

2011 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2025

2011 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

SB 2025

1/6/11

12636

Conference Committee

Committee Clerk Signature

Katie Oliver

Explanation or reason for introduction of bill/resolution:

Bid of threshold concessions.

Minutes:

Chairman Dever called the committee to order & opened the public hearing on SB 2025. The clerk read the title and Tim Dawson of Legislative Council appeared in front of the committee to introduce the bill. Mr. Dawson staffs the advisory commission on Intergovernmental Relations from which the bill came.

Tim Dawson: Section 1 is all clean up and section 2 is the meat of the bill draft which is basically raising the threshold for concession bidding from \$500 to estimated gross sales worth more than \$25,000 annually. Everything else in the bill is also cleanup to the end. Although there are lots of changes it says the same thing.

Chairman Dever: Are there any questions?

Vice Chairman Sorvaag: "Responsible better" what does that mean?

Tim Dawson: The change has been made to go from terms like 'highest bidder' to 'highest responsible bidder' and technically they mean the same thing.

Vice Chairman Sorvaag: So there is discretion there?

Tim Dawson: As long as you can articulate a reasonable reason for choosing a lower bid based on them being more responsible, it's good.

Senator Nelson: That is a pretty big jump. Are you doing that throughout the Code; going to annual sales rather than per event?

Tim Dawson: The language was very unclear. No one knew if it was, estimated sale, projected sales, ect. What they wanted to do was to put down a number that could be figured out. From the testimony we have received they have a pretty good idea.

Senator Cook: Where will this apply? To municipal ballparks, county fairs? Who has to go out for a bid today that won't have to go tomorrow?

Tim Dawson: The impetus for this was for Park & Recreation people and their concession & for their concessions that they have. The first section has exceptions for the North Dakota Fair Association and the Board of County Park Commissioners.

Senator Nelson: At Edgewood in Fargo someone has a food contract for the park & they run it the Park Board doesn't run it.

Vice Chairman Sorvaag: Yes, we did bid it for vendors it was done solely for an estimate.

Senator Barry: Was present law a problem & the reason for this change?

Tim Dawson: There are two problems here: first, it was vague as to what 'deemed worth \$500' meant. The second reason is that they have to bid everything because it's \$500. So everything is almost deemed \$500.

Senator Barry: So if they were going to do anything less than that they could just do what they wanted?

Tim Dawson: Yes it would create less bidding.

Chairman Dever: Does this apply to things like the BAGA art fair on the Capitol grounds? I would imagine that no individual vendor generates more than \$25,000 but certainly more than \$500.

Tim Dawson: Maybe, what I am focusing on is 'in the building or on the grounds'. Yes it is a concession. Is there a difference between granting a concession for any café, when I think of the word concession does that involve selling booths for whatever you want to do vs. taking a cut. It appears to me that the Capitol would have to follow that as well.

Senator Nelson: Does that cover things where they sell things in the Memorial Hall.

Tim Dawson: That is where I was hung up. You are renting a space to do what you want versus setting up a formal concession.

Chairman Dever: Maybe our interest is if the entity charges for the use of the space or not. And the question for profit or not for profit? In the street fair in downtown Bismarck, some of the vendors are for profit and some of them are non profit and they talked at one time about going to all for profit vendors. Then the for profit vendors complained that the non profits were not paying sales tax.

Dana Shar: Education Director for the North Dakota Recreation & Park Association at this time would like to introduce Ron Meritt who is on the NDRP Board of Directors to provide our testimony in support of this bill.

Ron Meritt: See attached testimony #1.

Chairman Dever: So currently any concession that is anticipated to generate more than \$500 do you put it out for bid?

Ron Meritt: Well at our soccer complex in Minot, there is a spring season, a summer program, fall program, high school games & youth program games. The concession might be open 15 or 16 times during the whole summer season and the values is most likely more than \$500 but it is virtually impossible to bid that out and get anyone to even look at it. So it is a dollar amount for seasonal facilities and it is way too low. We have tried to pool those together with other facilities where there is a concession area. From that standpoint it would probably help for a few of those areas.

Vice Chairman Sorvaag: To follow up as to what happens in Fargo, our Divots restaurant we bid because it is larger. Most other concessions the Park District went to running ourselves as it was too difficult to bid them out and it is hard to find people to run them anyway.

Senator Barry: Is there ever a problem in the reverse where people argue over the concessions?

Ron Meritt: It would make us happy but that has not been the case in many years.

Senator Barry: If that were to happen would?

Ron Meritt: If we had more than one person interested we would have an informal bid and the highest bidder would. But that has not happened.

Vice Chairman Sorvaag: We have Mickelson Ball Park, the park district runs that one but the Park Board runs all the softball complexes. Divots restaurant we advertised a full three weeks and we had one vendor.

Senator Nelson: What do you do with things like Art in the Park where people come in & sell. Do you take a cut at all? You don't just give them the space.

Ron Meritt: Instead of a fee for the space they give us a percentage of their profits.

Vice Chairman Sorvaag: During Christmas in the Park & we tried to do straight fee and learned quickly that it was not wise.

Chairman Dever opened the floor to opposition and neutral positions on the bill and no one was present to speak on those positions so the Chairman closed the public hearing on SB 2025. Senator Nelson made a motion for a Do Pass recommendation with a second by Vice Chairman Sorvaag.

Chairman Dever: It seems to me that \$25,000 just makes it a little easier since you don't have to decide what fits and what doesn't at \$500.

Senator Cook: There are times when I am sure there is competition for a concession stand and it might very well be under \$25,000 there are non for profit clubs they have a little

competition as to who gets the bid or not. I don't know if it has to be a large account to create the competition. It might be an event where there are only 10 games a year and that is all that the nonprofit wants to work.

Chairman Dever: And the bill doesn't say that they can't bid it at \$10,000

Vice Chairman Sorvaag: That is what I was going to say, too. There is an interest to do what is right by the local boards and communities as well. If there is competition you are going to do it if groups do but that really relates to parks. And you are always aware of not being too favorable to one group over the other but it just really clarifies a lot.

Chairman Dever: I would imagine, too, that when you put those bids out the question about highest responsible bidder that there are different considerations that go into the bid package not just how much they are going to pay.

Vice Chairman Sorvaag: Yes but, like running a restaurant you want someone you are going to be comfortable with.

Senator Barry: Did anybody see a downside? What would the downside be? What makes it a better bid? Is it strictly the dollar value or is it the product?

Vice Chairman Sorvaag: It is the day and age and the dollar amount that things are done and can only speak for the Fargo Park District but we still bid out things that are \$5,000 or so. They don't necessarily go through the formal bid process but you can still request multiple bids but not have to go through the 3 week advertising and traditionally we expect our staff to ask for multiple bids if they know vendors that could do it. It's just you don't go through the advertising process.

There was no further discussion, role was taken and passed on a 7-0 count with Vice Chairman Sorvaag carrying the bill to the Senate floor.

2025

Date: 1-19-11
Roll Call Vote #: 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Government and Veteran's Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Nelson Seconded By Sorvaag

Senator	Yes	No	Senator	Yes	No
Chairman Dever	/		Senator Marcellais	/	
Vice Chairman Sorvaag	/		Senator Nelson	X	
Senator Barry	/				
Senator Cook	/				
Senator Schaible	/				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Do Pass

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

REPORT OF STANDING COMMITTEE

SB 2025: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
SB 2025 was placed on the Eleventh order on the calendar.

2011 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2025

2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

SB 2025
March 3, 2011
14918

Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Bid threshold of concessions

Minutes:

Chairman **Bette Grande** opened the hearing on SB 2025.

Tim Dawson, Legislative Council, Staff the advisory commission in intergovernmental relations, appeared to give information on this bill. The bill is very simple. It relates to bidding for concessions and increases the threshold for public bidding from \$500 to \$25,000. Section 1 is cleanup and the meat of the bill is on Page 1, Lines 21-24. It says if a concession has estimated gross sales worth more than \$25,000 annually an advertisement for bids for the concession must occur. The previous standard was deemed worth more than \$500 and no one knew what that meant because it could have been estimated gross sales, actual sales. There was no standard in the previous law and it didn't have a time period as well so no one knew for sure exactly what the \$500 was for, which time period. As matter of clarity, the bill is much clearer than the previous law. The policy decision is the amount. The next page is all clean up as well.

Chairman Bette Grande: How were they doing it in the past if they didn't know what the \$500 stood for?

Tim Dawson: I don't know how they were doing that. I would guess estimated gross sales made the most logical sense and that is why we put it in after hearing testimony. I would assume almost everything was over \$500. I think they used the estimated gross sales.

Rep. Lonny Winrich: Even the \$25,000 doesn't sound like a huge number. Do you know are there concessions that would not have to be submitted for competitive bids under this that are currently in existence?

Tim Dawson: Yes. There are a lot of them like softball tournaments. You rent a spot for whatever the event is. This would mainly be applied for professional concessions like golf courses, things that are open more often than just a few weekends for some sporting event.

Rep. Glen Froseth: Is there a definition for responsible? Is there some kind of a threshold that you can define responsible to?

Tim Dawson: In this bill that language was changed to make it consistent with the use of those terms throughout the code and those terms are the subject of the Attorney General's opinions and they are fairly clear as to what those terms mean.

Dana Schaar, ND Recreation and Park Association, appeared to introduce one of their members of their board of directors, Ron Merritt.

Ron Merritt, North Dakota Recreation & Park Association Board Member and Director of Minot Park District, appeared. **Attachment 1.** We have several concessions throughout our system where there is no way you are even going to get a bid even if you do advertise it. Our soccer complex is open 14 or 15 times during an entire season from spring to fall. We have other areas where you have a baseball tournament or something like that where you don't have enough even with the whole system put together to get someone to bid on it. The tournament schedule might come out in the spring. They are bidding on a concession where they don't even know for sure how many times it might be open. There is not enough volume. At our golf course we have bid that out probably for the last eight or ten years. Almost every year we bid it out, we get one bidder. They will come in. They will maybe make a small profit. Some of them have taken losses during the season. We kind of struggle to get people to bid even on that one. This is something that would raise the limit up. Our golf course, for example, gross sales are going to be way over \$25,000. The \$500 is a burden on us to put these out for bid and end up with no one bidding on it every year.

Chairman Bette Grande: In Fargo they had this big squirt international tournament this past weekend. We had 126 teams from across the United States and Canada. In some of the rinks that are owned by our Park and Rec., they ran the concessions. In other portions they might have just said flyers you get to run that rink's concessions. How does that come into a bid process? As far as I remember, our hockey rinks concessions are usually run by Park and Rec. employees. That is not the kind of bid you are talking about? It is if a separate vendor wants to come in and run?

Ron Merritt: Correct. We do the same thing in Minot. We have some user groups that are running concessions that are concessions that if you bid them out you are not going to get a bidder. They may be provided as a fundraising effort the building for the concession itself. We allow them to run those. They are using volunteer labor and any profit they make is coming back to us in the form of a user fee. I know some of them, even in our system, we just run them on our own instead of trying to bid them out. Some of them we would like to bid out. We know we can't find a bidder so we run it or else a user group runs it so that you have the service provided.

Chairman Bette Grande: This is going to affect whether one of the groups wants to—you know the cheerleaders need to make some money and they want to run the concessions at the basketball game for the next three games—it is not that type of thing? They can still do that kind of thing? It is not a bid process they have to take and go a part of?

Ron Merritt: I don't know specifically. I suppose if you had a vendor out there that said I think I could make \$25,000 or \$30,000 for this tournament or this event, they might approach and want to bid on it. The example that you gave most likely the volume is going

to be way less. The gross sales will be way less than that so you would just be able to allow them to do that.

Chairman Bette Grande: In the international tournament when you are talking that mass volume for five days and it is mass volume that they are doing. You are doing just about everything but sleep at the arenas with your teams during that time frame. They are probably turning a volume so if Park and Rec. doesn't want to run it, do they have to bid it then at that point since they know the volume is going to be fairly high?

Ron Merritt: I couldn't with certainty answer that. It would have to be interpreted based on how this is written. In Minot itself we would have to make our best guess as to what the volume might be and most likely there aren't going to be any vendors that are going to bid on it anyway but if it is going to be a big national tournament or something where you don't have your own concession or a setup for it, it might be something that we bid out and see what we got.

Rep. Karen Rohr: It isn't a first come, first serve basis then? If somebody approaches you and says they want that spot, you wouldn't give it to them right away? You would wait to see what the volume potentially would be and then look for a bidder?

Ron Merritt: If we are going to have an event like that, we would know well in advance. If it is a big tournament, you would probably bid on receiving the tournament in your community six or eight months in advance so you would have time to set something like that up. Say baseball for example. If we have a big baseball tournament, there is already a concession vendor there. The baseball boosters run that one. It is the same scenario with the other ones. They would get luck that year and have a big volume, but they would be in place for the entire season.

Rep. Bill Amerman: I am trying to separate who belongs to your organization which must be different than the board of county park commissioners because they don't have to do any bidding process. How is this working?

Ron Merritt: County park boards and also the state fair are currently exempt from this so they do not have a bidding requirement to follow. This organization is the park districts across the state of North Dakota and all political subdivisions, schools, the state itself if that helps clarify.

Rep. Bill Amerman: Your NDRPA has to let out bids? Can you give me a little information on your organization?

Ron Merritt: The organization I am here representing is North Dakota Rec. and Park Association. We are made up of park districts across the state, large and small. I am here representing all the members across the state in our organization but also specifically I am the director of the park district in Minot. I can give you the best examples from what we do.

Vice Chairman Randy Boehning: The \$25,000 bid seems to be your goal. What happens if they reach \$35,000 and it wasn't bid?

Ron Merritt: At the point you would have to make a good faith effort to make an estimate based on past usage, what the volume might be. At the beginning of the year you would make that determination and as far as this goes, if they made a better volume than that you would have to reassess it the following the year but you had already made a commitment to them for that initial year.

Rep. Glen Froseth: Where is that exemption listed? It was pointed out to him. Lines 15-16.

Vice Chairman Randy Boehning: Are you anticipating more the park boards and cities running the concessions businesses then?

Ron Merritt: First of all our bid limit currently for other things, if we bid out on a vehicle or contract for other services, is \$25,000. We are trying to get this up to the same level as any other contract or item that we bid on. Personal preference for the Minot park district is that we would not run any of our concessions if we could find people to do them, but at the same time we can take the option of running them without having to worry about the bid process. That would be our prerogative. If we have the \$500 limit, we have to bid everything out no matter what it is and basically it is a feudal attempt to find someone to take the kind of volume that we are talking about. We are going through a bid process basically for no reason at this point because you are not getting bidders. That has been that way for a long time.

Vice Chairman Randy Boehning: When you work with the small groups, do you help them find the product as well? Are you able to give them discounts on pop, chips, and those sort of things?

Ron Merritt: We have over the last few years met with all of our user groups that are running them and have offered to do that. We do whatever we can to make sure that this works. The user groups run them with volunteer labor if they are running one and any profit that they make ends up getting paid back to us as a user fee for the facility that they are using. It is to our benefit to help them out if we can, but it is also to the benefit of the people that come to visit who want that as a service provided. We have a couple of concessions, one that we run at basically a break even for the year. We are running it because people want it even though we are not making a bunch of money. Another one we run we make a small profit on at the end of the year with a lot of time and effort and a lot of hard work.

There was no one opposed or neutral to this bill.

The hearing was closed.

Rep. Mark Sanford made a motion for a Do Pass.

Rep. Ron Guggisberg seconded the motion.

DO PASS, 10 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING. Rep. Ron Guggisberg is the carrier of this bill.

Date: 3-3-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2025

House GOVERNMENT AND VETERAN AFFAIRS Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Sanford Seconded By Guggisberg

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande	✓		Bill Amerman	✓	
Vice Chairman Randy Boehning		✓	Ron Guggisberg	✓	
Glen Froseth	✓		Lonny Winrich	✓	
Karen Karls	✓				
Lisa Meier					
Gary Paur	✓				
Karen Rohr	✓				
Mark Sanford	✓				
Vicky Steiner					
Roscoe Streyle	✓				

Total (Yes) 10 No 1

Absent 2

Floor Assignment Guggisberg

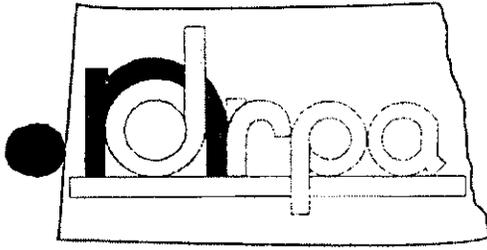
If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2025: Government and Veterans Affairs Committee (Rep. Grande, Chairman)
recommends **DO PASS** (10 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING).
SB 2025 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2025



NORTH DAKOTA RECREATION & PARK ASSOCIATION

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**Testimony of Ron Merritt, Legislative Chair for the North Dakota Recreation & Park
Association**

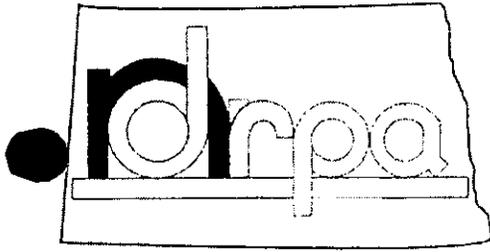
**To Senate Government and Veterans Affairs Committee
In Support of SB 2025, Concession Bidding
Thursday, January 6, 2011**

Chairman Dever and Members of the Committee, my name is Ron Merritt, and I am legislative chair for the North Dakota Recreation & Park Association (NDRPA) and director of the Minot Park District. NDRPA represents more than 500 members across the state, including park board members and park district staff, and works to advance parks and recreation for quality of life in North Dakota. I am here on behalf of NDRPA in support of Senate Bill 2025.

Current law requires political subdivisions as well as the state to bid out all concession contracts for cafes, restaurants and confectionaries on public buildings and grounds worth more than \$500, an amount that has not been increased in more than 20 years. SB 2025 simply raises the concession bid requirement to \$25,000, which is consistent with bidding requirements for other park district contracts, such as equipment. Further, the bill defines the amount as the annual estimated gross sales of the concession, clarifying current law which specifies the amount only as "deemed worth more than \$500," which is unclear and can be interpreted in many ways.

We urge a do pass on SB 2025. Thank you. I will do my best to answer any questions.





**NORTH DAKOTA
RECREATION & PARK
ASSOCIATION**

Attachment 1
2025

PO Box 1091 • Bismarck, ND 58502
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**Testimony of Ron Merritt, North Dakota Recreation & Park Association
To House Government and Veterans Affairs Committee
In Support of SB 2025, Concession Bidding
Thursday, March 3, 2011**

Madam Chair and Members of the Committee, my name is Ron Merritt, and I am a board member of the North Dakota Recreation & Park Association (NDRPA) and director of the Minot Park District. NDRPA represents more than 500 members across the state, including park board members and park district staff, and works to advance parks and recreation for quality of life in North Dakota. I am here on behalf of NDRPA in support of Senate Bill 2025.

Current law requires political subdivisions as well as the state to bid out all concession contracts for cafes, restaurants and confectionaries on public buildings and grounds worth more than \$500, an amount that has not been increased in more than 20 years. SB 2025 simply raises the concession bid requirement to \$25,000, which is consistent with bidding requirements for other park district contracts, such as equipment. Further, the bill defines the amount as the annual estimated gross sales of the concession, clarifying current law which specifies the amount only as "deemed worth more than \$500," which is unclear and can be interpreted in many ways.

It is often a struggle for park districts to find bidders for concession contracts. This is due in large part to the seasonal and intermittent nature of concessions, particularly in North Dakota. In some cases, concessionaires are dependent on weather. For example, a year with a late spring and rainy summer can result in fewer people on the golf course, which would negatively affect a concessionaire. Raising the concession bid requirement to \$25,000 would help park districts better manage concessions at their facilities by allowing them to work with user groups and other entities for small concessions without going through the significant bid process, ultimately benefiting park district users who expect reliable concessions at tournaments, special events and recreation facilities.

We ask for your support for a do pass recommendation on SB 2025. Thank you.

