

1999 SENATE JUDICIARY

SB 2271

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2271

Senate Judiciary Committee

Conference Committee

Hearing Date February 2, 1999

Tape Number	Side A	Side B	Meter #
1	x		1280 - end
Committee Clerk Signature <i>Jackie Follmon</i>			

Minutes:

SB2271 is to create and enact new subsections to business corporations, nonprofit corporations, limited partnerships, general partnerships, and limited liability partnerships.

SENATOR STENEHJEM opened the hearing on SB2271 at 9:00 a.m.

All were present.

SANDI TABOR, State Bar Association, introduced Bill Guy. She stated that the Bar Association does support SB2271.

BILL GUY, Chairman of Task Force Committee, testified in support of SB2271. Testimony attached. Amendments proposed. Amendments attached.

SENATOR TRAYNOR asked about the life span of the LLC. Will it be perpetual?

BILL GUY stated that yes, it would be.

SENATOR WATNE asked if you feel that most LLP's will change to Triple LP?

BILL GUY stated that yes, I believe so.

AL JAEGER, Secretary of State, testified in support of SB2271. Testimony attached.

SENATOR STENEHJEM CLOSED the hearing on SB2271.

SENATOR NELSON made a motion on AMENDMENTS, SENATOR WATNE seconded.

Motion carried.

SENATOR NELSON made a motion for DO PASS AS AMENDED, SENATOR WATNE seconded. Motion carried.

SENATOR NELSON will carry this bill.

6 - 0 - 0

FISCAL NOTE

(Return original and 10 copies)

Resolution No.: _____ Amendment to: Engrossment SB 2271

Requested by Legislative Council Date of Request: March 3, 1999

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

Narrative: : Revenue will be generated:

- from filing fees related to the availability of a new organizational structure (Limited Liability Limited Partnership);
- from fees generated due to customer initiated requests for pre-approval of an anticipated filing;
- from consent of registered agent filing fee for limited partnerships;
- from filing fee for annual reports filed by limited partnerships;
- from customer initiated conversions from a limited partnerships to a limited liability limited partnership

There is no additional fiscal impact as the result of the amendments made by the House to SB 2271. They are only to bring the amended sections of the bill into conformance with similar provisions already existing for other business entities.

2. **State** fiscal effect in dollar amounts:

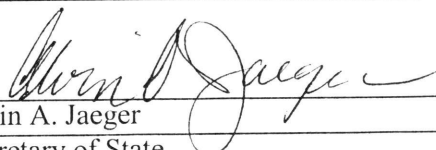
	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	None	None	56,000	None	66,000	None
Expenditures	None	None	None	None	None	None

3. What, if any, is the effect of this measure on the budget for your agency or department:

- a. For rest of 1997-99 biennium: None
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- b. For the 1999-2001 biennium: None
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- c. For the 2001-03 biennium: None

4. **County, city, and school district** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
None	None	None	None	None	None	None	None	None

Signed: 
 Typed Name: Alvin A. Jaeger
 Department: Secretary of State
 Phone Number: 328-2900
 Date Prepared: March 3, 1999

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: 2271 Amendment to: _____

Requested by Legislative Council Date of Request: January 22, 1999

- Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

Narrative: Revenue will be generated:

- from filing fees related to the availability of a new organizational structure (Limited Liability Limited Partnership);
- from fees generated due to customer initiated requests for pre-approval of an anticipated filing;
- from consent of registered agent filing fee for limited partnerships;
- from filing fee for annual reports filed by limited partnerships;
- from customer initiated conversions from a limited partnerships to a limited liability limited partnership

- State** fiscal effect in dollar amounts:

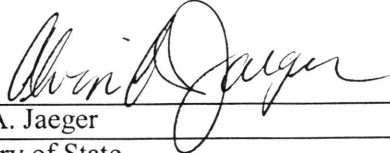
	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	None	None	56,000	None	\$66,000	None
Expenditures	None	None	None	None	None	None

What, if any, is the effect of this measure on the budget for your agency or department:

- For rest of 1997-99 biennium: **None**
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- For the 1999-2001 biennium: **Programming costs will be covered under recommended appropriation.**
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- For the 2001-03 biennium: **None**

- County, city, and school district** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
None	None	None	None	None	None	None	None	None

Signed: 
 Typed Name: Alvin A. Jaeger
 Department: Secretary of State
 Phone Number: 328-2900
 Date Prepared: January 22, 1999

Date: 2-2-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2271

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendments

Motion Made By Nelson Seconded By Watne

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Carolynn Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

Date: 2-2-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2271

Senate Judiciary Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass on Amendments

Motion Made By Nelson Seconded By Watne

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyne Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Nelson

REPORT OF STANDING COMMITTEE

SB 2271: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2271 was placed on the Sixth order on the calendar.

Page 6, line 30, overstrike "business continuation" and insert immediately thereafter "member-control" and overstrike "an" and insert immediately thereafter "other"

Page 36, line 8, replace "merger" with "resolution"

Page 37, line 7, replace "legal representative's" with "constituent organization's"

Page 42, line 2, replace "with" with "whose"

Page 45, line 14, after "changes" insert "the foreign corporation's"

Page 45, line 15, overstrike "shall" and after "promptly" insert "shall"

Page 45, line 24, replace "amends" with "changes"

Page 53, line 10, replace the second "corporation's" with "company's"

Page 53, line 16, after "or" insert an underscored comma

Page 53, line 24, after "of" insert "the"

Page 66, line 31, overstrike "disposes" and insert immediately thereafter "disposing" and overstrike "its"

Page 68, line 18, overstrike "member central" and insert immediately thereafter "member-control"

Page 70, line 22, overstrike "member central" and insert immediately thereafter "member-control"

Page 71, line 28, overstrike "subsection 1 of"

Page 85, line 20, remove the overstrike over "~~When~~" and remove "If"

Page 97, line 12, remove the overstrike over "~~No~~", remove "An", and remove the overstrike over "~~irrevocable~~"

Page 97, line 13, remove "revocable"

Page 119, line 28, overstrike "director's" and insert immediately thereafter "governor's"

Page 119, line 31, overstrike "director" and insert immediately thereafter "governor"

Page 153, line 21, after the second "the" insert "order, as ordered by the court upon entry of an order for the sale of a"

Page 154, line 11, overstrike "will" and insert immediately thereafter "may"

Page 154, line 17, overstrike "business"

Page 154, line 18, overstrike "continuation" and insert immediately thereafter "member-control"

Page 157, line 3, after "up" insert "a"

Page 173, line 25, replace "which" with "and that"

Page 175, line 8, remove the overstrike over "~~That~~"

Page 175, line 9, overstrike "A" and immediately thereafter insert "a"

Page 175, line 15, remove the overstrike over "~~That the~~", remove "The", and remove the overstrike over "~~then~~"

Page 175, line 16, remove the overstrike over "~~(1) Endorse~~" and remove "endorse"

Page 175, line 18, remove the overstrike over "~~(2) Record~~" and remove "record"

Page 179, line 17, replace "as" with "at"

Page 181, line 27, overstrike "amends" and insert immediately thereafter "changes" and after "and" insert "that"

Page 185, line 2, replace "July 1" with "December 31"

Page 185, line 20, after "partnership's" insert "certificate"

Page 185, line 21, after "partnership's" insert "registration"

Page 186, line 15, replace "partnership's" with "partnership", after "registration" insert "that", and replace "by" with "for"

Page 186, after line 21, insert:

"8. A limited partnership or foreign limited partnership registration expiring between July 1, 1999, and December 31, 1999, may be renewed or canceled in the manner provided by this section before July 1, 1999."

Page 191, line 13, overstrike "amends" and after "~~is~~" insert "changes"

Page 203, line 23, remove "limited"

Page 206, line 8, remove the second underscored comma and after "or" insert "rule"

Page 207, line 13, overstrike "last known" and insert immediately thereafter "last-known"

Page 211, line 13, remove "a"

Page 223, line 13, after "statement" insert "that"

Page 231, line 5, remove "a resident partner or a designated partner of a"

Page 232, line 16, replace "certificate of organization or certificate of authority" with "registration"

Page 235, line 24, after "resident" insert "partner"

Page 241, line 31, replace "2" with "3"

Renumber accordingly

1999 HOUSE JUDICIARY

SB 2271

Date: 3/1
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 227

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Am

Motion Made By Delmore Seconded By Maragos

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH		
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS	✓	
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 14 No 0

Absent 1

Floor Assignment Mahoney

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

REPORT OF STANDING COMMITTEE

SB 2271, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2271 was placed on the Sixth order on the calendar.

Page 1, line 5, after the first comma, insert "45-10.1-58.2," and after the sixth comma insert "45-22-20.1,"

Page 194, after line 31, insert:

"SECTION 164. Section 45-10.1-58.2 of the North Dakota Century Code is created and enacted as follows:

45-10.1-58.2. Foreign limited partnership - Transaction of business without registering.

1. A foreign limited partnership transacting business in this state may not maintain any claim, action, suit, or proceeding in any court of this state until the foreign limited partnership registers with the secretary of state.
2. The failure of a foreign limited partnership to register does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any claim, action, suit, or proceeding in any court in this state.
3. A foreign limited partnership, by transacting business in this state without registering, appoints the secretary of state as the foreign limited partnership's agent upon whom any notice, process, or demand may be served.
4. A foreign limited partnership that transacts business in this state without registering is liable to the state for the years or parts of years during which the foreign limited partnership transacted business in this state without registering in an amount equal to all fees that would have been imposed by this chapter upon that foreign limited partnership had the foreign limited partnership duly registered, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under this section.
5. A foreign limited partnership that transacts business in this state without registering is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each general partner and each agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited partnership that has not registered is subject to a civil penalty, payable to the state, not to exceed one thousand dollars.
6. The civil penalties set forth in subsection 5 may be recovered in an action brought within the district court of Burleigh County by the attorney general. Upon a finding by the court that a foreign limited partnership or any of the foreign limited partnership's general partners or agents have transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of the business of the foreign limited partnership and further exercise of any rights and privileges by the foreign limited partnership in this state. The foreign limited partnership must be enjoined

from transacting business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign limited partnership has otherwise complied with the provisions of this chapter."

Page 231, after line 10, insert:

"**SECTION 194.** Section 45-22-20.1 of the North Dakota Century Code is created and enacted as follows:

45-22-20.1. Foreign limited liability partnership - Transaction of business without registering.

1. A foreign limited liability partnership transacting business in this state may not maintain any claim, action, suit, or proceeding in any court of this state until the foreign limited liability partnership registers with the secretary of state.
2. The failure of a foreign limited liability partnership to register does not impair the validity of any contract or act of the foreign limited liability partnership or prevent the foreign limited liability partnership from defending any claim, action, suit, or proceeding in any court in this state.
3. A foreign limited liability partnership, by transacting business in this state without registering, appoints the secretary of state as the foreign limited liability partnership's agent upon whom any notice, process, or demand may be served.
4. A foreign limited liability partnership that transacts business in this state without registering is liable to the state for the years or parts of years during which the foreign limited liability partnership transacted business in this state without registering in an amount equal to all fees that would have been imposed by this chapter upon that foreign limited liability partnership had the foreign limited liability partnership duly registered, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under this section.
5. A foreign limited liability partnership that transacts business in this state without registering is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each managing partner or agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited liability partnership that has not registered is subject to a civil penalty, payable to the state, not to exceed one thousand dollars.
6. The civil penalties set forth in subsection 5 may be recovered in an action brought within the district court of Burleigh County by the attorney general. Upon a finding by the court that a foreign limited liability partnership or any of the foreign limited liability partnership's managing partners or agents have transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of the business of the foreign limited liability partnership and further exercise of any rights and privileges by the foreign limited liability partnership in this state. The foreign limited liability partnership must be enjoined from transacting business in this state until all civil penalties plus any interest and court costs that the court may

assess have been paid and until the foreign limited liability partnership has otherwise complied with the provisions of this chapter."

Renumber accordingly

1999 TESTIMONY

SB 2271

TESTIMONY OF WILLIAM L. GUY III, CHAIRMAN
THE NORTH DAKOTA LIMITED LIABILITY LIMITED
PARTNERSHIP ACT DRAFTING COMMITTEE

IN SUPPORT OF
SENATE BILL 2271

Mr. Chairman and Members of the Committee, I am here on behalf of a task force which has undertaken to draft the North Dakota Limited Liability Limited Partnership Act and, as in the past, to take care of housekeeping and technical legislation with respect to other business entity statutes. Accordingly, the Committee has prepared the legislation that you now have before you as Senate Bill 2271. This rather lengthy piece of legislation creates the North Dakota Limited Liability Limited Partnership ("Triple LP") Act (new Chapter 45-23) and clarifies and updates certain sections in the chapters governing Farm Corporations (Chapter 10-6.1), Business Corporations (Chapter 10-19.1), Development Corporations (Chapter 10-30), Venture Capital Corporations (Chapter 10-30.1), Professional Organizations (Chapter 10-31), Limited Liability Companies (Chapter 10-32), Non-Profit Corporations (Chapter 10-33), Labor Unions (Chapter 34-09), Limited Partnerships (Chapter 45-10.1), Limited Liability Partnership (Chapter 45-22), Fictitious Name Filings (Chapter 45-11) General Partnerships (Chapter 45-13 through 45-21), Trademarks (Chapter 47-22), Trade names (Chapter 47-25) and Irrigation Corporations (Chapter 61-13).

The Committee consists of Clara Jenkins, Director of Corporations in the Office of the Secretary of State; and Mary Bader, Greg Hammes, Terry Knoepfle, Darrell Larson, Mike Wagner and me, on behalf of the State Bar Association of North Dakota.

In addition to being the enabling legislation for Triple LPs, this legislation mostly consists of updating, technical clarifications and grammatical changes, some of which were initially enacted as part of the Minnesota counterpart for that particular chapter. In addition, some changes set forth in this legislation have been requested by the Office of the Secretary of State or by the Legislative Council. Finally, we have presented to the Chairman of your Committee a number of amendments that came to light in the final proofreading of the Bill. All of these amendments would be classified as either technical clarifications or grammatical changes.

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

If you wish, I will now cover some of the highlights in the Bill on a section by section basis. All "section references" are to sections in the Bill and not the legislation being amended.

For ease in reviewing this testimony the modifications in each section will be identified as being either a "grammatical change" a "technical clarification" or a "substantive change". All of the "substantive" changes have been highlighted in **bold type**. Finally, since some of the most substantive changes occur toward the end of the Bill, we will start with Section 201 (beginning on page 238).

- Section 201 creates new Chapter 45-23 which will be referred to as the "North Dakota Limited Liability Limited Partnership Act". For convenience during this presentation, the new entity known as the "Limited Liability Limited Partnership" will be referred to as the "Triple LP". As you may know, the shareholders in a corporation, the members in a limited liability company, partners in a limited liability limited partnership and the limited partners in a limited partnership all enjoy "limited liability" meaning that the maximum financial risk that any of them have in the entity in which they have invested is the value of their investment. However, a limited partnership has two classes of partners, limited partners who have no active management role and who enjoy limited liability and general partners who manage the limited partnership and who are personally liable for the obligations of the enterprise. The aspect of personal liability for the general partner limits the usefulness of limited partnerships in commercial transactions. As a consequence, many enterprises need to form a separate corporation or limited liability company to serve as the general partner in the limited partnership. This results in unnecessary cost and complexity for all concerned. The Triple LP solves this problem of personal liability for general partners. The Triple LP is identical to the traditional limited partnership except that all partners, including the general partner, have limited liability.
- Section 45-23-01 (beginning on page 238) sets forth the definitions used in this chapter. To the extent possible these definitions are identical or parallel with the

definitions used in the other business entity chapters of the Century Code.

- Section 45-23-02 (beginning on page 240) states that in any situation not provided for in Chapter 45-23 that the limited partnership chapter (Chapter 45-10.1) governs.
 - However, in the event of any conflict between the two chapters, Chapter 45-23 will take precedence.
 - Thus, to the extent possible, the new Triple LP will utilize existing Chapter 45-10.1.
- Section 45-23-03 (beginning on page 240) sets forth the criteria for the name to be used by Triple LPs.
 - A Triple LP must use as a suffix at the end of its name either "Limited Liability Limited Partnership", "L.L.L.P." or "LLLP".
 - In all other respects, this section parallels its counterparts in the other business entity chapters.
- Section 45-23-04 (beginning on page 240) sets forth the procedure for the formation of a Triple LP.
 - If a limited partnership does not already exist, then a Triple LP is formed by filing a Certificate of Limited Liability Limited Partnership:
 - That complies with the Triple LP name requirements of this chapter;
 - That states that Triple LP status is elected;
 - and,

- That otherwise conforms with the requirements for Certificates of Limited Partnership in Chapter 45-10.1.
- If an existing limited partnership wishes to convert to a Triple LP, then it files a document designed as an Amendment of the Certificate of Limited Partnership and as a Triple LP Certificate which:
 - Amends the limited partnership name to comply with the Triple LP name requirements of this chapter;
 - States that Triple LP status is elected; and,
 - Otherwise conforms with the requirements for Certificates of Limited Partnership in Chapter 45-10.1.

A limited partnership which elects Triple LP status continues to be the same entity for tax and accounting purposes as existed prior to the election (in other words, the old limited partnership does not legally dissolve).

- Section 45-23-05 (beginning on page 244) sets forth the effective date on which a Triple LP is formed or on which a limited partnership elects to be governed by Chapter 45-23.
- Section 45-23-06 (beginning on page 244) grants limited liability to the general partner.
- Section 45-23-07 (beginning on page 244) provides for Triple LP status for a foreign limited partnership which adopts Triple LP status in its jurisdiction of origin.

- Section 45-23-08 (beginning on page 245) sets forth the filing fees for Triple LPs which are parallel to those for limited partnerships under Chapter 45-10.1.
- Section 202 (beginning on page 246) contains **technical clarifications** to Subsection 6 of Section 47-22-02 by including references to limited liability partnership and Triple LPs in that section of the chapter on trademarks.
- Section 203 (beginning on page 246) contains **technical clarifications** to Section 47-25-03 by including references to limited liability partnership and Triple LPs in that section of the chapter on trade names.
- Section 204 (beginning on page 247) consists of **grammatical changes and technical clarifications** to Section 61-13-03.1 which pertains to limited liability companies organized for irrigation purposes and modifies that section to make it consistent with the technical clarifications made in the Limited Liability Company Act (Chapter 10-32) that will be discussed in a moment.
- Section 205 (beginning on page 247) repeals:
 - Section 45-10.1-54 in the Limited Partnership Act pertaining to foreign limited partnership names (now covered in Section 45-10.1-02); and
 - Section 45-22-08 in the Limited Liability Partnership Act pertaining to partner liability in limited liability partnerships (LLPs) (now covered in Section ^{45-22-08.17}~~45-10.1-08.1~~).
- Sections 176 through 200 (beginning on page 205) pertain to the Limited Liability Partnership Act (Chapter 45-22). At the time

Chapter 45-22 was enacted by the 1997 Legislature, the national model for limited liability partnerships (a relatively new entity at that time) called for an annual registration of what had previously been a general partnership (with all partners personally liable for the obligations of the partnership). By filing an annual registration with the Secretary of State, the partnership could convert itself into a limited liability partnership (LLP) in which all of the general partners would have limited liability. The registration lasted for one year and could be renewed annually. One of the shortcomings of that model was the gaps in limited liability coverage that would exist if the annual renewal registration was not filed on a timely basis. In order to avoid these inadvertent gaps in limited liability, the national trend is now to utilize a single registration followed by annual reports such as is the pattern for other business entities such as corporations and limited liability companies. What would seem like a relatively simple and innocent change required substantial modifications in Chapter 45-22. However, apart from the philosophical transition from annual re-registrations to an initial registration followed by annual reports, all of the changes in these sections consist of either technical clarifications (accomplishing that change of philosophy) or grammatical changes sought by the Legislative Council.

- Section 176 (beginning on page 205) consists of technical clarifications to Section 45-22-01 which are the amendments to the LLP chapter. Again the definitions in this chapter

are either identical to or parallel to those of other business entities.

- Section 177 (beginning on page 209) is a substantive change to Section 45-22-03 setting forth the procedure for the initial registration of an LLP and deleting the provisions that pertain to annual renewal registrations.
- Section 178 (beginning on page 214) consists of technical clarifications to the LLP name section which is parallel to the name requirements of other business entities.
- Section 179 (beginning on page 217) consists of technical clarifications pertaining to the reservation of LLP names with the Secretary of State.
- Section 180 (beginning on page 218) consists of grammatical changes in the section that pertains to the consequences of an LLP failing to use the LLP required name.
- Section 181 (beginning on page 219) consists of grammatical changes and technical clarifications deleting references to renewal registrations.
- Section 182 (beginning on page 219) is a substantive change that enacts new Section 45-22-08.1 pertaining to the liability of LLP partners.
 - This is significant in that the language of this section pertaining to LLP partner liability now parallels the limited liability language used in the Revised Uniform Partnership Act (the adoption of which

had been suggested by the Legislative Council earlier this year).

- This Section (45-22-08.1) replaces Section 45-22-08 which was repealed by Section 205 of this legislation.
- Section 183 (beginning on page 219) consists of several technical clarifications and a substantive change in the addition of Subsection 3 which provides that a partner actively engaged in partnership business is not liable to the partnership for any distribution that was regularly paid to the partner to the extent that the distribution is reasonable compensation for the partner's services to the partnership.
- Sections 184 and 185 (beginning on page 220) contain technical clarifications the requirements for maintaining a registered office and a registered agent by the LLP and grammatical changes in the procedure for changing the registered office and the registered agent of the LLP.
- Section 186 (beginning on page 222) consists of grammatical changes requested by the Legislative Council to the procedure for voluntarily withdrawing from LLP status.
- Section 187 (beginning on page 223) consists of technical clarifications for maintenance of LLP status by an LLP in the process of dissolution.
- Section 188 (beginning on page 225) consists of technical clarifications for LLPs which have dissolved and whose business is continued by a successor LLP.

- Section 189 (beginning on page 225) consists of technical clarifications for the revocation of LLP registration by the Secretary of State with most of those clarifications pertaining to the transition from annual re-registrations to initial registration followed by annual reports.
- Section 190 (beginning on page 227) consists of technical clarifications and grammatical changes pertaining to service of process on LLPs.
- Section 191 (beginning on page 228) is a substantive change to Section 45-22-18 providing that the governing law of foreign limited liability partnerships to be consistent with the provisions of the Revised Uniform Partnership Act.
- Section 192 (beginning on page 229) contains a grammatical change and a technical clarification making clear that limited liability by a partner is not waived solely by virtue of a foreign LLP transacting business in the state without having filed a registration with the Secretary of State.
- Section 193 (beginning on page 229) consists of technical clarifications to the determination of what activities do not constitute the transaction of business in the state by foreign LLPs.
- Section 194 (beginning on page 230) is a substantive change creating new Section 45-22-21.1 which sets forth the requirements for LLP annual reports to the Secretary of State and is parallel to similar requirements for other business entities.

- Section 195 (beginning on page 233) consists of **technical clarifications** to the fees and charges of the Office of the Secretary of State...again primarily the result of changing from annual renewal registrations to an initial registration followed by annual reports.
- Section 196 (beginning on page 235) consists of **grammatical changes** sought by the Legislative Council.
- Section 197 (beginning on page 237) is a **technical clarification** pertaining to the issuance of certified copies by the Secretary of State.
- Section 198 (beginning on page 237) is a **technical clarification** pertaining to the conversion from renewal registrations to annual reports.
- Section 199 (beginning on page 237) consists of **technical clarifications** pertaining to the audit reports of LLPs receiving state subsidies for the production of alcohol and methanol for combination gasoline.
- Section 200 (beginning on page 238) is a **technical clarification** pertaining to the definition of a private LLP operating in a foreign trade zone.
- Sections 164 through 175 pertain to the Revised Uniform Partnership Act as adopted in North Dakota (which governs the activities of general partnerships).
- Section 164 (beginning on page 193) contains **technical clarifications** to the definitions for these chapters which

again are identical to or parallel with the definitions used for other business entities.

- **Section 166** (beginning on page 196) sets forth a **technical clarification** clarifying that a partnership agreement may not vary the law pertaining to LLPs as set forth under Chapter 45-22.
- **Sections 167 and 168** are **substantive changes** setting forth the **requirements for the partnership name of a general partnership and setting forth to the process for reserving a name by a general partnership** (both of which are parallel to **similar sections in the chapters pertaining to other business entities**).
- **Section 169** (beginning on page 200) is a **technical clarification** pertaining to the signing, filing and recording of statements of partnership authority with the Office of the Secretary of State so as to make this section consistent with new Section 45-13-04.1 pertaining to the name of partnerships and setting forth the filing fees for general partnership filings with the Office of the Secretary of State.
- **Section 170** (beginning on page 202) contains **substantive changes to Section 45-13-06** making it clear that North Dakota law governs the relation between LLPs and its partners while the law of the jurisdiction in which the partnership has its chief executive office governs the relations between the general partnership and its partners.

- Section 171 (beginning on page 203) is a technical clarification making clear that an LLP is the same entity that existed prior to the LLP filing under Chapter 45-22.
- Section 172 (beginning on page 203) consists of technical clarifications to Subsection 1 of Section 45-15-03 setting forth the content in a statement of partnership authority so as to make that document consistent with the filings with the Office of the Secretary of State with other business entities.
- Sections 173 and 174 (beginning on page 204) contain substantive changes creating new Section 45-15-03.1 requiring that partnerships which file and maintain a statement of partnership authority shall also maintain a registered office and registered agent in the same manner as other business entities.
- Section 175 (beginning on page 205) is a technical clarification making clear that the joint and several liability of all partners for all partnership obligations excludes LLPs under Chapter 45-22.
- Sections 49 through 132 pertain to the Limited Liability Company Act contained in Chapter 10-32. As you may recall, January 1, 1997 the IRS issued its "Check the Box" regulations which abolished the complex and arbitrary structure which has previously determined whether business entities were income taxed as partnerships or corporations. In order to comply with the old rules, limited liability companies have previously been forced into a great deal

of unnecessary complexity. Some changes were made to the LLC Act by the 1997 Legislature in response to the newly issued "Check the Box" rules. However, since those rules were issued at about the time the 1997 Legislature convened, there was inadequate time for a thoughtful analysis of the streamlining and simplification that had been made possible by the new regulations. While there will no doubt be some fine tuning in future legislative sessions, this legislation will realign the North Dakota LLC Act with the recently modernized LLC acts of other states. Apart from a few substantive changes, nearly all of Sections 49 through 131 consist of grammatical changes and the technical clarifications made possible by the new IRS regulations.

- Section 49 (beginning on page 58) consists of technical clarifications containing the definitions pertaining to the LLC Act. Again, to the extent possible, these definitions are identical to or parallel with the definitions contained in the chapters for other business entities.
- Section 50 (beginning on page 67) contains a technical clarification making clear that one member LLCs are now allowed (clarifying an earlier amendment made in 1997).
- Section 51 (beginning on page 67) sets forth:
 - A substantive change in that LLC may have perpetual existence; and,
 - A number of technical clarifications to the contents of the Articles of Incorporation.

- Section 52 (beginning on page 74) consists of **technical clarifications** which sets forth the requirements for LLC names and is consistent with and parallel to the name requirements of other business entities.
- Section 53 (beginning on page 75) contains a **grammatical change** to Subsection 5 of Section 10-32-11.
- Section 54 (beginning on page 75) sets forth a **substantive change** requested by the Secretary of State to Section 10-32-13 which now provides that change of registered office filing fees resulting from rezoning or postal reassignment may now be refunded by the Secretary of State.
- Section 55 (beginning on page 75) consists of a **technical clarification** pertaining to voting by class or series of member interests on amendments to the Articles of Incorporation.
- Section 56 (beginning on page 76) contains **grammatical changes** pertaining to amendment of Articles of Organization in a court supervised reorganization.
- Section 57 (beginning on page 78) contains an **important technical clarification** in that after July 1, 1999 LLCs will have perpetual duration.
- Section 58 (beginning on page 81) consists of **technical clarifications** to Section 10-32-28 pertaining to security interests in membership interests.
- Section 59 (beginning on page 81) sets forth **substantive changes** to Section 10-32-30 pertaining to the events that

constitute the termination of a member's interest and the fact that termination of membership interest does not now result in dissolution of the LLC unless otherwise required by the Articles of Organization or a Member Control Agreement. This is one of the major changes resulting from the "Check the Box" rules and will effectively give LLCs the same continuity of life already enjoyed by corporations and limited partnerships.

- Section 60 (beginning on page 83) contains grammatical changes pertaining to the assignment of financial rights by a member.
- Section 61 (beginning on page 84) sets forth substantive changes to Section 10-32-32 pertaining to the assignment of governance rights (again as the result of the "Check the Box" regulations).
- Section 62 (beginning on page 87) sets forth a substantive change in that the termination of a member's interest does not result in dissolution of the LLC.
- Section 63 (beginning on page 87) contains grammatical changes pertaining to the sharing of profits and losses.
- Section 64 (beginning on page 87) consists of technical clarifications pertaining to the preemptive rights of members.
- Sections 65 through 75 (beginning on page 90) consist of technical clarifications pertaining to meetings of members

and the procedures and requirements for the voting by members at meetings.

- Section 76 (beginning on page 100) sets forth substantive changes to Section 10-32-50 pertaining to member control agreements by which the members may directly control the management of the LLC (in the same manner that shareholders through a shareholder control agreement can directly control the management of a corporation).
- Section 77 (beginning on page 103) consists of a grammatical change pertaining to the records that LLCs are required to keep for their members.
- Sections 78 and 79 (beginning on page 103) set forth technical clarifications pertaining to the rights of dissenting members and the procedures for asserting those rights.
- Sections 80 through 83 (beginning on page 111) set forth technical clarifications pertaining to contributions to LLCs and the methods of recognizing and valuing those contributions in the form of membership interests.
- Sections 84 through 88 (beginning on page 115) set forth grammatical changes and technical clarifications pertaining to the governance of distributions by LLCs.
- Section 89 (beginning on page 117) contains grammatical changes pertaining to the organizational meeting of the LLC.
- Section 90 (beginning on page 117) sets forth a technical clarification which provides that the document which had

previously been called the "Operating Agreement" will now be called the "By-Laws" since that is a term with which the general public is familiar and since the term "Operating Agreement" was an artificially derived term relating to the rules in effect prior to the IRS "Check the Box" regulations.

- **Sections 91 through 107** (beginning on page 118) consist of **technical clarifications** pertaining to the governors (the LLC equivalent of corporate directors) and the provisions pertaining to their qualifications, elections, terms of office, compensation, meetings, and standards of conduct.
- **Sections 108 through 111** (beginning on page 126) consist of **technical clarifications** pertaining to the managers (the LLC equivalent of corporate officers), their duties, provisions for resignation, removal and vacancy and for delegation of authority.
- **Section 112** (beginning on page 129) consists of **technical clarifications** pertaining to the criteria and procedures for indemnification of governors, managers and employees by the LLC for their acts on its behalf.
- **Sections 113 through 121** (beginning on page 135) consists of **technical clarifications** pertaining to mergers of LLCs with other LLCs and with corporations and the procedures for accomplishing those mergers.
- **Sections 121 through 127** (beginning on page 144) set forth **technical clarifications** pertaining to the dissolution of LLCs and the procedure for conducting those dissolutions and

a substantive change beginning on page 152 in which Subsection 3 is added to Section 10-32-119 giving LLC members the opportunity for court supervised buy-out of their interest in the LLC under the same conditions and procedures as are allowed for business corporations.

- Sections 128 and 129 (beginning on page 157) consists of technical clarifications to provisions pertaining to foreign LLCs and the amendment of their Certificates of Authority with the Secretary of State and procedures for merged foreign LLCs previously authorized to conduct business in this state and continuing to do so.
- Section 130 (beginning on page 158) consists of grammatical changes pertaining to the annual reports to the Secretary of State.
- Section 131 (beginning on page 158) consists of an amendment to Subsection 1 of Section 10-32-150 pertaining to the fees charged by the Secretary of State authorizing prefiling approval of any document upon payment of one-half of the otherwise required filing fee.
- Sections 132 through 143 (beginning on page 160) pertain to nonprofit corporations and consist largely of technical clarifications.
 - Section 132 (beginning on page 160) consists of technical clarifications to the definitions for the Nonprofit Corporation Act which, whenever possible, are identical to or parallel with the definitions for other business entities.

- Section 133 (beginning on page 165) sets forth a **technical clarification** making clear that the board of directors by resolution can take an action authorized to be taken by the by-laws without including that provision in the by-laws.
- Section 134 (beginning on page 165) consists of **technical clarifications** pertaining to the name requirements for nonprofit corporations which again are parallel to the name requirements for other business entities.
- Section 135 (beginning on page 166) sets forth a **substantive change** pertaining to a waiver of fees by the Secretary of State when the filing of a change of registered office results from postal rezoning or postal reassignment or when the change of registered office or registered agent is accomplished through the annual report.
- Section 136 (beginning on page 166) is a **substantive change** to Section 10-33-17 and provides that the assets held by a corporation are restricted to the uses and purposes for which the property was received and held.
- Sections 137 through 139 (beginning on page 167) set forth **technical clarifications** pertaining to the officers of the corporation and their duties as well as the clarification that treasurers in nonprofit corporations need not be elected offices.
- Section 140 (beginning on page 168) sets forth **grammatical changes and technical clarifications** pertaining to

indemnification of corporate officers and the criteria for indemnification.

- Section 141 (beginning on page 172) consists of a technical clarification pertaining to mergers of nonprofit corporations.
- Section 142 (beginning on page 173) contains a substantive change which clarifies that when a corporation dissolves or substantively changes the use or purpose for which it will use corporate assets that the assets of the corporation may not be diverted from the uses and purposes for which they were received.
- Section 143 (beginning on page 173) sets forth technical clarifications pertaining to the amendment of a foreign corporations's certificate of authority.
- Section 144 (beginning on page 174) contains grammatical changes pertaining to contracts between labor unions and employers.
- Sections 145 through 163 (beginning on page 174) pertain to limited partnerships.
 - Section 145 (beginning on page 174) consists of technical clarifications to the defined terms pertaining to limited partnerships which, to the extent possible, are identical to or parallel with the defined terms for other business entities.

- Section 146 (beginning on page 177) consists of technical clarifications pertaining to the requirements for the name used by limited partnerships.
- Section 147 (beginning on page 178) consists of a technical clarification requiring (as is the case with other business entities) that the registered agent file a written consent to serve as such with the Secretary of State.
- Section 148 (beginning on page 178) is a substantive change in that it enacts new Section 45-10.1-04.1 setting forth the procedures for change of registered office and registered agent (with those procedures being parallel with the requirements for other business entities).
- Sections 149 through 152 (beginning on page 180) set forth technical clarifications pertaining to the certificate of limited partnership and the procedures for amending, cancelling and executing the certificate.
- Section 153 (beginning on page 183) is a substantive change whereas limited partnerships have previously filed a renewal certificate every five years, limited partnerships will now file an annual report in the same manner as do other entities. Under the previous arrangement, if a limited partnership failed to file a renewal certificate, its status as a limited partnership was terminated (possibly having significant consequences to the partnership and its partners).

- Failure to file the renewal certificate was not an uncommon occurrence since many times the reminder sent by the Secretary of State was returned due to a change of address (without a current forwarding address).
- The annual report that will be filed by limited partnerships will be similar in content to the annual reports required of other business entities.
- Section 154 (beginning on page 186) consists of technical changes to the filing fee schedule for the filing of documents with the Secretary of State.
- Section 155 (beginning on page 188) consists of a substantive change governing the withdrawal of limited partners.
 - If the partnership was formed prior to July 1, 1999 and the partnership agreement does not specify in writing the time when or the events upon the happening of which a limited partner may withdraw, then a limited partner may withdraw upon not less than six months advance written notice to the general partners.
 - If the partnership was formed before July 1, 1999 and does specify the time when or the events upon the happening of which a limited partner may withdraw or if the limited partnership is formed after June 30, 1999, then a limited partner may not withdraw from a limited partnership except at the time when or upon the happening of the event specified in the partnership agreement.

This amendment to the default provision for the procedure for a limited partner's withdrawal will, among other things, enhance the valuation discounts to which limited partnerships are entitled for federal estate tax purposes.

- Sections 156 through 161 (beginning on page 188) consist of technical clarifications pertaining to foreign limited partnerships, the law governing them, the names they may use, procedure for registration, requirement of registered agents and reports.
- Section 162 (beginning on page 192) consists of substantive changes pertaining to action by the Secretary of State against foreign limited partnerships and clarifies the criteria by which the Secretary of State may revoke the registration of a foreign limited partnership.
- Section 163 (beginning on page 193) is a substantive change enacting new Section 45-10.1-58.1 making clear that the Attorney General may bring an action to restrain a foreign limited partnership transacting business in this state in violation of Chapter 45-10.1.
- Section 164 (beginning on page 193) consists of a technical clarification waiving the filing fee for the filing of fictitious name certificates filed prior to August 1, 1987 by LLPs.
- Sections 1 through 4 (beginning on page 3) pertain to the Farm Corporation Act (Chapter 10-6.1):

- Sections 1, 2 and 3 (beginning on page 3) are technical clarifications requested by the Secretary of State with respect to the filing requirements for farm corporations.
- Section 4 (beginning on page 6) consists of grammatical changes to Section 10-6.1-27.
- Sections 5 through 44 (beginning on page 7) pertain to the Business Corporation Act (Chapter 10-19.1):
 - Section 5 (beginning on page 7) consists of grammatical changes and technical clarifications to the definitions in the Business Corporation Act.
 - Section 6 (beginning on page 14) is a technical clarification correcting the citation to the filing fee section for this chapter.
 - Section 7 (beginning on page 14) is a substantive change adding a new subsection which makes clear that the board of directors may by resolution not added to the by-laws take action that could have been included in the by-laws under subsection 5 of Section 10-19.1-10 (which delineates certain subject areas that may be included in the by-laws).
 - Section 8 (beginning on page 14) is a technical clarification correcting the citation to the filing fee section for this chapter.
 - Section 9 (beginning on page 14) is a technical clarification primarily including references to the new chapter on limited liability limited partnerships.

- Section 10 (beginning on page 15) is a **technical clarification** correcting the citation to the filing fees section for the chapter and making certain grammatical changes.
- Section 11 (beginning on page 16) contains several **grammatical changes** prepared by the Legislative Council.
- Sections 12 through 19 (beginning on page 16) consist of **technical clarifications** to Sections 10-19.1-61 through 10-19.1-70 pertaining to the shares of the corporation and the authorization of them in the articles of incorporation, procedure for granting preferences to certain classes of shares and the procedure for the issuance of certificated or uncertificated shares.
- Sections 20 through 25 (beginning on page 22) consists of **technical clarifications** pertaining to shareholder meetings and the procedure governing the use of proxies and determining the voting shareholders at the meeting.
- Section 26 (beginning on page 25) consists of **grammatical changes and technical clarifications** pertaining to the indemnification of officers, directors and employees and is consistent with similar provisions in the LLC Act and Nonprofit Corporation Act.
- Sections 27 through 34 (beginning on page 30) consist of **technical clarifications** pertaining to the merger of corporations with other corporations and limited liability companies.

- Sections 35 through 38 (beginning on page 43) consist of technical clarifications and grammatical changes pertaining to the dissolution of corporations.
- Section 39 (beginning on page 43) consists of a technical clarification pertaining to the service of process on the corporation and non-resident directors.
- Sections 40 and 41 (beginning on page 45) set forth technical clarifications pertaining to amendments to the certificate of authority by foreign corporations and the merger of foreign corporations previously authorized to transact business in this state.
- Section 42 (beginning on page 46) is a technical clarification pertaining to the annual report filed by corporations with the office of the Secretary of State.
- Section 43 (beginning on page 48) is a technical clarification pertaining to the filing fees with the office of the Secretary of State and again provides that documents submitted for pre-filing approval will be accompanied by a fee for one-half of the fee for the filing of the document.
- Section 44 (beginning on page 51) consists of a technical clarification which provides that the Business Corporation Act applies to state development corporations in all circumstances not covered by Chapter 10-30.
- Section 45 (beginning on page 51) is a technical clarification pertaining to the incorporation of venture capital corporations.

- Sections 46 through 48 (beginning on page 54) pertain to the Professional Organizations Act (Chapter 10-31):
 - Section 46 (beginning on page 54) is a technical clarification again clarifying that professional LLCs (just like business LLCs) may organize with one or more members.
 - Section 47 (beginning on page 54) consists of grammatical changes to Subsection 2 of Section 10-31-11.
 - Section 48 (beginning on page 55) consists of grammatical changes and technical clarifications pertaining to the annual reports filed by professional organizations.

As you can see, the legislation embodied in this Bill is comprehensive and serves to further integrate key elements of our existing statutes governing business corporations, limited liability companies, limited liability partnerships, limited partnerships and nonprofit corporations with each other and with the new limited liability limited partnership (Triple LP Act). Thank you for the opportunity to address your committee. If you have any questions, I would be happy to answer them.



SECRETARY OF STATE

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

February 2, 1999

TO: Senator Stenehjem and Members - Senate Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: **SB 2271 – The Business Bill**

The Secretary of State's office has been an active participant in the task force that worked on the drafting of this bill over the past several months. Therefore, the bill is in conformity with our existing procedures and practices. It also includes provisions that improve the ability of the Secretary of State's office to efficiently and accurately maintain its database for the benefit of both the public and the state.

While the bill appears overwhelming, its primary intent is to maintain, improve, and enhance the laws of North Dakota as they relate to various forms of business structures and associated filings. Having "up-to-date," reasonable, "user friendly" and flexible laws allows North Dakota based businesses to grow and prosper and provides opportunity for new ones to begin. Having such laws in place also makes the state attractive for out-of-state interests who wish to expand or begin new businesses in North Dakota.

For example, this bill allows for the creation of a Limited Liability Limited Partnership (LLLLP). This business structure is already allowed in nine other states and the Secretary of State's office already has had a couple of applications pending the passage of this bill. While it is difficult to predict the numbers of LLLPs that might result from the passage of this bill, we do know this:

- The 1993 Legislative Assembly first authorized the creation of a Limited Liability Company (LLC). Today, there are 1,268 domestic and 504 foreign LLCs registered with the Secretary of State's office.
- The 1995 Legislative Assembly first authorized the creation of a Limited Liability Partnership (LLP). Today, there are 771 domestic and 22 foreign LLPs registered with the Secretary of State's office.
- At the same time, the filings of "normal" corporate structures have not declined but increased as well. The total in 1993 was 9,647 and now there are 11,269.

In many respects, this bill is a continuation of progressive legislation that has been adopted in the previous three sessions. Therefore, I am pleased to endorse this bill, with the proposed amendments, and to encourage its adoption.

THIS TESTIMONY IS THE VERY SAME AS THAT DATED 2-1-99
WITH THE EXCEPTION OF PAGES 28 and 29

TESTIMONY OF WILLIAM L. GUY III, CHAIRMAN

THE NORTH DAKOTA LIMITED LIABILITY LIMITED
PARTNERSHIP ACT DRAFTING COMMITTEE

IN SUPPORT OF

SENATE BILL 2271

Mr. Chairman and Members of the Committee, I am here on behalf of a task force which has undertaken to draft the North Dakota Limited Liability Limited Partnership Act and, as in the past, to take care of housekeeping and technical legislation with respect to other business entity statutes. Accordingly, the Committee has prepared the legislation that you now have before you as Senate Bill 2271. This rather lengthy piece of legislation creates the North Dakota Limited Liability Limited Partnership ("Triple LP") Act (new Chapter 45-23) and clarifies and updates certain sections in the chapters governing Farm Corporations (Chapter 10-6.1), Business Corporations (Chapter 10-19.1), Development Corporations (Chapter 10-30), Venture Capital Corporations (Chapter 10-30.1), Professional Organizations (Chapter 10-31), Limited Liability Companies (Chapter 10-32), Non-Profit Corporations (Chapter 10-33), Labor Unions (Chapter 34-09), Limited Partnerships (Chapter 45-10.1), Limited Liability Partnership (Chapter 45-22), Fictitious Name Filings (Chapter 45-11) General Partnerships (Chapter 45-13 through 45-21), Trademarks (Chapter 47-22), Trade names (Chapter 47-25) and Irrigation Corporations (Chapter 61-13).

The Committee consists of Clara Jenkins, Director of Corporations in the Office of the Secretary of State; and Mary Bader, Greg Hammes, Terry Knoepfle, Darrell Larson, Mike Wagner and me, on behalf of the State Bar Association of North Dakota.

- Sections 46 through 48 (beginning on page 54) pertain to the Professional Organizations Act (Chapter 10-31):
 - Section 46 (beginning on page 54) is a technical clarification again clarifying that professional LLCs (just like business LLCs) may organize with one or more members.
 - Section 47 (beginning on page 55) consists of grammatical changes to Subsection 2 of Section 10-31-11.
 - Section 48 (beginning on page 56) consists of grammatical changes and technical clarifications pertaining to the annual reports filed by professional organizations.
- Finally, at the request of the Attorney General's Office, the proposed amendments, sections 164 and 193 amend the Limited Partnership Act (Chapter 45-10.1) and the Limited Liability Partnership Act (Chapter 45-22) to include enforcement provisions in these two chapters to allow the Attorney General's Office to deal with out-of-state businesses who operate in the state without being authorized to do so by the Secretary of State. These two sections are identical to each other and to corresponding provisions in the Business Corporation Act (Chapter 10-19.1), the Limited Liability Company Act (Chapter 10-32) and the Non-Profit Corporation Act (Chapter 10-33).

As you can see, the legislation embodied in this Bill is comprehensive and serves to further integrate key elements of our existing statutes governing business corporations, limited liability companies, limited liability partnerships, limited partnerships and nonprofit corporations with each other and with the new limited liability limited partnership (Triple LP Act). Thank you for the opportunity to address your committee. If you have any questions, I would be happy to answer them.



SECRETARY OF STATE

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

March 1, 1999

TO: Rep. DeKrey and Members - House Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: SB 2271 – The Business Bill

The Secretary of State's office has been an active participant in the task force that worked on the drafting of this bill over the past several months. Therefore, the bill is in conformity with our existing procedures and practices. It also includes provisions that improve the ability of the Secretary of State's office to efficiently and accurately maintain its database for the benefit of both the public and the state.

While the bill appears overwhelming, its primary intent is to maintain, improve, and enhance the laws of North Dakota as they relate to various forms of business structures and associated filings. Having "up-to-date," reasonable, "user friendly" and flexible laws allows North Dakota based businesses to grow and prosper and provides opportunity for new ones to begin. Having such laws in place also makes the state attractive for out-of-state interests who wish to expand or begin new businesses in North Dakota.

For example, this bill allows for the creation of a Limited Liability Limited Partnership (LLLLP). This business structure is already allowed in nine other states and the Secretary of State's office has already received a couple of applications pending the passage of this bill. While it is difficult to predict the numbers of LLLPs that might result from the passage of this bill, we do know this:

- The 1993 Legislative Assembly first authorized the creation of a Limited Liability Company (LLC). Today, there are 1,268 domestic and 504 foreign LLCs registered with the Secretary of State's office.
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- At the same time, the filings of "normal" corporate structures have not declined but increased as well. The total in 1993 was 9,647 and now there are 11,269.

In many respects, this bill is a continuation of progressive business related legislation that has been adopted in the previous three sessions. Therefore, I am pleased to endorse this bill, along with the proposed amendments offered today, and to encourage its adoption.