

2013 HOUSE POLITICAL SUBDIVISIONS

HB 1207

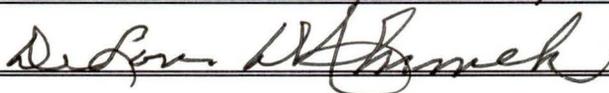
2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1207
January 31, 2013
Job 18053

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to notary stamps, the use of civil penalties collected by the secretary of state, and implementation of a notary public database; and to provide an effective date.

Minutes:

Testimony #1, Proposed amendment #2

Chairman N. Johnson: Opened the hearing on HB 1207.

Al Jaeger, Secretary of State: The bill you have before you was introduced on our behalf by Rep. Klemin as the prime sponsor. Last session under the sponsorship of Rep. Klemin a bill was introduced that uniform notary law. Rep. Klemin is a member of the uniform law commission and one of the areas was specific was that he was on the notarial uniform drafting committee. That particular adoption last session was the first in the nation of the bill and when that bill was adopted it contained a lot of things that they just referred to the state for rule making and we usually don't get into that so much so a lot of the stuff that we wanted to have carried forward was incorporated into that particular bill so it created Chapter 44.06.01 in the century code. We have a new chapter we operate under. Right now we have 13,614 notaries that are commissioned through my office. A notary receives a commission for six years. We just have a couple of small changes that need to be made. (See testimony #1). 02:00 - 12:10 Went over this. (Proposed amendment #2).

Rep. Kathy Hogan: How much income do you get from your fines a year?

Al Jaeger: It does all up to a few thousand dollars. In our general fund budget we do have a line and if we have any contractor issues that goes to administrative hearings it will just wipe out our line completely because we don't just pad it to be in our budget.

Rep. Kathy Hogan: Somebody in appropriations was carrying this on the floor somebody in appropriations would ask us that question so it might be helpful for you to provide us with that information.

Rep. Hatlestad: Is this fund audited by anybody?

Al Jaeger: Our general services operating fund is appropriated and there are certain operations of the office that we cannot predict as far as the demand. When we are

requested to provide certain services for which we charge the money for those services is deposited in this account. Prior to this we had a CD that was issued every month with all the crop and livestock liens and we started doing it and it was well received. Now we have had the general services fund for 14 years and it is just a special fund. We cannot spend more money than the revenue that comes in. At the end of the biennium we turn anything that we have over \$75,000 so the fund doesn't just keep building up. It is part of our audit when the state auditor coming in and we will be due for an audit this coming spring. You can go on line and read the report from the last time.

Rep. M. Klein: Would you give us an example of a more serious violation of this and how it was handled?

Al Jaeger: Right now the most serious is notarizing your own name. State law is clear that the notary needs to witness the signature being affixed so when we see something coming in that indicates the signer signed it on a certain date and all of a sudden the notary notarized it and put a date down several weeks afterwards we consider that being pretty serious. Things like a missing date or the county missing is causing about a 100 letters to be written. We consider that a hand slapper. We issue an authorization to purchase a notary stamp so the vendors are not supposed to not issue these until you have the authorization from the Secretary of State. During the course of the year I probably have about 50-100 that don't send it back and they keep notarizing. Their commission had lapsed and we fine for that.

Rep. M. Klein: What is the fee you charge?

Al Jaeger: \$36 for six years.

Rep. Klemin: The most serious cases I have seen in a notary is a couple of law suits where I represented some parties where the notary notarized documents that were not signed in front of the notary and those documents turned out to be fragrant like deeds or certificate of title for vehicles. That is very serious.

Rep. Koppelman: What is the legal effect of those notarized documents? Are they not valid?

Al Jaeger: In my mind they are not valid. If that becomes a legal question and if it was found out by someone it could jeopardize the document. Usually when we catch them they haven't done too many. It is frustrating when this does happen. All notary's by law are supposed to have their notary certification hanging somewhere in the open. The most notable cases have been where there have been things like a divorce where they have been attorneys involved and there has been a notary violation. One side will notice it very quickly and bring it to our attention and I am dealing with attorneys who are notaries who have violated the law.

Rep. Koppelman: We had a bill in our committee where there are a request to do away with the requirements for notaries for this particular kind of document. What does a notarization really accomplish? All a notary does it says he say this person sign the document.

Al Jaeger: It is a little more than that. Notarization goes way back. A notary's function is to verify the identity signing. Their function is not to determine if the document is legal. It is to determine that the person affixing their signature is who they say they are and that they say them execute it of their own free will. Our law says a notary cannot notarize the signature of a spouse. We advise notaries that they should be careful doing stuff for family members.

Rep. Koppelman: Do you think there is a concern when you take penalties that are assessed by a particular official and then say you get to keep whatever you collect from these penalty and then you say you get to keep whatever you collect from these penalties; is there an incentive to go out and get more penalties because it increases the collection.

Al Jaeger: We don't have time. I would just as soon not to have to do it at all. If the committee felt real strong about this there are other provisions in here that are more important to us. This is going into state funds. We are appropriated a general fund and a special fund so it isn't like this does not go back into the state fund.

Rep. Koppelman: If you faced a situation where you had a shortfall in these funds, what is your recourse?

Rep. Looyen: Jaeger: We got hit major and it went over I would suspect I would be talking to my colleagues on the emergency commission and say we need some contingency funding because this was completely unexpected.

Rep. Hatlestad: Do you send out renewal noticed when this notary's expire?

Al Jaeger: By law I have to do it after six years. There are vendors out there that get the list from us and if we don't send out a letter they are sure getting it because there is a bond requirement and they like to sell those bonds to the notaries so they are contacted. We now do a newsletter and a mailing once a year for sure. If you get married or move you have a requirement that within so many days you are supposed to notify our office. Because we do the mailing every year when those things get kicked back because we can't reach them then we follow up to make sure that we have their address current. It makes no sense to commission somebody and when you become a commissioned notary then you become an officer of the state. When we get to when all the notaries will be listed on line then people will know that too.

Rep. Beadle: What caused the delay so that July 31, 2013 doesn't work for being able to maintain the electronic data base of notary publics?

Al Jaeger: It is because it is not the highest priority. The one date that is being changed has to do with electronic notarization. That is of a higher priority than having the names of the notaries out there. It will get done and it might happen in the same time line but we just don't want to get locked in.

Rep. Beadle: I appreciate that your office is more than swamped. The new language reads when the Secretary of State acquires or develops the technical capability to maintain

an electronic data base. You have a website and you maintain newsletters going back to wherever and other agencies like real estate commission have a list of all the realtors on line and where their offices are so the capability is there so would it be better off to have some other wording? You have the ability to do it.

Al Jaeger: What might seem simple might not be that simple. There is a lot more programming that is involved with that in terms of using it and there are a lot of things that have to tie into that list being out there. My deputy said it won't be that much later. We got \$2236 in fees for the whole year.

Opposition: None

Hearing closed.

Chairman N. Johnson: The questions to be answered was how much the dollar amount is in there and maybe the question Rep. Koppelman was raising was is this a policy we want to have where we have the agency being able to keep the fines that they put forward? Discussion?

Rep. Koppelman: I don't have any problem in this case. It is a small amount of money. My question was do we want to get in the habit of doing this because then others can point to it and say well you do it here then you do it there and pretty soon the effectiveness of the appropriations process fades if every agency does their thing and collects their money and keeps and spends their money.

Chairman N. Johnson: If it was more than \$5,000 it would have to go through appropriations.

Rep. Kathy Hogan: That was my concern and when it is \$2000 it is a small enough figure I think we should do a do pass.

Motion Made to Move the amendments .01001 that was presented by Sec. Jaeger by Rep. Kathy Hogan: Seconded by Rep. Looyen: Voice vote carried.

Do Pass As Amended by Rep. Kathy Hogan: Seconded by Rep. Looyen:

Rep. Klemin: These funds in the special account are appropriated and subject to audit by the state auditor so I am not so sure there should be any concern.

Rep. Hatlestad: These fines are collected so they haven't been appropriated. There is a line item with an appropriation from what I understand, but they are extra money that has been collected. My concern is that you have created a slush fund. That is why I asked who audits it.

Rep. Klemin: There is a distinction between fines and civil penalties. Fines are required by the constitution to go into the commons school trust fund.

Vote: 13 Yes 0 No 2 Absent Carrier: Rep. Beadle:

Closed.

1/31/13
TD

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1207

Page 1, line 1, after "to" insert "create and enact a new subsection to section 44-06.1-09 of the North Dakota Century Code, relating to notarial acts performed in this state and bordering states; to"

Page 1, line 4, remove "and"

Page 1, line 4, after "date" insert "; and to declare an emergency"

Page 1, after line 6, insert:

"SECTION 1. A new subsection to section 44-06.1-09 of the North Dakota Century Code is created and enacted as follows:

A notarial act performed in this state by a notarial officer of a bordering state has the same effect as if the act were performed by a notarial officer of this state, if the bordering state grants notarial officers of this state similar authority within that state."

Page 3, after line 4, insert:

"SECTION 6. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

Date: 1-31-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1207

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Hogan Seconded By Rep. Looyen

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Ben Hanson		
Vice Chairman Patrick Hatlestad			Rep. Kathy Hogan		
Rep. Thomas Beadle			Rep. Jerry Kelsh		
Rep. Matthew Klein			Rep. Naomi Muscha		
Rep. Lawrence Klemin					
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Alex Looyen					
Rep. Andrew Maragos					
Rep. Lisa Meier					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*-01001
Voice
Vote
Carried!*

Date: 1-31-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1207

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Hogan Seconded By Rep. Looyzen

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Ben Hanson	✓	
Vice Chairman Patrick Hatlestad	✓		Rep. Kathy Hogan	✓	
Rep. Thomas Beadle	✓		Rep. Jerry Kelsh	✓	
Rep. Matthew Klein	✓		Rep. Naomi Muscha	✓	
Rep. Lawrence Klemin	✓				
Rep Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Alex Looyzen	✓				
Rep. Andrew Maragos	—				
Rep. Lisa Meier	—				
Rep. Nathan Toman	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep. Beadle

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

REPORT OF STANDING COMMITTEE

HB 1207: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1207 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new subsection to section 44-06.1-09 of the North Dakota Century Code, relating to notarial acts performed in this state and bordering states; to"

Page 1, line 4, remove "and"

Page 1, line 4, after "date" insert "; and to declare an emergency"

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"SECTION 1. A new subsection to section 44-06.1-09 of the North Dakota Century Code is created and enacted as follows:

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Page 3, after line 4, insert:

"SECTION 6. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Re-number accordingly

2013 SENATE POLITICAL SUBDIVISIONS

HB 1207

2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee
Red River Room, State Capitol

HB 1207
March 14, 2013
19896

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to notary stamps, the use of civil penalties collected by the secretary of state, and implementation of a notary public database; to provide an effective date; and to declare an emergency.

Minutes:

You may make reference to "attached testimony."

Chairman Andrist opened the hearing for HB 1207. All senators were present.

Al Jaeger Secretary of State. Written testimony #1. The bill in front of you pertains to the notary duties and a few adjustments that we're asking to be made during this particular session. Mr. Jaeger explained the bill.

Chairman Andrist the issue has come up primarily from a Montana notary?

Mr. Jaeger replied actually North Dakota people got it going over there because whether the reverse happens as often, but we need it to get the language back in. It is just to put something back that existed for quite a few years before that and something that was just inadvertently dropped out in the uniform drafting so it's a good thing to have.

Chairman Andrist How many kinds of violations do you have in a given year? How many are serious enough so you impose a penalty?

Mr. Jaeger replied we do several different levels. I do a reprimand level and if my memory serves me right we do about 600-700 reprimand's a year. **Chairman Andrist** Most of them are notarizing their own signature. **Mr. Jaeger** replied no, there are missing a date, when you notarized your supposed to like put down state of North Dakota, county of. Do you know that there is a county of ND? Yes, Senator Lee, yes because I've probably written 80-90 letters of that in the last year. So there is just little things.

Chairman Andrist Which you don't normally fine for that? **Mr. Jaeger** replied no, those we don't. But we go on record with them because these are documents, about 95% of the notary violations are on the very documents they submit to my office. I just feel very strongly, I can't just overlook that. So we do write them a letter, and show them the error, and then do a reprimand. On the others I suppose we do about 100-125 where we fine if

they miss or do not use their notary stamp; we have ones that when they receive the papers they are supposed to return an impression to us of the notary stamp and then we issue the commission. Sometimes they forget that step. We fine because what they do is they are starting to notarize before they are actually commissioned. So that can cause some legal problems if you're notarizing without a commission. Actually that is a criminal infraction too. Sometimes we have a situation where they and it seems to be more prevalent on notary bonds. But there is kind of a standard format that is used and the wording on there is very clear. (ex. cited 10:47-11:01) That infraction usually costs \$125-\$150 dollars because the notary is stating ex. cited 11:10- 11:24) That is why last year we added up to about \$2000. What we do in terms of education with the notaries, every year we have at least one annual mailing to every notary in our system where we review the reprimands and remind them and give them pointers, we include the copy of the law and so we take the initiative to educate them. In all of the letters that we send out, whether or not it's a reprimand or what have you, I always refer them to our web site.

Chairman Andrist you have the authority to impose penalties, not this isn't about having a finders' fee or not? **Al Jaeger** replied it just puts the fee in a different fund that's all.

Chairman Andrist I have a little bit of a problem with it as it's sort of like a finders' fee to me. **Al Jaeger** replied it's a fee that I already charge, so that is not going to change. It is just that the money rather than going into the general fund goes into my special fund because in the general fund all it does is add point 0000000001 to the states' general fund. Two thousand dollars doesn't add very much to the general fund, but it does in our special funds.

Al Jaeger continued with his testimony explaining the bill in its amendment for Section 5.

Vice Chairman Ronald Sorvaag Do they send you a copy every time a notary is due? How do you know their making a mistake on the form if I am signing a document and I need it notarized? If they filled it out wrong...How do you find out?

Al Jaeger replied first of all they submit them to our office, these are the notary application forms, these are the notary bond forms, in other words these are the documents as part of being commissioned as a notary that are submitted to my office. So these are original documents and on these documents the dates don't jive, signatures are missing, they send us our violations as part of the process.

Vice Chairman Ronald Sorvaag But on the ongoing they don't send you everything they notarized though? **Al Jaeger** replied well no, because 14,000 notaries! **Vice Chairman Ronald Sorvaag** how do you get through it all? Violations are more found if they turn themselves in or something. **Al Jaeger**, No, first of all, the notaries are commissioned for 6 years and so we're always receiving renewals. We're always receiving new applications, and that is part of our process. We probably do 100 a month or more. It is in those documents, most of them are correct, but on those, there are always a few. When I say I reprimanded maybe 600 people in the last year that is part of a couple of 2000-3000 documents used, most of them are correct. When we receive a complaint from the outside, it usually is involved in some situation where there is a divorce or something is happening.

Senator John Grabinger I'm wondering why in Section 2, regarding the size of the stamps and everything, is that really necessary that is in state law that we regulate exactly what size the stamp is and everything or is a rule that the Secretary of State can just have?

Al Jaeger replied it's been in state law for years and years. So there are specifications so that otherwise we would end up with many varied designs. This isn't anything abnormal.

Senator John Grabinger Where I am going with this is, in the courts we just change laws because it was spelling out dictation that had to be done in long form with certain paper, ink and everything and some of things get too far into it. We're micromanaging too much. You don't think that's here?

Al Jaeger replied I guess I don't see it as a problem because I mean it's actually all we're doing is just helping them out so that it can be done. You mentioned courts I mean one of the things we did get away from is we no longer allow embossers and some of us that used to be notaries we just kind of liked to use that embosser. It's nice to crimp that paper, but as you know embossed doesn't photocopy.

Senator Jim Dotzenrod Section 1 has the reciprocal agreement with the bordering states and based on your testimony can I assume then that So. Dakota and Minnesota do not have these reciprocal agreements with us at this time?

Al Jaeger replied my understanding that is the case. If they do then it would work.

Senator Jim Dotzenrod on page 2, line 6&7 where we change up to or equal. Right now current law says that the notary stamp has to be 1 5/8ths where providing in here it could be a smaller size. The rectangular stamp says it can be up to 2 5/8ths or smaller. **Al Jaeger** replied it also says maybe up to or equal. **Senator Jim Dotzenrod** which it would 2 5/8ths or smaller. **Al Jaeger** up to or equal, so what we're doing is providing the same standard for a round one as we are the rectangular one. **Senator Jim Dotzenrod** continued I guess I am wondering are there people out there notarizing with rectangular notaries that are smaller and would we expect with this language then that since that is permitted, we would probably see in the future people using notaries that are smaller than 1 5/8ths.

Al Jaeger replied most of the notaries automatically in the renewal process just go to a vendor and the vendor automatically does it. As part of the renewal process or application process, we issue an authorization. When you apply to become a notary, we issue an authorization that allows you to purchase a notary stamp. We don't want just anybody to come off the street and buy notary stamps. The vendors in North Dakota are real good about it. If you walk in and say I want a notary stamp they will ask to see your authorization. If the authorization isn't there they won't make one for you. When they receive their notary stamp they fix the impression to a document that they send to our office, electronically or by fax or mail, and then at that time, we know what that looks like. We review it at that time, and if it fits the legal requirements then we issue the commission to them.

Senator Jim Dotzenrod It appears from the changes that your recommending that its' okay and we should expect not any problems if we go to a smaller size in the future. That

would be okay. I was also going to ask about Section 3 where we changed the date on line 12. There is no other change in the text except that date change so I am wondering is the date change really needed?

Al Jaeger replied this law doesn't become effective until the date is indicated there. So, it becomes important that we change that because we're not able to. In other words if it isn't made by July 31, 2013 I am going to have a lot of work to do in a very short period of time that we don't have time to do.

Senator Jim Dotzenrod I am still confused here because current law says affective after July 31. **Al Jaeger** replied when the bill was drafted it includes a few bills over a course of time that have delayed effective dates. In other words, what you see, in Section 3, it isn't law yet. It would become law on July 31, 2013. **Senator Jim Dotzenrod** Okay.

Al Jaeger replied that all that we're saying is we don't want this to become law until 2015. What we'll be doing, prior to that, we will be doing all the preparatory work so that when the law becomes effective, that shortly after that we can start doing the electronics.

Chairman Andrist Why do we care if we're going to recognize a notary from a neighboring state? Why do we care if they got a reciprocal agreement we're doing for the benefit of our own people aren't we? I don't know why that would make a difference. **Al Jaeger** replied essentially right now in North Dakota law says is that you can only notarize in the state of North Dakota. **Chairman Andrist** okay but, why don't we just recognize notarial's from neighboring states and assume that why do we care? **Al Jaeger** replied we do if the document was notarized in Montana or in South Dakota or in Colorado, or whatever it was notarized that is recognized. What this reciprocal agreement says is that a notary physically can go into Montana and notarize something in the state of Montana, and it will be recognized. Right now the Montana law says a Montana notary can come into North Dakota and it will be recognized if the state has an agreement that is reciprocal. It was in law in 2001, and got inadvertently dropped last session and all we're doing is putting that back again. Otherwise a North Dakota notary cannot go across the border and have it recognized as a notarial act.

Senator Judy Lee I hope someday in Minnesota has this because I've been a notary for a very long time and there are times when one would be notarizing a deed or some other document living on the border, I would have to ask somebody who lived in Minnesota to come to North Dakota so that I could notarize the document, although the transaction could be on either side (ex. cited).

Chairman Andrist closed the hearing for HB 1207.

Senator Judy Lee moved do pass
2nd. Senator Grabinger
Role call vote 6 yea, 0 no, 0 absent
Carrier Senator Judy Lee

2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee
Red River Room, State Capitol

HB 1207-2
March 14, 2013
19973

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to notary stamps, the use of civil penalties collected by the secretary of state, an implementation of a notary public database; to provide an effective date; and to declare an emergency.

Minutes:

You may make reference to "attached testimony."

Chairman Andrist opened the hearing for a vote on HB 1207. All senators were present. I talked with leadership since we've already signed off on it and they thought the most efficient way if the carrier was agreeable to it, would be to have the carrier who is Senator Judy Lee do a floor amendment on it. It is okay with you?

Senator Judy Lee replied, yes what you want to do is fine with me. **Chairman Andrist** It would be good however that we could tell them the committee agrees unanimously agrees with the floor amendment, I wanted to give you a chance to think about it.

Senator Judy Lee I am sure that you visited with the Secretary of State as well, but did you want a little brief explanation for the committee or did you want to do that?

Senator Judy Lee It came from Senator Dotzenrod's question. Why that date really needed to be there and where would this section be, and it shows why it takes more than one set of eyes to look at these things. After leaving here, there was a staff member here as well as Secretary Jaeger and they said you know that's right. There were many places that would like to start the work, before July 31, 2015 and on page 2, line 12, it says effective after so really Senator Dotzenrod was correct about what's the difference if you leave it in there saying effective after July 31, 2013 so then they could start at any time and they will just work with the process as the technology and all becomes available. So that is really what this amendment would do, it just takes away that change to 2015, and as a result that section would not be in the bill at all. I think that is correct. Mr. Chairman if you read it differently let me know.

Chairman Andrist it took me a little time to figure out why we were taking out the whole section.

Senator Judy Lee there wouldn't be a change. Chairman Andrist replied there wouldn't be a change so there is no need to have it in there.

Senator Jim Dotzenrod I guess when I did ask the question it was more about the date. I had sort of assumed that we needed the text here, but if you read through the text I suppose you could argue that the things that are said in here are things you would probably not need to say. They are normal things like on lines 21, 22, 23, that 'if the secretary of state has established standards for approval of technology pursuant to section, the technology must conform to the standards. If the technology conforms to the standard the secretary of state shall approve the use.... Well I suppose you could argue that we don't need to have that essentially.

Chairman Andrist the language is already in the code. **Senator Jim Dotzenrod** so if we delete this we're just taking that date out. We're going to leave that in. **Chairman Andrist** nothing else changes.

Chairman Andrist We're actually just changing the date, really even though we're taking the rest of it out.

Senator Howard Anderson We had one of the same things, with one of my bills. It deleted a section and everybody thought we took out the original language, but that is not true.

Senator Jim Dotzenrod I think that the language that I see in the section is probably good, there is no downside to leaving it in there.

Chairman Andrist The bill is last on the calendar and we may not get to it today but we'll prepare the amendment if there are no objections. The carrier can say that it has the unanimous support of the committee, I presume.

REPORT OF STANDING COMMITTEE

HB 1207, as engrossed: Political Subdivisions Committee (Sen. Andrist, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1207 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1207

#1

ALVIN A. JAEGER
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January 31, 2013

TO: Rep. N. Johnson, Chairman, and Members of the House Political Subdivision Committee

FR: Al Jaeger, Secretary of State

RE: HB 1207 – Uniform Law on Notarial Acts

Under the sponsorship of Rep. Klemin, who was a member of the drafting committee of the Uniform Law Commission, the 2011 Legislative Assembly created Chapter 44.06.1, the Uniform Law on Notarial Acts. It has worked very well. As of today, the state has 13,615 active commissioned notaries. This bill makes the following minor changes.

Section 1, page 1, line 23: Because of challenges encountered with the manufacture of round notary stamping devices, which has resulted in rejections by the Secretary of State's office, the text is changed for the size specifications. This makes the specifications for a round stamping device the same as the "up to or equal" standard that now exists for a stamping device with a rectangular design as is stated beginning at the end of line 24.

Section 2, page 2, line 5: The change extends the effective date of this section of law to July 31, 2015. According to the detailed and project schedule for the Secretary of State's comprehensive software project now underway, it is not possible to meet the deadline that is now set in state law.

Section 3, page 2, lines 23 through 25: This change allows the penalty fees collected by the Secretary of State for notary violations to be deposited in the agency's general services operating fund. Because it is impossible to predict and budget in the agency's general fund appropriation for potential administrative hearings, having the fees in the agency's special fund will provide the agency with flexibility. For example, this past year, one case cost \$1,188, and it did not even go to a hearing because the two notaries involved agreed to acknowledge the violation before the hearing was held.

Section 4, page 2, lines 28 through 30: Instead of designating a specific effective date for development of the electronic database of notaries public, this bill would allow the Secretary of State to deploy it when the technical capability is available.

With this testimony, I am also offering an amendment, which has been prepared by legislative council, at the request of Rep. Larson. Prior to the adoption of the Uniform Act, North Dakota notary law included reciprocal language in N.D.C.C. § 47-19-14.1(1) that would recognize notarial acts executed in North Dakota by a notary commissioned by a bordering state if that state, in turn, would recognize the notarial act of a notary commissioned in North Dakota. Montana law has such language. Inadvertently, in the drafting of the HB 1136, with its 15 pages, the existing North Dakota reciprocal provision was overlooked when it was adopted last session. This amendment will correct that oversight and restore North Dakota notary law to the prior reciprocal provision that was first adopted by the legislature in 2001.

2

13.0608.01001
Title.

Prepared by the Legislative Council staff for
Representative Larson
January 18, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1207

Page 1, line 1, after "to" insert "create and enact a new subsection to section 44-06.1-09 of the North Dakota Century Code, relating to notarial acts performed in this state and bordering states; to"

Page 1, line 4, remove "and"

Page 1, line 4, after "date" insert "; and to declare an emergency"

Page 1, after line 6, insert:

"SECTION 1. A new subsection to section 44-06.1-09 of the North Dakota Century Code is created and enacted as follows:

A notarial act performed in this state by a notarial officer of a bordering state has the same effect as if the act were performed by a notarial officer of this state, if the bordering state grants notarial officers of this state similar authority within that state."

Page 3, after line 4, insert:

"SECTION 6. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

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

March 14, 2013

TO: Senator Andrist, Chairman, and Members of the Senate Political Subdivision Committee

FR: Al Jaeger, Secretary of State

RE: HB 1207 – Uniform Law on Notarial Acts

Under the sponsorship of Rep. Klemin, who was a member of the notarial drafting committee of the National Conference of Commissioners on Uniform State Laws, the 2011 Legislative Assembly created, with the adoption of HB 1136, Chapter 44-06.1 of the North Dakota Century Code known as the Uniform Law on Notarial Acts. It has worked very well. Currently, the state has approximately 13,695 active commissioned notaries. This is a 4% increase from the end of the previous biennium on June 30, 2011.

This bill makes the following changes.

Section 1, page 1, lines 10 through 12: This addition restores language to the Century Code that was inadvertently overlooked in the drafting of HB 1136. It previously existed, since 2001, in the former N.D.C.C. § 47-19-14.1(1). It is a reciprocal provision that would recognize the notarial act of a notary commissioned by a bordering state if that state, in turn, would recognize the notarial act of a notary commissioned in North Dakota. Montana has such a law.

Section 2, page 2, line 6: Because of challenges encountered with the manufacture of round notary stamping devices, which has resulted in rejections by the Secretary of State's office, the text is changed for the size specifications. This change makes the specifications for a round stamping device the same as the "up to or equal" standard that now exists in current law for a stamping device with a rectangular design as is stated at the end of line 7.

Section 3, page 2, line 12: The change extends the effective date of this section of law to July 31, 2015. This section is related to electronic notarial acts and is contingent on the Secretary of State establishing the standards for the applicable technology. Because of time constraints and personnel commitments related to the development of the Secretary of State's comprehensive software project, it is not possible to meet the deadline that is now set in state law.

Section 4, page 2, line 30 and page 3, lines 1 and 2: This change allows the penalty fees collected by the Secretary of State for notary violations to be deposited in the agency's general services operating fund. Because it is impossible to predict and budget in the agency's general fund appropriation for potential administrative hearings, having the fees in the agency's special fund will provide the agency with flexibility. For example, this past year, one case cost \$1,188, and it did not even go to a hearing because the two notaries involved agreed to acknowledge the violation before the hearing was held.

Section 5, page 3, lines 5 through 7: Instead of designating a specific effective date for development of the electronic database of notaries public, this change would allow the Secretary of State to deploy it according to a related project schedule and not by a date certain.

Section 6, page 3, line 13: Rather than waiting until August 1 for it to become effective, the emergency clause will allow the provisions in Section 1 to become law, as soon as the bill is filed with the Secretary of State.

#2

13.0608.02001
Title.

Prepared by the Legislative Council staff for
Senator Andrist

March 14, 2013

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1207

Page 1, line 3, remove "section 44-06.1-18,"

Page 1, line 6, remove "to provide an effective date;"

Page 2, remove lines 10 through 24

Renumber accordingly