

Committee: Senate State Affairs

Wednesday, February 15, 2023 10:00 AM

Roll Call

Present: Sen. Schoenbeck, Sen. Davis, Sen. Duhamel, Sen. Nesiba, Sen. Rohl,  
Sen. Tobin, Sen. Wheeler, Sen. Diedrich, and Sen. Crabtree

OTHERS PRESENT: See Original Minutes

**The meeting was called to order by Senator Crabtree**

**MOTION: TO APPROVE THE MINUTES OF MONDAY, FEBRUARY 13<sup>TH</sup>**

Moved by: Nesiba  
Second by: Davis  
Action: Prevailed by voice vote

**SB 189 : prohibit state agencies from contracting with companies owned or controlled by certain foreign entities or governments.**

Presented by: Senator Jim Stalzer  
Proponents: Katie Hruska, Governor's Office  
Scott Bollinger, Bureau of Administration  
Rick Weible, Self, Elkton

**MOTION: AMEND SB 189**

189C

On page 1, line 1, of the Introduced bill, delete " state" and insert " purchasing"

On page 1, line 4, of the Introduced bill, after "Dakota:" delete "Section 1. That chapter 5-18A be amended with a NEW SECTION:"

On page 1, line 5, of the Introduced bill, after "SECTION:" delete "Terms used in sections 2 to 8, inclusive, of this Act mean:

- (1) "Contract," an agreement, entered into by or on behalf of this state, for the purchase or lease of goods by the state, or for the provision of services, professional services, construction, or public improvements to the state, in return for compensation;
- (2) "Contractor," a vendor, supplier, or subcontractor that has submitted a bid, proposal, or offer for, or has been selected to engage in, providing goods or services to this state, provided the term does not include a sole proprietorship or individual United States citizen;
- (3) "Executive branch agency," an agency, authority, board, bureau, commission, department, or institution of this state, under the control of the Governor;
- (4) "Prohibited entity," an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by:
  - (a) A foreign national or a foreign parent entity from the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela; or
  - (b) The government of the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela. "

On page 2, after line 3, of the Introduced bill, insert: "

**Section 1. That § 5-18A-1 be AMENDED:**

**5-18A-1.** Terms used in this chapter and chapters 5-18B, 5-18C, and 5-18D mean:

- (1) "Acceptance," the formal resolution of a purchasing agency authorizing the execution of a design-build contract;
- (2) "Biobased," any materials composed wholly or in a significant part of biological products including renewable agricultural materials or forestry materials;
- (3) "Contract," any type of agreement, regardless of what the agreement may be called, for the procurement of supplies, services, or construction;
- (4) "Construction," and "constructed," in addition to their ordinary meaning, repair, demolition, and alteration;
- (5) "Construction management," any project delivery system based on an agreement whereby a construction manager provides leadership to the construction process through a series of services to the purchasing agency;
- (6) "Construction manager," any person or entity that provides construction management services for a purchasing agency, and is either a construction manager-agent or construction manager-at-risk;
- (7) "Construction manager-agent," any construction manager that provides construction management services to a purchasing agency in a fiduciary capacity;
- (8) "Construction manager-at-risk," any construction manager that assumes the risk for construction, rehabilitation, alteration, or repair of a public improvement and that provides construction management services to the purchasing agency;
- (9) "Design-build contract," any contract between a purchasing agency and a design-builder to furnish the architecture, engineering, and related services as required, and the labor, materials, and other construction services for a public improvement. A design-build contract may be conditioned upon future refinements in scope and price, and may permit the purchasing agency to make changes in the scope of the project without invalidating the design-build contract;
- (10) "Design-build proposal," an offer to enter into a design-build contract;
- (11) "Design-build request for proposals," any document or publication whereby a purchasing agency solicits proposals for a design-build contract;
- (12) "Design-builder," any person that proposes to design and construct a public improvement covered by the procedures of this chapter and chapters 5-18B, 5-18C, and 5-18D;
- (13) "Environmentally preferable product," any cleaning or maintenance product having properties that minimize potential impacts to human health and the environment, any product designed to conserve energy and water, any biobased product, and any product containing recycled materials or recovered materials;
- (14) "Internet," the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web;
- (15) "Invitation for bids," any document, whether attached or incorporated by reference, used for soliciting bids;
- (16) "Officer," any elected official or administrative officer appointed to that position by the governing body;
- (17) "Performance criteria," requirements for the public improvement, including as appropriate, capacity, durability, production standards, ingress and egress requirements, building code requirements, or other criteria for the intended use of the public improvement, expressed in performance-oriented

- specifications or drawings suitable to allow the design-builder to make a proposal;
- (18) "Performance criteria developer," any person and the person's subcontractors retained by the purchasing agency to develop performance criteria;
- (19) "Professional services," services arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual;
- (19A) "Prohibited entity," an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled by:
- (a) A foreign parent entity from the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela; or
- (b) The government of the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.
- A prohibited entity does not include a citizen or legal permanent resident of the United States, or an individual foreign national;
- (20) "Proposal," any offer to enter into contract in response to a request for proposals;
- (21) "Purchasing agency," any governmental body or officer authorized by law, administrative rule, or delegated authority, to enter into contracts;
- (22) "Public improvement," the process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any structure, building, or other improvements of any kind to real property, the cost of which is payable from taxes or other funds under the control of the purchasing agency, and includes any local improvement for which a special assessment is to be levied;
- (23) "Qualified agency," any public or private nonprofit corporation geographically located in the State of South Dakota that provides services for persons with disabilities and is certified by the Department of Human Services;
- (24) "Request for proposals," any document, whether attached or incorporated by reference, utilized by a purchasing agency when soliciting proposals for contracts for the procurement of supplies, services, or construction;
- (25) "Request for qualifications," the document or publication whereby a purchasing agency solicits interested design-builders to pre-qualify for a design-build contract;
- (26) "Resident," any person, partnership, association, limited liability company, foreign limited liability company, corporation, or foreign corporation licensed to do business within this state that has maintained a substantial and bona fide place of business and has conducted business from within this state for at least one year prior to the date on which a contract was awarded. The members of the partnership or association shall have been bona fide residents of the state for one year or more immediately prior to bidding upon the contract. A foreign corporation licensed pursuant to §§ 47-1A-1501 to 47-1A-1532, inclusive, is not a resident as defined by this section if the state or country in which it is organized enforces or has a preference for resident bidders;

- (26A) "Reverse auction," a purchasing process in which bidders submit bids in competing to sell supplies or nonprofessional services in an open environment via the internet;
- (27) "Sealed bid or proposal," a response to an invitation for bids or request for proposals submitted in a manner where the contents of the bid or proposal cannot be opened or viewed before the date and time of the formal opening without leaving evidence that the bid or proposal has been opened or viewed;
- (28) "Services," furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than reports which are merely incidental to the required performance;
- (29) "Supplies," any property, including equipment, materials, and printing;
- (30) "Surety," a bond or undertaking executed by a surety company authorized to do business in the State of South Dakota and countersigned by an agent of the company resident in the State of South Dakota. However, nothing in this subdivision requires countersignature of a bid bond."

On page 2, line 5, of the Introduced bill, delete "An executive branch" and insert "A purchasing"

On page 2, line 5, of the Introduced bill, after "contract " insert "that is subject to § 5-18A-14, 5-18A-40, 5-18B-29, 5-18B-44, or 5-18D-17 "

On page 2, line 6, of the Introduced bill, delete "An executive branch" and insert "A purchasing"

On page 2, line 7, of the Introduced bill, after "inquiry. " delete "Each executive branch agency shall reserve the right to terminate a contract with a contractor that submits a false certification."

On page 2, line 11, of the Introduced bill, delete " an executive branch" and insert " a purchasing"

On page 2, line 14, of the Introduced bill, delete " contractor" and insert " bidder or offeror"

On page 2, line 15, of the Introduced bill, after "contract " insert "that is subject to § 5-18A-14, 5-18A-40, 5-18B-29, 5-18B-44, or 5-18D-17 "

On page 2, line 15, of the Introduced bill, delete " contractor" and insert " bidder or offeror"

On page 2, line 17, of the Introduced bill, delete " the contractor" and insert " any party to a contract subject to § 5-18A-14, 5-18A-40, 5-18B-29, 5-18B-44, or 5-18D-17"

On page 2, line 17, of the Introduced bill, delete " the contractor" and insert " that party"

On page 2, line 18, of the Introduced bill, delete " contracting executive branch" and insert " purchasing"

On page 2, line 21, of the Introduced bill, after "designee," insert " or the governing board of a unit of local government, as applicable,"

On page 2, line 22, of the Introduced bill, delete " with respect to" and insert " and"

On page 2, line 24, of the Introduced bill, delete "The commissioner determines that compliance" and insert "Compliance"

On page 2, line 25, of the Introduced bill, delete " goods" and insert " supplies"

On page 3, line 1, of the Introduced bill, delete "Each executive branch agency shall implement the requirements of section 2 of this Act in accordance with all applicable state laws and rules, and all federal laws and regulations. Nothing in section 2 of this Act may affect the state's receipt of federal funds." and insert "

Any certification that falsely indicates a person is not a prohibited entity at the time of certification, and any failure to provide written notification to the purchasing agency that a person has become a prohibited entity as required by section 3 of this Act, is cause to suspend or debar a business under § 5-18D-12."

On page 3, line 4, of the Introduced bill, after "funds." delete "Section 6. That chapter 5-18A be amended with a NEW SECTION:"

On page 3, line 5, of the Introduced bill, after "SECTION:" delete "The commissioner of the Bureau of Administration may impose a civil penalty, in an amount not to exceed one thousand dollars, against any person for violating section 3 of this Act. Any civil penalty collected pursuant to this section must be deposited into the state general fund. "

On page 3, line 9, of the Introduced bill, after "fund." delete "Section 7. That chapter 5-18A be amended with a NEW SECTION:"

On page 3, line 10, of the Introduced bill, after "SECTION:" delete "A contractor who, pursuant to section 3 of this Act, submits a certification and falsely indicates the contractor is not a prohibited entity at the time of certification, or who becomes a prohibited entity after

certification and fails to provide written notification to the contracting executive branch agency, is liable for a civil penalty in the greater of:

- (1) Two hundred and fifty thousand dollars; or
- (2) Two times the amount of the contract for which a bid or proposal was submitted, regardless of whether the bid or proposal was actually accepted by this state.

If this section is violated, the executive branch agency shall terminate the contract with the contractor.

A contractor upon whom a penalty is imposed under this section may not bid on any state contract for a period of three years from the date of the penalty."

On page 3, line 21, of the Introduced bill, after "penalty." delete "Section 8. That chapter 5-18A be amended with a NEW SECTION:"

On page 3, line 22, of the Introduced bill, after "SECTION:" delete "An executive branch agency may not:

- (1) Procure or utilize any information or communication technologies, including devices, services, components, networks, and systems created, owned, or controlled by a prohibited entity, or by any other means made unsafe for this state's cybersecurity by any connection to a prohibited entity;
- (2) Procure or utilize any information or communication technologies, including devices, services, components, networks, and systems, if any federal agency has prohibited the sale of, restricted the licensing of, or otherwise limited the dissemination of, information or communication technologies on the basis that the entity selling, leasing, or otherwise distributing the technology or service poses a risk to national or state security;
- (3) Procure or utilize any information or communication technologies, including devices, services, components, networks, and systems that are designed, developed, or manufactured, or that are supplied by any affiliate, agent, or other actor working on behalf of, or for the benefit of, a prohibited entity, as determined by any federal or state governmental agency; or
- (4) Expose existing government information or communication technologies, services, equipment, components, networks, systems, or records to any prohibited entity, or any company, firm, individual, affiliate, agent, or any other entity or actor made unsafe for this state's cybersecurity by means of the entity's or the actor's connection to a prohibited entity."

Moved by: Duhamel  
 Second by: Diedrich  
 Action: Prevailed by voice vote

**MOTION: DO PASS SB 189 AS AMENDED**

Moved by: Schoenbeck  
 Second by: Diedrich  
 Action: Prevailed by Majority Members Elect (9-0-0-0)

Voting Yes: Schoenbeck, Davis, Duhamel, Nesiba, Rohl, Tobin, Wheeler, Diedrich, and Crabtree

**SB 123 : require certain reviews and updating of voter registration records and data sharing.**

Presented by: Senator Julie Frye-Mueller  
 Proponents: Rick Weible, Self, Elkton  
 Jessica Pollema, self, Sioux Falls  
 Cindy Meyer, self, Hartford  
 Linda Montgomery, self, Fairview  
 Opponents: Deb Halverson, Lyman County Auditor, self, Kennebec  
 Sheri Lund, Lincoln County Auditors Office, self, Worthing  
 Lindley Howard, McPherson County Auditor, self, Leola

**MOTION: AMEND SB 123**

123B

On page 1, line 17, of the Introduced bill, delete the comma and insert " or"  
 On page 1, line 18, of the Introduced bill, after "File" delete ", or included in an independent audit of the statewide voter registration file by a private entity that identifies deceased individuals as part of its business purpose. The secretary of state may only use a privately conducted independent audit of the statewide voter registration system for a monthly comparison if that audit was conducted in the one month immediately preceding the monthly comparison"

Moved by: Schoenbeck  
 Second by: Nesiba  
 Action: Prevailed by voice vote

**MOTION: DEFER SB 123 TO THE 41<sup>ST</sup> LEGISLATIVE DAY**

Moved by: Schoenbeck  
 Second by: Nesiba  
 Action: Prevailed by Majority Members Elect (9-0-0-0)

Voting Yes: Schoenbeck, Davis, Duhamel, Nesiba, Rohl, Tobin, Wheeler, Diedrich, and Crabtree

**SB 124 : update maintenance and verification requirements for voter registration files.**

Presented by: Senator Julie Frye-Mueller  
 Proponents: Rick Weible, Self, Elkton  
 Jessica Pollema, self, Sioux Falls  
 Cindy Meyer, self, Hartford  
 Matthew Monfore, Self, Oral  
 Gary Meyer, Self, Hartford  
 Opponents: Deb Halverson, Lyman County Auditor, self, Kennebec  
 Mary Arlington, SDCOA, Pierre  
 Sheri Lund, Lincoln County Auditors Office, self, Worthing  
 Stephen Saint, self, Custer  
 Greg Kulesa, DakotaPost, Watertown

**MOTION: AMEND SB 124**

124A

On page 1, line 23, of the Introduced bill, after "of " insert "nonresidential "  
 On page 1, line 24, of the Introduced bill, after "government." insert " For purposes of the address comparison required under this section, a residential address includes a commercial address where an individual both works and resides on the property. "  
 On page 3, line 31, of the Introduced bill, after "state." delete "The secretary of state and each county auditor is authorized to contract with commercial data companies, including credit reporting agencies, to verify and audit information in voter registration lists, including citizenship status and residence."

Moved by: Nesiba  
 Second by: Schoenbeck  
 Action: Prevailed by voice vote

**MOTION: DEFER SB 124 TO THE 41<sup>ST</sup> LEGISLATIVE DAY**

Moved by: Schoenbeck  
Second by: Wheeler  
Action: Prevailed by Majority Members Elect (9-0-0-0)

Voting Yes: Schoenbeck, Davis, Duhamel, Nesiba, Rohl, Tobin, Wheeler, Diedrich, and Crabtree

**SB 128 : remove the option to register to vote by a signed statement.**

Presented by: Senator Julie Frye-Mueller  
Proponents: Jessica Pollema, self, Sioux Falls  
Matthew Monfore, Self, Oral  
Rick Weible, Self, Elkton  
Linda Montgomery, self, Fairview  
Opponents: Deb Halverson, Lyman County Auditor, self, Kennebec  
Sheri Lund, Lincoln County Auditors Office, self, Worthing

**MOTION: DEFER SB 128 TO THE 41<sup>ST</sup> LEGISLATIVE DAY**

Moved by: Schoenbeck  
Second by: Wheeler  
Action: Prevailed by Majority Members Elect (9-0-0-0)

Voting Yes: Schoenbeck, Davis, Duhamel, Nesiba, Rohl, Tobin, Wheeler, Diedrich, and Crabtree

**SB 111 : establish and modify provisions related to economic development.**

Presented by: Senator Casey Crabtree

**MOTION: DO PASS SB 111**

Moved by: Rohl  
Second by: Tobin  
Action: Prevailed by Majority Members Elect (9-0-0-0)

Voting Yes: Schoenbeck, Davis, Duhamel, Nesiba, Rohl, Tobin, Wheeler, Diedrich, and Crabtree

**HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED SB 111 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.**

**SB 112 : establish and modify provisions related to taxation.**

Presented by: Senator Casey Crabtree

**MOTION: DO PASS SB 112**

Moved by: Rohl  
Second by: Tobin

Action: Prevailed by Majority Members Elect (9-0-0-0)

Voting Yes: Schoenbeck, Davis, Duhamel, Nesiba, Rohl, Tobin, Wheeler, Diedrich, and Crabtree

**HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED SB 112 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.**

**SB 113 : establish and modify provisions related to education.**

Presented by: Senator Casey Crabtree

**MOTION: DO PASS SB 113**

Moved by: Rohl

Second by: Tobin

Action: Prevailed by Majority Members Elect (9-0-0-0)

Voting Yes: Schoenbeck, Davis, Duhamel, Nesiba, Rohl, Tobin, Wheeler, Diedrich, and Crabtree

**HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED SB 113 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.**

**SB 114 : establish and modify provisions related to public safety.**

Presented by: Senator Casey Crabtree

**MOTION: DO PASS SB 114**

Moved by: Rohl

Second by: Tobin

Action: Prevailed by Majority Members Elect (9-0-0-0)

Voting Yes: Schoenbeck, Davis, Duhamel, Nesiba, Rohl, Tobin, Wheeler, Diedrich, and Crabtree

**HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED SB 114 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.**

**MOTION: ADJOURN**

Moved by: Rohl

Second by: Tobin

Action: Prevailed by voice vote

Doug Mortenson, Committee Secretary

---

/s/ CASEY CRABTREE  
Casey Crabtree, Chair