

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1170

2005 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1170

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1170

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 1/21/05

Tape Number	Side A	Side B	Meter #
1	x		0-26.5

Committee Clerk Signature



Minutes: HB 1170 Cooperative purchasing by the office of management and budget and to amend and reenact sections of the office of management and budget. 13 members present, 1 absent.

Sherry Neas-Office of Management and Budget, State Procurement Office

Rep. Froseth: On paragraph three that says largely a “clean up” bill that moves all the references to cooperative purchasing into a new section titled “cooperative purchasing” in section 1, are they all moved in without repealing old sections?

Sherry: There is some minor modification, if you look on page 3, line 16 and compare it that to page 1, line 10, those are moved in there, they are broken down into sections, this time though, before it was all lumped into exemptions.

Chairman Haas: On your first amendment, at the top of the second page of your testimony, when you referred to the contract by school boards, you referred to 15.10923 and the statute says 15.0934, am I correct that should be 34 on your testimony?

Sherry: Your correct.

Rep. Sitte: I was concerned on page 1, the last line, the nonprofit organization established on behalf of public entities, the association of counties is a lobbying group. I am concerned that we would be providing special favoritism to one lobbying group over another.

Sherry: There is a lot of non-profits that are established.

Rep. Sitte: Yes I want the counties, school boards, political subdivisions, everyone else to get the break, my concern is that organizations don't get the break, the lobbying organization, so we can change the phrasing slightly, so it would be pass through those organizations, but not for those organizations personal use.

Sherry: Perhaps we can put qualifying language that says for the purposes' of cooperative purchasing.

Rep. Sitte: That would help me a lot.

Chairman Haas: For a non profit organization, Sherry where did you put that clause.

Sherry: It's on page 2, line 1, after on behalf of public entities and then you would insert for the purpose of cooperative purchasing.

Chairman Haas: It seems to me if you say on behalf of public entities for the procurement of commodities or services in accordance with an agreement entered in or between the participants, that implies cooperative purchasing.

Rep. Klemin: It seems to me what Rep. Sitte said that it is OK for the association of counties to manage this, as long as it passes through all of the counties, but that the association of counties, as an organization can't take benefit of that itself?

Rep. Sitte: Right.

Rep. Klemin: What is wrong with that?

Rep. Sitte: I am just concerned that some of these lobby organizations, lobby groups have a lot of influence already, those lobby groups don't deserve to buy their chairs or desks at the same State rate as the State does and be participants, because they are lobbying groups. My concern is that the counties and schools can buy the chairs and the desks at the cheaper rate, but that the organization themselves who are coordinating that shouldn't have that advantage.

Chairman Haas: We are going to save this discussion for when we get into our committee deliberations.

Sherry: This amendment would be putting in qualifiers for when those instances, when purchasing against other governmental contracts, in lieu of the better bidding process, under section 54-44.409, which is the approved vendors, which would insure that those vendors that are approved bidders under state would have notice when you are doing cooperative purchasing and we do have existing procedures for this, when we do a noncompetitive purchase, to send out notice to everyone on the bidder list and give them an opportunity to challenge, we would extend that procedure.

Chairman Haas: Your approved vendors, how does a business become an approved vendor?

Sherry: Under 54-44.409 of our law, the approval process is vendors must first be registered with the Secretary of State, fill out a bidders list application with the Office of Management and Budget to become an approved vendor.

Chairman Haas: There is no qualifying criteria? Other than the registration and filling out the bidders list.

Sherry: Yes.

Chairman Haas: Thank you very much. Any more questions?

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House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1170

Hearing Date 1/21/05

The hearing will be closed on HB 1170.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1170

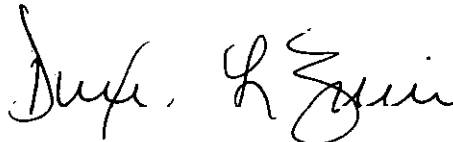
House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 1/28/05

Tape Number	Side A	Side B	Meter #
5	x		3.6-5.4

Committee Clerk Signature



Minutes: HB 1170 Cooperative purchasing by the office of management and budget and to amend and reenact sections and office of management and budget.

14 members present, and 0 absent.

Discussion and voting.

Chairman Haas: We will look at HB 1170. We will need a motion on here to reconsider this bill, because Rep. Sitte was the only dissenting vote, we will need a reconsider on this bill before we can bring it back to the discussion, Rep. Kasper moves to reconsider, is there a second, seconded by Rep. Froseth, is there any discussion. We will try a voice vote to reconsider, all those in favor for a motion to reconsider say I, oppose say no, the clerk will take the roll please on a motion to reconsider HB 1170.

VOTE: YES 5 NO 9 ABSENT 0 THE MOTION FAILED, SO THE MOTION TO RECONSIDER FAILED AND THE BILL WILL PROCEED ON THE LAST ACTION DO PASS AS AMENDED WHICH WAS A DO PASS AS AMENDED 13-O-1

Page 2

House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1170

Hearing Date 1/28/05

REP. KASPER HAD AGREED TO CARRY THE BILL.

REP. KASPER WISHES TO BE TAKEN OFF THE BILL.

REP. KLEMIN WILL CARRY THE BILL.

FISCAL NOTE
 Requested by Legislative Council
 02/01/2005

Amendment to: HB 1170

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The bill, if passed as amended, will not have a material fiscal impact. The amended bill requires agencies to send notice to approved vendors when making cooperative purchases. Sending notice to approved vendors is an existing requirement for other types of procurements. The intent of the bill is to enable cooperative purchasing with political subdivisions.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name: Linda Belisle
 Phone Number: 328-3494

Agency: Central Services Division
 Date Prepared: 02/02/2005

FISCAL NOTE
 Requested by Legislative Council
 01/03/2005

Bill/Resolution No.: HB 1170

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

No fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name: Linda Belisle
 Phone Number: 328-3494

Agency: OMB
 Date Prepared: 01/04/2005

VK
1/28/05
1082

HOUSE AMENDMENTS TO HOUSE BILL NO. 1170 GVA 1/31/05

Page 1, line 3, after "sections" insert "15.1-09-34," and after "54-44.4-02" insert a comma

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 15.1-09-34 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-34. Contracts by school boards - Bids - Penalty.

1. Except as provided in this section, the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than twenty-five thousand dollars unless the school board has given ten days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. This section does not apply to contracts for:
 - a. The personal services of district employees.
 - b. Textbooks and reference books.
 - c. Articles not sold on the open market.
 - d. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.
 - e. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
 - f. Building construction projects under chapters 48-01.1 and 48-02.
 - g. School transportation services purchased under section 15.1-30-11.
 - h. Vehicle fuel purchased under section 15.1-09-34.1.
 - i. Heating fuel purchased under section 15.1-09-34.1.
 - j. The purchase of a used motor vehicle, including a schoolbus, motorbus, or van, intended primarily for the transportation of students.
 - k. Cooperative purchases with the office of management and budget under chapter 54-44.4.
2. For purposes of this section, a "used motor vehicle" means a motor vehicle that has been previously owned or leased and which has an odometer reading in excess of eighteen thousand miles [28967 kilometers].
3. A board member who participates in a violation of this section is guilty of a class B misdemeanor."

Page 1, line 21, after "state" insert "after consideration of price, contractual terms and conditions, and the availability of competition from approved vendors under section 54-44.4-09"

2062

HOUSE AMENDMENTS TO HOUSE BILL NO. 1170 GVA 1/31/05

Page 2, line 9, after "54-44.4-05" insert "and shall send notice to approved vendors of the office's intent to make a cooperative purchase in accordance with this chapter"

Renumber accordingly

Date: 11/21/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House House Government and Veterans Affairs

Committee

Check here for Conference Committee

Legislative Council Amendment Number 58112.0101

Action Taken Do PASS As Amended

Motion Made By Rep. Klemin Seconded By Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas	✓		Rep. Bill Amerman	✓	
Bette B. Grande - Vice Chairman	✓		Rep. Kari Conrad	✓	
Rep. Randy Boehning	✓		Rep. Louise Potter		AB
Rep. Glen Froseth	✓		Rep. Sally M. Sandvig	✓	
Rep. Pat Galvin	✓				
Rep. Stacey Horter	✓				
Rep. Jim Kasper	✓				
Rep. Lawrence R. Klemin	✓				
Rep. Lisa Meier	✓				
Rep. Margaret Sitte	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Klemin

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

*Motion to
Kasper
Froseth*

Motion to reconsider -

Date: *1/28/05*
Roll Call Vote #: *1*

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1170**

House **House Government and Veterans Affairs**

Committee

Check here for Conference Committee

*Vote was already done
on 1170*

Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded By

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas		✓	Rep. Bill Amerman		✓
Bette B. Grande - Vice Chairman	✓		Rep. Kari Conrad		✓
Rep. Randy Boehning		✓	Rep. Louise Potter		✓
Rep. Glen Froseth		✓	Rep. Sally M. Sandvig		✓
Rep. Pat Galvin	✓				
Rep. Stacey Horter		✓			
Rep. Jim Kasper	✓				
Rep. Lawrence R. Klemin		✓			
Rep. Lisa Meier	✓				
Rep. Margaret Sitte	✓				

Total (Yes) *5* No *9*

Absent

Floor Assignment *Replaces ~~Kasper~~ Klemin -*

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

REPORT OF STANDING COMMITTEE

HB 1170: Government and Veterans Affairs Committee (Rep. Haas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1170 was placed on the Sixth order on the calendar.

Page 1, line 3, after "sections" insert "15.1-09-34," and after "54-44.4-02" insert a comma

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 15.1-09-34 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-34. Contracts by school boards - Bids - Penalty.

1. Except as provided in this section, the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than twenty-five thousand dollars unless the school board has given ten days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. This section does not apply to contracts for:
 - a. The personal services of district employees.
 - b. Textbooks and reference books.
 - c. Articles not sold on the open market.
 - d. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.
 - e. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
 - f. Building construction projects under chapters 48-01.1 and 48-02.
 - g. School transportation services purchased under section 15.1-30-11.
 - h. Vehicle fuel purchased under section 15.1-09-34.1.
 - i. Heating fuel purchased under section 15.1-09-34.1.
 - j. The purchase of a used motor vehicle, including a schoolbus, motorbus, or van, intended primarily for the transportation of students.
 - k. Cooperative purchases with the office of management and budget under chapter 54-44.4.
2. For purposes of this section, a "used motor vehicle" means a motor vehicle that has been previously owned or leased and which has an odometer reading in excess of eighteen thousand miles [28967 kilometers].
3. A board member who participates in a violation of this section is guilty of a class B misdemeanor."

Page 1, line 21, after "state" insert "after consideration of price, contractual terms and conditions, and the availability of competition from approved vendors under section 54-44.4-09"

Page 2, line 9, after "54-44.4-05" insert "and shall send notice to approved vendors of the office's intent to make a cooperative purchase in accordance with this chapter"

Renumber accordingly

2005 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1170

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1170**

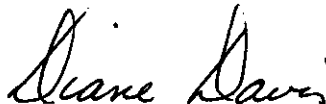
Senate Government and Veterans Affairs

Business and Conference Committee

Hearing Date March 3, 2005

Tape Number	Side A	Side B	Meter #
1	x		1478-3095

Committee Clerk Signature



Chairman Krebsbach opens hearing on **HB 1170**

Relating to the OMB's purchasing services and to competitive, limited competitive, noncompetitive, and negotiated purchases.

(meter #1478, tape 1, side A)

Sherry Neas - OMB, State Procurement Office - See written testimony.

Senator Nelson - Wondered about the impact of JPA's with this.

Neas - Said she was not familiar with them. They will have a section in their rules that defines what is a government entity with whom they can purchase.

Senator Krebsbach - Asked if there is any conflict here that could be a potential problem for the state.

Neas - Replied that the state procurement laws do not have a preference for ND vendors so when they do their requirements so you use any vendor on the list.

Senator Syverson - Questioned on page 4 line 7 and 8. Asked for an overview of the amounts mentioned.

Neas - Said in OMB's guidelines that dollar amount is \$2500 or less. Bidding is not required for anything under \$2500 providing the price is fair and reasonable.

Senator Syverson - Asked if her office is comfortable with that small amount.

Neas - She said that OMB has studied this extensively for the last 2 years to come up with this. \$2500 is a national standard. Middle ground is \$2500 - \$25,000. The agency can get 3 informal bids which can be written or oral. Formal bids start at \$25,000.

Senator Syverson - Asked if there is a time constraint or can you expedite things.

Neas - Replied yes they can. They have an emergency clause. Also can expedite for poor planning. In an emergency you meet the need at any value.

(meter #2478)

Bev Nielson - NDSBA - Thinks this is an important bill for school districts.

Lisa Feldner - Technical Coordinator for Bismarck Schools - In support of this bill. Says that right now it takes 10 man hours every time they bid. Very time consuming. This bill gives them the option to bid or not to bid. They could then buy like equipment every time they purchase.

There are some school districts in cooperative purchasing. They all get together to decide what it is they want to purchase and they let it for bids but for minimum quantities and then they have to warehouse and some things go to waste.

Close the hearing on 1170.

Page 3

Senate Government and Veterans Affairs

Bill/Resolution Number **HB** 1170

Hearing Date March 3, 2005

(meter #2974)

Senator Lee - moved for do pass

Senatror Brown - seconded

Senator Lee will carry.

(meter #3095)

Date: *3/3/05*
Roll Call Vote #: /

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *117D*

Senate **Government and Veterans Affairs**

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *As Pass*

Motion Made By *Senator Lee*

Seconded By *Senator Brown*

Senators	Yes	No
Karen K. Krebsbach, Chairman	<i>X</i>	
Richard L. Brown, Vice Chairman	<i>X</i>	
Judy Lee	<i>X</i>	
John O. Syverson	<i>X</i>	

Senators	Yes	No
Carolyn Nelson	<i>X</i>	

Total (Yes) *5* No *0*

Absent

Floor Assignment *Senator Lee.*

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

REPORT OF STANDING COMMITTEE (410)
March 3, 2005 9:55 a.m.

Module No: SR-39-4042
Carrier: J. Lee
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1170, as engrossed: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends DO PASS (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1170 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1170

House Bill No. 1170

Government and Veterans Affairs Committee
January 21, 2005
Chairman C.B. Haas

Testimony

Good morning, Chairman Haas and members of the committee, I am Sherry Neas of the Office of Management and Budget, State Procurement Office.

Cooperative purchasing is defined as "a procurement conducted on behalf of two or more public procurement entities." Some of the benefits of cooperative purchasing include better pricing by leveraging volumes and avoiding duplication of efforts by state and political subdivisions. The purpose of HB 1170 is to remove some of the existing obstacles to cooperative purchasing between the State and North Dakota political subdivisions.

Current state laws enable cooperative purchasing, but the references to cooperative purchasing are scattered in several sections of N.D.C.C. § 54-44.4. House Bill 1170 is largely a "clean up" bill that moves all the references to cooperative purchasing into a new section entitled "cooperative purchasing." In Section 1, the first three subsections contain language moved into this new section from other sections of the chapter (see Sections 2 and 3). These sections relate to cooperative purchasing between OMB and jurisdictions under the State Board of Higher Education, and the use of GSA and other governmental contracts.

Current procurement law in N.D.C.C. § 54-44.4-02 has a requirement that has made cooperative purchasing between the State and political subdivisions difficult. Current law allows OMB to cooperatively purchase with political subdivisions that "have organized a purchasing group." However, few political subdivisions have organized purchasing groups. The counties have formed a purchasing group through the North Dakota Association of Counties, but there are no similar statewide purchasing groups for cities and educational entities. So, OMB doesn't have a "purchasing entity" with which it can agree to a cooperative purchasing venture.

House bill 1170 removes this obstacle to cooperative purchasing. Section 2 (page 3, lines 23-28) removes the requirement for the political subdivisions to form purchasing groups. Section 1 of the bill, subsections 4 and 5 (page 1, beginning on line 22), enables OMB to simply participate, sponsor, or administer a cooperative purchasing agreement with government entities or nonprofit organizations established on their behalf. It also allows OMB to create open-ended contracts from which the political subdivisions can purchase.

At this time, we are submitting an amendment to HB 1170. This amendment changes the state laws related to Contracts by School Boards, N.D.C.C. 15.1-09-23, to enable school boards make cooperative purchases with OMB over \$25,000. This amendment was coordinated with the ND School Board Association and Edutech.

The OMB State Procurement Office has a very small staff, so we can't be the procurement office for all counties, cities, and educational entities. The OMB State Procurement Office has nearly 100 state term contracts for common-use items. When we pull reports of purchases from state term contracts, we find that political subdivisions and educational entities are purchasing from many of our state contracts. We could potentially realize deeper savings by better management of those cooperative purchases. This year, the State received a lot of Home Land Security dollars, and many counties and cities needed common items. It is unfortunate that we didn't have a cooperative purchasing effort in place to coordinate those purchase requests and establish term contracts for those common items.

Changing the laws to remove the roadblocks to cooperative purchasing is a good first step to enable our counties, cities, schools, institutions under the jurisdiction of higher education, and state agencies to benefit from statewide cooperative purchasing.

This concludes my testimony, and I welcome any questions you might have. Thank you.

Amendment To House Bill 1170

Amend the bill to create a new section:

Page 5, line 20, insert the following:

SECTION 4. AMENDMENT. Subsection 1 of section 15.1-09-34 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-34. Contracts by school boards - Bids - Penalty.

1. Except as provided in this section, the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than twenty-five thousand dollars unless the school board has given ten days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. This section does not apply to contracts for:
 - a. The personal services of district employees.
 - b. Textbooks and reference books.
 - c. Articles not sold on the open market.
 - d. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.
 - e. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
 - f. Building construction projects under chapters 48-01.1 and 48-02.
 - g. School transportation services purchased under section 15.1-30-11.
 - h. Vehicle fuel purchased under section 15.1-09-34.1.
 - i. Heating fuel purchased under section 15.1-09-34.1.
 - j. The purchase of a used motor vehicle, including a schoolbus, motorbus, or van, intended primarily for the transportation of students.
 - k. Cooperative purchases with the office of management and budget under chapter 54-44.4.
2. For purposes of this section, a "used motor vehicle" means a motor vehicle that has been previously owned or leased and which has an odometer reading in excess of eighteen thousand miles [28967 kilometers].
3. A board member who participates in a violation of this section is guilty of a class B misdemeanor.

1170
House Bill No. 1170 (First Engrossment) Testimony

**Government and Veterans Affairs
Chairman K. Krebsbach
March 3, 2005**

Chairman Krebsbach and members of the committee, I am Sherry Neas of the Office of Management and Budget, State Procurement Office.

Cooperative purchasing is "a procurement conducted on behalf of two or more public procurement entities." The benefits of cooperative purchasing include leveraging volume to get better pricing and avoiding duplication of efforts by state and political subdivisions. The purpose of HB 1170 is to remove the obstacles that hinder cooperative purchasing between the State and political subdivisions.

House Bill 1170 is largely a "clean up" bill that moves all the references to cooperative purchasing into a new section entitled "cooperative purchasing." Current state laws enable cooperative purchasing, but the references to cooperative purchasing are scattered in several sections of N.D.C.C. § 54-44.4.

Section 1 of the bill amends the state laws related to Contracts by School Boards, N.D.C.C. 15.1-09-23, to enable school boards make cooperative purchases with OMB over \$25,000. This language was coordinated with the ND School Board Association and Edutech.

In Section 2, the first three subsections contain language moved into this new section from other sections of the chapter. These sections relate to:

- Cooperative purchasing between OMB and jurisdictions under the State Board of Higher Education (see HB 1170, page 4, lines 17-24)
- Use of other government entity's contract (see HB 1170, page 5, line 23)
- Use of GSA contracts and cooperative purchasing agreements (see HB 1170, page 6, lines 15-19)

Current procurement law has made cooperative purchasing between the State and political subdivisions difficult because it only allows OMB to cooperatively purchase with political subdivisions that "have organized a purchasing group." Few North Dakota political subdivisions have organized purchasing groups. The counties have formed a purchasing group through the North Dakota Association of Counties, but there are no similar statewide purchasing groups for cities and educational entities. So, OMB doesn't have a "purchasing entity" with which it can agree to a cooperative purchasing venture. House Bill 1170 eliminates the requirement for the political subdivisions to form purchasing groups (see HB 1170, First Engrossment, page 4, lines 24-29).

The new language enables OMB to simply participate, sponsor, or administer a cooperative purchasing agreement with government entities or nonprofit organizations established on their behalf. It also allows OMB to create open-ended contracts from which the political subdivisions can purchase. Finally, the bill requires OMB to ensure that cooperative purchase agreements are awarded in accordance with state procurement laws and requires notice be sent to approved vendors on the state bidders list. (See HB 1170, First Engrossment, page 2, beginning on line 28).

This bill will not make the OMB State Procurement Office purchase for all counties, cities, and educational entities--the OMB State Procurement Office has a very small staff. However, this bill will enable political subdivisions and schools to benefit from state contracts. The OMB State Procurement Office has nearly 100 state term contracts for common-use items. When we pull reports of purchases from state term contracts, we find that political subdivisions and educational entities are purchasing from many of the state contracts. We could potentially realize deeper savings by better management of those cooperative purchases. This year, the State received a lot of Home Land Security dollars, and many counties and cities needed common items. It is unfortunate that our State didn't have a cooperative purchasing effort in place to coordinate those purchase requests and establish term contracts for those common items.

Changing the laws to remove the roadblocks to cooperative purchasing is a good first step to enable our counties, cities, schools, institutions under the jurisdiction of higher education, and state agencies to benefit from statewide cooperative purchasing.

This concludes my testimony, and I welcome any questions you might have. Thank you.

Sherry Neas
OMB State Procurement Office
701-328-1726

Ver 2

**Amendment
To
House Bill 1170**

Page 1, line 21, delete the period after "state."

Page 1, line 21, insert after "state" the following:

"after consideration of price, contractual terms and conditions, and the availability of competition from approved vendors under section 54-44.4-09."

Page 2, line 9, delete the period after "54-44.4-05." and insert the following,

"and send notice of its intent to make a cooperative purchase to approved vendors in accordance with this chapter."

**Amendment 2
To
House Bill 1170**

SECTION 1. A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

Cooperative purchasing.

1. The office of management and budget shall purchase commodities or services as requested by agencies and institutions under the jurisdiction of the state board of higher education and the legislative and judicial branches of state government.
2. The office of management and budget and the agencies and institutions under the jurisdiction of the state board of higher education, shall make joint purchases of like commodities or services of high common usage when the office of management and budget and the state board of higher education determine it is in the best interest of the state.
3. The director of the office of management and budget or the director's designee may agree to purchase commodities or services under contracts entered into by the United States general services administration or contracts of other government entities if it is determined to be in the best interest of the state **after consideration of price, contractual terms and conditions, and the availability of competition from approved vendors under section 54.44.4-09.**
4. The director of the office of management and budget or the director's designee may participate in, sponsor, or administer a cooperative purchasing agreement with one or more government entities or a nonprofit organization established on behalf of public entities for the procurement of commodities or services in accordance with an agreement entered into between the participants.
5. Cooperative purchasing may include open-ended contracts that are available to other government entities or nonprofit organizations established on behalf of public entities.
6. Before entering into a cooperative purchasing agreement under this section, the office of management and budget shall determine that the contracts were awarded through full and open competition or source selection methods specified in section 54-44.4-05. **Purchases from another entity's contract in lieu of a competitive procurement process must be justified in writing and are subject to the notice requirements of this chapter.**

The director of the office of management and budget or the director's designee may participate in, sponsor, conduct, or administer a cooperative purchasing agreement with one or more public procurement entities, for the procurement of commodities or services in accordance with an agreement entered into between the participants. Public

procurement entity means any political subdivision of this state and any other state, any agency or institution of this state and any other state, any agency of the United States, any Indian tribe recognized as such by the federal government, any organization of public procurement entities, and to the extent provided by law, any other entity that expends public funds for the procurement of commodities and services

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Cooperative purchasing may include open-ended contracts that are available to other public procurement entities.

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Amendment to House Bill 1170

Page 1, Line 23: After "sponsor," insert "conduct,"

Page 1, Line 24: After "more" strike "government" and insert "public procurement"
After the word "entities" strike "or a nonprofit organization established on"

Page 2, Line 1: Strike "behalf of public entities"
After "participants." Insert "Public procurement entity means any political subdivision of this state and any other state, any agency or institution of this state and any other state, any agency of the United States, any Indian tribe recognized as such by the federal government, any organization of public procurement entities, and to the extent provided by law, any other entity that expends public funds for the procurement of commodities and services"

Page 2, Line 4: After "other" strike "government" and insert "public procurement"
After "entities" insert "." And delete "or a nonprofit organization established on behalf of public entities."