

**Testimony To The
ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
Prepared July 1, 2010 by the
North Dakota Association of Counties
Terry Traynor, Assistant Director**

CONCERNING PUBLIC IMPROVEMENT BIDDING

Chairman Potter and members of the Advisory Commission, thank you for the opportunity to follow up on county concerns with the current public improvement bidding requirements of state law.

Four of the bill drafts prepared for today's meeting are of great interest to counties, and I will attempt to explain that interest and our support for each.

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Bill draft 10063.0100 accomplishes two goals – the first of which is greater simplicity and clarity. Sections 1, 2, 4, & 5 remove specific dollar thresholds, replacing them all with a reference or relationship to the new section (3). Section 3 creates a dynamic public improvement bidding threshold that accomplishes the goal of eliminating the need for the Legislature, local government, and the construction industry to continually discuss and debate this issue.

As testified previously, applying the consumer price index referenced in this bill to the \$100,000 (1997-established) threshold would have already inflated this amount to \$133,668 by March of 2010. We therefore believe that using \$135,000 as a starting point for calendar year 2010 may be appropriate. It has also been noted that this CPI reference is used in multiple locations of Century Code already.

Our Association believes that this is a reasonable starting point and an equitable means of solving this long-term issue.

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Bill draft 10064.0100 is a statutory change of fairly limited scope. The 2001 Legislature amended state law (48-01.1-04 – the precursor to 48-01.2-02) to permit NDDOT to utilize qualified in-house engineering for the “plans, drawings, and specifications” of storage buildings.

NDACo believes that it is reasonable to permit counties and cities to have this same ability, should they have qualified engineers on staff. In reality, there are only 10 counties and about the same number of cities that would meet this requirement. NDACo believes that this is an appropriate use of government resources that are already available within some jurisdictions.

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Bill draft 10065.0100 proposes to change 48-01.2-04, reducing the 21-day, 3-week advertisement period for public improvements to coincide with the 15-day, 2-week advertisement period that is now required for county road construction in 24-05-04, the erection of county buildings in 11-11-26, and for county supplies.

Counties contend that the significantly different requirement for advertising public building bids is, at first, confusing. Of greater concern, is the delay this can cause in situations where modifications in design and a subsequent “rebid” becomes necessary – particularly with North Dakota’s already limited construction season. With the timing of publication dates of (mostly weekly) county newspapers, the scheduling of commission meetings, and the current statutory delay; two months can easily pass before awards can be made. This delay can greatly impact completion schedules and therefore costs, if certain construction phases are not completed prior to adverse weather conditions.

For these reasons, NDACo supports bill draft 10065.0100

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Bill draft 10064.0100 changes 48-01.2-03 to remove the prohibition on specifying trademarked products. However, this bill would permit its removal only in situations where an addition or remodeling was taking place and where those products were already in use. As was testified by Cass County Administrator, Bonnie Johnson, this provision has resulted in costly changes, repurchases, and “work-arounds” particularly when brand-specific computer controlled jail door locks, air handling devices, and similar equipment could not be specified in a bid. This provision would not require including brand names in a bid, but would make it permissible in those situations that local boards determine it is important.

NDACo supports 100066.0100.

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Thank you Mr. Chairman and Commission members for the opportunity to address this important State and local government issue.