SECOND DRAFT:
Prepared by the Legislative Council staff for the
Industry, Business, and Labor Committee
September 2006

Sixtieth
Legislative Assembly
of North Dakota

Introduced by

A BILL for an Act to create and enact chapter 48-01.2 of the North Dakota Century Code, relating to public improvements, bidding, and public improvement contracts; to amend and reenact section 11-11-26, subdivision f of subsection 1 of section 15.1-09-34, sections 23-11-11, 25-01.1-33, 40-22-19, 40-28-07, 40-29-07, 40-31-04, and 40-33.2-09, subsection 7 of section 40-33.3-06, section 40-49-14, subsection 12 of section 40-57-03, sections 43-07-23, 48-05-12, and 57-40.2-14, subsection 2 of section 61-02-04.1, subsection 2 of section 61-02-23.2, sections 61-07-09, 61-12-25, 61-16.1-14, 61-21-25, 61-21-45, 61-24.3-03.1, 61-35-13, and 61-35-88, and subsection 2 of section 61-35-94 of the North Dakota Century Code, relating to public improvements, bidding, and public improvement contracts; and to repeal chapters 48-01.1 and 48-02 of the North Dakota Century Code, relating to public improvements, bidding, and public improvement contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11-26 of the North Dakota Century Code is amended and reenacted as follows:

11-11-26. When board shall advertise for bids. Except as provided in ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2, when the amount to be paid during the current year for the erection of county buildings or for election ballots and supplies exceeds ten thousand dollars, the board of county commissioners shall cause an advertisement for bids to be published at least once each week for two successive weeks in the official newspaper of the county and in such other newspapers as it shall deem advisable. The first publication shall be made at least fifteen days before the day set for the opening of the bids. For the purchase of fuel when the amount exceeds four thousand dollars, the board of county commissioners shall seek bids either by telephone solicitation from at least two suppliers, or by an advertisement for bids to be

published at least once each week for two successive weeks in the official newspaper of the county and in other newspapers as the board deems advisable.

SECTION 2. AMENDMENT. Subdivision f of subsection 1 of section 15.1-09-34 of the North Dakota Century Code is amended and reenacted as follows:

f. Building construction projects under ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

SECTION 3. AMENDMENT. Section 23-11-11 of the North Dakota Century Code is amended and reenacted as follows:

23-11-11. Powers of authority. An authority has the following powers and duties:

1. To exercise public and essential governmental functions.
2. To sue and be sued.
3. To have perpetual succession.
4. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
5. To make, amend, and repeal such bylaws, rules, and regulations, not inconsistent with this chapter, as are necessary to carry into effect the powers and purposes of the authority.
6. To prepare, carry out, acquire, lease, and operate housing projects within its area of operation.
7. To provide for the construction, reconstruction, improvement, alteration, or repair of any housing project, or any part of a housing project, within the authority's area of operation.
8. To arrange or contract for the furnishing by any person or any public or private agency of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants of a housing project.
9. To include, in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractor comply with requirements as to minimum wages and maximum hours of labor and any conditions that the federal government may have attached to the financial aid for the project.
10. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and, subject to the

limitations contained in this chapter, to establish and revise the rents or charges in the housing project.

11. To own, hold, and improve property.

12. To purchase, lease, obtain options upon, or acquire, by gift, grant, bequest, devise, or otherwise, any property or any interest in property.

13. To acquire real property by the exercise of the power of eminent domain.

14. To sell, lease, exchange, transfer, assign, pledge, or dispose of any property, or any interest in property.

15. To insure, or provide for the insurance of, any property, or any operation of the authority, against any risks or hazards.

16. To procure insurance or guaranties from the federal government of the payment of any debts, or parts of debts, secured by mortgages on any property included in any of the authority's housing projects, whether the debts were incurred by the authority or not.

17. To invest any funds held by the authority in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to a savings bank's control.

18. To purchase its bonds at a price not more than the principal amount of the bonds and accrued interest, a bond so purchased is canceled.

19. To investigate, in the authority's area of operation, living, dwelling, and housing conditions and the means and methods of improving the same.

20. To determine, within the authority's area of operation, where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low or moderate income.

21. To make studies and recommendations relating to the problem of clearing, replanning, and reconstructing the slum areas within the authority's area of operation and the problem of providing dwelling accommodations for the persons of low or moderate income, and to cooperate with the city, county, or state, or any political subdivision in any action taken in connection with these problems.

22. To engage in research, studies, and experimentation on the subject of housing within the authority's area of operation.

23. To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for the authority's information.
24. To administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and to issue commissions for the examinations of witnesses who are outside of the state or unable to attend before the authority or who are excused from attendance.
25. To make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within the authority's area of operation, the authority's findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.
26. To issue bonds from time to time for any of its corporate purposes.
27. To issue refunding bonds for the purpose of paying or retiring bonds previously issued by the authority.
28. To borrow money or accept grants or other financial assistance from the federal government for, or in aid of, any housing project within the authority's area of operation.
29. To take over or lease or manage any housing project or undertaking constructed or owned by the federal government.
30. To comply with conditions and to enter into mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable to carry out this section.
31. To do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance, or operation of any housing project.
32. To exercise all or any part or combination of powers granted.
33. To exercise within the authority's area of operation the authority granted to the industrial commission under section 54-17-07.6.

34. To exercise the power to provide operation and maintenance expenses under subdivision a of subsection 23 of section 23-11-24.

35. To exercise the power to issue general obligation bonds in accordance with chapter 21-03.

36. To develop a plan identifying the public purposes of the authority's ownership, conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes, and a plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur and to effectuate the plan.

37. To exercise other powers and duties as may be necessary to carry out the purposes and provisions of this chapter.

An authority, in exercising the powers specified in subsections 23, 24, and 25, may act through one or more of the commissioners or through other persons designated by the authority. Provisions of law with respect to the acquisition, operation, or disposition of property by other public bodies are not applicable to an authority unless there is specific provision to that effect by the legislative assembly. The construction of a housing project is a public improvement for which an authority is subject to the competitive bidding requirements of chapter ~~48-01.1~~ 48-01.2.

SECTION 4. AMENDMENT. Section 25-01.1-33 of the North Dakota Century Code is amended and reenacted as follows:

25-01.1-33. Use of patient labor in erection or repair of buildings of institutions. All work for the erection, repair, or improvement of buildings, grounds, or properties under the control of the supervising department must be let by contract, except that the work of patients in such institutions may be utilized if approved by the superintendent of such institution as having possible benefits to the patient and not detrimental to the patient's health or treatment and when the use of such labor will not substantially depart from the requirements of ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

SECTION 5. AMENDMENT. Section 40-22-19 of the North Dakota Century Code is amended and reenacted as follows:

40-22-19. Contract proposals. Proposals for the work of making improvements provided for in this chapter must be advertised for by the governing body in the official

newspaper of the municipality once each week for two consecutive weeks. All other provisions for proposals under this chapter are governed by ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

SECTION 6. AMENDMENT. Section 40-28-07 of the North Dakota Century Code is amended and reenacted as follows:

40-28-07. Bids for service connections. The governing body shall direct the city auditor to advertise for bids in accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2 for the laying and construction of service connections in accordance with the plans and specifications therefor.

SECTION 7. AMENDMENT. Section 40-29-07 of the North Dakota Century Code is amended and reenacted as follows:

40-29-07. Bids for sidewalks. Bids for the construction of sidewalks in a city must be made in accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

SECTION 8. AMENDMENT. Section 40-31-04 of the North Dakota Century Code is amended and reenacted as follows:

40-31-04. Letting contracts for curbing. At least once every year that the city plans to construct or repair curbing or gutters, the city auditor shall solicit bids in accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

SECTION 9. AMENDMENT. Section 40-33.2-09 of the North Dakota Century Code is amended and reenacted as follows:

40-33.2-09. Construction contracts. A city or municipal power agency may contract for the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, and improvement of generation and transmission facilities outside of its corporate limits or those of its members, or may contract with other public or private owners of these facilities to perform these functions, without advertising for bids, preparing final plans and specifications in advance of construction, or securing performance and payment bonds. If a payment bond is secured as provided in chapter ~~48-02~~ 48-01.2, is enforceable as therein provided, and no lien may be filed under chapter 35-27.

SECTION 10. AMENDMENT. Subsection 7 of section 40-33.3-06 of the North Dakota Century Code is amended and reenacted as follows:

7. May contract with any person for the construction of any project or for the sale, transmission, or distribution of liquids or of natural or synthetic gas by any project,

or for any interest therein or any right to capacity thereof, upon such terms as the authority determines. If a payment bond is secured as provided in chapter ~~48-02~~ 48-01.2, no lien may be filed under chapter 35-27.

SECTION 11. AMENDMENT. Section 40-49-14 of the North Dakota Century Code is amended and reenacted as follows:

40-49-14. When yea and nay vote taken - Letting contracts - Debt limit - Bills, claims, and demands against board. Yea and nay votes must be taken on all propositions involving the expenditure of money, levying of taxes, or the issuance of bonds or certificates of indebtedness. Approval of an expenditure of money must be recorded in the record of the board's proceedings and this shall be sufficient to indicate approval without requiring the members to sign or initial the voucher or order for payment. Except as provided in ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2, all contracts exceeding ten thousand dollars must be let to the lowest responsible bidder after advertisement in the official newspaper of the municipality once each week for two successive weeks. The board may reject any or all bids. All contracts must be in writing and must be signed by the president of the board or a designated representative and unless so executed, they shall be void. The debt of a park district may not exceed one percent of the taxable property within the district according to the last preceding assessment. No bill, claim, account, or demand against the district may be audited, allowed, or paid until a full, written, itemized statement has been filed with the governing body or unless otherwise authorized by the governing body pursuant to contract or other action. The governing body, in its discretion, may require the filing of any additional information which it may deem necessary to the proper understanding and audit of any claim or account and it may require the filing of a sworn statement in such form as it may prescribe or as noted below:

CERTIFICATE

I do hereby certify that the within bill, claim, account, or demand is just and true; that the money therein charged was actually paid for the purposes therein stated; that the services therein charged were actually rendered and of the value therein charged; and that no part of such bill, claim, account, or demand has been paid; and that the goods therein charged were actually delivered and were of the value charged.

Sign here _____

_____

If signed for a firm or company,
show authority on this line.

SECTION 12. AMENDMENT. Subsection 12 of section 40-57-03 of the North Dakota Century Code is amended and reenacted as follows:

12. If the project financed by the municipality consists of the construction, reconstruction, improvement, or betterment of real property, buildings and improvements on real property, and buildings, the provisions of chapter ~~48-02~~ 48-01.2 and other applicable statutes shall apply; except that the municipality, in the revenue agreement and resolution or mortgage defining the terms and conditions upon which the project is to be constructed and financed, or in a preliminary agreement establishing the general terms of the revenue agreement and financing of the project when constructed, may permit a contracting party which is not a governmental entity or a public institution, subject to such terms and conditions as the municipality shall find necessary or desirable and proper, to provide for the construction, acquisition, and installation of the buildings, improvements, and equipment to be included in the project by any means available to the contracting party, whether or not the procedure followed by the contracting party is in conformity with said chapter ~~48-02~~ 48-01.2.

SECTION 13. AMENDMENT. Section 43-07-23 of the North Dakota Century Code is amended and reenacted as follows:

43-07-23. Allowable retention of estimates - Interest on retainage. Contracts entered ~~into~~ between persons for the performance of work to be done by a contractor, except those contracts subject to section 40-22-37 or ~~48-02-07~~ 48-01.2-13, or contracts governed by federal statutes or regulations which require other provisions with respect to retention, are subject to a maximum retention on amounts due under the contract as follows: retention of ten percent of each estimate presented is allowable until such time as the project is fifty percent complete, with no further retainage on estimates during the continuance of the contract. If the owner, governing board, or authorized committee invests the retained estimate funds, the interest earned on those retained funds is payable at the time of final payment on the contract to the contractor on whose account the moneys were held.

SECTION 14. Chapter 48-01.2 of the North Dakota Century Code is created and enacted as follows:

48-01.2-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Architect" means an individual registered as an architect under chapter 43-03.
2. "Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building or other improvement to any public property.
3. "Construction observation" means observation of construction work and site visits by an architect, a landscape architect, or an engineer to assist the governing body in determining that the work conforms in general to the requirements of the construction contract and that the contractor has implemented and maintained the integrity of the design concept of a project as a functioning whole as indicated in the construction contract.
4. "Contract" means a type of agency agreement for the procurement of services under this chapter.
5. "Contract administration" means administrative services provided by a governing body or an architect, a landscape architect, or an engineer, and includes providing clarifications, submittal review, recommendations for payment, preparation of change orders, and other administrative services included in the agreement with the architect, landscape architect, or engineer. The term does not include supervision of the construction activities for the construction contracts.
6. "Contractor" means any person, duly licensed, that undertakes or enters a contract with a governing body for the construction or construction management of any public improvement.
7. "Design services" means architect services, engineer services, landscape architect services, or surveyor services.
8. "Design-bid-build" means a project delivery method in which design and construction of the project are in sequential phases, and in which the first project phase involves design services, the second project phase involves securing a contractor through a bidding process, and the third project phase provides for construction of the project by a contractor awarded the project.

9. "Emergency situation" means a sudden generally unexpected occurrence that requires immediate action to protect public health, safety, or property and which ends when the immediate threat to public health, safety, or property ceases and services are restored. The term does not include a lack of planning on the part of the governing body, architect, engineer, landscape architect, or contractor.

10. "Engineer" means an individual registered as an engineer under chapter 43-19.

11. "Governing body" means the governing officer or board of a state entity or a political subdivision.

12. "Landscape architect services" means landscape architecture services governed under chapter 43-03.

13. "Lowest responsible bidder" means the lowest best bidder for the project considering past experience, financial condition, past work with the governing body, and other pertinent attributes that may be identified in the advertisement for bids.

14. "Public improvement" means any improvement undertaken by a governing body for the good of the public and which is paid for with public funds and constructed on public land or within a public building and includes an improvement on public or nonpublic land if any portion of the construction phase of the project is paid for with public funds. The term does not include a county road construction and maintenance, state highway, or public service commission project governed by title 11, 24, or 38.

15. "Subcontractor" means a person that contracts to perform work or render a service to a contractor or to another subcontractor as part of a contract with a governing body.

48-01.2-02. Plans and specifications for a public improvement contract. If a contract for the construction of a public improvement is estimated to cost in excess of one hundred thousand dollars, the governing body shall procure plans, drawings, and specifications for the improvement from an architect or engineer. For a public building in use by or to be used by the North Dakota agricultural experiment stations in connection with farm or agricultural research operations, the plans, drawings, and specifications, with the approval of the state board of higher education, may be prepared by an engineer in the regular employment of the

agricultural experiment station. For a public building in use by or to be used by the department of transportation for the storage and housing of road materials or road machinery, equipment, and tools, the plans, drawings, and specifications may be prepared by an engineer employed by the department of transportation.

48-01.2-03. Specified brands, marks, names, or patented articles may not be specified. A governing body, in specifying materials to be used for a public improvement or in plans or specifications for a public improvement, may not request bids for any article of a specified or copyrighted brand or name, the product of any one manufacturer, or any patented apparatus or appliance when the requirement will prevent proper competition, unless the specifications also request bids on other similar articles of equal value, utility, and merit.

48-01.2-04. Publication of advertisement for bids - Emergency exception.

1. If the construction of a public improvement is estimated to cost in excess of one hundred thousand dollars, the governing body shall advertise for bids by publishing for three consecutive weeks. The first publication of the advertisement must be at least twenty-one days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, and in a trade publication of general circulation among the contractors, building manufacturers, and dealers in this state, except the advertisement for a public improvement financed by special assessments need be published only once each week for two weeks in the official newspaper with the first publication being at least fourteen days before the bid opening.
2. If a governing body declares an emergency situation, the governing body may contract for the construction of a public improvement without seeking bids.

48-01.2-05. Contents of advertisement. The advertisement for bids required by section 48-01.2-04 must state:

1. The nature of the work and the type and location of the proposed public improvement.
2. When and where the plans, drawings, and specifications may be seen and examined.
3. The place, date, and time the bids will be opened.

4. That each bid must be accompanied by a separate envelope containing the contractor's license and bid security. The bid security must be in a sum equal to five percent of the full amount of the bid and must be in the form of a bidder's bond. A bidder's bond must be executed by the bidder as principal and by a surety, conditioned that if the principal's bid is accepted and the contract awarded to the principal, the principal, within ten days after notice of the award, shall execute a contract in accordance with the terms of the bid and the bid bond and any condition of the governing body. A countersignature of a bid bond is not required under this section. If a successful bidder does not execute a contract within the ten days allowed, the bidder's bond must be forfeited to the governing body and the project awarded to the next lowest responsible bidder.

5. That a bidder, except a bidder on a municipal, rural, and industrial water supply project authorized for funding under Public Law No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], must be licensed for the full amount of the bid as required by section 43-07-05. For projects authorized for funding under Public Law No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], the advertisement must state that, unless a bidder obtains a contractor's license for the full amount of its bid within twenty days after it is determined the bidder is the lowest responsible bidder, the bid must be rejected and the contract awarded to the next lowest responsible bidder.

6. That no bid may be read or considered if the bid does not fully comply with the requirements of this section and that any deficient bid submitted must be resealed and returned to the bidder immediately.

7. That the governing body reserves the right to reject any and all bids and rebid the project until a satisfactory bid is received.

48-01.2-06. Bid requirements for public improvements. Multiple prime bids for the general, electrical, and mechanical portions of a project are required when any individual general, electrical, or mechanical contract or any combination of individual contracts is in excess of one hundred thousand dollars. If a general, mechanical, or electrical contract is estimated to be less than twenty-five thousand dollars, the contract may be included in one of the other prime contracts. A governing body may allow submission of a single prime bid for the complete project or bids for other specialized portions of the project. A governing body may not

accept the single prime bid unless that bid is lower than the combined total of the lowest responsible multiple bids for the project.

48-01.2-07. Opening of bids - Award of contract. At the time and place specified in the notice, a governing body shall open publicly and read aloud each responsible bid received and award the contract to the lowest responsible bidder. A governing body may reject any and all bids and readvertise for bids if no bid is satisfactory or if the governing body determines any agreement has been entered by the bidders or others to prevent competition. The governing body may advertise for new bids in accordance with this chapter until a satisfactory bid is received.

48-01.2-08. Officers must not be interested in contract. A governing body, or any member, employee, or appointee of a governing body, may not be pecuniarily interested or concerned in a contract for a public improvement entered by the governing body.

48-01.2-09. Contract with successful bidder. A governing body shall enter a contract with the lowest responsible bidder as determined under section 48-01.2-07. The contract must contain the following:

1. The written terms of the agreement and any associated document signed by the governing body and the contractor;
2. The required surety bond; and
3. Any other document deemed appropriate by the governing body and identified in the advertisement for bids.

48-01.2-10. Bonds from contractors for public improvements.

1. A governing body authorized to enter a contract for the construction of a public improvement in excess of one hundred thousand dollars shall take from the contractor a bond before permitting any work to be done on the contract. The bond must be for an amount equal at least to the price stated in the contract. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the contract and pay all bills or claims on account of labor performed and any supplies, and materials furnished and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01-14 be paid on bills and claims not

paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor or any subcontractor may sue on the bond.

2. A governing body may not require any person required to provide a surety bond to obtain the surety bond from a specified insurance or surety company or insurance producer or to submit financial data to the company or producer.

48-01.2-11. Claim for public improvement - Suit on contractor's bond. A person that has furnished labor or material for any public improvement for which a bond is furnished and has not been paid in full within ninety days after completion of the contribution of labor or materials may sue on the bond for the amount unpaid at the time of institution of suit. However, a person having a direct contractual relationship with a subcontractor, but no contractual relationship with the contractor furnishing the bond, does not have a claim for relief upon the bond unless that person has given written notice to the contractor, within ninety days from the date on which the person completed the contribution, stating with substantial accuracy the amount claimed and the name of the person for which the contribution was performed. The notice must be served by registered mail in an envelope addressed to the contractor at any place the contractor maintains an office, conducts business, or has a residence.

A governing body shall provide a certified copy of the bond and the contract for which the bond was given to any individual who submits an affidavit that either the individual has supplied labor or materials for the improvement and that payment has not been made or that the individual is being sued on the bond. The individual requesting the copy shall pay the actual cost of the preparation of the certified copy of the bond and the contract. The certified copy of the bond is prima facie evidence of the contents, execution, and delivery of the original.

48-01.2-12. Claims - When barred as liens against contractor and surety. Any claim for any labor, material, or supply furnished for an improvement, upon which a suit is not commenced within one year after completion and acceptance of the project, is barred as a lien or claim against the contractor and the contractor's surety and any right of setoff or counterclaim may be enforced in any court in this state against the governing body, the contractor, or the contractor's surety. This chapter does not bar the right of any person who

has furnished any labor, supply, or material to any subcontractor to enforce the claim against the subcontractor.

48-01.2-13. Payments. At least once in each calendar month during the continuance of work upon any public improvement, the governing body shall receive and consider any partial payment estimate prepared by the architect or engineer. Upon review and approval, the governing body shall pay an estimate in an amount equal to the estimated value of the labor and material furnished plus the material adequately stored. A partial payment estimate must include retentions or retainage as follows: ten percent of each estimate until the project is fifty percent completed with no further retainage on estimates during the continuance of the contract unless unsatisfactory progress or performance is documented. The governing body may, upon completion of ninety-five percent of the contract, pay to the contractor up to ninety-five percent of the amount retained from previous estimates. The remaining amount retained must be paid to the contractor in the amounts and at the times approved by the architect or engineer. The governing body shall make final payment of all moneys due to the contractor following completion of all work, acceptance of the project by the governing body, and the provision of necessary releases. If an architect or engineer is not employed by the governing body for administration of the contract, the contractor, at the end of each calendar month during the continuance of work, may furnish a payment estimate to the governing body. After considering and approving an estimate, the governing body shall draw a warrant upon the proper fund and promptly transmit the warrant to the contractor. The governing body may invest or deposit any retained amount in a financial association or institution so that the contractor's money retained is earning interest or dividends for the benefit of the contractor. Any amount invested or deposited must remain in the name of the governing body until final payment of all money due to the contractor is to be made.

48-01.2-14. Late payment - Rate of interest. If a governing body fails or neglects to consider any estimate properly submitted, pay any estimate approved, or make final payment upon completion and acceptance of a public improvement, for a period of more than thirty days from the date of approval of the estimate or the completion and acceptance date, the governing body shall pay interest on the estimate or final payment from the date of approval. The interest rate must be the rate per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of the estimate or completion date until the

issuance of a proper warrant for the payment. The governing body shall compute and add the interest to the face of the estimate or final payment and the interest must be charged to the fund upon which payment for the contract is to be made. No payment for, or on account of, any contract made under this chapter may be made except upon estimate of the architect, engineer, or contractor as provided in section 48-01.2-13.

48-01.2-15. Appropriations may not be diverted. No portion of any special appropriation for the erection of any public improvement, or for the doing of any work, may be drawn from the state treasury in advance of the work being completed or of the materials furnished. The funds may be drawn only upon proper estimates approved by the governing body of the institution for which the improvement is being constructed. No portion of any appropriation for any purpose may be drawn from the treasury before the appropriation is required for the purpose for which it is made, and no appropriation that is or may be made for any purpose with respect to the construction or improvement may be drawn or used for any other purpose until the construction or improvement for which the appropriation was made is fully completed and paid for.

48-01.2-16. Architects, landscape architects, and engineers - Duties. The governing body shall employ the architect, landscape architect, or engineer furnishing the plans as provided in this chapter or some other qualified person to provide construction administration and construction observation services for which the plans and specifications are prepared as provided by section 48-01.2-02. The architect, landscape architect, or engineer shall assist the governing body to ensure that the contractor performs the work in compliance with the plans and specifications. As part of a site visit or construction observation, the architect, landscape architect, or engineer may not supervise, direct, or have control over the contractor's work. The architect, landscape architect, or engineer may not exercise control over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by the contractor, the quality control of the work, the security or safety on the site, any safety precaution or program incident to the contractor's work, the failure of the contractor to comply with any law or rule applicable to the contractor's furnishing of or performance of the work, or the failure of the contractor to furnish or perform the work in accordance with the construction contract. The architect, landscape architect, or engineer is entitled to receive a reasonable

compensation to be fixed by the governing body. Any duty imposed or power conferred upon the governing body by this chapter applies to a successor to the governing body.

48-01.2-17. Coordination of work under multiple prime bids. If a public improvement is awarded as multiple prime contracts for the general, electrical, mechanical work, and other prime contracts as contained in the bid for the project, the governing body may assign the coordination of the electrical and mechanical contracts and any other contracts to the general contractor for the project to facilitate the coordination of the work.

48-01.2-18. Public buildings and facilities - Statement of compliance with accessibility guidelines. Each governing body shall require a statement from any person preparing the plans and specifications for a public building or facility that, in the professional judgment of that person, the plans and specifications are in conformance with the Americans with Disabilities Act accessibility guidelines for buildings and facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36, [28 CFR 36], subject to the exception stated in section 54-21.3-04.1.

48-01.2-19. Authorization of expansion of public improvements by legislative assembly or budget section. Notwithstanding any other provision of law, a state agency or institution may not significantly change or expand a public improvement beyond what has been approved by the legislative assembly unless the legislative assembly, or the budget section of the legislative council if the legislative assembly is not in session, approves the change or expansion of the project or any additional expenditure for the project. For the purposes of this section, a significant change or expansion includes the construction of an addition to a building, including skywalks or other type of enclosed walkway, or any other substantial increase in the area of the building, but does not include the construction of building entrances and stairwells.

SECTION 15. AMENDMENT. Section 48-05-12 of the North Dakota Century Code is amended and reenacted as follows:

48-05-12. Competitive bidding and architect and engineering services. Guaranteed energy savings contracts are not subject to the requirements of ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2, which relate to competitive bidding, and are not subject to section 43-19.1-28.

SECTION 16. AMENDMENT. Section 57-40.2-14 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-14. Contractor's performance bonds for payment of use tax. For the purposes of this section, the term "contractor" includes any person or group or combination of persons acting as a unit; "subcontractor" includes person or group or combination of persons acting as a unit, who undertakes to perform all or any part of work covered by the original contract entered into by the contractor, including the furnishing of any supplies, materials, equipment, or any other tangible personal property; "surety" means a bond or undertaking executed by a surety company authorized to do business in this state; and "surety company" means any person executing the surety.

Whenever any contractor or subcontractor enters into any contract for the erection of buildings or the alteration, improvement, or repair of real property in this state and the contractor or subcontractor furnishes surety for the faithful performance of such contract, there is hereby imposed the additional obligation upon the surety company to the state of North Dakota that said contractor or subcontractor shall promptly pay all use taxes which may accrue to the state of North Dakota under this chapter. In the case of a contractor and the contractor's surety company, this additional obligation shall include liability to pay to the commissioner on purchases made by either the contractor or the subcontractor all such use taxes which have not been paid to a retailer authorized or required to collect such taxes; and the contractor or the contractor's surety company may recover from the subcontractor the amount of any use taxes accruing with respect to purchases made by the subcontractor which the contractor or the surety company may be required to pay to the commissioner, or to withhold from the amount due the subcontractor under the subcontract an amount equal to any use taxes accruing with respect to purchases of the subcontractor which have not been paid by the subcontractor to the commissioner or to a retailer authorized or required to collect such taxes. Such liability on the part of the surety company is limited to three percent of the amount of the contract price.

The surety company within sixty days after executing such surety shall send written notice of the same to the commissioner, which notice must give the names and addresses of the parties contracting with respect to the real property and the place where the contract is to be performed. After the completion of the contract and the acceptance of the improvement by the owner of the real property improved, the surety company shall give written notice of such completion and acceptance to the commissioner.

Six months after the completion of the contract and the acceptance of the improvement by the owner thereof, the additional obligation imposed upon the surety company ceases unless written notice, within such period of time, of unpaid use taxes, is given to the surety company by the commissioner.

This section does not modify or repeal any ~~of the provisions~~ provision of ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

SECTION 17. AMENDMENT. Subsection 2 of section 61-02-04.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Sections 12.1-13-02, 12.1-13-03, and ~~48-02-12~~ 48-01.2-08 do not apply to contracts in which a member of the commission is directly or indirectly interested if the requirements of subsection 1 have been met.

SECTION 18. AMENDMENT. Subsection 2 of section 61-02-23.2 of the North Dakota Century Code is amended and reenacted as follows:

2. May issue, when it determines that it would be advantageous to the state or that it is necessary in order to construct the outlet in a timely manner, a request for proposals to design and build the outlet. The request for proposals must require that each proposal submitted contain a single price that includes the cost to design and build the outlet. Neither chapter ~~48-01.1~~ 48-01.2 or 54-44.7, nor any other law requiring competitive bidding applies to the construction of the outlet if the commission determines to use the design and build procedure. The commission shall select the proposal that it determines is the most advantageous to the state.

SECTION 19. AMENDMENT. Section 61-07-09 of the North Dakota Century Code is amended and reenacted as follows:

61-07-09. Advertising for bids. After adopting a plan of irrigation works, the board shall secure bids as provided in ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2. Contracts for the purchase of materials must be awarded to the lowest and best bidder. The person to whom a contract may be awarded shall furnish a bond with good and sufficient sureties, to be approved by the board, payable to such district for its use, in an amount at least equal to the contract price, conditioned for the faithful and complete performance of the contract. The work must be done under the direction and to the satisfaction of the engineer and must be approved by the

board. This section does not apply in case of any contract between the district and the United States, or any department, bureau, or agency thereof, or with the state water commission.

SECTION 20. AMENDMENT. Section 61-12-25 of the North Dakota Century Code is amended and reenacted as follows:

61-12-25. Notice of construction - Letting of contracts. After the order establishing a project has been entered, the board of flood irrigation shall advertise bids in accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2 for the construction of all work required, as shown by the plans and specifications on file.

SECTION 21. AMENDMENT. Section 61-16.1-14 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-14. Contracts for construction or maintenance of project. If the cost of construction or maintenance of a project does not exceed the amount provided for construction of a public improvement under section ~~48-01.1-03~~ 48-01.2-02, the work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of the construction or maintenance exceeds the amount provided for construction of a public improvement under section ~~48-01.1-03~~ 48-01.2-02, the board must let a contract in accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

SECTION 22. AMENDMENT. Section 61-21-25 of the North Dakota Century Code is amended and reenacted as follows:

61-21-25. Letting of contracts for drains. The board shall let contracts for the construction of the drain, culverts, bridges, and appurtenances thereto, or portions thereof in accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

SECTION 23. AMENDMENT. Section 61-21-45 of the North Dakota Century Code is amended and reenacted as follows:

61-21-45. Contracts for work of cleaning and repairing drains. If the cost of any work of cleaning out or repairing any drain, or system of legal drains, if more than one cleaning or repair project is carried on under one contract, does not exceed the amount provided for construction of a public improvement under section ~~48-01.1-03~~ 48-01.2-02 in any one year, the work may be done on a day work basis or a contract may be let without being advertised. When the cost of such work exceeds the amount provided for construction of a public improvement under section ~~48-01.1-03~~ 48-01.2-02 in any one year, a contract must be let in

accordance with ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2. The competitive bid requirement is waived, upon the determination of the board that an emergency situation exists requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

SECTION 24. AMENDMENT. Section 61-24.3-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-24.3-03.1. Preference for resident pipeline manufacturers and bidders for labor and services. Any contracts for the purchase of pipeline materials, labor, or services awarded by the state water commission in regard to the construction of the southwest water pipeline project must be awarded to North Dakota resident pipeline manufacturers and North Dakota resident bidders for labor and services making the lowest responsible bids if those bids do not exceed by more than five percent the lowest responsible bid submitted by a nonresident pipeline manufacturer or bidder for labor or services. As used in this section, "North Dakota resident pipeline manufacturers and bidders for labor or services" means bidders or sellers who have maintained a bona fide place of business within this state for at least five years prior to the date on which the contract bid on is awarded. If the state water commission awards any contract for pipeline materials, labor, or services in regard to construction of the southwest water pipeline project to a nonresident bidder, the commission shall publicly give notice in a newspaper of general circulation regarding the specific reasons why it did not award the contract to a resident bidder. This section does not apply to contracts that involve federal moneys where a preference would be contrary to federal laws or regulations, contracts covered under chapter ~~48-01.1~~ 48-01.2, or to architect, engineer, professional right of way, and land surveying services.

SECTION 25. AMENDMENT. Section 61-35-13 of the North Dakota Century Code is amended and reenacted as follows:

61-35-13. Contracts for construction or maintenance of a project. If the cost of construction or maintenance of a project does not exceed the amount provided for construction of a public improvement under section ~~48-01.1-03~~ 48-01.2-02, the work may be done on a day work basis or a contract may be let without being advertised. If the cost of the construction or maintenance exceeds the amount provided for construction of a public improvement under

section ~~48-01.1-03~~ 48-01.2-02, the lowest and best bid must be accepted. The board must comply with the requirements of sections 61-35-88 through 61-35-103 when bidding a project.

The competitive bid requirement of this section may be waived if the board determines that an emergency exists requiring the prompt repair of a project and a contract may be made for the prompt repair of the project without seeking bids.

SECTION 26. AMENDMENT. Section 61-35-88 of the North Dakota Century Code is amended and reenacted as follows:

61-35-88. Call for bids - Contents - Advertising. Proposals for the work of making improvements provided for in this chapter that exceed the amount provided for construction of a public improvement under section ~~48-01.1-03~~ 48-01.2-02 must be advertised for by the board in the official newspaper of the county where the district office is located once each week for two consecutive weeks. The board may cause the work on two or more improvements to be combined in one advertisement and one contract awarded pursuant to that advertisement. The advertisement for bids must:

1. Specify the work to be done according to the plans and specifications on file in the office of the district;
2. Call for bids upon the basis of cash payment for the work;
3. State the time within which the bids will be received; and
4. State the time within which the work on the improvement is to be completed.

The board may require bidders to state also the rate of interest, not exceeding seven percent per annum, which the bonds to be received and accepted by the bidder at par in payment for the work are to bear.

SECTION 27. AMENDMENT. Subsection 2 of section 61-35-94 of the North Dakota Century Code is amended and reenacted as follows:

2. Cause the work described in the plans, specifications, and estimates to be done directly by the district by the employment of labor and the purchase of materials required, or in any other manner the board considers proper, and payment for the work may be provided through special assessments in the same manner as though the work had been performed under contract, provided this work amounts to no more than the amount provided for construction of a public improvement under section ~~48-01.1-03~~ 48-01.2-02; or

SECTION 28. REPEAL. Chapters 48-01.1 and 48-02 of the North Dakota Century Code are repealed.