

2017 SENATE POLITICAL SUBDIVISIONS

SB 2168

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

SB 2168
1/20/2017
Job # 27180

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to public improvements

Minutes:

Written testimony #1 Mr. Glenn Moen

Chairman Burckhard opened the hearing for SB 2168. All senators are present. I am sponsor of this bill and will defer for expediency and Mr. Russ Hanson will lead off.

.19-2.25 Mr. Russ Hanson: Associated General Contractors of ND, Represents AGC of ND. This bill does two things that we think make good policy improvements to an already good section of the Century Code. The two changes that we think are relatively simple, rather than impose two separate bills we kind of combined them into one because they are closely related. I will explain the change on page 3, the new line 21 defining the definition of public improvements and Senator Laffen, will explain the change on line 20 of page 3, which is the inclusion of the term political subdivision. Basically, the change to 'public improvement' is just to clarify the language. Currently it said with public funds; we just make the change to further clarify that if any public funds occurring public loans, bonds, leases and is constructed and private or public land and if it is going to be maintained by the public entity, it is subject to our state bidding laws. That is all the bill does there. Anecdotally we've gotten some questions of people sometimes people look to us to be the referral place, do we need to bid this out, it's not a direct appropriation but it's coming from public grants or things like that. So, I have my past president here who is a real person, who works in the industry who can give some real life examples of why we are seeking this and why we think it is good.

2.25 Senator Howard Anderson: What happens if I build a building and later lease it the government, then is some of this retroactive or does it affect my lease or how does that work?

2.44 Mr. Russ Hanson: Well actually all this does, if it has one of these conditions at the time of the bidding, it will just have to bid out. What happens after it is built, is irrespective of that. This would just make the project at the time, if it fell within this definition, that it would have to do the 21 days of advertising, and be in the papers and publications and be publically bid.

3.10 Senator Howard Anderson: I think you said that they're going to be some examples given to us by somebody, right. Mr. Russ Hanson replied, there will be.

3.26 Senator Lonnie Laffen: District 43. I am here to speak about page 3, line 20, in general this statute defines how we build public buildings in the state of North Dakota. It does refer to political subdivisions throughout this chapter, but the definition of political subdivision was never included in the beginning under definitions. So all this is doing is just adding the already used political subdivision definition from other parts of the statute and putting it in here. The issue is oddly we had a few park districts and school districts around the state that just didn't think these public requirements defined how they had to do their own public projects because they weren't in the definition. That is all it's doing, initially.

4.38 Senator Howard Anderson: I wonder if you would support bidding out the architectural provision of a construction project?

4.49 Senator Lonnie Laffen: That is already all completely defined in statute and it an entire process of how to do that.

5.00 Senator Judy Lee: Is this the identical definition to the definition of political subdivisions used everywhere else?

5.10 Senator Lonnie Laffen: I am told from Legislative Council that it is.
Chairman Burckhard: That is the way it was designed. We have 2100 political subdivisions in our state. 1400 are townships, 357 cities, 180 school districts, 53 counties, and a partridge in a pear tree. So we have plenty of governance in our state.

5.43 Senator Lonnie Laffen: If you look at statistics the 2nd place state is like 1/3 of what are, and I believe it's mostly the townships. Most states just don't have townships anymore. So that 1400 of the 2100 puts us way over the top.

6.13-9.46 Glenn Moen: from Grand Forks, ND. Structures Inc. written testimony # 1. Support of SB 2168.

9.47 Senator Diane Larson: Does this allow for there to be any discretion with choosing the bid based on reputation of the company rather than only lowest bid?

10.08 Mr. Glenn Moen: In the previous sessions the Century Code had a major rewrite on that and it is the fact of "best value" for the public. It is the price plus the reputation of the contractor and the statute specifically states that the University of North Dakota they get to evaluate how you performed on your last projects you performed there.

10.35 Senator Judy Lee: I have a real rub about the state intruding into privately donated dollars to foundations including some of those of wish I might have contributed. I really don't worry that foundations necessarily are going to be doing something foolish spending more money than they ought to spend. I just think it is inappropriate. So, once it comes back under I can imagine anybody considering building a project that is going to be energy and inefficient, that is going to harder to manage, that isn't going to done collaboratively in some way and talking to, the major universities. But why should I be happy about the state stepping in on a

project that is totally funded by privately contributed dollars and I don't want the line about transparency and all that stuff to be the only thing here. I mean it is just not taxpayer money. So, tell me why I should be happy about that?

11.53 Mr. Glen Moen Partially I believe it may not be funded by taxpayer money, but it is for the benefit of the taxpayers at the University of North Dakota. Therefore, we believe that technically and should be a public improvement that should follow the open competition rules.

12.18-13.17 Bill Kalonuk. I am here representing the Dakota's chapter of the National Electrical Contractors Association as well as the North Dakota Association of Plumbing, Heating, and Mechanical Contractors. This is a concept that our groups have been supportive of for some time. We have the issue of transparency that is one thing that we've always advocated for transparency in the process. Because that is the sub-contractors on these projects. A lot of times we don't get an opportunity to bid the work and just want to every possible attempt to keep that process open. In support of SB 2168.

Chairman Burckhard: I think this process will help to keep that process open. Is that what you're thinking?

13.42 -14.08 Mr. Bill Kalonuk: We believe that it would do so. I understand why we wouldn't have put in some private dollars, however, in some cases the property might not be private dollars, it is state land. Those are projects being constructed on public property which is the owner's and the owners are the taxpayers in many of those instances. There have also been some instances in the past where a 3 party entities are created in order to build some public projects that which then are sold back to the political subdivision and in those instances we've have issues as well. Our membership has some hard feelings over those situations and those projects were not publically bid.

14.08 Senator Jim Dotzenrod: I am just thinking something like this, ex. big hockey arena at UND. In a situation where you have a private contractor, built the arena, would this be governed by this law, this thing we have here? Would that then require the company to do it that way?

14.55 Mr. Bill Kalonuk: I am assuming this section would govern that then.

15.08 Senator Judy Lee: I would certainly like to add one thing to Senator Dotzenrod's deal, I know that the original proposal for that nice hockey arena called for terrazzo floors, and because the donor thought the bid for the terrazzo was terrible and was unwilling to pay it, and the supplier was unwilling to negotiate the price, he put in Italian marble instead. Guess what, it looks nicer.

15.38-16.18 Ms. Bonnie Staiger, Executive Vice- President of AIA ND the American Institute of Architects. We are in support of this bill and we also want to let you know that we have been intricately involved in the development and crafting and the discussions and the rewrites on this bill.

Senator Judy Lee: I have a question for anybody who would like to respond in that is what involvement have you had with the, universities in this case, in discussing what kinds of

challenges it might provide and how we might be able to find a resolution that satisfies pretty much everybody.

16.54 Mr. Russ Hanson: To be very candid with you, we've talked amongst industry mostly, on this concept Senator Lee.

Senator Judy Lee: so there has been no discussion with, for example, the UND or NDSU Alumni foundations about how they might be able to provide some input into this?

17.32 Mr. Russ Hanson: I haven't spoken to them.

Chairman Burckhard Closed the hearing on SB 2168.

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

SB 2168
1/26/2017
Job # 27430

- Subcommittee
 Conference Committee

Committee Clerk Signature

M. J. Wood

Explanation or reason for introduction of bill/resolution:

Relating to public improvements

Minutes:

Chairman Burckhard: opened the committee for discussion

Senator Judy Lee: I could send a quick email to those people at UND, so I don't know, so we get it before we end up with activities completed today.

Chairman Burckhard : Let's leave that open until we hear and get some of that information. I totally forgot about that until I read it in my notes. So let's wait until we get some of that information. We will leave it undone.

Senator Judy Lee: I will just shoot an email.

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

Sb 2168
1/27/2017
Job # 27520

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to public improvements

Minutes:

Committee Discussion

Chairman Burckhard convened the committee for discussion on SB 2168. All senators are present.

Chairman Burckhard: we had work to do and had some concern from getting input from the universities on this topic which is related to public improvements. On that day we heard from Russ Hanson of the Associated General Contractors, Senator Laffen, Glenn Moen, Bill Kalonuk, and Bonnie Staiger were all in favor of the bill, there was no opposition to the bill as I have noted, and were going to ask for input from any of the universities.

Senator Judy Lee: I contracted, the directors of the UND and NDSU foundations because I thought this would apply as Senator Dotzenrod had mentioned with the Ralph Englestad arena and other projects that Alumni Foundations might be involved in building. I know they would be bidding but agree that I don't think Ralph Englestad would've been happy if the government is telling him that he had to go with the lowest bidder when it was his money. Anyway, the two foundations responded and said their fine with it, so until they have a problem with I, guess, I would have chosen to suggest that we amend that section out. Russ Hanson who had spoken to us in the first place had told his members that he thought that section might be deleted. So, I don't like it myself, but I am not the only voter on this committee.

Senator Judy Lee: The one that says that it is public page 3 line 21, talks about public or private land. Example cited. (2.19-6.40)

Senator Kannianen: So basically when we have the additional criteria for the public improvement projects have to follow that private do not have to, basically the foundations are already following those criteria anyway so it's not concerned about it, if they have to, as far as the bidding process or the architects or engineers process.

Senator Judy Lee: They are already accepting bids and there are some extremely responsible people that are on these boards. My concern is with the "or private" I guess I

wouldn't have such heartburn about this, if on line 25, we might delete "or private". In fact, I think I am going to move that we delete "or private" on page 3, line 25. 2nd Senator Diane Larson.

Chairman Burckhard: it has been moved and seconded to amend the bill, on page 3, line 25, to remove the words "or private" from that description.

Discussion on that amendment.

Senator Kannianen: Is there ever a case where if we do that, you talk about improvement for the good of the public paid for by any public funds, so what are examples of this. A foundation is private money, private land, but what are the examples that could be there where you use public funds on private land?

Senator Judy Lee: An example would be the presidents home. At the two universities both got a \$1M dollar donation to build new President's homes. So it was privately raised money that built the houses, but the universities maintain them. In each case they are on the campus so, there on public land but they were built with private funds, but the universities maintain them. The foundation is intended to provide benefits, but it is not only athletic scholarships, sometimes it is other stuff that they do as well. That's part of where we are going here. So I am not trying to stir the pot up, on this small issue, but's that my cynical background about this whole thing.

Senator Kannianen: How about with private land, is there ever a problem? **Chairman Burckhard:** for private lands with public funding? Is there a good example of that?

Senator Judy Lee: I think that perhaps the Ralph Englestad arena might be an example of that. It is adjoining the campus, it's part of the system not. I am not even sure. But now they can alcohol for example at the Ralph because it's a privately managed thing.

Senator Diane Larson: The only thing is, that it might be private land, but if there using public funding, I know I seconded the motion to start discussion, but if we're using public loans, bonds and leases then we're still talking about using public money. The heartburn I had with this, to start with was on page 3 under #19, not line 19, because it does say the lowest responsible bidder. I would to just highlight responsible, because I have some concerns about having to go to the lowers bidder, if there not the best pick. I guess I would've like to see a little bit more regarding that. (11.17-11.52 example cited).

Senator Dotzenrod: A small additional fact, I did find out that the Ralph Engelstad arena did go through a public bidding process. I wasn't sure of that when we had the hearing.

Chairman Burckhard: I was under the impression that it was built by one his construction companies.

Senator Kannianen: So on lines 28, and 29 just to clarify here, so even if you remove "or private" or any other public infrastructure facility if the result of the improvement will be operated and maintained by the governing body, does that still include where foundation funds are used but the university later supports it or maintains it. That would still cause the foundations to be lumped in with this requirement if the result is to be? How does that work?

Senator Judy Lee: Perhaps we need to find out a little bit more about that, but I am thinking more of the President's home, where they are maintained by the university. The Alumni Association buildings, the one for NDSU is not on campus, the one for UND is on campus. They were both built with donor raised funds, and they have a fine relationship with the university. My goal here is not to have to place a lot of time on this, but I just think that there is going to be some push back on this. I have a problem with the fact that they think that there guaranteed the opportunity to bid on something. When you bid something, you may not get it. There are circumstances in which if I paying a bill I don't want somebody else telling me who I have to go with accept a lot of sidewalks, some in newer neighborhoods are terrible and it was the city had to take the lowest bid. So we substituted some time ago, this lowers responsible bidder. What does responsible mean? Actually this may be a challenge on how you decide for the responsible bidder.

Chairman Burckhard: It kind of says enough there, because considering past experience. Now, contractors know who the bad actors are, based on previous construction projects they've worked with them on.

Senator Dotzenrod: As far as the amendment goes, I think I would be hassling myself personally to vote for the amendment without having some talk to the people who were in here on the bill. I am not close enough to the material here to understand some of the examples that they might be able to show me where this could create some trouble for them. We are talking about public money here, so I am probably going to resist this without more information about and not vote for the amendment.

Senator Judy Lee: Only that maybe because we all want to do the right thing here, and once we know a little bit more information it won't take us long to decide. I could even withdraw my motion if I have to.

Chairman Burckhard: The question is, I don't know if you have the bill in front you, on page 3, lines 25, I will read from the beginning of that. It talks about a public improvement undertaken by a governing body for the good of the public and which is paid for without any public funds including public loans, bonds or leases, and is constructed on public or private land with an existing or new public building. So we are debating about what would happen if we remove the words "or private land" would you see any issue with the removal of those two words?

Russ Hanson: Associated Contractors (19.45-26.26) We like the language that we proposed but obviously it's in your hands now and you are the policy makers. So, what that would do is if it was had private funding on private land but was over-maintained by a political subdivision then that would not be subject to this law if it's passed. **Senator Judy Lee:** But not public funds? **Chairman Burckhard:** What problem are you trying to solve with this bill, **Senator Anderson asked?** **Russ Hanson:** Well anecdotally if something was funded and it operated on state land or political subdivision land, there will be that ongoing expense to the state or political subdivisions so that would qualify it as a public project. That was the reason for it. **Chairman Burckhard:** So you would have us leave that wording in there? **Russ Hanson:** That would be our preference. **Chairman Burckhard:** **Senator Judy Lee** asking as how that would intrude on the wishes of the donor? **Russ Hanson:** She brought that up in committee and you know that is a point for your deliberation. **Senator Judy Lee:** What about least

responsible or lowest responsible bidder, how do you determine it's the lowest responsible bidder? Is responsible an adequate word because somebody had said that they would like to see that defined a little different. Somebody in the business that was a little? **Chairman Burckhard:** this is line 17 page 3, lowest responsible bidder means the lowest best bidder for the project considering past experience, financial condition, past work with the governing body and other permanent attributes may be identified in the advertisement for bids. Do you think that is adequate enough or is that too broad? **Russ Hanson:** We think it works pretty well. Because generally it does mean that when you're doing a design bid, or lowest bidder, but it does give the governing body a little bit of latitude to take a look at a contractor that someone may have had bad experiences with, who hasn't been able to meet deadlines or so forth. We like that definition, it's been there and it's part of our rewrite on the code when we wrote the whole code. **Senator Judy Lee:** I had somebody in your business talk about that being just a little vague, and I want it to not be too specific, but if there were any improvements that you saw that were appropriate now is the time to do it, because we've got that section in front of us. But if you're okay with the way it is, that is fine, I am just bringing up the question somebody else brought up. **Russ Hanson:** Generally, Senator Lee it has worked pretty well. We haven't had many complaints by this.

Senator Dotzenrod: If we took these words "or private" out so could we offer to you as a committee as an example of how this could have some limited consequences. As far as your concern we, (inaudible response)

Chairman Burckhard: What do you see to be the lone problem is we removed the words "or private"? What would be the main problem if we remove those two words "or private land" on line 25? What do you see as the main problem? **Russ Hanson:** I wouldn't see it as a problem. It is just a scenario would be that if you had private land operated on a private land would no longer be applicable to this code, it would only be applicable to those constructed on public land. So, if it was operated or maintained by a public entity, so it would limit the scope a little bit. Do we like the way it is written now, yes, but if you edit that out there are still parts of that bill that we still would like implemented?

Senator Dotzenrod: Can you give us one example of something that would be public money on private land and taken care of by public entity, like the Alumni. **Russ Hanson:** Just off the top of my head I am thinking of one which may lend into your questions.

Chairman Burckhard: You get the impression they would rather leave it in there but there's no example why? Do we still have a motion? **Senator Judy Lee:** We still have a motion, not one I would fall on my sword about, but I.

Chairman Burckhard: So the motion again is to remove those two words "or private" from line 25, page 3.

Senator Dotzenrod: If we took out "or private" we still could have a situation where you could have some public money, build something on a private piece of land, and could be maintained by government or public infrastructure or governing body and if we pass the bill, and took that "or private" then, we could have a situation right there and there would be low competitive bidding on that process. There would be requirements, but we wouldn't have a state law that would require it.

Senator Diane Larson: I've been sitting here trying to think of a scenario like that and one potentially came to me. For example, in Bismarck, on main street, that Fiesta Villa was built on private railroad land but they had a 100- year lease, and so that might even be considered some of those kinds of lands. It's private land. I talking about examples of private land that wouldn't be like my land. So, if there's like private land near a university or government building that's being built or something. **Senator Dotzenrod:** They are surrounded by private land that is mostly what they have is private land around it for the most part.

Chairman Burckhard: So the Governor's house is on public land and part of it being funded with private money, but a larger part is private funds. So are we going to vote on this amendment?

Senator Judy Lee: One last thing, we are talking about a building whether it's the Presidents homes or something else, that is a good example because it's on public, but the Alumni Center is across the street and that's on private land. I think it would be unrealistic to think that the private people's money is going to be used in a frivolous fashion in order to construct the buildings. The impact here that we need to consider is the maintenance financially efficiently.

Senator Anderson: It seems to like if somebody is building something on private land, for the future use of the university it seems to me like if they select somebody who is not the low bidder that could be an advantage to the institution later is was built at a higher standard and spent more money on it even though the institution is going to maintain it or pay for it, down the road or lease it, or whatever, I can't see that the disadvantage to the institution by somebody building that on private land and then saying okay now we're going to lease it to you or you're going to use it for something, what is the disadvantage of that. I guess I don't see that. We haven't spent public money for it and we're getting a better deal than we would have if they got the low bidder.

Senator Dotzenrod: The example of Senator Anderson, what this bill is talking about is using public money in the construction of that building.

Senator Judy Lee: The Alumni Association building is not but the President's home is. One of the tricky words in here is "any" public money. Example cited.32.20 I am thinking about Senator Anderson's example, example cited.

Senator Anderson: Some examples might be for example when private funds did the architectural center in the old provident life building downtown Fargo, they did the remodeling and all that with private at the time, and then later on the university took it over and it now runs their program out of that building so they maintain it, expenses. That could be an example of how this was done. It wasn't turned over to at least the remodeling was complete. Again I don't know why we need to intrude on that.

Chairman Burckhard: We will take a vote on the amendment taking out those two words from line 25 "or private". Roll Call vote: 4 Yea, 2 No, 0 Absent Now do we have a motion on the bill that is amended? **Senator Judy Lee:** I move do pass as amended. 2nd **Senator Dotzenrod;** Roll call vote: 6 Yea, 0 No, 0 Absent

Carrier: Senator Anderson

17.0645.02001
Title.03000

Adopted by the Political Subdivisions
Committee

January 27, 2017

CM
1/27/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2168

Page 3, line 25, remove "or private"

Renumber accordingly

Date: 1.27.17
 Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2168**

Senate Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: p. 3 line 25, remove words "or private fund"
17.0645.02001

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 Sen. Judy Lee Seconded By Sen. Diane Larson

Senators	Yes	No	Senators	Yes	No
Chairman Randy Burckhard		✓	Senator Jim Dotzenrod	✓	
Vice-Chairman Howard Anderson	✓				
Senator Jordan Kannianen	✓				
Senator Diane Larson		✓			
Senator Judy Lee	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

SB 2168: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2168 was placed on the Sixth order on the calendar.

Page 3, line 25, remove "or private"

Renumber accordingly

2017 HOUSE INDUSTRY, BUSINESS AND LABOR

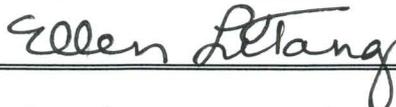
SB 2168

2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2168
3/13/2017
29122

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Public Improvements.

Minutes:

Attachment 1

Chairman Keiser: Opens the hearing of SB 2168.

Senator Lonnie Leffen ~ District 43-Grand Forks: Introduces the bill which deals with clarifying what is public works construction projects.

Russ Hanson ~ AGC of ND: This was introduced at the request of the AGC but in collaboration with the affiliated groups that meet regularly to discuss century code chapter 48. This bill does 3 things.

We didn't realize putting this bill together the term political subdivisions, it has never been defined in this section of the code. First change, page 3, line 20, will define political subdivision & we took that term from the architect section of the code so they match up.

The second portion of the change, takes a generic term, public improvement, which further clarifies that it includes any public funds including public loans, bond & leases.

Chairman Keiser: One of the problems when we get specific, we tend to leave something out. Should we add "or other alternative funding" in that little subsection?

Hanson: I think what you are suggesting is a good idea.

The last change, page 3, lines 27-28, adds into the code, that if a project is privately funded, but turned over to the public entity to staff it, we think that is defined as a public project so it would be subject to the bidding.

3:50

Rep Louser: I had somebody ask me the definition of a political subdivision & I told him. He said, "what does that mean"? My response was the ability to tax. I'm looking at this if it's

correct as any other unit of local government. Who would any other unit of local government be if it's not already listed?

Hanson: I'm drawing a blank right now.

Rep Louser: The first one that would come to my attention would be a water district. I'm wondering if we are leaving ourselves open to say any other unit of local government. I'm wondering if local government can create a unit locally. Now I have the ability to tax without the tax payers even be able to vote on it.

Hanson: We wanted to be simplistic & it was not defined before. We took a definition from a related section of the code & put it in to be the same. That is a good question.

Chairman Keiser: We could address it to say any other unit that has taxing authority.

Glenn Moen ~ Structures Inc: Attachment 1.

8:45

Rep Kasper: All I see are definitions in the bill. What am I missing?

Moen: When it brings in the definition of public projects, it brings in portion to chapter 48, the universities would have to follow.

Rep Kasper: This deals with chapter 48 but chapter 48 isn't here. You are changing definitions in this bill but it impacts chapter 48.

Moen: It deals with some specific portion of chapter 48.

Rep Kasper: It would be public improvement.

Moen: Yes.

Chairman Keiser: If any public funds are spent, then it's a public building. Now, for a private contribution that will eventually be given to a public entity, that's part of your concern. If you give us the building, we are going to use public funds to maintain it. Why should it be treated differently from any other public building?

Moen: I'm not sure I understand your question.

Chairman Keiser: I'm a wealthy person & I want to donate to a university. The building will be built on state land but I'm going to pay 100% of it. Do I have to follow state law for bidding?

Moen: Yes, if it's going to be a public building for the public use & benefit, it would fall under these public bidding procurement laws.

Chairman Keiser: Any amount, \$25,000, does it then fall under as a private citizen?

Moen: It would, but \$25,000 falls below the present procurement level.

Chairman Keiser: The procurement is for a ten million dollars building. I'm just giving \$25,000.

Moen: But your question at \$25,000, that is below the present threshold of having to follow public bidding requirements.

Rep Kasper: Is this bill drafted to address any particular situation out there on page 3, lines 23-31?

Moen: It's drafted mainly to the foundations where they would provide the building for a university that is built on public land, for the public purposes.

Rep Kasper: What we are doing is the hidden agenda to stop the foundations with the private money they raised & put them in the public domain under the purview of the public?

Moen: We are not trying to stop them., We are just saying that if building A is strictly use, then it's a public improvement & should follow public procurement laws.

Rep Kasper: Even though it's private funds?

Moen: Even though it's private funds, they still put up the building. But if it's built on private land, it would not fall under this bill.

Bonnie Staiger ~ Executive Vice President of AIA ND: We are here to lend support to this bill. We worked with the drafters of this bill to wordsmith it over the last couple of years. It's been our hope that addresses far more than one particular issue. We believe there are a lot of other circumstances that have inspired this bill. It's not a targeted bill.

The comment about the sale lease back is brilliant but we thought that might be covered in some of the language that is introduced here. Adding that would be important.

Chairman Keiser: Anyone else here to testify in support, opposition, neutral of SB 2168? What are your wishes? Closes the hearing.

Rep Lefor: You mentioned something about putting in language about "any type of funding", I would like to see wording or an amendment.

Rep Ruby: Rep Louser mentioned about "political subdivisions" but I think if we change it to "the way the taxing authority", that would exempt those foundations. We might want to leave that alone.

Chairman Keiser: We will hold that.

2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2168
3/13/2017
29123

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Public improvements.

Minutes:

Attachment 1

Chairman Keiser: Reopens the hearing of SB 2168.

Dennis Patroff ~ HIBL Law Intern: Attachment 1. Reads the amendment.

Chairman Keiser: What are the wishes of the committee?

Rep Lefor: Moves to adopt amendment 17.0645.03001.

Rep Bosch: Second.

Voice vote ~ Motion carried.

Chairman Keiser: Further discussion?

Rep Lefor: Moves a Do Pass as Amended.

Rep Bosch: Second.

Chairman Keiser: Further discussion?

Roll call was taken on a Do Pass as Amended on SB 2168 with 14 yes, 0 no, 0 absent with Rep Lefor as the carrier.

3/13/17 DVO

17.0645.03001
Title.04000

Adopted by the Industry, Business and Labor
Committee

March 13, 2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2168

Page 3, line 25, remove "or"

Page 3, line 25, after the third underscored comma insert "or alternative funding."

Renumber accordingly

Date: Mar 13, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2168

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: 17.0645.03001

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 Lefor Seconded By Rep Bosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep Laning		
Vice Chairman Sukut			Rep Lefor		
Rep Beadle			Rep Louser		
Rep R Becker			Rep O'Brien		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Boschee		
Rep Kasper			Rep Dobervich		

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

voice vote - motion carried

Date: Mar 13, 2017

Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 2168

House _____ Industry, Business and Labor _____ 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 Lefor

Seconded By Rep Bosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle	X		Rep Louser	X	
Rep R Becker	X		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Boschee	X	
Rep Kasper	X		Rep Dobervich	X	

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep Lefor

REPORT OF STANDING COMMITTEE

SB 2168, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2168 was placed on the Sixth order on the calendar.

Page 3, line 25, remove "or"

Page 3, line 25, after the third underscored comma insert "or alternative funding."

Renumber accordingly

2017 TESTIMONY

SB 2168

SB2168
1.20.17
Written Testimony #1

Senate Political Subdivisions Committee

January 20, 2017

Senate Bill 2168

Mr. Chairman and members of the Senate Political Subdivisions Committee, I am Glenn Moen from Grand Forks, I work for Structures, Inc., a commercial general contractor, we specialize in pre-engineered metal buildings. I am a past president of the Associated General Contractors of North Dakota (AGC).

I am here in support of SB 2168. Being a Grand Forks based contractor we follow and bid on much of the work in Grand Forks. Some of that work is at the University of North Dakota (UND). Some of the projects done at UND and the other universities and colleges in the state are funded to various degrees by their foundations and alumni. These projects presently seem to fall through the cracks of having to follow the public bidding and procurement laws of NDCC 48. Even though these projects are built on state owned land for the benefit of the college with the completed projects being staffed and maintained by the state.

This bill will close that loophole by requiring all political subdivisions to follow the procurement and bidding procedures of NDCC 48. This body has seen the necessity to practice good stewardship of the public trust and dollar.

Over the years we have seen and AGC has received numerous inquiries about whether a project needed to be bid as the source of funding was not as simple as a direct legislative appropriation or came from a number of sources. The language in SB 2168 takes into consideration the various funding sources being used and clearly states what constitutes a public project required to follow the advertisement and bid requirements of NDCC 48.

An example our company ran into was a UND project that was a pre-engineered metal building. The plans came out one week with bids due the next week. NDCC 48 requires a minimum of three weeks. It was a large, complex project that we had to send in to our manufacturer to get the building priced. This process takes more than a week. The building was designed around manufacturer A. Our company was a dealer for manufacturer B. The contractor awarded the project was a dealer for manufacturer A.

The other main component of the bill is if the governing body is going to maintain the completed project, it should be publicly bid. If North Dakota taxpayers have the ongoing expense of maintaining the completed project and the public uses that project, we believe the construction of the project is clearly a public improvement.

This bill would make sure all public projects are procured through open competition on a level playing field. We all know that when transparency, a level playing field and competitive fairness are not a part of this procurement process what eventually follows is cronyism, pay for play and sweet heart deals.

We believe SB 2168 is an improved public policy indicating if there are any public dollars, loans, revenue bonds, land or if the project is to be maintained by a public owner – it must be publicly advertised and bid. We believe that will lead to better competition - which usually results in more competitive bids.

Thank you for your time.

I will try to answer any question you may have.

March 13, 2017

Senate Bill 2168

Mr. Chairman and members of the House Industry, Business, & Labor Committee, my name is Glenn Moen from Grand Forks, I work for Structures, Inc., a commercial general contractor, we specialize in pre-engineered metal buildings. I am a past president of the Associated General Contractors of North Dakota (AGC).

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Bill LC# 17.0645.03000

Prepared by Legislative Intern 8
March 13, 2017

PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2168

Page 3, line 25, remove "or"

Page 3, line 25, after "leases," insert "or alternative funding,"

Re-number accordingly