

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2188

2001 SENATE POLITICAL SUBDIVISIONS

SB 2188

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2188

Senate Political Subdivisions Committee

Conference Committee

Hearing Date January 25, 2001

Tape Number	Side A	Side B	Meter #
1	x		19.4-49.1
		X	3.3-13.4
Committee Clerk Signature <i>Mary Jo Wocken</i>			

Minutes:

The hearing was opened on SB2188 ; relating to a governmental purchase preference to residents.

SENATOR GARY NELSON, sponsor, also spoke in favor of this bill. This bill simply allows a 5% preference for North Dakota bidders on ND projects. The people that asked me to sponsor this legislation have had the occasion to be beaten on a bid by a very small percentage, 1% or less than 1%. This bid has to be awarded to the low bidder and the low bidder is many times is domiciled outside the state of ND has absolutely no involvement in the state of ND other than sending the product in, dumping it and going back outside of the state. We think there are good reasons for allowing ND companies that manufacture in ND, that do business in ND, that are domiciled in ND to have some kind of leeway to be able to be successful in some of their bids. I propose an amendment which will exempt a group of people who wish not to be included in this bill. There is another bill in the House that deals with this same section of Century code, but after

reviewing that one, I think that's a bill that better stand on its own. SENATOR LEE: One comment from a constituent of mine related to the service that would likely be available and being able to consider that and I don't see that is a factor here. Is this something Political Subdivisions would be able to consider when they are looking at this. SENATOR NELSON: I think that would be absolutely something you could take a look at. SENATOR POLOVITZ : This process of bidding I have had a a lot of experience while Mayor of Grand Forks. I agree with you that there is a certain factor as far as service concern and its coming from even the whole state of North Dakota. We had trouble getting outside bids, outside the city. They were lower than the companies within the city. Why were the bids lower from out of the city or state? We always took in consideration because we did take into the factor of service. WY do these bids come in lower than our local people? SENATOR NELSON: There are times where we see some dumping, someone has a big supply of something and all its really going to cost us is the cost of transportation to ND and back. Using Minneapolis as a base, we can cut our price on that to get rid of some products. I believe I know the intent of the original legislation, to eliminate the 'good ole boys'. Through the scrutiny and the openness of the process at this point, that is not longer something that is prevalent. This would not be unique to the state of North Dakota, as we found in doing a little bit of groundwork that California has a 5% preference, as does Wyoming, West Virginia has a 2.5% preference also, and some other factors that can be considered within a bid. One of the concerns that always is, if we do it, the other state is going to reciprocate and it causes us problems as well. This is an issue to debate again and take a look at giving preference to our own North Dakota merchants. SENATOR MATHERN: I has some correspondence as to an Attorney Generals opinion on it and if it violated NAFTA, or any of those and if other states are doing it? Obviously, its typical, as I am in favor of taking care of our own. SENATOR

NELSON: I haven't asked for or received an Attorney General's opinion on the validity of this, within the trade agreements. REPRESENTATIVE PEACH: Spoke in favor of this bill. I worry about protectionism and being accused of protectionism and things like that, I worry about whether this bill would cause the cost of government subdivisions to pay more. Conceptually, I see from the stand point here, they ought to at least be 5% below what the accommodating vendors in North Dakota are able to do.

KEN YANTES: Township Officers Association, spoke in support of this bill. See attached testimony.

CURT PETERSON: Represented the Associated General Contractors of ND. He spoke in opposition to SB2188. However, he would support this bill with the attached amendment included in this bill. See attached testimony. SENATOR COOK: Do you know of any state that offers a preference to their bidders, the people of residence, the people that you bid against?

CURT PETERSON: None that I can think of. Now I believe Senator Nelson said there was a preference in Oklahoma or California, Wyoming, but I think that by and large most states have this reciprocal system. Minnesota put in a 8-10% preference and then Iowa passed a reciprocal legislation as did North Dakota, South Dakota as did everybody. CONNIE

SPRYNCZYNATYK: North Dakota League of Cities, was strongly ambivalent to this bill. The cities do have some concerns. I think they have already been alluded to. One, would be the fact that it's very common for us within a city construction project to receive bids from Curts' membership. It's not so common to receive bids from out of state contractors. However, if there is a way to drive up the price so that the local tax payers are going to pay more, that would not be our preference. We always love to support the main street businesses, the businesses that live in North Dakota, we have the ability to take the 'lowest and best bid' in most instances and in that

case we can consider service. We would be concerned if this bill will limit our number of bids. One bid is effectively no choice, two bids isn't really very good. We want as many bidders as possible on a project so we can take the lowest and best price. So if the net effect doesn't feel like this is to limit our choices in terms of number of bids, and to drive up the price, they all will have to pay, then we would be opposed to this bill. But like Mr. Peterson, we would be happy if you just take political subdivisions out of this bill. If the state wants to do it, then that would be certainly be your choice. SENATOR COOK: Connie, as a city commissioner, do you ever challenge sometimes when your opening bids and wishing that somehow you could apply a service factor? CONNIE SPRYNCZYNATYK: We try to take the lowest bid prices, but if there is a service factor included then the bid specifications are written so that we can take lowest and best. Which means, that we can factor in service. We prefer to have the lowest price because the economy is what the people that live in our state want, but we also can't ignore service when that is a factor. I understand the concept of this bill. I don't dispute the need to support our main street businesses, we need those people in our community. But we also have to look at the tax payers bottom line, and we do look at service. SENATOR WATNE: This bill all the way through says they shall give a 5%, they shall do this. If that word 'shall' was changed to 'may' would you have an objection to this bill? CONNIE SPRYNCZYNATYK: Frankly, our participants in the Legislative Council haven't talked about that, but Bill Wocken can speak on that behalf. BILL WOCKEN : See written testimony. I think a performance specification may be part of the answer to the lowest and best bid. There are some concerns that we certainly would have that would echo some of the concerns that you've heard previously. CONNIE SPRYNCZYNATYK: The real issue is in terms of this process in terms of the local level, its not the complaints from the out of state bids, it's the complaints from the out of town bids. LINDA ENGMANN,

Page 5
Senate Political Subdivisions Committee
Bill/Resolution Number SB2188
Hearing Date January 25,2001

Director,Central Services Committee. See written testimony. In state law, in our chapter for procurement laws we have to award it to the lowest and best bidder. It is a concern and we don't know how to work around that either. But preference laws do, there are some concerns and they can cause some problems. SENATOR COOK: Is there anything in this bill that you like? You did sign in? You did check neutral? LINDA ENGMANN: Yes.

The hearing was closed on SB 2188.

Discussion was held among committee members. (Tape 1, Side B, 3.3-13.4)

Roll call vote was taken.

Senator Lee moved a Do Not Pass on SB2188; Senator Polovitz, 2nd

Do Not Pass Motion SB2188 7 yea, 1 no 0 Absent

Carrier: Senator Lee

1-25-01

Tape 1 side A

Meter #19.3-49.1

side B 3.3-13.4

SB2188

SENATOR COOK OPENED THE HEARING ON SB2188.
SENATOR GARY NELSON SPONSOR OF THIS BILL, ALSO
SPOKE IN FAVOR OF THIS BILL, AND ASKED FOR A
FAVORABLE DO PASS.

SIMPLY ALLOWS 5% PREFERENCE FOR ND BIDDERS ON ND
PROJECTS

WE HAVE HAD A NUMBER OF OCCASSIONS; THE PEOPLE
THAT ASKED ME TO SPONSOR THIS LEGISLATION HAVE HAD
THE OCCASION TO BE BEATEN on a bid by a very small
percentage ,1% or less than 1%. The bid has to be awarded to the
low bidder and the low bidder is many times is domiciled outside the
state of North Dakota, has absolutely no involvement in the state of
ND other than sending the product in, dumping it and going back
outside of the state. We think there are good reasons for allowing ND
companies that manufacture in ND that do business in ND that are
domiciled in ND to have some kind of leeway to be able to be
successful in some of their bids. There will be some amendments to
this bill our proposed amendments, the one that I know of I do not
have a problem with, there is a group that would like to be exempted
From this part of the bill, and if that is their desire, it's not a problem
for me. There is another bill that deals with the same section of the
code over in the House, I thought perhaps maybe we could look at
putting them together, but after really reviewing that one, I think that
That's a bill that better stand on its own, and if we get it over here we
will look at that one. Senator Lee: one of the comments from a
constituent of mine had to do with the service that would likely be
available, and being able to consider that and i don't see that that is a
factor here? Is that something political subdivisions would be able to
consider when they are looking at this. SENATOR NELSON: I think
that would be absolutely something you could take a look at .

Senator Polovitz: This process of bidding I have had a lot experience
with, I have a lot of questions even with the city of Grand Forks, and I
can see both sides of the story. I agree with you that there is a certain
factor as far as services concern and its coming from even the whole

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state of ND. We had the problem in getting outside bids, outside the city. They were lower than the companies within the city. And the problem that I always has was why, why were the bids lower from out of the city, or out of the state. But we always took into consideration Because we did take into the factor of service. Why do these bids come in lower than our own local people? SENATOR NELSON: However, there are times where we see perhaps some dumping, we see, we've got a big supply of something and all its really going to cost us is the cost of transportation to ND and back, using Minneapolis as a base, we can cut our price on that to get rid of some products. I also have had some of the same thoughts. I believe I know what the intent of the original legislation, to eliminate the "good ole boys". Through the scrutiny and the openness of the process at this point, that is no longer that is something that is prevalent. Not a issue of great importance any more. This would not be unique to the state of ND, in a little bit of background work, we found that the state of California has a 5% preference, Wyoming does, West Virginia has a 2.5%, and some other factors that can be considered within a bid. One of the concerns that always is, if we do it, the other state if going to reciprocate, and it cause us some problems as well. I think it is an issue that we, its time for us to debate again and take a look at, are we wrong to give some preference to our own ND merchants?

SENATOR MATHERN: Senator Nelson, I had some correspondence as to an Attorney General's opinion on it, and if it violates NAFTA or any of those and if other states are doing it, obviously its typical, as I am in favor of taking care of our own. SENATOR NELSON: I haven't asked for or received an attorney generals opinion on the validity of this, within the trade agreements.

REPRESENTATIVE PEACH, spoke in support of this bill. I think that Senator Nelson has layed out. I worry about protectionism and being accused of protectionism and things like that, I worry about whether this bill would cause the cost of government subdivisions to pay more. Conceptually I see this from the stand point that if an out of state vendor wants to dump product here, they out to at least be 5% below what the accommodating vendors in North Dakota are able to do.

KEN YANTES, N.D. Township Officers Association spoke in support of this bill. See attached testimony.

