

TESTIMONY OF

**Sherry Neas, Director, Central Services Division**

Good morning, Chairman Thomas and members of the committee. My name is Sherry Neas, Central Services Division Director, and Chief Procurement Officer, of the Office of Management and Budget (OMB).

OMB opposes HB 1345 as introduced.

HB 1345 would create a new section in the state purchasing laws providing that, "All contracts between a state entity and a vendor must include a provision indicating the vendor's support of the state's agriculture and energy industries." This could significantly complicate procurement and state contracting.

This broad language would impact all state agencies, higher education institutions and thousands of state contracts, annually. Currently, state procurement and state contracts have nothing to do with a vendor's position on environmental and social governance issues. Procurement rules require all contractual terms and conditions to be disclosed in the bid document, so vendors can review the contract before they submit a bid or proposal. This provision would impact competition on state contracts and the ease of negotiating contracts with successful vendors. Many individuals and businesses would be hesitant to sign this vague provision, and others would refuse to agree to this provision altogether.

The fiscal impact of this bill cannot be calculated, but additional legal costs and time delays can be expected for contract negotiations.

The bill may raise Constitutional concerns of First Amendment free speech violations and possible risk of a federal 42 USC sec. 1983 claim. The bill requires individuals and businesses to agree to making a statement of support for North Dakota's agriculture and energy industries as a condition of a contract with the state of North Dakota. An individual or organization's expressions of their opinions and beliefs is a constitutionally protected activity. Any consequences to be applied to vendors that refuse to agree to this provision must be carefully crafted by legal counsel to avoid risk of restriction of freedom of speech potentially exposing the state and its employees to liability.

While this bill is well-intended, it would complicate procurement and state contracts and could have legal implications. I would be happy to answer any questions and would be available to

provide any assistance requested by the committee to draft amendments if you choose to amend the bill to address the concerns I have raised today.

Thank you, Mr. Chairman and committee members. This concludes my testimony.