

2009 HOUSE AGRICULTURE

HB 1543

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1543

House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: January 29, 2009

Recorder Job Number: 8101

Committee Clerk Signature

R. Mae Lueb

Minutes:

Representative Vig, Bill Sponsor: Proposed amendment #90705.0101. HB 1543 will allow local entities and several agencies to purchase local foods from qualifying venders in North Dakota. This bill will allow local entities to purchase foods from vendors that may reasonably exceed the lowest bid. That's stated in the 2nd paragraph on the last sentence. Over the last several years we've seen food scares in other parts of the country. I believe we trust our local vendors twice as much. This is where we can allow local schools, hospitals, and state agencies the opportunity to purchase on a yearly or seasonal basis.

Mary Mitchell, Missouri Valley Resource Council and Dakota Resource Council:

(Brought carrots that she raised in her own garden and passed around)

(Written testimony attached #2) This is a voluntary program not a mandate.

Derrick Braaten, Attorney with Sarah Vogel Law Firm: Has worked with issues related to local food systems. **(Written testimony attached #3)** Section 4302 of the 2002 Farm Bill encourages and explicitly allows geographic preferences under the Child Nutrition Act, and preferences for locally raised and produced foods.

Representative Schatz: Besides schools are there any other political subdivisions that this is aimed at?

Derrick Braaten: Schools would certainly be a focal point. Other state agencies, State Prison, State Hospital, nursing homes, etc. we hope would be encompassed as well.

Representative Uglem: I'm all for North Dakota products. But I see a conflict. If an agency has enough money to not buy the cheapest product, then it is up to this legislature to cut their budget. It is up to this legislature to budget only the amount necessary to run an agency.

Derrick Braaten: Even within an allotted budget, there is leeway in terms of purchasing this product or that product.

Sue Balcom, Local Foods Marketing Specialist, ND Dept. of Agriculture:

(Written testimony attached #4) Not only would this bill potentially affect economics of small scale family farms in the state, but it would also insure the freshest produce possible is being served at schools, nursing homes, penitentiaries, universities and the like.

Representative Schatz: The State Hospital, the Penitentiary, the universities, and colleges are state institutions. I assuming they would not be in this because this applies to political subdivisions.

Sue Balcom: That's what we've been working on to change "political subdivisions" to be more inclusive of other state institutions as well.

Chairman Johnson: Considering the cost of transportation, what we save on transportation is there that much difference on what we are able to sell our product for.

Sue Balcom: 90% goes into transportation, packaging, and the marketing. Only 10% is actually the cost of the food. As we pay more money for food, we would like to keep that money in the state. Plus our school children would receive more nutritious food.

Vice Chairman Brandenburg: With the hot lunch program at schools, have you had any discussion with them?

Sue Balcom: We meet regularly with the Department of Public Instruction. What we are trying to work out with them is trying to remove the hurdles in thinking. The new farm bill has geographical preference law. If a food service person would want to pursue more local produce or local meat, it is possible. We also have the Green & Growing Grant Program. We just awarded 12 schools money to start school gardens. The lunch room would actually use the produce from the garden program.

Chairman Johnson: Food coming in is all packaged. Is that certified vs. something coming from my farm.

Sue Balcom: The food with the food scares is coming from inspected plants. We're questioning how safe is some of that food if they are inspecting this food and it can still get by them. What we are also working on in our office is good agriculture practice classes. We are working on an education campaign so that we can be of equal or greater quality.

Commissioner Johnson believes North Dakota has the safest food in the world.

Chairman Johnson: Who does the liability go back on?

Sue Balcom: We have discussed the tracking to make sure we are getting the produce we want. That is in the beginning stages.

Karen Ehrens, Registered Dietitian: (Written testimony attached #5) gave reasons local food is healthier.

Representative Belter: One statement you made, local foods can be safer if they are grown in sustainable and organic methods. Another place you have locally organically produced meats may have a lower environmental impact than transported meats. I'm interpreting that you are implying that organically grown products are safer than nonorganic.

Karen Ehrens: That's why I worded it that they "can be" if they follow good practices. There is also a lower residue of pesticides.

Representative Belter: But there is no scientific data that they are safer than nonorganic foods?

Karen Ehrens: Both can be safe.

Lindsey Aull, Producer for Farmers' Market: (Written testimony attached #6)

This bill would open an opportunity for producers all over the state and instill pride in ourselves in North Dakota. In regard to liability issues, farms have their own insurance.

Oppose:

Sherry Neas, Director, Central Services Divisions, OMB: (Written testimony #7)

Opposes amendment also. Reciprocal preference laws require government entities who receive bids from out-of-state bidders to increase their bid price by the rate of preference given by that bidder's home state. **(Example given in testimony #7)**

Eric Aasmundstad, ND Farm Bureau: ND Farm Bureau supports agriculture. We look at this as a bad piece of legislation. We agree with everything OMB said about reciprocal laws.

We have to sell the vast majority of what we produce here, so we don't want to put ourselves at a disadvantage in dealing with other states. We've heard a lot of talk about choice.

Individuals have that choice now. Institutions and political subdivisions have that choice now.

We think it would be a serious flaw in the law to circumvent the bidding process as a responsibility to the taxpayers. Local subdivisions don't budget the way we in business do.

There was a lot of talk about local being healthier. Could be! Doesn't mean it has to be. The United States has the cheapest, safest, most abundant supply of food in the world. I don't think when we pit a local food supply against our national food supply, we're doing justice to the industry of agriculture.

Laura Glatt, ND University System: We just received the amendment this morning and haven't had time to study it. At this time we would have some significant concerns about the impact that would have on our food service operation on campus.

Chairman Johnson: Closed the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1543

House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2009 (**Committee Work**)

Recorder Job Number: 8815

Committee Clerk Signature

Re Mae Kuel

Minutes:

Representative Belter: Moved **Do Not Pass**

Vice Chairman Brandenburg: Seconded

Representative Vig: I was hoping to put an amendment on first. We heard a lot of positive testimony on the ability to have local entities purchase local foods. If the local entity was below or above their bidding budget they could do that with this bill. Right now when you purchase you have to go with the lowest bid. I'll have to resist the **Do Not Pass**.

Representative Belter. I withdraw my **Do Not Pass** motion if Representative Vig wants to propose his amendments.

Vice Chairman Brandenburg: I'll withdraw my second.

Chairman Johnson: Representative Vig would you present your amendments.

Representative Vig: I would like to move the amendment 90705.0101.

Representative Boe: Seconded.

Voice vote taken. Passed.

Representative Vig: Last sentence of paragraph 2 "reasonably exceeds the price offered by other bidders" We trust our local entities with the budgets they put together. If they stick to the lowest bidder they can. If they want to reasonably exceed for seasonal or holidays, they can.

The university system came in and they were concerned with this amendment. If I can further amend, in Section 1, line 3, strike "shall" and change to "may."

Representative Vig: moved to amend the amendment

Representative Holman: seconded the motion

Representative Boe: Does this take care of our reciprocal problems?

Representative Vig: OMB says there is a problem with reciprocal. I don't understand that yet. They make it sound like the world is going to stop because of reciprocal.

Representative Boe: We have reciprocal agreements with about 20 states. They will reciprocate whatever we do. So if we have preferential pricing for our buyers here, our sellers will also get that same courtesy extended to them. That's where OMB had the problem.

Representative Vig: They indicated there is still a flaw in the amendment: however, I talked to them last week. I have not touched base with them again. I would like to continue working on this.

Chairman Johnson: We can give you some time to work on it. Reciprocal agreements need to be worked out.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1543

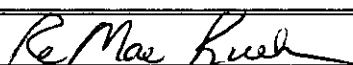
House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: February 12, 2009 (**Committee Work**)

Recorder Job Number: 9353 & 9360

Committee Clerk Signature



Minutes:

Representative Vig: I talked to Anita and OMB to try to work out the difficulty with reciprocal agreements. (**Proposed amendment 90705.0102**) The first sentence "Whenever possible" would open it up so the entities would not have to comply if they don't want to. It would not violate any reciprocal agreements with other states.

Representative Rust: Is the first amendment 90705.0101 gone?

Representative Vig: Yes

Representative Boe: Without this, what is the process we are using now?

Representative Vig: My understanding is with local entity purchases, they always purchase at the lowest bid.

Representative Uglem: Is there still question about whether it might violate trade agreements?

Representative Vig: I'm not sure.

Representative Schatz: The purchase at lower bid situation—how does this affect that? Does this have a conflict with that?

Representative Vig: For purchasing food products this would allow them to not abide by that. This would allow them to spend a little more for local foods.

Chairman Johnson: How is this going to play in with reciprocal agreements with other states?

Representative Vig: The words "whenever possible" would get around it. Montana has similar language.

Representative Boe: Did you ever do research on the Federal 8A Status Program?

Representative Vig: Yes, that's strictly federal.

Representative Boe: But the information would probably give you a tool to work with North Dakota to set up a no-bid process for producers that would certify.

Representative Mueller: We're saying state government shall purchase food products produced in the state. Is that what it is saying?

Representative Vig: Yes.

Representative Vig: Moved the second amendment #90705.0102

Representative Boe: Seconded.

Voice Vote taken. Passed.

Chairman Johnson: We have before us HB 1543 as amended. The bill is the amendment.

Representative Vig: I would move **Do Pass as amended.**

Representative Kingsbury: Seconded

Vice Chairman Brandenburg: I'm going to oppose the bill. I've got some concerns about it. Even though "preferential" is taken out. We still haven't heard from OMB and still haven't heard from the people that spoke about the concerns.

Representative Uglen: I oppose it too. I like the idea of local products even if we have to pay a little bit more. But we export 80% of what we produce in the state and we need to be real careful.

Representative Schatz: The word that bothers me is the "shall" on the third line.

Representative Vig: Again, I asked Anita about "shall." She said "whenever possible" clears up all sorts of things in code. When we could go local we probably should.

Representative Holman: Could we amend "shall" to "may"?

Previous motion withdrawn.

Rpresentative Holman: Moved to change "shall" to "may" after "purchase food products" on the second to last line.

Representative Vig: Seconded the amendment to the amendment.

Voice Vote taken. Passed.

Chairman Johnson: Now we have before us HB1543 as amended and further amended.

Representative Vig moved Do Pass as amended.

Representative Mueller seconded.

A Roll Call vote was taken. **Yes: 8, No: 3, Absent: 2**, (Representatives Belter and Froelich).

Representative Vig will carry the bill.

FISCAL NOTE
Requested by Legislative Council
03/18/2009

Amendment to: Engrossed
HB 1543

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$20,000	\$0	\$0	\$0
Appropriations	\$0	\$0	\$20,000	\$0	\$0	\$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Section 2 requires OMB to report estimated percent/dollars of ND products of the total food purchased by approx. 100 state agencies, higher education institutions, 413 schools, 53 counties, 864 cities, park boards, etc. (1,470+ entities).

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2: It will be difficult for food service personnel to collect data regarding the state of origin for food products given the volume/variety of food purchased. Schools receive federal commodities and would need to research state of origin. Purchasing/inventory documents do not normally list state of origin. Determining origin may require looking at food packages. The fiscal/labor impact to the reporting entities (schools, higher education institutions, state agencies, cities, counties, and other political subdivisions) may be considerable and is not addressed in this fiscal note.

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.*

None

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.*

Estimated appropriations of \$20,000 needed for OMB to collect, compile and analyze data. Cannot estimate cost and labor for food service personnel at state agencies, higher education institutions, schools, counties, cities, etc. to collect data regarding origin of food products.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Appropriation for OMB to hire consultants to collect the data and prepare the report.

Name:	Sherry Neas	Agency:	OMB
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Phone Number: 701-328-1726

Date Prepared: 03/19/2009

FISCAL NOTE STATEMENT

House Bill or Resolution No. 1543

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, or school districts. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

John Walstad
Code Revisor

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1543

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 44-08 of the North Dakota Century Code, relating to preferences for North Dakota food products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-08 of the North Dakota Century Code is created and enacted as follows:

North Dakota food products - Preference.

1. Notwithstanding any other provision of law, the office of management and budget, any other state entity, and any political subdivision purchasing food products shall provide a preference for food products grown or produced in this state. *may*
2. When the office of management and budget, any other state entity, or any political subdivision purchases food products through a formal or informal bidding procedure, the purchaser may enter a contract under which the price to be paid for a food product grown or produced in this state reasonably exceeds the price offered by other bidders, provided:
 - a. The quality of the food product is similar to or exceeds that of products available from other states or countries;
 - b. The vendor is able to supply the requisite amount of the food product;
and
 - c. The purchaser has sufficient resources available in its budget to pay the higher price.
3. As used in this section, "food products" means food and drinks consumed by humans and products that are components of food and drinks consumed by humans."

Renumber accordingly

Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1543

House Agriculture Committee☐ Check here for Conference Committee

Legislative Council Amendment Number 90705.0101

Action Taken ☐ **Do Pass** ☐ **Do Not Pass** ☐ **Amended**

Motion Made By Rep. Vig Seconded By Rep. Boe

[illegible]

Total **(Yes)** _____ **No** _____

Absent _____

Bill Carrier

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

Aoghouse

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1543

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 44-08 of the North Dakota Century Code, relating to the procurement of North Dakota food products."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-08 of the North Dakota Century Code is created and enacted as follows:

Procurement of North Dakota food products. Whenever possible, each state agency, institution of higher education under the control of the state board of higher education, and political subdivision having the authority to purchase food products shall purchase food products produced in this state."

Renumber accordingly

Date: 2/12/09

Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1543

House Agriculture Committee☐ Check here for Conference Committee

Legislative Council Amendment Number 90705.0102

Action Taken ☐ **Do Pass** ☐ **Do Not Pass** ☐ **Amended**

Motion Made By Rep. Vig Seconded By Rep. Boe

[illegible]

Total **(Yes)** _____ **No** _____

Absent _____

Bill Carrier

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

Uses "Whenever possible"

VR
2/13/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1543

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 44-08 of the North Dakota Century Code, relating to the procurement of North Dakota food products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-08 of the North Dakota Century Code is created and enacted as follows:

Procurement of North Dakota food products. Whenever possible, each state agency, institution of higher education under the control of the state board of higher education, and political subdivision that has the authority to purchase food products may purchase food products produced in this state."

Renumber accordingly

Date: 2/12/09Roll Call Vote #: 12009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1543House Agriculture Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 90705.0103Action Taken ☒ Do Pass ☐ Do Not Pass ☒ AmendedMotion Made By Rep. Vig Seconded By Rep. Mueller

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	✓		Tracy Boe	✓	
Mike Brandenburg, Vice Chair		✓	Rod Froelich	AB	
Wesley R. Belter	AB		Richard Holman	✓	
Joyce M. Kingsbury	✓		Phillip Mueller	✓	
David S. Rust	✓		Benjamin A. Vig	✓	
Mike Schatz	✓				
Gerry Uglem		✓			
John D. Wall		✓			

Total (Yes) 8 No 3Absent 2Bill Carrier Rep. Vig

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

REPORT OF STANDING COMMITTEE

HB 1543: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING). HB 1543 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 44-08 of the North Dakota Century Code, relating to the procurement of North Dakota food products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-08 of the North Dakota Century Code is created and enacted as follows:

Procurement of North Dakota food products. Whenever possible, each state agency, institution of higher education under the control of the state board of higher education, and political subdivision that has the authority to purchase food products may purchase food products produced in this state."

Renumber accordingly

2009 SENATE AGRICULTURE

HB 1543

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1543

Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 6, 2009

Recorder Job Number: 10386

Committee Clerk Signature

Cassie Kroll

Minutes:

Sen. Flakoll opened the hearing on HB 1543, a bill relating to organic standards. All members (7) were present.

Rep. Ben Vig, district 23, testified in favor of the bill.

Rep. Ben Vig- This bill is about our local ND foods suggesting that our state agencies purchase local foods in ND when possible. I think that we can get rid of the food scares across the nation when we work with quality local food vendors who can provide excellent supply to our local schools agencies and subdivisions. When we do this I think we provide a sense of pride and assurance in the providers the processors and consumers that we have quality products in the state and we do know where our food comes from.

Sen. Miller- can all the agencies and such already do this?

Ben- my understanding is that when agencies make purchases they purchase at the lowest bid.

Sen. Flakoll- do you know to what extent any of these agencies purchase ND food today?

And if this bill were to pass that in a few years we would know whether this bill made a difference?

Ben- I do not know the details.

Sen. Klein- would you say that when we made changes on this a number of years ago is there any indication that it helped?

Ben- I think any steps forward help we just need to make small steps at a time.

Sen. Flakoll- by making a statement are you making a step you feel?

Rep. Vig- yes.

Sen. Wanzek- it is hard to say anything against this cause I know that everyone would agree with the concept but have you considered some of the potential dangers of this? When you consider the magnitude of farmers and production in this state we are very dependent on exports and selling that product outside the state, we depend a lot on foreign markets. There is not enough people in our state to consume all the product that we grow, so I am concerned that we don't make too strong of a statement against our foreign customers.

Rep. Vig- that is a very good assessment and I think that when we look at the quality of food that we consume, when we do purchase locally we do get better quality.

Mary Mitchell, Dakota resource Council, testified in favor of the bill. See attached testimony, attachment #1.

Karen Ehrens, Licensed and registered dietitian, testified in favor of the bill. See attached testimony, attachment #2.

Sen. Heckaman- could I take tomatoes and go into a school and give them to the hot lunch program?

Karen- local public health codes may interpret the health code a little bit differently in different parts of the state, we are looking at trying to standardize those and most places in the state have accepted them.

Sen. Miller- Do they have to go through some kind of course on how to prepare this food?

Karen- yes there is a 10 hour course and they are required by state law to go back and update their training every 5 years.

Sen. Taylor- if a school is always suppose to take the low bid contract, are they buying those foods at par price to what's available through the commodity programs through the public schools or do you know if they are growing it?

Karen- I would say that they always pay attention to budget and I know that they do look closely at the price.

Sen. Wanzek- who is going to be responsible for the regulatory and liability issues if I go and sell food to the local school and someone gets sick?

Karen- I think that we may not have all the answers now but I think that we can work through it.

Sue Balcom, Local Foods Marketing Specialist with the ND Dept of Ag, testified in favor of the bill. See attached testimony, attachment #3.

Sen. Wanzek- so what you are saying is that this is more of a promotional encouragement type bill and not a mandatory type of a bill?

Sue- we agree that no one should be told what they are serving in their schools or lunch rooms but there are people who are really interested in supporting their local farmers markets and such enterprises and we would like this bill to give them the freedom to that.

Kayla Pulvermacher, ND Farmers Union, testified in favor of the bill.

Kayla- we also support this bill, we believe that it is important to promote ND products whenever possible. We believe that our producers produce some of the best food in the world and if we can promote that we believe that is always a good thing.

Brain Kramer, ND Farm Bureau, testified in opposition to the bill.

Brian- We have a lot of concerns about this bill and there are a lot of questions that need to be answered prior to implementing something like this, liability issues, consistent supplies, increase in cost of the supply concerns like this.

Sherry Neas, OMB, testified in opposition to the bill. See attached testimony attachment #4 and #5.

Sen. Flakoll- your conversation with the US trade rep was by phone or in writing?

Sherry- in a email.

Sen. Flakoll closed the hearing.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1543

Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 12, 2009

Recorder Job Number: 10825

Committee Clerk Signature

ASSU KROW

Minutes:

Sen. Flakoll opened the discussion on HB 1543.

Sherry Ness, OMB, came before committee to give them information that they had wanted relating to the bill.

Sherry- we opposed the bill as it was originally introduced cause it was a preference law and our basis was the preference laws have an adverse impact on ND growers and producers because 36 out of the 50 states have the reciprocal preference laws. The first engrossment limited any reference to purchasing preference so it had less of a likely hood of an adverse impact for food producers. However the engrossed bill doesn't really cleanly communicate any direction. During the hearing there was an amendment that was introduced and that proposed language would have given ND government entities broad discretion to specify a geographic region where the food is produced or grown, now we surveyed the heads of the state purchasing for the other 50 states.

Sen. Flakoll closed the discussion.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1543

Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 12, 2008

Recorder Job Number: 10834

Committee Clerk Signature Cassie Kroh

Minutes:

Sen. Flakoll opened discussion on HB 1543.

Sen. Flakoll- we have some amendments that were just handed out that I had pulled together for your consideration.

Sen. Klein motioned to move amendment and was seconded by **Sen. Taylor**, roll call vote 6 yea 0 nay 1 absent.

Sen. Taylor motioned for a do pass as amended and was seconded by **Sen. Klein**, roll call vote 6 yea 0 nay 1 absent.

Sen. Klein was designated to carry the bill to the floor.

Sen. Flakoll closed the discussion.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1543

Page 1, line 2, after "products" insert "; and to require the office of management and budget to report the procurement of North Dakota food products to the legislative council"

Page 1, after line 9, insert:

"SECTION 2. OFFICE OF MANAGEMENT AND BUDGET – PROCUREMENT OF NORTH DAKOTA FOOD PRODUCTS– REPORT. Before August 1, 2010, the office of management and budget shall report to the legislative council regarding its estimate of the total percentage of North Dakota products that represent the total food expenditures of state agencies, institutions of higher education under the control of the state board of higher education, and political subdivisions and the fiscal value of North Dakota products in comparison to out-of-state products utilized annually that are purchased by state agencies, institutions of higher education under the control of the state board of higher education, and political subdivisions."

Renumber accordingly

Roll Call Vote #:

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1542

Senate Agriculture

☐ Check here for Conference Committee

Committee

Legislative Council Amendment Number

Action Taken Move amendment
Motion Made By Klein

Motion Made By Klein

Seconded By Taylor

[illegible]

Total (Yes) 1 No 0
Absent 0

Absent

Floor Assignment

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

Roll Call Vote #:

1543

Committee

Legislative Council Amendment Number

Do Pass as Amended

Taylor

Klein

[illegible]

Total (Yes) 0 No 0

Sen. Klein

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

REPORT OF STANDING COMMITTEE

HB 1543, as engrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1543 was placed on the Sixth order on the calendar.

Page 1, line 2, after "products" insert "; and to provide for a report to the legislative council regarding the procurement of North Dakota food products"

Page 1, after line 9, insert:

"SECTION 2. OFFICE OF MANAGEMENT AND BUDGET - PROCUREMENT OF NORTH DAKOTA FOOD PRODUCTS - REPORT TO LEGISLATIVE COUNCIL.

Before August 1, 2010, the office of management and budget shall report to the legislative council regarding its estimate of the total percentage of North Dakota products which represents the total food expenditures of state agencies, institutions of higher education under the control of the state board of higher education, and political subdivisions and the fiscal value of North Dakota products in comparison to out-of-state products utilized annually which are purchased by state agencies, institutions of higher education under the control of the state board of higher education, and political subdivisions."

Renumber accordingly

2009 TESTIMONY

HB 1543



#2
Mary Mitchell
1543
1/29/09
Dakota Resource Council
"Organizing North Dakotans Since 1978"
P.O. Box 1095~~ Dickinson, ND~~ 58602-1095
701-483-2851
www.drcinfo.com

Testimony in support of House Bill 1543
January 29, 2009

Representative Johnson and Members of the House Agriculture Committee,

I am here on behalf of Missouri Valley Resource Council and Dakota Resource Council to support HB 1543.

Simply put, HB 1543 would allow state agencies, universities, schools and institutions to purchase food that is produced in North Dakota, even if it costs a bit more, if their budget allows. It is strictly voluntary.

Similar bills have been passed in other states, including Montana.

We brought this bill hoping that it will encourage state entities to opt for local food when and if they have the opportunity, not just on special days, but on a regular basis.

People are increasingly interested in where their food comes from and how it is raised. Even here in North Dakota there is a growing movement made up of people want to be more connected to their food and the farmers who produce it.

The reasons for this are many. One is concern about the safety of the nation's food supply. Consumers pay attention to food-related health scares such as the

"Members of Dakota Resource Council use grassroots actions to influence public opinion and shape public policy to protect agriculture, natural resources, livelihoods and community well-being."

numerous e-coli cases involving vegetables and meat. Many people find that food grown locally is fresher and of superior taste than food that is shipped thousands of miles, sometimes from across the world. Others are concerned about the consumption of fuel used to ship food great distances and the costs to the environment. And there are those of us who think that we can, and should, be keeping more of our food dollars in North Dakota.

I recently attended a Marketplace presentation. The speaker said that approximately \$1.2 billion food dollars per year are spent in North Dakota, yet we are importing 97% of our food from outside the state and country. Wouldn't it be great if we could put even a few percent of this \$1.2 billion in our state's economy?

We know that this bill alone will not stimulate a huge sea change. That will take time and effort. We can promise you that we will be working hard in the next 2 years to educate and inform those involved and to further the development of a comprehensive local foods infrastructure in our state.

Your endorsement of this bill will show that the state is proud of our producers and is serious about encouraging the support of their great food products.

Respectfully submitted,



Mary Mitchell
Dakota Resource Council

"Members of Dakota Resource Council use grassroots actions to influence public opinion and shape public policy to protect agriculture, natural resources, livelihoods and community well-being."

Testimony in support of House Bill 1543

January 29, 2009

Chairman Johnson and Members of the House Agriculture Committee,

My name is Derrick Braaten, and I am a resident of Bismarck, North Dakota. I have spent several years in personal and professional capacities working on issues related to local food systems, agriculture and economic development, most recently as an attorney working for the Sarah Vogel Law Firm, and more importantly, as a North Dakota citizen.

Although I feel that the benefits of supporting North Dakota farmers and ranchers, and the foods they produce, are worthy of very lengthy remarks, I think that there are others who can speak to this much better than myself. I believe that we can all agree that what is best for our farmers and ranchers, and for the health of our citizens, is also what is best for the State of North Dakota.

Thus, I would like to speak for just a minute about a couple of the legal issues related to House Bill 1543.

In several forums, such as briefing sessions, conversations and other meetings, I have heard people raise the issue of protectionism. Much as we would like, and do, favor our farmers and ranchers in North Dakota, we are also aware that certain forms of protectionism are not permitted under federal law. I apologize if everyone is aware of this, but for the benefit of those who may not be, the reason that states cannot engage in protectionist behavior relates to the federal commerce clause of the constitution, and the right of our federal congress to control commerce among the states.

I want to briefly address this issue. Section 4302 of the 2002 Farm Bill encourages and explicitly allows geographic preferences under the Child Nutrition Act, and preferences for locally raised and produced foods. Such an explicit statement from our federal government allays the commerce clause issues with geographical preferences in this context. Many states have begun passing legislation very similar to House Bill 1543. This bill itself is modeled closely to a bill recently passed in Montana. As many as 16 states have already passed similar legislation, and many more are sure to follow.

North Dakota now has the opportunity to join those states that recognize that there is no better food than that grown by our neighbors, our friends and ourselves.

In addition, this bill has been crafted to ensure that there is still some form of competition and bidding procedure in place. Although those purchasing foods for institutions would be allowed to pay a reasonably higher price for foods produced by North Dakota farmers and ranchers, they not only must remain in their budget, but they also must utilize some sort of bidding or competitive process as they always have. This allows them to institute

a geographical preference, while also making sure that the forces of economic competition keep the price of the food fair and affordable, and the suppliers of the food as diverse as possible.

North Dakota has always shown a great deal of pride in its farmers and ranchers. They make up the backbone of our economy, of our culture and our value system. House Bill 1543 is a chance to show them, in a very concrete way, that these values remain, and that we feel that the produce of their labor excels not only in national and global markets, but right here at home as well.

Respectfully submitted,

Derrick Braaten
Bismarck, North Dakota

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



#4
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Equal Opportunity in Employment and Services

**Testimony of Sue B. Balcom
Local Foods Marketing Specialist
ND Department of Agriculture
HB 1543
Peace Garden Room
January 29, 2009**

Chairman Johnson and members of the House Agriculture Committee, my name is Sue Balcom, the Local Foods Marketing Specialist with the ND Department of Agriculture. I am here today in support of HB 1543, which would create and enact a new section to the North Dakota Century Code, relating to preferences for North Dakota food products.

A local foods preference law would allow food service buyers and directors to select locally produced foods of comparable or better quality over foods produced many miles away, if the price of those products does not unreasonably exceed the competitors.

Pricing decisions would be left to the discretion of the buyer with regards to the available budget for these types of purchases. We are looking to this bill to encourage institutional food service directors to introduce more North Dakota grown produce and products into their menus.

We are not looking to create an unfair advantage for any North Dakota businesses affected by reciprocal preference laws.

According to Nancy Matheson from the Grow Montana initiative, there are at least 13 states that have laws allowing or encouraging such purchasing privileges. This bill is not a procurement

preference law with a monetary percentage attached to the bidding process. Rather it is an option for institutions in the state to support producers in North Dakota.

Not only would this bill potentially affect economics of small scale family farms in the state, but it would also insure the freshest produce possible is being served at schools, nursing homes, penitentiaries, universities and the like.

This bill would provide necessary first steps towards supporting Senate Concurrent Resolution No. 4018 passed in 2003 “urging all publicly supported entities that purchase food to support North Dakota producers and processors by purchasing food products grown or produced and processed in North Dakota.”

Our intentions are to promote the economic wellbeing of smaller family farms and the health of our state residents.

Local foods movements are growing rapidly throughout this country and in the rest of the world.

The ND Department of Agriculture created the position of local foods marketing specialist in August of last year to address this movement towards producing and consuming foods within state boundaries or even closer to home because of issues of food safety, health and economy.

Since that time, our department has sponsored four major regional meetings, one local foods summit and many small community meetings, as well at the Green and Growing School Garden grant program. The meetings have been well attended, because there are many people, farmers, school food service directors, chefs and families interested in healthier foods.

There are many reasons to think about our local food systems.

- Obesity costs in North Dakota alone are more than \$209 million.
- U.S. medical costs of obesity are \$118 billion per year.
- Over half of all adults in the U.S. are overweight.

- A change in diet could prevent 30% of cancer worldwide.
- 90% of Americans need to eat more fruits and vegetables.
- One-half of elderly people seeking medical care are under nourished.
- Statistics state children born after the year 2000 have a shorter life expectancy than we do.

A Maine study shows that by shifting just one percent of our food dollar to direct purchasing of local food products, we could increase farmers' income by five percent.

I urge you to give a "do pass" recommendation to HB 1543.

Thank you Chairman Johnson and members of the House Agriculture Committee for your time today. If you have any questions, I would be happy to answer them at this time.



January 29, 2009

Testimony
HB 1543

Chairman Johnson and Members of the House Agriculture Committee:

Good morning. I am Karen Ehrens, a Licensed Registered Dietitian, and I am here today on behalf of the 280 members of the North Dakota Dietetic Association (NDDA) in support of HB1543, which would allow for various state and local entities to apply preferences for food products grown in North Dakota when purchasing food.

The North Dakota Dietetic Association, with a mission to support the public through the promotion of optimal nutrition, health and well-being, encourages the ecological sustainability of the food system all the way from the farm to the fork and at every stage in between.

We support efforts to make it easier to access local North Dakota foods for the following reasons:

- Local foods can be more nutritious because they travel less and for shorter periods of time. Produce is at its peak nutritional value and flavor when ripe. The nutritional value of food decreases every day past harvest and through processing.
- Local foods can provide increased access to flavorful foods. And when people have access to great-tasting food, they are more likely to choose a healthful diet.
- Local foods can be safer because they are part of a shorter food chain and there are more diverse sources of food. Fewer handlers mean fewer changing of hands, fewer steps along the way, and less chance of contamination at each step.
- Local foods can be safer if they are grown with sustainable and/or organic methods, which means less exposure to agricultural chemicals for growers, neighbors and eaters.
- Local foods can lead to a healthier environment. There is potentially less pollution when food travels fewer miles. Local, organically produced meat may have a lower environmental impact than transported meats. Local food systems can lead to increased diversity of plant and animal health, a more diverse landscape that is the North Dakota we all love.

NDDA members work in schools, universities and senior feeding programs where they make decisions or influence decisions about which foods are purchased. Sourcing food locally is a way to promote health, protect the local agricultural landscape, indirectly conserve water and energy, and avoid increases in food costs as energy costs increase.

Just as we as a state and nation are working to reduce reliance on foreign oil, purchasing food locally can help reduce our reliance on imported foods. North Dakotans spend over one billion dollars a year on food. It is estimated that Americans currently spend only one to three percent on local foods. Using an estimate of three percent, in North Dakota we are currently spending about \$36 million dollars a year on local foods. If we can increase that percentage to just five percent, we could increase that amount to \$60 million dollars.

The NDDA supports efforts to facilitate, but not require, government and private entities to purchase foods grown in a nearby food system to help build more locally based, self-reliant food economies to enhance the economic, environmental, and social health of North Dakota and the personal health of North Dakotans.

#6

Chairman Johnson; Members of the House Agriculture Committee,

My name is Lindsey Aull. I grew up on a farm in Wells Co. where my parents raised turkeys for Land O' Lakes and commodity crops on about 1000 acres. So years later as a college student, when I told my parents I would be working on a farm that was 8 irrigated acres of produce and 30 in pasture, I was met with support but also a bit of skepticism. The question they both seemed to ask was, "Is that really farming? 40 acres?" . Over time their attitudes completely changed. I ended up staying with that same farm for 3 years, and spent another 2 working for other farms, all of which sold locally. During those years, my mother had several opportunities to visit and see what I was up too. What she saw when she came, was that the lettuce I was waking up to harvest and pack in the wee hours of the morning was being sold in grocery stores all over town; the cheese and milk our partner dairy farm was producing was being sold all over town; she saw that I was working hard, and that the finances of the farm were sound and solid. Both she and my father are now enthusiastic supporters of local food and the idea that I can make a good living and future from producing it.

This last summer, I had my first solo growing season here in ND, producing vegetables for farmers market here in Bismarck. Quite honestly , I don't know what direction my small enterprise may go in the future. Perhaps I will remain small or grow large enough to sell institutionally. In any scenario, I strongly urge support for this bill as a way to open opportunity for producers all over the state small and large, and also as a way to instill pride in ourselves as North Dakotans and our capacity to provide for communities, while supporting our economy and livelihoods. Thank you.

Sincerely,

Lindsey Aull

#7

Testimony

~~SB 2394~~

1543

Presented by: Sherry Neas, Director
OMB, Central Services Division
State Procurement Office

Before: Agriculture Committee
Senator D. Johnson, Chairman

Date: January 29, 2009

Good morning, Chairman Johnson and members of the committee. My name is Sherry Neas, Director of the Central Services Division within the Office of Management and Budget.

The State Procurement Office opposes this bill and the proposed amendment to the bill.

First, preference laws are not best practice in public procurement. N.D.C.C. 44-08-01 is one of the State's broadest procurement laws. It establishes the state's reciprocal preference law. Reciprocal preference laws are intended to deter local preference laws, because these laws have the effect of "punishing" businesses from states with preference laws. Reciprocal preference laws require government entities who receive bids from out-of-state bidders to increase their bid price by the rate of preference given by that bidder's home state.

For example: ND receives a bid from an out-of-state bidder (\$10,000) whose home state has a 5% preference bid. When evaluating that out-of-state bid, we apply the reciprocal preference by adding 5% to their bid (\$10,000 + \$500).

Many other states, some 36 of the 50, have "reciprocal laws." Establishing a preference law for food products grown or produced in this state could actually hurt North Dakota food producers try to trying to sell other states.

Montana and South Dakota don't have a preference for local food. Instead, they have provisions in their statutes that provide exemptions for food products.

I spoke to the Director of State procurement for Montana. Montana would consider this a preference law. This statute would be titled "North Dakota food products – Preference." While the bill discusses formal and informal bidding, the bill would allow North Dakota government entities to pay a price that "reasonably exceeds the price offered by other bidders." Therefore, Montana would consider this a 100% preference law, and no government institution in Montana would be allowed to buy food produced or processed in North Dakota.

The language in this amendment would be difficult to apply. The first section uses imperative language, "shall provide a preference." The second paragraph is permissive,

Testimony

~~SB 2394~~

"may enter into a contract under which the price paid...reasonably exceeds the price offered by other bidders."

Who determines what "reasonable" is?

OMB and other state agencies would need additional time to consider the impact of this legislation. North Dakota institutions operate on very tight budgets for meals.

If the committee recommends a "do pass," we respectfully request to be allowed to continue working on amendments to clarify some of the language in the bill as currently written.

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



drc

Dakota Resource Council
"Organizing North Dakotans Since 1978"
P.O. Box 1095 ~ Dickinson, ND ~ 58602-1095
701-483-2851
www.drcinfo.com

Testimony in support of House Bill 1543
March 6, 2009

Senator Flakoll and Members of the Senate Agriculture Committee,

I am here on behalf of Missouri Valley Resource Council and Dakota Resource Council to support HB 1543.

HB 1543 would allow state agencies, universities, schools and institutions to purchase food that is produced in North Dakota, even if it costs a bit more, if their budget allows. It is strictly voluntary.

Similar bills have been passed in other states, including Montana.

We brought this bill hoping that it will encourage state entities to opt for local food when and if they have the opportunity, not just on special days, but on a regular basis.

People are increasingly interested in where their food comes from and how it is raised. Even here in North Dakota there is a growing movement made up of people want to be more connected to their food and the farmers who produce it.

The reasons for this are many. One is concern about the safety of the nation's food supply. Consumers pay attention to food-related health scares such as the

"Members of Dakota Resource Council use grassroots actions to influence public opinion and shape public policy to protect agriculture, natural resources, livelihoods and community well-being."

numerous e-coli cases involving vegetables and meat. Many people find that food grown locally is fresher and of superior taste than food that is shipped thousands of miles, sometimes from across the world. Others are concerned about the consumption of fuel used to ship food great distances and the costs to the environment. And there are those of us who think that we can, and should, be keeping more of our food dollars in North Dakota.

I recently attended a Marketplace presentation. The speaker said that approximately \$1.2 billion food dollars per year are spent in North Dakota, yet we are importing 97% of our food from outside the state and country. Wouldn't it be great if we could put even a few percent of this \$1.2 billion in our state's economy?

We know that this bill alone will not stimulate a huge sea change. That will take time and effort. We can promise you that we will be working hard in the next 2 years to educate and inform those involved and to further the development of a comprehensive local foods infrastructure in our state.

Your endorsement of this bill will show that the state is proud of our producers and is serious about encouraging the support of their great food products.

Respectfully submitted,



Mary Mitchell
Dakota Resource Council

"Members of Dakota Resource Council use grassroots actions to influence public opinion and shape public policy to protect agriculture, natural resources, livelihoods and community well-being."



March 6, 2009

Testimony
HB 1543

Chairman Flakoll and Members of the Senate Agriculture Committee:

Good morning. I am Karen Ehrens, a Licensed Registered Dietitian, and I am here today on behalf of the more than 300 members of the North Dakota Dietetic Association (NDDA) in support of HB1543, which would allow for various state and local entities to purchase food products grown and produced in North Dakota.

The North Dakota Dietetic Association, with a mission to support the public through the promotion of optimal nutrition, health and well-being, encourages the ecological sustainability of the food system all the way from the farm to the fork and at every stage in between.

We support efforts to make it easier to access local North Dakota foods for the following reasons:

- Local foods can be more nutritious because they travel less and for shorter periods of time. Produce is at its peak nutritional value and flavor when ripe. The nutritional value of food decreases every day past harvest and through processing.
- Local foods can provide increased access to flavorful foods. And when people have access to great-tasting healthy food, they are more likely to choose a healthful diet.
- Local foods can be safer because they are part of a shorter food chain and there are more diverse sources of food. Fewer handlers mean fewer changing of hands, fewer steps along the way, and less chance of contamination at each step.

NDDA members work in schools, universities and senior feeding programs where they make decisions or influence decisions about which foods are purchased. Sourcing food locally is a way to promote health, protect the local agricultural landscape, indirectly conserve water and energy, and avoid increases in food costs as energy costs increase.

Just as we as a state and nation are working to reduce reliance on foreign oil, purchasing food locally can help reduce our reliance on imported foods. North Dakotans spend over one billion dollars a year on food. It is estimated that Americans currently spend only one to three percent on local foods. Using an estimate of three percent, in North Dakota we are currently spending about \$36 million dollars a year on local foods. If we can increase that percentage to just five percent, we could increase that amount to \$60 million dollars.

The NDDA supports efforts to facilitate, but not require, government and private entities to purchase foods grown in a nearby food system to help build more locally based, self-reliant food economies to enhance the economic, environmental, and social health of North Dakota and the personal health of North Dakotans.

Respectfully submitted by Karen K. Ehrens, LRD
NDDA Public Policy Chair

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



Attachment #3

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Bismarck, ND 58505-0020
Equal Opportunity in Employment and Services

**Testimony of Sue B. Balcom
Local Foods Marketing Specialist
ND Department of Agriculture
HB 1543
Roosevelt Room
March 6, 2009**

Chairman Flakoll and members of the Senate Agriculture Committee, my name is Sue Balcom, the Local Foods Marketing Specialist with the ND Department of Agriculture. I am here today in support of HB 1543, which would create and enact a new section to the North Dakota Century Code, relating to preferences for North Dakota food products.

I would also like the Committee to consider the amendment I am offering that would strengthen the bill. This amendment allows our state and local entities to set geographical region criteria in the bidding process, but does not waive any of the procurement laws now prescribed by law. While the current language of the bill might provide legislative intent, as a practical matter it does not change any current purchasing policies.

This bill, with the proposed amendment, should encourage institutional food service directors to introduce more North Dakota grown produce and products into their menus by using a geographic bidding process similar to the Child Nutrition Program language in the 2008 Farm Bill.

We are not looking to create an unfair advantage for any North Dakota businesses by changing the requirements for procurement prescribed by law.

According to Nancy Matheson from the Grow Montana initiative, there are at least 13 states that have laws allowing or encouraging purchasing local foods. This bill is not a procurement preference law. Rather it is an option for institutions in the state to support producers in North Dakota.

Not only would this bill potentially affect economics of small scale family farms in the state, but it would also insure the freshest produce possible is being served at schools, nursing homes, penitentiaries, universities and the like.

This bill, with the proposed amendment, would provide necessary first steps towards supporting Senate Concurrent Resolution No. 4018 passed in 2003 "urging all publicly supported entities that purchase food to support North Dakota producers and processors by purchasing food products grown or produced and processed in North Dakota."

Our intentions are to promote the economic wellbeing of smaller family farms and the health of our state residents.

Local foods movements are growing rapidly throughout this country and in the rest of the world.

The ND Department of Agriculture created the position of local foods marketing specialist in August of last year to address this movement towards producing and consuming foods within state boundaries, or even closer to home because of issues of food safety, health and economy.

Since that time, our department has sponsored four major regional meetings, one local foods summit and many small community meetings, as well as the Green and Growing School Garden grant program. The meetings have been well attended because there are many people, farmers, school food service directors, chefs and families interested in healthier foods. This week we sponsored the "Growing Local" lunch at the Capitol Cafeteria. I hope you were part of the excitement. We intend to replicate that all over the state with the hopes that restaurants might promote North Dakota products on their menu year round.

There are many reasons to think about our local food systems.

- Obesity costs in North Dakota alone are more than \$209 million.
- U.S. medical costs of obesity are \$118 billion per year.
- Over half of all adults in the U.S. are overweight.
- A change in diet could prevent 30% of cancer worldwide.
- 90% of Americans need to eat more fruits and vegetables.
- One-half of elderly people seeking medical care are under nourished.
- Statistics state children born after the year 2000 have a shorter life expectancy than we do.

A Maine study shows that by shifting just one percent of our food dollar to direct purchasing of local food products, we could increase farmers' income by five percent.

I urge you to give a "do pass" recommendation to HB 1543 with the proposed amendment.

Thank you Chairman Flakoll and members of the Senate Agriculture Committee for your time today. If you have any questions, I would be happy to answer them at this time.

Attachment #4

Memo To: Senator Flakoll, Chairman, Senate Agriculture Committee
Senator Klein, Senate Agriculture Committee

From: Sherry Neas, Director, OMB, Central Services Division 

Date: March 11, 2009

Subject: HB 1543 Procurement of ND Food Products

During the Senate Hearing, Office of Management and Budget, State Procurement Office was asked to conduct additional research on the impact of this bill and the proposed amendment.

The bill as originally introduced was a preference law for North Dakota food products. OMB testified against the bill during the House Committee hearing. We opposed the bill on the basis that a preference law for North Dakota food would have an adverse impact on North Dakota growers and producers who seek to do business in other states, because 36 of the 50 states have "reciprocal preference laws."

Reciprocal preference means simply that other states will treat our bidders the same way we treat bidders from their states. When we create a preference for food grown or produced in North Dakota, our state is essentially discriminating against food grown or produced in other states. States with reciprocal preference laws would reverse this preference/discrimination when they receive bids offering food grown or produced in North Dakota. Thus, preference laws adversely impact ND bidders and producers who want to do business in other states.

The First Engrossment eliminated any reference to purchasing preference, thus lessening the likelihood of adverse impact to North Dakota food producers. However, the engrossed bill does not communicate any clear direction or intent, as I pointed out during the Senate hearing. "Whenever possible, (government entities) may purchase food products produced in the state." Government entities may already purchase food products produced in this state.

An amendment to HB 1543 was introduced during the Senate Hearing. The proposed language gives ND government entities the discretion to specify a "geographic region from where the food is grown or produced." OMB State Procurement surveyed the other state procurement offices. Generally, states with reciprocal preference laws would interpret the amended language as a preference law, thus triggering reciprocal preference. OMB opposes the proposed amendment.

Enclosures

1. Survey Results
2. List of States with Reciprocal Preference Laws

Question: Would your state apply reciprocal preference against food grown or produced in North Dakota?

State	Response
Montana	Yes. In Montana that would be a restrictive specification. Yes, Montana would consider restricting the geographic region to ND would be a 100% preference and Montana would apply a 100% reciprocal preference
Minnesota	Yes. (Minnesota would apply reciprocal preference against food grown or produced in ND) if North Dakota specifies a geographic region that excludes Minnesota.
South Dakota	Interesting wording. It is unlikely that South Dakota would take any action to apply reciprocal preference since perishable foods are not subject to bid requirements here. In the case of non-perishable foods, I don't think I could say for sure what would happen since the legislation does not specifically state that the "geographic region" identified will be North Dakota.
California	Competition is one of the basic tenets in California's state procurement and contracting; therefore, it is not likely that the State of (North Dakota)'s legislation would trigger reciprocity. Also, for your information, an attempt to create similar legislation by legislators was found to be unconstitutional in California.
Tennessee	Yes. Tennessee would (apply reciprocal preference against food grown or produced in ND).
Wisconsin	Yes. Wisconsin would apply its reciprocity law if these were enacted.
Kentucky	Yes, the Commonwealth of Kentucky would apply a reciprocal preference against North Dakota.
Washington	Yes. Washington has a in-state preference/reciprocity law. Washington has a schedule of percentage increases to be added to bids and proposals from bidders in states that grant a preference to contractors located in their state or for goods manufactured in state.
Iowa	Yes. If the laws of another state mandate a percentage preference for businesses or products from that state..., the same percentage shall be applied to Iowa businesses and products when (businesses from the other state bid in Iowa).
Massachusetts	Yes. MA enacted an agricultural preference a couple of years ago, which I have summarized below. This would be applied regardless of whether other states have their own preferences.
Rhode Island	Has Rhode Island food preference law
New York	NYS has similar requirements that say that NYS may specify local grown products based upon availability
Ohio	Ohio is also looking for ways to increase use of Ohio grown food. Has a in-state preference law that gives Ohio bidder a 5% preference over nonresident bidders.
Nevada	No. Nevada is in the process of eliminating its inverse preference law, so after July 1 st we would not.
Alaska	No. We have no reciprocal preference in Alaska.
Florida	Not now.
Delaware	Delaware does not hold a potential "local preference" against other State vendors, but could.

Reciprocal Preference Laws

State by State Reciprocal Preference Data

Click on the state you wish to visit



State	Reciprocal Law	Tie-Bid Preference	Preference (%)	Preference and Conditions	Date Revised	
Alabama (AL)	No	Yes	Details	Details	February	2009
Alaska (AK)	No	No	Details	Details	March	2003
Arizona (AZ)	No	No	None	Details	January	2009
Arkansas (AR)	No	No	15%	Details	February	2009
California (CA)	No	Yes	Details	Details	February	2009
Colorado (CO)	Yes	Yes	None	Details	June	2003
Connecticut (CT)	Yes	Yes	None	Details	January	2009
Delaware (DE)	No	No	Yes	Details	January	2009
Florida (FL)	Yes	Yes	10% (5%)	Details	March	2003
Georgia (GA)	Yes	Yes	None	Details	January	2009
Hawaii (HI)	Yes	Yes	Details	Details	January	2009
Idaho (ID)	Yes	Yes	Details	Details	March	2009
Illinois (IL)	Yes	Yes	Details	Details	May	2002
Indiana (IN)	Yes	No	Details	Details	December	2007

Iowa (IA)	Yes	N/A	Details	Details	June	2003
Kansas (KS)	Yes	Yes	None	Details	January	2009
Kentucky (KY)	No	Yes	None	Details	January	2009
Louisiana (LA)	Yes	Yes	Varies by category	Details	January	2009
Maine (ME)	Yes	Yes	Details	Details	February	2009
Maryland (MD)	Yes	Yes	None	Details	January	2001
Massachusetts (MA)	No	Yes	None	Details	January	2001
Michigan (MI)	Yes	Yes	Details	Details	January	2009
Minnesota (MN)	Yes	No	Yes	Details	January	2009
Mississippi (MS)	Yes	Yes	None	Details	January	2009
Missouri (MO)	Yes	Yes	None	Details	February	2009
Montana (MT)	Yes	No	None	Details	February	2009
Nebraska (NE)	Yes	Yes	None	Details	January	2009
Nevada (NV)	Yes	Yes	5% (10%)	Details	June	2003
New Hampshire (NH)	No	No	None	None	January	2001
New Jersey (NJ)	Yes	No	None	Details	January	2009
New Mexico (NM)	No	Yes	5%	Details	May	2002
New York (NY)	Yes	Yes	None	Details	February	2009
North Carolina (NC)	Yes	Yes	None		March	2003
North Dakota (ND)	Yes	Yes	Details	Details	March	2003
Ohio (OH)	Yes	No	5%	Details	January	2009
Oklahoma (OK)	Yes	No	No	N/A	March	2003
Oregon (OR)	Yes	Yes	Details	Details	May	2005
Pennsylvania (PA)	Yes	Yes	Details	Details	January	2009

Rhode Island (RI)	No	No	None	None	February	2009
South Carolina (SC)	No	Yes	7%	Details	May	2002
South Dakota (SD)	Yes	Yes	Details	Details	February	2009
Tennessee (TN)	Yes	Yes	None	Details	March	2003
Texas (TX)	Yes	Yes	None	Details	January	2009
Utah (UT)	No	Yes	None	Details	February	2009
Vermont (VT)	No	Yes	None	Details	January	2009
Virginia (VA)	Yes	Yes	Details	Details	February	2009
Washington (WA)	Yes	No	Yes	Details	January	2009
West Virginia (WV)	Yes	No	Details	Details	January	2001
Wisconsin (WI)	Yes	No	None	Details	January	2009
Wyoming (WY)	No	Yes	None	Details	February	2009

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North Dakota Department of Agriculture

HB 1543

Suggested Amendment

Each state agency, institution of higher education under the control of the state board of higher education, and political subdivisions that has the authority to purchase food products ~~may purchase food products produced in this state.~~ may set criteria for bidding that specifies a geographic region from where the food is grown or produced. This provision shall not eliminate the other requirements for procurement to be conducted in the manner prescribed by law.

Neas, Sherry L.

From: Grier, Jean [Jean_Grier@USTR.EOP.GOV]
Sent: Thursday, February 05, 2009 6:35 PM
To: Neas, Sherry L.
Cc: Venkataraman, Arun
Subject: RE: ND Legislation

1543

Hi Sherry,

Arun sent me your legislative proposal on food purchases. We appreciate the opportunity to review it. However, since this is a restriction on government procurement, and North Dakota is not covered by any international obligations on government procurement, it does not raise any international trade concerns.

Jean

Jean Heilman Grier
Senior Procurement Negotiator
Office of the United States Trade Representative
Tel: 202/395-9476
Email: jean_grier@ustr.eop.gov

From: Venkataraman, Arun
Sent: Thursday, February 05, 2009 6:29 PM
To: Grier, Jean
Cc: Tai, Katherine C.; Pagan, Maria
Subject: FW: ND Legislation

From: Neas, Sherry L. [mailto:sneas@nd.gov]
Sent: Thursday, February 05, 2009 5:44 PM
To: Venkataraman, Arun
Subject: RE: ND Legislation

Mr. Venkataraman,
Good afternoon! I would appreciate your reviewing the potential impact, if any, of this legislation.

Thank you,

Sherry

Sherry Neas
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