

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1353

2001 HOUSE POLITICAL SUBDIVISIONS

HB 1353

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1353

House Political Subdivisions Committee

Conference Committee

Hearing Date 2-1-01

Tape Number	Side A	Side B	Meter #
1	xx		4660--end
1		xx	1-68
2	xx		4034-4750
Committee Clerk Signature <i>Patricia D. Jones</i>			

Minutes: Chair Froseth opened the hearing on HB1353 relating to filing of oaths of office.

Rep. Lisa Meier, Dist. 32, Bismarck : bring this bill before you on behalf of the Sec. of State's Office. Please bring a do pass for this bill.

Cory Fong, Sec. of State's Office : (4790) This bill will provide a mechanism for appointments to be rescinded if an appointee fails to take an oath of office and clarify which public officials are required to file oaths of office. (SEE ATTACHED)

Rep. Grosz : (5422) If I did not file, who would terminate me?

Cory : A rescinding can only happen from someone who is appointed. Not if you are elected. You are an elected official, so you could be rescinded. You have to file your oath. Technically, you were not to have any public business before filing. This is just talking about appointees.

Rep. Herbel : The word "may rescind", on line 7, what might be some options for the term?

Cory : It is intended to give flexibility that they may rescind. It doesn't talk about reasons. The word "shall" would create problems. I don't know how many times this happens.

Page 2  
House Political Subdivisions Committee  
Bill/Resolution Number HB1353  
Hearing Date 2-1-01

Rep. N. Johnson : On line 16, would this mean a water board, too?

Cory : This would be applicable to every council, commission, bureau, or authority. A water development board would. A committee to study would not. An appointed board would.

**End Tape 1, side A**

**Begin Tape 1, side B** Cory continues explaining. State board, state commissions, etc. who have subcommittees would not require those subs to file an oath of office.

Chair Froseth : Any more testimony for or against? Hearing none, hearing is closed.

**Tape 2, side A, 2-1-01** Chair Froseth : Let's take up HB1353.

Rep. Maragos : I move a **DO PASS**.

Rep. Delmore : I second.

**VOTE: 14 YES and 0 NO with 1 Absent. BILL PASSED. Rep. Maragos will carry.**

**FISCAL NOTE**  
 Requested by Legislative Council  
 03/12/2001

Bill/Resolution No.:

Amendment to:            HB 1353

**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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The amendments adopted by the Senate were at the request of the Secretary of State. The intent of the amendment in Section 4 was to make it clear in 54-09-04 that no fee will be charged for the filing of an Oath of Office. Although the SOS has never charged a fee for such a filing, 54-09-04(5) implied that such a fee should be charged unless exempted in the paragraph at the end of 54-09-04. Therefore, to make sure that the law was absolutely clear and reflected actual practice, the amendment in Section 4 was requested and adopted by the Senate. In other words, this was a housekeeping admendment.

**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.*

None

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and*

*appropriations.*

None

<b>Name:</b>	Al Jaeger	<b>Agency:</b>	Secretary of State
<b>Phone Number:</b>	328-2900	<b>Date Prepared:</b>	03/12/2001

Date: 2-1-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1353

House POLITICAL SUBDIVISIONS Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

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

Action Taken Do PASS

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	/		Rep. Wayne W. Tieman	/	
Vice-Chair Dale C. Severson	/				
Rep. Lois Delmore	/				
Rep. Rachael Disrud	/				
Rep. Bruce Eckre	/				
Rep. Mary Ekstrom	/				
Rep. April Fairfield	AB				
Rep. Michael Grosz	/				
Rep. Jane Gunter	/				
Rep. Gil Herbel	/				
Rep. Nancy Johnson	/				
Rep. William E. Kretschmar	/				
Rep. Carol A. Niemeier	/				
Rep. Andrew G. Maragos	/				

Total (Yes) 14 No 0

Absent 1 AB

Floor Assignment Rep. Maragos

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

**REPORT OF STANDING COMMITTEE (410)**  
February 1, 2001 4:23 p.m.

Module No: HR-18-2166  
Carrier: Maragos  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1353: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1353 was placed on the Eleventh order on the calendar.**

2001 SENATE POLITICAL SUBDIVISIONS

HB 1353

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1353

Senate Political Subdivisions Committee

Conference Committee

Hearing Date March 2, 2001

Tape Number	Side A	Side B	Meter #
1	x		22.6-42.2
		x	31.-42.2
March 8, 2001 3	X		1.2-15.1
Committee Clerk Signature <i>Mary Jo Wocken</i>			

Minutes:

The hearing was opened on HB1353 which relates to filing of oaths of office. All senators were present except for Senator Flakoll.

REPRESENTATIVE MEIER: Introduced and sponsored HB1353. Representative Meier gave a short explanation of the bill and then introduced Cory Fong from the Secretary of States' office.

CORY FONG: Secretary of States' office. See written attached testimony. The purpose of this bill is to allow appointments made traditionally by the governor to be rescinded if the person doesn't file their oath for an extensive period of time. It gives them the ability to do that. It says they may do that. The other thing this bill does is simply clarify who is responsible for filing

oaths of office. SENATOR COOK: Cory, I am also besides being a States Senator, I am Chairman of the Morton County Housing Authority. I've never signed an oath that I can recall. If this bill passes I'd have to sign a oath? Is that correct? CORY FONG: I think the original version of this bill, yes you would have, but I think because of the way we have refined it and identified

that you are a appointee of a state board council commission bureau you would have to file but as a county or political subdivision body you would not have to file. You would have to file an oath if you are county commissioner because your an elected official. But if your going to be appointed to the Morton County Housing Authority that would not be covered by this bill. You would not have to file an oath. SENATOR COOK: I was appointed by the Morton County Commission. CORY FONG: That's correct. You would not have to file an oath under this bill. If you were appointed to the State Housing Board or Authority, yes you would. SENATOR COOK: Why? Why is it important that somebody files an oath? The way I am understanding you, is the intent is if they don't file an oath it is a indication that they do not want to serve and therefore? CORY FONG: Actually, Senator Cook, right now the requirement is for all civil officers to file an oath. So really our purpose is to bring this down and narrow it down because the definition of civil officer is what is up to interpretation. That everyone could possibly under the definition of civil officer be required to file. We specifically try to narrow in what a civil officer is. To include every elected official in the state, every member who is appointed to a state forward bureau, commission, authority, every appointed member of a state agency or division and then the last component is that the legislative appointments don't count. SENATOR LEE: What brought this up? CORY FONG: Actually, this has been something that was brought forth by the Governors' office and since we filed oaths of office we work with them on this particular bill, because there are situations where they make an appointment to a state board and the person doesn't file their oath of office for a considerable of time. They would like the ability to have the option of rescinding that, having the appointment come back. And then, since we're making that change there are needs to obviously define what a civil officer is. So that is what prompted this. SENATOR COOK: Cory, does the governor not have the authority right now to remove anybody

from an appointed position that, for any reason? CORY FONG: Unfortunately, I am not sure I'm the person to ask that question, I have not done that research. My understanding is the real concern is that after an extensive period of time after someone has been appointed and they do not file an oath of office with our office they will be able to rescind that based on this particular bill. I can certainly do some follow-up research and contact persons in the governors office to make that request, and will get back to the committee. SENATOR COOK: Cory do you have a list or any idea how many appointments this could effect? CORY FONG: I can get a list I think we have a recording in our office how many oaths we file. Obviously the only effect this is going to have at the local level, it really won't have an affect at the local level because that same people that are filing oaths now are still going to be filing oaths at the local level. In our office I think this is going to probably make it better. I mean we're going to better define who is required to file and all, and therefore I would say it probably going to reduce the number of stray filings of people who just think they have to file an oath because you know they consider themselves civil officers. Now it is going to be very specific, if your appointee by the governor, or a state board, bureau or commission, if your state appointee of an agency or agency division it is much more specific. The intent again is to provide to narrow this versus leave it the way it is, which is very kind of uncertain and expansive. SENATOR COOK: Cory is the lawyer an officer of a court? Is the lawyer required to take an oath? CORY FONG: Every lawyer in the state that goes and passes the Bar Exam, there not filing an oaths. But special assistant attorneys that are appointed by the Attorney General are filing oaths right now. And also assistant attorney generals. But maybe this is a better question for Renee. I don't, regular attorneys out there are not filing oaths. SENATOR LYSON: Your amendments on page 1, line 3, what is 54-09-04? CORY FONG: That is the section of law that refers to the fees and charges on our office. So that is the addition

of that section of law so we can get rid of some of the claims that requires us to charge fees and things we should not be charging fees for. SENATOR POLOVITZ: If I was appointed to committees or boards being an elected official, and I have to sign one as an elected official do I then have to sign another one? Suppose I was appointed to five boards, would I have to sign an oath of office for everyone of these boards which is the same thing? CORY FONG: Yes you would. If you or your a state senator for a district 42 you would have to take an oath, if your appointed to the State Board of Higher Education you would have to file an oath. And we have people in our agency or folks who have filed several oaths on file, because they arrived at that post and are required to file an oath. SENATOR POLOVITZ: But the oath is the same? CORY FONG: It is the same. But they are filing that oath for different purposes. SENATOR COOK: Existing law requires us to file these multiple oaths, or the bill as brought before without the amendments requires that? CORY FONG: current law and as the bill currently is would require people to file multiple oaths. I can visit with our legal council to see if the bill could be amended. I get the sense that perhaps what your saying is if someone's got an oath on file it would count for all those different purposes. The concern that I guess I would have is they take an oath for different , its the same oath, but it is for different purposes to serve on the state legislature or to serve on a board or bureau, so I am not sure that would necessarily achieve our goal. SENATOR POLOVITZ: This really confuses me, because the oath is the same. Your swearing to uphold the Constitution of the United States and the State Constitution. How can it differ for a position that your going to get if your swearing to the same thing? For a different purpose I don't understand it, the purpose is the same? CORY FONG: Then based on your question, would you be interested in a provision that would allow someone who has a oath on file, that counts for subsequent appointments and or declaring to file an oath. SENATOR POLOVITZ: I would say, that at this

stage, yes. SENATOR COOK: Cory, maybe I am getting confused here. You get applied to the Legislative council do you have to take another oath right now? Did Senator Gary Nelson when he became leader of the legislative council, president of the legislature, did he have to take another oath? CORY FONG: No, he did not. With the original version of this bill, there was a concern that he would have, or if you were appointed to serve on the legislative council that is why the amendments have been drafted. SENATOR COOK: The amendments that you bring here remove that? CORY FONG: To exempt appointees of the Legislature, however what I think Senator Polovitz is getting at is he is state senator from District 42, he has to file an oath, but if he is also appointed to the Board of Higher Education or some other state board which is very conceivable if the governor appoints you, you would have to file an oath for that position as well. SENATOR POLOVITZ: The same oath..CORY FONG: The same oath. SENATOR COOK: Cory, was there somebody, my question regarding lawyers, was there somebody that was going address that question? CORY FONG: I think there is a couple things I need to get back to you on. That question is one. The question about whether or not this bill could be amended to achieve what Senator Polovitz is getting at. So, I will certainly follow up on those two things. I am pretty certain that officers of the court or lawyers are not required to file this, however, its going to continue on assistant attorney general and appointees of the special assistants are going to have to file. SENATOR COOK: I think we've all heard statements, debates or whatever concerns as to whether or not lawyers are officers of the court and whether or not they are required to take an oath no matter how we feel whether they should or not. The existing law, is there enough confusion in that where that's, is this where that concern comes from as to whether or not they are or not required to take an oath. Is this where the argument stems from, from some people

saying I believe you are and somebody else saying no I don't think you have to? CORY FONG:  
It could be. I only know that there is a great deal of debate of who should be filing, There is some  
out there who think that everyone should file an oath who works for some kind of government  
structure. That is certainly not what this bill in not intended to do. SENATOR POLOVITZ: My  
feelings right now as that were getting more confused as far as I am concerned. I have often  
thought that basically the purpose of filing an oath was to substantiate you as a elected official  
are going to work for the purpose of the of the oath which is for the purpose of the people. And  
that is it. From then on, you really are responsible for those appointments and it would fall down  
on your back, but it sure would simply things as to who files the oath and who doesn't. CORY  
FONG: Right now, as is exists we are getting oaths of office in from people who are not just  
elected officials. The governors office when they appoint someone, they'll have a certificate of  
appointment that comes to our office and the attached oath. They send out the oath and say  
please fill this out. And so there are already people that are appointees that are filing oaths and I  
think according to the current law they would be considered civil officers that would be required  
to file oaths. We're trying to make it less expansive and more specific. So, hopefully, in the next  
couple of days I can get you some more information that will make it clear.

Hearing Closed HB1353

**March 2, 2001 Tape 1, Side B, Meter # 31.0-42.2**

Cory Fong brought more information in for HB1353 which is the bill about the filing of oaths.  
First of all Senator Cook, to deal with your question, I called the Supreme Court and I called our  
legal council and yes, attorneys have an obligation to submit themselves to an oath and to  
attorneys pledge that they take when they are admitted. Now current procedure is that they do  
that orally at the admissions ceremony. If they are not in attendance they do file something that

indicates that they did file or take an oath of office and that oath is done in the presence of a official judge of an official court in our state. So when they all gather in Bismarek and are admitted to the Bar they do that in front of the Supreme Court. If they missed that then they do it in the presence of a judge anywhere in the state. There are minutes of those proceedings so that you can determine that an attorney did take that oath. But it is a one time oath that they take and its not something that they resubmit on a yearly or periodic basis. The question that Senator Polovitz raised and I as I leaving the room, I thought of one concern that I guess that I would have. People are appointed to different offices or they are elected to different offices for different terms. So the administration of that would be very difficult if we said one oath is going to stand for all these different appointments or different offices. Your elected for a four year term, but you maybe appointed to fill a shorter term on another board or bureau. And so that is really probably one of the main reasons that we need to make sure that every appointment or every office that your elected to, that you do have an oath on file because of the those competing terms. I think that is probably the primary reason, but also you are a elected or appointed for different reasons. Your reasons for filing an oath for state senator, than is different if your appointed to the board of higher ed. You file the same oath, but it is for a different purposes. Fundamental purposes. So I guess to come back to this committee with some kind of recommendation, I don't think that we would want to amend the bill to provide that. I can understand at first glance why that would make it maybe make more sense as far as to only file one oath. But I think the broad effect of that would be great. SENATOR COOK: Cory the oath that I signed, or that everyone of us signed, are there times when I don't have to myself accountable to that oath, at least during my term as state senator? CORY FONG: No, I don't believe so. I think that oath applies to 24 hours a day, 7 days a week. SENATOR COOK: 24 hours a day and 7 days a week. CORY FONG: That's

correct. SENATOR POLOVITZ: Cory, I am still confused as for the reasons. Can you differentiate for the reasons for an oath that is the same oath, depending upon on what I might be appointed to, I just don't understand how you can change. Cause reasons to me change the implications of the oath. If the oath is the same and is so simple, I have a hard time understanding the reasons. Now somebody else explain it to me then? Why one, a reason for the same oath is different by an appointment or an election? I just don't understand it, so straighten me out. CORY FONG: Senator Polovitz, it would not only be if you were elected or appointed or if you be appointed to two different boards. So if your elected to the State Senate, your required to file an oath of office that is a part of the procedure. Your issued a certificate of election as State Senator from District 42, and you file an oath saying that your going to uphold the Constitution of the United States and of North Dakota. That is specific in your election as state senator. If Governor Hoeven were to decide that he was going to appoint you then for another purpose to another board a state board, a commission, bureau or authority, you would then be given a authorized certificate for that appointment, but then you would also, according to current law and in the new law you would be required to file a oath of office swearing to the same requirements, but its because it to that particular appointment. It maybe for a different term, it maybe for a longer term, which is probably more likely. So, administratively, I think there is a need probably more so than because of the different purposes, but. SENATOR WATNE: I was in a appointed, official position as a elected officer, as a court reporter to a judge, which meant that there were a number of things that I couldn't do during that time. Politically and socially. I remember signing oaths for that position, but I don't remember what they said. Do, was that oath the same as the oath I've taken as a senator. It seemed to me it was to uphold the duties, so

forth and so on...CORY FONG: Senator Watne, it probably was the same oath. What this bill particularly does, is it defines what a civil officer is in terms of who is required to file an oath. All civil officers are required an oath, currently, and what this particular statute does is define what a civil is, and defines it as any elected official, any appointee of the governor, any appointed member of the state bureau or commission council, and any appointee of the state agencies or division of an agency. It specifically excludes appointees made by the Legislature. So for example, when Senator Nelson is the Chairman of the Legislative Council may appoint you to some special commission, the Uniform Laws Commission, for example, or someone else, they wouldn't have to file an oath according to changes made. We're trying to limit it to state appointees. Of course all elected officials in the state, school board members have to file with the law, county auditors as an elected official has to file with the law, and so that procedure when you were appointed as a court recorder, you, it probably was just that had been done and were going to do it again. Probably something that has been passed on. SENATOR LYSON: I guess that I look at that a little bit difference than the rest of them here. I took an oath as a sheriff, I took an oath to uphold the Constitution of the United States and North Dakota and all the laws presided there under and the ordinances and rules of the county. So that is a different type of oath that I did here. Same way for a couple of committees I take an oath to represent them and the rules under what they are for. I think that is the difference in the type of oaths that we're taking. SENATOR POLOVITZ: I think the light bulb went on! I think there is what Senator Watne said, is something that says to uphold the Constitution but also, we ought to have the oath in front of us. But I think there is reference to the duties that are imposed by holding this office which means that my duties as an elected official are totally different than the duties of an appointed to office for any kind. SENATOR COOK: Are all these oaths on the same form? Are they the same

identical ? CORY FONG: Senator Cook, yes they are. They do specify that they, the biggest part of it are going to uphold the Constitution of the U.S., and of North Dakota and then to perform their duties. I can provide the committee with the copy of the oath we are talking about.

SENATOR WATNE: Isn't there something else in there about, not morality, integrity or something or another, I would like to see that? CORY FONG: I will get the committee a copy of the oath that we are referring to. It is prescribed by the Constitution. SENATOR COOK: What if somebody for religious reasons refuses to take an oath? Is there Constitutional protection?

CORY FONG: The oath has been designed so it can affirm so they don't have to swear, and that has been already in previously taken care of in statute by this body.

Committee adjourned.

**March 8, 2001 ( Tape 3, Slide A, Meter #1.2-15.1)**

Senator Cook asked the committee for discussion on HB1353. A lengthy discussion was held.

Senator Watne motioned to move the Jaeger Amendments

Senator Lyson- 2nd

Roll call vote: 7 Yeas, 0 No, 1 Ab.

No discussion held after the roll call vote.

Senator Watne motioned to Do Pass as Amended

Senator Lyson -2nd

Roll call vote: 5 Yeas, 2 No, 1 Ab.

Carrier: Senator Cook

## PROPOSED AMENDMENTS TO HOUSE BILL NO. 1353

Page 1, line 3, replace the and with a comma, after "44-05-04" insert ", and 54-09-04" and after "officers" insert "and fees of the secretary of state"

Page 1, line 16, after the semi colon insert "any person appointed by the governor,", and after "any" insert "state"

Page 1, line 17, after "any" insert "state"

Page 1, line 18, after the period insert "Except for a person appointed to fill a vacancy existing in the legislative assembly, the term does not include any person receiving a legislative appointment."

Page 2, line 5, after "secretary of state." insert:

**"SECTION 4. AMENDMENT.** Section 54-09-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-09-04. Fees.** The secretary of state, unless otherwise provided by law, shall charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in the secretary of state's office, one dollar for every four pages or fraction thereof.
2. For affixing the signature of the secretary of state, certificate, or seal, or combination thereof to any document, ten dollars.
3. For filing a certificate of appointment of attorney, five dollars.
4. ~~For any other document signed by the governor, except a commission, and attested by the secretary of state, five dollars.~~
5. For searching records and archives of the state, five dollars. For the purposes of this section, a search of records conducted by the secretary of state for which a fee must be collected includes the following:
  - a. A search of a filed document that is active or archived, an archived index, or an index of business name changes to identify specific information to satisfy a request;
  - b. A search of any record for which written verification of the facts of the search is required; and
  - c. For every search of records when the request for the search is contained in a list compiled by the requester.

The secretary of state may provide, at no charge, information from publications or reference materials published or maintained by the secretary of state and verbal confirmation of any element of information maintained in a computer data base.

6. 5. For filing any paper not otherwise provided for, ten dollars.
7. 6. For filing utility property transfers, five dollars, and issuing a certificate of filing, five dollars.
8. 7. For sending a copy of a document by electronic transmission, one dollar for each page.
9. 8. For filing any process, notice, or demand for service, twenty dollars.
10. 9. For preparing any listing or compilation of any information recorded or filed in the office of the secretary of state, thirty-five dollars plus the actual cost for assembling and providing the information on the medium requested.

A member of the legislative assembly or a state or county officer may not be charged for any search relative to matters appertaining to duties of office, any fee for a certified copy of any law or resolution passed by the legislative assembly relative to the person's official duties or for filing any process, notice, or demand for service. A person required to file an oath of office with the secretary of state may not be charged for filing an oath of office nor may an officer be charged for filing any document with the secretary of state when acting in the officer's official capacity. All fees when collected must be paid by the secretary of state into the state treasury at the end of each month and placed to the credit of the state. Unless otherwise provided by law, the secretary of state shall retain a handling charge from filing fees tendered when a document submitted to the secretary of state under any law is rejected and not perfected. The handling charge is five dollars or fifty percent of the filing fee, whichever is greater, but may not exceed one hundred dollars. This section does not apply to fees submitted for filing in, or information obtained from, the computerized central notice system, to the computerized Uniform Commercial Code central filing data base, or to the computerized statutory liens data base "

Renumber accordingly

March 8, 2001

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1353

Page 1, line 3, replace "and" with a comma, after "44-05-04" insert ", and 54-09-04", and after "officers" insert "and fees of the secretary of state"

Page 1, line 16, after the semicolon insert "any <sup>imposed by</sup> person appointed by the governor;" and after "any" insert "state"

Page 1, line 17, after "any" insert "state" and replace "persons" with "individual"

Page 1, line 18, after the <sup>underscored</sup> period insert "Except for <sup>an individual</sup> a person appointed to fill a vacancy existing in the legislative assembly, the term does not include any person receiving a legislative appointment."

Page 2, after line 5, Insert:

**"SECTION 4. AMENDMENT.** Section 54-09-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-09-04. Fees.** The secretary of state, unless otherwise provided by law, shall charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in the secretary of state's office, one dollar for every four pages or fraction thereof.
2. For affixing the signature of the secretary of state, certificate, or seal, or combination thereof to any document, ten dollars.
3. For filing a certificate of appointment of attorney, five dollars.
4. ~~For any other document signed by the governor, except a commission, and attested by the secretary of state, five dollars.~~
5. For searching records and archives of the state, five dollars. For the purposes of this section, a search of records conducted by the secretary of state for which a fee must be collected includes the following:
  - a. A search of a filed document that is active or archived, an archived index, or an index of business name changes to identify specific information to satisfy a request;
  - b. A search of any record for which written verification of the facts of the search is required; and
  - c. For every search of records when the request for the search is contained in a list compiled by the requester.

The secretary of state may provide, at no charge, information from publications or reference materials published or maintained by the secretary of state and verbal confirmation of any element of information maintained in a computer data base.

Insert line 13, replace "persons" with "individuals"

- 6- 5. For filing any paper not otherwise provided for, ten dollars.
- 7- 6. For filing utility property transfers, five dollars, and issuing a certificate of filing, five dollars.
- 8- 7. For sending a copy of a document by electronic transmission, one dollar for each page.
- 9- 8. For filing any process, notice, or demand for service, twenty dollars.
- 10- 9. For preparing any listing or compilation of any information recorded or filed in the office of the secretary of state, thirty-five dollars plus the actual cost for assembling and providing the information on the medium requested.

*Individuals  
Associates  
- this*

*a state or county*

A member of the legislative assembly or a state or county officer may not be charged for any search relative to matters appertaining to duties of office, any fee for a certified copy of any law or resolution passed by the legislative assembly relative to the person's official duties, or for filing any process, notice, or demand for service. A person required to file an oath of office with the secretary of state may not be charged for filing an oath of office, nor may an officer be charged for filing any document with the secretary of state when acting in the officer's official capacity. All fees when collected must be paid by the secretary of state into the state treasury at the end of each month and placed to the credit of the state. Unless otherwise provided by law, the secretary of state shall retain a handling charge from filing fees tendered when a document submitted to the secretary of state under any law is rejected and not perfected. The handling charge is five dollars or fifty percent of the filing fee, whichever is greater, but may not exceed one hundred dollars. This section does not apply to fees submitted for filing in, or information obtained from, the computerized central notice system, to the computerized Uniform Commercial Code central filing data base, or to the computerized statutory liens data base."

Renumber accordingly





**REPORT OF STANDING COMMITTEE**

HB 1353: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1353 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "and" with a comma, after "44-05-04" insert ", and 54-09-04", and after "officers" insert "and fees imposed by the secretary of state"

Page 1, line 13, replace "person's" with "individual's"

Page 1, line 16, after the underscored semicolon insert "any individual appointed by the governor;" and after "any" insert "state"

Page 1, line 17, after "any" insert "state" and replace "person" with "individual"

Page 1, line 18, after the underscored period insert "Except for an individual appointed to fill a vacancy existing in the legislative assembly, the term does not include any individual receiving a legislative appointment."

Page 2, after line 5, insert:

**"SECTION 4. AMENDMENT.** Section 54-09-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-09-04. Fees.** The secretary of state, unless otherwise provided by law, shall charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in the secretary of state's office, one dollar for every four pages or fraction thereof.
2. For affixing the signature of the secretary of state, certificate, or seal, or combination thereof to any document, ten dollars.
3. For filing a certificate of appointment of attorney, five dollars.
4. ~~For any other document signed by the governor, except a commission, and attested by the secretary of state, five dollars.~~
5. For searching records and archives of the state, five dollars. For the purposes of this section, a search of records conducted by the secretary of state for which a fee must be collected includes the following:
  - a. A search of a filed document that is active or archived, an archived index, or an index of business name changes to identify specific information to satisfy a request;
  - b. A search of any record for which written verification of the facts of the search is required; and
  - c. For every search of records when the request for the search is contained in a list compiled by the requester.

The secretary of state may provide, at no charge, information from publications or reference materials published or maintained by the

secretary of state and verbal confirmation of any element of information maintained in a computer data base.

- ~~6~~ 5. For filing any paper not otherwise provided for, ten dollars.
- ~~7~~ 6. For filing utility property transfers, five dollars, and issuing a certificate of filing, five dollars.
- ~~8~~ 7. For sending a copy of a document by electronic transmission, one dollar for each page.
- ~~9~~ 8. For filing any process, notice, or demand for service, twenty dollars.
- ~~10~~ 9. For preparing any listing or compilation of any information recorded or filed in the office of the secretary of state, thirty-five dollars plus the actual cost for assembling and providing the information on the medium requested.

A member of the legislative assembly or a state or county officer may not be charged for any search relative to matters appertaining to duties of office, any fee for a certified copy of any law or resolution passed by the legislative assembly relative to the ~~person's~~ individual's official duties, or for filing any process, notice, or demand for service. An individual required to file an oath of office with the secretary of state may not be charged for filing the oath of office, nor may a state or county officer be charged for filing any document with the secretary of state when acting in the officer's official capacity. All fees when collected must be paid by the secretary of state into the state treasury at the end of each month and placed to the credit of the state. Unless otherwise provided by law, the secretary of state shall retain a handling charge from filing fees tendered when a document submitted to the secretary of state under any law is rejected and not perfected. The handling charge is five dollars or fifty percent of the filing fee, whichever is greater, but may not exceed one hundred dollars. This section does not apply to fees submitted for filing in, or information obtained from, the computerized central notice system, to the computerized Uniform Commercial Code central filing data base, or to the computerized statutory liens data base."

Renumber accordingly

2001 TESTIMONY

HB 1353

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## SECRETARY OF STATE

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

February 1, 2001

**TO:** Representative Glen Froseth & Members of the House Political Subs Committee  
**FR:** Al Jaeger, Secretary of State (presented on his behalf by Cory Fong)  
**RE:** **HB 1353 – Filing of Oaths of Office by Civil Officers**

House Bill 1353 is intended to provide a mechanism for appointments to be rescinded if an appointee fails to take an oath of office and clarify which public officials are required to file oaths of office.

### Section 1

Section 1 allows the appointment of any civil officer, which is defined in section 2 of the bill, to be rescinded by the appointing authority if the civil officer fails to take and file an oath of office at the place designated by law.

### Section 2

All civil officers are required to take an oath of office according to section 44-01-05. Section 2 more exhaustively defines the term civil officer and in doing so clarifies and specifies which public officials are required to file oaths of office. According to the proposed changes in section 2 of the bill, a civil officer would now include:

- Elected officials
- Appointed members of every; authority, board, bureau, commission, and council; and
- Appointed heads of every agency and agency division

### Section 3

Section 3 adds civil officers to public officers in section 44-05-04 which discusses the various locations for filing oaths of offices

- State officials file with the Secretary of State
- County officials file with the County Auditor
- City officials file with the City Auditor
- District/Multi District officials with the Secretary of State

For these reasons, the Secretary of State's office urges a due pass on HB 1353.



**SECRETARY OF STATE**  
STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 308  
BISMARCK ND 58505 0500

March 2, 2001

**TO:** Senator Dwight Cook & Members of the Senate Political Subdivisions Committee  
**FR:** Cory Fong, Secretary of State's office  
**RE:** HB 1353 – Filing of Oaths of Office by Civil Officers

House Bill 1353 is intended to provide a mechanism for the appointment of a civil officer to be rescinded by the appropriate appointing authority if an appointee fails to take an oath of office. The bill also defines the term civil officer and by doing so clarifies which public officials are required to file oaths of office.

Since the hearing and passage of HB 1353 in the House, questions have emerged about the expansiveness of HB 1353. The original purpose of the bill was to be limited and never intended to require the filing of oaths by persons appointed by the legislative branch or by persons appointed at local levels. This is not certain under the present version of the bill.

Therefore, I am including with my testimony a set of amendments to narrow the scope of HB 1353 so that it does not require the filing of oaths of office by legislative branch appointees or by local appointees.

The amendments also make revisions to section 54-09-04 of the NDCC relating to the fees charged by the Secretary of State for various filings made and services provided by the office. Technically, section 54-09-04 requires the Secretary of State to charge \$10 of each person filing an oath of office. This is not currently being done, nor should it be done. The primary purpose of amending section 54-04-09 is to specify that the Secretary of State may not charge a fee for the filing of an oath of office. The amendments also provide that the Secretary of State may not charge another officer for filing documents when acting in the officer's official capacity nor charge persons requesting reproductions of documents signed by the governor and attested by the Secretary of State.

### Section 1

Section 1 allows the appointment of any civil officer, which is defined in section 2 of the bill, to be rescinded by the appointing authority if the civil officer fails to take and file an oath of office at the place designated by law.

### Section 2

All civil officers are required to take an oath of office according to section 44-01-05. If the proposed amendments are adopted, Section 2 of the bill more specifically defines the term civil officer and in doing so specifies which public officials are required to file oaths of office. According to the bill, a civil officer would now include:

- Elected officials
- Any person appointed by the governor
- Any appointed member of a state authority, board, bureau, commission, and council
- Any appointed member of a state agency and agency division

In addition, if the proposed amendments are adopted, Section 2 of the bill provides that the term civil officer does not include any person appointed by the legislative branch.

### Section 3

Section 3 adds civil officers to public officers in section 44-05-04 which specifies the various locations for filing oaths of offices:

- State officials file with the Secretary of State
- County officials file with the County Auditor
- City officials file with the City Auditor
- District/Multi District officials with the Secretary of State

### Section 4

If the proposed amendments are adopted, Section 4 specifies that the Secretary of State may not charge a fee for:

- Filing an oath of office;
- Filing documents by an officer when the officer is acting in his or her official capacity;  
or
- Persons requesting documents signed by the Governor and attested by the Secretary of State.

For these reasons, the Secretary of State's office urges a do pass on HB 1353.