

2019 HOUSE EDUCATION

HB 1454

2019 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Coteau Room, State Capitol

HB 1454
1/23/2019
31292

- Subcommittee
 Conference Committee

Committee Clerk: Bev Monroe by Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to bids for school district contracts.

Minutes:

Attachment 1, 2, 3

Vice Chairman- Cynthia Schreiber-Beck: Opened the hearing on HB 1454.

Rep. Brandy Pyle, District 22: Introduced HB 1454. (See Attachment 1) 00:38-1:20

Vice Chairman- Cynthia Schreiber-Beck: Any questions?

Rep. Mary Johnson: In political subdivisions we have the Park Board bill for \$50,000 but that regarded emergencies, do you see a need to include an emergency exemption in this bill? Because when that flood hits it can be very difficult.

Rep. Brandy Pyle: That is a great idea, I don't know the answer. 2:30

Vice Chairman- Cynthia Schreiber-Beck: Any testimony in support of HB 1454?

Alexis Baxley, North Dakota School Boards Association: (See Attachment 2) I urge a do pass on HB 1454. 3:45 - 6:30

Vice Chairman- Cynthia Schreiber-Beck: Any questions? Seeing none. Further support.

Elroy Burkle, North Dakota Small Organized Schools: We stand in support of HB 1454. Raising the bid from \$25,000 to \$50,000 is a big step, if you look at construction projects that is not much money in this day and age. Any type of flexibility or research to increase that we would really appreciate it. The joint purchases is a good idea, the more we can do to work together may also open up avenues for collaboration and discussion. 6:39- 8:50

Vice Chairman- Cynthia Schreiber-Beck: No questions so continue with testimony in favor of HB 1454.

Russ Ziegler, Assistant Director of the North Dakota Council of Educational Leaders:
In support of HB 1454. 8:50-10:50 (See Attachment 3)

Vice Chairman- Cynthia Schreiber-Beck: Any other support? Any opposition? Any neutral?

Sherry Neas, Office of Management and Budget, Central Services division, State Procurement Manager: I wanted to provide some information about the thresholds. OMB did change the thresholds this year. It is a landmark OMB and Higher Ed synchronized their bidding thresholds. OMB is very different than other types of entities. Most of the School Board and the Political Subdivisions have to advertise in the official county newspaper whereas under state procurement law the OMB maintains the website for advertising government bidding opportunities. We are also required to maintain a state bidders list. When we do public notice that is how it is accomplished. On July 1st the thresholds that OMB moved to is a tiered threshold so at \$0-\$10,000 which requires one quote and between \$10,000 and \$50,000 requires 3 informal proposals, which can be communicated and received back electronically, email or fax and full public notice actually kicks in at \$50,000. OMB does have sealed bids and we have a sealed electronic lock box tied to our website. We are doing full public notice on our website at \$50,000. Between \$50,000 and \$100,000 we did make that a public bid opening. The only difference between the \$50,000 and \$100,000 and above is the public bid opening. It is the same level of competition. 10:60-11:32

Vice Chairman- Cynthia Schreiber-Beck: Any questions?

Rep. Pat D. Heinert: Are the school districts allowed to buy out the state procurement site.

Sherry Neas: Yes, it was 2 sessions ago that worked with the School Board Association to amend the law, if you look at page 2 line 1 and 2 it says Cooperative purchases with the office of management and budget under Chapter 54-44.4. So that is already in law, this changes actually adding another avenue for the school boards to accomplish cooperative purchasing. OMB is excited about cooperative purchasing if we can aggregate state government and Higher Ed, Political Subs and other areas.

Vice Chairman- Cynthia Schreiber-Beck: You don't see any flaw in this?

Sherry Neas: I am not legal counsel, but joint powers is a chapter of law that is another avenue. Not speaking on behalf of any other entity, but the counties have a joint powers agreement. It does take a little work because you have to develop the cooperative purchasing under that chapter of law 16:00

Vice Chairman- Cynthia Schreiber-Representative Rick Becker: Any other neutral testimony on HB 1454. Seeing none. The hearing is closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Coteau A Room, State Capitol

HB 1454
1/28/2019
31758

- Subcommittee
 Conference Committee

Committee Clerk: Bev Monroe by Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to bids for school district contracts.

Minutes:

Vice Chairman Schreiber-Beck: Opened the hearing on HB 1454. There are no amendments to this bill unless someone has some to offer.

Rep. Heinert: Moved a Do Pass on HB 1454.

Rep. Guggisberg: Seconded.

Vice Chairman Schreiber-Beck: Any discussion?

Rep. Zubke: I have a question on the second page line 5 where we talk about “cooperative purchases made pursuant to a joint powers agreement”. It says those are exempted, how high could you do? Does that exempt them if they join together as a cooperative and do a joint powers agreement to just get around this? We have no boundaries then?

Vice Chairman Schreiber-Beck: I don’t remember what the code said 54-40.3. We will look that up because it may have some restrictions in it. Checking in 54-40.3 shows no limitations in the code.

Rep. Pyle: OMB did testify on this bill, there is a tiered threshold \$0-\$10000, \$10,000-\$50,000 needs three informal bids and full public knowledge for \$50,000 -\$100,000. They have sealed electronic bids on a website with a notice of bidders list and then anything over \$100,000 public bid openings that has the same level of competition as the \$50,000 to \$100,000. Do we have any further discussion or do we need some clarification prior to voting.

Rep. Zubke: Are you saying they still have to bid according to the tier, is that correct?

Rep. Pyle: Yes that is the OMB procedure.

Rep. Zubke: I would investigate this if the motion was rescinded.

Rep. Heinert: I will rescind the motion of a Do Pass on HB 1454.

Vice Chairman Schreiber-Beck: Motion is withdrawn on HB 1454. We will get more information on this.

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Coteau A Room, State Capitol

HB 1454
1/30/2019
31825

- Subcommittee
 Conference Committee

Committee Clerk: Bev Monroe

Explanation or reason for introduction of bill/resolution:

Relating to bids for school district contracts.

Minutes:

Chairman Owens: Opened the hearing on HB 1454.

Rep. Zubke: I have an amendment to HB 1454. On page 2 line 5 after the word "purchases" insert the words "of at least fifty thousand dollars but not exceeding one hundred thousand dollars. I would move this amendment to HB 1454.

Rep. Guggisberg: Seconded.

Chairman Owens: Any further discussion? Seeing none.

Voice Vote taken: Motion carried to amend HB 1454.

Rep. Zubke: I will move a Do pass on HB 1454 as amended.

Rep Guggisberg: Seconded.

Chairman Owens: Is there any other discussion?

Rep. Zubke: Explained the amendment. On page 2 line 5 after the word "purchases" insert the words "of at least fifty thousand dollars but not exceeding one hundred thousand dollars. I talked the School Boards and this is what they came up with to keep that unlimited.

Chairman Owens: What it basically creates is it allows both districts to bring their ability to contract \$50,000 or less without going out on a bid together. They can't do over \$100,000 it says less than that. Any further discussion? Seeing none.

House Education Committee
HB1454
1/30/2019
Page 2

Roll call vote taken: Yes 12 No 0 Absent 2. Motion carries on a Do Pass as amended on HB 1454.

Rep. Guggisberg: Will carry the bill.

19.0954.03001
Title.04000

Adopted by the Education Committee

January 30, 2019

Handwritten:
1/30/19
10/1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1454

Page 2, line 5, after "purchases" insert "of at least fifty thousand dollars but not exceeding one hundred thousand dollars."

Renumber accordingly

Date: 1-30-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1454

House Education Committee

Subcommittee

Amendment LC# or Description: 19.0954.03001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. D. Zubke Seconded By Rep. R. Guggisberg

Representatives	Yes	No	Representatives	Yes	No
Chairman M. Owens			Rep. Guggisberg		
V. Chair. Schreiber-Beck			Rep. Hager		
Rep. Heinert					
Rep. Hoverson					
Rep. D. Johnson					
Rep. M. Johnson					
Rep. Johnston					
Rep. Longmuir					
Rep. Marschall					
Rep. Pyle					
Rep. Strinden					
Rep. Zubke					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Motion carried

Date: 1-30-19
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1454**

House Education Committee

Subcommittee

Amendment LC# or Description: 19.0954.03001
04000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Zubke Seconded By Rep. Guggisberg

Representatives	Yes	No	Representatives	Yes	No
Chairman M. Owens	✓		Rep. Guggisberg	✓	
V. Chair. Schreiber-Beck	✓		Rep. Hager	✓	
Rep. Heinert	A				
Rep. Hoverson	A				
Rep. D. Johnson	✓				
Rep. M. Johnson	✓				
Rep. Johnston	✓				
Rep. Longmuir	✓				
Rep. Marschall	✓				
Rep. Pyle	✓				
Rep. Strinden	✓				
Rep. Zubke	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Guggisberg

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

REPORT OF STANDING COMMITTEE

HB 1454: Education Committee (Rep. Owens, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1454 was placed on the Sixth order on the calendar.

Page 2, line 5, after "purchases" insert "of at least fifty thousand dollars but not exceeding one hundred thousand dollars."

Renumber accordingly

2019 SENATE EDUCATION

HB 1454

2019 SENATE STANDING COMMITTEE MINUTES

Education Committee
Sheyenne River Room, State Capitol

HB 1454
3/11/2019
33500 (17:41)

- Subcommittee
 Conference Committee

Committee Clerk: Lynn Wolf

Explanation or reason for introduction of bill/resolution:

A bill relating to bids for school district contracts.

Minutes:

Att. #1-Pyle; Att. #2-DeKok; Att. #3-Ziegler; Att. #4-Burkle

Chairman Schaible: Committee we'll open the hearing on HB 1454.

Representative Brandy Pyle, Dist 22: *See Att. #1.*

Chairman Schaible: Seeing no questions, thank you.

Amy DeKok, ND School Boards Association: *See Att. #2.*

Senator Oban: Do you know the last time the Century Code was updated to increase it to \$25,000? How long has it been at \$25,000?

Amy DeKok: I don't know, but it has been several sessions. What it is resulting in is they are having to bid out a significant amount of purchases.

Chairman Schaible: Other questions. Seeing none, thank you.

Russ Ziegler, Asst. Director of ND Council of School Administrators: *See Att. #3.*

(07:22) **Chairman Schaible:** Other testimony in favor of the bill.

(08:04) **Elroy Burkle, Exec. Director, ND Small Organized Schools:** *See Att. #4.*

Chairman Schaible: Seeing no questions, thank you. Any testimony in opposition to the bill. Agency testimony?

(9:31) **Sherry Nies, Chief Procurement Officer, Office of Management and Budget:** OMB did synchronize the bidding thresholds with Higher Ed. July, 2018. There is a bit of misunderstanding – the testimony said that the \$50,000 is half of OMB threshold. There is a

distinct difference between the OMB and Higher Ed. Our bidding requirements are tiered. The threshold for zero competition is \$10,000 and below. Between \$10,000 and \$50,000 it is three informal bids or proposals. OMB and Higher Ed. do full notice at \$50,000 all the way up to \$100,000. We have this state procurement online system, so we are not advertising in the newspaper. Under the state purchasing chapter of law, OMB is required to maintain a website for state bidding opportunities. At \$50,000, it goes out on the web and gets full notice to the bidders list – that is informal, so you don't have to have a formal sub bid opening at that level. At \$100,000, is when the same level of notice – it is just that's when you have the sealed bid. With that then, that would support a threshold change. OMB a Higher Ed. did a lot of research. We were in the same boat – we hadn't changed our thresholds since 2003. That \$50,000, we determined was the right place for full notice. We are in a little bit different situation because we can do full competition without that. If I could talk a little bit about cooperative purchasing – I know there was an amendment to page 2 – discussed. If you look at item k of the original – page 2 line 1 – cooperative purchasing with OMB under the chapter 54-44.4 – we amended that law four or five biennium ago. Under the OMB cooperative purchasing law, OMB can do a contract, that can benefit schools – every level of government. Under our law, we are required to look at the procurement process if we are using somebody else's – like a consortium or something like that. Our law says that it doesn't necessarily require bidding requirements. It has to be consistent with our purchasing practices. If you think about it, sometimes there are situations where what you are buying is exclusive – for example, a Symantec or Microsoft or something. Microsoft is available for Microsoft and sold at large, so it is not a fully competitive process, because you have to get Microsoft from somebody that sells Microsoft. The way OMB purchasing language is it facilitates that. Under the miscellaneous provisions of the Century Code, 44.08 – which is a very broad law – it is actually state preference law. Under that section of law, it talks about government entities doing a justification if they are limiting competition. With the cooperative purchasing, there might be those instances where cooperative purchasing is being done for something that is exclusive. West Law, legal things are another – I can give you some examples of that, but there are examples where what you need is exclusive and it would still make sense for people to cooperate.

(13:57) **Chairman Schaible:** With the amendment that was proposed, is there something we need to look out for?

Sherry Nies: It says competitive bidding requirements of the lead organization – it might be – a way to reference 44.08 so you don't limit yourself from authority you already have. That is just off the top of my head when I heard it. We had the same situation with OMB, where sometimes, it is a consortium for something that is not biddable.

Chairman Schaible: And that is because it is so exclusive, it is not necessary?

Sherry Nies: Or the government entity might have that provision and again, in 44.08 it requires the government entity to provide a justification for why there is not a bidding process.

(15:01) **Senator Davison:** Do schools fall under the statute of OMB for purchasing?

Sherry Nies: No, they don't. Schools have their own chapter of law. OMB has just cooperative purchasing which allows us to be like the GSA for all of state government. Every

type of jurisdiction has its own section of law. One other thing – under n then, the way it is written then, there is a combination of things happening here. The way n is written, you couldn't use a joint powers agreement for something that is less than \$50,000 is the way that it looks like it is read – reads. Cooperative purchasing of at least \$50,000, but not exceeding \$100,000 – so if the intent was that you do your own bid, I think the amendment that we just talked about seems like it fixes that, but there still might be an opportunity to merge those two if amendment o is just to undo not being able to use a consortium for stuff under \$50,000 and then to talk about the procurement requirements.

Chairman Schaible: Other questions? Thank you. Any other agency testimony? With that, we will close the hearing on HB 1454.

2019 SENATE STANDING COMMITTEE MINUTES

Education Committee
Sheyenne River Room, State Capitol

HB 1454
3/18/2019
33863 (5:30)

- Subcommittee
 Conference Committee

Committee Clerk: Lynn Wolf

Explanation or reason for introduction of bill/resolution:

A bill relating to bids for school district contracts.

Minutes:

No Attachments.

Chairman Schaible: Committee, we will work on HB 1454.

Senator Rust: I move a Do Pass on HB 1454.

Senator Elkin: Second.

Chairman Schaible: I had a note on my bill for a possible amendment.

Senator Oban: Me, too, Mr. Chairman from NDCEL and OMB provided some feedback on that as well.

Senator Rust: What was the amendment?

Senator Davison: I had a couple of emails on the \$100,000.

Senator Rust: Maybe I need to relook at that.

Senator Fors: Line two on page two? And then I think line six on page two.

Senator Rust: I'll withdraw that motion.

Senator Elkin: I'll withdraw the second.

Chairman Schaible: We have 1454 before us.

Senator Davison: Why are limiting the cap to \$100,000? It says cooperative purchases at least \$50,000 but not exceeding \$100,000 – why is it so narrow in scope if you are under a joint powers agreement? Why wouldn't it be for anything over \$50,000?

Chairman Schaible: I am guessing it is – has to do with the bidding process.

Senator Rust: It is \$50,000 for a single school district, so they doubled it for a cooperative.

Senator Davison: A \$100,000 is just not very much money if you are talking IT equipment or – I mean for construction it is one thing, -

Chairman Schaible: Alexis (Baxley) could you clear this up for us?

Alexis Baxley: Exec. Director, ND School Boards Association: That portion of the bill was added on to the bill in the House Education Committee. There was some discomfort with the language being wide open and not having a limit, but you are correct, anybody entering into a cooperative purchasing agreement through joint powers agreement would be doing competitive purchasing. What that language does is say you are exempt between \$50,000 and \$100,000.

Senator Davison: That defeats the purpose of the bill. I don't know that passing the bill is helping anybody. Mr. Chairman, I would be happy to go and do an amendment to undo that – that might not make everybody comfortable, but at least it would get us to conference committee to have a discussion of why they thought how narrow that would be.

Chairman Schaible: And then you want to also look at subsection k which I think is another – it is 54-44.4, but you should also look at 44.8. If you look on page 2, line 2, I think I had a note here saying that this is also under chapter 54-44.8 also.

Senator Rust: Then NDCEL wanted to add subsection o if you look at their testimony (Att. #3 from HB1454 testimony on 3/11/2019)

Chairman Schaible: So Senator Davison will look at all of them and bring back a recommendation.

Senator Davison: Can Alexis come back up here for a moment. Did the NDSBA support the original language in the bill in the House?

Alexis Baxley: Yes, we supported the original language.

Senator Davison: Thank you.

Chairman Schaible: So, Senator Davison, are you going to work on this?

Senator Davison: I will.

Chairman Schaible: If not, we will wait with HB 1454.

2019 SENATE STANDING COMMITTEE MINUTES

Education Committee
Sheyenne River Room, State Capitol

HB 1454
3/19/2019
33973 (7:44)

- Subcommittee
 Conference Committee

Committee Clerk: Lynn Wolf

Explanation or reason for introduction of bill/resolution:

A bill relating to bids for school district contracts.

Minutes:

Att. #1-Davison

Chairman Schaible: Senator Davison passed out an amendment 19.0954.04001 to HB 1454.

Senator Davison: See Att. #1. When we looked at this bill, I thought there was some confusion on – I didn't like between \$50,000 and \$100,000 – that is what you were really going to allow cooperative purchases to be between. Anything outside of \$100,000, you weren't going to be able to use the cooperative purchasing process for that. That seemed real limiting and that is what the House added on as an amendment on their side when they sent it over here. The amendment takes it back to the original bill and then we will take this bill if it passes as our starting point for negotiations in conference committee. The cooperative purchasing – the joint powers agreement – the group that is pushing this forward – there are large buying groups in Minnesota, they started their service agencies back in the sixties – and there are two or three large buying groups – in fact, the one out of Fergus Falls has an agreement in ND and they do a lot of business in ND. They have found it very restrictive as the cost of items and goods have gone up this purchasing that they do is already on a bid basis and so, trying to allow that shelter or that format for schools for that to be their bidding process is being able to buy through these joint power cooperative agreements. **I would move amendment 19.0954.04001 be adopted to HB 1454.**

Senator Rust: Second.

Chairman Schaible: Is there another amendment to this bill?

Senator Davison: On the first page of that bill, you will notice on line 8, that is where it says where we are initially raising the \$25,000 to \$50,000, so that is part of the original bill. That is why we could eliminate the \$50,000 on the second page of 1454. Just so everybody is clear. All the bill really does is add \$50,000 there, so it says you need to contract the expenditure of an aggregate amount greater than \$50,000 unless the school board is given blah, blah, blah. This section does not apply for contracts for – so that \$50,000 would not –

below – the section does not apply for contracts – and then on the back it is just going to say, cooperative purchases made pursuant to a joint powers agreement under chapters 54-40.3

Chairman Schaible: We also had a suggested amendment of o that was given to us by NDCEL (ND Council of Educational Leaders).

Senator Davison: Did that meet their – what I did, did it meet what they wanted?

Amiee Copas, Exec. Director of NDCEL: Essentially, we were looking for to provide that assurance that –

Chairman Schaible: Amiee, come up to the podium.

Amiee Copas: All that we were looking for in our amendment was to provide the House some of that assurance that so long the bidding process takes place in the GPA and the cooperative agreement that it should be fine. The original intent of the bill is really what we were trying to get after, while providing them some assurances that there is bidding taking place.

Chairman Schaible: With the Davison amendment, you do not need o?

Amiee, Copas: That is correct.

Chairman Schaible: Is everybody clear on that? We have a motion and a second on the floor to adopt the amendment 19.0954.04001 of HB 1454. Other discussion – seeing none, clerk take the roll.

Roll Call Vote: 7 Yeas, 0 Nays, 0 Absent.

Amendment adopted.

Senator Davison: I move Do Pass as Amended HB 1454.

Senator Rust: Second.

Chairman Schaible: We have a Do Pass as Amended on engrossed HB 1454 in front of us. Is there any discussion?

Roll Call Vote: 7 Yeas; 0 Nays; 0 Absent.

Motion Carries. Senator Rust will carry the bill.

19.0954.04001
Title.05000

Prepared by the Legislative Council staff for
Senator Davison

March 19, 2019

SK
1001
3/19

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1454

Page 2, line 5, remove "of at least fifty thousand dollars but not exceeding one"

Page 2, line 6, remove "hundred thousand dollars."

Renumber accordingly

Date: 3-18-19
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. AB 1454

Senate Education Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Sen Rust Seconded By Sen Elkin

Senators	Yes	No	Senators	Yes	No
Chairman Schaible:			Senator Marcellais:		
Vice-Chairman Fors:			Senator Oban:		
Senator Davison					
Senator Elkin:					
Senator Rust:					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Motion to Do Pass
was withdrawn
by Sens: Rust + Elkin*

Date: 3-19-19
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1454

Senate Education Committee

Subcommittee

Amendment LC# or Description: 19.0954.04001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Davison Seconded By Rust

Senators	Yes	No	Senators	Yes	No
Chairman Schaible:	✓		Senator Marcellais:	✓	
Vice-Chairman Fors:	✓		Senator Oban:	✓	
Senator Davison	✓				
Senator Elkin:	✓				
Senator Rust:	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

HB 1454, as engrossed: Education Committee (Sen. Schaible, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1454 was placed on the Sixth order on the calendar.

Page 2, line 5, remove "of at least fifty thousand dollars but not exceeding one"

Page 2, line 6, remove "hundred thousand dollars."

Renumber accordingly

2019 CONFERENCE COMMITTEE

HB 1454

2019 HOUSE CONFERENCE COMMITTEE MINUTES

Education Committee
Coteau A Room, State Capitol

HB 1454
4/5/2019
34549 and 34551

Subcommittee
 Conference Committee

Committee Clerk: Bev Monroe

Explanation or reason for introduction of bill/resolution:

A bill relating to bids for school district contracts

Minutes:

Rep. Brandy Pyle: Could the Senators please give us an explanation of the amendments they did in their committee after we sent it to them?

Sen. Davison: We moved our amendment back to its original form. We have elected school boards and have gone into joint power agreements with other elected school boards. Those boards have the best interest of their districts in mind. We wanted to give them the flexibility to be able to purchase within those joint powers agreements when they go into different kinds of agreements. Those contracts are already bid on a national level. That is how they join those purchasing groups within that joint powers agreement and that is the purpose of them saving dollars from those agreements. We wanted to empower the school boards to make those joint powers agreements and save time and energy in the purchasing process. We thought that \$100,000 was not enough leeway on the topside for them to benefit. The bill was changed back to its original form.

Rep. Brandy Pyle: Any further discussion?

Rep. Longmuir: I agree with the senators. It's better to join the purchasing groups than go out as single school districts. Since the state is bidding on a broad basis anyway, I think the Senate version is a better bill than what we sent over.

Rep. Brandy Pyle: Any questions?

Rep. Ron Guggisberg: I agree but the problem sometimes is – is the best policy the best policy that will pass the house floor. I will defer to my colleagues whether or not they think that we can get the original bill passed. I like the senate version better.

Rep. Brandy Pyle: When I pulled the minutes from your hearing, the procurement officer for OMB had a great explanation. Do you remember that and update our colleagues?

Sen. Davison: Could you refresh me on that?

Rep. Brandy Pyle: In the cooperative purchases (when the two entities go together) it is not necessarily done through OMB, correct?

Sen. Davison: Minnesota has three large buying co-ops, one of which is out of Fergus Falls. That co-op has set up a board in North Dakota and there is North Dakota joint powers agreement with the Lakes Country Service Co-op. They have a sales person that goes around and works with schools to buy off of this purchasing contract. There are other contracts outside of that and other ways, but I'm giving you this example. Lakes Country does these bids and they sell cars, health insurance, etc.; this is one of the things they do as a service agency. Not only for schools but for political subdivisions too. Collectively, the joint powers agreement was formed to create the North Dakota purchasing co-op, so that that co-op could buy off that contract as part of that joint powers agreement. That is an example of something that spurred this legislation.

Rep. Brandy Pyle: Any further discussion?

Rep. Longmuir: I would **move** that the **House accede** to the Senate's version of **House Bill 1454**.

Rep. Ron Guggisberg: **Seconded**.

A Roll Call Vote was taken. Yes: 6, No: 0, Absent: 0. House Carrier: Rep. Pyle, Senate Carrier: Sen. Davison

**2019 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. HB 1454 as (re) engrossed

House Education Committee

- Action Taken** **HOUSE accede to Senate Amendments**
 HOUSE accede to Senate Amendments and further amend
 SENATE recede from Senate amendments
 SENATE recede from Senate amendments and amend as follows
- Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. D. Longmuir Seconded by: Rep. R. Guggisberg

Representatives	4-5	Yes	No	Senators	4-5	Yes	No
Rep. Pyle	X	X		Sen. Davison	X	X	
Rep. Longmuir	X	X		Sen. Fors	X	X	
Rep. Guggisberg	X	X		Sen. Marcellais	X	X	
Total Rep. Vote		3		Total Senate Vote		3	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep. Brandy Pyle Senate Carrier Sen. Kyle Davison

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1454, as engrossed: Your conference committee (Sens. Davison, Fors, Marcellais and Reps. Pyle, Longmuir, Guggisberg) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ page 1308 and place HB 1454 on the Seventh order.

Engrossed HB 1454 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

HB 1454

HB 1454
1-23-19
#1

HB 1454 Testimony
Rep. Brandy Pyle
1.23.19

Good morning Chairman Owens and Education committee. For the record, I am Brandy Pyle, Representative from District 22. I am here today to bring HB 1454 before you for consideration.

HB 1454 addresses two issues. The first is to allow school districts to be able to make purchases without entering into a contract if the aggregate amount is less than \$50,000. This brings the amount in line with other political subdivisions such as a park board for purchasing.

This proposed piece of legislation will also allow school districts to make cooperative purchase made pursuant to a joint-powers agreement. An example of this could be the a school district to work with a park district to purchase exercise equipment, or a school district to make a purchase though an Regional Education Association (REA).

Thank you committee for your time and consideration. I believe there are others here to testify in support of this bill. I stand for questions.

HB 1454
1-23-19
#2



NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

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HB 1454
Testimony of Alexis Baxley
House Education Committee
January 23, 2019

Chairman Owens and members of the House Education Committee, my name is Alexis Baxley. I am the executive director of the North Dakota School Boards Association. NDSBA represents all 178 North Dakota public school districts and their boards. I am here today to support HB 1454.

First, we believe it is finally time to raise the bidding thresholds for school districts. While this bill doubles the current threshold of \$25,000 to \$50,000, it is still only half of the recently raised threshold for the state. It has been some time since these thresholds were raised, and \$25,000 does not go as far as it used to. I am sure there are some superintendents in the room that could speak to the types of purchases that might be included in that amount. Additionally, even with the increase, board will still be approving these purchases at public meetings. Most districts have adopted policies that delegate spending authority to their superintendents up to a certain amount. While that amount varies, in my experience it is well under \$50,000.

The second part of this bill is the addition on line five of page two. This language is an additional exception to the general bidding requirements set forth in 15.1-09-34 for competitive purchasing with another school district through a joint powers agreement pursuant to NDCC 54-40.3. We believe this language will create some clarity for districts who are using cooperative purchasing. Many districts work with their local REA to do cooperative purchasing, while other districts in North Dakota enter into joint powers agreements for purposes of cooperative purchasing with political subdivisions of other states (namely, MN). As the law is currently written, there has been some uncertainty as to whether a school district can actually enter into a joint powers agreement with an REA for purposes of cooperative purchasing (or other purpose) under chapter 54-40.3. It is unclear if a regional education association would itself constitute a political subdivision as that term is used in chapter 54-40.3. If not, then a school district may not be able to enter into a joint powers agreement with an regional education association (which is an association of multiple school districts) even though they could enter into an agreement with individual school districts under chapter 54-40.3. We believe this language would provide that clarity and allow districts to get the most out of every dollar. For these reasons, NDSBA urges a do pass on HB 1454, and I would be happy to stand for any questions.

Russ Ziegler



HB 1454
1-23-19
#3
Pg 1

HB 1454 – Bids for School District Contracts

Testimony in Support

Good afternoon Chair Owens and members of the House Education Committee, I stand before you on behalf of NDCEL which is the organization that serves our school Superintendents, Principals, CTE Directors, Technology Directors, AD's, County Superintendents, Business Officials and truly every school leader with the exception of teachers and school board members. We stand before you today in support of the positive intent behind HB 1454.

With the rising costs of building equipment and maintenance, and school supplies it is very easy to go beyond the \$25,000 aggregate expenditure that would require bids in current statute. This bill would move that amount to \$50,000 which would allow school districts to fill some immediate needs without going through a lengthy bidding process. This shift also aligns the dollar amount with the naturally rising costs of products and services. For example, the paper cost in West Fargo is over the \$25,000 base line currently. Another item to consider is that the proposed amount is still below the state agency bidding threshold of \$100,000.

Adding subsection n. with allowing cooperative purchases made pursuant to a joint powers agreement is also a change that will help districts spend their funds efficiently. This would allow a district to efficiently access products that have already been bid out through a cooperative agreement. Districts would be utilizing a process that has been vetted through the cooperative.

We respectfully request a Do Pass on HB 1454



HB 1454
1-23-19
#3
P2

HB 1454 – Bids for School District Contracts

Testimony in Support from Fargo Public Schools

Greetings Honorable Legislators,

I am the Business Manager for Fargo Public Schools and am in support of HB 1454 to:

- raise the bidding threshold requirement from \$25,000 to \$50,000; and
- exclude from the bidding requirement purchases under cooperative purchases pursuant to a joint powers agreement

The proposed changes would increase efficiencies in purchasing, allowing us to save time and money. Our current purchasing policies provide that we obtain quotes to ensure fiscal responsibility. An increase in the threshold would allow purchases within the limits defined to occur more expeditiously. In addition, the district would save dollars in a decreased number of bids required to be published in the official newspaper of the district.

I respectfully request your support of HB 1454.

Jackie Gapp, CPA, SFO

Business Manager

Fargo Public Schools

415 N 4th St, Fargo, ND 58102

Phone: 701-446-1032

Testimony on HB 1454
Presented to the House Education Committee
By Mark Lemer, Business Manager, West Fargo Schools
January 23, 2019

HB 1454
1-23-19
#3
p3

1 Chairman Owens and members of the House Education Committee, I offer
2 this testimony in support of the provisions of HB 1454 related to changes to the
3 bidding requirements for school districts.

4 The process of bidding is intended to provide good value for purchases made
5 by school districts. This process has merit for public organizations by providing
6 transparency for larger purchases and making good use of taxpayer funds.

7 The provisions in this bill do not intend to undermine those intentions, but
8 instead offer some additional flexibility to school districts. For example, in West
9 Fargo Schools, our School Board has adopted a policy that requires purchases in
10 excess of \$2,000 be substantiated by three quotes. The quote process also provide
11 some of the same measures of protection as the legal bidding requirements, but
12 offers a much more streamlined process.

13 By changing the bid threshold from \$25,000 to \$50,000, we will have more
14 flexibility to use our quoting process versus the formal bid process, which provides
15 substantial time efficiencies.

16 Below is an example of a quote process that we currently use for paper
17 purchases. We buy paper by the truckload. With the impacts of inflation, the cost
18 of a truckload of paper is approaching the current bid threshold of \$25,000. I have
19 outlined our current process as compared to the public bid process in the table
20 below:

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P.4

Informal Quote Process	Public Bid Process
Day 1: Send email to current paper vendors (approximately 10)	Day 1: Send legal notice to newspaper (one week in advance)
Day 4: Receive pricing from vendors	Day 8: Legal ad runs in newspaper
Day 5: Issue purchase order for paper (Process complete)	Day 18: Open bids received
	Day 23 – Day 42: Depending on when Board meeting falls, School Board awards bid
	Day 24 – Day 43: Issue purchase order for paper (Process complete)

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2

The time varies from approximately one week for the quote process to up to nearly a month and a half for the formal process.

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The second change in the bill provides for the additional of purchases under Joint-Powers Agreements. The North Dakota Educators Service Cooperative was formed by member school districts to leverage their buying power through a group bidding process. Unfortunately, for purchases in excess of the bid threshold, school districts were still unable to utilize this cooperative in lieu of bidding as required by law. The addition of the provisions on page 2 of the bill will provide an avenue for school districts to work together to drive down the cost of goods and services.

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We ask for your consideration of a Do Pass recommendation from the committee.

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I apologize for not being able to attend in person. However, if you have questions, please contact me by email at lemer@west-fargo.k12.nd.us.

14

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3-11-19
AH #1
PT of 1

HB 1454 Testimony
Rep. Brandy Pyle
3.11.19

Good morning Chairman Schaible and Education committee. For the record, I am Brandy Pyle, Representative from District 22. I am here today to bring HB 1454 before you for consideration.

HB 1454 addresses two issues. The first is to allow school districts to be able to make purchases without entering into a contract if the aggregate amount is less than \$50,000. This brings the amount in line with other political subdivisions such as a park board for purchasing.

This proposed piece of legislation will also allow school districts to make cooperative purchase made pursuant to a joint-powers agreement. An example of this could be the a school district to work with a park district to purchase exercise equipment, or a school district to make a purchase though an Regional Education Association (REA).

Thank you committee for your time and consideration. I believe there are others here to testify in support of this bill. I stand for questions.



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HB 1454
3-11-19
AA # 2
p1 of 1

HB 1454
Testimony of Amy De Kok
Senate Education Committee
March 11, 2019

Chairman Schaible and members of the Senate Education Committee, my name is Amy De Kok. I am in-house Legal Counsel for the North Dakota School Boards Association. NDSBA represents all 178 North Dakota public school districts and their boards. I am here today to support HB 1454.

First, we believe it is finally time to raise the bidding thresholds for school districts. While this bill doubles the current threshold of \$25,000 to \$50,000, it is still only half of the recently raised threshold for the state. It has been some time since these thresholds were raised, and \$25,000 does not go as far as it used to. Additionally, even with the increase, boards will still be approving these purchases at public meetings. Most districts have adopted policies that delegate spending authority to their superintendents up to a certain amount. While that amount varies, in my experience it is well under \$50,000.

The second part of this bill is the addition starting on line five of page two. This language is an additional exception to the general bidding requirements set forth in 15.1-09-34 for competitive purchases made through a joint powers agreement pursuant to NDCC ch. 54-40.3 not exceeding \$100,000. We believe this language will create some clarity for districts who are using cooperative purchasing. Many districts work with their local REA to do cooperative purchasing, while other districts in North Dakota enter into joint powers agreements for purposes of cooperative purchasing with political subdivisions of other states (namely, MN). As the law is currently written, there has been some uncertainty as to whether a school district can actually enter into a joint powers agreement with an REA for purposes of cooperative purchasing (or other purpose) under chapter 54-40.3. We believe this language would provide that clarity and allow districts to get the most out of every dollar. For these reasons, NDSBA urges a do pass on HB 1454, and I would be happy to stand for any questions.



HB 1454
3-11-19
AH #3
p1 of 2

HB 1454 – Bids for School District Contracts

Testimony in Support

Good afternoon Chairman Schaible and members of the Senate Education Committee, I stand before you on behalf of NDCEL which is the organization that serves our school Superintendents, Principals, CTE Directors, Technology Directors, AD's, County Superintendents, Business Officials and truly every school leader with the exception of teachers and school board members. We stand before you today in support of the positive intent behind HB 1454.

With the rising costs of building equipment and maintenance it is very easy to go beyond the \$25,000 aggregate expenditure that would require bids in current statute. This bill would move that amount to \$50,000 which would allow school districts to fill some immediate needs without going through a lengthy bidding process. This shift also aligns the dollar amount with the naturally rising costs of products and services. For example, the paper cost in West Fargo is over the \$25,000 base line currently.

Adding subsection n. with allowing cooperative purchases made pursuant to a joint powers agreement is also a change that will help districts spend their funds efficiently. This section was amended on the House side to have a bidding requirement for items greater than \$100,000. One question that we would have would be would an entity have to take bids on items over the \$100,000 limit if the joint powers agreement went through the competitive bidding process when it was enacted? For example:

If a group of schools decided to create a joint powers agreement for the purchase of artificial turf. If in the joint power agreement, the competitive bidding process of the lead organization was followed, would the other entities also have to bid for the turf? Or could they purchase without bidding since the product was already bid out during the creation of the JPA?



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3-11-19
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Possible Amendment:

- o. Cooperative purchases made pursuant to a joint-powers agreement under chapter 54-40.03 that followed the competitive bidding requirements of the lead organization.

We respectfully request a Do Pass on HB 1454



North Dakota Small Organized Schools

HB1454
3-11-19
AH#4
p1 of 1

Mr. ElRoy Burkle
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701-845-2910

March 8, 2019

Chairman Schaible, and Members of the ND Senate Education Committee,

For the record, my name is Mr. ElRoy Burkle, Executive Director of North Dakota Small Organized Schools (NDSOS).

NDSOS goes on record of supporting HB 1454 – relating to bids for school contracts.

Revising the bidding process by increasing bidding amount from \$25,000 to \$50,000 is welcomed as any major repair and/or upgrades quickly reach the proposed \$50,000 bidding threshold. Also, allowing cooperative bidding (\$50,000 to \$100,00) will greatly assisting the purchasing power of those schools that are part of a joint-powers agreement.

Thank you for your time and I shall stand for questions.

Respectfully,

s/s Mr. ElRoy Burkle

Mr. ElRoy Burkle, Executive Director
ND Small Organized Schools
1419 9th Ave NE
Jamestown, ND 58401
Cell: 701-230-1973 Email eburklendsos@gmail.com

March 8, 2019
File HB 1454 Senate Ed 3-11-19 Schools Bids

Board of Directors

Region 1

Mr. Tim Holte, Supt. Stanley
Mr. John Gruenberg, Supt. Powers Lake

Region 2

Mr. Jeff Hagler, Supt. North Star
Mr. Steven Heim, Anamoose & Drake

Region 3

Mr. Frank Schill, Supt. Edmore
Mr. Dean Ralston, Supt. Drayton

Region 4

Mr. Kelly Koppinger, Supt. New England
Mr. Jim Gross, Supt. Selfridge

Region 5

Mr. Joel Lemer, Bd. Member Carrington
Mr. Brandt Dick, Supt. Underwood

Region 6

Mr. Mitch Carlson, Supt. LaMoure
Dr. Steven Johnson, Supt. Lisbon

The mission of NDSOS is to provide leadership for the small/rural schools in North Dakota and to support legislation favorable to their philosophy while opposing legislation that is harmful.

19.0954.04001
Title.

Prepared by the Legislative Council staff for
Senator Davison

March 19, 2019

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3-19-19
A# #1
p. 1 of 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1454

Page 2, line 5, remove "of at least fifty thousand dollars but not exceeding one"

Page 2, line 6, remove "hundred thousand dollars."

Renumber accordingly