

2017 SENATE JUDICIARY

SB 2276

# 2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Fort Lincoln Room, State Capitol

SB 2276  
2/1/2017  
27716

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

Relating to judgments imposing fines or assessing costs.

Minutes:

Testimony attached #

1,2,3

**Chairman Armstrong** called the committee to order on SB 2276. All committee members were present.

**Chairman Armstrong's** Amendment was passed out. (see attachment 3)

**Rich Wardner, North Dakota State Senator of District 37, Senate Majority Leader**, introduced and briefly testified in support of the bill. Senator Wardner went over the Proposed Amendment that was passed out. (see attachment 1)

**Chairman Armstrong:** "Just for everyone to know, municipal courts are for limited jurisdiction, they only deal with Class B Misdemeanors. So maximum penalty of fines and fees is 1500 dollars and maybe some costs associated with that. These are small dollar amounts and they just want to have the ability to collect these costs in the same manner that they collect civil judgement. It creates a way for them to do it which they are already familiar with."

**Stephany Dassinger, Deputy Director and Staff Attorney for the North Dakota League of Cities**, testified in support of the bill. No written testimony. Stephany briefly discussed the process of collecting fines and fees in the court system.

"We support this bill and recommend a Do Pass."

**Wayne Stenhjem, Attorney General of North Dakota**, testified in support of the bill. No written testimony.

"In 2014, my office learned that there are some serious problems with the Dickinson State University Foundation, and that the Foundation was insolvent and they were not able to meet the payment of their bills. So I applied to the court and we had a receiver appointed to help them bring down their affairs and get the bills paid off and so forth.

Eventually, we noticed a potential problem with our statutes and that is that one section of our law says that people who give a restricted gift to a University, that, that restriction has

to be honored and you can't pledge that money as collateral for a loan, but there's another section that talks about dissolving foundations and it doesn't mention anything that happens to those restricted gifts. It is the position of my office that those people who in good faith gave money for scholarships and other restricted purposes should have the guarantee that their gifts will be honored. This is the position that the state of North Dakota is taking. This Amendment that we are proposing clarifies that, and I think it's important to note in the minutes here that this is a position that the state of North Dakota is taking, it is a position that we have always taken, and will continue to take, but I think that it is wise to have you - members of the legislation - as long as you are here, to clarify that in the statute.

I outlined for you what the proposed Amendments will do. We did intend to have this as a separate bill, but it just didn't work out that way. It's still early in the process though."

**Senator Nelson:** "Mr. Chairman, are we looking at your Amendments or their Amendments? They're both the same but you did the shortcut method."

**Chairman Armstrong:** "When we offer we will offer mine, when they're talking we will look at theirs."

**Parrell D. Grossman, Director of the Consumer Protection and Antitrust Division Office of the Attorney General**, testified in support of the bill. (see attachment 2)

"The Attorney General's Office recommends a Do Pass on this bill with the inclusion of the proposed Amendments."

**Chairman Armstrong** closed the hearing on SB 2276.

**Senator Luick** motioned to Adopt the Amendment. **Senator Larson** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0  
The motion carried.

**Senator Luick** motioned Do Pass as Amended. **Senator Nelson** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0  
The motion carried.

**Chairman Armstrong** carried the bill.



PROPOSED AMENDMENTS TO SENATE BILL NO. 2276

Page 1, line 1, after "reenact" insert "subsection 7 of section 10-33-21, section 10-33-100, subsection 4 of section 10-33-108, and"

Page 1, line 2, after "to" insert "the prohibition of the diversion of restricted assets, the priority of those assets in a dissolution, and"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 7 of section 10-33-21 of the North Dakota Century Code is amended and reenacted as follows:

7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income. A corporation may not pledge as collateral, grant a security interest in, or borrow from assets received and held for a special use or purpose expressed or intended by the original donor.

**SECTION 2. AMENDMENT.** Section 10-33-100 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-100. Procedure in dissolution.**

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible to collect or make provision for the collection of debts owing to the corporation and to pay or make provision for the payment of debts, obligations, and liabilities of the corporation according to their priorities.
2. Notwithstanding section 10-33-94, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the members, subject to sections 10-33-95 and 10-33-122.
3. ~~Property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation~~ must be distributed under section 10-33-105.

**SECTION 3. AMENDMENT.** Subsection 4 of section 10-33-108 of the North Dakota Century Code is amended and reenacted as follows:

4. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge of:
  - a. Assets received and held for a special use or purpose must be distributed pursuant to subsection 2 of section 10-33-105;



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2 of 2
- b. The costs and expenses of the proceedings, including attorney's fees and disbursements;
  - b-c. Debts, taxes, and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;
  - e-d. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried workforce safety and insurance coverage, as provided by law, at the time the injury was sustained;
  - e-e. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
  - e-f. Other claims duly proved and allowed."

Renumber accordingly

**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2276**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 17.0659.01001

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Senator Luick Seconded By Senator Larson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Osland	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2276**

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Motion Made By Senator Luick Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Osland	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Chairman Armstrong

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



**REPORT OF STANDING COMMITTEE**

**SB 2276: Judiciary Committee (Sen. Armstrong, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2276 was placed on the Sixth order on the calendar.

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  - a. Assets received and held for a special use or purpose must be distributed pursuant to subsection 2 of section 10-33-105;
  - b. The costs and expenses of the proceedings, including attorney's fees and disbursements;
  - ~~b-c.~~ Debts, taxes, and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;

- e-d. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried workforce safety and insurance coverage, as provided by law, at the time the injury was sustained;
- d-e. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
- e-f. Other claims duly proved and allowed."

Renumber accordingly

**2017 HOUSE JUDICIARY**

**SB 2276**



# 2017 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

SB 2276  
3/15/2017  
29245

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

Relating to the prohibition of the diversion of restricted assets, the priority of those assets in a dissolution, and judgments imposing fines or assessing costs.

**Minutes:**

1,2

**Chairman K. Koppelman:** Opened the hearing on SB 2276.

**Senator Wardner:** Introduced the bill. This was put in for our municipal judge in Dickinson. It has to do with the imposition of fines or assessed costs and the judgement is by order of the municipal court and the judgement is enforceable by execution in the same manner as provided in the judgement for money in a civil action and on the words basically that they can collect. There is another bill and I am on it. We tacked in on this bill and it deals with the issues with the foundation at Dickinson State. There were amendments put on, but that is probably going to be the main part of this bill. This money must be used on what it has been given for.

**Representative Klemin:** Since this is a combination bill; which sections apply to which issue?

**Senator Wardner:** The first part is on the foundation stuff. Section 4 is the municipal judge; so basically it is the original bill.

**Representative Vetter:** So Section 4; you are talking about the means like if I sue somebody and I win a judgement; you can use all the same techniques from a criminal so you can use a levy and have the sheriff collect things that are like a judgement.

**Senator Wardner:** Yes most of this has to do with the city judge imposes a fine upon someone for speeding for example.

**Representative Jones:** How much trouble to we have for these judges to collect these?

**Senator Wardner:** The judges were irritated about it, but I don't see them here? These municipal judges are busy. These municipal judges also have law practices that they are busy with. I think we can help them out here.

**Representative Nelson:** Is this just when the judge levees the fine or would it also apply to municipal traffic fines where you don't actually go to court?

**Senator Wardner:** This has to do with the municipal court.

**Chairman K. Koppelman:** Going over the bill. The bill says assets that are received and held for special use or purpose must be distributed pursuant to subsection 2 of section 10-33-105. Does that deal specifically with foundations?

**Senator Wardner:** Bankers were uneasy with that so they have worked with the Attorney General's office because they have the Dickinson old foundation in receivership and they worked out language so you will get an amendment to take care of all of that.

**Representative Paur:** On page 2, Section 4; didn't subsection 1 already cover municipal judges?

**Senator Wardner:** That is the way counsel did it for us so you think it repeats itself?

**Representative Paur:** Yes. Subsection 1 you added district court so you restricted it there.

**Senator Wardner:** In the original bill it talks about the judgement for fine or cost. Maybe district court needed it too. That is the way they did it.

**Parrell Grossman, Director, Consumer Protection & Antitrust Division; Attorney General's Office:** (#1) Read testimony. (stopped 23:30)

**Representative Klemin:** So there is a conflict between voluntary and involuntary donations? What principal of statutory structure is the Attorney General relaying on under law to argue that these donations should be treated the same regardless of whether it was voluntary or involuntary?

**Parrell Grossman:** When you read the statute as a whole; with the other statutes that I referenced that do generally refer to the restricted nature of assets without talking in those specific sections about whether it is voluntary or involuntary I think is one good argument. We don't think the legislature could have possibly intended this particular result. It is non-sensible that you would treat the two types of dissolutions differently. I think it is just an oversight. Minnesota has the same law.

**Representative Klemin:** The legislature doesn't intent assert results. Is that what you are saying?

**Parrell Grossman:** We don't think the legislature intended these particular results.

**Vice Chairman Karls:** Is this DSU's get out of jail card?



**Parrell Grossman:** No it is not. It is our possession that as we move forward in this law suit's that these assets do have a priority over creditors and can't be diverted. This is making sure in the future there is no litigation and we don't want a repeat of these circumstances.

**Chairman K. Koppelman:** I don't see anything in the bill that would have retroactivity or an emergency clause so it is not intend to apply to pending litigation?

**Parrell Grossman:** We think the law is already there so we are clarifying it.

**Representative Paur:** You said restricted assets should never be diverted. It causes confusion, but you have temporary restriction in here? Isn't that causing confusion?

**Parrell Grossman:** We have drawn a distinction between permanently restricted funds like college endowments where they say only the principal remains untouched and the interest can be used to fund scholarships for students and faculties; but there are all kind of circumstances where temporarily restricted funds may be given to a non-organization. There are all kinds of circumstances where a donor may not express any probation and there may be nothing to say you can't borrow against those particular funds.

**Representative Paur:** Can you change that; a donor?

**Parrell Grossman:** I don't know if heirs could do that. There might be circumstances with a living donor where they could change those terms.

**Representative Klemin:** On the issue of whether this is retroactive or not; I can see the situation may be different for Dickinson State University Foundation which is in receivership now. We need a clear line that is established that this applies to donations they received and not ones they got after August 1, 2017. What is the effect of this change on donations already received by solvent foundations?

**Parrell Grossman:** This would apply to any ongoing transactions that they should not be pledging these funds.

**Chairman K. Koppelman:** If we pass this law is it your opinion that a currently solvent foundation which is in good fiscal health would be found by these restrictions should it dissolve five years from now?

**Parrell Grossman:** Yes that restriction going forward would be subject to that.

**Representative Paur:** If NDSU Foundation has pledged restricted funds; what do they do now if they have pledged them as collateral?

**Parrell Grossman:** They should make alternative arrangements. If you have pledged funds be sure you make sure they are not at risk.

**Representative Klemin:** On temporary and permanent restriction; is there a duty to inform the donor what you do with these funds?



**Parrell Grossman:** It would be a question if the donors have already allowed that. By the way the law allows you pledge or borrow from these temporary restricted funds. Either the donor has granted that permission or they haven't. I think the organization should inform those donors that you are taking some of those actions if it wasn't discussed at a prior time.

**Chairman K. Koppelman:** As I read the amendment this is what I saw; you are a college foundation and you want to contribute to build that new building. I donate to you and say I am pledging these funds and they are intended for the purpose of building that new building; so the non-profit corporation collects donations and they may not have enough on hand to actually build that building; but they have enough to make a down payment and borrow some money and do whatever else is necessary to build the building; they could use my donation as collateral against a loan to build that building because it is in harmony to what I donated. Is that the intent?

**Parrell Grossman:** Yes that is right.

**Representative Klemin:** We are talking about scholarships. That would seem to not be according to the donor's restrictions; maybe it would be prudent to include full disclosure on this amendment. Maybe we should put it in this amendment?

**Parrell Grossman:** We would be alright with that. I think people should know how their donations are going to be used.

**Chairman K. Koppelman:** If I donated money for the scholarship fund; then I don't think this would allow for that.

**Parrell Grossman:** We started with a broad probation with restricted funds. These non-profit organizations will need some flexibility with the temporarily restricted funds like the fund drive you talked about. We wanted to make sure there was full disclosure to the financial institutions too so they were carried on the record.

**Chairman K. Koppelman:** I hesitate putting our charitable institutions in the position. I think it is clear. In your amendment second to the last line we should have a comma after collateral and the word grant should not be capitalization. This is amending 10-33-21 is all about non-profit corporations; there might be another section within 10-33 that makes it clearer; we need to look at that.

**Parrell Grossman:** We could take it out of there. It seemed like the easiest fix at the time.

**Chairman K. Koppelman:** I was also looking at 10-33-95, which you mentioned earlier.

**Parrell Grossman:** We could put it somewhere else. I will check on this.

**Representative Magrum:** Does this cover parks?

**Parrell Grossman:** It talks about donations that are given for a specific purpose shouldn't be diverted. That is already in the law. We would have the chance to bring that to the court and correct that.

**Chairman K. Koppelman:** It would have to be a non-profit corporation that owned the parks.

**Parrell Grossman:** That is probably covered in a number of ways. This is probably when a corporation is being dissolved.

**Chairman K. Koppelman:** Back to the non-profit corporation; would a healthy non-profit corporation is ongoing, if they misuse funds these sections of code would protect against that as well.

**Parrell Grossman:** That is correct. Funds given for a specific purpose should be used for them.

**Chairman K. Koppelman:** Is there some duty on the part of financial institutions to verify the availability to accept them as collateral.

**Parrell Grossman:** I am reluctant to answer that because of the ongoing litigation.

**Jack McDonnell: Independent Community Banks of ND:** This bill is confusing. They are trying to get it the municipal court to do it on its own within having to move it up to the district court.

**Representative Klemin:** So as a judgement lien on real property in the municipal court docket would have the same effect as a judgement entry in the district court docket? Is that a given?

**Jack McDonnell:** Municipal court judgement have the same authority as far as judgements are concerns. This may make it clearer.

**Representative Klemin:** Maybe we should put this language somewhere else to cover everything in the century code.

**Jack McDonnell:** You may be correct.

**Chairman K. Koppelman:** When you talk about the title searches. There are other searches like mechanic's liens that aren't necessarily formulized by the district court.

**Representative Klemin:** In order to give real effect to what is intended here the municipal court is treated the same way as a district court then it is going to have to be a lien on real property.

**Stephanie Dassinger, ND League of Cities: (#2) (57:48-59:08)** The jurisdictions of municipal courts is limited to imposing fines and fees of \$1000 so we are not talking about huge fines being imposed.



**Representative Klemin:** The real judgement comes when it is sold and the buyer wants to be sure all the liens including judgement liens are taken care of and released from that particular property. If the municipal court is really interested in getting paid someday on these fines and costs that they would want to have their judgement be a lien on real property, the same as a district court judgement.

**Stephanie Dassinger:** I don't think they would be opposed to that. We would support a change that would add the ability for municipal courts to have a lien on real property.

**Representative Klemin:** Right now it is in the county where the judgement was entered. It can be transferred to other counties as well.

**Chairman K. Koppelman:** Language of the bill was aimed at collection; rather than obtaining a long term interest in the property.

**Representative Jones:** The sheriff is already being paid. Are you talking about an additional fee?

**Stephanie Dassinger:** It would be an additional fee for execution of judgements.

**Chairman K. Koppelman:** That is common practice.

**Representative Klemin:** Under the existing law if the judgement is entered under district court the execution of that judgement it is execution of that judgement is issued by the clerk of the district court. Under this new change is that execution going to be issued by the clerk of the municipal court to the sheriff to go out and levy on property of the debtor?

**Stephanie Dassinger:** This change is that it would be the municipal court that sealing that judgement and issuing the sheriff to go collect the property.

**Representative Klemin:** You are not providing procedures on how to do this?

**Stephanie Dassinger:** You may be right. I need to take a look at that.

**Marilyn Foss, General Counsel to ND Bankers Association:** (1:03:44) It would preclude our banks from lending for the local hospital or agencies that are building homes for troubled children for local people. My question for Mr. Grossman, I don't take the position banks are seeking to have restricted assets as collateral, but how are they supposed to know what is what. A couple of CPA firms working with accountants who do non-profit corporation accounting and talking to them on what our goal was; to have a mechanism for banks to be able to look, that the non-profits being run generally by honest people would follow the directive to designation as temporary restrictive or permanently restricted that the disclosure would we be made on a financial statement; which the bank could obtain and see. The Accounting Standards board would now apply and require these standards be made. Discussed background on non-profit and accounting standards and temporary and permanently restricted situations. We think that gives our banks the ability to see what is available for collateral and to move forward that way.



**Representative Klemin:** I am concerned that the donor doesn't know what is going on.

**Marilyn Foss:** We are working with non-profits that are following the rules. Are charities really using donated funds for the purposes they were donated has resulted in the non-profits becoming more sensitive about getting the intent of the donor in writing? Certainly for substantial donations.

Recessed.

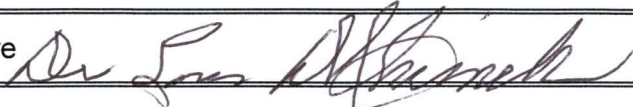
# 2017 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

SB 2276  
3/15/2017 PM  
29280

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

Relating to the prohibition of the diversion of restricted assets, the priority of those assets in a dissolution, and judgements imposing fines or assessing costs.

**Minutes:**

**Chairman K. Koppelman:** Reopened the hearing on SB 2276.

**Dana Schaar Johrer, Executive Director of the NDANO:** Current law and best practices recommended by NDANO already requires non-profit to send written acknowledge to all donors who make contribution of \$250 or more in a calendar year. Charitable non-profits must also do annual reports with the ND Secretary of State and the IRS so must already provide information and activities for the use of charitable funds. Exercise caution on adding more instruction to non-profit charities.

**Representative Klemin:** What about sending the acknowledge of the donation?

**Dana Johrer:** It is an acknowledgement of the donation and the funds are being used for the purpose for which it was donated.

**Representative Klemin:** I am concerned about the person donating money being disclosed that this could be in either a temporary or permanent account. How do you think this should be handled?

**Dana Johrer:** I think the higher donation levels they are contributing to the operating of the organization. I think there is already a lot of conversation between donors is what is already happening, particularly when it is going to restricted funds.

**Representative Klemin:** If you are dealing with someone who is not going to go out and hire an attorney; but I get one or two requests for donations one or two times a day in the mail. If I chose to do that and I send them \$1000; should I have a right to know that they are going to use that for collateral for a loan if it is not a capitol campaign?

**Dana Johrer:** I don't think for those kind of dollar amounts are going to be used for loans necessarily, but I think that would be on the donor to be able to do that.

**Representative Klemin:** This doesn't cover unrestricted at all. What level do you think there should be some disclosure to a donor or couldn't there be?

**Dana Johrer:** After the donation is made there is a requirement to provide a written notice if it is \$250 or more in a calendar year.

**Chairman K. Koppelman:** How often does this come up?

**Dana Johrer:** I wouldn't have any idea. In salutations you have to explain what you are wanting the money for. It has to be clear what they would be used for in the organization.

Opposition: None

Neutral: None

Hearing closed.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

SB 2276  
3/20/2017  
29460

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to the prohibition of the diversion of restricted assets, the priority of those assets in the dissolution, and judgements imposing fines or assessing costs.

Minutes:

**Chairman K. Koppelman:** Opened the meeting on SB 2276.

**Motion Made to amend by removing Section 4 by Representative Klemin: Seconded by Representative Vetter**

Discussion:

**Representative Klemin:** This section 4 is different than the other sections. Senator Wardner explained he tacked it on to this other bill because he forgot about it. It allows municipal court to enter a judgement in municipal court and to enforce it by execution the same as a money judgement in a civil action; which is what can be done now by district court. They can already enter that judgment in district court and procedure to execute on that judgement as a district court judgement. We already have rules and procedures in place to cover this now. In municipal court there is nothing. This is my opinion that it is totally unworkable. A solution is what they have been doing. No one appeared from the municipal courts to tell us anything about this other than the prime sponsor, who said he didn't know.

**Representative Paur:** It appears to me if we don't take it out they won't know what to do.

**Representative Vetter:** I don't think it belongs there.

**Voice Vote Carried.**

**Motion Made to move the Grossman amendment by Rep. Paur; Seconded by Rep. Karls. We are removing a corporation may not on page 1, line 10; and removing lines 11 and 12 and inserting this language in place of that.**



**Voice Vote Carried.**

**Do Pass as Amended by Representative Roers Jones: Seconded by Rep. Blum**

Discussion:

**Roll Call Vote: 15 Yes 0 No 0 Absent Carrier: Rep. Paur**

Closed.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

SB 2276  
3/28/2017  
29740

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



**Explanation or reason for introduction of bill/resolution:**

**Minutes:**

1

**Chairman K. Koppelman:** Opened the meeting on SB 2276. (#1) proposed amendment. This bill was on the floor calendar and then pulled back. That was because when Kelly took it to the Legislative Counsel they told her they were concerned about the amendment that Harold Grossman had given us with respect to the wording. It had wording that talked about the financial accounting standards board. The counsel was concerned that it might be an unconstitutional delegation of legislative authority to an outside group. This is basically the same amendment inserts language and basically just says generally accepted accounting principles.

**Motion Made to reconsider our action by Rep. Karls; Seconded by Representative Vetter:**

Discussion: None

**Roll Call Vote 14 Yes 0 No 1 Absent**

**Motion Made to Move the amendment 17.0659.02002 by Rep. Vetter; Seconded by Rep. Klemin**

Discussion:

**Voice vote carried.**

**Do Pass as Amended by Rep. Paur; Seconded by Rep. Satrom**

Discussion: None

**Roll Call Vote: 14 Yes 0 No 1 Absent Carrier: Rep. Paur**

House Judiciary Committee

SB 2276

March 28, 2017

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Closed.



ENGROSSED SENATE BILL NO. 2276 PROPOSED AMENDMENTS  
HOUSE JUDICIARY COMMITTEE  
KIM KOPPELMAN, CHAIRMAN  
MARCH 15, 2017

PRESENTED BY  
PARRELL D. GROSSMAN, DIRECTOR  
CONSUMER PROTECTION & ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL

Page 1, line 10, remove "A corporation may not"

Page 1, remove lines 11 and 12 and insert immediately thereafter "All assets received by a corporation from donors for special use or purpose must be designated as temporarily restricted or permanently restricted in accordance with the applicable Financial Accounting Standards Board codification and disclosed on the corporation's financial statements. A corporation may pledge as collateral, grant a security interest in, or borrow from assets initially designated as temporarily restricted only for such purposes that are in accordance with the donor's restrictions. A corporation may not pledge as collateral. Grant a security interest in, or borrow from assets designated as permanently restricted assets."

Renumber accordingly

3/20/17 DA

17.0659.02001  
Title.03000

Adopted by the Judiciary Committee

March 20, 2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2276

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

Page 1, line 2, remove ", and section 29-27-02"

Page 1, line 3, replace the comma with "and"

Page 1, line 4, remove ", and judgments imposing fines or assessing costs"

Page 1, line 10, remove "A corporation may not"

Page 1, replace lines 11 and 12 with "All assets received by a corporation from donors for special use or purpose must be designated as temporarily restricted or permanently restricted in accordance with the applicable financial accounting standards board codification and disclosed on the corporation's financial statements. A corporation may pledge as collateral, grant a security interest in, or borrow from assets initially designated as temporarily restricted only for purposes that are in accordance with the donor's restrictions. A corporation may not pledge as collateral, grant a security interest in, or borrow from assets designated as permanently restricted assets."

Page 2, remove lines 21 through 30

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2276

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

Page 1, line 2, remove ", and section 29-27-02"

Page 1, line 3, replace the comma with "and"

Page 1, line 4, remove ", and judgments imposing fines or assessing costs"

Page 1, line 10, remove "A corporation may not"

Page 1, replace lines 11 and 12 with "All assets received by a corporation from donors for special use or purpose must be designated as temporarily restricted or permanently restricted in accordance with the applicable generally accepted accounting principals and disclosed on the corporation's financial statements. A corporation may pledge as collateral, grant a security interest in, or borrow from assets initially designated as temporarily restricted only for purposes that are in accordance with the donor's restrictions. A corporation may not pledge as collateral, grant a security interest in, or borrow from assets designated as permanently restricted assets."

Page 2, remove lines 21 through 30

Renumber accordingly



3/28/17 DO

17.0659.02003  
Title.04000

Adopted by the House Judiciary Committee

March 28, 2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2276

In lieu of the amendments as printed on pages 1050 and 1051 of the House Journal, Engrossed Senate Bill No. 2276 is amended as follows:

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

Page 1, line 2, remove ", and section 29-27-02"

Page 1, line 3, replace the comma with "and"

Page 1, line 4, remove ", and judgments imposing fines or assessing costs"

Page 1, line 10, remove "A corporation may not"

Page 1, replace lines 11 and 12 with "All assets received by a corporation from donors for special use or purpose must be designated as temporarily restricted or permanently restricted in accordance with the applicable generally accepted accounting principles and disclosed on the corporation's financial statements. A corporation may pledge as collateral, grant a security interest in, or borrow from assets initially designated as temporarily restricted only for purposes that are in accordance with the donor's restrictions. A corporation may not pledge as collateral, grant a security interest in, or borrow from assets designated as permanently restricted assets."

Page 2, remove lines 21 through 30

Renumber accordingly

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2276

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Remove Section 4

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Klemin Seconded By Rep. Vetter

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

0  
Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Rep.

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

**Voice vote carried.**

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2276

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: **We are removing a corporation may not on page 1, line 10; and removing lines 11 and 12 and inserting this language in place of that.**

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Paur Seconded By Rep. Karls

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

0  
Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

**Voice vote carried**



**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2276**

House **Judiciary** Committee

☐ Subcommittee

Amendment LC# or Description: **17.0659.02001**

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Roers Jones Seconded By Rep Blum

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	X		Rep. Hanson	X	
Vice Chairman Karls	X		Rep. Nelson	X	
Rep. Blum	X				
Rep. Johnston	X				
Rep. Jones	X				
Rep. Klemin	X				
Rep. Magrum	X				
Rep. Maragos	X				
Rep. Paur	X				
Rep. Roers-Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter	X				

0  
Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep. Paur

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

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2276

House Judiciary

Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☒ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Karls Seconded By Rep. Vetter

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

0  
Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep. \_\_\_\_\_

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

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2276

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 17.0659.02002

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Vetter Seconded By Rep. Klemin

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

0  
Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Rep. \_\_\_\_\_

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

*Voice Vote Carried*



## 2017 HOUSE STANDING COMMITTEE

## ROLL CALL VOTES

BILL/RESOLUTION NO. 2276

House Judiciary

Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
 Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Paur Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

0  
 Total (Yes) 14 No 0

Absent \_\_\_\_\_

Floor Assignment Rep. Paur

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

**REPORT OF STANDING COMMITTEE**

**SB 2276, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2276 was placed on the Sixth order on the calendar.

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

Page 1, line 2, remove ", and section 29-27-02"

Page 1, line 3, replace the comma with "and"

Page 1, line 4, remove ", and judgments imposing fines or assessing costs"

Page 1, line 10, remove "A corporation may not"

Page 1, replace lines 11 and 12 with "All assets received by a corporation from donors for special use or purpose must be designated as temporarily restricted or permanently restricted in accordance with the applicable financial accounting standards board codification and disclosed on the corporation's financial statements. A corporation may pledge as collateral, grant a security interest in, or borrow from assets initially designated as temporarily restricted only for purposes that are in accordance with the donor's restrictions. A corporation may not pledge as collateral, grant a security interest in, or borrow from assets designated as permanently restricted assets."

Page 2, remove lines 21 through 30

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2276, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2276  
was placed on the Sixth order on the calendar.

In lieu of the amendments as printed on pages 1050 and 1051 of the House Journal,  
Engrossed Senate Bill No. 2276 is amended as follows:

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

Page 1, line 2, remove ", and section 29-27-02"

Page 1, line 3, replace the comma with "and"

Page 1, line 4, remove ", and judgments imposing fines or assessing costs"

Page 1, line 10, remove "A corporation may not"

Page 1, replace lines 11 and 12 with "All assets received by a corporation from donors for special use or purpose must be designated as temporarily restricted or permanently restricted in accordance with the applicable generally accepted accounting principles and disclosed on the corporation's financial statements. A corporation may pledge as collateral, grant a security interest in, or borrow from assets initially designated as temporarily restricted only for purposes that are in accordance with the donor's restrictions. A corporation may not pledge as collateral, grant a security interest in, or borrow from assets designated as permanently restricted assets."

Page 2, remove lines 21 through 30

Renumber accordingly



2017 TESTIMONY

SB 2276

①

2/1/17

## PROPOSED AMENDMENTS TO SENATE BILL NO. 2276

Page 1, line 1, after "Act" insert "to amend and reenact subsection 7 of section 10-33-21 and sections 10-33-100 and 10-33-108 of the North Dakota Century Code, relating to the prohibition of the diversion of restricted assets from the uses and purposes expressed and intended by the original donor and the priority of those assets in a dissolution; and"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 7 of section 10-33-21 of the North Dakota Century Code is amended and reenacted as follows:

7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income. A corporation, however, may not pledge as collateral, grant a security interest in, or borrow from assets received and held for a special use or purpose expressed or intended by the original donor.

**SECTION 2. AMENDMENT.** Section 10-33-100 of the North Dakota Century Code is amended and reenacted as follows:

### **10-33-100. Procedure in dissolution.**

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible to collect or make provision for the collection of debts owing to the corporation and to pay or make provision for the payment of debts, obligations, and liabilities of the corporation according to their priorities.
2. Notwithstanding section 10-33-94, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the members, subject to sections 10-33-95 and 10-33-122.
3. ~~Property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation must be distributed under section 10-33-105.~~

**SECTION 3. AMENDMENT.** Section 10-33-108 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-108. Procedure in involuntary or supervised voluntary dissolution.**

1. In dissolution proceedings the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the activities of the corporation until a full hearing can be held.
2. When a proceeding involving a corporation described in subsection 1 of section 10-33-122 is begun, the court shall order that a copy of the petition be served on the attorney general. In all proceedings under this section, the attorney general has a right to participate as a party.
3. After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets. A receiver has authority, subject to the order of the court, to continue the activities of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.
4. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge of:
  - a. Assets received and held for a special use or purpose must be distributed pursuant to subsection 2 of section 10-33-105.
  - b. The costs and expenses of the proceedings, including attorney's fees and disbursements;
  - b~~c~~. Debts, taxes, and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;
  - e~~d~~. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried workforce safety and insurance coverage, as provided by law, at the time the injury was sustained;



de. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and

ef. Other claims duly proved and allowed.

5. After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, must be distributed in accordance with section 10-33-105."

Renumber accordingly

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SENATE JUDICIARY COMMITTEE  
KELLY M. ARMSTRONG, CHAIRMAN  
FEBRUARY 1, 2017

TESTIMONY BY  
PARRELL D. GROSSMAN  
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL  
IN SUPPORT OF PROPOSED AMENDMENTS TO  
SENATE BILL NO. 2276

Chairman Armstrong and members of the Senate Judiciary Committee. I am Parrell Grossman, and it is my privilege to be the Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of Attorney General Wayne Stenehjem in support of Proposed Amendments to Senate Bill 2276.

The Attorney General and his Consumer Protection Division enforce the State's nonprofit corporation and charitable solicitation laws. In this role, the Attorney General necessarily requested a court place a university foundation in receivership in December 2014. After completion of the Receiver's review and reports in this matter, the Attorney General in September 2015 recommended to the Court a dissolution of the Foundation. The Attorney General and Court's actions were the result of Foundation decisions and actions that resulted in the inability of the Foundation to meet its financial commitments to student and faculty scholarships or pay its creditors. This matter has been in litigation since September, 2015.

Despite that the Foundation arguably has millions of dollars in assets, the Foundation has been unable to provide any scholarships to the college since the commencement of the Receivership in December, 2014.

Within these millions of dollars of assets, there are restricted funds and other funds. The amounts of each are in dispute and will be determined by the Court in the ongoing litigation. "Restricted funds" are those funds donated for scholarships and other specific purposes designated by the donors. These funds are not to be spent for any purposes not designated or approved by the donors.

During its operations, the Foundation pledged, as security for loans, millions of dollars in restricted assets. Now, the financial entity that provided the loan and accepted the restricted funds as collateral is claiming a priority in and title to these restricted funds that were donated for scholarships, etc.

The Attorney General maintains the Foundation lacked legal authority to pledge the restricted assets as collateral and that the pledge transaction is void. The Court, however, will now decide.

We have received many calls from donors or family members of donors that have expressed feelings ranging from frustration to outrage that their or their family member's donations and gifts for scholarships are potentially at risk of being subjected to creditor



claims, instead of being used for scholarships. Many have inquired whether North Dakota law allows this to occur and how can this be prevented in the future.

The Attorney General has responded that he believes the law does not allow restricted funds to be used to pay creditor claims and will propose to the Legislature some amendments that will clarify the existing law and further prevent restricted funds from inappropriate risks that are not authorized or intended by the donors.

It is somewhat astonishing that any nonprofit, foundation, charity, etc. would pledge restricted funds as collateral for a loan and place those funds at risk. While we strongly maintain such pledges are not authorized by law and are invalid, apparently it needs to be more obvious to organizations and financial institutions. Therefore, we believe it is appropriate for the Legislature to more clearly prohibit this practice. We have proposed an amendment to subsection 7 of section 10-33-21 that states as follows: "A corporation, however, may not pledge as collateral, grant a security interest in, or borrow from assets received and held for a special use or purpose expressed or intended by the original donor."

In addition, the law should be crystal clear on the priority of distribution of assets when an entity is dissolved and assets are distributed. Assets given for a special purpose should never be diverted from those purposes and should have absolute priority over creditor claims. While we believe this is the law and this priority is reflected in the current statutes, it is clearer in some portions of the statutes than others.

One of the main issues in the litigation surrounding the dissolution of the referenced Foundation is the potential conflict that exists between N.D.C.C. §§10-33-95 and 10-33-105, which provide that a non-profit corporation's restricted assets may not be diverted from the uses or purposes expressed or intended by the original donor, and N.D.C.C. §§ 10-33-100 and 10-33-108, which do not address the priority of restricted assets as part of the procedure set forth for the dissolution of the non-profit corporation.

This potential conflict in the statutory provisions of chapter 10-33 creates uncertainty around the status and protection of restricted assets when a non-profit corporation dissolves and there are not enough unrestricted assets to pay creditor claims. The lack of reference to restricted assets in N.D.C.C. §§ 10-33-100 and 10-33-108, which sets forth the procedure in dissolution, must have been an unintended oversight, because the conflict makes the statutory provisions impossible to reconcile, and may make the statement of priority for restricted assets set forth in N.D.C.C. §§10-33-95 and 10-33-105 without effect or purpose. A clarification of this intent is needed in order to provide clear notice to both non-profit corporations and creditors of the intended protection of restricted assets.

If §§ 10-33-105 and 10-33-108 are not reconciled there arguably are two different priorities or results for restricted assets depending upon whether the corporation is voluntarily or involuntarily dissolved.



It would seem that in a voluntary dissolution, pursuant to §10-33-105, assets of the corporation may not be diverted from the uses and purposes for which the assets have been received or held or from the uses and purposes expressed or intended by the original donor. This provision protects restricted assets and honors donor intentions.

Conversely, it could be argued that in an involuntary dissolution, pursuant to §10-33-108, there is nothing prohibiting assets of the corporation from being diverted from the uses and purposes for which the assets have been received or held or from the uses and purposes expressed or intended by the original donor. With this interpretation, there would not appear to be any expressed protection for restricted assets or to honor donor intentions, except as provided in §§10-33-95 and 10-33-105, previously discussed.

The differences can only be explained as an oversight, because they otherwise do not make sense. We have communicated with the two preeminent North Dakota lawyers involved in the drafting of these statutes as previously enacted, and they are without any explanation for the differences and could not offer any support for any intent or interpretation that restricted assets in voluntary and involuntary dissolutions should be treated differently.

Imagine that you are well-informed donors thinking about donating to an organization that supports college scholarships. It might be donations for a medical facility or a youth sports complex. The nature of the organization does not particularly matter. You realize your donation of restricted assets might not be protected in the event of an involuntary dissolution (as occurred in this instance). Do you not donate because you cannot possibly know whether the organization to which you donated might be dissolved and, if so, what if it is dissolved involuntarily?

The proposed amendment to subsection 4 eliminates any confusion, potential conflict, or unintended results. Under chapter 10-33, restricted assets could not be diverted from donors' expressed or intended uses, and would not be subjected to creditor claims.

The proposed change in subsection 3 of section 10-33-100 removes or prevents any confusion about the priority of distributions in light of the other proposed changes in subsection 4 of section 10-33-108 and section 10-33-105 unequivocally controls.

Unfortunately, the present Foundation might not be the last nonprofit or charitable entity, that solicits and accepts restricted funds, to fail as a result of unfortunate circumstances. The clarification and amendments to these restricted funds laws can provide some certainty and peace-of-mind to all donors in North Dakota.

The Attorney General respectfully asks the Senate Judiciary Committee give SB 2276 a "Do Pass" recommendation, with the proposed amendments.

Thank you for your time and consideration. I would be pleased to try and answer any questions.



- a. Change the corporate name, period of duration, or corporate purposes of the corporation.
  - b. Repeal, alter, or amend the bylaws of the corporation.
  - c. Change the aggregate number of shares, or shares of any class, which the corporation has the authority to issue.
  - d. Change the preferences, limitations, relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify, or cancel all or any part thereof, whether issued or unissued.
  - e. Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof.
  - f. Constitute or reconstitute and classify or reclassify the board and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.
2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:
    - a. Articles of amendment approved by decree or order of the court must be executed and verified by the person or persons designated or appointed by the court for that purpose and must set forth the name of the corporation, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, and the title of the proceedings in which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation under the provisions of an applicable statute of the United States.
    - b. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to the filing requirements of this chapter and that all fees have been paid as provided in section 10-33-140, the original must be recorded in the office of the secretary of state.
  3. The articles of amendment become effective upon their acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.
  4. The articles are amended accordingly with the same effect as if the amendment had been adopted by unanimous action of the directors and members.

**10-33-21. General powers.**

1. A corporation has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles.
2. A corporation has perpetual duration.
3. A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.
4. A corporation may purchase, lease, or otherwise acquire, own, hold, improve, and use and otherwise deal in and with real or personal property, or any interest in property, wherever situated.
5. A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in property, wherever situated.
6. A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of, use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality.
7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income.



8. A corporation may invest and reinvest its funds.
9. A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.
10. A corporation may conduct its activities, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.
11. Except as otherwise prohibited by law, a corporation may make donations, irrespective of corporate benefit, for:
  - a. The public welfare;
  - b. Social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes, and for similar or related purposes;
  - c. The purpose of fostering national or international amateur sports competition; and
  - d. The prevention of cruelty to children and animals, and for similar or related purposes.
12. A corporation may pay pensions, retirement allowances, and compensation for past services and establish employee or incentive benefit plans, trusts, and provisions for the benefit of the corporation and the corporation's related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.
13. A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control.
14. A corporation may provide for its benefit life insurance and other insurance with respect to the services of its officers, directors, employees, and agents, or on the life of a member for the purpose of acquiring, at the death of the member, any membership interests in the corporation owned by the member.
15. A corporation may have, alter at pleasure, and use a corporate seal as provided in section 10-33-22.
16. A corporation may adopt, amend, and repeal bylaws relating to the management of the activities or the regulation of the affairs of the corporation as provided in section 10-33-26.
17. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in section 10-33-44 and fix their compensation.
18. A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties and fix their compensation.
19. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-33-82.
20. A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 10-33-83.
21. A corporation shall indemnify those persons identified in section 10-33-84 against certain expenses and liabilities only as provided in section 10-33-84 and may indemnify other persons.
22. A corporation may conduct all or part of its activities under one or more trade names as provided in chapter 47-25.
23. A corporation may take, receive, and hold real and personal property, including the principal and interest of money or other funds, that is given, conveyed, bequeathed, devised to, or vested in the corporation in trust when the corporation or a related organization has a vested or contingent interest in the trust.



2. Unless otherwise provided in its articles or bylaws, a corporation, by affirmative vote of a majority of directors, may sell, lease, transfer, or dispose of all or substantially all of its property and assets in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient. Member approval is not required under this subsection.
3. A corporation, by affirmative vote of a majority of all directors, may sell, lease, transfer, or dispose of all or substantially all of its property and assets, including its goodwill, not in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient.
  - a. If there are members with voting rights, then the sale, lease, transfer, or disposition must be submitted to the members under subdivision c. If there are not members with voting rights, then member approval is not required.
  - b. Written notice of the meeting must be given to each member with voting rights within the time and in the manner provided in section 10-33-68 for notice of meetings of members.
  - c. Whether the meeting is an annual or special meeting, the notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation. The sale, lease, transfer, or disposition must be approved at a regular or special meeting of the members by the affirmative vote of the majority of the members with voting rights voting on the action.
  - d. Unless otherwise provided in its articles or bylaws and subject to subsection 1 of section 10-33-82, a corporation may, by the affirmative vote of a majority of directors, grant a security interest in all or substantially all of its property and assets whether in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property as the board considers expedient. Member approval is not required under this subsection.
4. If applicable, a corporation shall comply with sections 10-33-122 and 10-33-144 before selling, leasing, transferring, or disposing of all or substantially all of the corporation's assets under this section.
5. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.
6. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state.

**10-33-95. Certain assets not to be diverted.**

If a corporation dissolves, merges, substantially changes the use or purposes for which the corporation will use corporate assets, consolidates, transfers corporate assets, or grants a mortgage or other security interest in corporate assets, assets of the corporation or a constituent corporation and assets subsequently received by a single corporation after a merger or consolidation may not be diverted from the uses and purposes for which the assets were received and held or from the uses and purposes expressed or intended by the original donor.

**10-33-96. Methods of dissolution.**

1. Subject to section 10-33-122, a corporation may be dissolved:
  - a. By the incorporators under section 10-33-97;
  - b. By the board and members with voting rights under sections 10-33-98 through 10-33-103; or
  - c. By order of a court under sections 10-33-106 through 10-33-113.
2. A corporation also may be dissolved by the secretary of state under section 10-33-139.



- (1) The name of the corporation;
  - (2) The date and place of the meeting at which the resolution was approved by the board under subsection 2 of section 10-33-98, and by the members under subsection 3 of section 10-33-98, if applicable; and
  - (3) A statement that the requisite approval of the directors and members was received.
- b. If applicable, notify the attorney general under section 10-33-122.
2. When the notice of intent to dissolve has been filed with the secretary of state and subject to section 10-33-104, the corporation may not carry on its activities, except to the extent necessary for the winding up of the corporation.
  - a. The board and members with voting rights have the right to revoke the dissolution proceedings under section 10-33-104.
  - b. The members with voting rights have the right to remove directors or fill vacancies on the board.
  - c. The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or articles of dissolution are filed with the secretary of state.
3. The filing with the secretary of state of a notice of intent to dissolve does not affect a remedy in favor of the corporation or a remedy against it or its directors, officers, or members in those capacities, except as provided in section 10-33-115.

**10-33-100. Procedure in dissolution.**

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible to collect or make provision for the collection of debts owing to the corporation and to pay or make provision for the payment of debts, obligations, and liabilities of the corporation according to their priorities.
2. Notwithstanding section 10-33-94, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the members, subject to sections 10-33-95 and 10-33-122.
3. Property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation must be distributed under section 10-33-105.

**10-33-101. Dissolution procedure for corporations that give notice to creditors and claimants.**

When a notice of intent to dissolve has been filed with the secretary of state and the attorney general, if applicable, the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or noncontingent.

1. If notice to creditors and claimants is given, it must be given:
  - a. By publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located; and
  - b. By giving written notice to known creditors and claimants pursuant to subsection 26 of section 10-33-01.
2. a. The notice to creditors and claimants must contain:
  - (1) A statement that the corporation is in the process of dissolving;
  - (2) A statement that the corporation has filed with the secretary of state a notice of intent to dissolve;
  - (3) The date of filing the notice of intent to dissolve;
  - (4) The address of the office to which written claims against the corporation must be presented; and
  - (5) The date by which all the claims must be received, which must be the later of:



**10-33-104. Revocation of dissolution proceedings.**

1. As provided in this section, dissolution proceedings begun under section 10-33-98 may be revoked before the articles of dissolution are filed.
2. The board may adopt a resolution revoking the proposed dissolution by the affirmative vote of a majority of all directors. If there are members with voting rights, the resolution must be submitted to the members under subsection 3.
3. Written notice must be given to the members with voting rights within the time and in the manner provided in section 10-33-68 for notice of meetings of members and must state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings.
  - a. The proposed revocation must be submitted to the members at the meeting.
  - b. If the proposed revocation is approved by the members with voting rights, the dissolution proceedings are revoked.
4. Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state.
  - a. After the notice is filed, the corporation may resume its activities.
  - b. If notice to the attorney general has been given under section 10-33-122, the notice of revocation also must be given to the attorney general on or before the time that it is filed with the secretary of state.

**10-33-105. Distribution of assets.**

1. In performing the duties under section 10-33-100, the board, or the officers acting under the direction of the board, shall distribute the assets of the corporation in the following order of priority:
  - a. Distribution of assets received and held for a special use or purpose under subsection 2;
  - b. Payment of costs and expenses of the dissolution proceedings, including attorney's fees and disbursements;
  - c. Payment of debts, obligations, and liabilities of the corporation;
  - d. Distribution of assets pursuant to articles or bylaws of the dissolving corporation or the rules or canons of another organization under subsection 3; and
  - e. Distribution of remaining assets under subsection 4.
2. Assets of the corporation may not be diverted from the uses and purposes for which the assets have been received and held or from the uses and purposes expressed or intended by the original donor.
3. When the articles or bylaws of the dissolving corporation, or the rules or canons of another organization by which the dissolving corporation is bound, provide for a particular distribution of the assets of the dissolving corporation, the assets must be distributed accordingly.
4. The distribution of assets held for or devoted to a charitable or public use or purpose is subject to section 59-20-01.

**10-33-106. Supervised voluntary dissolution.**

After the notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the corporation, the attorney general, or, for good cause, a creditor, or at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, may apply to a court within the county in which the principal executive office of the corporation is located to have the dissolution conducted or continued under the supervision of the court under sections 10-33-107 through 10-33-113.

**10-33-107. Involuntary dissolution.**

1. A court may grant equitable relief it considers just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and activities:
  - a. In a supervised voluntary dissolution under section 10-33-106.



omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the corporation thirty additional days in which to effect the correction before filing the action.

2. In determining whether to order equitable relief or dissolution under this section, the court shall consider the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation is solvent.
3. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision b, c, or d of subsection 1. Lesser relief may be ordered if it would be appropriate under the facts and circumstances of the case.
4. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may award reasonable expenses, including attorney's fees and disbursements, to any of the other parties.
5. Proceedings under this section must be brought in a court within the county in which the principal executive office of the corporation is located. It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

**10-33-108. Procedure in involuntary or supervised voluntary dissolution.**

1. In dissolution proceedings the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the activities of the corporation until a full hearing can be held.
2. When a proceeding involving a corporation described in subsection 1 of section 10-33-122 is begun, the court shall order that a copy of the petition be served on the attorney general. In all proceedings under this section, the attorney general has a right to participate as a party.
3. After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets. A receiver has authority, subject to the order of the court, to continue the activities of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.
4. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge of:
  - a. The costs and expenses of the proceedings, including attorney's fees and disbursements;
  - b. Debts, taxes, and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;
  - c. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried workforce safety and insurance coverage, as provided by law, at the time the injury was sustained;
  - d. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
  - e. Other claims duly proved and allowed.
5. After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, must be distributed in accordance with section 10-33-105.

**10-33-109. Qualifications of receivers - Powers.**

1. A receiver must be an individual or organization authorized to transact business or conduct activities in this state. A receiver shall give bond as directed by the court with the sureties required by the court.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2276

Page 1, line 1, after "reenact" insert "subsection 7 of section 10-33-21, section 10-33-100, subsection 4 of section 10-33-108, and"

Page 1, line 2, after "to" insert "the prohibition of the diversion of restricted assets, the priority of those assets in a dissolution, and"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 7 of section 10-33-21 of the North Dakota Century Code is amended and reenacted as follows:

7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income. A corporation may not pledge as collateral, grant a security interest in, or borrow from assets received and held for a special use or purpose expressed or intended by the original donor.

**SECTION 2. AMENDMENT.** Section 10-33-100 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-100. Procedure in dissolution.**

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible to collect or make provision for the collection of debts owing to the corporation and to pay or make provision for the payment of debts, obligations, and liabilities of the corporation according to their priorities.
2. Notwithstanding section 10-33-94, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the members, subject to sections 10-33-95 and 10-33-122.
3. ~~Property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation~~ must be distributed under section 10-33-105.

**SECTION 3. AMENDMENT.** Subsection 4 of section 10-33-108 of the North Dakota Century Code is amended and reenacted as follows:

4. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge of:
  - a. Assets received and held for a special use or purpose must be distributed pursuant to subsection 2 of section 10-33-105;



- b. The costs and expenses of the proceedings, including attorney's fees and disbursements;
- ~~b.c.~~ Debts, taxes, and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;
- ~~e.d.~~ Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried workforce safety and insurance coverage, as provided by law, at the time the injury was sustained;
- ~~d.e.~~ Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
- ~~e.f.~~ Other claims duly proved and allowed."

Renumber accordingly

HOUSE JUDICIARY COMMITTEE  
KIM KOPPELMAN, CHAIRMAN  
MARCH 15, 2017

#1  
2276  
3-15-17

TESTIMONY BY  
PARRELL D. GROSSMAN  
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL  
IN SUPPORT OF PROPOSED AMENDMENTS TO  
ENGROSSED SENATE BILL NO. 2276

Chairman Koppelman and members of the House Judiciary Committee. I am Parrell Grossman, and it is my privilege to be the Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of Attorney General Wayne Stenehjem in support of Engrossed Senate Bill 2276 with proposed amendments.

The Attorney General and his Consumer Protection Division enforce the State's nonprofit corporation and charitable solicitation laws. In this role, the Attorney General necessarily requested a court place a university foundation in receivership in December 2014. After completion of the Receiver's review and reports in this matter, the Attorney General in September 2015 recommended to the Court a dissolution of the Foundation. The Attorney General and Court's actions were the result of Foundation decisions and actions that resulted in the inability of the Foundation to meet its financial commitments to student and faculty scholarships or pay its creditors. This matter has been in litigation since September, 2015.

Despite that the Foundation arguably has millions of dollars in assets, the Foundation has been unable to provide any scholarships to the college since the commencement of the Receivership in December, 2014.

Within these millions of dollars of assets, there are restricted funds and other funds. The amounts of each are in dispute and will be determined by the Court in the ongoing litigation. "Restricted funds" are those funds donated for scholarships and other specific purposes designated by the donors. These funds are not to be spent for any purposes not designated or approved by the donors.

During its operations, the Foundation pledged, as security for loans, millions of dollars in restricted assets. Now, the financial entity that provided the loan and accepted the restricted funds as collateral is claiming title to and priority in these restricted funds that were donated for scholarships, etc.

The Attorney General maintains the Foundation lacked legal authority to pledge the restricted assets as collateral and that the pledge transaction is void. The Court, however, will now decide.

We have received many calls from donors or family members of donors that have expressed feelings ranging from frustration to outrage that their or their family member's donations and gifts for scholarships are potentially at risk of being subjected to creditor



claims, instead of being used for scholarships. Many constituents have inquired whether North Dakota law allows this to occur and how can this result can be prevented in the future.

The Attorney General responded that he believes the law does not allow restricted funds to be used to pay creditor claims when not authorized by the donors and that he will propose to the Legislature some amendments to clarify the existing law and further prevent restricted funds from inappropriate risks that are not authorized or intended by the donors.

It is astonishing that any nonprofit, foundation, charity, etc. would pledge permanently restricted funds as collateral for a loan and place those funds at risk. While the Attorney General strongly maintains such pledges are not authorized by law and are invalid, apparently it will be better to make this prohibition more obvious to the nonprofit organizations and financial institutions. Therefore, it is appropriate for the Legislature to more clearly prohibit this practice. The Attorney General initially proposed an amendment to subsection 7 of section 10-33-21 that states as follows: "A corporation, however, may not pledge as collateral, grant a security interest in, or borrow from assets received and held for a special use or purpose expressed or intended by the original donor."

That language is now contained in Engrossed Senate Bill No. 2276. However, since this legislation was passed by the Senate, the Attorney General became aware of the need to tweak this new legislation. The Attorney General and the North Dakota Banker's Association are presenting some amendments and have consulted with the North Dakota Association of Nonprofit Organizations in drafting these amendments. These amendments accomplish two purposes. First, they provide nonprofits more flexibility than the original language to allow such actions for temporarily restricted assets when such actions are authorized by the donors. Next, the amendments ensure that the corporation designates and discloses temporarily and permanently restricted assets on the corporation's financial statements to, among other reasons, ensure that the financial institution is aware of the restricted nature of the assets.

Therefore, the Attorney General and NDBA are proposing that the previous law changes starting with "[a] corporation may not" on page 1, line 10, and continuing through lines 11 and 12, be replaced with the following language:

"All assets received by a corporation from donors for special use or purpose must be designated as temporarily restricted or permanently restricted in accordance with the applicable Financial Accounting Standards Board codification and disclosed on the corporation's financial statements. A corporation may pledge as collateral, grant a security interest in, or borrow from assets initially designated as temporarily restricted only for such purposes that are in accordance with the donor's restrictions. A corporation may not pledge as collateral, grant a security interest in, or borrow from assets designated as permanently restricted assets."



The second proposed clarification to the treatment of restricted assets in chapter 10-33 is to ensure that the law is crystal clear on the priority of distribution of assets when an entity is dissolved and assets are distributed. Assets given for a special purpose should never be diverted from those purposes and should have absolute priority over creditor claims. While the Attorney General believes this is the law and this priority is reflected in the current statutes, it is clearer in some portions of the statutes than others.

One of the main issues in the litigation surrounding the dissolution of the referenced Foundation is the potential conflict that exists between N.D.C.C. §§10-33-95 and 10-33-105, which provide that a non-profit corporation's restricted assets may not be diverted from the uses or purposes expressed or intended by the original donor, and N.D.C.C. §§ 10-33-100 and 10-33-108, which do not address the priority of restricted assets as part of the procedure set forth for the dissolution of the non-profit corporation. (Copies of the statutes are attached.)

This potential conflict in the statutory provisions of chapter 10-33 creates uncertainty around the status and protection of restricted assets when a non-profit corporation dissolves and there are not enough unrestricted assets to pay creditor claims. The lack of reference to restricted assets in N.D.C.C. §§ 10-33-100 and 10-33-108, which sets forth the procedure in dissolution, must have been an unintended oversight, because the conflict makes the statutory provisions impossible to reconcile, and may make the statement of priority for restricted assets set forth in N.D.C.C. §§10-33-95 and 10-33-105 without effect or purpose. A clarification of this intent is needed in order to provide clear notice to both non-profit corporations and creditors of the intended protection of restricted assets.

If §§ 10-33-105 and 10-33-108 are not reconciled there arguably are two different priorities or results for restricted assets depending upon whether the corporation is voluntarily or involuntarily dissolved.

It is clear that, in a voluntary dissolution, pursuant to §10-33-105, assets of the corporation may not be diverted from the uses and purposes for which the assets have been received or held or from the uses and purposes expressed or intended by the original donor. This provision protects restricted assets and honors donor intentions.

However, because §10-33-108 does not contain this same language, it could be argued that, in an involuntary dissolution, pursuant to §10-33-108, there is nothing prohibiting assets of the corporation from being diverted from the uses and purposes for which the assets have been received or held or from the uses and purposes expressed or intended by the original donor. With this interpretation, there would not appear to be any expressed protection for restricted assets or to honor donor intentions, except as provided in §§10-33-95 and 10-33-105, previously discussed. Therefore, donor funds could be subject to creditor or other claims.

The differences do not make any sense and can only be explained as an oversight. The Attorney General has communicated with the two preeminent North Dakota lawyers involved in the drafting of these statutes as previously enacted. These lawyers did not



have any explanation for the differences and could not offer any support for any intent or interpretation that restricted assets in voluntary and involuntary dissolutions should be treated differently.

The ambiguity and uncertainty could have a huge chilling effect on future charitable donations. Imagine that you are well-informed donors thinking about donating to an organization that supports college scholarships. Or, it might be donations for a medical facility, church, or youth sports complex. The nature of the organization does not particularly matter. You realize your donation of restricted assets might not be protected in the event of an involuntary dissolution (as occurred in this instance). Do you not donate because you cannot possibly know whether the organization to which you donated might be dissolved and, if so, what if it is dissolved involuntarily?

The proposed amendment to subsection 4 eliminates any confusion, potential conflict, or unintended results. Under chapter 10-33, restricted assets could not be diverted from donors' expressed or intended uses, and would not be subjected to creditor claims.

The proposed change in subsection 3 of section 10-33-100 removes or prevents any confusion about the priority of distributions in light of the other proposed changes in subsection 4 of section 10-33-108 and section 10-33-105 unequivocally controls.

Unfortunately, the present Foundation might not be the last nonprofit or charitable entity, that solicits and accepts restricted funds, to fail as a result of unfortunate circumstances. The clarification and amendments to these restricted funds laws can provide some certainty and peace-of-mind to all donors in North Dakota.

The Attorney General respectfully asks the House Judiciary Committee adopt the proposed amendments and give Engrossed SB 2276 a "Do Pass" recommendation.

Thank you for your time and consideration. I would be pleased to try and answer any questions.

ENGROSSED SENATE BILL NO. 2276 PROPOSED AMENDMENTS  
HOUSE JUDICIARY COMMITTEE  
KIM KOPPELMAN, CHAIRMAN  
MARCH 15, 2017

PRESENTED BY  
PARRELL D. GROSSMAN, DIRECTOR  
CONSUMER PROTECTION & ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL

Page 1, line 10, remove "A corporation may not"

Page 1, remove lines 11 and 12 and insert immediately thereafter "All assets received by a corporation from donors for special use or purpose must be designated as temporarily restricted or permanently restricted in accordance with the applicable Financial Accounting Standards Board codification and disclosed on the corporation's financial statements. A corporation may pledge as collateral, grant a security interest in, or borrow from assets initially designated as temporarily restricted only for such purposes that are in accordance with the donor's restrictions. A corporation may not pledge as collateral. Grant a security interest in, or borrow from assets designated as permanently restricted assets."

Renumber accordingly

Sixty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2276

Introduced by

Senators Wardner, Armstrong

1 A BILL for an Act to amend and reenact subsection 7 of section 10-33-21, section 10-33-100,  
2 subsection 4 of section 10-33-108, and section 29-27-02 of the North Dakota Century Code,  
3 relating to the prohibition of the diversion of restricted assets, the priority of those assets in a  
4 dissolution, and judgments imposing fines or assessing costs.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Subsection 7 of section 10-33-21 of the North Dakota Century  
7 Code is amended and reenacted as follows:

8 7. A corporation may make contracts and incur liabilities, borrow money, issue its  
9 securities, and secure any of its obligations by mortgage of or creation of a security  
10 interest in all or any of its property, franchises, and income. A corporation may not  
11 pledge as collateral, grant a security interest in, or borrow from assets received and  
12 held for a special use or purpose expressed or intended by the original donor.

13 **SECTION 2. AMENDMENT.** Section 10-33-100 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **10-33-100. Procedure in dissolution.**

- 16 1. When a notice of intent to dissolve has been filed with the secretary of state, the  
17 board, or the officers acting under the direction of the board, shall proceed as soon as  
18 possible to collect or make provision for the collection of debts owing to the  
19 corporation and to pay or make provision for the payment of debts, obligations, and  
20 liabilities of the corporation according to their priorities.
- 21 2. Notwithstanding section 10-33-94, when a notice of intent to dissolve has been filed  
22 with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose  
23 of all or substantially all of the property and assets of a dissolving corporation without  
24 a vote of the members, subject to sections 10-33-95 and 10-33-122.



- 1        3. ~~Property, including money, remaining after the discharge of the debts, obligations, and~~  
2        ~~liabilities of the corporation~~ must be distributed under section 10-33-105.

3        **SECTION 3. AMENDMENT.** Subsection 4 of section 10-33-108 of the North Dakota  
4 Century Code is amended and reenacted as follows:

- 5        4. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or  
6        other disposition must be applied in the following order of priority to the payment and  
7        discharge of:

8        a. Assets received and held for a special use or purpose must be distributed  
9        pursuant to subsection 2 of section 10-33-105;

10       b. The costs and expenses of the proceedings, including attorney's fees and  
11       disbursements;

12       ~~b-c.~~ Debts, taxes, and assessments due the United States, this state and its  
13       subdivisions, and other states and their subdivisions, in that order;

14       ~~e-d.~~ Claims duly proved and allowed to employees under title 65. Claims under this  
15       subdivision may not be allowed if the corporation carried workforce safety and  
16       insurance coverage, as provided by law, at the time the injury was sustained;

17       ~~d-e.~~ Claims, including the value of all compensation paid in any medium other than  
18       money, duly proved and allowed to employees for services performed within  
19       three months preceding the appointment of the receiver, if any; and

20       ~~e-f.~~ Other claims duly proved and allowed.

21       **SECTION 4. AMENDMENT.** Section 29-27-02 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23       **29-27-02. Judgment for fine or costs.**

- 24       1. If the judgment mentioned in section 29-27-01 imposes a fine or assesses costs and  
25       the judgment has been docketed in the judgment docket by order of the district court,  
26       the judgment is enforceable by execution in the same manner as provided for a  
27       judgment for money in a civil action.

- 28       2. If the judgment mentioned in section 29-27-01 imposes a fine or assesses costs and  
29       the judgment is by order of the municipal court, the judgment is enforceable by  
30       execution in the same manner as provided for a judgment for money in a civil action.

- a. Change the corporate name, period of duration, or corporate purposes of the corporation.
  - b. Repeal, alter, or amend the bylaws of the corporation.
  - c. Change the aggregate number of shares, or shares of any class, which the corporation has the authority to issue.
  - d. Change the preferences, limitations, relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify, or cancel all or any part thereof, whether issued or unissued.
  - e. Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof.
  - f. Constitute or reconstitute and classify or reclassify the board and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.
2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:
    - a. Articles of amendment approved by decree or order of the court must be executed and verified by the person or persons designated or appointed by the court for that purpose and must set forth the name of the corporation, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, and the title of the proceedings in which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation under the provisions of an applicable statute of the United States.
    - b. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to the filing requirements of this chapter and that all fees have been paid as provided in section 10-33-140, the original must be recorded in the office of the secretary of state.
  3. The articles of amendment become effective upon their acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.
  4. The articles are amended accordingly with the same effect as if the amendment had been adopted by unanimous action of the directors and members.

**10-33-21. General powers.**

1. A corporation has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles.
2. A corporation has perpetual duration.
3. A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.
4. A corporation may purchase, lease, or otherwise acquire, own, hold, improve, and use and otherwise deal in and with real or personal property, or any interest in property, wherever situated.
5. A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in property, wherever situated.
6. A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of, use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality.
7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income.



8. A corporation may invest and reinvest its funds.
9. A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.
10. A corporation may conduct its activities, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.
11. Except as otherwise prohibited by law, a corporation may make donations, irrespective of corporate benefit, for:
  - a. The public welfare;
  - b. Social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes, and for similar or related purposes;
  - c. The purpose of fostering national or international amateur sports competition; and
  - d. The prevention of cruelty to children and animals, and for similar or related purposes.
12. A corporation may pay pensions, retirement allowances, and compensation for past services and establish employee or incentive benefit plans, trusts, and provisions for the benefit of the corporation and the corporation's related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.
13. A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control.
14. A corporation may provide for its benefit life insurance and other insurance with respect to the services of its officers, directors, employees, and agents, or on the life of a member for the purpose of acquiring, at the death of the member, any membership interests in the corporation owned by the member.
15. A corporation may have, alter at pleasure, and use a corporate seal as provided in section 10-33-22.
16. A corporation may adopt, amend, and repeal bylaws relating to the management of the activities or the regulation of the affairs of the corporation as provided in section 10-33-26.
17. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in section 10-33-44 and fix their compensation.
18. A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties and fix their compensation.
19. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-33-82.
20. A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 10-33-83.
21. A corporation shall indemnify those persons identified in section 10-33-84 against certain expenses and liabilities only as provided in section 10-33-84 and may indemnify other persons.
22. A corporation may conduct all or part of its activities under one or more trade names as provided in chapter 47-25.
23. A corporation may take, receive, and hold real and personal property, including the principal and interest of money or other funds, that is given, conveyed, bequeathed, devised to, or vested in the corporation in trust when the corporation or a related organization has a vested or contingent interest in the trust.



2. Unless otherwise provided in its articles or bylaws, a corporation, by affirmative vote of a majority of directors, may sell, lease, transfer, or dispose of all or substantially all of its property and assets in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient. Member approval is not required under this subsection.
3. A corporation, by affirmative vote of a majority of all directors, may sell, lease, transfer, or dispose of all or substantially all of its property and assets, including its goodwill, not in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient.
  - a. If there are members with voting rights, then the sale, lease, transfer, or disposition must be submitted to the members under subdivision c. If there are not members with voting rights, then member approval is not required.
  - b. Written notice of the meeting must be given to each member with voting rights within the time and in the manner provided in section 10-33-68 for notice of meetings of members.
  - c. Whether the meeting is an annual or special meeting, the notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation. The sale, lease, transfer, or disposition must be approved at a regular or special meeting of the members by the affirmative vote of the majority of the members with voting rights voting on the action.
  - d. Unless otherwise provided in its articles or bylaws and subject to subsection 1 of section 10-33-82, a corporation may, by the affirmative vote of a majority of directors, grant a security interest in all or substantially all of its property and assets whether in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property as the board considers expedient. Member approval is not required under this subsection.
4. If applicable, a corporation shall comply with sections 10-33-122 and 10-33-144 before selling, leasing, transferring, or disposing of all or substantially all of the corporation's assets under this section.
5. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.
6. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state.

**10-33-95. Certain assets not to be diverted.**

If a corporation dissolves, merges, substantially changes the use or purposes for which the corporation will use corporate assets, consolidates, transfers corporate assets, or grants a mortgage or other security interest in corporate assets, assets of the corporation or a constituent corporation and assets subsequently received by a single corporation after a merger or consolidation may not be diverted from the uses and purposes for which the assets were received and held or from the uses and purposes expressed or intended by the original donor.

**10-33-96. Methods of dissolution.**

1. Subject to section 10-33-122, a corporation may be dissolved:
  - a. By the incorporators under section 10-33-97;
  - b. By the board and members with voting rights under sections 10-33-98 through 10-33-103; or
  - c. By order of a court under sections 10-33-106 through 10-33-113.
2. A corporation also may be dissolved by the secretary of state under section 10-33-139.



- (1) The name of the corporation;
  - (2) The date and place of the meeting at which the resolution was approved by the board under subsection 2 of section 10-33-98, and by the members under subsection 3 of section 10-33-98, if applicable; and
  - (3) A statement that the requisite approval of the directors and members was received.
- b. If applicable, notify the attorney general under section 10-33-122.
2. When the notice of intent to dissolve has been filed with the secretary of state and subject to section 10-33-104, the corporation may not carry on its activities, except to the extent necessary for the winding up of the corporation.
    - a. The board and members with voting rights have the right to revoke the dissolution proceedings under section 10-33-104.
    - b. The members with voting rights have the right to remove directors or fill vacancies on the board.
    - c. The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or articles of dissolution are filed with the secretary of state.
  3. The filing with the secretary of state of a notice of intent to dissolve does not affect a remedy in favor of the corporation or a remedy against it or its directors, officers, or members in those capacities, except as provided in section 10-33-115.

**10-33-100. Procedure in dissolution.**

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible to collect or make provision for the collection of debts owing to the corporation and to pay or make provision for the payment of debts, obligations, and liabilities of the corporation according to their priorities.
2. Notwithstanding section 10-33-94, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the members, subject to sections 10-33-95 and 10-33-122.
3. Property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation must be distributed under section 10-33-105.

**10-33-101. Dissolution procedure for corporations that give notice to creditors and claimants.**

When a notice of intent to dissolve has been filed with the secretary of state and the attorney general, if applicable, the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or noncontingent.

1. If notice to creditors and claimants is given, it must be given:
  - a. By publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located; and
  - b. By giving written notice to known creditors and claimants pursuant to subsection 26 of section 10-33-01.
2. a. The notice to creditors and claimants must contain:
  - (1) A statement that the corporation is in the process of dissolving;
  - (2) A statement that the corporation has filed with the secretary of state a notice of intent to dissolve;
  - (3) The date of filing the notice of intent to dissolve;
  - (4) The address of the office to which written claims against the corporation must be presented; and
  - (5) The date by which all the claims must be received, which must be the later of:



**10-33-104. Revocation of dissolution proceedings.**

1. As provided in this section, dissolution proceedings begun under section 10-33-98 may be revoked before the articles of dissolution are filed.
2. The board may adopt a resolution revoking the proposed dissolution by the affirmative vote of a majority of all directors. If there are members with voting rights, the resolution must be submitted to the members under subsection 3.
3. Written notice must be given to the members with voting rights within the time and in the manner provided in section 10-33-68 for notice of meetings of members and must state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings.
  - a. The proposed revocation must be submitted to the members at the meeting.
  - b. If the proposed revocation is approved by the members with voting rights, the dissolution proceedings are revoked.
4. Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state.
  - a. After the notice is filed, the corporation may resume its activities.
  - b. If notice to the attorney general has been given under section 10-33-122, the notice of revocation also must be given to the attorney general on or before the time that it is filed with the secretary of state.

**10-33-105. Distribution of assets.**

1. In performing the duties under section 10-33-100, the board, or the officers acting under the direction of the board, shall distribute the assets of the corporation in the following order of priority:
  - a. Distribution of assets received and held for a special use or purpose under subsection 2;
  - b. Payment of costs and expenses of the dissolution proceedings, including attorney's fees and disbursements;
  - c. Payment of debts, obligations, and liabilities of the corporation;
  - d. Distribution of assets pursuant to articles or bylaws of the dissolving corporation or the rules or canons of another organization under subsection 3; and
  - e. Distribution of remaining assets under subsection 4.
2. Assets of the corporation may not be diverted from the uses and purposes for which the assets have been received and held or from the uses and purposes expressed or intended by the original donor.
3. When the articles or bylaws of the dissolving corporation, or the rules or canons of another organization by which the dissolving corporation is bound, provide for a particular distribution of the assets of the dissolving corporation, the assets must be distributed accordingly.
4. The distribution of assets held for or devoted to a charitable or public use or purpose is subject to section 59-20-01.

**10-33-106. Supervised voluntary dissolution.**

After the notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the corporation, the attorney general, or, for good cause, a creditor, or at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, may apply to a court within the county in which the principal executive office of the corporation is located to have the dissolution conducted or continued under the supervision of the court under sections 10-33-107 through 10-33-113.

**10-33-107. Involuntary dissolution.**

1. A court may grant equitable relief it considers just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and activities:
  - a. In a supervised voluntary dissolution under section 10-33-106.



omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the corporation thirty additional days in which to effect the correction before filing the action.

2. In determining whether to order equitable relief or dissolution under this section, the court shall consider the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation is solvent.
3. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision b, c, or d of subsection 1. Lesser relief may be ordered if it would be appropriate under the facts and circumstances of the case.
4. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may award reasonable expenses, including attorney's fees and disbursements, to any of the other parties.
5. Proceedings under this section must be brought in a court within the county in which the principal executive office of the corporation is located. It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

**10-33-108. Procedure in involuntary or supervised voluntary dissolution.**

1. In dissolution proceedings the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the activities of the corporation until a full hearing can be held.
2. When a proceeding involving a corporation described in subsection 1 of section 10-33-122 is begun, the court shall order that a copy of the petition be served on the attorney general. In all proceedings under this section, the attorney general has a right to participate as a party.
3. After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets. A receiver has authority, subject to the order of the court, to continue the activities of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.
4. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge of:
  - a. The costs and expenses of the proceedings, including attorney's fees and disbursements;
  - b. Debts, taxes, and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;
  - c. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried workforce safety and insurance coverage, as provided by law, at the time the injury was sustained;
  - d. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
  - e. Other claims duly proved and allowed.
5. After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, must be distributed in accordance with section 10-33-105.

**10-33-109. Qualifications of receivers - Powers.**

1. A receiver must be an individual or organization authorized to transact business or conduct activities in this state. A receiver shall give bond as directed by the court with the sureties required by the court.

#2  
2276  
3-15-17

March 15, 2017

House Judiciary Committee  
SB 2276

Chair Koppelman and members of the committee, for the record I am Stephanie Dassinger, Deputy Director of the North Dakota League of Cities. I also serve as the staff attorney for the League.

I appear before you today to express the League's support of SB 2276. The League is only taking a position on Section 4 of the bill.

Section 4 of SB 2276 would allow a municipal court or city court to be executed on for fines and fees in the same manner that a civil judgment is executed upon. Two points – First, district courts (state courts) already have this power. This way to collect fines and fees already exists under statute and you are not being asked to create a new system.

Second, municipal court authority to impose a fine is limited by statute to \$1,500.

With this system, a prosecutor would prepare a document called an "Execution." The Execution contains the name of the court, the name of the parties, the date and amount of the judgment. The Execution needs to be sealed with the court seal. Once the court seal is on the Execution, it is sent to the county sheriff who will look for property of the defendant to pay the judgment. The city would pay a fee to the county sheriff for performing the work associated with the Execution.

Collecting court fines and fees through an execution is the most efficient use of tax payer dollars as the alternative would be to pursue payment of the fees through finding a defendant in contempt of court and potentially arresting him or her and bringing him or her in front of a judge again.

For these reasons, the League urges the committee to vote DO PASS on SB 2276.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

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#1  
2276  
3-28-17

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2276

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

Page 1, line 2, remove ", and section 29-27-02"

Page 1, line 3, replace the comma with "and"

Page 1, line 4, remove ", and judgments imposing fines or assessing costs"

Page 1, line 10, remove "A corporation may not"

Page 1, replace lines 11 and 12 with "All assets received by a corporation from donors for special use or purpose must be designated as temporarily restricted or permanently restricted in accordance with the applicable generally accepted accounting principals and disclosed on the corporation's financial statements. A corporation may pledge as collateral, grant a security interest in, or borrow from assets initially designated as temporarily restricted only for purposes that are in accordance with the donor's restrictions. A corporation may not pledge as collateral, grant a security interest in, or borrow from assets designated as permanently restricted assets."

Page 2, remove lines 21 through 30

Renumber accordingly