

2017 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2271

# 2017 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2271  
1/25/2017  
Job Number 27361

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Eva Lubelt*

## Explanation or reason for introduction of bill/resolution:

Relating to energy conservation measures

**Minutes:**

Attachments 0

**Chairman Klein:** Opened the hearing.

**Senator Laffen:** Introduced the bill. In current statute we have an energy conservation program and as I understand the program works, let's take a school as an example, a mechanical contractor can come to a school through an RFP process and propose to make changes to their heating and ventilation systems and rebuild the system for the school, capturing energy savings that go back to the school and then the school can pay for that project through the reduced energy cost. The problem is the school doesn't get to see the costs, so the vendor can say that it is a seven-year payback. (:10-7:30)

**Chairman Klein:** Have there been any issues out there?

**Senator Laffen:** I think Eric Fewson can answer that.

**Senator Roers:** When you talk about the payback, if you can establish the fact that it is a million dollars' worth of value. What are you thinking as it relates to the investor, what is he going to be allowed to get back on his million-dollar investment?

**Senator Laffen:** The vendor should be able to get back all of their costs and some financing and some profit, we just want to see all of that.

**Senator Roers:** You are anticipating this end of the company that is going to come forth with these great innovative ideas to allow them to be making a profit, you need to get your arms around what is that going to be.

**Senator Laffen:** Yes, I assuming the public agency would have some reasonable amount of profit they would accept but they do need to know, the profit has to be a part of it or no one would do these projects.

**Eric Fewson, P.E. West Plains Engineering:** (12:00-21:57) I was involved in energy savings performance contracting from 2005-2009. This is how we worked as far as energy conservation measures and how we used the savings to pay for building improvements. These projects are active and ongoing all over the state. The schools are challenged to pay for building improvements. Approaching the schools to have them make building improvements and use energy savings to pay for them is quite powerful because it allows them to not have to go to bonds and to vote. I fully support it, however in my experience in my role as an energy engineer and I was responsible for identifying any energy savings opportunities in a building and then quantifying them through engineering calculations and working with a salesman to put together a cash flow statement for that customer and show them how they could reallocate their energy savings through their utility bills. Eric addressed chapter 48-05 and said it was loosely written. He said his intent is to protect the client so they are not being gouged.

**Senator Roers:** Is there a component of inspecting the product at the end of the day to make sure it was completed and done in accordance to the drawing, is that part of this bill?

**Eric Fewson:** No it is not. It falls back on best practice left up to the provider.

**Senator Roers:** You are right the client doesn't have the expertise to validate whether everything is working the originally designed and intended. I have seen other retrofit concepts like this where the installer or engineer, the designer of this project will take a percentage over a period of time, have you ever considered that?

**Eric Fewson:** That is a great point and that does happen in the industry. Not so much in North Dakota, we aren't on the cutting edge of energy efficiency in the state. Yes, it happens and would I consider it, certainly.

**Senator Roers:** Asked if the bond for faithful performance was the same as a performance guarantee.

**Eric Fewson:** Yes, it is. He was also asked if 21 days was enough time and he said no it is not because surveys could take months. The way it is written now a provider of these services can do the survey work before the RFP, so nobody knows this work is going on. The provider of the services is doing this work as a gratis. They've already engaged the owner, and can go after the RFP, they have two weeks. Another company cannot do this work in two weeks. It is not a level playing field. (24:20-28:27:42)

**Chairman Klein:** Why 21 days and not 60 days? What I am hearing is it doesn't matter how many days because we are only going to get the one guy anyway.

**Eric Fewson:** If were up to me it would be longer, 8 weeks.

**Chairman Klein:** This is up to you, kind of. We want to make this work and want to make sure we are providing every opportunity to get the best price with the best work and certainly are smaller school districts, we want to have the biggest bang for our buck. That is still up for discussion.

**Eric Fewson:** I would prefer a longer period.

**Senator Roers:** Can you speak to financing and tax credits. How easy are these projects to finance and is there any tax credits available as the provider?

**Eric Fewson:** No there isn't. He talked about the challenges with dealing with the school boards because the positions change every couple of years and you approach them as a provider and trying to get this concept across, it's a steep learning curve for the school board. He doesn't feel that a lot of schools are aware of these projects and he would like it to be provided to the owner up front so they have some information and are protected.

**Chairman Klein:** What I see here is once a relationship is developed with the superintendent, sudden they may be the only provider the school looks at. I am glad to see that someone else will have to be looking at this too. He closed the hearing and asked Eric Fewson and Senator Laffen to get together and discuss the time period and bidding process.

# 2017 SENATE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol

SB 2271

2/1/2017

Job Number 27721

Subcommittee

Conference Committee

Committee Clerk Signature

*Eva Liebelt*

### Explanation or reason for introduction of bill/resolution:

Relating to energy conservation measures

### Minutes:

Attachment 1

**Chairman Klein:** Called the meeting back to order.

**Senator Laffen:** This is the bill that made changes to the energy conservation program where a company, usually a heating and ventilating company will work with a school to make changes to their HVAC system which brings substantial reductions in the cost of operations and that company funds the company and the school pays them back with the savings in operations. The main intent of the bill was to get a little more transparency in the costs that the work project actually took because right now the school didn't know what the true cost of the project. There was some nervousness of some people who work in this industry that all of the pay back should be paying off these projects quicker and because they weren't seeing it they were afraid that maybe the vendor was getting too much profit out of this. This amendment came from Eric Fewson who testified and what he is asking for in this amendment it would clarify that the selection is based on overall qualifications of each qualified provider and a provider who performs the energy analysis work before being selected must be disqualified. He's trying to get this back to the way the process is supposed to work with a selection process first and then the analysis. Amendment, see attachment #1. (:21-3:39)

**Senator Casper:** Asked if this was going to fix the 21-day issue.

**Senator Laffen:** Said it would because the 21 days is plenty of time under the selection based process. This would get rid of that because they would hire one firm who then gets that time to do that.

**Senator Roers:** This will say if someone comes in and presents an idea and wants to put out an RFP, that person is disqualified.

**Senator Laffen:** They wouldn't be disqualified for just coming and saying we think we can help but at that point they need to put out for an RFP and pick the firm to do then do the

analysis. What is happening now is the firm is doing all of the analysis and saying I know I can save you money and here is all of the engineering. They have such an advantage going into the RFP that the school is never going to hire someone else because they know they got a firm that can get them there.

**Senator Roers:** Wouldn't that discourage firms from coming forth and saying, I've done this in three different schools and if you just let me present to you I can show you ways to save you money and to find out by doing that it disqualifies himself from being a bidder.

**Senator Laffen:** That would not disqualify them. This is stopping them from doing all of the engineering up front.

**Senator Burckhard:** So this is just doing things in the right order.

**Senator Laffen:** That is what this amendment is trying to do. It's trying to keep the process as it was originally intended to select the firm on based on qualifications. Right now the work is being done by one firm and trying to convince the school that this is the right thing to do.

**Chairman Klein:** Doing the right thing but also conceivably saving that small school district some money.

**Senator Laffen:** This actually happens quite a bit even in our industry.

**Chairman Klein:** Committee any other questions.

Senator Casper moved a do pass on amendment 17.0945.01001.

Senator Roers seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Poolman moved a do pass as amended.

Senator Casper seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Roers will carry the bill.

January 31, 2017

DL  
2/1/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2271

Page 1, line 12, overstrike "reports" and insert immediately thereafter "proposals"

Page 1, line 12, overstrike "which summarize" and insert immediately thereafter "and make a selection based on the overall qualifications of each qualified provider. A qualified provider that performs energy analysis work before being selected must be disqualified. The selected qualified provider shall prepare an energy conservation measure report, including"

Renumber accordingly





**REPORT OF STANDING COMMITTEE**

**SB 2271: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2271 was placed on the Sixth order on the calendar.

Page 1, line 12, overstrike "reports" and insert immediately thereafter "proposals"

Page 1, line 12, overstrike "which summarize" and insert immediately thereafter "and make a selection based on the overall qualifications of each qualified provider. A qualified provider that performs energy analysis work before being selected must be disqualified. The selected qualified provider shall prepare an energy conservation measure report, including"

Renumber accordingly

**2017 HOUSE INDUSTRY, BUSINESS AND LABOR**

**SB 2271**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

SB 2271  
3/7/2017  
28790

- Subcommittee  
 Conference Committee

*Ellen Stang*

## Explanation or reason for introduction of bill/resolution:

Energy conservation measures.

## Minutes:

**Chairman Keiser:** Opens the hearing of SB 2271.

**Senator Laffen ~ District 43-Grand Forks:** This came from a constituent that owns a small mechanical engineering firm in Mandan. He saw issues with one of our programs. This makes 3 fixes.

Deals with a program that is called "Guaranteed Energy Saving Contract". Page 2, line 5, describes the program. Schools can enter into a contract with a mechanical engineer or a large company like Honeywell. That company can come in, do an audit, & tell them you are using this much energy that costs you this much per year (1 million dollars). They say, if we spent a half a million dollars revamping your system, they would save a quarter of a million dollars a year & in 4 years, you would get your money back. They guarantee that, provide all the financing, do the project, they get paid back from the savings from the school, then the project is paid for & then the school saves money going forward. That's how the program is supposed to work. They are to operate like our other state contracts, they put out a RFP & say, we want to look at this to see if our school will qualify for this, select a firm, firm would look at it without getting paid, (at risk then) & they would execute this contract if it makes sense. The bill fixes 3 problems in executing that kind of idea.

First, the biggest one, the school isn't seeing the cost of the project. The fix for that piece page 2, line 11. We just need to see the project cost. If they have that information, they have a better assessment. The 3 cost things I need to know is what I'm paying you, what I'm paying the workers & what I'm paying for finance. Then I will know exactly what this project costs. If they have that information, they can make a better assessment of whether paying for 4 years or 12 years. They are all agreeing to that it because they are getting their money back, they are just paying too much money.

Second problem this bill fixes is the selection of the consultants. State statues is the same throughout when you hire any engineering, you hire through a RFP, usually 3 weeks & you pick the best one. What is happening in this small area of work is there are a couple large out of state companies & they are coming in first before any selection is done.

The problem is there are out of state firms are coming in before it's out & doing the RFP after the fact. Under the normal process of picking a firm first & then doing the engineering, you don't know that it's 4, 6 or 12 years, they will always pick the firm that came in & did it ahead of time because they know they will get their money back. The fix is on page 1, line 8-12, it changes the period for request for proposals to 21 days. We are at a big disadvantage & we are trying to evening out the playing field on the RFP side. It must be by a registered, professional engineer or architect. There is currently in statue for the vendor to stamp their drawings. There is also a provision, if they don't, then you need to provide it as a state or the school, which is line 18-22. The vendor says, well if I don't provide it, then the school has to. School doesn't want to go out & hire an independent engineer. What this bill does is simply states, you are the vendor, you are guaranteeing the work, you work has to have an engineering stamp like everything else. It takes out of the schools hands of having that oversight.

Third, another piece, page 1, line 12, is clarifies that you make a selection based on the overall qualifications of each provider. If a vendor comes in & has the reports already put together, that they would be disqualified. You have to go through the RFP first & not second. We want to open up the RFP process, select the right vendor, give them 21 days, but if you came in ahead of time by doing all the engineering, then you would be disqualified from this one selection process.

Those are the 3 fixes, gives us the financial information we need to see, move the engineering to the vendor & clean up the selection process so it's a qualification open to everybody.

**Rep Becker:** I'm concern about the RFP aspect & selection. My first question, on line 13, selected means that the RFP that came in & the entity has made their selection. Don't you need to do some type of analysis before you can put a RFP in. How do you determine what your proposal is without having done an analysis?

**Laffen:** The selection made is what they call qualification. Have you done this before, do you have the staff & am I going to get good results. All the engineering analysis, it has to happen. It's a lot work. We only want to ask the one firm that we are going to work with, to do all of that work. Instead of asking all the engineers that might have any interest in this school. It is not a fee proposal or proposal where they all look at it, done the work to make sure that schools are going to get the payback. It's simply a qualifications based selection & that one firm, does all their own internal engineering at their own expense to see if that's going to work. That's done after they have been selected. That's the problem right now, the big firms out of Minneapolis are doing the work ahead of time & the school always picked them. It wipes out the qualifications based part of the proposal because it's not qualification based anymore if one firm has already done all of the work.

**Rep Becker:** I'm surprised it's a RFP.

**Laffen:** It's a RFQ, it's probably worded wrong in here. There are 2 types of proposals that the state asks for on different things. One is a RFP, it's a request for a proposal which is a fee based proposal. RFQ's are requests for qualification. Engineering & service based industries are usually RFQ's where you pick through qualifications.

**Rep Becker:** That helps clear up but do you think that the problem because it says all over throughout the bill, request for proposal?

**Laffen:** That should probably be amended to RFQ. This section of the law was never intended for a request for proposal.

**Rep Laning:** My background we did a lot engineering studies before we even proceed. If you had to hire someone to evaluate proposed project on possible savings, then say we want you to evaluate this but we are going to eliminate your firm for consideration of the actual work, don't you think this language creates a problem there?

**Laffen:** The school doesn't have to pay for that engineering report analysis. They are at risk in section of law. They are not paying the vendor that they selected any money prior to knowing if this is going to work. What we are trying to say, make sure you pick best firm & then have them do the analysis to see if this is going to work instead of picking a firm that selling you a bill goods that may not be the best.

**Rep Kasper:** What you are saying here is you are going to select the person is going to do the work before any work is done?

**Laffen:** Correct.

**Rep Kasper:** So the firm you selected hasn't spent any money yet, you are getting background information, have 10 of them, you select this one, then they select them, negotiate the contract & then they go in & do the analysis.

**Laffen:** At their own expense. The reason we like to do that way, it's an unbiased look at a wider swath of firms. You can check references, there are a lot of thing you can do to make sure you have the right firm working for you.

**Rep Boschee:** Page 1, line 12-15, my business model is one in which I'm doing the work ahead of time & I'm trying to sell my product using this process to a school or other government entity, why would I penalize an entity for doing part of business model & then disqualifying them from being able to. We are not saying that you can't pick the best, my business model is I'm going out to promote this. Why would be penalize those groups?

**Laffen:** There are big companies that can afford to do this because one they get into the school districts; they change those systems to be their systems & they have on going advantage. There is sale after the fact but they are making it up by not being honest of the cost of return, where an independent vendor, who isn't selling anything, probably would be a more independent look & working more as the agent of the school to truly get back to savings. They want to get hired again. Honeywell, sells Honeywell equipment. Their business model is different than all the smaller mechanical engineers in ND.

**Rep Boschee:** Wouldn't some of the other provision you are putting protect against that?

**Laffen:** All these things do help protect.

**Rep Ruby:** On Line 9-10, you add in add in "the proposal must be approved & stamped with the seal of a registered professional engineer or architect before being submitted to a governmental unit". You are also removing the exemption that they were under on the last line on page 2, so it would put them, not only because of that stamp but then if it's expenditures for project that exceeds the sum of \$150,000, (reads 48-01.2) why are you removing from that exemption & also adding it here? Seems like you are adding more layers.

**Laffen:** The page 2, line 25, they are not subject to those rules. Those rules state that if you are a state public agency in ND, you need to hire an engineer & if the bidding is a certain statue above, you have to hire. We are removing the need for the school to hire them because we are asking the vendor to hire them. We are taking that relief back off the school from hiring an engineer. We are asking the vendor in this case. In this small area of work, it's a design build contract where the vendor has to hire the engineer.

**Rep Ruby:** Wouldn't you just leave that language in that would say they are not subject to 43 19.1 28?

**Laffen:** Legislative council made that change, I would have to think about it. I think the intent of changing that was to make sure the school district does not need to hire an engineer because that is being provided by the vendor.

**Rep Lefor:** Isn't it one of the main aims of your bill is to increase transparency to potentially lower the cost of the energy plan. If this bill were to pass, I would suspect the bids will come in lower, is that part of your game plan?

**Laffen:** Right now, we don't know what the bid are coming in at, I want to see the costs.

**Rep Bosch:** If we do believe that we are going to have it be a request for qualifications, I'm unclear if we are having a request for qualifications, what engineering would they provide that needs to be stamped?

**Laffen:** You are exactly right. That was a flaw that I was going to get at the end. What we were trying to do is change the language where the engineering stamp was required from the school to the vendor, it's not written very well. That's a change we need to make here. Somewhere in this bill it simply says that the vendor needs to provide the engineering stamp & it's in the law in place.

**Rep Bosch:** But the stamp would have an after the design.

**Laffen:** Yes, exactly right, after the design.

**Rep Beadle:** Companies that take the effort, they go out, they try to find these communities & schools that could use some energy efficiencies. By making some of these adjustments,

would it be possibly creating some situations where they did these events because they pitched them on the idea that they wouldn't have come upon on their own?

**Laffen:** That could happen & maybe that's the down side. The important piece is the financial side & cleaning up the RFP they do it.

**Rep Beadle:** Section 2 of the bill, what's the necessity for including the list of subcontractors pricing.

**Laffen:** You could change that just to the project cost.

**Rep Becker:** Doesn't this bill change it from a RFP to RFQ? Page 1, line 8, in the old language says request for proposal but also on line 11 & 12, upon receipt requests of proposals, the government unit shall evaluate all reports from qualified providers which summarize, then continue on line 15, estimates of all costs & including the costs of design & engineering. It seems that prior to this bill is was an actual RFP, now it changes to a RFQ, only if we amend the bill.

**Laffen:** That is not the way the constituent brought it but that's the way it was written originally.

**Chairman Keiser:** Seems you have RFP & RFQ in this bill but if we are going to get into pricing of it, that's a RFP.

**Laffen:** The constituent that brought this, who does work in this world, the way the bill was supposed to work, is they put out a RFQ. They pick a firm, that firm does all the engineering at their own expense & then guarantee's the saving. That is the way they thought the program was supposed to work but it short circuited by companies coming in & turning it into a RFP. The committee could decide what they want to do here.

**Rep Kasper:** Isn't it, the way current law is written without the amendment, that schools are going to have to hire this firm to do the study so you can ask for a request & which locks in firm that has already done the study. That firm already has the first place almost locked up?

**Laffen:** The school never has to pay the vendor for any upfront work until they enter into a contract & this is all at risk by the vendor. The only question is if you do want RFP's for this work, they would ask all vendors to come look at the school, do the engineering, create the report, see how much money they safe, do the bidding & then the school would pick one. Without the financial information, they didn't have any idea if they are paying too much. In that case you are asking all those engineering firms, they are not going to do it. The engineering firms in ND don't sell the equipment so, they are not going to answer that kind of a RFP. In a RFQ, you would pick the right engineering firm & then that select firm will work towards putting the whole thing together.

**Chairman Keiser:** Technical issues, page 1, line 9, the 21 days. IBL would like to convert that to 15 business days because of holidays. Is that acceptable to you?

**Laffen:** Sure.

**Chairman Keiser:** Page 1, line 13-14, there is reference to overall qualifications, are there established criteria that these schools would use, is that industry standards?

**Laffen:** There isn't one in this one. We could rely on schools to see who's qualified.

**Rep Laning:** The disqualification, would it tear you up if we amended that sentence out of there? To disqualify that firm because they have done so many analyses ahead of time, it seems unfair to the person who made me aware of a problem that I didn't even know that I had.

**Laffen:** First, we need to do is decide if it's a RFP or RFQ. The problem now is that Honeywell & Johnson & Johnson are the only one doing this in the state. The local engineering firm would like to have an opportunity but they can compete against the big firms. I'm open to any suggestions.

**Chairman Keiser:** Anyone else here to testify in support to SB 2271, opposition, neutral? Closes the hearing. Sam, will you come up & help us?

**Chairman Keiser:** Line 9, change to 15 business days.

**Rep Kasper:** Is that too quick?

**Chairman Keiser:** That is what they are proposing, I think is relative standard of the industry.

**Chairman Keiser:** Should this be a RFQ or RFP?

**Rep Becker:** This gets to the heart of the matter, if we strike the added language from lines 12-15, unstrike the 2 words on line 12 which summarize, I believe that it takes care of most of the problem. That reverts it back to the RFP aspect. If we leave it at RFP instead of trying to somehow melt RFQ into there, then it makes sense on lines 9-10 to leave the stamp aspect from the engineer or architect. Lines 8-9, the days, gives the smaller firms time to come in & actually do a RFP, we don't disqualify the ones that came in ahead because they will still have to compete head to head. I think simply eliminating all those lines clears it up.

**Rep Kasper:** I don't understand what Rep Becker said. I don't know if were are supporting a RFP or a RFQ. I support a RFQ because that will open it up for the smaller firms. The RFP sort of closes the loop that big firms win almost all of them.

**Rep Bosch:** If it's a RFQ, then there can't be any technical specifications in the bill. If it's a RFP it can have whatever technical qualifications we want to have. I think that the person who put the bill forward, is asking us to find a way to help them compete with the big firms. We need to decide if it's a RFP or RFQ.

**Chairman Keiser:** Regardless of which direction you go, I can't support because part of their business model of businesses, is to go out promote business & take the risk. The way this is worded now, if I were one of the two big carriers, I'm not going to the school because I can't do the project, that's an unintended consequence that you really don't want.

**Rep Becker:** I agree completely & to further that, on page 2, lines 11-12, as what the bill sponsor indicated for amending instead of subcontractor pricing, but what I'm getting at is lines 11-12 are great, so that the schools aren't being assuming, that it makes sense that it's a RFP. If it's a RFQ, you are picking your person & if after the fact, they have to let you know what the fees are, well, you have already picked them.

**Rep Bosch:** Frankly, RFQ only happens with architects, everyone else uses a RFP process in bidding. I don't like were we are going to pick. These small firms could add a sales staff & go out & compete.

**Rep Kasper:** I thought that a RFP, every firm that is going to bid is going to have engineering done. Engineers don't sell products. They are not going to pay an engineering fee then submit a proposal if you lose.

**Rep Boschee:** If we remove 12-15 & keep 8-11, regardless if I'm company A & I show up with a proposal, because I'm a government unit, I still have to do a RFP. Now the little guy can compete, big guy already has he numbers figured out, but we are still opening the market up to whoever is the best qualified, am I correct?

**Chairman Keiser:** Page 1, lines 13-14, a qualified provider that preforms energy analysis work before being selected, must be disqualified, that statement is very broad. Are they disqualified or is it specific to my school the way this language is worded?

**Sam~LC Lawyer:** The proposed language is provided to me to create the draft. My understanding of that sentence, yes, it would apply to just that school if that provider has already done work on that school.

**Chairman Keiser:** I suggest we might want to state that because it can be read either way.

**Rep Becker:** I was going to propose an amendment, change, line 9, 21 days to "15 business days", on line 12, to unstrike "which summarize", to remove all of the added language on lines 12-15 & page 2, line 11, to strike the new language "a list of subcontracted pricing & change it to "total project costs". That impression that that give the protections to the small guy but leave it strictly as a RFP which is currently, as I read it, the law.

**Rep Lefor:** Second.

**Chairman Keiser:** Further discussion?

**Rep Beadle:** In terms of page 2 amendment that Rep Becker brought forward based on previous discussion, I support. Would we be able to simplify that & remove all that add language that is there & will meet or exceed the costs of the system, refer that to the cost of the project? Then remove the rest of the language, would that solve the same issue?

**Sam:** I think that would.

**Rep Beadle:** For clarification, the reasoning for that I would assume all of the financing costs & provider fees are included in the cost of the project. Change that one word might solve that issue.

**Rep Becker:** My only concern is the financing costs & if we don't know specifically what financing costs are, we don't know if we truly are saving.

**Rep Beadle:** When I look at a project, financing cost is part of the cost of the project.

**Chairman Keiser:** The one advantage I can see by delineating the 3 forms of cost is a large company could move costs to different accounts. There may be an advantage to specifying the element for the total costs.

49:50

**Rep Beadle:** What if we make the adjustments that it says "contract must include written guaranteeing qualified provider energy operating savings to not exceed the cost of & then replace system with project including the financing costs of the project & provider fees.

**Chairman Keiser:** Sam will give us a markup with these changes.

**Rep Beadle:** Sam, could you add "including cost of the system".

**Chairman Keiser:** Decided it was a RFP, will get these changes & get it back.

**Rep Ruby:** The question earlier, page 1, lines 9-11, about requiring the approved & stamped, but on last page, we are moving their exemption from 43 19.1 28, the public works that brings in the same stuff only with the \$150,000 threshold, why are we putting that in, it seems like we are putting it in 2 places?

**Sam:** I believe it was a threshold amount concern.

**Chairman Keiser:** Would you double check it to make sure that the language isn't contradicting that we are taking away & putting it right back in & if it's a threshold thing that we are putting it in properly?

**Rep Ruby:** It is under the one, it's maybe not necessary to have the language in the other area.

**Rep Bosch:** The stamping, doesn't at the RFP time, it takes place after selection as a parcel to the contract being worded. The whole language in here is confusing.

**Chairman Keiser:** You don't stamp it at the RFP, you stamp it after the RFP has been issued & a contract is awarded.

**Rep Becker:** Could we change, starting with page 1, line 9, each proposal & extending it to the rest of the added language.

**Chairman Keiser:** We are not going to act on the amendment, we will get it drafted & embedded in the bill so we can see. Then we will come back. Any other questions? Sam, you have the committee's permission to give copies of the amendment to anyone who is interested in it prior to you bringing it down.,

# 2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

SB 2271  
3/8/2017  
28890

- Subcommittee  
 Conference Committee

Ellen Hetang

## Explanation or reason for introduction of bill/resolution:

Energy conservation measures.

## Minutes:

Attachment 1, 2, 3

**Chairman Keiser:** Opens the hearing of SB 2271.

**Samantha Kramer ~ Legislative Council-Legal Division:** Attachment 1 & 2.

**Chairman Keiser:** That should be 15 business days, not 15 days. It takes care of holidays.

**Kramer:** Continues testimony.

**Chairman Keiser:** On line 12, you added the term, "which summarize", should it be summarize or itemize? Summarize, I'm giving you the total & what we are really looking for is the line items specifications of what each of these costs. Should it be itemized? I will leave it up to the committee.

**Kramer:** Continues testimony.

**2:15**

**Rep Ruby:** As I read the sentence that you were wondering about the "summarize", if you continue on what it is summarizing, it's the estimates of all costs of installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, repairs, or debt service, & estimates of the amounts by which energy or operating costs will be reduced. I think summarize might be ok.

**Chairman Keiser:** If the committee likes it, I can summarize by just giving you the total dollar.

**Rep Becker:** As an alternate word, what about the word "includes"? Then the itemization by the virtue of the fact we have all the things that must be included. I can see where

summarize seems to give permission to give a paragraph narrative. If you take the word summarize out & replace it with any other word, like guidelines.

**Chairman Keiser:** I agree with Rep Ruby in part 2.

**Rep Bosch:** Anywhere it might talk about a payback schedule that are one of the things included? It was one of the issues that they weren't sure how long it actually took for them to get that information. Is that where financing costs to me is different that a payback schedule.

**Chairman Keiser:** It doesn't address the payback but the argument was they sign contracts that are payback contracts & how do you know how much you should pay or receive back if you don't know the costs? They are trying to address it indirectly by getting the costs.

**Rep Kasper:** I want to talk about the process for the request for proposal. How is the governmental agency to put together the data it needs to submit, provide out a request for proposal, where do they get the information that will be in the request & provide it?

**Rep Lefor:** We had general statements that we made seeking a proposal to save on our electrical costs, it was general wording, it wasn't specific. Then in the RFP, they had to their due diligence, their work to come back to us with a bid.

**Rep Kasper:** So, the entity decides we are going to send out a request for a proposal, they take their time & write it up, make available to all the people who look on a daily basis for a request proposal. There is the general information about what they need, but the people who provide the request for proposal, really don't know much about anything, except these are our general guideline.

Now they have 15 business days to go to that place of business, come up with all the research that they need to do to try to figure out what they are going to bid, go back to their shop, come up with the numbers & then send it in, to me that's unrealistic.

They will be bidding & guessing. So the fact that we are doing a request for proposal to me is wrong. The problem with this approach is with the big boys, they will be hired by the entity, have the research in advance that they need, they get the data, they have the advantage, have the product & the small contractors have the huge disadvantage.

This bill doesn't do anything there that allows our small contractors to compete. I don't like the bill the way it is but the amendments don't do anything from my perspective.

**Rep Becker:** I disagree. The RFP & RFQ was intermingled. The idea of getting a fair playing field, was the intent to say we should switch, in my opinion, needs to be reworked to convert it to a RFQ. Appropriately, we don't know the costs but we are going to pick a person based on the qualifications. The qualifications, I don't think is very good for the tax payers. I do think this fixes & makes it a much more even playing field because the situation in current law is Honeywell can come in. Nobody has time to compete with the big boys. That is without knowing the portion on page 2, lines 11-12, because they are the professionals, they can manipulate the numbers & make it seem it's a better deal.

What this bill does to help even the playing field it requires a minimum of 3 weeks for the small player to get in & make a RFP. It also avoids the ability of the big boys to manipulate & hide the finance costs. Everything is transparent. In my mind, it fixes things dramatically. If you feel that 3 weeks isn't enough, maybe that should be increased. It does give the ability & yes, they have to put in their time for an RFP's, that part of business. They don't have to do anything for a RFQ. They are used to it & if they are players in the energy field, they should be adept enough & should be able to do it.

**Rep Lefor:** I'm questioning why we put a time frame on it, why don't we let the local entity that's bringing out the bid, make that decision?

**Rep Bosch:** I think what we are trying to fix, we assume that the big boys are doing something wrong, really what is happening here is that the people who are contracting, they are the one who are making the decision that they want to go with the big boys. I don't think there is anything that we can do, legislatively that going to keep a school who decides to have a big boy do their project. Where the decision is to make the playing field level is at the buyer's perspective, not the people providing the service.

**Rep Ruby:** If you read the language with the limitation of the dates, that is just no less than 15 business days. I don't think there isn't going to be too much problem, they can go to a month if they want. I don't think that's a problem & probably you don't want it less than that. Explains what he does with bids in his business.

**16:10**

**Rep Bosch:** Three weeks is common in what we will see in this. How I see it, if there is a level playing field, is that there will be a 15 days to respond but prior to that, they will give a period to ask questions. When you see a period to ask questions along with the 15 days, you know that you have a level playing field.

**Rep Beadle:** Attachment 3. I had conversations last night with my uncles who works for ESG who has done over 100 of these projects. Now he works for Unesco.

**18:15**

The whole bidding can be left to local control. Section 2, in terms of some of the transparency, I think that is a good substance to change so we can make sure people are not getting misled, but I don't think it's necessary.

**Rep Becker:** Moves the amendment as present to us with 2 exceptions. We add business after 15 & strike the word summarize & add the words include on line 12 of the christmas tree bill.

**Rep Lefor:** Second.

**Chairman Keiser:** Further discussion on the amendment?

**Rep Becker:** I concur with Rep Beadle that section 2 is particularly good & the important one. If we look at what's has been stricken from the new language & the amended version of the bill, if this amendment passes, it still allows something important that I think beneficial to the level playing field requiring the minimum of 3 weeks.

**Chairman Keiser:** Voice vote – motion carried.

**Chairman Keiser:** Further discussion?

**Rep Ruby:** Moves a Do Pass as Amended.

**Rep Bosch:** Second.

**Chairman Keiser:** Further discussion.

**Rep Ruby:** The struck language on line 9 through 11, obviously they determined that wasn't necessary because they are putting them under the public works.

**Chairman Keiser:** The one concern I have is that we are not messing up existing business models that are out there. You have companies, maybe they are better companies, they are hustling in the field, going to the schools, coming in making a proposal & if it's truly significant savings, I support that. What we don't want to do is set up a system that just bureaucratic but you have to go all through these steps to get to where you have that end effect of saving the school money. What I do like about the bill is there was no minimum time limit. There are a lot of games with RFP's but one of them is, I can give you 3 days to respond. You have to give companies 15 business days. The 2<sup>nd</sup> page is really important. If we do have situations as described where they are inflating the real cost in order to get a bigger payback, we don't want that.

**Rep Ruby:** The discussion made also, that they will come in with an option & then the entity would decide to put up the bid. If they do that before the board, that is open record.

**Chairman Keiser:** Further discussion?

**Roll call was taken on SB 2271 for a Do Pass as Amended with 12 yes, 1, no, 1 absent & Rep O'Brien is the carrier.**

March 8, 2017

3/8/17 DE

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2271

Page 1, line 9, replace "twenty-one" with "fifteen business"

Page 1, line 9, remove "Each proposal must be reviewed by, approved,"

Page 1, remove line 10

Page 1, line 11, remove "submitted to a governmental unit."

Page 1, line 12, remove the overstrike over "~~which~~"

Page 1, line 12, remove "and make a"

Page 1, remove lines 13 and 14

Page 1, line 15, replace "qualified provider shall prepare an energy conservation measure report, including" with "include"

Page 2, line 11, after the second "the" insert "project, including costs of the"

Renumber accordingly

Date: Mar 8, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 2271

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

Subcommittee

Amendment LC# or Description: 17.0945.02002

Recommendation

- Adopt Amendment
- Do Pass     Do Not Pass     Without Committee Recommendation
- As Amended     Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions     Reconsider     \_\_\_\_\_

Motion Made By Rep Becker    Seconded By Rep Lefor

| Representatives     | Yes | No | Representatives | Yes | No |
|---------------------|-----|----|-----------------|-----|----|
| Chairman Keiser     |     |    | Rep Laning      |     |    |
| Vice Chairman Sukut |     |    | Rep Lefor       |     |    |
| Rep Beadle          |     |    | Rep Louser      |     |    |
| Rep R Becker        |     |    | Rep O'Brien     |     |    |
| Rep Bosch           |     |    | Rep Ruby        |     |    |
| Rep C Johnson       |     |    | Rep Boschee     |     |    |
| Rep Kasper          |     |    | Rep Dobervich   |     |    |
|                     |     |    |                 |     |    |
|                     |     |    |                 |     |    |
|                     |     |    |                 |     |    |

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

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_ Voice vote ~ Motion carried

Date: Mar 8, 2017

Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 2271

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation

- Adopt Amendment
- Do Pass     Do Not Pass     Without Committee Recommendation
- As Amended     Rerefer to Appropriations
- Place on Consent Calendar

Other Actions     Reconsider     \_\_\_\_\_

Motion Made By Rep Ruby    Seconded By Rep Bosch

| Representatives     | Yes | No | Representatives | Yes | No |
|---------------------|-----|----|-----------------|-----|----|
| Chairman Keiser     | X   |    | Rep Laning      | X   |    |
| Vice Chairman Sukut | X   |    | Rep Lefor       | X   |    |
| Rep Beadle          |     | X  | Rep Louser      | Ab  |    |
| Rep R Becker        | X   |    | Rep O'Brien     | X   |    |
| Rep Bosch           | X   |    | Rep Ruby        | X   |    |
| Rep C Johnson       | X   |    | Rep Boschee     | X   |    |
| Rep Kasper          | X   |    | Rep Dobervich   | X   |    |
|                     |     |    |                 |     |    |
|                     |     |    |                 |     |    |
|                     |     |    |                 |     |    |

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep O'Brien

**REPORT OF STANDING COMMITTEE**

**SB 2271, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2271 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "twenty-one" with "fifteen business"

Page 1, line 9, remove "Each proposal must be reviewed by, approved,"

Page 1, remove line 10

Page 1, line 11, remove "submitted to a governmental unit."

Page 1, line 12, remove the overstrike over "~~which~~"

Page 1, line 12, remove "and make a"

Page 1, remove lines 13 and 14

Page 1, line 15, replace "qualified provider shall prepare an energy conservation measure report, including" with "include"

Page 2, line 11, after the second "the" insert "project, including costs of the"

Renumber accordingly

2017 TESTIMONY

SB 2271

17.0945.01001  
Title.

Prepared by the Legislative Council staff for  
Senator Laffen

January 31, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2271

Page 1, line 12, overstrike "reports" and insert immediately thereafter "proposals"

Page 1, line 12, overstrike "which summarize" and insert immediately thereafter "and make a selection based on the overall qualifications of each qualified provider. A qualified provider that performs energy analysis work before being selected must be disqualified. The selected qualified provider shall prepare an energy conservation measure report, including"

Renumber accordingly

March 8, 2017

17.0945.02001  
Title.

Prepared by the Legislative Council staff for  
House Industry, Business and Labor  
Committee

March 7, 2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2271

Page 1, line 9, replace "twenty-one" with "fifteen" *change to 15 business days*

Page 1, line 9, remove "Each proposal must be reviewed by, approved."

Page 1, remove line 10

Page 1, line 11, remove "submitted to a governmental unit."

Page 1, line 12, remove the overstrike over "~~which summarize~~"

Page 1, line 12, remove "and make a"

Page 1, remove lines 13 and 14

Page 1, line 15, remove "qualified provider shall prepare an energy conservation measure report, including"

Page 2, line 11, after the second "the" insert "project, including costs of the"

Renumber accordingly

17.0945.02001

FIRST ENGROSSMENT

Sixty-fifth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2271

Introduced by

Mar 8, 2017

Senator Laffen

1 A BILL for an Act to amend and reenact section 48-05-10, 48-05-11, and 48-05-12 of the North  
2 Dakota Century Code, relating to energy conservation measures.

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

4 **SECTION 1. AMENDMENT.** Section 48-05-10 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **48-05-10. Energy conservation measure recommendations.**

7 Before entering into a contract under section 48-05-11, a governmental unit shall submit a  
8 request for proposals. The time period between the request for proposals and the due date for  
9 proposals may be no less than ~~twenty one~~fifteen days. ~~Each proposal must be reviewed by,~~  
10 ~~approved, and stamped with the seal of a registered professional engineer or architect before~~  
11 ~~being submitted to a governmental unit.~~ Upon receipt of the request for proposals, the  
12 governmental unit shall evaluate all ~~reports~~proposals from qualified providers which summarize  
13 ~~and make a selection based on the overall qualifications of each qualified provider. A qualified~~  
14 ~~provider that performs energy analysis work before being selected must be disqualified. The~~  
15 ~~selected qualified provider shall prepare an energy conservation measure report, including~~  
16 estimates of all costs of installations, modifications, or remodeling, including costs of design,  
17 engineering, installation, maintenance, repairs, or debt service, and estimates of the amounts  
18 by which energy or operating costs will be reduced. ~~If technical assistance is not available by a~~  
19 ~~licensed architect or registered professional engineer on the governmental unit staff, then the~~  
20 ~~evaluation of this report must be done by a registered professional engineer or architect, who is~~  
21 ~~to be retained by the governmental unit. The governmental unit may pay a reasonable fee for~~  
22 preparation of the report or include the fee as part of a contract under section 48-05-11.

23 **SECTION 2. AMENDMENT.** Section 48-05-11 of the North Dakota Century Code is  
24 amended and reenacted as follows:

1       **48-05-11. Guaranteed energy savings contracts.**

2       The governmental unit shall provide public notice of the meeting at which it proposes to  
3 award a guaranteed energy savings contract, the names of the parties to the proposed contract,  
4 and the purpose of the contract. After reviewing the report under section 48-05-10, a  
5 governmental unit may enter a guaranteed energy savings contract with a qualified provider if  
6 the governmental unit finds that the amount the governmental unit would spend on the energy  
7 conservation measures recommended in the report is not likely to exceed the amount to be  
8 saved in energy and operation costs over a period not exceeding fifteen years from the date of  
9 installation if the recommendations in the report are followed. The contract must include a  
10 written guarantee of the qualified provider that the energy and operating cost-savings will meet  
11 or exceed the costs of the project, including costs of the system, a list of subcontractor pricing,  
12 the financing costs for the project, and any provider fees. The written guarantee must be for a  
13 period equal to the financing period, which may provide payments over a period not exceeding  
14 fifteen years. If the governmental unit can document that savings meet or exceed the payment  
15 for a period of not less than three years, the governmental unit may request a waiver of the  
16 guaranteed portion of the contract for the remainder of the financing term. A guarantee waiver  
17 request must be approved by a committee administered by the division of community services.  
18 If the contract involves facility alteration or real property improvement, a qualified provider to  
19 whom the contract is awarded shall give a sufficient bond to the governmental unit for the  
20 faithful performance of the contract.

21       **SECTION 3. AMENDMENT.** Section 48-05-12 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23       **48-05-12. Competitive bidding and architect and engineering services.**

24       Guaranteed energy savings contracts are not subject to the requirements of chapter  
25 48-01.2, which relate to competitive bidding, ~~and are not subject to section 43-19.1-28.~~

Mar 8, 2017

HB 2271

3

Apparently, it's the small mechanical contractors that are mad at Honewell and Johnson Control coming in and doing the work, pricing them out, and then installing their systems that guarantee they have the work going forward.



Thanks Thomas. I'll share this with my people. In my experience, adequate rules are a good thing but too many make it difficult to get work done. The language that is lined thru appears to be geared just to get architects & engineers more work so glad it was stricken. I'm not sure if more rules are needed but maybe he thinks more safeguards are warranted for some reason. If it's just to get his firm and others more work - then seems like not good legislation. These extra fees drive up cost & payback periods meaning less actual work gets done usually. Structural changes, new boilers, new HVAC systems or major electrical or plumbing work would already require stamped drawings/plans from a architect or engineer licensed in the state but paying an EE a fee to bless a lighting retrofit would not be a good investment for customers. IES has design criteria that should be followed by whoever is doing the work, just like we did for the 100+ buildings we did successfully in ND in 2000's including the state capital bldg/complex. Ameresco has only done 1 project in ND but may do more in future. Thanks for keeping me posted. TK

Great feedback! Appreciate it. This bill came before our committee this morning for review, we will be working on amending it so that it doesn't preclude companies from sending their sales force out to educate and convince schools, etc to take these sort of projects into consideration. We don't need to disincentive those groups just to build fences for our small guys who don't want to pay sales people.



This is a complicated issues. JCI and HON are our competitors but they provide a service (some good, some not good I'm sure) that the small local guy often can't (larger projects that may have to get done in summer or may have an energy saving component/financing or may be an expansion or upgrade of an existing JCI or HON building automation system, etc). Nobody can get all the work so hopefully enough to go around. Without sales people out there chasing these projects - they don't happen until the building is falling apart and they get funding from voters to fix. There are 2 sales guys in Fargo who I used to work with that may be good resources for you if you are interested in talking with them. Neither work for the majors but both use to. JCI and HON both would have temperature control technicians and pipe fitters on staff in ND but would sub out most other components of the project.

Good to know! I'll let you know if I need them to comment on anything, but this gives me a pretty good understanding/reinforces my initial gut reaction

Appreciate it!

TUE 5:09PM



I talked with Mark Bucholz (my former co-worker from ESG days). He now works for Unesco, a small ESCO owned by other former ESG folks, so he'd like to talk with you about getting his voice heard about Senate bill 2271 so expect his call or email. He has many years in the ND energy project arena. Thanks

Sounds good!

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Thomas R. Beadle  
ND House of Representatives