

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1123

2001 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1123

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1123 A

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 01-18-01

Tape Number	Side A	Side B	Meter #
#2	X		877-2057
Committee Clerk Signature <i>Robin L. Small</i>			

Minutes:

REP. M. KLEIN called the meeting to order, all members were present.

In favor:

LINDA ENGMANN, DIRECTOR, CENTRAL SERVICES DIVISION

Please see attached testimony.

REP. DEVLIN states that he has some concerns about removing name brand specifics.

ENGMANN states that brand name specification can occur if, under the statute, that you can waive competition. Under certain circumstances. (Purchasing statute.)

REP. DEVLIN asks in 5444, will it cover all political subdivisions?

ENGMANN replies no that is state agency.

REP. DEVLIN talks about an amendment removing language from the bill.

REP. M. KLEIN states that there is concern that this will tie the hands for certain existing equipment. The association of counties seems to be quite upset, in not being able to purchase the

same equipment that would fit in with their existing equipment. Maybe we do need to amend that part. Let them have that option.

ENGMANN states that they are inserting this language for exemptions that are granted that would also apply to political subdivisions as well. ENGMANN says that they would also entertain amendments as well.

REP. GRANDE has concerns with the replacement of a system. The opening of bids. Could they be specific so they could retain local service?

ENGMANN replies that the bid writing specifications, you are able to insert that in your proposal. Yes, that is exactly what you can do.

REP. GRANDE so that is all addressed, would that be the counties waiver?

ENGMANN replies yes that would be the case. You need to write your specifications to get what you need and want, and we'll get what you want.

REP. DEVLIN reads from the century code to the committee.

REP. KLEMIN asks about the change in subsection 2. There really is no change in subsection 3.

ENGMANN replies , yes that is correct.

REP. KLEMIN states that changing something that the bill here didn't propose to change. All they did was move this language basically out of subsection 1 and into subsection 3. They are not proposing any substance change in this part.

REP. KASPER asks about a code that would influence another part of the law. Why would we want to spell out in this particular area those exceptions. It is much simpler when people are looking in that area let them see that the exceptions are written in the bill? Why not put it in this bill? Down the road the legislature amends this section, we don't have that problem then.

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House Government and Veterans Affairs Committee

Bill/Resolution Number HB ~~426~~ A

Hearing Date 01-18-01      1123

REP. M. KLEIN asks ENGMANN if she would be willing to draw up an amendment, to satisfy the county and the political subdivisions?

ENGMANN replies that yes they could do that.

REP. M. KLEIN states that they are very concerned that this bill is going to tie their hands.

SHERRY NEAS, OMB

NEAS states that there is no provision in the law that states that anyone to but a brand name.

No questions.

No opposition.

The hearing was closed on HB 1123, no action was taken on this day.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1123 B

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 2/2/01

Tape Number	Side A	Side B	Meter #
1	X		0-923
Committee Clerk Signature <i>Robin R. Small</i>			

Minutes:

REP. M. KLEIN called the hearing to order. All members were present. REP. M. KLEIN would like to take action on this bill at this time.

There was proposed amendments, the committee then reviews them.

REP. HAAS states that he is not sure how line ten is going to read after the amendments.

REP. M. KLEIN then proceeds to explain the before and the after of the amendment. Talks about replacing the merit, then a new sentence.

General discussion.

REP. BRUSEGAARD moves to accept the amendments, seconded by REP. GRANDE.

REP. M. KLEIN then takes a voice vote, voice vote passes. REP. BRUSEGAARD then motions for a DO PASS AS AMENDED, seconded by REP. GRANDE. The roll call is taken with a 14-1, motion carries. The carrier of the bill is REP. KASPER.

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House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1123 B

Hearing Date 2/2/01

HB 1123-DO PASS AS AMENDED 14-1

CARRIER-REP. KASPER

**FISCAL NOTE**  
 Requested by Legislative Council  
 12/21/2000

Bill/Resolution No.: HB 1123

Amendment to:

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

No fiscal impact

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No fiscal impact

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

No fiscal impact

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*



Name:	Pam Sharp	Agency:	OMB
Phone Number:	328-4608	Date Prepared:	12/28/2000

Central Services Division  
January 26, 2001  
Fifty-seventh  
Legislative Assembly  
Of North Dakota

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1123

Page 2, line 10, replace "merit," with "merit. When it is advantageous that the purchase"

Page 2, line 11, replace "waived under section 54-44.4-05," with "be of a particular brand of product or products of a particular manufacturer to the exclusion of competitive brands or manufacturers, the purchasing board or entity must document those circumstances and provide written justification for the proprietary specification or purchase. The purchasing board or entity must procure the proprietary product through a competitive process unless the needed product is available exclusively from one source of supply or other circumstances exist under which competition can be waived."

Renumber accordingly

18133.0101  
Title.0200

Adopted by the Government and Veterans  
Affairs Committee  
February 2, 2001

VR  
2/5/01

HOUSE AMENDMENTS TO HB 1123 HOUSE GVA 2/5/01

Page 2, line 10, replace ", or unless competition may be limited or" with "When it is advantageous that the purchase be of a particular brand of product or products of a particular manufacturer to the exclusion of competitive brands or manufacturers, the purchasing board or entity must document those circumstances and provide written justification for the proprietary specification or purchase. The purchasing board or entity shall procure the proprietary product through a competitive process unless the needed product is available exclusively from one source of supply or other circumstances exist under which competition can be waived."

Page 2, remove line 11

Renumber accordingly

Date: 2-2-2001

Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1123

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Subcommittee on \_\_\_\_\_

or

☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken accept the amendments

Motion Made By Brusegaard Seconded By Grande

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KLEIN			REP KROEBER		
VICE CHAIR GRANDE					
REP BELLEW					
REP BRUSEGAARD					
REP CLARK					
REP DEVLIN					
REP HAAS					
REP KASPER					
REP KLEMIN					
REP MEIER					
REP WIKENHEISER					
REP CLEARY					
REP HUNSKOR					
REP METCALF					

*Voice vote  
passed!*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 2-2-2001

Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1123

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Subcommittee on \_\_\_\_\_

or

☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass As Amended

Motion Made By Brusegaard Seconded By Grande

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KLEIN	✓		REP KROEBER		✓
VICE CHAIR GRANDE	✓				
REP BELLEW	✓				
REP BRUSEGAARD	✓				
REP CLARK	✓				
REP DEVLIN	✓				
REP HAAS	✓				
REP KASPER	✓				
REP KLEMIN	✓				
REP MEIER	✓				
REP WIKENHEISER	✓				
REP CLEARY	✓				
REP HUNSKOR	✓				
REP METCALF	✓				

Total (Yes) 14 No 1

Absent \_\_\_\_\_

Floor Assignment Rep. Kasper

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

**REPORT OF STANDING COMMITTEE**

**HB 1123: Government and Veterans Affairs Committee (Rep. M. Klein, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1123 was placed on  
the Sixth order on the calendar.

Page 2, line 10, replace "or unless competition may be limited or" with "When it is advantageous that the purchase be of a particular brand of product or products of a particular manufacturer to the exclusion of competitive brands or manufacturers, the purchasing board or entity must document those circumstances and provide written justification for the proprietary specification or purchase. The purchasing board or entity shall procure the proprietary product through a competitive process unless the needed product is available exclusively from one source of supply or other circumstances exist under which competition can be waived."

Page 2, remove line 11

Renumber accordingly

2001 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1123

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1123

Senate Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date March 2, 2001

Tape Number	Side A	Side B	Meter #
1	X		13,9-34,3
Committee Clerk Signature <i>James A. Raib</i>			

Minutes: **Chairman Krebsbach** opened the hearing on HB 1123 which relates to preference to North Dakota bidders for services and specifying name brand merchandise. Appearing before the committee was **Linda Engmann**, director, Central Services Division. A copy of her written testimony is attached. **Chairman Krebsbach** inquired about the house amendments to the original bill. **Ms. Engmann** indicated that in the original bill there were objections and concerns that the section that deals with state procurement would become confusing because it was this particular section of statute that applies to items that refer back to another section. If one section had changed would they remember to refer back to it. So, what the amendment was, was to put the language from that section into this one for statute. **Senator T. Mathern** indicated on page 2 of the Engrossed Bill, when he was reading it through it seemed like the first sentence sort of set out all of these negatives and then it gets to the meat of it. Is that the correct order of this? I mean it's like even the way you explained it, said you could specify a brand name and when I read this it starts out with all of these reasons you can't. To him there's just not a simple read to



really get the concept that you testified to. **Ms. Engmann**, indicated it is generally not because brand specifying, specifying a brand does limit competition. It is with competition that we get better pricing hopefully, that's the theory. It is generally not acceptable to do brand specification because it limits competition and that is what, without saying or equivalent. That is what the first sentence is saying. You can not specify a brand without saying equivalent because of the limiting of the competition pricing. There are circumstances under which it is advantageous to specify. So it moves from no, you can't do it unless you specify equivalent, however, when you need to do you can do it. If you document those it is acceptable. **Senator T. Mathern** inquired couldn't we just eliminate the first sentence and get at what you are trying to get at? **Ms. Engmann** indicated that this first sentence was just moved from section one of the original statute to this subsection. That has always been a requirement under statute that you can not specify a brand without stating or equivalent. That is not changed. What we have allowed under this is to allow specifying a certain brand under certain circumstances. That has not been in statute thus far. **Senator T. Mathern** once again inquired if we really need this. **Ms. Engmann** cited examples of why it needs to be in this bill. **Senator Dever** offered some comments on specifications. Discussion continued with comments, observations, and questions from **Senators Dever, Krebsbach, and Ms. Engmann**. **Bill Wocken**, City Administrator for the City of Bismarck appeared before the committee. A copy of his written testimony is attached. Questions were offered by **Senators T. Mathern and Dever**. **Mr. Wocken** responded. There was nothing further. **Chairman Krebsbach** closed the hearing on HB 1123. **Senator Dever** moved a Do Pass on HB 1123, seconded by **Senator Kilzer**. Roll Call Vote indicated 5 Yeas, 0 Nays, and 1 Absent or Not Voting. **Senator Dever** will carry the bill.

Date: 3/02/01  
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1123 (Engrossed)

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Sen. Dever Seconded By Sen. Kilzer

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.	✓		Senator Carolyn Nelson		
Senator Dick Dever, Vice-Chr.	✓		Senator Tim Mathern	✓	
Senator Ralph Kilzer	✓				
Senator Rich Wardner	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Sen. Dever

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

**REPORT OF STANDING COMMITTEE (410)**  
March 2, 2001 12:55 p.m.

Module No: SR-36-4699  
Carrier: Dever  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HB 1123, as engrossed: Government and Veterans Affairs Committee (Sen. Krepsbach, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1123 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1123

Presented by: Linda Engmann, Director  
Central Services Division

Before: Government and Veterans Affairs Committee  
Matthew Klein, Chairman

Date: January 18, 2001

TESTIMONY

Chairman Klein and members of the committee, my name is Linda Engmann. I am the director of Central Services Division of the Office of Management and Budget.

Subsection 1 of the statute addresses two topics – preference to North Dakota bidders and brand-name specification in bids. This bill moves the language regarding brand-name specification when purchasing goods, merchandise, supplies, or equipment from subsection 1 to a newly created subsection 3. No requirements under the law are changed.

Subsection 2 is rewritten to parallel the preference given for service contracts with that given for goods as specified in Subsection 1. In North Dakota, preference given in-state vendors is reciprocal to that given in the state of a non-resident bidder.

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

Testimony before the Senate Government/Veterans Affairs Committee  
Engrossed House Bill 1123  
March 2, 2001

Good morning Madame Chairman and committee members. My name is Bill Wocken. I am City Administrator for the City of Bismarck. I am appearing in support of HB 1123 this morning.

The engrossed bill restates present state law to make more clear the state's position on local preference and on purchase of designated products. Although my city most often purchases via unrestricted bidding it is occasionally necessary to purchase a particular type of gauge or a brand name product. This bill sets out a logical process to arrive at this purchase. I would appreciate your favorable consideration of this bill.

Thank you for allowing me to speak to you this morning.

H.B. 1123

Presented by: Linda Engmann, Director  
Central Services Division

Before: Government and Veterans Affairs Committee  
Karen Krebsbach, Chair

Date: March 2, 2001

TESTIMONY

Chairman Krebsbach and members of the committee, my name is Linda Engmann. I am the director of Central Services Division of the Office of Management and Budget.

Section 1 of the bill moves language regarding brand-name specification when purchasing goods, merchandise, supplies, or equipment from subsection 1 of the statute to a newly created subsection 3. No requirements under the law are changed.

Section 2 of the bill parallels the preference given for service contracts with that given for goods as specified in Subsection 1. In North Dakota, preference given in-state vendors is reciprocal to that given in the state of a non-resident bidder.

Section 3 of the bill creates a new subsection 3 in the statute that allows OMB, any other state entity, and political subdivisions to specify a brand name when purchasing goods if the bidders are asked for a bid on equivalent goods. It also allows entities to bid a brand name without specifying an equivalent if it is advantageous for the entity to do so. For example, if a county has standardized on a particular brand of equipment, it only makes sense to buy replacement parts or accessory equipment from the same manufacturer. The county should be able to do that without having to consider other brands that they know will not meet their needs. All circumstances under which competition is limited or waived must be documented.

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