

2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2027

# 2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2027  
1/5/2011  
Job Number 12590

Conference Committee

Committee Clerk Signature

*Erin Tubett*

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

Specifying certain materials in a request for bids for existing buildings allowed

## Minutes:

1 Attachment

**Chairman Senator Klein:** Opened the meeting

**Tim Dawson:** Legislative Council; SB 2027 ties into SB 2026, he explains the bill. Brand or name can be requested.

**Chairman Senator Klein:** Bill allows for the higher bid.

**Tim:** Generally a prohibition on the products. States you can ask for a specific type if you have a reasonable explanation for doing so. This states you can do so earlier in the process.

**Chairman Senator Klein:** So we can ask for a specific copy written name in the bid process.

**Senator Schneider:** Who requested this change?

**Tim:** It came from two instances; locks in a building and electronic locks tied up to a computer system and the locks installed were not compatible. The other was a large treatment plant and the spare parts were \$200,000.

**Senator Nodland:** Asked what the reaction from the industry was and if there were any issues?

**Tim:** Said he hated to speak for industry when they were in the room. He couldn't remember if there was anything in particular, there is room for abuses from both the industry and the government.

**Senator Andrist:** Wanted to know if he could specify who would supply the products and if there was anything that excludes a competitive activity.

**Tim:** That goes to the who, you would have to ask for the what. What being the brick they had.

**Senator Andrist:** In a sense it would still give the franchise to the original builder. I sense a potential for some abuse but also see the practical application.

**Tim:** Yes, looking at the bill but if there is going to be abuses it would be quickly brought up.

**Chairman Senator Klein:** Any other questions for Tim. Asked if anyone else in support of bill 2027?

**Terry Traynor, Assistant Director of North Dakota Association of Counties:**  
Attached testimony (1)

**Chairman Senator Klein:** Asked for any questions.

**Senator Nodland:** How limited is this and how far does it go? Can we be doing an addition and start specifying what we want?

**Terry:** If the product is already there, you don't want to get too specific because you would want to balance the cost. If you get too specific you might lose at the other end.

**Senator Laffen:** The bill says it would have to contain that copyrighted bid.

**Chairman Senator Klein:** Closed the hearing and asked for discussion.

**Senator Laffen:** This bill makes a lot of sense. It is more than locks. This would be good to have in place and somewhere down the road we look at expanding this to new construction in some fashion. There are some products we would like to specify sole proprietors that have a far superior product that could save energy, (gave examples).

**Senator Nodland:** Has a concern of what this could lead to. He is looking out for the other side of the industry. This bill is okay but expanding it because someone makes a better product then we are limiting who can bid. We're a public entity working with tax dollars; we should be open to everybody and allow everyone to bid. Then as a public entity or a board you decide if it is correct or not.

**Chairman Senator Klein:** The question is getting the lowest bid and there being an exception of getting the best product. If you get the lowest bid but the other company

provides a better product, in the long run we're going to save money in the future. How do we draw that distinction?

**Senator Laffen:** In most of the cases we don't have the user material in a singular bid. We are taking a lot of different products in a singular bid where each product is identified. We are allowing industry that had the low bid in the past and got there product into the building. Now we are allowing the building owner to stay with that manufacturer for maintenance.

**Senator Andrist:** Share concerns for abuse with Senator Nodland but feels there is more good than bad in the bill. Move for a due pass.

**Senator Murphy:** Seconded the due pass motion.

**Senator Larsen:** It might deter technology to move forward, gave example.

**Chairman Senator Klein:** Wouldn't that be covered in the specs that need to be provided?

**Senator Laffen:** This isn't limiting that we have to stick with the previous manufacturer. Only in the case that it makes sense for the building project. Most will recognize if there is a product is far superior they would make that jump.

Chairman Senator Klein called for the roll on SB 2027

Roll Call Vote Taken

Do Pass

Pass 7-0

Senator Schneider to carry

Date: 1/5/2011  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2027

Senate Industry, Business and Labor Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Senator Andrist Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Schneider

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

**REPORT OF STANDING COMMITTEE**

**SB 2027: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2027 was placed on the Eleventh order on the calendar.**

2011 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2027

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee  
Fort Union Room, State Capitol

SB 2027  
March 3, 2011  
14920

Conference Committee

Committee Clerk Signature

*Carmen Hart*

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

Relating to specifying materials used in a public improvement

## Minutes:

**Chairman Bette Grande** opened the hearing on SB 2027.

**Tim Dawson, Legal Council, Staff the advisory commission in intergovernmental relations**, appeared to give information about this bill. The bill before you allows for the specifications of brands of goods in a request for bids in a public improvement if there is a remodel and the specified good is already used in the building. The language in particular says a governing body in a public improvement may not request bids for any article or specified copyrighted brand or name, the product of any one manufacturer or any patented apparatus unless remodeling or expanding an existing building that contains the specified or copyrighted article, product of one manufacturer, or patented apparatus or appliance. This bill came to the committee so that when doing a remodel, the same locks could be used in a jail. If you were doing a water treatment facility, you could use the same sort of equipment as you used in the previous ones because spare parts which you must keep on hand costs hundreds of thousands of dollars. That is the impetus for this and it came from the ACIR.

**Vice Chairman Randy Boehning:** There is a clause in the spec. books that reads equal or equivalent to. The product is the same. There are a lot of products that are the same. You have basically the same doors. Everything is the same except all of a sudden they will say John wants—if I can use Mr. Boyle over there as an example—John can say I got these doors from such and such a place. I have used them for 20 years. Another door manufacturer comes in and says I can make that same identical door, different name, different brand. They look identical, but Mr. Boyle says I can pick this one but the other one is equivalent to. Is this going to allow someone to use that more expensive product versus the cheaper product?

**Tim Dawson:** I am looking at the final report in front of me. There were some abuses by people saying that their product was identical and wasn't. It cost some political subdivisions a lot of money and then having to change back to let's say the lock that does work. They weighed the abuses of people saying it is equivalent and isn't versus the abuses of government making those sorts of decisions that would be unfair or not right and



they felt that because if these political subdivisions made preferential deals, they would be out of their jobs real quick. There would be political accountability. There was less likely for abuse on that side of the equation.

**Vice Chairman Randy Boehning:** In those projects where they had to go back and change the products, were there architects involved in that process?

**Tim Dawson:** I don't know.

**Vice Chairman Randy Boehning:** You can look at steel roofing. You can have ten manufacturers make basically the identical product and it is all the same. I am just trying to weigh this out. We don't want to bump the prices up anymore than we already do. If we can get something that is equal to or just as good as—I would like to see probably some change in that language in there somehow so we don't end up with some preferential treatment with some products versus others.

**Tim Dawson:** That is a policy decision that is contained within this bill.

**Bonnie Staiger, American Council of Engineering Companies,** appeared. **Jeff Volk, President of the organization,** was going to be here to testify today and is unable to. The ACEC is in favor of this bill. We would like to propose a two word change that we think would strengthen the bill and make it less confusing in the future. Line 13 says expanding an existing building that contains the specified or copyrighted article. We would like to suggest that the words existing building be changed to public improvement in part because the term public improvement is defined in Chapter 48 where existing building is left to interpretation. For example, Mr. Dawson used the example of a water treatment plant. Not a lot of people would necessarily think of a water treatment plant as an existing building but there are other kinds of things that are more easily and recognized as public improvements such as lift stations, water and sewage plants, other kinds of systems that appear in those type of structures but aren't just in the normal person's definition of building.

There was no opposition to this bill.

**The following were neutral to this bill.**

**John Boyle, Director of Facilities Management here at the State Capitol Grounds,** appeared in a neutral position. I can see how someone in my position can really take advantage of this bill. I will give you an example. I am responsible for the \$52 million Heritage Center expansion project. I went through all of the items that we bid and there aren't more than probably 20, maybe 10%, of those items that are not trademarked or patented. An example would be carpet. If we were good to go and do 100,000 square feet of carpet in that expansion floor, we could just pick the people that already have carpeting in the existing Heritage Center. While Rep. Boehning said equal or equivalent, you can already do this. You can already specify who you want. When an engineer or an architect is involved, it is their responsibility to make sure that what is submitted in their bid is the equivalent or equal. I would beg to differ because I heard it when it was on the senate side and I heard the examples and they are good examples. The water treatment plant is a good example. Maybe this applies to the water commission. In the case of the locks in the

jails if an engineer or architect approve that as an or equal then the political sub or the state shouldn't have to pay any more money. The architect, with their errors and admissions insurance or whatever, should have been responsible for having the contractor go out and replace that part. I just can't imagine giving a \$1 million worth of carpet to a contractor without bidding it to others because carpet is trademarked and patented. I just can't imagine that would be something that we would do. There are a lot more jobs like what we do. There was another example of an air handling unit. If you have an engineer involved and they spec. what the air handling unit is, you can say if you want a McQuay air handling unit, McQuay or equivalent. You can even have them list what the equivalents are, but to just say I am going to buy a McQuay because I have a McQuay. Again, that makes my life very easy, but I just think it is just out of sheer laziness. You are not putting the engineer or architect making them responsible for an equivalent product really being an equivalent product. I believe the process we have right now is fine, but I am in a neutral position. If this bill would have been in last session when the Heritage Center project was submitted and approved, we wouldn't have had to bid 80% of the items. It would have been fantastic. Instead we always had to go and say or equivalent. We made our architect when we went through the list of the winning contractor and he submitted all his products, we went through and made sure everyone was equivalent if it wasn't what we specifically specified in the specs.

**Chairman Bette Grande:** I have a question when you bring up the expansion. One of the important pieces is the façade of our facilities on the grounds. We would not say or equivalent when it comes to the particular marble outside? Do we not have specific that we are matching that up.

**John Boyle:** For the limestone facade we specify that it has to come out of the quarry. We specify that it has to be a certain thickness, cut a certain way. If somebody were to come to us and make a good argument that says they could reproduce limestone not specifically from that quarry, but if they could give us a mockup showing us that it would match and bring a piece and show that it would match, that would have been one we wouldn't have had to write a spec. for. They could charge whatever they wanted. You are taking all the competition out of it. The Historical Society said we have to have the same security system. I said I am sorry, but the statue doesn't allow that. We will put what you want or equivalent and if somebody comes up with another one that the engineer or architect believes is equivalent that is what we have to go with. We can't pick and choose which is what we are going to use. If this bill were in place, we wouldn't have had to go through that, we could have just said we are going with this and whatever those folks wanted to charge that is what we would have ended up paying.

**Rep. Ron Guggisberg:** What if we get carpet from a different manufacturer and they say it is equivalent and it turns out it is not equivalent, what is the recourse for the state?

**John Boyle:** If we had an architect or an engineer say yes this is equivalent and it didn't turn out being equivalent, I would ask them you are the one that approved this product, it is not equivalent, someone has to make the contractor tear that out and replace it. It shouldn't be the state's obligation to pay that. That is the problem. We have a lot of people in the state that will just pay it so that it is fixed, it goes away. The state wasn't liable in any way. It was the architect or the engineer who said that it was equivalent and it wasn't.

**Rep. Karen Rohr:** If we would change the term on Line 13 from building to public improvement, what would be the implications of that in your mind?

**John Boyle:** I don't think there would be any implications.

**Rep. Karen Rohr:** It just seems more of a global term, public improvement.

**John Boyle:** As was mentioned, that is what it says in the chapter. It describes it as a public improvement.

**Rep. Glen Froseth:** Would you be in favor of us submitting in a construction of a new governor's mansion into this bill?

**John Boyle:** I would probably be neutral on that also.

**Rep. Glen Froseth:** The reason I asked I hadn't seen any bill like that come through.

**Rep. Gary Paur:** It sounds like you make a fairly compelling argument to just leaving things the way they are. Why do you think we received it?

**John Boyle:** When it was on the senate side, nobody spoke up in a neutral position or opposed to it. All the arguments that were brought before and what the interim committee worked on were very valid arguments. Then it passed. Of course, I report to somebody, so before I come down and speak, I bring them up to my supervisor and she said yes we probably should talk about this when it gets over to the house. That is why I am here.

**Vice Chairman Randy Boehning:** Maybe we need to amend this so that it is at \$100,000 to where we have that threshold in there again. If you are going to use architects and engineers, anything over \$100,000 would be protected by that. When you do your small projects you could say I need to go and buy the same type of material to match it so we have everything the same. I don't know how you would feel on that.

**John Boyle:** Right now we can do that. For anything under \$100,000 we can just pick whoever we want, whatever product we want, and do whatever needs to be done. That was my biggest neutral position on this bill was that there is no limit to what can be spent on any product. I know the water commission is a perfect example of an agency that could really use something like this, but when you have agencies like facility management, DOCR, Human Services that have other public buildings that do projects that are over \$100,000 and there are architects and engineers, we could really take advantage of this bill.

The hearing was closed.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee  
Fort Union Room, State Capitol

SB 2027  
March 4, 2011  
14959

Conference Committee

Committee Clerk Signature	<i>Carmen Hart</i>
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## Explanation or reason for introduction of bill/resolution:

Relating to specifying materials used in a public improvement

## Minutes:

**Chairman Bette Grande** opened the discussion on SB 2027. Since we kind of speeded through things yesterday, we missed out on letting Terry Traynor testify because he got here about ten minutes late. Between him being late and me being early we totally missed each other yesterday and so I offered to allow Mr. Traynor to come forward and offer his testimony on this bill.

**Terry Traynor, Assistant Director, North Dakota Association of Counties**, appeared in support. **Attachment 1.**

**Vice Chairman Randy Boehning:** I really have a concern with this being in the construction field for quite a long time. If you are looking to specify something, put that specification in then and if they come in with equal to—I really have a problem with let us just use this. It is kind of like giving certain contractors a preferential treatment. It leaves some contractors out in the bid process. What is your opinion on that?

**Terry Traynor:** An issue came up in the interim and I recognize that. Local elected officials are going to want to get the best deal for the counties, and I don't see them specifying a product unless they feel there is no other way other than using that product. It could be abused now I suppose. This was experience that a number of counties had and they felt that it would have been cheaper in the long run to have specified ahead of time.

**Vice Chairman Randy Boehning:** Are they using engineers, architects when they are doing this bid process or is it just the counties doing their own management?

**Terry Traynor:** Like the state, once you hit a \$100,000 any political subdivision is required to use an architect or an engineer to design the remodeling, construction, whatever it is. Under \$100,000 they do not need to use an engineer but they do not need to bid either.

**Vice Chairman Randy Boehning:** Reading your testimony on the air handlers, they went with whatever brand it was at a higher price to get what they wanted. Correct?

**Terry Traynor:** I believe in that case what they did was they just bought the one item at a time to stay below the bid requirement. They just purchased direct.

**Vice Chairman Randy Boehning:** This is the product they want even though it is going to cost more. Essentially without going to the bid and giving somebody else a chance and costing taxpayers more money, correct?

**Terry Traynor:** They felt that by using the alternative brand that may have come in at a lower price if they had bid it that ultimately the maintenance cost and because of the non native communication with their heating and cooling control system would have cost them more. That was the determination of their contract officer.

**Rep. Gary Paur:** In testimony yesterday these bids that are over \$100,000 you have to have an architect or engineer for them. If they are not compatible they are protectoral or the engineering firms are liable to make it compatible. I can't see the advantage.

**Terry Traynor:** That was discussed at the interim as well and a number of the county people felt that although that is indeed the law, it is very difficult to prove that case and get any sort of compensation from the architect and engineer. It is a challenging argument to make.

**Rep. Gary Paur:** If specified use as air handling system and it doesn't work, you are just out of luck? Maybe we should drop the requirement that we use engineering and architectural firms.

**Terry Traynor:** You probably wouldn't see us testifying against that bill. It comes down to a matter of degree. Will the air handling system work? Does it work as well as it should? Is the maintenance cost higher than was expected because it is non native? All those things figure in and it is pretty hard to prove that the engineer was totally incompetent or lax in their duties if the thing is still working. If the long term costs more, who is at fault? It gets to be difficult and also particularly in the smaller counties you don't have a lot of options for architects and engineers or contractors and sometimes they hate to create more of a problem for the future by going that route.

**Sherry Neas, Office of Management and Budget,** appeared. I would like to propose a suggestion for SB 2027. **Attachment 2.** I am here on behalf of John Boyle. What I am handing out is Century Code 44-08. This is a miscellaneous provision but it is really one of the broadest procurement laws in the Century Code. The first two sections talk about preference law. Subsection 3 is what I would like to draw to your attention. As Mr. Boyle discussed, the language in SB 2027 is very wide open and he gave some examples of how it could be used or misused. The language in 44-08 is actually language that has been amended into that section within the last ten years. It applies to OMB, any other state entity, governing body of any political subdivision. It really is just good practice when you use a brand name specification you ask for or equal, but this section of law acknowledges that sometimes there are circumstances when it is advantageous to specify a particular brand, make, or model. Then it requires the purchasing board to provide a written justification. Sometimes when you use a particular brand name, competition exists. For example, heat pumps. The capitol needed to procure about 400 heat pumps. We had an

existing brand that we were using we said or equal and then we had another brand that was offered as an or equal. You might have a particular brand. Say I want a Trane heat pump. There are lots of vendors that sell Trane so this law says that if you do specify a proprietary product, a particular brand, then you also go through a competitive process unless basically there is no competition. A solution may be to say instead of the new language that is being proposed to say except as otherwise provided in Section 44-08-01. This is existing law and it has some quality assurance in it. It provides a written justification for why you can't specify or equal and requires competition if you are doing a particular brand unless you can't get competition.

**Rep. Lonny Winrich:** As I read this, it looks to me and a lot of the discussion that has been going on about this is that the thought is that we are replacing physical objects or bidding physical objects. But as I understand Mr. Traynor's testimony, most of the problems that have arisen out there in places have to do with things working with software in an integrated computer system. I know from personal experience as a member of the interim IT committee that there have been a number of software systems that the various state departments including Legislative Council, Secretary of State's Office, and so on has gotten a little ways into a software project and discovered it is not going to work that way and it has cost the state millions of dollars. It is much more difficult to certify compatibility and to deal with these compatibility issues when you are talking about things working with software. There are a lot of compatibility issues when you start dealing with software systems that are very subtle, and I think that is the sort of thing that this bill is addressing. Is there anything in code particularly pertaining to software?

**Sherry Neas:** Of course, software would be outside of public improvement except as it relates to maybe a security system that would have compatible software. With regard to public improvements, there is only the law. There is not a regulatory agency so no rules are promulgated to expound upon what is in law. The way this chapter works is if it is over \$100,000 the government entity needs to use an architect or engineer to draw the plans and then it is bid, lower bidder meeting spec. using those plans. In answer to your question there is nothing specifically related to that except that they have to meet the specifications. The specification on that would say you do have an existing security system, for example. You are doing an addition to an existing building and if you wanted the new security system to be compatible with existing that would have to be part of your specifications. Before you made the award you would have to verify that the solution that is being offered is in fact compatible or not. We just wanted to try to see if we could find some language that would provide some kind of process for facilitating instances when you do need a particular brand without opening wide up to potential abuse. In our chapter of law, the state procurement chapter of law, we say except as otherwise provided in Section 44-08 that these purchasing contracts must be awarded through a fully competitive process.

**Chairman Bette Grande:** As I am reading this Part 3 here, I am not sure we need 27 because it says that we can document circumstances, provide written justification for the proprietary specifications or purchase. That gives them that authority so why do I need another section of law? It says political subs so that would take care of counties. They have that ability then in this particular section.

**Sherry Neas:** When you read the existing law in 20-27, it doesn't have any provisions for something other than so brand name or equal. Which would trump? Does this trump this because in the public improvement law it doesn't reference this? It was just an idea that if the existing law referenced this chapter you would then have the authority. I want to disclaimer though. This is a fairly recent idea. We haven't consulted legal counsel nor have we had an opportunity to talk to the association of counties on whether or not this would be a mutually agreeable solution.

**Chairman Bette Grande:** Are we looking at the solution that we would strike the new language and put in language that says or otherwise and then reference?

**Sherry Neas:** Yes, something like that.

**Chairman Bette Grande:** What I would like to do is ask that legal counsel, your office, and counties try to work on some language for us. Are you in agreement to that? They agreed.

**Rep. Karen Rohr:** I am going to throw this out because I am wondering if maybe this isn't part of the problem too. Where is the accountability language? They are providing written justification but who is holding that individual accountable that indeed they are following your law?

**Sherry Neas:** That is a valid point. With Office Management and Budget, of course, OMB would be the approval agency for anyone in executive branch. With this law it really falls back on the governing board to provide that justification. You are right that this language is trusting whoever the purchasing entity is that the justification will be valid.

**Chairman Bette Grande:** As you move forward in the discussion, will you please include Rep. Rohr so that she can bring language to the committee?

**Sherry Neas:** Yes.

**Rep. Karen Rohr:** I will be happy to be included.

The meeting was adjourned.

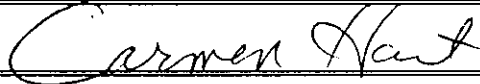
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee  
Fort Union Room, State Capitol

SB 2027  
March 17, 2011  
15630

Conference Committee

Committee Clerk Signature



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

Relating to specifying materials used in a public improvement

## Minutes:

**Chairman Bette Grande** opened the discussion on SB 2027. Amendments were presented. **Attachments 1 and 2.** This is the one where the procurement officer of OMB worked with the committee to put together some amendments here.

**Vice Chairman Randy Boehning:** The language in the bill is too permissive to allowing public entities such as counties and cities to say we want this certain product. The amendment does allow them to do that and have to explain why and so forth. There is some public accountability as to why they want to do it. This is language that OMB uses. This is already in statue. It is going to be a reference to this.

**Vice Chairman Randy Boehning** moved the amendment 02001.

**Rep. Lisa Meier** seconded the motion.

**Vice Chairman Randy Boehning:** I don't know if Terry Traynor with the North Dakota Association of Counties had an opportunity to look at these, but we tried to meet with him and told him what we were looking at doing. Sherry Neas of OMB should have emailed it to him.

**Chairman Bette Grande:** Has Mr. Boyle seen these amendments?

**Vice Chairman Randy Boehning:** I think Mr. Boyle would be more comfortable with these amendments as they are written versus the way this bill is written.

**A voice vote was taken to accept the amendment. Motion carried.**

**Vice Chairman Randy Boehning** moved for a Do Pass as amended.

**Rep. Lisa Meier** seconded the motion.



**Vice Chairman Randy Boehning:** We just passed for school boards to raise their limits without having to go to competitive bidding up to \$100,000. I was going to do some amendments onto this bill but it is going to have to be worked on during the next interim. OMB has it set out in code in 54-44.1. They solicit bids for purchases over \$25,000. For the taxpayer we do need to have competitive bidding as much as possible. I am going to work with some groups during interim with something like a \$25,000 threshold and maybe three bids, etc.

**DO PASS AS AMENDED, 11 YEAS, 0 NAYS, 2 ABSENT. Rep. Karen Rohr is the carrier of this bill.**

VR  
3/17/11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2027

Page 1, line 12, remove "or unless remodeling or"

Page 1, remove line 13

Page 1, line 14, replace "manufacturer, or patented apparatus or appliance" with "or unless as provided in section 44-08-01"

Renumber accordingly

Date: 3-17-11  
Roll Call Vote #: 7

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2027

House GOVERNMENT AND VETERAN AFFAIRS Committee

Check here for Conference Committee

Legislative Council Amendment Number 02001

Action Taken  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Boehning Seconded By Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande			Bill Amerman		
Vice Chairman Randy Boehning			Ron Guggisberg		
Glen Froseth			Lonny Winrich		
Karen Karls					
Lisa Meier					
Gary Paur					
Karen Rohr					
Mark Sanford					
Vicky Steiner					
Roscoe Streyle					

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

Absent \_\_\_\_\_

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

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

*voice vote to  
accept  
amendment  
motion  
carried*

Date: 3-17-71  
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 202-7

House GOVERNMENT AND VETERAN AFFAIRS Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Boehning Seconded By Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande	✓		Bill Amerman	✓	
Vice Chairman Randy Boehning	✓		Ron Guggisberg		✓
Glen Froseth	✓		Lonny Winrich	✓	
Karen Karls	✓				
Lisa Meier	✓				
Gary Paur	✓				
Karen Rohr	✓				
Mark Sanford	✓				
Vicky Steiner	✓				
Roscoe Streyle	✓				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rohr

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

REPORT OF STANDING COMMITTEE

**SB 2027: Government and Veterans Affairs Committee (Rep. Grande, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2027 was placed on the Sixth order on the calendar.

Page 1, line 12, remove "or unless remodeling or"

Page 1, remove line 13

Page 1, line 14, replace "manufacturer, or patented apparatus or appliance" with "or unless as provided in section 44-08-01"

Renumber accordingly

2011 TESTIMONY

SB 2027

**Testimony To  
THE SENATE INDUSTRY BUSINESS & LABOR COMMITTEE  
Prepared January 5, 2011  
by Terry Traynor, Assistant Director  
North Dakota Association of Counties**

**REGARDING SENATE BILL No. 2027**

Mr. Chairman and committee members, the North Dakota Association of Counties requested the interim committee consider the issue that ultimately became SB2027, and we strongly support its passage.

As you can see, the intent of this bill is to remove the existing prohibition on specifying trademarked products in situations where an addition or remodeling is taking place and where those products are already in use.

County officials involved with major remodeling and building additions believe the restrictions on specifying brands and trademarks do a great disservice to the public, as this requirement often makes it difficult to maintain consistent equipment – increasing taxpayer costs. This has become a much more critical issue with the development of computer controlled heating and cooling as well as security systems.

Replacing a number of air handlers (at about \$50,000 each) in the Cass County courthouse was given as an example during the interim. Cass County was faced with a choice. They could periodically purchase one replacement air handler at a time (of the desired brand) at a higher cost, without reaching the required bid threshold; or, they could bid the three they anticipated needing in the next year without specifying the brand and running the risk that they end up with a low bidder of a different brand. While a vendor may claim that the alternate brand could communicate with the software managing the air handling system (therefore meeting the bid specification), this could not be accomplished natively, resulting in less efficiency and increased maintenance.

When adding on to a jail, in another example, a county was prohibited from specifying the same brand of cell door locks that operate the same way with their security software. Keyless entry for county buildings is another example. One county actually reported that they finished a remodeling and then immediately replaced all of the newly-installed door locks, provided as

part of the low bid, with a second purchase – disposing of the non-matching equipment they had just bought. Clearly, this provision would not require including brand names in a bid, but would only make it permissible in those situations that local boards determine it is important and cost-effective.

Mr. Chairman and committee members, we believe that this limited exception to the trademark prohibition is reasonable and clearly in the taxpayers best interest. We urge the committee to give SB2027 a Do Pass recommendation.



Attachment 1  
2027

**Testimony To The  
HOUSE GOVERNMENT & VETERANS AFFAIRS COMMITTEE  
Prepared March 3, 2011  
by Terry Traynor, Assistant Director  
North Dakota Association of Counties**

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As you can see, the intent of this bill is to remove the existing prohibition on specifying trademarked products in situations where an addition or remodeling is taking place and where those products are already in use.

County officials that have been involved with major remodeling and building additions believe the restrictions on specifying brands and trademarks do a great disservice to the public, as this requirement often makes it difficult to maintain consistent equipment – increasing taxpayer costs. This has become a much more critical issue with the development of computer controlled heating and cooling, and security systems.

Replacing a number of air handlers (at about \$50,000 each) in the Cass County courthouse was given as an example during the interim. Cass County was faced with a choice. They could periodically purchase one replacement air handler at a time (of the desired brand) at a higher cost, without reaching the required bid threshold; or, they could bid the three they anticipated needing in the next year without specifying the brand and run the risk that they end up with a low bidder of a different brand.

While a vendor may claim that the alternate brand could communicate with the software managing the air handling system (therefore meeting the bid specification), this could not be accomplished natively, resulting in less efficiency and increased maintenance.

When adding on to a jail, in another example, a county was prohibited from specifying the same brand of cell door locks that operate the same way with their security software.

A keyless entry system for county buildings was another example given. One county actually reported that they finished a remodeling and then immediately replaced all of the newly-installed door locks provided as part of the low bid, with a second purchase – disposing of the non-matching equipment they had just bought.

These are the situations we believe this bill would help avoid. Clearly, this provision would not require including brand names in a bid, but would only make it permissible in those situations that local boards determine it is important and cost-effective.

Madam Chair and committee members, we believe that this limited exception to the trademark prohibition is reasonable and clearly in the taxpayers best interest. We urge the committee to give SB2027 a Do Pass recommendation.

**CHAPTER 44-08**  
**MISCELLANEOUS PROVISIONS**

**44-08-01. Preference to North Dakota bidders, sellers, and contractors.**

1. The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in purchasing any goods, merchandise, supplies, or equipment of any kind, or contracting to build or repair any building, structure, road, or other real property, shall give preference to bidders, sellers, or contractors resident in North Dakota. The preference must be equal to the preference given or required by the state of the nonresident bidder, seller, or contractor.

2. A state entity authorized to accept bids shall give preference to a resident North Dakota bidder when accepting bids for the provision of professional services, including research and consulting services. The preference must be equal to the preference given or required by the state of the nonresident bidder.

3. The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in specifying or purchasing any goods, merchandise, supplies, or equipment, may not specify any trademarked or copyrighted brand or name, nor the product of any one manufacturer, nor any patented product, apparatus, device, or equipment, when the same will prevent proper competition, unless bidders also are asked for bids or offers upon other articles of like nature, utility, and merit. When it is advantageous that the purchase be of a particular brand of product or products of a particular manufacturer to the exclusion of competitive brands or manufacturers, the purchasing board or entity must document those circumstances and provide written justification for the proprietary specification or purchase. The purchasing board or entity shall procure the proprietary product through a competitive process unless the needed product is available exclusively from one source of supply or other circumstances exist under which competition can be waived.

11.0281.02001  
Title.

Attachment 1  
2027  
Prepared by the Legislative Council staff for  
Representative Boehning  
March 16, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2027

Page 1, line 12, remove "or unless remodeling or"

Page 1, remove line 13

Page 1, line 14, replace "manufacturer, or patented apparatus or appliance" with "or unless as provided in section 44-08-01"

Renumber accordingly

Attachment 2  
2027

**44-08-01. Preference to North Dakota bidders, sellers, and contractors.**

1. The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in purchasing any goods, merchandise, supplies, or equipment of any kind, or contracting to build or repair any building, structure, road, or other real property, shall give preference to bidders, sellers, or contractors resident in North Dakota. The preference must be equal to the preference given or required by the state of the nonresident bidder, seller, or contractor.

2. A state entity authorized to accept bids shall give preference to a resident North Dakota bidder when accepting bids for the provision of professional services, including research and consulting services. The preference must be equal to the preference given or required by the state of the nonresident bidder.

3. The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in specifying or purchasing any goods, merchandise, supplies, or equipment, may not specify any trademarked or copyrighted brand or name, nor the product of any one manufacturer, nor any patented product, apparatus, device, or equipment, when the same will prevent proper competition, unless bidders also are asked for bids or offers upon other articles of like nature, utility, and merit. When it is advantageous that the purchase be of a particular brand of product or products of a particular manufacturer to the exclusion of competitive brands or manufacturers, the purchasing board or entity must document those circumstances and provide written justification for the proprietary specification or purchase. The purchasing board or entity shall procure the proprietary product through a competitive process unless the needed product is available exclusively from one source of supply or other circumstances exist under which competition can be waived.