

2013 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2110

2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2110
January 14, 2013
Job Number 17126

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to criminal history record checks of appraisers

Minutes:

Testimony Attached

Chairman Klein opened the hearing and attendance was taken.

Joe Ibach: Chairman of the North Dakota appraisers Qualifications and Ethics Board. Written Testimony attached. (1)

Chairman Klein: Made a comment about the present appraisers being grandfathered in.

Senator Sinner: Asked what they would do if the person was found to have a criminal record.

Joe: Said they abide by the real property appraiser qualifications criteria. In the criteria it does state that they would have the authority of revocation or suspension of the individual's authorization to be an appraiser. They would follow the minimum requirements.

Senator Andrist: Commented that the appraisal jobs in North Dakota aren't getting done and that it is an impediment to the growth rate in North Dakota. He asked what they were doing to solve that problem.

Joe: Said he wasn't ready for that question but gave statistics on appraisers being licensed in 2012 at 66 compared to 2010 which was 40. He stated that it was increasing but trying to get appraisers to come in from other states is the problem.

Chairman Klein: Stated that what they are doing is following federal law, the impediments are put on by the federal government and not by the state government.

Joe: Said that was correct and to do a federally related transaction, it has to be done by a licensed or certified appraiser and if it isn't done by a licensed or certified appraiser you can't sell or market the loan.

Senator Sorvaag: Asked if the federal government has guidelines, certain backgrounds that automatically disqualify or if they have the discretion to decide, as criminal history can be many different levels of violations.

Joe: Said that the background check law has been in place in North Dakota for a long time and he would go to legal counsel. As far as he understands it there will be certain limitations that they can place on an appraiser.

Senator Sinner: Asked Joe to explain the process someone must go through that wants to be an appraiser and if they are already in an apprenticeship are they subject to a background check.

Joe: Anyone that is just applying for an apprenticeship would be subject to the background check. The process would be that you must have 75 hours of approved education before you can apply for the apprentice level and you must work with a licensed appraiser for typically two years to become licensed and to be certified takes longer. Then you would take an exam.

Senator Andrist: Commented about getting people through the apprenticeship being a stumbling block because there are not enough appraisers willing to train. He also asked if this is already a federal rule why it needs to be imbedded in state rules. Asked if there could be a secondary classification where people could work in the state where a federal program isn't involved.

Joe: Said that North Dakota is a voluntary state as to having to be licensed in appraising but if you are not licensed you will not be able to take that appraisal to the bank but if it is privately funded you wouldn't need to be licensed.

Chairman Klein: Closed the hearing and asked for the roll call vote to be taken.

Senator Laffen: Motioned for a do pass.

Senator Murphy: Seconded the motion.

Yes: 7 No: 0

Absent: 0

Senator Sinner: Will carry the bill. (Senator Sorvaag was listed as the carrier on the standing committee report.)

FISCAL NOTE
Requested by Legislative Council
12/21/2012

Bill/Resolution No.: SB 2110

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill allows the ND real estate appraiser qualifications and ethics board to require real estate appraiser applicants for permits to have a state and nationwide criminal history record check. All costs associated with a criminal record check are the responsibility of the applicant.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The impact of this bill is estimated to be less than \$5,000.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*



Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 701-328-3622

Date Prepared: 12/21/2012



Roll Call Vote #: _____ Date: 1/14/13

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2110**

Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Senator Laffen Seconded By Senator Murphy

Senators	Yes	No	Senator	Yes	No
Chairman Klein	✓		Senator Murphy	✓	
Vice Chairman L Laffen	✓		Senator Sinner	✓	
Senator Andrist	✓				
Senator Sorvaag	✓				
Senator Unruh	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Sinner

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

REPORT OF STANDING COMMITTEE

SB 2110: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2110 was placed on the Eleventh order on the calendar.

2013 HOUSE INDUSTRY, BUSINESS, AND LABOR

SB 2110

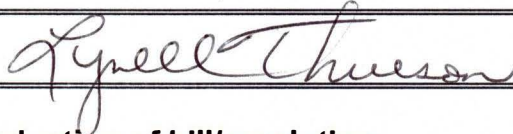
2013 HOUSE STANDING COMMITTEE MINUTES

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

SB 2110
March 6, 2013
Job 19481

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subdivision to subsection 2 of section 12-60-24 and a new section to chapter 43-23.3 of the North Dakota Century Code, relating to criminal history record checks of appraisers.

Minutes:

Testimony, attachment 1

Hearing opened.

00:30 Joe Ibach, Chairman of the North Dakota Real Estate Appraiser Qualifications and Ethics Board: Provided written testimony, attachment 1; summarized main points.

5:15 Representative Amerman: Are the criminal background checks confidential?

Joe Ibach: Legal counsel is working on this with us. We would follow what the state already does relative to background checks for any other agency.

Chairman Keiser: There is a fiscal note. The applicant has to pay the fee. Why do we have 5000?

Joe Ibach: You are correct as to why the fiscal note was attached. Legislative Council set the fee at 5000, not knowing how it was going to be run. This will be paid by the applicant, not by us or where we have to fund it.

Chairman Keiser: But there would be on behalf of the board some additional paperwork, time, and allocation to make sure that processing the new applicants gets through this process.

Joe Ibach: Yes, we are a self-sufficient board. All of our expenses are paid by our members and it wouldn't be a fiscal detriment at all.

7:03 Representative Frantsovog: If an appraiser comes from out of state, do they have to go through this background check?

Joe Ibach: They would not. This is for new applicants. We have reciprocity with all states. If they come in with reciprocity, my understanding is that they would not be a new applicant just for a permit in our state, they have already gone through whatever their state requires and their state will have the same requirements our state has. They would have that background check done at some point.

Support:

Opposition:

Neutral:

Hearing closed.

Representative Kreun: I move a Do Pass.

Second by Representative Gruchalla.

A roll call vote was taken.

Yes = 13

No = 1

Absent = 1

Carrier: Representative Kreun

FISCAL NOTE
Requested by Legislative Council
12/21/2012

Bill/Resolution No.: SB 2110

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- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill allows the ND real estate appraiser qualifications and ethics board to require real estate appraiser applicants for permits to have a state and nationwide criminal history record check. All costs associated with a criminal record check are the responsibility of the applicant.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The impact of this bill is estimated to be less than \$5,000.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

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Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 701-328-3622

Date Prepared: 12/21/2012

Date: 3-6-13Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2110**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment☐ Rerefer to Appropriations ☐ Reconsider ☐ Consent CalendarMotion Made By Kreun Seconded By Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Bosch	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson	✓	
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson		ab			
Rep. Jim Kasper		✓			
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigasaa	✓				

Total Yes 13 No 1Absent 1Floor Assignment Kreun

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

REPORT OF STANDING COMMITTEE

SB 2110: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (13 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING).
SB 2110 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2110

SENATE BILL NO. 2110

Testimony of Joe Ibach, Chairman of the North Dakota Real Estate Appraiser Qualifications and Ethics Board

January 14, 2013

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

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

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

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

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

Again, the Appraisal Qualifications Board (AQB) of the Appraisal Foundation establishes minimum requirements for real property appraisers to obtain licensure or certification. All States are required to implement appraiser licensing and certification requirements that are no less stringent than those established by the AQB.

On December 9, 2011, the AQB adopted changes to the Real Property Appraiser Qualification Criteria. These changes represent the minimum national requirements that each state must implement no later than January 1, 2015.

The change in which the ND Appraiser Board needs to address immediately is to include the "requirement" that all candidates applying for a real property appraiser credential undergo background screening. Specifically, the AQB Real Property Appraiser Qualification Criteria states:

"All candidates for a real property appraiser credential must undergo background screening. State appraiser regulatory agencies shall, at a minimum, obtain fingerprints of the individual, in digital form if practicable, and an appropriate identifying information for submission to the Federal Bureau of Investigation and/or any governmental agency or entity authorized to receive such information in connection with a State and national background check...."

The "Criteria" set by the AQB further states:

"State appraiser regulatory agencies must ensure that all candidates for a real property appraiser credential do not possess a background that could call into question public trust. State appraiser regulatory agencies must take proper steps to ensure those applicants found to possess a background which calls into question the applicant's ability to maintain public trust are not issued a real property appraiser credential."

Currently, ND statute does not give the ND Appraiser Board the authority to require a background check as part of the application process to obtain a license or certification. To meet the minimum national level requirements set by the AQB, a change in ND Statute is required and is then being introduced by the ND Appraiser Board. In order for the ND Appraiser Board to remain in compliance with the requirements set by the national level, the Board must implement the requirement of background checks for applicants for licensure or certification by January 1, 2015.

The North Dakota Appraiser Board then recommends a "Do Pass" of Senate Bill 2110.

SENATE BILL NO. 2110

Testimony of Joe Ibach, Chairman of the North Dakota Real Estate Appraiser Qualifications and Ethics Board

①
3-6-2013
SB 2110

March 6, 2013

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

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

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On December 9, 2011, the AQB adopted changes to the Real Property Appraiser Qualification Criteria. These changes represent the minimum national requirements that each state must implement no later than January 1, 2015.

The change in which the ND Appraiser Board needs to address immediately is to include the "requirement" that all candidates applying for a real property appraiser credential undergo background screening. Specifically, the AQB Real Property Appraiser Qualification Criteria states:

"All candidates for a real property appraiser credential must undergo background screening. State appraiser regulatory agencies shall, at a minimum, obtain fingerprints of the individual, in digital form if practicable, and an appropriate identifying information for submission to the Federal Bureau of Investigation and/or any governmental agency or entity authorized to receive such information in connection with a State and national background check...."

The "Criteria" set by the AQB further states:

"State appraiser regulatory agencies must ensure that all candidates for a real property appraiser credential do not possess a background that could call into question public trust. State appraiser regulatory agencies must take proper steps to ensure those applicants found to possess a background which calls into question the applicant's ability to maintain public trust are not issued a real property appraiser credential. State appraiser regulatory agencies shall not issue a real property appraiser credential if:

- 1. The applicant has had an appraiser license or certification revoked in any governmental jurisdiction with the five (5) year period immediately preceding the date of application.*
- 2. The applicant has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, or foreign court:*
 - a. during the five (5) year period immediately preceding the date of the application for licensing or certification; or*
 - b. at any time preceding the date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.*

3. *The applicant has failed to demonstrate character and general fitness such as to command the confidence of the community and to warrant a determination that the appraiser will operate honestly, fairly, and efficiently within the purposed of these Criteria."*

The AQB Criteria outlines a number additional background issues State Agencies should evaluate prior to issuing a permit. These issues include 1) convictions of any criminal offense involving dishonesty, breach of trust, money laundering etc., 2) civil judicial actions in connection with financial services-related activities or 3) actions or orders taken by a state, federal or foreign regulatory agency that found the individual to have made false statements, been dishonest or unethical etc.

A listing of these background issues that the Board will need to consider if an applicant is found to have criminal history will be detailed in rules and regulations.

As proposed in SB 2110, the Board would restrict the requirement of background checks to "new" applicants, unless there is cause to perform a background check on an existing credentialed appraiser.

Currently, ND statute does not give the ND Appraiser Board the authority to require a background check as part of the application process to obtain a license or certification. To meet the minimum national level requirements set by the AQB, a change in ND Statute is required and is then being introduced by the ND Appraiser Board. In order for the ND Appraiser Board to remain in compliance with the requirements set by the national level, the Board must implement the requirement of background checks for applicants for licensure or certification by January 1, 2015.

The North Dakota Appraiser Board then recommends a "Do Pass" of Senate Bill 2110.