

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2093

2007 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2093

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2093

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 01/04/07

Recorder Job Number: 625

Committee Clerk Signature

Monica Spaulding

Minutes:

Roll was taken and all members were present. Sen. Dever, Chairman opened the hearing on SB 2093, relating to payment of travel expenses of state officers and employees and purchasing card expenditures. Chuck Lang OMB introduced the bill, mentioned that it would have no fiscal impact, and reviewed the bill. See attachment #1.

Terry Traynor, Assistant Director of ND Association of Counties spoke in favor of SB 2093 and introduced an amendment to the bill to address the reimbursements for county employees.

See attachment #2.

Sen Horne questioned whether the counties' use of purchasing cards in the past have been illegal.

Mr Traynor jokingly said he had tried to avoid saying that. He said a number of State Attorneys felt this amendment would give them the authority that they would need.

Sen. Dever asked whether this would allow the counties to establish their own policies.

Mr Traynor confirmed that was correct.

Further support: -

Opposition: -

Neutral: -

Sen. Dever asked if there had been problems with the abuse of purchasing cards.

Chuck Lang responded that the purchasing card provider has their own safeguards for fraud and there had been very little fraud to date. What fraud did occur was on stolen cards.

Sen Dever closed the hearing on SB 2093.

Senator Nelson moved to approve the amendment.

Senator Oehlke seconded the motion.

Discussion:

Roll Call Vote on amendment: Yes 6 No 0 Absent 0

Sen. Lee moved a Do Pass on SB 2093

Sen. Horne seconded the motion.

Discussion:

Roll Call Vote on amended bill: Yes 6 No 0 Absent 0

Carrier: Senator Lee

Date : 1-4-07
Roll Call Vote # : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2093

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

^{78684.0101}
amendment to SB 2093

Action Taken

Motion Made By

Nelson

Seconded By

Oehlke

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - Vice Chairman	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes)

6

No

0

Absent

0

Floor

Assignment

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

Date : 1-4-07
Roll Call Vote # : 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2093^{with} Amendment

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken _____

Motion Made By Lee Seconded By Horne

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Lee

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

Library

REPORT OF STANDING COMMITTEE

SB 2093: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (06 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2093 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to authorizing counties to enter purchasing card agreements; to" and after "reenact" insert "section 11-10-16,"

Page 1, line 3, after "state" insert "and county"

Page 1, line 4, after "expenditures" insert "; and to provide a penalty"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 11-10-16 of the North Dakota Century Code is amended and reenacted as follows:

11-10-16. Statement to claim mileage. ~~Before~~Unless the expense was incurred by the use of a purchasing card, before an allowance for mileage or travel expense may be paid by a county, the ~~person~~ individual for whose travel the claim is made shall file with the county auditor an itemized statement verified by affidavit showing the number of miles traveled, the mode of travel, the days of traveling, the purpose of the travel, and the destination. Before a claim for mileage is allowed or paid, the claimant shall file the statement and affidavit with the board of county commissioners which shall decide whether to allow the claim.

SECTION 2. A new section to chapter 11-10 of the North Dakota Century Code is created and enacted as follows:

Purchasing card authority - Penalty.

1. A board of county commissioners may approve entering a purchasing card agreement, including participation in a cooperative purchasing contract established by the office of management and budget.
2. A public officer or employee who willfully uses or approves any purchase with a purchasing card which is false or unlawful or otherwise does not comply with any requirement in the contractual agreement is guilty of theft and punishable under chapter 12.1-23.
3. A public officer or employee who willfully uses or approves a payment with a purchasing card which is false or unlawful or not authorized is personally liable for any funds improperly expended.
4. The manager of a purchasing card system or any other individual who has knowledge of an actual or possible violation of this section shall make the information known to the attorney general or the appropriate state's attorney. Upon receipt of a report of an alleged violation, the attorney general or state's attorney shall investigate the alleged violation and, if a violation appears to exist, prosecute the offender or bring a civil suit for the recovery of the funds that may have been improperly paid against the payee and the individual who approved the payment.

5. An officer or employee who approves any payment negligently has the right of subrogation against the payee of the payment if public funds have been improperly paid to the payee."

Renumber accordingly

2007 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2093

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2093

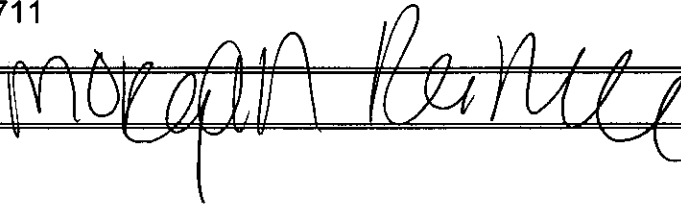
House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: March 8, 2007

Recorder Job Number: 4711

Committee Clerk Signature



Minutes:

Jeff Larshus: Testimony attached.

Rep. Meier: What would be an example of this?

Jeff Larshus: An example is that our facility management puts on the card the monthly water bill. They use their annual elevated contract and they pay an annual amount. It is roughly 100,000 dollars. They are using that on the cards. Some agencies may have their IT people buying computers for the agency.

Rep. Haas: Are these purchasing cards, who are they with?

Jeff Larshus: Our card provider is General Electric Financial out of Salt Lake. Last August we just had a new card. They are the ones that were chosen and that all state agencies use.

Rep. Haas: Does the state accumulate some type of redeemable points?

Jeff Larshus: They do have a rebate program. They have a complex schedule based on how soon after the bill is due, the payments made by the state. There will be a rebate given back to the state board.

Rep. Haas: What happened to that rebate?

Jeff Larshus: We will be putting that into general funds.

Rep. Amerman: So an employee prepays for a motel room. That way he can get reimbursed quicker with this card?

Jeff Larshus: Yes. If someone did have to pay for a lodging night, the conference was three months down the road, they could pay for that.

Rep. Amerman: So a snowstorm comes and I can't get there, but I have been reimbursed, what happens?

Jeff Larshus: They would have to pay that back. If for some reason they were reimbursed and that travel never occurred, they would pay it back.

Rep. Kasper: How many of these cards are floating around out there? Does each agency have one card, does each employee have a card? What is the security on these cards and the auditing and monitoring of them?

Jeff Larshus: It's up to the agency as to who would have the purchasing card. Not every employee does. It is limited. They have an administrator within the agency that monitors programs for their agency. The people that you have would have to set up monthly forms as far as purchases. It varies from agency to agency.

Rep. Kasper: Are these agencies then audited by OMB or is there a check on them all?

Jeff Larshus: Yes we periodically do audits in the auditor's office. The agency does their audits.

Terry Traynor: Testimony attached.

Rep. Amerman: You say that section 1 and 2 were brought forth from the association of counties. In these 2 sections you can now use these cards.

Terry Traynor: Page 1 line 20 is the authorization. That is correct. That is where they can enter into a purchasing card agreement.

Rep. Haas: Look at the engrossed bill.

Rep. Kasper: Are these credit cards, are they purchasing cards, are they Visa, is there a company that makes these p-cards. Are they issued in the name of the employee, or the county?

Terry Traynor: I'm not familiar with every county. Those that are, a number of them use a credit card. It's a visa/MasterCard issue. They are issued to the agencies themselves. There are individuals within the county that are authorized to make transactions.

Rep. Kasper: So the card would have Cass County on it. Would the employees name be on it? Or would it just be the counties name that is on it?

Terry Traynor: They are MasterCard issued credit cards. It is the state of ND, the employees name is on there. It is pretty specific.

Rep. Haas: Once the agency requests the particular employee to have the card, the card is made specific to that employee.

Rep. Kasper: Are these cards paid every month with no interest, or do they carry balances where states have interest?

Terry Traynor: What we do is that every month the bill is paid in full.

Rep. Weiler: Will these cards be good when they are traveling?

Terry Traynor: Yes, down the road they can use it for certain traveling. An example is your lodging. As far as meals and so forth, we can't allow them on there because they are allowed so much a day for them. The lodging would be charged to the P-Card. We talked earlier about authorized purchases. We do have the ability to only allow certain types of purchases. We can put a limit on there so they can only be used at particular merchants. You can limit and restrict a particular person to what they can actually use the card for.

Rep. Weiler: Is there a way you can put a limit on there?

Terry Traynor: Yes. They can determine who in their agency gets a P-Card.

Rep. Meier: Has there been any reports of people abusing these P-Cards?

Terry Traynor: There have been some accidental situations like when someone picks a wrong card and it is a personal purchase. That happens but they reimburse. To my knowledge nobody has purposely abused these cards.

Rep. Amerman: Are the payments made in full or how does that work?

Terry Traynor: We have a couple of cards in our office for an example. When people travel we use that card for their travel and we have all their documentation. We use the card for stuff like that. The payment is made once a month for all agencies. We could have 150 different purchases that we make 1 payment a month for.

Rep. Boehning: Do they charge you a fee for using them?

Terry Traynor: No.

Ed Gerhardt: *I am the business manager for the Bismarck Public Schools. I came here today to learn about this so I wasn't planning on testifying. I know that this bill has been amended to include counties and I guess as a school employee I would like to suggest including school districts and possibly cities. Last session the legislator did pass an amendment about the P-Card so we could use a credit card. I think the school district should be able to use the credit card and we did in fact start with one that I keep in my desk. We use it for the types of situations like online purchasing, reservations, etc. What we have discovered in that period of time is that it has come unreal for the terms of keeping track of who charged what with this one credit card. People forget to turn in receipts and we don't know who charged this. I have been in contact with OMB who manages the P-Card system and decided to piggyback with the state when they went through their selection process. Just in the last couple of months we got on our own and decided to select a company that we would piggyback with them. Just earlier this afternoon I met with our building and ground staff and for the first time issued credit cards to*

our maintenance and grounds people who make a lot of small purchases. We feel that we will have better control over credit card purchases that I can download on the internet that in the past would either come as a receipt or in some cases a form for reimbursement. I just raise the question that if it is possible and if you feel necessary some careful consideration for the language to apply to school districts. It would be nice to have this type of system.

Rep. Kasper: You said you are using credit cards already. What is wrong with expanding on your credit cards? Is there an advantage of joining this purchasing card authority to get lower rates? Why not just expand what you are doing?

Ed Gerhardt: its better controls and better systems. They have the ability to set up within one overall account. You can set up separate groups and divisions that when someone is using a credit card it is easier to track back to what building that came from and the fact that they do it over the internet to download our statements. It's a more managed system through this group. They have more sophisticated controls then if each individual were to get a card. The card that we are getting for our employees does not have their social security on it, just the employee ID number on it so there is no identity theft or anything like that.

Rep. Kasper: What I hear you saying is that you can have one master account with 15-20 accounts under that so it can show what your employees purchased. So when you reconcile you can see what they spent?

Rep. Meier: How many P-Cards are you using if we would include an amendment?

Ed Gerhardt: This first group that we set up with our building and grounds staff, we have 35 employees that are issued these P-Cards. We are going to use them as sort of our learning guinea pigs to make sure it works before we issue more. They are all within one department so before we get any cards out to the schools we will know how they work and know if we can handle and manage it. For the next 4-5 months we are going to do this and this fall when

school starts again we will consider issuing cards on an as needed basis to those principals, teachers, and staff who do a lot of small purchasing. Our Home-Ec teacher can go to the store and charge supplies. When we get that bill from Dan's Supermarket we can find out how much was purchased and reconciles the invoices. This way each individual teacher can do that. We will get a statement that says teacher x bought this and that. That way if we are missing a receipt we will know who to contact. With the system we have now if we are missing a receipt we don't know where to start looking.

Rep. Meier: Are you thinking eventually that every employee will have a P-Card eventually.

Ed Gerhardt: I doubt it, not every employee could make purchases. I really hesitate to guess how many will have them. I doubt that it will be half of them. It is going to be a work in progress. If there is some reason why they don't work we are going to back off on them. It is easier to go online and add accounts or cancel accounts if someone loses their card. It is very user friendly. We haven't had experience with them but with the state's experience and the service Rep. that I dealt with, it sounds like it is going to well very well.

Rep. Weiler: Mr. Larshus made the comment that these cards would be able to be restricted to certain places, can you do that with each individual card or the whole system? So in other words that the state agency has can be restricted, and they can only do it for hotels, but the schools can only use it for supplies, etc?

Jeff Larshus: Yes we can restrict by cardholders. Like the highway patrol can buy ammunition.

Sherry Neas: Just some additional testimony to address the school board situation. We actually did look at that when we were working with the association of counties on the school district. Last session there was legislation that was enacted to allow OMB to possibly purchase with political subs and school districts. The cooperative purchasing card is enabled. I did talk to

Bev Nielson at the school board association regarding the school districts legislation last session. We would be glad to look at that with the committee. The language the school districts use is in the section that enables the business manager to establish a purchasing card program.

Rep. Haas: And that is why Mr. Gerhardt has the only one?

Sherry Neas: Yes. So it would depend upon how that was circuited from last session.

Rep. Haas: You are telling us that if we want to expand this to include school boards in a broader sense we do need an amendment to this bill?

Sherry Neas: I believe that we clarified that. I had this conversation with Bev Nielson. I can't speak on their behalf but they had decided not to pursue it but there could be room for clarification of that statute. If they do accept the P-Card issue it will be expanded to employees within that school district.

Rep. Amerman: How many schools are we talking about, and does each have a school board?

Sherry Neas: No. All the Bismarck schools have one board.

Rep. Amerman: So each school doesn't have a school board? I was wondering if one school board doesn't want to do it.

Rep. Haas: Well this is an optional thing.

Sherry Neas: Yes the language opens it up for it to be optional.

Rep. Haas: Is there any other testimony on SB 2093? If not we will close the hearing on SB 2093.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2093

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: March 8, 2007

Recorder Job Number: 4712

Committee Clerk Signature

Morgan Rasmussen

Minutes:

Rep. Haas: Are your wishes to explore the possibility of expanding this to include school boards. Is that your wishes? Do I have a volunteer to work with Sherry on those regards?

Rep. Grande: I will.

Rep. Froseth: I think that maybe this bill should work for a couple of years with what we have here now. If we open it up to school boards that is a pretty vast area. We might be skating on some thin ice.

Rep. Kasper: The school districts can already use credit cards. This is just authorizing them to use this new system. It will be more user friendly for them and more efficient as well. That is where I see that.

Rep. Haas: Having been a business man under the school district for a number of years, one of the most significant primary concerns that a manager pays attention to is internal controls and audit trails. Believe me, the less somebody has the inclination to do dishonest things, they won't happen. There have been instances that it has happened.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2093

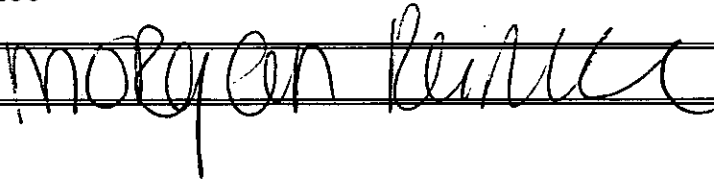
House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: March 15, 2007

Recorder Job Number: 5200

Committee Clerk Signature



Minutes:

Rep. Grande: Amendment attached.

Rep. Grande: These will look a little complicated and that is why we brought Sherry Neas back down to explain them. If you remember the P-Card bill and the school districts asking if they could have participation in this. Sherry Neas went to work with all of the groups involved and has come together with a comprehensive amendment that really worked well with this. If you would indulge me to let her explain the amendments.

Rep. Haas: That would be fine.

Sherry Neas: This was a cooperative effort. Everyone did agree with the changes. The goal of this amendment is to put all of the language related to P-Card with the state and school board into one section of law to void the duplication that was going to be created with the original engrossed bill. One of the value ads of doing this is that section 5 of the bill does have ethics. It has criminal and civil penalties that are applied. If we go to the bill the introduction is changed. We are no longer enacting a new section in chapter 11 which was the counties. We are simply amending the existing statutes. Section 2 of the bill is deleted in its entirety. That section is going to create authority for the counties. Then it will duplicate the criminal and civil penalties that already exist in the law in section 5. There were no changes in section 3 or 4. In

section 5 we are renaming the title. We are striking actions for violations because that just duplicates the penalty portion. In the first paragraph under 44.08.05.1 we are striking the words that sculpt the mold of state agencies only so that it can be generally brought to any public office or employee. Organizationally we put subsections in. Section 2 is moved. The language there is very broad. It allows the OMB, State Board of Higher Education, and the subdivisions and school board of any district can monitor the purchasing card program for all its employees. Sometimes there are contractors and other people that are not necessarily and officer or employee but do administrative programs. A good example would be the Department of Commerce. They have authority that they actually run by contractors. Then it references another section of law which is under state purchasing chapter that was passes last session that allows OMB to do contract on behalf of the political subdivisions. I just want to point out that parts of the language here actually comes from section 6. OMB's enabling language was in the state purchasing law. Section 6 of the bill was amended. Instead of amending 54-44, we are striking the whole 4th section and moving that into the 44-08. The changes in section 4 are just to open it up for state agencies and political subdivisions. With regards to investigations, the attorney general was in there, but it now includes the appropriate states attorney. Section 6 again strikes out the last section.

Rep. Grande: In legislative council's amendment, I'm looking at the part where you and I had discussed the penalty phases and liability. I just don't see the amendments.

Sherry Neas: Rep. Grande and I had discussed that when you are doing cooperative purchasing, they want to make sure that each entity is responsible for administering its own program and also liable for any expenditures that is made. If you look at the last sentence on the first page, it's the director of OMB that is establishing the proper purchasing contract. Each

participating government entity is responsible for its purchasing cards. We didn't talk specifically about financial liability and the administration, we hope that it would be effective.

Rep. Grande: I did see as I was reading the current language in part 4, halfway through it says a person is personally liable for any funds. I was just wondering if that was current language.

Rep. Kasper: On page 2 section 3, we passed legislation of the original bill. We passed that bill out of chambers.

Rep. Grande: Those numbers will be reconciled into the bill later because it hasn't been signed by the governor.

Rep. Haas: That bill is sitting in appropriations still pending.

Rep. Grande: But they will merge after we leave.

Rep. Haas: What are your wishes?

Rep. Grande: I move the amendment.

Rep. Dahl: I second that.

Rep. Haas: Is there any further discussion on the amendment? If not we will take a voice vote on the amendment. All in favor say 'aye' all opposed say 'no'. The amendment is carried.

Rep. Weiler: I have some amendments also that I would like to pass out. I can explain what it does. It is a very simple amendment. The amendment does one simple thing. These P-Cards that several state employees and agencies are going to have, are going to have the name of the employee and the agency. I felt that it is fairly important that we allow the public to have access to what goes on with these P-Cards. It says that OMB shall operate a single searchable website, accessible to the public at no cost, and list the monthly updates of what goes on with the purchases. They are going to have to take the statement that they get every month and post it on the website. I move the amendment.

Rep. Kasper: I second that.

Rep. Froseth: I guess my question or concern is that will OMB need additional FTE's or appropriations?

Rep. Weiler: I don't know the answer to that but my guess is with the IT department that we have, and the millions of dollars they spend, they should have enough resources to take care of a little website.

Rep. Grande: I agree with the amendment. I do have one thing that came up. Should it say that each agency should have that? Right now we are asking for only higher education to do it.

Rep. Weiler: I was thinking along the same lines as I was reading your amendments where it says at the bottom of page 1. So I think you are asking if the Board of Higher Education has to post their own on a website and if the political subdivisions have to post their own on the website? My amendment reads that OMB has to do all of that.

Sherry Neas: Under the amendment that we just passed, each entity is responsible for its own P-card program. They were just using the view that was established by OMB. That information would reside with the vendor but also to the entity using the card.

Rep. Grande: When you read the second set of amendments do you feel we need to break it out to clarify it?

Sherry Neas: It would be unfair.

Rep. Haas: OMB wouldn't have access to the information in order to post that information for a school district or a county.

Sherry Neas: One could write the contract so we have access to that. We normally do.

Rep. Haas: Would your record keeping permit such a thing as posting specific purchases? That would only be true for state contracts, am I correct? If a school district buys into a state negotiated contract, you would have that information? But if the school district uses the P-Card for a custodian to go buy plumbing supplies, you have no access to those records.

Sherry Neas: Yes, but we could write a contract so we would. Ultimately the contractor would have access to all this information to all the entity purchasing under the state contract. We would have to get the information from the contractor. We do actually get reports. Any of that is already public information. Right now without additional language you could have access to the purchases made by any entity.

Rep. Haas: If a political subdivision is not purchasing off a state contract, but using their purchasing card, would you still have access to that record?

Sherry Neas: No, if they weren't entered into a state contract we would have no access to that.

Rep. Potter: With the posting of all of the purchases from the card, what kind of work will that take to post all of that on the internet? What kind of costs will it take? I have changed websites and it is time consuming. I'm just wondering how much time we are looking at.

Sherry Neas: I would be concerned about the administration costs of maintaining this website. Especially if you look at the volume of cities, counties, schools, etc. The size of the file times 12 will be posted. This information is public. As a suggestion, that would be it. If any interested party wanted to know about the volume, or get those reports they are available. We are electronically connected with the vendor so we do get downloads. Anyone can do that.

Rep. Weiler: If I wanted to go find out this information about what state agencies are spending, how do I go about that? You said its open record and accessible?

Sherry Neas: Right now if you wanted to have a report on what our spending has been in the past, you would make that request to us and we would get that file and dump it into excel. Every transaction is coded with the type of vendor it's from. Some vendors have a deeper level of coding so you can see what is being purchased.

Rep. Weiler: I think that is the problem that people have to request the information. I want it so the people can see it without having to call a state agency and request it. In light of this I would like to withdraw my motion had have until next Thursday to fix this. I do understand there are some issues.

Rep. Haas: We have an amended bill 2093 which we will take up again next Thursday.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2093

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: March 22, 2007

Recorder Job Number: 5437

Committee Clerk Signature

Morgan Penell

Minutes:

Rep. Haas: We had passed an amendment on this bill. Rep. Grande has a replacement amendment. We need to have a motion to reconsider our actions. Is there a motion?

Rep. Froseth: I move to reconsider.

Rep. Boehning: I second that.

Rep. Grande: After these amendments had gone out, Sherry did not have the opportunity to review them because they had shown up on my desk as I was coming down here. She took them up and reviewed them with their attorney up there. They found just a couple of lines that were not how they wanted the penalty phases to read. They worked those in. Section 5 goes into whether or not it was willfully or fraudulently purchased. If you go to page 2 part 4, we are taking out the willfully and going with fraudulently. We are taking out the words with knowledge. They wanted to take out the guilty of theft and punishable under that chapter and state they may be subject to criminal prosecution. They put permissive in there so how it would be received. They wanted to be very clear that this was a fraudulent act.

Rep. Haas: I think for the purposes to reconsider, this should be an adequate explanation. Is there any discussion on the motion to reconsider? If not we will do a voice vote on the motion to reconsider. All in favor say 'aye' all opposed say 'no' the motion is carried.

Rep. Grande: As you can see Sherry Neas, along with the working group that included all of these cities, counties, universities, etc, it took a lot of time. What ended up happening which is kind of neat is that we ended up with an email from the Attorney General's office. It was stating that this engrossment was making this bill so much better. At first this was supposed to be just an OMB bill. The counties were added on in the Senate. Then the school districts wanted to be added on. Everyone wanted to come into play. They were able to find where in the OMB code they could consolidate all of this and have one centralized area. This just turned into a huge action that we needed to control that had them, how it was going to be done, how it would be tracked. Really we have come up with a nice piece of legislation.

Rep. Haas: Just for your convenience if you take your first engrossed bill and cross off line 17-24 on the first page, lines 1-16 on the second page, then lines 12-31 on the third page, and all of the fourth page.

Rep. Grande: There was an adjustment which is now just 11-18 on the last page. They had to put that other language back in there.

Rep. Haas: It says remove lines 1-10 and replaces lines 11-18. Everything is red lined on page 4 except lines 11 and 12. That essentially cleans up the bill. If you read the amendment plus lines 8-16 on page 1, you have the new bill.

Rep. Grande: I move the amendment.

Rep. Meier: I second that.

Rep. Haas: Is there any more discussion?

Rep. Kasper: Can you read this one more time?

Rep. Grande: The narrative portion is just that we are cleaning up the fraudulent side of the language which is making the intent of the bill that when they are following through with any

fraudulent use that it will be the proper reproduction in place. The Attorney General's office or the appropriate State Attorney will handle this.

Rep. Kasper: What political subdivisions are we bringing in?

Rep. Haas: That is on page 1. This is how the amendment actually started was for the consideration of bringing in school boards and so on. If you look at the bottom of page 1 on the amendment where it says in subsection 2: The state board of higher education, the governing body of any political subdivision, and any school district may establish and administer purchasing card systems. If the director of OMB establishes a cooperative person to contact, each participating government entity is responsible for its own purchasing card system. It gives them permissive language that allows them to establish their own purchasing card system which may or may not be in cooperation with the state system. It more than likely will be independent of the state system.

Rep. Dahl: On page 2 section 4 where it says may be subject to criminal prosecution. Is that how it is stated in other criminal sections of the code?

Rep. Grande: I believe so.

Rep. Dahl: I was just wondering why it doesn't say 'is' subject. If it is used fraudulently or knowingly it would be subject.

Rep. Grande: It doesn't explain that in my explanation. It doesn't say if they took that from another section or not.

Rep. Haas: Is there any other discussion on the amendment? If not we will try a voice vote on the amendment. All in favor say 'aye' opposed say 'no'. Amendment is carried.

Rep. Weiler: I have some further amendments on SB 2093.

Rep. Kasper: Just to be clear did we actually strip the other amendments out of the bill?

Rep. Haas: Yes. We adopted Rep. Grande's amendments which mean these are gone. When

we reconsider they are gone. After we reconsider an action it comes back to the committee in the form that it was before that action.

Rep. Weiler: The amendment is number .0204. It is dated March 20, 2007. Subsection 5 page 4, line 18, is a very simple minor amendment. It just states that OMB shall develop and operate a searchable website or on the office website providing a link to a searchable website accessible to the public at no costs for this that lists and updates monthly etc. Basically these P-Cards that are going to become more and more popular, I feel that it is somewhat necessary and useful to the public to be able to easily access to where some of their tax dollars are going. With that I would move the amendment.

Rep. Kasper: I second that.

Rep. Haas: Is there any discussion?

Rep. Dahl: Rep. Weiler did you talk to OMB about the costs that this will have?

Rep. Weiler: Yes I did speak with them. There would be a cost but they didn't have an idea of what it would cost. What they do with something like this is have IT do it. Then they bill IT for the work they did. There is a cost but I don't believe it is going to be a significant cost. When I was up there Friday visiting with OMB, they showed me the list of the credit card statements that just OMB gets for the same agencies. They do not have to take every piece of the paper and post it on the website. They just kind of need to summarize agency by agency. Or they can summarize business by business on what kind of stuff they got. If you recall the original amendment that I drafted up was to have higher education, K-12, and the counties all having to do this. I felt that this might be a little tough just coming aboard. I thought we would have a test run for two years on this project and see how it goes. Whoever is back here in two years can certainly take a look at.

Rep. Haas: Actually right now, I don't think there is a school district in the state that doesn't publish their records each month. That is put on a ballot for the people to vote on. Every district I have been in, the citizens have always passed that measure on the ballot. On a monthly basis it is all published.

Rep. Weiler: I knew that, that is why I left K-12 out.

Rep. Dahl: Rep. Weiler, you said they could do a summary by each state agency?

Rep. Weiler: Yes.

Rep. Dahl: In the amendment it says each purchase made by a state agency. To me that says each purchase. It would be a lot of web space.

Rep. Weiler: If you look at the sheets of paper that I saw, basically what they would need to do is list the agency, list the business that it was purchased from, and list the dollar amount. They can do a summary.

Rep. Kasper: If you recall on the testimony on the P-Card, the statement that a state will receive for the P-Card will have all of this already summarized in the statement. Therefore it is simply a matter of providing a new link from the P-Card statement to the website of OMB. It will all be itemized on that billing statement. There is hardly any work involved. It will do what the amendment says. There should not be much cost at all. It will be broken down by purchaser, by item, and everything that this amendment requests.

Rep. Boehning: Does the state get a copy in the electronic form as well or can they? If they could the link would take maybe five minutes of work.

Rep. Weiler: They do however along with that electronic link, the name of the cardholder is on there. As you know if we expand this project their name will be on the card. It will have the card, the name, and so on. The name would have to be removed. The card number will have to be removed. But yes they do get it electronically.

Rep. Wolf: The question that I have is about the amendment that we just passed of Rep. Grande's, and looking at Rep. Weiler's they kind of contradict each others. I was just wondering why.

Rep. Haas: If both of these amendments get passed, those type of things will be taking care of in legislative council. It would show the changes of what is made.

Rep. Weiler: I would like to respond to Rep. Dahl's question. As I look back on the statements, I think that the phrase a type of item purchased, I think I would like to see that stricken. The reason is that when those statements might come across it might have Ace Hardware on there but it doesn't say hammer. I'm not doing this to try and make a whole bunch of work for OMB. So I stand corrected on that. I think the words ' the type of item purchased' should be removed.

Rep. Dahl: I think that is just fine but I still think there is an issue on the fourth line down that says each purchase. If you just say the purchases made by state you wouldn't have to define each purchase.

Rep. Weiler: That is on there.

Rep. Dahl: However you said that you wanted a summary?

Rep. Weiler: I guess to me that it is something we can change.

Rep. Haas: Is there any further discussion on the amendment?

Rep. Potter: I am not quite sure after it is all said and done exactly what is going to be done or what will be read by others to be required of this down the line. I think this is pretty broad and wide open as to exactly how this is going to be perceived. There will be other perceptions with others in other rooms.

Rep. Kasper: Right now, without this amendment, all it is is a public record anyway. If an individual wished to look at how the spending is being made they would need a faxed copy, run to the capital and go make your own copies. This is doing nothing more than making it

more accessible to the individuals that might want to look at this. Frankly there might be 1 in 50,000 who want to see this information. The fact of the matter is that all of these expenditures are being made with public funds that we as a legislative body appropriate. Therefore under the open records law of our state, the people have the right to know if they want to. This is just making it easier for those who wish to know to be able to do it with their website and their computer as opposed to a whole lot of additional expense that they would incur if they want to see those.

Rep. Haas: Any further discussion?

Rep. Potter: I understand that we can find out about any purchase we want to know about. We can find out any purchase that they have done. I just don't know what this is going to involve, what kind of expense it is going to involve, how it's going to be interpreted, etc. I think there are a lot of questions that involve that but we just don't know.

Rep. Boehning: Just to address Rep. Potter's concerns about that. If one of us calls up to ask about the information, the first hour is free to us. They won't have to go back and look for everyone who comes up. The time it would take to find out one, they could have it up for everybody. If someone comes up and wants this it may take 30 min to find. If you put it on a website once it is going to save them a whole lot of time in the long run. If two people want to know you will have to look for it twice where here you can just put it on a website monthly.

Rep. Wolf: Does anybody know if we would get charged for the copies?

Rep. Boehning: Yes, 25 cents.

Rep. Haas: Is there further discussion? If not we will do a voice vote on the amendment. All in favor say 'aye' all opposed say 'no'. The amendment carries. We have the amended bill before us, what are your wishes?

Rep. Kasper: I move a do pass as amended.

Rep. Meier: I second that.

Rep. Haas: Is there any discussion? If not we will take a voice vote on SB 2093. The do pass motion on SB 2093 passes with a vote of 13-0-0. Is there a volunteer to carry this bill?

Rep. Grande: I Will.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2093

Page 1, line 3, replace the second "and" with a comma

Page 1, line 4, remove "subsection 4 of section"

Page 4, line 11, replace "Subsection 4 of section" with "Section"

Page 4, after line 12, insert:

"54-44.4-11. Small purchases.

1. A procurement not exceeding the amount established by written directive of the director of the office of management and budget under section 54-44.4-02 or by the state board of higher education under subsection 5 of section 15-10-17 may be made in accordance with small purchase procedures.
2. A small purchase need not be made through competitive sealed bidding or competitive sealed proposals. However, small purchases must be made with competition that is practicable under the circumstances.
3. Procurement requirements may not be artificially divided as to constitute a small purchase under this section."

Page 4, after line 18, insert:

- "5. The office of management and budget shall develop and operate a single, searchable web site accessible to the public at no cost to the user which lists, and updates monthly, each purchase made through the use of a purchasing card. Each purchase listed must include the recipient of the funds, the amount of the purchase, the type of item purchased, the agency making the purchase, and any other information required by the office of management and budget."

Renumber accordingly

Date: 3-16-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 2093

Action Taken move amendment

Motion Made By Rep Grande Seconded By Rep Dahl

Representatives			Representatives		
	Yes	No		Yes	No
Rep. C. B Haas Chairman			Rep. Bill Amerman		
Rep. Bette Grande VC			Rep. Louise Potter		
Rep. Randy Boehning			Rep. Jasper Schnelder		
Rep. Stacey Dahl			Rep. Lisa Wolf		
Rep. Glen Froseth					
Rep. Karen Karls					
Rep. Jim Kasper					
Rep. Lisa Meier					
Rep. Dave Weller					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2093

Page 1, line 1, remove "to create and enact a new section to chapter 11-10 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to authorizing counties to enter purchasing card agreements;"

Page 1, line 3, after the second comma insert "and"

Page 1, line 4, remove ", and subsection 4 of section 54-44.4-11"

Page 1, line 6, replace "expenditures" with "authority"

Page 1, remove lines 17 through 24

Page 2, remove lines 1 through 16

Page 3, replace lines 12 through 31 with:

"44-08-05.1. Payments - Requirements for approval Purchasing card authority - Penalty - Action for violations.

1. Any public officer or employee who has the power to approve a payment ~~for a department, agency, or institution~~ for travel expenses or any other state expenditure of public funds shall determine before approving the payment:
 - ~~1.~~ a. That the expenditure for travel or other expenditures were for lawful and official purposes.
 2. b. If for employee travel reimbursement, that the travel actually occurred and that the sums claimed for travel expenses are actually due the individual who is seeking reimbursement, allowance, or payment.
 - ~~3.~~ c. If the payment is for expenditure other than travel expense, that the expenditure is lawful and that the payment contains no false claims.

~~For purchases made with the use of a purchasing card authorized under section 54-44.4-11, an~~

2. The director of the office of management and budget, the state board of higher education, the governing body of any political subdivision, and the board of any school district may establish and administer a purchasing card system for use by its officers, employees, representatives, or agents. If the director of the office of management and budget establishes a cooperative purchasing contract under section 54-44.4-13, each participating government entity is responsible for its purchasing card system.

3. An employee of the office of management and budget designated by the director of the office of management and budget, on behalf of all state agencies, may review and approve payments under this section made with a purchasing card and make payments pursuant thereto. The director of the office of management and budget may designate the state agencies that are required to use the purchasing card system.
4. Any public officer or employee who willfully uses a purchasing card or approves a payment with knowledge it contains false or unlawful claims or that it does not otherwise meet the requirements of this section for approval is guilty of theft and punishable under chapter 12.1-23. Any public officer or employee who, without the use of ordinary care and diligence, negligently uses a purchasing card or approves a payment for a department, agency, or institution containing false or unlawful claims or which does not otherwise meet the requirements of this section for approval is personally liable for any funds improperly expended. ~~The director of the office of management and budget, members of the office of the budget, state auditor~~ Any public officer, employee, or any other person who has knowledge of an actual or possible violation of this section shall make such information known to the attorney general or the appropriate state's attorney. The attorney general or appropriate state's attorney shall investigate any alleged violation and, if a violation appears to exist, shall prosecute under chapter 12.1-23 or bring a civil suit for the recovery of such funds as may actually have been improperly paid against the payee and officer or employee who approved the payment in violation of the above requirements or shall bring both such criminal action and civil suit. The officer or employee who approves any payment negligently has the right of subrogation against the payee of the payment in the event public funds have been improperly paid to the payee."

Page 4, remove lines 1 through 18

Renumber accordingly

Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 2093

Action Taken move amendment

Motion Made By Rep Weiler Seconded By Rep Kasper

Representatives		Yes	No	Representatives		Yes	No
Rep. C. B Haas Chairman				Rep. Bill Amerman			
Rep. Bette Grande VC				Rep. Louise Potter			
Rep. Randy Boehning				Rep. Jasper Schneider			
Rep. Stacey Dahl				Rep. Lisa Wolf			
Rep. Glen Froseth							
Rep. Karen Karls							
Rep. Jim Kasper							
Rep. Lisa Meier							
Rep. Dave Weller							
Total	(Yes)						

Total (Yes) _____ No _____
Absent _____

Absent _____

Floor Assignment

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

Date: 3-22-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 2093

Action Taken Reconsider

Motion Made By Rep. Froseth Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Rep. C. B Haas Chairman			Rep. Bill Amerman		
Rep. Bette Grande VC			Rep. Louise Potter		
Rep. Randy Boehning			Rep. Jasper Schneider		
Rep. Stacey Dahl			Rep. Lisa Wolf		
Rep. Glen Froseth					
Rep. Karen Karls					
Rep. Jim Kasper					
Rep. Lisa Meier					
Rep. Dave Weiler					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2093

Page 1, line 3, replace the second "and" with a comma

Page 1, line 4, remove "subsection 4 of section"

Page 4, line 11, replace "Subsection 4 of section" with "Section"

Page 4, after line 12, insert:

"54-44.4-11. Small purchases.

1. A procurement not exceeding the amount established by written directive of the director of the office of management and budget under section 54-44.4-02 or by the state board of higher education under subsection 5 of section 15-10-17 may be made in accordance with small purchase procedures.
2. A small purchase need not be made through competitive sealed bidding or competitive sealed proposals. However, small purchases must be made with competition that is practicable under the circumstances.
3. Procurement requirements may not be artificially divided as to constitute a small purchase under this section."

Page 4, after line 18, insert:

- "5. The office of management and budget shall develop and operate a searchable web site or on the office's web site provide a link to a searchable web site accessible to the public at no cost to the user which lists, and updates monthly, each purchase made by a state agency through the use of a purchasing card. Each purchase listed must include the recipient of the funds, the amount of the purchase, the type of item purchased, the agency making the purchase, and any other information required by the office of management and budget."

Renumber accordingly

Date: 3-22-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 2093

Action Taken move amendment

Motion Made By Rep Grance Seconded By Rep Meier

Representatives			Representatives		
	Yes	No		Yes	No
Rep. C. B Haas Chairman			Rep. Bill Amerman		
Rep. Bette Grande VC			Rep. Louise Potter		
Rep. Randy Boehning			Rep. Jasper Schneider		
Rep. Stacey Dahl			Rep. Lisa Wolf		
Rep. Glen Froseth					
Rep. Karen Karls					
Rep. Jim Kasper					
Rep. Lisa Meier					
Rep. Dave Weller					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2093

Page 1, line 1, remove "to create and enact a new section to chapter 11-10 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to authorizing counties to enter purchasing card agreements;"

Page 1, line 3, after the second comma insert "and" and replace the second "and" with a comma

Page 1, line 4, remove "subsection 4 of section"

Page 1, line 6, replace "expenditures" with "authority"

Page 1, remove lines 17 through 24

Page 2, remove lines 1 through 16

Page 3, replace lines 12 through 31 with:

"44-08-05.1. Payments - Requirements for approval Purchasing card authority - Penalty - Action for violations.

1. Any public officer or employee who has the power to approve a payment ~~for a department, agency, or institution~~ for travel expenses or any other state expenditure of public funds shall determine before approving the payment:
 - 1- a. That the expenditure for travel or other expenditures were for lawful and official purposes.
 - 2- b. If for employee travel reimbursement, ~~that the travel actually occurred and that~~ the sums claimed for travel expenses are actually due the individual who is seeking reimbursement, allowance, or payment.
 - 3- c. If the payment is for expenditure other than travel expense, that the expenditure is lawful and that the payment contains no false claims.

~~For purchases made with the use of a purchasing card authorized under section 54-44.4-11, an~~

2. The director of the office of management and budget, the state board of higher education, the governing body of any political subdivision, and the board of any school district may establish and administer a purchasing card system for use by its officers, employees, representatives, or agents. If the director of the office of management and budget establishes a cooperative purchasing contract under section 54-44.4-13, each participating government entity is responsible for its purchasing card system.

3. An employee of the office of management and budget designated by the director of the office of management and budget, on behalf of all state agencies, may review and approve payments under this section made with a purchasing card and make payments pursuant thereto. The director of the office of management and budget may designate the state agencies that are required to use the purchasing card system.
4. Any public officer or employee who willfully fraudulently uses a purchasing card or knowingly approves a payment with knowledge it contains for false or unlawful claims or that it which does not otherwise meet the requirements of this section for approval is guilty of theft and punishable under chapter 12.1-23 may be subject to criminal prosecution under title 12.1. Any public officer or employee who, without the use of ordinary care and diligence, negligently uses a purchasing card or approves a payment for a department, agency, or institution containing false or unlawful claims or which does not otherwise meet the requirements of this section for approval is personally liable for any funds improperly expended. The director of the office of management and budget, members of the office of the budget, state auditor Any public officer, employee, or any other person individual who has knowledge of an actual or possible violation of this section shall make such that information known to the attorney general or the appropriate state's attorney. The attorney general or appropriate state's attorney shall investigate any alleged violation and, if a violation appears to exist, shall prosecute under chapter 12.1-23. If there is probable cause to believe that a violation has occurred, the attorney general or appropriate state's attorney shall initiate a criminal prosecution under title 12.1 or bring a civil suit against the public officer or employee for the recovery of such the funds as may actually have been improperly paid against the payee and officer or employee who approved the payment in violation of the above requirements or shall bring both such criminal action and civil suit. The officer or employee who approves any payment negligently has the right of subrogation against the payee of the payment in the event public funds have been improperly paid to the payee, or may initiate a prosecution and a civil suit."

Page 4, remove lines 1 through 10

Page 4, line 11, replace "Subsection 4 of section" with "Section"

Page 4, replace lines 13 through 18 with:

"54-44.4-11. Small purchases.

1. A procurement not exceeding the amount established by written directive of the director of the office of management and budget ~~under section 54-44.4-02~~ or by the state board of higher education under subsection 5 of section 15-10-17 may be made in accordance with small purchase procedures.
2. A small purchase need not be made through competitive sealed bidding or competitive sealed proposals. However, small purchases must be made with competition that is practicable under the circumstances.
3. Procurement requirements may not be artificially divided as to constitute a small purchase under this section.
4. ~~The director of the office of management and budget may establish and administer, including by contract with a provider, a system of procurement~~

~~for commodities agencies are authorized to purchase under this section. If the director establishes a purchasing card system under this subsection, the director may designate which agencies are required to use the purchasing card system for purchasing commodities under this section."~~

Renumber accordingly

Date: 5-22-01
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 2093

Action Taken move Amendment

Motion Made By Rep. Weiler Seconded By Rep. Kasper

Representatives	Yes	No	Representatives	Yes	No
Rep. C. B Haas Chairman			Rep. Bill Amerman		
Rep. Bette Grande VC			Rep. Louise Potter		
Rep. Randy Boehning			Rep. Jasper Schnelder		
Rep. Stacey Dahl			Rep. Lisa Wolf		
Rep. Glen Froseth					
Rep. Karen Karls					
Rep. Jim Kasper					
Rep. Lisa Meier					
Rep. Dave Weller					
Total (Yes)					

Total (Yes) _____ No _____
Absent _____

Absent _____

Floor Assignment Rep

If the vote is on an amendment, bring it on

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

Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 7093

Action Taken 10 YASS AS Amended

Motion Made By Rep Kasper Seconded By Rep Meier

Rep. Miller

Representatives			Yes	No	Representatives			Yes	No
Rep. C. B Haas	Chairman		X		Rep. Bill Amerman		X		
Rep. Bette Grande	VC		X		Rep. Louise Potter		X		
Rep. Randy Boehning			X		Rep. Jasper Schneider		X		
Rep. Stacey Dahl			X		Rep. Lisa Wolf		X		
Rep. Glen Froseth			X						
Rep. Karen Karls			X						
Rep. Jim Kasper			X						
Rep. Lisa Meier			X						
Rep. Dave Weller			X						

Total (Yes) 13 No 0

Absent _____

Floor Assignment Rep. Grance

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

REPORT OF STANDING COMMITTEE

SB 2093, as engrossed: Government and Veterans Affairs Committee (Rep. Haas, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2093 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "to create and enact a new section to chapter 11-10 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to authorizing counties to enter purchasing card agreements;"

Page 1, line 3, after the second comma insert "and" and replace the second "and" with a comma

Page 1, line 4, remove "subsection 4 of section"

Page 1, line 6, replace "expenditures" with "authority"

Page 1, remove lines 17 through 24

Page 2, remove lines 1 through 16

Page 3, replace lines 12 through 31 with:

"44-08-05.1. Payments - Requirements for approval Purchasing card authority - Penalty - Action for violations.

1. Any public officer or employee who has the power to approve a payment ~~for a department, agency, or institution~~ for travel expenses or any other ~~state~~ expenditure of public funds shall determine before approving the payment:
 1. a. That the expenditure for travel or other expenditures were for lawful and official purposes.
 2. b. If for employee travel reimbursement, ~~that the travel actually occurred and that the sums claimed for travel expenses are actually due the individual who is seeking reimbursement, allowance, or payment.~~
 3. c. If the payment is for expenditure other than travel expense, that the expenditure is lawful and that the payment contains no false claims.

~~For purchases made with the use of a purchasing card authorized under section 54-44.4-11, an~~

2. The director of the office of management and budget, the state board of higher education, the governing body of any political subdivision, and the board of any school district may establish and administer a purchasing card system for use by its officers, employees, representatives, or agents. If the director of the office of management and budget establishes a cooperative purchasing contract under section 54-44.4-13, each participating government entity is responsible for its purchasing card system.
3. An employee of the office of management and budget designated by the director of the office of management and budget, on behalf of all state

agencies, may review and approve payments ~~under this section~~ made with a purchasing card and make payments pursuant thereto. The director of the office of management and budget may designate the state agencies that are required to use the purchasing card system.

4. Any public officer or employee who ~~willfully fraudulently uses a purchasing card or knowingly approves a payment with knowledge it contains for false or unlawful claims or that it~~ which does not otherwise meet the requirements of this section for approval ~~is guilty of theft and punishable under chapter 12.1-23~~ may be subject to criminal prosecution under title 12.1. Any public officer or employee who, without the use of ordinary care and diligence, ~~negligently uses a purchasing card or approves a payment for a department, agency, or institution containing false or unlawful claims or which does not otherwise meet the requirements of this section for approval~~ is personally liable for any funds improperly expended. ~~The director of the office of management and budget, members of the office of the budget, state auditor~~ Any public officer, employee, or any other person individual who has knowledge of an actual or possible violation of this section shall make ~~such~~ that information known to the attorney general or the appropriate state's attorney. The attorney general or appropriate state's attorney shall investigate any alleged violation and, if a violation appears to exist, ~~shall prosecute under chapter 12.1-23~~. If there is probable cause to believe that a violation has occurred, the attorney general or appropriate state's attorney shall initiate a criminal prosecution under title 12.1 or bring a civil suit against the public officer or employee for the recovery of such the funds as may actually have been improperly paid against the payee and officer or employee who approved the payment in violation of the above requirements or shall bring both such criminal action and civil suit. The officer or employee who approves any payment negligently has the right of subrogation against the payee of the payment in the event public funds have been improperly paid to the payee, or may initiate a prosecution and a civil suit."

Page 4, remove lines 1 through 10

Page 4, line 11, replace "Subsection 4 of section" with "Section"

Page 4, replace lines 13 through 18 with:

"54-44.4-11. Small purchases.

1. A procurement not exceeding the amount established by written directive of the director of the office of management and budget ~~under section 54-44.4-02~~ or by the state board of higher education under subsection 5 of section 15-10-17 may be made in accordance with small purchase procedures.
2. A small purchase need not be made through competitive sealed bidding or competitive sealed proposals. However, small purchases must be made with competition that is practicable under the circumstances.
3. Procurement requirements may not be artificially divided as to constitute a small purchase under this section.
4. ~~The director of the office of management and budget may establish and administer, including by contract with a provider, a system of procurement for commodities agencies are authorized to purchase under this section. If~~

~~the director establishes a purchasing card system under this subsection; the director may designate which agencies are required to use the purchasing card system for purchasing commodities under this section~~
The office of management and budget shall develop and operate a searchable web site or on the office's web site provide a link to a searchable web site accessible to the public at no cost to the user which lists, and updates monthly, each purchase made by a state agency through the use of a purchasing card. Each purchase listed must include the recipient of the funds, the amount of the purchase, the agency making the purchase, and any other information required by the office of management and budget."

Renumber accordingly

2007 SENATE GOVERNMENT AND VETERANS AFFAIRS

CONFERENCE COMMITTEE

SB 2093

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2093

Senate Government and Veterans Affairs Committee

☒ Check here for Conference Committee

Hearing Date: 4-03-07

Recorder Job Number: 5691

Committee Clerk Signature

Monica Spaulding

Minutes:

Chairwoman Judy Lee called to order the conference committee on SB 2093.

Roll was taken and all members were present.

Senator Lee asked if a Representative could explain the amendments to the Senators.

Representative Grande said the bill was initially an OMB adjustment on the purchasing cards.

The Senate Government and Veteran Affairs Committee added the counties into the bill. When the House considered it the school boards thought they would fit in also. Sherry Neas went ahead and worked with all groups involved; Higher Ed, schools, counties, cities, political subdivisions, school boards, etc. There were two options to look at. The first would be to go into each portion of code that those entities were in. The second would be to combine it and put it into one section. This would give each of those entities the opportunity to go through the purchasing card versus using credit cards. The purchasing cards are so much easier to track electronically. With purchasing cards it is easier to put limits on what can be purchased with a certain card. With a credit card it is harder to have as much control.

Senator Lee asked for an explanation of Section 5.

Representative Grande said Section 5 came out of a subcommittee as a separate amendment.

Version 78084.0300 section 5, line 22 – line 28 on page 4, was put in by a committee member.

He was looking for some better transparency. We all know if you need information you can call an agency and ask for photo copies, pay for the copies, have it sent to you, whatever. He wanted it out on a website somewhere. If someone wanted to see what was being purchased by a certain agency, the names and card numbers are blacked out. The intent was to have a rolling 2 months information available. She is not sure the language for that is clear in the amendments as drafted. If this part is accepted she would suggest adjusting the wording.

Senator Lee said this isn't meant to be a flippy question but why would she need this?

Representative Grande said part of it comes from the movement nationwide and through various people in the state wanting better transparency of spending in government. They feel an access to that is necessary. It is arguable. Should we go to a round table and have no transparency or to the other extreme and have total transparency or is there a happy medium?

Senator Lee said purchases made are a matter of public record anyway. She is wondering about the effort to establish and maintain a website. Would it be worth it for the rare occasion she would care about the expenditures of a public employee? She makes it clear she is just raising the question.

Representative Grande said one of the things that makes it easier, yes there would be the establishment of the website or just a searchable piece. It could be OMB would have a link that would take them into that area. They get all the electronic entries from the purchasing cards anyway. They can link it in, making it not overly onerous.

Senator Lee asked if it is necessary to have an appropriation in their budget to establish a website.

Representative Wolf said all they need is a tag. It would be that simple; type in the HTML code and their link, so no appropriation would be necessary.

Senator Dever questioned wouldn't this involve thousands of transactions that would need to be linked to the website.

Representative Grande said that was possibly the case. That is why it was brought down to just dealing with only OMB stuff at this point. Initially the amendment came in for every single purchasing card for every entity. What this did was, let's see how this will work for a while. Is it possible to develop some form of transparency? They want to try it out on a smaller scale at first. She understands that some of the agencies pay all of their bills electronically including their electrical bills. It could be extensive so she feels it is important to have something in there that says they are going to only do 2 months at a time.

Senator Lee asked if the word micromanagement ever came up in their discussion about this.

Representative Grande said yes it did.

Senator Lee said she sees this discussion as two issues. One is the fact that we are including the other public entities in the purchasing card option. The other is whether or not we might continue with the website portion of it. She asked if that was where the other committee members saw the discussion as well.

The other committee members concurred.

Senator Lee said she would like to deal with the easy part first, whether the other entities would be included. She doesn't want an unnecessarily long bill but she is wondering if this will be easily accessible for instance to the political subdivisions if it is not in their individual sections in statute.

Terry Traynor with the Association of Counties said he believes so. They are going to work independently and with OMB to publicize this. Counties are already doing this and the problem was brought to their attention that they probably don't have the authority to do this. He feels this provides the authority and that is their main goal. They also see some real advantages to

working with OMB and their purchasing card system and how flexible and how much information the agencies can get from that.

Senator Lee asked if he felt it was not going to be a problem.

Representative Dahl said she feels it is not going to be a problem because every entity was involved in the drafting of it.

Senator Nelson asked if there was a reason the bill wasn't hoghoused rather that redone so much.

Representative Grande said this is the way Legislative Council did it.

Senator Lee said they will ask Legislative Council.

Senator Lee asked if they were ok with the part about involving other entities.

Senator Dever asked if the proper controls were in place so it won't be difficult to implement for other political subdivisions.

Sherry Neas with the OMB State Procurement Office said they have a state contract that includes corporate purchasing language. They already have statutory authority to do corporate purchasing with *(I couldn't hear the tape.)* Each political subdivision that wants to participate actually executes their own contract so that they are liable and they establish their own controls how it gets facilitated. OMB does help the counties.

Senator Dever said as long as the structure is there so the potential for abuse is less.

Sherry said the political subs would have to develop their own internal procedures for controlling the purchasing card. In Section 4 of the bill on line 12 of page 3 it spells out the civil and criminal penalties so the controls are right in the bill.

Senator Dever asked about the case of the school board in Twin Buttes where they are in trouble for travel expenses. If they used a credit card for that would there be penalties in here for that.

Sherry said on page 2, line 19 through line 28 it spells out how they will determine what is an allowed expenditure. Civil and criminal penalties apply regardless of the method of payment. Representative Grande said she believes the language has been approved by the Attorney General's office.

Senator Nelson asked if OMB has done any work with the school districts to this point or has it been with only the counties and the cities.

Sherry said the both the Bismarck and the Mandan school districts have met with OMB.

Senator Lee asked if Sherry was prepared to take questions on the website part of the bill.

Sherry said she would defer those questions to Pam Sharp.

Pam Sharp with OMB said the website would not be a difficult thing to implement, it would not be onerous and an appropriation would not be needed. They are concerned that this would just show purchasing card purchases which are small purchases and is a very small piece of the pie and may give the public wrong impressions. There is a lot more money spent on a lot of other things. With just purchasing card transactions out there for the public to look at it might discourage some agencies from using their purchasing cards and they are trying to build up the use of purchasing cards. Another concern is that it would not give any detail about what the purchase is for so it could give the public wrong impressions. If a purchase says XYZ Resort it could make people wonder even when it is a very legitimate expense. Agencies may not want the information out there without the chance to explain what the expenditures are for. Purchasing cards are about 12% of their expenditures.

Senator Lee said it sounds like they are creating a problem where there might not be one.

Pam agreed and said the records are already open. They have accounting reports if anyone wants to see them. What is behind this is the Federal Transparency Act. That is specific to

federal grant dollars. The one thing the feds exclude in their transparency act is purchasing card purchases.

Senator Lee said she can understand federal grant applications and how grant dollars are spent being made available to the public.

Representative Wolf said Pam mentioned with purchasing card transactions being available online the public may misconstrue the information. She asked when the public comes in to get a physical copy of the record do they have access to the details of the purchases.

Pam said there would not be but they could probably have access to further documentation and the person would perhaps get the opportunity to ask a question of someone whereas on a website it wouldn't be there.

Representative Wolf said there could be a link to an email address. Or they could call in and ask a question.

Pam said they could and maybe the email link would be complicated because it would be a different link for each agency.

Representative Wolf said there is a charge for getting paper copies. She asked what the charge is. She also asked if there is a charge for researching it.

Pam said there is a statute that allows agencies to charge. She cannot remember what the charge is. The agency is not required to charge. In her agency they typically do not charge for a small request and even a large request is charged a very reasonable fee. She said she is not sure if the statute says they can charge or they must charge.

Representative Dahl said as she understands the bill it says there must be a searchable website that updates every month. She was wondering how the agencies would interpret that and how often it would need to be updated and how helpful it would be to the public. She was

also wondering if it would be a burden to the agencies to keep that amount of information on the website.

Pam said the purchasing card information is all electronic so she doesn't think they would have a huge task to add the monthly information to that website. She mentioned questions would come up and they would have to deal with those questions.

Senator Lee said she would be more fearful if people wouldn't ask questions.

Senator Nelson asked how often old information would be archived, yearly? every 2 months?

Senator Lee realizes the position OMB is in trying to accommodate the request for openness in spending but she is struggling with whether this will be a real benefit to the public. The information is there for anyone who wants to have it.

Senator Dever gave an example of travel expenses to a NCSL conference in 2002. Usually hotel expenses are paid by the individual and they are reimbursed. Because Colorado has a reciprocal arrangement with North Dakota, if the state paid for the hotel rooms they would not charge sales tax. Legislative Council used a credit card and paid for everyone's hotel rooms which he is sure was thousands of dollars. He thinks that would spark a red flag for anyone looking at it and not necessarily understand it even though it helped them realize a considerable savings.

There was some discussion about what parts of the bill to retain and what not to.

Senator Lee asked Sherry Neas if she would be comfortable with Section 6 in the 0200 version replacing Section 5 in the 0300 version. Is there anything that they would have left out if they just go back to the old Section 6?

Sherry Neas explained why Section 4 was deleted.

There was some discussion about what to leave in and what to delete.

Senator Lee said they would let Legislative Council and Sherry prepare an amendment without the website provision for the committee to consider.

Senator Judy Lee recessed the committee on SB 2093.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2093

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 4/05/07

Recorder Job Number: 5758

Committee Clerk Signature

Minutes:

Chairwoman Judy Lee called to order the conference committee on SB 2093.

Roll was taken and all members were present.

Senator Lee presented 0207 amendment as a possibility. See attachment #1. They took time to look it over noting that everything was there except for the language about the website. She recapped that they had agreed it would be good to include all of the other political subdivisions who were interested in doing it. She pointed out the overstrike in 54-44.4-11 having to do with small purchases. She felt the hoghouse version was more readable but she had no preference.

Representative Dahl moved to adopt 0207 amendment.

Senator Dever seconded the motion.

Roll Call Vote: Yes 5 No 1 Absent 0

There was discussion about how the recede and accede language worked.

Senator Grande said Representative Dahl's motion was that the House recede from its amendments and then further amend. This was discussed and they made a call to Legislative Council to get it straight. Jay Buringrud in Legislative Council said the language that he used was at the top of 0207, "That the House recede from its amendments as printed on pages

Page 2

Senate Government and Veterans Affairs Committee

Bill/Resolution No. "Click here to type Bill/Resolution No."

Hearing Date: "Click here to type Hearing Date"

1039-1041 of the Senate Journal." They reached a consensus that they could trust that

Legislative Council got it right.

Meeting was closed.

April 3, 2007

93
45-7
1 of 3

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2093

That the House recede from its amendments as printed on pages 1039-1041 of the Senate Journal and pages 1127-1129 of the House Journal and that Engrossed Senate Bill No. 2093 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 11-10-16, subsection 2 of section 44-08-04, and sections 44-08-04.4, 44-08-05.1, and 54-44.4-11 of the North Dakota Century Code, relating to payment of travel expenses of state and county officers and employees and purchasing card authority; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-10-16 of the North Dakota Century Code is amended and reenacted as follows:

11-10-16. Statement to claim mileage. ~~Before~~ Unless the expense was incurred by the use of a purchasing card, before an allowance for mileage or travel expense may be paid by a county, the ~~person~~ individual for whose travel the claim is made shall file with the county auditor an itemized statement verified by affidavit showing the number of miles traveled, the mode of travel, the days of traveling, the purpose of the travel, and the destination. ~~Before a claim for mileage is allowed or paid, the claimant shall file the statement and affidavit with the board of county commissioners which shall decide whether to allow the claim.~~

SECTION 2. AMENDMENT. Subsection 2 of section 44-08-04 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Expenses for~~ For travel within the state ~~must be reimbursed at~~, the following rates for each quarter of any twenty-four-hour period must be used:
 - a. First quarter is from six a.m. to twelve noon and the sum must be five dollars. First quarter reimbursement may not be made if travel began after seven a.m.
 - b. Second quarter is from twelve noon to six p.m. and the sum must be seven dollars and fifty cents.
 - c. Third quarter is from six p.m. to twelve midnight and the sum must be twelve dollars and fifty cents.
 - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed fifty dollars plus any additional applicable state or local taxes. A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses.

SECTION 3. AMENDMENT. Section 44-08-04.4 of the North Dakota Century Code is amended and reenacted as follows:

44-08-04.4. Prepayment of travel expenses of state officers and employees. Any travel expense, including airline tickets and registration fees, that

2 of 3

must be incurred more than five weeks in advance of approved travel ~~ef~~ to meet necessary deadlines or to obtain low rates, may be purchased by the state or any elected or appointed officer, employee, representative, or agent of this state to meet necessary deadlines or to obtain low rates ~~must be purchased prepaid by the state~~. No state entity may require an officer, employee, representative, or agent of the state to pay these expenses.

SECTION 4. AMENDMENT. Section 44-08-05.1 of the North Dakota Century Code is amended and reenacted as follows:

44-08-05.1. Payments - ~~Requirements for approval~~ Purchasing card authority - ~~Penalty - Action for violations~~.

1. Any public officer or employee who has the power to approve a payment ~~for a department, agency, or institution~~ for travel expenses or any other state expenditure of public funds shall determine before approving the payment:
 - 1- a. That the expenditure for travel or other expenditures were for lawful and official purposes.
 - 2- b. If for employee travel reimbursement, ~~that the travel actually occurred and that~~ the sums claimed for travel expenses are actually due the individual who is seeking reimbursement, allowance, or payment.
 - 3- c. If the payment is for expenditure other than travel expense, that the expenditure is lawful and that the payment contains no false claims.

~~For purchases made with the use of a purchasing card authorized under section 54-44.4-11, an~~

2. The director of the office of management and budget, the state board of higher education, the governing body of any political subdivision, and the board of any school district may establish and administer a purchasing card system for use by its officers, employees, representatives, or agents. If the director of the office of management and budget establishes a cooperative purchasing contract under section 54-44.4-13, each participating government entity is responsible for its purchasing card system.
3. An employee of the office of management and budget designated by the director of the office of management and budget, on behalf of all state agencies, may review and approve payments under this section made with a purchasing card and make payments pursuant thereto. The director of the office of management and budget may designate the state agencies that are required to use the purchasing card system.
4. Any public officer or employee who ~~willfully fraudulently~~ uses a purchasing card or knowingly approves a payment with knowledge it contains for false or unlawful claims or that it which does not otherwise meet the requirements of this section for approval is guilty of theft and punishable under chapter 12.1-23 may be subject to criminal prosecution under title 12.1. Any public officer or employee who, without the use of ordinary care and diligence, ~~negligently~~ uses a purchasing card or approves a payment for a department, agency, or institution containing false or unlawful claims or which does not otherwise meet the requirements of this section for approval is personally liable for any funds improperly expended. The director of the office of management and budget, members of the office of the budget, state auditor Any public officer, employee, or any other ~~person~~ individual who has knowledge of an actual or possible violation of this section shall make ~~such~~ that information known to the attorney general

or the appropriate state's attorney. The attorney general or appropriate state's attorney shall investigate any alleged violation and, if a violation appears to exist, shall prosecute under chapter 12-1-23. If there is probable cause to believe that a violation has occurred, the attorney general or appropriate state's attorney shall initiate a criminal prosecution under title 12.1 or bring a civil suit against the public officer or employee for the recovery of such the funds as may actually have been improperly paid against the payee and officer or employee who approved the payment in violation of the above requirements or shall bring both such criminal action and civil suit. The officer or employee who approves any payment negligently has the right of subrogation against the payee of the payment in the event public funds have been improperly paid to the payee, or may initiate a prosecution and a civil suit.

SECTION 5. AMENDMENT. Section 54-44.4-11 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-11. Small purchases.

1. A procurement not exceeding the amount established by written directive of the director of the office of management and budget ~~under section 54-44.4-02~~ or by the state board of higher education under subsection 5 of section 15-10-17 may be made in accordance with small purchase procedures.
2. A small purchase need not be made through competitive sealed bidding or competitive sealed proposals. However, small purchases must be made with competition that is practicable under the circumstances.
3. Procurement requirements may not be artificially divided as to constitute a small purchase under this section.
4. ~~The director of the office of management and budget may establish and administer, including by contract with a provider, a system of procurement for commodities agencies are authorized to purchase under this section. If the director establishes a purchasing card system under this subsection, the director may designate which agencies are required to use the purchasing card system for purchasing commodities under this section."~~

Renumber accordingly

Date : 4-5-07
Roll Call Vote # :

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. _____

Senate **Government and Veterans Affairs** Committee

☒ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt 207 amendments *House Receding & further amend.*

Motion Made By Dahl Seconded By Dever

Senators	Yes	No	Representatives	Yes	No
✓ ✓ Senator Judy Lee	✓		✓ Representative Bette Grande	✓	
✓ ✓ Senator Dick Dever	✓		✓ Representative Stacey Dahl	✓	
✓ ✓ Senator Carolyn Nelson	✓		✓ Representative Lisa Wolf		✓

Total (Yes) 5 No 1

Absent 0

Floor Assignment _____

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

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 2093 (, as (re)engrossed):

Date: 4-5-07

Your Conference Committee Senate H/A

For the Senate:

For the House:

<u>J. Lee</u>	<input checked="" type="checkbox"/>	<u>yes</u>	<u>Shande</u>	<input checked="" type="checkbox"/>	<u>yes</u>
<u>Diver</u>	<input checked="" type="checkbox"/>	<u>yes</u>	<u>Dahl</u>	<input checked="" type="checkbox"/>	<u>yes</u>
<u>Nelson</u>	<input checked="" type="checkbox"/>	<u>yes</u>	<u>Wolf</u>	<input checked="" type="checkbox"/>	<u>no</u>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1039 -- 1041

☒ and place 2093 on the Seventh order.

☒ , (adopt) (further) amendments as follows, and place 3093 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 2093 was placed on the Seventh order of business on the calendar.

DATE: _____

HOUSE CARRIER: _____

SENATE CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: _____

SECONDED BY: _____

VOTE COUNT: ____ YES ____ NO ____ ABSENT

REPORT OF CONFERENCE COMMITTEE

SB 2093, as engrossed: Your conference committee (Sens. J. Lee, Dever, Nelson and Reps. Grande, Dahl, Wolf) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1039-1041, adopt amendments as follows, and place SB 2093 on the Seventh order:

That the House recede from its amendments as printed on pages 1039-1041 of the Senate Journal and pages 1127-1129 of the House Journal and that Engrossed Senate Bill No. 2093 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 11-10-16, subsection 2 of section 44-08-04, and sections 44-08-04.4, 44-08-05.1, and 54-44.4-11 of the North Dakota Century Code, relating to payment of travel expenses of state and county officers and employees and purchasing card authority; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-10-16 of the North Dakota Century Code is amended and reenacted as follows:

11-10-16. Statement to claim mileage. ~~Before~~ Unless the expense was incurred by the use of a purchasing card, before an allowance for mileage or travel expense may be paid by a county, the person individual for whose travel the claim is made shall file with the county auditor an itemized statement verified by affidavit showing the number of miles traveled, the mode of travel, the days of traveling, the purpose of the travel, and the destination. ~~Before a claim for mileage is allowed or paid, the claimant shall file the statement and affidavit with the board of county commissioners which shall decide whether to allow the claim.~~

SECTION 2. AMENDMENT. Subsection 2 of section 44-08-04 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Expenses for~~ For travel within the state ~~must be reimbursed at~~, the following rates for each quarter of any twenty-four-hour period must be used:
 - a. First quarter is from six a.m. to twelve noon and the sum must be five dollars. First quarter reimbursement may not be made if travel began after seven a.m.
 - b. Second quarter is from twelve noon to six p.m. and the sum must be seven dollars and fifty cents.
 - c. Third quarter is from six p.m. to twelve midnight and the sum must be twelve dollars and fifty cents.
 - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed fifty dollars plus any additional applicable state or local taxes. A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses.

SECTION 3. AMENDMENT. Section 44-08-04.4 of the North Dakota Century Code is amended and reenacted as follows:

44-08-04.4. Prepayment of travel expenses of state officers and employees. Any travel expense, including airline tickets and registration fees, that must be incurred more than five weeks in advance of approved travel ~~of to meet necessary deadlines or to obtain low rates, may be purchased by the state or any elected or appointed officer, employee, representative, or agent of this state to meet necessary deadlines or to obtain low rates must be purchased prepaid by the state.~~ No state entity may require an officer, employee, representative, or agent of the state to pay these expenses.

SECTION 4. AMENDMENT. Section 44-08-05.1 of the North Dakota Century Code is amended and reenacted as follows:

44-08-05.1. Payments - ~~Requirements for approval~~ Purchasing card authority - Penalty ~~Action for violations.~~

1. Any public officer or employee who has the power to approve a payment ~~for a department, agency, or institution~~ for travel expenses or any other state expenditure of public funds shall determine before approving the payment:
 1. a. That the expenditure for travel or other expenditures were for lawful and official purposes.
 2. b. If for employee travel reimbursement, ~~that the travel actually occurred and that the sums claimed for travel expenses are actually due the individual who is seeking reimbursement, allowance, or payment.~~
 3. c. If the payment is for expenditure other than travel expense, that the expenditure is lawful and that the payment contains no false claims.

~~For purchases made with the use of a purchasing card authorized under section 54-44.4-11, an~~

2. The director of the office of management and budget, the state board of higher education, the governing body of any political subdivision, and the board of any school district may establish and administer a purchasing card system for use by its officers, employees, representatives, or agents. If the director of the office of management and budget establishes a cooperative purchasing contract under section 54-44.4-13, each participating government entity is responsible for its purchasing card system.
3. An employee of the office of management and budget designated by the director of the office of management and budget, on behalf of all state agencies, may review and approve payments under this section made with a purchasing card and make payments pursuant thereto. The director of the office of management and budget may designate the state agencies that are required to use the purchasing card system.
4. Any public officer or employee who ~~willfully fraudulently uses a purchasing card or knowingly approves a payment with knowledge it contains for false or unlawful claims or that it which~~ willfully fraudulently uses a purchasing card or knowingly approves a payment with knowledge it contains for false or unlawful claims or that it which does not otherwise meet the requirements of this section for approval ~~is guilty of theft and punishable under chapter 12.1-23~~ may be subject to criminal prosecution under title 12.1. Any public officer or employee who, without the use of ordinary care and diligence, ~~negligently uses a purchasing card or approves a payment for a department, agency, or institution containing false or~~

unlawful claims or which does not otherwise meet the requirements of this section for approval is personally liable for any funds improperly expended. ~~The director of the office of management and budget, members of the office of the budget, state auditor~~ Any public officer, employee, or any other ~~person~~ individual who has knowledge of an actual or possible violation of this section shall make ~~such that~~ information known to the attorney general ~~or the appropriate state's attorney~~. The attorney general ~~or appropriate state's attorney~~ shall investigate any alleged violation ~~and, if a violation appears to exist, shall prosecute under chapter 12.1-23~~. If there is probable cause to believe that a violation has occurred, the attorney general ~~or appropriate state's attorney~~ shall initiate a criminal prosecution under title 12.1 ~~or bring a civil suit against the public officer or employee for the recovery of such the funds as may actually have been improperly paid against the payee and officer or employee who approved the payment in violation of the above requirements or shall bring both such criminal action and civil suit. The officer or employee who approves any payment negligently has the right of subrogation against the payee of the payment in the event public funds have been improperly paid to the payee, or may initiate a prosecution and a civil suit.~~

SECTION 5. AMENDMENT. Section 54-44.4-11 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-11. Small purchases.

1. A procurement not exceeding the amount established by written directive of the director of the office of management and budget ~~under section 54-44.4-02~~ or by the state board of higher education under subsection 5 of section 15-10-17 may be made in accordance with small purchase procedures.
2. A small purchase need not be made through competitive sealed bidding or competitive sealed proposals. However, small purchases must be made with competition that is practicable under the circumstances.
3. Procurement requirements may not be artificially divided as to constitute a small purchase under this section.
4. ~~The director of the office of management and budget may establish and administer, including by contract with a provider, a system of procurement for commodities agencies are authorized to purchase under this section. If the director establishes a purchasing card system under this subsection, the director may designate which agencies are required to use the purchasing card system for purchasing commodities under this section."~~

Renumber accordingly

Engrossed SB 2093 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

SB 2093

attach #1

No fiscal impact

Changes reflect today's common business practices

Page 1, line 8:

- Section deals with rates to be used for in state travel per quarter – breakfast, lunch, dinner & lodging
 - Kept the rates the same
- Eliminate “ ... travel within the state must be reimbursed ... ”
 - Implies employee must incur the cost then is reimbursed
 - Allows state agencies to pay for travel expenses, i.e., 1st night's lodging on the pcard

Page 2, line 3:

- Section deals with prepaid travel expenses
- Changed “must be prepaid by the state” to “may be prepaid by the state or state employee”
- Allows state employees to incur the expense & be reimbursed prior to traveling

Page 2, line 14:

- Section deals with reimbursing employees for travel expenses
- Eliminated “ ... that the travel actually occurred ”
- If an employee prepaid a valid travel expense, i.e., 1st night's lodging, they should not have to wait weeks / months to be reimbursed.

Page 2, line 19:

- Section deals with incurring unlawful pcard purchases made with the pcard & the course of action to be taken by the state to recover such funds
- Eliminated “ authorized under section 54.44.4-11 ”
 - Want this section to apply to all pcard purchases – not just those authorized in 54.44.4-11 (small purchases)

Page 3, line 11:

- 54-44.4-11. Small purchases
- Changed “ ... If the director (of OMB) establishes a purchasing card system under this section” to “... uses a purchasing card system ... ”
- Implies OMB will establish a purchasing card system for small purchases & commodities.
 - We only have one purchasing card system used for both small & large purchases

library
attach #2
page 1

**Testimony To The
SENATE GOVERNMENT & VETERANS AFFAIRS COMMITTEE
Prepared January 4, 2007 by the
North Dakota Association of Counties
Terry Traynor, Assistant Director**

CONCERNING SENATE BILL 2093

Chairman Dever and members of the Committee, the North Dakota Association of Counties supports OMB in their efforts to correct and clarify statutes addressing state employee travel reimbursement. We are however, here today to offer a friendly amendment to SB2093, to correct and clarify sections that address county employee travel issues. That amendment is attached to this testimony.

We have been in discussion with representatives of OMB for several weeks, however timing did not allow for the inclusion of our language in their bill, prior to the pre-filing deadline. I believe that OMB is supportive of our efforts, and I sincerely believe the amendment will benefit both the State and the counties.

The issue we hope to correct with our amendment – the authorization of county purchasing card agreements – was addressed several sessions ago for State government. Like state government at that time, counties lack the clear authority to permit employees to obligate the county for specified purchases. The problem has become most apparent in the transport of prisoners.

Counties often must travel across the State and across the country to retrieve offenders. To avoid placing the burden of those travel costs on the employees, many counties have issued credit cards with strict usage type, location, and dollar limitations. A diligent State's Attorney however, recently questioned the authority of the county to operate in this manner, and it was learned that (like the State several sessions ago) the statute failed to clearly permit it.

Our proposed language mirrors that which was adopted for State government, and it even permits the counties to cooperate with OMB in their purchase card agreements if it is advantageous for both. Present day commerce almost demands the use of credit cards, and this amendment will allow counties to join the State in operating in a prudent and efficient manner.

Mr. Chairman, I will conclude by urging adoption of the proposed amendments and giving SB2093 a "Do Pass" recommendation.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2093

Attachment #2
page 2

Page 1, line 1, after "reenact" insert "11-09-41, 11-10-16,"

Page 1, line 3, after "state" insert "and county"

Page 1, line 4, replace the period with a semicolon and insert "and to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to enabling legislation for counties to enter into purchasing card agreements."

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 11-09-41 of the North Dakota Century Code is amended and reenacted as follows:

11-09-41. No money drawn from treasury unless in pursuance of appropriation – Accounts of appropriations. Unless such expenses were incurred by use of a purchasing card as authorized by section 2 of this bill, No no money shall be drawn from the treasury of the county, nor shall any obligation for the expenditure of money be incurred, except in pursuance of the annual appropriation by the board of county commissioners. Accounts shall be kept for each item of appropriation made by the board. Each account shall show in detail the appropriation made thereto, the amount drawn thereon, the unpaid obligation charged against it, and the unencumbered balance in the appropriation account.

SECTION 2. A new section to chapter 11-10 of the North Dakota Century Code is created and enacted as follows:

Purchasing (Credit) Card Authority to Counties.

1. Any board of county commission may approve entering into a purchasing card agreement, including participation in a cooperative purchasing contract established by the office of management and budget.
2. Any public officer or employee who willfully uses or approves purchases with the purchasing card that are false or unlawful or do not otherwise comply with the requirements as set out in the contractual agreement is guilty of theft and punishable under chapter 12.1-23.
3. Any public officer or employee who willfully uses or approves payments with the purchasing card that are false or unlawful or not authorized is personally liable for any funds improperly expended.
4. The manager of the purchasing card system or any other person who has knowledge of an actual or possible violation of this section shall make such information known to the Attorney General or the local State's Attorney.

The Attorney General or State's Attorneys office shall investigate any alleged violation and, if a violation appears to exist, shall prosecute under chapter 12.1-23 or bring a civil suit for the recovery of such funds as may actually have been improperly paid against the payee and officer or employee who approved the payment in violation of the above requirements.

5. The officer or employee who approves any payment negligently has the right of subrogation against the payee of the payment in the event public funds have been improperly paid to the payee.

SECTION 3. AMENDMENT. Section 11-10-16 of the North Dakota Century Code is amended and reenacted as follows:

11-10-16. Statement to claim mileage. Unless such expenses were incurred by use of a purchasing card as authorized by section 6 of this bill, Before before an allowance for mileage or travel expense may be paid by a county, the person for whose travel the claim is made shall file with the county auditor an itemized statement verified by affidavit showing the number of miles traveled, the mode of travel, the days of traveling, the purpose of the travel, and the destination. Before a claim for mileage is allowed or paid, the claimant shall file the statement and affidavit with the board of county commissioners which shall decide whether to allow the claim."

Renumber accordingly

No fiscal impact

Changes reflect today's common business practices

Bill was amended in the Senate at the request of Association of Counties

Page 2, Section 3 line 19:

- Section deals with rates to be used for in state travel per quarter – breakfast, lunch, dinner & lodging
 - Kept the rates the same
- Eliminate " ... travel within the state must be reimbursed ..."
 - Implies employee must incur the cost then is reimbursed
 - Allows state agencies to pay for travel expenses, i.e., 1st night's lodging on the pcard

Page 3, Section 4 lines 5-8:

- Section deals with prepaid travel expenses
- Changed "must be prepaid by the state" to "may be prepaid by the state or state employee"
- Allows state employees to incur the expense & be reimbursed prior to traveling

Page 3, Section 5 line 18:

- Section deals with reimbursing employees for travel expenses
- Eliminated " ... that the travel actually occurred"
- If an employee prepaid a valid travel expense, i.e., 1st night's lodging, they should not have to wait weeks / months to be reimbursed.

Page 3, Section 5 line 23:

- Section deals with incurring unlawful pcard purchases made with the pcard & the course of action to be taken by the state to recover such funds
- Eliminated "authorized under section 54.44.4-11"
 - Want this section to apply to all pcard purchases – not just those authorized in 54.44.4-11 (small purchases)

Page 4, Section 6 line 16:

- 54-44.4-11. Small purchases
- Changed " ... If the director (of OMB) establishes a purchasing card system under this section" to "... uses a purchasing card system ..."
- Implies OMB will establish a purchasing card system for small purchases & commodities.
 - We only have one purchasing card system used for both small & large purchases

Engrossed Senate Bill No. 2093

This bill amends laws related to travel and purchasing card.

- Sections 1, 2, and 3 are intended to allow government entities to prepay some travel expenses using a purchasing card. (Currently employees must incur the expenses and be reimbursed. For example, hotels often require prepayment of the first night to guarantee the room.)
- The intent in Section 4 is to create one statute governing the use of purchasing cards for all ND government entities. New language was added to give political subdivisions and schools express authority to establish purchasing card systems. State entities can also use a cooperative purchasing contract for a purchasing card provider established by OMB (Page 2, Line 30 thru Page 3, Line 5).
- OMB currently has statutes related to purchasing cards in two chapters, 44-08 and 54-44.4. Section 4 consolidates those statutes into one section. You'll see that language in Section 4, (Page 2, Lines 30 thru Page 3, Line 11) was moved from Section 5 (Page 4, Lines 17-22).
- Section 4 also updates the criminal and civil penalties that apply to public officers or employees who fraudulently use a purchasing card or make a payment (Page 3, beginning on Line 12 thru Page 4, Line 4.)
- Section 5 was amended in the House to add a new paragraph related to OMB creating a website to publicly post purchasing made using a purchasing card.

**Testimony To The
HOUSE GOVERNMENT & VETERANS AFFAIRS COMMITTEE
Prepared March 8, 2007 by the
North Dakota Association of Counties
Terry Traynor, Assistant Director**

CONCERNING ENGROSSED SENATE BILL 2093

Chairman Haas and members of the Committee, the North Dakota Association of Counties supports OMB in their efforts to correct and clarify statutes addressing state employee travel reimbursement. We are however, here today to strongly support the Engrossed Bill, which incorporates language (Sections 1 & 2) to correct and clarify sections that address county employee travel issues.

We were in discussion with representatives of OMB for several weeks prior to the start of the Session, however timing did not allow for the inclusion of our language in their bill, prior to the pre-filing deadline. OMB did not oppose its addition in the Senate, and the Senate Committee strongly supported its addition.

The issue we hope to correct with these sections – the authorization of county purchasing card agreements – was addressed several sessions ago for State government. Like state government at that time, counties appear to lack the clear authority to permit employees to obligate the county for specified purchases. The problem has become most apparent in the transport of prisoners.

County employees often must travel across the State and across the country to retrieve offenders. To avoid placing the burden of those travel costs on the employees, many counties have issued credit cards with strict usage, location, and dollar limitations. A diligent State's Attorney however, recently questioned the authority of the county to operate in this manner, and it was learned that (like the State several sessions ago) the statute failed to clearly permit it.

The bill's proposed language mirrors that which was adopted for State government and it even permits the counties to cooperate with OMB in their purchase card agreements if it is advantageous for both. Present day commerce almost demands the use of credit cards, and this amendment will allow counties to join the State in operating in a prudent and efficient manner.

Mr. Chairman, I will conclude by urging "Do Pass" recommendation on Engrossed Senate Bill 2093.

12.1-32-01. Classification of offenses — Penalties.

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.

2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.

3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.

4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both, may be imposed.

5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of two thousand dollars, or both, may be imposed.

6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand dollars, or both, may be imposed.

7. Infraction, for which a maximum fine of five hundred dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

Source. S.L. 1973, ch. 116, § 31; 1975, ch. 116, § 23; 1979, ch. 177, § 2; 1995, ch. 134, § 1; 1997, ch. 132, § 1.

Effective Date. - The 1997 amendment of this section by section 1 of chapter 132, S.L. 1997 became effective August 1, 1997.