

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2168**

Introduced by

Senators Burckhard, Campbell, Laffen

Representatives Rich S. Becker, B. Koppelman, Streyle

1 A BILL for an Act to amend and reenact section 48-01.2-01 of the North Dakota Century Code,
2 relating to public improvements.

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

4 **SECTION 1. AMENDMENT.** Section 48-01.2-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **48-01.2-01. Definitions.**

7 In this chapter, unless the context otherwise requires:

8 1. "Agency construction management" means a public improvement delivery method
9 through which a person provides to a governing body experienced construction
10 management services, including ideas on constructability, documentation of design
11 and construction, and coordination of project schedules.

12 2. "Architect" means an individual registered as an architect under chapter 43-03.

13 3. "Common ownership" means a shared management or ownership interest in two or
14 more entities.

15 4. "Construction" means the process of building, altering, repairing, improving, or
16 demolishing any public structure or building or other improvement to any public
17 property. The term does not include the routine operation or maintenance of existing
18 facilities, structures, buildings, or real property or demolition projects costing less than
19 the threshold established under section 48-01.2-02.1.

20 5. "Construction administration" means administrative services provided by a governing
21 body or an architect, a landscape architect, or an engineer, and includes providing
22 clarifications, submittal review, recommendations for payment, preparation of change
23 orders, and other administrative services included in the agreement with the architect,

1 landscape architect, or engineer. The term does not include supervision of the
2 construction activities for the construction contracts.

3 6. "Construction management at-risk" means a public improvement delivery method
4 through which a construction manager provides advice to the governing body during
5 the planning and design phase of a public improvement, negotiates a contract with the
6 governing body for the general construction bid package of the public improvement,
7 and contracts with subcontractors and suppliers for the actual construction of the
8 public improvement.

9 7. "Construction manager" means a contractor licensed under chapter 43-07 or an
10 individual employed by a licensed contractor which has the expertise and resources to
11 assist a governing body with the management of the design, contracting, and
12 construction aspects of a public improvement.

13 8. "Construction observation" means observation of construction work and site visits by
14 an architect, a landscape architect, or an engineer to assist the governing body in
15 determining that the work conforms in general to the requirements of the construction
16 contract and that the contractor has implemented and maintained the integrity of the
17 design concept of a project as a functioning whole as indicated in the construction
18 contract.

19 9. "Contract" means a type of agency agreement for the procurement of services under
20 this chapter.

21 10. "Contractor" means any person, duly licensed, that undertakes or enters a contract
22 with a governing body for the construction or construction management of any public
23 improvement, including multiple prime contracts.

24 11. "Design services" means architect services, engineer services, landscape architect
25 services, or surveyor services.

26 12. "Design-bid-build" means a project delivery method in which design and construction
27 of the project are in sequential phases, and in which the first project phase involves
28 design services, the second project phase involves securing a contractor through a
29 bidding process, and the third project phase provides for construction of the project by
30 a contractor awarded the project.

- 1 13. "Emergency situation" means a sudden generally unexpected occurrence that requires
2 immediate action to protect public health, safety, or property and which ends when the
3 immediate threat to public health, safety, or property ceases and services are restored.
4 The term does not include a lack of planning on the part of the governing body,
5 architect, engineer, landscape architect, or contractor.
- 6 14. "Engineer" means an individual registered as an engineer under chapter 43-19.1.
- 7 15. "General conditions" means the written portion of a contract setting forth the governing
8 body's minimum acceptable performance requirements, including the rights,
9 responsibilities, and relationships of the parties involved in the performance of the
10 contract.
- 11 16. "Governing body" means the governing officer or board of a state entity or a political
12 subdivision.
- 13 17. "Guaranteed maximum price" means the maximum amount a construction manager
14 at-risk may be paid under a contract to construct a public improvement.
- 15 18. "Landscape architect services" means landscape architecture services governed
16 under chapter 43-03.
- 17 19. "Lowest responsible bidder" means the lowest best bidder for the project considering
18 past experience, financial condition, past work with the governing body, and other
19 pertinent attributes that may be identified in the advertisement for bids.
- 20 20. "Political subdivision" means a county, township, park district, school district, city, and
21 any other unit of local government which is created either by statute or by the
22 Constitution of North Dakota for local government or other public purposes.
- 23 21. "Public improvement" means any improvement undertaken by a governing body for
24 the good of the public and which is paid for with any public funds and, including public
25 loans, bonds, leases, or alternative funding, and is constructed on public land or within
26 aan existing or new public building and includes an improvement on public or
27 nonpublic land if any portion of the construction phase of the project is paid for with
28 public funds or any other public infrastructure or facility if the result of the improvement
29 will be operated and maintained by the governing body. The term does not include a
30 county road construction and maintenance, state highway, or public service
31 commission project governed by title 11, 24, or 38.

- 1 ~~21-22.~~ "Subcontractor" means a person that contracts to perform work or render a service to
2 a contractor or to another subcontractor as part of a contract with a governing body.