

# PUBLIC BUILDINGS

## CHAPTER 356

### SENATE BILL NO. 2270

(Senators J. Lee, Heckaman, Schaible)  
(Representatives Sanford, Wieland)

AN ACT to amend and reenact subsection 1 of section 48-01.2-04 and subsection 3 of section 48-01.2-19 of the North Dakota Century Code, relating to the publication of advertisements for bids for public improvement contracts.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 1 of section 48-01.2-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this chapter, if the estimated cost for the construction of a public improvement is in excess of the threshold established under section 48-01.2-02.1, the governing body shall advertise for bids by publishing for three consecutive weeks. The first publication of the advertisement must be at least twenty-one days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, and in a trade publication, electronic plan service, builders exchange, or other industry-recognized method of general circulation among the contractors, building manufacturers, and dealers in this state, except the advertisement for a public improvement financed by special assessments need be published only once each week for two weeks in the official newspaper with the first publication being at least fourteen days before the bid opening.

**SECTION 2. AMENDMENT.** Subsection 3 of section 48-01.2-19 of the North Dakota Century Code is amended and reenacted as follows:

3. The governing body shall publish a notice of the request for qualifications in a newspaper of general circulation in the county in which the public improvement is located and in a construction trade publication, electronic service, builders exchange, or other industry-recognized method in general circulation among the contractors, building manufacturers, and dealers in this state and shall be published for three consecutive weeks, with the first publication being at least twenty-one days before the date of opening of the request for qualifications. Upon written request, the governing body shall mail a copy of the invitation to any interested party.

Approved March 26, 2013  
Filed March 27, 2013

## CHAPTER 357

### HOUSE BILL NO. 1200

(Representatives Delzer, Bellew, Kempenich)

AN ACT to amend and reenact sections 15-10-12.1 and 48-01.2-25 of the North Dakota Century Code, relating to the approval of higher education campus improvements financed by donations, gifts, grants, and bequests and the approval of a change or expansion of a public improvement project.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 15-10-12.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-10-12.1. Acceptance of buildings and campus improvements - Legislative approval.**

The state board of higher education may authorize campus improvements and building maintenance on land under the control of the board which are financed by donations, gifts, grants, and bequests if the cost of the improvement or building maintenance is not more than three hundred eighty-five thousand dollars. The consent of the legislative assembly is required for construction of any building financed by donations, gifts, grants, and bequests and for campus improvements or building maintenance financed by donations, gifts, grants, and bequests if the cost of the improvements or maintenance is more than three hundred eighty-five thousand dollars. During the time the legislative assembly is not in session, except for the six months preceding the convening of a regular session and the three months following the close of a regular session, and unless otherwise restricted by previous legislative action or other law, the state board of higher education, with the approval of the budget section of the legislative management, may authorize the use of land under the control of the board and construct buildings financed by donations, gifts, grants, and bequests and campus improvements and building maintenance financed by donations, gifts, grants, and bequests and if the cost of the improvement or maintenance is more than three hundred eighty-five thousand dollars. The budget section approval must include a specific dollar limit for each building, campus improvement project, or maintenance project. The state board of higher education may authorize the sale of any real property or buildings which an institution of higher learning has received by gift or bequest. The board shall prescribe such conditions for the sale of the property as it determines necessary. The conditions must include requiring an appraisal and public auction or advertisement for bids, unless the gift instrument requires a different process. If the state board of higher education submits a request for campus improvements, building maintenance, or to construct buildings under this section to the budget section for approval, the legislative council shall notify each member of the legislative assembly of the date of the budget section meeting at which the request will be considered and provide a copy of the meeting agenda to each member of the legislative assembly. The chairman of the budget section shall allow any member of the legislative assembly an opportunity to present testimony to the budget section regarding any such request.

**SECTION 2. AMENDMENT.** Section 48-01.2-25 of the North Dakota Century Code is amended and reenacted as follows:

**48-01.2-25. Authorization of expansion of public improvements by legislative assembly or budget section.**

Notwithstanding any other provision of law, a state agency or institution may not significantly change or expand a public improvement beyond what has been approved by the legislative assembly unless the legislative assembly, ~~or the budget section of the legislative management if the legislative assembly is not in session,~~ approves the change or expansion of the project or any additional expenditure for the project. During the time the legislative assembly is not in session, and unless otherwise restricted by previous legislative action or other law, the budget section of the legislative management may approve a change or expansion or any additional expenditure for the project. However, the budget section of the legislative management may not approve a change, expansion, or additional expenditure for the project during the six months preceding the convening of a regular session or during the three months following the close of a regular session except for changes in project scope and related additional expenditures resulting from an unforeseen emergency event. For the purposes of this section, a significant change or expansion includes the construction of an addition to a building, including skywalks or other type of enclosed walkway, or any other substantial increase in the area of the building, but does not include the construction of building entrances and stairwells.

Approved April 10, 2013

Filed April 10, 2013

## CHAPTER 358

### HOUSE BILL NO. 1270

(Representatives Kasper, Beadle, Belter, Carlson,  
Dosch, Headland, Keiser, Ruby, Thoreson)  
(Senators Klein, Miller, Wardner)

AN ACT to provide for open and fair competition in governmental construction; to provide for application; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

##### SECTION 1.

###### Definitions.

As used in this Act:

1. "Facility" means a physical improvement to real property owned or leased, directly or through a building authority, by a governmental unit, including a road, bridge, runway, rails, or building or structure along with the building's or structure's grounds, approaches, services, and appurtenances.
2. "Governmental unit" means the state or a political subdivision.

##### SECTION 2.

###### Prohibited labor organization terms in construction contract clauses.

A governmental unit awarding a contract for the construction, repair, remodeling, or demolition of a facility and any construction manager acting on that governmental unit's behalf may not include any of the following in the bid specifications, project agreements, or other controlling documents:

1. A term that requires or prohibits a bidder, an offeror, a contractor, or a subcontractor from entering or adhering to agreements with one or more labor organizations relating to the construction project or a related construction project; or
2. A term that otherwise discriminates against a bidder, an offeror, a contractor, or a subcontractor for becoming, remaining, or refusing to become or remain a signatory to or for adhering to or refusing to adhere to an agreement with one or more labor organizations in regard to that project or a related construction project.

##### SECTION 3.

###### Prohibited labor organization terms in a grant, tax abatement, and tax credit.

1. A governmental unit may not award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the awardee include a term prohibited under section 2 of this Act in a contract document for any construction.

improvement, maintenance, or renovation of real property or fixtures that are the subject of the grant, tax abatement, or tax credit.

2. This Act does not prohibit a governmental unit from awarding a contract, grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor that enters, is a party to, or adheres to an agreement with a labor organization, if:
  - a. Being or becoming a party or adhering to an agreement with a labor organization is not a condition for the award of the contract, grant, tax abatement, or tax credit; and
  - b. The governmental unit does not discriminate against a private owner, bidder, contractor, or subcontractor in the awarding of that contract, grant, tax abatement, or tax credit based upon the status as being or becoming, or the willingness or refusal to become, a party to an agreement with a labor organization.
3. This Act does not prohibit a contractor or subcontractor from voluntarily entering or complying with an agreement entered with one or more labor organizations in regard to a contract with a governmental unit or a contract funded in whole or in part from a grant, tax abatement, or tax credit from a governmental unit.

#### **SECTION 4.**

##### **Exemptions.**

The head of a governmental unit may exempt a particular project, contract, subcontract, grant, tax abatement, or tax credit from the requirements of any or all of the provisions in this Act if after public notice and hearing the governmental unit finds special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstances under this section may not be based on the possibility or presence of a labor dispute concerning:

1. The use of contractors or subcontractors that are nonsignatories to or otherwise do not adhere to agreements with one or more labor organizations; or
2. Employees on the project who are not members of or affiliated with a labor organization.

#### **SECTION 5.**

##### **Limitations.**

This Act may not be construed to:

1. Prohibit an employer or other party from entering an agreement or engaging in any other activity protected by the National Labor Relations Act [29 U.S.C. 151 et seq.]; or
2. Interfere with labor relations of a party which are left unregulated under the National Labor Relations Act [29 U.S.C. 151 et seq.].

**SECTION 6. APPLICATION.** This Act applies to construction contracts executed on and after the effective date of this Act.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 8, 2013  
Filed April 8, 2013