

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER
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DESCRIPTION

1241

2007 HOUSE JUDICIARY

HB 1241

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1241

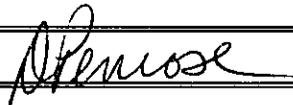
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/24/07

Recorder Job Number: 1771

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will open the hearing on HB 1241.

**Al Jaeger, Secretary of State:** Introduced the bill.

**Chairman DeKrey:** Thank you. Further testimony in support.

**William Guy, ND Business Entity Drafting Task Force:** (see attached testimony).

**Chairman DeKrey:** Thank you. Further testimony in support.

**Clara Jenkins, Director of Business Division, Secretary of State:** (see attached testimony)

and explained the amendments

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1241

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/29/07

Recorder Job Number: 2196

Committee Clerk Signature *Penrose*

Minutes:

**Chairman DeKrey:** We will take a look at HB 1241.

**Rep. Delmore:** I move the amendments by the Secretary of State.

**Rep. Koppelman:** Seconded.

**Chairman DeKrey:** We will take a voice vote. Motion carried. We now have the bill before us as amended.

**Rep. Griffin:** I move a Do Pass as amended.

**Rep. Wolf:** Seconded.

13 YES 0 NO 1 ABSENT

DO PASS AS AMEND

CARRIER: Rep. DeKrey

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/10/2007

Bill/Resolution No.: HB 1241

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The intent of the bill is to update several chapters of state law pertaining to the various business entities registered by the agency. The bill has no positive or negative fiscal impact.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Throughout the bill, there is a consolidation of several fees into one fee. However, the resulting fee is no higher or lower than the combined fee. The combined fee will make it easier for the agency's customers to comply with the fee schedule when they file documents and it will allow faster processing of the those documents when they are filed with the agency.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

<b>Name:</b>	Al Jaeger	<b>Agency:</b>	Secretary of State
<b>Phone Number:</b>	328-2900	<b>Date Prepared:</b>	01/11/2007

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 1, line 1, after the comma insert "a new section to chapter 10-19.1,"

Page 1, line 2, replace the second comma with "and" and replace "and" with "a new section to chapter 10-32, section"

Page 1, line 3, after the first comma insert "section 10-33-01.3," replace the second "section" with "sections", and after "10-33-72.1" insert ", 10-34-02.1, 45-10.2-06.1, and 45-13-02.1"

Page 1, line 4, remove "and"

Page 1, line 5, after "corporations" insert ", real estate investment trusts, limited partnerships, and partnerships"

Page 1, line 14, after the fifth comma insert "and" and remove ", and 10-32-29"

Page 1, line 18, remove the third "and"

Page 1, line 21, replace "and" with a comma

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 9, after line 8, insert:

"39. "Originating records" means for an organization that is:

- a. A corporation, its articles of incorporation;
- b. A limited liability company, its articles of organization;
- c. A limited partnership, its certificate of limited partnership;
- d. A limited liability partnership, its registration; or
- e. A limited liability limited partnership, its certificate of limited liability limited partnership."

Page 9, line 9, replace "39." with "40."

Page 9, line 11, replace "40." with "41."

Page 9, line 15, replace "41." with "42."

Page 9, line 23, replace "42." with "43."

Page 9, line 29, replace "43." with "44."

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 10, line 3, replace "44." with "45."

Page 10, line 5, replace "45." with "46."

Page 10, line 8, replace "46." with "47."

Page 10, line 18, replace "47." with "48."

Page 10, line 22, replace "48." with "49."

Page 10, line 23, replace "49." with "50."

Page 10, line 28, replace "50." with "51." and remove the overstrike over "~~shareholders~~"

Page 10, line 29, remove the overstrike over "~~proprietary~~", remove "ownership", and replace "a" with "the"

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 11, line 1, replace "51." with "52."

Page 11, line 4, replace "52." with "53."

Page 11, line 18, replace "53." with "54."

Page 11, line 20, replace "54." with "55."

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 12, line 1, replace "55." with "56."

Page 12, line 5, replace "56." with "57."

Page 12, line 9, replace "57." with "58."

Page 12, line 10, replace "58." with "59."

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 14, after line 19, insert:

**"SECTION 4.** A new section to chapter 10-19.1 of the North Dakota Century Code is created and enacted as follows:

**Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A corporation incorporated under or governed by this chapter is subject to this reserved right.

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 15, line 8, overstrike "3." and remove the overstrike over "The following provisions govern a corporation unless modified in the articles:"

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 21, line 2, replace "partners" with "portions"

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 24, line 28, remove the overstrike over "shares" and remove "ownership"

Page 24, line 29, remove "interests"

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 31, line 24, replace "ownership interests" with "shares"

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 37, line 25, overstrike "ownership interests" and insert immediately thereafter "shares"

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 38, line 29, overstrike "articles"

Page 38, line 30, after "~~organization~~" insert "originating records"

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 43, line 13, after the underscored comma insert "if"

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 47, line 17, overstrike "If the surviving organization is a" and remove "domestic"

Page 47, line 18, remove "organization", overstrike the comma, remove "then", overstrike "the" and insert immediately thereafter "The"

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 53, line 28, remove "j." and overstrike ""Originating records" means for an organization which is:"

Page 53, overstrike lines 29 through 31

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 54, overstrike lines 1 through 3

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 60, line 12, overstrike "forty" and insert immediately thereafter "one hundred thirty-five"

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 69, line 12, replace "a member" with "the members"

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 71, after line 20, insert:

- "44. "Originating records" means for an organization which is:
- a. A corporation, its articles of incorporation;
  - b. A limited liability company, its articles of organization;
  - c. A limited partnership, its certificate of limited partnership;
  - d. A limited liability partnership, its registration; or
  - e. A limited liability limited partnership, its certificate of limited liability limited partnership."

Page 71, line 21, overstrike "44." and insert immediately thereafter "45."

Page 71, line 26, overstrike "45." and insert immediately thereafter "46."

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 72, line 5, overstrike "46." and insert immediately thereafter "47."

Page 72, line 11, overstrike "47." and insert immediately thereafter "48."

Page 72, line 18, overstrike "48." and insert immediately thereafter "49."

Page 72, line 24, overstrike "49." and insert immediately thereafter "50."

Page 72, line 26, overstrike "50." and insert immediately thereafter "51."

Page 72, line 29, overstrike "51." and insert immediately thereafter "52."

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 73, line 8, overstrike "52." and insert immediately thereafter "53."

Page 73, line 12, overstrike "53." and insert immediately thereafter "54."

Page 73, line 14, overstrike "54." and insert immediately thereafter "55."

Page 73, line 15, overstrike "55." and insert immediately thereafter "56."

Page 73, line 19, overstrike "56." and insert immediately thereafter "57."

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 74, line 3, overstrike "57." and insert immediately thereafter "58."

Page 74, line 15, overstrike "58." and insert immediately thereafter "59."

Page 74, line 19, overstrike "59." and insert immediately thereafter "60."

Page 74, line 24, overstrike "60." and insert immediately thereafter "61."

Page 74, line 31, overstrike "61." and insert immediately thereafter "62."

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 75, line 1, overstrike "62." and insert immediately thereafter "63."

Page 75, line 4, overstrike "63." and insert immediately thereafter "64."

Page 75, after line 11, insert:

**"SECTION 39.** A new section to chapter 10-32 of the North Dakota Century Code is created and enacted as follows:

**Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A limited liability company organized under or governed by this chapter is subject to this reserved right.

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 81, line 29, replace "partners" with "portions"

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 85, remove lines 18 through 29

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 86, remove lines 1 through 3

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 90, line 2, remove the overstrike over "~~securities~~"

Page 90, line 3, remove "ownership interests"

Page 90, line 6, remove the overstrike over "~~securities~~" and remove "ownership interests"

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 92, line 12, remove the overstrike over "~~securities~~" and remove "ownership interests"

Page 92, line 19, remove the overstrike over "~~securities~~" and remove "ownership interests"

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 98, line 20, overstrike "If the surviving organization is a" and remove "domestic"

Page 98, line 21, remove "organization", overstrike the comma, remove "then", and overstrike "the" and insert immediately thereafter "The"

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 107, line 6, remove "Ownership interests" means for a domestic or foreign organization that is:"

Page 107, remove lines 7 through 13

Page 107, line 14, remove "30."

Page 107, line 19, remove the overstrike over "~~30.~~" and remove "31."

Page 107, line 21, remove the overstrike over "~~34.~~" and remove "32."

Page 107, line 24, remove the overstrike over "~~32.~~" and remove "33."

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 108, line 4, remove the overstrike over "~~33.~~" and remove "34."

Page 108, line 8, remove the overstrike over "~~34.~~" and remove "35."

Page 108, line 22, remove the overstrike over "~~35.~~" and remove "36."

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 109, line 3, remove the overstrike over "~~36.~~" and remove "37."

Page 109, line 7, remove the overstrike over "~~37.~~" and remove "38."

Page 109, line 8, remove the overstrike over "~~38.~~" and remove "39."

Page 109, after line 14, insert:

**"SECTION 60.** Section 10-33-01.3 of the North Dakota Century Code is created and enacted as follows:

**10-33-01.3. Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A corporation incorporated under or governed by this chapter is subject to this reserved right.

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 118, after line 28, insert:

**"SECTION 67.** Section 10-34-02.1 of the North Dakota Century Code is created and enacted as follows:

**10-34-02.1. Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A real estate investment trust formed under or governed by this chapter is subject to this reserved right.

**House Amendments to HB 1241 (78112.0101) - Judiciary Committee 02/05/2007**

Page 119, after line 13, insert:

**"SECTION 69.** Section 45-10.2-06.1 of the North Dakota Century Code is created and enacted as follows:

**45-10.2-06.1. Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A limited partnership formed under or governed by this chapter is subject to this reserved right.

Page 121, after line 12, insert:

"**SECTION 73.** Section 45-13-02.1 of the North Dakota Century Code is created and enacted as follows:

**45-13-02.1. Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A partnership formed under or governed by this chapter is subject to this reserved right."

Renumber accordingly

Date: 1-24-07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1241

House JUDICIARY Committee

Check here for Conference Committee

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

Action Taken DP as Amended

Motion Made By Rep. Guffin Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning			Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. DeKrey

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

**REPORT OF STANDING COMMITTEE**

**HB 1241: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1241 was placed on the Sixth order on the calendar.

Page 1, line 1, after the comma insert "a new section to chapter 10-19.1,"

Page 1, line 2, replace the second comma with "and" and replace "and" with "a new section to chapter 10-32, section"

Page 1, line 3, after the first comma insert "section 10-33-01.3,", replace the second "section" with "sections", and after "10-33-72.1" insert ", 10-34-02.1, 45-10.2-06.1, and 45-13-02.1"

Page 1, line 4, remove "and"

Page 1, line 5, after "corporations" insert ", real estate investment trusts, limited partnerships, and partnerships"

Page 1, line 14, after the fifth comma insert "and" and remove ", and 10-32-29"

Page 1, line 18, remove the third "and"

Page 1, line 21, replace "and" with a comma

Page 9, after line 8, insert:

"39. "Originating records" means for an organization that is:

- a. A corporation, its articles of incorporation;
- b. A limited liability company, its articles of organization;
- c. A limited partnership, its certificate of limited partnership;
- d. A limited liability partnership, its registration; or
- e. A limited liability limited partnership, its certificate of limited liability limited partnership."

Page 9, line 9, replace "39." with "40."

Page 9, line 11, replace "40." with "41."

Page 9, line 15, replace "41." with "42."

Page 9, line 23, replace "42." with "43."

Page 9, line 29, replace "43." with "44."

Page 10, line 3, replace "44." with "45."

Page 10, line 5, replace "45." with "46."

Page 10, line 8, replace "46." with "47."

Page 10, line 18, replace "47." with "48."

Page 10, line 22, replace "48." with "49."

Page 10, line 23, replace "49." with "50."

Page 10, line 28, replace "50." with "51." and remove the overstrike over "~~shareholders~~"

Page 10, line 29, remove the overstrike over "~~proprietary~~", remove "ownership", and replace "a" with "the"

Page 11, line 1, replace "51." with "52."

Page 11, line 4, replace "52." with "53."

Page 11, line 18, replace "53." with "54."

Page 11, line 20, replace "54." with "55."

Page 12, line 1, replace "55." with "56."

Page 12, line 5, replace "56." with "57."

Page 12, line 9, replace "57." with "58."

Page 12, line 10, replace "58." with "59."

Page 14, after line 19, insert:

**"SECTION 4.** A new section to chapter 10-19.1 of the North Dakota Century Code is created and enacted as follows:

Reservation of legislative right. The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A corporation incorporated under or governed by this chapter is subject to this reserved right."

Page 15, line 8, overstrike "3." and remove the overstrike over "~~The following provisions govern a corporation unless modified in the articles:~~"

Page 21, line 2, replace "partners" with "portions"

Page 24, line 28, remove the overstrike over "~~shares~~" and remove "ownership"

Page 24, line 29, remove "interests"

Page 31, line 24, replace "ownership interests" with "shares"

Page 37, line 25, overstrike "ownership interests" and insert immediately thereafter "shares"

Page 38, line 29, overstrike "articles"

Page 38, line 30, after "~~organization~~" insert "originating records"

Page 43, line 13, after the underscored comma insert "if"

Page 47, line 17, overstrike "If the surviving organization is a" and remove "domestic"

Page 47, line 18, remove "organization", overstrike the comma, remove "then", overstrike "the" and insert immediately thereafter "The"

Page 53, line 28, remove "j." and overstrike "'Originating records" means for an organization which is:"

Page 53, overstrike lines 29 through 31

Page 54, overstrike lines 1 through 3

Page 60, line 12, overstrike "forty" and insert immediately thereafter "one hundred thirty-five"

Page 69, line 12, replace "a member" with "the members"

Page 71, after line 20, insert:

"44. "Originating records" means for an organization which is:

- a. A corporation, its articles of incorporation;
- b. A limited liability company, its articles of organization;
- c. A limited partnership, its certificate of limited partnership;
- d. A limited liability partnership, its registration; or
- e. A limited liability limited partnership, its certificate of limited liability limited partnership."

Page 71, line 21, overstrike "44." and insert immediately thereafter "45."

Page 71, line 26, overstrike "45." and insert immediately thereafter "46."

Page 72, line 5, overstrike "46." and insert immediately thereafter "47."

Page 72, line 11, overstrike "47." and insert immediately thereafter "48."

Page 72, line 18, overstrike "48." and insert immediately thereafter "49."

Page 72, line 24, overstrike "49." and insert immediately thereafter "50."

Page 72, line 26, overstrike "50." and insert immediately thereafter "51."

Page 72, line 29, overstrike "51." and insert immediately thereafter "52."

Page 73, line 8, overstrike "52." and insert immediately thereafter "53."

Page 73, line 12, overstrike "53." and insert immediately thereafter "54."

Page 73, line 14, overstrike "54." and insert immediately thereafter "55."

Page 73, line 15, overstrike "55." and insert immediately thereafter "56."

Page 73, line 19, overstrike "56." and insert immediately thereafter "57."

Page 74, line 3, overstrike "57." and insert immediately thereafter "58."

Page 74, line 15, overstrike "58." and insert immediately thereafter "59."

Page 74, line 19, overstrike "59." and insert immediately thereafter "60."

Page 74, line 24, overstrike "60." and insert immediately thereafter "61."

Page 74, line 31, overstrike "61." and insert immediately thereafter "62."

Page 75, line 1, overstrike "62." and insert immediately thereafter "63."

Page 75, line 4, overstrike "63." and insert immediately thereafter "64."

Page 75, after line 11, insert:

**"SECTION 39.** A new section to chapter 10-32 of the North Dakota Century Code is created and enacted as follows:

Reservation of legislative right. The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A limited liability company organized under or governed by this chapter is subject to this reserved right."

Page 81, line 29, replace "partners" with "portions"

Page 85, remove lines 18 through 29

Page 86, remove lines 1 through 3

Page 90, line 2, remove the overstrike over "~~securities~~"

Page 90, line 3, remove "ownership interests"

Page 90, line 6, remove the overstrike over "~~securities~~" and remove "ownership interests"

Page 92, line 12, remove the overstrike over "~~securities~~" and remove "ownership interests"

Page 92, line 19, remove the overstrike over "~~securities~~" and remove "ownership interests"

Page 98, line 20, overstrike "If the surviving organization is a" and remove "domestic"

Page 98, line 21, remove "organization", overstrike the comma, remove "then", and overstrike "the" and insert immediately thereafter "The"

Page 107, line 6, remove "Ownership interests" means for a domestic or foreign organization that is:"

Page 107, remove lines 7 through 13

Page 107, line 14, remove "30."

Page 107, line 19, remove the overstrike over "~~30.~~" and remove "31."

Page 107, line 21, remove the overstrike over "~~31.~~" and remove "32."

Page 107, line 24, remove the overstrike over "~~32.~~" and remove "33."

Page 108, line 4, remove the overstrike over "~~33.~~" and remove "34."

Page 108, line 8, remove the overstrike over "~~34.~~" and remove "35."

Page 108, line 22, remove the overstrike over "~~35.~~" and remove "36."

Page 109, line 3, remove the overstrike over "~~36.~~" and remove "37."

Page 109, line 7, remove the overstrike over "~~37.~~" and remove "38."

Page 109, line 8, remove the overstrike over "~~38.~~" and remove "39."

Page 109, after line 14, insert:

**"SECTION 60.** Section 10-33-01.3 of the North Dakota Century Code is created and enacted as follows:

10-33-01.3. Reservation of legislative right. The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A corporation incorporated under or governed by this chapter is subject to this reserved right."

Page 118, after line 28, insert:

**"SECTION 67.** Section 10-34-02.1 of the North Dakota Century Code is created and enacted as follows:

10-34-02.1. Reservation of legislative right. The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A real estate investment trust formed under or governed by this chapter is subject to this reserved right."

Page 119, after line 13, insert:

**"SECTION 69.** Section 45-10.2-06.1 of the North Dakota Century Code is created and enacted as follows:

45-10.2-06.1. Reservation of legislative right. The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A limited partnership formed under or governed by this chapter is subject to this reserved right."

Page 121, after line 12, insert:

**"SECTION 73.** Section 45-13-02.1 of the North Dakota Century Code is created and enacted as follows:

45-13-02.1. Reservation of legislative right. The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A partnership formed under or governed by this chapter is subject to this reserved right."

Renumber accordingly

2007 SENATE JUDICIARY

HB 1241

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1241

### Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 5, 2007

Recorder Job Number: 4403

Committee Clerk Signature *Mark L. Solbey*

**Minutes:** Relating to Business Corporations Act.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following hearing:

#### **Testimony in Favor of the Bill:**

**Al Jaeger**, Secretary of the State of ND introduced the bill as a bill. Spoke of this as of one of the duties of the Secretary of State. The bill is typical in each session. In 1993 the legislature adopted legislation my office and the State Bar Association on limited liability partnerships and other business entities. This bill makes corrections, changes and updates the tax code. He introduced Bill Guy and his background. He also referred to a one word mistake that occurred in drafting that we need to put an amendment on – Att. #1

**William Guy III**, ND Bus. Entity Drafting Task Force – Att. #2

**Rep Nelson** questioned (meter 6:40) on page 6, what are "assumable shares"? It is when a board could go to a shareholder and have a capital call, and spoke of it.

**Sen. Nething** state that we have six sections that govern the Common Business Entities, the changes repeat themselves. One third of the language is new and it repeats throughout the bill.

**Sec. Jaeger** stated the goal (meter 14:32) of his office is to keep the bills uniform and in structure order. He stated several statistics and spoke of last sessions good work.

**Testimony Against the bill:**

None

**Testimony Neutral to the bill:**

None

**Senator David Nething**, Chairman closed the hearing.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1241

### Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 12, 2007

Recorder Job Number: 4880

Committee Clerk Signature *Maria L. Solberg*

**Minutes:** Relating to Business Corporation Act.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

**Sen. Nething** spoke to the minor amendment with the word typo.

**Sen. Olafson** made the motion to Do Pass Amendment – Att. #1 from today and **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

**Sen. Lyson** made the motion to Do Pass HB 1241 as amended and **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Fiebiger**

**Senator David Nething**, Chairman closed the hearing.



Handwritten signature and date: 3-12-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1241

Page 115, line 1, replace "partners" with "portions"

Renumber accordingly





REPORT OF STANDING COMMITTEE (410)  
March 13, 2007 1:00 p.m.

Module No: SR-47-5108  
Carrier: Fleblger  
Insert LC: 78112.0202 Title: .0300

**REPORT OF STANDING COMMITTEE**

**HB 1241, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1241 was placed on the Sixth order on the calendar.**

Page 115, line 1, replace "partners" with "portions"

Renumber accordingly

2007 TESTIMONY

HB 1241

TESTIMONY OF WILLIAM L. GUY III, CHAIR  
NORTH DAKOTA BUSINESS ENTITY DRAFTING TASK FORCE  
IN SUPPORT OF  
HOUSE BILL NO. 1241

Mr. Chairman and members of the Committee, I am here on behalf of a task force which, as in the past, has undertaken the drafting of housekeeping and technical legislation with respect to the various business entity statutes in the North Dakota Century Code. Accordingly, the task force has prepared the legislation that you have before you as House Bill No. 1241. This legislation updates certain sections of the chapters governing Business Corporations (Chapter 10-19.1), Limited Liability Companies (Chapter 10-32), Nonprofit Corporations (Chapter 10-33), General Partnerships (Chapters 45-13 through 45-21), Limited Liability Partnerships (Chapter 45-22) and Limited Liability Limited Partnerships (Chapter 45-23).

This legislation consists mostly of updating, technical clarification, numerical changes and grammatical changes, some of which were initially enacted as part of the Minnesota counterpart for that particular chapter. In addition, some of the changes set forth in this legislation have been requested by the Office of the Secretary of State.

Finally, we have presented to the chair of your committee certain amendments which will be discussed by Clara Jenkins from the Office of the Secretary of State.

As has been the case in years past, our object is to make each of these chapters as user friendly as possible to the general public by keeping the format and as many of the defined terms as possible either identical to or parallel in each of the state's principal business entities such as business corporations, nonprofit corporations, limited liability companies (LLC's), limited partnerships (LP's), limited liability partnerships (LLP's), limited liability limited partnerships (LLLLP's) and general partnerships (GP's).

I will now summarize some of the highlights of this legislation. Any "section references" are to the sections in the legislation and not to the chapter being amended.

For ease in reviewing this testimony, modifications in each section will be

identified as being either a "grammatical change", a "numerical change", a "technical clarification", or a "substantive change". All **substantive changes** and **technical clarifications** have been highlighted in **bold type**.

**Sections 1 through 36** (page 2 through 63) pertain to the **North Dakota Business Corporation Act** (Chapter 10-19.1).

- **Section 1** (on page 2) codifies the citation as the "North Dakota Business Corporation Act".
- **Section 2** (beginning on page 2) is the definition section of the Business Corporation Act (Chapter 10-19.1):
  - **Subsection 2** is a **substantive change** that broadens the term "acquiring organization" beyond corporations and limited liability companies to include any domestic organization (see item 38 on page 9 for the definition of "organization").
  - **Subsection 4** (beginning on page 2) is a grammatical change.
  - **Subsection 8** (on page 3) is a grammatical change.
  - **Subsection 10** (on page 3) is a **substantive change** that broadens the term "class" beyond being a reference to corporate shares now includes the ownership interests of any domestic organization.
  - **Subsection 12**(beginning on page 2) is a **technical clarification** of the term "constituent corporation" which makes clear that the references to corporation refer to both foreign and domestic corporations.
  - **Subsection 13** (on page 4) is a **substantive change** that broadens the term "constituent organization" beyond corporations and limited liability companies to include any domestic organization.
  - **Subsection 16** (on page 4) is a **technical clarification** to include the term "domestic corporation" in the general definition of "corporation".
  - **Subsection 18** (on page 4) is a grammatical change.
  - **Subsection 30** (beginning on page 5) is a **substantive change** adding the term "governing body" to refer to the board of directors of a

corporation, the board of governors of a limited liability company or any similar governing body of any other domestic organization.

- **Subsection 34** (on page 7) is a **technical clarification** adding the term "domestic liability company" to the previous definition of "limited liability company".
- **Subsection 40**(on page 9) is a **substantive change** that broadens the term "owners" to include the holders of ownership interest in any organization (rather than just the shareholders of a corporation or the members of a limited liability company).
- **Subsection 42**(on page 9) is a **substantive change** that broadens the term "parent" to include any organization rather than limiting the term to a corporation or limited liability company.
- **Subsection 46** (on page 10) is a **substantive change** that broadens the term "related organization" to include the ownership interest in any domestic organization.
- **Subsection 50** (beginning on page 10) is a **technical clarification** to the term "share" to make clear that it is the ownership interest of a shareholder in a corporation.
- **Subsection 52** (on page 11) is a **technical clarification** to the definition of "signed" to make clear that the signature is being placed with the present intention to authenticate the record in question.
- **Subsection 54** (beginning on page 11) is a **substantive change** which broadens the term "subsidiary" to include all domestic organizations (rather than just corporations and limited liability companies).
- **Subsection 55** (on page 12) is a **technical clarification** to make clear that the surviving corporation in a merger may either preexist the merger or be created by the merger.
- **Subsection 56** (on page 12) is a **substantive change** that expands the definition of "surviving organization" to include any domestic organization

rather than just a corporation or limited liability company.

- **Section 3** (beginning on page 12) is numerical change only (changing an internal reference from subsection 35 to subsection 36).
- **Section 4** (beginning on page 14) includes:
  - **Subsection 2** (on page 15) which is a **technical clarification** deletes obsolete references to limitations with regard to cumulative voting and preemptive rights that were repealed in the June 2006 primary election.
  - **Subsection 2d** (on page 15) is a **technical clarification** that refers to the fact that a corporation must now allow for cumulative voting.
  - **Subsection 2n** (on page 16) is a **technical clarification** that now refers to the fact that shareholders have certain preemptive rights.
  - **Subsection 2p** (on page 16) is a numerical change.
  - **Subsection 3h** (beginning on page 17) is a **substantive change** that now makes clear that a committee may create a subcommittee and delegate some or all of its authority to the subcommittee.
  - **Subsection 3l** (on page 18) is a **technical clarification** which makes clear that the corporation establishes uncertificated shares (not the board).
  - **Subsection 8** (beginning on page 20) is a **substantive change** and is new material which makes clear:
    - That any provision of the articles may be dependent upon facts ascertained while outside of the articles if the manner in which the facts operate is clearly set forth in the articles; and,
    - That the articles may incorporate by reference some or all of the terms of agreements to which the corporation is a party if the corporation retains a copy in its principal executive office
- **Section 5** (beginning on page 21) includes:
  - **Subsection 6** (beginning on page 22) which is a **technical clarification** making clear that both a domestic and foreign corporation are referred to in this subsection.

- **Subsection 10** (on page 24) which is a **substantive change** and is new material making clear that an amendment to the articles which changes only the name of the corporation need not be submitted to the shareholders.
- **Section 7** (beginning on page 24) is a **substantive change** which deletes obsolete references to the repealed constitutional provisions and substitutes language clarifying the right of shareholders to cumulate their votes for directors.
- **Section 8** (beginning on page 25) is a **substantive change** to the procedure for the non-judicial removal of directors and makes clear that a director may be removed with or without cause by the affirmative vote of the majority of the voting power of all shares entitled to vote at an election for directors unless, in the case of a corporation with cumulative voting, there are cast against the removal of the director is sufficient votes to have elected the director at an election of the entire board under cumulative voting.
- **Section 9** (on page 26) is a **substantive change** which provides that a committee may create a subcommittee and may delegate any or all of its authority to the subcommittee.
- **Section 10** (beginning on page 26) is a **technical clarification** that deletes language which was moved from this section to its new location as subsection 8 of section 10-19.1-10.
- **Section 11** (beginning on page 27) is a **technical clarification** deleting the obsolete references to the repealed constitutional provisions:
  - followed by several grammatical changes in **subsection 2** (beginning on page 27); and,
  - ending with a **substantive change** in **subsection 4** (beginning on page 28) to provide that all shares issued are non-assessable unless assessable shares are issued with the unanimous consent of all shareholders.
- **Section 12** (beginning on page 30) is a **technical clarification** deleting

language rendered obsolete by the recent constitutional amendment followed by another **technical clarification** making clear that now shareholders have preemptive rights as provided in this section.

- **Section 13** (on page 30) is a **technical clarification** regarding the issuance of uncertificated shares.
- **Section 14** (beginning on page 30) is a **technical clarification** which reiterates the fact that shareholders are not personally liable for the acts or debts of the corporation.
- **Section 15** (on page 31) is a **substantive change** allowing the corporation to submit a matter to the shareholders whether the board believes the matter is advisable or not.
- **Section 16** (beginning on page 31) is a **technical clarification** making clear that written action by the shareholders requires at least a majority of the voting power of all shares entitled to vote on the question.
- **Section 17** (on page 32) is a **technical clarification** making clear that the reference to corporation refers to both domestic and foreign corporations.
- **Section 18** (on page 32) is a numerical change.
- **Section 19** (beginning on page 33) is a **technical clarification** that makes clear that a plan of exchange may be authorized by the governing statute of any domestic organization involved in an exchange with a corporation.
- **Section 20** (on page 36) is a grammatical change.

**Sections 21 through 30** (beginning on page 37) contain numerous **substantive changes** in the area of mergers, exchanges and transfers making clear that any domestic organization can participate in a merger, exchange or transfer with a corporation (the previous sections having limited these transactions to other corporations or limited liability companies).

- **Section 31** (beginning on page 50) contains **substantive changes** in **subsection 1** making clear that the transfers of assets can occur between a corporation and any foreign or domestic organization followed by a **technical**

**clarification** in **subsection 4** making clear that a disposition of substantially all of the assets of the corporation is not considered to be a merger or defacto merger and that the transferee shall not be liable solely because it is deemed to be a continuation of the transferor.

- **Section 32** (beginning on page 52) is a **substantive change** which adds definitions for the "act of the governing body" and "act of the owners" in reference to conversions making clear that conversions of entities which are not corporations are authorized by their governing bodies or owners.
- **Section 33** (on page 54) is a numerical change.
- **Section 34** (on page 54) is a **substantive change** setting forth new provisions for the conversion of a foreign corporation authorized to transact business within the state and how that entity interacts with the Office of the Secretary of State.
- **Section 35** (beginning on page 54) sets forth **substantive changes** to the annual report of foreign and domestic corporations in that the annual report no longer need reference the value of the property owned by the corporation followed by other technical clarifications to the annual report in subsections 2 and 5.
- **Section 36** (beginning on page 59) in **subsections 30 and 31** deletes the license fee for capitalization of a corporation (instead substituting a flat fee for incorporation of a domestic corporation).

**Sections 37 through 57** (page 63 through 102) pertain to the **North Dakota Limited Liability Company Act** (Chapter 10-32).

- **Section 37** (beginning on page 62) is the definition section of the Limited Liability Company Act.
  - **Subsection 1** (on page 63) is a **substantive change** to the definition of "acquiring organization" making that term identical to its counterpart in chapter 10-19.1.
  - **Subsection 3** (beginning on page 64) is a grammatical change.
  - **Subsection 11** (beginning on page 64) is a **substantive change** to the

definition of "constituent organization" making that term identical to its counterpart in chapter 10-19.1.

- **Subsection 17** (on page 65) is a **technical clarification** to make clear that the term "domestic corporation" is included in the definition of corporation.
- **Subsection 20** (on page 66) is a grammatical change.
- **Subsection 29** (on page 67) is a **technical clarification** that defines a foreign limited liability company as one which is both organized under or governed by the laws of another state.
- **Subsection 33** (beginning on page 67) is a **substantive change** creating a definition of "governing body" that is identical to its counterpart in chapter 10-19.1.
- **Subsection 38** (on page 69) is a **technical clarification** making clear that the term "domestic limited liability company" is identical to and included in that of "limited liability company".
- **Subsection 41** (on page 69) is a grammatical change.
- **Subsection 44** (on page 71) is a **substantive change** making the definition of "owners" identical to that in chapter 10-19.1.
- **Subsection 45** (beginning on page 71) is a **substantive change** to the definition of "ownership interests" making that term identical to its counterpart in chapter 10-19.1.
- **Subsection 46** (on page 72) is a **substantive change** broadening the definition of "parent" to be identical to its counterpart in chapter 10-19.1.
- **Subsection 56** (beginning on page 73) is a **technical clarification** to the definition of "signed" making its definition identical to that of its counterpart in chapter 10-19.1.
- **Subsection 57** (on page 74) is a **substantive change** making the definition of the term "subsidiary" identical to its counterpart in chapter 10-19.1.

- **Subsection 59** (on page 74) is a **substantive change** which makes the term "surviving organization" identical to its counterpart in chapter 10-19.1.
- **Subsection 60** (on page 74) is a grammatical change.
- **Section 38** (beginning on page 75) relates to the articles of organization and includes:
  - **Subsection 3h** (on page 78) which is a **substantive change** giving the committee the power to create a subcommittee and delegate any or all of its authority to the subcommittee and is identical to its counterpart in chapter 10-19.1.
  - **Subsections 5, 6 and 7** (on page 81) are each **technical clarifications** regarding matters which may be addressed in the articles of organization and are identical to their counterparts in chapter 10-19.1.
  - **Subsection 8** (on page 81) is a **substantive change** which is identical to its counterpart in chapter 10-19.1 and provides that articles of organization:
    - may be dependent upon facts ascertainable outside of the articles; and,
    - may incorporate by reference documents maintained in the corporate office.
- **Section 39** (beginning on page 82) is a **substantive change** which adds **subsection 9** (on page 84) providing that an amendment to the articles which changes only the name need not be submitted to the members for approval.
- **Section 40** (beginning on page 84) is a **technical clarification** pertaining to the transactions of business outside of North Dakota by limited liability companies.
- **Section 41** (beginning on page 85) is a **substantive change** making clear in **subsection 2** that the limitation on personal liability of a limited liability company are to be identical to those of business corporations chapter 10-19.1.
- **Section 42** (on page 86) is a **technical clarification** which deletes obsolete language repealed by the voters in the June 2006 primary election.

- **Section 43** (on page 86) is a **substantive change** which adds the ability of a limited liability company to submit a matter to its members whether or not the board believes the matter to be advisable and is identical to its counterpart in chapter 10-19.1.
- **Section 44** (beginning on page 87) is a **technical clarification** making clear that member action without a meeting must always receive the affirmative vote by at least a majority of voting power of all member interests entitled to vote on the question.
- **Section 45** (on page 87) is a **technical clarification** making clear that provisions pertaining to the election of governors can be set forth in either the articles or a member control agreement.
- **Section 46** (on page 87) is a **substantive change** providing that a committee may create a subcommittee and delegate any or all of its authority to the subcommittee and is identical to its counterpart in chapter 10-19.1.

**Sections 47 through 56** (beginning on page 88) are **substantive changes** that pertain to mergers, exchanges and transfers and make clear that these transactions may occur between a limited liability company and any domestic organization (correcting two inconsistencies in subsection 1 of section 10-32-100) followed by numerous **technical clarifications** in the sections in question all of which are substantively the same (if not identical) to their counterparts in chapter 10-19.1.

- **Section 57** (beginning on page 101) is a **substantive change** which provides that a disposition of substantially all of the property of a limited company is not considered to be a merger or defacto merger and that the transferee is not solely liable because it is deemed to be a continuation of the transferor and is identical to its counterpart in chapter 10-19.1.

**Sections 58 through 64** (pages 102 through 118) pertain to the **North Dakota Nonprofit Corporation Act** (Chapter 10-33).

- **Section 58** (beginning on page 102) is the definition section of the Nonprofit Corporation Act.

- **Subsection 3** (on page 102) is a grammatical change.
- **Subsection 29** (on page 107) was included in error and will be deleted in the amendments offered by the Office of the Secretary of State.
- **Subsection 33** (beginning on page 107) is a **technical clarification** to the term “related organization” and is identical to its counterparts in chapters 10-19.1 and 10-32.
- **Subsection 35** (on page 108) is a **technical clarification** of the term “signed” and is identical to its counterpart in chapters 10-19.1 and 10-32.
- **Subsection 36** (beginning on page 108) is a **substantive change** to the term “subsidiary” and is identical to its counterpart in chapters 10-19.1 and 10-32.
- **Section 59** (beginning on page 109) pertains to the articles of incorporation:
  - **Subsection 2** (beginning on page 102) is a **technical clarification** which deletes references to obsolete constitutional provisions which were repealed in the June 2006 primary election followed by the inclusion of a reference to cumulative voting now being unrestricted unless specifically provided in the articles.
  - **Subsection 3I** (on page 111) is a **substantive change** which refers to a committee’s ability to create a subcommittee and delegate the authority to the subcommittee.
  - **Subsection 9** (on page 114) is a **substantive change** which is identical to its counterpart in chapters chapter 10-19.1 and 10-32 and which adds a new provision allowing the articles:
    - to be dependent upon facts ascertainable outside of the articles; and,
    - to incorporate by reference agreements which copies are maintained in the corporate office.
- **Section 60** (beginning on page 114) is a **substantive change** which is identical to its counterpart in chapters 10-19.1 and 10-32 and which adds new **subsection 10** which allows an amendment to the articles which only changes the corporate

name to be authorized by the board without the approval of the members.

- **Section 64** (on page 118) is a **technical clarification** which is identical to its counterpart in chapters 10-19.1 and 10-32 which makes clear that written action by the members requires at least a majority vote of the voting power entitled to vote on the matter in question.

**Sections 65 through 67** (pages 118 through 120) pertain to the **North Dakota Limited Partnership Act** (chapter 45-10.2):

- **Section 65** (beginning on page 118) is a **technical clarification** to **Subsection 40** of the definition section is a **technical clarification** with regard to the term "signed" and is identical to its counterpart in chapters 10-19.1, 10-32 and 10-33.
- **Section 66** (beginning on page 119) is a **technical clarification** to the filings with the Office of the Secretary of State.
- **Section 67** (on page 120) is a **technical clarification** making clear that at least one general partner must sign any application for an amended certificate of authority by a limited partnership.

**Section 68 and 69** (pages 120 and 121) pertain to the **North Dakota Uniform Partnership Act**:

- **Section 68** (beginning on page 12) is a **technical clarification** to subsection 26 of the definition section making the definition of the term "sign" identical to its counterparts in chapters 10-19.1, 10-32 and 10-33.
- **Section 69** (on page 121) is a **technical clarification** to the requirements for the filing of a statement of renewal with the Office of the Secretary of State.

**Sections 70 and 71** (pages 121 and 122) pertain to the **North Dakota Limited Liability Partnership Act**:

- **Section 70** (beginning on page 121) is a **technical clarification** to the term "signed" in Subsection 24 of the definitions section making that term identical with its counterpart in chapters 10-19.1, 10-32, 10-33, 45-10.2 and 45-13.
- **Section 71** (on page 122) is a **substantive change** in the filing fee for a certified copy fact relating to a domestic or foreign limited liability partnership.

- **Section 72** (beginning on page 122) is a **technical clarification** of subsection 24 of the definition to cause the definition of the term “signed” to be identical to its counterparts under chapters 10-19.1, 10-32, 10-33, 45-10.2, 45-13 and 45-22.

As you can see, the legislation embodied in this bill is for the most part technical clarifications and housekeeping. I appreciate the opportunity to address your committee. If you have any questions, I will be happy to answer them.

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ALVIN A. JAEGER  
SECRETARY OF STATE

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SECRETARY OF STATE  
STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

January 24, 2007

1241

PHONE (701) 328-2900

FAX (701) 328-2992

E-MAIL [sos@nd.gov](mailto:sos@nd.gov)

TO: Rep. DeKrey, Chairman, and Members of the House Judiciary Committee

FR: Clara Jenkins, Director, Business Division, on behalf of Al Jaeger, Secretary of State

RE: HB 1241 – Proposed Amendments

The amendments proposed to HB 1241 are necessary to correct several typographical and omission errors in the bill, provide additional technical clarification, and to make a substantive insert to each of the business entity chapters. The volume of pages is attributable to the renumbering required because these amendments remove section 41 of the bill, page 85, and adds six new sections.

The six new sections are provisions related to the reservation of legislative right. They are being added because of a US Supreme Court decision in *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819). The court ruled the US Constitution prohibited the application of newly enacted statutes to existing corporations because a corporate charter is a contract and, as a result, is protected from unilateral amendment by the state by the impairment of contracts clause. The same text is added in each of the chapters applicable to the following business entities:

- Page 14, new section 4 relating to Chapter 10-19.1, the business corporation act
- Page 75, new section 39 relating to Chapter 10-32, the limited liability company act
- Page 109, new section 60 relating to Chapter 10-33, the nonprofit corporation act
- Page 119, new section 68 relating to Chapter 10-34, real estate investment trusts
- Page 119, new section 69 relating Chapter 45-10.2, the uniform limited partnership act
- Page 119, new section 70 relating to Chapter 45-13, partnerships in general

The final substantive change appears is on page 60, line 12. It was missed when the bill was placed in style and form by the Legislative Council. This amendment changes the fee for a foreign corporation certificate of authority from \$40 to \$135. It is not a fee increase. Instead of having several fees adding up to the same amount to complete a registration, it is a consolidation of the fees listed in subsection 23 and subsection 31. The new flat fee is easier for customers to understand and for internal processing.

The above change is consistent with the flat fee already in the bill on page 59, line 7, for chartering corporations.

This bill eliminates a fee based on capitalization, which was a formula difficult to accurately calculate and assess. North Dakota is one of only a few remaining states charging incorporation and authority fees predicated on the share structure of a corporation. These fees were difficult to understand and result in many erroneous and delayed filings because of an incorrect calculation of the fee. The flat fee will be significantly more efficient and customer friendly as the Secretary of State's office migrates to the option of electronically filing corporate documents.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1241

Page 1, line 3, after "10-32-85," insert "section 10-33-01.3"

Page 1, line 3, remove "and"

Page 1, line 3, after "10-33-72.1" insert ", section 10-34-02.1, 45-10.2-06.1, and 45-13-02.1"

Page 1, line 4, remove "and"

Page 1, line 5, after "corporations" insert ", real estate investment trusts, limited partnerships, and partnerships"

Page 1, line 5, after "10-19.1-01.2," insert "10-19.1-07,"

Page 1, line 14, after "10-32-02," insert "10-32-03,"

Page 1, line 14, after "10-32-10," insert "and"

Page 1, line 14, remove "and 10-32-29,"

Page 9, after line 8, insert:

39. "Originating records" means for an organization which is:

(1) A corporation, its articles of incorporation;

(2) A limited liability company, its articles of organization;

(3) A limited partnership, its certificate of limited partnership;

(4) A limited liability partnership, its registration; or

(5) A limited liability limited partnership, its certificate of limited liability limited partnership.

Page 9, line 9, replace "39." with "40."

Page 9, line 11, replace "40." with "41."

Page 9, line 15, replace "41." with "42."

Page 9, line 23, replace "42." with "43."

Page 9, line 29, replace "43." with "44."

Page 10, line 3, replace "44." with "45."

Page 10, line 5, replace "45." with "46."

Page 10, line 8, replace "46." with "47."

Page 10, line 18, replace "47." with "48."

Page 10, line 22, replace "48." with "49."

Page 10, line 23, replace "49." with "50."

Page 10, line 28, replace "50." with "51."

Page 10, line 28, remove the overstrike over "shareholders<sup>2</sup>"

Page 10, line 29, remove the overstrike over "proprietary"

Page 10, line 29, remove "ownership"

Page 10, line 29, replace the first "a" with "the"

Page 11, line 1, replace "51." with "52."

Page 11, line 4, replace "52." with "53."

Page 11, line 18, replace "53." with "54."

Page 11, line 20, replace "54." with "55."

Page 12, line 1, replace "55." with "56."

Page 12, line 5, replace "56." with "57."

Page 12, line 9, replace "57." with "58."

Page 12, line 10, replace "58." with "59."

Page 14, after line 19, insert:

**"SECTION 4. AMENDMENT.** Section 10-19.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-07. Reservation of legislative power-right.** The legislature reserves the right to amend or repeal the provisions of this chapter. A corporation incorporated under or governed by this chapter is subject to this reserved right."

Page 14, line 20, replace "SECTION 4" with "SECTION 5"

Page 15, line 8, overstrike "3."

Page 15, line 8, remove the overstrike over "The following provisions govern a corporation unless modified in the articles:"

Page 21, line 2, replace "partners" with "portions"

Page 21, line 4, replace "SECTION 5" with "SECTION 6"

Page 24, line 4, replace "SECTION 6" with "SECTION 7"

Page 24, line 15, replace "SECTION 7" with "SECTION 8"

Page 24, line 28, remove the overstrike over "shares"

Page 24, line 28, remove "ownership"

Page 24, line 29, remove "interests"

Page 25, line 1, replace "SECTION 8" with "SECTION 9"

Page 26, line 9, replace "SECTION 9" with "SECTION 10"

Page 26, line 19, replace "SECTION 10" with "SECTION 11"

Page 27, line 6, replace "SECTION 11" with "SECTION 12"

Page 29, line 26, replace "SECTION 12" with "SECTION 13"

Page 30, line 3, replace "SECTION 13" with "SECTION 14"

Page 30, line 23, replace "SECTION 14" with "SECTION 15"

Page 31, line 11, replace "SECTION 15" with "SECTION 16"

Page 31, line 17, replace "SECTION 16" with "SECTION 17"

Page 31, line 24, replace "ownership interests" with "shares"

Page 32, line 4, replace "SECTION 17" with "SECTION 18"

Page 32, line 9, replace "SECTION 18" with "SECTION 19"

Page 33, line 1, replace "SECTION 19" with "SECTION 20"

Page 36, line 8, replace "SECTION 20" with "SECTION 21"

Page 37, line 1, replace "SECTION 21" with "SECTION 22"

Page 37, line 25, overstrike "ownership interests" and insert immediately thereafter "shares"

Page 38, line 11, replace "SECTION 22" with "SECTION 23"

Page 38, line 29, overstrike "articles"

Page 38, line 30, insert "originating records" after "~~organization~~"

Page 39, line 6, replace "SECTION 23" with "SECTION 24"

Page 41, line 20, replace "SECTION 24" with "SECTION 25"

Page 41, line 28, replace "SECTION 25" with "SECTION 26"

Page 43, line 13, insert "if" after "3."

Page 45, line 9, replace "SECTION 26" with "SECTION 27"

Page 45, line 19, replace "SECTION 27" with "SECTION 28"

Page 47, line 5, replace "SECTION 28" with "SECTION 29"

Page 47, line 17, overstrike "If the surviving organization is a"

Page 47, line 17, remove "domestic"

Page 47, line 18, remove "organization"

Page 47, line 18, overstrike " ,"

Page 47, line 18, remove "then"

Page 47, line 18, overstrike "the" and insert immediately thereafter the word "The"

Page 48, line 23, replace "SECTION 29" with "SECTION 30"

Page 49, line 1, replace "SECTION 30" with "SECTION 31"

Page 50, line 11, replace "SECTION 31" with "SECTION 32"

Page 51, line 30, replace "SECTION 32" with "SECTION 33"

Page 53, line 28, remove "1."

Page 53, line 28, overstrike "Originating records" means for an organization which is:"

Page 53, overstrike lines 29 through 31

Page 54, overstrike lines 1 through 3

Page 54, line 4, replace "SECTION 33" with "SECTION 34"

Page 54, line 13, replace "SECTION 34" with "SECTION 35"

Page 54, line 25, replace "SECTION 35" with "SECTION 36"

Page 59, line 3, replace "SECTION 36" with "SECTION 37"

Page 60, line 12, overstrike "forty" and immediately thereafter insert "one hundred thirty-five"

Page 63, line 8, replace "SECTION 37" with "SECTION 38"

Page 69, line 12, replace "a member" with "the members"

Page 69, line 12, overstrike "is" and insert immediately thereafter "and"

Page 71, after line 20, insert:

44. "Originating records" means for an organization which is:

(1) A corporation, its articles of incorporation;

(2) A limited liability company, its articles of organization;

(3) A limited partnership, its certificate of limited partnership;

(4) A limited liability partnership, its registration; or

(5) A limited liability limited partnership, its certificate of limited liability limited partnership.

Page 71, line 21, overstrike "44." and insert "45."

Page 71, line 26, overstrike "45." and insert "46."

Page 72, line 5, overstrike "46." and insert "47."

Page 72, line 11, overstrike "47." and insert "48."

Page 72, line 18, overstrike "48." and insert "49."

Page 72, line 24, overstrike "49." and insert "50."

Page 72, line 26, overstrike "50." and insert "51."

Page 72, line 29, overstrike "51." and insert "52."

Page 73, line 8, overstrike "52." and insert "53."

Page 73, line 12, overstrike "53." and insert "54."

Page 73, line 14, overstrike "54." and insert "55."

Page 73, line 15, overstrike "55." and insert "56."

Page 73, line 19, overstrike "56." and insert "57."

Page 74, line 3, overstrike "57." and insert "58."

Page 74, line 15, overstrike "58." and insert "59."

Page 74, line 19, overstrike "59." and insert "60."

Page 74, line 24, overstrike "60." and insert "61."

Page 74, line 31, overstrike "61." and insert "62."

Page 75, line 1, overstrike "62." and insert "63."

Page 75, line 4, overstrike "63." and insert "64."

Page 75, after line 11, insert:

**"SECTION 39. AMENDMENT.** Section 10-32-03 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-03. Reservation of legislative ~~power-right~~.** The legislature reserves the right to amend or repeal the provisions of this chapter. A limited liability company organized under or governed by this chapter is subject to this reserved right.

Page 75, line 12, replace "SECTION 38" with "SECTION 40"

Page 81, line 29, replace "partners" with "portions"

Page 82, line 1, replace "SECTION 39" with "SECTION 41"

Page 84, line 30, replace "SECTION 40" with "SECTION 42"

Page 85, remove lines 18 through 29.

Page 86, remove lines 1 through 3

Page 86, line 4, replace "SECTION 42" with "SECTION 43"

Page 86, line 12, replace "SECTION 43" with "SECTION 44"

Page 86, line 18, replace "SECTION 44" with "SECTION 45"

Page 87, line 16, replace "SECTION 45" with "SECTION 46"

Page 87, line 22, replace "SECTION 46" with "SECTION 47"

Page 88, line 1, replace "SECTION 47" with "SECTION 48"

Page 88, line 10, replace "SECTION 48" with "SECTION 49"

Page 89, line 20, replace "SECTION 49" with "SECTION 50"

Page 90, line 2, remove the overstrike over "~~securities~~"

Page 90, line 3, remove "ownership interests"

Page 90, line 6, remove the overstrike over "~~securities~~"

Page 90, line 6, remove "ownership interests"

Page 90, line 14, replace "SECTION 50" with "SECTION 51"

Page 92, line 12, remove the overstrike over "~~securities~~"

Page 92, line 12, remove "ownership interests"

Page 92, line 19, remove the overstrike over "~~securities~~"

Page 92, line 19, remove "ownership interests"

Page 92, line 29, replace "SECTION 51" with "SECTION 52"

Page 93, line 8, replace "SECTION 52" with "SECTION 53"

Page 96, line 22, replace "SECTION 53" with "SECTION 54"

Page 98, line 9, replace "SECTION 54" with "SECTION 55"

Page 98, line 20, overstrike "If the surviving organization is a"

Page 98, line 20, remove "domestic"

Page 98, line 21, remove "organization"

Page 98, line 21, overstrike “.”

Page 98, line 21, remove “then”

Page 98, line 21, overstrike “the” and thereafter insert “The”

Page 100, line 4, replace “SECTION 55” with “SECTION 56”

Page 100, line 12, replace “SECTION 56” with “SECTION 57”

Page 101, line 27, replace “SECTION 57” with “SECTION 58”

Page 102, line 5, replace “SECTION 58” with “SECTION 59”

Page 107, line 6, remove “Ownership interests” means for a domestic or foreign organization that is:”

Page 107, remove lines 7 through 13

Page 107, line 14, remove “30.”

Page 107, line 19, remove the overstrike over “30.”

Page 107, line 19, remove “31.”

Page 107, line 21, remove the overstrike over “31.”

Page 107, line 21, remove “32.”

Page 107, line 24, remove the overstrike over “32.”

Page 107, line 24, remove “33.”

Page 108, line 4, remove the overstrike over “33.”

Page 108, line 4, remove “34.”

Page 108, line 8, remove the overstrike over “34.”

Page 108, line 8, remove “35.”

Page 108, line 22, remove the overstrike over “35.”

Page 108, line 22, remove “36.”

Page 109, line 3, remove the overstrike over “36.”

Page 109, line 3, remove “37.”

Page 109, line 7, remove the overstrike over “37.”

Page 109, line 7, remove “38.”

Page 109, line 8, remove the overstrike over “38.”

Page 109, line 8, remove “39.”

Page 109, after line 14, insert:

“**SECTION 60.** A new section 10-33-01.3 of the North Dakota Century Code is created and enacted as follows:

**10-33-01.3. Reservation of legislative right.** The legislature reserves the right to amend or repeal the provisions of this chapter. A corporation incorporated under or governed by this chapter is subject to this reserved right.”

Page 109, line 15, replace “**SECTION 59**” with “**SECTION 61**”

Page 114, line 13, replace “partners” with “portions”

Page 114, line 15, replace “**SECTION 60**” with “**SECTION 62**”

Page 117, line 13, replace “**SECTION 61**” with “**SECTION 63**”

Page 117, line 18, replace “**SECTION 62**” with “**SECTION 64**”

Page 117, line 28, replace “**SECTION 63**” with “**SECTION 65**”

Page 118, line 3, replace “**SECTION 64**” with “**SECTION 66**”

Page 118, line 29, replace “**SECTION 65**” with “**SECTION 67**”

Page 119, after line 13, insert:

“**SECTION 68.** A new section 10-34-02.1 of the North Dakota Century Code is created and enacted as follows:

**10-34-02.1. Reservation of legislative right.** The legislature reserves the right to amend or repeal the provisions of this chapter. A real estate investment trust formed under or governed by this chapter is subject to this reserved right.”

“**SECTION 69.** A new section 45-10.2-06.1 of the North Dakota Century Code is created and enacted as follows:

**45-10.2-06.1. Reservation of legislative right.** The legislature reserves the right to amend or repeal the provisions of this chapter. A limited partnership formed under or governed by this chapter is subject to this reserved right."

"**SECTION 70.** A new section 45-13-02.1 of the North Dakota Century Code is created and enacted as follows:

**45-13-02.1. Reservation of legislative right.** The legislature reserves the right to amend or repeal the provisions of this chapter. A partnership formed under or governed by this chapter is subject to this reserved right."

Page 119, line 14, replace "SECTION 66" with "SECTION 71"

Page 120, line 3, replace "SECTION 67" with "SECTION 72"

Page 120, line 29, replace "SECTION 68" with "SECTION 73"

Page 121, line 13, replace "SECTION 69" with "SECTION 74"

Page 121, line 30, replace "SECTION 70" with "SECTION 75"

Page 122, line 15, replace "SECTION 71" with "SECTION 76"

Page 122, line 24, replace "SECTION 72" with "SECTION 77"

Renumber accordingly.

KHH #1  
3-5-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1241

Page 115, line 1, replace "partners" with "portions"

AH # 2  
3-5-07

TESTIMONY OF WILLIAM L. GUY III, CHAIR  
NORTH DAKOTA BUSINESS ENTITY DRAFTING TASK FORCE  
IN SUPPORT OF  
HOUSE BILL NO. 1241

Mr. Chairman and members of the Committee, I am here on behalf of a task force which, as in the past, has undertaken the drafting of housekeeping and technical legislation with respect to the various business entity statutes in the North Dakota Century Code. Accordingly, the task force has prepared the legislation that you have before you as the first engrossment of House Bill No. 1241. This legislation updates certain sections of the chapters governing Business Corporations (Chapter 10-19.1), Limited Liability Companies (Chapter 10-32), Nonprofit Corporations (Chapter 10-33), General Partnerships (Chapters 45-13 through 45-21), Limited Liability Partnerships (Chapter 45-22) and Limited Liability Limited Partnerships (Chapter 45-23).

This legislation consists mostly of updating, technical clarification, numerical changes and grammatical changes, some of which were initially enacted as part of the Minnesota counterpart for that particular chapter. In addition, some of the changes set forth in this legislation have been requested by the Office of the Secretary of State.

As has been the case in years past, our object is to make each of these chapters as user friendly as possible to the general public by keeping the format and as many of the defined terms as possible either identical to or parallel in each of the state's principal business entities such as business corporations, nonprofit corporations, limited liability companies (LLCs), limited partnerships (LPs), limited liability partnerships (LLPs), limited liability limited partnerships (LLLPs) and general partnerships (GPs).

I will now summarize some of the highlights of this legislation. Any "section references" are to the sections in the legislation and not to the chapter being amended.

For ease in reviewing this testimony, modifications in each section will be identified as being either a "grammatical change", a "numerical change", a "technical

clarification", or a "substantive change". All **substantive changes** and **technical clarifications** have been highlighted in **bold type**.

**Sections 1 through 36** (page 2 through 63) pertain to the **North Dakota Business Corporation Act** (Chapter 10-19.1).

- **Section 1** (on page 2) codifies the citation of Chapter 10-19.1 as the "North Dakota Business Corporation Act".
- **Section 2** (beginning on page 2) is the definition section of the Business Corporation Act (Chapter 10-19.1):
  - **Subsection 2** is a **substantive change** that broadens the term "acquiring organization" beyond corporations and limited liability companies to include any domestic organization (see item 38 on page 9 for the definition of "organization").
  - **Subsection 4** (beginning on page 2) is a grammatical change.
  - **Subsection 8** (on page 3) is a grammatical change.
  - **Subsection 10** (on page 3) is a **substantive change** that broadens the term "class" beyond being a reference to corporate shares and now includes the ownership interests of any domestic organization.
  - **Subsection 12**(beginning on page 2) is a **technical clarification** of the term "constituent corporation" which makes clear that the references to "corporation" refer to both foreign and domestic corporations.
  - **Subsection 13** (on page 4) is a **substantive change** that broadens the term "constituent organization" beyond corporations and limited liability companies to include any domestic organization.
  - **Subsection 16** (on page 4) is a **technical clarification** to include the term "domestic corporation" in the general definition of "corporation".
  - **Subsection 18** (on page 4) is a grammatical change.
  - **Subsection 30** (beginning on page 5) is a **substantive change** adding the term "governing body" to refer to the board of directors of a

corporation, the board of governors of a limited liability company or any similar governing body of any other domestic organization.

- **Subsection 34** (on page 7) is a **technical clarification** adding the term "domestic liability company" to the previous definition of "limited liability company".
- **Subsection 40**(on page 9) is a **substantive change** that broadens the term "owners" to include the holders of ownership interest in any organization (rather than just the shareholders of a corporation or the members of a limited liability company).
- **Subsection 42**(on page 9) is a **substantive change** that broadens the term "parent" to include any organization rather than limiting the term to a corporation or limited liability company.
- **Subsection 46** (on page 10) is a **substantive change** that broadens the term "related organization" to include the ownership interest in any domestic organization.
- **Subsection 50** (beginning on page 10) is a **technical clarification** to the term "share" to make clear that it is the ownership interest of a shareholder in a corporation.
- **Subsection 52** (on page 11) is a **technical clarification** to the definition of "signed" to make clear that the signature is being placed with the present intention to authenticate the record in question.
- **Subsection 54** (beginning on page 11) is a **substantive change** which broadens the term "subsidiary" to include all domestic organizations (rather than just corporations and limited liability companies).
- **Subsection 55** (on page 12) is a **technical clarification** to make clear that the surviving corporation in a merger may either preexist the merger or be created by the merger.

- **Subsection 56** (on page 12) is a **substantive change** that expands the definition of “surviving organization” to include any domestic organization rather than just a corporation or limited liability company.
- **Section 3** (beginning on page 12) is numerical change only (changing an internal reference from subsection 35 to subsection 36).
- **Section 4** (on page 15) is a **substantive change** which re-inserts the “reservation of right” language that was deleted several years ago by the legislative council. The section makes clear that the legislature retains the right to modify corporate law with respect to existing corporations.
- **Section 5** (beginning on page 14) includes:
  - **Subsection 2** (on page 15) which is a **technical clarification** deletes obsolete references to limitations with regard to cumulative voting and preemptive rights that were repealed in the June 2006 primary election.
  - **Subsection 2d** (on page 15) is a **technical clarification** that refers to the fact that a corporation must now allow for cumulative voting.
  - **Subsection 2n** (on page 16) is a **technical clarification** that now refers to the fact that shareholders have certain preemptive rights.
  - **Subsection 2p** (on page 16) is a numerical change.
  - **Subsection 3h** (beginning on page 17) is a **substantive change** that now makes clear that a committee may create a subcommittee and delegate some or all of its authority to the subcommittee.
  - **Subsection 3l** (on page 18) is a **technical clarification** which makes clear that the corporation establishes uncertificated shares (not the board).
  - **Subsection 8** (beginning on page 20) is a **substantive change** and is new material which makes clear:
    - That any provision of the articles may be dependent upon facts ascertained while outside of the articles if the manner in which the facts operate is clearly set forth in the articles; and,

- That the articles may incorporate by reference some or all of the terms of agreements to which the corporation is a party if the corporation retains a copy in its principal executive office
- **Section 6** (beginning on page 21) includes:
  - **Subsection 6** (beginning on page 22) which is a **technical clarification** making clear that both a domestic and foreign corporation are referred to in this subsection.
  - **Subsection 10** (on page 24) which is a **substantive change** and is new material making clear that an amendment to the articles which changes only the name of the corporation need not be submitted to the shareholders.
- **Section 8** (beginning on page 24) is a **substantive change** which deletes obsolete references to the repealed constitutional provisions and substitutes language clarifying the right of shareholders to cumulate their votes for directors.
- **Section 9** (beginning on page 25) is a **substantive change** to the procedure for the non-judicial removal of directors and makes clear that a director may be removed with or without cause by the affirmative vote of the majority of the voting power of all shares entitled to vote at an election for directors unless, in the case of a corporation with cumulative voting, there are cast against the removal of the director is sufficient votes to have elected the director at an election of the entire board under cumulative voting.
- **Section 10** (on page 26) is a **substantive change** which provides that a committee may create a subcommittee and may delegate any or all of its authority to the subcommittee.
- **Section 11** (beginning on page 26) is a **technical clarification** that deletes language which was moved from this section to its new location as subsection 8 of section 10-19.1-10.
- **Section 12** (beginning on page 27) is a **technical clarification** deleting the obsolete references to the repealed constitutional provisions:

- followed by several grammatical changes in **subsection 2** (beginning on page 27); and,
- ending with a **substantive change** in **subsection 4** (beginning on page 28) to provide that all shares issued are non-assessable unless assessable shares are issued with the unanimous consent of all shareholders.
- **Section 13** (beginning on page 30) is a **technical clarification** deleting language rendered obsolete by the recent constitutional amendment followed by another **technical clarification** making clear that now shareholders have preemptive rights as provided in this section.
- **Section 14** (on page 30) is a **technical clarification** regarding the issuance of uncertificated shares.
- **Section 15** (beginning on page 30) is a **technical clarification** which reiterates the fact that shareholders are not personally liable for the acts or debts of the corporation.
- **Section 16** (on page 31) is a **substantive change** allowing the corporation to submit a matter to the shareholders whether the board believes the matter is advisable or not.
- **Section 17** (beginning on page 31) is a **technical clarification** making clear that written action by the shareholders requires at least a majority of the voting power of all shares entitled to vote on the question.
- **Section 18** (on page 32) is a **technical clarification** making clear that the reference to corporation refers to both domestic and foreign corporations.
- **Section 19** (on page 32) is a numerical change.
- **Section 20** (beginning on page 33) is a **technical clarification** that makes clear that a plan of exchange may be authorized by the governing statute of any domestic organization involved in an exchange with a corporation.
- **Section 21** (on page 36) is a grammatical change.

- **Sections 22 through 31** (beginning on page 37) contain numerous **substantive changes** in the area of mergers, exchanges and transfers making clear that any domestic organization can participate in a merger, exchange or transfer with a corporation (the previous sections having limited these transactions to other corporations or limited liability companies).
- **Section 32** (beginning on page 50) contains **substantive changes** in **subsection 1** making clear that the transfers of assets can occur between a corporation and any foreign or domestic organization followed by a **technical clarification** in **subsection 4** making clear that a disposition of substantially all of the assets of the corporation is not considered to be a merger or defacto merger and that the transferee shall not be liable solely because it is deemed to be a continuation of the transferor.
- **Section 33** (beginning on page 52) is a **substantive change** which adds definitions for the "act of the governing body" and "act of the owners" in reference to conversions making clear that conversions of entities which are not corporations are authorized by their governing bodies or owners.
- **Section 34** (on page 54) is a numerical change.
- **Section 35** (on page 54) is a **substantive change** setting forth new provisions for the conversion of a foreign corporation authorized to transact business within the state and how that entity interacts with the Office of the Secretary of State.
- **Section 36** (beginning on page 54) sets forth **substantive changes** to the annual report of foreign and domestic corporations in that the annual report no longer need reference the value of the property owned by the corporation followed by other technical clarifications to the annual report in subsections 2 and 5.
- **Section 37** (beginning on page 59) in **subsections 30 and 31** deletes the license fee for capitalization of a corporation (instead substituting a flat fee for incorporation of a domestic corporation).

**Sections 38 through 58** (page 63 through 102) pertain to the **North Dakota Limited Liability Company Act** (Chapter 10-32).

- **Section 38** (beginning on page 62) is the definition section of the Limited Liability Company Act.
  - **Subsection 1** (on page 63) is a **substantive change** to the definition of “acquiring organization” making that term identical to its counterpart in chapter 10-19.1.
  - **Subsection 3** (beginning on page 64) is a grammatical change.
  - **Subsection 11** (beginning on page 64) is a **substantive change** to the definition of “constituent organization” making that term identical to its counterpart in chapter 10-19.1.
  - **Subsection 17** (on page 65) is a **technical clarification** to make clear that the term “domestic corporation” is included in the definition of corporation.
  - **Subsection 20** (on page 66) is a grammatical change.
  - **Subsection 29** (on page 67) is a **technical clarification** that defines a foreign limited liability company as one which is both organized under or governed by the laws of another state.
  - **Subsection 33** (beginning on page 67) is a **substantive change** creating a definition of “governing body” that is identical to its counterpart in chapter 10-19.1.
  - **Subsection 38** (on page 69) is a **technical clarification** making clear that the term “domestic limited liability company” is identical to and included in that of “limited liability company”.
  - **Subsection 41** (on page 69) is a grammatical change.
  - **Subsection 44** (on page 71) is a **substantive change** making the definition of “owners” identical to that in chapter 10-19.1.

- **Subsection 45** (beginning on page 71) is a **substantive change** to the definition of “ownership interests” making that term identical to its counterpart in chapter 10-19.1.
- **Subsection 46** (on page 72) is a **substantive change** broadening the definition of “parent” to be identical to its counterpart in chapter 10-19.1.
- **Subsection 56** (beginning on page 73) is a **technical clarification** to the definition of “signed” making its definition identical to that of its counterpart in chapter 10-19.1.
- **Subsection 57** (on page 74) is a **substantive change** making the definition of the term “subsidiary” identical to its counterpart in chapter 10-19.1.
- **Subsection 59** (on page 74) is a **substantive change** which makes the term “surviving organization” identical to its counterpart in chapter 10-19.1.
- **Subsection 60** (on page 74) is a grammatical change.
- **Section 39** (beginning on page 76) is a **substantive change** regarding the “reservation of legislative right” that is the counterpart to a similar section in Chapter 10-19.1.
- **Section 40** (beginning on page 75) relates to the articles of organization and includes:
  - **Subsection 3h** (on page 78) which is a **substantive change** giving the committee the power to create a subcommittee and delegate any or all of its authority to the subcommittee and is identical to its counterpart in chapter 10-19.1.
  - **Subsections 5, 6 and 7** (on page 81) are each **technical clarifications** regarding matters which may be addressed in the articles of organization and are identical to their counterparts in chapter 10-19.1.
  - **Subsection 8** (on page 81) is a **substantive change** which is identical to its counterpart in chapter 10-19.1 and provides that articles of organization:

- may be dependent upon facts ascertainable outside of the articles; and,
  - may incorporate by reference documents maintained in the corporate office.
- **Section 41** (beginning on page 82) is a **substantive change** which adds **subsection 9** (on page 84) providing that an amendment to the articles which changes only the name need not be submitted to the members for approval.
- **Section 42** (beginning on page 84) is a **technical clarification** pertaining to the transactions of business outside of North Dakota by limited liability companies.
- **Section 43** (on page 86) is a **technical clarification** which deletes obsolete language repealed by the voters in the June 2006 primary election.
- **Section 44** (on page 86) is a **substantive change** which adds the ability of a limited liability company to submit a matter to its members whether or not the board believes the matter to be advisable and is identical to its counterpart in chapter 10-19.1.
- **Section 45** (beginning on page 87) is a **technical clarification** making clear that member action without a meeting must always receive the affirmative vote by at least a majority of voting power of all member interests entitled to vote on the question.
- **Section 46** (on page 87) is a **technical clarification** making clear that provisions pertaining to the election of governors can be set forth in either the articles or a member control agreement.
- **Section 47** (on page 87) is a **substantive change** providing that a committee may create a subcommittee and delegate any or all of its authority to the subcommittee and is identical to its counterpart in chapter 10-19.1.
- **Sections 48 through 57** (beginning on page 88) are **substantive changes** that pertain to mergers, exchanges and transfers and make clear that these transactions may occur between a limited liability company and any domestic organization (correcting two inconsistencies in subsection 1 of section 10-32-

100) followed by numerous **technical clarifications** in the sections in question all of which are substantively the same (if not identical) to their counterparts in chapter 10-19.1.

- **Section 58** (beginning on page 101) is a **substantive change** which provides that a disposition of substantially all of the property of a limited company is not considered to be a merger or defacto merger and that the transferee is not solely liable because it is deemed to be a continuation of the transferor and is identical to its counterpart in chapter 10-19.1.

**Sections 59 through 65** (pages 102 through 118) pertain to the **North Dakota Nonprofit Corporation Act** (Chapter 10-33).

- **Section 59** (beginning on page 102) is the definition section of the Nonprofit Corporation Act.
  - **Subsection 3** (on page 102) is a grammatical change.
  - **Subsection 29** (on page 107) was included in error and will be deleted in the amendments offered by the Office of the Secretary of State.
  - **Subsection 33** (beginning on page 107) is a **technical clarification** to the term "related organization" and is identical to its counterparts in chapters 10-19.1 and 10-32.
  - **Subsection 35** (on page 108) is a **technical clarification** of the term "signed" and is identical to its counterpart in chapters 10-19.1 and 10-32.
  - **Subsection 36** (beginning on page 108) is a **substantive change** to the term "subsidiary" and is identical to its counterpart in chapters 10-19.1 and 10-32.
- **Section 60** (beginning on page 109) is a **substantive change** and is the counterpart to a similar section in chapter 10-19.1 regarding the reservation of legislative right.
- **Section 61** (beginning on page 109) pertains to the articles of incorporation:
  - **Subsection 2** (beginning on page 102) is a **technical clarification** which deletes references to obsolete constitutional provisions which were repealed in the June 2006 primary election followed by the inclusion of a reference to

cumulative voting now being unrestricted unless specifically provided in the articles.

- **Subsection 3I** (on page 111) is a **substantive change** which refers to a committee's ability to create a subcommittee and delegate the authority to the subcommittee.
- **Subsection 9** (on page 114) is a **substantive change** which is identical to its counterpart in chapters 10-19.1 and 10-32 and which adds a new provision allowing the articles:
  - to be dependent upon facts ascertainable outside of the articles; and,
  - to incorporate by reference agreements which copies are maintained in the corporate office.
- **Section 62** (beginning on page 114) is a **substantive change** which is identical to its counterpart in chapters 10-19.1 and 10-32 and which adds new **subsection 10** which allows an amendment to the articles which only changes the corporate name to be authorized by the board without the approval of the members.
- **Section 63** (beginning on page 117) is a **technical clarification** deleting obsolete references to the repealed constitutional provisions.
- **Section 64** (on page 118) is a **substantive change** and is the counterpart to similar provisions in chapters 10-19.1 and 10-32 regarding the authority to establish subcommittees.
- **Section 66** (on page 118) is a **technical clarification** which is identical to its counterpart in chapters 10-19.1 and 10-32 which makes clear that written action by the members requires at least a majority vote of the voting power entitled to vote on the matter in question.
- **Section 67** (on page 119) is a **substantive change** and is the counterpart to a similar provision in chapter 10-19.1 regarding the reservation of legislative right.

**Sections 68 through 70** (pages 119 through 121) pertain to the **North Dakota Limited Partnership Act** (chapter 45-10.2):

- **Section 68** (beginning on page 118) is a **technical clarification** to **Subsection 40** of the definition section is a **technical clarification** with regard to the term "signed" and is identical to its counterpart in chapters 10-19.1, 10-32 and 10-33.
- **Section 69** (on page 120) is a **substantive change** and is the counterpart to a similar provision in chapter 10-19.1 regarding the reservation of legislative right.
- **Section 70** (beginning on page 120) is a **technical clarification** to the filings with the Office of the Secretary of State.
- **Section 71** (on page 120) is a **technical clarification** making clear that at least one general partner must sign any application for an amended certificate of authority by a limited partnership.

**Section 72 and 74** (pages 122 and 123) pertain to the **North Dakota Uniform Partnership Act**:

- **Section 72** (beginning on page 122) is a **technical clarification** to subsection 26 of the definition section making the definition of the term "sign" identical to its counterparts in chapters 10-19.1, 10-32 and 10-33.
- **Section 73** (beginning on page 122) is a **substantive change** and is the counterpart to a similar provision in chapter 10-19.1 regarding the reservation of legislative right.
- **Section 74** (beginning on page 122) is a **technical clarification** to the requirements for the filing of a statement of renewal with the Office of the Secretary of State.

**Sections 75 and 76** (pages 123 and 124) pertain to the **North Dakota Limited Liability Partnership Act**:

- **Section 75** (beginning on page 123) is a **technical clarification** to the term "signed" in Subsection 24 of the definitions section making that term identical with its counterpart in chapters 10-19.1, 10-32, 10-33, 45-10.2 and 45-13.
- **Section 76** (beginning on page 123) is a **substantive change** in the filing fee for a certified copy relating to a domestic or foreign limited liability partnership.

- **Section 77** (beginning on page 122) is a **technical clarification** of subsection 24 of the definition to cause the definition of the term "signed" to be identical to its counterparts under chapters 10-19.1, 10-32, 10-33, 45-10.2, 45-13 and 45-22.

As you can see, the legislation embodied in this bill is for the most part technical clarifications and housekeeping. I appreciate the opportunity to address your committee. If you have any questions, I will be happy to answer them.