National Association of Surety Bond Producers
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Delivered via email

Senator Jerry Klein
Chair, Industry, Business and Labor
P.O. Box 265
Fessenden, ND 58438-0265

Senator Tom Campbell
Vice Chair, Industry, Business and Labor
15135 County Road 11
Grafton, ND 58237-8802

RE: Concerns with SB 2146, legislation to increase surety bond threshold

Dear Senators Klein and Campbell;

On behalf of the members of the National Association of Surety Bond Producers (NASBP), a national trade organization of professional surety bond producers, whose membership includes resident and non-resident firms employing licensed surety bond producers placing bid, performance, and payment bonds throughout the U.S., including North Dakota, I am contacting you regarding our concerns with Senate Bill 2146, which increases the statutory bond threshold on contracts awarded from $100,000 to $150,000. Such an increase would mean that many more taxpayer-funded construction contracts would be procured without the vital assurance of performance and payment guarantees.

The North Dakota legislature recognized the important, protective role surety bonds play on public works contracts by enacting the North Dakota Century Code Title 48, specifically 48-01.2-10. "*Bonds from contractors for public improvements*." Such statutory requirements ensure that only pre-qualified construction firms receive award of public contracts and those subcontractors and suppliers on those contracts have vital payment remedies in place in the event of non-payment.

If North Dakota raises its bond threshold to $150,000, it would have the highest threshold of the surrounding states. The other states bond their work at the following levels: Montana, $50,000; Wyoming, $25,000; South Dakota, $50,000; Minnesota, $100,000. NASBP urges you to leave the bonding threshold at its present level of $100,000.

NASBP is concerned that SB 2146 would have a negative impact on small businesses that supply labor and materials on North Dakota public construction projects as well as the taxpayers of North Dakota. Small businesses often cannot compete as prime contractors on public construction contracts, so they participate at subcontractor and supplier levels. At that level, these businesses' only viable remedy in the event of nonpayment by the prime contractor is to claim on the statutorily-required payment bond. If the prime contractor fails to pay subcontractors and suppliers due to bankruptcy, or for other reasons, such subcontractors and suppliers would not have an alternative means to recover their wages, costs, and expenses. They cannot sue the governmental entity, because they do not have a direct contract with the governmental entity, and they cannot place a mechanic's lien against public property. The absence of a payment bond can mean that such businesses will not remain viable.

Furthermore, taxpayer dollars are at risk when state projects are awarded without the protection of performance bond guarantees. In the absence of a performance bond, additional taxpayer funds will be required to complete projects where prime contractors default in their performance of public construction contracts. By increasing the threshold for a surety bond, contracting agencies also will have to shoulder a higher burden of screening and pre-qualifying more contractors, diverting their resources and energies away from other important tasks.

By removing needed protections and transferring the risk of losses to taxpayers, SB 2146 may be fiscally imprudent. SB 2146, as introduced, does not serve the best interests of the State of North Dakota, its taxpayers, or its many businesses performing as subcontractors and suppliers on public construction projects.

If you have any questions concerning the issues raised, please feel free to contact me at 202-686-3700 or lleclair@nasbp.org.

Respectively submitted for your consideration,

Larry LeClair

Larry LeClair
Director, Government Relations

cc: Members of the Senate Committee on Industry, Business and Labor