

**1999 HOUSE APPROPRIATIONS**

**HB 1046**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1046

House Appropriations Committee  
Government Operations Division

Conference Committee

Hearing Date January 21, 1999

Tape Number	Side A	Side B	Meter #
1	x		0-31.9
Committee Clerk Signature <i>Roxanne Kohl</i>			

Minutes:

A BILL FOR AN ACT TO PROHIBIT STATE AGENCIES AND INSTITUTIONS FROM ENTERING INTO CONTRACTS FOR SERVICES TO BE PROVIDED IN ONE BIENNIUM WHICH PROVIDE FOR THE PAYMENT FOR THE SERVICES TO EXTEND BEYOND THAT BIENNIUM; AND TO AMEND AND REENACT SUBSECTION 8 OF SECTION 54-44.1-06 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO THE CONTENTS OF BUDGET DATA PREPARED BY THE DIRECTOR OF THE BUDGET.

Summary of Hearing:

Paul Kramer, Legislative Council  
Explanation of HB 1046.

1A: 3.2 Charles E. Johnson, Public Service Commissioner (See attached testimony)  
Opposes HB 1046 language.

1A: 5.7 Representative John Dorso, District 46  
Opposes HB 1046 language.

1A: 8.0 Jim Heck, Information Services Division (See attached testimony)  
Opposes HB 1046 language.

1A: 12.2 Marshall Moore, Director North Dakota Department of Transportation (See attached testimony)  
Opposes HB 1046 language.

Page 2

Government Operations Division

Bill/Resolution Number 1046

Hearing Date January 21, 1999

1A: 14.5 Curt Peterson, Association of General Contractors of North Dakota

Opposes HB 1046 language.

1A: 15.3 Larry Eide, Representing UND and Minot State (See attached testimony)

Opposes HB 1046 language.

1A: 22.0 Dale Eberle, Bank of North Dakota (See attached testimony)

Opposes HB 1046 language.

1A: 24.7 Dick Rayl, Vice President of Business/Finance of NDSU (See attached testimony)

Opposes HB 1046 language.

1A: 28.5 Lynette Pederson, Northern States Power Company (See attached testimony)

Opposes HB 1046 language.

Opposition to language was due to fear of not being able to enter into multi-biennium service contracts.

Closed hearing on HB 1046.

## General Discussion

- Committee on Committees
- Rules Committee
- Confirmation Hearings
- Delayed Bills Committee
- House Appropriations
- Senate Appropriations
- Other

Date February 3, 1999			
Tape Number	Side A	B Side	Meter #
2	x		0-3.5
Committee Clerk Signature <i>Roxanne Kohl</i>			

Minutes:

Chairman Byerly opened the discussion on House Bill 1046.

The committee moved to amend House Bill 1046 on a Voice Vote. The amendment removed section 1 from the bill.

Rep. Poolman moved a DO PASS AS AMENDED on House Bill 1046. Rep. Tollefson 2nd the motion. On a Roll Call Vote the motion carried.

6 voting Yes

0 voting No

0 voting Absent

### General Discussion

- Committee on Committees
- Rules Committee
- Confirmation Hearings
- Delayed Bills Committee
- House Appropriations
- Senate Appropriations
- Other

Date February 4, 1999			
Tape Number	Side A	B Side	Meter #
1		x	12.8-15.0
Committee Clerk Signature <i>Casyn Davis</i>			

Minutes:

**HB 1046 - A bill for an act to prohibit state agencies and institutions from entering into contracts for services to be provided in one biennium which provide for the payment for the services to extend beyond that biennium; and to amend and reenact subsection 8 of section 54-44.1-06 of the North Dakota Century Code, relating to the contents of budget data prepared by the director of the budget.**

**CHAIRMAN DALRYMPLE** called the meeting to order.

**1B: 12.8 REP. BYERLY** presented the Government Operations subcommittee's recommendation for a DO PASS and the proposed amendment.

**1B: 13.0 REP. BYERLY** made a motion to adopt amendment 0101 to HB 1046. The motion was seconded by Rep. Poolman. A voice vote was taken and the motion carried.

**1B: 14.7 ACTION ON BILL** Rep. Byerly made a motion for a DO PASS as amended. The motion was seconded by Rep. Poolman. A roll call vote was taken and the motion carried with 16 yeas, 0 nays, and 4 absent and not voting. Rep. Byerly will carry the bill to the floor.

**CHAIRMAN DALRYMPLE** closed the meeting on HB 1046.

Date: 2.3.99  
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1046

House \_\_\_\_\_ APPROPRIATIONS \_\_\_\_\_ Committee

Subcommittee on Government Operations  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS AS AMENDED

Motion Made By POOLMAN Seconded By TOLLEFSON

Representatives	Yes	No	Representatives	Yes	No
Rex R. Byerly	✓				
Ron Carlisle	✓				
Ben Tollefson	✓				
Robert Huether	✓				
Pam Gulleeson	✓				
Jim Poolman	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Rep. Byerly

If the vote is on an amendment, briefly indicate intent:  
Remove Section 1

Date: 2-4-99

Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1046

House **APPROPRIATION**

Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

Legislative Council Amendment Number 0101

Action Taken Do Pass as amended

Motion Made By Byerly Seconded By Poolman

Representatives	Yes	No	Representatives	Yes	No
Rep. Ole Aarsvold	✓		Rep. Ronald Nichols	✓	
Rep. LeRoy G. Bernstein	✓		Rep. Jim Poolman	✓	
Rep. James Boehm	✓		Rep. Ken Svedjan	✓	
Rep. Rex R. Byerly	✓		Rep. Mike Timm		
Rep. Al Carlson	✓		Rep. Ben Tollefson		
Rep. Ron Carlisle	✓		Rep. Janet Wentz	✓	
<del>Rep. Al Carlson</del>	<del>✓</del>		Chairman Jack Dalrymple	✓	
Rep. Jeff Delzer	✓				
Rep. Pam Guleson					
Rep. Serenus Hoffner	✓				
Rep. Robert Huether	✓				
Rep. James Kerzman	✓				
Rep. Ed Lloyd	✓				
Rep. David Monson					

Total (Yes) 16 No 0

Absent 4

Floor Assignment Byerly

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

on plats, delineation of the floodway for lakes, elevation of structure in the floodway, and mandatory community participation in the flood insurance program.

#### ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 93 YEAS, 1 NAY, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

**YEAS:** Aarsvold; Belter; Berg; Bernstein; Boehm; Boucher; Brandenburg; Brekke; Brusegaard; Byerly; Carlisle; Carlson; Clark; Cleary; Dalrymple; DeKrey; Delmore; Delzer; Devlin; Disrud; Drovdal; Eckre; Ekstrom; Froelich; Froseth; Galvin; Glassheim; Gorder; Grande; Grosz; Grumbo; Gulleston; Gunter; Haas; Hanson; Hawken; Henegar; Herbel; Hoffner; Huether; Jensen; Johnson, D.; Johnson, N.; Keiser; Kelsch, R.; Kelsh, S.; Kempenich; Kerzman; Klein; Klemm; Kliniske; Koppang; Koppelman; Kroeber; Lemieux; Lundgren; Mahoney; Maragos; Martinson; Metcalf; Meyer; Mickelson; Monson; Mueller; Nelson; Nicholas; Nichols; Niemeier; Nottestad; Nowatzki; Pollert; Poolman; Porter; Price; Renner; Rennerfeldt; Rose; Sandvig; Schmidt; Severson; Solberg; Stefanowicz; Svedjan; Sveen; Thoreson, B.; Thoreson, L.; Tollefson; Warner; Weisz; Wentz; Wikenheiser; Winrich; Speaker Wald

**NAYS:** Thorpe

**ABSENT AND NOT VOTING:** Dorso; Fairfield; Lloyd; Timm

HB 1167 passed and the title was agreed to.

#### SECOND READING OF HOUSE BILL

**HB 1199:** A BILL for an Act to create and enact a new chapter to title 15 of the North Dakota Century Code, relating to the creation of a residency incentive loan program.

#### ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO NOT PASS, the roll was called and there were 21 YEAS, 72 NAYS, 0 EXCUSED, 5 ABSENT AND NOT VOTING.

**YEAS:** Boucher; Cleary; Drovdal; Froelich; Galvin; Grumbo; Gulleston; Hoffner; Keiser; Kelsh, S.; Kempenich; Kerzman; Kroeber; Lemieux; Maragos; Martinson; Nichols; Niemeier; Rose; Schmidt; Winrich

**NAYS:** Aarsvold; Belter; Berg; Bernstein; Boehm; Brandenburg; Brekke; Brusegaard; Byerly; Carlisle; Carlson; Clark; Dalrymple; DeKrey; Delmore; Delzer; Devlin; Disrud; Eckre; Ekstrom; Froseth; Glassheim; Gorder; Grande; Grosz; Gunter; Haas; Hanson; Hawken; Henegar; Herbel; Huether; Jensen; Johnson, D.; Johnson, N.; Kelsch, R.; Klein; Klemm; Kliniske; Koppang; Koppelman; Lundgren; Mahoney; Metcalf; Meyer; Mickelson; Monson; Mueller; Nelson; Nicholas; Nottestad; Pollert; Poolman; Porter; Price; Renner; Rennerfeldt; Sandvig; Severson; Solberg; Stefanowicz; Svedjan; Sveen; Thoreson, B.; Thoreson, L.; Thorpe; Tollefson; Warner; Weisz; Wentz; Wikenheiser; Speaker Wald

**ABSENT AND NOT VOTING:** Dorso; Fairfield; Lloyd; Nowatzki; Timm

HB 1199 was declared lost.

#### SECOND READING OF HOUSE BILL

**HB 1224:** A BILL for an Act to amend and reenact subsection 4 of section 15-47-38 of the North Dakota Century Code, relating to teacher suspensions.

#### ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 88 YEAS, 6 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

**YEAS:** Aarsvold; Belter; Berg; Bernstein; Boehm; Boucher; Brandenburg; Brekke; Byerly; Carlisle; Carlson; Clark; Cleary; Dalrymple; DeKrey; Delmore; Delzer; Disrud; Drovdal; Eckre; Ekstrom; Froelich; Galvin; Glassheim; Gorder; Grande; Grosz; Grumbo; Gulleston; Gunter; Haas; Hanson; Hawken; Henegar; Herbel; Hoffner; Huether; Jensen; Johnson, D.; Johnson, N.; Keiser; Kelsch, R.; Kelsh, S.; Kempenich; Kerzman; Klein;

Klemm; Kliniske; Koppang; Koppelman; Kroeber; Lemieux; Lundgren; Mahoney; Maragos; Martinson; Metcalf; Meyer; Mickelson; Monson; Mueller; Nelson; Nicholas; Nichols; Niemeier; Nottestad; Nowatzki; Pollert; Poolman; Porter; Price; Renner; Rennerfeldt; Rose; Sandvig; Schmidt; Solberg; Stefanowicz; Svedjan; Sveen; Thoreson, B.; Thoreson, L.; Thorpe; Tollefson; Weisz; Wikenheiser; Winrich; Speaker Wald

**NAYS:** Brusegaard; Devlin; Froseth; Severson; Warner; Wentz

**ABSENT AND NOT VOTING:** Dorso; Fairfield; Lloyd; Timm

HB 1224 passed and the title was agreed to.

.....  
**MESSAGE TO THE SENATE FROM THE HOUSE (LANCE HAGEN, CHIEF CLERK)**  
**MADAM PRESIDENT:** The House has passed and your favorable consideration is requested on: HB 1085, HB 1200, HB 1223, HB 1310, HB 1406, HB 1446, HB 1459.

#### MOTION

**REP. MONSON MOVED** that the absent members be excused, which motion prevailed.

#### MOTION

**REP. MONSON MOVED** that the House be on the Fifth order of business and at the conclusion of that order, the House stand adjourned until 8:30 a.m., Monday, February 8, 1999, which motion prevailed.

#### REPORT OF STANDING COMMITTEE

**HB 1038, as engrossed:** Appropriations Committee (Rep. Dalrymple, Chairman) recommends **DO PASS** (18 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1038 was placed on the Eleventh order on the calendar.

#### REPORT OF STANDING COMMITTEE

**HB 1043: Judiciary Committee (Rep. DeKrey, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the Appropriations Committee (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1043 was placed on the Sixth order on the calendar.

Page 3, line 15, after the second underscored comma insert "sexual preference."

Page 3, line 20, after the fourth underscored comma insert "sexual preference."

Page 7, line 8, after the second "members" insert ", unless membership in the club is restricted because of race, color, or national origin"

Renumber accordingly

#### REPORT OF STANDING COMMITTEE

**HB 1046: Appropriations Committee (Rep. Dalrymple, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (16 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). HB 1046 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "prohibit state agencies and institutions from entering into contracts for"

Page 1, remove line 2

Page 1, line 3, remove "extend beyond that biennium; and to"

Page 1, remove lines 7 through 10

Renumber accordingly

#### STATEMENT OF PURPOSE OF AMENDMENT:

DEPARTMENT 110 - OFFICE OF MANAGEMENT AND BUDGET

HOUSE - This amendment removes the section of the bill which prohibited, unless specifically provided by law, the entering of a contract for services when the contract would provide for the payment for the services to extend beyond the current biennium.



## REPORT OF STANDING COMMITTEE

HB 1071: Government and Veterans Affairs Committee (Rep. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1071 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "paragraph to subdivision b of subsection 4 of" with "section to chapter 54-52"

Page 1, line 2, remove "section 54-52-17"

Page 1, line 8, replace "paragraph to subdivision b of subsection 4 of section 54-52-17" with "section to chapter 54-52"

Page 1, line 9, remove "the 1997 Supplement to"

Page 1, replace lines 10 through 17 with:

"Judges postretirement adjustments. A supreme or district court judge who, on December 31, 1999, is receiving retirement benefits under subdivision b of subsection 4 of section 54-52-17 is entitled to receive an increase in benefits equal to two percent of the individual's present benefits with the increase payable beginning January 1, 2000. A supreme or district court judge who, on December 31, 2000, is receiving retirement benefits under subdivision b of subsection 4 of section 54-52-17 is entitled to receive an increase in benefits equal to two percent of the individual's present benefits with the increase payable beginning January 1, 2001."

Renumber accordingly

## REPORT OF STANDING COMMITTEE

HB 1072: Government and Veterans Affairs Committee (Rep. Klein, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1072 was placed on the Eleventh order on the calendar.

## REPORT OF STANDING COMMITTEE

HB 1095: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO PASS (13 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1095 was placed on the Eleventh order on the calendar.

## REPORT OF STANDING COMMITTEE

HB 1141: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO PASS (14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1141 was placed on the Eleventh order on the calendar.

## REPORT OF STANDING COMMITTEE

HB 1143: Human Services Committee (Rep. Price, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (9 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1143 was placed on the Sixth order on the calendar.

Page 1, line 4, replace "person" with "licensed individual or licensed facility" and remove ", including a hospital, physician, chiropractor,"

Page 1, line 5, remove "medical clinic, and pharmacy" and replace "The copying costs and administrative expense provisions of this" with "This"

Page 1, line 6, replace "apply" with "applies"

Page 1, replace lines 9 through 17 with:

1. Provide a free copy of a patient's medical records to a medical provider designated by the patient or the person authorized by the patient if the records are requested for the purpose of transferring that patient's medical care to another medical provider for the continuation of medical treatment.
2. Provide a copy of a patient's medical records requested for any purpose other than the continuation of care for a maximum charge of twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five. This charge includes any administrative fee, retrieval fee, and postage expense."

Renumber accordingly

## REPORT OF STANDING COMMITTEE

HB 1194: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (9 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). HB 1194 was placed on the Sixth order on the calendar.

Page 1, line 5, replace "Unless the court orders otherwise, the" with "The"

Page 1, line 6, replace "over" with "from"

Page 1, line 9, replace "over" with "from"

Renumber accordingly

## REPORT OF STANDING COMMITTEE

HB 1263: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO NOT PASS (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1263 was placed on the Eleventh order on the calendar.

## REPORT OF STANDING COMMITTEE

HB 1267: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (9 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1267 was placed on the Sixth order on the calendar.

Page 1, line 7, remove "1."

Page 1, line 10, remove the overstrike over "+" and remove "a."

Page 1, line 16, replace "b" with "2" and remove "or redeems"

Page 1, line 22, replace "c" with "3"

Page 2, line 3, replace "d" with "4" and remove "or redeems"

Page 2, line 8, replace "e" with "5"

Page 2, line 13, replace "f" with "6" and remove "or redeems"

Page 2, remove lines 18 through 30

Renumber accordingly

## REPORT OF STANDING COMMITTEE

HB 1268: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (12 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1268 was placed on the Sixth order on the calendar.

Page 1, line 1, after "47-02-27.4" insert "and two new sections to chapter 47-02"

Page 1, line 2, after "perpetuities" insert "and restrictions on irrevocable trusts"

Page 1, line 3, replace "sections" with "section" and remove "and 47-02-27.2"

Page 1, line 4, remove "and contingent property interests"

Page 2, remove the overstrike over lines 10 through 19

Page 2, line 20, remove the overstrike over "~~death of the survivor of the specified lives.~~" and insert immediately thereafter "This subsection applies only to a trust or other property arrangement that owns or acquires real property in this state."

Page 2, remove lines 21 through 30

Page 3, remove lines 1 through 7

**1999 SENATE APPROPRIATIONS**

**HB 1046**

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1046

Senate Appropriations Committee

Conference Committee

Hearing Date March 9, 1999; March 30, 1999

Tape Number	Side A	Side B	Meter #
1		X	5040-end
2	X		1-107
3/30/99 1	x		3360-3630
Committee Clerk Signature <i>Kathleen C. Kottelrock</i>			

Minutes:

**SENATOR NETHING:** Opened the hearing on HB1046; A BILL FOR AN ACT TO AMEND AND REENACT SUBSECTION 8 OF SECTION 54-44.1-06 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO THE CONTENTS OF BUDGET DATA PREPARED BY THE DIRECTOR OF THE BUDGET.

**PAUL KRAMER:** Legislative Council, testified in support of HB1046 (tape 1, side B, meter 5040-5198). HB1046 was recommended by the Legislative Audit Review Committee because of the findings in various audit reports. What the bill does in the engrossed form is require OMB to expand the budget information that is provided to you. It expands it to include assets or services and takes out the word leased and adds in or other financing arrangement. This is attempting to get at agencies that are entering into multi-biennium contracts for such things as information technology services where it may not be actual leased equipment or assets but it could include training and other services that are being provided over a number of biennium's.

**SENATOR ST. AUBYN:** On all leases, if it goes beyond the biennium, doesn't there have to be that clause subject to future appropriations or something to that effect and if it does on these other financing arrangements what are these other financing arrangements and does it have that same clause on them.

**PAUL KRAMER:** The first part of your question, the answer is yes. All of the contracts or leases that the state auditor's office reviewed and reported to the audit review committee did contain that language but the question was raised by the Auditor's office, even with that language in the contract, if it's a contract for a service that the service may be provided right away and then the payments go for a number biennium's to pay for that contract, if the appropriation isn't provided could the vendor whether IBM or whoever could come back and sue the state even though that language is in the contract. Regards to the other financing types, I guess none of

them were specifically identified and brought forward to the committee but what was done here was the language was added so, in the event that something else does come up in the future, we don't have to go back in and amend it to catch it at that time.

**SENATOR SOLBERG:** What LAFRC was basically looking at on some of these situations was to make sure that the appropriations committees knew what some of these contractual arrangements were. They weren't always being brought forward and the complaint was in LAFRC, it was more difficult to build a budget when these hidden costs don't come forward.

**PAUL KRAMER:** That is what the committee was hoping to get at.

**SENATOR NETHING:** Tell us again what the problem is that this bill is trying to cure.

**PAUL KRAMER:** The problem, maybe not a problem as much as the audit fiscal and review committee trying to find a way to inform the appropriations committees of multi-biennium contracts in the budget process. Right now leased assets are identified in there but if it isn't a leased asset it doesn't have to be identified on that list.

**SENATOR NETHING:** This doesn't mean they won't enter in for those service contracts, it just simply means that it will be provided.

**PAUL KRAMER:** The way the bill was introduced, there was a first section before this one that would have prohibited multi-biennium contracts and that ran into quite a bit of problems because there are certain agencies that need to have that ability and that was removed. We're down to now where it's just to identify these for the appropriations committees.

**SENATOR ST. AUBYN:** Paul, you made a comment that the auditor's office was concerned about services being done and whether or not the state could be sued after that, if we had that language in there how could they sue. The state law specifically states, subject to that, isn't that at the vendors risk. I am just wondering did the Attorney General's Office talk at all about that, whether or not they felt that we were running into problems. If there is a potential that we could be sued, maybe we shouldn't be doing that.

**PAUL KRAMER:** The audit review committee didn't necessarily go along with the assumption that we would be at risk of a lawsuit. That was an issue that created this whole area and came out of a performance audit and it was an issue brought up by the State Auditor's Office. The contracts are reviewed by the Attorney General's Office and that is why they all have that language in there because that is what the Attorney General's Office feels is needed to prevent a lawsuit from happening. The committee didn't do anything in regard to the lawsuit issue because they apparently didn't go along with the assumption that it was a big problem. What they wanted was the appropriations committees to see these items up front so that you could prevent the contracts from being funded before its two biennium's down the road.

**LAURA GLATT:** Vice Chancellor, North Dakota University System, testified in support of HB1046 and offered an amendment (testimony attached (tape 1, side B, meter 5970-end, tape 2, side A, meter 1-80)).

**SENATOR NETHING:** Closed the hearing on HB1046.

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**3/30/99**

**Tape 1, A, 3360-3630**

**SENATOR NETHING:** Reopened the hearing on HB1046.

**SENATOR ST. AUBYN:** Explained the proposed amendment.

**SENATOR NETHING:** Called for the motion on HB1046.

**SENATOR ST. AUBYN:** Moved a Do Pass on the amendment to HB1046.

**SENATOR KRAUTER:** Seconded the motion.

**ROLL CALL: VOICE VOTE: UNANIMOUS.**

**SENATOR ST. AUBYN:** Moved a Do Pass as Amended on HB1046.

**SENATOR SOLBERG:** Seconded the motion.

**ROLL CALL: 13 YEAS, 0 NAYS, 1 ABSENT & NOT VOTING.**

Absent & Not Voting: Senator Tallackson.

Motion carried Do Pass As Amended.

**CARRIER: SENATOR SOLBERG**

**SENATOR NETHING:** Closed the hearing on HB1046.

Date: 3/30/99  
Roll Call Vote #: 7

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. Engrossed HB 1046

Senate APPROPRIATIONS Committee

Subcommittee on \_\_\_\_\_  
or

Conference Committee

✓ Legislative Council Amendment Number 90037.0201

✓ Action Taken Do PASS

Motion Made By Senator St. Aubyn Seconded By Senator KRAUTER

Senators	Yes	No	Senators	Yes	No
Senator Nething, Chairman					
Senator Naaden, Vice Chairman					
Senator Solberg					
Senator Lindaas					
Senator Tallackson					
Senator Tomac					
Senator Robinson					
Senator Krauter					
Senator St. Aubyn					
Senator Grindberg					
Senator Holmberg					
Senator Kringstad					
Senator Bowman					
Senator Andrist					

Total (Yes) VOICE VOTE UNANIMOUS ~~NO~~

Absent \_\_\_\_\_

Floor Assignment Senator \_\_\_\_\_

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

Date: 3/30/99  
Roll Call Vote #: \_\_\_\_\_

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. Engrossed HB 1046

Senate APPROPRIATIONS Committee

Subcommittee on \_\_\_\_\_  
or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS AS AMENDED

Motion Made By Senator St. Aubyn Seconded By Senator Solberg

Senators	Yes	No	Senators	Yes	No
Senator Nething, Chairman	✓				
Senator Naaden, Vice Chairman	✓				
Senator Solberg	✓				
Senator Lindaas	✓				
Senator Tallackson					
Senator Tomac	✓				
Senator Robinson	✓				
Senator Krauter	✓				
Senator St. Aubyn	✓				
Senator Grindberg	✓				
Senator Holmberg	✓				
Senator Kringstad	✓				
Senator Bowman	✓				
Senator Andrist	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Senator Solberg

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

**REPORT OF STANDING COMMITTEE**

HB 1046, as engrossed: Appropriations Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1046 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "other" with "debt"

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

SENATE - This amendment clarifies that the budget document disclosure requirement is for debt arrangements. The requirement would not apply to regular service contracts that are paid as a fee for service, such as copier repairs, pest control, elevator maintenance, or other similar contracted services.



**1999 TESTIMONY**

**HB 1046**

**TESTIMONY ON HB1046**  
**To the House Appropriations Committee**  
**Government Operations Division**  
**By the Information Services Division**  
**Thursday, January 21, 1999**

HB1046 bill will eliminate the flexibility for ISD to enter into long term contracts to purchase technology hardware and software, services and license agreements.

The Information Services Division (ISD) has 12 contracts (notes) with a total original value of \$6,381,711.00 for the purchase of hardware and software. Ten contracts are for a period of 3 years and two for 2 years. Six of the contracts will expire in April 1999. The remaining six expire in the years of 2000 and 2001. All contracts have a funding out clause, which states that if the Legislature does not appropriate funds for the payment, the contract can be terminated without a penalty to the State. Contract terms and conditions are reviewed by the Attorney General's Office. The contracts are listed in our financial statement prepared at the end of each fiscal year.

ND has a number of service contracts. In all cases ISD receives a discount for a three-year contract vs. a one-year or monthly contract. All contracts for services are reviewed by the Attorney General's Office.

Facilities Management has a seven-year service contract with MDU, which provides a savings of 10% or \$5,000 per month on electrical service. This is a \$420,000 savings over the life of the contract.

ISD has many software license agreements for extended periods. The original license fee is paid for the right to use the software with either monthly or annual maintenance fees paid covering future updates and technical support. Most of the licenses agreements signed by ISD do not have an expiration date but payments go beyond the biennium boundary.

Not all license agreements, service contracts or the purchase of hardware and software transactions are done at the beginning of the biennium. Some contracts are entered into toward the end of the biennium and we will be forced into a short contract, which will cost more money. Some vendors will not respond to a Request for Proposal or consider less than a three-year contract for services if they have to make up front investments. We will restrict competition because fewer vendors will bid on short contracts.

ISD operates from revenue for service provided. We do not have a cash flow that will support all contracts expiring at the same time. ISD needs the ability to enter into license agreements, contract for services, and purchases of equipment and software that go beyond a biennium boundary.

**ISD NOTES AS OF 1/15/1999**

<b>NOTE</b>	<b>DESCRIPTION</b>	<b>START</b>	<b>END</b>	<b>%</b>	<b>ORIG AMT</b>	<b>REM AMT</b>
Note 26	IBM CMOS Processor	May-96	Apr-99	4.45%	685,400	60,670
Note 26a	IBM Software	May-96	Apr-99	5.07%	442,300	39,475
Note 29	IBM CMOS Processor Upgrade	Apr-97	Apr-99	4.25%	393,760	49,110
Note 29a	IBM Software	Apr-97	Apr-99	4.25%	107,024	13,350
Note 30	IBM CMOS Processor Upgrade	Jun-97	Apr-99	4.75%	1,390,012	188,550
Note 30a	IBM Software	Jun-97	Apr-99	4.75%	500,084	67,830
Note 31	IBM Software Upgrades	Aug-97	Jul-00	5.65%	500,000	260,560
Note 33	IBM Tape Management System	Oct-97	Sep-00	5.07%	345,958	198,660
Note 34	IBM RAMAC Virtual Array	Mar-98	Feb-01	5.85%	263,000	187,465
Note 35	Computer Associates Software	Jul-98	Jun-01	5.65%	223,522	182,965
Note 36	Mainframe Software	Aug-98	Jul-01	5.65%	634,427	536,000
Note 37	IBM Tape Drive Upgrade	Oct-98	Sep-01	4.75%	89,290	79,985
Note 38	IBM CMOS Processor Upgrade	Oct-98	Sep-01	4.75%	744,398	666,815
Note 38a	IBM Software	Oct-98	Sep-01	4.75%	62,536	56,020
<b>Totals</b>					<b>6,381,711</b>	<b>2,587,455</b>

## SERVICE CONTRACTS

<u>VENDOR</u>	<u>DESCRIPTION</u>	<u>LENGTH</u>	<u>END DATE</u>
<b><u>ISD</u></b>			
ATI	Commissions on Pay Phones	4 years	12/30/2001
AT&T	SDN and 800 Service	3 years	08/04/1999
AT&T	State Radio MDT Circuits	2 years	12/31/2000
DCN	Inter LATA DS3	3 years	08/31/2001
MDU	Metro Fiber	5 years	11/30/2001
SPRINT	Relay Service	3 years	06/30/2000
SRT	Frame Relay	3 years	10/09/1999
US WEST	ISDN PRI Service Circuits	2 years	12/22/1999
US WEST	Various T-1 Circuits	3 years	10/28/2000
US WEST	Centrex	5 years	03/17/2001
<b><u>FACILITIES MANAGEMENT</u></b>			
MDU	Electrical Services	7 years	06/30/2005

**HOUSE APPROPRIATIONS COMMITTEE**  
**Government Operations Division**  
**January 21, 1999**

**North Dakota Department of Transportation**  
**Marshall W. Moore, Director**

**HB 1046**

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Section 1 of HB 1046 prohibits multi-biennium service contracts. This may burden transportation in North Dakota. We are aware of at least 28 types of contracts that we routinely enter into which could be affected by this bill.

The most far-reaching effect of HB 1046 would be on road construction and repair contracts. Most of our road contracts begin before June 30 and end after that date. On June 30, 1998, NDDOT had 188 outstanding construction contracts with a value of more than \$123 million. We expect a similar amount outstanding at the close of the biennium. In fact, with the passage of the federal-aid TEA-21 legislation, these numbers will increase. If this bill prohibits these contracts, it would be very difficult to maintain a viable transportation program in North Dakota.

Beyond the direct impact on road building, this legislation could also affect many other NDDOT activities, including Motor Vehicle branch office operations, rest area maintenance, contracts with consultant engineers and architects, contract vegetation control, and transit and safety programs.

Section 1 of this legislation could have a broad impact on transportation in North Dakota. Without the ability to use multi-biennium contracts, we would find it difficult to have a quality road construction and maintenance program.

Mr. Chairman and members of the Committee:

I am Lynette Pederson representing Northern States Power Company. We serve 80,000+ electric and 30,000+ gas customers in and around Fargo, Grand Forks and Minot.

Our company works hand in hand with our customers to help them become more energy efficient. Very often this means the purchase of new high efficiency or properly sized equipment.

It is not unusual that the lack of up front money prevents many customers from making the necessary changes. There are financing programs available that will match the term of the loan to the expected payback. In other words, the amount saved in energy costs is used to pay back the loan. When the loan is paid in full, the customer begins to actually save money. The term of these loans is almost always more than two years.

This bill would greatly limit a state agency or institution from participating in any of these financing programs.

**Source:** S.L. 1915, ch. 152, § 1; 1919 Sp., ch. 34, § 1; 1925 Supp., § 283c1; R.C. 1943, § 54-1601; S.L. 1949, ch. 317, § 1; 1957 Supp., § 54-1601; S.L. 1967, ch. 74, § 14; 1973, ch. 420, § 1; 1973, ch. 421, § 1; 1975, ch. 475, § 1; 1995, ch. 507, § 2; 1995, ch. 508, § 1.

**Effective Date.**

The 1995 amendment of this section by section 2 of chapter 507, S.L. 1995 became effective August 1, 1995.

The 1995 amendment of this section by section 1 of chapter 508, S.L. 1995 became effective August 1, 1995.

**Note.**

Section 54-16-01 was amended twice by the 1995 Legislative Assembly in section 1 of chapter 508, S.L. 1995, and section 2 of chapter 507, S.L. 1995. Pursuant to section 1-02-09.1, the section is printed above as found in section 1 of chapter 508, S.L. 1995.

**54-16-02. Proceedings not valid unless entered in minutes.** The proceedings of the emergency commission are not valid unless entered in the commission's minutes.

**Source:** S.L. 1915, ch. 152, § 1; 1919 Sp., ch. 34, § 1; 1925 Supp., § 283c1; R.C. 1943, § 54-1602; S.L. 1995, ch. 507, § 3.

section 3 of chapter 507, S.L. 1995 became effective August 1, 1995.

**Effective Date.**

The 1995 amendment of this section by

**54-16-03. Unlawful to expend more than appropriated — May secure approval from commission for use of other funds — Deficit void.** A state officer may not expend, or agree or contract to expend, any amount in excess of the sum appropriated for that expenditure, and may not expend an amount appropriated for any specific purpose or fund or for any other purpose without prior approval in the form of a transfer approval or expenditure authorization as provided in this chapter. The office of management and budget shall provide information to the emergency commission with respect to all emergency requests. Any debt or deficit created by a state officer in violation of this section is void. The emergency commission may not approve an expenditure of institutional income, other than gifts or grants, in excess of the institutional income appropriated to the institution by the legislative assembly.

**Source:** S.L. 1915, ch. 152, § 4; 1923, ch. 2, § 1; 1925 Supp., §§ 283c4, 640a1; R.C. 1943, § 54-1603; S.L. 1967, ch. 384, § 1; 1973, ch. 421, § 2; 1995, ch. 507, § 4.

**Effective Date.**

The 1995 amendment of this section by section 4 of chapter 507, S.L. 1995 became effective August 1, 1995.

**54-16-04. May order transfer of moneys between funds — Line item transfers — Order may draw from state treasury.** A state officer may present to the emergency commission an itemized, verified petition requesting approval of a transfer of spending authority from the state contingencies appropriation, a transfer of money or spending authority between funds or line items, or expenditure of federal funds. The emergency commission shall request and receive information from the director of the office of management and budget regarding the petition. If the emergency commission finds that an emergency exists, the emergency commission may order money or spending authority transferred from one fund or line item to another fund or line item belonging to or appropriated for the same institution or board or the same state enterprise, may order a transfer of spending authority from the state contingencies appropriation, may authorize expenditure of federal funds, or in an extremity may authorize money

**HOUSE BILL 1046**  
**Prohibition of Multiple Biennium Service Contracts**  
**Testimony Submitted on Behalf of the University of North Dakota**

The University of North Dakota currently participates in numerous contract arrangements for services which are provided over more than one year and extend beyond one biennium. Examples include:

- prime vendor contracts for food , beverages, copy machines, etc.
- maintenance agreements
- radio/TV broadcast rights
- equipment rental
- speakers for workshops/conferences
- professional performers at the Chester Fritz Auditorium
- Medical School contracts with physicians and clinics
- janitorial and data processing services for off campus locations
- telecommunications equipment and technology services
- Barnes & Noble management agreement
- Western Area Power rate agreement
- AT&T long distance rate agreement
- Numerous sponsored agreements with external agencies

Many of these agreements provide for payment of services on the basis of utilization, i.e. we only pay for the electricity we use. All contracts that extend beyond a biennium have a non-appropriation clause. The ability to enter into multiple year arrangements offers the following opportunities:

- Increased competition resulting in lower prices (increased vendor participation)
- Better services due to longer term working relationship
- Ability to stagger bids throughout the biennium to better manage workload
- Ability to acquire new technology



Major issues of concern are:

1. If the legislation passes as proposed, it is our understanding that UND would not be able to contract with Barnes & Noble to manage our bookstore, nor would we likely be able to attract other privatization opportunities.
2. UND would not be able to contract with WAPA to lock in utility rates. We currently have a contract through 2009 which results in savings of over \$1 million per biennium.
3. UND would not be able to enter into contractual agreements with external sponsors for research and other activities where the project period covered multiple years, nor would we be able to enter into agreements with a subrecipient under those agreements.
4. Our ability to realize the economies and stabilizing factors of longer term relationships with vendors would be eliminated.

Peggy Lucke

Interim Vice President for Finance and Operations

# House Bill 1046

## Public Service Commission Testimony

**Presented by:** Charles E. Johnson  
Public Service Commission

**Before:** Appropriations, Government Operations Division  
Representative Rex R. Byerly, Chairman

**Date:** January 21, 1999

Mr. Chairman and committee members, I am Charles E. Johnson, an attorney with the Public Service Commission (Commission). I appear on behalf of the Commission.

The Public Service Commission opposes this bill primarily because of the complications it will cause with the construction contracts of its Abandoned Mine Lands Division. However, it appears that all contracts for services, including court reporter transcription services, must end on June 30 and be renegotiated for the new biennium.

The AML Division oversees the restoration of abandoned mines. It contracts with independent contractors to remove dangerous highwalls, underground mines and other mine hazards. The contracts typically extend over a summer construction season, beginning in early April and ending late November. Contracts range from as little as \$5,000 to as much as \$1,000,000.

This bill appears to force such contracts to be separated into two contracts, one for activities in the old biennium and the other for activities in the new biennium. It appears that the contracts will have to be bid separately. This would require the development of two sets of engineering and bidder specifications, thereby increasing the cost of staff time, and the advertising of the project for bids a second time, thereby increasing the administrative costs of the project. In addition, bidding smaller projects attracts less competition and has the potential of increasing the overall project cost.

In the past the AML Division has been confronted with an emergency situation when a sink hole occurs on or near a county road or in the middle of a residential area. These emergencies may occur in late June and continue into July. It appears that this bill would require that the AML staff terminate its work on June 30 and restart the work after renegotiating the remainder of the contract.

The lowest bidder may not be the same contractor for each contract. Contractors typically allow roughly 15% of the bid for organizing and moving equipment to and from the site. It appears that this bill would add at least 15% to the cost of each contract. Furthermore, it would appear to interrupt the work in the middle of the project in order to bid the second phase of the project.

The Commission is proposing an amendment as shown on the attached sheet that would except the Commission from this bill.

Mr. Chairman, that concludes my testimony. I would be happy to respond to any questions from the committee at this time.

Prepared by Public Service Commission  
Dated 1-21-99

PROPOSED AMENDMENTS TO HB 1046

Page 1, line 8, after "institution" insert "except the Public Service Commission"  
Renumber accordingly

Sis/legal/HB1046Testimony99.doc/pg3

**HOUSE BILL 1046**  
Prohibition of Multiple Biennium Service Contracts  
Testimony Submitted on Behalf of Minot State University

I. At the end of the 1997-98 academic year, we knew we needed to make a dramatic change in our food service program. We had operated at a loss for two consecutive years which had drawn the attention of the State Auditor's Office.

By the end of May 1998, we were soliciting proposals from seven different nationally known food service providers. We specified a three-year contract period. Most inquired about the possibility of a five-year term since the proposals we received included an amount for capital investment. Because of that specified investment, the firms wanted a longer period of time to amortize their capital outlay.

By July we had contracted with a national provider for a three-year period. I recently received a request to extend the contract to five years so the company had more time to recover their capital investment costs. We will not agree to that request.

I share this experience with the committee for these reasons:

1. This contract began in the final year of this biennium. HB1046 would have limited us to offering a one-year contract with future contracts limited to two years.
2. I suspect little if any interest by vendors under the limitations of HB1046.

II. The proposed legislation to limit contracting to the Budget Biennium will present some difficult challenges to the management of grant projects for the North Dakota Center for Persons with Disabilities at Minot State University. Over 70% of its budget comes from federal grants and contracts. Most of the large projects, those with budgets that exceed \$100,000 per year, have multi-year budgets that rarely coincide with the state's budget biennium. These large projects usually involve a range of activities that are subcontracted to other agencies, groups, or individuals. Arbitrarily limiting the length of these contracts to the biennium will present some significant administrative difficulties. Here are some examples:

1. The state bid process is already very complex. Requiring grant projects that have budget periods spanning more than one biennium to repeat the bid procedures for letting subcontracts will more than double the paperwork and administration costs for management.
2. Federal research and demonstration grants generally require that line items for subcontracts be spelled out in great detail in the budget that is negotiated at the beginning of a grant. It is in the negotiation process that funds are allocated for the intended subcontracts. Having to repeat the bid and contracting process at the end of the biennium makes computing those costs very difficult and ultimately affects the amount of the grant award.
3. Federal research and demonstration grants start at different times, depending on the funding agency. The proposed legislation sets up a situation where a multi-year grant could be awarded part way through the end of the second year of the biennium where subcontracts would have to be negotiated, awarded, and then renegotiated within only a few months.

4. Due to government downsizing, the trend in federal grants is towards larger, multi-year projects. These projects generally require partnerships in the application process, which result in subcontracting for the services.

This week, NDCPD approved contracts for approximately \$400,000 as part of a \$1.1 million grant from the US Department of Commerce. This grant represents a partnership between Minot State University, private telecommunication service providers, and eight rural businesses throughout the state. This grant will span two biennia, even though it is only a two-year project. The proposed legislation would double the cost of administering the subcontracts in the project.

Neither of these examples involves General Fund or Special Funds dollars.

Testimony to the  
House Appropriations-Education and Environment Committee  
House Bill 1046  
Dale Eberle - Bank of North Dakota

Bank of North Dakota is testifying in opposition to HB-1046.

The services BND contracts for range from armored security services for transportation of currency and coin, air and ground courier services used in BND forward check collection service, alarm services for protection of BND's premises and assets, US postal service for caller box services in our lock box service to computer hardware leases, software maintenance and equipment maintenance.

BND is a for profit enterprise which not only generates revenue to cover all its own costs of operations, but also transfers income to the state general fund. As a business enterprise, BND's financial performance is clearly measured in its financial statements.

We need to be able to do business on the most cost effective basis. That includes having the ability to lock in contracts and the best pricing available beyond the biennium. For example, if this bill passes, BND could not enter into a one year agreement within eleven months of the end of the biennium. This would seriously and negatively impact our ability to do business. Also, in the case of computer hardware and software, longer term contracts provide BND with assurances the vendor will be available to support, maintain and upgrade their product.

To protect ourselves, currently contracts that extend beyond the biennium contain a clause that allows BND to cancel the contract if monies are not appropriated.

For these reasons, BND opposes HB-1046. In the event HB-1046 is needed for other reasons in state government, we request an exemption on basis the BND is an enterprise fund agency (for profit) and not a general fund agency.



Testimony of Richard Rayl  
HB 1046

January 21, 1999

- I. Interruption of good business practice
  - A. Performance contracts
  - B. Consulting contracts
  - C. Service contracts for specialized equipment
  - D. Other service contracts for such services as cable TV and telephone service

## North Dakota University System Engrossed HB1046 Testimony

Chair and members of the committee:

My name is Laura Glatt. I am the Vice Chancellor for Administrative Affairs for the North Dakota University System. I am here today to offer an amendment to Engrossed HB1046. We would suggest that the bill be amended to substitute "other financing arrangement" with "debt financing arrangement" on line 9 of the bill. A copy of the proposed amendment is attached.

In its current form, Engrossed HB 1046 would require the NDUS to include, as part of the budget request, a list of every individual asset or service, in excess of \$50,000, that is acquired through a capital or operating lease arrangement or other financing arrangement. It is unclear to us what is meant by "other financing arrangements". For example, many campuses have multiple year contracts for food service with companies such as Marriott Food Services. All of the contracts include the mandatory non-funding clause and the campuses pay for the cost of these services at regular intervals after the services have been provided. This same contract for service arrangement exists in many other areas of campus operations. We not believe the original bill intended that all of these types contracts to be disclosed; yet it is unclear whether this would be considered a "other financing arrangement" under the current bill.

Our amendment would require all debt financing, whether it is a lease or any other debt borrowing, to be fully disclosed as part of the budgeting process. This would provide us further guidance so that we may ensure that there is consistent and complete disclosure of the information. I would add, that our list will only be as complete as the information we have at the time we prepare the budget request. Between the time the budget request is prepared and the close of the biennial period, many changes occur during this three year period. Not all of these are known at the time we prepare the request. We appreciate your recognition of the dynamics of our operation and willingness to provide us the flexibility to address these the needs. This is the only way we can continue to provide services to students on a timely basis.

Thank you for your consideration of this amendment. If you have questions I would be happy to try to answer them.

## Proposed Amendment to Engrossed HB1046

Page 1, line 9, replace "other" with "debt"

Renumber accordingly

### Purpose of Amendment:

Further clarifies that the disclosure requirement relates to those instances where agencies or institutions are entering into debt arrangements that commit resources beyond the current biennium. It would not apply to regular contracts for services that include maintenance contracts, food service contracts and other contracts that are paid as a fee for service.