

2011 SENATE JUDICIARY

SB 2174

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2174
1/31/11
Job #13691

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to listing of commercial registered agents, cooperative associations, corporations, limited liability companies, nonprofit corporations, limited partnerships and general partnerships.

Minutes:

There is attached written testimony

Senator Nething – Chairman

Al Jaeger – Secretary of State of ND – Introduces the bill – See written testimony.

Clara Jenkins – With the Secretary of State's Office – Explains the changes, see Jaegers written testimony.

Senator Nelson – Asks what the amendments do.

Jenkins – Explains the language changes. She explained that Justine Neuman said it is unconstitutional to pass law that forces anything that is issued by the Sec. of State to be received as evidence. She says they went back to amend law in existence since 1997.

William Guy – See written testimony.

Senator Nething – Asks if this is more for those people working with the corporate structure of an entity as opposed to furthering business friendliness.

Guy – Responds, furthering business friendliness in that they clarify issues pertaining to various entities.

Senator Nething – Responds that the objectiveness is still there.

Senator Olafson – Ask who comprises the ND Business Entity Drafting Taskforce.

Guy – Responds it is him and Clara.

Senator Sitte – Asks how broad this is.

Guy – Responds that it is any business that organizes itself as a cooperative. He gives examples.

Jenkins – Says we have about 74 foreign cooperatives in ND; an example would be the Cenex Companies.

Senator Nething – Discusses the changes that were made in the 2007 Legislature to let foreign corporations organize in ND.

Jenkins – States that any of the changes to the Business Corporation Act would apply to the publicly traded corporations unless there is any specific correlating section in that bill.

Opposition – 0

Close the hearing on 2174

Senator Nelson-moves for a do pass on the amendment

Senator Olafson seconds

Motion passes

6 yes, 0 no

Senator Olafson moves a do pass as amended

Senator Sorvaag seconds

Roll call vote – 6 yes, 0 no

Senator Nelson will carry

PROPOSED AMENDMENTS TO SENATE BILL NO. 2174

Page 1, line 2, replace the second "and" with a comma and insert "and" after "10-15-57.2,"

Page 1, remove line 3

Page 1, line 4, remove "10-33-142, subsection 3 to section 45-10.2-112," and remove "and subsection 3 to section"

Page 1, line 5, remove "45-22-24"

Page 1, line 13, after "10-19.1-147," insert "section 10-19.1-149,"

Page 1, line 17, after "10-32-152," insert "section 10-32-153,"

Page 1, line 23, after "10-33-140," insert "section 10-33-142,"

Page 1, line 24, after "45-10.2-109," insert "section 45-10.2-112," and after "45-22-16," insert "section 45-22-24,"

Page 4, line 27, replace the third "of" at the end of the line with "or"

Page 7, line 4, place "10-15-52.6" with "10-15-52.5"

Page 9, line 6, replace "must" with "may"

Page 9, line 11, replace "must" with "may"

Page 9, line 21, replace "10-19.1-57" with "10-19.1-52"

Page 14, line 19, remove "subsection 1 of"

Page 19, line 23, after "principal" insert "executive"

Page 21, line 30, after "maintain" insert "both" and replace "or" with "and"

Page 24, line 17, after "**24.**" Insert "**AMENDMENT.**" and remove "Subsection 3 to section" and insert immediately thereafter "Section"

Page 24, line 18, replace "created" with "amended" and replace "enacted" with "reenacted"

Page 24, after line 18, insert:

"10-19.1-149. Secretary of state - Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified

copy of any of the foregoing records or certificates, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated."

Page 38, line 2, remove "subsection 1 of"

Page 43, line 13, overstrike "a corporation" and insert immediately thereafter "an organization" and overstrike "shares" and insert immediately thereafter "ownership interests"

Page 47, line 16, after "39." Insert "AMENDMENT." and remove "Subsection 3 to section" and insert immediately thereafter "Section"

Page 47, line 17, replace "created" with "amended" and replace "enacted" with "reenacted"

Page 47, after line 17, insert:

"10-32-153. Secretary of state - Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts therein stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited liability companies which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated therein."

Page 54, line 13, remove "subsection 1 of"

Page 58, line 27, replace the second "the" with "any"

Page 67, line 30, after "61." Insert "AMENDMENT." and remove "Subsection 3 to section" and insert immediately thereafter "Section"

Page 67, line 31, replace "created" with "amended" and replace "enacted" with "reenacted"

Page 67, after line 31, insert:

"10-33-142. Secretary of state - Evidence.

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated."

Page 71, line 14, replace “1” with “3” and replace “45-10.2-23” with “45-10.2-27”

Page 74, line 24, after “67.” Insert “AMENDMENT.” and remove “Subsection 3 to section” and insert immediately thereafter “Section”

Page 74, line 25, replace “created” with “amended” and replace “enacted” with “reenacted”

Page 74, after line 25, insert:

“45-10.2-112. Secretary of state - Certificates and certified copies to be received in evidence.

1. All copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima-facie~~ evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited partnerships or foreign limited partnerships which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima-facie~~ evidence of the existence or nonexistence of the facts stated.”

Page 80, line 5, replace “1” with “9”

Page 81, line 20, after “72.” Insert “AMENDMENT.” and remove “Subsection 3 to section” and insert immediately thereafter “Section”

Page 81, line 21, replace “created” with “amended” and replace “enacted” with “reenacted”

Page 81, after line 21, insert:

“45-22-24. Certificates and certified copies to be received in evidence.

1. All copies of documents filed in accordance with this chapter, when certified by the secretary of state, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima-facie~~ evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to domestic limited liability partnerships or foreign limited liability partnerships which would not appear from a certified copy of any of the foregoing documents or certificates, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima-facie~~ evidence of the existence or nonexistence of the facts stated.”

Renumber accordingly

Date: 1/31
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2174

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Nelson Seconded By Senator Olafson

| Senators | Yes | No | Senators | Yes | No |
|------------------------------|-----|----|----------------|-----|----|
| Dave Nething - Chairman | X | | Carolyn Nelson | X | |
| Curtis Olafson - V. Chairman | X | | | | |
| Stanley Lyson | X | | | | |
| Margaret Sitte | X | | | | |
| Ronald Sorvaag | X | | | | |
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Total (Yes) 6 No 0

Absent _____

Floor Assignment _____

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

Date: 1/31
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2174

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By S. Olafson Seconded By S. Sorvaag

| Senators | Yes | No | Senators | Yes | No |
|------------------------------|-----|----|----------------|-----|----|
| Dave Nething - Chairman | X | | Carolyn Nelson | X | |
| Curtis Olafson - V. Chairman | X | | | | |
| Stanley Lyson | X | | | | |
| Margaret Sitte | X | | | | |
| Ronald Sorvaag | X | | | | |
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Total (Yes) 6 No 0

Absent _____

Floor Assignment S. Nelson

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

REPORT OF STANDING COMMITTEE

SB 2174: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2174 was placed on the Sixth order on the calendar.

Page 1, line 2, after the second comma insert "and"

Page 1, line 2, replace the second "and" with a comma

Page 1, line 2, after the third comma insert "and"

Page 1, remove line 3

Page 1, line 4, remove "10-33-142, subsection 3 to section 45-10.2-112, section"

Page 1, line 4, remove ", and subsection 3 to section"

Page 1, line 5, remove "45-22-24"

Page 1, line 13, replace the first "section" with "sections"

Page 1, line 13, after "10-19.1-147" insert "and 10-19.1-149"

Page 1, line 17, after the first comma insert "section 10-32-153,"

Page 1, line 23, after "sections" insert "10-33-142,"

Page 1, line 24, after the first comma insert "section 45-10.2-112,"

Page 1, line 24, after the fourth comma insert "45-22-24,"

Page 4, line 27, replace the third "of" with "or"

Page 7, line 4, replace "10-15-52.6" with "10-15-52.5"

Page 9, line 6, replace "must" with "may"

Page 9, line 11, replace "must" with "may"

Page 9, line 21, replace "10-19.1-57" with "10-19.1-52"

Page 14, line 19, remove "subsection 1 of"

Page 19, line 23, after "principal" insert "executive"

Page 21, line 30, after "maintain" insert "both"

Page 21, line 30, replace "or" with "and"

Page 24, replace lines 17 through 21 with:

"SECTION 24. AMENDMENT. Section 10-19.1-149 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-149. Secretary of state - Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state,

~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima-facie~~ evidence of the facts stated.

2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima-facie~~ evidence of the existence or nonexistence of the facts stated.
3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

Page 38, line 2, remove "subsection 1 of"

Page 43, line 13, overstrike "a corporation" and insert immediately thereafter "an organization"

Page 43, line 13, overstrike "shares" and insert immediately thereafter "ownership interests"

Page 47, replace lines 16 through 20 with:

"SECTION 39. AMENDMENT. Section 10-32-153 of the North Dakota Century Code is amended and reenacted as follows:

10-32-153. Secretary of state - Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima-facie~~ evidence of the facts therein stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited liability companies which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima-facie~~ evidence of the existence or nonexistence of the facts stated therein.
3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

Page 54, line 13, remove "subsection 1 of"

Page 58, line 27, replace the second "the" with "any"

Page 67, remove lines 30 and 31

Page 68, replace lines 1 through 3 with:

"SECTION 61. AMENDMENT. Section 10-33-142 of the North Dakota Century Code is amended and reenacted as follows:

10-33-142. Secretary of state - Evidence.

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state,

~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima-facie~~evidence of the facts stated.

2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima-facie~~evidence of the existence or nonexistence of the facts stated.
3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

Page 71, line 14, replace "1" with "3"

Page 71, line 14, replace "45-10.2-23" with "45-10.2-27"

Page 74, replace lines 24 through 28 with:

"SECTION 67. AMENDMENT. Section 45-10.2-112 of the North Dakota Century Code is amended and reenacted as follows:

45-10.2-112. Secretary of state - Certificates and certified copies to be received in evidence.

1. All copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima-facie~~evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited partnerships or foreign limited partnerships which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima-facie~~evidence of the existence or nonexistence of the facts stated.
3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

Page 80, line 5, replace "1" with "9"

Page 81, replace lines 20 through 24 with:

"SECTION 72. AMENDMENT. Section 45-22-24 of the North Dakota Century Code is amended and reenacted as follows:

45-22-24. Certificates and certified copies to be received in evidence.

1. All copies of documents filed in accordance with this chapter, when certified by the secretary of state, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima-facie~~evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to domestic limited liability partnerships or foreign limited liability partnerships which would not appear from a certified copy of any of the foregoing documents or certificates, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima-facie~~evidence of the existence or nonexistence of the facts stated.

3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form."

Renumber accordingly

2011 HOUSE JUDICIARY

SB 2174

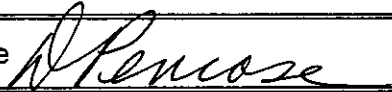
2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2174
March 14, 2011
15340

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2174.

Al Jaeger, Secretary of State: Support (see attached 1,2).

Clara Jenkins, Director of Business Systems and Programs for the Secretary of State: Support (read summary of changes from attached 1).

Rep. Klemin: Section 66, standardizes the fee, are there any fee increases.

Clara Jenkins: That is a very small increase in that fee, it is \$10 per filing, so that the fee is the same as it is for a domestic corporation. It wasn't enough to cause an increase on a fiscal note.

Rep. Klemin: What was the fee.

Clara Jenkins: It was \$125, now it's gone to \$135.

Rep. Klemin: How long was it \$125.

Clara Jenkins: I believe it's been \$125 ever since the statute was enacted.

Rep. Klemin: The reason I am asking this, is that somebody on the Floor will ask this question.

Rep. Hogan: In looking at the numbers, it seems like there are a large number of foreign corporations. Has there been an increase in that.

Clara Jenkins: Yes, there has been an increase in foreign corporations transacting business, particularly in the oil and gas industry.

Chairman DeKrey: Thank you. Further testimony in support.

William L. Guy III, Chair, ND Business Entity Drafting Task Force: Support (see attached 3,4).

Rep. Koppelman: Please comment on why these changes occur every biennium and prompts the changes that are made.

William L. Guy: Our statutes in ND are patterned after the MN counterparts. They have lots of time & funds to work on these statutes. Every year MN legislature meets, and so every two years we bring forward the changes they made that we think are relevant to our statutes. Plus, the Secretary of State's office, particularly, is constantly refining its procedures.

Rep. Klemin: We're making all of these entities pretty much identical, except for tax effects, etc. Is there going to come a point in time that we are basically going to have one generic provision that covers all of these, and then some short differences in each of the chapters for the unique differences between the entities.

William L. Guy: I suppose that's a possibility, because to the extent that they don't need to be different, we try to make them the same, so that people essentially have one set of rules. However, if we were to do that, we would have to have the master set of rules and then a special set and somehow integrate them. We've tried to make these statutes very user-friendly, so that either a lawyer or a citizen can simply print off the chapter they need right from the computer. I don't think that we would ever do that to be honest.

Rep. Klemin: The Uniform Law Commission has been working on a project about that, so it might come up some day.

William L. Guy: Well, that would be interesting.

Chairman DeKrey: Thank you. Further testimony in support.

Al Jaeger: I would like to point out a couple of highlights. Number 1, there was a reference made to the registered agent's act. I just want to remind the ones that have been here that ND was the first state in the nation to adopt that and it has worked exceedingly well. In number 8, the question about the fee. Virtually our fees have remained unchanged since the 1993 session. So when we do have a fee adjustment it's only to make sure that everybody is being treated the same, but also in number 8, I want to point out the word "reinstate". When we have legal entities that die or dissolved, either by choice or the fact that they didn't file their annual report, and several sessions ago there was a bill passed which allowed an entity to go to the court and with the court's approval they can be resurrected. This has proven to be exceedingly helpful particularly when it comes to situations where title of property is involved, where somebody has let something go. They go to the court and then they have to come in and file all of the annual reports from whenever they dissolved all the way to the current date. I suspect that I sign off on one of those

probably once a month. The fact that they can be resurrected with court action and put back into the system to allow for transfer of property, particularly, has proven to be very helpful. Number 8 just allows that to happen with a limited liability company. I realized that I provided information for the House budget committee the other day that I could have brought up here too. We tracked at the beginning of this biennium through December; it was prompted by Rep. Hogan's question about the number of foreign corporations. We have since June 30, 2009, we have added a total of 10,000 entities to our list. We were registering an average of over 600 new entities a month during that 18 month period. When you talk about business in ND, the impact of development, it's very real and our office has certainly been involved with it.

Rep. Koppelman: Where do the fees go, are they deposited into the General Fund or do they go to your office to defray the costs of registering the corporations.

Al Jaeger: They go to the general fund. We are a profit center for the state of ND; we bring in approximately \$3 million dollars more in revenue than I receive in Appropriations. It would be nice to be a special fund agency, but no. There are some exceptions. PEO's, which is the Professional Employment Organizations, and the publicly traded companies, when we came in with those kind of pieces of legislation, because it was so unpredictable we didn't know what we were going to be dealing with. We do get a little bit that goes into the special fund and that is to offset the programming, etc. When the professional employment organizations came in, we were estimating that we would have probably 8 or 9; we have 40-50 of them now, which is nice, the extra income does come in.

Rep. Kretschmar: When the hearing was before the Senate Committee, did any groups or individuals oppose or question the bill.

Al Jaeger: No. We did spare you; a number of errors were caught and corrected on the Senate side. As you can imagine, this is quite an undertaking and actually we spared you about 20-25 pages, because we are usually over 100 pages.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

Rep. Steiner: I move a Do Pass.

Rep. Delmore: Second the motion.

11 YES 0 NO 3 ABSENT

DO PASS

CARRIER: Rep. Kretschmar

Date: 3/14/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2174

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Steiner Seconded By Rep. Delmore

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------|-----|----|-----------------|-----|----|
| Ch. DeKrey | ✓ | | Rep. Delmore | ✓ | |
| Rep. Klemin | ✓ | | Rep. Guggisberg | ✓ | |
| Rep. Beadle | ✓ | | Rep. Hogan | | |
| Rep. Boehning | | | Rep. Onstad | | |
| Rep. Brabandt | ✓ | | | | |
| Rep. Kingsbury | ✓ | | | | |
| Rep. Koppelman | ✓ | | | | |
| Rep. Kretschmar | ✓ | | | | |
| Rep. Maragos | ✓ | | | | |
| Rep. Steiner | ✓ | | | | |
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Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE

SB 2174, as reengrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends
DO PASS (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING).
Reengrossed SB 2174 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2174

ALVIN A. JAEGER
SECRETARY OF STATE

PAGE www.nd.gov/sos



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

January 31, 2011

TO: Senator Nething, Chairman, and Members of the Senate Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: SB 2174 – General Business Entities

First, I want to express my appreciation and thank the Chairman for introducing this bill on behalf of the Secretary of State. Second, I want to acknowledge the long-standing relationship that the Secretary of State's office has had with the North Dakota Bar Association and particularly with William L. Guy III. Third, I want to acknowledge the expertise of Clara Jenkins, who has been with the Secretary of State's office for 37 years.

Since the 1993 session, a bill has been introduced in each session to maintain and move forward the state's business laws and to promote North Dakota as a business friendly state. Such legislation was adopted in the following years: 1993, Limited Liability Companies; 1995 Limited Liability Partnerships Act; 1999 Limited Liability Limited Partnerships; 2007, Publicly Traded Corporation Act; 2009 Nonprofit Limited Liability Companies; and the nation's first Registered Agent's Act in 2007. On the reverse side is a list of the various business entities registered, which reveals the significance of the legislation passed.

The following is a summary of changes specifically identified by the Secretary of State's office to establish consistency of administrative procedures and fees among the entities which will allow for the application of software features common to all business entities.

1. Section 2 improves the administrative procedures related to the Registered Agents Act.
2. Sections 2 and 22 establish similar signature provisions for an authorized person to sign the annual report of a farm or business corporation.
3. Sections 3, 4, 11, 28, 42, 63, 70, and 73 require entity names to be submitted in letters or characters of the English language, includes the trademarks and service marks in the list of records that must be checked to determine the availability of a name, and secures the name of an entity when the origination documents are filed with a later effective date. (The English standard is also extended in HB 1366 to partnership fictitious names and trade names)
4. Sections 5, 21, 36, 59, 65, and 71 define a common procedure for the revocation of the authority of a foreign entity that failed to properly amend its authority, or file a merger or withdrawal when appropriate.
5. Section 7 extends to cooperative associations the same ability to correct an erroneous record, which is already extended to all other entities.
6. Sections 8, 24, 39, 61, 66, and 72 standardize the provisions for certificates and certified copies of entity records and the various formats in which they may be provided for use for official purposes.
7. Section 23 applies the same fee for a conversion record of a foreign corporation as is paid for articles of conversion of a domestic corporation.
8. Section 36 establishes the same fee and procedures to reinstate a domestic limited liability company that exists for a domestic corporation.
9. Section 62 changes the share of the annual fee received from a publicly traded corporations that is allocated to the Secretary of State's general services operating fund.
10. Section 66 standardizes the fee to file a domestic or foreign limited partnership.

Since the bill was introduced, additional changes were identified and an amendment is attached, for which we request your favorable consideration, along with the bill.

Business Registrations on Record with the Secretary of State as of January 28, 2011

| | |
|---|--------|
| Business Corporations | 12,972 |
| Publicly Traded Corporation – Chapter 10-35, North Dakota Century Code | 1 |
| Limited Liability Companies | 9,205 |
| Cooperatives/Electric Cooperatives/Mutual Aid Corporations/Grazing Assn | 300 |
| Farm Corporations | 758 |
| Farm Limited Liability Companies | 175 |
| Professional Corporations | 949 |
| Professional Limited Liability Companies | 134 |
| Foreign Business Corporations | 13,980 |
| Foreign Professional Corporations | 149 |
| Foreign Limited Liability Companies | 4,949 |
| Foreign Professional Limited Liability Companies | 32 |
| Foreign Cooperatives | 74 |
| Limited Partnerships – Domestic | 1,850 |
| Limited Partnerships – Foreign | 490 |
| Limited Liability Partnerships – Domestic | 2,632 |
| Limited Liability Partnerships – Foreign | 79 |
| Limited Liability Limited Partnerships – Domestic | 722 |
| Limited Liability Limited Partnerships – Foreign | 17 |
| Nonprofit Corporations – Domestic | 6,094 |
| Nonprofit Corporations – Foreign | 2,262 |
| Nonprofit Corporations – Church | 1,365 |
| Nonprofit Certified Development Corporations | 8 |
| Nonprofit Limited Liability Companies | 8 |
| Total | 59,205 |

PROPOSED AMENDMENTS TO SENATE BILL NO. 2174

Page 1, line 2, replace the second "and" with a comma and insert "and" after "10-15-57.2,"

Page 1, remove line 3

Page 1, line 4, remove "10-33-142, subsection 3 to section 45-10.2-112," and remove "and subsection 3 to section"

Page 1, line 5, remove "45-22-24"

Page 1, line 13, after "10-19.1-147," insert "section 10-19.1-149,"

Page 1, line 17, after "10-32-152," insert "section 10-32-153,"

Page 1, line 23, after "10-33-140," insert "section 10-33-142,"

Page 1, line 24, after "45-10.2-109," insert "section 45-10.2-112," and after "45-22-16," insert "section 45-22-24,"

Page 4, line 27, replace the third "of" at the end of the line with "or"

Page 7, line 4, place "10-15-52.6" with "10-15-52.5"

Page 9, line 6, replace "must" with "may"

Page 9, line 7, remove "prima facie"

Page 9, line 11, replace "must" with "may"

Page 9, line 12, remove "prima facie"

Page 9, line 21, replace "10-19.1-57" with "10-19.1-52"

Page 14, line 19, remove "subsection 1 of"

Page 19, line 23, after "principal" insert "executive"

Page 21, line 30, after "maintain" insert "both" and replace "or" with "and"

Page 24, line 17, after "24." Insert "AMENDMENT." and remove "Subsection 3 to section" and insert immediately thereafter "Section"

Page 24, line 18, replace "created" with "amended" and replace "enacted" with "reenacted"

Page 24, after line 18, insert:

"10-19.1-149. Secretary of state - Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated.”

Page 38, line 2, remove “subsection 1 of”

Page 43, line 13, overstrike “a corporation” and insert immediately thereafter “an organization” and overstrike “shares” and insert immediately thereafter “ownership interests”

Page 47, line 16, after “39.” Insert “**AMENDMENT.**” and remove “Subsection 3 to section” and insert immediately thereafter “Section”

Page 47, line 17, replace “created” with “amended” and replace “enacted” with “reenacted”

Page 47, after line 17, insert:

“10-32-153. Secretary of state - Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts therein stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited liability companies which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated therein.”

Page 54, line 13, remove “subsection 1 of”

Page 58, line 27, replace the second “the” with “any”

Page 67, line 30, after “61.” Insert “**AMENDMENT.**” and remove “Subsection 3 to section” and insert immediately thereafter “Section”

Page 67, line 31, replace “created” with “amended” and replace “enacted” with “reenacted”

Page 67, after line 31, insert:

“10-33-142. Secretary of state - Evidence.

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts stated.

2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated."

Page 71, line 14, replace "1" with "3" and replace "45-10.2-23" with "45-10.2-27"

Page 74, line 24, after "67." Insert "AMENDMENT." and remove "Subsection 3 to section" and insert immediately thereafter "Section"

Page 74, line 25, replace "created" with "amended" and replace "enacted" with "reenacted"

Page 74, after line 25, insert:

"45-10.2-112. Secretary of state - Certificates and certified copies to be received in evidence.

1. All copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited partnerships or foreign limited partnerships which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated."

Page 80, line 5, replace "1" with "2"

Page 81, line 20, after "72." Insert "AMENDMENT." and remove "Subsection 3 to section" and insert immediately thereafter "Section"

Page 81, line 21, replace "created" with "amended" and replace "enacted" with "reenacted"

Page 81, after line 21, insert:

"45-22-24. Certificates and certified copies to be received in evidence.

1. All copies of documents filed in accordance with this chapter, when certified by the secretary of state, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to domestic limited liability partnerships or foreign limited liability partnerships which would not appear from a certified copy of any of the foregoing documents or certificates, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated."

Renumber accordingly

(2)

ORAL TESTIMONY OF WILLIAM L. GUY III, CHAIR
NORTH DAKOTA BUSINESS ENTITY DRAFTING TASK FORCE
IN SUPPORT OF
SENATE BILL NO. 2174
PRESENTED TO THE SENATE JUDICIARY COMMITTEE ON
JANUARY 31, 2011

Mr. Chairman and members of the Committee, my name is William Guy and I am here to testify in support of Senate Bill No. 2174. You have before you a thirteen (13) page version of my written testimony. If you are going to use my written testimony as a checklist to identify important parts of this legislation, then I would suggest focusing on the sections that are identified as “**substantive changes**” and “**technical clarifications**”.

This oral testimony is going to focus on the aspects of this bill that I believe deserve your most intense attention. Many of these provisions appear numerous times in the chapters for different business entities. The first time I explain a particular section of that nature I will identify the other sections which are similar to it and will not repeat them later.

- **Section 1** (page 2) enacts a new subsection 6 to the “**North Dakota Registered Agents Act**” which allows the Secretary of State to modify the name of a commercial registered agent in a filed document to reflect the correct name of the commercial registered agent. Thus, if our office filed a document listing “Vogel Law Firm” as the registered agent the Secretary of State could correct the document to read “Vogel Law Firm, Ltd.”
- **Sections 3 through 8** (on pages 4 through 9) pertain to **Cooperative Associations (Chapter 10-15)**.
 - **Section 3** (pages 4 through 6) pertains to the name that a cooperative association may use.
 - **Subsection 1.a.** provides that the cooperative name must be expressed in letters or characters used in the English language as they appear in the American standard code for information interchange (ASCII) table and is similar to its counterpart subsection in section 11 for business corporations, in section 28 for limited liability companies, in section 42 for nonprofit corporations, in section 63 for limited partnerships, in

section 70 for limited liability partnerships and in section 73 for limited liability limited partnerships.

- **Subsection 6** provides that a cooperative association which files its articles of association with an effective date later than the date of filing will maintain the right to that name until the effective date and is similar to its counterpart subsection in section 11 for business corporations, in section 28 for limited liability companies, in section 42 for nonprofit corporations, in section 63 for limited partnerships, in section 70 for limited liability partnerships and in section 73 for limited liability limited partnerships.
- The remaining modifications make clear that the requirements for the name for a cooperative association are similar to the existing requirements of other business entities (such as corporations, limited liability companies and partnerships).
- **Section 4** provides that a foreign cooperative association may apply for a certificate of authority using a trade name which would be otherwise available to a domestic cooperative association so long as the trade name is registered under Chapter 47-25. This provision is similar to existing law for corporations, limited liability companies and partnerships.
- **Section 5** provides the procedure for the revocation of a certificate of authority held by a foreign cooperative and is again similar to the existing law used for corporations, limited liability companies and partnerships.
- **Section 7** (page 8) provides the procedure by which a cooperative association may correct a filed record (the same procedure as currently pertains to corporations, limited liability companies and partnerships).
- **Section 8** (page 9) provides that certificates and certified copies issued by the Secretary of State with regard to cooperative associations may be received into evidence (the same procedure as currently pertains to corporations, limited liability companies and partnerships).
- **Section 9 through Section 24** (pages 9 through 24) pertain to the **North Dakota Business Corporation Act** (Chapter 10-19.1)
 - **Section 12** (pages 14 and 15) is similar to its counterpart provision in section 31 for limited liability companies and section 44 for nonprofit corporations and makes clear:

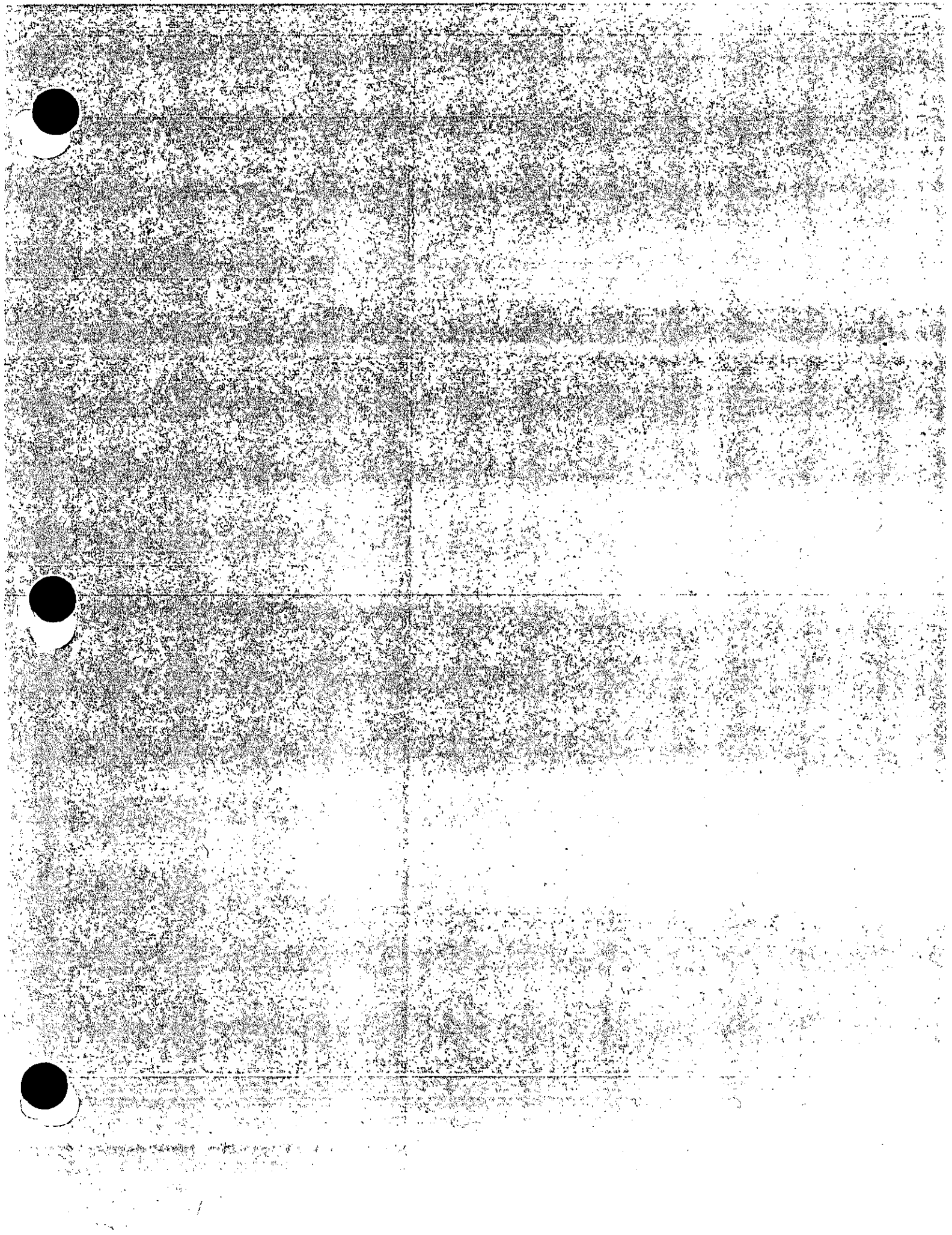
- That certain matters may be set forth in the bylaws in the organizations; and,
 - That the bylaws may be amended as provided in the articles or in the bylaws and in the absence of such a provision that certain items must be amended by the shareholders with voting rights.
- **Section 13** (pages 15 and 16) makes clear that directors are not counted either for voting purposes or for purposes of a quorum, when that director is the subject of a transaction in which the director has a conflict of interest and is similar to its counterpart provisions in section 13 for limited liability companies and section 50 for nonprofit corporations.
 - **Section 14** (pages 16 and 17) is similar to its counterpart provision in section 33 for limited liability companies and section 51 for nonprofit corporations and:
 - Makes clear that the officers are elected by the board unless the articles or bylaws provide that they are to be elected by the shareholders; and,
 - Provides that, if authorized in the articles, in the bylaws or in a resolution of a board, the president may appoint one or more officers other than the treasurer.
 - **Section 15** (pages 17 and 18) provides for the removal of officers, and is similar to its counterpart provisions in section 34 for limited liability companies and in section 54 for nonprofit corporations and provides:
 - That an officer appointed by the president may also be removed at any time, with or without cause, by the president.
 - That, to the extent authorized by the articles, by the bylaws or by a resolution approved by the board, the president may also remove any officer elected or appointed by the board other than the treasurer.
 - **Section 19** (pages 19 and 20) provides that a corporation may maintain the records required under section 10-19.1-84 at other places within the United States other than its principal executive office, if authorized by the board.
 - **Section 21** (pages 20 and 21) provides that the Secretary of State may revoke the certificate of authority of a foreign corporation and is similar to the counterpart provisions in section 5 for cooperative associations, in section 36 for limited liability companies and in section 65 for limited partnerships:

- If the corporation has failed to file a certificate of merger in the office of the Secretary of State;
 - If the foreign corporation has failed to file a certificate of withdrawal in the office of the Secretary of State when the foreign corporation has been dissolved in its jurisdiction of incorporation; or,
 - If the foreign corporation has failed to appoint and maintain both a registered agent and a registered office in this state
- **Section 24** (page 24) provides that the Secretary of State may create and disseminate any certificate or certified copy as an electronic record with the same force and effect as if produced in paper form and is similar to its counterpart provisions in section 39 for limited liability companies, in section 61 for nonprofit corporations, in section 67 for limited partnerships and in section 72 for limited liability partnerships. .
- **Sections 25 through 39** (pages 24 through 47) pertain to the **North Dakota Limited Liability Company Act** (Chapter 10-32).
 - **Section 26** (pages 24 through 34) is a series of numerical changes in which the subdivisions of the section are re-numbered so as to be in the same numerical order as the sections within Chapter 10-32 to which they relate.
 - This section, section 10-32-7, is in effect a table of contents for the provisions that can be accomplished by a limited liability company either in its articles of organization or in its member control agreement only; or,
 - Other things that can be accomplished in its articles of organization, in its member control agreement or in its bylaws.
 - No substantive changes or technical clarifications occur.
 - **Section 27** (page 34) makes clear that the existence of a limited liability company begins upon the date that its certificate of organization is filed or at a later date as specified in the articles of organization (as is currently allowed for all other entities).
 - **Section 30** (pages 38 and 39) provides that documents required to be maintained by the limited liability company must be delivered for examination by a member who seeks to examine them at a place which is mutually agreeable to both the company and the member.

- **Sections 40 through 61** (pages 47 through 68) pertain to the **North Dakota Nonprofit Corporation Act**.
 - **Section 45** (page 57) provides that the remaining directors, if they have the power to elect or appoint directors, may appoint as many directors as are needed to increase the number of serving directors to the number required in the bylaws (or to the statutory minimum of three (3)).
 - **Section 47** (pages 57 through 59) provides that the notice of a board of directors meeting must contain the substance of a proposed amendment to the articles of incorporation but otherwise need not state the purpose of the meeting unless the articles or bylaws require doing so.
 - **Section 52** (page 62) makes clear that individuals who are exercising the functions of an office are deemed to have been elected to that office.
 - **Section 53** (pages 61 and 62) makes clear that unless the articles or bylaws provide otherwise, any number of offices may be held by the same individual.
 - **Section 55** (page 62) makes clear the unlimited authority of the corporation to indemnify its directors, officers or employees.
 - **Section 57** (pages 63 and 64) provides for the procedures by which a nonprofit corporation may sell, lease, transfer, dispose of or grant a security interest in substantially all of its property and assets and is similar to the counterpart provisions in current law for business corporations and for limited liability companies.
- **Sections 62** (page 68) pertains to the North Dakota Publicly Traded Corporation Act and amends section 10-35-33 to increase the percentage of fees received by the Secretary of State that go into the general services operating fund of the Secretary of State from 10% to 20%.
- **Sections 63 through 67** (pages 68 through 74) pertain to the **North Dakota Limited Partnership Act**.
 - **Section 64** (pages 71 through 73) provides for the cancellation of a certificate of authority of a foreign limited partnership and sets forth the documents which must be delivered to the Secretary of State in order to accomplish the cancellation of the certificate of authority by the limited partnership.
 - **Section 66** (page 74) provides for increasing the filing fee for a certificate of authority of a foreign limited partnership from \$100 to \$110.

- **Section 68** (pages 74 and 75) pertains to the **North Dakota General Partnership Act** which sets forth the procedure by which a foreign general partnership converts to another organization and is the general partnership counterpart to similar sections for business corporations, for limited liability companies, for limited partnerships and for limited liability limited partnerships.
- **Sections 69 through 72** pertain to the **North Dakota Limited Liability Partnership Act** (Chapter 45-22).
 - **Section 71** (page 80 and 81) provides for the revocation of registration of a limited liability partnership which fails to file certain documents with the Secretary of State.

As you can see, the legislation embodied in this bill is for the most part technical clarifications and housekeeping. I appreciate the opportunity to address your committee. If you have any questions, I will be happy to answer them.





WRITTEN TESTIMONY OF WILLIAM L. GUY III, CHAIR
NORTH DAKOTA BUSINESS ENTITY DRAFTING TASK FORCE
IN SUPPORT OF
SENATE BILL NO. 2174
PRESENTED TO THE SENATE JUDICIARY COMMITTEE ON
JANUARY 31, 2011

Mr. Chairman and members of the Committee, my name is William Guy and I am here on behalf of a task force which, as in the past, has undertaken the drafting of housekeeping and technical legislation with respect to the various business entity statutes in the North Dakota Century Code. Accordingly, the task force has prepared the legislation that you have before you as Senate Bill No. 2174. This legislation updates certain sections of the chapters governing Registered Agents (Chapter 10-01.1), Corporate or Limited Liability Company Farming (Chapter 10-6.1), Cooperative Associations (Chapter 10-15), Business Corporations (Chapter 10-19.1), Limited Liability Companies (Chapter 10-32), Nonprofit Corporations (Chapter 10-33), Publically Traded Corporations (Chapter 10-35), Limited Partnerships (Chapter 45-10.2), General Partnerships (Chapters 45-13 through 45-21), Limited Liability Partnerships (Chapter 45-22) and Limited Liability Limited Partnerships (Chapter 45-23).

This legislation consists mostly of updating, technical clarifications, numerical changes and grammatical changes, some of which were initially enacted as part of the Minnesota counterpart for that particular chapter. In addition, some of the changes set forth in this legislation have been requested and prepared by the Office of the Secretary of State.

Finally, we have presented to the chair of your committee certain amendments which will be discussed by Clara Jenkins from the Office of the Secretary of State.

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

I will now summarize each of the sections of this legislation. Any "section references" are to the sections in the legislation and not to the chapter being amended.

For ease in reviewing this testimony, modifications in each section will be identified as being either a “**grammatical change**”, “**numerical change**”, “**technical clarification**”, or a “**substantive change**” all of which have been highlighted in **bold type**.

- **Section 1** (page 2) is a **substantive change** to the “**North Dakota Registered Agents Act**” (Chapter 10-01.1) that enacts new Subsection 6 to Section 10-01.1-06 which allows the Secretary of State to modify the name of a commercial registered agent in a filed document to reflect the correct name of the commercial registered agent. Thus, if our office filed a document listing “Vogel Law Firm” as the registered agent the Secretary of State could correct the document to read “Vogel Law Firm, Ltd.”
- **Section 2** (pages 2 through 4) is a **technical clarification** to **Corporate and Limited Liability Company Farming** (Chapter 10-6.1):
 - That aligns the authorized signers of a farm corporation or the farm limited liability company annual report with the counterpart sections under Chapter 10-19.1 and Chapter 10-32 for corporations and limited liability companies, respectively; and,
 - That requires that the annual report be signed be the receiver or trustee, if the farm corporation or the farm limited liability company is the hands of a receiver or trustee.
- **Sections 3 through 8** (on pages 4 through 9) pertain to **Cooperative Associations** (Chapter 10-15).
 - **Section 3** (pages 4 through 6) pertains to the name that a cooperative association may use and amends seven (7) subsections of Section 10-15-8.1.
 - **Subsection 1.a.** is a **substantive change** which provides that the cooperative name must be expressed in letters or characters used in the English language as they appear in the American standard code for information interchange (ASCII) table and is similar to its counterpart subsection in section 11 for business corporations, in section 28 for limited liability companies, in section 42 for nonprofit corporations, in section 63 for limited partnerships, in section 70 for limited liability partnerships and in section 73 for limited liability limited partnerships.
 - **Subsection 6** is a **substantive change** which provides that a cooperative association which files its articles of association with an effective date later than the date of filing will maintain the right to that name until the effective date and is similar to its counterpart subsection

in section 11 for business corporations, in section 28 for limited liability companies, in section 42 for nonprofit corporations, in section 63 for limited partnerships, in section 70 for limited liability partnerships and in section 73 for limited liability limited partnerships.

- The remaining modifications are **technical clarifications** making clear that the requirements for the name for a cooperative association are similar to the existing requirements of other business entities (such as corporations, limited liability companies and partnerships).
- **Section 4** is a **substantive change** which provides that a foreign cooperative association may apply for a certificate of authority using a trade name which would be otherwise available to a domestic cooperative association so long as the trade name is registered under Chapter 47-25. This provision is similar to existing law for corporations, limited liability companies and partnerships.
- **Section 5** is a **substantive change** which provides the procedure for the revocation of a certificate of authority held by a foreign cooperative and is again now similar to the existing law used for corporations, limited liability companies and partnerships.
- **Section 6** is a **substantive change** which establishes the same filing fee for a statement of correction as currently pertains to corporations, limited liability companies and partnerships.
- **Section 7** (page 8) is a **substantive change** which provides the procedure by which a cooperative association may correct a filed record (the same procedure as currently pertains to corporations, limited liability companies and partnerships).
- **Section 8** (page 9) is a **substantive change** which provides that certificates and certified copies issued by the Secretary of State with regard to cooperative associations may be received into evidence (the same procedure as currently pertains to corporations, limited liability companies and partnerships).
- **Section 9 through Section 24** (pages 9 through 24) pertain to the **North Dakota Business Corporation Act** (Chapter 10-19.1)
 - **Section 9** (page 9) is a **technical clarification** making clear that the definition of “officer” includes the president, treasurer or any other office elected by the corporation and is similar to its counterpart provisions in section 25 for limited liability companies and in section 40 for nonprofit corporations.

- **Section 10** (pages 9 through 11) is a **numerical change** in which subdivisions r. and s. of subsection 4 of section 10-19.1-10 are renumbered so that the content of each subdivision is in the correct numerical order.
- **Section 11** (pages 11 through 14) is a **substantive change** which provides for the use of letters or characters used in the English language as they appear in the American standard code for information interchange (ASCII) table and the ability of a business corporation to maintain its right to its name until a future of effective date of incorporation and is similar to its counterpart provisions in section 3 for cooperative associations, in section 28 for limited liability companies, in section 42 for nonprofit corporations, in section 63 for limited partnerships, in section 70 for limited liability partnerships and in section 73 for limited liability limited partnerships.
- **Section 12** (pages 14 and 15) is a **technical clarification** setting forth some of the provisions that may be contained in the bylaws of the corporation and is similar to its counterpart provision in section 31 for limited liability companies and in section 44 for nonprofit corporations.
- **Section 13** (pages 15 and 16) is a **technical clarification** making clear that directors are not counted either for voting purposes or for purposes of a quorum, when that director is the subject of a transaction in which the director has a conflict of interest and is similar to its counterpart provision in section 32 for limited liability companies and section 50 for nonprofit corporations.
- **Section 14** (pages 16 and 17) is similar to its counterpart provision in section 33 for limited liability companies and section 51 for nonprofit corporations and:
 - Is a **technical clarification** making clear that the officers are elected by the board unless the articles or bylaws provide that they are to be elected by the shareholders;
 - Is a **substantive change** which provides that, if authorized in the articles, in the bylaws or in a resolution of a board, the president may appoint one or more officers other than the treasurer; and,
 - Is a **technical clarification** making clear that “president” means “chief executive officer” and “treasurer” means “chief financial officer”.
- **Section 15** (pages 17 and 18) is a **substantive change** which provides for the removal of officers, and is similar to its counterpart provisions in section 34

for limited liability companies and in section 54 for nonprofit corporations and provides:

- That an officer appointed by the president may also be removed at any time, with or without cause, by the president.
 - That, to the extent authorized by the articles, by the bylaws or by a resolution approved by the board, the president may also remove any officer elected or appointed by the board other than the treasurer.
 - That the articles or the bylaws may provide other methods of removing an officer.
- **Section 16** (page 18) is a grammatical change only.
 - **Section 17** (page 18) is a **technical clarification** making clear that restrictions regarding the transfer or registration of transfer of securities is specifically enforceable against the holder of those securities.
 - **Section 18** (pages 18 and 19) is a **technical clarification** in which references to “annual meetings” in two places are changed to “regular meetings” (to bring this section in alignment with the rest of the chapter).
 - **Section 19** (pages 19 and 20) is a **substantive change** which provides that a corporation may maintain the records required under section 10-19.1-84 at other places within the United States other than its principal executive office, if authorized by the board.
 - **Section 20** (page 20) is a **technical clarification** making clear that a corporation may transfer its assets without shareholder approval to another entity which is, either directly or indirectly, owned by the corporation through wholly owned organizations and is similar to its counterpart provisions in section 35 for limited liability companies.
 - **Section 21** (pages 20 and 21) is a **substantive change** which provides that the Secretary of State may revoke the certificate of authority of a foreign corporation and is similar to the counterpart provisions in section 5 for cooperative associations, in section 36 for limited liability companies and in section 65 for limited partnerships:
 - If the corporation has failed to file a certificate of merger in the office of the Secretary of State;

- If the foreign corporation has failed to file a certificate of withdrawal in the office of the Secretary of State when the foreign corporation has been dissolved in its jurisdiction of incorporation; or,
 - If the foreign corporation has failed to appoint and maintain both a registered agent and a registered office in this state
- **Section 22** (page 22) is a **technical clarification** making clear who are the persons authorized to sign the annual report of business corporation.
- **Section 23** (pages 22 through 24) is a **grammatical change** and a **technical clarification** regarding the filing fees assessed by the office of the Secretary of State.
- **Section 24** (page 24) is a **substantive change** which provides that the Secretary of State may create and disseminate any certificate or certified copy as an electronic record with the same force and effect as if produced in paper form and is similar to its counterpart provisions in section 39 for limited liability companies, in section 61 for nonprofit corporations, in section 67 for limited partnerships and in section 72 for limited liability partnerships. .
- **Sections 25 through 39** (pages 24 through 47) pertain to the **North Dakota Limited Liability Company Act** (Chapter 10-32).
 - **Section 25** (page 24) is a **technical clarification** of the definition of “manager” and is similar to its counterpart provisions clarifying the definition of “officer” in section 9 for business corporations and in section 40 for nonprofit corporations.
 - **Section 26** (pages 24 through 34) are a series of **numerical changes** in which the subdivisions of the section are re-numbered so as to be in the same numerical order as the sections within Chapter 10-32 to which they relate.
 - This section, section 10-32-7, is in effect a table of contents for the provisions that can be accomplished by a limited liability company either in its articles of organization or in its member control agreement only; or,
 - Other things that can be accomplished in its articles of organization, in its member control agreement or in its bylaws.
 - No **substantive changes** or **technical clarifications** occur.

- **Section 27** (page 34) is a **technical clarification**, making clear that the existence of a limited liability company begins upon the date that its certificate of organization is filed or at a later date as specified in the articles of organization (as is currently allowed for all other entities).
- **Section 28** (pages 34 through 38) is a **substantive change** which provides for the use of letters or characters used in the English language and the ability of a limited liability company to maintain its right to its name until a future effective date of organization filing date and is similar to its counterpart provisions in section 3 for cooperative associations, in section 11 for business corporations, in section 42 for nonprofit corporations, in section 63 for limited partnerships, in section 70 for limited liability limited partnerships and section 73 for limited liability limited partnerships.
- **Section 29** (page 38) is a **technical clarification** changing two references from “annual” meetings to “regular” meetings and is similar to its counterpart provisions in section 18 for business corporations.
- **Section 30** (pages 38 and 39) is a **substantive change** which provides that documents required to be maintained by the limited liability company must be delivered for examination by a member who seeks to examine them at a place which is mutually agreeable to the company and to the member.
- **Section 31** (pages 39 and 40) is similar to its counterpart provisions in section 12 for business corporations and in section 44 for nonprofit corporations and is a **technical clarification** making clear:
 - That certain matters may be set forth in the bylaws of the organization; and,
 - That the bylaws may be amended as provided in the articles or bylaws and in the absence of such a provision that certain items must be amended by the members with voting rights.
- **Section 32** (pages 40 and 41) is a **technical clarification** making clear that governors are not counted, either for voting purposes or for purposes of a quorum, when that governor is the subject of a transaction in which the governor has a conflict of interest and is similar to its counterpart provisions in section 13 for business corporations and in section 50 for nonprofit corporations.
- **Section 33** (pages 41 and 42) is a **substantive change** which provides for the designation of and the appointment or election of managers of a limited

liability company and is similar to its counterpart provisions in section 14 for business corporations and in section 51 for nonprofit corporations .

- **Section 34** (pages 42 and 43) is a **substantive change** which provides for the removal and appointment of managers of a limited liability company and is similar to its counterpart provisions in section 15 for business corporations and in section 54 for nonprofit corporations.
- **Section 35** (page 43) is a **technical clarification** making clear that a limited liability company may transfer its assets to another entity which is owned, either directly or indirectly, by the limited liability company through wholly owned organizations and is similar to its counterpart provisions in section 20 for business corporations.
- **Section 36** (pages 43 and 44) is a **substantive change** which provides for the revocation of a certificate of authority for a foreign limited liability company and is similar to its counterpart provisions in section 5 for cooperative associations, in section 21 for business corporations, in section 59 for nonprofit corporations and in section 65 for limited partnerships.
- **Section 37** (pages 44 through 47) is a **substantive change** regarding the fees collected by the office of the Secretary of State for the reinstatement of a certificate of authority of a foreign limited liability company whose statement of authority has been terminated.
- **Section 38** (page 47) is a **numerical change** only.
- **Section 39** (page 47) is a **substantive change** which provides that certificates and certified copies issued by the Secretary of State electronically have the same force and effect as those produced in paper form and is similar to its counterpart provisions in section 24 for business corporations, in section 61 for nonprofit corporations, in section 67 for limited partnerships and in section 72 for limited liability partnerships.
- **Sections 40 through 61** (pages 47 through 68) pertain to the **North Dakota Nonprofit Corporation Act**.
 - **Section 40** (page 47) is a **technical clarification** of the definition of “officer” and is similar to its counterpart provisions in section 9 for officers in a business corporation and in section 25 for managers in a limited liability company.

- **Section 41** (pages 47 through 51) are **technical clarifications** making clear that provisions allowing members to vote on certain issues pertain to members with voting rights.
- **Section 42** (page 51) is a **substantive change** regarding the name of a nonprofit corporation and is similar to its counterpart in section 3 for cooperative associations, in section 11 for business corporations, in section 28 for limited liability companies, in section 63 for limited partnerships, in section 70 for limited liability partnerships and in section 73 for limited liability limited partnerships.
- **Section 43** (pages 54 and 55) are a series of **technical clarifications** making clear that the members who have a right to vote on certain issues are the members with voting rights.
- **Section 44** (pages 55 through 57) is a **technical clarification** setting for some of the provisions that may be contained in the bylaws of a nonprofit corporation and is similar to its counterpart provisions in section 12 for business corporations and in section 31 for limited liability companies.
- **Section 45** (page 57) is a **substantive change** which provides that the remaining directors, if they have the power to elect or appoint directors, may appoint as many directors as are needed to increase the number of serving directors to the number required in the bylaws (or to the statutory minimum of three (3)).
- **Section 46** (page 57) is a **technical clarification** making clear that the members who can vote on an issue are the members with voting rights.
- **Section 47** (pages 57 through 59) is a **substantive change** which provides that the notice of a board of directors meeting must contain the substance of a proposed amendment to the articles of incorporation but otherwise need not state the purpose of the meeting unless the articles or bylaws require doing so.
- **Section 48** (pages 59 and 60) is a **technical clarification** making clear that certain action by members pertains to the members with voting rights.
- **Section 49** (page 60) is a **technical clarification** making clear that individuals appointed to a committee may be appointed by an affirmative vote of a majority of the directors present.
- **Section 50** (pages 60 and 61) is a **technical clarification** making clear that neither the vote or the presence of an interested director are counted in any

action to be taken when determining a quorum and is similar to its counterpart provisions in section 13 for business corporations and in section 32 for limited liability companies.

- **Section 51** (page 61) is a **substantive change** which provides for the designation of and the election or appointment of the officers of a nonprofit corporation and is similar to its counterpart provisions in section 14 for business corporations and in section 33 for limited liability companies..
- **Section 52** (page 62) is a **technical clarification** making clear that individuals who are exercising the functions of an office are deemed to have been elected to that office.
- **Section 53** (pages 61 and 62) is a **technical clarification** making clear that unless the articles or bylaws provide otherwise, any number of offices may be held by the same individual.
- **Section 54** (page 62) is a **substantive change** which provides for the removal of officers and is similar to its counterpart provisions in section 15 for business corporations and in section 34 for limited liability companies.
- **Section 55** (page 62) is a **technical clarification** making clear the unlimited authority of the corporation to indemnify its directors, officers or employees.
- **Section 56** (pages 62 and 63) is a **technical clarification** making clear that action by members on mergers pertains to members with voting rights.
- **Section 57** (pages 63 and 64) is a **substantive change** which provides for the procedures by which a nonprofit corporation may sell, lease, transfer, dispose of or grant a security interest in substantially all of its property and assets and is similar to the counterpart provisions for business corporations in section 10-19.1-104 and for limited liability companies in section 10-32-108.
- **Section 58** (pages 64 and 65) is a **technical clarification** making clear that voting on the proposed dissolution of a nonprofit corporation pertains to the members with voting rights.
- **Section 59** (pages 65 and 66) is a **substantive change** which provides for the revocation of certificates of authority for foreign corporations by the office of the Secretary of State and is similar to its counterpart provisions in section 5 for cooperative associations, in section 21 for business corporations, in section 36 for limited liability companies and in section 65 for limited partnerships.
- **Section 60** (pages 66 and 67) is a **grammatical change** only.

- **Section 61** (page 67 and 68) is a **substantive change** which provides for the issuance of certificates and certified copies by the office of the Secretary of State electronically having the same force and effect as those produced in paper form and is similar to its counterpart provisions in section 24 for business corporations, in section 39 for limited liability companies, in section 67 for limited partnerships and in section 72 for limited liability partnerships.
- **Sections 62** (page 68) pertains to the North Dakota Publicly Traded Corporation Act and is a **substantive change** which amends section 10-35-33 to increase the percentage of fees received by the Secretary of State that go into the general services operating fund of the Secretary of State from 10% to 20%.
- **Sections 63 through 67** (pages 68 through 74) pertain to the **North Dakota Limited Partnership Act**.
 - **Section 63** (pages 68 through 71) is a **substantive changes** regarding the name of a limited partnership and is similar to its counterpart provisions in section 3 for cooperative associations, in section 11 for business corporations, in section 28 for limited liability companies, in section 42 for nonprofit corporations, in section 67 for limited partnerships, in section 70 for limited liability partnerships and in section 73 for limited liability limited partnerships.
 - **Section 64** (pages 71 through 73) is a **substantive change** which provides for the cancellation of a certificate of authority of a foreign limited partnership and sets forth the documents which must be delivered to the Secretary of State in order to accomplish the cancellation of the certificate of authority by the limited partnership.
 - **Section 65** (pages 73 and 74) is a **substantive change** which provides for the cancellation of the certificate of authority of a foreign limited partnership and is similar to its counterpart provisions in section 5 for cooperative associations, in section 21 for business corporations, in section 36 for limited liability companies and in section 59 for nonprofit corporations.
 - **Section 66** (page 74) is a **substantive change** which provides for increasing the filing fee for a certificate of authority of a foreign limited partnership from \$100 to \$110.
 - **Section 67** (page 74) is a **substantive change** which provides that the Secretary of State may create and disseminate any certificate or certified copy as an electronic record with the same force and effect as produced in paper form and is similar to its counterpart provisions in section 24 for business corporations, in section 39 for limited liability companies, in section 61

pertaining to nonprofit corporations and in section 72 for limited liability companies.

- **Section 68** (pages 74 and 75) pertains to the **North Dakota General Partnership Act** and is a **substantive change** setting forth the procedure by which a foreign general partnership converts to another organization and is the general partnership counterpart to similar sections for business corporations, for limited liability companies, for limited partnerships and for limited liability limited partnerships.
- **Sections 69 through 72** pertain to the **North Dakota Limited Liability Partnership Act** (Chapter 45-22).
 - **Section 69** (page 75 and 76) is a **technical clarification** deleting the need for the consent of the designated registered agent when filing the limited liability partnership registration and is consistent with all other entities (since consent by registered agents is no longer required for any entity).
 - **Section 70** (pages 76 through 80) is a **substantive changes** which provides for the use of letters or characters used in the English language and the ability of a limited liability partnership to maintain its right to its name until a future effective date of organization and is similar to its counterpart provisions in section 3 for cooperative associations, in section 11 for business corporations, in section 28 for limited liability companies, in section 42 for nonprofit corporations, in section 63 for limited partnerships and in section 73 for limited liability limited partnerships.
 - **Section 71** (page 80 and 81) is a **substantive change** which provides for the revocation of registration of a limited liability partnership which fails to file certain documents with the Secretary of State.
 - **Section 72** (page 81) is a **substantive change** which provides that certificates and certified copies issued by the Secretary of State electronically have the same force and effect as those produced in paper form and is similar to its counterpart provisions in section 24 for business corporations, in section 39 for limited liability companies; in section 61 for nonprofit corporations and in section 67 for limited partnerships.
- **Section 73** (pages 81 through 85) pertains to the **North Dakota Limited Liability Limited Partnership Act** (Chapter 45-23) and is a **substantive change** which provides for the use of letters or characters used in the English language and the ability of a limited liability limited partnership to maintain its right to its name until a future effective date of organization and is similar to its counterpart provisions in section 3 for cooperative associations, in section 11 for business corporations, in section 28 for limited liability

companies, in section 42 for nonprofit corporations, in section 63 for limited partnerships and in section 70 for limited liability partnerships.

As you can see, the legislation embodied in this bill is for the most part technical clarifications and housekeeping. I appreciate the opportunity to address your committee. If you have any questions, I will be happy to answer them.



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

March 11, 2011

TO: Rep. DeKrey, Chairman, and Members of the House Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: SB 2174 – General Business Entities

First, I want to express my appreciation and thank the Chairman for being a co-sponsor of this bill on behalf of the Secretary of State. Second, I want to acknowledge the long-standing relationship that the Secretary of State's office has had with the North Dakota Bar Association and particularly with William L. Guy III. Third, I want to acknowledge the expertise of Clara Jenkins, who has been with the Secretary of State's office for 37 years.

Since the 1993 session, a bill has been introduced in each session to maintain and move forward the state's business laws and to promote North Dakota as a business friendly state. Such legislation was adopted in the following years: 1993, Limited Liability Companies; 1995 Limited Liability Partnerships Act; 1999 Limited Liability Limited Partnerships; 2007, Publicly Traded Corporation Act; 2009 Nonprofit Limited Liability Companies; and the nation's first Registered Agent's Act in 2007. On the reverse side is a list of the various business entities registered, which reveals the significance of the legislation passed.

The following is a summary of changes specifically identified by the Secretary of State's office to establish consistency of administrative procedures and fees among the entities which will allow for the application of software features common to all business entities.

1. Section 1 improves the administrative procedures related to the Registered Agents Act.
2. Sections 2 and 22 establish similar signature provisions for an authorized person to sign the annual report of a farm or business corporation.
3. Sections 3, 5, 11, 28, 42, 63, 70, and 73 require entity names to be submitted in letters or characters of the English language, includes the trademarks and service marks in the list of records that must be checked to determine the availability of a name, and secures the name of an entity when the origination documents are filed with a later effective date. (The English standard is also extended in HB 1366 to partnership fictitious names and trade names)
4. Sections 5, 21, 36, 59, 65, and 71 define a common procedure for the revocation of the authority of a foreign entity that failed to properly amend its authority, or file a merger or withdrawal when appropriate.
5. Section 7 extends to cooperative associations the same ability to correct an erroneous record, which is already extended to all other entities.
6. Sections 8, 24, 39, 61, 67, and 72 standardize the provisions for certificates and certified copies of entity records and the various formats in which they may be provided for use for official purposes.
7. Section 23 applies the same fee for a conversion record of a foreign corporation as is paid for articles of conversion of a domestic corporation.
8. Section 37 establishes the same fee and procedures to reinstate a domestic limited liability company that exists for a domestic corporation.
9. Section 62 changes the share of the annual fee received from a publicly traded corporation that is allocated to the Secretary of State's general services operating fund.
10. Section 66 standardizes the fee to file a domestic or foreign limited partnership.

Business Registrations on Record with the Secretary of State as of January 28, 2011

| | |
|---|--------|
| Business Corporations | 12,972 |
| Publicly Traded Corporation – Chapter 10-35, North Dakota Century Code | 1 |
| Limited Liability Companies..... | 9,205 |
| Cooperatives/Electric Cooperatives/Mutual Aid Corporations/Grazing Assn | 300 |
| Farm Corporations | 758 |
| Farm Limited Liability Companies | 175 |
| Professional Corporations | 949 |
| Professional Limited Liability Companies..... | 134 |
| Foreign Business Corporations | 13,980 |
| Foreign Professional Corporations..... | 149 |
| Foreign Limited Liability Companies | 4,949 |
| Foreign Professional Limited Liability Companies | 32 |
| Foreign Cooperatives | 74 |
| Limited Partnerships – Domestic..... | 1,850 |
| Limited Partnerships – Foreign | 490 |
| Limited Liability Partnerships – Domestic | 2,632 |
| Limited Liability Partnerships – Foreign | 79 |
| Limited Liability Limited Partnerships – Domestic..... | 722 |
| Limited Liability Limited Partnerships – Foreign..... | 17 |
| Nonprofit Corporations – Domestic | 6,094 |
| Nonprofit Corporations – Foreign | 2,262 |
| Nonprofit Corporations – Church..... | 1,365 |
| Nonprofit Certified Development Corporations | 8 |
| Nonprofit Limited Liability Companies | 8 |
| Total..... | 59,205 |

ORAL TESTIMONY OF WILLIAM L. GUY III, CHAIR
NORTH DAKOTA BUSINESS ENTITY DRAFTING TASK FORCE
IN SUPPORT OF
SENATE BILL NO. 2174
PRESENTED TO THE HOUSE JUDICIARY COMMITTEE ON
MARCH 14, 2011

Mr. Chairman and members of the Committee, my name is William Guy and I am here to testify in support of Senate Bill No. 2174. You have before you a thirteen (13) page version of my written testimony. If you are going to use my written testimony as a **checklist** to identify important parts of this legislation, then I would suggest focusing on the sections that are identified as “**substantive changes**” and “**technical clarifications**”.

This oral testimony is going to focus on the aspects of this bill that I believe **deserve** your closest attention. Many of these provisions appear numerous times in the **chapters** for different business entities. The first time I explain a particular section of that **nature** I will identify the other sections which are similar to it and will not repeat them later.

- **Section 1** (page 2) enacts a new subsection 6 to the “**North Dakota Registered Agents Act**” (Chapter 10-01.1) and was covered by the Secretary of State.
- **Section 2** (pages 2 through 4) pertains to the **Corporate and Limited Liability Company Farming** (Chapter 10-6.11) and was covered by the Secretary of State
- **Sections 3 through 8** (on pages 4 through 9) pertain to **Cooperative Associations** (Chapter 10-15) and were covered by the Secretary of State.
- **Section 9 through Section 24** (pages 9 through 25) pertain to the **North Dakota Business Corporation Act** (Chapter 10-19.1)
 - **Section 9** (page 9) makes clear that the definition of “officer” **includes** the president, treasurer or any other office elected by the corporation **and** is similar to its counterpart provisions in section 25 for limited liability companies and in section 40 for nonprofit corporations.

- **Section 12** (pages 14 and 15) is similar to its counterpart provision in section 31 for limited liability companies and section 44 for nonprofit corporations and makes clear:
 - That certain matters may be set forth in the bylaws in the organizations; and,
 - That the bylaws may be amended as provided in the articles or in the bylaws and in the absence of such a provision that certain items must be amended by the shareholders with voting rights.
- **Section 13** (pages 15 and 16) makes clear that directors are not counted either for voting purposes or for purposes of a quorum, when that director is the subject of a transaction in which the director has a conflict of interest and is similar to its counterpart provisions in section 13 for limited liability companies and section 50 for nonprofit corporations.
- **Section 14** (pages 16 and 17) is similar to its counterpart provision in section 33 for limited liability companies and section 51 for nonprofit corporations and:
 - Makes clear that the officers are elected by the board unless the articles or bylaws provide that they are to be elected by the shareholders; and,
 - Provides that, if authorized in the articles, in the bylaws or in a resolution of a board, the president may appoint one or more officers other than the treasurer.
- **Section 15** (pages 17 and 18) provides for the removal of officers, and is similar to its counterpart provisions in section 34 for limited liability companies and in section 54 for nonprofit corporations and provides:
 - That an officer appointed by the president may also be removed at any time, with or without cause, by the president.
 - That, to the extent authorized by the articles, by the bylaws or by a resolution approved by the board, the president may also remove any officer elected or appointed by the board other than the treasurer.
- **Section 17** (page 18) makes clear that restrictions regarding the transfer or registration of transfer of securities is specifically enforceable against the holder of those securities.

- **Section 19** (pages 19 and 20) provides that a corporation may maintain the records required under section 10-19.1-84 at other places within the United States other than its principal executive office, if authorized by the board.
- **Section 20** (page 20) makes clear that a corporation may transfer its assets without shareholder approval to another entity which is, either directly or indirectly, owned by the corporation through wholly owned organizations and is similar to its counterpart provisions in section 35 for limited liability companies.
- **Section 21** (pages 20 and 21) was covered by the Secretary of State.
- **Section 22** (page 22) is a **technical clarification** making clear who are the persons authorized to sign the annual report of business corporation.
- **Section 24** (page 24) was covered by the Secretary of State.
- **Sections 25 through 39** (pages 24 through 47) pertain to the **North Dakota Limited Liability Company Act** (Chapter 10-32).
 - **Section 25** (page 25) is similar to its counterpart provisions clarifying the definition of “officer” in section 9 for business corporations and in section 40 for nonprofit corporations.
 - **Section 26** (pages 24 through 34) is a series of numerical changes in which the subdivisions of the section are re-numbered so as to be in the same numerical order as the sections within Chapter 10-32 to which they relate.
 - This section, section 10-32-7, is in effect a table of contents for the provisions that can be accomplished by a limited liability company either in its articles of organization or in its member control agreement only; or,
 - Other things that can be accomplished in its articles of organization, in its member control agreement or in its bylaws.
 - No substantive changes or technical clarifications occur.
 - **Section 27** (pages 34 and 35) makes clear that the existence of a limited liability company begins upon the date that its certificate of organization is filed or at a later date as specified in the articles of organization (as is currently allowed for all other entities).
 - **Section 28** was covered by the Secretary of State.

- **Section 30** (page 39) provides that documents required to be maintained by the limited liability company must be delivered for examination by a member who seeks to examine them at a place which is mutually agreeable to both the company and the member.
- **Section 31** (pages 39 through 41) is similar to its counterpart provisions in section 12 for business corporations and in section 44 for nonprofit corporations and makes clear:
 - That certain matters may be set forth in the bylaws of the organization; and,
 - That the bylaws may be amended as provided in the articles or bylaws and in the absence of such a provision that certain items must be amended by the members with voting rights.
- **Section 32** (pages 41 and 42) makes clear that governors are not counted, either for voting purposes or for purposes of a quorum, when that governor is the subject of a transaction in which the governor has a conflict of interest and is similar to its counterpart provisions in section 13 for business corporations and in section 50 for nonprofit corporations.
- **Section 33** (page 42) provides for the designation of and the appointment or election of managers of a limited liability company and is similar to its counterpart provisions in section 14 for business corporations and in section 51 for nonprofit corporations .
- **Section 34** (pages 42 and 43) provides for the removal and appointment of managers of a limited liability company and is similar to its counterpart provisions in section 15 for business corporations and in section 54 for nonprofit corporations.
- **Section 35** (page 43) makes clear that a limited liability company may transfer its assets to another entity which is owned, either directly or indirectly, by the limited liability company through wholly owned organizations and is similar to its counterpart provisions in section 20 for business corporations.
- **Section 36** (pages 43 through 45) is similar to its counterpart provisions in section 5 for cooperative associations, in section 21 for business corporations, in section 59 for nonprofit corporations and in section 65 for limited partnerships.

- **Sections 40 through 61** (pages 47 through 68) pertain to the **North Dakota Nonprofit Corporation Act**.
 - **Section 40** (page 48) is similar to its counterpart provisions in section 9 for officers in a business corporation and in section 25 for managers in a limited liability company.
 - **Section 41** (pages 48 through 52) makes clear that provisions allowing members to vote on certain issues pertain to members with voting rights.
 - **Section 42** (pages 52 through 55) was covered by the Secretary of State.
 - **Section 43** (pages 55 and 56) makes clear that the members who have a right to vote on certain issues are the members with voting rights.
 - **Section 44** (pages 56 and 57) is similar to its counterpart provisions in section 12 for business corporations and in section 31 for limited liability companies.
 - **Section 45** (page 57) provides that the remaining directors, if they have the power to elect or appoint directors, may appoint as many directors as are needed to increase the number of serving directors to the number required in the bylaws (or to the statutory minimum of three (3)).
 - **Section 46** (page 58) makes clear that the members who can vote on an issue are the members with voting rights.
 - **Section 47** (pages 58 through 60) provides that the notice of a board of directors meeting must contain the substance of a proposed amendment to the articles of incorporation but otherwise need not state the purpose of the meeting unless the articles or bylaws require doing so.
 - **Section 51** (pages 61 and 62) is similar to its counterpart provisions in section 14 for business corporations and in section 33 for limited liability companies..
 - **Section 52** (page 62) makes clear that individuals who are exercising the functions of an office are deemed to have been elected to that office.
 - **Section 53** (pages 61 and 62) makes clear that unless the articles or bylaws provide otherwise, any number of offices may be held by the same individual.
 - **Section 54** (page 63) is similar to its counterpart provisions in section 15 for business corporations and in section 34 for limited liability companies

- **Section 55** (page 62) makes clear the unlimited authority of the ^{non-profit} corporation to indemnify its directors, officers or employees.
- **Section 56** (pages 63 and 64) makes clear that action by members on mergers pertains to members with voting rights.
- **Section 57** (pages 63 and 64) provides for the procedures by which a nonprofit corporation may sell, lease, transfer, dispose of or grant a security interest in substantially all of its property and assets and is similar to the counterpart provisions in current law for business corporations and for limited liability companies.
- **Section 62** (page 68) pertains to the North Dakota Publically Traded Corporation Act (Chapter 10-35) and was covered by the Secretary of State.
- **Sections 63 through 67** (pages 68 through 74) pertain to the **North Dakota Limited Partnership Act** (Chapter 45-10.2).
 - **Section 63** (pages 69 through 72) is similar to its counterpart provisions in section 3 for cooperative associations, in section 11 for business corporations, in section 28 for limited liability companies, in section 42 for nonprofit corporations, in section 67 for limited partnerships, in section 70 for limited liability partnerships and in section 73 for limited liability limited partnerships.
 - **Section 64** (pages 71 through 73) provides for the cancellation of a certificate of authority of a foreign limited partnership and sets forth the documents which must be delivered to the Secretary of State in order to accomplish the cancellation of the certificate of authority by the limited partnership.
 - **Section 65** (pages 74 and 75) is similar to its counterpart provisions in section 5 for cooperative associations, in section 21 for business corporations, in section 36 for limited liability companies and in section 59 for nonprofit corporations.
- **Section 66** (page 74) was covered by the Secretary of State.
- **Section 68** (pages 74 and 75) pertains to the **North Dakota General Partnership Act** which sets forth the procedure by which a foreign general partnership converts to another organization and is the general partnership counterpart to similar sections for business corporations, for limited liability companies, for limited partnerships and for limited liability limited partnerships.

- **Sections 69 through 72** (pages 76 through 83) pertain to the **North Dakota Limited Liability Partnership Act** (Chapter 45-22) and were covered by the Secretary of State.

As you can see, the legislation embodied in this bill is for the most part technical clarifications and housekeeping. I appreciate the opportunity to address your committee. If you have any questions, I will be happy to answer them.

WRITTEN TESTIMONY OF WILLIAM L. GUY III, CHAIR
NORTH DAKOTA BUSINESS ENTITY DRAFTING TASK FORCE
IN SUPPORT OF
SENATE BILL NO. 2174
PRESENTED TO THE HOUSE JUDICIARY COMMITTEE ON
MARCH 14, 2011

Mr. Chairman and members of the Committee, my name is William Guy and I am here on behalf of a task force which, as in the past, has undertaken the drafting of housekeeping and technical legislation with respect to the various business entity statutes in the North Dakota Century Code. Accordingly, the task force has prepared the legislation that you have before you as Senate Bill No. 2174. This legislation updates certain sections of the chapters governing Registered Agents (Chapter 10-01.1), Corporate or Limited Liability Company Farming (Chapter 10-6.1), Cooperative Associations (Chapter 10-15), Business Corporations (Chapter 10-19.1), Limited Liability Companies (Chapter 10-32), Nonprofit Corporations (Chapter 10-33), Publically Traded Corporations (Chapter 10-35), Limited Partnerships (Chapter 45-10.2), General Partnerships (Chapters 45-13 through 45-21), Limited Liability Partnerships (Chapter 45-22) and Limited Liability Limited Partnerships (Chapter 45-23).

This legislation consists mostly of updating, technical clarifications, numerical changes and grammatical changes, some of which were initially enacted as part of the Minnesota counterpart for that particular chapter. In addition, some of the changes set forth in this legislation have been requested and prepared by the Office of the Secretary of State.

Finally, we have presented to the chair of your committee certain amendments which will be discussed by Clara Jenkins from the Office of the Secretary of State.

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

I will now summarize each of the sections of this legislation. Any "section references" are to the sections in the legislation and not to the chapter being amended.

For ease in reviewing this testimony, modifications in each section will be identified as being either a **“grammatical change”**, **“numerical change”**, **“technical clarification”**, or a **“substantive change”** all of which have been highlighted in **bold type**.

- **Section 1** (page 2) is a **substantive change** to the **“North Dakota Registered Agents Act”** (Chapter 10-01.1) that enacts new Subsection 6 to Section 10-01.1-06 which allows the Secretary of State to modify the name of a commercial registered agent in a filed document to reflect the correct name of the commercial registered agent. Thus, if our office filed a document listing “Vogel Law Firm” as the registered agent the Secretary of State could correct the document to read “Vogel Law Firm, Ltd.”
- **Section 2** (pages 2 through 4) is a **technical clarification** to **Corporate and Limited Liability Company Farming** (Chapter 10-6.1):
 - That aligns the authorized signers of a farm corporation or the farm limited liability company annual report with the counterpart sections under Chapter 10-19.1 and Chapter 10-32 for corporations and limited liability companies, respectively; and,
 - That requires that the annual report be signed be the receiver or trustee, if the farm corporation or the farm limited liability company is the hands of a receiver or trustee.
- **Sections 3 through 8** (on pages 4 through 9) pertain to **Cooperative Associations** (Chapter 10-15).
 - **Section 3** (pages 4 through 6) pertains to the name that a cooperative association may use and amends seven (7) subsections of Section 10-15-8.1.
 - **Subsection 1.a.** is a **substantive change** which provides that the cooperative name must be expressed in letters or characters used in the English language as they appear in the American standard code for information interchange (ASCII) table and is similar to its counterpart subsection in section 11 for business corporations, in section 28 for limited liability companies, in section 42 for nonprofit corporations, in section 63 for limited partnerships, in section 70 for limited liability partnerships and in section 73 for limited liability limited partnerships.
 - **Subsection 6** is a **substantive change** which provides that a cooperative association which files its articles of association with an effective date later than the date of filing will maintain the right to that name until the effective date and is similar to its counterpart subsection

in section 11 for business corporations, in section 28 for limited liability companies, in section 42 for nonprofit corporations, in section 63 for limited partnerships, in section 70 for limited liability partnerships and in section 73 for limited liability limited partnerships.

- The remaining modifications are **technical clarifications** making clear that the requirements for the name for a cooperative association are similar to the existing requirements of other business entities (such as corporations, limited liability companies and partnerships).
- **Section 4** (page 6) is a **substantive change** which provides that a foreign cooperative association may apply for a certificate of authority using a trade name which would be otherwise available to a domestic cooperative association so long as the trade name is registered under Chapter 47-25. This provision is similar to existing law for corporations, limited liability companies and partnerships.
- **Section 5** (pages 6 and 7) is a **substantive change** which provides the procedure for the revocation of a certificate of authority held by a foreign cooperative and is again now similar to the existing law used for corporations, limited liability companies and partnerships.
- **Section 6** (page 7) is a **substantive change** which establishes the same filing fee for a statement of correction as currently pertains to corporations, limited liability companies and partnerships.
- **Section 7** (page 8) is a **substantive change** which provides the procedure by which a cooperative association may correct a filed record (the same procedure as currently pertains to corporations, limited liability companies and partnerships).
- **Section 8** (page 9) is a **substantive change** which provides that certificates and certified copies issued by the Secretary of State with regard to cooperative associations may be received into evidence (the same procedure as currently pertains to corporations, limited liability companies and partnerships).
- **Section 9 through Section 24** (pages 9 through 25) pertain to the **North Dakota Business Corporation Act** (Chapter 10-19.1)
 - **Section 9** (page 9) is a **technical clarification** making clear that the definition of “officer” includes the president, treasurer or any other office elected by the corporation and is similar to its counterpart provisions in section 25 for limited liability companies and in section 40 for nonprofit corporations.

- **Section 10** (pages 9 through 11) is a **numerical change** in which subdivisions r. and s. of subsection 4 of section 10-19.1-10 are renumbered so that the content of each subdivision is in the correct numerical order.
- **Section 11** (pages 11 through 14) is a **substantive change** which provides for the use of letters or characters used in the English language as they appear in the American standard code for information interchange (ASCII) table and the ability of a business corporation to maintain its right to its name until a future of effective date of incorporation and is similar to its counterpart provisions in section 3 for cooperative associations, in section 28 for limited liability companies, in section 42 for nonprofit corporations, in section 63 for limited partnerships, in section 70 for limited liability partnerships and in section 73 for limited liability limited partnerships.
- **Section 12** (pages 14 and 15) is a **technical clarification** setting forth some of the provisions that may be contained in the bylaws of the corporation and is similar to its counterpart provision in section 31 for limited liability companies and in section 44 for nonprofit corporations.
- **Section 13** (pages 15 and 16) is a **technical clarification** making clear that directors are not counted either for voting purposes or for purposes of a quorum, when that director is the subject of a transaction in which the director has a conflict of interest and is similar to its counterpart provision in section 32 for limited liability companies and section 50 for nonprofit corporations.
- **Section 14** (pages 16 and 17) is similar to its counterpart provision in section 33 for limited liability companies and section 51 for nonprofit corporations and:
 - Is a **technical clarification** making clear that the officers are elected by the board unless the articles or bylaws provide that they are to be elected by the shareholders;
 - Is a **substantive change** which provides that, if authorized in the articles, in the bylaws or in a resolution of a board, the president may appoint one or more officers other than the treasurer; and,
 - Is a **technical clarification** making clear that “president” means “chief executive officer” and “treasurer” means “chief financial officer”.
- **Section 15** (pages 17 and 18) is a **substantive change** which provides for the removal of officers, and is similar to its counterpart provisions in section 34

for limited liability companies and in section 54 for nonprofit corporations and provides:

- That an officer appointed by the president may also be removed at any time, with or without cause, by the president.
 - That, to the extent authorized by the articles, by the bylaws or by a resolution approved by the board, the president may also remove any officer elected or appointed by the board other than the treasurer.
 - That the articles or the bylaws may provide other methods of removing an officer.
- **Section 16** (page 18) is a grammatical change only.
 - **Section 17** (page 18) is a **technical clarification** making clear that restrictions regarding the transfer or registration of transfer of securities is specifically enforceable against the holder of those securities.
 - **Section 18** (pages 18 and 19) is a **technical clarification** in which references to “annual meetings” in two places are changed to “regular meetings” (to bring this section in alignment with the rest of the chapter).
 - **Section 19** (pages 19 and 20) is a **substantive change** which provides that a corporation may maintain the records required under section 10-19.1-84 at other places within the United States other than its principal executive office, if authorized by the board.
 - **Section 20** (page 20) is a **technical clarification** making clear that a corporation may transfer its assets without shareholder approval to another entity which is, either directly or indirectly, owned by the corporation through wholly owned organizations and is similar to its counterpart provisions in section 35 for limited liability companies.
 - **Section 21** (pages 20 and 21) is a **substantive change** which provides that the Secretary of State may revoke the certificate of authority of a foreign corporation and is similar to the counterpart provisions in section 5 for cooperative associations, in section 36 for limited liability companies and in section 65 for limited partnerships:
 - If the corporation has failed to file a certificate of merger in the office of the Secretary of State;

- If the foreign corporation has failed to file a certificate of withdrawal in the office of the Secretary of State when the foreign corporation has been dissolved in its jurisdiction of incorporation; or,
 - If the foreign corporation has failed to appoint and maintain both a registered agent and a registered office in this state
- **Section 22** (page 22) is a **technical clarification** making clear who are the persons authorized to sign the annual report of business corporation.
- **Section 23** (pages 22 through 24) is a **grammatical change** and a **technical clarification** regarding the filing fees assessed by the office of the Secretary of State.
- **Section 24** (pages 24 and 25) is a **substantive change** which provides that the Secretary of State may create and disseminate any certificate or certified copy as an electronic record with the same force and effect as if produced in paper form and is similar to its counterpart provisions in section 39 for limited liability companies, in section 61 for nonprofit corporations, in section 67 for limited partnerships and in section 72 for limited liability partnerships. .
- **Sections 25 through 39** (pages 25 through 48) pertain to the **North Dakota Limited Liability Company Act** (Chapter 10-32).
 - **Section 25** (page 25) is a **technical clarification** of the definition of “manager” and is similar to its counterpart provisions clarifying the definition of “officer” in section 9 for business corporations and in section 40 for nonprofit corporations.
 - **Section 26** (pages 25 through 34) are a series of **numerical changes** in which the subdivisions of the section are re-numbered so as to be in the same numerical order as the sections within Chapter 10-32 to which they relate.
 - This section, section 10-32-7, is in effect a table of contents for the provisions that can be accomplished by a limited liability company either in its articles of organization or in its member control agreement only; or,
 - Other things that can be accomplished in its articles of organization, in its member control agreement or in its bylaws.
 - No **substantive changes** or **technical clarifications** occur.

- **Section 27** (pages 34 and 35) is a **technical clarification**, making clear that the existence of a limited liability company begins upon the date that its certificate of organization is filed or at a later date as specified in the articles of organization (as is currently allowed for all other entities).
- **Section 28** (pages 35 through 38) is a **substantive change** which provides for the use of letters or characters used in the English language and the ability of a limited liability company to maintain its right to its name until a future effective date of organization filing date and is similar to its counterpart provisions in section 3 for cooperative associations, in section 11 for business corporations, in section 42 for nonprofit corporations, in section 63 for limited partnerships, in section 70 for limited liability limited partnerships and section 73 for limited liability limited partnerships.
- **Section 29** (pages 38 and 39) is a **technical clarification** changing two references from “annual” meetings to “regular” meetings and is similar to its counterpart provisions in section 18 for business corporations.
- **Section 30** (page 39) is a **substantive change** which provides that documents required to be maintained by the limited liability company must be delivered for examination by a member who seeks to examine them at a place which is mutually agreeable to the company and to the member.
- **Section 31** (pages 39 through 41) is similar to its counterpart provisions in section 12 for business corporations and in section 44 for nonprofit corporations and is a **technical clarification** making clear:
 - That certain matters may be set forth in the bylaws of the organization; and,
 - That the bylaws may be amended as provided in the articles or bylaws and in the absence of such a provision that certain items must be amended by the members with voting rights.
- **Section 32** (pages 41 and 42) is a **technical clarification** making clear that governors are not counted, either for voting purposes or for purposes of a quorum, when that governor is the subject of a transaction in which the governor has a conflict of interest and is similar to its counterpart provisions in section 13 for business corporations and in section 50 for nonprofit corporations.
- **Section 33** (page 42) is a **substantive change** which provides for the designation of and the appointment or election of managers of a limited

liability company and is similar to its counterpart provisions in section 14 for business corporations and in section 51 for nonprofit corporations .

- **Section 34** (pages 42 and 43) is a **substantive change** which provides for the removal and appointment of managers of a limited liability company and is similar to its counterpart provisions in section 15 for business corporations and in section 54 for nonprofit corporations.
- **Section 35** (page 43) is a **technical clarification** making clear that a limited liability company may transfer its assets to another entity which is owned, either directly or indirectly, by the limited liability company through wholly owned organizations and is similar to its counterpart provisions in section 20 for business corporations.
- **Section 36** (pages 43 through 45) is a **substantive change** which provides for the revocation of a certificate of authority for a foreign limited liability company and is similar to its counterpart provisions in section 5 for cooperative associations, in section 21 for business corporations, in section 59 for nonprofit corporations and in section 65 for limited partnerships.
- **Section 37** (pages 45 through 47) is a **substantive change** regarding the fees collected by the office of the Secretary of State for the reinstatement of a certificate of authority of a foreign limited liability company whose statement of authority has been terminated.
- **Section 38** (page 47) is a **numerical change** only.
- **Section 39** (pages 47 and 48) is a **substantive change** which provides that certificates and certified copies issued by the Secretary of State electronically have the same force and effect as those produced in paper form and is similar to its counterpart provisions in section 24 for business corporations, in section 61 for nonprofit corporations, in section 67 for limited partnerships and in section 72 for limited liability partnerships.
- **Sections 40 through 61** (pages 48 through 69) pertain to the **North Dakota Nonprofit Corporation Act**.
 - **Section 40** (page 48) is a **technical clarification** of the definition of “officer” and is similar to its counterpart provisions in section 9 for officers in a business corporation and in section 25 for managers in a limited liability company.

- **Section 41** (pages 48 through 52) makes clear that provisions allowing members to vote on certain issues pertain to members with voting rights.
- **Section 42** (page 52 through 55) is a **substantive change** regarding the name of a nonprofit corporation and is similar to its counterpart in section 3 for cooperative associations, in section 11 for business corporations, in section 28 for limited liability companies, in section 63 for limited partnerships, in section 70 for limited liability partnerships and in section 73 for limited liability limited partnerships.
- **Section 43** (pages 55 and 56) are a series of **technical clarifications** making clear that the members who have a right to vote on certain issues are the members with voting rights.
- **Section 44** (pages 56 and 57) is a **technical clarification** setting for some of the provisions that may be contained in the bylaws of a nonprofit corporation and is similar to its counterpart provisions in section 12 for business corporations and in section 31 for limited liability companies.
- **Section 45** (pages 57 and 58) is a **substantive change** which provides that the remaining directors, if they have the power to elect or appoint directors, may appoint as many directors as are needed to increase the number of serving directors to the number required in the bylaws (or to the statutory minimum of three (3)).
- **Section 46** (page 58) is a **technical clarification** making clear that the members who can vote on an issue are the members with voting rights.
- **Section 47** (pages 58 through 60) is a **substantive change** which provides that the notice of a board of directors meeting must contain the substance of a proposed amendment to the articles of incorporation but otherwise need not state the purpose of the meeting unless the articles or bylaws require doing so.
- **Section 48** (page 60) is a **technical clarification** making clear that certain action by members pertains to the members with voting rights.
- **Section 49** (pages 60 and 61) is a **technical clarification** making clear that individuals appointed to a committee may be appointed by an affirmative vote of a majority of the directors present.
- **Section 50** (page 61) is a **technical clarification** making clear that neither the vote or the presence of an interested director are counted in any action to be taken when determining a quorum and is similar to its counterpart provisions

in section 13 for business corporations and in section 32 for limited liability companies.

- **Section 51** (pages 61 and 62) is a **substantive change** which provides for the designation of and the election nor appointment of the officers of a nonprofit corporation and is similar to its counterpart provisions in section 14 for business corporations and in section 33 for limited liability companies..
- **Section 52** (page 62) is a **technical clarification** making clear that individuals who are exercising the functions of an office are deemed to have been elected to that office.
- **Section 53** (page 62) is a **technical clarification** making clear that unless the articles or bylaws provide otherwise, any number of offices may be held by the same individual.
- **Section 54** (page 63) is a **substantive change** which provides for the removal of officers and is similar to its counterpart provisions in section 15 for business corporations and in section 34 for limited liability companies.
- **Section 55** (page 63) is a **technical clarification** making clear the unlimited authority of the corporation to indemnify its directors, officers or employees.
- **Section 56** (pages 63 and 64) is a **technical clarification** making clear that action by members on mergers pertains to members with voting rights.
- **Section 57** (pages 64 and 65) is a **substantive change** which provides for the procedures by which a nonprofit corporation may sell, lease, transfer, dispose of or grant a security interest in substantially all of its property and assets and is similar to the counterpart provisions for business corporations in section 10-19.1-104 and for limited liability companies in section 10-32-108.
- **Section 58** (pages 65 and 66) is a **technical clarification** making clear that voting on the proposed dissolution of a nonprofit corporation pertains to the members with voting rights.
- **Section 59** (pages 66 and 67) is a **substantive change** which provides for the revocation of certificates of authority for foreign corporations by the office of the Secretary of State and is similar to its counterpart provisions in section 5 for cooperative associations, in section 21 for business corporations, in section 36 for limited liability companies and in section 65 for limited partnerships.
- **Section 60** (pages 67 and 68) is a **grammatical change** only.

- **Section 61** (pages 68 and 69) is a **substantive change** which provides for the issuance of certificates and certified copies by the office of the Secretary of State electronically having the same force and effect as those produced in paper form and is similar to its counterpart provisions in section 24 for business corporations, in section 39 for limited liability companies, in section 67 for limited partnerships and in section 72 for limited liability partnerships.
- **Sections 62** (page 69) pertains to the North Dakota Publically Traded Corporation Act and is a **substantive change** which amends section 10-35-33 to increase the percentage of fees received by the Secretary of State that go into the general services operating fund of the Secretary of State from 10% to 20%.
- **Sections 63 through 67** (pages 69 through 76) pertain to the **North Dakota Limited Partnership Act**.
 - **Section 63** (pages 69 through 72) is a **substantive change** regarding then name of a limited partnership and is similar to its counterpart provisions in section 3 for cooperative associations, in section 11 for business corporations, in section 28 for limited liability companies, in section 42 for nonprofit corporations, in section 67 for limited partnerships, in section 70 for limited liability partnerships and in section 73 for limited liability limited partnerships.
 - **Section 64** (pages 72 through 74) is a **substantive change** which provides for the cancellation of a certificate of authority of a foreign limited partnership and sets forth the documents which must be delivered to the Secretary of State in order to accomplish the cancellation of the certificate of authority by the limited partnership.
 - **Section 65** (pages 74 and 75) is a **substantive change** which provides for the cancellation of the certificate of authority of a foreign limited partnership and is similar to its counterpart provisions in section 5 for cooperative associations, in section 21 for business corporations, in section 36 for limited liability companies and in section 59 for nonprofit corporations.
 - **Section 66** (page 75) is a **substantive change** which provides for increasing the filing fee for a certificate of authority of a foreign limited partnership from \$100 to \$110.
 - **Section 67** (pages 75 and 76) is a **substantive change** which provides that the Secretary of State may create and disseminate any certificate or certified copy as an electronic record with the same force and effect as produced in paper form and is similar to its counterpart provisions in section 24 for business corporations, in section 39 for limited liability companies, in section 61

pertaining to nonprofit corporations and in section 72 for limited liability companies.

- **Section 68** (page 76) pertains to the **North Dakota General Partnership Act** and is a **substantive change** setting forth the procedure by which a foreign general partnership converts to another organization and is the general partnership counterpart to similar sections for business corporations, for limited liability companies, for limited partnerships and for limited liability limited partnerships.
- **Sections 69 through 72** (pages 76 through 83) pertain to the **North Dakota Limited Liability Partnership Act** (Chapter 45-22).
 - **Section 69** (page 76 through 78) is a **technical clarification** deleting the need for the consent of the designated registered agent when filing the limited liability partnership registration and is consistent with all other entities (since consent by registered agents is no longer required for any entity).
 - **Section 70** (pages 78 through 81) is a **substantive changes** which provides for the use of letters or characters used in the English language and the ability of a limited liability partnership to maintain its right to its name until a future effective date of organization and is similar to its counterpart provisions in section 3 for cooperative associations, in section 11 for business corporations, in section 28 for limited liability companies, in section 42 for nonprofit corporations, in section 63 for limited partnerships and in section 73 for limited liability limited partnerships.
 - **Section 71** (page 81 through 83) is a **substantive change** which provides for the revocation of registration of a limited liability partnership which fails to file certain documents with the Secretary of State.
 - **Section 72** (page 83) is a **substantive change** which provides that certificates and certified copies issued by the Secretary of State electronically have the same force and effect as those produced in paper form and is similar to its counterpart provisions in section 24 for business corporations, in section 39 for limited liability companies, in section 61 for nonprofit corporations and in section 67 for limited partnerships.
- **Section 73** (pages 83 through 87) pertains to the **North Dakota Limited Liability Limited Partnership Act** (Chapter 45-23) and is a **substantive change** which provides for the use of letters or characters used in the English language and the ability of a limited liability limited partnership to maintain its right to its name until a future effective date of organization and is similar to its counterpart provisions in section 3 for cooperative associations, in section 11 for business corporations, in section 28 for limited liability

companies, in section 42 for nonprofit corporations, in section 63 for limited partnerships and in section 70 for limited liability partnerships.

As you can see, the legislation embodied in this bill is for the most part technical clarifications and housekeeping. I appreciate the opportunity to address your committee. If you have any questions, I will be happy to answer them.