

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1170

Introduced by

Government and Veterans Affairs Committee

(At the request of the Office of Management and Budget)

1 A BILL for an Act to create and enact a new section to chapter 54-44.4 of the North Dakota
2 Century Code, relating to approved vendors under state purchasing laws; to amend and
3 reenact sections 12-48-07, 24-03-14, 46-01-02, 46-02-01, 46-02-09, 46-05-03, 54-23.2-02,
4 54-24-09, 54-44-04.5, 54-44-04.6, subsection 3 of section 54-44.2-02, subsections 4, 5, and 8
5 of section 54-44.4-02, sections 54-44.4-03, 54-44.4-05, 54-44.4-07, and 54-44.4-08 of the
6 North Dakota Century Code, relating to state purchasing and printing practices and the
7 responsibilities of the office of management and budget; to repeal section 54-44-09 of the North
8 Dakota Century Code, relating to the requirement that state purchases comply with United
9 States bureau of standards; and to declare an emergency.

10 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

11 **SECTION 1. AMENDMENT.** Section 12-48-07 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **12-48-07. Tools and equipment.** The warden, under the direction of the director of
14 the division of adult services, shall procure the machinery, tools, and equipment necessary to
15 carry on and conduct the work and industries of the penitentiary. Procurement must be made
16 by the warden according to chapter 54-44.4 and rules adopted under that chapter.

17 **SECTION 2. AMENDMENT.** Section 24-03-14 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **24-03-14. Authority to acquire buildings for equipment.** ~~The office of management~~
20 ~~and budget has the authority to acquire buildings for equipment under its purchasing powers,~~
21 ~~however, the office of management and budget may delegate such authority to the director,~~
22 ~~and in such instances the director has authority to construct, rent, or purchase for the state the~~
23 necessary land and buildings for the storage and housing of road materials, road machinery,
24 equipment, and tools.

1 **SECTION 3. AMENDMENT.** Section 46-01-02 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **46-01-02. Printing duties of office of management and budget.** The office of
4 management and budget shall:

- 5 1. Bid all printing requisitions as requested and let all contracts.
- 6 2. ~~Examine all work to determine if it conforms to the contract.~~
- 7 3. ~~Examine all accounts let to contract to determine if the charges are correct.~~
- 8 4. Determine the price of any legal notice or publication when requested by any state
9 agency or department, or by any political subdivision. Its decision on the proper
10 fee for ~~such~~ the publication is binding and final, subject to review by the courts.

11 **SECTION 4. AMENDMENT.** Section 46-02-01 of the 1997 Supplement to the North
12 Dakota Century Code is amended and reenacted as follows:

13 **46-02-01. Printing and binding - Duties of the office of management and budget.**

14 The office of management and budget shall have charge of all the printing required to be done
15 for ~~the several departments of the~~ all state government agencies except as otherwise provided
16 by section 46-02-09. ~~No printing required by any state officer as provided in this chapter may~~
17 ~~be paid for unless it was authorized by the legislative assembly or by the office of management~~
18 ~~and budget for seven hundred fifty dollars and over.~~

19 **SECTION 5. AMENDMENT.** Section 46-02-09 of the 1997 Supplement to the North
20 Dakota Century Code is amended and reenacted as follows:

21 **46-02-09. Sixth-class items - When bids or quotations required.** All work on
22 sixth-class items amounting to seven hundred fifty dollars or over, not done by the central
23 duplicating service of the office of management and budget or by departments, institutions, or
24 state offices, must be let by competitive bidding or by the solicitation of at least two quotations
25 by the office of management and budget, or by the departments, institutions, or state offices
26 authorized to bid their own printing needs. Printing items amounting to less than seven
27 hundred fifty dollars may be given by the department head to a printer selected by the
28 department head and accompanied by a purchase order ~~of which one copy must be sent to the~~
29 ~~office of management and budget.~~ ~~Where~~ If practical, all departments, institutions, or state
30 offices authorized to do their own bidding shall take advantage of annual contracts established
31 by the office of management and budget.

1 **SECTION 6. AMENDMENT.** Section 46-05-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **46-05-03. Legal notices - Fees.** To effect uniformity, the office of management and
4 budget may compute a standard price on those legal notices which are widely published such
5 as ballots, insurance statements, and official proclamations. All newspapers must use the
6 rates, type size, and column width as shown on its legal notice rate certification issued by ~~the~~
7 ~~state printing agent~~ of the office of management and budget. Certifications must be issued
8 within fifteen days after samples are submitted.

9 The office of management and budget shall annually review and adjust rates to reflect
10 changes in economic conditions within the newspaper industry and the general economy, and
11 those adjustments become effective on each July first following the review. These annual
12 changes may be percentage increases or decreases in the base rates, and they may
13 incorporate revisions in the base rate structure. Whenever the office of management and
14 budget considers an adjustment in the legal publication rates contained herein, it shall consult
15 with representatives of the daily and weekly newspaper industry of the state and with
16 representatives of state and local units of government.

17 **SECTION 7. AMENDMENT.** Section 54-23.2-02 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **54-23.2-02. State radio broadcasting system.** The director may purchase the
20 necessary apparatus and equipment to construct or establish a radio broadcasting system for
21 the state of North Dakota, which system must be used solely for the transmission of state
22 business and information. The director is further authorized and empowered to purchase
23 shortwave radio receiving and transmitting sets in ~~such~~ quantities as may be most economical
24 and to equip with shortwave radio receiving and transmitting sets all state-owned cars used in
25 connection with law enforcement, ~~such~~ road maintainers as ~~he~~ the director shall determine
26 advisable, the state penitentiary, and ~~such~~ any other places as may furnish the speedy
27 transmission of messages and state information. Purchases must be made by the director
28 according to chapter 54-44.4 and rules adopted thereunder. The director is charged with the
29 operation and maintenance of said system.

30 **SECTION 8. AMENDMENT.** Section 54-24-09 of the 1997 Supplement to the North
31 Dakota Century Code is amended and reenacted as follows:

1 **54-24-09. Distribution of certain state publications for certain libraries required.**

2 The ~~state purchasing and printing agent~~ office of management and budget shall arrange to
3 deposit with the state library eight copies of all publications issued by all executive, legislative,
4 and judicial agencies of state government intended for general public distribution. These
5 publications must be provided to the state library without charge. If expense and limited supply
6 of state publications, particularly audiovisual items, make compliance with the depository
7 requirement impossible, the state library shall accept as many copies as an agency can afford
8 to provide. However, each agency shall provide no less than two copies to the state library.
9 State publications refer to any informational materials regardless of format, method of
10 reproduction, or source, originating in or produced with the imprint of, by the authority of, or at
11 the total or partial expense of, any state agency. The definition incorporates those publications
12 that may or may not be financed by state funds but are released by private bodies such as
13 research and consultant firms under contract with or supervision of any state agency. In
14 circumstances not directly involving the ~~state purchasing and printing agent~~ office of
15 management and budget, a state agency shall comply with the depository requirement by
16 arranging with the necessary parties for the printing and deposit of eight copies of any state
17 publication issued. State publications are specifically defined as public documents appearing
18 as reports, directories, statistical compendiums, bibliographies, laws or bills, rules, regulations,
19 newsletters, bulletins, state plans, brochures, periodicals, committee minutes, transcripts of
20 public hearings, other printed matter, audiotapes, videotapes, films, filmstrips, or slides, but not
21 those administrative or training materials used only within the issuing agency. As the document
22 acquisition and distribution agency, the state library shall retain for its document collection two
23 copies of every state document received and transmit the remaining copies to the depository
24 libraries. These are the libraries of the state historical board, the university of North Dakota,
25 North Dakota state university, library of Congress, and two others to be designated by the state
26 library. All nondepository North Dakota libraries may receive state documents under an
27 optional selection program developed by the state library. The state library shall catalog state
28 publications and arrange for their conversion to microfilm or to optical disk storage prescribed
29 by the state records administrator and shall make available for distribution the same to the
30 designated depository libraries.

1 **SECTION 9. AMENDMENT.** Section 54-44-04.5 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **54-44-04.5. Federal surplus property - Office of management and budget**
4 **responsible for distribution - Powers and duties of director.**

- 5 1. The office of management and budget is responsible for the fair and equitable
6 distribution, through donation, of all federal surplus property transferred to the state
7 in accordance with the Federal Property and Administrative Services Act of 1949,
8 as amended [63 Stat. 378; 40 U.S.C. 484 (j)], hereinafter referred to as the federal
9 Act.
- 10 2. The director of the office of management and budget, or ~~such subordinate officer~~
11 ~~as the director shall designate~~ director's designee:
- 12 a. May receive, investigate, and make recommendations on
13 applications for federal surplus property available under the federal Act.
- 14 b. May acquire any federal surplus property transferred to the state under the
15 federal Act.
- 16 c. May distribute any federal surplus property pursuant to the federal Act to:
- 17 (1) Any public agency for use in carrying out or promoting for the residents
18 of a given political subdivision one or more public purposes; or
- 19 (2) Nonprofit educational institutions, public health institutions, or
20 organizations which are exempt from taxation under section 501 of the
21 federal Internal Revenue Code, for purposes of education or public
22 health or research for those purposes.
- 23 d. May store the federal surplus property.
- 24 e. Shall develop, submit, and implement a state plan of operation for distribution
25 of federal surplus property and comply with the federal Act and rules and
26 regulations adopted thereunder. Provided, the director may continue the
27 state plan of operation developed by the department of public instruction.
- 28 f. May cooperate and enter into agreements with other surplus property
29 agencies and federal agencies to screen and acquire surplus property and
30 exchange property, facilities, personnel, and services.

- 1 g. May provide information and assistance for acquiring federal surplus property
2 to entities listed in subdivision c.
- 3 h. May assess and collect service charges from participating recipients to cover
4 direct and reasonable cost of services under this section. The service
5 charges must be deposited with the state treasurer in a surplus property
6 special fund and used pursuant to the federal Act. The state treasurer shall
7 credit all interest earned to the fund if the director requests the state treasurer
8 to invest portions of the fund.
- 9 i. Adopt rules and take other action necessary to distribute federal surplus
10 property pursuant to the federal Act.
- 11 3. The director of the office of management and budget or the director's designee
12 may purchase available federal property under applicable federal property
13 management regulations for distribution according to this section.

14 **SECTION 10. AMENDMENT.** Section 54-44-04.6 of the 1997 Supplement to the North
15 Dakota Century Code is amended and reenacted as follows:

16 **54-44-04.6. State surplus property - Department heads to inform director -**
17 **Disposition of property - Proceeds - Exchange of property.**

- 18 1. The person in charge of any department, agency, or institution of the state shall
19 inform the director of the office of management and budget or the director's
20 designee whenever that department, agency, or institution possesses property
21 surplus to its needs, whether originally obtained with state or other funds.
- 22 2. Political subdivisions may provide their surplus property to the office of
23 management and budget for disposition according to subsections 3, 4, and 5.
- 24 3. State surplus Surplus property must be transferred at fair market value to state
25 agencies, political subdivisions, and nonprofit organizations eligible to receive
26 federal surplus property under the Federal Property Administrative Services Act of
27 1949, as amended. Eligible organizations must be notified of the availability of
28 property on a regular basis.
- 29 ~~3.~~ 4. If not disposed of under subsection ~~2~~ 3, then by sale on sealed bids or at public
30 auction to the highest and best bidder for property valued at more than three
31 thousand dollars, with no money deposit required prior to sale, or by sealed bids,

1 public auction, or negotiation at fair value for property valued at less than three
2 thousand dollars.

3 ~~4.~~ 5. All proceeds received from the transfer or sale of ~~state~~ surplus property must be
4 deposited into the state or political subdivision fund from which the property was
5 originally purchased, less administrative expenses.

6 ~~5. No department, agency, or institution may exchange items as part of a purchase~~
7 ~~price of new items until a detailed statement of the value of the items to be~~
8 ~~exchanged and request for approval have been submitted to the director of the~~
9 ~~office of management and budget. The director shall approve the exchange only if~~
10 ~~the director has determined that the item has been valued at fair value.~~

11 **SECTION 11. AMENDMENT.** Subsection 3 of section 54-44.2-02 of the 1997

12 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13 3. Have the authority to purchase or lease equipment or replace, including by trade or
14 resale, present equipment as may be necessary to carry out this chapter. Each
15 executive branch department, agency, or institution, except the institutions under
16 the control of the board of higher education, shall submit to the information
17 services division and the legislative council, or its designee, in accordance with
18 guidelines established by the division, a written request for the lease, purchase, or
19 other contractual acquisition of information technology services or equipment. The
20 information services division shall review requests for conformance with the
21 requesting organization's strategic plan and compliance with statewide policies and
22 standards. If the request is not in conformance or compliance, the information
23 services division may disapprove the request or require justification for the
24 departure from the strategic plan or statewide policy or standard. The division
25 shall inform the legislative council, or its designee, of any requests disapproved or
26 additional justification received relating to a request. All acquisitions made by the
27 division under this section must be done according to chapter 54-44.4 and rules
28 adopted under that chapter.

29 **SECTION 12. AMENDMENT.** Subsections 4, 5, and 8 of section 54-44.4-02 of the
30 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 1 4. Department of transportation materials, equipment, and supplies in accordance
2 with ~~the provisions of chapters 24-02 and 24-03~~ section 24-02-16.
- 3 5. Professional services ~~pursuant to written contract~~, unless the office of
4 management and budget agrees to procure professional services in response to
5 an agency's written request.
- 6 8. Such specific items or items costing less than a specified amount as determined
7 and indicated by written directive by the director of the office of management and
8 budget. The director may organize and administer, including by contract with a
9 provider, a system of procurement for items agencies are authorized to purchase
10 under this subsection which includes use of a procurement card.

11 **SECTION 13. AMENDMENT.** Section 54-44.4-03 of the 1997 Supplement to the North
12 Dakota Century Code is amended and reenacted as follows:

13 **54-44.4-03. Director of the office of management and budget may delegate**
14 **purchasing authority.** The director of the office of management and budget or the director's
15 designee may delegate to state agencies and institutions the authority to make purchases of
16 items not otherwise exempted by law. Any delegation of purchasing authority must be in
17 writing and must specify what may be purchased by the agency or institution and the duration
18 of the delegation.

19 **SECTION 14.** A new section to chapter 54-44.4 of the North Dakota Century Code is
20 created and enacted as follows:

21 **Approved vendors.**

- 22 1. Every person or business entity that desires to bid or submit a proposal on
23 contracts awarded under this chapter must be an approved vendor in order to
24 receive a request for bids or proposals. Unless waived by the director of the office
25 of management and budget, or the director's designee, a bid or proposal may not
26 be considered under this section from any vendor that is not approved.
- 27 2. To become an approved vendor a person or business entity shall file an
28 application with the office of management and budget. The application must
29 contain information requested by the office of management and budget, including
30 business and persons' names, phone numbers, addresses, federal tax
31 identification numbers, type of business organization, other permits or licenses

1 issued by this state and related numbers, the nature of the business and the
2 products sold, the types of bids or proposals in which the applicant is interested,
3 references, and other business information. The application must also contain a
4 statement appointing the secretary of state as the applicant's agent for service of
5 process pursuant to subsection 3. The application must be signed and certified by
6 an owner, partner, or company officer authorized by company bylaws or other
7 organizational document to bind the company. The office of management and
8 budget may require proof of the signing person's authority by certified copy of
9 appropriate company documents.

10 3. At the time of filing the application to become an approved vendor, the applicant, if
11 organized as a corporation, limited liability company, limited liability partnership, or
12 limited partnership, must be properly and currently registered with the secretary of
13 state according to its type of business organization as a corporation under chapter
14 10-19.1, a limited liability company under chapter 10-32, a limited liability
15 partnership under chapter 45-22, or a limited partnership under chapter 45-10.1.
16 Any exemptions to registration under the above chapters that would otherwise
17 apply to those entities organized as such do not apply to this section and
18 registration must be made for the applicant to become an approved vendor.
19 Applicants for approved vendor status using a trade name or a fictitious
20 partnership name must be in full compliance with chapter 47-25 or chapter 45-11
21 at the time of making the application. Whenever any registration required by this
22 section is cancelled, revoked, or not renewed, the vendor ceases to be an
23 approved vendor.

24 By signing and filing the application, the vendor applicant appoints the
25 secretary of state as its true and lawful agent for service of process in this state
26 upon whom may be served all lawful process in any action or proceeding against
27 the vendor if the vendor or its registered agent cannot be found for service of
28 process in this state. The signed application is written evidence of the applicant's
29 consent that any process served against the applicant that is so served upon the
30 secretary of state is of the same legal force and effect as if served upon the
31 applicant personally within this state. Within ten days after service of the

1 summons upon the secretary of state pursuant to this subsection, notice of the
2 service with the summons and complaint in the action must be sent to the
3 defendant vendor at the vendor's last known address by certified mail with return
4 receipt requested and proof of mailing must be attached to the summons. The
5 secretary of state shall keep a record of all process served upon the secretary of
6 state under this section showing the day and hour of service. When service of
7 process is made as provided in this subsection, the court, before entering a default
8 judgment, or at any stage of the proceeding, may order a continuance as may be
9 necessary to afford the defendant vendor reasonable opportunity to defend any
10 action pending against the vendor.

11 4. The director of the office of management and budget, or the director's designee,
12 may waive the requirements for registration with the secretary of state as provided
13 in this section and authorize receipt of a bid or proposal from a vendor that
14 unqualifiedly refuses to register as provided in this section if the director or the
15 director's designee makes a written determination that:

16 a. A commodity is so unique and possesses such specific characteristics
17 essential to the government program in question that it is available only from
18 one source and not through wholesalers or retailers; or

19 b. An emergency as defined in subsection 7 of section 54-44.4-02 exists.

20 **SECTION 15. AMENDMENT.** Section 54-44.4-05 of the 1997 Supplement to the North
21 Dakota Century Code is amended and reenacted as follows:

22 **54-44.4-05. Competitive bidding on purchases - Exempt records.** Except as
23 otherwise provided in section 44-08-01 and section 25-16.2-02, purchasing contracts must be
24 awarded to the lowest responsible bidder considering conformity with specifications, terms of
25 delivery, and quality and serviceability. The office of management and budget may reject any
26 or all bids or negotiate for a lower price with a successful bidder. Each bid received, with the
27 name of the bidder, must be recorded. The office of management and budget may make
28 multiple awards for term commodity contracts when it deems a multiple award to be in the best
29 interests of the state. Until the date and time set for receiving and opening bids and proposals
30 pursuant to a request for bids or proposals, all bids and proposals received under this chapter
31 are exempt records under subsection 5 of section 44-04-17.1.

1 **SECTION 16. AMENDMENT.** Section 54-44.4-07 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **54-44.4-07. Specification for paper products and inks.** The office of management
4 and budget, the institutions of higher education, and any other state agency or institution that
5 has authority to purchase products, are encouraged, whenever possible, when purchasing
6 newsprint printing services, to specify the use of soybean-based ink. ~~By July 1, 1990, at least~~
7 ~~fifteen percent of the garbage can liners purchased by the office of management and budget,~~
8 ~~the institutions of higher education, or a state agency or institution to which authority to~~
9 ~~purchase has been delegated must be starch based. The percentage of starch based garbage~~
10 ~~can liners purchased must increase by five percent annually until at least fifty percent of the~~
11 ~~garbage can liners purchased are starch based. The office of management and budget shall~~
12 ~~review the procurement specifications currently used by the state to eliminate, wherever~~
13 ~~possible, discrimination against the procurement of products manufactured with starch based~~
14 ~~plastics and soybean based inks. The North Dakota corn growers association and the~~
15 ~~commissioner of agriculture shall assist the office of management and budget in locating~~
16 ~~suppliers of starch based plastics and in collecting data on the purchase of starch based~~
17 ~~plastics. The North Dakota soybean council and the commissioner of agriculture shall assist~~
18 the office of management and budget in locating suppliers of soybean-based inks and in
19 collecting data on the purchase of soybean-based inks. In requesting bids for paper products,
20 ~~starch based plastic products, and soybean based inks,~~ the office of management and budget
21 must request information on the recycled content of such products.

22 **SECTION 17. AMENDMENT.** Section 54-44.4-08 of the 1997 Supplement to the North
23 Dakota Century Code is amended and reenacted as follows:

24 **54-44.4-08. Purchase of recycled paper products.** The office of management and
25 budget, and any state agency or institution that has authority to purchase products, shall
26 ensure that beginning July 1, 1993, at least ten percent of the total volume of paper and paper
27 products being purchased for state agencies and institutions contain at least twenty-five
28 percent recycled material; beginning January 1, 1994, at least thirty percent of the total volume
29 of paper and paper products being purchased contain at least twenty-five percent recycled
30 material; beginning January 1, 1996, at least forty percent of the total volume of paper and
31 paper products being purchased contain at least twenty-five percent recycled material; and

1 beginning January 1, 1998, at least sixty percent of the total volume of paper and paper
2 products being purchased contain at least twenty-five percent recycled material; ~~and beginning~~
3 ~~January 1, 2000, at least eighty percent of the total volume of paper and paper products being~~
4 ~~purchased contain at least twenty-five percent recycled material.~~

5 **SECTION 18. REPEAL.** Section 54-44-09 of the North Dakota Century Code is
6 repealed.

7 **SECTION 19. EMERGENCY.** Section 15 of this Act is declared to be an emergency
8 measure.