

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1545

2009 HOUSE STANDING COMMITTEE MINUTES

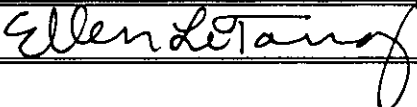
Bill/Resolution No. 1545

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 3, 2009

Recorder Job Number: 8549

Committee Clerk Signature 

Chairman Keiser: Opened the hearing on HB 1545 relating to creation of a new type of limited liability company called a low-profit limited liability company.

Mary Ekstrom~Representative from District 11. See testimony attachment.

Representative N Johnson: Would you give me a more specific instance of what you're talking about in Montana?

Ekstrom: There's a program out in Delaware where women were released from prison. The non profits set up a place for these folks to work, it's very labor intensive, don't do any mechanical packing, everything is done by hand, but it's to give these women employment history that's valid. The only place that's going to work is a place of non profit. This would let a for profit come in and help them get that set up. As this soup mix takes off, there's money to be realized from that. Many times the money turns back into another entity, but will give the investor the opportunity.

Clara Jenkins~Director of Business Program in the Secretary of State Office. For the past 15 years, the Secretary of State has been in partnership with the North Dakota Bar Association.

We have a developed the business statues for the state of North Dakota, many of which were in place and updated and many are brand new. After this bill came out, we did a little bit of research and couldn't a whole lot of information on it. What we did learn is that it is somewhat

a bit of a hybrid entity that has some characteristics of a business LLC and some characteristics of a nonprofit LLC. The information that I received from my counterparts in the National Association Commercial Administrators, of which I'm a member, indicated that the state of Vermont has adopted this legislation. They have only registered only 21 of these entities. The Vermont Secretary of State was not able to provide any data of date to support this therapy the success of these types of entities. When we met with our counterpart in the Bar Association, there were some significant concerns with the way the bill was drafted. There were so many unanswered question and we didn't have the liberty of time to do the research to get this crafted in the matter where it would do some good. It seems to have some shared funding sources, charitable donations, & others by private investors or a combination there of. That begs the question, if funded by charitable donations, should this type of entity be able to merge with another business entity or should it be allowed to convert to a business entity. Charitable donations seem to be more of a public trust that that money is going to be used for the purpose for which it was donated. If this entity is allowed to convert to a business or allow merging with a business entity, obviously that public trust is destroyed. That's one of the questions unanswered. Having this placed in the regular business LLC chapter, it is not exempted from the definition of a business organization. If that is the compelling definition that enables conversion and mergers and they could have merged with any other business entity, but with the nonprofit, because nonprofit is exempted from the organization definition and cannot merge back and forth. Another thing we were concerned with is placing within the business LLC chapter, it left filers a little venerable of choosing the wrong LLC entity to establish their business and have some unseen painful consequences. Some which could be tax related and if they were forced to dissolve and start over, there would be potential transfer of title that would have to occur. There being so many unanswered questions, we felt that, to

give this a decent share, a study would definitely be something we would support. If you would pass this with Representative Ekstrom's amendment we would support it otherwise we stand
Representative Ruby: Is this something that would consider how it work and set it up on your own or would it needs a study in the interim.

Jenkins: We feel this needs a study. We do not have the time to put into it because it will take some extensive hours put into it.

Representative Ruby: Can a nonprofit ever convert to a profit?

Jenkins: No.

Chairman Keiser: When you researched Vermont, is there in Vermont a clause in that section they created that is a non compete clause with other business entities?

Jenkins: I've seen the legislation that was adopted by Vermont is three paragraphs and they stuck it into their business LLC chapter. It didn't appear to exempt them from any type of interaction.

Chairman Keiser: Anyone here to testify in support, opposition, or neutral? Closes the hearing on HB 1545. What are the wishes of the committee?

Representative Ruby: I move the amendment.

Representative Vigesaa: Second.

Representative Thorpe: Wasn't there a reference to HB 1298?

Jenkins: HB 1298 was developed by the Secretary of State and the State Bar Association.

Voice roll call was taken on the amendment 0101 on HB 1545 was all aye's and 0 nay's.

Chairman Keiser: What are the wishes of the committee?

Representative Nottestad: Moves a Do Pass as Amended.

Representative Schneider: Second.

Chairman Keiser: I'm going to oppose this with my experience with Roughrider Industries.

Roll call was taken for HB1545 on a Do Pass as Amended with 11 aye's, 1 nay, 1 absent and Representative Amerman is the carrier.

VR
2/4/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1545

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study relating to the feasibility and desirability of creating a new type of limited liability company called a low-profit limited liability company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - LOW-PROFIT LIMITED LIABILITY COMPANIES. During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of creating a new type of limited liability company called a low-profit limited liability company. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

Date: Feb 3 - 2009
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1545

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	}		Representative Amerman	}	
Vice Chairman <u>Kasper</u>		Representative Boe	<u>Ab</u>		
Representative Clark		Representative Gruchalla			
Representative N Johnson		Representative Schneider			
Representative Nottestad		Representative Thorpe			
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

all ayes, 0 nays, 1 absent.

Date: Feb 3 - 2009
Roll Call Vote # 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1545

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By Nottestad Seconded By Schneider

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe		
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total (Yes) 11 No 1

Absent 1

Floor Assignment Amerman

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

REPORT OF STANDING COMMITTEE

HB 1545: Industry, Business and Labor Committee (Rep. Kelsner, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1545 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study relating to the feasibility and desirability of creating a new type of limited liability company called a low-profit limited liability company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - LOW-PROFIT LIMITED LIABILITY COMPANIES. During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of creating a new type of limited liability company called a low-profit limited liability company. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1545

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1545

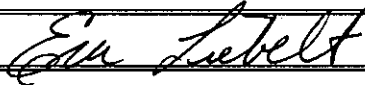
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 16, 2009

Recorder Job Number: 10996

Committee Clerk Signature



Minutes:

Chairman Klein: Good morning.

Mary Ekstrom: In support of the bill. Written testimony.

Senator Potter: I am in this business; we keep these at arm's length why wouldn't you just do that? Why wouldn't you just create another for Profit Corporation, that had this relationship?

Representative Ekstrom: That is why we need to study it. The feeling was that this would increase the number of investments coming to non-profits by allowing this.

Chairman Klein: And investments in non-profits are a good thing.

Representative Ekstrom: That's correct.

Senator Wanzek: What you're aiming at here is attract investors and allow them to make some profit to attract them and still maintain their non-profit status?

Representative Ekstrom: That's precisely what we want to do.

Clara Jenkins, for the Secretary of State: If this bill passes we would like it in the form of a study. We have learned that the state of Vermont is the only state that has adopted this legislation. Currently they have fifteen entities on record. Now the other side of this story is the IRS has not given us a ruling yet on how they are going to treat this. Technically it's a hybrid organization similar to a non-profit organization. While the investors are probably starting as

contributors there is always that potential if they realize there is some type of a profit that there could be some means of paying back those investors. There has been a lot of correspondence going back and forth between the states with the position and that capacity. Where others states have this legislation as well, most are taking a wait and see attitude. As it was proposed this is going into the LLC statute. There could be a problem there. There are a lot of entities that go into LLC that they think are low profit and it could cause some folks to make some decisions that could have some serious tax consequences. Hopefully if this passes it will be in a separate chapter so it won't be accidentally taken on by someone who is not of a non-profit orientation. So we are in support of the study.

Senator Potter: Is it possible to make dividends or profit in excess of what your contributions are?

Clara: There are not a lot of answers to those questions. When I contacted Vermont they didn't have any answers to how these organizations are operating. So the IRS might be looking at them as a business entity at this time.

Senator Wanzek: Really to do this is more of a question of what the IRS does versus what we do?

Clara: You're absolutely right if the IRS doesn't go along with it I don't think we should either.

Chairman Klein: We will close the hearing on 1545.

Senator Nodland: Moved for a do pass.

Senator Horne: Seconded.

Roll Call Vote: 6-0

Floor Assignment: Senator Potter.

REPORT OF STANDING COMMITTEE (410)
March 16, 2009 1:04 p.m.

Module No: SR-47-4938
Carrier: Potter
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1545, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1545 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1545

Industry Business and Labor Committee

Representative George Keiser, Chairman

HB 1545 Low Profit Limited Liability Company

February 3, 2009

Good morning Mr. Chairman and members of the IB&L Committee. For the record, my name is Mary Ekstrom I represent District 11 in South Fargo.

I am here to ease your burdens and make short work of this hearing. I understand that you may have spent a little bit of time this morning on a pharmacy bill? Seriously, if you will look at HB 1545, you will see that it is 15 pages long. I have the new version here. Which hog houses the 0100 version and calls for the consideration of a study resolution.

At the recommendation of the Secretary of State, we have agreed to propose a study on the concept of a low profit limited liability entity which would allow for profit investors to take a share of a non-profit. The original bill was based on Montana law. It was felt that to mesh with the existing corporation sections in the Century Code, it would better to study the matter first.

I respectfully request a DO PASS recommendation for HB 1545.

Industry Business and Labor Committee

Senator Jerry Klein, Chairman

HB 1545 Low Profit Limited Liability Company

March 16, 2009

Good morning Mr. Chairman and members of the IB&L Committee. For the record, my name is Mary Ekstrom I represent District 11 in South Fargo.

HB 1545 started life in a much longer version. At the recommendation of the Secretary of State, we have agreed to propose a study on the concept of a low profit limited liability entity which would allow for profit investors to take a share of a non-profit. It was felt that to mesh with the existing corporation sections in the Century Code, it would better to study the matter first.

I respectfully request a DO PASS recommendation for HB 1545.