

2015 HOUSE EDUCATION

HB 1426

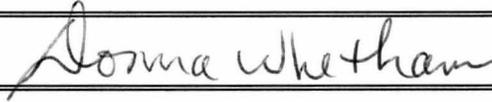
2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

HB 1426
2/3/2015
23128

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to approval of school construction projects by the superintendent of public instruction and bids and plans and specifications for public improvements; and to provide for application.

Attachment # 1-6.

Minutes:

Chairman Nathe: opened the hearing on HB 1426.

Representative Vickie Steiner District 37: Introduced HB 1426. (1:00-3:13) (See Attachment #1).

Chairman Nathe: So you went from \$500,000 dollars to \$100,000 dollars? Where is that in the bill?

Representative Steiner: Page 2, and the threshold for bidding construction on a public improvement is \$100,000. If you updated the \$100,000 number it would have been \$800,000.

Rep. Koppleman: Do you know when these limits were set?

Representative Steiner: I am being told 1997.

Rep. Koppleman: It makes sense you would contend to adjust those costs.

Representative Steiner: Correct.

Representative Wayne Trottier: District 19 in support of HB 1426(4:00-9:43) (See Attachment #2).

Representative Devlin : District 43, in support of HB 1426. I believe this is a local control issue and I firmly believe this bill should pass. (9:56)

Blake Crosby: Executive Director of the North Dakota League of Cities. In support of HB 1426. (See attachment #3).

Chairman Nathe: Any other support of HB 1426? None. Any opposition on HB 1426?

Wayne Kern: Director of the North Dakota Department of Health's Division of Municipal Facilities. In opposition to HB 1426. (11:00- 19:00) (See Attachment #4)

Rep. Zubke: In the second bullet point and the fifth bullet point, you say many times communities realize that getting their submittal into approval conditions is beyond their expertise and hire an engineer and this is inefficient and causes delays, then you mention you have experienced an increase from 150 to 400 projects nearly all these projects were prepared by engineers, thus enabling timely review and approval, I cannot connect those two, please explain this.

Wayne Kern: I think the key word is occasionally, we do not often receive plans that are not prepared by an engineer, we do spend considerable time on those that are not prepared by an engineer than a large project that has been.

Rep. Koppleman: Do you think it is appropriate that when construction didn't need engineering in an earlier date, that it would still not need an engineer?

Wayne Kern: That is a multifaceted question, we do have projects that can have significant safety and health consequences that are under \$100,000. Maybe it's time to be looking not so much at the money as to looking at the kinds of projects and their implications. I do think it would be a task worth an interim study.

Rep. Olson: Can you point to the code that requires that they consult with the Department of Public health?

Wayne Kern: I don't have that but I can get that to you. The authority is for that is under the state Health Officer.

Rep. Hunskor: You indicated you get projects that haven't been completed by an engineer, are these projects faulty because they had no engineer?

Wayne Kern: Occasionally we get questions and also from the contractor, I can't recall a substandard project but we continue to work hard to try to make that not happen.

Rep. Hunskor: So raising it from \$100,000 to \$500,000 does create more problems then?

Wayne Kern: Yes.

Rep. Olson: Have you had problems with a project that had an engineer?

Wayne Kern: No profession is perfect, that is a possibility.

Rick Tonder: NDUS Director of Facilities Planning, written testimony in opposition to HB 1426. (See Attachment # 5).

Bonnie Staiger: representing the American Council of Engineering Companies and American Institute of Architects) in opposition to HB 1426. (26:00-31:58) (See Attachment # 6). Provided language for an amendment.

Chairman Nathe: Was that amendment you suggested here was that put on any other bill?

Bonnie Staiger: It was put on HB 1182.

Rep. Olson: Do you know when the threshold was set?

Bonnie Staiger: I believe it was 1997 too.

John Boyle: Director of Facility Management. In opposition to HB 1426. It was HB 1182 that the full house passed last week that would call for an interim study and we would prefer that you not pass this and that would go to the Senate and pass and we can work this out during the interim.

Chairman Nathe: Closed the hearing on HB 1426.

2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

HB 1426
2/9/2015
23522

- Subcommittee
 Conference Committee

Committee Clerk Signature

Gonna Wheetham

Explanation or reason for introduction of bill/resolution:

Relating to approval of school construction projects by the superintendent of public instruction and bids and plans and specifications for public improvements; and to provide for application.

Minutes:

Chairman Nathe: reopened the hearing on HB 1426. This bill has to do with school construction projects. HB 1182 there was a study and that bill was passed on the floor and on to the Senate.

Rep. Meier: The study was placed in HB 1182. So with that on HB 1426 I would move to amend the bill from \$500,000 dollars to \$150,000 dollars.

Rep. Mock : seconded. In Sections 1 ,2 and 3.

Rep. Meier: Yes. When you look back in 1997 is when we initially had placed it at \$100,000 dollars and I think \$150,000 dollars would be pretty workable. It is not that much of an increase and when you look at tax payers dollars it probably could work. I did visit with the bill sponsor as well and she thought that was workable as well.

Rep. Kelsh: We have had to bills on political subs and we tried millions, we tried \$500,000 dollars, we tried \$150,000 dollars and none of them worked. One got turned into a study. I would like to have a study done on this school construction too. I don't know if the language on HB 1182 includes schools or not. I would go against the amendment and have a study. My fear is if this bill doesn't get passed the schools will never get studied. I will probably go against the motion and put a study on here.

Rep. Meier: We could amend this to \$ 150,000 dollars and do a study as well. If that is what the committee wanted.

Chairman Nathe: I would agree with Rep. Kelsh, if you look at the testimony two Engineering Institutions would like to see a study as well during the interim. This issue needs to be studied more and thoroughly before we get to the dollar amounts. I like HB 1182 that we passed. I will oppose the amendment.

Rep. Kelsh: By raising the threshold it may leave out a safety issue. Here we are dealing with children and that is a big issue to me. They still would have to have an engineer at the lower figure but not to the higher figure. This might be beat on the floor and it wouldn't have schools in the study. If the bill gets defeated then the study would too.

Chairman Nathe: If this bill passes we are looking at projects that can take off without engineering included. Industry would like to take their time and come up with a good solution.

Rep. Schreiber Beck: I concur with Rep. Kelsh, I think the study can move away from the strict bid threshold and look at bids being required based on components of the project as listed in testimony against the bill by Blake Crosby. That language could be included.

Rep. Olson: We had a bill on the floor very similar to this, HB 1407, that narrowly was defeated. As I understand the reason that failed is because it had raised the bidding threshold to \$500,000 dollars as well. This bill doesn't do that, it only raises the engineering threshold. The purpose is to save the tax payer money. As we heard from Blake Crosby, he felt the local leadership should be able to decide when engineering is needed and when it isn't needed. With regards to the amendment of \$150,000, I think that would pass, it is not out of line, and that is adjusted for inflation from 1997.

Rep. Rohr: What bill you were referring to that we did a study on?

Chairman Nathe: HB 1182 passed the house. It was turned into a study.

A Roll Call Vote was taken. Yes: 8 No: 5 Absent: 0. Motion Carried to amend.

Chairman Nathe: I see this bill as a duplicate. When I see industry wants to study this more before moving forward, I think that means a lot.

Rep. Kelsh: To make it clear it does include the bidding process on the construction.?

Chairman Nathe: Yes.

Rep. Mock: I supported the amendment because I do think it is responsible to lower that threshold, but I do need to side with the concern that we do need a study. I will resist a do pass.

Rep. Zubke: Do Pass as Amended on HB 1426 as amended.

Rep. Koppleman: Seconded. Just to be clear the amendment changed line 12 and 18 on page 1 from \$500,000 dollars to \$150,000 dollars and also on line 4 on page 2. But did not do anything on page 2 line 2 ?

Chairman Nathe: No, it would not change line 2 on page 2.

A Roll Call Vote was taken. Yes: 7 No: 6 Absent: 0. Motion carried.

Rep. Meier: Will carry the bill.

February 9, 2015

SR
2/9/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1426

Page 1, line 12, remove the overstrike over "one"

Page 1, line 12, remove "five"

Page 1, line 12, after "hundred" insert "fifty"

Page 1, line 18, remove the overstrike over "one"

Page 1, line 18, remove "five"

Page 1, line 18, after "hundred" insert "fifty"

Page 2, line 4, remove the overstrike over "one"

Page 2, line 4, remove "five"

Page 2, line 4, after "hundred" insert "fifty"

Renumber accordingly

Date: 2/9/15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1426**

House Education Committee

Subcommittee

Amendment LC# or Description: amend to \$150,000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Meier Seconded By Rep. Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe		✓	Rep. Hunskor		✓
Vice Chairman Schatz		✓	Rep. Kelsh		✓
Rep. Dennis Johnson		✓	Rep. Mock	✓	
Rep. B. Koppelman	✓				
Rep. Looyen	✓				
Rep. Meier	✓				
Rep. Olson	✓				
Rep. Rohr	✓				
Rep. Schreiber Beck	✓				
Rep. Zubke	✓				

Total (Yes) 8 No 5

Absent 0

Floor Assignment _____

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

*lines 12 + 18 + line 4 page 2
 page 1 strike 500,000 to \$150,000*

*amend -
 Motion passes!*

Date: 2-9-15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1426**

House Education Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Zubke Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe		✓	Rep. Hunskor		✓
Vice Chairman Schatz		✓	Rep. Kelsh		✓
Rep. Dennis Johnson		✓	Rep. Mock		✓
Rep. B. Koppelman	✓				
Rep. Looyen	✓				
Rep. Meier	✓				
Rep. Olson	✓				
Rep. Rohr	✓				
Rep. Schreiber Beck	✓				
Rep. Zubke	✓				

Total (Yes) 7 No 6

Absent 0

Floor Assignment Rep. Meier

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

REPORT OF STANDING COMMITTEE

HB 1426: Education Committee (Rep. Nathe, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1426 was placed on the Sixth order on the calendar.

Page 1, line 12, remove the overstrike over "one"

Page 1, line 12, remove "five"

Page 1, line 12, after "hundred" insert "fifty"

Page 1, line 18, remove the overstrike over "one"

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Page 1, line 18, after "hundred" insert "fifty"

Page 2, line 4, remove the overstrike over "one"

Page 2, line 4, remove "five"

Page 2, line 4, after "hundred" insert "fifty"

Renumber accordingly

2015 SENATE EDUCATION

HB 1426

2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

HB 1426 (Engrossed)
3/4/2015
Job # 24281(50:12)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

INITIAL HEARING

Relating to approval of school construction projects by the superintendent of public instruction

Minutes:

6 Attachments

Chairman Flakoll called the committee to order at 11:45am with all committee members present.

--SUPPORT--

Chairman Flakoll: I will note that we have testimony from *Rick Tonder*, NDUS Director of Facilities Planning (*see attachment #1*)

Blake Crosby, Executive Director of the ND League of Cities (*see attachment #2*)

(5:30) **Vicky Steiner**, District 37 Representative (*see attachment #3*)

Representative Steiner: The reason for introducing this bill was that there was an original bill that the House heard. It was defeated, but we still had time to put bills in. The House Education committee adjusted the number slightly for the years and the original bill sponsors are in the room and will be talking about that. There was a feeling that in some cases, it may be costing property tax payers if we leave that \$100,000 number hard in code for years. I appreciate that the League of Cities has taken a look at how you move these numbers. I think beyond this bill, we should keep our eyes open for other hard numbers that we wish to cross in code and try to adjust them as they go so that we don't get locked into a number that may be in there for 20-30 years. I don't have concern about the amendments. I would appreciate the study on it. In fact if you want to expand the study to look at all hard numbers in code, that would be a great idea. Perhaps there are other numbers that should be addressed.

(8:35) **Wayne Trottier**, District 19 Representative

Representative Trottier: I am here to endorse this bill. We had heard a bill with a different number on it. It came through the committee on the House side with \$500,000 on engineering architect limits, and the same for bidding. It passed in the committee 13-0 do not pass, passed on the floor then reconsidered the next day and failed. The problem was in the bidding procedure numbers. I think if we had left that at \$100,000, it would have stood a chance. This is common sense and saving the public entities money from unnecessary costs. This bill raises the limit from \$100,000 to \$150,000. However keep in mind this does not say that if you have a \$25,000 project, you can't have an engineer or architect and bidding can be at whatever limit under \$100,000. It doesn't restrict them. These are elected officials. The people put their trust in them like they do us. A bus barn may be \$300,000, and the average engineering architect fee is about 15%. That is \$45,000 that that entity would save by not having an engineer on it, and they could go to Menards and buy pre-engineered materials. There are other issues I understand that, but I think we need to leave this up for the locals. If there is an idea for an amendment, I would like to see the bidding left at \$100,000 and the engineers and architects up to \$500,000.

Chairman Flakoll: How do we ensure that they don't have two projects of \$125,000 that are similar to one another, such as roofing and installation in the same building?

Representative Trottier: It would be wise for the school district to split them.

Chairman Flakoll: They can \$125,000 us to death. They can \$75,000 us to death in the current legislation.

Representative Trottier: Right. I don't have an answer for that, but for instance if you want to resurface one block in your town, it is about \$100,000 dollars. In Northwood, we had to do about 5-6 blocks, so either we do a short block each year or we pay the 15% in engineering fees for 5 blocks. At \$500,000 that was \$75,000 that would have almost covered one block. There are ways around the system and I understand that; that is government.

(13:10) **Aaron Birst**, ND Association Counties

Birst: Counties have 92 statues that require us to bid. This bill does not address all of them. An absurd example is county bridges. Bridges are required to be bid for \$30,000, and if you find a bridge for \$30,000 I would be happy to sell it to you. In this bill, we are suggesting a modest increase. We certainly support HB 1182 which contains the study provision, and if you want to amend in a study provision in this bill as well, that is fine. The bidding is expensive because of the publication requirements. Usually it is three weeks. We would need to print in our paper a three week publication requirement for the bidding which does have expenses to the counties. I would concede that public safety is paramount. You should have an engineer or architect if there is some sort of safety component. Using arbitrary numbers to do safety is awkward, so maybe that is something we can work on in the study. If you wanted to do a carpeting project or put up a steel shed which don't really have any safety components, \$150,000 is clearly not that big of an increase. It has been \$100,000 since 1997 and needs revising.

--OPPOSITION--

(16:45) **Bonnie Staiger**, ACEC and AIA Representative (see attachment #4)

(22:35) **Senator Schaible**: We are currently at a \$100,000 threshold. At that threshold with the safety, have we seen any safety issues?

Staiger: I am unaware of any at this time.

Senator Davison: Have these organizations brought bills forward in the past bienniums in order to reduce the threshold of \$100,000?

Staiger: No we have not.

Senator Davison: This has been in place since 1997 or before, correct?

Staiger: Correct and it was reaffirmed in 2007.

Senator Davison: Over the last 20 years or so, at 3-4% inflation, wouldn't you think the increase would be for similar projects? This seems reasonable to me.

Staiger: Your job description is to vote for this. We are consistently proposing that there may be other commodities outside of dollars that may better serve the procurement process. I also want to point out that architecture and engineering fees are nowhere near 15%, not even half of that. A bus barn is an exempt project that would not require bidding.

Chairman Flakoll: You would acknowledge that the inflationary costs of construction have gone up dramatically in the last few years?

Staiger: Yes I think that is reasonable, but there are other factors that can make this process much simpler.

Chairman Flakoll: Would your organization oppose any increase?

Staiger: We are not speaking specifically to a dollar amount but rather propose the interim study and not take a piecemeal or a dart method to all of these 8 bills that came forward. It was a position that made it possible for us to simplify the legislative process and get to the interim.

*Clarified responses from Bonnie Staiger emailed to committee after hearing (see attachment #6)

(27:40) **Wayne Kern**, Director of the ND Department of Health's Division of Municipal Facilities (see attachment #5)

Kern: It is important to note that this bill addresses only the threshold for design services, not bidding.

(34:25) **Senator Schaible**: Of this 400 projects we had, how many of those are in the \$150,000 range?

Kern: I do not have specific numbers, but typically we have projects that can range from \$50,000 all the way up to millions of dollars.

Senator Schaible: Do you have a guess? Is it 10 or 20% that would be under the \$150,000 range?

Kern: That is a fair statement. The majority of the projects are over the current threshold of \$100,000. In our business, it is possible for particularly small communities to do a lot of work with that money. For example they could do a block of water and sewer or a small rest station project. I don't want to get too hung up on monetary value, but keep in mind we are

talking about projects that are complex and if not designed and constructed properly, they can end up with genuine public health safety issues.

Chairman Flakoll: I don't understand the second bullet point on page 1. Whose standpoint is that from?

Kern: If we have engineer involvement up front and it clearly shows the plans and specifications in a format that proves design standards are met, it saves us considerable time in reviewing and approving them. Sometimes we get projects from non-engineers in which we are obligated to go back with a reiterative process, so that we can feel comfortable in approving it. Sometimes we simply cannot get to a point in a community where they are able to provide the kind of information that is needed for our standards. We have never rejected a project; however we've been on the edge in terms of conflict of interest of how far we've had to go to get that project in a form that can actually be approved.

Chairman Flakoll: I think the capitol building is full of violations of code. Who's checking those things, is that going through your office?

Kern: No we deal with water works, but it is necessary to have some entity that knows what the standards are to be looking at that. As minor as it may sound, you could have some things that represent genuine public health safety health considerations, but on the contrary it may be a simple code violation that can result in liability and risk issues for the owner.

Senator Davison: You stated that many entities hire engineers anyway. If you say it is not your job to help them prepare the projects then why are you doing that? At some point in time wouldn't you request that they hire someone to aid them in their project?

Kern: We have always tried to be as assistant-oriented as possible. We work with communities so we don't have to get to the point where it has to be rejected. What typically happens is we realize we don't know enough, so we have to obtain design services for it.

(41) **Bob Marthaller** with the Department of Public Instruction was called to the podium

Chairman Flakoll: When did you begin your job with the Department of Public Instruction?

Marthaller: I've been with the Department for about 8 years.

Marthaller: In terms of as it applies to school districts, we think section 1 and 3 of the current bill is a good idea for districts. Section 1 only applies to school districts. It is that threshold we are talking about that is our responsibility as a Department to approve those projects. Currently any project over \$100,000, the school district needs to seek in security Department of Public Instruction approval. It is a good idea to raise it to \$150,000. Costs of even small projects today are escalated to about 20-40%. School districts that for example are moving or replacing walls or windows will easily approach \$100-150,000. Local school districts can best make those determinations with smaller projects such as these. A school district project still has to meet all of the safety standards such as fire, electrical and plumbing codes. There is some level of safety that can be assured just by those codes. In the last couple of years, we have approved basic, somewhat maintenance \$130-150,000 projects. Raising the threshold is a good idea.

With section 3 in terms of what school districts need to meet, the bidding requirement is not changing. They still have to bid projects that are \$100,000 or greater. That is a good idea. It

gives an opportunity for smaller contractors to be able to bid and compete for those kinds of projects within their own community. Raising the threshold for securing the architect and engineer specifications from \$100-150,000 as it applies to school districts for smaller projects, is appropriate. It doesn't seem that engineering or architect drawings are required for those projects. In that case it would save a school district those fees for the smaller projects.

Chairman Flakoll: In the determination of the threshold, does that include A&E or FF&E fees?

Marthaller: No it does not.

Chairman Flakoll: I think it was 2005 or 2007 that we changed it from \$25,000 in a conference committee on HB 1154?

Marthaller: Since I've been here in the business, the construction approval from the Department of Public Instruction point of view has been \$25,000 at one point. Then it went to \$40,000. Senator Rust was involved. It was at that point in which we raised the threshold for construction approval in terms of school construction to \$100,000.

Chairman Flakoll: There was differing reports earlier today.

Marthaller: It is important to note that section one applies to school districts and the Department of Public Instruction requirement. Other numbers I cannot speak to.

Chairman Flakoll: At that time it seemed like the discussions about the thresholds were more about schools that should be consolidating instead of putting money into a bad building that requires department approval.

Marthaller: In the conversations that I have been involved in since about 2008, I don't recall consolidation or reorganization was part of increasing the thresholds. I can say as a former superintendent that there has certainly been conversation about reorganization and looking at school districts and how they can better cooperate and share buildings, etc.

Vice Chairman Rust: This was in 2009. As I recall the reason for going to the \$100,000 for bidding was to get to the same number that was needed for architectural fees.

Marthaller: Correct.

Chairman Flakoll closes the hearing on HB 1426.

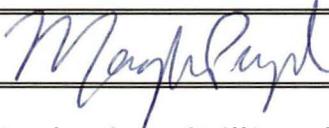
2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

HB 1426
3/17/2015
Job # 25010 (2:38)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

ACTION

Minutes:

No attachments

Vice Chairman Rust motions for a DO PASS
Senator Davison seconds.

Chairman Flakoll: There are no amendments to this one.

Vice Chairman Rust: Mr. Marthaller is not opposed to this legislation.

A vote was taken: 6 yays, 0 nays, 0 absent
The motions carries.

Senator Davison will carry the bill.

**2015 SENATE EDUCATION COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1426**

Senate Education _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Vice Chairman Rust Seconded By Senator Davison

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	X		Senator Marcellais	X	
Vice Chairman Rust	X		Senator Oban	X	
Senator Davison	X				
Senator Schaible	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Davison

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

REPORT OF STANDING COMMITTEE

HB 1426, as engrossed: Education Committee (Sen. Flakoll, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1426 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1426

#1 HB 1426

2/3/15

Good afternoon, Mr. Chairman Nathe and Members of Education Committee,

My name is Vicky Steiner, State Representative for District 37, Dickinson.

This bill, 1426, may look familiar. We voted on a similar bill, 1407 on the floor of the house and there was a good debate on how the bill might be crafted. That bill was defeated but I've changed up a few things to see if the House might re-consider the concept.

This bill, 1426, contains some of the arguments of the floor. I believe it's a good concept for lowering property tax by updating a number that's been eroded by time.

You'll hear from the special interests again about protecting their market share. A bus barn from dealers can be pre-engineered. Why spend money for additional engineering on a project if it's already been done. This gives some parameters to the local elected officials. One of the arguments was public safety. The scare tactic that a local official would build onto the state capitol without proper design is absolute ridiculousness on the part of the lobbyists.

Local elected officials are just as concerned about safety as we are. If they believe they need to spend money on additional engineering and or an architect, they can. They've been elected just like us.

We can't leave numbers to ride in our law books because it starts to cost us as taxpayers. It's simply common sense to update the number of \$100,000. I've started it at \$500,000. The lobbyists will want the number much lower but we need to update that number as time goes on.

HB 1047 had \$500,000 in the bidding process. I've lowered that back to \$100,000.

Again, this gives local officials the chance to make their own decision on whether an engineer and architect might be hired at certain levels.

Without this bill becoming law, the special interests will possibly earn \$75,000 on public projects of \$500,000 depending on the percentage they require. I question if that cost is justified in every situation. I completely understand they are hired to protect their client's pocketbook. We also need to protect the taxpayer's pocketbook.

We need to be vigilant on how we as legislators impact local property tax so we should not mandate this cost based on an outdated number.

Thank you Mr. Chairman and members of the committee for your consideration of this bill.

2
HB 1476
2/3/15

Good afternoon Chairman Nathe and members of education committee.

My name is Wayne Trottier, representing district 19 in eastern central ND, and runs from Hoople/Grafton area on the north and Northwood on the south.

Thanks to Rep Steiner for bringing back a version of HB 1407, which was passed and defeated. That bill, HB 1407, had \$500,000 eng/arch and \$500,000 on bidding limits. Many of the red votes told me that they voted red because they felt the \$500,000 limit on bidding was too high. Maybe this is right, but either of these limits do not say you can't have an engineer or offer the bid process if they are lower than amounts in the bill. It really goes back to letting the local elected officials make the decision. They, like us, are elected and the voters have put their faith and trust in them and us.

I have visited with Walsh, Grand Forks, Trail and Williams county commissioners, cities of Mayville, Northwood, Larimore, Grafton and Cavalier and all have had some sort of disagreement or problem with a project and the design and final settlement. One example I will share with you is my hometown of Northwood, where a street project, where part of the approximate 6 blocks of rebuilding a paved street. At the final one block, there were ag storage buildings on both sides of the street. The engineer was warned to not make the street elevation too high, so that water would not drain into the buildings. The contractor told the city during the process, that he felt the street was going to be a few inches too high. The engineer said it would be ok. When the project was completed, all those that would be affected, said you could see the pavement was too high. There was \$85,000 held at the completion, until the engineer and the contractor corrected the problem. Incidentally, the engineer was present for the entire project. Finally, in the end, the city attorney said by the time they went to court, court fees, attorney fees, expert testimony would probably eat up the entire amount, and suggested to just pay the engineer and contractor's final fees.

I have more from all the cities, that I talked to, but will not give that long a testimony. By the way, most of the complaints, were of street projects.

In the end, please give our political subs a chance to make their own decisions. They again, are elected by the people. I believe this could amount to millions of dollars saved for our citizens.

I appreciate your time and attention, and would attempt to answer any questions you may have.

Thank you Mr chairman and members of the education committee

February 3, 2015

#3
HB 1426
2/3/15

HOUSE EDUCATION COMMITTEE
HB 1426

CHAIRMAN NATHE AND MEMBERS OF THE COMMITTEE

For the record my name is Blake Crosby. I am the Executive Director of the North Dakota League of Cities representing the 357 cities across the State.

HB 1426 in one of a series of bills (HB 1077, HB 1182, and SB 2246) introduced having to do with bid thresholds for public works and public improvement construction. Those bills have suggested thresholds ranging from \$150,000 to \$1 million. We have heard much testimony on the public safety aspect and jeopardizing of the tax payer's dollars if the threshold were to be increased beyond some amount. And, there is validity in the public safety concern. However, relative to protection of the tax payer's dollars, I believe that locally elected officials act in the best interest of their city and they should be trusted until proven otherwise. But, rather than get into a protracted argument on the need for a higher threshold, I have a suggestion.

Bid thresholds inherently create conflict. They are a cookie-cutter, one-size-fits-all answer. Based on the number of sessions where bid thresholds continue to come to the forefront; there are obviously some problems in that concept.

I would recommend that this committee request an interim study on moving away from strict bid thresholds and look at bids being required based on components of the project such as public safety, structural integrity, public access, public health, potential liability, other critical components and yes, cost of the project. To keep coming back session after session and arguing about an arbitrary threshold is not a prudent use of taxpayer's dollars.

On behalf of the North Dakota League of Cities, I would ask for a Do-Pass on HB 1426.

THANK YOU FOR YOUR TIME AND CONSIDERATION. I will try to answer any questions.

#4
HB 1426
2/3/15

**Testimony
House Bill 1426
House Education Committee
February 3, 2015; 2:00 p.m.
North Dakota Department of Health**

Good morning, Chairman Nathe and members of the House Education Committee. My name is Wayne Kern. I am Director of the North Dakota Department of Health's Division of Municipal Facilities, which is part of the Environmental Health Section. I am here to provide testimony in opposition to Sections 2 and 3 of House Bill 1426.

Under current state law, public works and public improvement projects costing over \$100,000 cannot proceed to construction without engineer-prepared plans and specifications. Sections 2 and 3 of House Bill 1426 propose to increase this threshold amount to \$500,000. If House Bill 1426 is enacted, the state and its political subdivisions would be allowed to undertake projects up to \$500,000 without engineer-prepared plans and specifications.

The Department of Health opposes Sections 2 and 3 of House Bill 1426 for the following reasons:

- The Department of Health is responsible for review and approval, prior to construction, of all projects involving water works, sewerage, and solid waste. These reviews are done to ensure that projects meet design standards. This is crucial to ensure system functionality and integrity, and to protect public health and the environment. Improperly designed or constructed facilities can fail, leading to loss of service and direct contamination of drinking water, groundwater or surface waters.
- Based on the current threshold of \$100,000, communities occasionally submit projects for review that have not been prepared by an engineer. We spend considerable time working with these communities to get their submittals in a form that satisfies design standards and can be quoted for construction purposes. Many times, communities realize that getting their submittal into an approvable condition is beyond their expertise and hire an engineer. This is inefficient and causes delays in project approval and construction. Increasing the threshold to \$500,000 dollars will significantly exacerbate this situation as larger and more complex projects will be involved. This will add more work to already heavy workloads

and delay approval of all projects. More projects may be rejected and not approved, leading to further delays and expense for communities.

- The Department's role is to review and approve already-prepared projects to ensure that design standards are met, not to design projects. We are often asked and do provide design recommendations. However, we cannot both design and approve projects, as this represents a conflict of interest. To avoid conflict of interest, we may have to reject projects that do not initially meet design standards, which may result in project delays.
- The proposed increased threshold could reduce funding assistance opportunities for communities. Funding assistance agencies typically require engineer involvement in public improvement projects. This is likely in recognition of their technical complexity and public health and safety implications.
- Finally, engineers are uniquely equipped to prepare plans and specifications that meet design standards and that are sufficiently detailed for construction purposes. Over the last four years, we have experienced an increase from 150 to over 400 in the number of projects submitted for approval. Nearly all of these projects were prepared by engineers. This enabled timely review and approval. The proposed increased threshold has the potential to significantly reduce engineer involvement and our ability to approve projects in a timely manner. It also has the potential to impede needed public improvement projects statewide.

The Department of Health takes its responsibility for public health, safety and environmental protection seriously. Keeping the current threshold of \$100,000 in place for engineer-prepared plans and specifications will allow us to do this.

This concludes my testimony. I would be happy to answer any questions you have at this time.



5
HB1426
2/3/15

NORTH DAKOTA UNIVERSITY SYSTEM
Facility Planning Department
4349 James Ray Drive
P.O. Box 13597
Grand Forks, ND 58202 -3597
701-777-4270

HB1426

House Education Committee, 2/03/15

Rick Tonder, NDUS Director of Facilities Planning

Chair and Members of the Committee:

My name is Rick Tonder, NDUS Director of Facilities Planning, and I submit this testimony in opposition to HB1426. . This bill, as introduced, would retain the current \$100,000 competitive bidding requirement limit, but increase the architectural/engineering services (AE services) limit from \$100,000 to \$500,000. Although I support a practical and appropriate increase in the dollar threshold for requiring AE services, this threshold should be the same as that for competitive bids in order to avoid confusion and to ensure competitive bid documents are prepared by a registered design professional

This legislative session there are several proposed amendments to NDCC 48-01.2 which modify the current bidding requirements or bidding threshold for public improvement projects. With consideration for the testimony provided by the broad range of constituents interested in 48-01.2, it has become apparent there are significant implications related to even modest amendments of this statute. Therefore, we would be happy to participate in any discussions with this legislative body and the many stakeholders regarding changes to NDCC 48-01.2 either during the legislative session or during the interim.

Please do not hesitate to contact me regarding any questions you may have on this testimony.

rick.tonder@ndus.edu
701-777-4270

#6
HB 1426
2/3/15

03 Feb 2015
House Education Committee
Testimony in opposition to of HB 1426

Chairman Nathe and Members of the Committee:

My name is Bonnie Staiger, Today I appear representing both the ACEC (American Council of Engineering Companies) and AIA North Dakota (American Institute of Architects) Each organization is requesting that you give this bill a Do Not Pass recommendation or in the alternative, amend the bill into an interim study so that further collaboration can occur among all stakeholders.

HB 1426 is among, at last count, 8 assorted bills introduced which make widely disparate and uncoordinated changes to Chapter 48 and similar provisions to other chapters. Both organizations believe all these bills should be moved to an interim study thus allowing enough time to collaborate under the auspices of an interim committee. This would provide an alternative to having them pass or fail without the critical coordination of all stakeholders. We have consistently offered the same request for all these bills.

For some background, I'd like to take you through a short time-travel of how various industry groups have slogged their way through a history not unlike the Hatfields and McCoys which had pitted many (in this room today) against one another and evolving to an unprecedented level of collaboration on issues and a peaceful coexistence in Chapter 48. The undertaking started at the end of the 2005 session and represented the following design and construction industry organizations:

- ACEC/ND (American Council of Engineering Companies)
- AIA North Dakota
- AGC (Associated General Contractors of ND)
- National Electrical Contractors Association
- ND Home Builders Association
- ND Plumbing, Heating, and Mechanical Contractors Association
- ND Society of Professional Engineers

The coalition formed after a particularly contentious session dealing with procurement and delivery options. Out of desperation a mandatory interim study was passed. We came to the interim committee, chaired by Sen. Karen Krebsbach, offering to be a resource, partner with them and maybe if we were successful, help craft a bill draft that collectively we could support and would also protect the public trust and taxpayers of North Dakota.

Her committee --all too familiar with The Great Construction Wars--was relieved by our offer and we did come up with a bill--which was no small feat because first we had to learn how to be in the same room together, then work

through compromises to produce a work product that we could support in 2007.

During those 2 years, we met at least monthly and we created a culture of collaboration and frequently reported our progress to the interim committee. We also worked with many other groups representing public owners and agencies such as Board of Higher Ed, Fargo Public Schools—which at that time was the only K-12 school district with much interest and experience in construction management. We also consulted with the Department of Transportation, the Office of Facilities Management, the Association of Counties, and through the interim committee we relied heavily on Legislative Council.

The collaborative bill largely overhauled and streamlined the public procurement and project delivery section of the statutes. It has remained effective and for the most part unamended since then.

So here we are in 2015. HB 1426, like others introduced this session, attempts to arbitrarily raise the dollar threshold under which public works projects can be procured and constructed without certain triggers and bidding restrictions. Historically, a dollar threshold has always been the default determinant when in reality, today's world is more complicated than that factor alone.

You have heard from some proponents that the threshold should be adjusted. While others disagree and say that it was raised too high. A few think even \$1 of public money should be bid in order to uphold the public trust and scrutiny. Playing devil's advocate: Isn't it usually the more conservative House of Representatives advocating for this fiscal accountability?

In this context, public safety, public schools, and school children can't be wedged into an over-simplified cost commodity framework. Two examples that have been used recently to illustrate the issue: a large painting project could be over most suggested dollar thresholds yet a relatively inexpensive but faulty project could bring down the capitol tower. Should the pressures of expediency now override and overturn the critical role of protecting the public trust, the taxpayers, and life-safety?

With great respect for Rep. Steiner, we ask for a **do not pass on HB 1426** as introduced or-- if you should have an interest in amending the bill to defer these issues to an interim study -- I have provided potential language for your consideration. We believe the public/private collaboration can once again create solutions and that will again withstand the test of time.

A BILL for an Act to provide for a legislative management study of public improvement issues relating to use of multiple bids versus single prime bids, bidding thresholds, design services thresholds, and indemnification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY. The legislative management shall consider studying public improvement issues relating to use of multiple bids versus single prime bids, bidding thresholds, design services thresholds, and indemnification. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

#1
3/4/15



NORTH DAKOTA UNIVERSITY SYSTEM
Facility Planning Department
4349 James Ray Drive
P.O. Box 13597
Grand Forks, ND 58202-3597
701-777-4270

HB1426

Senate Education Committee, 3/04/15

Rick Tonder, NDUS Director of Facilities Planning

Chair and Members of the Committee:

My name is Rick Tonder, NDUS Director of Facilities Planning, and submit this testimony in support of HB1426 as engrossed by the House of Representatives. Although I believe it prudent and practical to maintain both the threshold for bidding construction of a public improvement and the threshold for procuring plans, drawings, and specifications for a public improvement from a design professional at the same amount; raising the threshold for the latter to \$150,000 is not unmanageable for the NDUS.

There are currently several proposed amendments to NDCC 48-01.2 which direct the legislative council to implement an interim study for the purpose of evaluating this and other thresholds within NDCC 48-01.2 and related statutes. I strongly support an interim study, and would be pleased to participate in that discussion.

Please do not hesitate to contact me regarding any questions you may have on this testimony.

rick.tonder@ndus.edu

1/1

March 4, 2015

#2
3/4/15

SENATE EDUCATION COMMITTEE
HB 1426

CHAIRMAN FLAKOLL AND MEMBERS OF THE COMMITTEE

For the record my name is Blake Crosby. I am the Executive Director of the North Dakota League of Cities representing the 357 cities across the State.

HB 1426 is one of three bills (HB 1182 and SB 2246) still alive having to do with bid thresholds for public purchases and public improvement construction. You will hear testimony on the public safety aspect and jeopardizing of the tax payer's dollars if the threshold were to be increased beyond some amount. And, there is validity in the public safety concern. However, relative to protection of the tax payer's dollars, I believe that locally elected officials act in the best interest of their city and they should be trusted until proven otherwise.

Bid thresholds inherently create conflict. They are a cookie-cutter, one-size-fits-all response in a multi-piece environment. Based on the number of sessions where bid thresholds continue to come to the forefront; there are obviously some problems in the concept.

I have some suggestions on amendments:

- 1) I would recommend that HB 1426 be amended to add in Legislative Management study language as in HB 1182 (15.0486.02000) and SB 2246 (15.0672.02000) [copies attached]. You may hear testimony that some of the construction industry folks got together in 2005 to study the issue and offer amendments to the 2007 Assembly. I can't say if that worked well or not, but I will note that they did reach out to schools, counties, and NDDOT but they seem to have neglected to include cities. All involved parties need to be a part of the solution.
- 2) I would also suggest amending in Section 48-01.2-02.1, relating to the Public Improvement Construction threshold as in SB 2246. This should address concerns expressed by the ND Department of Health.

Page 2—HB 1426

March 4, 2015

SENATE EDUCATION COMMITTEE

- 3) And, include amendments of Sections 11-11-26 and 11-11-27 as in HB 1182 which was amended to address concerns about bids for fuel for counties.

Amending as I have suggested would consolidate all the common pieces of HB 1426, HB 1182 and SB 2246 as they currently stand. Everyone gets something and I strongly encourage your support for the study so we can see if this issue not come before you quite so regularly.

On behalf of the North Dakota League of Cities, I would ask for a Do-Pass on HB 1426 with the amendments I suggested.

THANK YOU FOR YOUR TIME AND CONSIDERATION. I will try to answer any questions.

FIRST ENGROSSMENT

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1182

Introduced by

Representatives Mooney, Kelsh, J. Nelson, M. Nelson, Owens

Senators Bowman, Sinner, Sorvaag

1 A BILL for an Act to amend and reenact sections 11-11-26 and 11-11-27 of the North Dakota
2 Century Code, relating to bidding requirements for public purchases; and to provide for a
3 legislative management study.

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

5 **SECTION 1. AMENDMENT.** Section 11-11-26 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **11-11-26. When board shall advertise for bids for fuel.**

8 ~~Except as provided in chapter 48-01.2, when the amount to be paid during the current year~~
9 ~~for the erection of county buildings or for election ballots and supplies exceeds ten thousand~~
10 ~~dollars, the board of county commissioners shall cause an advertisement for bids to be~~
11 ~~published at least once each week for two successive weeks in the official newspaper of the~~
12 ~~county and in such other newspapers as it shall deem advisable. The first publication shall be~~
13 ~~made at least fifteen days before the day set for the opening of the bids. For the purchase of~~
14 fuel when the amount exceeds four thousand dollars, the board of county commissioners shall
15 seek bids either by telephone solicitation from at least two suppliers, or by an advertisement for
16 bids to be published at least once each week for two successive weeks in the official newspaper
17 of the county and in other newspapers as the board deems advisable.

18 **SECTION 2. AMENDMENT.** Section 11-11-27 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **11-11-27. Contents of fuel bids advertisement - When bids may be opened - Lowest**
21 **bidder accepted.**

22 The advertisement ~~shall~~must state what ~~supplies are~~type of fuel is required ~~or where the~~
23 ~~plans and specifications may be examined, the time allowed for the completion of the~~
24 ~~examination,~~ and when the bids will be opened and passed upon by the board of county

Sixty-fourth
Legislative Assembly

1 commissioners. The bids may be opened and passed upon at a regular or adjourned session of
2 the board, or at a meeting called by the county auditor as provided in section 11-11-05. The bid
3 of the lowest responsible bidder ~~shall~~must be accepted, but the board ~~shall have power to may~~
4 reject any or all bids.

5 **SECTION 3. LEGISLATIVE MANAGEMENT STUDY.** During the 2015-16 interim, the
6 legislative management shall consider studying public improvement issues relating to use of
7 multiple bids versus single prime bids, bidding thresholds, design services thresholds, and
8 indemnification. The legislative management shall report its findings and recommendations,
9 together with any legislation required to implement the recommendations, to the sixty-fifth
10 legislative assembly.

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2246

Introduced by

Senators Klein, Campbell, O'Connell

Representatives Brandenburg, Pollert, Weisz

1 A BILL for an Act to amend and reenact section 48-01.2-02.1 of the North Dakota Century
2 Code, relating to the bidding threshold for plans and specifications for a public improvement
3 contract; and to provide for a legislative management study.

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

5 **SECTION 1. AMENDMENT.** Section 48-01.2-02.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **48-01.2-02.1. Public improvement construction threshold.**

8 The threshold for bidding construction of a public improvement is one hundred thousand
9 dollars. The threshold for procuring plans, drawings, and specifications from an architect or
10 engineer for construction of a public improvement involving water works, sewerage, or solid
11 waste is one hundred thousand dollars and for construction of other public improvement
12 projects is one hundred fifty thousand dollars.

13 **SECTION 2. LEGISLATIVE MANAGEMENT STUDY.** During the 2015-16 interim, the
14 legislative management shall consider studying public improvement issues relating to the use of
15 multiple bids versus single prime bids, bidding thresholds, design services thresholds, and
16 indemnification. The legislative management shall report its findings and recommendations,
17 together with any legislation required to implement the recommendations, to the sixty-fifth
18 legislative assembly.



NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



#3
3/4/15

Representative Vicky Steiner

District 37
859 Senior Avenue
Dickinson, ND 58601-3755

Residence: 701-225-4227
Cell: 701-290-1376
vsteiner@nd.gov

COMMITTEES:
Finance and Taxation
Government and Veterans Affairs

March 4, 2015

Support 1426

Good afternoon, Mr. Chairman Flakoll and Members of Senate Education,

My name is Vicky Steiner, State Representative for District 37, Dickinson.

HB 1426 increases the threshold for bidding from \$100,000 to \$150,000 to recognize that hard numbers in code need to be adjusted over time.

At the House hearing, the special interests were interested in protecting their market share so we lowered the threshold to \$150,000. A bus barn from dealers can be pre-engineered. Why spend money for additional engineering on a project?

One of the arguments on the House hearing was about public safety and how a higher number might impact public safety. Local elected officials are just as concerned about safety as we are. If they believe they need to spend money on additional engineering and or an architect, they can. They've been elected just like us.

We can't leave numbers to ride in our law books because it starts to cost us as taxpayers. It's simply common sense to update the number of \$100,000. The bill starts it at \$150,000. I would support a higher dollar amount but it met with resistance in the House hearing.

Again, this gives local officials the chance to make their own decision on whether an engineer and architect might be hired at certain levels. This gives some parameters to the local elected officials.

We need to be vigilant on how we, as legislators, impact local property tax so we should not mandate this cost to schools based on an outdated number.

Thank you, Mr. Chairman and members of the committee, for your consideration of this bill.

11

#4
3/4/2015

04 Mar 2015
Senate Education Committee
Testimony in opposition to of HB 1426

Chairman Flakoll and Members of the Committee:

My name is Bonnie Staiger, Today I appear representing both the ACEC (American Council of Engineering Companies) and AIA North Dakota (American Institute of Architects) Each organization is requesting that you give this bill a Do Not Pass recommendation or in the alternative, amend the bill into an interim study so that further collaboration can occur among all stakeholders.

HB 1426 is among, at last count, 8 assorted bills introduced which make widely disparate and uncoordinated changes to Chapter 48 and similar provisions to other chapters. Both organizations believe all these bills should be moved to an interim study thus allowing enough time to collaborate under the auspices of an interim committee. This would provide an alternative to having them pass or fail without the critical coordination of all stakeholders. We have consistently offered the same request for all these bills.

For some background, I'd like to take you through a short time-travel of how various industry groups have slogged their way through a history not unlike the Hatfields and McCoys which had pitted many (in this room today) against one another and evolving to an unprecedented level of collaboration on issues and a peaceful coexistence in Chapter 48. The undertaking started at the end of the 2005 session and represented the following design and construction industry organizations:

- ACEC/ND (American Council of Engineering Companies)
- AIA North Dakota
- AGC (Associated General Contractors of ND)
- National Electrical Contractors Association
- ND Home Builders Association
- ND Plumbing, Heating, and Mechanical Contractors Association
- ND Society of Professional Engineers

The coalition formed after a particularly contentious session dealing with procurement and delivery options. Out of desperation a mandatory interim study was passed. We came to the interim committee, chaired by Sen. Karen Krebsbach, offering to be a resource, partner with them and maybe if we were successful, help craft a bill draft that collectively we could support and would also protect the public trust and taxpayers of North Dakota.

Her committee --all too familiar with The Great Construction Wars--was relieved by our offer and we did come up with a bill--which was no small feat because first we had to learn how to be in the same room together, then work through compromises to produce a work product that we could support in 2007.

During those 2 years, we met at least monthly and we created a culture of collaboration and frequently reported our progress to the interim committee. We also worked with many other groups representing public owners and agencies such as Board of Higher Ed, Fargo Public Schools—which at that time was the only K-12 school district with much interest and experience in construction management. We also consulted with the Department of Transportation, the Office of Facilities Management, the Association of Counties, and through the interim committee we relied heavily on Legislative Council.

The collaborative bill largely overhauled and streamlined the public procurement and project delivery section of the statutes. It has remained effective and for the most part unamended since then.

So here we are in 2015. HB 1426, like others introduced this session, attempts to arbitrarily raise the dollar threshold under which public works projects can be procured and constructed without certain triggers and bidding restrictions. Historically, a dollar threshold has always been the default determinant when in reality, today's world is more complicated than that factor alone.

You have heard from some proponents that the threshold should be adjusted while others disagree and say that it was raised too high. A few think even \$1 of public money should be bid in order to uphold the public trust and scrutiny.

In this context, public safety, public schools, and school children can't be wedged into an over-simplified cost commodity framework. Two examples that have been used recently to illustrate the issue: a large painting project could cost more than \$150K threshold in this engrossed bill yet a relatively inexpensive but improperly built project could result in serious injury or loss of life. Ultimately, we ask: Should the notion of expediency now override and overturn the critical role of protecting the public trust, the taxpayers, and life-safety?

With great respect for Rep. Steiner, we ask for a **do not pass on HB 1426** as introduced or-- if you should have an interest in amending the bill to defer these issues to an interim study -- I have provided potential language for your consideration. We believe the public/private collaboration can once again create solutions and that will again withstand the test of time.

Overview of several bills dealing with this issue this session:

Interim Study Included

HB 1182 (Mooney)

SB 2233 (Dever)

SB 2246 (Klein)

Defeated

HB 1077 (Trottier)

SB 2203 (Laffen)

LEGISLATIVE MANAGEMENT STUDY. During the 2015-16 interim, the legislative management shall consider studying public improvement issues relating to use of multiple bids versus single prime bids, bidding thresholds, design services thresholds, and indemnification. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

#5
3/4/15

Testimony
House Bill 1426
Senate Education Committee
March 4, 2015; 11:15 a.m.
North Dakota Department of Health

Good morning, Chairman Flakoll and members of the Senate Education Committee. My name is Wayne Kern. I am Director of the North Dakota Department of Health's Division of Municipal Facilities, which is part of the Environmental Health Section. I am here to provide testimony in opposition to Sections 2 and 3 of engrossed House Bill 1426.

Under current state law, public works and public improvement projects costing over \$100,000 cannot proceed to construction without engineer-prepared plans and specifications. Sections 2 and 3 of engrossed House Bill 1426 propose to increase this threshold amount to \$150,000. If engrossed House Bill 1426 is enacted, the state and its political subdivisions would be allowed to undertake public works and public improvement projects up to \$150,000 without engineer-prepared plans and specifications.

The Department of Health opposes Sections 2 and 3 of engrossed House Bill 1426 for the following reasons:

- The Department of Health is responsible for review and approval, prior to construction, of all public works and public improvement projects involving water works, sewerage, and solid waste. These reviews are done to ensure that projects meet design standards. This is crucial to ensure system functionality and integrity, and to protect public health and the environment. Improperly designed or constructed facilities can fail, leading to loss of service and direct contamination of drinking water, groundwater or surface waters.
- Based on the current threshold of \$100,000, communities occasionally submit projects for review that have not been prepared by an engineer. We spend considerable time working with these communities to get their submittals in a form that satisfies design standards and can be quoted for construction purposes. Many times, communities realize that getting their submittal into an approvable condition is beyond their expertise and hire an engineer. This is inefficient and causes delays in project approval and construction. Increasing the threshold to \$150,000 dollars will exacerbate this situation as larger and more complex projects will be involved. This

will add more work to already heavy workloads and delay approval of all projects. More projects may be rejected and not approved, leading to further delays and expense for communities.

- The Department's role is to review and approve already-prepared projects to ensure that design standards are met, not to design projects. We are often asked and do provide design recommendations. However, we cannot both design and approve projects, as this represents a conflict of interest. To avoid conflict of interest, we may have to reject projects that do not initially meet design standards, which may result in project delays.
- The proposed increased threshold could reduce funding assistance opportunities for communities. Funding assistance agencies typically require engineer involvement in public works and public improvement projects. This is likely in recognition of their technical complexity and public health and safety implications.
- Finally, engineers are uniquely equipped to prepare plans and specifications that meet design standards and that are sufficiently detailed for construction purposes. Over the last four years, we have experienced an increase from 150 to over 400 in the number of projects submitted each year for approval. Nearly all of these projects were prepared by engineers. This enabled timely review and approval. The proposed increased threshold has the potential to further reduce engineer involvement and our ability to approve projects in a timely manner. It also has the potential to impede needed public improvement projects statewide.

The Department takes its responsibility for public health, safety and environmental protection seriously. The current threshold of \$100,000 for engineer-prepared plans and specifications allows us to do this.

It is important to note that the current design services threshold of \$100,000 resulted from legislation introduced in 2007. The legislation came from an interim study committee that used a collaborative process involving input from a broad array of stakeholders.

Several bills have been introduced this session proposing changes to the design services threshold as well as other current requirements pertaining to public improvement projects. These changes need to be coordinated and further evaluated as to their consequences. Deferring these issues to an interim study would enable time to thoroughly evaluate current requirements and collaborate

with stakeholders on changes. The result could be one bill draft that addresses and balances pertinent issues and has stakeholder support.

In summary, the Department opposes Sections 2 and 3 of engrossed House Bill 1426. The Department proposes that the bill be amended to replace these Sections with a new Section that requires an interim legislative management study. The study would address current state law requirements for public improvement projects including the design services threshold.

This concludes my testimony. I would be happy to answer any questions you have at this time.

#6
3/4/15

From: Bonnie Staiger Hon. AIA [<mailto:bonnie@bis.midco.net>]
Sent: Friday, March 06, 2015 6:41 AM
To: Flakoll, Tim
Subject: Clarify Testimony on (HB1426) Bidding Thresholds

- **Senate Education Committee**
- **Rep. Steiner**
- **Rep. Trottier**

**Clarification for my testimony in opposition to of HB 1426
(Thresholds for bidding public projects)**

Chairman Flakoll and Members of the Committee:

I ask for a moment of your time to clarify my response to a question during the hearing concerning architecture and/or engineering fees. Fees for a project in which only the design is required are considerably less than fees for professional services through the full life of a project which can include project development, cost estimating, design, preparation of plans, specifications & bid documents, bidding/contract negotiation, construction observation and construction contract administration. A political subdivision generally negotiates the scope of services and fees with the architect/engineer based on the needs of the political subdivision, which can be dictated by the funding agency, regulatory agency, laws & regulations, etc.

As always, thanks for your time. Please feel free to stop me in the halls or if you wish to call my office: 223-3184

Bonnie Staiger

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