

2013 SENATE INDUSTRY, BUSINESS, AND LABOR

SB 2152

2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2152
January 21, 2013

Job Number 17408

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to ownerships of professional organizations

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Senator Sitte: Said she is bringing this bill before them because of a unique situation. She has a constituent, Dr. Mark Monasky who is a neurosurgeon, one of the finest neurosurgeons we have ever had in Bismarck and also a lawyer. She said that because he was trying to register two professional organizations, and he has not been allowed to do that in North Dakota, he has moved his medical practice to South Dakota.

Senator Laffen: Said the way he understood it, the law was maybe intended so that you couldn't have two practices, say two architecture practices, keeping them from becoming a monopoly. It wasn't intended that you couldn't be a doctor and a lawyer.

Senator Sitte: Said that he was correct in every way. That is why the secretary of state's office is here, Clara Jenkins has helped us work this out. She will testify as to that history.

Dr. Mark Monasky, MD, JD: Written Testimony Attached (1). He is a licensed neurosurgeon and attorney in North Dakota.

Chairman Klein: Said that Dr. Monasky had argued this before the Secretary of State and they had suggested that he visit with the Attorney General and the Attorney General did not recognize your interpretation of what you believe the law says. So you have spent a lot of time attempting to convince them?

Dr. Monasky: Said that was correct. He said in fact it was very disconcerting to him that the Attorney General would not even meet with him. He said in a small state such as North Dakota he found that very distressing and disconcerting. He did some legal research and found the states of Minnesota, South Dakota and Montana do not prohibit an individual from having ownership interests in more than one professional corporation, whether for the same or different professions. He said every one of our neighboring states, a professional

can form more than one professional corporation to practice different professions. The only restrictions in the various states, all of the neighboring states, restrict an individual from practicing a profession for which they are not licensed. He said that is common sense, that's for the protection of the public. Some of the states will prevent combinations of practicing the same profession in the same professional organization, North Dakota clearly does that and that is not what he is arguing. He isn't arguing that he wants to practice medicine and law on the same profession. Minnesota would defer to the state licensing board. South Dakota would allow for both in the same profession. Montana is similar to Minnesota and would defer the application to the state licensing boards. He believes this has been against the interest of North Dakota, he can't think of any public policy arguments from any constituency or anybody's point of view where they would be harmed by allowing him and other professionals to form more than one professional organization for two totally different professions. He said it is almost ludicrous and absurd that he is even standing up here. He said it is crystal clear the intent of the law as currently written is that of course one can form more than one professional corporation if it is for different professions. There is nowhere in the corporation statutes in North Dakota that prevents someone from engaging in more than one type of business. He said he is the only physician in North Dakota that can't form a professional corporation for his medical practice. He has already ceased his practice in North Dakota and is practicing in South Dakota. He said he urges them to modify this statute so that professionals like him, even though small in number will be able to practice their professions within the state. He said the revenues collected by the state of North Dakota would be increased if he was allowed to form to professional corporations within the state. He continued going over his written testimony.

Chairman Klein: Said that it was unfortunate that he didn't come before them before so that this could have been corrected. He said they don't want to chase qualified individuals out of our state. Sometimes there is just a glitch in the law and he is happy that he is here today with an opportunity to possibly correct this. He asked if he was good with the way the bill was written.

Dr. Monasky: Said he is very comfortable.

Clara Jenkins, Director of Business Systems for the Secretary of State's Office: Written Testimony (2). She is here on behalf of the Secretary of State, Al Jaeger.

Chairman Klein: Commented on the situations that exist where the foreign organizations have an upper hand over and above the domestics because they can have two professional organizations in the state at one time.

Clara Jenkins: Said that was right but that this situation had not come up five years ago. It wasn't very common for professionals to have more than one professional license. They are now finding that dual license situation coming up more often. She then went back to her testimony.

Chairman Klein: Asked if Clara was good with the bill but that they don't have the fiscal note ready yet.

Clara Jenkins: Said that it is a good idea to do this but would like time to prepare the fiscal note.

Chairman Klein: Closed the hearing.

Senator Andrist: Said that this seems like such a simple change in the law that he thinks it will be passed unanimously. If they attach a fiscal note it will have to go to appropriations so he is wondering if they need the fiscal note.

Chairman Klein: Said if it is more than \$5,000 for general fund or \$50,000 cost to the agency it doesn't have to go to appropriations. He is hoping it won't be \$50,000 and that they should act on it and move it forward. By the time it hits the floor there will be a fiscal note attached.

Senator Andrist: Motioned for a do pass.

Senator Sinner: Seconded the motion.

Roll Call Vote Taken: Yes - 7 No - 0

Absent: 0

Floor Assignment: Senator Unruh

FISCAL NOTE
Requested by Legislative Council
01/28/2013

Bill/Resolution No.: SB 2152

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$102,072	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **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 bill modifies existing law by allowing an owner of a professional organization to own a professional organization under as many different professional licensing categories that they have in his or her name. It would not allow more than one in the same professional licensing category.

- 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.*

As part of the agency's comprehensive software project and detailed timeline, the software is already developed for a professional organization to allow for the filing of its paper documents in the Secretary of State's office or for filing these documents online. It is built to limit a shareholder's name from appearing in more than one professional organization, as required by existing law. The statutory change of SB 2152 requires a change in the software to enable a shareholder's name to appear in more than one professional organization of different professions. It will require the development of a list of licensed professions from which a filer can select only one profession/organization, which is different from that in any other professional organizations the licensee already owns.

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.*

None

- 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.*

To cover the cost of the scope change to the agency's project, ITD has estimated it would cost \$102,072.

- 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.*

The cost of the scope change is not included in the agency's budget for the next biennium and it would require an appropriation to cover the cost of \$102,072.

Name: Al Jaeger

Agency: Secretary of State

Telephone: 701-328-2900

Date Prepared: 01/29/2013

Date: 1/21

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2152

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Senator Andrist Seconded By Senator Sinner

Senators	Yes	No	Senator	Yes	No
Chairman Klein	✓		Senator Murphy	✓	
Vice Chairman L Laffen	✓		Senator Sinner	✓	
Senator Andrist	✓				
Senator Sorvaag	✓				
Senator Unruh	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Unruh

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

REPORT OF STANDING COMMITTEE

SB 2152: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2152 was placed on the Eleventh order on the calendar.

2013 SENATE APPROPRIATIONS

SB 2152

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2152
2-04-2013
Job # 18195

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact NDCC, relating to ownership of professional organizations

Minutes:

See attached testimony

Chairman Holmberg called the committee to order on Monday, February 04, 2013 at 9:30 am in regards to SB 2152. All committee members were present except Senator Robinson.

Legislative Council - Brittani Reim
OBM - Joe Morrisette

Senator Margaret Sitte, District 35 from Bismarck explained SB 2152 and testified in favor of SB 2152 which would allow professionals to register more than one professional organization if they are simultaneously engaged in more than one profession. She urged a Do Pass on SB 2152. (1.16) **Testimony attached # 1**

Senator Mathern asked how the policy committee dealt with this and how many persons it would affect.

Senator Sitte replied that the policy committee voted unanimously a do pass for this bill and it would impact less than 5 people in a given year.

Senator Kilzer said that he agreed with this bill but asked her to comment on the fiscal part of it.

Senator Sitte said that she was shocked at the fiscal note. The question has to be answered by the Secretary of State office why it is so high.

Clara Jenkins, Secretary of State testified in favor of SB 2152. The change in this bill would allow a person to be an owner of a professional organization created under ND law in as many professional licensing categories which they have in his or her name. The only restriction would be that they could not be an owner in more than one professional organization that rendered the same professional service. She explained the reason for the fiscal note. **Testimony attached # 2**

Chairman Holmberg 6:16) asked if he had two different professions and tried to fill out two forms, does it kick it back to her or won't it let him do it.

Clara Jenkins replied that the application system would not allow him to do it.

Chairman Holmberg so we are back to paper.

Clara Jenkins said the business rules have to be changed. There is no override in the system.

Vice Chairman Bowman asked if the doctor could actually register with the State Attorney office and the attorney could actually register his business also.

Clara Jenkins said that they cannot do that right now but if we change the software they can.

Vice Chairman Bowman asked if it was going to cost a \$100,000 just to register two professions.

Clara Jenkins replied that the business rules have to be changed on the software and that is what it will cost.

Al Jaeger, Secretary of State, commented that the fiscal note is not intended to kill these two bills. These are programming situations. If they did this paper wise, they have no way of being able to cross check names. He said that if it can be done for less they will do that. They had to go on the estimate from ITD on both this bill and 2144. He stated that he wants to go on record that they are not trying to kill these bills.

Senator Mathern (11.29) asked if we pass this law without resources and they didn't make the changes, what would be the consequences to these individuals.

Al Jaeger said that Clara explained that they wouldn't be able to register online and if they did go to paper, they would have to search records for conflicts and cross check information.

Senator Kilzer stated that each one of these bills has a fiscal note and asked if there is any overlap.

Al Jaeger: There is no overlap in the fiscal note.

Senator Kilzer asked if these two fiscal notes are a onetime deal and if there are additional annual expenses.

Al Jaeger would see this as part of their ongoing maintenance with their entire project so he didn't see any significant increase. The system is being built for current laws and next session it could be something else but they are trying to plan for some changes in their budget.

Mike Ressler, Deputy CIO with ITD.

Senator Carlisle asked how they came up with this fiscal note. It sounds high for software program changes.

Mike Ressler (15:15) explained what they would have to do with the software and the cost of a contractor.

Senator Carlisle questioned why they wouldn't have program people on staff to do this.

Mike Ressler said that they have six individuals that are working on the project that the legislature has authorized to be completed by October 2014. There is always that option to take one of those people but they strongly advise against that because they believe they need to finish the project that they are working on.

Senator Gary Lee commented that it sounds like a very inflexible system. Is there a priority system in terms of access to things that you can change based on your position in the department. It doesn't seem very practical that when you want to make a small change it will take an architect or a contractor.

Mike Ressler explained how they design software. He said they put checks and balances in so mistakes aren't made.

Senator Mathern asked if it would be more efficient to hire a new fte.

Mike Ressler said they could use more developers. They have 16 contractors on staff. Their rates are from \$85 to \$130 an hour. State Agencies never want to overstaff. If they see there is less work, they move those people around. It is the cheapest way to do it. State agencies don't like to invest in those people.

Vice Chairman Bowman had concerns with the cost that would only affect a handful of people. He still questioned why it can't be done on paper.

Mike Ressler said that this cannot be done on paper. It is such an integrated system and it would be a nightmare. It sounds simpler than it really is. He said there would not be any additional fees. He said that if they approve both bills, he believes the fiscal note will be less. There could be some efficiency because there is small amount of duplication.

Claus Lembke ND Association of Realtors questioned whether this bill actually changed the law. They are neutral on the bill but they do have some questions.

Chairman Holmberg closed the hearing on SB 2152,

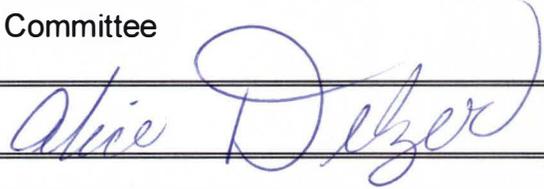
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2152
02-07-2013
Job # 18473

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL relating to ownership of professional organizations. (Do Pass)

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg opened the hearing on SB 2152. All committee members were present.

Brady Larson and Adam Mathiak - Legislative Council
Tammy R. Dolan -OMB

Senator Warner Moved Do Pass. 2nd by Senator Gary Lee .

Chairman Holmberg: Discussion. This goes back to IBL. Call the roll on a Do Pass on 2152.

A Roll Call vote was taken. Yea: 12 Nay: 1 Absent: 0.

Senator Unruh from IB & L will carry the bill.

The hearing was closed on SB 2152.

FISCAL NOTE
Requested by Legislative Council
01/28/2013

Bill/Resolution No.: SB 2152

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None

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To cover the cost of the scope change to the agency's project, ITD has estimated it would cost \$102,072.

- 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.*

The cost of the scope change is not included in the agency's budget for the next biennium and it would require an appropriation to cover the cost of \$102,072.

Name: Al Jaeger

Agency: Secretary of State

Telephone: 701-328-2900

Date Prepared: 01/29/2013

Date: 2-7-13

Roll Call Vote # 1

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. 2152

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Warner Seconded By Lee

Senators	Yes	No	Senator	Yes	No
Chairman Ray Holmberg	✓		Senator Tim Mathern	✓	
Co-Vice Chairman Bill Bowman	✓		Senator David O'Connell		✓
Co-Vice Chair Tony Grindberg	✓		Senator Larry Robinson	✓	
Senator Ralph Kilzer	✓		Senator John Warner	✓	
Senator Karen Krebsbach	✓				
Senator Robert Erbele	✓				
Senator Terry Wanzek	✓				
Senator Ron Carlisle	✓				
Senator Gary Lee	✓				

Total (Yes) 12 No 1

Absent 0

Floor Assignment 1 B L

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

REPORT OF STANDING COMMITTEE

SB 2152: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS
(12 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2152 was placed on the
Eleventh order on the calendar.

2013 HOUSE INDUSTRY, BUSINESS, AND LABOR

SB 2152

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee Peace Garden Room, State Capitol

SB 2152
March 6, 2013
Job 19530

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 10-31-06 of the North Dakota Century Code, relating to ownership of professional organizations.

Minutes:

Attachments 1, 2

Hearing opened.

0:01 **Senator Sitte, District 35:** Provided background on this bill. Distributed written testimony from Dr. Mark Monasky, attachment 1. Highlighted sections of Dr. Monasky's testimony.

4:31 **Representative Kreun:** Asked for clarification about Dr. Monasky's background.

4:45 **Senator Sitte:** Gave background information regarding Dr. Monasky.

5:28 **Representative Kreun:** Would he be capable of representing a malpractice suit against another physician?

5:35 **Senator Sitte:** I suppose he could. He primarily does estate planning.

5:56 **Representative Kreun:** Could there potentially be a conflict of interest?

6:07 **Chairman Keiser:** Attorneys would point out a conflict of interest in any case.

6:37 **Representative Kasper:** If you were a physician and if you were being sued for malpractice, would you see any value in having as your attorney someone who is also licensed as a physician?

Senator Sitte: I would.

7:01 **Chairman Keiser:** Why do we limited individuals to ownership in just one professional organization?

7:15 **Senator Sitte:** I talked with Clara Jenkins several times while working on this bill. She said this issue has not come up very frequently.

Support:

7:58 **Clara Jenkins, director of systems and programs for the Secretary of State:** Provided written testimony, attachment 2.

11:05 **Clara Jenkins:** Our new software will allow the office of the Secretary of State to receive paper, process it, properly index it so that it correctly reflects back to the public during a search. In addition, it will allow the attorney or the private citizen to use the online dynamic forms that will allow them to file the information themselves from home. In addition, they will be able file not only their organization documents but also their own amendments and annual reports. With the annual report, it will take the data that exists in our index and push that back to the filer so they will not have to repeat information.

12:35 **Representative Ruby:** Read section from Dr. Monasky's testimony. Do you think this is possibly an interpretation issue or a following of legislative intent?

13:14 **Clara Jenkins:** The interpretation is coming to us from the Attorney General's office. The intent might be quite old. This particular section of law has not been changed in at least thirty-five years. It is only within the last five years that we have had situations like this come up.

13:58 **Representative M. Nelson:** If we pass both of these, would the limitation on ownership apply not only to professionals but also to nonprofessionals?

14:25 **Clara Jenkins:** Spoke of whether an employee would likely retain shares after severing employment.

14:54 **Chairman Keiser:** The corporation would purchase those shares.

Representative Kasper: Has the Attorney General given you an opinion?

15:03 **Clara Jenkins:** I think we do have a written opinion on that.

Representative Kasper: Would we be able to get a copy?

15:15 **Chairman Keiser:** Why are we limiting it to the same professional service? That you can only be in one?

15:27 **Clara Jenkins:** A conceivable conflict of interest could exist if you had two architectural firms or two legal firms dealing with the same issue and filtering funds from the same....

Chairman Keiser: In terms of leveling the playing field, all other corporations can do that.

16:02 **Clara Jenkins:** But you are in a business corporation. There are a lot of professional ethics that go with professions. Professional ethics do not allow some of this. Each profession has its own licensing chapter with restraints.

16:36 **Representative M. Nelson:** If a physician provides services in two similar firms in different cities, he would not be allowed to have ownership in both?

Clara Jenkins: That is true.

Opposition:

Neutral:

Hearing closed.

17:35 **Representative Kasper:** It appears to me that if we pass this bill, nothing changes in terms of the software. I would like to know about that as well.

Chairman Keiser: We will hold this bill.

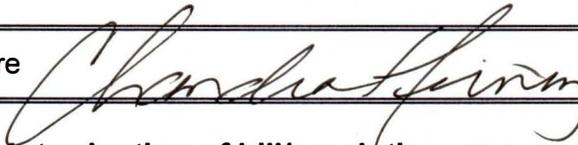
2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2144, 2152
March 13, 2013, afternoon
Job 19874

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

SB 2144: Relating to nonprofessional ownership of professional organizations.

SB 2152: Relating to ownership of professional organizations.

Minutes:

Handouts, attachments 1 and 2

Note: The information contained within the recording pertains to both SB 2144 and 2152.

Chairman Keiser: Reminded committee that the fiscal notes for SB 2144 and SB 2152 are connected.

0:59 **Mike Ressler, deputy CIO of Information Technology Department:** Distributed handout, attachment 1.

1:52 **Lyle Ripplinger, senior programming analyst for ITD:** Provided background on creation of fiscal note. Explained assumptions listed on page 2 of attachment 1.

4:07 **Chairman Keiser:** If phase 1 is still underway, why not work these changes into the current phase rather than billing for it again?

4:45 **Lyle Ripplinger:** If this had been identified then, it would likely have been identified as an additional scope to the initial project.

4:53 **Chairman Keiser:** Question regarding integration of this project into current project

5:21 **Lyle Ripplinger:** As we add in new units, we are able to add them in as we work through the process.

5:35 **Chairman Keiser:** Have you completed the section of the code which deals with this?

5:40 **Lyle Ripplinger:** For this particular change, most of the code has already been changed. Phase 1 is nearly completed and ready for testing.

5:56 **Lyle Ripplinger:** Resumed explanation of assumptions, page 2 of attachment 1. Highlighted metrics shown on page 2 of attachment 1.

7:02 **Representative Kasper:** I would like detail on the metrics.

7:10 **Lyle Ripplinger:** Provided detail on the metrics listed on page 2 of attachment 1.

7:54 **Representative Kasper:** Question about the high level use case diagrams.

8:20 **Lyle Ripplinger:** Explained high level use case diagrams and how they are used.

8:51 **Representative Kasper:** Question about procedure

9:03 **Lyle Ripplinger:** Relayed how the diagrams are used to ensure that the system which will be created meets the needs of those who will be using it

9:31 **Representative Kasper:** Question about procedure and feedback

9:52 **Lyle Ripplinger:** Explained software development lifecycle phase

10:13 **Representative Kasper:** Question about procedure

10:24 **Lyle Ripplinger:** This is a conceptual representation to be able to communicate with the customer

10:30 **Representative Kasper:** Question about length of time for step of process

10:35 **Lyle Ripplinger:** It varies depending on the complexity of the project.

10:48 **Representative Kasper:** Asked for an estimate

10:51 **Chairman Keiser:** What numbers did you use to estimate this process for pricing?

10:59 **Lyle Ripplinger:** The ninety we are looking at here is for the overall system, the File 2.0 project. We would have estimated hours in our analysis phase to review and update or create additional diagrams for this additional change.

11:23 **Representative Kasper:** So the ninety diagrams are for the whole project, but we are talking about this add on. What I am trying to focus on is the cost of this add on.

11:49 **Lyle Ripplinger:** The metrics here are for the whole system. I have not gotten into the part for this small change. I am showing the metrics for the whole system and how complex it is.

12:05 **Representative Kasper:** What we're trying to find out is the cost for the add on.

12:35 **Lyle Ripplinger:** These metrics are setting the framework of the overall project to show how big it is. As we continue through the handout, we will get to the change.

12:44 **Chairman Keiser:** Let's go to the change presented for SB 2152 on page 3.

12:55 **Lyle Ripplinger:** Drew attention to pages 3-5 of attachment 1. Explained elements of page 3.

14:12 **Representative Kasper:** So the analysis portion would take one person a week plus a day?

14:22 **Lyle Ripplinger:** Yes.

14:36 **Lyle Ripplinger:** Explained bullet points pertaining to design listed on page 3 of attachment 1.

15:52 **Representative Kasper:** So the design phase would take one person over four weeks for this change?

16:07 **Lyle Ripplinger:** With this particular change, it is not a true reflection of the resources involved. We would also involve a web designer. Provided details.

16:29 **Representative Kasper:** But you already know that the full software has to meet certain standards and be compatible with browsers. What is the difficulty about making this portion comply when the software you are already designing has to comply?

16:47 **Lyle Ripplinger:** Every change we make to a particular page needs to be checked for compatibility and compliance.

17:17 **Representative Kasper:** Comment regarding indicated time requirements

17:30 **Lyle Ripplinger:** Explained bullet points pertaining to development listed on page 4 of attachment 1.

18:49 **Representative Kasper:** Comment regarding indicated time requirements

19:03 **Lyle Ripplinger:** Yes. Explained bullet points pertaining to testing listed on page 4 of attachment 1.

20:27 **Representative Kasper:** Comment regarding indicated time requirements

20:45 **Lyle Ripplinger:** Explained bullet points pertaining to database listed on page 4 of attachment 1. Explained bullet points pertaining to implementation listed on page 5 of attachment 1.

22:06 **Representative Kasper:** I add up seventeen weeks for one person.

22:36 **Lyle Ripplinger:** Doing the raw calculation like that may produce those results. When you use project management to be able to schedule out the time like that, you need to factor in sick leave, vacation time, and holidays in to the schedule. Those factor in when figuring out how long a change will take.

23:00 **Representative Kasper:** Are you billing clients for a workers' sick leave or vacation time?

23:06 **Lyle Ripplinger:** The agency only gets bills for hours spent working on their product. Holiday time is not billed to the agency.

23:21 **Representative Kasper:** What I see here is fluff to justify the cost. Verbalized frustration. Expressed that the length of time needed to make the small change is unrealistic. How many people are in your department that do this type of stuff?

24:12 **Lyle Ripplinger:** Right now we have approximately one hundred developers.

24:16 **Representative Kasper:** So we would have one fiftieth of your workforce on this project for one sixth of a year?

24:22 **Lyle Ripplinger:** In the one section where I referred to two individuals, the second individual would have knowledge in the design area and would only be involved in the design area. The other individual would be involved from beginning to end. It would not necessarily be two individuals involved the full time of the project.

24:49 **Representative Kasper:** But the hours are the same, whether one or two people are doing them. The point is that we're at about one third of a year for this itty bitty little change.

25:06 **Chairman Keiser:** It apparently is not so little.

25:14 **Representative Sukut:** Did IT develop the current system that you're working on, or did it come out from an outside vendor? You developed it? So you are familiar with the system. You said that you may need to contract with outside vendors. So you cannot do this with current staff so that we could be working with the lower hourly rate?

26:04 **Mike Ressler:** Explained rationale behind bringing in outside vendors for this project.

26:45 **Representative Sukut:** Comment regarding bringing outside vendor up to speed on the current system. This is large software in which we're adding in a small change. These projects can be enormously expensive.

28:00 **Chairman Keiser:** Expressed confidence in Lyle. I do understand how complicated a little change can be when it has to go to every part of the system. In terms of billing, how do employees or vendors account for their time? Are they in six minute units? Example.

28:41 **Mike Ressler:** We assume seventy-five percent chargeable time. The hourly rate is calculated with that taken into consideration.

29:08 **Chairman Keiser:** So is the \$120 per hour at seventy-five percent of a day?

29:20 **Mike Ressler:** That would be correct. We then calculate into the cost estimate that it is a four month project. The customer is not all that interested in the total number of hours but rather in when it will go into production.

29:29 **Chairman Keiser:** What was the timetable requested for this project? You must have more than one person working on this, perhaps even on different phases?

29:47 **Lyle Ripplinger:** Yes, we have various roles that individuals play, and they are working on different parts of the system at the same time.

29:56 **Chairman Keiser:** What was the timeframe given for this project?

30:01 **Lyle Ripplinger:** For SB 2152, it was four months.

30:15 **Representative Vigesaa:** If the actual comes in less than the fiscal note, how is that accounted for in your budget as well as in the agency's budget?

30:31 **Mike Ressler:** We will not charge the agency for the extra. We charge only for what it costs us. The dilemma is then the agency has unused money sitting in their budget. If we underestimate, we have to stop working, or the agency has to find the money. Described process of creating a fiscal note and then a more accurate cost estimate during the analysis phase.

31:30 **Chairman Keiser:** Can you work if they have not found the money yet?

31:33 **Mike Ressler:** No. We will stop. There have been times we have put the software on hold until the agency has been able to request the money from a legislative body or session.

31:59 **Chairman Keiser:** Thank you for coming back. Now we have an explanation of how you see it working, the process, and what is involved.

32:37 **Representative Kasper:** Distributed budget of ITD going back to 2001-2003, attachment 2. Shared opinion about the validity of the numbers provided in the explanation.

33:35 **Chairman Keiser:** I do share some of the frustrations. Commented on the growth in the budget for ITD. Commented that departments cannot bid projects to outside vendors.

34:20 **Representative Sukut:** Comment about past situations in which outside vendors have backed out after money has been given.

34:33 **Chairman Keiser:** Provided example. Keep in mind that ITD was the oversight agency.

34:47 **Representative Sukut:** I think they have more control when more of it is in house.

34:42 **Chairman Keiser:** If you hire an outside contractor who did not work on the original system, they have to learn the original system before they can work on it.

35:04 **Representative Boschee:** I agree that it is a mess with the market created, but we have to deal with that market. Provided example of when the university system brings in outside contractors who underbid and then bring in change orders to get more money.

35:25 **Representative Ruby:** Gave example of difficulties when using an industry-specific software and then being tied to a vendor for updates and maintenance. Unless we would be able to do maintenance with the source codes, I can see that it would be valuable for the state to do a lot of this in house.

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2152
March 13, 2013, afternoon
Job 19876

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 10-31-06 of the North Dakota Century Code, relating to ownership of professional organizations.

Minutes:

No attachments

0:10 **Representative Kasper:** Question regarding whether he should yield to someone else as carrier.

0:22 **Chairman Keiser:** You can carry it. The handout given during testimony was self-explanatory. Reviewed concept of bill.

0:38 **Representative Ruby:** Reviewed example given during testimony.

0:44 **Chairman Keiser:** Reviewed example given during testimony.

0:59 **Motion for a Do Pass with a Re-referral to Appropriations.** Motion made by Representative Boschee and seconded by Representative Ruby.

Roll call vote on a Do Pass with a Re-referral to Appropriations. Motion carries.

Yes = 13

No = 0

Absent = 2

Carrier: Representative Kasper

FISCAL NOTE
Requested by Legislative Council
01/28/2013

Bill/Resolution No.: SB 2152

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$102,072	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **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 bill modifies existing law by allowing an owner of a professional organization to own a professional organization under as many different professional licensing categories that they have in his or her name. It would not allow more than one in the same professional licensing category.

- 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.*

As part of the agency's comprehensive software project and detailed timeline, the software is already developed for a professional organization to allow for the filing of its paper documents in the Secretary of State's office or for filing these documents online. It is built to limit a shareholder's name from appearing in more than one professional organization, as required by existing law. The statutory change of SB 2152 requires a change in the software to enable a shareholder's name to appear in more than one professional organization of different professions. It will require the development of a list of licensed professions from which a filer can select only one profession/organization, which is different from that in any other professional organizations the licensee already owns.

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.*

None

- 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.*

To cover the cost of the scope change to the agency's project, ITD has estimated it would cost \$102,072.

- 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.*

The cost of the scope change is not included in the agency's budget for the next biennium and it would require an appropriation to cover the cost of \$102,072.

Name: Al Jaeger

Agency: Secretary of State

Telephone: 701-328-2900

Date Prepared: 01/29/2013

Date: 3-13-13pm^B

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2152**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

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

Motion Made By Boschee Seconded By Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	ab
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson	✓	
Rep. Robert Frantsvog		ab			
Rep. Nancy Johnson	✓				
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 13 No 0

Absent 2

Floor Assignment Kasper

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

REPORT OF STANDING COMMITTEE

SB 2152: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2152 was rereferred to the Appropriations Committee.

2013 HOUSE APPROPRIATIONS

SB 2152

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee
Roughrider Room, State Capitol

SB 2152
3/26/13
Job 20450

Conference Committee

Committee Clerk Signature

Meredith Traubolt

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 10-31-06 of the North Dakota Century Code, relating to ownership of professional organizations.

Minutes:

You may make reference to "attached testimony."

SB 2144 is also discussed on this recording.

Rep. George Keiser, District 47: If the chair does not object, I would like to present 2144 and 2152 together.

Chairman Delzer: My understanding is they basically work together, and if they are both passed, the Fiscal Note would be reduced.

Rep. Keiser: The total, yes. The FN for 2144 is \$106,152; the FN for 2152 is \$102,072, which would combine to about \$208,000. However, if both bills are passed, the total FN goes down to \$127,848. When you here the two bills together, you'll understand.

Handouts related to a previous bill were distributed.

02:00

Chairman Delzer: Why are these two bills not together?

Rep. Keiser: From a policy standpoint, they address entirely different issues.

Chairman Delzer: Did they both come out of the secretary of state's office?

Rep. Keiser: They did not. One came from a Senate member, and one came from a constituent. To understand the basis of 2144 and 2152, this deals with the section of code that we currently have on professional organizations. Currently, in professional organizations, you must be a professional within that organization to be an owner. Dentists, physicians, attorneys, architects, etc. 2144 would allow a minority owner, a person associated with that business. 2144 is specific only to architecture firms. For medical and legal firms, their code of ethics does not allow minority owners under any condition. There is a limitation in 2144 that minority owners can never individually or collectively own a

majority, so we are maintaining the requirement that the professional(s) own 51% or more of the firm. The secretary of state is presently engaged in a major IT rewrite of their operation. IT came in and defended the FN; the experts say it will take this amount of money and time. That's 2144. SB 2152 is a related issue, but different. It allows a professional to simultaneously be an executive owner of more than one professional organization, providing that those organizations are in different categories. In Bismarck, there is a man that is a lawyer and a surgeon. He is running both of his entities right now. Our current law does not allow a person to be a professional owner in more than one industry, so he has to make a choice. The committee thought this was not an unreasonable request; why should we hinder the opportunity for an individual to have an ownership in two totally different professional organizations at one time.

9:05

Chairman Delzer: You said he's in a law firm, is it his law firm?

Rep. Keiser: It cannot be his law firm right now, because he cannot be an owner of two. He can work as a lawyer and have a thriving practice, but he cannot have ownership of that practice, or be a full partner. This is correcting that glitch we created through legislation. We don't want people being professional owners of two or three or four different medical practices; first of all, it's not allowed in the code of ethics, but it would not be a good deal.

Chairman Delzer: What about a surgeon and a dentist?

Rep. Keiser: It would be allowed under this.

Chairman Delzer: Could they hire a dentist to own the practice?

Rep. Keiser: No, they have to have all of the ownership. It's only the architects that have the 51%.

Chairman Delzer: On 2144, was there any discussion about what happens when that 51% wants to sell, or passes away? What's the protection for the minority owners?

Rep. Keiser: Another architect would have to become the >51% owner to maintain the operation of the firm. A minority owner at least participates in the profits of the firm. There is risk with minority ownership, no different than when I buy a stock that could crash, but the good side is you get the benefit and the income side.

Rep. Boe: Why do we care that they are 51%?

Rep. Keiser: If we don't, we will have professional firms that are not owned by professionals and they will just be out hiring professionals. When we established in this part of the Century Code a professional organization company, we wanted it to be a category that is owned and operated by the professional.

Chairman Delzer: Did you ask the question of what happens with the software two years from now when other professional organizations come in and want to be able to minority owners? Will they have to redo the software again?

Rep. Keiser: We did discuss that with ITD. They said their restructuring is generic and can handle anything, if they put the triggers in.

Rep. Guggisberg: Where does the money on the FN come from and go to?

Chairman Delzer: That's what FNs are, they just state the cost is there. If either or both of these pass, then it would be cognizant of the secretary of state to go to the conference committee to address the budget.

Rep. Keiser: I might add that the secretary of state appeared on both of these bills and was neutral but supportive.

Chairman Delzer: If we so desired we could put money in one of these bills, but normally that doesn't happen because it's better off being in the budget. Further questions? Thank you. We'll continue to the next bill.

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

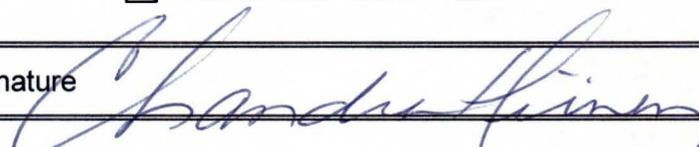
SB 2152

4/5/13

Job 20938 up to minute 11:05

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 10-31-06 of the North Dakota Century Code, relating to ownership of professional organizations.

Minutes:

You may make reference to "attached testimony."

Chairman Delzer: This is basically the same bill as SB 2144. If we do anything other than amend it like the other one (SB 2144) we're going to have a hard time on the floor. Summarized content of bill. I received a list from the Secretary of State. There are about forty professional organizations. This bill was put in for one person who is both a doctor and a lawyer. Other professions might fall under the same thing.

1:11 Rep. Skarphol **moves to amend** to allow the Secretary of State to charge costs for this service, but it may not have a software application produced until a he has a minimum of ten people wishing to use the service.

Rep. Nelson **seconds** the motion.

2:27 **Chairman Delzer:** These bills are separate bills and separate issues. But the software issue is kind of combined. We can take them to the floor stand alone; but if we're willing to say that if there are ten requests on the professional side, shouldn't we thinking about referring to ten requests on the other bill as well? If this is the way we want to it to go, we can reconsider our action on SB 2144.

Rep. Skarphol: I'd be willing to do that.

Chairman Delzer: I hate to take this bills to the floor with two different processes when the software is the problem.

Rep. Grande: Are you looking at reconsidering how we passed out SB 2144?

Chairman Delzer: We would have to do that.

Rep. Grande: If it is the case that we do something like that, I think we really need to address the start dates also in that we don't allow them to start working on this until August or October date that saves the considerable amount of money.

Chairman Delzer: The safe one would be January 1, 2015.

Rep. Skarphol: I would add that to the motion.

Rep. Nelson indicated his willingness to add that to the second.

Chairman Delzer: So it would say that the Secretary of State can charge and make software changes but cannot make those changes unless he has ten requests, and it cannot be done before January 1, 2015.

4:31 **Unidentified speaker:** Does the bill take effect January 1, 2015?

Chairman Delzer: The bill would take effect right away. This would stipulate when he could do the software changes. These would be qualifiers of what would trigger him being able to do the software change.

Voice vote to amend. Voice vote carries.

Rep. Skarphol moves for a Do Not Pass as Amended. Seconded by Rep. Kreidt.

Chairman Delzer: I think we're covering ourselves well on the money issue. I don't have a problem with the policy per se. It was the costs.

6:38 **Rep. Monson:** If you're going to amend it to do what we're doing, we might as well give them a fighting shot to try to take care of the problem, if there is one. I do not think there are ten people who will fit this bill.

7:04 **Rep. Bellew:** Does this prevent the Secretary of State from doing it manually?

Chairman Delzer: He cannot change the software without money enough to do it.

Rep. Monson: If this is in order, I would make a substitute motion to Do Pass as Amended.

Chairman Delzer: A substitute motion is always in order, but we may as well run this one.

Roll call vote on motion for a Do Not Pass as Amended. Motion fails.

Yes = 9 No = 12 Absent = 1

Rep. Grande moves for a Do Pass as Amended. Seconded by Rep. Glassheim.

Roll call vote on motion for a Do Pass as Amended. Motion carries.

Yes = 14 No = 7 Absent = 1

Carrier: Rep. Grande

At minute 11:05 of recording job 20938, the discussion moves to SB 2144. The discussion from the remainder of recording job 20938 is included with the minutes for SB 2144 for April 5, 2013.

FISCAL NOTE
Requested by Legislative Council
01/28/2013

Bill/Resolution No.: SB 2152

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$102,072	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **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 bill modifies existing law by allowing an owner of a professional organization to own a professional organization under as many different professional licensing categories that they have in his or her name. It would not allow more than one in the same professional licensing category.

- 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.*

As part of the agency's comprehensive software project and detailed timeline, the software is already developed for a professional organization to allow for the filing of its paper documents in the Secretary of State's office or for filing these documents online. It is built to limit a shareholder's name from appearing in more than one professional organization, as required by existing law. The statutory change of SB 2152 requires a change in the software to enable a shareholder's name to appear in more than one professional organization of different professions. It will require the development of a list of licensed professions from which a filer can select only one profession/organization, which is different from that in any other professional organizations the licensee already owns.

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.*

None

- 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.*

To cover the cost of the scope change to the agency's project, ITD has estimated it would cost \$102,072.

- 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.*

The cost of the scope change is not included in the agency's budget for the next biennium and it would require an appropriation to cover the cost of \$102,072.

Name: Al Jaeger

Agency: Secretary of State

Telephone: 701-328-2900

Date Prepared: 01/29/2013

April 5, 2013

VK
4/8/13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2152

Page 1, line 1, after "to" insert "create and enact a new subsection to section 10-31-13 of the North Dakota Century Code, relating to regulation of professional organizations; to"

Page 1, line 2, after "organizations" insert "; and to provide legislative intent"

Page 1, after line 15, insert:

"SECTION 2. A new subsection to section 10-31-13 of the North Dakota Century Code is created and enacted as follows:

In order to help defray the costs associated with regulating organizations that have ownership that renders more than one professional service, the secretary of state may establish fees for filings related to an organization that has ownership that renders more than one professional service. Fees collected by the secretary of state under this subsection must be deposited in the secretary of state's general services operating fund.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly:

1. That if the secretary of state establishes additional fees under section 2 of this Act, that the secretary of state take all reasonable efforts to minimize costs associated with regulating professional organizations that have ownership that renders more than one professional service; and
2. That if the secretary of state regulates more than a combined total of nine professional organizations that have ownership that renders more than one professional service and, if Senate Bill No. 2144 is approved by the sixty-third legislative assembly and becomes effective, professional organizations that have minority ownership, the secretary of state not invest in software changes related to regulation of those professional organizations until after December 31, 2014."

Renumber accordingly

Date: 4/5/13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2152

House Appropriations 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. Skarphol Seconded By Rep. Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Rep. Streyle		
Vice Chairman Kempenich			Rep. Thoreson		
Rep. Bellew			Rep. Wieland		
Rep. Brandenburg					
Rep. Dosch					
Rep. Grande			Rep. Boe		
Rep. Hawken			Rep. Glassheim		
Rep. Kreidt			Rep. Guggisberg		
Rep. Martinson			Rep. Holman		
Rep. Monson			Rep. Williams		
Rep. Nelson					
Rep. Pollert					
Rep. Sanford					
Rep. Skarphol					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

allow Sec. of State to charge costs; no software developed
until min. 10 people wish to use service
cannot be done prior to Jan. 1, 2015

voice vote carries

Date: 4/5/13
 Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2152**

House Appropriations 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. Skarphol Seconded By Rep. Kreidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Rep. Streyle	X	
Vice Chairman Kempenich	X		Rep. Thoreson	X	
Rep. Bellew		X	Rep. Wieland		X
Rep. Brandenburg		X			
Rep. Dosch	X				
Rep. Grande		X	Rep. Boe		
Rep. Hawken		X	Rep. Glassheim	X	X
Rep. Kreidt	X		Rep. Guggisberg		X
Rep. Martinson		X	Rep. Holman	X	
Rep. Monson		X	Rep. Williams	X	
Rep. Nelson		X			
Rep. Pollert		X			
Rep. Sanford		X			
Rep. Skarphol	X				

Total Yes 9 (No) 12

Absent 1

Floor Assignment _____

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

Date: 4/5/13
Roll Call Vote #: 3

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2152

House Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0026.02001

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

Motion Made By Rep. Grande Seconded By Rep. Glassheim

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer		X	Rep. Streyle		X
Vice Chairman Kempenich		X	Rep. Thoreson		X
Rep. Bellew	X		Rep. Wieland	X	
Rep. Brandenburg	X				
Rep. Dosch		X			
Rep. Grande	X		Rep. Boe		
Rep. Hawken	X		Rep. Glassheim	X	
Rep. Kreidt		X	Rep. Guggisberg	X	
Rep. Martinson	X		Rep. Holman	X	
Rep. Monson	X		Rep. Williams	X	
Rep. Nelson	X				
Rep. Pollert	X				
Rep. Sanford	X				
Rep. Skarphol		X			

Total Yes 14 No 7

Absent 1

Floor Assignment Rep. Grande

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

REPORT OF STANDING COMMITTEE

SB 2152: Appropriations Committee (Rep. Delzer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 7 NAYS, 1 ABSENT AND NOT VOTING). SB 2152 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new subsection to section 10-31-13 of the North Dakota Century Code, relating to regulation of professional organizations; to"

Page 1, line 2, after "organizations" insert "; and to provide legislative intent"

Page 1, after line 15, insert:

"SECTION 2. A new subsection to section 10-31-13 of the North Dakota Century Code is created and enacted as follows:

In order to help defray the costs associated with regulating organizations that have ownership that renders more than one professional service, the secretary of state may establish fees for filings related to an organization that has ownership that renders more than one professional service. Fees collected by the secretary of state under this subsection must be deposited in the secretary of state's general services operating fund.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the sixty-third legislative assembly:

1. That if the secretary of state establishes additional fees under section 2 of this Act, that the secretary of state take all reasonable efforts to minimize costs associated with regulating professional organizations that have ownership that renders more than one professional service; and
2. That if the secretary of state regulates more than a combined total of nine professional organizations that have ownership that renders more than one professional service and, if Senate Bill No. 2144 is approved by the sixty-third legislative assembly and becomes effective, professional organizations that have minority ownership, the secretary of state not invest in software changes related to regulation of those professional organizations until after December 31, 2014."

Renumber accordingly

2013 CONFERENCE COMMITTEE

SB 2152

2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2152
April 12, 2013
Job Number 21147

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to ownerships of professional organizations

Minutes:

Discussion

Chairman Unruh: Called the conference committee to order and the clerk took the roll. Senator Unruh, Senator Laffen, Senator Murphy, Representative Kasper, Representative Ruby and Representative Boschee were present.

Chairman Unruh: Said the bill allows individuals to be an executive owner of a professional organization that render different services. She asked for the amendments from the House to be explained.

Representative Ruby: The changes we made did not remove the appropriation and fiscal note from the bill there was just a delay. He was told that they would be able to handle this in a way that is more "old school". They would be able to flag any application that came in that was requesting this. They feel it is a minimal number of people that would qualify under this and someone higher up would handle it and it would be filed separately.

Senator Laffen: Said he talked about the fees with the Secretary of State and it was discussed that the fee would be one thousand dollars.

Representative Ruby: Asked if the fee needed to be that high. If it sets precedence for others to be charged that much, it is a policy decision and should be considered for all the other areas that might be charged that much.

Representative Kasper: Asked if the Secretary of State has the ability under the current statute to go to an increase fee of up to one thousand or would that require statutory changes.

Senator Laffen: I don't know.

Representative Keiser: Said he would encourage them not to change the fees without a full hearing. It is appropriate, to whatever the fee is, for a current professional organization to reregister as a second organization makes sense.

Senate Industry, Business and Labor Committee

SB 2152

April 12, 2013

Page 2

Senator Laffen: Said that was his point that they don't want to get into a fee thing in this one.

Senator Murphy: Said if the Secretary of State wanted to change the fees he would have to bring that bill forward.

Representative Ruby: Said he agrees, if they are going to do something it would have to be specific to this.

Chairman Unruh: Said we will work on some amendments and adjourned the meeting.

2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2152
April 16, 2013
Job Number 21175

Conference Committee

Committee Clerk Signature

Eric Lusk

Explanation or reason for introduction of bill/resolution:

Relating to ownership of professional organizations

Minutes:

Amendment and Vote

Chairman Unruh: Opened the conference committee on SB 2152 and the roll was taken. Senator Unruh, Senator Laffen, Senator Murphy, Representative Kasper, Representative Ruby, and Representative Boschee were present.

Chairman Unruh: Asked Representative Ruby to talk about his amendments.

Representative Ruby: Said as they discussed he drafted an amendment that would remove the amended language that the House put on and puts in a new section that clarifies that the Secretary of State is able to register a person in two different professional organizations. Amendment Attached (1).

Representative Kasper: Asked if this amendment would remove the fiscal note on the original bill.

Al Jaeger, Secretary of State: Yes it does and if it goes through I will be responding with zero dollars. That was the intent of the discussions that Representative Ruby had with me. (3:42-4:31)

Representative Kasper: Based on the knowledge you have now, do you see it a problem?

Al Jaeger: Said he doesn't think there will be many situations where this is needed and it doesn't create a problem for them.

Chairman Unruh: Asked for further discussion on the amendment.

Representative Ruby: Made a motion for the House to recede from their amendments and to further amend, 13.0026.02002.

Senator Murphy: Seconded the motion.

Senate Industry, Business and Labor Committee
SB 2152
April 16, 2013
Page 2

Roll Call Vote: Yes - 6 No - 0 Absent: 0

Senate Carrier: Senator Unruh **House Carrier:** Representative Kasper

Representative Ruby: Said now that it has passed we will need to request another fiscal note. That is done through Legislative Council and they will work in conjunction with the Secretary of State.

Chairman Unruh: We will make sure that happens. The meeting was adjourned.

FISCAL NOTE
Requested by Legislative Council
04/17/2013

Amendment to: SB 2152

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **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 bill allows an owner of a professional organization to own a professional organization under as many different professional licensing categories that they have in his or her name. However, they cannot own two professional organizations within the same professional licensing category.

- 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.*

No significant fiscal impact is expected

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.*

The revenue will be dependent on demand, which is expected to be minimal.

- 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.*

Any expenditures will be covered by the registration fee, which will be deposited into the agency's general services operating fund.

- 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.*

None

Name: Al Jaeger
Agency: Secretary of State
Telephone: 701-328-2900
Date Prepared: 04/17/2013

FISCAL NOTE
Requested by Legislative Council
04/08/2013

Amendment to: SB 2152

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$102,072	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **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 bill modifies existing law by allowing an owner of a professional organization to own a professional organization under as many different professional licensing categories that they have in his or her name. It would not allow more than one in the same professional licensing category.

- 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.*

As part of the agency's comprehensive software project and detailed timeline, the software is already developed for a professional organization to allow for the filing of its paper documents in the Secretary of State's office or for filing these documents online. It is built to limit a shareholder's name from appearing in more than one professional organization, as required by existing law. The statutory change of SB 2152 requires a change in the software to enable a shareholder's name to appear in more than one professional organization of different professions. It will require the development of a list of licensed professions from which a filer can select only one profession/organization, which is different from that in any other professional organizations the licensee already owns.

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.*

None

- 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.*

To cover the cost of the scope change to the agency's project, ITD has estimated it would cost \$102,072.

- 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.*

The cost of the scope change is not included in the agency's budget for the next biennium and it would require an appropriation to cover the cost of \$102,072.

Name: Al Jaeger

Agency: Secretary of State

Telephone: 701-328-2900

Date Prepared: 04/09/2013

FISCAL NOTE
Requested by Legislative Council
01/28/2013

Bill/Resolution No.: SB 2152

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
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Expenditures	\$0	\$0	\$102,072	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

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Townships	\$0	\$0	\$0

- 2 A. **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 bill modifies existing law by allowing an owner of a professional organization to own a professional organization under as many different professional licensing categories that they have in his or her name. It would not allow more than one in the same professional licensing category.

- 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.*

As part of the agency's comprehensive software project and detailed timeline, the software is already developed for a professional organization to allow for the filing of its paper documents in the Secretary of State's office or for filing these documents online. It is built to limit a shareholder's name from appearing in more than one professional organization, as required by existing law. The statutory change of SB 2152 requires a change in the software to enable a shareholder's name to appear in more than one professional organization of different professions. It will require the development of a list of licensed professions from which a filer can select only one profession/organization, which is different from that in any other professional organizations the licensee already owns.

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.*

None

- 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.*

To cover the cost of the scope change to the agency's project, ITD has estimated it would cost \$102,072.

- 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.*

The cost of the scope change is not included in the agency's budget for the next biennium and it would require an appropriation to cover the cost of \$102,072.

Name: Al Jaeger

Agency: Secretary of State

Telephone: 701-328-2900

Date Prepared: 01/29/2013



Handwritten signature and date: 4-16-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2152

That the House recede from its amendments as printed on page 1208 of the Senate Journal and pages 1267 and 1268 of the House Journal and that Senate Bill No. 2152 be amended as follows:

Page 1, line 1, after "to" insert "create and enact a new subsection to section 10-31-13 of the North Dakota Century Code, relating to regulation of professional organizations; and to"

Page 1, after line 15, insert:

"SECTION 2. A new subsection to section 10-31-13 of the North Dakota Century Code is created and enacted as follows:

In order to regulate organizations that have ownership that renders more than one professional service, the secretary of state shall collect one thousand dollars for articles of incorporation for a corporation, articles of organization for a limited liability company, or articles of amendment related to an organization that has ownership that renders more than one professional service. This fee is in addition to the fees provided for these filings under section 10-19.1-147 or 10-32-150. Fees collected by the secretary of state under this subsection must be deposited in the secretary of state's general services operating fund."

Renumber accordingly

Date: 04/16/2013

Roll Call Vote #1

**2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. **SB 2152**as (re) engrossed

Senate Industry, Business and Labor Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Ruby Seconded by: Senator Murphy

Senators	4/16		Yes	No	Representatives	4/16		Yes	No
Unruh	✓		x		Kasper	✓		x	
Laffen	✓		x		Ruby	✓		x	
Murphy	✓		x		Boschee	✓		x	
Total Senate Vote			3		Total Rep. Vote			3	

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Senator Unruh House Carrier Representative Kasper

LC Number 13.0026 . 02002 of amendment

LC Number _____ of engrossment

REPORT OF CONFERENCE COMMITTEE

SB 2152: Your conference committee (Sens. Unruh, Laffen, Murphy and Reps. Kasper, Ruby, Boschee) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 1208, adopt amendments as follows, and place SB 2152 on the Seventh order:

That the House recede from its amendments as printed on page 1208 of the Senate Journal and pages 1267 and 1268 of the House Journal and that Senate Bill No. 2152 be amended as follows:

Page 1, line 1, after "to" insert "create and enact a new subsection to section 10-31-13 of the North Dakota Century Code, relating to regulation of professional organizations; and to"

Page 1, after line 15, insert:

"SECTION 2. A new subsection to section 10-31-13 of the North Dakota Century Code is created and enacted as follows:

In order to regulate organizations that have ownership that renders more than one professional service, the secretary of state shall collect one thousand dollars for articles of incorporation for a corporation, articles of organization for a limited liability company, or articles of amendment related to an organization that has ownership that renders more than one professional service. This fee is in addition to the fees provided for these filings under section 10-19.1-147 or 10-32-150. Fees collected by the secretary of state under this subsection must be deposited in the secretary of state's general services operating fund."

Renumber accordingly

SB 2152 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

SB 2152

SENATE BILL 2152

Testimony delivered January 21, 2013 by Mark Monasky, MD, JD

I am here today to provide testimony regarding modification and clarification of NDCC 10-31-06(1). I am a licensed neurosurgeon and attorney in North Dakota. I am currently a partner at the law firm of Bormann, Myerchin, Monasky & Espeseth, LLP. I wish to form a professional organization for my neurosurgical practice so as to be able to have greater autonomy and deduct business expenses that every other business owner is entitled to. My application was rejected by the Secretary of State based on N.D.C.C. § 10-31-06(1) which states:

No individual may be simultaneously an executive or owner of more than one professional organization.

The Secretary of State's reasoning is that because I already have ownership in a legal professional organization, I cannot simultaneously have an ownership interest in a medical professional organization. I believe the statute already supports my position, and is being misinterpreted and not read in context. I am here today to clarify and explain the modifications as proposed by Senator Sitte.

This subsection must be interpreted in the context of the Code as a whole. "Professional organization" is qualified in prior sections of Chapter 10-31 to refer only to organizations engaged in the practice of one profession. The apparent prohibition in N.D.C.C. § 10-31-06(1) is to specifically prevent a professional from simultaneously being an executive or owner of more than one professional organization for *the practice of the same profession*.

Every context of "professional organization" in prior sections of Chapter 10-31 is in reference to the practice of only one profession by that organization. The statutes either refer to the practice of a profession (singular) or service by a professional corporation, see N.D.C.C. § 10-31-01(10), §10-31-02(1), § 10-31-02(1)(a) & (b), § 10-31-02(2), § 10-31-02.1(1), § 10-31-02.1(1)(a) & (b), § 10-31-02.1(2), § 10-31-02.2(1), § 10-31-02.2(1)(a) & (b), § 10-31-02.2(2); or the direct prohibition of the rendering of more than one specific type of professional service within a professional organization, see N.D.C.C. § 10-31-04(1) & (2).

The above statutes clearly prohibit the practice of a single profession in more than one professional organization; nowhere do they prohibit the practice of different professions in separate and distinct professional organizations. N.D.C.C. § 10-31-06(1) is to be interpreted in this context, i.e. "[n]o individual may be simultaneously an executive or owner of more than one professional organization" *for the purpose of rendering one specific type of professional service*. See N.D.C.C. 10-31-04(1) ("A professional organization may be created pursuant to this

chapter only for the purpose of rendering one specific type of professional service and services ancillary thereto ... ") **To read § 10-31-06(1) in isolation, and ignore the preceding chapter sections qualifying a professional organization as one that practices only one profession leads to the absurd result that North Dakota prohibits its residents blessed enough to be licensed in more than one profession from practicing each profession separately within its own professional organization.**

It does not make sense for all sections prior to N.D.C.C. § 10-31-06(1) in Chapter 10-31 to refer to professional organizations which render only one professional service, and then to exclude this qualifying language from N.D.C.C. § 10-31-06(1). In fact, the only way to conclude N.D.C.C. § 10-31-06(1) prohibits the forming of more than one professional organization under circumstances where an individual is qualified to practice more than one profession, is to repudiate the qualifying language of N.D.C.C. § 10-31-04(1) or to ascertain that it is the legislative intent that an individual cannot practice more than one profession in North Dakota in separate and distinct professional organizations. Either option is absurd; the first requires the qualifying language of N.D.C.C. § 10-31-04(1) prohibiting a professional organization from rendering more than one type of professional service to be redundant or null as applied to N.D.C.C. § 10-31-06(1), and the second prohibits an individual from operating a business in more than one profession in which the state grants a license.

In construing statutory provisions, meaning is given to every phrase, word, and sentence. N.D.C.C. § 1-02-02, § 1-02-03. The State has granted me unrestricted licenses to practice law and medicine on the one hand, but will not allow me to exercise my right to practice medicine as a business owner. My proposed medical professional organization otherwise complies in every way with N.D.C.C. § 10-19.1 North Dakota Business Corporation Act. The State is essentially saying, "if you wish to practice medicine. you must do so as an employee." **No other physician in the state is under a similar restriction to practice his or her profession. Nowhere in the Century Code is such intent evident, and is frankly anti-business. Federal and state constitutional arguments against such a policy exist as well.**

Furthermore, N.D.C.C. § 10-31-04(1) specifically addresses the issue of rendering two or more kinds of professional services within the same professional organization. It specifically recognizes that individuals may possess two or more professional skill sets and provides exceptions where more than one professional service may be rendered within the same professional organization. Nowhere does it prohibit such individuals from forming a separate and distinct professional organization for a completely unrelated professional service.

There exists no prohibition whatsoever in the Code against forming a foreign professional organization and then registering it as a professional entity in North Dakota. If this is permitted, it allows me to do indirectly what I am not allowed to do directly; again an absurd result that bolsters my argument that I should be allowed to form a second professional corporation in North Dakota for an unrelated profession.

Minnesota, South Dakota, and Montana do not prohibit an individual from having ownership interests in more than one professional corporation, whether for the same or different professions. The only restrictions are to prevent individuals from practicing a profession in which they are not licensed, and in some instances to prevent certain combinations of professions to be practiced within the same professional organization.

Under the current law, I cannot and will not recommend professionals blessed enough to practice more than one profession to come to North Dakota. I no longer provide medical services in North Dakota. I have set up a professional organization in South Dakota to deliver medical services.

There exist no public policy arguments in not allowing a professional to practice more than one profession in separate professional organizations, so long as that person is duly licensed. Rather, the public is harmed by not allowing North Dakota licensed professionals in good standing with their respective boards to duly practice their professions within North Dakota. Hospitals in Bismarck, Fargo, Grand Forks, and Minot currently hire out of state neurosurgeons to fill in the gaps as there are not enough neurosurgeons in the state to meet the need. The North Dakota Board of Medical Examiners does not oppose the proposed changes. I am not aware of any resistance from the State Board of Law Examiners, who are fully aware I practice medicine. The North Dakota Medical Association and the State Bar Association of North Dakota have not opposed my position. The State of North Dakota is losing revenue by not allowing individuals in North Dakota to practice more than one profession. I am not aware of any constituency that is harmed.

I urge you to pass Senate Bill 2152. It is good for the citizens and State of North Dakota.

Sincerely,

Mark Monasky, MD, JD, FACS, FAANS, FCLM

(2)

ALVIN A. JAEGER
SECRETARY OF STATE
HOME PAGE www.nd.gov/sos



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

January 21, 2013

TO: Sen. Klein, Chairman, and Members of the Senate Industry, Business and Labor Committee

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

RE: SB 2152 – Ownership of Professional Organizations

The Secretary of State's office supports Senate Bill 2152. However, we do have a request, which I will explain shortly. First, I will provide background, which the committee may find helpful.

In N.D.C.C. § 10-31-01(10), professional service is defined as "personal service to the public which requires a license as a condition precedent to the rendering of such service and which requires as a condition of licensure an undergraduate or advanced college degree in the specific field." Examples would include a doctor, engineer, lawyer, architect, etc.

North Dakota law allows persons in a specific field, as defined above, to create a business structure under the professional organizations act in Chapter 10-31 of the Century Code. It is specific to that licensing category and has owners specifically associated with that licensing category. This is a distinctly different and unique business structure compared to, for example, a business corporation under Chapter 10-19.1 or a limited liability company under Chapter 10-32.

Currently, under Chapter 10-31, a person is allowed to be an owner in only one professional organization business structure even though they may have a professional license in two or more differing professions. That is not the situation in some other states. For example, Minnesota is one of those states.

To bypass this restriction in North Dakota law, some persons have created a professional organization under our state's laws for one of their professional licensing categories. Then, for their other professional licensing category, they have created a professional organization under the laws of another state. In turn, they have filed it with the Secretary of State's office as a foreign professional organization, which the law allows. In effect, they now own two professional organizations for their separate licensing categories although created in two different states.

The change in this bill would allow a person to be an owner of a professional organization created under North Dakota law in as many professional licensing categories, which they have in his or her name. The only restriction would be that they could not be an owner in more than one professional organization that rendered the same professional service.

Now, having provided the forgoing background, here is the agency's request. That is, to allow the agency a few days to prepare a fiscal note for this bill. Because of the text of the bill, it would not normally trigger the need for a fiscal note, but this bill does have a financial impact on our agency.

As the Director of Business Systems for the Secretary of State's office, I am in charge of the development of the agency's comprehensive software project authorized by the last legislative assembly and which is now being developed by the state's Information Technology Department (ITD). The adoption of SB 2152 will require a scope change to the project because the architecture and business rules for professional organizations (as they now exist in Chapter 10-31) have already been developed. Because today is a holiday, it may not be possible to have the fiscal note back to the committee before you are through with your hearings for this week.

Senate Appropriations
SB 2152, February 4, 2013

Mr. Chairman and members of the committee, my name is Margaret Sitte from District 35 in Bismarck.

SB 2152 would allow professionals to register more than one professional organization if they are simultaneously engaged in more than one profession. A constituent of mine wanted to register as both an attorney and a neurosurgeon. Currently, North Dakota law forbids people from registering more than one professional organization. The law was intended to prohibit one architect from forming two competing organizations and having a bidding advantage.

In this case, Dr. Mark Monasky was a successful neurosurgeon in Bismarck when he decided to attend law school. Now he wants to practice both neurosurgery and law, but state law prevents him from doing so. Dr. Monasky currently travels to South Dakota to practice medicine, but I assure you that if you or one of your loved ones needed brain surgery, you would wish he were readily available in this state.

It's hard to fathom that adding five words to a statute to allow an additional one or two people a year with dual professions to register with the Secretary of State would require a \$100,000 update to the computer system.

I urge you to vote Do Pass on SB 2152.



2-4-13
#2
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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 21, 2013

TO: Sen. Klein, Chairman, and Members of the Senate Industry, Business and Labor Committee

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

RE: SB 2152 – Ownership of Professional Organizations

The Secretary of State's office supports Senate Bill 2152. However, we do have a request, which I will explain shortly. First, I will provide background, which the committee may find helpful.

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North Dakota law allows persons in a specific field, as defined above, to create a business structure under the professional organizations act in Chapter 10-31 of the Century Code. It is specific to that licensing category and has owners specifically associated with that licensing category. This is a distinctly different and unique business structure compared to, for example, a business corporation under Chapter 10-19.1 or a limited liability company under Chapter 10-32.

Currently, under Chapter 10-31, a person is allowed to be an owner in only one professional organization business structure even though they may have a professional license in two or more differing professions. That is not the situation in some other states. For example, Minnesota is one of those states.

To bypass this restriction in North Dakota law, some persons have created a professional organization under our state's laws for one of their professional licensing categories. Then, for their other professional licensing category, they have created a professional organization under the laws of another state. In turn, they have filed it with the Secretary of State's office as a foreign professional organization, which the law allows. In effect, they now own two professional organizations for their separate licensing categories although created in two different states.

The change in this bill would allow a person to be an owner of a professional organization created under North Dakota law in as many professional licensing categories, which they have in his or her name. The only restriction would be that they could not be an owner in more than one professional organization that rendered the same professional service.

Now, having provided the forgoing background, here is the agency's request. That is, to allow the agency a few days to prepare a fiscal note for this bill. Because of the text of the bill, it would not normally trigger the need for a fiscal note, but this bill does have a financial impact on our agency.

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2

North Dakota Legislative Council

View Requested Fiscal Note

Fiscal Notes

Details

Bill Number: SB 2152 **Amendment:** **Engrossment:**
Original: 13.0026.02000 **In Context:**
Requested: 01/28/2013 11:11 AM
Revision Requested:
Next Hearing:
Engrossment Status:
Assigned To/Due:
Agency Comments:

Fiscal Note

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.*

	2011-2013		2013-2015		2015-2017	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenue	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$102,072	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013	2013-2015	2015-2017
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$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 bill modifies existing law by allowing an owner of a professional organization to own a professional organization under as many different professional licensing categories that they have in his or her name. It would not allow more than one in the same professional licensing category.

2B. 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.*

As part of the agency's comprehensive software project and detailed timeline, the software is already developed for a professional organization to allow for the filing of its paper documents in the Secretary of State's office or for filing these documents online. It is built to limit a shareholder's name from appearing in more than one professional organization, as required by existing law. The statutory change of SB 2152 requires a change in the software to enable a shareholder's name to appear in more than one professional organization of different professions. It will require the development of a list of licensed professions from which a filer can select only one profession/organization, which is different from that in any other professional organizations the licensee already owns.

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.*

None

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.*

To cover the cost of the scope change to the agency's project, ITD has estimated it would cost \$102,072.

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.*

The cost of the scope change is not included in the agency's budget for the next biennium and it would require an appropriation to cover the cost of \$102,072.



Software Development Division Budget Estimate

To: Linda L. Gregoryk Secretary of State	Date Issued: 1/23/2013	Prior Est. Date:
	From: Della Thorsness	
	Prepared By: Dennis Owen	
Project Description: Estimate for Implementation of Senate Bill 2152		
WMS Work Order Number: 204817	WMS Service Request: 1433592	

ITD is recommending your agency budget **\$102,072** for this project. This amount includes an estimated **\$85,060** based on requirements we received during the interview process plus an additional **\$17,012** for scope changes. The additional **20%** is based on ITD's experience with scope changes in projects this size. Including this additional amount will give your agency the flexibility to cover typical scope changes, and remain within your budgeted amount. A more accurate estimate will be prepared once this project has started and the analysis phase is completed. The cost to complete the analysis phase is estimated to be approximately **\$10,664**.

What you get for your money from ITD

ITD estimates this project to take **4 months**. This timeframe is a projected timeframe based on typical project staffing levels. The actual timeframe will be determined during the Planning Phase and will be based on the availability of customer and ITD resources at that time.

Should you decide to proceed with this project, please approve the cost estimate via the online Work Management System. Upon your approval, you will be prompted to submit a service request under the existing work order. All ITD services relating to this project will be billed to your department monthly at actual cost.

At the start of the project ITD will review any estimate over 90 days old. If necessary a revised estimate will be issued.

'ITD - Software that works'

Project Description

This project is to implement changes to the SOS File 2.0 application in response to SB 2152. Changes to shareholder requirements for Professional Corporations, Professional LLCs and Professional LLPs would allow for an individual shareholder to be a shareholder in more than one entity, if the entity was a different type of profession. In order to be a shareholder in multiple entities, the individual would have to be a licensed professional in multiple areas. An architect that is also a lawyer could be a shareholder in an professional architect firm and a professional law firm, but not 2 architect firms or 2 law firms. The SOS will supply a list of approved professions the system will use to validate the requirements.

Assumptions

The one-time costs (development) of the routines are based on the following assumptions:

- This cost estimate is based on a blended hourly rate of \$120 due to the unknown availability of ITD Software Development staff at the time this estimate was issued. If only ITD Software Development staff work on the project, billing will be at normal ITD Software Development rates.
- The work will be done in coordination with ongoing development work in the SOS File 2.0 project.
- The project will follow ITD’s software development quality assurance methodology and processes.
- ITD will create a new lookup list – Professions – that will be used to restrict the choices for profession practiced when entering data related to shareholders for these business entities.
- ITD will update business rules for the entities.
- ITD will update existing data as necessary.
- ITD will create a new Entity type based on the current Shareholder entity to be used for these “Professional” shareholders.
- No changes to security will be required. Existing security groups and page access rights will be maintained.
- These changes can be implemented before or after SOS File 2.0 Phase 1 has been deployed to production. This estimate assumes SOS File 2.0 Phase 1 will have been deployed to production first.
- Updates to the public dynamic views can be implemented before or after SOS File 2.0 Phase 2 has been deployed to production. This estimate assumes SOS File 2.0 Phase 2 will not have been deployed to production yet.
- Maintenance of the profession list will be handled by the Maintain Drop-Down Tables functionality already defined in Phase 1.
- Costs for Senate Bill 2152 were determined independently of the cost for Senate Bill 2144.

Determining Costs

The cost estimate includes the following processes:

Process	Description
Dynamic Views for Professional Corporation	Existing dynamic views for intake and review of creation, amendment and annual report forms for Professional Corporations will be modified to replace the existing text field entry for profession practiced with a defined lookup list of professions. This will include both back office and public dynamic views.
Dynamic Views for	Existing dynamic views for intake and review of creation, amendment and annual report

Process	Description
PLLC	forms for PLLC will be modified to replace the existing text field entry for profession practiced with a defined lookup list of professions. This will include both back office and public dynamic views.
Dynamic Views for PLLP	Existing dynamic views for intake and review of creation, amendment and annual report forms for PLLP will be modified to replace the existing text field entry for profession practiced with a defined lookup list of professions. This will include both back office and public dynamic views
Data Conversion	A data conversion script will be create to update any existing Professional Corporation, PLLC or PLLP records to change the profession practiced from a text field to the lookup field.
Business Rules	The validation rules for these business entities will be updated to include the new requirements: <ul style="list-style-type: none"> • Allow a shareholder to be a shareholder for multiple entities as long as the shareholder has different professions in each entity. • Require the entity to certify each shareholder has a certification of license on file.
Professional Shareholder Object	Create a new Professional Shareholder entity type similar to the Shareholder type to distinguish between the 2 types of shareholders.

One-Time Cost for System Development

The cost for development is estimated to be **\$102,072**. This amount includes an estimated **\$85,060** based on requirements and an additional **\$17,012** for scope changes. The additional 20% is based on ITD's experience with scope changes in projects this size. Including this additional amount will give your agency the flexibility to cover typical scope changes, and remain within your budgeted amount. A more accurate estimate will be prepared once this project has started and the analysis phase is completed.

On-Going Monthly Costs

There are no additional on-going monthly costs.



Providing Customer-Centric Services

The Information Technology Department (ITD) provides technology leadership for state government and the people of North Dakota. ITD exists solely to help State agencies discover, assess, and implement information technologies. ITD's Software Development Division develops, implements, operates and supports software solutions that meet our customer's need as provided in this cost estimate. ITD also provides server computing, local and wide area network support, voice and data technologies, video conferencing, and other emerging technologies. The following overview describes the services ITD considers valuable to our customers. We hope you'll find this helpful in assessing the value of our services.

State Government IT Partner

ITD knows the business of North Dakota State government and understands inter-agency relationships. We've been servicing State agencies since 1968. Upon request, we'll provide references offering honest referrals about our services.

Our customer relationships are long-term partnerships.

Affordable Cutting Edge Technology

ITD helps agencies discover best fit solutions for their agency at affordable rates. ITD charges only to recover costs – we retain no profit with our low rates. Our staff is trained in many new and existing technologies, so we can readily assess customer requirements and provide solutions that best fit an agency's needs. ITD implements and supports IT solutions on modern hardware in modern facilities, using operating systems and software no older than current version minus 1.

Whenever it's necessary to extend our capabilities, we augment our current staff with outside vendors to meet demands.

Quality

ITD develops applications within the processes of a structured systems development methodology. This includes functional testing and all applications are tested for usability and performance (load tested). ITD Meets State & Federal Audit Compliance. Our infrastructure and operation processes are reviewed by and meet state and federal audit requirements. ITD Supports State Enterprise Architecture Standards and our software and infrastructure meet North Dakota Enterprise Architecture standards.

We build compliance into our service offerings which relieves the customer of State standard compliance concerns.

Dedicated & Experienced Staff

ITD employees submit to an FBI background check and are bound by the same confidentiality requirements as agency staff. ITD's staff is cross-trained to provide continuous backup. We provide dedicated architects to design effective, top-notch infrastructure for security, system hosting, software development, and telecommunications. Our staff applies formal project management practices to all projects.

ITD strives to retain innovative, talented, and dedicated staff. ITD's staff is tenured with an average of 13 years of service.

Support Structure

ITD offers several levels of customer support, including 24 x 7 support for applications and infrastructure.

Customer Service Surveys indicate 99% of customers are very satisfied with our support.

Flexible Infrastructure

ITD's infrastructure and support structure are designed to meet varied needs. ITD designs and builds applications that can operate in a redundant environment. If one server fails, another server picks up the workload with little or no down time.

We can design and host any size application.

Disaster Recovery

ITD has the tools and resources required to monitor software applications and computer system infrastructure to assure adequate performance and up-time. Applications can be monitored on a 24 x 7 basis. If a disaster occurs in our Computer Systems area or Statewide Network, customer applications can be running within hours.

ITD's standard practice is to keep all data, applications, and systems backed up in a secure location to meet customer expectations.

Security

By investing in the infrastructure and training required to prevent malicious activity within our IT environment, ITD has dedicated staff to assure that customer data and applications are secure.

We use source code control software to provide sound source code management.

[Back to Estimate](#)

(1)

①
3-6-2013
SB 2152

SENATE BILL 2152

Testimony delivered January 21, 2013 by Mark Monasky, MD, JD

I am here today to provide testimony regarding modification and clarification of NDCC 10-31-06(1). I am a licensed neurosurgeon and attorney in North Dakota. I am currently a partner at the law firm of Bormann, Myerchin, Monasky & Espeseth, LLP. I wish to form a professional organization for my neurosurgical practice so as to be able to have greater autonomy and deduct business expenses that every other business owner is entitled to. My application was rejected by the Secretary of State based on N.D.C.C. § 10-31-06(1) which states:

No individual may be simultaneously an executive or owner of more than one professional organization.

The Secretary of State's reasoning is that because I already have ownership in a legal professional organization, I cannot simultaneously have an ownership interest in a medical professional organization. I believe the statute already supports my position, and is being misinterpreted and not read in context. I am here today to clarify and explain the modifications as proposed by Senator Sitte.

This subsection must be interpreted in the context of the Code as a whole. "Professional organization" is qualified in prior sections of Chapter 10-31 to refer only to organizations engaged in the practice of one profession. The apparent prohibition in N.D.C.C. § 10-31-06(1) is to specifically prevent a professional from simultaneously being an executive or owner of more than one professional organization for *the practice of the same profession*.

Every context of "professional organization" in prior sections of Chapter 10-31 is in reference to the practice of only one profession by that organization. The statutes either refer to the practice of a profession (singular) or service by a professional corporation, see N.D.C.C. § 10-31-01(10), §10-31-02(1), § 10-31-02(1)(a) & (b), § 10-31-02(2), § 10-31-02.1(1), § 10-31-02.1(1)(a) & (b), § 10-31-02.1(2), § 10-31-02.2(1), § 10-31-02.2(1)(a) & (b), § 10-31-02.2(2); or the direct prohibition of the rendering of more than one specific type of professional service within a professional organization, see N.D.C.C. § 10-31-04(1) & (2).

The above statutes clearly prohibit the practice of a single profession in more than one professional organization; nowhere do they prohibit the practice of different professions in separate and distinct professional organizations. N.D.C.C. § 10-31-06(1) is to be interpreted in this context, i.e. "[n]o individual may be simultaneously an executive or owner of more than one professional organization" *for the purpose of rendering one specific type of professional service*. See N.D.C.C. 10-31-04(1) ("A professional organization may be created pursuant to this

chapter only for the purpose of rendering one specific type of professional service and services ancillary thereto ... ") **To read § 10-31-06(1) in isolation, and ignore the preceding chapter sections qualifying a professional organization as one that practices only one profession leads to the absurd result that North Dakota prohibits its residents blessed enough to be licensed in more than one profession from practicing each profession separately within its own professional organization.**

It does not make sense for all sections prior to N.D.C.C. § 10-31-06(1) in Chapter 10-31 to refer to professional organizations which render only one professional service, and then to exclude this qualifying language from N.D.C.C. § 10-31-06(1). In fact, the only way to conclude N.D.C.C. § 10-31-06(1) prohibits the forming of more than one professional organization under circumstances where an individual is qualified to practice more than one profession, is to repudiate the qualifying language of N.D.C.C. § 10-31-04(1) or to ascertain that it is the legislative intent that an individual cannot practice more than one profession in North Dakota in separate and distinct professional organizations. Either option is absurd; the first requires the qualifying language of N.D.C.C. § 10-31-04(1) prohibiting a professional organization from rendering more than one type of professional service to be redundant or null as applied to N.D.C.C. § 10-31-06(1), and the second prohibits an individual from operating a business in more than one profession in which the state grants a license.

In construing statutory provisions, meaning is given to every phrase, word, and sentence. N.D.C.C. § 1-02-02, § 1-02-03. The State has granted me unrestricted licenses to practice law and medicine on the one hand, but will not allow me to exercise my right to practice medicine as a business owner. My proposed medical professional organization otherwise complies in every way with N.D.C.C. § 10-19.1 North Dakota Business Corporation Act. The State is essentially saying, "if you wish to practice medicine. you must do so as an employee." **No other physician in the state is under a similar restriction to practice his or her profession. Nowhere in the Century Code is such intent evident, and is frankly anti-business. Federal and state constitutional arguments against such a policy exist as well.**

Furthermore, N.D.C.C. § 10-31-04(1) specifically addresses the issue of rendering two or more kinds of professional services within the same professional organization. It specifically recognizes that individuals may possess two or more professional skill sets and provides exceptions where more than one professional service may be rendered within the same professional organization. Nowhere does it prohibit such individuals from forming a separate and distinct professional organization for a completely unrelated professional service.

There exists no prohibition whatsoever in the Code against forming a foreign professional organization and then registering it as a professional entity in North Dakota. If this is permitted, it allows me to do indirectly what I am not allowed to do directly; again an absurd result that bolsters my argument that I should be allowed to form a second professional corporation in North Dakota for an unrelated profession.

Minnesota, South Dakota, and Montana do not prohibit an individual from having ownership interests in more than one professional corporation, whether for the same or different professions. The only restrictions are to prevent individuals from practicing a profession in which they are not licensed, and in some instances to prevent certain combinations of professions to be practiced within the same professional organization.

Under the current law, I cannot and will not recommend professionals blessed enough to practice more than one profession to come to North Dakota. I no longer provide medical services in North Dakota. I have set up a professional organization in South Dakota to deliver medical services.

There exist no public policy arguments in not allowing a professional to practice more than one profession in separate professional organizations, so long as that person is duly licensed. Rather, the public is harmed by not allowing North Dakota licensed professionals in good standing with their respective boards to duly practice their professions within North Dakota. Hospitals in Bismarck, Fargo, Grand Forks, and Minot currently hire out of state neurosurgeons to fill in the gaps as there are not enough neurosurgeons in the state to meet the need. The North Dakota Board of Medical Examiners does not oppose the proposed changes. I am not aware of any resistance from the State Board of Law Examiners, who are fully aware I practice medicine. The North Dakota Medical Association and the State Bar Association of North Dakota have not opposed my position. The State of North Dakota is losing revenue by not allowing individuals in North Dakota to practice more than one profession. I am not aware of any constituency that is harmed.

I urge you to pass Senate Bill 2152. It is good for the citizens and State of North Dakota.

Sincerely,

Mark Monasky, MD, JD, FACS, FAANS, FCLM

ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.nd.gov/sos



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

March 6, 2013

② SB 2152
3-6-12

PHONE (701) 328-2900
FAX (701) 328-2992

E-MAIL sos@nd.gov

TO: Rep. Keiser, Chairman, and Members of the House Industry, Business and Labor Committee

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

RE: SB 2152 – Ownership of Professional Organizations

The Secretary of State's office supports Senate Bill 2152.

N.D.C.C. § 10-31-01(10), defines professional service as a "personal service to the public which requires a license as a condition precedent to the rendering of such service and which requires as a condition of licensure an undergraduate or advanced college degree in the specific field." Examples would include a doctor, engineer, lawyer, architect, etc.

North Dakota law allows individuals in a specific field, as defined above, to create a business structure under the professional organizations act in Chapter 10-31 of the Century Code. It is specific to that licensing category and has owners specifically associated with that licensing category. This is a distinctly different and unique business structure compared to, for example, a business corporation under Chapter 10-19.1 or a limited liability company under Chapter 10-32.

Currently, under Chapter 10-31, an individual is allowed ownership in only one professional organization business structure even though they may have a professional license in two or more differing professions. That restriction does not exist in some other states. For example, Minnesota is one of those states.

To bypass this restriction in North Dakota law, some individuals have created a professional organization under our state's laws for one of their professional licensing categories. Then, for their other professional licensing category, they have created a professional organization under the laws of another state. In turn, they have filed it with the Secretary of State's office as a foreign professional organization, which the law allows. In effect, the individual now owns two professional organizations for their separate licensing categories although they were created separately in two different states.

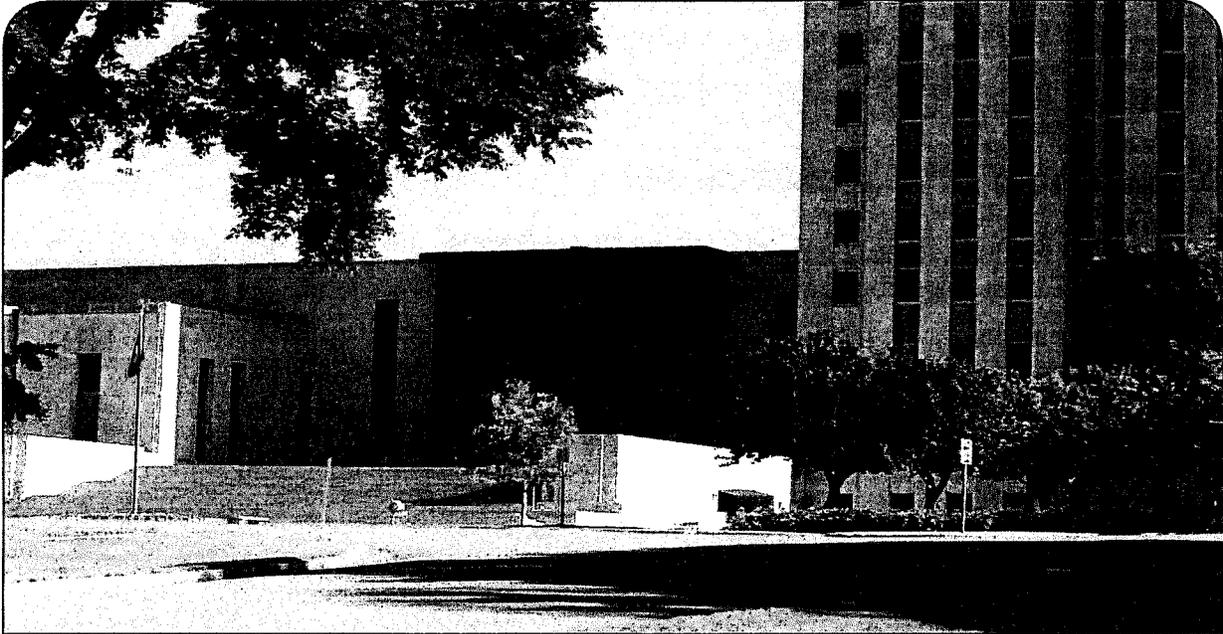
The change in this bill would allow a person to be an owner of a professional organization created under North Dakota law in as many professional licensing categories, which they have in his or her name. The only restriction would be that they could not be an owner in more than one professional organization that rendered the same professional service.

The Secretary of State's office supports this bill. However, the bill has a fiscal impact on the agency and so two fiscal notes are attached to it. As to which one applies will depend on the action taken on this bill and SB 2144, which was just heard.

As the Director of Business Systems for the Secretary of State's office, I am in charge of the development of the agency's comprehensive software project authorized by the last legislative assembly and which is now being developed by the state's Information Technology Department (ITD). The adoption of SB 2152 will require a scope change to the project because the architecture and business rules for professional organizations (as they now exist in Chapter 10-31) have already been developed.

If this bill is passed without SB 2144 being adopted at the same time, the estimated programming cost for SB 2152 will be \$102,072. If SB 2144 is passed and SB 2152 is not, the estimated programming cost for SB 2144 will be \$106,152. If both SB 2144 and SB 2152 are adopted, the shared programming cost for both bills will be \$127,848.

① 3-13-2013 pm.
2144
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Presentation to the House Industry, Business & Labor Committee

Explanation of Fiscal Notes for SB 2144 & SB 2152

**Lyle Ripplinger
Senior Programmer Analyst
Information Technology Department**

**March 13, 2013
Peace Garden Room**

Assumptions for SB 2144 and SB 2152:

- This cost estimate is based on a blended hourly rate of \$120 due to the unknown availability of ITD Software Development staff at the time this estimate was issued.
- If only ITD Software Development staff work on the project, billing will be at normal ITD Software Development rates. The ITD rates for 2013-2015 range from \$83-\$94.
- When a resource is needed from the vendor pool, the individual may not be familiar with Secretary of State's business nor ITD's Software Development practices and system documentation. Extra time is needed to educate the contractor and answer questions.
- The effort required to perform these changes will occur after the first phase of the Secretary of State's File 2.0 project is complete and before the second phase is complete. Therefore, multiple versions of documents, code, and database information will need to be maintained.

Secretary of State's File 2.0 Application Metrics (all approximates)

- 90 High Level Use Case Diagrams
- 5,400 Requirements in the Requirements Traceability Matrix
- 860 User Interface Pages
- 450 Business Entity Validation Rules
- 2,100 Code Objects
- 120 Tables in the Database
- 100 Stored Procedures and Views in the Database

Estimate for Implementation of Senate Bill 2152

This project is to implement changes to the SOS File 2.0 application in response to SB 2152. Changes to shareholder requirements for Professional Corporations, Professional LLCs and Professional LLPs would allow for an individual shareholder to be a shareholder in more than one entity, if the entity was a different type of profession. In order to be a shareholder in multiple entities, the individual would have to be a licensed professional in multiple areas. An architect that is also a lawyer could be a shareholder in an professional architect firm and a professional law firm, but not 2 architect firms or 2 law firms. The SOS will supply a list of approved professions the system will use to validate the requirements.

Total Cost Estimate

- \$102,072

Analysis

- Estimated Time and Cost
 - 49 hours @ \$120 plus 10 hours @ \$100 = \$6,880
- Description of work for this phase
 - Meetings with the agency to achieve a full understanding of the necessary changes
 - Time allocated to gather and document the requirements of the project
 - Identify the impact of this bill on the current system
 - Create new or update system artifacts including Use Case diagrams, Conceptual Data Model Diagrams, Requirement Traceability Matrix, Analysis Package and Business Validation Rules
 - Conduct customer analysis walk through of artifacts

Design

- Estimated Time and Cost
 - 170 hours @ \$120 = \$20,400
- Description of work for this phase
 - An iterative process to review with the agency the proposed changes and perform modifications until the requirements of the project are achieved
 - Create new or update approximately 9 prototype Graphical User Interface pages
 - Ensure compliance with the Americans with Disabilities Act and Enterprise Architecture Standards
 - Confirm browser compatibility for recent releases of Internet Explorer, Firefox, Chrome and Safari
 - Update the Physical Data Model Diagram to contain the new database information
 - Conduct customer design walk through

Development

- Estimated Time and Cost
 - 257 hours @ \$120 = \$30,840
- Description of work for this phase
 - Change the identified code to align with the Requirements Traceability Matrix and design documents
 - Create separate versions of the code to align with each phase of the Secretary of States File 2.0 project and to accommodate the changes identified in this estimate
 - Synchronize the multiple versions of code to ensure code integrity
 - Create new or update approximately 25-30 different objects of code such as data access functions, view model, controller, and unit of work functions
 - Perform Unit Testing on the new changes

Testing

- Estimated Time and Cost
 - 157 hours @ \$120 = \$18,840
- Description of work for this phase
 - Create new or update current testing plans
 - Execute test plans, track and fix defects that are identified
 - Verify the items in the Requirements Traceability Matrix have been met
 - Perform validation on the system to ensure compliancy with American with Disabilities Act
 - Migrate the multiple versions of code for each phase while testing across multiple testing environments
 - Regression test existing processes within the system to verify that it was not compromised as a result of these changes
 - Conduct browser compatibility testing on Internet Explorer, Firefox, Chrome and Safari
 - Execute performance testing under stringent conditions with a large volume of simulated users
 - Coordinate and support user acceptance testing

Database

- Estimated Time and Cost
 - 15 hours @ \$100 = \$1,500
- Description of work for this phase
 - Perform conversion and cleansing of existing data to provide a common and uniformed set of values for the professions list
 - Time spent performing changes to the underlying database that contains the data.
 - Performance tuning of structured query language for suitable response times

Implementation

- Estimated Time and Cost
 - 15 hours @ \$120 = \$1,800
- Description of work for this phase
 - Create new or update implementation plan including rollback procedures
 - Time to make the final product available to the agency
 - Synchronization of documentation, multiple versions of code and implement database changes

Project Management

- Estimated Time and Cost
 - 48 hours @ \$100 = \$4,800
- Description of work for this phase
 - Time managing the overall project, working with the agency on change requests, minimizing potential risk, resolving issues, and identifying scope changes

Scope

- Estimated Cost
 - 20% of \$85,060 = \$17,012
- Description of work for this phase
 - The estimate recommended \$85,060 based on partial analysis of core requirements received during the interview process. The additional 20% is to cover scope and to address unanalyzed requirements.
 - An after analysis estimate will be prepared once this project has started and the analysis phase is completed.

Estimate for Implementation of Senate Bill 2144

This project is to implement changes to the SOS File 2.0 application in response to SB 2144. Changes to the shareholder requirements for Professional Corporations, Professional LLCs and Professional LLPs would allow for an individual shareholder to be a “non-licensed” shareholder, where SOS File 2.0 requires all shareholders for these types of businesses to be licensed. This project will also introduce minority shareholders that are non-licensed. The system must be able to designate a shareholder as non-licensed and/or minority owner. The minority owners shares owned will now be required to be captured on the annual reports filed by the businesses. In addition, the system will be required to capture additional fields on the annual reports indicating if there are minority owners, the organization supplied a certificate identifying the minority owners and the express law authorizing the minority owners.

Total Cost Estimate

- \$106,152

Analysis

- Estimated Time and Cost
 - 62 hours @ \$120 = \$7,440
- Description of work for this phase
 - Meetings with the agency to achieve a full understanding of the necessary changes
 - Time allocated to gather and document the requirements of the project
 - Identify the impact of this bill on the current system
 - Create new or update system artifacts including Use Case diagrams, Conceptual Data Model Diagrams, Requirement Traceability Matrix, Analysis Package and Business Validation Rules
 - Conduct customer analysis walk through of artifacts

Design

- Estimated Time and Cost
 - 167 hours @ \$120 = \$20,040
- Description of work for this phase
 - An iterative process to review with the agency the proposed changes and perform modifications until the requirements of the project are achieved
 - Create new or update approximately 9 prototype Graphical User Interface pages
 - Ensure compliance with the Americans with Disabilities Act and Enterprise Architecture Standards
 - Confirm browser compatibility for recent releases of Internet Explorer, Firefox, Chrome and Safari
 - Update the Physical Data Model Diagram to contain the new database information

- Conduct customer design walk through

Development

- Estimated Time and Cost
 - 276 hours @ \$120 = \$33,120
- Description of work for this phase
 - Change the identified code to align with the Requirements Traceability Matrix and design documents
 - Create separate versions of the code to align with each phase of the Secretary of States File 2.0 project and to accommodate the changes identified in this estimate
 - Synchronize the multiple versions of code to ensure code integrity
 - Create new or update approximately 25-30 different objects of code such as data access functions, view model, controller, and unit of work functions
 - Perform Unit Testing on the new changes

Testing

- Estimated Time and Cost
 - 162 hours @ \$120 = \$19,440
- Description of work for this phase
 - Create new or update current testing plans
 - Execute test plans, track and fix defects that are identified
 - Verify the items in the Requirements Traceability Matrix have been met
 - Perform validation on the system to ensure compliancy with American with Disabilities Act
 - Migrate the multiple versions of code for each phase while testing across multiple testing environments
 - Regression test existing processes within the system to verify that it was not compromised as a result of these changes
 - Conduct browser compatibility testing on Internet Explorer, Firefox, Chrome and Safari
 - Execute performance testing under stringent conditions with a large volume of simulated users
 - Coordinate and support user acceptance testing

Database

- Estimated Time and Cost
 - 16 hours @ \$100 = \$1,600
- Description of work for this phase
 - Time spent performing changes to the underlying database that contains the data.
 - Performance tuning of structured query language for suitable response times

Implementation

- Estimated Time and Cost
 - 16 hours @ \$120 = \$1,920
- Description of work for this phase
 - Create new or update implementation plan including rollback procedures
 - Time to make the final product available to the agency
 - Synchronization of documentation, multiple versions of code and implement database changes

Project Management

- Estimated Time and Cost
 - 49 hours @ \$100 = \$4,900
- Description of work for this phase
 - Time managing the overall project, working with the agency on change requests, minimizing potential risk, resolving issues, and identifying scope changes

Scope

- Estimated Cost
 - 20% of \$88,460 = \$17,692
- Description of work for this phase
 - The estimate recommended \$88,460 based on partial analysis of core requirements received during the interview process. The additional 20% is to cover scope and to address unanalyzed requirements.
 - An after analysis estimate will be prepared once this project has started and the analysis phase is completed.

Estimate for Implementation of Both Senate Bill 2144 and 2152

This project involves the implementation of changes identified in SB 2144 and SB 2152. The work to be performed will be combined into one project. The requested changes are based on the knowledge of information available at the time of this estimate and are detailed below.

The first part of the project is to implement changes to the SOS File 2.0 application in response to SB 2144. Changes to the shareholder requirements for Professional Corporations, Professional LLCs and Professional LLPs would allow for an individual shareholder to be a “non-licensed” shareholder, where SOS File 2.0 requires all shareholders for these types of businesses to be licensed. This will also introduce minority shareholders that are non-licensed. The system must be able to designate a shareholder as non-licensed and/or minority owner. The minority owners shares owned will now be required to be captured on the annual reports filed by the businesses. In addition, the system will be required to capture additional fields on the annual reports indicating if there are minority owners, the organization supplied a certificate identifying the minority owners and the express law authorizing the minority owners.

This second part of the project is to implement changes to the SOS File 2.0 application in response to SB 2152. Changes to shareholder requirements for Professional Corporations, Professional LLCs and Professional LLPs would allow for an individual shareholder to be a shareholder in more than one entity, if the entity was a different type of profession. In order to be a shareholder in multiple entities, the individual would have to be a licensed professional in multiple areas. An architect that is also a lawyer could be a shareholder in an professional architect firm and a professional law firm, but not 2 architect firms or 2 law firms. The SOS will supply a list of approved professions the system will use to validate the requirements.

Total Cost Estimate

- \$127,848

Analysis

- Estimated Time and Cost
 - 73 hours @ 120 = \$8760
- Description of work for this phase
 - Meetings with the agency to achieve a full understanding of the necessary changes
 - Time allocated to gather and document the requirements of the project
 - Identify the impact of this bill on the current system
 - Create new or update system artifacts including Use Case diagrams, Conceptual Data Model Diagrams, Requirement Traceability Matrix, Analysis Package and Business Validation Rules
 - Conduct customer analysis walk through of artifacts

Design

- Estimated Time and Cost
 - 203 hours @ \$120 = \$24,360
- Description of work for this phase
 - An iterative process to review with the agency the proposed changes and perform modifications until the requirements of the project are achieved.
 - Create new or update approximately 9 prototype Graphical User Interface pages
 - Ensure compliance with the Americans with Disabilities Act and Enterprise Architecture Standards
 - Confirm browser compatibility for recent releases of Internet Explorer, Firefox, Chrome and Safari
 - Update the Physical Data Model Diagram to contain the new database information
 - Conduct customer design walk through

Development

- Estimated Time and Cost
 - 342 hours @ \$120 = \$41,040
- Description of work for this phase
 - Change the identified code to align with the Requirements Traceability Matrix and design documents
 - Create separate versions of the code to align with each phase of the Secretary of States File 2.0 project and to accommodate the changes identified in this estimate.
 - Synchronize the multiple versions of code to ensure code integrity
 - Create new or update approximately 25-30 different objects of code such as data access functions, view model, controller, and unit of work functions.
 - Perform Unit Testing on the new changes

Testing

- Estimated Time and Cost
 - 184 hours @ \$120 = \$22,080
- Description of work for this phase
 - Create new or update current testing plans.
 - Execute test plans, track and fix defects that are identified
 - Verify the items in the Requirements Traceability Matrix have been met
 - Perform validation on the system to ensure compliancy with American with Disabilities Act
 - Migrate the multiple versions of code for each phase while testing across multiple testing environments
 - Regression test existing processes within the system to verify that it was not compromised as a result of these changes

- Conduct browser compatibility testing on Internet Explorer, Firefox, Chrome and Safari
- Execute performance testing under stringent conditions with a large volume of simulated users
- Coordinate and support user acceptance testing

Database

- Estimated Time and Cost
 - 20 hours @ \$100 = \$2,000
- Description of work for this phase
 - Perform conversion and cleansing of existing data to provide a common and uniformed set of values for the professions list
 - Time spent performing changes to the underlying database that contains the data
 - Performance tuning of structured query language for suitable response times

Implementation

- Estimated Time and Cost
 - 20 hours @ \$120 = \$2,400
- Description of work for this phase
 - Create new or update implementation plan including rollback procedures
 - Time to make the final product available to the agency
 - Synchronization of documentation, multiple versions of code and implement database changes

Project Management

- Estimated Time and Cost
 - 59 hours @ \$100 = \$5,900
- Description of work for this phase
 - Time managing the overall project, working with the agency on change requests, minimizing potential risk, resolving issues, and identifying scope changes

Scope

- Estimated Cost
 - 20% of \$106,540 = \$21,308
- Description of work for this phase
 - The estimate recommended \$106,540 based on partial analysis of core requirements received during the interview process. The additional 20% is to cover scope and to address unanalyzed requirements.
 - An after analysis estimate will be prepared once this project has started and the analysis phase is completed.

INFORMATION TECHNOLOGY DEPARTMENT BIENNIAL APPROPRIATIONS

The schedule below provides information on legislative appropriations for the Information Technology Department for the 2001-03 biennium through the 2011-13 biennium and includes the 2013-15 executive recommendation:

	2001-03	2003-05	2005-07	2007-09	2009-11	2011-13	2013-15 Executive Budget
Salaries and wages	\$25,576,531	\$25,715,694	\$28,074,299	\$37,921,324	\$43,829,943	\$45,603,386	\$54,461,316
Operating expenses	35,661,772	33,120,860	42,047,702	57,062,912	55,208,550	53,152,191	64,834,643
Capital assets	5,080,000	5,323,000	10,361,163	12,145,250	11,970,746	15,035,666	12,500,600
Center for Innovation and Instruction	800,334						
Center for Distance Education/Division of Independent Study		5,625,480	6,006,439	6,473,565	6,347,917	6,649,238	6,072,187
Educational Technology Council		793,818	885,754	1,136,574	974,986	1,075,403	1,814,609
EduTech	1,200,000	2,540,348	2,652,348	2,722,348	7,753,602	7,926,447	8,279,530
SENDIT network	1,673,669						
Wide area network	9,968,905	7,436,223	7,542,211	4,066,926	5,976,970	5,206,992	4,928,177
Enterprise resource planning system	7,500,000	20,000,000					
Geographic information system	750,000	678,343	686,437	798,313	789,678	1,112,065	1,460,294
Prairie Public Broadcasting	1,407,513	1,337,138					
Criminal justice information sharing		4,741,200	2,525,090	2,352,448	3,609,239	2,981,394	3,869,361
MMIS project (contingent appropriation)			8,125,784				
Statewide longitudinal data system				228,116	4,730,208	3,626,867	1,870,754
Health information technology					88,350,000	13,959,238	4,785,991
Federal stimulus funds						8,000,000	6,800,000
Eligibility system replacement project						19,346,077	
Total	\$89,618,724	\$107,312,104	\$108,907,227	\$124,907,776	\$229,541,839	\$183,674,964	\$171,677,462
General fund	\$18,779,844	\$8,194,803	\$9,972,837	\$11,659,411	\$19,170,785	\$19,252,204	\$21,365,764
Federal and special funds	70,838,880	99,117,301	98,934,390	113,248,365	210,371,054	164,422,760	150,311,698
Total	\$89,618,724	\$107,312,104	\$108,907,227	\$124,907,776	\$229,541,839	\$183,674,964	\$171,677,462
FTE	244.7	248.2	265.2	306.2	328.2	336.3	340.3

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Title.

Prepared by the Legislative Council staff for
Representative Ruby
April 16, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2152

That the House recede from its amendments as printed on page 1208 of the Senate Journal and pages 1267 and 1268 of the House Journal and that Senate Bill No. 2152 be amended as follows:

Page 1, line 1, after "to" insert "create and enact a new subsection to section 10-31-13 of the North Dakota Century Code, relating to regulation of professional organizations; and to"

Page 1, after line 15, insert:

"SECTION 2. A new subsection to section 10-31-13 of the North Dakota Century Code is created and enacted as follows:

In order to regulate organizations that have ownership that renders more than one professional service, the secretary of state shall collect one thousand dollars for articles of incorporation for a corporation, articles of organization for a limited liability company, or articles of amendment related to an organization that has ownership that renders more than one professional service. This fee is in addition to the fees provided for these filings under section 10-19.1-147 or 10-32-150. Fees collected by the secretary of state under this subsection must be deposited in the secretary of state's general services operating fund."

Re-number accordingly