

2025 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1445

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1445
2/7/2024

Relating to the definition of a pre-engineered structure and the threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement.

11:10 a.m. Chairman Schauer opened the hearing.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, Brown, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff
Members absent: Representative Christy

Discussion Topics:

- Clarity and safety
- Efficiency and fiscal responsibility
- Collaborative and balanced approach

11:11 a.m. Representative Brandenburg, District 28, introduced the bill.

11:22 a.m. Cole Garman, Outreach & Engagement Chief of North Dakota Parks and Recreation, testified on behalf of Cody Schulz, Director of North Dakota Parks and Recreation, testified in favor and submitted testimony, #36096, #36230.

11:31 a.m. Aaron Birst, Association of Counties, testified in favor.

11:32 a.m. Paul Taylor, Deputy Director of North Dakota Parks and Recreation, testified in favor and submitted testimony, #36232.

11:39 a.m. Mike Krumwiede, American Council of Engineering Companies, testified in opposition and submitted testimony, #36233, #36234.

11:48 a.m. Russ Hanson, Executive Vice President of Associated General Contractors of North Dakota, testified in opposition and submitted testimony, #36235, #36236.

11:54 a.m. Jolene Rieck, North Dakota Landscape Artist, testified in opposition, #36237.

12:01 p.m. Thomas Todd, Northwest Contracting, testified in opposition.

12:04 a.m. Bill Kalanek, ND Association of Plumbing Heating, Mechanical Contractors, testified in opposition.

Additional written testimony:

Cole Higlin, Public Policy Chair of North Dakota Recreation & Park Association, submitted testimony in favor, #36038.

David Bruschwein, Division Director of the NDDEQ, submitted testimony in favor, #36067.

12:05 p.m. Chairman Schauer closed the hearing.

Jackson Toman, Committee Clerk

**Testimony of Cole Higlin
North Dakota Recreation & Park Association
To House Government & Veterans Affairs Committee
In Support to HB 1445
Friday, February 7, 2025**

Chairman Schauer and members of the Committee, my name is Cole Higlin, and I am the public policy chair of the North Dakota Recreation & Park Association (NDRPA). We represent more than 900 members, primarily park districts, and work to advance parks, recreation and conservation for an enhanced quality of life in North Dakota.

On behalf of North Dakota's park districts, I express support for House Bill 1445, which amends the procurement threshold for architectural and engineering services related to public improvements.

HB 1445 proposes an increase in the threshold for procuring plans, drawings and specifications from an architect or engineer for pre-engineered structures, raising the limit from \$200,000 to \$1 million. This change will apply to pre-engineered buildings, which are designed and reviewed by engineers before manufacturing to ensure they comply with building codes and project requirements. For other types of public improvements, the procurement threshold remains at \$200,000.

This bill would eliminate the unnecessary redundancy of requiring additional approvals from an architect or engineer for pre-engineered structures within the \$200,000 to \$1 million range. Such structures are already thoroughly vetted and stamped by engineers prior to fabrication, reducing the need for further review when the designs are within the specified cost range.

As park districts manage public spaces, recreational facilities, and community centers—often with constrained budgets—HB 1445 provides much-needed flexibility. By allowing park districts to more easily manage pre-engineered projects, the bill helps to streamline construction processes, saving time and resources.

HB 1445 would enhance the efficiency of public projects, supporting the ongoing development of North Dakota's communities. I strongly urge you to pass this bill, which will help park districts and local governments manage resources more effectively while fostering growth in public infrastructure. Thank you for the opportunity to express our support.



Testimony in Support of
House Bill No. 1445
House Government and
Veteran Affairs Committee
February 7, 2025

TESTIMONY OF

David Bruschwein, Director of Municipal Facilities Division

Good afternoon, Chairman Schauer and members of the House Government and Veterans Affairs Committee. My name is David Bruschwein, and I am the Director of the Division of Municipal Facilities at the Department of Environmental Quality (DEQ). I am here to testify in support of House Bill 1445.

The DEQ worked with the Parks and Recreation Department in developing a similar bill, House Bill 1121, which the Parks and Recreation Department requested to be killed in anticipation of House Bill 1445. This bill still addresses our concerns about the possible impact on public drinking water and wastewater systems. Because a "pre-engineered structure" includes "components", the DEQ had concerns that this definition could cover drinking water system components incorporated into walls such as a water feed and backflow prevention to a chemical feed pump.

To avoid any future confusion and prevent possible loopholes in the State's drinking water regulations, the DEQ and Park and Recreation agreed to add an exemption in the pre-engineered structure definition. It states, "The term does not include any infrastructure regulated under chapters 23.1-01 and 61-28.1", which are the drinking and wastewater chapters in Century Code. This exemption has also been incorporated in House Bill 1445.

The DEQ supports House Bill 1445, and I would be happy to answer any questions.

Testimony – HB 1445
House Government and Veterans Affairs
February 7, 2025
By Cody Schulz
Director, ND Parks and Recreation

Chairman Schauer and members of the House Government and Veterans Affairs Committee, my name is Cody Schulz. I am the Director of the North Dakota Parks and Recreation Department, and I offer this testimony in support of HB 1445.

In the previous legislative session, we strongly supported SB 2347, which sought to raise thresholds for hiring architects and engineers for pre-engineered structures. While the bill passed the Senate, it was voted down in the House due to two primary concerns:

1. The term "unit" was undefined, leading to fears that it might unintentionally apply to regulated infrastructure like wastewater systems.
2. Concerns were raised about the safety of pre-engineered buildings if they did not meet North Dakota standards.

In response, our agency approached this issue with a commitment to refining the language and addressing these concerns comprehensively. We consulted with the North Dakota Department of Transportation (NDDOT), the North Dakota Department of Environmental Quality (NDDEQ), the Insurance Department, and the State Fire Marshal. Their expertise, along with the leadership Representative Brandenburg shaped the language now before you in HB 1445. Notably, this final language received no opposition from these key departments, reinforcing its practicality and alignment with state safety and regulatory standards.

Key Improvements in HB 1445:

1. Replacing the term "unit" with "building" to clearly define the scope and eliminate any potential overlap with regulated infrastructure, such as water or wastewater systems.
2. Including a precise definition of "pre-engineered building" and requiring compliance with North Dakota Building Code, addressing safety concerns while preserving the cost-saving and efficiency goals of the legislation.

It is also important to note that HB 1445 works within a framework of existing safeguards in the North Dakota Century Code that ensure public safety, particularly for schools:

- **NDCC 18-12-05:** Requires the State Fire Marshal and local fire departments to approve plans and specifications for school buildings before construction begins. This ensures fire safety standards are met and maintained through the building process.
- **NDCC 15.1-36-01:** Requires approval from the Superintendent of Public Instruction for school construction projects exceeding \$150,000. This additional oversight ensures that large-scale school improvement projects are reviewed for safety and appropriateness before construction.

These statutory provisions demonstrate that North Dakota has robust checks in place for public projects, ensuring safety and accountability even as thresholds are updated to reflect modern costs and needs.

We feel that HB 1445 provides us with a common-sense solution to the statutory challenges placed on many state agencies, particularly in three main categories:

1. Clarity and Safety:

- HB 1445 resolves the ambiguities of its predecessor, SB 2347, by narrowly defining its scope and mandating compliance with state safety standards. These refinements directly address feedback from last session and ensure public confidence in the legislation.

2. Efficiency and Fiscal Responsibility:

- Under current thresholds, many simple pre-engineered structures—such as comfort stations, cabins, and storage buildings – require unnecessary architectural and engineering oversight. In many cases forcing us to spend taxpayer dollars twice for the same service. These requirements add costs and delays without adding value. Increasing the threshold to \$1 million for pre-engineered buildings allows agencies to focus resources where they are most needed.

3. Collaborative and Balanced Approach:

- The development of this bill reflects meaningful consultation with regulatory and safety authorities, demonstrating that HB 1445 is a well-balanced and thoroughly vetted solution to streamline public improvement processes.

In closing, HB 1445 is a thoughtful and well-refined approach to modernizing public improvement thresholds. It incorporates lessons from the past legislative session and provides a commonsense solution to save taxpayer dollars, streamline government processes, and ensure safety standards are upheld.

On behalf of North Dakota Parks and Recreation, I strongly encourage a "Do Pass" on HB 1445. Thank you for your time, and I am happy to answer any questions.

25.0714.01000

Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1445

Introduced by

Representatives Brandenburg, Beltz, Grueneich, Kempenich, O'Brien, Pyle, Vanwinkle
Senators Erbele, Patten, Wanzek, Weber

1 A BILL for an Act to amend and reenact sections 48-01.2-01 and 48-01.2-02.1 of the North
2 Dakota Century Code, relating to the definition of a pre-engineered structure and the threshold
3 for procuring plans, drawings, and specifications from an architect or engineer for construction
4 of a public improvement.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 48-01.2-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **48-01.2-01. Definitions.**

9 In this chapter, unless the context otherwise requires:

- 10 1. "Agency construction management" means a public improvement delivery method
11 through which a person provides to a governing body experienced construction
12 management services, including ideas on constructability, documentation of design
13 and construction, and coordination of project schedules.
- 14 2. "Architect" means an individual registered as an architect under chapter 43-03.
- 15 3. "Common ownership" means a shared management or ownership interest in two or
16 more entities.
- 17 4. "Construction" means the process of building, altering, repairing, improving, or
18 demolishing any public structure or building or other improvement to any public
19 property. The term does not include the routine operation or maintenance of existing
20 facilities, structures, buildings, or real property or demolition projects costing less than
21 the threshold established under section 48-01.2-02.1.
- 22 5. "Construction administration" means administrative services provided by a governing
23 body or an architect, a landscape architect, or an engineer, and includes providing
24 clarifications, submittal review, recommendations for payment, preparation of change

- 1 orders, and other administrative services included in the agreement with the architect,
2 landscape architect, or engineer. The term does not include supervision of the
3 construction activities for the construction contracts.
- 4 6. "Construction management at-risk" means a public improvement delivery method
5 through which a construction manager provides advice to the governing body during
6 the planning and design phase of a public improvement, negotiates a contract with the
7 governing body for the general construction bid package of the public improvement,
8 and contracts with subcontractors and suppliers for the actual construction of the
9 public improvement.
- 10 7. "Construction manager" means a contractor licensed under chapter 43-07 or an
11 individual employed by a licensed contractor which has the expertise and resources to
12 assist a governing body with the management of the design, contracting, and
13 construction aspects of a public improvement.
- 14 8. "Construction observation" means observation of construction work and site visits by
15 an architect, a landscape architect, or an engineer to assist the governing body in
16 determining that the work conforms in general to the requirements of the construction
17 contract and that the contractor has implemented and maintained the integrity of the
18 design concept of a project as a functioning whole as indicated in the construction
19 contract.
- 20 9. "Contract" means a type of agency agreement for the procurement of services under
21 this chapter.
- 22 10. "Contractor" means any person, duly licensed, that undertakes or enters a contract
23 with a governing body for the construction or construction management of any public
24 improvement, including multiple prime contracts.
- 25 11. "Design services" means architect services, engineer services, landscape architect
26 services, or surveyor services.
- 27 12. "Design-bid-build" means a project delivery method in which design and construction
28 of the project are in sequential phases, and in which the first project phase involves
29 design services, the second project phase involves securing a contractor through a
30 bidding process, and the third project phase provides for construction of the project by
31 a contractor awarded the project.

Sixty-ninth
Legislative Assembly

- 1 13. "Emergency situation" means a sudden generally unexpected occurrence that requires
2 immediate action to protect public health, safety, or property and which ends when the
3 immediate threat to public health, safety, or property ceases and services are restored.
4 The term does not include a lack of planning on the part of the governing body,
5 architect, engineer, landscape architect, or contractor.
- 6 14. "Engineer" means an individual registered as an engineer under chapter 43-19.1.
- 7 15. "General conditions" means the written portion of a contract setting forth the governing
8 body's minimum acceptable performance requirements, including the rights,
9 responsibilities, and relationships of the parties involved in the performance of the
10 contract.
- 11 16. "Governing body" means the governing officer or board of a state entity or a political
12 subdivision.
- 13 17. "Guaranteed maximum price" means the maximum amount a construction manager
14 at-risk may be paid under a contract to construct a public improvement.
- 15 18. "Landscape architect services" means landscape architecture services governed
16 under chapter 43-03.
- 17 19. "Lowest responsible bidder" means the lowest best bidder for the project considering
18 past experience, financial condition, past work with the governing body, and other
19 pertinent attributes that may be identified in the advertisement for bids.
- 20 20. "Political subdivision" means a county, township, park district, school district, city, and
21 any other unit of local government which is created either by statute or by the
22 Constitution of North Dakota for local government or other public purposes.
- 23 21. "Pre-engineered structure" means a building, excluding infrastructure regulated under
24 chapters 23.1-01 and 61-28.1, which has manufactured roof and wall components
25 sent to a construction site to be assembled on location, has plans and specifications,
 including foundation, footing or anchoring requirements stamped by an architect or
 engineer, and is in compliance with state building code requirements under chapter 54-
 21.3 and the state fire code requirements under North Dakota Administrative Code article
 45-18.
- 26 24--22. "Public improvement" means any improvement undertaken by a governing body for
27 the good of the public and which is paid for with any public funds, including public
28 loans, bonds, leases, or alternative funding, and is constructed on public land or within
29 an existing or new public building or any other public infrastructure or facility if the

1 result of the improvement will be operated and maintained by the governing body. The
2 term does not include a county road construction and maintenance, state highway, or
3 public service commission project governed by title 11, 24, or 38.

4 22-:-23. "Subcontractor" means a person that contracts to perform work or render a service to
5 a contractor or to another subcontractor as part of a contract with a governing body.

6 **SECTION 2. AMENDMENT.** Section 48-01.2-02.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

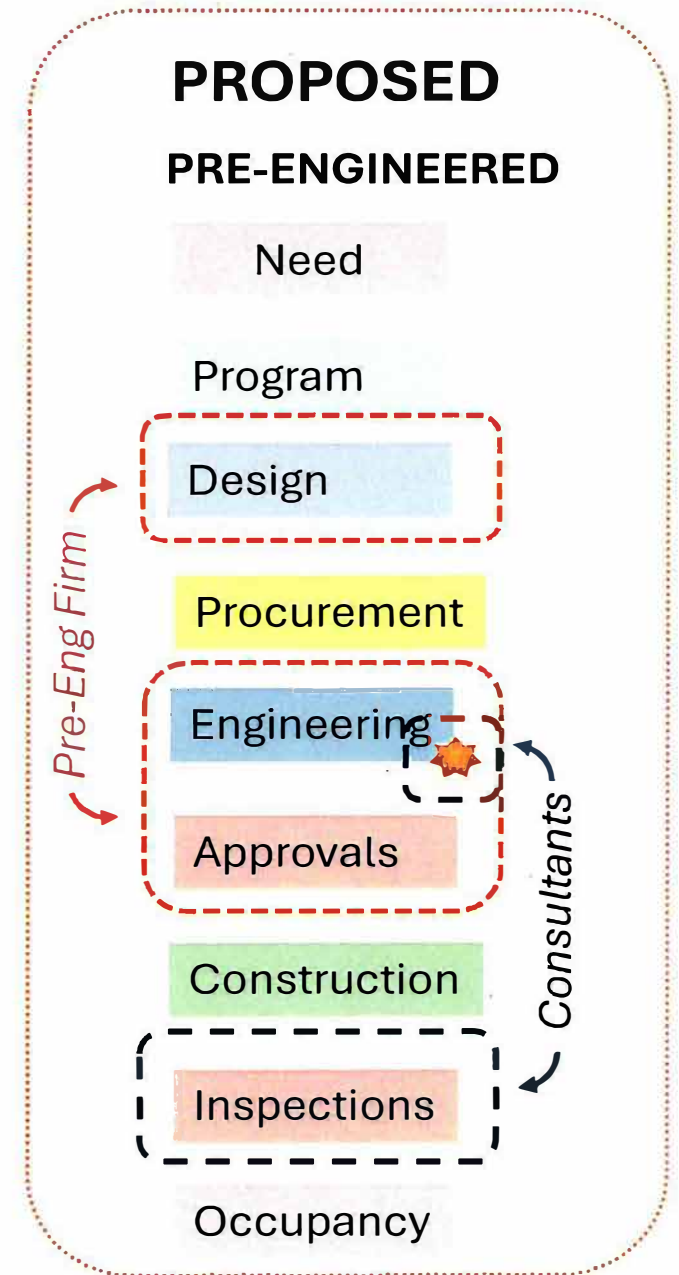
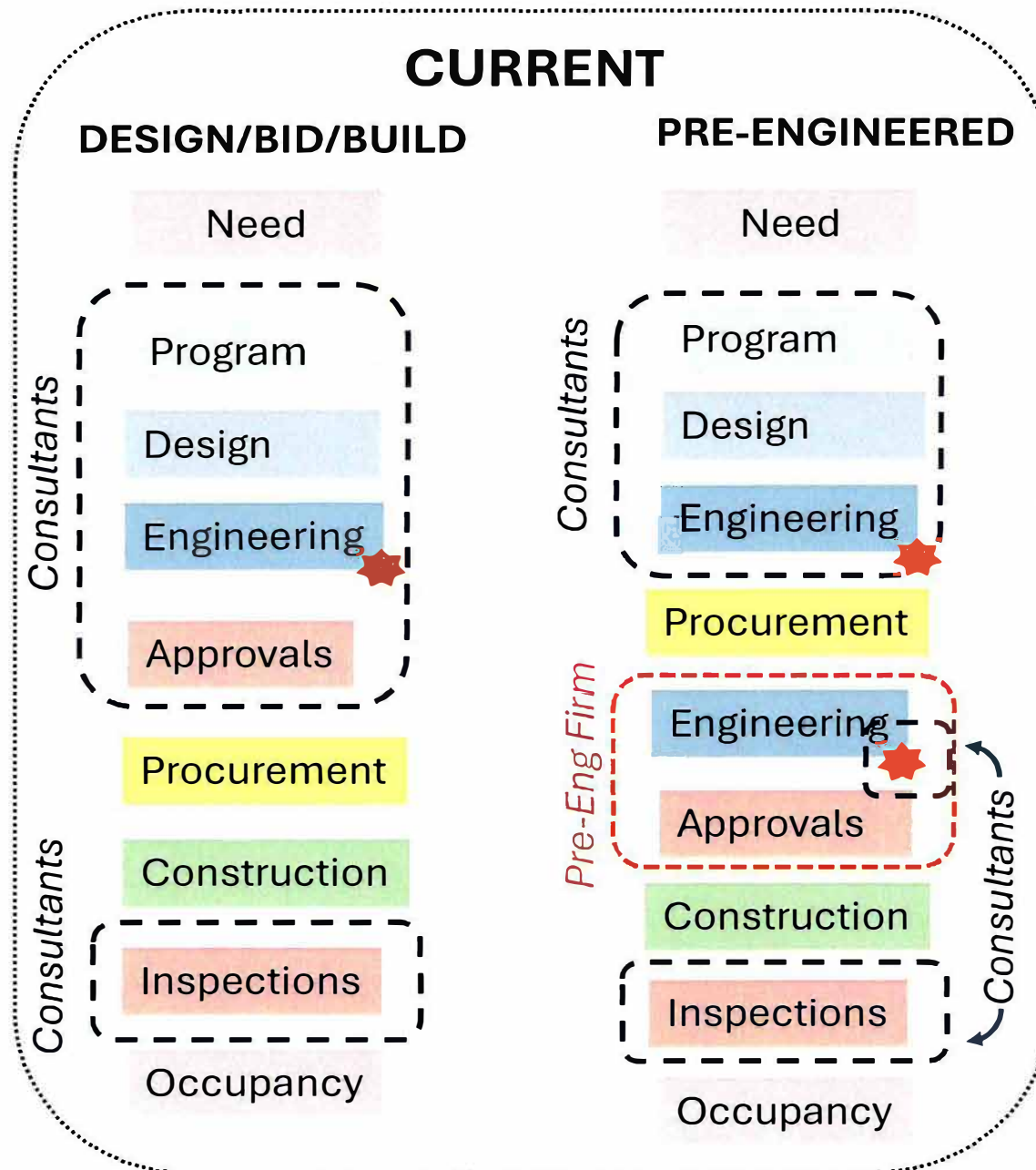
8 **48-01.2-02.1. Public improvement construction threshold.**

9 1. The threshold for bidding construction of a public improvement is two hundred
10 thousand dollars. The threshold for procuring plans, drawings, and specifications from
11 an architect or engineer for construction of a

12 a. 8, public improvement is two hundred thousand ~~dollars;~~ or

13 b. A pre-engineered structure to be constructed as a public improvement is
14 one million dollars.

15 2. Notwithstanding the thresholds in subsection 1, if the state or a political subdivision
16 undertakes the construction of a public improvement and there is reason to believe
17 that engineering or architectural services are necessary to protect the health, safety, or
18 welfare of the public, the state or political subdivision shall consider consulting with an
19 engineer or architect.





Senate Government and Veterans Affairs

Testimony to oppose HB 1445

Chairman Schauer and Members of the Committee, my name is Mike Krumwiede appearing on behalf of the ND Chapter of the American Institute of Architects in opposition of HB 1445. The ND Chapter of the American Institute of Architects is a nonprofit, voluntary, self-governing organization which represents 230 member Architects in ND.

The concerns AIA has about HB 1445 are generally universal to all of the threshold bills that have come before the Legislative Assembly over the past several biennia. The primary concern is that the issue of thresholds as a requirement for project bidding and thresholds as they relate to a requirement of utilizing licensed design professionals have historically been tied together, and they should not be.

Raising the limit to \$1,000,000 would not require a State agency to engage a design professional to assist in the preparation of documents and construction oversight. The Architects responsibility is to protect the safety and welfare of the general public in the structures they occupy or visit. Architects and Engineers are immersed in the building code during design to provide a building that is designed for the safety of its occupants. Although there may be several competent contractors with a design staff to perform projects for less than \$1,000,000, there are countless more in the State that may not be as capable.

One question to consider is who verifies pre-engineered units comply with the state building code before they are purchased or awarded the project? This is typically performed by an Architect or Engineer. As written, the bill would put the responsibility on the Agency. There are many examples when code conflicts were identified in the building manufacturer's submittal that likely wouldn't have been caught prior to receiving a bid if an Architect or Engineer wasn't involved.

Pre Engineered Manufactured Buildings are great solutions for big spaces or when economics is important. They are also great because they lend themselves to a variety of flexible use solutions. They are not just reserved for shops and warehouses. Although we would also argue that shops and warehouses can be extremely hazardous uses that can require sophisticated life safety analysis.

Below are some specific examples of a PEMB that a building official may not want to take on the responsibility for determining life safety requirements for any of these structures.

Capital Ice Complex: Wachter Arena

Completion Date: December 2018

32,000 SF

Fixed Seating for 500

Standing Room for 100

VFW Sports Center: First International Bank and Trust Arena

Completion Date: November 2023

27,000 SF

Fixed Seating for 250

Standing Room for 100

Oberon Public Schools – Elementary School

Completion Date: August 2020

20,000 SF

7 classrooms school with gymnasium

For these reasons we would ask for a Do Not Pass recommendation on HB 1445.



House Government and Veterans Affairs

Testimony to oppose HB 1445

Chairman Schauer and Members of the Committee, my name is Mike Krumwiede appearing on behalf of the American Council of Engineering Companies in opposition of HB 1445. The American Council of Engineering Companies of North Dakota (ACEC/ND) is a nonprofit, voluntary, self-governing organization which represents 27 member firms and nearly 1700 employees.

The concerns ACEC has about HB 1445 are generally universal to all of the threshold bills that have come before the Legislative Assembly over the past several biennia. The primary concern is that the issue of thresholds as a requirement for project bidding and thresholds as they relate to a requirement of utilizing licensed design professionals have historically been tied together, and they should not be.

Thresholds related to project bidding for construction should be established by striking a balance between agility of agencies to procure services and being fiscally responsible, while giving the contracting industry an opportunity to bid projects in an open, fair and consistent manner. However, thresholds related to requirements for utilizing licensed design professionals should be established with appropriate deliberation given to the impact to public safety.

Agencies are making judgments of whether to get a licensed professional involved in the design of a project based on the project cost, because that is the metric prescribed in State law. The reality is that a \$500 project could have a higher degree of impact to public safety than a \$5 million project, depending on the scope of the project. Simply increasing the threshold amount by any factor is going to be accompanied by a corresponding increase in risk to public safety, and we don't feel that is acceptable.

Three sessions ago we worked extensively to come up with a compromise to raising the threshold limit. This bill would increase it again by 400% in just 6 years. Arbitrarily raising this threshold again is going to be accompanied by increased risk to public safety.

In addition, this bill also exempts Pre-Engineered units which raises additional concerns among the engineering community because these types of buildings still require the expertise of architects and/or engineers to evaluate plans, drawings, or specifications.

This bill does not reflect the process and design work that goes into a pre-engineered building like:

- Building Specifications
 - Size
 - Design life
 - wind/snow loads
 - insulation requirements
 - doorways/emergency exits (if any)
 - vehicle access
- Foundation
- Heating and ventilation
- Plumbing
- Fire protection/sprinkler systems
- Electrical system
- Building Site
 - Sidewalks
 - Driveways
 - Water/sewer connections

One thing that is often misunderstood on these structures is that work is still required by local engineers and a general contractor to design and construct the foundations, to design and construct the site the building sits on, complete the structural fill and grading work, design and install utilities, design and install parking and sidewalks to the buildings, and sometimes to deliver and install the buildings. It might take what could be a \$500,000 structure out of the assembly/manufacturing plant and by the time it is delivered and installed onsite it might cost \$1.5 million. This often means that it would be less expensive to design a custom building and have a contractor build it onsite.

If the goal is to optimize the value of engineering and architectural services obtained by public entities, there are a lot of studies that show that the best way to do this is to conduct qualifications-based selections as already described in NDCC 54-44.7.03. Any concerns about necessary versus unnecessary services can be easily discussed and accounted for as part of this process.

For these reasons we would ask for a Do Not Pass recommendation on House Bill 1445.

February 7, 2025
House Government & Veterans Affairs Committee
HB 1445

Mr. Chairman and members of the House Government & Veterans Affairs Committee, my name is Russ Hanson, and I am with the Associated General Contractors of North Dakota (AGC of ND). The AGC of ND is the largest construction trade association in North Dakota representing 400 members who perform all types of commercial construction (highway/bridge, vertical commercial, water/utility). Our membership also consists of equipment and material suppliers and has been in existence since 1951.

The AGC of ND is in opposition to HB 1445 which proposes to increase the design threshold to \$1,000,000 for "pre-engineered structures".

The purpose of thresholds is for a transparent bid. Transparency in bidding usually leads to more bidders. The proposal to raise the design threshold for a specific type of project \$1,000,000 raises concerns and confusion dealt with in past policy.

Since the inception of the bid thresholds, I believe the design and bid thresholds had been the same except for the 2015-17 biennium. My experience with thresholds goes to the early 1990's and I believe they may have started at \$50,000 or in that range. At some point they were adjusted to \$100,000 and stayed at that level for well over a decade, maybe close to a decade and a half.

The 2015 Legislature (SB 2246) raised the design threshold from \$100,000 to \$150,000 while leaving the construction/advertising/bidding/bonding thresholds at \$100,000. When they became two different, there was confusion.

The 2017 Legislature (SB 2146) raised the construction and bonding threshold to match the design threshold, so they were all the same amount - \$150,000. The 2019 Legislature (HB 1356) raised all NDCC 48 thresholds to \$200,000 where they have remained since.

The stakeholders believe having uniform thresholds for advertising, bidding, bonding, and procuring designs is an important element to keep NDCC 48 (Public Bid Code) simple and easy to apply to the construction process. While public entities in our more metro areas build regularly and are very familiar with the NDCC 48 statutes, many of the rural political subdivisions are not.

They may only have a construction project every 20 to 30 years so having a process to guide them in a simple (and safe) manner is important. De-coupling the thresholds at different amounts and adding a specific threshold for “pre-engineered structure” into the code makes the process more complex, confusing, and ripe for NDCC 48 noncompliance. Having a statute that is easy to comply with is important to stakeholder groups. We have found when the section is misapplied, it is generally not because of their intention to do so, they didn’t know the process or policies.

There are consequences which are likely should this bill become law. When the Legislature enacts policy for one specific entity, or in this case a type of building, you can almost be certain the line for similar special considerations will follow. Where does the Legislature stop with the special provisions once it goes there for a certain situation? The more it does, the more confusion is likely, and the health, safety, and welfare concerns become greater. An excellent illustration of this situation occurred just a couple of weeks ago in the House IBL committee involving a requested addition to WSI coverage to a small group of employees at a certain state facility – it was to add “just them”. By the time the hearing concluded, two more groups requested to be included with the same special consideration as those who asked for the bill to be introduced. I’d expect there to be numerous additional future requests of the same type of consideration that is being requested in HB 1445, should this legislation be enacted as proposed.

For those reasons, we do not view HB 1445 as necessary, and we would request a **Do Not Pass Committee Recommendation**. Thank you for allowing me to present this testimony.

PS – I wanted to include in this testimony for the committee to monitor HB 1369. It has a section proposing to increase the NDCC 48 bid, bond, and design thresholds that are also being discussed in HB 1445. HB 1369 proposes all the thresholds in NDCC 48 (stated in previous sentence) be raised from \$200,000 to \$250,000.

14. "Engineer" means an individual registered as an engineer under chapter 43-19.1.
15. "General conditions" means the written portion of a contract setting forth the governing body's minimum acceptable performance requirements, including the rights, responsibilities, and relationships of the parties involved in the performance of the contract.
16. "Governing body" means the governing officer or board of a state entity or a political subdivision.
17. "Guaranteed maximum price" means the maximum amount a construction manager at-risk may be paid under a contract to construct a public improvement.
18. "Landscape architect services" means landscape architecture services governed under chapter 43-03.
19. "Lowest responsible bidder" means the lowest best bidder for the project considering past experience, financial condition, past work with the governing body, and other pertinent attributes that may be identified in the advertisement for bids.
20. "Political subdivision" means a county, township, park district, school district, city, and any other unit of local government which is created either by statute or by the Constitution of North Dakota for local government or other public purposes.
21. "Public improvement" means any improvement undertaken by a governing body for the good of the public and which is paid for with any public funds, including public loans, bonds, leases, or alternative funding, and is constructed on public land or within an existing or new public building or any other public infrastructure or facility if the result of the improvement will be operated and maintained by the governing body. The term does not include a county road construction and maintenance, state highway, or public service commission project governed by title 11, 24, or 38.
22. "Subcontractor" means a person that contracts to perform work or render a service to a contractor or to another subcontractor as part of a contract with a governing body.

48-01.2-02. Plans and specifications for a public improvement contract.

Except as otherwise provided in this chapter, if the estimated cost for the construction of a public improvement is in excess of the threshold established under section 48-01.2-02.1, the governing body shall procure plans, drawings, and specifications for the improvement from an architect or engineer. For a public building in use by or to be used by the North Dakota agricultural experiment station in connection with farm or agricultural research operations, the plans, drawings, and specifications, with the approval of the state board of higher education, may be prepared by an engineer in the regular employment of the agricultural experiment station. For a public building in use by or to be used by the department of transportation for the storage and housing of road materials or road machinery, equipment, and tools, the plans, drawings, and specifications may be prepared by an engineer employed by the department of transportation. Plans, drawings, and specifications of an architect or engineer must be stamped and sealed by the date of the initial bid advertisement.

48-01.2-02.1. Public improvement construction threshold.

1. The threshold for bidding construction of a public improvement is two hundred thousand dollars. The threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement is two hundred thousand dollars.
2. Notwithstanding the thresholds in subsection 1, if the state or a political subdivision undertakes the construction of a public improvement and there is reason to believe that engineering or architectural services are necessary to protect the health, safety, or welfare of the public, the state or political subdivision shall consider consulting with an engineer or architect.

House Government and Veteran Affairs Committee

House Bill 1445 – A BILL for an Act to amend and reenact sections 48-01.2-01 and 48-01.2-02.1 of the North Dakota Century Code, relating to the definition of a pre-engineered structure and the threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement.

Testimony by Jolene Rieck, PLA; Bismarck, North Dakota

Thursday, February 7, 2025

Good morning, Chairman Schauer, and members of the Committee. I am Jolene Rieck, a North Dakota Licensed Landscape Architect (License #8). Please vote **DO NOT PASS** on HB 1445.

Design professionals, including landscape architects, play a critical role in ensuring the health, safety, and welfare of the public. By overseeing the design and construction of public improvements, we are responsible for compliance with building codes, site integration, accessibility requirements, and environmental considerations.

A pre-engineered structure is a public improvement. There is no need for a separate definition. Most people think of a pre-engineered structure as a pre-engineered metal building, but without proper terminology, this can include any type of building: steel or wood frame. Others may confuse this with the term “prefabricated” building, which is not addressed in this bill.

Most pre-engineered buildings are effectively design-build services for structural integrity. Manufacturers and suppliers are typically not licensed nor insured to provide professional design services in mechanical, electrical or plumbing as well as fire protection. Most state agencies and political subdivisions do not have North Dakota licensed design professionals on staff to properly review a proposed design. This often results in delays and rejections from the local building code and fire officials.

The risks with pre-engineered structures are errors or inaccuracies in the design phase, which can lead to deficiencies or mismatches during fabrication and construction. Another risk is poor quality fabrication with substandard components, compromising the integrity and safety of the building, leading to costly rework, delays and future repairs.

One advantage of utilizing pre-engineered structure is that it can administratively speed up the funding obligation process. However, the tradeoff is that pre-engineered structures are often more expensive – up

to 150% more expensive due to a need for customization – a common trait of most public improvement projects.

An example provided by one of my colleagues was a project in Jamestown that originally started with a prefabricated building because of how straightforward the project seemed. However, the client pivoted to a traditional stick-built structure because the moment that plumbing and HVAC were added to the prefabricated structure, the cost nearly doubled. Additionally, the geotechnical investigation found fat clay soils that required substantial engineering and site work to reduce/eliminate differential settling.

Because of the current statute, that client had a licensed design professional on the project, who identified the need for a geotechnical investigation. Many political subdivisions and agencies do not have licensed design professionals on staff. Their level of awareness of all the components in a public improvement may lead to violations in permitting, code compliance, mechanical/electrical/plumbing (MEP), non-pre-engineered components, leading to compromise in health and safety.

By raising the construction cost threshold for requiring agencies and political subdivisions to engage in the services of licensed design professional risks undermining these safeguards. A higher threshold could lead to bypassed professional oversight, increasing the likelihood of design flaws, code violations, and safety risks. Across the country, we have seen examples of structures that failed, resulting in costly repairs, injuries, and even loss of life.

Cost thresholds are a blunt instrument that do not account for the specific complexities of individual projects. The bill is also problematic because it does not define if “cost” only includes the shell of a pre-engineered structure? What about the utilities serving the building? The site work? The fire suppression systems? Does the “cost” include the assembly on location? Does the “cost” include each individual structures or the sum of the “costs” in a multi-structure project?

I urge the committee to prioritize the safety and welfare of our communities by maintaining the current cost threshold for requiring design professionals in pre-engineered building projects. The potential savings from raising the threshold are far outweighed by the risks to public safety and the potential for increased long-term costs.

Please vote **DO NOT PASS** on HB1445.

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1445
2/13/2025

Relating to the definition of a pre-engineered structure and the threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement.

3:43 p.m. Chairman Schauer opened the meeting.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Brown, Grindberg, Karls, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff
Members absent: Representatives Bahl, Christy, McLeod

Discussion Topics:

- Proposed amendments relating to the price of projects
- Committee work

3:44 p.m. Vice-Chairman Satrom moved to amend page 4, line 20.

3:45 p.m. Representative Steiner seconded the motion.

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	AB
Representative Collette Brown	AB
Representative Josh Christy	AB
Representative Karen Grindberg	Y
Representative Karen Karls	Y
Representative Carrie McLeod	AB
Representative Karen Rohr	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	N
Representative Christina Wolff	N

3:47 p.m. Motion passed 8-2-4.

3:47 p.m. Representative Steiner moved a Do Pass as Amended.

3:47 p.m. Representative Schneider seconded the motion.

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	N

Representative Landon Bahl	AB
Representative Collette Brown	AB
Representative Josh Christy	AB
Representative Karen Grindberg	Y
Representative Karen Karls	N
Representative Carrie McLeod	AB
Representative Karen Rohr	N
Representative Mary Schneider	N
Representative Vicky Steiner	Y
Representative Lori VanWinkle	N
Representative Steve Vetter	Y
Representative Christina Wolff	Y

3:54 p.m. Motion failed 5-5-4.

3:54 p.m. Representative Karls moved a Do Not Pass as Amended.

3:55 p.m. Steiner seconded the motion.

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	AB
Representative Collette Brown	AB
Representative Josh Christy	AB
Representative Karen Grindberg	Y
Representative Karen Karls	Y
Representative Carrie McLeod	AB
Representative Karen Rohr	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	N
Representative Lori VanWinkle	Y
Representative Steve Vetter	N
Representative Christina Wolff	N

3:55 p.m. Motion passed 7-3-4.

Vice-Chairman Satrom will carry the bill.

3:56 p.m. Chairman Schauer adjourned the meeting.

Jackson Toman, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

MB
2/13/25
1 of 4

HOUSE BILL NO. 1445

Introduced by

Representatives Brandenburg, Beltz, Grueneich, Kempenich, O'Brien, Pyle, VanWinkle

Senators Erbele, Patten, Wanzek, Weber

1 A BILL for an Act to amend and reenact sections 48-01.2-01 and 48-01.2-02.1 of the North
2 Dakota Century Code, relating to the definition of a pre-engineered structure and the threshold
3 for procuring plans, drawings, and specifications from an architect or engineer for construction
4 of a public improvement.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 48-01.2-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **48-01.2-01. Definitions.**

9 In this chapter, unless the context otherwise requires:

- 10 1. "Agency construction management" means a public improvement delivery method
11 through which a person provides to a governing body experienced construction
12 management services, including ideas on constructability, documentation of design
13 and construction, and coordination of project schedules.
- 14 2. "Architect" means an individual registered as an architect under chapter 43-03.
- 15 3. "Common ownership" means a shared management or ownership interest in two or
16 more entities.
- 17 4. "Construction" means the process of building, altering, repairing, improving, or
18 demolishing any public structure or building or other improvement to any public
19 property. The term does not include the routine operation or maintenance of existing

1 facilities, structures, buildings, or real property or demolition projects costing less than
2 the threshold established under section 48-01.2-02.1.

3 5. "Construction administration" means administrative services provided by a governing
4 body or an architect, a landscape architect, or an engineer, and includes providing
5 clarifications, submittal review, recommendations for payment, preparation of change
6 orders, and other administrative services included in the agreement with the architect,
7 landscape architect, or engineer. The term does not include supervision of the
8 construction activities for the construction contracts.

9 6. "Construction management at-risk" means a public improvement delivery method
10 through which a construction manager provides advice to the governing body during
11 the planning and design phase of a public improvement, negotiates a contract with the
12 governing body for the general construction bid package of the public improvement,
13 and contracts with subcontractors and suppliers for the actual construction of the
14 public improvement.

15 7. "Construction manager" means a contractor licensed under chapter 43-07 or an
16 individual employed by a licensed contractor which has the expertise and resources to
17 assist a governing body with the management of the design, contracting, and
18 construction aspects of a public improvement.

19 8. "Construction observation" means observation of construction work and site visits by
20 an architect, a landscape architect, or an engineer to assist the governing body in
21 determining that the work conforms in general to the requirements of the construction
22 contract and that the contractor has implemented and maintained the integrity of the
23 design concept of a project as a functioning whole as indicated in the construction
24 contract.

25 9. "Contract" means a type of agency agreement for the procurement of services under
26 this chapter.

27 10. "Contractor" means any person, duly licensed, that undertakes or enters a contract
28 with a governing body for the construction or construction management of any public
29 improvement, including multiple prime contracts.

30 11. "Design services" means architect services, engineer services, landscape architect
31 services, or surveyor services.

- 1 12. "Design-bid-build" means a project delivery method in which design and construction
2 of the project are in sequential phases, and in which the first project phase involves
3 design services, the second project phase involves securing a contractor through a
4 bidding process, and the third project phase provides for construction of the project by
5 a contractor awarded the project.
- 6 13. "Emergency situation" means a sudden generally unexpected occurrence that requires
7 immediate action to protect public health, safety, or property and which ends when the
8 immediate threat to public health, safety, or property ceases and services are restored.
9 The term does not include a lack of planning on the part of the governing body,
10 architect, engineer, landscape architect, or contractor.
- 11 14. "Engineer" means an individual registered as an engineer under chapter 43-19.1.
- 12 15. "General conditions" means the written portion of a contract setting forth the governing
13 body's minimum acceptable performance requirements, including the rights,
14 responsibilities, and relationships of the parties involved in the performance of the
15 contract.
- 16 16. "Governing body" means the governing officer or board of a state entity or a political
17 subdivision.
- 18 17. "Guaranteed maximum price" means the maximum amount a construction manager
19 at-risk may be paid under a contract to construct a public improvement.
- 20 18. "Landscape architect services" means landscape architecture services governed
21 under chapter 43-03.
- 22 19. "Lowest responsible bidder" means the lowest best bidder for the project considering
23 past experience, financial condition, past work with the governing body, and other
24 pertinent attributes that may be identified in the advertisement for bids.
- 25 20. "Political subdivision" means a county, township, park district, school district, city, and
26 any other unit of local government which is created either by statute or by the
27 Constitution of North Dakota for local government or other public purposes.
- 28 21. "Pre-engineered structure" means a building, excluding infrastructure regulated under
29 chapters 23.1-01 and 61-28.1, which has manufactured roof and wall components
30 sent to a construction site to be assembled on location, has plans and specifications

1 stamped by an architect or engineer, and is in compliance with state building code
2 requirements under chapter 54-21.3.

3 21.22. "Public improvement" means any improvement undertaken by a governing body for
4 the good of the public and which is paid for with any public funds, including public
5 loans, bonds, leases, or alternative funding, and is constructed on public land or within
6 an existing or new public building or any other public infrastructure or facility if the
7 result of the improvement will be operated and maintained by the governing body. The
8 term does not include a county road construction and maintenance, state highway, or
9 public service commission project governed by title 11, 24, or 38.

10 22.23. "Subcontractor" means a person that contracts to perform work or render a service to
11 a contractor or to another subcontractor as part of a contract with a governing body.

12 **SECTION 2. AMENDMENT.** Section 48-01.2-02.1 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **48-01.2-02.1. Public improvement construction threshold.**

- 15 1. The threshold for bidding construction of a public improvement is two hundred
16 thousand dollars. The threshold for procuring plans, drawings, and specifications from
17 an architect or engineer for construction of a:
18 a. A public improvement is two hundred thousand dollars; or
19 b. A pre-engineered structure to be constructed as a public improvement is
20 ~~one million~~two hundred fifty thousand dollars.
21 2. Notwithstanding the thresholds in subsection 1, if the state or a political subdivision
22 undertakes the construction of a public improvement and there is reason to believe
23 that engineering or architectural services are necessary to protect the health, safety, or
24 welfare of the public, the state or political subdivision shall consider consulting with an
25 engineer or architect.

**REPORT OF STANDING COMMITTEE
HB 1445**

Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends **AMENDMENTS** ([25.0714.01001](#)) and when so amended, recommends **DO NOT PASS** (7 YEAS, 3 NAYS, 4 ABSENT OR EXCUSED AND NOT VOTING). HB 1445 was placed on the Sixth order on the calendar.