2023 HOUSE AGRICULTURE

HB 1345

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1345
1/20/2023

Relating to state purchasing contacts.

Vice Chairman Beltz called meeting to order 9:00 AM

Members present; Chairman Thomas, Vice Chairman Beltz, Representatives Fisher, Headland, Henderson, Kiefert, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle.
Members absent; Representatives Christy, Finley-DeVille.

Discussion Topics:

- Investigating
- Spending cap
- Vendor support
- Political position
- State's interests

In favor:
Representative Bernie Satrom, District 12, primary bill sponsor (no written testimony)

Opposed:
Sherry Neas, Director of Central Services and Chief Procurement Officers of the Office of Management and Budget ("OMB"), #14743
Andrea Fettig, Marketing Manager GNDA (no written testimony)

Neutral:
Tag Anderson, Risk Management Director, Office of Management and Budget (no written testimony)

Chairman Thomas adjourned the meeting 9:37 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1345
2/9/2023

Relating to state purchasing contracts.

Vice Thomas call the meeting to order 10:19 AM

Members present; Chairman Thomas, Vice Chairman Beltz, Representatives Finley-DeVille, Fisher, Headland, Henderson, Kiefert, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle.

Discussion Topics:

- Committee action
- Amendment rights
-

Representative Tveit moved a do pass.
Representative VanWinkle seconded.

Roll call vote:

Representatives	Vote
Representative Paul J. Thomas	N
Representative Mike Beltz	N
Representative Josh Christy	N
Representative Lisa Finley-DeVille	N
Representative Jay Fisher	N
Representative Craig Headland	N
Representative Donna Henderson	Y
Representative Dwight Kiefert	N
Representative SuAnn Olson	N
Representative Brandon Prichard	N
Representative Cynthia Schreiber-Beck	N
Representative Bill Tveit	Y
Representative Lori VanWinkle	N

Motion failed 11-2-0

Representative Prichard moved to adopt the proposed amendment, #20348.
Representative VanWinkle seconded.

Roll call vote:

Representatives	Vote
Representative Paul J. Thomas	N
Representative Mike Beltz	N

Representative Josh Christy	N
Representative Lisa Finley-DeVille	N
Representative Jay Fisher	Y
Representative Craig Headland	Y
Representative Donna Henderson	Y
Representative Dwight Kiefert	N
Representative SuAnn Olson	Y
Representative Brandon Prichard	Y
Representative Cynthia Schreiber-Beck	N
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y

Motion passed 7-6-0

Chairman Thomas adjourned the meeting 10:52 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1345
2/10/2023

Relating to state purchasing contracts.

Vice Thomas call the meeting to order 2:24 PM

Members present; Chairman Thomas, Vice Chairman Beltz, Representatives Finley-DeVille, Fisher, Headland, Henderson, Kiefert, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle.

Discussion Topics:

- Committee action

Representative Prichard presented a further amendment LC #23.0453.02003 and moved to adopt.
Representative Henderson seconded.

Roll call vote:

Representatives	Vote
Representative Paul J. Thomas	Y
Representative Mike Beltz	Y
Representative Josh Christy	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Craig Headland	Y
Representative Donna Henderson	Y
Representative Dwight Kiefert	Y
Representative SuAnn Olson	Y
Representative Brandon Prichard	Y
Representative Cynthia Schreiber-Beck	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y

Motion passed 13-0-0

Representative VanWinkle moved a do pass as amended. Representative Prichard seconded.

Roll call vote:

Representatives	Vote
Representative Paul J. Thomas	Y
Representative Mike Beltz	Y
Representative Josh Christy	Y

Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Craig Headland	Y
Representative Donna Henderson	Y
Representative Dwight Kiefert	Y
Representative SuAnn Olson	Y
Representative Brandon Prichard	Y
Representative Cynthia Schreiber-Beck	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y

Motion passed 13-0-0

Representative Tveit will carry the bill.

Chairman Thomas adjourned the hearing 2:30 PM

Diane Lillis, Committee Clerk

23.0453.02003
Title.03000

Prepared by the Legislative Council staff for
Representative Prichard
February 9, 2023

2-10-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1345

Page 1, replace lines 7 and 8 with "The state may give priority to companies that support the state's agriculture and energy industries."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1345: Agriculture Committee (Rep. Thomas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1345 was placed on the Sixth order on the calendar.

Page 1, replace lines 7 and 8 with "The state may give priority to companies that support the state's agriculture and energy industries."

Renumber accordingly

2023 SENATE AGRICULTURE AND VETERANS AFFAIRS

HB 1345

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1345
3/16/2023

A bill relating to state purchasing contracts.

9:47 AM Chairman Luick opened the meeting on HB 1345.

Members present: Chairman Luick, Senator Weber, Senator Weston, Senator Hogan.
Members absent: Senator Myrdal, Senator Lemm.

Discussion Topics:

- Procurement
- Federal regulations
- ESG goals
- Low-cost energy
- Contracts with the state

9:47 AM Representative Bernie Satrom, District 12, Jamestown, ND, introduced HB 1345 and testified in favor. No written testimony.

9:57 AM Sherry Neas, Director, Central Services Division, OMB, testified opposed to HB 1345. #25338

10:14 AM Chairman Luick closed the hearing on HB 1345.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Agriculture and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1345
3/24/2023

A bill relating to state purchasing contracts.

2:28 PM Chairman Luick opened the meeting.

Members present: Chairman Luick, Vice Chairman Myrdal, Senator Lemm, Senator Hogan, Senator Weston, Senator Weber.

Discussion Topics:

- Committee action

2:29 PM Senator Myrdal moved DO NOT PASS on HB 1345.
Senator Hogan seconded the motion.

Roll call vote:

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Randy D. Lemm	Y
Senator Mark F. Weber	Y
Senator Kent Weston	N

Vote 5-1-0 DO NOT PASS HB 1345

Senator Myrdal will carry the bill.

2:30 PM Chairman Luick adjourned the meeting.

Brenda Cook, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1345, as engrossed: Agriculture and Veterans Affairs Committee (Sen. Luick, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1345 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1345

NORTH Dakota Be Legendary. | Management and Budget

Testimony in Opposition to
House Bill 1345
House Agriculture Committee
January 20, 2023

TESTIMONY OF
Sherry Neas, Director, Central Services Division

Good morning, Chairman Thomas and members of the committee. My name is Sherry Neas, Central Services Division Director, and Chief Procurement Officer, of the Office of Management and Budget (OMB).

OMB opposes HB 1345 as introduced.

HB 1345 would create a new section in the state purchasing laws providing that, "All contracts between a state entity and a vendor must include a provision indicating the vendor's support of the state's agriculture and energy industries." This could significantly complicate procurement and state contracting.

This broad language would impact all state agencies, higher education institutions and thousands of state contracts, annually. Currently, state procurement and state contracts have nothing to do with a vendor's position on environmental and social governance issues. Procurement rules require all contractual terms and conditions to be disclosed in the bid document, so vendors can review the contract before they submit a bid or proposal. This provision would impact competition on state contracts and the ease of negotiating contracts with successful vendors. Many individuals and businesses would be hesitant to sign this vague provision, and others would refuse to agree to this provision altogether.

The fiscal impact of this bill cannot be calculated, but additional legal costs and time delays can be expected for contract negotiations.

The bill may raise Constitutional concerns of First Amendment free speech violations and possible risk of a federal 42 USC sec. 1983 claim. The bill requires individuals and businesses to agree to making a statement of support for North Dakota's agriculture and energy industries as a condition of a contract with the state of North Dakota. An individual or organization's expressions of their opinions and beliefs is a constitutionally protected activity. Any consequences to be applied to vendors that refuse to agree to this provision must be carefully crafted by legal counsel to avoid risk of restriction of freedom of speech potentially exposing the state and its employees to liability.

While this bill is well-intended, it would complicate procurement and state contracts and could have legal implications. I would be happy to answer any questions and would be available to

provide any assistance requested by the committee to draft amendments if you choose to amend the bill to address the concerns I have raised today.

Thank you, Mr. Chairman and committee members. This concludes my testimony.

23.0453.02000

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1345

Introduced by

Representatives Satrom, Grueneich, Hagert, Headland, Kiefert, Ostlie, Steiner

Senators Conley, Erbele, Lemm, Wanzek

A BILL for an Act to create and enact a new section to chapter 54-44.4 of the North Dakota Century Code, relating to state purchasing contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

Vendors - Contracts.

~~All contracts between a state entity and a vendor must include a provision indicating the vendor's support of the state's agriculture and energy industries.~~

If a contract is at least one hundred thousand dollars and this state has a reasonable belief that a vendor is conducting practices against this state's agricultural or energy interests, this state may decline to enter into a contract.

NORTH Dakota Be Legendary. | Management and Budget

Testimony in Opposition to
Engrossed House Bill 1345
Senate Agriculture and Veterans Affairs Committee
March 16, 2023

TESTIMONY OF
Sherry Neas, Director, Central Services Division

Good morning, Chairman Luick and members of the committee. My name is Sherry Neas, Central Services Division Director, and Chief Procurement Officer, of the Office of Management and Budget (OMB).

OMB opposed HB 1345 as introduced and is opposed to the engrossed bill before you. The original bill required individuals and businesses make a statement of support for North Dakota's agriculture and energy industries as a condition of a contract with the state of North Dakota. OMB raised concerns about potential First Amendment free speech violations and other legal issues because an individual or organization's expression of their opinions and beliefs is a constitutionally protected activity.

There were several Environmental Social Governance (ESG) bills this session related to investments and state contracts. The ESG movement has impacted North Dakota agriculture and energy and the intent of these bills to "do business" with companies that are not part of that anti-fossil fuel, anti-production agriculture movement. OMB greatly appreciates the willingness of the primary sponsor, Rep. Satrom, sponsors of the other ESG bills, subcommittee members, and other stakeholders to address concerns raised by OMB and other agencies. Three bills passed through the cross-over: HB 1429, HB 1278, and HB 1345.

Engrossed HB 1345 creates a new section in the state purchasing law: "The state may give priority to companies that support the state's agriculture and energy industries." My testimony will identify the potential challenges OMB finds with the engrossed bill.

"Give **priority**" would be a new term in state procurement. OMB assumes this would create a type of preference in awarding contracts.

The bill language is permissive, "**may** give priority." OMB and purchasing agencies would need to decide when to invoke the statutory ability to "give priority to companies that support the state's agriculture and energy industries."

The "priority" given is based upon a company's "**support** (of) the state's agriculture and energy industries." Good evaluation criteria are qualitative and quantitative. Implementing this law would require OMB to develop guidelines, templates, and procedures for agencies to measure a company's "support of ND agriculture and energy" as a consideration in contract award.

After discussing this bill with OMB procurement staff and other agencies, the following questions/concerns arose about its implementation:

- "Support" is very subjective and could be difficult to determine.
- Do procurement officers ask vendors if they support ND agriculture and energy? How truthful will their answer be knowing "priority" is based upon that support?
- What happens to vendors that do not have an opinion or awareness of North Dakota agriculture or energy industry? Some companies simply sell goods or services needed by North Dakota state agencies and have no position on environmental social governance.
- Would state procurement officers need to perform due diligence in attempt to determine whether companies support or oppose ND agriculture and energy industries?
- If companies are denied an award because the agency determined another company supported ND agriculture and industry, would there be an increase in protest and appeals?

Transparency and fairness are imperative in state procurement. Currently, state procurement and state contracts have nothing to do with a vendor's position on environmental and social governance issues, beliefs or politics. Procurement laws requires the evaluation criteria to be identified in the solicitation. Bids and proposals are awarded based upon evaluation of what is being offered, experience and qualifications of the vendor, and cost.

OMB's focus this session has been to simplify procurement for vendors and government. OMB understands the desire to "do something" about ESG now. The engrossed bill is well-intended, but OMB has concerns that this bill would create an ambiguous procurement evaluation preference that could complicate the procurement process. The other engrossed ESG bills, HB 1429 and HB 1278, each contain studies of ESG issues. Let's take time to understand the issue and if legislation is needed, write a law that provide adequate guidance for consistent, effective implementation.

Mr. Chairman and members of the committee, I urge you to vote "do not pass" on this bill. This concludes my testimony, and I am happy to answer any questions. Thank you.