

2023 SENATE INDUSTRY AND BUSINESS

SB 2347

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

SB 2347
2/7/2023

A bill relating to the threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement.
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11:00 Chairman D. Larsen opened the hearing on SB 2347. Members Present: Chairman D. Larsen, Senator Barta, Senator Klein, Senator Boehm. Members absent: Vice Chairman Kessel.

Discussion Topics:

- Cost threshold
- Current law
- ADA compliant playground equipment cost
- Comfort stations, also known as “shower houses”
- Cabins
- Requirements
- Pre-engineered buildings

11:01 AM Senator Erbele, District 28, North Dakota State Senate, introduced SB 2347 and testified in favor. (verbal)

11:08 Cole Garman, Outreach Engagement Chief, North Dakota Parks and Recreation, presented testimony in favor of SB 2347 from Cody Schultz, Director, North Dakota Parks and Recreation. #19449

11:14 AM Paul Taylor, Department Director, Municipal Parks and Recreation answered questions of the committee.

11:18 AM Russ Hanson, Associate, General Contractors of North Dakota testified in opposition of SB 2347. (verbal)

11:27 AM Mike Krumwiede, North Dakota Chapter of American Council of Engineering Companies, testified in opposition of SB 2347. #19410

11:50 AM Jack McDonald, North Dakota Newspaper Association testified in opposition to SB 2347. (verbal)

11:57 AM David Bruschwein, Director, Municipal Facilities, North Dakota Department of Environmental Quality, testified in opposition of SB 2347. #19400

12:02 PM Chairman D. Larsen closed the hearing on SB 2347.

Additional written testimony:

Mike Krumwiede #19411

12:03 PM Chairman D. Larsen adjourned the meeting.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

SB 2347
2/7/2023

A Bill relating to the threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement.
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3:02 PM Chairman D. Larsen called the Committee together. Members present: Chairman D. Larsen, Senator Barta, Senator Klein, Senator Boehm. Members absent: Vice Chairman Kessel.

Discussion Topics:

- Bidding requirements
- Threshold for architect or engineer
- Prefab
- Amendment
- Sewer systems

3:02 PM Chairman D. Larsen reviewed bill progress and opened meeting up for discussion.

3:03 PM Senator Klein provided information.

3:05 PM Senator Boehm discussed details of the bill.

3:08 PM Senator Barta discussed details of the bill.

3:21 PM Chairman Larsen adjourned the meeting.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

SB 2347
2/8/2023

A bill relating to the threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement.
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10:57 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Senator Barta, Senator Klein, Senator Boehm. Members absent: Vice Chairman Kessel.

Discussion Topics:

- Fiscal prudence
- Engineering thresholds
- Prefabricated buildings

10:57 AM Chairman D. Larsen discussed SB 2347 and opened the meeting up for discussion.

11:18 AM Chairman D. Larsen closed the meeting on SB 2347.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

SB 2347
2/13/2023

A bill relating to the threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement.

3:57 PM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Committee action

3:57 PM Chairman D. Larsen introduced a proposed amendment to SB 2347. #20681

3:57 PM Senator Klein moved to adopt the amendment to SB 2347. LC 23.0874.01002

3:58 PM Senator Barta seconded the motion to adopt the amendment to SB 2347.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Motion Passed: 5-0-0

3:59 PM Senator Klein moved to DO PASS AS AMENDED SB 2347.

3:59 PM Senator Barta seconded the motion DO PASS AS AMENDED SB 2347.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Motion Passed 5-0-0 Senator Boehm will carry the bill.

4:00 PM Chairman D. Larsen adjourned the meeting.

Brenda Cook, Committee Clerk

February 13, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2347

Page 1, line 10, overstrike "a" and insert immediately thereafter ":

a. A"

Page 1, line 11, replace "one million" with "five hundred thousand"

Page 1, line 11, overstrike the period and insert immediately thereafter " ; and

b."

Page 1, line 12, remove "not subject to the requirements for procuring plans, drawings, and"

Page 1, line 13, replace "specifications from an architect or engineer under this section" with "one million dollars"

Renumber accordingly

AGC
2-13-23
(1-1)

REPORT OF STANDING COMMITTEE

SB 2347: Industry and Business Committee (Sen. Larsen, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2347 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 10, overstrike "a" and insert immediately thereafter ":

a. A"

Page 1, line 11, replace "one million" with "five hundred thousand"

Page 1, line 11, overstrike the period and insert immediately thereafter " and

b."

Page 1, line 12, remove "not subject to the requirements for procuring plans, drawings, and"

Page 1, line 13, replace "specifications from an architect or engineer under this section" with "one million dollars"

Renumber accordingly

2023 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2347

2023 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2347
3/9/2023

Relating to the threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement.

Chairman Schauer called the meeting to order at 9:20 AM.

Chairman Austen Schauer, Vice Chairman Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, Mary Schneider. All present.

Discussion Topics:

- Cost threshold
- Commercial construction
- Engineer safety
- Construction inflation
- Multiple dollar thresholds
- Playground equipment
- Cabins
- Fiscal responsibility
- Drinking water systems
- Environmental quality
- Pre-engineering

Sen. Erbele introduced SB 2347 with supportive testimony.

Cody Schulz, Director of the North Dakota Parks and Recreation Department, supportive testimony (#23139).

Russ Hanson, with the Associated General Contractors of North Dakota, opposition testimony (#23326).

Tom Todd, Co-owner of Northwest Contracting, opposition testimony (#23331).

Mike Krumwiede, with the American Council of Engineering Companies, opposition testimony (#23237).

Mike Burg, on behalf of the American Council of Engineering Companies, spoke in opposition.

Mark Schneider, President of the ND Chapter of American Institute of Architects, opposition testimony (#23238).

Glenn Moen, General contractor and former President of the associated General Contractors of North Dakota (AGC), opposition testimony (#23342).

David Bruschwien, Director of the Division of Municipal Facilities in the North Dakota Department of Environmental Quality, opposition testimony and proposed amendment (#23225).

John Arnold, Deputy Insurance Commissioner, spoke in opposition.

Additional written testimony:

Dan Hanson, City Engineer from West Fargo, North Dakota, supportive testimony and recommended an amendment (#23028).

Mike Dunn, Business Development Manager for Construction Engineers, opposition testimony (#23243).

Ryan Ackerman, CEO of Ackerman-Estvold in Minot, North Dakota, opposition testimony (#23278).

Chairman Schauer adjourned the meeting at 10:39 AM.

Phillip Jacobs, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2347
3/9/2023

Relating to the threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement.

Chairman Schauer called the meeting to order at 4:24 PM.

Chairman Austen Schauer, Vice Chairman Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, and Mary Schneider present. Reps. Landon Bahl and Vicky Steiner not present.

Discussion Topics:

- Committee work
- Amendments

Chairman Schauer called for a discussion on SB 2347.

Rep. Cory moved a do not pass on SB 2347.

Seconded by Rep. McLeod.

Roll Call Vote:

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	AB
Representative Claire Cory	Y
Representative Jeff A. Hoverson	N
Representative Jorin Johnson	N
Representative Karen Karls	Y
Representative Scott Louser	Y
Representative Carrie McLeod	Y
Representative Karen M. Rohr	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	AB
Representative Steve Vetter	Y

Motion carries 9-2-2.

Carried by Vice Chairman Satrom.

Chairman Schauer adjourned the meeting at 4:35 PM.

Phillip Jacobs, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2347, as engrossed: Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends DO NOT PASS (9 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2347 was placed on the Fourteenth order on the calendar.

TESTIMONY

SB 2347



Environmental Quality

Testimony in Opposition of
Senate Bill No. 2347

Senate Industry and Business Committee

February 7, 2023

TESTIMONY OF

David Bruschwein, Director of Municipal Facilities

Good morning Chairman Larsen and members of the Senate Industry and Business Committee. My name is David Bruschwein, and I am the Director of the Division of Municipal Facilities in the North Dakota Department of Environmental Quality. I am here to testify in opposition to Senate Bill No. 2347 as written but would like to offer an amendment to keep the \$200,000 threshold for public improvements and pre-engineered units involving water works, sewerage, or solid waste projects.

Under current state law, public works and public improvements projects costing over \$200,000 cannot proceed to construction without engineer-prepared plans and specifications. Senate Bill 2347 proposes to increase the cost threshold to \$1 million and exempts pre-engineered units from the cost threshold. If Senate Bill 2347 is enacted, the state and its political subdivisions could undertake projects up to \$1 million without engineer-prepared plans and specifications or projects with pre-engineered units of any cost.

The Department of Environmental Quality (DEQ) proposes an amendment to Senate Bill 2347 for the following reasons:

- The DEQ is responsible for the pre-construction review and approval of all projects involving water works, sewerage, and solid waste. These reviews 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, additional costs, and direct contamination of drinking water, groundwater, or surface waters.
- Based on the current threshold of \$200,000, 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. It is an inefficient use of state resources and causes delays in project approval and construction. Increasing the threshold to \$1 million would heighten this situation by involving larger and more complex projects. This will add more work to already heavy workloads and delay approval of all projects.
- The Department's role is to review and approve already-prepared projects to ensure that the design standards are met, not to design projects. We do provide design recommendations when asked. However, we cannot both design and approve projects, as this represents a conflict of interest. To avoid a conflict of interest, we may have to

reject projects that do not initially meet design standards, which may result in further project delays.

- Exempting pre-engineered units from the engineering threshold causes several concerns for the Department. This bill does not include a definition for a “pre-engineered unit”. It is anticipated that pre-engineered units for drinking water and wastewater infrastructure would include water and wastewater treatment plant equipment and process units. These are complex designs requiring knowledge from an experienced engineer to determine appropriateness and feasibility. Vendors and manufacturers do not perform these services, which will put this responsibility onto the drinking water or wastewater operator. Furthermore, review and approval of pre-engineered units would require a significant increase in staff time to coordinate directly with vendors and manufacturers, who are often located out-of-state and have limited experience with North Dakota’s climate and water resources. This would place a burden on both the community and the Department’s engineers.
- Finally, engineers are uniquely equipped to prepare plans and specifications that meet design standards sufficiently detailed for construction purposes. Over the last four years, there has been an average of 174 projects submitted for approval each year. 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 professional involvement and our ability to approve projects in a timely manner.

The DEQ takes its responsibility for public health, safety, and environmental protection seriously. Keeping the current threshold of \$200,000 in place for engineer-prepared plans and specifications will allow us to do this. Therefore, we request that the bill be amended to keep the \$200,000 threshold for public improvements and pre-engineered units involving water works, sewerage, or solid waste projects.

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

AMENDMENT TO SENATE BILL NO. 2347

Page 1, line 10, after “public improvement” insert “involving waterworks, sewerage, or solid waste is two hundred thousand dollars and for construction of other improvement projects is one million dollars.”

Page 1, line 13, after “under this section” insert “except for those involving waterworks, sewerage, or solid waste”

Renumber accordingly



Senate Industry and Business Committee

Testimony to oppose SB 2347

Chairman Larsen and Members of the Committee, my name is Mike Krumwiede appearing on behalf of the American Council of Engineering Companies in opposition of HB 2347. The American Council of Engineering Companies of North Dakota (ACEC/ND) is a nonprofit, voluntary, self-governing organization which represents 27 member firms and nearly 1700 employees.

The concerns ACEC has about HB 2347 are generally universal to all of the threshold bills that have come before the Legislative Assembly over the past several biennia. The primary concern is that the issue of thresholds as a requirement for project bidding and thresholds as they relate to a requirement of utilizing licensed design professionals have historically been tied together, and they should not be.

Thresholds related to project bidding for construction should be established by striking a balance between agility of agencies to procure services and being fiscally responsible, while giving the contracting industry an opportunity to bid projects in an open, fair and consistent manner. However, thresholds related to requirements for utilizing licensed design professionals should be established with appropriate deliberation given to the impact to public safety.

Agencies are making judgments of whether to get a licensed professional involved in the design of a project based on the project cost, because that is the metric prescribed in State law. The reality is that a \$500 project could have a higher degree of impact to public safety than a \$5 million project, depending on the scope of the project. Simply increasing the threshold amount by any factor is going to be accompanied by a corresponding increase in risk to public safety, and we don't feel that is acceptable.

Two sessions ago we worked extensively to come up with a compromise to raising the threshold limit. Actually, the language starting on line 14 on page 1 of SB 2347 is the language we agreed to in the 2019 session and we came to an agreement to raise the threshold by \$50,000 to its current \$200,000 limit. This is approximately a 33% increase, and this bill would increase it again by 400% in just 4 years. Arbitrarily raising this threshold again is going to be accompanied by increased risk to public safety.

In addition, this bill also exempts Pre-Engineered units which raises additional concerns among the engineering community because these types of buildings still require the expertise of architects and/or engineers to evaluate plans, drawings, or specifications.

This bill does not reflect the process and design work that goes into a pre-engineered building like:

- Building Specifications
 - Size
 - Design life
 - wind/snow loads
 - insulation requirements
 - doorways/emergency exits (if any)
 - vehicle access
- Foundation
- Heating and ventilation
- Plumbing
- Fire protection/sprinkler systems
- Electrical system
- Building Site
 - Sidewalks
 - Driveways
 - Water/sewer connections

This bill changes the requirement so the person designing these pre-engineered buildings does not need to be an engineer or architect licensed in North Dakota. So rhetorically I ask you to consider, “Is this project or person insured for design errors?” Or “What happens if something is missed, who is now responsible?”

If the goal is to optimize the value of engineering and architectural services obtained by public entities, there are a lot of studies that show that the best way to do this is to conduct qualifications-based selections as already described in NDCC 54-44.7.03. Any concerns about necessary versus unnecessary services can be easily discussed and accounted for as part of this process.

For these reasons we would ask for a Do Not Pass recommendation on Senate Bill 2347.



Senate Industry and Business Committee

Testimony to oppose SB 2347

Chairman Larsen and Members of the Committee, my name is Mike Krumwiede appearing on behalf of the ND Chapter of the American Institute of Architects in opposition of HB 2347. The ND Chapter of the American Institute of Architects is a nonprofit, voluntary, self-governing organization which represents 220 member Architects in ND.

The concerns AIA has about HB 2347 are generally universal to all of the threshold bills that have come before the Legislative Assembly over the past several biennia. The primary concern is that the issue of thresholds as a requirement for project bidding and thresholds as they relate to a requirement of utilizing licensed design professionals have historically been tied together, and they should not be.

Raising the limit to \$1,000,000 would not require a State agency to engage a design professional to assist in the preparation of documents and construction oversight. The Architects responsibility is to protect the safety and welfare of the general public in the structures they occupy or visit. Architects and Engineers are immersed in the building code during design to provide a building that is designed for the safety of its occupants. Although there may be several competent contractors with a design staff to perform projects for less than \$1,000,000, there are countless more in the State that may not be as capable.

Thresholds related to project bidding for construction should be established by striking a balance between agility of agencies to procure services and being fiscally responsible, while giving the contracting industry an opportunity to bid projects in an open, fair and consistent manner. However, thresholds related to requirements for utilizing licensed design professionals should be established with appropriate deliberation given to the impact to public safety.

Pre Engineered Manufactured Buildings are great solutions for big spaces or when economics is important. They are also great because they lend themselves to a

variety of flexible use solutions. They are not just reserved for shops and warehouses. Although we would argue that shops and warehouses can be extremely hazardous uses that can require sophisticated life safety analysis.

Below are some specific examples of a PEMB that a building official may not want to take on the responsibility for determining life safety requirements for any of these structures.

Capital Ice Complex: Wachter Arena

Completion Date: December 2018

32,000 SF

Fixed Seating for 500

Standing Room for 100

VFW Sports Center: First International Bank and Trust Arena

Completion Date: November 2023

27,000 SF

Fixed Seating for 250

Standing Room for 100

Oberon Public Schools – Elementary School

Completion Date: August 2020

20,000 SF

7 classrooms school with gymnasium

For these reasons we would ask for a Do Not Pass recommendation on Senate Bill 2347.

Testimony – SB 2347
Senate Industry and Business Committee
February 7, 2023
By Cody Schulz
Director, ND Parks and Recreation

Good morning Chairman Larsen and members of the Senate Industry and Business Committee, my name is Cody Schulz. I am the Director of the North Dakota Parks & Recreation Department. I offer this testimony in support of SB 2347.

Due to the nature of the work we do and the projects we typically construct, we strongly support both the increase in the cost threshold from \$200,000 to \$1 million and the exemption of pre-engineered structures. In many cases the current threshold and requirements may not be necessary, as simple projects generally do not require the level of expertise and oversight that is provided by architects and engineers. Additionally, when not needed, the current requirements can both slow down the construction process and significantly increase the overall cost of the project.

We have specific examples of how current law not only slows construction and increases cost, but in one case makes it nearly impossible to purchase/construct park amenities.

1. **Playground Equipment:** In the current economic environment, it would not be uncommon for a large, ADA compliant, set of playground equipment to exceed the current \$200,000 threshold for requiring drawings and specifications from an architect or engineer. However, unique specifications (and the cost to procure them) would be wasteful and useless, because virtually the only way to purchase playground equipment is as a “pre-engineered” unit. Therefore, if we put a unique set of specifications out for bid, we would likely get few or no responses, and any responses/bids we would receive would likely be much higher than a more generally specified unit in which pre-engineered vendors would be able to bid.
2. **Comfort Stations:** Comfort stations, also known as “shower houses” are another example where we believe the current requirements are adding considerable cost and time to projects. Beyond the simple attributes of square footage, number of showers, toilets, and sink fixtures, and general aesthetics, other specifications are generally unimportant. There are a number of vendors that offer pre-engineered solutions, but they do so either exclusively at their own specifications, or charge a premium price for modifications – which would be required if we had an architect draw up specifications separately.
3. **Cabins:** Much like comfort stations, the general layout of rooms and detailed specifications are much less important than the general requirements of square footage, number of rooms, amenities, and aesthetics. There are no fewer than a dozen vendors that offer pre-engineered options that would enjoy the opportunity to compete for the State’s business, but again, they generally only build to their own specifications and would be unable to bid if we are required to have unique specifications drawn up.

In conclusion, we believe the changes laid out in this bill are common sense, reasonable solutions that both cut red tape and costs, but leave in place accountability measures that protect public investment and taxpayer dollars.

On behalf of North Dakota Parks and Recreation, I recommend SB 2347 receive a Do Pass.

Thank you for your time; I will do my best to answer any questions you may have.

23.0874.01001
Title.

Prepared by the Legislative Council staff for
Senator Larsen
February 10, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2347

Page 1, line 10, overstrike "a" and insert immediately thereafter ":

a. A"

Page 1, line 11, replace "one million" with "seven hundred fifty thousand"

Page 1, line 11, overstrike the period and insert immediately thereafter "; and

b."

Page 1, line 12, remove "not subject to the requirements for procuring plans, drawings, and"

Page 1, line 13, replace "specifications from an architect or engineer under this section" with "one million dollars"

Renumber accordingly



**Testimony on SB 2347
Presented to the Senate Finance and Taxation Committee
Prepared by Dan Hanson, City Engineer, City of West Fargo
Thursday, March 9, 2023**

1 Chairman Schauer and members of the House Government and Veterans Affairs
2 Committee:

3 I would like to provide a recommendation for amendment on Senate Bill 2347 to
4 achieve the original intention of the bill while maintaining safety throughout North
5 Dakota.

6 As the principal engineer for the City of West Fargo my primary responsibility, as is
7 the primary responsibility of engineers for all political subdivision, is to design and maintain
8 a safe city. The original intent of the bill is to cut costs of projects using pre-engineering
9 buildings, and I have no opposition to the language included on page 1, line 13-14 that
10 addresses that concern. Pre-engineered buildings are built to certain specifications and
11 reviewed by professional engineers at some point in the process to deem them safe for
12 use. However, the change of the threshold requiring plans and specification of all public
13 improvement projects to \$500,000 in line 11 has unintended consequences that could
14 make cities across North Dakota less safe.

15 Procuring plans, drawings, and specifications from a professional architect or
16 engineer is a vital part of an infrastructure project. Professional Engineers follow the
17 Principles and Practice of Engineering set at a national level. They use standards and
18 modelling that consider health and safety and helps to understand a project's life span
19 and usage. They also plan for connections to current and future infrastructure. This is
20 expertise that someone outside of the engineering or architecture field would not have.

21 If SB 2347 was passed with a \$500,000 threshold, there would be street, sewer and
22 water projects that could be completed without input from an engineer. Some projects
23 in West Fargo that would fall under this threshold include street overlays, sidewalk repairs
24 and the installation and repair of water mains, sanitary sewer systems, sanitary sewer lifts



Testimony on SB 2347
Presented to the Senate Finance and Taxation Committee
Prepared by Dan Hanson, City Engineer, City of West Fargo
Thursday, March 9, 2023

1 and traffic signals. These are pieces of infrastructure that are utilized every day by
2 residents and directly impact their health and safety. Passage of this bill as written would
3 not require professional engineers or architects to be a part of the planning or design of
4 those projects.

5 In West Fargo, we will continue to procure plans and specifications for every
6 project that impacts resident safety even if it is not required by law, and we hope that
7 other political subdivisions are compelled by their professional standards to do the same.
8 However, we all face pressure to cut project costs and if this bill is passed it is likely there
9 are political subdivisions that would turn to general contractors or attempt to complete
10 infrastructure project designs in-house in order to cut the cost of procuring professional
11 services.

12 I recommend keeping the current language setting the threshold at \$200,000 for
13 procuring plans, drawing, and specifications from an architect or engineer for
14 construction of a public improvement. I have no opposition to adding a threshold for pre-
15 engineered units, which would meet the needs of the agencies requesting this change
16 in legislation, while ensuring the safety of all North Dakotans.

Testimony – SB 2347
House Government & Veterans Affairs Committee
March 9, 2023
By Cody Schulz
Director, ND Parks and Recreation

Good morning Chairman Schauer and members of the House Government & Veterans Affairs Committee, my name is Cody Schulz. I am the Director of the North Dakota Parks & Recreation Department. I offer this testimony in support of SB 2347.

Due to the nature of the work we do and the projects we typically construct, we strongly support both the increase in the cost threshold from \$200,000 to \$500,000 for “regular” public improvements and from \$200,000 to \$1 million for pre-engineered units. In many cases the current threshold and requirements may not be necessary, as simple projects generally do not require the level of expertise and oversight that is provided by architects and engineers. Additionally, when not needed, the current requirements can both slow down the construction process and significantly increase the overall cost of the project.

We have specific examples of how current law not only slows construction and increases cost, but in one case makes it nearly impossible to purchase/construct park amenities.

1. **Playground Equipment:** In the current economic environment, it would not be uncommon for a large, ADA compliant, set of playground equipment to exceed the current \$200,000 threshold for requiring drawings and specifications from an architect or engineer. However, unique specifications (and the cost to procure them) would be wasteful and useless, because virtually the only way to purchase playground equipment is as a “pre-engineered” unit. Therefore, if we put a unique set of specifications out for bid, we would likely get few or no responses, and any responses/bids we would receive would likely be much higher than a more generally specified unit in which pre-engineered vendors would be able to bid.
2. **Comfort Stations:** Comfort stations, also known as “shower houses” are another example where we believe the current requirements are adding considerable cost and time to projects. Beyond the simple attributes of square footage, number of showers, toilets, and sink fixtures, and general aesthetics, other specifications are generally unimportant. There are a number of vendors that offer pre-engineered solutions, but they do so either exclusively at their own specifications or charge a premium price for modifications – which would be required if we had an architect draw up specifications separately.
3. **Cabins:** Much like comfort stations, the general layout of rooms and detailed specifications are much less important than the general requirements of square footage, number of rooms, amenities, and aesthetics. There are no fewer than a dozen vendors that offer pre-engineered options that would enjoy the opportunity to compete for the State’s business, but again, they generally only build to their own specifications and would be unable to bid if we are required to have unique specifications drawn up.

In conclusion, we believe the changes laid out in this bill are common sense, reasonable solutions that both cut red tape and costs, but leave in place accountability measures that protect public investment and taxpayer dollars.

On behalf of North Dakota Parks and Recreation, I recommend SB 2347 receive a Do Pass.

Thank you for your time; I will do my best to answer any questions you may have.



Testimony in Opposition of
Senate Bill No. 2347
House Government and
Veterans Affairs Committee
March 9, 2023

TESTIMONY OF

David Bruschwein, Director of Municipal Facilities

Good morning Chairman Schauer and members of the House Government and Veterans Affairs Committee. My name is David Bruschwein, and I am the Director of the Division of Municipal Facilities in the North Dakota Department of Environmental Quality. I am here to testify in opposition to Senate Bill No. 2347 as written, but would like to offer an amendment to keep the \$200,000 threshold for public improvements and pre-engineered units involving public drinking water, public wastewater, and public solid waste projects.

Under current state law, public improvements projects costing over \$200,000 cannot proceed to construction without engineer-prepared plans and specifications. Senate Bill 2347 proposes to increase the cost threshold to \$500,000 and \$1,000,000 for pre-engineered units. If Senate Bill 2347 is enacted, the state and its political subdivisions could undertake projects up to \$500,000 without engineer-prepared plans and specifications, or projects with pre-engineered units up to \$1,000,000.

The Department of Environmental Quality (DEQ) proposes an amendment to Senate Bill 2347 for the following reasons:

- The DEQ is responsible for reviewing and approving pre-construction plans for all projects involving drinking water systems, wastewater facilities, and solid waste management facilities. These reviews 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, additional costs, and direct contamination of drinking water, groundwater, or surface waters.
- Based on the current threshold of \$200,000, 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. It is an inefficient use of state resources and causes delays in project approval and construction. Increasing the threshold to \$500,000 and \$1 million for pre-engineered units would heighten this situation by involving larger and more complex projects. This will add more work to already heavy workloads and delay approval of all projects.

- The Department's role is to review and approve already-prepared projects to ensure that the design standards are met, not to design projects. We do provide design recommendations when asked. However, we cannot both design and approve projects, as this represents a conflict of interest. To avoid a conflict of interest, we may have to reject projects that do not initially meet design standards, which may result in project delays.
- Setting \$1,000,000 as the engineering threshold for pre-engineered units causes several concerns for the Department. This bill does not include a definition for a "pre-engineered unit". We expect pre-engineered units for drinking water and wastewater infrastructure would include water and wastewater treatment plant equipment and process units. These are complex designs requiring knowledge from an experienced engineer to determine appropriateness and feasibility. Vendors and manufacturers do not perform these services, which will put this responsibility onto the drinking water or wastewater operator. Furthermore, review and approval of pre-engineered units would require a significant increase in staff time to coordinate directly with vendors and manufacturers, who are often located out-of-state and have limited experience with North Dakota's climate, water resources, and design standards. This would place a burden on both the community and the Department's engineers.
- I would like to provide two recent examples of drinking water treatment units that previously required the review of a North Dakota licensed engineer, but could qualify as pre-engineered units under this bill.
 1. A drinking water system purchased an ozone generator for \$319,100. Ozone can be used for many purposes in drinking water treatment, but one of the most critical is its ability to disinfect water containing bacteria and viruses. Individuals may be subject to gastrointestinal illnesses if ozone treatment is not properly designed.
 2. Another drinking water system is in the process of purchasing a pressure filter vessel for \$561,180 to increase their drinking water treatment capacity. Filter vessels are used to remove contaminants from drinking water, but their effectiveness can depend on several factors like the raw water quality and treatment goals. Engineers are qualified to help systems choose appropriate filters to prevent contaminants from carrying over into finished water.
- For solid waste management facilities, it is critical to have engineers prepare plans and specifications that meet design and safety requirements for landfills and surface impoundments. The Environmental Protection Agency (EPA) and the North Dakota Solid Waste Management Rules require engineers to prepare plans and specifications for certain solid waste management facilities. Without the use of professional engineers, it will take longer for the Solid Waste Program to review and approve plans for solid waste management facilities.
- There has been discussion if drinking water systems, wastewater facilities and solid waste management facilities would be considered public works under NDCC 43-19.1-28

and therefore not included in this bill. Unfortunately, there is no definition of public works in that section. There is a definition of public works in NDCC 40-05-01, but the examples do not specifically include drinking water systems, rural water systems, and solid waste management facilities.

The DEQ takes its responsibility for public health, safety, and environmental protection seriously. Therefore, to ensure the protection of public health and the appropriate expenditure of public funds, we propose that the bill be amended to allow a \$200,000 threshold for public improvements and pre-engineered units involving drinking water, wastewater, and solid waste projects. For the committee's review, we have provided an amendment to address this issue.

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

PROPOSED AMENDMENT TO SENATE BILL NO. 2347

Page 1, line 12, remove “and”

Page 1, line 14 replace “.” with “; and”

Page 1, after line 14, insert:

- c. A public improvement or pre-engineered unit being constructed as part of a drinking water system, wastewater facility, or solid waste management facility is two hundred thousand dollars.

Renumber accordingly



House Government and Veterans Affairs Committee

Testimony to oppose SB 2347

Chairman Schauer and Members of the Committee, my name is Mike Krumwiede appearing on behalf of the American Council of Engineering Companies in opposition of HB 2347. The American Council of Engineering Companies of North Dakota (ACEC/ND) is a nonprofit, voluntary, self-governing organization which represents 27 member firms and nearly 1700 employees.

The concerns ACEC has about HB 2347 are generally universal to all of the threshold bills that have come before the Legislative Assembly over the past several biennia. The primary concern is that the issue of thresholds as a requirement for project bidding and thresholds as they relate to a requirement of utilizing licensed design professionals have historically been tied together, and they should not be.

Thresholds related to project bidding for construction should be established by striking a balance between agility of agencies to procure services and being fiscally responsible, while giving the contracting industry an opportunity to bid projects in an open, fair and consistent manner. However, thresholds related to requirements for utilizing licensed design professionals should be established with appropriate deliberation given to the impact to public safety.

Agencies are making judgments of whether to get a licensed professional involved in the design of a project based on the project cost, because that is the metric prescribed in State law. The reality is that a \$500 project could have a higher degree of impact to public safety than a \$5 million project, depending on the scope of the project. Simply increasing the threshold amount by any factor is going to be accompanied by a corresponding increase in risk to public safety, and we don't feel that is acceptable.

Two sessions ago we worked extensively to come up with a compromise to raising the threshold limit. Actually, the language starting on line 14 on page 1 of SB 2347 is the language we agreed to in the 2019 session and we came to an agreement to raise the threshold by \$50,000 to its current \$200,000 limit. This is approximately a 33% increase, and this bill would increase it again by 400% in just 4 years. Arbitrarily raising this threshold again is going to be accompanied by increased risk to public safety.

In addition, this bill also exempts Pre-Engineered units up to \$1,000,000 which raises additional concerns among the engineering community because these types of buildings still require the expertise of architects and/or engineers to evaluate plans, drawings, or specifications.

This bill does not reflect the process and design work that goes into a pre-engineered building like:

- Building Specifications
 - Size
 - Design life
 - wind/snow loads
 - insulation requirements
 - doorways/emergency exits (if any)
 - vehicle access
- Foundation
- Heating and ventilation
- Plumbing
- Fire protection/sprinkler systems
- Electrical system
- Building Site
 - Sidewalks
 - Driveways
 - Water/sewer connections

This bill changes the requirement so the person designing these pre-engineered buildings does not need to be an engineer or architect licensed in North Dakota. So rhetorically I ask you to consider, “Is this project or person insured for design errors?” Or “What happens if something is missed, who is now responsible?”

If the goal is to optimize the value of engineering and architectural services obtained by public entities, there are a lot of studies that show that the best way to do this is to conduct qualifications-based selections as already described in NDCC 54-44.7.03. Any concerns about necessary versus unnecessary services can be easily discussed and accounted for as part of this process.

For these reasons we would ask for a Do Not Pass recommendation on Senate Bill 2347.



House Government and Veterans Affairs Committee

Testimony to oppose SB 2347

Chairman Schauer and Members of the Committee, my name is Mark Schneider, and I am here on behalf of the ND Chapter of American Institute of Architects in opposition to SB 2347. The American Institute of Architects represents a great cross-section variety of North Dakota's roughly 220 Member Architects. The National Organization represents roughly 94,000 members. Our Code of Ethics promotes the Health, Safety and Welfare of the general public and to design buildings and structures to improve our built environment, consider energy efficiencies, and earth friendly designs, all while keeping people safe.

HB 2347 intends to raise the bidding threshold for Public Projects from \$200,000 to \$500,000 and \$1,000,000. As an Architect and a Building Official, I urge you to give this bill a do not pass recommendation.

As far as a threshold for procuring a building, all pre-engineered metal buildings, even housing units, must be certified by a third party inspector within the state they are built, have an engineer's stamp on them before they are shipped to the state of North Dakota. This ensures the structure itself is safe and built to a minimum standard but does not ensure site specific needs for the structure are addressed properly within North Dakota.

What some might consider a simple project under \$500,000 or \$1,000,000, are actually more complex than what you might think. Architects and Engineers review the geotechnical reports which indicate the ground has suitable soils and is safe to build on for structures, site planning to allow public and fire department access to the building, verify public parking and ADA requirements on the site to allow entry into the building. Will there be concrete floors or dirt floors? What structural footings/foundations are required to adequately anchor the building to the ground? Does the Building meet the current International Energy Conservation Code (IECC) which is also part of the IBC and adopted by the North Dakota State Building Code? Certain insulation is required at the footings/foundation level, exterior walls, and the ceiling/roof assembly. Is there safe egress from within the building if there were to be a fire? Within minutes the entire building could fill with smoke and a person may not see the building exit. Emergency lighting may be required. Exit lights may be required. Panic hardware may be required. Travel distances are considered. The number of exit passageways and doorways are calculated based on square footage of the structure, occupancy type of the building, and the construction type of the building.

Occupancy Type designations are determined by the "Use of the Building". For example, A Occupancies are Assembly spaces, B for Business, E for Educational projects, F for Factory, H for High Hazard, I for Institutional, M for Mercantile, R for Residential, S for Storage, and U for Utility. Each classification has different levels of safety consideration which, along with square footage sizes for these buildings, are tied to fire separations, exiting, life safety devices, notifications, and even sprinkler systems. So if one were to purchase a simple Pre-Engineered metal building used for a storage structure, we need to consider if it is an S-1 Occupancy or an S-2 Occupancy. When the Use is determined, square footages

then determine the maximum size and what sprinkler requirements may kick-in. A million-dollar simple building may need to be sprinklered.

Construction types are determined by what materials are used to construct the building. There are 5 different Construction Types to consider. Each type has a myriad of differences where one may require a complicated formula to determine the materials for walls, ceilings and floors, another type may have exterior walls that are non-combustible and interior walls built of wood framing, and some where every material needs to be calculated based on square footage of materials that are combustible or non-combustible. As you can see, it is not a simple matter of ordering a pre-engineered metal building and erecting it for quick storage space.

I also spoke to a Professional Engineer about snow loads and wind loads on a building. Pre-Engineered buildings come with a standard snow load and wind load requirement, but according to this Licensed Engineer in 28 different states, every jurisdiction in North Dakota has typically adopted their own snow load factors. For example, Fargo and the eastern side of the state require a 42-pound snow load factor, because of wind speeds, snow drifting, and whether you heat your building or leave it non-heated, which could require additional snow loading factors. Does the building have a turning gable roof, are there different height levels, or is it a simple gable roofline? All these factors come into play with wind and snow loads in North Dakota.

While researching building requirements for each state, I came across the Public Building Requirements for all 50 states. It is a 38 page narrative describing each states requirement for public projects. Almost every state in the union have tightened requirements for their buildings. It is disheartening that while most states are creating tighter requirements for public buildings, North Dakota would want to lessen the quality and safety of it's own buildings by allowing the threshold to jump from \$200,000 to \$1,000,000 without requiring any Professional services to assist Owners in their designs and safety requirements. So by increasing the bidding threshold to help Public Improvement projects hurry up and order materials they need for their facility, is not a great idea, and should be considered with grave detail and consideration before we as a State, make the mistake of allowing even the smallest of projects to be built without the consideration of a licensed professional.

Mark D. Schneider, AIA



President of the ND Chapter of the American Institute of Architects

Local Building Official (AHJ)/Development Services Director for the City of Williston ND

March 9, 2023

**House Government & Veterans Affairs Committee
SB 2347**

Mr. Chairman and members of the House Government & Veterans Affairs Committee, my name Mike Dunn. For the last 20 years I have worked as the Business Development Manager for Construction Engineers – a long time Grand Forks based construction company which specializes in vertical commercial construction across the State. I also serve on the board of the Associated General Contractors of North Dakota.

Engrossed SB 2347 proposes to increase the design threshold to \$500,000 for most public projects and \$1,000,000 for “pre-engineered units”. At first glance, such a proposal appears innocuous. However, when one further considers it, there are serious consequences such a law change could cause.

When it comes to public improvement projects, our firm operates within the parameters of NDCC Section 48. The current procedures and requirements in place are practical and provide the opportunity for the industry to compete and innovate while protecting the taxpayer with transparency and accountability.

As a design-builder in the private sector, the minimum level of design that we need for a building remodel project that materially changes building layout is a code study stamped by a licensed architect. This will at least ensure that the project is meeting ADA and life safety standards. This is also the minimum design required by most municipalities that have a legitimate code official. For any project more involved than a simple remodel we would need to add in civil and structural design, and likely

have some form of mechanical and/or electrical design, whether procured by us or by the M/E contractor.

That being said, design being an important requirement isn't really the question, it's what should the threshold be? The threshold was recently raised to \$200,000 for both design and construction. Any additional adjustments to the threshold would logically apply to both design and construction and should be supported by the design and construction industry. Although I would be supportive of periodic increases in this threshold to keep in line with inflationary construction costs, SB 2347 doesn't seem to be following this as it's guiding logic. A better plan going forward would be to craft a periodic adjustment based on actual inflationary costs in order to keep the spirit of the Century Code.

Additionally, as a general contractor who has been building pre-engineered buildings for 16 years, I can't even begin to understand why utilizing a pre-engineered building system would have any impact on the design threshold. Every project requires a custom design to be built in its unique location. A pre-engineered building system is only a portion of an entire building project. That project will also require soil analysis and correction, site work and utilities, concrete foundations and slabs, interior finishes, and HVAC, plumbing, and electrical systems to be completed in order to occupy the building. With a pre-engineered system, the structural design for the building system itself is done by the same company who supplies the building system. It does not change any other requirements as it relates to design of the entire project. Again, that isn't even in the spirit of the threshold. It's not about the technical work required to design the building, but rather the point at which a public project should need to be procured through a public competitive process. Therefore, having any building system type fall under a separate threshold does not make any sense.

For those reasons, I do not view SB 2347 as necessary, and I would request a Do Not Pass Committee Recommendation.

Thank you for allowing me to present this testimony.

House Government & Veterans Affairs
Chairman – Representative Austen Schauer
March 9, 2023

Testimony of:

Ryan Ackerman, PE
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In Opposition to Senate Bill 2347

Why is procuring services from a registered design professional a good idea for public projects?

First, it encourages a level playing field for bidders and contractors. Design professionals like architects or engineers will design a project through the use of plans or drawings and a set of specifications, which typically includes bidding documents for interested contractors to use. When a set of specifications is developed by a design professional, it sets a standard for the products which are allowed to be used, performance requirements, maintenance requirements, warranty requirements, etc. It levels the playing field because all contractors are bidding the same project with the same set of requirements, and the project and its requirements have been thought out by a design professional who is designing a project for the public.

Without a set of plans and specifications, the contractor has the latitude to pick and choose the products and their associated performance. And as you might expect, using a cheaper product as a basis for bidding gives a contractor an advantage. But is cheaper always better? Is cheaper always in the public interest? I think we all would agree that cheaper is in the public interest with all other things being equal. But without a clear set of plans and specifications which lays out the requirements for a project, the playing field will not be level, and there will be incentive to use products with a lower capital cost that may have reduced performance, poor efficiency, or higher operational and maintenance costs.

Secondly, and most importantly, using licensed design professionals assists in ensuring public safety, regardless of the project size or cost. I dislike the threshold laws of our State because they unfortunately trade agency procurement agility with public safety. I don't believe the intent was ever to compromise public safety, but that is an unintended consequence of these types of bills. I'll give you a real example from my own work.

Several years ago, I was working in a northwest North Dakota community when I observed a used waterslide being unloaded at the community swimming pool. This slide had been purchased from the Minot Air Force Base for \$250. It was an exceptionally good buy, given the size and type of waterslide. For context, it was about twenty feet tall and came complete with the pumps and controls. The community contractors had gotten together with the local recreation board and they had a plan to get this slide operational for the community for under \$5,000.

I simply asked how they intended to anchor the slide, and it caused quite a stir. The plan was to anchor it to the existing 4" concrete slab. Without question, this installation would have failed in the North Dakota wind, so I suggested that they get a structural design professional involved. Their response was that they didn't need a structural engineer because the project cost was only \$5,000. This illustrates the unintended consequences of thresholds for procuring the services of design professionals. Regardless of the cost of a project, a design professional should be involved if the general public is to expect that the installation is safe for public use. Ultimately, I had to blow the whistle to make sure that the slide was placed on an appropriate foundation that would be safe for the general public to use. To those that didn't understand the safety risk, I was fairly unpopular in that community. I've included a newspaper article with my testimony for reference.

When the threshold for requiring a design professional is increased, the risk associated with not having a public project properly designed also increases. Public safety takes a hit. I think that is bad policy.

Also, the bill creates a special carve-out for what it refers to as 'pre-engineered units'. The bill states that a political subdivision or agency can procure a 'pre-engineered unit' without the use of an engineer if it's under \$1 million. So, is the 'pre-engineered unit' actually engineered? Certainly, pre-engineered structures, such as a metal building system supplied by a contractor, are fairly common. But the steel structures have to be designed by a registered professional engineer to ensure public safety. And all of the reputable metal building suppliers in this state have a team of structural engineers that design these buildings safely. The one part that they typically do not design, though, is the foundation system. While the design of a given metal building in Minot and Grand Forks may be identical from the floor and up, the system below the floor could be much different, depending on the soils.

And to go back to my first point, is it in the public interest to have bidders and contractors guessing about the foundation requirements for a public building? I don't think it is. The best practice is to have the structure designed by a registered professional and to put the plans and specifications out to bid for all contractors to utilize as a consistent basis for determining their best price. Not only is this fiscally responsible, it's in the best interests of public safety as well.

I respectfully request a 'do not pass' recommendation on this bill.



The Kenmare News

HOME OF THE OLD DANISH MILL AND THE KENMARE HONKERS

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Park Board says water slide is unlikely to ever be installed here

The water slide purchased for the swimming pool by the City of Kenmare remains in pieces in the Jaycees Park where it was unloaded nearly four years ago.

5/22/13 (Wed)



A good idea at the time . . . The used water slide purchased for the Kenmare swimming pool in 2009 remains dismantled in the Jaycees Park south of the pool. Soil testing and other preparatory work have delayed the installation for three years, and the project may have to be abandoned.

By Caroline Downs

The water slide purchased for the swimming pool by the City of Kenmare remains in pieces in the Jaycees Park where it was unloaded nearly four years ago.

"Yes, it is an eyesore," said Kenmare Park Board president Arlen Gartner.

The city paid the Minot Air Force Base \$250 after winning the bid for the slide in October 2009. The slide seemed like an ideal attraction for the local pool at the time, and the cost included the pump needed to draw water from the pool to operate the slide.

The slide was supposed to be installed on the west side of the Kenmare pool during the summer of 2010, when Gartner approached the city council about the project. However, city engineer Ryan Ackerman told the council soil testing would have to be done in order to build an adequate foundation and secure the structure.

The council approved up to \$5000 to spend on soils investigation at the pool, but that work delayed the slide installation.

"When it was brought in, we weren't aware we were going to have to go through all the testing of the soil samples," Gartner said, "and we weren't aware of the structural requirements. That took almost a year."

According to Gartner, by the time the soil test results were available, the Park Board was facing the wet spring of 2011, and the super-saturated soils at the time prevented any construction from taking place.

"We had to make sure that when we put the pillars in for the slide, we wouldn't crack the foundation of the pool," said Gartner. "We still don't know if the slide will fit in the area designated for it because we've never been able to get the measurements done for that."

The delays and uncertainties have taken a toll. "You lose that enthusiasm for getting the slide up," Gartner said. "It was a great project that we can't fulfill."

As the 2013 summer season approaches, Gartner doesn't see any way to get the slide installed for public use. "Unless some individuals who are energetic and have the skills to do it come forward," he added. "Otherwise, we should sell the slide and get rid of it."

City swimming pool will open soon

The pool itself will open for business as usual under the supervision of the Kenmare Recreation Board, according to Gartner. "It's not a money maker, but it's something the community needs, for the kids and for the adults," he said. "You're funding the pool, funding the lifeguards and constantly fixing things, but the manager and board have worked hard and kept costs down so the pool isn't losing \$20,000 to \$30,000 a year anymore."

Erika Lemere will take over as manager of the facility, replacing Karen Medlang who formerly served in that capacity.

Gartner noted repairs will be made to the bathhouse at the pool this summer, and the foundation on the west side of the facility will be reinforced with additional concrete.

The pool will offer daily swimming sessions and several rounds of lessons. The opening date, hours and lesson schedule will be announced and advertised in a later issue of *The Kenmare News*.

March 9, 2023

**House Government & Veterans Affairs Committee
SB 2347**

Mr. Chairman and members of the House Government & Veterans Affairs Committee, my name is Russ Hanson, and I am with the Associated General Contractors of North Dakota (AGC of ND). The AGC of ND is the largest construction trade association in North Dakota representing 400 members who perform all types of commercial construction (highway/bridge, vertical commercial, water/utility). Our membership also consists of equipment and material suppliers and been in existence since 1951.

The AGC of ND is in opposition to SB 2347 which proposes to increase the design threshold to \$500,000 for most public projects and to \$1,000,000 for "pre-engineered units". Our association has been a consistent opponent of raising thresholds throughout the years as they are presented to the Legislature.

Our main reason to oppose raising the thresholds is for the purpose of a transparent bid. Transparency in bidding usually leads to more bidders. While we are pleased the bid/bond threshold in SB 2347 remain at the current \$200,000, the proposal to raise the design threshold to \$500,000 or \$1,000,000 raises concerns and confusion we dealt with in past policy.

Since the inception of the bid thresholds, I believe the design and bid thresholds had been the same except for the 2015-17 biennium. My experience with thresholds goes to the early 1990's and I believe they may have started at \$50,000 or in that range. At some point they were adjusted to \$100,000 and stayed at that level for well over a decade, maybe close to a decade and a half.

The 2015 Legislature (SB 2246) raised the design threshold from \$100,000 to \$150,000 while leaving the construction threshold at \$100,000. When they became two different, there was confusion. The stakeholders believe having uniform thresholds for advertising, bidding, bonding, and procuring designs is an important element to keep NDCC 48 (Public Bid Code) simple and easy to apply to the construction process. While public entities in our more metro areas build regularly and are very familiar with the NDCC 48 statutes, many of the rural political subdivisions are not. They may only have a construction project every 20 to 30 years so having a process to guide them in a simple manner is important. Decoupling the thresholds at different amounts and adding a specific threshold for “pre-engineered units” into the code makes the process more complex, confusing, and ripe for NDCC 48 noncompliance. I could not find a definition for “pre-engineered unit” in NDCC 48 which, to us, is very concerning. Further, there is no penalty for violating NDCC 48 policies so having a statute to clearly follow is important to stakeholder groups. We have found when the section is misapplied, it is generally not because of their intention to do so, they didn’t know the process or policies.

With that, the 2017 Legislature (SB 2146) raised the construction and bonding threshold to match the design threshold, so they were all the same amount - \$150,000. The 2019 Legislature (HB 1356) raised all NDCC 48 thresholds to \$200,000 where they have remained since. We believe the current thresholds are the proper amounts. There is other legislation this session (HB 1127) which propose to bring county bridge construction projects to the NDCC amounts to further align public funding thresholds at the same value.

For those reasons, we do not view SB 2347 as necessary, and we would request a Do Not Pass Committee Recommendation. Thank you for allowing me to present this testimony.

March 9, 2023

House Government & Veterans Affairs Committee

SB 2347

Mr. Chairman and members of the House Government & Veterans Affairs Committee, my name is Tom Todd. I am a co-owner of Northwest Contracting – a long time Bismarck based construction company which specializes in vertical commercial construction. I also serve on the board of the Associated General Contractors of North Dakota and was the association's 2018 President.

Engrossed SB 2347 proposes to increase the design threshold to \$500,000 for most public projects and \$1,000,000 for "pre-engineered units". There are several reasons I do not support the proposed changes.

Changing the threshold dollar amount from a single dollar amount, currently \$200,000, to several different dollar amounts, \$500,000 and \$1M as currently proposed, creates a lot of confusion in our industry. In the past there were varying dollar amounts in the Century Code until recently when this was changed back to a single amount for all projects to resolve this confusion. We believe the design and bidding threshold amount should be the same.

Further, it makes it very difficult to publicly bid a project apples to apples without an Architect or Engineer involved. For publicly bid projects an Architect or Engineer creates the basis of design for the project, which attempts to have all contractors bid the same scope.

For those reasons, we do not view SB 2347 as necessary, and we would request a Do Not Pass Committee Recommendation.

Thank you for allowing me to present this testimony.

S.B. 2347

Chairman Schauer and member of Government & Veterans Affairs

I am Glenn Moen from Grand Forks; I work for a smaller commercial general contractor. I am a past president of the associated General Contractors of North Dakota (AGC).

I first started coming to the capital to testify on construction related bills in 1993, and with my involvement with AGC I have been in Bismarck for most of the sessions since then. So, a bill similar to this, to raise the threshold of either bidding or design procurement has been introduced in most sessions. As Mr. Hanson stated when the thresholds are different for building and design it causes confusion. I have a long-standing relationship with the Architects & Engineers in town and they will call me to ask questions about the threshold. So, I know firsthand that if the threshold is not at the same level, it causes confusion. I just had a meeting on a project with a political subdivision that we discovered asbestos and I had to clarify to them the bidding requirements for them to get it abated.

When I watched the bill hearing in the Senate the few that supported this bill talked about the time it takes the designer to finish the plans, this sounds to me like someone isn't taking the time to plan the project.

Some of the supporters also talked about why they can't use prefabricated units or structures. So, do you think these manufacturers design that many different types of units to meet each different type of soils in the state? Or which seismic zone do they base their designs on.

In Grand Forks we recently had a partial structural failure, where a gusset plate failed and cause a beam to roll. Luckily only one bay sunk a few inches, or do you remember the bridge that collapsed in the cities a few years ago, it too was a gusset plate failure. So I took most of the math in school as engineers do and I still have my Statics & Strength of Materials book with all tables & formulas, but it been a long time since I did the math on a daily basis, so I hire engineers on my private project.

My field of expertise is building not design and codes. So, I consult with the professional or hire them for design or for plans reviews of the ones I draw up myself. There is a big difference drawing up a plan based on my experience of what I typically see and a design professional going through all the steps and review processes.

In the Senate testimony they talked about the cost it adds to a project. Some things to consider. Grand Forks would require a stamped set of plans to get a building permit for a million-dollar project. So even if say UND didn't hire an Architect I would have to and I would have their costs in my bid.

If the political subdivision doesn't hire the architect for any project under a million who is designing and drawing the plans for me to bid on. It would have to be a staff person; how many political subdivisions have qualified designers on staff and do they have that large of staffs to be designing job?

Thank you for your time, and I will attempt to answer any questions.