

TESTIMONY OF

Sherry Neas, Director, Shared Services Division

Good morning, Chairman Warrey and members of the committee. My name is Sherry Neas, Director of Shared Services Division and Chief Procurement Officer under the Office of Management and Budget (OMB). OMB opposes HB 1309.

HB 1309 would further complicate the procurement and contracting process and impact thousands of state contracts annually. It would create a new section Chapter 54-06 General Provisions that would broadly apply to all contracts for all state agencies and political subdivisions when entering contracts valued at \$100,000 or more with a company with ten or more full-time employees.

The bill prohibits a government entity from contracting with a company unless verified that the company does not boycott energy and production agriculture. The bill requires a list of financial institutions not eligible to receive investments of state funds by the state investment board and prohibits government entities from contracting with companies on that list.

The bill provides an exception if the government entity determines that the goods or services are not otherwise available.

This bill is structured like HB 1368 bill last session, which was related to investments and purchasing contracts regarding companies that boycott Israel.

This bill, however, may raise Constitutional concerns of First Amendment free speech violations and possible risk of a federal 42 USC sec. 1983 claim. 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, political subdivisions and their employees to liability.

Last session, there were several environmental social governance (ESG) bills, including HB 1429 which was like this bill. HB 1429 was hog-housed, and the enrolled version of the bill required the Bank of North Dakota to conduct a study on environmental, social, and governance trends and report to legislative management. The study included trends, laws, and policies that impact businesses and industries of this state, with input from experts in energy, agriculture, investment, insurance, economic development, finance, procurement, contracting and laws related to these areas.

In the final report issued by the Bank of North Dakota, a recommendation is made on page 54:

“It’s recommended to avoid the use of blacklists for state contracts or investments. Blacklists have the potential to increase fees, limit investment opportunities, and reduce investment returns.”

Best practices in government procurement requires purchasing and contract decisions based upon the business requirements, quality and price of offered bids or proposals, and the evaluation criteria set forth in the solicitation.

This bill would deny a company the opportunity to contract with a government entity based upon the opinions of the company, related to environmental social governance concerns. Government entities attempting to negotiate contracts would certainly find businesses hesitant to sign this vague provision, and others would refuse to agree to this provision altogether.

Mr. Chairman and committee members, this concludes my testimony. While this bill is well-intended to support North Dakota’s energy and agriculture industries, it would complicate procurement and contracts for all state agencies and political subdivisions and could have legal implications. OMB stands in strong opposition to HB 1309.

I would be happy to answer any questions.