2011 SENATE POLITICAL SUBDIVISIONS

SB 2198

2011 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee
Red River Room, State Capitol

SB 2198
January 27, 2011
13512

☐ Conference Committee

Committee Clerk Signature	*Mary J. Wods*

Explanation or reason for introduction of bill/resolution

Relating to heating, ventilation, and air-conditioning interoperability standards.

Minutes:

Senator Andrist opened the hearing on SB 2198, relating to heating, ventilation, and air-conditioning standards. All senators present.

Senator Tony Grindberg: District 41, Sponsor, in support of SB 2198. Section 1, relates to heating, ventilation, air-conditioning interoperability standards for public buildings. That any new construction or remodeling of public buildings which affect the heating, ventilation, air-conditioning systems in the building which is paid for by using state funds must be constructed to include open protocol heating, ventilation, air-conditioning systems that provide for interoperability of the systems. What does that mean? Those companies that control systems to have interoperability standards, so that company A who installed the system and someone takes occupancy of a building, then six to twelve months down the road, that service agreement that you agreed to with the installer of that system; locks you in for their service agreement, you have no options because they are the system that was installed, they know it, and you pay the price no matter what it is. Of course you can choose not to have the service agreement but then you're in a situation where what if the system goes down. These systems become highly automated and technical and require software computer systems and so the point here is that is if installer- company A puts a system in, and you're not happy with that, you can go to company B and I want to solicit your services to perform service and maintance. By doing so, they have to open protocol to have access into that system and be able to perform to your request or contract for service. The intent of this bill is to bring a more competitive market into that environment.

Senator Olafson: Do you know what impact this will have on costs for new construction? Will it save money? Will it cost money, what impact will it have?

Senator Grindberg: I don't believe it will have any impact on cost because you know the architects are going to be part of that whole scope and design work. You're going to have to be competitive with your system and I would imagine that certain systems are more preferential to certain architects. They know the numbers. In a large project, this is really

kind of buried in the tail end of the project. Most people don't pay attention to it, until you get into the system and then you're locked.

Senator Laffen: Example given from an architect's point of view. This bill would tell a certain company that within their system that runs the control, it has to be a non- sole propriety type of system that anybody can connect too, and service. Open protocol and those systems are out there. In the end this won't cost us anything more to construct buildings, but it will save a lot of money in maintaining them.

Anyone wants to testify in opposition or neutral position on this bill.

Closed Hearing on SB 2198.

Senator Laffen made a motion for Do Pass
Senator Dotzenrod   2nd the motion
Role call vote: 5 Yeas, 0 No, 0 absent
Carrier: Senator Laffen

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *2198*

Senate   Political Subdivisions _____ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☑ Do Pass   ☐ Do Not Pass   ☐ Amended   ☐ Adopt Amendment

☐ Rerefer to Appropriations   ☐ Reconsider _____

Motion Made By *Sr. Laffen* _____ Seconded By *Sr. Dotzenrod* _____

Senators	Yes	No	Senators	Yes	No
Senator John Andrist	✓		Senator Curtis Olafson	✓	
Senator Lonnie Laffen	✓				
			Senator Jim Dotzenrod	✓	
Senator Judy Lee	✓				

Total   (Yes) _____*5*_____   No _____*0*_____

Absent _____*0*_____

Floor Assignment _____*Senator Laffen*_____

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

REPORT OF STANDING COMMITTEE
SB 2198: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2198 was placed on the Eleventh order on the calendar.

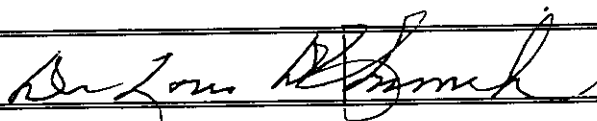# 2011 HOUSE POLITICAL SUBDIVISIONS

SB 2198

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

SB 2198
March 11, 2011
Job # 15305

☐ Conference Committee

Committee Clerk Signature	*[signature]*

Explanation or reason for introduction of bill/resolution:

Relating t5o heating, ventilation, and air-conditioning interoperability standards; and to provide an effective date.

Minutes:

Testimony #1

Chairman Johnson: Opened the hearing on SB 2198.

Senator Grindberg: In support of this bill. Section 1 requires and sets up language for heating ventilation for heating language and air conditioning interoperability standards for public buildings for public buildings will exist. It basically requires that any new construction of a public building or remodeling after January 1, 2012 will be subject to this provision. You are asking yourself what in the world does this mean. In my experience in construction projects with various engineering firms and architects there is a competitive environment that is not present in current mechanical control systems. Let me illustrate; say a new building is completed. Say a new campus like the Heritage Center construction. The architect will design that scope of work and put that project together and bid. In the case of mechanical systems the low bid based on the architect's design and scope will win the award. Typically they will assign or use a vender for the control systems. That unit on the wall over there that regulates the temperature in this room. These systems have become fairly suffocated in technology, computer software and management. You have to sign a service agreement because most of them are highly technical and a normal custodian cannot figure it out. Usually it is through contracts and once has that system in place you're locked in. My understanding over the years is the industry has discussed and indicated they will develop interoperability standards so if you end up with company A providing your that annual service agreement most often you are locked in and whatever they want to charge you for a fee annually you have to pay it. Company B who has the same specification; maybe a little different system cannot bid on it so what this bill will do for any public building is allow those interoperability standards to exist. In some cases they would say we want to put out for bid this maintenance contract. I have had discussions with various folks around the state in some of our campus's who have expressed that this would be a tool to force the private sector into a completive environment when state buildings are at question so that is why I put the bill in. You will hear testimony for an amendment which I would support. This would provide an exemption for warehouses and elevators and factories. Questions?

Rep. Klemin: Is this something that is technologically feasible or possible now?

Senator Grindberg: That is my understanding talking to engineers and design firms it could be possible.

Rep. Klemin: We are talking about a generic system that anyone in that business could come in and maintain it?

Senator Grindberg: I am not sure I would describe it as a generic system. The protocols of company A and the protocols of company B might be somewhat different but company B would have excess to those protocols to determine whether they could bid on that contract for maintenance and thereby have a competitive environment for that annual service agreement.

Rep. Klemin: Are we likely to get into trade issues or things like that as far as these protocols are concerned?

Senator Grindberg: I cannot answer that question but in the interest of the state from a standpoint of competitive market I think that that side should prevail.

Karlene Fine, Executive Director, ND Industrial Commission: (See testimony #1 plus proposed amendment).

Rep. Klemin: Looking at the amendment I know you are looking for an exception for the State Mill but your amendment says warehouse, elevators or factories. I think elevators can be looked at a couple of ways; I think you are talking about grain terminal elevators and maybe it should be more specific on that regard. What factories do we have?

Karlene Fine: We were having discussions with our council as to how we describe the milling units where the actual milling takes place. Is it an industrial building or what do you call it? So they went back to the statue for the state mill and in that statue they refer to factories so the council said lets be constituent an due the word factory.

Rep. Klemin: Why don't we just say the State Mill instead of all this other stuff?

Karlene Fine: We could do that. We thought maybe we should use some of the verbiage that is in the law but we would be perfectly comfortable with the except for the State Mill. We didn't know if we would carve the office building out that we have so we thought maybe we should use the industrial part of it.

Rep. Klemin: Why should the office building be exempt?

Karlene Fine: That is why we said warehouse, factory and elevator. We didn't include the office building. The office building would still fall under this provision.

Rep. Klemin: If the office building was exempt you could still do this. So if you said the State Mill you wouldn't have a choice.

Rep. Shirley Meyer: I understand about the State Mill and the different, unique concept in regulating this. Couldn't that be true of many of the state owned buildings where they maybe have unique components? This bill might affect that also.

Karlene Fine: We didn't look at the other buildings. The only other buildings we had was the Bank of ND and some of our buildings for some of our other offices that we rent or are a part of so we just focused on the mill. It might apply to other agencies on the university campuses. They would have to testify on their own case. We felt it was a safety concern at the mill with our dust control and ventilation that we felt we had to speak to that affect.

Rep. Shirley Meyer: With the state bank. Is there a service agreement in place for the Bank of ND to deal air ventilation and air conditioning that doesn't have to be bid out?

Karlene Fine: We visited with the folks at the bank. They did not think this was a problem.

Rep. Koppelman: If the 70 year old capitol had to remodel and a new heating and ventilation system put in, this would apply to the capitol, would it not?

Karlene Fine: I think John Bowl is here from the facilities management and he can speak to that.

Rep. Koppelman: What is an open protocol system? Is that an industry term? Do you know?

Karlene Fine: We had some discussion about that. I have talked to a couple of engineers and one of them is in the room so maybe he can respond to that question better than I.

Opposition:

Chairman Johnson: We have a couple questions here. Neutral testimony Mr. Boyle would you be willing to respond to some questions?

John Boyle, Director of Facilities Management for the Capitol: I didn't testify when it was on the Senate side. All of my staff came up and said we are opposed to this. Since the Heritage Center came up I thought I would just testify in a neutral position. I am responsible for the Heritage Center expansion project. When we went out to bid that project we specifically specified that we would like to use the same system we have in the entire campus which is Andover Building Automation. That is the name of the system we have. However, we know by law we just cannot pick a system so we said Andover or equitant and then we had our engineers determine when the bids came in if they were equitant. Before I got here we had a system, Johnson's Controls, is who we used and at that time we did have a very outrageous annual contract that we had to pay. It was $15,000 and that was five years ago. It increased by 4-5% a year so by now it would be around $20,000 now. We did a $4.7 million energy saving project here on the grounds and when we did that project we put building automation in all the other buildings. That capitol had already had it; the judicial wing, DOT had it and a little bit in the Heritage Center. Andover could actually replace the whole system that was existing and add to the property

for less money than what Johnson Control's could do it for. Some of these systems are extremely complicated and it is very suffocated programming but we have staff that are training in these systems and especially in Andover. Andover is the most user friendly system we have found on the market. Senator Grindberg said a custodian can't use this. That is not true. With Andover it can and a person had started as a custodian in our department is now worked his way to general maintenance person; he takes care and changes the automation all the time using Andover. Because of our education and our experience with the system we have eliminated the annual contract. It is not required to have an annual contract. The Johnson Control's contract we could have gotten rid of that; however, we weren't suffocated enough in that system that we could go in and program. We are in the new system. So I think with a little training by state employees you could resolve this also. We would actually like to see definitely the capitol included if there is an amendment that excludes some buildings because not only for security reasons, highway patrol, cameras and card excess is the same system as our heating and ventilation to if we have created a situation that if there were a substance in the building that we did not want go through the ventilation we can just push one button and it shuts everything down. Highway patrol has excess to that button; facility management has excess to that. I would hate it if there was some third party software system that over rode our existing ventilation system because then you are just actually adding another layer to what you already have and then this third party software system would probably still want you to have a maintenance contract with them and it must be lower than the rest of them. I am all for competition and it there are areas where it would make it less expensive for agencies to utilize this third party to over ride it then yes if it means saving money that is a good idea. I do think in some situations and with some products that the software is so user friendly that anyone can do it. With the control here you can go in now and change the temperature. Before you would have had to call facility management and we would have to have gone on the computer and changed it.

Rep. Koppelman: What is open protocol system?

John Boyle: I am not. I am not an engineer.

Rep. Koppelman: You are giving examples of cases where it might not provide more flexibility?

John Boyle: I do believe there are examples such as the State Mill and the capitol that there could be a determent to doing this. It does say we must go out and see if this exists. Right now we don't pay anything for an annual contract so I don't see how it would affect us. Anything that would be a third layer over us we probably have to pay for because we would not be familiar with that system.

Rep. Koppelman: The way the bill is written it is a must. Maybe it would make sense to have that language softened in some way to say much consider or something like that so that as these bids would go out this would sort of be something that would pop up on the radar and it would be considered if this would be a savings to the state or a better long term financial decision let's look at this but maybe not something so forceful? That might eliminate the need for all of these amendments too if it was optional.

John Boyle: I would agree with that statement.

Rep. Klemin: Does the state have a software license?

John Boyle: Yes we do. When you initially get the system you have to have a license. So if Microsoft changes operating systems then this software also has to be upgraded. I believe we get those at no cost.

Rep. Klemin: In that license is there a confidentiality or trade secret relating to the source code?

John Boyle: All of these are trademark patented software items so I don't understand how this third one even works. I do know that the state of Utah does use a third party that does over ride some of their systems. They did not use the Andover system.

Rep. Zaiser: In light of the fact that the capitol and the grounds seem to want to opt out of this. It seems to me that state buildings all over the state are going to want to opt out too because they say the center point of the state government is opting out. Do you see that happening?

John Boyle: Actually I don't. I think universities, people are tied into a system just like Johnson's Controls like we were; until those folks actually do an energy saving project where they could change out a system to a simpler system that everyone can use and they are trained on it. I would think they definitely would want this to pass so they would have an opportunity to use one of these third parties. You can go to an hourly fee schedule as needed. A lot of folks don't have adequate staff so they rely on contractors to maintain their systems. If they could get a third party to do it for half the price then I am sure many of them would like to do that.

Rep. Zaiser: Must or may might be a more appropriate language; wouldn't you agree?

John Boyle: Yes I would agree with that statement.

Rep. Klemin: Do you know what that exception is here on line 9?

John Boyle: I don't know right off the top of my head.

Rep. Shirley Meyer: I would like to know what an open protocol is if there is someone that knows what that it?

Senator Laffen: I do know a little bit about this system. The way these digital control systems work we know them as thermostats they are much more suffocated now and they are managed by computer systems. Each different manufacturer; Honeywell or whoever originally developed their own software. If this building was originally set up with a Honeywell system, it had Honeywell software that ran the system. It was proprietary software and only Honeywell could work on it. So therefore when we needed a maintenance contract for that system or to run the building only Honeywell could have that maintenance contract because they were the only ones allowed to work on their proprietary

software. We when you asked for a maintenance contract, either in a bid or otherwise you were held to whatever price they wanted to name for the maintenance contract because there was zero competition. No one else could do it. Eventually this industry figured out that that is not a good idea. Actually they were forced into figuring out that we want to be able to openly competitive maintenance contracts. So the industry itself developed what is called this open protocol software that all the different manufacturers would have excess to it. Protocol is just a computer word that just means the language that runs the software and open just means it is open to anybody. The intent of this is to make our state buildings say we should use this open system so that anybody can come in and work on our digital controls and maintenance contracts if we need instead of just the manufacturer who built it. That is the idea of the bill.

Rep. Koppelman: No one else can work on the other systems. Is that because they don't supply information on how to do that? Once you buy the system it is your property, is it not?

Senator Laffen: I am not exactly sure either how all of that works. I just know that in the first days when digital control systems with software came into place that they were proprietary and nobody else had excess to that. That is why this open system came into play.

Hearing closed.

House Political Subdivisions Committee
Prairie Room, State Capitol

SB 2198
March 18, 2011
Job # 15653

☐ Conference Committee

Committee Clerk Signature	*[signature]*

Minutes:

Chairman Johnson: Discussed the SB 2198.

Rep. Beadle: We had some of the various state agencies come in to testify asking to be exempt from this bill. The State Mill had so many more requirements as far as type of air exchange that they need. The Capitol person came in and said our system works great, we should be exempt. Both of those points missed what the actual bill is saying to do. I spoke with Ron Garrick who is president of Midwest Mechanical, which is one of the largest installer of commercial H Vack systems in the Red River Valley area. I asked for his upon on what the wording on this bill means. He said this is dealing more with the issue of the language of the interface that they are using. It is making sure the interface is all on the same system and the same language. Not that it is the same system itself. So it is not saying you have the exact same air exchange system for one state agency building to the next, but rather the agency systems all use a language or code that can be read by whatever agency wants to come in there. No saying that the Capitol that you have to change the language out entirely so that the Capitol people can no longer service it themselves or run it themselves, but rather it is instead using a universal language that can be understood or read by the computer with every company involved. Not just the one who initially installed the system? Problems arising because you would have a system that would be installed on a building; say if the building has Johnson controls with an automotive system and you would have to have Johnson because Andover or Train wouldn't interface when you are trying to expand the facility. All this bill would do is say you have to use the same source code language. It would be similar to phones now; if you want to work on the phone from Apple you would have to buy the source code from Apple and work on their phone. So Apple would have full control of it. Versus Andover which is an open system and anyone can get excess to that code. It is the language that everybody recognizes. I don't think there would be a need for the exemption for the State Mill or the Capitol or any of that stuff. Because you are not saying they have to have the same system itself in place. You are not saying they have to have the same air filtration system or whatever; but rather you are saying regardless of what system they are running on there; the language should able to be read by everyone. The open protocol system is something that is being used in the industry right now.

Rep. Koppelman: I do have a question about a possible amendment. Maybe you and I should discuss this if we can hold the bill.

Chairman Johnson: If we don't put the amendments on I think we need to talk to Karlene Fine so that she understands too.

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

SB 2198
March 31, 2011
Job # 16220

☐ Conference Committee

Committee Clerk Signature	_(signature)_

Minutes:

Chairman Johnson: reopened the discussion on SB 2198. This was the bill that talked about the heating, ventilation, and air-conditioning interoperability standards for public buildings. We had a request from the Industrial Commission to exempt the State Mill and Elevator.

Rep. Beadle: I talked to Karlene Fine as per the email I forwarded to you earlier. She wanted to make for sure that this wasn't requiring that the systems themselves were identical. In talking with some industry people she learned that the open protocol deals with the language, not the system itself. It is just making sure they can talk to each other. She felt comfortable with the language of the bill as is after checking with people in the industry.

Rep. Koppelman: Is that true of the Capitol also?

Rep. Beadle: I did not ask specifically about the Capitol, but it would be the same thing. The issue with the Capitol was he wanted to be able to service it himself. He had people that knew how to do it. This wouldn't affect this at all. The systems in the Capitol would stay as is. The bill was only effective if they were going to replace the entire system or expand or remodel, as necessary so that is when it would come into effect.

Rep. Koppelman: Would this exclude certain manufacturers out there that a state entity couldn't purchase their product?

Rep. Beadle: I have talked to trained people and they say the industry as a whole is moving toward the open protocol. It won't prevent anyone from this system. Mostly it deals with the master service agreement so you can't be tied down into the Master Service Agreements exclusively with one company and they won't share their secrets.

Do Pass Motion Made by Rep. Zaiser: Seconded by Rep. Beadle

Vote: **14 Yes   0   No   0   Absent Carrier: Rep. Beadle**

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. _2198_

House __Political Subdivisions__ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken   ☑ Do Pass ☐ Do Not Pass ☐ Amended   ☐ Adopt
Amendment

☐ Rerefer to Appropriations   ☐ Reconsider

Motion Made By _Rep. Zaiser_   Seconded By _Rep. Beadle_

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Kilichowski	✓	
Vice Chairman Hatelstad	✓		Rep. Shirley Meyer	✓	
Rep. Beadle	✓		Rep. Mock	✓	
Rep. Devlin	✓		Rep. Zaiser	✓	
Rep. Heilman	✓				
Rep. Klemin	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Pietsch	✓				

Total   (Yes) _____ _14_ _____   No __0__

Absent _____ _0_

Floor Assignment _____ _Rep. Beadle_

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

REPORT OF STANDING COMMITTEE

SB 2198: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends
DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2198 was placed
on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2198

INDUSTRIAL COMMISSION OF NORTH DAKOTA

Jack Dalrymple	Wayne Stenehjem	Doug Goehring
Governor	Attorney General	Agriculture Commissioner

Testimony
Senate Bill No. 2198
Karlene Fine, Executive Director
North Dakota Industrial Commission
March 11, 2011 – House Political Subdivisions Committee

For the record my name is Karlene Fine and I am Executive Director for the North Dakota Industrial Commission. I am appearing today on behalf of the North Dakota State Mill and Elevator, one of the entities overseen by the Industrial Commission. Attached to my testimony is a proposed amendment to SB 2198. After further review of the legislation and discussions with our counsel we believe that an exception should be included in the law as it relates to the operations at the State Mill.

The State Mill complex includes 7 milling units with the capacity to produce 3.6 million lbs. of finished product per day, a terminal elevator with total available storage of over 4,000,000 bushels of grain and a packaging center and warehouse capable of producing, storing and shipping large quantities of various sized bags of milled products. The buildings on this complex have different types of heating, air conditioning and ventilation systems as needed for the operations that take place within those facilities. Dust control and ventilation is a major concern in a milling operation and is not necessarily related to the heating and air-conditioning systems. For safety reasons the ventilation system/dust control system operates separate from the heating and air-conditioning systems.

We would request your favorable consideration of the proposed amendments.

Page 1, line 10, after "building" insert "other than warehouses, elevators, or factories,"

Renumber accordingly