

**2015 SENATE INDUSTRY, BUSINESS AND LABOR**

**SB 2203**

# 2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2203  
1/19/2015  
Job Number 22141

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to bids for public improvement contracts

## Minutes:

Attachments

**Chairman Klein:** Senator Laffen will be speaking on SB 2203, which he is the prime sponsor of because he will be gone tomorrow. He will give us an overview so we will have some understanding of what his intentions are.

**Senator Laffen:** SB 2203 deals with how we take bids on state public projects. Up until about twenty-five years ago whenever we took bids, we received bids from single prime general contractors. We would take the low bidder. The general contractor goes out and collects all of the subcontractors; the painter, drywall, carpentry, mechanical, electrical, there is about thirty on the job. The general contractor does about half of the work themselves and then the other half is all these trades that work for them. Their job is to run the project, make sure everyone is there to do the job, pay them but they are the single go to source. That is how the industry worked. About twenty-five years ago the mechanical and electrical subcontractors came to this body and lobbied to get their own contract. The argument was that they had to wait to get paid from the general contractor and they didn't like that. They convinced the legislature to allow three contracts. Now there is a general contractor, mechanical and an electrical. It has forced are public agency to go to a construction manager because they have to manage those three entities now. There is no way to keep a project on schedule anymore. This is where the construction manager comes into play, they manage the other three. That's the best process. We have a limit right now that says if you're under a million it is too complicated to have three prime contracts. This bill simply says let's change that to five million. (:50-7:50) Amendment Attached (1).

**Senator Murphy:** The reason we can stop at five million is you usually go to construction management anyway, which it puts it back to one. Are general contractor and a construction manager are synonymous?

**Senator Laffen:** Yes it goes back to one million. They are synonymous but construction management developed in a lot of the bigger cities where the firms are much larger. They

are much more sophisticated in the way they manage projects to keep them on time and on budget and quality control and safety. They are the same kind of firms; they all started as general contractors. The only real difference in these two processes in a single prime general contract you when the bid on the award day and the next day you have a five million dollar project you have to move right away. It's not a good process but it's still in our state law and it works. Under construction management the construction manager is brought in the same time we are and are part of the design process. You get to hire them by qualifications because they do a great job. Sometimes the general contractor is not that good but we would be stuck with them.

**Senator Murphy:** What happens to your amendment which gets rid of the bid shopping, when the general contractor or the construction management does not have a mechanical or electrical when the bid is put in? Your amendment says they have to write it in when they submit the bid, how does that work?

**Senator Laffen:** The amendment will require they write the names down; it's a compromise to the bid shopping issue. It's rare when the general contractor would go out and bid without that number. This would force them into getting that bid. They have a lot more leverage over those guys than others because they are working with them every day.

**Senator Campbell:** Why doesn't the low bid always get the contract?

**Senator Laffen:** Our state law says lowest and best bid. It's very rare that the lower bid doesn't get the contract. The only reason is if you have pretty good evidence that contractor didn't do a very good job on a previous project.

**Chairman Klein:** We won't vote on this tomorrow but will probably bring you back again.

# 2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2203  
1/20/2015  
Job Number 22187

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to bids for public improvement

## Minutes:

Attachments

**Chairman Klein:** Called the hearing back to order. Senator Laffen isn't here today so we may schedule it one more time.

### **Rick Tonder, Director of Facility Planning for the North Dakota University System:**

This bill is to allow the agency to specify only single prime bids up to five million dollars in lieu of allowing both multiple prime and single prime bids. The net effect of that would be the only bids you would open will be single prime bids up to five million dollars, if you so choose. You still have as an agency, the opportunity to use multiple prime that can include single prime, construction manager at risk or agency construction manager, the three allowable delivery methods. (:45-3:17)

**Senator Campbell:** Aren't we trying to control and regulate too much? There are a lot of things that go on behind the scenes, its way more complex for most of us. I don't have a problem with if a general gets it and he didn't commit to any of his subs and he can find someone else to do it for less and save some money, that's capitalism.

**Rick Tonder:** I would say I'd take Bonnie's recommendation strongly to changes to 48-01.2 with a combined group of people who advise you on this representing all the various components. He feels some issues need to be resolved before they go forward with this bill as proposed. (4:38-5:46)

**Senator Sinner:** Asked how many projects the North Dakota University Systems do in a year and how many are fewer than five million dollars.

**Rick Tonder:** There is a large number that comes underneath that five million dollar threshold, many of which are over the threshold for bidding but under the threshold that require board authorization of two hundred and fifty thousand dollars. In that instance you may find in a given year anywhere from fifty to hundred small projects ranging from one

hundred thousand dollars to large projects that are closer to two and three million. There are very many in this category that will be affected by this bill.

**Chairman Klein:** It says in excess of the threshold, do we have a million dollar threshold currently?

**Rick Tonder:** The threshold is one hundred thousand dollar currently; we requested that be changed but anything over one hundred thousand dollars this kicks in.

**Chairman Klein:** We are changing it from one hundred thousand to under five million.

**Rick Tonder:** No that is strictly for the qualifications for single prime. You still must do one of the following; you must have multiple prime bids, you can specify a single prime bid, you can select a construction manager at risk or an agency construction manager.

**Chairman Klein:** My question is, is that all new language under five million, did we have any other threshold before or was it nothing?

**Rick Tonder:** There was no threshold.

**Russ Hanson, Associated General Contractors of North Dakota:** They are in support of the bill. This would add another delivery system to the foray to be utilized. (7:53-8:22)

**Bill Kalanek, National Electrical Contractors Association, Dakotas Chapter ND Association of Plumbing, Heating & Mechanical Contractors:** In opposition to the bill. Written Testimony Attached (1). (8:51-10:57)

**Senator Campbell:** This goes back quite a few years but when the general contractor didn't pay the electrical, the electrical got mad. There was a reason the general didn't pay because the electrical or the mechanical had a quality or time issue, if we don't pass this who would hold the mechanical or electrical contractors accountable?

**Bill Kalanek:** Where the accountability comes into play is the owner of the project and typically speaking the design professional that they have hired to run the project.

**Travis Greff, Construction Manager of HA Thompson & Sons:** Opposed to the bill. Written Testimony Attached (2). (14:30-16:26)

**Chairman Klein:** In 1991, when they changed this, what was the reason?

**Travis Greff:** They were afraid bid shopping was occurring between numbers that were out there. There was also, at the time, a lot of the generals were not able to bond for all three trades so it opened up there bonding capabilities by allowing the electrical and mechanical to bond for them and their subs.

**Chairman Klein:** Do you want to respond to Senator Campbell's question, when there is a general contractor and he holds the mechanical and electrical pay until they get the work done?

**Travis Greff:** We do fight with that when we are in the private sector and under the thumb of the general. We have had to go after them for payment even though we have done our portion of the work. We do like the ability to bid multiple prime.

**Bonnie Staiger, American Council of Engineering Companies:** In opposition to the bill. They are opposing all of the bills this session that are dealing with changing the threshold and the bid requirements in chapter 48. We believe that universally they need to be held to the highest standard to allow for everybody to participate so that the public trust is protected. (18:05-19:38)

**Chairman Klein:** Closed the hearing.

# 2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2203  
2/3/2015  
Job Number 23108

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Era Liebelt*

## Explanation or reason for introduction of bill/resolution:

Relating to bids for public improvement contracts

## Minutes:

No Attachments

**Chairman Klein:** Opened the meeting. Said that he had visited with Senator Laffen and suggested to him that Bonnie Staiger was right in that they should study a couple of these bid issues. Senator Laffen was good with that and said that there is a lot of stuff happening out there, eight years has passed and people are building things differently. Senator Laffen said he would not be opposed to them amending the study resolution in his bill or in the 2233. Senator Dever's bill also created a lot of discussion which was 2233 asked for opening all the bids in public and we had no problem with the one section but the other section provided for a lot of discussion. Maybe we could start with Senator Laffen's bill. We will do these together, 2203 and 2233.

**Senator Miller:** Let's kill one of them and pass the other.

**Chairman Klein:** That's what my thought was but I sensed that 2233 might have a hard time getting passed.

**Senator Sinner:** Moved a do not pass.

**Senator Miller:** Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

**Senator Sinner will carry the bill.**

**2015 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2203**

Senate 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 Senator Sinner    Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7    No 0

Absent 0

Floor Assignment Senator Sinner

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

**REPORT OF STANDING COMMITTEE**

**SB 2203: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO NOT PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).** SB 2203 was placed on the Eleventh order on the calendar.

**2015 TESTIMONY**

**SB 2203**

1/19/2015 #1

15.0478.01001  
Title.

Prepared by the Legislative Council staff for  
Senator Laffen

January 14, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2203

Page 1, line 11, after "bids" insert "and the single prime bid must contain the names of the electrical and mechanical subcontractors"

Re-number accordingly

Testimony on SB 2203

Bill Kalanek

National Electrical Contractors Association, Dakotas Chapter  
ND Association of Plumbing, Heating & Mechanical Contractors

Senate Industry, Business & Labor Committee

January 20, 2015

Good Morning Chairman Klein and members of the Senate Industry Business & Labor Committee, my name is Bill Kalanek, here today representing the members of the Dakotas Chapter of the National Electrical Contractors Association and the ND Association of Plumbing, Heating & Mechanical Contractors.

On behalf of our contractor members I'd like to voice our combined opposition to Senate Bill 2203 which establishes an unnecessary addition to the existing public project delivery system. The proposed change as suggested by the bill would in our estimation create more inequities and be less transparent than the current accepted methods.

The bill as drafted would allow a governing body to specify a Single Prime bid for all public projects with a budget of \$5,000,000 or less, something that is already provided for in this same section of law. The current bid process already allows a governing body the option of selecting a Single Prime contract or Multiple Prime bid contracts depending on which method produces the lower cost option. The proposed change if enacted would be less transparent as the governing body would not be able clearly identify the cost of each portion of the project and assess the true costs to the taxpayer. The current Multiple Prime bid process provides for an exact accounting of the costs for the general, electrical and mechanical construction costs associated with a project. If a governing body receives a Single Prime bid on the project they have the option to select that bid if the total bid is less than the combined total of the Multiple Prime bids.

For these reasons I would ask the committee in its wisdom give SB 2203 a "Do Not Pass" recommendation and leave the current, fair and open process unchanged as we look to prudently spend taxpayer dollars.

Thank you.

## SB 2203

Chairman Klein

Senator Campbell

Senator Burckhard

Senator Miller

Senator Murphy

Senator Poolman

Senator Sinner

My name is Travis Greff. I am the Construction Manager for HA Thompson & Sons: a plumbing, heating and mechanical firm located here in Bismarck. I am speaking here today to ask you to oppose the proposed amendment to Senate Bill 2203.

We have been in the construction industry since 1908. In that time, our company was involved in the original amending of the public contract bidding portion of the Century Code Section 48-02-05.1 in 1991. This required that all public bids must accept multiple prime bids for general, mechanical, and electrical when the project is greater than \$25,000 (which has now been changed to \$100,000.) The amendment allowed for all trades to be bid under the general with a single prime bid as well and still does today.

In that time, 2 other people besides myself have bid hundreds of public projects for HA Thompson & Sons and speaking with them none of us can recall a single time in which we saw a single prime bid come in lower than the sum of the multiple prime numbers when there were responsive bidders for all 3 primes. This proves to me that by taking away the requirement of multiple prime bidding on projects up to \$5,000,000 in scope, the tax payers will ultimately pay more on these projects than by keeping this section as it is written.

When you look at a \$5,000,000 bid, many times the mechanical can constitute 20% of the price and the electrical an additional 15% of the overall costs putting these trades at \$1,000,000 and \$750,000 respectively. If the general proceeds to mark his subs up 10%, this would mean the taxpayer just paid an additional \$175,000 for the exact same project.

HA Thompson and Sons along with many other mechanical contractors have testified on multiple occasions over the life of this bill to make sure that the multiple prime bidding technique remains in place to continue to save the taxpayers' money. The bill will still allow the single prime as an option along with the multiple prime so we do not see any reason to amend what is already in place.

Thank you for your time and the opportunity to express our concerns.