

# MICROFILM DIVIDER

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DESCRIPTION

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2003 HOUSE EDUCATION

HB 1241

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Deanna Hall  
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10/2/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES  
BILL/RESOLUTION NO. HB 1241  
House Education Committee

☐ Conference Committee

Hearing Date February 4, 2003

Tape Number	Side A	Side B	Meter #
1	x		00-end
1		x	00-2096
Committee Clerk Signature <i>Linda Giechta</i>			

Minutes: Chairman Kelach opened HB 1241. There are two separate issues in this bill. The Legislators come forward and testify so that they can go back to their committee meetings. Then we will break it out so that we have discussion based on the University System and the k-12.

Rep Wes Belter, District 22,

This is much more complex than it appears. The issue at hand here is that in both k-12 and higher Ed, we need to come to some type of agreement so we do not have competition between our tax supported institutions and private enterprises. Yet we also have to keep in mind that there are some instances where private enterprises is not going to fulfill all needs. What you will ultimately find is that common sense of those who are involved in the food service is what is needed. The Legislature lay out some parameters, saying to private sector that we want you to participate and provide those services that you can provide. And have legislation that allows the state supported food services to provide those services that can not be provided by the private system. We have two issues here, they both face the same problem. If there is anything I can assist the committee with, please ask.

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*Doreen Hall*  
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*10/2/03*  
Date

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**(300) Rep. Carlson, District 41, South Fargo**

On the Benefit of one of our constituents, the Oven Door. The issue on this goes back to 1999, because John called me up and said I am loosing all my business, that I have built up over the past 9 years, to the Fargo Public School. What can we do about it. So we got an Attorney General's opinion done and John will give you the history on that. The Fargo Public school stopped competing with the Oven Door in respects to serving meals to day cares. They used some office of the Federal Nutrition Act for Children. What they did was take away 60% of his business by underbidding all of his prices. that would be easy to do because you are buying commodities and you have subsidized equipment, electricity, and etc. But it hasn't been with out threat along the way, Fargo Public is sending out letters requesting another opportunity to bid. I told the Fargo Public School at a board meeting that this isn't a threat or a policy, we will develop legislation to protect private business.

**Rep. Eckre, District 25, See Attached Testimony with amendments.**

I hope that flexibility doesn't mean that we put private businesses out of business. We don't want the colleges to do reunions, weddings that can be done at other places. These are state buildings with state subsidies. Colleges do have a function, to teach. There has to be a fine line here somewhere. Please read the enclosed letter.

**Rep. Hunskor** MSU Bottineau, they have an independent private contractor called the Marriott, which is the only full-service catering business in Bottineau. There is nowhere else to hold it, where would they go?

**Eckre:** Under this bill they can do it, because there is nowhere else to go.

**Rep. Hunskor** Is there a gray area here?

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**Eckre:** It comes down to common sense, I don't know if you can legislate common sense. There is always going to be gray area.

**Rep. Herbel** Section 2, A,B,C,D are they covered under E.

**Eckre:** I didn't want to spell it out, I just wanted to try to put something together to start on this.

**(1000-1900) John Carlson, Oven Door Catering Business, See Attached Testimony**

**Rep. Mueller** Are there other businesses being affected like you are?

**Carlson:** VIP Catering, Grainery, I don't know all of them.

**Rep. Sitte** Senior Citizen Center's Meal on Wheels, by NDSU, do you know of any other?

**Carlson:** No I do not. No one will bid on the Meals on Wheels program.

**Rep. Meler** What was the Fargo School's reason for not serving day care with less than 25 kids.

**Carlson:** I don't know what the rationale was, but if I were to speculate, it was because it is less possible to make a profit to deliver the meal. I received a call for the business manager at the Fargo School wanting me to do just that, they take the larger, and I the smaller. I did not agree.

**Rep. Herbel** This would not affect Dickinson, Valley City, Jamestown, Mayville, and smaller communities like that, correct? **Carlson:** I don't believe it would.

**Suzie White,** I have been in the hospitality business for over 30 years.

What used to be a great state for a for-profit state. Today I have brought a bag of shoes' soles are thin from the many hours of hard work in this industry, I want you to take off your shoes today and walk in mine before you make a decision on this bill. I want you to really listen and become aware what is happening to for-profit business persons in ND. And I'm not just talking about the hospitality industry either. Any one in our industry knows that your heart has to be in service to people in order to stay afloat. And over the years, for-profits of industry, motel lounges have

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decreased dramatically. I would love to blame the influx of big out-of-state chains, but that is small comparison to the nonprofit state and federal subsidized organizations that are serving against us and are allowed to compete illegally and legally.

- 1) The nonprofit clubs that allow anyone in their clubs, like the for-profit does, and they in turn allowed are allowed to operate as a charitable gaming site. Keeping 50% of the profits to off set their expenses. And to pay for their labor that is not volunteer, and for remodeling and utility costs. The senior centers around the state that are now catering and they are leasing rental space and serving thousands of meals which by law are to be served from a local restaurant when possible before building or funding centers. As not to jeopardize for-profit business. The rents that they collect are called donations, when I collect rent I have to pay tax on it.
- 2) We compete against schools and local fund groups and local churches, and every social nonprofit organization there is on a daily basis. These groups do not pay insurance for food poisoning and are not forced to follow state health food codes, and do not pay taxes on their labor. And now for the past several years, schools and higher Ed have become competitive to the point of embarrassment. If you want to have food catered or to book convention, meeting room, wedding or family reunion. Call a college club or school, a for-profit business does not stand a chance in competing. University of Mary's high tech meeting rooms will make the best convention center in Bismarck look meager. I could bore you with stories about Universities competing. And I mean competing for what we go into business for to serve and cater food, not to educate people. I'm starting to wonder if they know what there mission is.

Rep. Mueller Are you suggesting we go beyond educational institutions and address that?

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**White:** I was just trying to let you know that this is just another freighting area for us. We have talked many times and how to address these issues, what is fair. But when nonprofit organizations are out competing and selling themselves and advertising to take away our business. I find that to be difficult to compete with.

**Patty Lewis, Hospitality Association**

This is a huge issue for us this session, for the reasons that already have been addressed by previous speakers. I would like to share with you one other story, one of our board members in Minot shared with us that Minot State University advertises their huge, new banquet rooms rates against the Holiday Inn. That is just another example of how this is encompassing us and how we have to compete.

**Rep. Hanson** In Minot do they lease out their facilities or do they allow a catering service to come in? **Lewis:** It is my understanding they are doing the whole thing.

**Chairman Kelsch** are they actually providing the food as well **Lewis:** Yes

**Rep Gross, District 42, NW Grand Forks, See Attached Testimony**

**Rep. Williams** Flexibility, In you own mind how do you rationalize going up against with private enterprise.

**Gross:** I believe we are in competition sometimes. If you take the state track meet for example: it is going to be held at the Memorial Stadium, in Grand Forks and the is University property and the concession stand that are used for our own functions are used for that. It is impossible for us to allow another vendor to use the facility. It would be just like the local hardware store, had another come into your store and set up shop. The controls are in place so that you can't do it.

**Rep. Williams** In the amendment in section E, cover that very issue.

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**Gross:** In theory it does, but in other sections of the amendment I'm not so sure.

**Chairman Kelsch** That was the concern that I had, I have been to state events at UND campus, I think that you are right if you have to make all the calls first, that is a strain.

**Rep. Herbel** Obviously these people have concerns, and we need to come up some kind of an instrument that will protect those people and allow them to operate within the university or public schools to satisfy the conditions that they can have their concession stands and operations directed towards student activities. How would you see us amending it so activities off campus or school ground to satisfy that conditions.

**Gross:** I don't see any possible way, What you are trying to do is legislate common sense. We have talked a lot about concessions, but there are a lot of other food service operations.

**Rep. Sitte** how about any event sanctioning by NDHSAA, or some kind of rulemaking. You get together and come back with some amendments that will work.

**Rep. Mueller** In your mind is there a maximum dollar amount that would fit in this scenario.

**Gross:** I don't believe so, the Meals on Wheels numbers are very large, because it is daily.

**Rep. Mueller** having lunch with my son or daughter, could that be controlled by a \$ amount.

**Chairman Kelsch** You could go eat at a private institution directly on campus.

**Gross** that is correct

**Rep. Sitte** Advertising to host events, does UND advertise

**Gross:** UND doesn't advertise to get business in. We did do the meals on wheel years ago.

However we do need to market our institutional programs on school property to our students.

**Orlin Rossas, Director of Dining Services at the UND.**

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We are required to be self-sustaining. They are required to cover all of their labor, food costs, equipment and plant improvement. Often if any surplus is left over, these moneys go back to the institution to upgrade or maintain the facilities of that institution. If these dollars are not generated, the institutions have to look to other places to find these dollars. the food service of UND doesn't solicit business from non campus sources. But there are situations when we do provide service to nonaffiliated groups, such as concessions: local regional and state athletic events and the powwows. many of the attendees to these events are potential students to UND. And UND uses these events to recruit. Showcase the food service department is also crucial to the recruitment process. Occasionally we have been asked to provide food service to community groups. Let me stress again that we did not actively solicit this type of business. We have been approached by the community after they have exhausted all other resources to find a source to assist them. We feel that this is a vital relationship between the university and the community.

**Rep. Haas** What is the structural setup at UND, Is it contracted by a vendor?

**Rossas:** No it is not, we are self-operated by state employees, generating our own revenues.

**Rep. Williams** Have you seen the amendments?

**Rossas:** yes?

**Chairman Kelsch** Did you do the food service for the grand opening of the Englestad arena

**Rossas:** No that is either operated by the corporation or contracted out to a local business.

**Prakash Mathew, Dean of Student Life at NDSU, See Attached Testimony**

**Rep. Herbel** You indicated that you do the Senior's Meals on Wheels Program? **Mathew:** yes

**Rep. Herbel** Do you have other people that bid for that?

**Mathew:** To the best of my knowledge, for the past 31 years no one has placed a bid for that.

*Dannan G. Baller*  
Operator's Signature

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**Rep. Herbel** Your catering service would be adversely affected by losing that 500K, but at the same time you do have an advantage in your bidding, you don't have to pay for heat and lights, or do you pay extra for that

**Mathew:** we pay for all the expenses, we are self-supporting. The employees specifically hired to do that program 3 1/2 employees for that program.

**Rep. Sitte** Do you have to pay sales tax?

**Mathew:** When the director of the Memorial union got married she wanted to use the union, so she contracted with us and we charged sales tax on her event.

**flip tape**

**Mathew:** We do not go out and solicit.

**Rep. Hanson** Do you pay rent for your facility?

**Mathew:** The dining services pay rent to the Memorial Union.

**Brain Arett, Executive Director of Fargo Senior Commission, Inc., See Attached Testimony**

**Dr. John Richman, Vice President for Instruction at NDSCS, See Attached Testimony**

**Rep. Jon Nelson** Do you advertise?

**Richmond:** We don't have an advertising program, we do have brochures on the tables at the university encouraging students to use the facility and the prices. We don't advertise for business outside of the College. The relationships that we have with our downtown business is very important to us. We do not seek, we allow them to use the facilities when the functions are large and no other facility can handle it.

**Rep. Mueller** Do you allow off campus Pizza Huts to come on campus to serve at functions

**Richmond:** If the group coming in is a sponsored activity,

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Booster club is using a local caterer, we are working on a relationship, they could spend less money and use the dining services they have chosen to use the caterer.

**Rep. Herbel** How many times do you get complaints from the downtown business.

(1300) **Richmond**: only one, the wedding from last year.

(1416) **Kathy Grafgaard**, Director of Child Nutrition and Food Distribution Programs,  
Department of Public Instruction, See Attached Testimony

(1715) **Dixie Schultz**, Food Service Director fro Mandan Public Schools and Legislative  
Chair for the ND School Food Service Association, See Attached Testimony

(2114) closed hearing

Afternoon the same day committee work:

Discussion on the hearing.

**Rep. Haas** moved to accept the amendments, **Rep. Hawken** second the motion

tape 2

Passes with a voice vote

**Rep. Haas** motioned a DO NOT PASS as amended, **Rep. Meier** seconded the motion.

Vote 11-2-1. **Rep. Haas** to carry the bill.

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10/2/03  
Date

30384.0202  
Title.0300

Prepared by the Legislative Council staff for  
Representative Eckre  
January 29, 2003

VK  
2/4/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1241 EDU 2-05-03

Page 1, replace lines 7 through 9 with:

**"Institutions of higher education - Catering events - Conditions.**

1. An institution of higher education under the control of the state board may not cater an event, either on the campus or off the campus, if doing so would compete with for-profit or not-for-profit entities that are located within the same city as the institution and which are able and willing to offer the necessary services. Before accepting a contract to cater an event, a representative of the institution shall contact the appropriate entities to determine their ability and willingness to provide the service.
2. Notwithstanding the provisions of subsection 1, an institution of higher education may cater an event either on the campus or off the campus provided the event is:
  - a. For persons who belong to an organization affiliated with the institution;
  - b. For persons who are enrolled in the institution;
  - c. For persons who are employed by or at the institution;
  - d. For persons who are guests of the institution; or
  - e. Held by or under the auspices of the institution."

Renumber accordingly

Page No. 1

30384.0202

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Date: 2/4/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House HOUSE EDUCATION 1241 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number amendments

Action Taken DNR

Motion Made By ~~WILLIAMSON~~ Haas Seconded By Herbert Hawken

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch					
Rep. Johnson					
Rep. Nelson					
Rep. Haas					
Rep. Hawken					
Rep. Herbel					
Rep. Meier					
Rep. Norland					
Rep. Sitte					
Rep. Hanson					
Rep. Hunsakor					
Rep. Mueller					
Rep. Solberg					
Rep. Williams					

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

Absent \_\_\_\_\_

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

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

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Donna Hallmark 10/2/03  
Operator's Signature Date

Date: 2/4/03  
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1241

House HOUSE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number as amended

Action Taken DNP as amend

Motion Made By Haas Seconded By Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓				
Rep. Johnson	✓				
Rep. Nelson	AB				
Rep. Haas	✓				
Rep. Hawken	✓				
Rep. Herbel	✓				
Rep. Meier	✓				
Rep. Norland	✓				
Rep. Sitte		✓			
Rep. Hanson	✓	✓			
Rep. Hunsakor	✓				
Rep. Mueller	✓				
Rep. Solberg	✓				
Rep. Williams	✓				

Total (Yes) 11 No 2

Absent 1

Floor Assignment Haas

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

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10/2/03  
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**REPORT OF STANDING COMMITTEE (410)**  
February 5, 2003 12:25 p.m.

Module No: HR-22-1706  
Carrier: Haas  
Insert LC: 30384.0202 Title: .0300

**REPORT OF STANDING COMMITTEE**

**HB 1241: Education Committee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1241 was placed on the Sixth order on the calendar.**

Page 1, replace lines 7 through 9 with:

**"Institutions of higher education - Catering events - Conditions.**

1. An institution of higher education under the control of the state board may not cater an event, either on the campus or off the campus, if doing so would compete with for-profit or not-for-profit entities that are located within the same city as the institution and which are able and willing to offer the necessary services. Before accepting a contract to cater an event, a representative of the institution shall contact the appropriate entities to determine their ability and willingness to provide the service.
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  - c. For persons who are employed by or at the institution;
  - d. For persons who are guests of the institution; or
  - e. Held by or under the auspices of the institution."

Renumber accordingly

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2003 TESTIMONY

HB 1241

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*Dennis Hall*  
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10/2/03  
Date



Representative Bruce Eckre  
1300 North 7th Street  
Wahpeton ND 58075

January 22, 2003

Dear Representative Eckre,



We write regarding House Bill # 1241. This bill, as we understand it, prohibits state institutions of higher learning from providing meals and food services to persons or programs not affiliated with the institution. No allowed competition with local food service businesses.

As Wahpeton business people we believe direct competition with North Dakota State College of Science, or any college, is for both the business district and the college unhealthy. Businesses create local tax bases; are college supporters through gifts, scholarships, and student tuitions; and provide local venues for young scholars to hone classroom skills. A partnership for education and business. Not a competition!

Business is in business to provide a high standard of services and products. How else can we stay in business? We pay wages, sales taxes, property taxes, licensing fees, and purchase supplies. All locally. This is good for the community, and, for the college.

With over 50% of Wahpeton's property held by non-property tax paying institutions (NDSCS) and other organizations, the property owners remaining, private and business, carry the tax load. Food services providers are no less engaged.

Already, we're in a form of competition with NDSCS' student cafeteria services. Wahpeton's food services industry viewed with jaundiced eye NDSCS' recent venture into direct competition. With their facilities paid for and kept up with tax dollars, how could they not expect a howl from local food service providers from both sides of the Red River?

While it is true that NDSCS has dining room and kitchen facilities capable of hosting large events, we submit theirs is not the only place in town. Our Eagles Club has a fine facility and it is kept quite busy and is NOT supported by tax dollars. Our "can do" determination to meet customer expectations consistently has proven a very successful formula. We offer a great product, outstanding service, affordable prices, and a well maintained and attractive facility. Healthy competition within the local food service industry is the reason. We each have found what works and have stayed with it. And, we remain competitive locally and regionally because we think of ourselves as the "twin towns" more than just Wahpeton ND.

Special requests are on occasion made for a closed bar, non-smoking, special preparations, special decorations, or set-ups to please the palate, the eye or the breath of the customer. These take special effort and we have risen to each occasion. But, it's our aforementioned formula that continues to serve us. And, word of mouth in the food

WAHPETON  
**EAGLES**  
P.O. BOX 878  
WAHPETON, ND 58074

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Representative Bruce Eckre

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service industry is our greatest ally.

State employees ought not be in direct competition to local businesses. An exception is when private and state funded institutions of higher learning compete. Businesses and colleges should have a symbiotic relationship and not one that clashes on the field of business competition. Therefore, the Wahpeton Eagles Club strongly supports House Bill # 1241.

Respectfully yours,

Clifford Barth  
President, Wahpeton Eagles Club

WAHPETON  
**EAGLES**  
P.O. BOX 875  
WAHPETON, ND 58074

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## HB 1241 TESTIMONY OUTLINE

- **Madam Chairwoman. Honorable Representatives of the House Education Committee. My name is John Carlson. My wife, Brenda and I own and operate the Oven Door Catering Service in Fargo. I am pleased to have the opportunity to testify today in favor of HB 1241 passage.**
- **This bill is absolutely necessary to constrain governmental agencies, such as school districts, colleges, and universities to their intended mission: EDUCATING OUR YOUTH.**
- **Let me tell you a short story: In July of 1999, our catering service was faced with the first of 3 attempts by the Fargo Public School District to take away the daycare children feeding business we had cultivated and built over the years. In concert with the ND Department of Public Instruction (DPI), under the auspices of a federal "Child Nutrition Program", Fargo schools, unannounced, took away 60% of our CONTRACTED daycare feeding business in two months by undercutting our prices. We sold a hot meal for \$1.75 per child per day, they sold it for \$1.25 per child per day. They "cream skimmed" and took only the largest daycare's (25 kids and over).**
- **How could they do this? They pay no property taxes on their kitchen, and use federally subsidized commodity foods. How could we ever compete? They sold meals below our costs! Some daycare's broke meals contracts with us and paid a penalty to go to the school district's attractive pricing. If it had not been for attrition, we would have been forced to lay off 2 or more employees.**

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- We protested this unfair onslaught by Fargo Schools and an Attorney General's opinion was sought. In the 2 month interim awaiting the AG opinion, Fargo Schools "Parked" the daycare's at a local Fargo Hospital, who, coincidentally, fed the daycare's at the same prices as Fargo Schools. In the corporate anti-trust world, this action is called collusion.
- The ND Attorney General ruled in November 1999 that Fargo Schools was not structured properly to legally feed private daycare's. But, the AG also ruled that all it would take was an approved formal agreement between the Fargo School Board and ND DPI to do meal services. For political reasons, apparently, an agreement with DPI did not get acted upon. The hospital kept on feeding the daycare's and proceeded to take away more of our daycare feeding business.
- After the hospital completed the decimation of our daycare business, they abruptly terminated daycare meal service, effective March 1, 2001, with 30 days notice. No regard as to who would continue the feeding service was given. The financially distressed hospital then soon thereafter sold out to another Fargo hospital organization.
- In 12 months, we lost nearly 40% of our TOTAL catering business. This kind of loss would have easily bankrupted a smaller, debt-carrying business.
- After the schools/hospital fiasco, a large non-profit Fargo daycare attempted to take advantage of the opportunity to become a daycare meals provider, but could not handle all of them. By April of 2002, the

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Oven Door, one-by-one, regained most of the daycare feeding business that had been lost.

- In this nearly 3 year elapsed time, we had come full circle and lost nearly \$600,000 in TAXABLE sales and \$80,000 in TAXABLE profits, triggered by Fargo Schools District's initial actions. We barely survived and had to change our business focus to stay solvent. How would any of you feel if this happened to your business?
- It was not over! To add insult, last year in April, Fargo Schools publicly announced that they were looking for other revenue sources outside of property taxes and were going to become more "entrepreneurial". They publicly announced intentions to cater meals to daycare's, and would execute an agreement with ND DPI. We again protested and this time, had a demonstration at the Fargo School District offices on May 28th with 5 catering vans and 14 employees with picket signs prior to a school board meeting. It drew much media attention and the public favored our side. The school district's daycare meals activity subsided again.
- I hope this chronology of events demonstrates to the Education Committee members what education bureaucrats can and will do if not reigned in by limits of law. Their mission is to educate children and feed them while at school - pure and simple. The Century Code already outlines that charge in the "Powers of a School Board" section. But, there are those who find "work arounds" to frustrate the good intent of previous legislation.

- In the face of declining enrollments, Fargo Schools built a \$4.3 million central kitchen that enables meal capacities far beyond their needs. It appears to me that Fargo Schools conspired with ND DPI to create an unneeded "Child Nutrition Program" to force daycare's with low-income "program children", and all other kids in daycare's, into a federal meals program, to generate more utilization of their large kitchen.
- A "Child Nutrition Program" infers that children are not getting adequate nutrition, which is a bad situation that needs to be corrected. Inadequate child nutrition at the daycare's was never the case with the Oven Door food service. All of our daycare meals meet or exceed federal and state child nutrition standards with flying colors, and are in fact approved by ND DPI.
- The daycare providers have had enough of this run-around. They found the food quality wasn't as good, the customer service wasn't as good, and ultimately, the food service was not dependable. Small daycare's with less than 25 kids would have been left completely without food service!
- Child Nutrition was NOT the issue here: Creating MORE kitchen utilization, MORE Fargo School District revenues and MORE power was. Child nutrition was just the vehicle! I call this an abuse of power by education bureaucrats!
- Am I angry? You betcha! We spent hundreds of hours and thousands of dollar in attorney fees and lost profits to battle school district and state resources we helped create with our tax dollars.  
**This should never be!**

- I see no problem with schools, colleges, and universities catering meals on their campuses for "Official" school or university functions, but to allow them to compete with the livelihoods of those who support them with tax dollars is repugnant. They will not police themselves and will be belligerent and do whatever they think they can get away with.
- This unfair competition must be stopped and a message sent that schools must operate within the intent of their charter: "EDUCATE OUR CHILDREN". They must NOT compete with private, tax-paying small businesses that support them. HB 1241 addresses smaller ND communities where there may not be another private business alternative for feeding daycare children, so their concerns should be addressed.
- If you do not pass HB 1241, you absolutely will be sending a message to all government agencies, school districts and higher education that it is OK to compete unfairly with the local community, job-building, tax-paying small business person. Can you live with that?
- I HOPE NOT! PLEASE PASS HB 1241!
- THANK YOU!!
- I would entertain any questions the committee might have.

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**TESTIMONY FOR  
HOUSE BILL 1241  
Presented by Rep. Mike Grosz, District 42**

Thank you Chairman Kelsch. Members of the distinguished Education Committee, for the record my name is Mike Grosz, representative for District 42, the northwest portion of the city of Grand Forks. In my "real life" occupation, I am the accountant for the Food Service department at the University of North Dakota.

I would like to speak in opposition to Section 1 of House Bill 1241. According to the highly recognized Roundtable Report, the university system is provided flexibility with accountability, while using resources both legally and responsibly. This bill, even with the amendment, does not provide flexibility.

The bill in its original form creates numerous concerns. I will speak from my experience at UND, as that is what I am familiar. The state high school track meet is held at the Memorial Stadium on the UND campus periodically. Under the original bill, there would be no concessions provided. Another example of a concern would be if a parent brought their child to campus and wanted to eat with their child in one of the dining centers in order to see the quality of food and service that is being provided, that parent could not be served.

The amendment addresses these specific concerns, however it creates others. The last sentence in subsection 1 reads, "Before accepting a contract to cater an event, a representative of the institution shall contact the appropriate entities to determine their ability and willingness to provide the service." I am concerned on what level of due diligence would I need to do in order to be in compliance. When someone wants to schedule a catered event through the UND Campus Catering unit, would I then have to call every restaurant, catering service, and food provider in the region and ask them if they are able to provide the service, if they are willing to provide the service, and if they would provide the service? Would I then have to get back to the person that originally booked the event with me on what I found?

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Another concern I have with the amendment is in the first sentence of subsection 1. The phrase, "either on the campus or off the campus," will take away a lot of on-campus business. The amount of infrastructure needed to provide such an operation to campus is great. You need conventional ovens, dish machines, dishes, utensils, coolers, freezers, cooks, servers, and numerous other fixed assets or costs. The food costs are the variable costs. In other words, in order to maximize benefits and minimize costs of having a catering operation on-campus, the university has to be able to fully utilize the services of that catering operation. If the university catering operation is limited to serving only a few qualified university functions, those functions will carry a very large cost per function.

Madam Chairman, I am all for accountability. In fact, I welcome all of you to visit me at the UND campus to see what kind of quality operation we are running. Unfortunately, if this bill passes, we'll have to eat elsewhere. If certain institutions are not being accountable and not utilizing resources responsibly, we should be providing feedback or sanctions to those institutions. We should not be passing laws that tie the hands of those that are responsible behind their backs.

I urge you to continue the philosophy of flexibility with accountability, and amend Section One out of this bill.

The previous comments are only directed at Section One of this bill. Comparing Section One and Two are like comparing apples to oranges, if you would forgive the food pun. Institutions of higher education do not receive food subsidies; rather it negotiates a bid price with an area food supplier, just like any other business. In NDSU and UND's case, our prime vendor is FSA out of Fargo. Also, we undergo an annual audit for any unrelated business income, such as income (or losses) from the concessions for the state track meet, and provide a corporate income tax return for that income (or loss).

Madam Chairman, I would be happy to answer any questions you may have.

**Testimony Before The  
House Education Committee  
February 4, 2003**

Chairman Kelsch and members of the Committee, my name is Brian Arett. I am the Executive Director of Fargo Senior Commission, Inc. I am here to testify on House Bill 1241. Fargo Senior Commission, Inc. is an agency that provides services to senior citizens in a six county area in southeastern North Dakota. Services we provide include Home Delivered Meals, Congregate Dining, Transportation, Health Screening and Outreach Assistance. All of our services are designed to assist senior citizens throughout the region in maintaining independence. In particular, we focus our services on frail, low income and isolated seniors.

Good nutrition is central to our mission of service to the elderly. To assist with this mission, we contract with fifteen restaurants throughout the region. In Fargo, we contract with two restaurants and NDSU to provide meal service seven days a week at seven locations. In addition, NDSU prepares the meals that we utilize for our home delivered meals program.

The budget for our program in 2003 is \$2.5 million. Revenues to support our services come from a variety of sources including federal, state, county and city as well as private donations. The private donations that we generate fund just over half of our budget.

Section 1 of HB 1241 would prevent us from continuing to contract with NDSU for

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meal services. Based on our experience with the restaurants we are already working with, we believe that this will cause our costs to go up by \$50, 000 a year. Any increase in the cost of providing services will have a negative impact on our ability to keep up with the growing demands of our aging population.

Because of this impact, I ask you to reject HB 1241 or amend it to allow non-profit agencies like ours to continue to work with institutions of higher education and school districts in serving the seniors of our state. It is important to note that our contract for meal services in Fargo is bid out annually. In the 31 year history of our program there have been only two competing bids. Both of them came from non profit organizations based in Minnesota.

I appreciate the opportunity to address this legislation with your committee and would be happy to respond to any questions you might have.

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## House Bill 1241

*Madam Chair,*

~~Mr. Chairman~~, Members of the committee, my name is Prakash Mathew, Dean of Student Life at North Dakota State University. Mr. Jack Donahue, Director of the Dining Services is also present with me, if I am not able to answer some of the questions. This morning, I would like to speak in opposition to the House Bill 1241.

The passage of House Bill 1241 would have a profound impact on institutions of higher education in North Dakota, particularly the Dining Services at NDSU, with a significant emphasis on the Fargo Senior Meals on Wheels program.

I would like to highlight some critical points which will summarize our concerns in this matter.

- NDSU Dining Services is a self supporting department, and the Catering Services play a significant role to meet our expenses such as differed maintenance, renovations, funding for service provided by Physical Plant, as well as providing support for the University in accomplishing its mission and goals. In addition, based on this income, we are able to keep the food contract rate for our students at a minimum. The passage of this bill would impact a loss of approximately \$500,000 revenue annually.

- We have never gone out into the community outside of the University to advertise or solicit business for the Dining Services. Beyond serving meals for students, faculty, and staff, a majority of the business we conduct is in the Memorial Union, Alumni Center, and the Technology Park. At the Alumni Center, we are one of the six caterers to provide services to their patrons. The customers select the caterers of their preference. It is important to note that the Dining Services pay sales tax for all events not affiliated with the institution.

One significant service we conduct outside of the University is providing meals on wheels for the Fargo seniors. We consider this a tremendous service to the seniors and the community. Even though there is a bidding process for this service every two years, no one has ever been able to provide service or match what we charge for this non-profit group for the past 31 years.

Finally, I want to thank you for listening to our concerns and I humbly request that you give thoughtful consideration for NOT approving House Bill 1241.

*Prakash Mathew*  
Operator's Signature

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Date

**Fifty-eight  
Legislature Assembly  
Of North Dakota**

**Reference HOUSE BILL NO. 1241**

**For the Record**

**I am Dr. John Richman, Vice President for Instruction (Interim) at North Dakota State College of Science.**

**I am here presenting information provided by North Dakota State College of Science. I am representing Mike Renk, Vice President of Administrative Affairs.**

**Facts that should be known:**

**Auxiliary Enterprises must be run like any other private business that is expected to make a profit.**

**All employees that work for the Auxiliary Enterprises have a clause in their contracts that relates directly to the profit side of the business. If there is no profit, the employee is laid off with no notice. That lay-off becomes effective immediately and is not related to the biennium budget process as are state appropriated (employees) positions.**

**Part of the Auxiliary Enterprise (Bookstore and Dining Services) pays both Unrelated Business Income Tax (UBIT) and sales tax for operating a business on campus.**

**They, also, pay the college \$110,000 annually to operate their businesses in the Student Union. Those funds are used to fund the Student Union operations.**

**Neither the Bookstore nor the Dining Services are supplemented with state tax dollars. As a matter of fact, both the Bookstore and Dining Services at NDSCS help supplement the College budget.**

**If the Bookstore or Dining Service must repair or replace any equipment, it must be paid for with the profit that is generated from the Bookstore and Dining Services profits.**

**If the Bookstore or Dining Services does any remodeling, it also must be paid for with the profit that is generated from the Bookstore and Dining Services profits.**

**The Bookstore and Dining Services funds one full-time position in the campus mailroom (\$27,721, salary and benefits). This position serves the entire campus.**

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The Bookstore and Dining Services funds one full-time position in the Information Technology Department (\$39,221, salary and benefits). This technician serves the entire campus.

The Bookstore and Dining Services funds one half-time position in the Grants Office (\$35,256, salary and benefits). This grants officer serves the entire campus.

Additionally, the Bookstore and Dining Services are asked to fund special projects during the year in the amount of \$30,000 annually (marketing \$10,000, admissions \$10,000, President projects \$10,000).

Both the Bookstore and Dining Services make a profit every year but must be supplemented with the demands made of them.

We do this with cash sales, catering and the vending machines. Listed below is last year's gross sales and profit from the three above-mentioned areas:

	Gross Sales	Profits
Campus Vending		\$14,600
Connections (Cash Sales)	\$92,203	\$19,362
Catering	<u>\$99,976</u>	<u>\$24,994</u>
Total	\$265,739	\$58,956

Not included is the Athletic Department that operates the concession stands at all Athletic events. They currently generate:

	Gross Sales	Profits
Blikre Activities Center	\$63,627	\$21,325

These profits are used to support the Athletic Department, because NDSCS is not able to fund the Athletic Department with State appropriation funds.

We believe this bill would affect those profits because we sell directly to the general public during athletic events.

The following is why we have concerns with the current bill and the amendment that will be introduced to it:

The Roundtable recommendations have asked us to become entrepreneurs in building the economy of North Dakota. That is exactly what we are doing with Auxiliary Enterprises. This bill flies in the face of that directive.

Who will decide what for-profit and non-profit entities we are to get permission to do outside catering?

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Some examples would be for-profit entities; 4 E's Catering, Burger King, China Buffet, Domino's Pizza, Fry'n Pan Restaurant, Godfather's Pizza, Hills Cafe, McDonalds, Nancy B's, Prante's Fine Dining, Subway Sandwiches, Taco John's, Wahpeton Deli and every bar in town that sells food.

Non-profit entities would include every church in the community that could serve food, the VFW, and the Eagles Club.

As the State of North Dakota looks to the university system to support more of its own costs due to shrinking revenues, does this bill help us become more effective and efficient, or does it hinder the university system with additional paperwork?

Does it also create another set of rules to follow that do not make any business sense?

Overall we believe this bill will have a direct negative affect on NDSCS in operating its Auxiliary Enterprises (which supports the overall mission of the college).

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**TESTIMONY ON HB 1241  
HOUSE EDUCATION COMMITTEE  
February 4, 2003**

**Kathy Grafsgaard, Director  
Child Nutrition and Food Distribution Programs  
Department of Public Instruction**

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Chairman Kelsch and members of the committee:

My name is Kathy Grafsgaard and I am the Director of Child Nutrition and Food Distribution Programs for the Department of Public Instruction. I am here to speak in opposition to House Bill 1241. I am concerned about the limitations this bill places on access to meals by North Dakota children and others.

House Bill 1241 prohibits institutions of higher education from preparing meals, snacks, and other food services to programs or persons not affiliated with the institution. In addition, boards of school districts in cities having a population over five thousand are prohibited from preparing meals, snacks, or other food services for programs or persons not affiliated with the school district.

This bill will curtail food service options for childcare and head start centers. As you can see from the centers that are shaded on the table attached to my testimony, this bill will prohibit existing food service arrangements with six childcare and head start centers. For example, a private, non-profit childcare center, housed on the campus of Lake Region State College (LRSC) receives meals through a contract with the college food service. This bill may prohibit this relationship because there is no definition of "affiliated". In other words, is the childcare center considered to be affiliated because it is housed on the LRSC campus? If the current contract were prohibited, the childcare center would be required to seek off-campus foodservice, which may not be available or affordable.

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Presently, the Jamestown and Devils Lake Public Schools provide meals to childcare and head start classrooms that are located in or near their elementary schools. This bill would prohibit this relationship because the cities of Jamestown and Devils Lake exceed the five thousand population limit noted in the bill.

School food service programs are efficient providers of meals to childcare and head start centers because they have the same federal meal pattern requirements, and plan menu choices that are accepted by preschool children. In many communities, the school food service program is the only viable option for contracted meals. As the population in our rural areas decreases, the availability of an adequate food service operation will become increasingly critical.

Section 2 of this bill targets cities with populations of more than five thousand, which are also the communities where the greatest numbers of childcare and head start centers are located. Prohibiting school districts from being a potential food service vendor will limit the food service options available and may lead to a center not offering food service to children, or it may stop a potential center from establishing a child care operation. Equipping a child care operation with an acceptable kitchen is extremely expensive. To keep the cost of child care as low as possible, efficient contract meal arrangements are often encouraged. We would rather see existing food services in schools utilized by centers.

Further, a population of five thousand does not guarantee that there are private food service vendors available and willing to provide meals to childcare and head start centers; however, in each community, there is likely to be a school district.

All food service entities, including school boards, should be allowed to participate in providing meals to childcare and head start programs. The Department is opposed to any language that prohibits any segment of the food service industry from offering meal service options to childcare and head start centers.

Chairman Kelsch, this concludes my testimony. I would be happy to answer any questions that the committee may have.

**North Dakota Department of Instruction  
Child Nutrition and Food Distribution**

**Childcare and Head Start Centers Which Contract for Meals  
Fiscal Year 2003 (October 1, 2002 - May 30, 2003)**

Center Sponsor	Center Site	City	Entity Providing Meals
Bismarck Public Schools	Richholt Elementary	Bismarck	Bismarck Public Schools
Bismarck Public Schools	Riverside Elementary	Bismarck	Bismarck Public Schools
Bismarck Public Schools	Roosevelt Elementary	Bismarck	Bismarck Public Schools
Bismarck Public Schools	Saxvik Head Start Center	Bismarck	Bismarck Public Schools
SENDCAA Head Start Program	Lisbon Head Start	Lisbon	Lisbon Public Schools
NDSU Center for Child Development	Center for Child Development	Fargo	Oven Door Catering
YMCA Child Care Center	Schlossman Family YMCA West	Fargo	Oven Door Catering
YMCA Child Care Center	YMCA South	Fargo	Oven Door Catering
Dakota Montessori, Inc	Dakota Child Care	Fargo	VIP Catering
TGU School District	Drake Head Start	Drake	Drake Public School
TGU School District	Granville Head Start	Granville	TGU School District
TGU School District	Harvey Head Start	Harvey	Harvey School District
TGU School District	McClusky Head Start	McClusky	McClusky Public School
TGU School District	Towner Head Start	Towner	TGU School District
TGU School District	Turtle Lake Head Start	Turtle Lake	Turtle Lake Public School
West River Head Start	West River Head Start-Carson	Carson	Roosevelt Public School (Carson)
West River Head Start	West River Head Start-Elgin	Elgin	Elgin/New Leipzig Public School
West River Head Start	West River Head Start-Hebron	Hebron	Hebron Public School
West River Head Start	West River Head Start-Mandan	Mandan	Dan's Supermarket
West River Head Start	West River Head Start-New Salem	New Salem	New Salem Public Schools
Community Action & Development Program - Dickinson	Bowman	Bowman	Bowman Public School

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Community Action & Development Program - Dickinson	Hettinger	Hettinger	Hettinger Public School
Community Action & Development Program - Dickinson	Beach	Beach	Beach School District
Community Action Agency, Region VI	Jamestown Head Start	Jamestown	Jamestown Hospital
Community Child and Family Center	Community Child and Family Center	Jamestown	Jamestown Hospital
Community Action Region VI Early Head Start	Community Action Region VI Early Head Start	Jamestown	Jamestown Hospital
Mayville Child Development Center	MSU Child Development Center and Head Start-Hillsboro	Hillsboro	Hillsboro Elementary School
Mayville Child Development Center	MSU Child Development Center and Head Start-Mayville	Mayville	Sodexo Marriott Services
Minot Public Schools	Minot AFB	Minot Air Force Base	Minot Public Schools
Good Shepherd Day Care	Washington/Vincent Off Site	Minot	Minot Commission on Aging
Wee Y's Owls	Wee Y's Owls	Minot	UniMed Dining Services
Williston Public School	Trenton Center	Trenton	Trenton Public School

G/CACFP/Centers/cc which contract for meals

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*Dan H. Ball*

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10/2/03

**Testimony on HB 1241**

**I am Dixie Schulz Food Service Director for Mandan Public Schools and Legislative Chair for the North Dakota School Food Service Association.**

**I am here to voice my opposition to HB 1241.**

**This bill would close the door on contracts that now exist with Head Start, with pre-schools, with other school districts and with daycare facilities.**

**Mandan Public Schools contracted up until 2 years ago with St. Joseph school for meals that were provided to Mandan Public Students who attended Collins Elementary housed in St. Joseph school. At which time that school closed and students were absorbed into other schools in the Mandan district. This practice would not have been allowed under the language of this bill.**

**Mandan Public Schools has contracted to provide lunch to Mandan Head Start students. And they have requested a bid from Mandan each year since then. This bill would not allow such a contract.**

**This bill would also not allow us to provide lunch for visiting parents, grandparents, guests, or even students for other districts who often participate in music, drama, science or sport events at Mandan Schools. Our Adopt a cop couldn't eat lunch with the students. We could not provide food for sports tournaments for example wrestling, basketball, speech, swim meets, which we now do.**

**I am not sure I understand the use of the arbitrary number of 5000. Those 12 largest cities hold 1/2 of North Dakota's population. A population of 5000 or more certainly isn't a criterion that a caterer exists who would be willing to provide such food services.**

**School food service across the state is often requested to provide bids on childcare facilities and elderly feeding program contracts. When these centers participate in the USDA childcare and Adult Care Food Program they are governed by USDA regulations. School food service operates under the same governing agency, which makes serving one of these entities an easy transition.**

**School meal programs are managed by food service staff who are well trained and offer an education component in their foodservice. The lead worker in every school kitchen has training in safety and sanitation rules and requirements. (which by the way, was a result of legislation that this committee approved in 1999)**

**As legislative chair for NSDFSFA my colleagues share my concern for the negative impact that this bill would have on their ability to provide food service in their schools. They currently have contracts with agencies described in the bill. They have expressed an overwhelming concern for the impact this bill would have on their future food service operations.**

**I believe this is an issue that is best left up to the decision of the local school board as they represent the wishes of the community in which they live and serve.**

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