

2013 SENATE POLITICAL SUBDIVISIONS

SB 2270

2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee Red River Room, State Capitol

SB 2270
January 31, 2013
18095

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the publication of advertisements for bids for public improvement contracts

Minutes:

You may make reference to "attached testimony."

Chairman Andrist opened the hearing for SB 2270. Senator Judy Lee was testifying on another bill, and returned to the committee. All senators were now present.

Doug Johnson, Executive Director of the North Dakota Council of Educational Leaders introduced this bill for Senator Judy Lee. This bill was put forward at the request of the West Fargo public school district. They have gone through some extensive building projects over the last several years. They've had a particularly difficult time getting many of their publications requirements from the current law put into place to meet the intent of the law. Mr. Johnson read Mr. Mark Lemer's testimony in support of SB 2270. (See testimony #1). The North Dakota Council of Educational Leaders does support SB 2270. I see this more as a perfecting amendment to the current law. It just gives school districts much more capability in meeting the intent of the law when they really struggle to try to read it under the way it is currently written. We have many school districts that are undergoing tremendous amounts of growth. I know that Bismarck Public Schools has an ambitious school building project that is going to be taking place very shortly. There are several districts, Dickinson, Williston, and others that are looking at building projects in the near future. This would help those school districts as well as other municipalities that are looking for building to meet the requirements of the law and give them some additional options.

Senator Jim Dotzenrod asked about line 13, page 1, 'electronic plan service'. I am not sure if I understand, does that just mean an advertisement or a process that is industry specific or what is an electronic plan service?

Doug Johnson replied that he was not able to converse with Mr. Lemer on that, but I do know that we have some other business managers that are here that will testify on that and will be able to answer it. My understanding is there are probably publication services that are done on-line by the industry and it can go out in that manner. So that would be how I would interpret that.

Senator John Grabinger asked if it still would be published in the newspaper regardless of this method. This allows them to go other directions to seek the bids.

Chairman Andrist replied yes that is my understanding and if there is anybody in the room they can clarify it. It does not repeal or remove the publication requirements, it just adds another option for letting potential contractors know.

Senator Howard Anderson asked that its' his understanding in these type of projects that most contractors now use these electronic services to get information for their bids more than they do the old system of where you send out a packet of information or whatever. But, they see it published on there and then they ask for the details. That is how most of the contractors are getting their information now.

Eric Johnson Vice President of Meinecke Johnson Construction in Fargo responded to Senator Dotzenrods' question about the electronics. Basically, the old dodge report (builders exchange to get specifications on construction bids) was a paper report that they sent out to the contractors every month that gave us a slip of paper that told us all the construction projects that were coming out in our area in that month. Basically what this does is allows the builders exchanges in the major cities to put on line the plans, the specs, the dates, the prices, all the information for those projects puts it all online and us as contractors know where to go to find these things when we hear about projects that are potentially coming out. So it makes it more accessible for us to pull plans off of these sites, to better expedite the bidding process. It doesn't get rid of paper advertising in the newspapers. There are a couple of trade publications that still process bid information.

Senator Jim Dotzenrod asked on line 11, the advertisement must ...so we are not allowing them an option here to not do this. We're telling them in law this advertisement must be in the current trade publication. The electronic plan service, is there competing electronic plan services or is there a platform that is universal so that we're not going to find some people advertising in one channel or trade publication that is on line and maybe I don't understand exactly how that system is organized? Are we saying there is only one service out there so you must publish there? Or are there half a dozen plan services and you can pick one?

Chairman Andrist replied that it is his sense from listening to this bill we should enlarge on your question. Maybe what they intended that they really wanted is this as an option and the language does tend to require it. Maybe we should say...and may also be... do you wish to comment on that?

Eric Johnson replied that he didn't wish to comment on that. I was just hoping to explain what the whole electronic advertising was to help alleviate. I will let somebody else explain the wording on that.

Senator Andrist, would you like to elaborate on that? **Doug Johnson** replied that what this had done previously to this amendment going forward and give this a do pass. They were required to do the publication in a trade publication, a hard written one and those are harder and harder to find. So what this does is keeps that there but they may select one of those other options that follow beside that. So it does not remove that, it still goes into the newspaper but they can look at a trade publication, they can look at an electronic plan service, a builder's exchange, or another industry recognized method. They would have

those choices rather than being locked in to the one particular trade publication option that is currently in statute. Does that explain it?

Chairman Andrist replied it explains what your intent is, but I am trying to decide for myself as to whether it requires all of these things or whether this is intended to be an option for a trade publication.

Doug Johnson replied it does allow for the option. I had that same question when I visited with Mark Lemer about this last night. Because of the way it is written, I thought it should have been re-crafted but really the way you look at it grammatically, after the comma after located, then it says an in a trade publication. So what this is going to mean is grammatically it's going to be in any one of those that follow after each comma, to have the choice in a trade publication, you could put the word "or" in there, but you do that at the close of that sentence, electronic plan service is builder exchange or other industry recognized method of its circulation. So that's the correct grammatical way. I had some trouble with that as well, but after consultation that is what we came up with.

Senator Jim Dotzenrod replied as he was reading this and on line 14, when they use the word or that is very helpful there. If they would've said 'and' that would have been big trouble; but when they say 'or' I think that we say must and then we have the choices so I think we are okay.

Chairman Andrist I guess I can read it both ways. **Doug Johnson** replied for your information I have that same question. I sat down with my associate that helps me a lot and we had this discussion last night. I did call Mark Lemer and conferred with him as well so that is the way it reads.

Senator Judy Lee District 13 I introduced this as you can see at the request of Mark Lemer our business manager in the West Fargo Public Schools and I think it is important to make clear what you just were discussing. It is not taking away any of the required published venues through which this information would flow, but would provide additional ways to broadcast this project coming up so that the people in the school district know that we will have entertained as many contractors, inquiries, and potential bids as possible, so that there is going to be broad knowledge of what's going on. It's intended to provide additional outreach in order to have access to contractors who will indicate then if they have an interest in this bid and electronically some of that stuff is easier to do. So it's not taking away the print part but we're adding another option there. So I would encourage our favorable consideration of this bill.

Chairman Andrist closed the hearing for SB 2270.

Senator Howard Anderson moved do pass SB 2270
Senator Jim Dotzenrod- 2nd.

Roll call vote: 6 Yea, 0 No, 0 Absent
Carrier: Senator Howard Anderson

Date: 1-31-13
Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2270**

Senate Political Subdivisions 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 Anderson Seconded By Senator Doty

Total (Yes) 6 No 0

Absent _____ 0

Floor Assignment Senate Anderson

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

REPORT OF STANDING COMMITTEE

SB 2270: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2270 was placed on the Eleventh order on the calendar.

2013 HOUSE POLITICAL SUBDIVISIONS

SB 2270

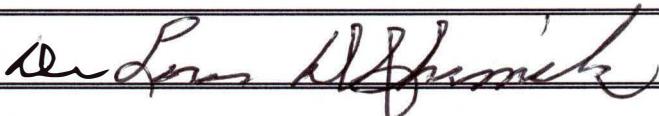
2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee Prairie Room, State Capitol

SB 2270
March 14, 2013
Job # 19895

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the publication of advertisements for bids for public improvement contracts.

Minutes:

Testimony #1

Chairman N. Johnson opened the hearing on SB 2270.

Senator Lee: Introduced bill. Read his testimony. (See testimony #1) 0:25-3:07 In these days of electronic communication being much more common than at the time this statue was written it would permit the additional option of the electronic exchanges. Even Senator Andrist our newspaper guy and chair of the political subs committee in the Senate thought this was an appropriate addition since we didn't rewrite the newspapers.

Rep. Klemin: This statue now sets out the mandatory publication requirements but does not limit a party from publishing or conveying that by any other means. Right now they could do the same thing you are asking without having a statutory change.

Senator Lee: My understanding was this was a way this would be an acceptable alternative to the trade publication because some of them that have been in general use are not in print any more. It doesn't preclude any print option that would permit them to have these additional options. If they do use these options it would be considered official notice also.

Rep. Klemin: Typically when a party is required to publish something you have to show proof that you have done this. Like an example from a newspaper you would get an affidavit of publication from the newspaper. How is that done for an electronic service or other method that is used?

Senator Lee: I don't think that would be that hard to do. You could actually print out the message if nothing else. It still would be published in the official newspaper so there aren't any questions that there would a print notification as well. This would be an additional electronic notice.

Rep. Klemin: I don't know if in a competitive market somebody might claim they didn't get notice and the person who was required to publish a notice did not have any proof that they did it.

Senator Lee: It will be in the official new paper. The goal is to make sure we are not being backward on the way this is done.

Eric Johnson, Vice President of Mitikee Johnson Construction in Fargo, ND: I am in favor of the bill. They get notification from the paper and you get a return email from the internet site that is hosting the plans and specs for that specific job. Basically the online system is exactly the same as the builder's exchanges that are allotted us on the construction industry from the state.

Rep. J. Kelsh: Does the bill say that it must be in a newspaper and it must be in a trade publication such as this and it can be used in an electronic form. It has to be in two different places. Is that true?

Eric Johnson: Yes it has to be in at least two.

Rep. Kretschmar: Senator Lee mentioned that this construction in this little publication they don't do anymore. Has it been replaced with other things?

Eric Johnson: Yes it is true. They are not printing things out like they use to. It is easier to do it on line. Everything is changing and a lot of the paper companies are seeing this; they are closing the paper side but they are opening and internet site.

Rep. Klemin: The reason I asked about the proof of publication because I have seen a number of cases where if you didn't follow the statutes specifically and proved that you did it then things were held invalid.

Eric Johnson: They send out an email response back to the owner. There is a paper trail. If the bidding process has gone through and somebody says I never got notification because it was only publicized in the local Kindred newspaper they can come back and say we had it on the site and it was there two weeks prior to the bid.

Rep. Klemin: We just had a controversy last month in one of the schools they are building so you have to be careful.

Opposition: None

Hearing closed.

Do Pass Motion Made by Rep. J. Kelsh: Seconded by Rep. A. Looyzen

Discussion:

Rep. Klemin: One time all the tax sales were invalidated in the state because the county auditor missed the publication by one day so you do have to follow everything specifically.

House Political Subdivisions Committee
SB 2270
March 14, 2013
Page 3

Vote: **14 Yes 0 No 1 Absent Carrier: Rep. Toman:**

Closed.

Date: 3-14-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2270

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerrefer to Appropriations Reconsider

Motion Made By

Rep. J. Kelsh

Seconded By

Rep. Looyse

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Ben Hanson	✓	
Vice Chairman Patrick Hatlestad	✓		Rep. Kathy Hogan	✓	
Rep. Thomas Beadle	✓		Rep. Jerry Kelsh	✓	
Rep. Matthew Klein	✓		Rep. Naomi Muscha	✓	
Rep. Lawrence Klemin	✓				
Rep Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Alex Looyse	✓				
Rep. Andrew Maragos	✓				
Rep. Lisa Meier	✓				
Rep. Nathan Toman	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep. Toman

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

REPORT OF STANDING COMMITTEE

SB 2270: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends
DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2270 was placed
on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2270

#)

Testimony on SB 2270
Presented to the Senate Political Subdivisions Committee
By Mark Lemer, Business Manager, West Fargo Schools

1 Mr. Chairman and members of the Senate Political Subdivisions Committee, my name is
2 Mark Lemer. I am the business manager for the West Fargo School District and my testimony is
3 to support the provisions of SB 2270.

4 This bill was submitted at the request of the West Fargo School District. We have a
5 number of public improvement projects that we bid each year and must comply with the
6 provision of NDCC 48-01.2-04, relating to the advertisement of these improvements.

7 The current provisions of law require the publication of a legal advertisement in the
8 official newspaper of the school district, as well as in a trade publication of general circulation.
9 Recently, we have had difficulty meeting the requirement of publishing in a trade publication as
10 the Construction Bulletin, which has been used in the past, is no longer in print.

11 The proposed change would broaden the options that are available for notification of
12 contractors regarding our construction projects. The requirement to publish in the official
13 newspaper remains unchanged, but other options would be made available in lieu of the trade
14 publication, including use of the local builder's exchanges or an online plan service. These
15 changes will allow us to take advantage of electronic distribution systems, while still providing
16 maximum exposure of our projects to the construction community.

17 We ask for your support of SB 2270, which will allow us to remain in compliance with
18 the publication notice requirements on our public improvement projects, but will also provide
19 options regarding how this notice may be provided.

20 I apologize for not being available to answer questions in person. However, if there are
21 questions from the committee, I can be reached by e-mail at lemer@west-fargo.k12.nd.us or by
22 telephone at 701-499-1004. Thank you for your consideration of SB 2270.

Sixty-third
Legislative Assembly

1 building manufacturers, and dealers in this state and shall be published for three
2 consecutive weeks, with the first publication being at least twenty-one days before the
3 date of opening of the request for qualifications. Upon written request, the governing
4 body shall mail a copy of the invitation to any interested party.

#)

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