

**HOUSE BILL NO. 1122**

Introduced by

Representative Nelson

1 A BILL for an Act to create and enact two new sections to chapter 54-44.4 of the North Dakota  
2 Century Code, relating to purchases by state officials and employees and purchases from  
3 prison industries; and to amend and reenact subsection 2 of section 12-48-03.1, subsection 6 of  
4 section 44-04-18.4, sections 54-44.4-01, 54-44.4-02, 54-44.4-05, 54-44.4-05.1, subsection 1 of  
5 section 54-44.4-07, subsection 1 of section 54-44.4-09, sections 54-44.4-09.1, 54-44.4-12,  
6 54-44.4-13, and 54-44.4-14 of the North Dakota Century Code, relating to state purchasing  
7 practices.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Subsection 2 of section 12-48-03.1 of the North Dakota  
10 Century Code is amended and reenacted as follows:

11 2. All products made in prison industries may be purchased directly by governmental  
12 agencies, including federal, state, and tribal agencies and political subdivisions, for  
13 use in official business, and by nonprofit organizations, excluding trade associations,  
14 fraternal organizations, co-ops, and health insurance companies. Prison industries  
15 may sell commissary items and prison industries-made clothing to inmates. Prison  
16 industries-made products may also be sold through wholesale or retail outlets that  
17 possess a valid sales tax permit, and if the products are manufactured under the  
18 prison industries enhancement certification program under Public Law No. 96-157 [93  
19 Stat. 1215; 18 U.S.C. 176(c)], in interstate commerce and through export firms for sale  
20 to international markets. If determined to be in the best interest of the state by the  
21 office of management and budget under chapter 54-44.4, prison industries products  
22 may be made available for personal purchase by state officials and employees.

23 **SECTION 2. AMENDMENT.** Subsection 6 of section 44-04-18.4 of the North Dakota  
24 Century Code is amended and reenacted as follows:

- 1           6. Unless made confidential under subsection 1 or made exempt under subsection 5:  
2           a. Bids received by a public entity in response to an invitation for bids by the public  
3           entity are exempt until all of the bids have been received and opened by the  
4           public entity.  
5           b. Proposals received by a public entity in response to a request for proposals are  
6           exempt records until a notice of intent to award is issued.  
7           c. ~~Records included with any bid or proposal naming and generally describing the~~  
8           ~~entity submitting the proposal are open.~~

9           **SECTION 3. AMENDMENT.** Section 54-44.4-01 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11           **54-44.4-01. Declaration of policy - Definitions.**

12           It is state policy to provide comprehensive purchasing services based upon sound  
13 procurement practices and principles wherein, through full competition with fair and equal  
14 opportunity to all qualified persons to sell to the state, each state agency and institution shall  
15 obtain its necessary commodities and services at competitive cost, consistent with quality, time,  
16 and performance requirements, except as otherwise provided by law. As used in this chapter,  
17 unless the context requires otherwise:

- 18           1. "Commodities" means all property, including equipment, supplies, materials, printing,  
19           insurance, and leases of equipment.  
20           2. "Information technology" has the same meaning as provided in section 54-59-01.  
21           3. "Procurement officer" means an individual duly authorized to enter and administer  
22           purchasing contracts and make written determinations with respect thereto and also  
23           includes an authorized representative acting within the limits of authority.  
24           ~~3.4.~~ "Professional services" means those services requiring special knowledge, education,  
25           or skills when the qualifications and experience of the individual rendering the services  
26           are of primary importance and the individual is required to exercise professional  
27           judgment. Professional services providers include appraisers, attorneys, accountants,  
28           psychologists, physicians, dentists, planners, analysts, and consultants. The term  
29           includes human services under which a person provides direct health or social welfare  
30           services to the citizens on behalf of the state. The term does not include services  
31           defined in section 54-44.7-01.

1     ~~4.5.~~ "Purchasing agency" means a governmental entity in the executive branch of  
2           government other than the office of management and budget which is authorized by  
3           this chapter, rules adopted under this chapter, written policy of the office of  
4           management and budget, or by way of delegation from the office of management and  
5           budget to enter purchasing contracts for commodities and services.

6     ~~5.6.~~ "Services" means the furnishing of labor, time, or effort by a contractor, not involving  
7           the delivery of a specific end product other than reports that are merely incidental to  
8           the required performance. The term includes professional services.

9           **SECTION 4. AMENDMENT.** Section 54-44.4-02 of the North Dakota Century Code is  
10    amended and reenacted as follows:

11           **54-44.4-02. Office of management and budget purchasing services.**

12           The office of management and budget shall purchase or lease or otherwise arrange for the  
13    procurement, for all state agencies and institutions in the executive branch of state government,  
14    all materials, furniture, fixtures, printing, insurance, services, and other commodities. ~~The~~  
15    ~~International Peace Garden may participate in the procurement authorized by this~~  
16    ~~section~~Contracts for use by multiple state agencies and institutions, including purchases under  
17    this section, must be established as a state contract by the office of management and budget or  
18    as a cooperative purchasing contract under section 54-44.4-13. Information technology  
19    procurements, including purchases under this section, are subject to the requirements of  
20    chapter 54-59 and policies, standards, and guidelines established pursuant to section 54-59-09.  
21    The following commodities and services, ~~however,~~ are not subject to the competitive  
22    procurement requirements of this chapter:

- 23           1. Land, buildings, space, or the rental thereof, in accordance with sections 54-21-24.1  
24           and 54-44.1-16.
- 25           2. Telephone and telegraph service and electrical light and power services.
- 26           3. Public books, maps, periodicals, resource materials, and technical pamphlets.
- 27           4. Department of transportation materials, equipment, and supplies in accordance with  
28           section 24-02-16.
- 29           5. ~~Procurements~~Energy-related procurements by the industrial commission for  
30           ~~energy-related~~ programs under chapters 17-05, 54-17.5, 54-17.6, 54-17.7, 54-63, and  
31           54-63.1 and under those statutes in title 38 authorizing the industrial commission to

- 1 perform well and hole pluggings, reclamation work, equipment removal, leak  
2 prevention, and similar work.
- 3 6. Services for the maintenance or servicing of equipment by the manufacturer or  
4 authorized servicing agent of that equipment when the maintenance or servicing can  
5 best be performed by the manufacturer or authorized service agent, or when such a  
6 contract would otherwise be advantageous to the state.
- 7 7. Emergency purchases the office of management and budget or a purchasing agency  
8 cannot make within the required time and which involve public health or public safety,  
9 or when immediate expenditures are necessary for repairs of state property to protect  
10 it against further loss or damage, or to prevent or minimize serious disruption in state  
11 services.
- 12 a. Emergency purchases made under this subsection must treat all bidders fairly  
13 and promote competition as is practicable under the circumstances;
- 14 b. The procurement file must contain a written determination of:
- 15 (1) The basis for the emergency; and  
16 (2) The basis for the selection of the particular contractor.
- 17 c. If the emergency circumstances warrant a noncompetitive purchase, the office of  
18 management and budget or the purchasing agency shall document within the  
19 procurement file a written determination of the basis for the noncompetitive  
20 purchase, including the circumstances that justified the noncompetitive purchase.
- 21 d. If the emergency purchase is subject to federal funding reimbursement, the office  
22 of management and budget or the purchasing agency shall ensure the  
23 procurement procedures and documentation are adequate to satisfy  
24 requirements for federal reimbursement.
- 25 e. If time allows, emergency purchases for commodities under this subsection may  
26 require a sample for use in determining whether an offered product meets  
27 specifications.
- 28 8. Commodities and services costing less than a specified amount as determined by  
29 written directive by the director of the office of management and budget.
- 30 9. Specified commodities and services as determined by written directive by the director  
31 of the office of management and budget.

- 1       10. Employee benefit services, trust-related services, and investment management  
2       services obtained by an agency with a fiduciary responsibility regarding those  
3       services. Nothing in this subsection may be construed to allow an agency to create or  
4       renew a contract perpetually and without limitation.
- 5       11. Services to extract, tow, store, and dispose of abandoned or submerged vehicles as  
6       defined in chapter 23.1-15.
- 7       12. Contracts by the agriculture commissioner for agricultural market news services under  
8       cooperative agreements with the United States department of agriculture, ombudsmen  
9       for pipeline restoration under section 4.1-01-17, environmental impact mitigation  
10      services under section 4.1-01-21.1, ombudsmen for wind property issues under  
11      section 4.1-01-23, weed control inspection agents under section 4.1-14-02, and hemp  
12      testing under section 4.1-18.1-04.2.
- 13     13. Contracts by the state auditor for audits of computer systems under section 54-10-29.
- 14     14. Contracts by the attorney general with experts under section 10-33-145.
- 15     15. Contracts by the department of health and human services for ~~online virtual mental~~  
16      ~~health and suicide prevention simulation-based training programs under subsection 28-~~  
17      ~~of section 50-06-05.1 and brain injury informal supports under section~~  
18      50-06.4-07 training and related materials for individuals receiving assistance or  
19      services and employees, contractors, or professionals providing assistance or services  
20      under programs administered by or under the supervision and direction of the  
21      department of health and human services.
- 22     16. Expenditures by a state agency or institution for direct media placement, including a  
23      billboard or signage, with a newspaper or newspaper industry association, magazine  
24      or other publication, radio or television station, digital media provider, or venue.

25 All purchases made by the office of management and budget or a state agency or institution to  
26 which authority to purchase has been delegated by the office of management and budget must  
27 be made in accordance with this chapter, rules adopted under this chapter, and written policies  
28 of the office of management and budget.

29       **SECTION 5. AMENDMENT.** Section 54-44.4-05 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1           **54-44.4-05. Competitive, limited competitive, noncompetitive, and negotiated**  
2 **purchases - Exempt records.**

- 3           1. Except as otherwise provided in sections 12-48-03.1 and 44-08-01, chapter 25-16.2,  
4           and this chapter, purchasing contracts must be awarded through a competitive bidding  
5           process to the lowest responsible bidder considering conformity with specifications,  
6           and terms of delivery, and quality and serviceability, unless it is ~~determined to be~~  
7           advantageous to the state to select a contractor through a request for a competitive  
8           proposal process pursuant to section 54-44.4-10 ~~using other or additional criteria~~.  
9           Notwithstanding this section, the director of the office of management and budget or  
10          the director's designee may determine a different procurement process is in the best  
11          interest of the state and shall document the circumstances, procurement process, and  
12          basis for contract award in the procurement file.
- 13          2. The procurement officer may reject any or all bids or proposals or negotiate for a lower  
14          price with a successful bidder or offeror. Each bid or proposal received, with the name  
15          of the bidder or offeror, must be recorded. The office of management and budget may  
16          enter into term contracts for the acquisition of commodities or services and may make  
17          multiple awards for term commodity or service contracts when it deems a multiple  
18          award to be in the best interests of the state.
- 19          3. All bids and proposals received under this chapter pursuant to a competitive ~~sealed-~~  
20          bidsolicitation are exempt records under subsection 5 of section 44-04-17.1 ~~until the~~  
21          ~~date and time the bids are opened~~except as otherwise provided under subsection 6 of  
22          section 44-04-18.4.
- 23          4. The office of management and budget shall adopt rules specifying the circumstances  
24          under which competition may be waived or limited, when negotiation may be used,  
25          and specifying the required justifications and procedures for using those methods of  
26          purchasing. The office of management and budget shall adopt rules related to sending  
27          notice of intent to make limited competitive, noncompetitive, and negotiated purchases  
28          in accordance with this chapter. The notice must describe the needed commodity or  
29          service and the intended procurement method and must state that persons are  
30          permitted to submit bids or proposals for contracts to be awarded under this section.

- 1           The circumstances that may permit limited competitive, noncompetitive, or negotiated  
2           purchases include:
- 3           a.    The commodity or service is available from only one source.
  - 4           b.    The commodity or service is to be purchased for experimentation or trial.
  - 5           c.    No acceptable bid or proposal was received pursuant to a competitive bidding or  
6           competitive proposal process.
  - 7           d.    Commodities are being purchased for over-the-counter resale.
  - 8           e.    Acceptable commodities or services are produced or provided by ~~correctional-~~  
9           ~~institutions or~~ prison industries under section 12-48-03.1, other government  
10          agencies, or a work activity center as defined in section 25-16.2-01.
  - 11          f.    The anticipated cost of purchasing specified commodities or services is less than  
12          an amount determined by the office of management and budget which would  
13          justify the expense of a competitive bidding or competitive proposal process.
  - 14          g.    A used commodity is advantageous to the state and the commodity is available  
15          only on short notice.
  - 16          h.    The commodity is a component or replacement part for which there is no  
17          commercially available substitute and which can be obtained only from the  
18          manufacturer.
  - 19          i.    Compatibility with equipment currently owned by the state is essential to the  
20          proper functioning of that equipment.
  - 21          j.    The agency provides documentation indicating that the services or the  
22          circumstances are of such a nature that deviation from the procurement  
23          procedure is appropriate.
  - 24          k.    Recurring support costs associated with implemented information technology  
25          solutions, including licensing, service agreements, maintenance, and  
26          subscriptions for software as a service, platform as a service, and infrastructure  
27          as a service. This includes recurring costs for software or firmware required for  
28          proper functioning of currently owned equipment.
  - 29          l.    Contracts for specialized equipment, machinery, and materials required for  
30          manufacturing, production, and distribution by the North Dakota mill and elevator  
31          association under section 54-18-02 or prison industries under section 12-48-03.1.

- 1           m. Purchases of copyrighted printed and electronic books, periodicals, subscriptions  
2           to publications, subscriptions to information services, prerecorded audio and  
3           video materials, state library materials, and state library online resources,  
4           including purchases for libraries operated by state agencies, institutions of higher  
5           education, and other public libraries.

6           **SECTION 6. AMENDMENT.** Section 54-44.4-05.1 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8           **54-44.4-05.1. Resolution of tie bids or proposals.**

9           In the event that two or more bids or proposals contain identical pricing or receive identical  
10 evaluation scores, preference must be given ~~to~~as follows:

- 11           1. If one of the tie bids or proposals was submitted by prison industries under section  
12           12-48-3.1, preference must be given to prison industries.  
13           2. If one of the tie bids or proposals was submitted by a resident North Dakota bidder,  
14           seller, vendor, offeror, or contractor as defined in section 44-08-02 and another of the  
15           tie bids or proposals was submitted by a nonresident bidder, seller, vendor, offeror, or  
16           contractor, preference must be given to the resident bidder, seller, vendor, offeror, or  
17           contractor.

18           **SECTION 7. AMENDMENT.** Subsection 1 of section 54-44.4-07 of the North Dakota  
19 Century Code is amended and reenacted as follows:

- 20           1. The office of management and budget, the institutions of higher education, and any  
21           other state agency or institution that has authority to purchase products are  
22           encouraged to purchase environmentally preferable products.  
23           a. When practicable, specifications for purchasing newsprint printing services  
24           should specify the use of soybean-based ink. ~~The North Dakota soybean council~~  
25           ~~and the agriculture commissioner shall assist the office of management and~~  
26           ~~budget in locating suppliers of soybean-based inks and in collecting data on the~~  
27           ~~purchase of soybean-based inks.~~  
28           b. When practicable, biobased products should be specified.

29           **SECTION 8. AMENDMENT.** Subsection 1 of section 54-44.4-09 of the North Dakota  
30 Century Code is amended and reenacted as follows:



- 1           1.    The office of management and budget shall establish and maintain a bidders list of  
2                    persons that desire to be informed of government procurement opportunities. The  
3                    office of management and budget or the purchasing agency shall notify those on the  
4                    list when issuing invitation for bids or request for proposals over the amount  
5                    established for small purchases, except as otherwise provided in this section. The  
6                    office of management and budget or the purchasing agency shall notify those on the  
7                    list when sending notice of intent to make cooperative, limited competitive,  
8                    noncompetitive, and negotiated purchases. A person may be required to register for  
9                    the bidders list before the person may submit a response to a solicitation.

10           **SECTION 9. AMENDMENT.** Section 54-44.4-09.1 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12           **54-44.4-09.1. Secretary of state registration.**

13           A person that has a registration requirement with the secretary of state must be registered  
14 before the contract award execution and the registration must remain active for the duration of  
15 the contract period.

16           **SECTION 10. AMENDMENT.** Section 54-44.4-12 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18           **54-44.4-12. Resolution of protested solicitations and awards.**

- 19           1.    An interested party may protest the award of a contract, the notice of intent to award a  
20                    contract, or a solicitation for commodities or services by the office of management and  
21                    budget or purchasing agency under this chapter. The protest must be submitted in  
22                    writing or electronic mail communication to the procurement officer responsible for the  
23                    contract or solicitation within seven calendar days after the protestor knows or should  
24                    have known of the facts giving rise to the protest.
- 25           2.    If a contract has been awarded, the procurement officer immediately shall give notice  
26                    of a protest to the contractor. In the case of pending award, a stay of award may be  
27                    requested. A stay must be granted unless a written determination is made that the  
28                    award of the contract without delay is necessary to protect the interests of the state.
- 29           3.    If the protest is resolved by mutual agreement, the procurement officer shall send  
30                    written notice to the protestor confirming the mutually agreed upon resolution. If the  
31                    protest is not resolved by mutual agreement, the procurement officer ~~promptly~~ shall,

1           within seven calendar days, send by certified mail to the protestor a written decision  
2           containing the basis for the decision and inform the protestor of the protestor's right to  
3           appeal under subsection 5 of this section. The procurement officer may extend the  
4           protest review period by no more than seven calendar days and shall send written  
5           notice to the protestor of the extension.

6           4. The procurement officer shall promptly provide the office of management and budget  
7           with a copy of the protest and the procurement officer's decision.

8           4.5. The protestor may file an appeal of the decision rendered by the procurement officer  
9           with the director of the office of management and budget or designee. An appeal must  
10          be filed in writing within seven calendar days after the protestor receives the decision  
11          rendered by the procurement officer of the office of management and budget or the  
12          purchasing agency. The appeal must include a copy of the decision being appealed  
13          and the basis for the appeal. An appeal of a decision rendered by a procurement  
14          officer of a state agency or an institution that is not under the jurisdiction of the state  
15          board of higher education, must be filed with the office of management and budget. An  
16          appeal of a decision rendered by a procurement officer of an institution under the  
17          jurisdiction of the state board of higher education must be filed in accordance with  
18          policy established under subsection 5 of section 15-10-17. Within seven calendar days  
19          the director of the office of management and budget or the director's designee deciding  
20          authority shall send by certified mail written notice of the appeal decision to the  
21          protestor. The deciding authority may extend the appeal review period by no more  
22          than seven calendar days. Notice of any extension shall be provided in writing to the  
23          protestor.

24          6. Written notices required in this section may be accomplished by certified mail,  
25          commercial delivery service with delivery confirmation, or by a delivery confirmation to  
26          the electronic mail address used by the protestor to submit the protest.

27          **SECTION 11. AMENDMENT.** Section 54-44.4-13 of the North Dakota Century Code is  
28          amended and reenacted as follows:

1       **54-44.4-13. Cooperative purchasing.**

2       1. The office of management and budget shall purchase commodities or services as  
3       requested by agencies and institutions ~~under the jurisdiction of the state board of~~  
4       higher education and the legislative and judicial branches of state government.

5       2. The office of management and budget and the agencies and institutions ~~under the~~  
6       ~~jurisdiction of the state board of~~ higher education shall make joint purchases of like  
7       commodities or services of high common usage when the office of management and  
8       budget and the state board of higher education determine it is in the best interest of  
9       the state.

10      3. An institution of higher education may establish a cooperative purchasing contract for  
11      use limited to other institutions of higher education.

12      ~~3.4.~~ The director of the office of management and budget or the director's designee may  
13      agree to purchase commodities or services under contracts entered into by the United  
14      States general services administration or contracts of other government entities if it is  
15      determined to be in the best interest of the state after consideration of price,  
16      contractual terms and conditions, and the availability of competition.

17      ~~4.5.~~ The director of the office of management and budget or the director's designee may  
18      participate in, sponsor, or administer a cooperative purchasing agreement with one or  
19      more government entities or a nonprofit organization established on behalf of public  
20      entities for the procurement of commodities or services in accordance with an  
21      agreement entered into between the participants.

22      ~~5.6.~~ The director of the office of management and budget or the director's designee may  
23      coordinate with the director of the department of transportation or the director's  
24      designee to establish or participate in contracts which may be made available to  
25      entities that have been determined by the department of transportation to be  
26      transportation providers under chapter 39-04.2 eligible to receive state funds or federal  
27      funds for public transportation.

28      ~~6.7.~~ Cooperative purchasing may include open-ended contracts that are available to other  
29      government entities, nonprofit organizations established on behalf of public entities,  
30      tribal agencies, ~~or~~ transportation providers determined to be eligible under this section,  
31      or the International Peace Garden established under chapter 55-05.

1     ~~7.8.~~ Before entering into a cooperative purchasing agreement under this section, the office  
2           of management and budget must determine that the contracts were awarded through  
3           full and open competition or source selection methods specified in section 54-44.4-05  
4           and shall send notice to the bidders list of the office's intent to make a cooperative  
5           purchase in accordance with this chapter.

6           **SECTION 12. AMENDMENT.** Section 54-44.4-14 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8           **54-44.4-14. Procurement information - Website.**

- 9           1. The office of management and budget shall establish and maintain a procurement  
10           information website on the internet. This procurement information website must  
11           provide current information regarding North Dakota government procurement  
12           opportunities in order to inform potential vendors of the commodities and services  
13           sought by state agencies and institutions. Notwithstanding section 54-44.4-09, for  
14           each purchase of services or commodities over the amount established for small  
15           purchases, the office of management and budget and every purchasing agency shall  
16           provide procurement information on the website. The time period and manner of  
17           providing procurement information on the website must be in accordance with rules  
18           adopted by the office of management and budget. The office of management and  
19           budget may contract with a third party to assist in providing or maintaining the  
20           procurement information website.
- 21           2. Aln addition to other notice requirements provided by law, a state agency or institution  
22           may elect to ~~use the~~issue solicitation notices on the procurement information website  
23           for the purchase of services and commodities that are not subject to the procurement  
24           requirements of this chapter, including:
- 25           a. Commodities and services exempted under section 54-44.4-02;  
26           b. Public improvements under title 48;  
27           c. Architect, engineer, construction management, and land surveying services  
28           under chapter 54-44.7; and  
29           d. Concessions under chapter 48-09.
- 30           3. The office of management and budget shall establish and maintain a standardized  
31           procedure for the submission of electronic bids and proposals through the

1 procurement information website. The office of management and budget, in  
2 consultation with the office of the attorney general, shall develop standardized  
3 solicitation documents. The documents must be made available on the procurement  
4 information website. When drafting a solicitation, the office of management and budget  
5 and purchasing agencies shall use their best efforts to minimize the length of the  
6 solicitation by ensuring only those sections from the standardized solicitation  
7 documents applicable to the procurement are included.

8 4. The office of management and budget may make the procurement information website  
9 available to government entities, including political subdivisions of the state and public  
10 schools, for the purpose of issuance of solicitation notices that are in addition to any  
11 other notice requirements provided by law.

12 **SECTION 13.** A new section to chapter 54-44.4 of the North Dakota Century Code is  
13 created and enacted as follows:

14 **Purchases from state contracts and prison industries by state officials and**  
15 **employees.**

16 The office of management and budget, in consultation with the office of the attorney  
17 general, shall adopt rules related to circumstances under which it is determined to be in the best  
18 interest of the state to authorize state officials and employees to make personal purchases from  
19 state contracts and prison industries products under section 12-48-03.1.

20 **SECTION 14.** A new section to chapter 54-44.4 of the North Dakota Century Code is  
21 created and enacted as follows:

22 **Purchase of prison industries products.**

23 The office of management and budget, institutions of higher education, and purchasing  
24 agencies are encouraged to purchase prison industries products under section 12-48-03.1  
25 when the products are comparable to commercially available products, meet specifications,  
26 delivery time requirements, and can be purchased at a fair market price. Prices for prison  
27 industries products may be negotiated between the parties.