

**2015 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1100**

# 2015 HOUSE STANDING COMMITTEE MINUTES

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

HB 1100  
1/7/2015  
21734

- Subcommittee  
 Conference Committee

EL

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

Relating to real estate appraiser permits.

**Minutes:**

Attachment 1

**Chairman Keiser:** Opens the hearing on HB 1100. Is anyone here to testify in favor of HB 1100?

**Joe Ibach~Chairman of the ND Real Estate Appraiser Qualifications & Ethics Board:** (See attachment 1).

(8:11)

**Representative Becker:** With regard of temporary permits, what period of time does a temporary permit exist and for how many jobs?

**Ibach:** No time limit but only for one appraisal. It is driven by the contract with the client.

**Representative Becker:** Is there a limit to how many temporary practice permits one can have in a year?

**Ibach:** Six.

**Representative Becker:** So, six jobs per year. Can they get repeat permits?

**Ibach:** If most appraisers are doing more than one or two on a temporary practice permit, they are getting a license. The reason is the reciprocity system is much easier to get now than it was three years ago.

**Representative Becker:** Is it possible that my license is revoked in another state because of something that came up in the background check. The only way I could continue to practice, is by doing temporary practice permits where I wouldn't have any background checked on.

(10:31)

**Ibach:** What happens is not the background check if I submit an application for a temporary practice permit to ND. Our administrator will check the national registry to determine if there is an allegation or complaint filed that has some merit.

**Representative Ruby:** I can understand the change for the allegations, but is it possible by having the board make the determination, could give the appearance of protecting certain individuals if they don't want to have a negative mark against them.

**Ibach:** The board always had the discretion to determine whether it's a complaint to be filed or not.

**Representative Beadle:** Concerning section 1 of the bill, the reciprocity is not consistent with title 11. My question is that language in section 1 is permissive language, but 4.1 removes some of the language regarding the equivalent requirements for what qualifies as a substantial licensing in another state. By making this change, does it make it so in effect, we now have reciprocity agreement with every state or do we now no longer have authority to have those reciprocity agreements?

**Ibach:** We do not have reciprocity agreements with any state.

**Representative Beadle:** If they are compliant with the federal regulations and requirements to be an appraiser, they can get a license in ND without any other action required other than just submitting the application?

**Ibach:** That is correct. We all have essentially the same criteria in all states.

(14:37)

**Representative Louser:** About the national registry, you said "an allegation or complaint", does the national registry keep track of the difference between an allegation or complaint as we are proposing to do?

**Ibach:** If I said that, I missed spoke, the only thing that gets reported to the federal registry will be a complaint that the board finds that has merit and we have taken action on it. If it's an allegation, we will dismiss it and never gets reported.

**Representative Louser:** Is there any state that has standards lower than what ND licensing requirements are?

**Ibach:** There is no state that has standards less than ND. Federal makes that call.

**Chairman Keiser:** The function of the boards is to protect our citizens, if a complaint is filed and if we error, we want to error on the conservative side. If it's going to be considered an allegation, the board needs to meet quickly to consider if it's a ligament complaint in order to take action. So the question would be, if it's a complaint that isn't ligament, the board meets quickly and removes it and not confirm it. I'm not certain that we

are setting a precedence relative to the public that we want to set, unless you can tell me that the board is going to meet relatively immediately, when an allegation is brought forward.

(17:35)

**Ibach:** If an allegation or complaint comes into the office, we will not look at that until we meet next. It sets there and doesn't affect anyone. It will get acknowledged at the next board meeting.

**Chairman Keiser:** Then there really isn't a problem by leaving it as a complaint because it doesn't get filed, then the board meets to determine if it a legitimate complaint. It could be setting an interesting precedence.

**Representative Kasper:** On the allegation vs complaint, I realize the wrong and improper action could have. You are trying to say is, when this piece of paper comes in that says there is a wrong doing, right now, you have to call it a complaint under state statute, even though it might not be a complaint. Are you changing what this complaint or allegation is to the word "allegation", so that it doesn't arise to the level of complaint which is now a recordable incident on licensing?

**Ibach:** That is exactly what we are trying to do. We want to prevent the frivolous complaint to be on the appraiser's record.

**Representative Kasper:** That's what I want to prevent.

**Ibach:** That's right.

**Representative Ruby:** I feel we are splitting hairs, I think an allegation is a complaint. The problem I have is the determination or the definition of frivolous; it gives the board power to insulate members from getting a mark on their renewal insurance. Is there a different way that we could make that determination other than the board?

**Ibach:** We are a board appointed by the governor; our number one priority is to protect the public, not to protect the appraiser.

(25:17)

**Representative Amerman:** Right now, when a person files a complaint, it's a complaint, whether it's frivolous or not. If you change it to an allegation and you find it frivolous, the allegation goes away and there is no record of complaint being filed. Is there another appeal process or action they can take?

**Ibach:** We dismiss the frivolous. We dismiss it and that is what we are trying to circumvent.

**Representative Amerman:** Is there any recourse if you dismiss it?

**Ibach:** The public can do what they want.

**Representative Louser:** A complaint that is found to be frivolous or dismissed, is that complaint given to the registry?

**Ibach:** If it's dismissed, it does not go to the federal registry, but he is still going to mark yes.

**Representative Louser:** If you file with the state and it's dismissed, is it recorded in your file as an appraiser for licensing purposes in the state?

**Ibach:** No.

**Representative Louser:** What we are getting at, is at the end of the year, your application for E&O Insurance, that question and we're discussing the ASC, as your making that to the MC's, are those two incidences?

(29:05)

**Ibach:** Yes, those are the two primary incidences.

**Representative Louser:** Is any other state proposing similar legislation?

**Ibach:** As I recall, every state has different language.

**Representative Louser:** I'm talking specifically about the application for E&O Insurance, that application is uniform across state lines.

**Ibach:** That correct.

**Representative Louser:** If a state handles it differently, you still have to say yes, if there is a complaint.

**Ibach:** If there was a complaint in ND and it was dismiss as an allegation, I would not have to put yes.

**Representative Lefor:** How many complaints do you have in an average year and how many of those were frivolous?

**Ibach:** About 20 complaints files and we dismisses about 25%.

**Representative Lefor:** This is a case of guilty, until proven innocent. This comes down to the merits of the argument you have in front of you.

**Ibach:** You're right.

**Opposition:**

**Chairman Keiser:** What are the wishes of the committee?

**Representative Kasper:** Motions for a Do Pass.

**Representative Beadle:** Second.

**Chairman Keiser:** Further discussion?

**Representative Becker:** I have a problem with the complaint allegation with being involved with different organizations. What they are asking for is very reasonable.

**Roll Call was taken: 13 Yes, 1 No, & 1 Absent and Representative Louder is the carrier.**

**Chairman Keiser:** Closes the hearing on HB 1100.

Date: 1/7/2015

Roll Call Vote 1

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1100**

**House Industry, Business & Labor Committee**

Subcommittee       Conference Committee

Amendment LC# or Description:

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerrefer to Appropriations

Other Actions:  Recconsider

Other Actions:  Reconsider

Motion Made By Representative Kasper Seconded By Representative Beadle

Total (Yes) 13 No 1

Absent 1

## Floor Assignment Representative Louser

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

**REPORT OF STANDING COMMITTEE**

**HB 1100: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (13 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1100 was placed on the Eleventh order on the calendar.

**2015 SENATE INDUSTRY, BUSINESS AND LABOR**

**HB 1100**

# 2015 SENATE STANDING COMMITTEE MINUTES

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

HB 1100  
3/10/2015  
Job Number 24544

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to real estate appraiser permits

**Minutes:**

Attachment

**Chairman Klein:** Opened the hearing.

**Joe Ibach, Chairman of the North Dakota Real Estate Appraiser Qualifications and Ethics Board:** Written Testimony Attached (1). (:58-11:51)

**Chairman Klein:** Asked about page four under the criminal history record and deleting 43-23.3.

**Jim Ibach:** What it does right now, if I am in South Dakota and I want to come to North Dakota on a temporary practice permit the way our statute reads is they must undertake a background check, not necessarily because they are in good standing in South Dakota. That is just another gate to keep appraisers from coming into North Dakota which we don't need because it is a requirement that is not required in South Dakota so why would we put up a fence. It will make it more convenient for appraisers to come here and get a temporary or full practice permit.

**Nancy Willis, Government Affairs Director for the North Dakota Association of Realtors:** In support of the bill. They did meet with the Appraisal Board when they were drafting this legislation and feel appraisers are important to the real estate industry and are in support of all the changes they are making.

**Chairman Klein:** Closed the hearing.

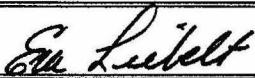
# 2015 SENATE STANDING COMMITTEE MINUTES

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

HB 1100  
3/10/2015  
Job Number 24556

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to real estate appraiser permits

**Minutes:**

No Attachment

**Chairman Klein:** There are no amendments to this one.

**Senator Sinner:** Moved a do pass.

**Senator Burckhard:** Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

**Senator Campbell will carry the bill.**

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
HB 1100**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description:

Recommendation:	<input type="checkbox"/> Adopt Amendment	<input checked="" type="checkbox"/> Do Pass <input type="checkbox"/> Do Not Pass	<input type="checkbox"/> Without Committee Recommendation
	<input type="checkbox"/> As Amended	<input type="checkbox"/> Place on Consent Calendar	<input type="checkbox"/> Rerrefer to Appropriations
Other Actions:	<input type="checkbox"/> Reconsider		

Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Senator Sinner Seconded By Senator Burckhard

Absent \_\_\_\_\_ 0 \_\_\_\_\_

**Floor Assignment** Senator Campbell

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

**REPORT OF STANDING COMMITTEE**

**HB 1100: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends  
**DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1100 was placed  
on the Fourteenth order on the calendar.

**2015 TESTIMONY**

**HB 1100**

**HOUSE BILL NO. 1100**  
**Testimony**  
**Joe Ibach, Chairman**  
**North Dakota Real Estate Appraiser Qualifications and Ethics Board**

**January 7, 2015**

Good morning. My name is Joe Ibach, Chairman of the North Dakota Real Estate Appraiser Qualifications and Ethics Board. I will refer to this Board throughout my testimony as either the ND Appraiser Board or the Appraiser Board.

The North Dakota Appraiser Board was established in 1991 as a result of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). FIRREA was established due to the savings and loan financial meltdown in the 1980's. Title XI addressed the need and process for regulation of real estate appraisers. The intent of this regulation was to have a "three-legged" enforcement tool to ensure that appraisals conducted for "federally related transactions" over a certain dollar amount (diminimus) be performed by qualified and competent appraisers.

The first leg of this FIRREA established enforcement tool was and continues to be the Appraisal Subcommittee (ASC). Among its obligations, the ASC has an oversight responsibility to include the monitoring of the state certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility.

The second leg was and continues to be the Appraisal Foundation. This non-profit organization, established by Congress in 1987, is dedicated to the advancement of professional valuation services. Initially, the Appraisal Foundation sponsored two independent boards to help complete its mission. The first, the Appraisal Qualifications Board (AQB), is responsible for establishing the minimum requirements for real property appraisers to obtain state licensure or certification. The second board, the Appraisal Standards Board (ASB), is responsible for the development, interpretation, and amendments to the Uniform Standards of Professional Appraisal Practice (USPAP). Most recently, the Appraisal Foundation added a third board, the Appraisal Practices Board (APB), to provide voluntary guidance on recognized valuation methods and techniques.

The third leg of FIRREA, the "leg" that applies in this proposed legislation, was the requirement that each state establish a state law to implement Title XI. In this regard, Chapter 43-23.3 of the ND Century Code was created in 1991 to regulate real estate appraisers. It is important to note that the establishment of the appraiser statute was a federal mandate and continues to fall under federal oversight by the Appraisal Subcommittee.

Pursuant to Title XI, the Appraisal Subcommittee (ASC) monitors each State Appraiser Regulatory program for compliance with Title XI, the Appraisal Qualifications Board (AQB) Real Property Appraiser Qualifications Criteria, and the ASC Policy Statements. An on-site Compliance Review of each State is completed by the ASC at least every two years. This Review process involves analyzing statutes, regulations, policies, and procedures to determine the State Program's compliance with Title XI. A report of the Preliminary findings are provided to the State and the State is given 60 days to respond to the findings. ASC Staff considers the State's response and makes formal recommendations to the ASC for final disposition. The ASC considers the recommendations as well as the State's response. The ASC issues a final Compliance Review Report and letter to the State regarding the State's compliance with Title XI. If a State program is found to be noncompliant in one or more areas, the State may be (1) subject to additional oversight, including follow-up reviews or moved to a one-year review cycle or (2) required to take specific actions.

The ASC conducted a Compliance Review of the North Dakota appraiser regulatory program in June of 2014. The North Dakota Program was awarded an ASC Finding of "Good". However, relative to ND Statute, the ASC identified the following areas of noncompliance:

- 1. ND Statutes §43-23.3-03. 2.c., §43-23.3-04.1 and Regulation 101-02-02.1-01.1 do not comply with Title XI. It requires a reciprocal credential be issued when the applicant holds a valid credential from a State whose program is in compliance with Title XI and whose credentialing requirements meet or exceed the requirements of the state where the applicant is made.**
- 2. The State's statutory/regulatory authority is not consistent with the State's practice or federal requirements. However, in practice, it appears North Dakota complies with Title XI concerning reciprocity.**

In practice, ND has an open-door reciprocity policy in-place. An applicant via reciprocity must certify that he/she is in good standing in another state, certify that disciplinary proceedings are not pending in any jurisdiction, and provide documentation of the current requirements of the state in which he/she was originally licensed or certified. Board Staff reviews the application, verifies that the reciprocal state is in compliance with Title XI and if the application is in order Board Staff will issue a permit. The Board will review and confirm approval of the permit at a following Board meeting.

To remedy the concerns noted in the June 2014 ASC Compliance Review and to assume that the ND Appraiser Regulatory Program is in compliance with Title XI, the ND Appraiser Board amended Title 101. Furthermore, the ND Appraiser Board proposes the following amendments to NDCC 43-23.3:

**43-23.3-03. 2.c Enter reciprocity with other states.**

**43-23.3-04.1. Issuance of permits to applicants licensed or certified by another state.**

*The board shall issue a permit to an applicant who is licensed or certified in good standing by another state if the other state's requirements to be licensed or certified are at least substantially equivalent to the requirements imposed by this state, and if grounds for denial of the application under section 43-23.3-18 do not exist. If an applicant was licensed or certified by another state by reciprocity or a similar process, the requirements of the state in which the applicant was originally licensed or certified must be at least substantially equivalent to the requirements imposed by this state. Within sixty days of filing a completed application, the board shall issue or deny the application and inform the applicant of the decision.*

Additionally the Board is proposing the following amendments:

1. 43-23.3-04 current language limits an out-of state appraiser to practice in North Dakota through a temporary practice permit. An out-of-state appraiser should not be limited to practicing in-state under a temporary permit. In practice, the ND Appraiser Board does not limit an out-of-state appraiser to obtain and practice in North Dakota under a temporary permit. Proposed language will allow an out-of-state appraiser the option to either obtain a permit to practice under a temporary permit or, alternatively, to obtain a permit for full licensure or certification through the reciprocity process.
2. 43-23.3-09 current language "may" is being replaced with "shall" to meet national requirements. The Appraisal Qualifications Board (AQB) Real Property Appraiser Qualification Criteria "requires" review of work product as part of the application process.
3. 43-23.3-22 3 Relates to a terminology clarification between the words "complaint" and "allegation" involving an accusation from the public against an appraiser. Currently, an accusation filed by the public against an appraiser is termed a "complaint". A "complaint" filed against an appraiser (even if fully reviewed, found to be without merit, and, ultimately, dismissed by the ND Appraiser Board) can have an unintended, yet, significant impact(s) on the appraiser. Many appraisers carry errors and omission insurance. A "complaint" filed against an appraiser can impact the cost and even the availability of obtaining such insurance coverage. In addition, several Appraisal Management Companies (a "middle-man" company created to provide an arms-length separation between banks and appraisers) many times do not allow an appraiser to be placed or remain on

the AMC's approved appraiser roster if a complaint (even if fully reviewed, found to be without merit, and, ultimately, dismissed by the ND Appraiser Board) has been filed against said appraiser.

Under current practice, the ND Appraiser Board makes the determination as to whether a filed allegation (now called a complaint) actually has merit. If, in the judgment of the ND Appraiser Board, such allegation (currently called a complaint) has merit, it is the ND Appraiser Board that files a formal complaint against an appraiser. Alternatively, if the ND Appraiser Board believes the allegation (currently called a complaint) does not have merit, the ND Appraiser Board will not file a formal complaint against said appraiser.

By adding the proposed language (page 4, lines 4-6) any signed or unsigned accusation against an appraiser will be treated as an allegation rather than a complaint. This modification will provide for continued public protection and protection of an innocent appraiser.

4. 43-23.3-11 Current language requires an applicant for a temporary permit to undergo a background check. A temporary permit is issued on an assignment basis. The Board is proposing the requirement "that an applicant via temporary practice undergo a background check" be removed based on the following:
  - a. Title XI "*contemplates reasonably free movement of credential appraisers across State lines..*"
  - b. Appraisal Subcommittee (ASC) Policy Statement 2 Temporary Permit requires States to issue a temporary permit within five days of receipt of the application.
  - c. The Appraisal Subcommittee encourages States to use the ASC National Registry (the ND Appraiser Board uses the Registry) when verifying a credential status of an applicant for temporary practice. The National Registry is a database consisting of all State Licensed, State Certified Residential, and State Certified General Appraisers. It is intended to serve as an historical reference to every credential an appraiser holds or has held with the exception of a trainee credential. Active and Inactive credentials are listed. Only State certified or licensed appraisers who are listed on this National Registry as having current valid certifications or licenses are authorized under Federal law to perform appraisals in connection with federally related transactions.
  - d. Requiring a background check would hinder the turnaround time of the application process. Staff reviews the National Registry for each applicant for temporary practice. If

the applicant is not in good standing in their state(s) of licensure or certification, the Board may deny the application.

The proposed legislation 43-23.3 assures compliance with XI, continues to allow for reasonably free movement of out-of-state appraisers, maintains public protection, and protects the State's appraisers.

The North Dakota Appraiser Board then recommends a "Do Pass" of House Bill 1100.

**HOUSE BILL NO. 1100**  
**Testimony**  
**Joe Ibach, Chairman**  
**North Dakota Real Estate Appraiser Qualifications and Ethics Board**

**March 10, 2015**

Good morning. My name is Joe Ibach, Chairman of the North Dakota Real Estate Appraiser Qualifications and Ethics Board. I will refer to this Board throughout my testimony as either the ND Appraiser Board or the Appraiser Board.

The North Dakota Appraiser Board was established in 1991 as a result of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). FIRREA was established due to the savings and loan financial meltdown in the 1980's. Title XI addressed the need and process for regulation of real estate appraisers. The intent of this regulation was to have a "three-legged" enforcement tool to ensure that appraisals conducted for "federally related transactions" over a certain dollar amount (*diminimus*) be performed by qualified and competent appraisers.

The first leg of this FIRREA established enforcement tool was and continues to be the Appraisal Subcommittee (ASC). Among its obligations, the ASC has an oversight responsibility to include the monitoring of the state certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility.

The second leg was and continues to be the Appraisal Foundation. This non-profit organization, established by Congress in 1987, is dedicated to the advancement of professional valuation services. Initially, the Appraisal Foundation sponsored two independent boards to help complete its mission. The first, the Appraisal Qualifications Board (AQB), is responsible for establishing the minimum requirements for real property appraisers to obtain state licensure or certification. The second board, the Appraisal Standards Board (ASB), is responsible for the development, interpretation, and amendments to the Uniform Standards of Professional Appraisal Practice (USPAP). Most recently, the Appraisal Foundation added a third board, the Appraisal Practices Board (APB), to provide voluntary guidance on recognized valuation methods and techniques.

The third leg of FIRREA, the "leg" that applies in this proposed legislation, was the requirement that each state establish a state law to implement Title XI. In this regard, Chapter 43-23.3 of the ND Century Code was created in 1991 to regulate real estate appraisers. *It is important to note that the establishment of the appraiser statute was a federal mandate and continues to fall under federal oversight by the Appraisal Subcommittee (ASC).*

Pursuant to Title XI, the Appraisal Subcommittee (ASC) monitors each State Appraiser Regulatory program for compliance with Title XI, the Appraisal Qualifications Board (AQB) Real Property Appraiser Qualifications Criteria, and the ASC Policy Statements. An on-site Compliance Review of each State is completed by the ASC at least every two years. This Review process involves analyzing statutes, regulations, policies, and procedures to determine the State Program's compliance with Title XI. A report of the Preliminary findings are provided to the State and the State is given 60 days to respond to the findings. ASC Staff considers the State's response and makes formal recommendations to the ASC for final disposition. The ASC considers the recommendations as well as the State's response. The ASC issues a final Compliance Review Report and letter to the State regarding the State's compliance with Title XI. If a State program is found to be noncompliant in one or more areas, the State may be (1) subject to additional oversight, including follow-up reviews or moved to a one-year review cycle or (2) required to take specific actions.

The ASC conducted a Compliance Review of the North Dakota appraiser regulatory program in June of 2014. The North Dakota Program was awarded an ASC Finding of "Good". However, relative to ND Statute, the ASC identified the following areas of noncompliance:

1. **ND Statutes §43-23.3-03. 2.c., §43-23.3-04.1 and Regulation 101-02-02.1-01.1 do not comply with Title XI which requires a reciprocal credential be issued when the applicant holds a valid credential from a State whose program is in compliance with Title XI and whose credentialing requirements meet or exceed the requirements of the state where the applicant is made.**
2. **The State's statutory/regulatory authority is not consistent with the State's practice or federal requirements. However, in practice, it appears North Dakota complies with Title XI concerning reciprocity.**

The Appraisal Qualifications Board (AQB) establishes minimum requirements for appraisers to obtain licensure or certification and. As all States must adopt these minimum requirements, the Board no longer needs to evaluate licensing/certification standards of other States. Therefore, signed reciprocal agreements are no longer necessary. However, the ASC requires and will monitor States to ensure each State has a reciprocal process in place that allows current licensed or certified appraisers who are in good-standing within their jurisdictions to obtain permits in other states via reciprocity.

In practice, ND has an open-door reciprocity policy in-place. An applicant via reciprocity must certify that he/she is in good standing in another state, certify that disciplinary proceedings are not pending in any jurisdiction, and provide documentation of the current requirements of the state in which he/she was originally licensed or certified. Board Staff reviews the application, verifies that the reciprocal state is in compliance with Title XI and if the application is in order Board Staff will issue a permit. The Board will review and confirm approval of the permit at a following Board meeting.

The ASC has recognized that the Appraiser Board currently practices an open-door reciprocity policy. However, 1) to remedy the concerns noted in the June 2014 ASC Compliance Review, 2) to assure that the ND Appraiser Regulatory Program is in compliance with Title XI, and 3) in accordance with ASC recommendations, the ND Appraiser Board proposes the following amendments to NDCC 43-23.3:

**(Page 1, line 11)**

~~43-23.3-03. 2.c Enter reciprocity with other states.~~

**(Page 2, line 9)**

*43-23.3-04.1. Issuance of permits to applicants licensed or certified by another state.*

*The board shall issue a permit to an applicant who is licensed or certified in good standing by another state if the other state's requirements to be licensed or certified are at least substantially equivalent to the requirements imposed by this state, and if grounds for denial of the application under section 43-23.3-18 do not exist. If an applicant was licensed or certified by another state by reciprocity or a similar process, the requirements of the state in which the applicant was originally licensed or certified must be at least substantially equivalent to the requirements imposed by this state. Within sixty days of filing a completed application, the board shall issue or deny the application and inform the applicant of the decision.*

Additionally the Board is proposing the following amendments:

**(Page 1, line 20)**

1. 43-23.3-04 current language limits an out-of state appraiser to practice in North Dakota through a temporary practice permit. An out-of-state appraiser should not be limited to practicing in-state under a temporary permit. In practice, the ND Appraiser Board does not limit an out-of-state appraiser to obtain and practice in North Dakota under a temporary permit. Proposed language will allow an out-of-state appraiser the option to either obtain a permit to practice under a temporary permit or, alternatively, to obtain a permit for full licensure or certification through the reciprocity process.

**(Page 2, line 19)**

2. 43-23.3-09 current language "may" is being replaced with "shall" to meet national requirements.

The Appraisal Qualifications Board (AQB) Real Property Appraiser Qualification Criteria "requires" review of work product as part of the application process.

(Page 4, line 4)

3. 43-23.3-22 3 Relates to a terminology clarification between the words "complaint" and "allegation" involving an accusation against an appraiser. Currently, an accusation filed against an appraiser is termed a "complaint". A "complaint" filed against an appraiser (even if fully reviewed, found to be without merit, and, ultimately, dismissed by the ND Appraiser Board) can have an unintended, yet, significant impact(s) on the appraiser. Many appraisers carry errors and omission insurance. A "complaint" filed against an appraiser can impact the cost and even the availability of obtaining such insurance coverage. In addition, several Appraisal Management Companies (a "middle-man" company created to provide an arms-length separation between banks and appraisers) many times do not allow an appraiser to be placed or remain on the AMC's approved appraiser roster if a complaint (even if fully reviewed, found to be without merit, and, ultimately, dismissed by the ND Appraiser Board) has been filed against said appraiser.

Under current practice, the ND Appraiser Board makes the determination as to whether a filed complaint actually has merit. If, in the determination of the ND Appraiser Board, such complaint has merit, it rises to the level of a formal complaint. It is then the ND Appraiser Board that files a formal complaint against the appraiser. Alternatively, if the ND Appraiser Board believes the complaint does not have merit, the ND Appraiser Board will not file a formal complaint against said appraiser and dismiss the complaint.

Under the proposed language, the ND Appraiser Board makes the determination as to whether a filed *allegation* actually has merit. If, in the determination of the ND Appraiser Board, such allegation has merit, it rises to the level of a complaint. It is then the ND Appraiser Board that files a complaint against the appraiser. Alternatively, if the ND Appraiser Board believes the allegation does not have merit, the ND Appraiser Board will not file a complaint against said appraiser and dismiss the allegation.

It is important to note, the Appraiser Board's current investigative and notification process do NOT change. If the Board determines an allegation is legitimate, it moves forward as a complaint. If the allegation is determined frivolous, it remains an allegation. Parties on both sides are notified of the Board's final determination.

This proposed legislation came about due to an unintended consequence that was brought to the Board's attention from an appraiser who had a complaint filed against him. The complaint against this appraiser was dismissed. However, in the course of renewing his E&O insurance, a question on the application asked whether there had been any complaints filed against the appraiser. Even though the complaint was dismissed, the appraiser had to check "Yes" on the application. His E&O insurance rates increased.

We have all heard a statement to the effect that an individual is presumed innocent until proven guilty. We have also heard the contrasting statement that an individual is presumed guilty until proven innocent. Unfortunately, under current language and in the eyes of this insurance company, the appraiser is still presumed to be guilty, despite the fact that the Appraiser Board reached a conclusion that the appraiser was not guilty.

By adding the proposed language (page 4, lines 4-6) any signed or unsigned accusation against an appraiser will be treated as an allegation rather than a complaint. This modification will provide for continued public protection as well as protection of an innocent appraiser.

(Line 9 page 4)

4. 43-23.3-24 Current language requires an applicant for a temporary permit to undergo a background check. A temporary permit is issued on an assignment basis. The Board is proposing the requirement "that an applicant via temporary practice undergo a background check" be removed based on the following:
  - a. Title XI "*contemplates reasonably free movement of credential appraisers across State lines..*"
  - b. Appraisal Subcommittee (ASC) Policy Statement 2 Temporary Permit requires States to issue a temporary permit within five days of receipt of the application.
  - c. The Appraisal Subcommittee encourages States to use the ASC National Registry (the ND Appraiser Board uses the Registry) when verifying a credential status of an applicant for temporary practice. The National Registry is a database consisting of all State Licensed, State Certified Residential, and State Certified General Appraisers. It is intended to serve as an historical reference to every credential an appraiser holds or has held with the exception of a trainee credential. Active and Inactive credentials are listed. Only State certified or licensed appraisers who are listed on this National Registry as having current valid certifications or licenses are authorized under Federal law to perform appraisals in connection with federally related transactions.

- d. Requiring a background check would hinder the turnaround time of the application process. Staff reviews the National Registry for each applicant for temporary practice. If the applicant is not in good standing in their state(s) of licensure or certification, the Board may deny the application.

The proposed legislation 43-23.3 assures compliance with XI, continues to allow for reasonably free movement of out-of-state appraisers, maintains public protection, and protects the State's appraisers.

The North Dakota Appraiser Board then recommends a "Do Pass" of House Bill 1100.