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2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2094

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2094**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 8, 2007**

Recorder Job Number: **#744**

Committee Clerk Signature

*Debra Linkel* *Revised*

Minutes:

**A BILL for an Act to amend and reenact section 46-02-15 of the North Dakota Century Code, relating to resident bidder preference for public printing.**

***Written testimony presented by Sherry Neas, State Procurement Manager***

**S. Andrus:** [former printer] In today's world a lot of actual press work is done outside printing, they bidding the work or doing the work, do all the prep work, then they email the job to a press facility someplace, in essence, we think of "printing" as being the press work. Most of the printing is probably still done in state.

**S. Klein:** Have we had a glitch along the way? A problem with an adjacent state, Fargo-Mhd, GF?

**Sherry N:** S. Andrus mentioned that there are some printers who do not do all the work in house, so we started asking, where is all the work being done, and we found that sometimes they are outsourcing a portion of it and it really complicates the process.

**S. Klein:** So you feel this will give the ND Printers a leg-up, this will cover them and not create any more confusion instead of having out-of-state printers have the upper hand.

**Sherry N:** We're defining a resident printer as having a bonified place of business. It will help those ND printers that own other interests out of state or outsourcing a piece of it, but the contract will be awarded to the ND business. This Preference Law right now, 75% of our printing is being awarded to ND vendors, and this will help and especially simplify the process for both the printers and for the public entity.

**S. Wanzek:** The way the law is being proposed as, the change, it still allows for exception if it's not practical

**Sherry N:** That is true. There is flexibility in this law where applicable, you could do something else.

**S. Klein:** Any more questions for Sherry? Anyone else in favor of SB2094?

**Jack McDonald:** ND Newspaper Association

Supports this bill, takes out glitch that says where exactly all the printing is done, right now the important thing is to get the bid to a ND bidder where that bidder has to take it to another state is really beside the point. We would appreciate the passage.

**S. Behm:** Does this pertain to the state printing that the state has to do for their own work, or does it apply to anybody in the state of ND?

**J. McDonald:** It is public printing that is done by the state.

**S. Wanzek:** Possible that you can have a potential printing company that is owned by non-resident, who lives outside the state, but the business is located in the state? There might be ND people working there, but the owner is in Mpls?

**J. McDonald:** Yes, that could easily happen as in any other business. The state law defines a bidder or seller contract that can maintain a bonified place of business within the state for at

least one year, so it's just maintaining a place of business in the state for one year, it doesn't necessarily say that the owner has to be a resident, it's just that their business/residence, so yes, it could happen.

**S. Klein:** Anyone here to testify in favor? Anyone in opposition. Hearing none, we will close.

**S. Hacker:** I've actually had experience with a company with a company that is located in the State, ND resident, they use a 4-color press in Canada and they cannot do state jobs. They are very talented individuals, the problem was the 4-color press that they use was also much cheaper for the state and could supply the state, the state was going to save money.

**S. Wanzek:** We're talking about business residence, filed with the Secretary of State, even though they might do work outside the state, that would business would not be excluded.

**S. Klein:** If someone in Mpls opened a shop in Jamestown and under this definition.

**S. Wanzek:** If their business is here they're registered through the Secretary of State, they're considered a resident business of ND

**S. Potter:** Question: What if they were resident business in some other line of business and just opened a print shop? Walmart has been here a year, opens a print shop, would they still qualify? I assume they would.

**S. Klein:** Under that definition.

**S. Behm:** As long as the print shop is owned in ND and they send their printing out in Canada, as long as the profit comes back to ND, I think it would be alright.

**Senator Hacker** made a motion for a **Do Pass**. Second by **Senator Potter**.

Roll call vote 7-0-0. **Passed**. Floor carrier is **Senator Hacker**.

**SB 2094** was placed on the eleventh order on the calendar.



**REPORT OF STANDING COMMITTEE (410)**  
January 8, 2007 12:57 p.m.

**Module No: SR-04-0303**  
**Carrier: Hacker**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2094: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2094 was placed on the Eleventh order on the calendar.**

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2094



## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2094

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 21, 2007

Recorder Job Number: 3531

Committee Clerk Signature

*Stephanie J Thomas*

Minutes:

**Chair Keiser** opened the hearing on SB 2094.

**Sherry Neas, OMB:** See written testimony #1.

**Rep. Zaiser:** Does this run into any violations of the Commerce Clause, in terms of fairness instate verses out of state?

**Sherry:** Generally speaking public procurement frowns upon preference laws. In most other instances, we would normally testify against a preference law.

**Rep. Keiser:** On lines 8 and 9 it says must be awarded, have you had any discussion on the differential in price that might be involved, so it must be awarded?

**Sherry:** This law is fairly loose, and usually preferences do have a percentage so you can find out whether it's a good decision or not. OMB has to promulgate rules related to public printing, and we've defined practicable as when the ND printers are not capable of providing the required printing services at a reasonable price, or meet the required delivery schedule, or whether it's a lack of qualified ND printers. So, it is very loose, because there's no percentage, and it's really left up to the discretion of the purchasing agency whether or not it's too expensive to awarding state, or out of state.

**Rep. Thorpe:** Where it says must, it seems pretty strong there, the must contract with an instate printer. How does this fit, in relation to if there's a bid coming from an out of state contractor for less money for the total contract? In other words, you wouldn't be able to contract with the lowest bidder, is that right?

**Sherry:** If it will, it will be if practicable. It's a pretty broad loophole. If you find that the price received is not reasonable, then that if practicable would maybe be determined not practicable. This is honestly a difficult law to apply, because it's not a normal preference law, it's really a set aside. The way this law is written is we will purchase from ND bidders, unless there's some reason that we don't. So, what we try to do in this procurement arena is to find out if it's determined upfront that this needs to be awarded to ND printers, and we'd normally reject bids from out of state printers, unless the prices received from instate bidders are not reasonable, or we don't get any.

**Rep. Thorpe:** OMB makes that decision then?

**Sherry:** Some printing is delegated back to the agency, so the agencies could be making that. What OMB does is we have publicized rules, then we have a guideline, and then we like templates, but a lot of it is ultimately left down to the decision of the purchasing agency, whether in their opinion they have a reason that's not practicable to work instate, or they determine that the price received is not reasonable.

**Rep. Thorpe:** This must be seems pretty solid to me. I understand, and instate businesses should have preference, but I'm wondering if you wouldn't consider this too strong of language?

**Sherry:** You have to go back to that if practicable it only must be if it's practicable. That's fairly consistent with other sections within the state procurement law.

**Rep. Amerman:** Are there any printers that just have a residency, but they really don't do hardly any printing within the state, maybe they just have an office or anything nicer. Are there any of those that are manning the state?

**Sherry:** Yes. There are businesses in ND that really outsource all the printing. The way the current law is written is that we would no longer jeopardize this, because none of the work is done in the state.

**Rep. Gruchalla:** Is this exclusiveness common with the way other states treat our printers?

**Sherry:** Most states, about 35 out of the 50 have reciprocal preference laws. The way a preference law works is that if a state has a preference law, and they're big in another state, they usually will add that percentage. In looking at the other laws, it's true that we are definitely a minority of the states that still have preference laws for printing.

**Rep. Thorpe:** I'm wondering the reasoning why this bill is here with that language?

**Sherry:** OMB drafted the bill, and it was introduced at our request. This is an existing law that is in the books, but has been problematic for us. So, we were trying to brainstorm something that would be easy for us to apply without legating the intent of our forefathers, if you will.

**Rep. Zaiser:** The other portions of my question are in terms of percentages. Are you opposed to using that percentage penalty, or using the set aside? This is the way you'd like to go, obviously.

**Sherry:** We hadn't played with the idea if we were going to look at a percentage, we'd like the opportunity to meet with the committee, and discuss that as a possibility. It would make it easier to apply, but it wouldn't be a complete set aside the way it is right now.

**Rep. Clark:** Wouldn't it be better if there were no preference law? Do other states have no preference law?

**Sherry:** From the state procurement perspective, that truly would be the best situation, because then you have fair and open competition, which is really the defining principal of public procurement.

**Rep. Amerman:** Do you have a list, or could you get a list of printers that do all their printing in state, and the outsourcing printers?

**Sherry:** We don't have anything like that, and to do that we really have to do a lot of serving of the printers. It depends on what is being printed.

**Rep. Dietrich:** Often times you'll see the lowest best bid; would the lowest best be practical, and not just lowest?

**Sherry:** Right now if all things are equal, we already have existing laws.

**Rep. Dietrich:** Approximately, what is the amount of cost of printing that you do in the state of ND per year?

**Sherry:** It varies, but it runs about \$5 million a year, and that is just printing that is outsourced.

**Rep. Keiser:** I don't see how this does anything. You've said in your testimony at least 5 times if applicable, and that's your loophole. When is it not applicable, when is it applicable?

**Sherry:** This has presented us a challenge for a long time, and that's why when we promulgated rule, we tried to narrow that down when it is applicable. When ND printers are not capable of requiring the printed serves at a reasonable price, or leave their part delivery schedule, or when specialized printing is required, this is a lack of qualified working printers to provide those services. So, those are the circumstances right now in administrative rules under which you can exercise that loophole if you like.

**Rep. Keiser:** So, there is no definition there? I can interpret those quote rules any way you want me to, and so we still come back to if applicable. You're going to make the decision of whether or not to place the work instate or out of state.

**Sherry:** Yes, you're right. There's a lot of discretion here to make that determination.

**Rep. Keiser:** It is when you boil down to price.

**Sherry:** If you look at the historical expenditure 75% of the printing is staying instate, and 25% is out.

**Rep. Keiser:** 75% was a low bid, or a high bid?

**Sherry:** I wouldn't have any data on that. In our experience, it's not often that we waited, and allow a bid to go out of state, usually it's just specialized printing jobs, such as the tourism guide.

**Rep. Keiser:** So, I did the tourism guide, and my bid is \$5,000 less then the next bid. Are you going to give it to the second low bidder?

**Sherry:** Under the proposed amendments, whether or not the ND bidder outsources would not be a factor. It would just be whether or not they are a resident's bidder.

**Rep. Keiser:** So, you're still going to go on price?

**Sherry:** That would be the case. If the bidder was a resident to ND, it would just go down to price.

**Rep. Zaiser:** Identify maybe 7 items, and then you gradually go down if there's a tie on price, then you award promptness in delivery. Then the next item for discussion, maybe have 3 or 4 items, and then still there's no differentiation, you award the local bidder whether that be work done in state, or out state, or local contractor.

**Sherry:** That is the case right now. If there's a tied price, then it goes instate. As I mentioned before, we've got tie braking procedures where it goes instate approved or not, and then the rest is involved in tiebreaking procedures.

**Rep. Zaiser:** Is that codified then?

**Sherry:** Yes, that is in administrative rules.

**Rep. Gruchalla:** I think you said that you would prefer to have no preference bidding, and also that you'd rather have a percentage built in, correct?

**Sherry:** Generally speaking, state procurement frowns upon, or is not best practice to have printing law. One of our hopes would be to make it easier to apply, and the reason I brought up the percentage is because then it takes the guessing out of it, and you know exactly what the rate of preference is.

**Rep. Gruchalla:** Why didn't the bill identify, or go into those two issues?

**Sherry:** There's a proverb so you don't move the ancient boundary stone established by your forefathers, and that was what we were trying not to do. This has been on the books for a long time, and what we wanted to do is make it more workable. We did talk about a rate of percentage, but that actually lessens the effect of this, because as it is right now it is a set aside, you must use ND bidders, or ND printers, or the work must be done in ND unless it's not practicable to do so. A percentage is a lot less astringent than set aside, so we were trying to keep the intent of the original legislation.

**Caitlin McDonald, ND Newspaper Association:** Support SB 2094.

**Rep. Kasper:** Why would this be an issue at the ND Newspaper Association? Where is the tie?

**Caitlin:** We have several newspapers, for example the Fargo Forum, which is contracted out, and has had some of their printing done in Detroit Lakes, and the change awarded adheres more to the law.

Hearing closed.

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2094**

## House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: **20 March 2007**

Recorder Job Number: **5323**

Committee Clerk Signature



Minutes:

**Chairman Kaiser opened the discussion of SB 2094.** This is bill on resident bidders. It is presented to clear up the language. What this allows the in plant print shops at universities to do color process printing if they desire. This limits that just to universities,

**Representative Zaiser:** Did HB 1011 pass?

**Chairman Kaiser:** It has passed both houses and is signed. If we pass this, process color would go back to a limit and keep it in the private sector.

**Representative Kasper:** I move adoption of amendment .0101.

**Representative Ruby:** I second.

**Representative Zaiser:** Just to be clear. This bill would allow both private sector and public sector to compete.

**Chairman Kaiser:** No. This language says "may not provide the following services. . ." I have great philosophical debates with my friends in government. Keep in mind that when they buy a piece of equipment, they have an appropriation to provide it. They don't have to make any money in advance to go buy a piece of equipment. There's no interest expense, there's no depreciation expense. They do pay \$7 psf as a fee. I would trade that in heartbeat for having to the have parking lot, bathroom, lunch room, security if that were my entire cost. It

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House Industry, Business and Labor

Bill/Resolution No **SB 2094**

Hearing Date: **20 Mar 07**

would be a sweetheart deal. So, do they, on paper, look like they are less expensive?

Absolutely.

**Representative Boe:** How many printers are they going to be competing with?

**Chairman Kaiser:** Probably about 50.

**A roll call vote was taken: Yes: 13, No: 0, Absent: 1 (Thorpe) The amendment was adopted.**

**Representative Kasper:** I move a Do Pass as Amended.

**Representative Dosch:** I second.

**A roll call vote was taken. Yes: 13, No: 0, Absent 1 (Thorpe)**

**Representative Zaiser carried the bill.**



**House Amendments to SB 2094 (78082.0101) - Industry, Business and Labor  
Committee 03/20/2007**

Page 1, line 1, replace "section" with "sections" and after "46-02-15" insert "and 46-02-20"

Page 1, line 2, after "printing" insert "and services provided by in-plant print shops"

Page 1, after line 9, insert:

**"SECTION 2. AMENDMENT.** Section 46-02-20 of the North Dakota Century Code is amended and reenacted as follows:

**46-02-20. In-plant print shops.** Central duplicating services of the office of management and budget or by departments, institutions, state offices, and printing services under the jurisdiction of the board of higher education, with the exception of the state ~~school~~ college of science, the university of North Dakota, ~~and the North Dakota state university of North Dakota - Valley City, and Valley City state university,~~ may not provide the following services: printing or duplicating of all coated stock, continuous forms, snap-out forms, envelopes over twenty thousand, process color, and print or duplicate paper larger than eleven inches [27.94 centimeters] by seventeen inches [43.18 centimeters], excluding work done on plotters."

Renumber accordingly

Date: 3-20-07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2094

House Industry Business & Labor Committee

Check here for Conference Committee

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

Action Taken Adopt Amendment 78082 - 0101

Motion Made By Rep Kasper Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe		
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep. Zaiser

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

Date: 3-20-07  
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2094

House Industry Business & Labor Committee

Check here for Conference Committee

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

Action Taken DO Pass, as amended

Motion Made By Rep. Kasper Seconded By Rep. Dosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe		
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep Zaiser

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

**REPORT OF STANDING COMMITTEE**

**SB 2094: Industry, Business and Labor Committee (Rep. Kelsner, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2094 was placed on the Sixth order on the calendar.**

Page 1, line 1, replace "section" with "sections" and after "46-02-15" insert "and 46-02-20"

Page 1, line 2, after "printing" insert "and services provided by in-plant print shops"

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**"SECTION 2. AMENDMENT.** Section 46-02-20 of the North Dakota Century Code is amended and reenacted as follows:

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Renumber accordingly

2007 SENATE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

SB 2094

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2094 Conference Committee**

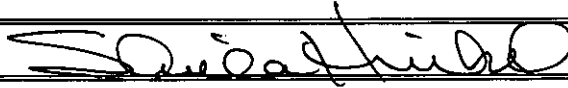
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **April 4, 2007**

Recorder Job Number: **5742**

Committee Clerk Signature



*RE Printing projects relating to resident bidder preference for public printing.:*

Conference Committee Weds. April 4, 2007 HB 2094 2:30 pm

All members present: Chairman Hacker, S Andrist, S Heitkamp

Rep. Dosch, Rep. Ruby, Rep Zaiser

OMB: Linda Belisle, Sherry Neas

**S Hacker:** The House made some amendments to the Senate bill. Please explain those.

**R Dosch:** My understanding the set of the amendments that the house made basically was to reinstate section 2. Another bill had previously passed that dealt with in-plant print shops, in that bill, what was slid through that wasn't realized at the time, is, they took out as an exemption, the words "process color" that was missed when it went through the House and it was caught and I guess it raised a lot of concern which is why R Kaiser had it amended back onto the bill. By eliminating the words, "process color," it opened up the door to state agencies and government to get into the color processing/copying business. So that was the reason House put it back in.

**S Hacker:** Because this would be the last bill filed?

**R Dosch:** Yes The understanding is the last bill that gets filed is the way it ends up.

**S Hacker:** Was the other one already signed by the Governor?

**R Dosch:** Yes, through the process, but maybe not signed,

**S Andrist:** *Discussed what process color was, brought a newspaper and showed what "spot" color and "process color" were, and what the difference is. Suggested put the color back in. Commented on doing 100 copies on computer printers. I don't know how you're going to stop this if you do 100-200 copies per copy. When you do 100-200 copies, it is cheaper to do it on a computer printer and they all have that equipment and capability. It eliminates coated stock, which is a highly glossy paper. We need to limit it to 100 or 200 copies. I can go either way.*

**Rep Zaiser:** I like S Andrist's idea, but have a little twist on it, rather than have a number, you could have a small number, put a number and put just put "commercial printers." If someone prints 1000 of something, so be it, so that the process color can be for themselves, but if you hire someone to do it.....

**S Hacker:** I think this is the procurement process. I spoke with a few individuals, the problem is they're trying to print up a small brochure, 20, 50, 200, before they are forced to get 3 bids, bid-out and have a commercial printer print them up. I've seen them, and they're not that great, it's not the coated stuff.

**S Andrist:** It is the shiny stock. That's prohibited.

**R Ruby:** I think the fear is, that when they can step it up and get higher quality, and bigger machines, it wouldn't be feasible on what they can do and can't do. If you are keeping some kind of control on what the line is. If you allow 100 copies, 500 copies, if you get better printers, once you have invested, once you have the investment, why can't they do it for all their needs? The idea is to make sure the state doesn't put investments in equipment that, there are advantages to the government buying equipment over what the private entity can. I noticed that certain taxes are incurred and office space being taken care of at the office, to have the

printers pay for their space. The concern was to not get the nose of the camel under the tent too far.

**S Andrist:** I fought this battle as a printer for 30 years myself. I guess I could accept the amendments, I'm wondering if the agencies assume that they can run them on color laser printers, they do the same quality as 4 color printing, but aren't really printing. Toner is extremely expensive, it is not cost effective. I was thinking, if we make an exception to 100 copies, we may define them, if it represents color printing. They may do 1000 copies on the printer and say, "This isn't color printing, it's just a color copy."

**S Hacker:** Sometimes the Legislators are frustrated when agencies are ignoring the law, they are printing things currently, they will continue to print those things anyway. We need to make progress, 100, 200 copies, we need to get it done commercially. Technology is already at the agencies. I hate to deny anybody access to new technology, you age yourself by not providing the opportunity.

**R Ruby:** My concern is setting the limit for one, with 20,000 listed for envelopes, by putting a number on one type of processing, is that going to be for all types of processing? Are we going down the road of identifying each type we have?

**S Andrist:** The 20,000 is just for envelopes. If we put 100 or 200 for color printing. Color printing done on a computer printer. I can go either way. I know the frustration of local contractors are seeing themselves eaten-up by state agencies doing things in house that may not be cost effective.

**S Heitkamp:** Is there any evidence that committee members have that these state agencies are doing it for a profit other than their own needs?

**S Hacker:** Nothing that I would know of.



**S Heitkamp:** So they're really doing it for their own needs? So if they're doing it in-house, they have to answer the question if it is cost effective or not. They may be doing it and not realize it is not cost effective.

**S Andrist:** They have the paper supply, computer, printer, loaded, they have no idea what the cost is. It is extremely expensive if you do short runs..

**S Heitkamp:** I would support the House amendment if there were some evidence that they were doing it for a profit or expanding business or anything like that. As it went over, it looked like common sense. The world's changed, you can do color printing on your printer easily.

**R Ruby:** When I was looking for printers for my business, I needed a printer for my statements and had color on my logo, and was looking for printers with color and with black, I could see it was very expensive, so I bought forms with pre-printing in color and printed on the pre-color documents. They probably have the printers do small runs, I wouldn't do 100 on my printer, I don't think that's cost effective for even that number. There may be printers where you would.

**S Andrist:** The nature of the business, they almost give away the printers, so they can get money for the color toner.

**R Zaiser:** Curious, can OMB come up and we can ask some question, the quantities, and our concerns.

**S Hacker:** *Asked Sherry Neas, Procurement Manager* Is this the marketing tourism 80 page booklet that they send out, or...?

**Linda Belisle:** Director Central Services Division, OMB

We are talking about a survey from the agencies, the process color, the two types of color.

There were very few agencies that run under 1000, they do it in large runs mostly, there were some, they provided samples. There are agencies, commerce has a series of work that they do, this work is designed and is bid out. Excellent prices. Excellent quality, coated stock. This

