

2011 HOUSE POLITICAL SUBDIVISIONS

HB 1185

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1185
January 20, 2011
Job # 13163

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to advertising contracts for road construction and equipment.

Minutes:

Testimony #1

Chairman Johnson: Opened the hearing on HB 1185.

Rep. Vigesaa: This bill would remove the need to advertise contracts for road construction and equipment from \$50,000 to \$100,000. Very few road construction projects are less than \$100,000 today. This will save the political subdivisions considerable time and effort as contemplate projects for anything within that \$50,000 range it would save them a lot of time and effort. ND Association of Counties requested that I submit this bill on their behalf.

Chairman Johnson: We have questions because of the way the bill is written and it is a little confusing. We noticed that the bill we were looking at is in error and needs to be changed. **Printed the version that is was on the internet and used that to continue the hearing.**

Rep. Shirley Meyer: I think until we know what the actual bill is and what it should actually look like I don't think we should hold a hearing.

Chairman Johnson: I don't think the intent of the bill is going to change. Handed out the correct version for everyone. Look on line 8 9 and 10 that is new underlined language. One line 15 you can see what is being crossed out.

Rep. Vigesaa: It just removes the \$50,000 out of that section for that particular type of project and put in \$100,000.

Rep. Koppelman: When political subdivisions are advertising for repair if it is over \$100,000 they would have advertised for bids where now they do for \$50,000. Why is that necessary?

Rep. Vigesaa: The reason they requested the change is there is virtually no highway construction projects that are less than \$100,000 and for very small projects that

might be in the \$50,000 range; it is a lot of time and effort to publicize for bids when it is such a small project.

Rep. Koppelman: Are there contractors out there that would object to this?

Rep. Vigesaa: Yes that is a good question. I don't think there is any opposition.

Rep. Klemin: If there is no highway construction less than \$100,000 than what difference does it make because they are all going to be more than \$50,000 anyway?

Rep. Vigesaa: Those projects are few, but for those few they would just as soon not have to go through the process of advertising for this.

Rep. Klemin: In those instances they could do a project to whomever without going through the bidding process.

Rep. Vigesaa: That I assume is correct.

Terry Traynor, Ass't Director, ND Assoc. of Counties: (See Testimony #1)

I am in support of this bill. There are things like putting in a culvert, if the county can't do it themselves, that could fall in between that \$50,000 and \$100,000 range. To prepare the bid documents by the county and expect a bunch of contractors to respond to bid documents, it is a time consuming and costly process for everyone. On small projects there aren't a lot of individuals willing to do that. That is the reason for the bill.

Rep.Devlin: Is there any requirements on political subdivisions getting prices or bids from more than one person on this type of project? Can they just award a \$99,000 project to their neighbor or is there a requirement they have to get one or more bids?

Terry Traynor: No they would not have to get other bids. I would suspect most counties would. The Attorney General's guideline document suggests they do that, but I don't believe there is a requirement that they do that.

Rep. Koppelman: Is there any provision in law that allows for an emergency procedure?

Terry Traynor: I believe there are some exceptions if there is a declared emergency that they can go ahead with certain level safety and protection for the public.

Rep. Koppelman: Are smaller companies out there that we may be taking out of the competition for what could be their bread and butter by adopting something like this.

Terry Traynor: There is a representative from the construction industry that can answer that question better than I can.

Keith Berndt, County Engineer from Cass County: The raising of the threshold from \$50,000 to \$100,000 would be more a matter of convenience. It would not eliminate competition. Now the way the statute is written if I was going to do a highway repair contract I have to put together a set of plans and specifications; run an advertisement in the Fargo Forum 3 weeks before the bid opening. It takes 7 days; they take them on Monday's; so it is seven days later so if I have a culvert that washes out or a road that breaks up. By the time I put the proposal together and advertise it is typically six weeks before I can open bids. The driving public doesn't want to hear I am going to fix that damaged road in six weeks. The emergency provision, I do not believe there is an emergency provision regarding roads. The statute regarding bridges which requires we competitively bid bridge projects does have a provision whereby if the county commission declares it an emergency we can repair bridges without the advertisement period. If we had a \$75,000 project and this law was passed we would still go out for quotes; more informally by a one page 8 1/2 by 11 specification even sent out by fax or email where they would provide informal quotes as opposed to having to advertise in the newspaper and going through that very lengthy process.

Rep. Maragos: What happens if the project costs more than \$100,000?

Keith Berndt: If the project went over \$100,000 that would kick it into having to be advertised and then we would have to stop and go through the process. I do think it does say based on the estimated cost.

Russ Hanson, Associated General Contractors: The Association of Counties did contact the industry as he had indicated. As per Rep. Koppelman question, we did not receive any heartburn for this change. It would be consistent with state law which is \$100,000.

Opposition: None

Neutral: None

Rep. Shirley Meyer: I do feel that it has to be noted. There is no procedure to do this. I am not in any way opposed to this bill; however this has that when the bill we are working off of isn't a bill that we just got passed out. If our computer system that we put in place is doing things incorrectly we have to start notifying them. This could set a precedent that any bill that we look at says no this is what I really want you to look at so I just want it noted and reported.

Chairman Johnson: It is duly noted. We will hold the hearing open and we are going to go back and see what we did was correct. I have no intention of action on the bill at this time.

Rep. Shirley Meyer: I think we need to be sure this is noted since we are setting a scary persistence here.

Rep. Hatelstad: Couldn't we just hoghouse the bill?

Rep. Klemin: We already had the testimony on this bill; but we could re notice this for hearing next week in case anyone else wanted to come in and testify on the bill the way it should have been.

Chairman Johnson: The suggestion to hoghouse; we could come back and work on the bill and do that, but I would like to keep the hearing open and then we can check on this. Would that meet with the committee's approval? We will be discussing this will Legislative Council and IT.

Hearing adjourned.

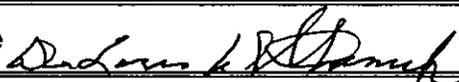
2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1185
January 27, 2011
Job # 13591

Conference Committee

Committee Clerk Signature



Minutes:

Chairman Johnson: reopened the hearing on HB 1185. Held the hearing open and it was regarding the road construction bid changes. We have some confusion on what we had printed and what was available on line.

Anyone more in support. None

Opposition: None

Hearing closed.

Do Pass Motion Made by Rep. Kilichowski: Seconded by Rep. Beadle

Discussion:

Rep.Devlin: I probably will vote against the motion. It isn't the \$100,000 deal; I don't have a problem with that because you can't bid for anything less than \$100,000. So often when I was a county commissioner and times since I have seen where it wasn't bidding on a project or piece of equipment or whatever; it always ended up going to the same people. I don't see the openness I would see otherwise.

Rep. Kilichowski: I have no problem with Rep. Devlin bringing in an amendment if you want to hold this till tomorrow I would gladly rescinded my motion.

Chairman Johnson: Rep. Devlin would you like to bring forth an amendment?

Rep.Devlin: I could do that. I would talk to the Association of Counties and maybe there is some simple language they would have to get a price from more than one person. I don't want to the same one to always get the bid.

Rep. Kilichowski: When I was a county commissioner I know our road engineer would always call two or three people that were capable of doing the job.

Chairman Johnson: OK I am holding that one till later.

House Political Subdivisions Committee

HB 1185

January 27, 2011

Page 2

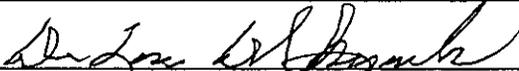
Hearing closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1185
Job #13625
January 28, 2011

Conference Committee

Committee Clerk Signature 

Minutes:

Amendment #1

Chairman Johnson: reopened the hearing on HB 1185. (Passed out the proposed amendment#1).

Rep.Devlin: The amendment is just addressing my concern where they would at least get a couple of quotes on the bidding process. When it exceeds \$100,000 they still have to advertise it. When it is between \$50,000-\$100,000 they get a couple of quotes from somebody. I think that allows for small contractors to have an opportunity to give them a price.

Motion Made By Rep.Devlin to move the amendment; Seconded By Rep. Koppelman:

Discussion:

Rep. Koppelman: I do think it is a good idea. The testimony we heard that this threshold was \$15,0000 until 1997. I think the amendment helps deal with the need to seek quotes from at least two contractors.

Voice Vote Carried.

Do Pass As Amended Motion Made By Rep.Devlin: Seconded by Rep. Kilichowski:

Discussion:

Vote: 13 Yes 0 No 1 Absent Carried Rep.Devlin:

Hearing closed.

Date: 1-27-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1185

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended Adopt
Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. Kilichowski Seconded By Rep. Beadle

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------|-----|----|--------------------|-----|----|
| Chairman Nancy Johnson | | | Rep. Kilichowski | | |
| Vice Chairman Hatelstad | | | Rep. Shirley Meyer | | |
| Rep. Beadle | | | Rep. Mock | | |
| Rep. Devlin | | | Rep. Zaiser | | |
| Rep. Heilman | | | | | |
| Rep. Klemin | | | | | |
| Rep. Koppelman | | | | | |
| Rep. Kretschmar | | | | | |
| Rep. Maragos | | | | | |
| Rep. Pietsch | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

withdrawn

January 28, 2011

VK
1/28/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1185

Page 1, line 10, replace "law for the purchase of county supplies" with "sections 11-11-26 and 11-11-27. For any contract for highway improvement which exceeds fifty thousand dollars but does not exceed one hundred thousand dollars, the county, when possible, shall seek quotes from at least two contractors"

Renumber accordingly

Date: 1-28-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1185

House Political Subdivisions Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended Adopt
Amendment

Rerefer to Appropriations Reconsider _____

Motion Made By Rep. Berlin Seconded By Rep. Koppelman

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------|-----|----|--------------------|-----|----|
| Chairman Nancy Johnson | | | Rep. Kilichowski | | |
| Vice Chairman Hatelstad | | | Rep. Shirley Meyer | | |
| Rep. Beadle | | | Rep. Mock | | |
| Rep. Devlin | | | Rep. Zaiser | | |
| Rep. Heilman | | | | | |
| Rep. Klemin | | | | | |
| Rep. Koppelman | | | | | |
| Rep. Kretschmar | | | | | |
| Rep. Maragos | | | | | |
| Rep. Pietsch | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Vote
Vote
carried!*

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 1185

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended Adopt
 Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. Devlin Seconded By Rep. Kilichowski

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------|-----|----|--------------------|-----|----|
| Chairman Nancy Johnson | ✓ | | Rep. Kilichowski | ✓ | |
| Vice Chairman Hatelstad | ✓ | | Rep. Shirley Meyer | ✓ | |
| Rep. Beadle | ✓ | | Rep. Mock | ✓ | |
| Rep. Devlin | ✓ | | Rep. Zaiser | ✓ | |
| Rep. Heilman | ✓ | | | | |
| Rep. Klemin | ✓ | | | | |
| Rep. Koppelman | ✓ | | | | |
| Rep. Kretschmar | | | | | |
| Rep. Maragos | ✓ | | | | |
| Rep. Pietsch | ✓ | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Devlin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1185: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1185 was placed on the Sixth order on the calendar.

Page 1, line 10, replace "law for the purchase of county supplies" with "sections 11-11-26 and 11-11-27. For any contract for highway improvement which exceeds fifty thousand dollars but does not exceed one hundred thousand dollars, the county, when possible, shall seek quotes from at least two contractors"

Renumber accordingly

2011 SENATE POLITICAL SUBDIVISIONS

HB 1185

2011 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee Red River Room, State Capitol

HB 1185
March 17, 2011
15574

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to advertising contracts for road construction and equipment.

Minutes:

You may make reference to "attached testimony."

Chairman Andrist opened the committee hearing on HB1185.

Representative Vigesaa, District 23, Cooperstown, Introduced HB 1185. It raises the amount whereby a highway improvement construction project needs to be advertised for the project. Under current law, anything over \$50,000 needs to be put out with the formal advertising process for bids, because so many projects now \$50,000 is hardly anything with a road project. This is moving the threshold up to \$100,000 where it has to be advertised according to state law for bids. However, it does say in the bill, and this was part of an amendment that was made in the House, that if it's a project in between the \$50,000 and the new threshold of \$100,000 we are asking the county to still seek a least two quotations. So it's just not open ended. They just can't go and select a project of their choosing. They do need to seek quotes from at least two contractors. Of course they can do that through a number of different ways. They could advertise it in the paper, or they could just contact two contractors to supply bids. That is all the bill will do.

Senator Dotzenrod: On line 17, the words are struck out 'or any contract for highway improvement', the other items that were included are still left there except necessary repairs for road machinery and any other purchase. Why was that taken out?

Representative Vigesaa: That is precisely what we're doing, that section says that anything over \$50,000 must be advertised. **Senator Dotzenrod**: Ok. **Representative**

Vigesaa: So we're striking out the highway improvement and moving that up into the Section 1 where then it has to be over \$100,000 to be advertised. The others would still stay at the \$50,000 threshold. **Senator Dotzenrod**: So Section 1 is actually new? That is a created section, it's not an amended section, by taking out line 17 then, you've in its place created a separate section? **Representative Vigesaa**: Yes, that is correct, because we did add also that language where the counties must obtain at least two quotations in there.

Aaron Birst: Association of Counties. In support of 1185. See written testimony #1. It was amended in the House to include that when possible, we shall seek quotes from at least two contractors from that \$50,000 to \$100,000 level. We are fine with that. If it was left as

current we would mandate it, have to advertise for \$50,000. When possible we shall seek quotes which we usually do that is just good policy.

Senator Olafson: Did you ask the implement dealers if they had any equipment left on their lot that is between \$50,000 to \$100,000, because I don't think there is? **Aaron Birst:** I could almost guarantee that the equipment the county buys is nothing of that nature.

Senator Dotzenrod: This section is part of 24:05; does that section only apply to counties? Is there any application of this to cities or other subdivisions, townships or is this only a county thing? **Aaron Birst:** This is the general provision that applies to everyone.

Anyone in support of this bill, in opposition to the bill, offer clarification testimony.

Closed Hearing on HB 1185.

Discussion:

Senator Judy Lee: Senator Dotzenrod asked if this applies to everybody and Mr. Birst said that it does, but in here it just says the counties shall seek quotes from at least two contractors. So why only the counties?

Aaron Birst: That was the amendment by the House that we didn't really participate in other than saying we have no problem if the county is directed to advertise for that. But if you wanted to strike that out and make it a general provision that is fine. It is probably actually right. **Senator Judy:** It just seems odd that other political subdivisions wouldn't be expected to do that but just the county was and so maybe it was just an oversight. I wondered if there was a specific reason, so thanks for letting me there apparently wasn't.

Chairman Andrist: Would somebody be compelled to introduce a proposed amendment that the word county be deleted? **Senator Laffen:** So Section 24:05 references county roads. **Senator Andrist:** Oh it is, okay.

Motion for Do Pass: Senator Olafson
2nd: Senator Laffen
Roll call vote: 5 Yeas, 0 No, 0 Absent
Carrier: Senator Olafson

REPORT OF STANDING COMMITTEE

HB 1185, as engrossed: Political Subdivisions Committee (Sen. Andrist, Chairman)
recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1185 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1185

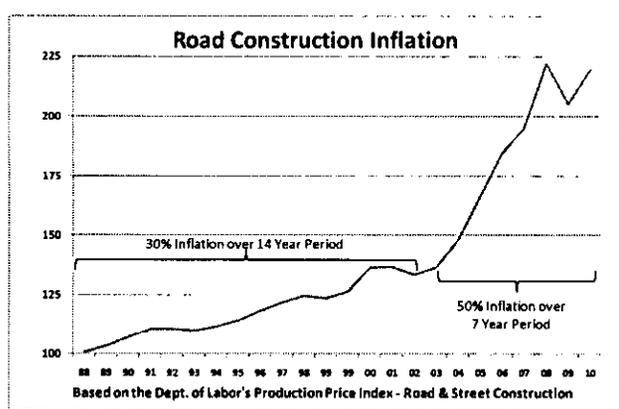
**Testimony To The
HOUSE POLITICAL SUBDIVISIONS COMMITTEE
Prepared January 20, 2010, by
Terry Traynor, Assistant Director
North Dakota Association of Counties**

REGARDING HOUSE BILL No. 1185

Chairman Johnson and members of the Committee, the Association of Counties asked Rep. Vigesaa to sponsor this road construction bidding legislation and we thank him for his interest in getting the bill before you. County officials are solidly in support of the bill's passage.

HB1185 may appear more complex than it really is. Section 24-05-04 has, for many years, governed the bid notice threshold for counties when they decide to seek bids for road machinery or for highway improvements. Combining these two different purchase functions has historically been a bit confusing – particularly when counties or vendors sought to change the threshold.

To address the confusion as well as the construction threshold, this bill has been drafted to separate equipment from improvements – with the only substantive change being the increase of the threshold for county highway improvement contracting. After discussions with the implement dealers' association, they indicated that they would prefer we leave the equipment threshold at its current \$50,000 limit.



This threshold was changed from \$15,000 to \$50,000 in 1997 (1997, ch. 238 § 1). As the included chart indicates, the costs of road construction have increased substantially since that time – particularly in the last seven years. The Production Price Index (PPI) of the chart is the inflationary factor for this specific industry, monitored by the Dept. of Labor – the equivalent of the CPI for consumers.

The public improvement bid threshold governing state government construction as well as local government buildings was moved to \$100,000 several years ago. At that time it was testified that the cost of preparing and responding to bid documents for projects of less than \$100,000 was not cost effective for the public entity or the contractor. County officials believe that this logic holds true for county road construction – thus the introduction of this bill. County officials seek your support and a “do pass” recommendation on HB1185.

#1

PROPOSED AMENDMENT FOR HOUSE BILL No. 1185

Page 1, line 10 replace "law for the purchase of county supplies" with "sections 11-11-26 and 11-11-27. For any contract for highway improvement which exceeds the sum of fifty thousand dollars but not more than one hundred thousand dollars, the county shall, when possible, seek quotes from at least two contractors"

Renumber accordingly

* * * * *

This amendment would have the following effect to the proposed new section of law.

Contracts to be advertised – Road construction. Any contract for highway improvement which exceeds the sum of one hundred thousand dollars must be advertised as provided by ~~law for the purchase of county supplies~~ sections 11-11-26 and 11-11-27. For any contract for highway improvement which exceeds the sum of fifty thousand dollars but not more than one hundred thousand dollars, the county shall, when possible, seek quotes from at least two contractors.

**Testimony To The
SENATE POLITICAL SUBDIVISIONS COMMITTEE**

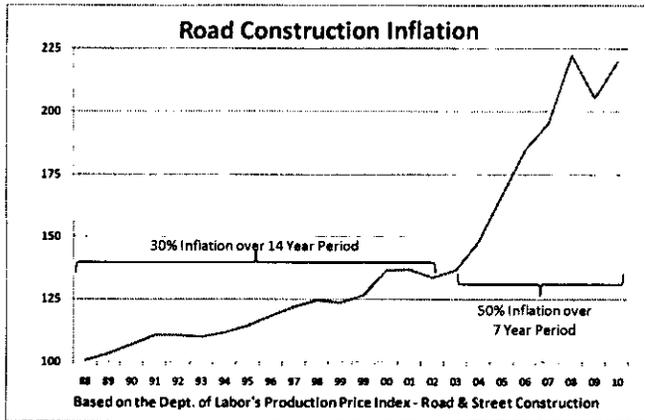
**Prepared March 17, 2011 by
Aaron Birst, Legal Counsel
North Dakota Association of Counties**

REGARDING ENGROSSED HOUSE BILL No. 1185

Chairman Andrist and members of the Committee, the Association of Counties asked Rep. Vigesaa to sponsor this road construction bidding legislation and we thank him and the cosponsors for their interest in getting the bill before you. County officials are solidly in support of the bill's passage.

HB1185 may appear more complex than it really is. Section 24-05-04 has, for many years, governed the bid notice threshold for counties when they decide to seek bids for road machinery or for highway improvements. Combining these two different purchase functions has historically been a bit confusing – particularly when counties or vendors sought to change the threshold.

To address the confusion as well as the construction threshold, this bill has been drafted to separate equipment from improvements – with the only substantive change being the increase of the threshold for county highway improvement contracting. After discussions with the implement dealers' association, they indicated that they would prefer we leave the equipment threshold at its current \$50,000 limit. This threshold was last changed from \$15,000 to \$50,000 in 1997 (1997, ch. 238 § 1).



As the included chart to the left indicates, the costs of road construction have increased substantially since that time – particularly in the last seven years.

The Production Price Index (PPI) of the chart is the inflationary factor for this specific industry, monitored by the Dept. of Labor – the equivalent of the CPI for consumers.

The public improvement bid threshold governing state government construction, as well as local government buildings, was moved to \$100,000 several years ago. At that time it was testified that the cost of preparing and responding to bid documents for projects of less than \$100,000 was not cost effective for the public entity or the contractor. County officials believe that this logic holds true for county road construction – thus the introduction of this bill. We are in agreement with the more informal quote process added in the House for those projects in the \$50,000 to \$100,000 range, and seek your support and a “do pass” recommendation on engrossed HB1185.