

TESTIMONY OF

Sherry Neas, Director, Central Services Division

Good morning, Chairman Luick 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 opposed HB 1345 as introduced and is opposed to the engrossed bill before you. The original bill required individuals and businesses make a statement of support for North Dakota's agriculture and energy industries as a condition of a contract with the state of North Dakota. OMB raised concerns about potential First Amendment free speech violations and other legal issues because an individual or organization's expression of their opinions and beliefs is a constitutionally protected activity.

There were several Environmental Social Governance (ESG) bills this session related to investments and state contracts. The ESG movement has impacted North Dakota agriculture and energy and the intent of these bills to "do business" with companies that are not part of that anti-fossil fuel, anti-production agriculture movement. OMB greatly appreciates the willingness of the primary sponsor, Rep. Satrom, sponsors of the other ESG bills, subcommittee members, and other stakeholders to address concerns raised by OMB and other agencies. Three bills passed through the cross-over: HB 1429, HB 1278, and HB 1345.

Engrossed HB 1345 creates a new section in the state purchasing law: "The state may give priority to companies that support the state's agriculture and energy industries." My testimony will identify the potential challenges OMB finds with the engrossed bill.

"Give **priority**" would be a new term in state procurement. OMB assumes this would create a type of preference in awarding contracts.

The bill language is permissive, "**may** give priority." OMB and purchasing agencies would need to decide when to invoke the statutory ability to "give priority to companies that support the state's agriculture and energy industries."

The "priority" given is based upon a company's "**support** (of) the state's agriculture and energy industries." Good evaluation criteria are qualitative and quantitative. Implementing this law would require OMB to develop guidelines, templates, and procedures for agencies to measure a company's "support of ND agriculture and energy" as a consideration in contract award.

After discussing this bill with OMB procurement staff and other agencies, the following questions/concerns arose about its implementation:

- “Support” is very subjective and could be difficult to determine.
- Do procurement officers ask vendors if they support ND agriculture and energy? How truthful will their answer be knowing “priority” is based upon that support?
- What happens to vendors that do not have an opinion or awareness of North Dakota agriculture or energy industry? Some companies simply sell goods or services needed by North Dakota state agencies and have no position on environmental social governance.
- Would state procurement officers need to perform due diligence in attempt to determine whether companies support or oppose ND agriculture and energy industries?
- If companies are denied an award because the agency determined another company supported ND agriculture and industry, would there be an increase in protest and appeals?

Transparency and fairness are imperative in state procurement. Currently, state procurement and state contracts have nothing to do with a vendor’s position on environmental and social governance issues, beliefs or politics. Procurement laws requires the evaluation criteria to be identified in the solicitation. Bids and proposals are awarded based upon evaluation of what is being offered, experience and qualifications of the vendor, and cost.

OMB’s focus this session has been to simplify procurement for vendors and government. OMB understands the desire to “do something” about ESG now. The engrossed bill is well-intended, but OMB has concerns that this bill would create an ambiguous procurement evaluation preference that could complicate the procurement process. The other engrossed ESG bills, HB 1429 and HB 1278, each contain studies of ESG issues. Let’s take time to understand the issue and if legislation is needed, write a law that provide adequate guidance for consistent, effective implementation.

Mr. Chairman and members of the committee, I urge you to vote “do not pass” on this bill. This concludes my testimony, and I am happy to answer any questions. Thank you.