

2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2265

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2265
January 25, 2011
Job Number 13348

Conference Committee

Committee Clerk Signature

Eve Leibel

Explanation or reason for introduction of bill/resolution:

Relating to work activity center contracts

Minutes:

Attached Testimonies

Chairman Klein: Opened the hearing.

Senator Krebsbach: Sponsor of the bill. She stated that the words, Digital Imaging, needed to be added for preference bidding, for the work activity centers in North Dakota. This will broaden the opportunities for the rehabilitation of the mentally and physically disabled. In trying to bring a few changes it led to more details than they anticipated.

Sherry Neas, Director of the OMB Central Services Division: Testimony Attached (1). Said that there is a list of products produced by and/or services provide by work activity centers in the state that are part of the NDACP. (Attached).

Chairman Klein: Stated that one of the issues of trying to move state products ahead of the competitive process they have run into issues. He asked if all the details and issues that were concerns, were worked out.

Sherry: Generally speaking most states have some kind of programs that encourage purchasing from people with disabilities. The federal program mandates that certain service be purchased from people with disabilities. She continues to explain laws that are in place already.

Chairman Klein: Asked if she was okay with the amendment?

Sherry: Understands the reason for the amendment is because of the wording. She explained the concerns they had that triggered the amendment.

Barbra Murry, Executive Director of the North Dakota Association of Community Providers: Written Testimony (2).

Senator Nodland: Asked if there were community providers or work centers that are looking for work.

Barbra: Yes that is right. There are more than thirty providers who serve people in ninety communities and want the services to be as community based as possible. They are having trouble finding adequate employment for the disabled.

Terry Peterson, Rehab Services Inc, Social Security Benefits Planner: Testimony Attached (3).

Discussion and questions

Vickay Gross, Program Coordinator and Advocate with the Protection and Advocacy Project: Testimony Attached (4). Neutral testimony and also an amendment attached.

Senator Schneider: Asked for the definition of integrated settings.

Vickay: Would like to see an equal portion of people with and without disabilities, so they are learning from their co-workers and are challenged. Continued to talk about how important she feels the integrated setting is for the disabled.

Senator Laffen: Under the existing work activity centers how many would have to change to that kind of employment pattern to qualify?

Vickay: Thinks there would have to be some shifting in several of them, doesn't really know.

Senator Larsen: Are the workers currently being given benefit for housing, if they weren't working at all?

Vickay: People with disabilities do have to depend on social security benefits, housing benefits, food stamps, etc. Work activity centers get paid by the developmentally disability waiver to provide though vocational services. The goal is to help these people achieve a higher level of being self-sufficient. Once they start increasing their income they lose the benefits, which is a good thing.

Questions continued about the disabled and how they may transition and also about Vickay's amendment.

Veronica Zietz, Executive Director at the Ark of Bismarck: Testimony Attached (5).

Chairman Klein: Asked Sherry another question about the bill and the amendment and asked her to visit with Barbra and to work it through so it will work with all the programs.

Sherry: Yes, she would like that opportunity. The first amendment opens it up to, for profits, which deviates from the original law. The set aside they have now is only for non-profits work activity centers. Motivation is different and not sure about the compensation issue.

Chairman Klein: Asked Sherry again to work with whoever wants to get together to solve these issues. It must work for the OMB if it is going to work for the State. Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2265
February 14, 2011
Job Number 14475

Conference Committee

Committee Clerk Signature

Eva Libelt

Explanation or reason for introduction of bill/resolution:

Relating to work activity center contracts

Minutes:

Amendment and Vote

Chairman Klein: Called the meeting to order on Senate Bill 2265. Recalls for the committee what the bill is about. Talked about the discussion they had and how they worked together to get an amendment they would all agree on. A statement of purpose was put into the bill. The language is what everyone has agreed upon, including OMB.

Senator Schneider: Asked if the ARK and Protection of Advocacy were both on board.

Chairman Klein: Yes and the Community Providers.

Senator Schneider: Moved an adoption of the Klein amendments.

Senator Larsen: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Andrist: Moved a do pass as amended.

Senator Schneider: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Schneider to carry

February 10, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2265

Page 1, line 1, replace "a" with "two"

Page 1, line 1, replace "section" with "sections"

Page 1, line 2, after the first "to" insert "a statement of purpose and"

Page 1, line 2, after "reenact" insert "sections 25-16.2-01 and 25-16.2-03, subsection 1 of section 54-44.4-05, and"

Page 1, line 4, after "to" insert "work activity centers and"

Page 1, after line 5, insert:

"SECTION 1. A new section to chapter 25-16.2 of the North Dakota Century Code is created and enacted as follows:

Purpose.

It is in the public interest to advance employment opportunities to individuals with disabilities so that those individuals may acquire job skills and training and gain greater independence and quality of life. This state is committed to promoting self-sufficiency, integrating individuals with disabilities into our communities, and maximizing the earning potential of individuals with disabilities.

SECTION 2. AMENDMENT. Section 25-16.2-01 of the North Dakota Century Code is amended and reenacted as follows:

25-16.2-01. Work activity center - Definition.

As used in this chapter "work activity center" means a facility, licensed by the department of human services, which is located in the state and operated by a nonprofit corporation organized for the primary purpose of employing and providing rehabilitative activities for physically handicapped, developmentally disabled, and chronically mentally ill persons individuals with physical disabilities, developmental disabilities, or chronic mental illnesses.

SECTION 3. AMENDMENT. Section 25-16.2-03 of the North Dakota Century Code is amended and reenacted as follows:

25-16.2-03. Contract requirement.

Any contract awarded pursuant to this chapter must be in writing and must be made available by the purchasing party to any person upon request. The contract must include the purchase price, the quantity of product commodity or service purchased, and the time period for which the product commodity or service will be provided."

Page 1, after line 11, insert:

"SECTION 5. AMENDMENT. Subsection 1 of section 54-44.4-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in ~~sections~~section 44-08-01 and 25-16.2-02, chapter 25-16.2, and in this chapter, purchasing contracts must be awarded through a competitive bidding process to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability, unless it is determined to be advantageous to the state to select a contractor through a competitive proposal process using other or additional criteria. The procurement officer may reject any or all bids or negotiate for a lower price with a successful bidder. Each bid received, with the name of the bidder, must be recorded. The office of management and budget may enter into term contracts for the acquisition of commodities or services and may make multiple awards for term commodity or service contracts when it deems a multiple award to be in the best interests of the state. All bids received under this chapter pursuant to a competitive sealed bid are exempt records under subsection 5 of section 44-04-17.1 until the date and time the bids are opened."

Renumber accordingly

Date: 2/14/11
 Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2265

Senate Industry, Business and Labor 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 Senator Schneider Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 2/14/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2265

Senate Industry, Business and Labor 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 Senator Andrist Seconded By Senator Schneider

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Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Schneider

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

REPORT OF STANDING COMMITTEE

SB 2265: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2265 was placed on the Sixth order on the calendar.

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Page 1, line 2, after "reenact" insert "sections 25-16.2-01 and 25-16.2-03, subsection 1 of section 54-44.4-05, and"

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considering conformity with specifications, terms of delivery, and quality and serviceability, unless it is determined to be advantageous to the state to select a contractor through a competitive proposal process using other or additional criteria. The procurement officer may reject any or all bids or negotiate for a lower price with a successful bidder. Each bid received, with the name of the bidder, must be recorded. The office of management and budget may enter into term contracts for the acquisition of commodities or services and may make multiple awards for term commodity or service contracts when it deems a multiple award to be in the best interests of the state. All bids received under this chapter pursuant to a competitive sealed bid are exempt records under subsection 5 of section 44-04-17.1 until the date and time the bids are opened."

Renumber accordingly

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2265

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2265
March 14, 2011
Job #15374

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A statement of purpose and work activity center contracts; work activity centers and procurement of services by state agencies

Minutes:

Chairman Keiser: Open the hearing on SB 2265.

Senator Karen Krebsbach, Co-Sponsor, Minot: Introduces SB 2265. This bill was supposed to be simple. Just add some wording to allow digital imaging services for the activity center people. I think we have a workable solution for all of the entities.

Sherry Neas~Director of the OMB Central Services Division:
(See attached testimony 1).

The amendment added a purpose statement that explains the purpose of this chapter of law that is to further employment opportunities for people with disabilities.

Section 2 amends the definition of "work activity center" and adds some quality assurance by defining that "work activity center" means a facility that is licensed by the Dept. of Human Services. It is reworded to improve and modernize the language.

Section 3—the existing law talks about products only. Work activity centers do provide commodities and services.

Section 4 is the original language that creates the authority for government entities to purchase from work activity centers without obtaining competition provided the prices are reasonable.

Section 5 leaves that chapter of law and amends state purchasing law. This is the section in state purchasing law that deals with noncompetitive purchases. It amends in line 14 of page 2 to reference the whole chapter instead of simply the construction stake section.

Section 6—within that section of state procurement law there is a list of things that OMB must promulgate rules related to, and a list of goods and services and sources from which noncompetitor or negotiated purchases may be made.

Vice Chairman Kasper: Page 2, line 9, what is and who determines "fair market price"?

Sherry Neas: Fair market price would be determined by the purchasing agency. It would be determined in comparison to what the going rate is for goods and services based on what is available in the market.

Vice Chairman Kasper: How does a political subdivision determine fair market price if they don't get any bids?

Sherry Neas: This bill has that language and it's implied that the purchasing agency will make that determination. But it is not specific how they make that determination.

Vice Chairman Kasper: If you look at line 11, "without obtaining competition." That implies to me that if they don't ask for bids, because someone has determined fair market price and they don't even know what fair market price is. That's a dilemma and discriminatory across the private business sector that might be able to offer the same product at a lower price but they aren't even asked.

Sherry Neas: This language is similar to the law that is related to Roughrider Industries.

Vice Chairman Kasper: How do we determine what fair market price is?

Sherry Neas: Within OMB, in the executive branch we have a process where there is a justification that includes how you arrive at this price. The latter Section 54-44.4-05 & 06, OMB's promulgating rules, we have existing procedures that address those. There is no detail in here that would address how political subs determine fair market price except that it is implied that it needs to be at fair market price.

Chairman Keiser: Under current law, if it is over a certain value it has to be bid and if they are a low bid they get it. If they are not low bid they don't get it.

Sherry Neas: Under current law and under normal purchasing procedure, there are tiered levels that require competition. State purchasing laws do have a section that identifies circumstances under which non-competitive and negotiated purchases are authorized. That does include when you purchase from correctional institutions and government entities. This would place those work activity centers that are licensed through Human Services on an even playing field with government entities and correctional facilities.

Representative Gruchalla: Special Olympics and other agencies are switching terms. They are trying to include the term "intellectually disabled." How would that play into this?

Sherry Neas: We didn't look specifically at that term. We did tie back this definition to the Department of Human Services. They have a chapter of law that talks about the entities being licensed. There are people here from the Department of Human Services that can speak about the language used related to licensing.

Representative Boe: Are you familiar with what ADA status is for the Federal Government?

Sherry Neas: Yes. I was formerly a federal contracting officer about 15 years ago.

Representative Boe: This sounds like that, you file for an ADA status and then you do the no bid contracts.

Sherry Neas: When we were looking at other state laws, there is a qualification process where nonprofit entities are certified. It is a network of community-based work activity centers. There is a regulatory entity that provides quality assurance with regard to the goods and services being produced and facilitates contract negotiations. The federal government has that and some states have that too. When we were working with the sponsors of this bill, we looked at what it would take to implement this program. In the states that did have the qualifications process they had dedicated staff. You will notice that there is no fiscal note. For this language we looked at the laws of California and Oregon. They had programs that they were able to implement with minimal staff. OMB has existing authority to do state contracts that are made available to political subs. There is potential with this enabling legislation to have OMB act as that entity that establishes these contracts.

Representative Boe: You get that status for a certain time frame and then it expires. Would that be something we could incorporate into this bill so you can get this status but after a certain time you are expected to compete.

Sherry Neas: The way this bill is set up now, the equivalent of the ADA status would be if you are a work activity center licensed by Human Services, then you would be eligible to receive this purchasing preference. If you are one of those entities licensed, you could market those goods and services to government entities if there was a desire to do something with regard to a qualification process. That is something we would have to amend to the bill or establish procedures.

Representative Boe: It says on page 2, line 9, "services are produced or provided by a work activity center." That doesn't limit to the product that they specifically produce. They could be a contracting agent and contract that at a no bid to government agency. It seems to be expanding farther than what I thought when I first read the bill. Would that be accurate?

Sherry Neas: It could be interpreted as that. It does say produced or provided. The potential would be there that they could be a reseller.

Representative Kreun: To clarify, Chapter 25-16.2, it is adding a new section to that chapter on lines 8, 9, 10 and 11. Is that correct?

Sherry Neas: That is correct. The purpose statement would be added. Sections 2 & 3 would amend the existing sections and a new section.

Representative Kreun: Also, that would be added in the exceptions as well. I'm confused on the bidding process that was brought up earlier because there are exceptions to the bidding process. But if it indicated there is a purchasing contract, it has to go through

the bidding process. Where is that differentiation? Where is that included in this language?

Sherry Neas: The question about bidding was to contrast what normal bidding procedures are. This would fall under a circumstance under which competitive bidding is not required. The contract language is language that was in the existing law but has no requirement related to competitive bidding. The existing section though when you look at the direct bidding on work activity center was a set-aside. There is a competitive process but the contract has to be awarded to a work activity center unless no work activity center bids. That one is commodity specific.

Representative N Johnson: On page 2, line 9, if we would change the language to "if acceptable commodities produced or services provided by a work activity center." Would that address the concern where you couldn't resell a product that you buy here and put it out? It would have to be a product produced by the work center or a service provided by the work center. Would that work?

Sherry Neas: At a glance that's clarifies it.

Vice Chairman Kasper: What is happening out there and why was this bill introduced? Are these work services not having any business?

Sherry Neas: Work activity centers need to compete with everybody else against private industry. The initial effort was an interest to increase to include imaging and digital scanning. When you look at the list of 29 providers, there are just a handful of industries that provide highway construction. They are only getting one bid from a work activity center. There are not that many work activities centers. It is the same with digital scanning. There is a law here that intends to benefit work activity centers. But it is benefiting such a small portion of the centers. The federal program and the other states, the intent is to create a program that enables work activity centers with industry to have another market or make the government market more accessible to them.

Vice Chairman Kasper: Are the work centers busy now? What is the volume of work under the current law?

Sherry Neas: I would defer that to those testifying after me.

Vice Chairman Kasper: They would also be able to tell us about the number of contracts that are being won on a competitive bid compared to this bill?

Sherry Neas: Yes.

Chairman Keiser: Further questions? OMB provides the regulatory oversight on the bidding process. How do you see the department providing regulatory oversight over this process?

Sherry Neas: That section of law requires OMB to promulgate rules related to circumstances under which noncompetitive and negotiated purchases can be made. If this

bill is successful, we would need to address the circumstance of contract with work activity centers.

Chairman Keiser: I understand you promulgate the rules, how would you have oversight? Would they come under annual audits or be put in the normal cycle of audits by the auditor as a subdivision of OMB?

Sherry Neas: The way I envisioned it, you would have to start first by getting the list of the licensed work activity centers, identifying what commodities and services do they produce that the state and political subs could use, and then do a process of quality assurance, and then look at price so that it is fair and reasonable. OMB does that routinely. Our mission is to make sure goods and services are at a fair market price. We negotiate any price changes.

Chairman Keiser: Anyone else here to testify in support of SB 2265.

Terry Peterson~Rehab Services, Inc-Minot: (See attached testimony 2).

Vice Chairman Kasper: On page 2, line 10, this bill deals not only with state entities but also political subdivisions so we are going beyond the state?

Terry Peterson: That would be correct.

Vice Chairman Kasper: At your center right now, how many employees do you have and how busy are you? What is your capacity compared to what your capacity could be?

Terry Peterson: Ours is a private nonprofit. We do community based competitive employment. If we see a need in the community, we can meet that need but use it as an employment opportunity for people with disabilities. We also provide employment services for people with disabilities. How many do we employ with a disability. Last month our total was 12 that were above minimum wage. We have a few in internship.

Vice Chairman Kasper: How many total employees do you have? Or are all of your employees the 12 that are disabled?

Terry Peterson: We have 10 or 12 different programs. They range from addiction services to assisted living. We have 100-150 employees. A lot of the employees aren't directly involved with disability services.

Vice Chairman Kasper: If this bill were to pass, would you use only disabled employees to provide services or would you take your nondisabled employees as well as disabled to provide services in areas that you might obtain a bid where there is no competition?

Terry Peterson: The intent of the bill is to increase employment opportunities for people with disabilities. Anything we provide would be done by individuals with disabilities.

Vice Chairman Kasper: It is your position that no non-disabled worker would ever get involved in a bid that you received to provide service for that contract. It would all be done by disabled persons.

Terry Peterson: Define involvement. We have an executive director, vice president, myself—do we help?

Vice Chairman Kasper: Let's say you have a \$400,000 contract. You have 12 disabled employees. Are you going to take some of your other workforce to provide these services?

Terry Peterson: No, if we see a need for increased work, we will employ people with disabilities.

Vice Chairman Kasper: What if you couldn't find them.

Terry Peterson: With 40% unemployment, there is a need there. If it got to a point where we could not provide the commodity or service we would default on the contract.

Vice Chairman Kasper: What areas would you like to expand into?

Terry Peterson: Scanning is a unique industry that lends itself well for all degrees of disabilities. We could do snow removal, carpet cleaning, etc. If there is a need, we could pursue it.

Vice Chairman Kasper: Those services are being provided by other for-profit businesses.

Terry Peterson: That is correct.

Representative M Nelson: What isn't working about the bid system that you would gain from this?

Terry Peterson: The advantage is to those purchasers. We have a very underemployed population. If we can make the procurement slightly more advantageous to these entities that employ people with disabilities . . .

Representative M Nelson: Is the bid system for too short a period of time? Would a contract like this be an ongoing relationship? What is it that is the problem?

Terry Peterson: I think both are problems. You get locked into one business or service, and do it for ever. To really work at that 40% level, these work activities centers need to expand. Getting locked into one or two products or services is an issue. A lot of agencies don't considered providing employment opportunities for people with disabilities. This would increase exposure for these services or goods.

Vice Chairman Kasper: What is your starting wage and highest wage for any disabled person?

Terry Peterson: Our lowest wages is the North Dakota and federal minimum wage. We do not employ anybody at subminimal wage. The highest wage is \$11.

Vice Chairman Kasper: Do disabled people have benefits through Medicaid/Medicare so you don't have to provide benefits?

Terry Peterson: If the individual is working, we have services requirement for health insurance and they can access that. If it is part time, and they don't qualify, if they receive SSI, Supplemental Security Income, they are eligible for Medicaid. If they are on SSDI (Social Security Disability Insurance) they are eligible for Medicare after a two-year waiting period. A vast majority of people we serve are on either or both.

Vice Chairman Kasper: If you get the free benefit, you don't need to pay for it.

Terry Peterson: If they meet our qualifications as an agency to where we would provide that health insurance with the minimum hours of 32, then we would be providing that for them.

Representative Nathe: How many contracts do you bid on per year? Who are some of your competitors for those bids?

Terry Peterson: We don't bid on a lot. We go to banks and set up the shred boxes, law firms need scanning. We bid on one state contract and didn't get it.

Representative Kreun: If the need is there, and the availability of labor is there, why wouldn't that be an opportunity to go out there and bid and do the work without any legislation and be competitive?

Terry Peterson: It's a more difficult hill to climb initially. It is difficult for non profits to take that risk. You also have the stereotype of people with disabilities.

Representative Kreun: Just from past experience, a project like janitorial, doesn't have that attitude. They are glad to have those individuals and the bid process and have a good job done. There are usually coaching facilities that go with it so they are not left alone. They actually make more money than if you are confined to a price that is given to you. Is it really necessary to have this bill in order to reduce the labor force from 40% to 20% of unemployment?

Terry Peterson: It's not a magic bullet.

Representative Kreun: Have you tried that method out in the public sector?

Terry Peterson: Yes, 29 workers have to a limited extent.

Chairman Keiser: Further questions? Anyone else here to testify in SB 2265.

Barb Murry-Exective Director of the North Dakota Association of Community Providers: (See attached testimony 3).

Chairman Keiser: Currently these centers are funded in part by grants from DDD?

Barb Murry: That's correct. They are funded for their staff to provide the training and support for the people with disabilities. Some of them have center-based programs and others are in supported employment out in the community. We would like this expanded option to be for both kinds of programs.

Chairman Keiser: Was Voc. Ed. the second source of funding?

Barb Murry: The first part of supported employment, the training and stabilization is funded through vocational rehabilitation. Then as the person moves more into the lifelong meeting of the job coach out in the business then developmental disabilities picks up that funding for the coach.

Chairman Keiser: They are 501 C3's?

Barb Murry: Of our 29 organizations in our association, 26 of them are 501C3's. There are also 3 or 4 profits who would be excluded from participating in this program.

Chairman Keiser: Do the 501C3's pay property taxes and sales tax?

Barb Murry: There is a differentiation between the levels of care with an (ICFMR) Intermediate Care Facility for the Mentally Retarded. Those are excluded from paying sales tax. Those providers who have waived service homes only do pay sales tax but not property tax.

Chairman Keiser: Anyone else here to testify in support, in opposition to SB 2265?

Opposition:

Veronica Zietz~Executive Director at The Arc of Bismarck representing the The Arc of Cass County and Bismarck: (See attached testimony 4).

Representative N Johnson: In the bill where does it say that they can do subminimum wage?

Veronica Zietz: It doesn't specifically say they can do subminimum wage but it doesn't say they cannot. A lot of providers in our state have a federal waiver that allows them to pay subminimum wage.

Chairman Keiser: Closes the hearing,


2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2265
March 14, 2011
Job #15393

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Work Session Minutes:

Chairman Keiser: Opens the committee work session on SB 2265.

Sherry Neas: After the first hearing there were entities that testified against this bill. A committee worked on an amendment that meets the needs of all the parties.

Tony Weiler~Commissioner of Labor: (See attached testimony).

The first thing handed out is the Century Code. Under 34-06-15, the commissioner may issue to an employee whose productivity is impaired by physical or mental disability a special license authorizing the employment of that licensee at less than the minimum wage. My office is required to adopt rules.

Under ND Administrative Code 46-02-07.02, sub 3, that is the code under which my office operates. On the page labeled page 6 of 11, the paragraph before #4 at the top it talks about programs. We may issue special licenses to pay less than a minimum wage to nonprofit community rehabilitation programs. To do so, those licenses are issued after I have received a copy of the application and license from the commensurate federal program for employment of disabled workers under special certificate.

The third sheet shows the number of individuals who receive less than minimum wage licenses. It looks like we average just over a thousand per year.

Chairman Keiser: The other two cases where you can violate minimum wage is the waiters and waitresses based on the assumption that tips are there. What about piecemeal work? Can they make less than minimum wage when they are starting?

Tony Weiler: There may be certain special exemptions. Generally you have to look at minimum wage unless there would be a special exemption under the state law.

Vice Chairman Kasper: I have a lot of concerns about this bill. The first area of concern is that this is a non-profit competing with a for-profit. We know nonprofits do not pay property taxes. The second area of concern is the number of employees compared to the number that are disabled. I see the potential that the disabled employees could be used as

a method to obtain the bids from the private sector and also be able to use nondisabled employees to fulfill some contracts. The third area of concern is on page 2, lines 9 & 10, it says determined to be at fair market price. What is fair market price? It is in the eye of the beholder. This opens things up to not only the state areas but it also adds political subdivisions. So now we are creating an additional area of competition for our small businesses in the areas of political subdivisions. Again, allowing all of this to be done without obtaining any competitive bids. I sympathize with disabled employees. But I can't support a bill that is so broad reaching.

Vice Chairman Kasper: Moved Do Not Pass

Representative Kreun: Seconded the motion

A Roll Call vote was taken. **Yes: 8, No: 5, Absent: 1,**
(Representative M. Nelson)

DO NOT PASS carries.

Representative Kreun will carry the bill.

Date: March 14, 2011

Roll Call Vote # _____

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2265

House House Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Kreun

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman		✓
Vice Chairman Kasper	✓		Representative Boe		✓
Representative Clark	✓		Representative Gruchalla		✓
Representative Frantsvog		✓	Representative M Nelson	Ab	
Representative N Johnson		✓			
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 8 No 5

Absent 1

Floor Assignment Rep Kreun

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

REPORT OF STANDING COMMITTEE

SB 2265, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO NOT PASS (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2265 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2265

Testimony
SB 2265 Work Activity Center Contracts

Senate Industry, Business and Labor, Chairman Senator J. Klein

Chairman Klein and members of the Committee, my name is Sherry Neas, Director of the OMB Central Services Division. The Office of Management and Budget supports this legislation. This legislation is intended to help provide work for nonprofit entities that provide employment and rehabilitative activities for persons with physical handicaps, developmental disabilities, and chronically mental illnesses by allowing government entities to contract for goods and services without obtaining competition.

Many other states have procurement programs that encourage purchasing goods or services from nonprofit organizations that employ people with disabilities. A 2009 survey by the National Association of State Procurement Officials reported that of the 45 responding states 18 states had preference laws related to purchasing from sheltered workshops. Many states have set-aside programs that require certain goods to be purchased from qualified entities that employ persons with disabilities.

The federal government has the AbilityOne Program through which federal government entities purchase goods provided by the National Industries for the Blind (NIB) and entities that employ persons with severe handicaps (NISH).

I have attached Chapter 25-16.2 to my testimony. The first section defines work activity center. The second section is an existing law that requires OMB or NDDOT to purchase highway grade stakes from work activity centers, unless no activity center bids on the contract. Section 3 of this chapter, requires that, "Any contract awarded pursuant to this chapter must be in writing and must be made available by the purchasing party to any person upon request. The contract includes the purchase price, the quantity of product purchased, and the time period for which the product will be provided."

This legislation is not specific to particular state agencies or particular goods or services, so it would benefit more work activity centers. The language is permissive, so state entities and political subdivisions would not be required to purchase certain products or services.

The legislation has language that allows for consideration of quality and price. Section 1 of this legislation would allow government entities to purchase from nonprofit entities in North Dakota without going through a competitive purchase process, provided the goods or services are "acceptable" and provided at "fair market price."

Section 2 amends current state purchasing statutes related to limited and noncompetitive purchases to include commodities or services produced or provided by work activity centers.

To implement this legislation, state entities and political subdivisions need to be able to identify work activity centers and their respective industries. OMB could provide that information on the State Procurement Office website.

That concludes my testimony and I would be happy to answer any questions you might have.

Sherry Neas, 701-328-1726

Neas, Sherry L.

From: Terry Peterson [rsi5@srt.com]
Date: Friday, January 21, 2011 3:14 PM
To: Neas, Sherry L.
Subject: Provider List of Services/Products

Please find below a nearly complete listing of the products produced by and/or services provided by work activity centers in the state who are part of NDACP.

Please note that in addition to the products/services listed, all expressed willingness to pursue new opportunities.

Terry Peterson, CWIC
Rehab Services, Inc.
www.disablognd.blogspot.com
701-839-4240

This e-mail is confidential and privileged. If you are not the intended recipient please accept my apologies; please do not disclose, copy or distribute the information in this e-mail or take any action in reliance on its contents: to do so is strictly prohibited and may be unlawful. Please inform me that this message has gone astray before deleting it. If you wish to be removed from future emails, please let me know.

4th Corporation	<u>Kodi Keller</u> 120 -11th Street New Rockford, ND 58356 Ph: (701) 947-2147 - Fax: (701) 947-2027
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- limited services or products currently. Have done some in the past
- Willing to pursue

Able, Inc.	<u>Mary Anderson</u> 653 -19th Street West Dickinson, ND 58601 Ph: (701) 456-3000 - Fax: (701) 456-3004
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- Currently doing sewing contracts in Bowman
- Recycling
- Cleaning
- Packaging

Agassiz Enterprises	<u>James Breidenbach</u> 2105 Gateway Drive
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Grand Forks, ND 58201
Ph: (701) 775-2566 - Fax: (701)
775-2568

- Produce stakes for concrete work
- Recycle clothing into work rags

Alpha Opportunities **Don Nelson**
P.O. Box 824
Jamestown, ND 58402
Ph: (701) 252-0162 - Fax: (701)
252-7770

- Janitorial
- Collating
- Shredding
- Produce bungee cords for govt. contracts

Anne Carlsen Center **Eric Monson**
701 - 3rd St. NW
Jamestown, ND 58401
Ph: (701) 252-3850 - Fax: (701)
952-5154

Catholic Charities ND **Donna Byzewski**
5201 Bishops Blvd., Suite B
Fargo, ND 58104-7605
Ph: (701) 235-4457 - Fax: (701)
356-7993

- Willing to pursue

Community Living Services, Inc. **James Berglie**
111 North University
Fargo, ND 58102
Ph: (701) 232-3133 - Fax: (701)
478-4140

Community Options **Bryan Wetch**
3831 Lockport St., Suite B
Bismarck, ND 58503
Ph: (701) 223-2417 - Fax:
(701) 223-2843

Developmental Center Community Services	<u>Sue Foerster</u> 112 2nd St SW Grafton, ND 58701 Ph: (701) 352-4260 - Fax: (701) 352-4598
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- Cross-making (necklaces)
- Shredding
- Buttons
- Laminating
- Has a work crew that does work for Marvin Windows

<u>Development Homes</u>	<u>Sandi Marshall</u> 3880 South Columbia Road. Grand Forks, ND 58201-3523 Ph: (701) 335-4000 - Fax: (701) 335-4004
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Contracts with area businesses

- Janitorial
- Maid work at hotels
- Assembly
- Shredding

Easter Seals Goodwill ND	<u>Gordon Hauge</u> P.O. Box 1206 Mandan, ND 58554 Ph: (701) 663-6828 - Fax: (701) 663-6859
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Enable, Inc.	<u>Jon Larson</u> 1836 Raven Drive Bismarck, ND 58501 Ph: (701) 255-2851 - Fax: (701) 258-4765
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EFC/VTC	<u>Terry Paulson</u> 424 - 9th Avenue South
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	Fargo, ND 58101 Ph: (701) 241-4858 - Fax: (701) 241-4896
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- Manufacture stakes
- Manufacture lathe
- Hanger sorting
- Shredding
- Bird seed packaging
- Door hanger packet stuffing

<u>Fraser, LTD</u>	<u>Sandra Leyland</u> 2902 South University Drive Fargo, ND 58103 Ph: (701) 232-3301 - Fax: (701) 237-5775
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<u>Friendship, Inc.</u>	<u>Jeff Pederson</u> 801 Page Drive Fargo, ND 58103 Ph: (701) 235-8217 - Fax: (701) 235-7538
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<u>HAV-IT</u>	<u>Tim Huseth</u> 409 West Brewster Street Harvey, ND 58341 Ph: (701) 324-4636 - Fax: (701) 324-4778
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- Fluorescent orange highway flags for road construction and road equipment such as snow plows and gravel trucks
- Fluorescent green safety vests with reflectors
- Fluorescent orange safety vests

	<u>Michael J. Remboldt</u> 1402 2nd St. NW Mandan, ND 58554 Ph: (701) 667-8612 - Fax: (701)
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663-1535

- Sell produce (fruit/veggie trays, etc.)
- All other "goodies" (cookies, caramel corn, etc.)

Knife River Group Homes, Inc.	<u>Marilyn Jensen</u> 508 - 3rd Avenue West PO Box 392 Hazen, ND 58545 Ph: (701) 748-6627 - Fax: (701) 748-6637
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- Willing to pursue

<u>L.I.S.T.E.N., Inc.</u>	<u>Charles Bremseth</u> 1407 - 24th Avenue South, #100 Grand Forks, ND 58201 Ph: (701) 746-7840 - Fax: (701) 795-1900
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- Willing to pursue

<u>Lake Region Corporation</u>	<u>Ellen Davidson</u> 224 - 3rd Street SW Devils Lake, ND 58301 Ph: (701) 662-8681 - Fax: (701) 662-5776
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- Willing to pursue

Northern Plains Special Education KIDS Program	<u>Keith Gustafson</u> Box G Crosby, ND 58730 Ph: (701) 965-6313 - Fax: (701) 965-6004
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Open Door Center	<u>Mary Simonson</u> 209 - 2nd Street SE Valley City, ND 58072
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Ph: (701) 845-1124 - Fax: (701) 845-1175
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Produce Poly-bags for the Navy/govt.

<u>Opportunity Foundation</u>	<u>Charles Robinson</u> P.O. Box 1627 Williston, ND 58802 Ph: (701) 774-8593 - Fax: (701) 572-8871
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- Car Wash Center
- Recycling Center
- Daycare
- T and T services selling; cotton rags, fireplace starters, custom made buttons
- Collating
- Enveloping
- Shredding
- Housecleaning services

<u>Pride, Inc.</u>	<u>Charles Bisnett</u> 1200 Missouri Ave. Bismarck, ND 58501 Ph: (701) 258-7838 - Fax: (701) 258-7911
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- Janitorial
- Housekeeping
- Yard work
- Micro-film
- Shredding
- Mailing
- Collating
- Assembly work

<u>Red River Human Services</u>	<u>Tom Newberger</u> 2506 35th Avenue South Fargo, ND 58104 Ph: (701) 235-0971 - Fax: (701) 235-1051
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- Highway grade stakes

TESTIMONY
Senate Bill 2165 – Direct Purchase from a Work Activity Center
Senate I B & L
Senator Klein, Chairman
January 25, 2011

Chairman Klein, members of the Senate I B & L Committee, I am Barbara Murry, Executive Director of the North Dakota Association of Community Providers. I am here today to offer testimony in support of Senate Bill 2265, the direct purchase from a work activity center.

Providers may assist people with disabilities with employment and pre-employment activities in facility based work centers, in the community based Supported Employment – Extended Services program, or through other employment programs, often funded through the Division of Vocational Rehabilitation. In spite of extensive efforts, options for employment for people with disabilities continue to be limited and people with disabilities have been identified as a under-employed target population.

This bill will expand options for people with disabilities who are served in a variety of settings, while assuring that any bids accepted must be fair market value.

The definition of a work activity center is as follows: **25-16.2-01. Work activity center - Definition.** As used in this chapter "work activity center" means a facility located in the state and operated by a nonprofit corporation organized for the primary purpose of employing and providing rehabilitative activities for physically handicapped, developmentally disabled, and chronically mentally ill persons.

This definition has been in law for many years and no longer clearly defines a specific group of licensed providers as the term "work activity" is no longer commonly used. I am suggesting an amendment that would add further clarification to organizations that are eligible for this set aside, so a list of eligible providers could be developed.

I am not recommending the definition of work activity be changed, as this may have unforeseen ramifications that need further review.

This concludes my testimony. I would be happy to answer any questions.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2265

Page 1, line 16, after 25-16.2-01 insert the following before the period “, and includes not-for-profit and for-profit organizations, as licensed by the Developmental Disabilities Division or contracted with by the Vocational Rehabilitation Division of the Department of Human Services, to provide employment or pre-employment services.

TESTIMONY
**Senate Bill 2165 – Direct Purchase from a Work Activity
Center**
Senate I B & L
Senator Klein, Chairman
January 25, 2011

Chairman Klein, members of the Senate I B & L Committee, my name is Terry Peterson and I live in Velva, ND. I'm here today offering testimony in support of Senate Bill 2265, enabling direct purchase from ND work activity centers. (amended)

The unemployment rate of North Dakota's citizens with disabilities is nearly 40%.

The poverty rate of North Dakota's citizens with disabilities is 19% - over twice that of citizens without disabilities.

SB 2265 will help lower these statistics.

Purchasing from these providers means that money is invested into programs and businesses that create economic independence and self-reliance of people with disabilities while at the same time, saves the state money.

The savings to the state is direct. As wages for individuals with disabilities increase, they are able to reduce or eliminate their reliance on means-tested,

government and state funded programs and services. They also add to the tax base by becoming tax payers.

In Oregon, similar legislation allowing public agencies to directly negotiate with nonprofit Qualified Rehabilitation Facilities showed that for every dollar spent, *“more than \$.35 is returned in the form of reduced public support and increases in payroll taxes from workers with disabilities.” - Oregon Rehabilitation Association*

Is this the right type of legislation?

More than 40 states have more aggressive “set aside” legislation requiring them to award a certain percentage of contracts to nonprofit Work Activity Centers. SB 2265 simply allows state agencies to purchase directly, at fair market price, should they choose to do so.

We've also worked closely with the Office of Management and Budget to assure the language is satisfactory.

Why DD Providers?

State Providers are uniquely qualified to address employment issues facing people with disabilities. They have expert knowledge of disabilities, employment accommodations, assistive technology, ADA and beyond. They're functioning

corporations in our state and have their fingers on the pulse of employment and business trends. They're able to pursue employment opportunities when they develop and are best suited to make those jobs successful for people with disabilities.

This bill benefits state agencies, North Dakota providers and North Dakota's citizens with disabilities.

Thank you Senator Chair for this opportunity to testify in favor of SB 2265.

**TESTIMONY – PROTECTION AND ADVOCACY PROJECT
SENATE BILL 2265
INDUSTRY, BUSINESS & LABOR
January 25, 2011**

Chairman Klein and Members of the Senate Industry, Business & Labor Committee:

My name is Vickay Gross, program coordinator and advocate with the Protection & Advocacy Project. The Protection & Advocacy Project is an independent state agency that acts to protect people with disabilities from abuse, neglect, and exploitation, and advocates for the disability-related rights of people with disabilities. I coordinate the advocacy activities for a grant through the Social Security Administration that works to eliminate barriers to employment experienced by people with disabilities. I am testifying before you today as neutral on this bill. However, I would like to encourage changes to the bill that would insure people with disabilities working on state contracts will receive equitable wages in an integrated setting.

Hundreds of thousands of people in our country are being segregated on the job and paid less than minimum wage because of their disability. Section 14(c) of the Fair Labor Standards Act allows employers to pay individuals less than the minimum wage if they have a physical or mental disability that impairs their earning or productive capacity. The concept that individuals with disabilities should be earning less than other workers was originally meant to assist WWI veterans. Some, not all, work activity centers referenced in this bill hold Section 14(c) waivers that allow them to pay individuals with disabilities less than minimum wage. Paying below the minimum wage reinforces a life of poverty and a dependency on public support.

I understand that people providing the labor on state contracts need to be able to do the work. Job coaching, job carving, job sharing, and use of assistive technology are just a few examples of accommodations that can be used to assist people with disabilities to be productive on state contracts. In addition, as with any of us here today, people with disabilities have a greater chance of being productive if matched with the right type of work.

I support work activity centers finding creative ways to secure work for people with disabilities in integrated setting at minimum wage or better. Through this bill, the state will have an opportunity to partner with work activity centers to increase the employment opportunities for many people with disabilities. However, state entities should not perpetuate the practice of paying people with disabilities less than the lowest wage allowed in our country.

In closing, I am asking this committee to insure that people with disabilities are compensated fairly for the labor they provide on state contracts. North Dakota state government needs to take the position that all of its citizens should be treated fairly in the work force including individuals with disabilities. I would like to propose that language be added to this bill requiring that workers be paid at least minimum wage and the work is performed in integrated settings. As an over site measure, written assurances should be provided by work activity centers stating that people with disabilities working on state contracts will be paid at or above minimum wage. In addition, the work should be done in an integrated setting that includes both workers with and without disabilities.

Chairman Klein and Members of the Senate Industry, Business and Labor Committee, thank you for the opportunity to testify on SB 2265. I am prepared to provide an amendment to this bill and to answer questions you may have regarding my testimony.

PROPOSED AMENDMENTS TO SENATE BILL 2265

Page 1, line 11, insert after the period;

- f. These contracts may be free of competition only if all workers are paid at least minimum wage and work is performed in integrated settings.



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Industry, Business and Labor Committee
January 25, 2011

Good morning Chairmen Klein and members of Industry, Business and Labor Committee. My name is Veronica Zietz (#99); I am the Executive Director at The Arc of Bismarck and I'm here today representing both The Arc of Bismarck and The Arc of Cass County. The Arc is an organization that provides education and advocacy to people with disabilities to foster empowerment and full inclusion in the community.

Senate Bill 2265 is very concerning, allowing state entities to purchase products and services from work activity centers without competition could have unintended consequences. Work activity centers are essentially sheltered workshops for people with intellectual disabilities. Workshops often pay their employees with disabilities less than the federal minimum wage and are considered to be another institution that warehouses people by restricting opportunities while providing financial gains for the employers which are passed on to customers, which in this case would be the state. I believe it would be incredibly disgraceful for the state to be saving money at the expense of individuals with disabilities who are not being fairly compensated.

The Arc is not a supporter of workshops for several reasons; however if this committee would like to pass this bill I would suggest making an amendment that would address the issue of compensation for individuals working at the activity centers. By adding a statement such as "Entering into a contract is contingent on employee compensation being at least equal to federal minimum wage rates." to the close of section one.

The National Disability Rights Network has condemned the advocates, employers and lawmakers in our country that have supported sub-minimum wage and I think this committee needs to seriously consider the ramifications of passing Senate Bill 2265 in current form. I urge the committee to either adopt the suggested amendment or vote no on this bill. Thank you for your time and consideration.

SB 2265 Work Activity Center Contracts

Industry, Business and Labor Committee
Chairman George Keiser
March 14, 2011, 10:00 am

Chairman Keiser and members of the committee, my name is Sherry Neas, Director of the OMB Central Services Division. OMB supports this bill.

This bill creates authority for state and political subdivision entities to enter into contracts with work activity centers that employ persons with disabilities.

Many other government entities have laws that encourage purchases from entities that employ persons with disabilities.

- The Federal government has law and programs that are intended to provide employment opportunities for people with severe disabilities. The federal AbilityOne program, National Institute of the Blind (NIB) and NISH create a system that enables community-based nonprofit agencies that employ people with significant disabilities to provide goods and services to the federal government at a fair price.
- Approximately 40 states have some time of program or preference laws related to purchasing from entities that employ persons with disabilities.

North Dakota currently has a law that requires NDDOT and OMB to purchase construction stakes from work-activity centers. That law benefits only those work activity centers that have an industry to manufacture construction states. The current law is on the back of my testimony.

This legislation will provide work activity centers that employ persons with disabilities in other industries expanded opportunity to contract with government entities. This legislation enables government entities to purchase from work activity centers without obtaining competition provided the goods and services are offered at a fair market price.

The engrossed bill is the result of the collaborative efforts of many stakeholders. At this time, I will go through the sections of the engrossed bill.

This completes my testimony, and I would be happy to answer any questions you may have.

Sherry Neas
701-426-5354
sneas@nd.gov

CHAPTER 25-16.2

WORK ACTIVITY CENTER CONTRACT AWARDS

25-16.2-01. Work activity center - Definition. As used in this chapter "work activity center" means a facility located in the state and operated by a nonprofit corporation organized for the primary purpose of employing and providing rehabilitative activities for physically handicapped, developmentally disabled, and chronically mentally ill persons.

25-16.2-02. Direct bidding with work activity centers for highway grade stakes.

Unless no work activity center bids on the contract, the office of management and budget or the

department of transportation, whichever may be authorized to purchase highway grade stakes,

shall award any contract for the purchase of highway grade stakes to work activity centers.

The

office of management and budget or the department of transportation shall request bids from work activity centers and shall award any contract for the purchase of highway grade stakes on

the basis of these factors:

1. Whether the product contracted for is supplied by the work activity center at a fair market price.
2. Whether the product to be supplied by the work activity center meets the specifications of the department of transportation.
3. The ability, capacity, and skill of the work activity center to perform the contract required.
4. The character, integrity, reputation, judgment, experience, and efficiency of the work activity center.
5. Whether the work activity center can perform the contract within the time specified.
6. The quality of performance of previous contracts negotiated with the work activity center.
7. The previous and existing compliance by the work activity center with laws relating to the contract.

25-16.2-03. Contract requirement. Any contract awarded pursuant to this chapter must be in writing and must be made available by the purchasing party to any person upon request.

The contract must include the purchase price, the quantity of product purchased, and the time

period for which the product will be provided.

Testimony 2

2265

TESTIMONY

Senate Bill ~~2165~~ – Direct Purchase from a Work Activity Center

House I B & L

Representative Keiser, Chairman

March 14th, 2011

Chairman Keiser, members of the House I B & L Committee, my name is Terry Peterson, I live in Velva and I work for Rehab Services, Inc. in Minot. I'm here today offering testimony in support of Senate Bill 2265, enabling direct purchase from ND work activity centers. (amended)

North Dakota boasts one of the lowest unemployment rates in the Nation...yet the unemployment rate of North Dakota's citizens with disabilities remains at nearly 40%.

SB 2265 will help lower this statistic.

Is this the right type of legislation?

SB 2265 would simply allow state agencies to purchase directly from work activity centers, at fair market price, should they choose to do so.

Over 40 states actually have more aggressive "budget set aside" legislation requiring states to award a certain percentage of contracts to nonprofit Work Activity Centers. This is not what SB 2265 does.

The savings to the state is direct. As wages for individuals with disabilities increase, means-tested government and state funded programs and services are reduced or eliminated. At the same time, people who become employed obviously, become tax-payers and add to the tax base.

In Oregon, similar legislation allowing public agencies to directly negotiate with nonprofit Qualified Rehabilitation Facilities showed that for every dollar spent, *“more than \$.35 is returned in the form of reduced public support and increases in payroll taxes from workers with disabilities.”* - Oregon Rehabilitation Association

SB 2265 is also North Dakota specific so all awards made through this process would be contracts given to in-state agencies/companies.

I'm proud of the dialogue we've had with other agencies, Protection and Advocacy in particular, concerning the final language in front of you – and also with our communication with the Office of Management and Budget to assure the procurement process will be smooth.

I'm confident this bill will benefit North Dakota's citizens with disabilities.

Thank you Representative Chair and the committee for this opportunity to testify in favor of SB 2265.

TESTIMONY
Senate Bill 2265 – Direct Purchase from a Work Activity Center
House I B & L
Representative Keiser, Chairman
March 14, 2011

Chairman Keiser, members of the House I B & L Committee, I am Barbara Murry, Executive Director of the North Dakota Association of Community Providers. I am here today to offer testimony in support of Senate Bill 2265, - direct purchase from a work activity center.

I'd like to give a little background on services and DD Providers. The North Dakota Association of Community Providers is made up of 29 organizations across the state. We represent approximately 4,500 staff, 3,900 of whom are Direct Support Professionals, or DSP's. We serve approximately 4,500 individuals with developmental disabilities. Services are most often, lifelong. Ninety-nine percent of the typical provider funding comes through the Department of Human Services. Providers may assist people with disabilities with employment and pre-employment activities in facility based work centers, in community based Supported Employment – Extended Services program, or through other employment programs. Services are most often funded by developmental disabilities programs found in DD grants, claims, and benefits, found in SB 2012, but may also be funded through the Division of Vocational Rehabilitation.

In spite of extensive efforts, options for employment for people with disabilities continue to be limited and people with disabilities have been identified as a under-employed target population.

This bill will expand options for people with disabilities who are served in a variety of settings, including individual placements at an integrated, business location, as well as center based sites. It does assure that any bids accepted must be fair market value.

The definition of a work activity center is as follows: 25-16.2-01. Work activity center - Definition. As used in this chapter "work activity center" means a facility located in the state and operated by a nonprofit corporation organized for the primary purpose of employing and providing rehabilitative activities for physically handicapped, developmentally disabled, and chronically mentally ill persons.

This definition has been in law for many years. It's original, common definition was interpreted to mean a "work activity program" which always occurred within a segregated center. The term "work activity" is no longer used and no longer defines a specific program. However, it was discovered that it is general enough to encompass employment and pre-employment programs operating across all situations and sites.

I recommend passage of this bill. It could expand employment options for as many as a thousand people with disabilities. This concludes my testimony. I would be happy to answer any questions.



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Testimony Senate Bill 2265
House Industry, Business and Labor Committee
March 14, 2011

Good morning Chairmen Keiser and members of House Industry, Business and Labor Committee. My name is Veronica Zietz (#99); I am the Executive Director at The Arc of Bismarck and I'm here today representing both The Arc of Bismarck and The Arc of Cass County. The Arc is an organization that provides education and advocacy to people with disabilities to foster empowerment and full inclusion in the community.

The intent of Senate Bill 2265 is positive; creating job opportunities for people with a disability is a very important issue. However, I believe the language of this bill does not appropriately address this issue. Allowing state entities to purchase products and services from work activity centers without competition could have unintended consequences. Work activity centers are essentially sheltered workshops for people with intellectual disabilities; workshops often pay their employees with disabilities less than the federal minimum wage and are considered to be another institution that warehouses people by restricting opportunities while providing financial gains for the employers which are passed on to customers, which in this case would be the state; this is very concerning. I believe it would be incredibly disgraceful for the state to save money at the expense of individuals with disabilities who are not being fairly compensated.

The Arc is not a supporter of workshops for several reasons; however if this committee would like to pass Senate Bill 2265 I would suggest making an amendment that would address compensation for individuals working at the activity centers. I have prepared a proposed amendment and it is on the reverse side of my testimony.

The National Disability Rights Network has condemned the advocates, employers and lawmakers in our country that have supported sub-minimum wage and I think this committee needs to seriously consider the ramifications of supporting Senate Bill 2265 in current form. I urge the committee to either adopt the suggested amendment or vote no on this bill. Thank you for your time and consideration.

House Industry, Business and Labor Committee

March 14, 2011

PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2265

Page 1, line 12, after "to" insert "competitive wages,"

Renumber accordingly

person interested in a matter under investigation may appear and testify at any public hearing held thereon. The commissioner or the commissioner's duly authorized representative may subpoena and compel the attendance of any witness at any public hearing or at any session of any conference called and held as provided in this chapter and may administer an oath to any witness who is to testify thereat. A witness subpoenaed by the commissioner or by the commissioner's representative must be paid the same mileage and per diem as are paid to witnesses in civil cases before the district court.

34-06-09. Conference to consider investigation by commissioner - Members, quorum, report. Repealed by S.L. 2003, ch. 281, § 6.

34-06-10. Recommendations contained in report of conference. Repealed by S.L. 2003, ch. 281, § 6.

34-06-11. Consideration of report by commissioner - Hearing upon approval. Repealed by S.L. 2003, ch. 281, § 6.

34-06-12. Order issued by commissioner - Posting. Repealed by S.L. 2003, ch. 281, § 6.

34-06-13. Investigation of employment of minors - Recommendations and requirements governing. Repealed by S.L. 2003, ch. 281, § 6.

34-06-14. Right of appeal from commissioner's decision limited. Except as otherwise provided in this chapter, all questions of fact arising under this chapter must be determined by the commissioner. There may be no appeal from the decision of the commissioner on any question of fact, but there is a right of appeal from the commissioner to the district court of Burleigh County from any ruling or holding on any question of law included or embodied in any decision of the commissioner, and there is a right of appeal from the district court to the supreme court of this state. In all such appeals, the attorney general shall appear for and represent the commissioner.

* **34-06-15. Special license to employ at less than minimum wage.** The commissioner may issue to an employee whose productive capacity for the work to be performed is impaired by physical or mental disability, or to any student or learner enrolled in a career and technical education or related program, a special license authorizing the employment of that licensee at less than the minimum wage. The commissioner may also issue special licenses to community rehabilitation programs for the handicapped which engage in the occupation and responsibility of representing and placing for the purpose of training, learning, or employment of those employees whose productive capacity for the work to be performed is impaired by physical or mental disability. The commissioner shall issue such licenses under rules adopted by the commissioner. *

34-06-16. Recovery by underpaid employee. Repealed by S.L. 1975, ch. 298, § 1.

34-06-17. Investigation of compliance with rules - Failure to observe or comply. The commissioner, from time to time, shall investigate and ascertain whether or not employers in this state are observing and complying with rules issued pursuant to the provisions of this chapter, and shall take such steps as may be necessary to cause the prosecution of employers failing to observe or comply therewith.

34-06-18. Employer discriminating against employees. No employer may discharge or in any other manner discriminate against any employee because such employee has testified or is about to testify, or because such employer believes that the employee may testify, in any investigation or proceeding under or relative to this chapter.

34-06-19. Penalty for violation of chapter. Any person who violates any of the provisions of this chapter, or any rule issued pursuant thereto, is guilty of a class B misdemeanor.

1. The training is similar to that in a vocational school.
 2. The training is clearly for the benefit of the trainee.
 3. The trainee does not displace regular employees.
 4. The employer derives no immediate benefit.
 5. The trainee is not entitled to a job.
 6. The trainee is not entitled to wages.
2. The commissioner may issue subminimum wages for students enrolled in vocational education or related programs as long as the wage is not below eighty-five percent of the current state minimum wage.

The process for granting subminimum wages for students includes:

1. The student must complete the application for subminimum wage certificate for vocational education students (SFN 51370). The application (SFN 51370) includes: the employee's name, address, and signature; the employer's name, type of business, address, and signature; a description of the job; the pay rate; the vocational education instructor's signature.
2. Upon receipt of the application the commissioner may issue a license to pay a subminimum wage to the employee for not more than one year.

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3. The process for granting subminimum wages to individuals with disabilities in accordance with **North Dakota Century Code section 34-06-15** includes:

Individuals

1. The disabled worker must complete the application for subminimum wage certificate for individuals with disabilities (SFN 51371). The application (SFN 51371) includes: the employee's name, address, and signature; the employer's name, type of business, address, and signature; a description of the job; the prevailing wage; the proposed pay rate; and an analysis of the employee's productive capacity. A physician's signed verification of the disability in relationship to the job duties or existing supporting evidence of the disability must be provided.
2. In order to be paid less than the minimum wage, documentation of the employee's commensurate wage rate must be provided to the commissioner and maintained by the employer. Commensurate wages are determined by assessing nondisabled worker productivity, the prevailing wage rate for the same or similar work, and an evaluation of the worker's own efficiency.
3. Upon receipt of the application and documentation the commissioner may issue a license to pay a subminimum wage to the employee for not more than one year.
4. The worker's commensurate wage rate must be reevaluated by the

employer every six months and adjusted accordingly; the employer must maintain all documentation.

Programs

The commissioner may issue a special license to pay less than the minimum wage to nonprofit community rehabilitation programs for the handicapped under **North Dakota Century Code section 34-06-15**. Those programs must conduct a recognized program for rehabilitation for handicapped workers or provide paid employment for such workers or other occupational rehabilitative activity of an educational or learning nature. Special licenses to these programs may be issued after the commissioner receives a copy of the application and license from the commensurate federal program for employment of disabled workers under special certificates.

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4.

- Overtime pay must be paid at one and one-half times the regular rate of pay to any employee for hours worked in excess of forty hours in any one week. Paid holidays, paid time off, or sick leave are not counted in computing overtime hours. Overtime is computed on a weekly basis regardless of the length of the pay period. Hours worked may not be averaged over the pay period or used to offset shorter weeks. Employees working more than one job under the control of the same employer must have all hours worked counted toward overtime. Individuals employed as drivers by taxicab companies must be compensated at one and one-half times the regular rate of pay for all hours worked in excess of fifty hours in any one week. Hospitals and residential care establishments may adopt, by agreement with their employees, a fourteen-day overtime period in lieu of the usual seven-day workweek, if the employees are paid at least time and one-half their regular rate for hours worked over eight in a day or eighty in a fourteen-day work period. The following types of employment are exempt from the overtime provisions of this subsection:
1. Any employee employed in a bona fide executive, administrative, or professional capacity.
 2. Any employee engaged in an agricultural occupation.
 3. Any employee spending at least fifty-one percent of the employee's work time providing direct care to clients of a shelter, foster care, or other such related establishment whose primary responsibilities are to provide temporary shelter, crisis intervention, prevention, education, and fellowship.
 4. Any employee employed in domestic service who resides in the household in which employed.
 5. A straight commission salesperson in retail automobile, trailer, boat, aircraft, truck, or farm implement dealerships unless that salesperson is

NORTH DAKOTA DOL SUB-MIN. LICENSES

Employee Counts Listed by Fiscal Year in which License was Issued

Organization	Employees FY 2007 (7/06-6/07)	Employees FY 2008 (7/07-6/08)	Employees FY 2009 (7/08-6/09)	Employees FY 2010 (7/09-6/10)	Employees FY 2011 (7/10-6/11)	Employees FY 2012 (7/11-6/12)	ND License Expires	Federal License Expires
ABLE, Inc.	47	49	57	56			2/26/2011	2/28/2011
Agassiz Enterprises	40	35	32	39	35		7/31/2011	7/31/2011
Alpha Opportunities, Inc.	56	51	56	45			5/31/2011	5/31/2011
Connections of Moorhead, Inc.	102	94	76	85	117		7/31/2011	7/31/2011
Development Homes, Inc.	42	27	31	0	No Longer paying sub min wages as of 6/15/09			
4TH Corporation	22	24	24	18	19		1/28/2011	9/30/2011
Friendship, Inc.	86	86	98	94	94		4/30/2011	4/30/2011
Hav-It Adult Services	28	28	27	25	26		10/31/2011	10/31/2011
H. I. T. Inc.	61	55	55	70			5/19/2011	12/31/2011
Lake Region Corporation	30	31	25	22	28		7/31/2011	7/31/2011
MVW Services, Inc.	216	209	241	204	203		10/31/2011	10/31/2011
Open Door Center	66	68	75	79			2/9/2011	8/31/2011
Opportunity Foundation, Inc.	28	27	43	23	46		7/31/2011	7/31/2011
Pride, Inc.	84	84	83	89			2/12/2011	8/31/2011
Productive Alternatives, Inc.	11	8	25	35	13		7/31/2011	7/31/2011
Red River Human Services	39	42	43	40			4/1/2011	9/30/2011
Tri-City Cares	13	15	22	19	17		8/31/2011	8/31/2011
Vocational Training Center	53	73	73	70	85		7/31/2011	7/31/2011
Total	1024	1006	1086	1013	531			