

**2021 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1169**

# 2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Room JW327C, State Capitol

HB 1169  
1/26/2021

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| <b>Competition between the government &amp; private industry &amp; report to the legislative management</b> |
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(10:18) Chairman Lefor calls the hearing on HB 1169.

| <b>Representatives</b> | <b>Attendance</b> |
|------------------------|-------------------|
| Chairman Lefor         | P                 |
| Vice Chairman Keiser   | P                 |
| Rep Hagert             | P                 |
| Rep Jim Kasper         | A                 |
| Rep Scott Louser       | P                 |
| Rep Nehring            | P                 |
| Rep O'Brien            | P                 |
| Rep Ostlie             | P                 |
| Rep Ruby               | P                 |
| Rep Schauer            | P                 |
| Rep Stemen             | P                 |
| Rep Thomas             | P                 |
| Rep Adams              | P                 |
| Rep P Anderson         | P                 |

## Discussion Topics:

- Economic development efforts

Rep Toman~District 34-Mandan introduces the bill.

Dustin Gawrylow~Managing Director-ND Watchdog Network. Attachment 3090.

Rick Gardner~Director-Rough Rider Industries-Dept of Corrections & Rehabilitation. Attachment # 2231.

Sherry Neas~Director of OMB Central Service Division-Office of Management & Budget. Attachment # 3275.

Rick Clayburgh~Bank of North Dakota. Testified in opposition.

John Schuh~Staff Attorney-Public Service Commission. Attachment # 3164.

Chairman Lefor closes the hearing.

Rep Thomas moves a Do Not Pass.

Rep Schauer second.

| <b>Representatives</b> | <b>Vote</b> |
|------------------------|-------------|
| Chairman Lefor         | Y           |
| Vice Chairman Keiser   | Y           |
| Rep Hagert             | Y           |
| Rep Jim Kasper         | A           |
| Rep Scott Louser       | Y           |
| Rep Nehring            | Y           |
| Rep O'Brien            | Y           |
| Rep Ostlie             | Y           |
| Rep Ruby               | Y           |
| Rep Schauer            | Y           |
| Rep Stemen             | Y           |
| Rep Thomas             | Y           |
| Rep Adams              | Y           |
| Rep P Anderson         | Y           |

Vote roll call Motion carried 13-0-1 & Rep Schauer is the carrier.

**Additional written testimony:** Attachments #2287 & 3302.

(11:06) End time.

*Ellen LeTang, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1169: Industry, Business and Labor Committee (Rep. Lefor, Chairman)** recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1169 was placed on the Eleventh order on the calendar.

**HB 1169 – Testimony by Dustin Gawrylow (Lobbyist #266) North Dakota Watchdog Network**

HB 1169 is a bill to protect the philosophy of a free and open market when government is involved in providing services for the market.

Today, North Dakota's economic needs and its business friendly approach require a way for private industry to react to the various ways North Dakota's business activities affect the free market.

Businesses need a way to petition their government without expending financial costs in court.

By creating a mechanism for businesses to petition the Public Service Commission for an evaluation as to whether the government funded and managed competition they deal with is fair, North Dakota could give businesses a lower cost alternative to lawyers and courts.

This bill grants businesses and individuals access to elected officials who can evaluate the governments' role in the free market effectively, as the PSC already regulates monopolies.

This bill should have limited financial impact on the PSC as any utilization of this law could be worked into the PSC's regular business. Only when there is need for further investigation would there be further costs.

All North Dakotans should seek to find ways to limit the government's involvement in the free market, and thereby limit the taxpayers exposure to market-driven instability.

**HOUSE INDUSTRY, BUSINESS, AND LABOR COMMITTEE  
REPRESENTATIVE MIKE LEFOR, CHAIR  
JANUARY 26, 2021**

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**RICK GARDNER, DIRECTOR, ROUGH RIDER INDUSTRIES  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION  
PRESENTING TESTIMONY IN OPPOSITION OF HOUSE BILL 1169**

Good morning, Chairman Lefor and members of the Industry, Business, and Labor Committee. My name is Rick Gardner, and I am the Director of Rough Rider Industries (RRI). I am here on behalf of the North Dakota Department of Corrections and Rehabilitation (DOCR) to provide testimony in opposition to House Bill 1169.

North Dakota Century Code Section 12-48-03.1 authorizes the DOCR correctional industries to make goods to be purchased directly by governmental agencies, including federal, state, and tribal agencies and political subdivisions for use in official business, and by nonprofit organizations, and through wholesale or retail outlets possessing a valid sales tax permit, and for products manufactured under the Prison Industries Certification Program (PIECP), in interstate commerce. RRI may also sell commissary items and RRI-made clothing to residents.

RRI's mission is to provide adults in custody job skills training necessary for successful reentry while providing quality goods and services in a self-sustaining manner. Correctional Industries is a proven program that works. The median recidivism rate submitted by state and federal correctional industries programs across the United States is 20.5% recidivism rate for incarcerated residents who worked in an industries

program; this is approximately half of the overall state rate of recidivism, which is 40.5%.<sup>1</sup> This illustrates that residents who worked in correctional industries are significantly less likely to return to prison than the average resident.

Employment is one of the main barriers an incarcerated individual will face upon reentry and is a determining factor in their rehabilitative success. RRI has between 150-200 residents working in our correctional industries program at any given time, which represents approximately 13% of the incarcerated men's population. Revenues generated from the sale of RRI products and services sustain all correctional industry programs. RRI provides training and learning opportunities in a variety of skill sets and trades, while utilizing the latest in manufacturing technologies and production equipment. Manufacturing industries and trades offered inside RRI include furniture and metal fabrication, seating, upholstery, CAD and graphic design, signs, license plates, laser cutting and engraving, sandblasting, wet or powder paint, sewing and garment, plastic bags, welding, sandbag filling for state construction projects, livestock care through a partnership with the North Dakota State University Hettinger Research Extension Center, and correctional commissary.

So who benefits from RRI?

1. The Taxpayers- Teaching and instilling valuable job skills to this population has been proven to lessen the cost of incarceration. As stated above, correctional industry programs report significant reductions in recidivism rates for participants. A 2015 study conducted by the

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<sup>1</sup> National Correctional Industries Association (NCIA) 2021 Directory, median recidivism rate calculated from self-reported statistics submitted by state and federal Correctional Industries agencies.

Washington State Institute for Public Policy found for every \$1 spent on correctional industries, \$4.77 is saved in future criminal justice costs attributable to the reduction in recidivism<sup>2</sup>.

2. Residents of the DOCR- While learning critical job skills as well as invaluable soft skills, residents gain the experience, expertise, and self-confidence that will help them find meaningful employment upon release.
3. Private Sector Business- RRI program helps support North Dakota business and the state economy. During the last biennium, RRI purchased \$8.6 million on raw materials, supplies, component parts, equipment and services to support our operations and mission. From this expenditure, all lumber, stain and finish, hardware, miscellaneous accessories, and equipment service was obtained directly from North Dakota providers. RRI is not designed to compete with private enterprise but rather complement their business offerings and should not be considered as a direct competitor. RRI is able to make available our personnel to help private enterprise in today's tight labor market. RRI has also invested in equipment and technologies to better prepare our workers for the private sector and offers these technologies to private enterprise, lessening their need to invest in expensive technologies.

Fewer work opportunities cause a less safe prison environment. In 1978, there was a major prison riot in Pontiac, Illinois, which was attributable to many factors,

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<sup>2</sup> Washington State Institute for Public Policy- Return on Investment: Evidence-Based Options to Improve Statewide Outcomes, February 2015.

including not only overcrowding and old and obsolete facilities, but also the lack of employment and training for residents. RRI's training programs offset the need to spend additional taxpayer dollars for offender supervision and alternative programming costs.

The monies earned by RRI program participants allow them the opportunity to send a portion of their earnings home to support their families, offsetting the need for additional taxpayer public assistance programs. It also increases the participant's ability to contribute to their financial obligations.

During the pandemic, RRI was able to supply North Dakota with hard-to-find PPE-type products. RRI provided a North Dakota-manufactured product to schools and universities, hospitals, long-term care facilities, National Guard and United States military, governmental agencies and other entities throughout the state to help in their COVID-19 response. RRI manufactured and supplied over 103,000 masks, 15,000 Bammiies, 200 utility gowns, 1,300 acrylic barriers, biohazard bags, social distancing floor graphics and signs, hand sanitizer, and foam vaccine vial holders.

Currently, all fifty states have a correctional industries program. Twenty-nine states, to include North Dakota, restrict sales to state/local government. Thirty-two state correctional industry programs receive preference in the state procurement process. Sixteen states allow direct sales to the private sector.

The establishment of correctional industries is solid public policy; it positively impacts public safety and supports the reduction of state government costs. House Bill 1169 would reduce opportunity for residents of the North Dakota Department of Corrections to gain work experience and receive job skills training. Recidivism rates in

North Dakota would be on the rise, our prisons would be less safe and, fewer dollars would be collected for financial obligations and Family Support Payments.

Mr. Chairman and committee members, I ask that you oppose House Bill 1169.

Mr. Chairman, I would be happy to answer any questions at this time. Thank you.

TESTIMONY OF

**Sherry Neas, Director, Central Service Division**

Chairman Lefor and members of the Committee. My name is Sherry Neas, Office of Management and Budget (OMB), Central Services Division. OMB is opposed to HB 1169 as introduced.

Similar bills were introduced in 2017 (HB 1162) and 2019 (HB 1217), which OMB also opposed.

The broad language in HB 1169 would allow anyone to petition that a government agency or correctional institution is competing with the private sector. This creates the potential for many petitions that could result in substantial workload for the Public Service Commission and interruption of state agency operations.

OMB is the administrative agency for state purchasing practices. State procurement laws facilitate a competitive process for vendors to compete for state contracts.

There are several government agencies and correctional institutions that have statutory authority to perform functions or provide goods and services that also exist in private sector. Procurement law allows government agencies and correctional institutions to obtain needed goods and services directly from other government agencies and correctional institutions, this is known as using government sources of supply.

Government sources of supply may be established for efficiency, security or a specific mission of the agency. For example, OMB has statutory authority to operate a central mailroom, central supply, printing operations and surplus property operation. There are several other government agencies and correctional institutions that perform functions or provide goods and services also provided by private sector individuals and businesses. In some cases, government entities have the option to use the government source or conduct a procurement process to select a private sector provider.

This bill describes an administrative process whereby the Public Service Commission determines whether a government entity is in competition with private sector and determines whether or not the government entity can continue the activity. OMB has concerns regarding how the administrative process described in this bill can override statutory authority for government agencies and correctional institutions to provide the goods or services being petitioned.

Page 2, lines 11-13 provide, "If a state agency or institution is authorized to engage in an activity in competition with private enterprise, the commission shall set a fee for that activity to reflect the fair market value and the actual costs incurred."

Involving the Public Service Commission in establishing fees for government entities that provide goods and services would create a substantial workload increase for the Public Service Commission, and likely reduce the efficiencies of government programs.

Using OMB as an example, the laws that authorize OMB to operate a surplus property operation require OMB to transfer property at fair market value. OMB operates surplus property and has subject matter expertise in that area. Therefore, OMB would be the logical entity to establish rates for that program.

Existing law emphasizes opportunities for private sector entities to compete for government contracts, while also authorizing purchases directly from existing government agencies and correctional institutions. OMB opposes the broad language of HB 1169 which could conflict with existing laws and create a substantial workload increase for state agencies and institutions. This concludes my testimony, and I would welcome any questions you might have.

**House Bill 1169**

**Presented by:**     **John M. Schuh**  
                          **Staff Attorney**  
                          **Public Service Commission**

**Before:**            **House Industry, Business and Labor Committee**  
                          **The Honorable Mike Lefor, Chairman**

**Date:**              **January 26, 2021**

**TESTIMONY**

Mister Chairman and committee members, I am John Schuh. The Commission asked me to provide some agency considerations and recommendations on HB 1169.

HB 1169 creates a new section under chapter 49-02 which allows an individual directly affected by competition with a state agency or institution to present a case to the Public Service Commission. Then, if determined to be in competition with private enterprise, the Commission will direct the state institution to terminate the activity. The Commission certainly agrees with the principle of this bill. However, there are some concerns in its application.

In its application, the Commission requests that a written decision not be limited to twenty days. The valuation of many of the services and products are not commonly evaluated by the Commission and the Commission may be limited by what is provided by the parties on record. This may result in a need, and resources for the Commission, to conduct an external investigation into cost of services to aid in its evaluation.

The Commission would also request that the committee consider having the Commission instead provide a written report or recommendation to legislative management instead of directing the agencies and elected officials to terminate the activity or change an enacted fee.

Mister Chairman, this concludes our testimony. I will be happy to answer any questions.



January 26, 2021

Chair Lefor and Members of the House Industry, Business and Labor Committee:

EDND represents more than 80 state economic development organizations on the front line of economic development efforts throughout North Dakota. The primary purpose of the organization is to promote the creation of new wealth throughout North Dakota to develop more vibrant communities and improve quality of life. EDND would like to express its opposition to HB 1169.

While EDND agrees with the intent of this bill, to limit competition between government and private industry, we feel the bill could have unintended consequences. Petitions could potentially be filed against state agencies such as the North Dakota Department of Transportation, the North Dakota Department of Commerce, the North Dakota Housing Finance Agency, the Bank of North Dakota, the North Dakota Information Technology Department, and other agencies with which EDND partners. One example could be if a petition was filed against the North Dakota Information Technology Department providing services to the North Dakota University System. This bill could potentially require universities to use a higher-priced option, resulting in higher costs to the system and higher tuition rates for students. There are efficiencies in state agencies working together and using a private company could result in higher costs for North Dakota taxpayers.

Thank you for the opportunity to express EDND's concern about HB 1169.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Greuel". The signature is written in a cursive, flowing style.

Jennifer Greuel  
Executive Director

**House Industry, Business and Labor Committee  
Chairman – Representative Mike Lefor  
January 26, 2021**

**Testimony**

**By: Harold Stewart  
City Manager, City of Minot  
[harold.stewart@minotnd.org](mailto:harold.stewart@minotnd.org)  
701-857-4750**

**HB 1169**

Chairman Lefor and members of the House Industry, Business and Labor Committee, my name is Harold Stewart, City Manager of Minot. The City of Minot would like the record to reflect its opposition to HB 1169.

As the bill is currently drafted, it potentially jeopardizes many of the services North Dakota communities provide their constituencies. Examples of these services include utilities such as water and sewer, trash collection and recycling, and quality of life amenities such as gyms and weight rooms.

While the private sector often provides such services in a particular community, it is frequently in the interest of the public to have such services operated by the local government. In some cases, this is because operation by government is cheaper for its constituents and preserves economic competitiveness, and in others cases it provides these services to lower economic classes of communities where they otherwise would not have access to such services. Examples include providing waste collection services at lower cost and providing workout equipment to citizens that cannot afford a membership at a Gold's Gym.

Given the potential detriments to economic development competitiveness and socioeconomic disparity this bill would introduce to North Dakota communities, the City of Minot respectfully requests a "do not pass" action from this Committee.