

2011 SENATE JUDICIARY


SB 2073

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

SB 2073  
January 12, 2011  
Job #12847

Conference Committee

Committee Clerk Signature 

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

**Relating to campaign contribution statements.**

**Minutes:**

See attached testimony

**Senator Nething, Chairman, called the hearing to order on SB 2073.**

**Al Jaeger, Secretary of State for ND**, citing that U.S. Supreme Court made a ruling about campaign contributions and corporations giving money. We put together a task force of people including someone from Legislative Council, Secretary of State's office to discuss how that Supreme Court ruling may impact ND law. One of the first things that was thought was that somehow that this Supreme Court ruling would allow corporate contributions to candidates. Under ND law, that is not allowed. Limited Liability Companies and Corporations cannot give contributions direct to a candidate. It doesn't mean a corporation cannot establish a PAC. (Political Action Committee) but it is covered under law very clearly in terms of how it is done. Upon complete review of law, the Attorney General and with us working with him, results in SB 2073 that you have in front of you. Deputy, Jim Silrum, who worked with John Fox, (AG office) on the bill and who worked through it. The bill essentially says that they can give to measure committees and can do a number of different things but it doesn't prevent, under ND law, or doesn't supersede ND law that prohibits corporations from currently giving to a candidate. That has not changed. (See attached testimony #1).

The bottom line of this entire bill is we received calls in our office after the Supreme Court and during the election cycle. Does this mean I can accept corporate contributions now as a candidate? What this all boils down to is that is still "prohibited under ND law. The law was changed due to accommodating the Supreme Court ruling that said, "that corporations can make these certain types of contributions and then the last part is what we added."

**Senator Nelson** states she is looking at Section 3 because she is treasurer of Cass County Political Party. She feels it makes it harder for her and when they fundraiser and people write checks they get noted that they gave money for meal and it gives me summary of totals per payee. Do I have to take out those that paid less than \$25. each time they did it and claimed it or not? I have had no complaints that anyone has got reported.

**Jim Silrum, Deputy, Secretary of State of ND**, states that the "crux" of this is that we do not have a vested interest, one way or another. What we have heard is that there were a number of multi-candidate committees existing in ND that were not being registered as a multi-candidate committee. They did not know, under law, that they were required to be registered. However, one of you or an elected official would submit a campaign contribution statement and there was a multi-candidate committee listed as making a contribution a sum greater than \$200. Leann would take a look and say she had never heard of that multi-candidate committee and they are not registered with this office. She would contact them and they would mention that they did not know they had to be registered and realize that there was a reporting requirement. They state, "All we do is hold bake sales and things of that nature". The request came from them. Secretary of State's office agreed to submit it to the legislature for your review. If committee sees fit that this is not an appropriate item it is certainly would not have any bearing on us if you removed it.

**Senator Nelson** is questioning why they don't know. It is well enough "denoted by both major parties" in the state that if you have 3 people running for office, you are a multi-candidate committee, that you should be a particular district and should be registered.

**Jim Silrum** states that they do not have difficulty with multi-candidate committees that are specifically with district parties. We do have committees that are formed that don't start off as politically associated to begin with. They give to the Boy Scouts and others and gather together in a social organizational type fashion and they raise money and give to all kinds of charitable organizations. Then, they suddenly make a contribution to a candidate and a political party that is larger than \$200. and that contribution to that candidate, political party or organization suddenly makes them a multi-candidate committee, which was not their intention. It is not particularly the Bismarck area Republicans or the any specific formulated multi-candidate committees that are in question.

**Senator Nelson** states it cannot be 501C3 organizations because they are prohibited from giving to political candidates. So is there a cross reference to that? If they give to Boy/Girl Scouts there may be possibility that they are considering themselves a charitable organization which would cause big trouble.

**Jim Silrum** states that we don't research that. It is simply the duties of our office when one of these committees appears on a campaign contribution statement submitted by one of you or my boss. Then that triggers a research on our part because of the fact that they are a multi-candidate committee by virtue of that gift. We do not check them out in any way, shape or form because we do not see the law requires us to do that. Nor do we have staff time.

**Leann Oliver, Election Officer, Secretary of State Office**, states that they get calls from groups and get a report in from, we register that committee and handle corporations and put in their name that is on the report and see if it is registered as a corporation or a nonprofit. If it is, they are called and can't have this on your report. They need to return money and get a personal check. If I don't find it and the name doesn't indicate if it is Republican or Democrat, I email both parties and inquire who this is and if it is a candidate, what party are they are with. I then call that headquarters. I ask what a specific club is and

never heard of it. That is why there are calls indicating there is a \$25 registration. Clubs indicate that there are 3 people giving \$10 and why do we have to do that since we are such a small organization? Indicates she makes a preliminary look and determines if it is a corporation, if not, then more calls are made.

**No one opposed or neutral to SB 2073.**

**Claus Lemke, representing ND Association of Realtors** indicates they have an Issues and Mobilization Fund that we have used on measures. It was not controlled and came from volunteer contributions so it wasn't money of corporation but our corporation or association handled these funds. We were involved in the high fence hunting issue. We put money into that. The local boards have part of that fund, divided between us just like the PAC funds are divided. Local funds can spend on local issues. They have flood sales tax proposals for flood protection and put money in there and local boards also have put money there to support that or may be to defeat that. We have been doing this a long time and don't know if this affects us or not. It would probably add an annual report but probably not on local issues. I don't think we need to report that. We have been operating very nicely and because of the realtors that do not want to give to PAC. We like to contribute to their community and state in another way. So we take these checks and put in "issues" fund an excellent tool. States he does not think bill affects them much.

**Senator Sitte**, asks how many complaints about \$20 ticket to steak fry? Is that a big problem?

**Leann Oliver** states that if they are new or a smaller committees, yes, especially if it is a onetime thing. They call and ask if they have to do a report then sometimes they won't do it then.

**Senator Sitte** asks "If they have only one event, they are not going to have an aggregate of \$200. do they have to present?"

**Leann Oliver** states that the calls that they get concern, "What do I have to report, do I have to report?" As far as number of calls that are complaining about that, is minimal. However, I do get calls saying, "Why do we have to do this and your hurting small groups from collecting money for doing a good thing for their community?" We have added to the last part of bill is to suffice the smaller ones that "yes" you can do something in your community if you only have a couple of suppers a year means you are not going to have to report anything.

**Senator Sitte** states she is bothered by \$25. fee. If any fundraiser wants to make any money, would any of you object to raising fee to \$30-\$40?

**Leann Oliver** states in the past it was \$15. Then, \$25. If you went from \$25 to \$30 would not be too detrimental. That is the political committee registration you are talking about? Misunderstood. We picked \$25.

**Senator Nething** asking if anyone is offering an amendment and what section are you speaking of?

**Committee** discussed the \$25. fee.

**Jim Silrum** discusses how they came up with the \$25. amount.

**Committee member** proposes \$50. Motion to change \$25 on Line 5, page 4 to \$50.  
There is a second.

**Jim Silrum** states that how it is defined under law, the definition of a multi-candidate committee, is a committee that is organized for the support of more than one candidate.

**Discussion** follows that there is frustration of "what a multi-candidate is?"

Under these changes in law, in Section 3, whenever a multi-cabinet committee would hold a dinner, bake sale etc. and the item in question was less than the dollar amount set, that money from that individual would never need to be reported to the Secretary of State. This law would mostly protect multi-candidate committee that rarely does anything of a political nature. Also, very active multi-candidate committees would be spared a reporting requirement for many of their participants.

**Senator Nething** asks what the "downside" is.

**Discussion.**

**Senator Nething** asks for any more discussion on motion.

**Motion to amend from \$25 to \$50. All voted for motion. Carried 6-0.**

**Senator Nelson** discusses that she is having a problem with Supreme Court decision that a corporation if we can do anything to override that.

**Discussion**

**Jim Silrum** states that that the first two sections of the bill do not, in any way, shape or form, change the current law. The first two sections of bill simply reorganizes the way it is read because so many people, in reading those current sections of law, get confused. Under current law, it is completely legal for a corporation to give to a measures committee. It is completely legal for a corporation to make a direct expenditure, in support of or opposition to, an initiated measure

**Discussion** ensues stating that, "Nothing changes in this law except the rewording".

**Jim Silrum** states that in this wording "a corporation, making a direct expenditure, would have a 48 hour time frame to report that to us so that it can be made available to the public." Under current law, there is no time frame specified to have to report that.

**Senator Sitte** references page 2, line 9, and that is a change that I didn't see carried over. So in other words, the law stated that a corporation, who receives contributions may, but we have cut that out. Is that correct?

**Jim Silrum** states that 3.1 is a different section of law and it refers to 8.1, 03. That section of law refers to just specific deals with the "contributions statements required of a measures committee". Rather than use the Century Code reference to it, we use the wording "measures committee".

**Senator Olafson** states SB 2073 **DO PASS, as amended.**

**Senator Sorvaag** seconds the motion.

**Amended SB 2073 passed 5-1-0.**

11.8093.01001  
Title.02000

Adopted by the Judiciary Committee

January 13, 2011

*JB*  
1-13-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2073

Page 4, line 5, replace "twenty-five" with "fifty"

Renumber accordingly

Date: 1/12/11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2073

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

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

Motion Made By Senator Olafson Seconded By Senator Sorvaag

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson		X
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 5 No 1

Absent \_\_\_\_\_

Floor Assignment Senator Olafson

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



**REPORT OF STANDING COMMITTEE**

**SB 2073: Judiciary Committee (Sen. Nething, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2073 was placed on the Sixth order on the calendar.

Page 4, line 5, replace "twenty-five" with "fifty"

Renumber accordingly

**2011 HOUSE POLITICAL SUBDIVISIONS**

SB 2073

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee  
Prairie Room, State Capitol

SB 2073  
March 10, 2011  
Job # 15264

Conference Committee

Committee Clerk Signature 

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

Relating to campaign contribution statements.

## Minutes:

Testimony #1

**Chairman Johnson:** Opened the hearing on SB 2073.

**Jim Silrum, Deputy Secretary of State:** (See testimony #1). You have the testimony that I passed out. The first two sections of this bill do not have any true substantive changes to the way the law currently stands right now regarding what corporations can and cannot do in giving to measurers. Section 3 is the only truly substantive change. Went over the bill and his testimony. This is a direct expenditure about a particular measure that is on the ballot. An example that you might remember is Scheel's Corporation when there was a seatbelt law on the ballot. They purchased full page ads in local newspapers to talk about their viewpoints on that particular measure. Corporations have been allowed to make this kind of expenditure. We always have asked for them to report. There is a substitute change here that would say they have 48 hours to make that report to the Secretary of State so we can make it available to the public as to what it is that they have done. I will stand for any questions.

**Rep. Klemin:** On section 2 the direct expenditure issue on page 3; in your testimony you sort of defined what a direct expenditure is; is that defined in this bill?

**Jim Silrum:** Direct expenditure has not been defined specifically in the campaign finance chapter. Were we to do it over again we probably would give a definition to direct expenditure, but there is another bill that you will be hearing a little bit later on this morning in which a number of bills that came forward in the Senate have now been changed to a study resolution that would be authorized during the intern and I believe that during that timeframe we would probably suggest the addition of definition for direct expenditure within the bill.

**Rep. Klemin:** We still have the opportunity to define it in this bill.

**Jim Silrum:** We would be in favor of that. The definition should probably go into the first section of the campaign finance chapter so we would need to do it there.

**Rep. Klemin:** Maybe it would be appropriate for your office to provide us with a proposed definition of direct expenditures that you would like to see in that definition section so we can review it.

**Jim Silrum:** That would be very easy to do because in the bill that was significantly changed to a study resolution when we thought it was going to go forward in the Senate as a bill that would be passed this year relating to that we did draft that particular definition for direct expenditure that we could easily provide to you and the committee.

**Rep. Klemin:** On Section 3; the \$50 amount; sometimes the dinners are more too so since the other dollar amounts in here are \$200 why aren't we talking about \$200 or less in this section?

**Jim Silrum:** When we originally came forward to the Senate with \$25 suggestion; we did that because a multicandidate committee in a given year would have to have 5 dinners in which they charged \$25 and a person would need to go to all five of those dinners in order to become a reported individual in that campaign contribution. It was our thinking it was an awful lot of dinners or fund raisers that they would have. The Senate thought somewhat along your lines in saying let's raise that amount, but here it would take four to five of those dinners to hit the \$200 mark. The objective is to be as transparent as possible with who are the people who are giving more than \$200 to a particular campaign or a multicandidate committee. The reason behind the law is to make the reporting easier. Whatever the legislative body things it the appropriate amount is certainly your call to make.

**Rep. Klemin:** We have quite a gap here between \$50 and \$200 or less. When someone goes to an event at which food is served, but not necessarily a set down meal and people donate food that is not is not bought by the multicandidate committee or anything like that is that considered a meal or food item? Seems like it would be here. Since they now got food at the fund raiser that was donated by other people, all of a sudden we have to start reporting it; it looks like if it is over \$50.

**Jim Silrum:** We are not attorneys or do we intend to act like them. The reason I bring that up is because I believe the question of whether or not a particular fund raiser was a meal or something else might have to be determined by those who are granted the authority to interrupt the law. We would see that a fund raiser would be a meal that is provided as part of that so if the suggested donation were \$50 or under this bill the multicandidate committee would not need to take down the individual names and addresses of all of those people who attend that particular event just so that in the event they later on make contributions that would in addition to this fund raiser, push them over the \$200 reporting threshold. They wouldn't have to be kept in that manner. As a citizen I make a contribution to your campaign and I give you over the course of a year more than \$200 then you must on your campaign contribution report that Jim Silrum gave you more than \$200. This was an attempt to simply address the situation that was not of our own doing but came from small multicandidate committees as a suggestion to us that could we introduce this and we did so on their behalf. Based on all the questions we have had concerning it probably wish now that I had said that would be fine if you would want to introduce that for yourself. She

receives one of your reports in that say you received a donation from something that looks like a multicandidate committee. She then goes to our website and records to determine whether they are a registered multicandidate committee or not. Then she also checks the business registration records to see if they should happen to be a corporation or something like that that would prohibit them from making a direct contribution to your campaign. If she does find them in either of those locations, then she does her level best to reach out to that multicandidate committee and sometimes she has to call each of you and say you received a contribution from the Farmers Daughter's group. Something along those lines and do you have the contact information. You let her know what that is; she calls them up and lo and behold they find out we are a multicandidate committee, no we are not a multicandidate committee and she said you gave a contribution to a person who is on the ballot so by virtue of that contribution you are a multicandidate committee. They then have to register as a multicandidate committee. This really doesn't make any sense. All we do is have a few picnics here or there. Most of the time we give to civic organizations but in this particular situation we gave to a candidate and so that is not our typical venue.

**Rep. Klemin:** I think this section raises more questions than not having it there.

**Rep. Koppelman:** Getting back to what constitutes a multicandidate committee. Does the bill redefine that? If for example the Garden Club said we know this one legislature, Rep. Johnson, who is always talking about flowers so we are going to give her some money. They are in a multicandidate committee now if they do that?

**Jim Silrum:** Because they have given a reportable contribution to you, yes they do become a multicandidate committee even though they were not forms specifically for your group they are giving to candidates and they are not an individual.

**Rep. Koppelman:** That must be the definition of multicandidate group is somewhere. Does this bill change that?

**Jim Silrum:** No it doesn't. Yes it is defined in another section of the campaign finance chapter. LeAnn can you tell me which section that is? It is in the definition part a multicandidate political committee established to support multi groups of candidates seeking public office that solicits and receives contribution for political purposes.

**Rep. Koppelman:** Solicits and receives, but not gives.

**Jim Silrum:** It has been our understanding that any political committee that gives to a candidate falls under the definitions of what must happen. The Section is 16.1 -08.1-.01 and is under the subsection 8 under the definition of political committee. Political committee means any committee, club, association, or other group of persons which received contributions or makes expenditures for political purposes and includes the following: it then says a political action committee, a candidate committee, an organization governed by 527, a multicandidate political committee.

**Rep. Koppelman:** We will take a look at that. If a group came to you saying this is silly and we would like you to fix it.

**Jim Silrum:** Yes this section of the bill came right from them.

**Rep. Koppelman:** We have learned it is probably better to let legislators submit bills. I see it is introduced by the judiciary committee. Was that where it was on the Senate side?

**Jim Silrum:** Yes that is where it did begin.

**Rep. Koppelman:** So it wasn't an intern committee. It was introduced by the judiciary committee in the Senate at the request of the Secretary of State.

**Jim Silrum:** I forget who the sponsor was. This was an agency bill that was submitted and it was directed to the judiciary.

**Rep. Koppelman:** The other piece of policy making that seems to be going on here is on page 3 where we are talking about allowing these groups to make expenditures for measurers. Is that current practice that is being codified or is that a change?

**Jim Silrum:** That is current law that comes directly from the current subsection 1 of that and so it is just being ported from there to a new subsection where we can speak directly to what a direct expenditure is and separate it from a gift that a corporation may give to a measure committee.

**Rep. Koppelman:** We just heard a bill about signs etc. Do you see any of the previous bills being handed down regarding free speech affecting the laws we have on the books in ND regarding corporations or unions or other types of organizations giving money and do you see a change?

**Jim Silrum:** I see that the case you are most speaking of specifically is the Citizen's united against the state of Wisconsin. That Supreme Court case does have an impact on what corporations can and can't do. There was a bill that was submitted by Senator Schneider on the Senate side that you will hear in just a little bit because the bill has been turned into a study that will be done during the intern. It has gotten to be a study, not because we don't believe that something should be done now, but that something appropriate should be done in North Dakota. Considering the fact the federal election commission, which is responsible for this kind of thing on a federal level does not have a well defined answer as to how the Citizen's united impacts the free speech issues of corporations. Both the Republicans and Democrats on the Federal Election Commission are currently battling it out. We felt it was best to do some additional study during the intern to make sure we have legislation that will be constitutionally upheld in both North Dakota and on the federal level so that is why it was suggested to become a study.

**Rep. Koppelman:** In addition to the Citizen's United case the White case as it affects judicial elections is another one that made some new law in terms of free speech in regard to elections.

**Rep. Shirley Meyer:** Back to page 4 again with the multicandidate political committee. When I read that and I know we have called the Secretary of State's office about this, I thought it meant like just for example the three K's, Koppelman, Klemin and Kaiser. In my mind that was the multicandidate political committee when we run as a team effort. When we have run as a team that was a question of what we had was what the reportable contributions were when people donated food at our benefits or whatever. That is what I

was thinking this meant. Not a garden club that gave to a political person, but those legislatures that were running as a group.

**Jim Silrum:** I am glad you brought that question up again because as we saw in the definitions in 16.1.08.101 Subsection 8 a political committee and all of these are political committees means any committee, club, association, or other group of persons which received contributions or makes expenditures for political purposes. So if a club of any kind gives a contribution to a candidate then they fall under the definition of a multicandidate committee in this particular instance whether they were formed for that purpose or not. By virtue of them bridging that gap suddenly they fall into that category and then later on in the chapter 16.1.08.103.8 further define the statement that is required of multicandidate committees. I do draw your attention to that. Whether receive contributions or make expenditures and in the case that is described an expenditure is being made because a contribution is being made from that committee to a political purpose, meaning your campaign, that is what switches the trigger, turns on the switch that makes them a multicandidate committee. That must first register as a multicandidate committee and then must report as one.

**Rep. Klemin:** Staying on section 3 for a minute, I understand there are going to be multicandidate committees that have fund raising events, but this says the contribution is made to the committee in exchange for any meal or food item. So if there is a pot luck where people donate these food items for the fund raising event, is that money really then being given to the committee in exchange for the food item. Because the committee didn't provide the food item, somebody else did.

**Jim Silrum:** I think the argument could go both ways and it would be our stance that the multicandidate committee should report what they feel is appropriate under the law. They have the burden of responsibility of saying this is a reportable contribution or this is not a reportable contribution. If in the particular situation you describe I doubt that we would be micromanaging the efforts of that multicandidate committee so much to determine whether or not something was a fund raiser event in which there was a meal served or whether it was a pot luck or something like that. However, another multicandidate committee or somebody else could file a complaint saying that there was a fund raising event held by this and we claim that it either was or was not a fund raising event in which food was served and then the battle would begin because of that. We ourselves would not be supervising the individual actions of all multicandidate committees in that regard.

**Rep. Klemin:** So you're saying it is up to the committee then to have the burden of trying to interrupt this language and really your office is going to get these questions. Don't we have some responsibility here in the legislature to make sure that it is clear so we don't get these questions?

**Jim Silrum:** It is always best if the law can be explicitly clear as to what is and what the case isn't. A legislative assembly can not anticipate everything that might possible be the case. If you chose to add something to this for clarification purposes, that would be just fine.

**Rep. Klemin:** If you pay in \$50 or less to the committee and the committee is not providing the food, but somebody else is, then how was it being done in exchange for the food?

**Jim Silrum:** I don't know how to answer your question.

**Rep. Klemin:** The intention is you are trying to put in a situation in which you don't have to keep track of all this stuff in order to aggregate it up to more than \$200. That seems like a good thing to do. I am not too sure about the way the language is used in here. If food is served at all I would certainly clarify that whether the committee brings it or somebody else does that would help the people that have to make these reports, I would think.

**Jim Silrum:** All I can say is when we draft possible legislation for you to consider we don't do this simply in a vacuum. We run this past the Attorney General's office for input from that as well and this particular language was something that was suggested to us as a possibility from there. We stand behind it as being something that we put forward but we are more than happy to except some sort of helpful change to this. It was our intent to make the reporting requirements of these multicandidate committee easier, not more difficult.

**Rep. Mock:** I will be switching topics and referring to Rep. Koppelman.

**Rep. Koppelman:** I still think Mr. Silrum is the problem is the definition or the way you are interrupting the definitions of these various committees because as I look in that section you cited earlier it says a multicandidate political committee established to support multiple groups or slates of candidates seeking public office that solicits or receives contributions for political purposes. It seems to me that doesn't fit in any respect because the kind of entity you are talking about isn't established for that purpose. They don't solicit contributions and they don't receive contributions. You are talking about a group that made a contribution. There is another definition called political committee and we all think of that as being parties or campaign committees but it says political committee means any committee, clubs, association, or other group of persons which receives contributions or makes expenditures for political purposes. That is a more fitting place to define a group, club or association or an entity that gives money to a candidate or campaign it seems to me that fits better than multicandidate committee.

**Jim Silrum:** You are correct. Political committee is the over arching theme that governs all of these various types of political committees. There is the political action committee, candidate committee, 529 organizations, measure committees and multicandidate committees. Regardless of whether they are one of those or just a political committee itself they would have a \$25 registration requirement and they would have to report as a political committee. We generally tend to think of them as a multicandidate committee because the reason we are noticing them at all is because they are showing up on several reports so these groups are giving to not just one candidate, but to several candidates. LeAnn checked on this Garden Group because it showed up on several reports so upon checking she said because you are making expenditures and for a committee like that where they are giving a contribution, that is really expenditure from their committee to candidates or multi slates of candidates. They have a registration requirement.

**Rep. Mock:** I am looking at section 2; page 2 under subsection 1 and I just have a question. In the over struck language that is being put into subsection 3 for clarification. I noticed that on line 9, starting on line 8 any corporation, cooperative, corporation or limited liability company or association that receives contributions pursuant to Section



16.1.08.1.031. I don't see anything in this bill relating to receiving of contributions. Everything is expenditures or making contributions but nothing relating to receiving contributions. Could you speak to that?

**Jim Silrum:** There is certainly still work that needs to be done. I believe the study that will be done during the intern will address that wholeheartedly because we don't quite understand at the moment how one corporation may receive contribution from another corporation or something like that. The Citizen's United and other cases that have changed the political landscape of what is free speech is still quite confusing. It has been our thought that Scheels or any other corporation like that is making a direct expenditure and they are buying advertising. They themselves are making a decision as a corporation that they want to support a particular measure or they want to support the defeat of that particular measure, but now we are understanding that it may be possible and it may be happening that life minded corporations are able to give to one another and then that particular corporation then makes a one concerted effort from that particular corporation, but it is really the combined voice of Scheel's and Cabals etc. Our intent is to take a look at that during the intern and to make sure whatever we decide it appropriate. So for the time being if a corporation gives to a measure committee or they can make a direct expenditure. You are absolutely correct; we have not addressed specifically the whole idea of corporations receiving contributions, which they in turn make as political contributions.

**Rep. Mock:** There are seven words or so in the deleted language what wasn't transferred to the new subsection. In reading of the deleted language, if any corporation or LLC or association received contributions they would be required to file a statement. Under this bill during the intern that we are studying it, if a corporation receives a contribution, are they required to file a statement?

**Jim Silrum:** We would believe that they would still be required because they are making ultimately with that contribution that they are receiving; their intent is made known in the direct expenditure that they then make for a political purpose relating to a particular measure. How do we govern whether a corporation gives to another corporation, but does not ever do anything as a political nature with that? It just remains as something between those two corporations. Yes we could port that language over, but we believe that the political purpose is identified most when the advertising is purchased. In those cases then there is a reporting requirement that would kick in.

**Rep. Mock:** I hope that it is a mandatory study. I am uncomfortable removing language that may require statements to be filed if a corporation, or cooperative corporation or LLC, or association receives contributions. Maybe your office can provide something to the committee to clarify that to at least insure that we are not creating a loop hole while this section of law is being looked into further.

**Jim Silrum:** I don't see a real problem with moving over all those particular seven or eight words into subsection 3 if that would be helpful. We can go ahead and do that and we can certainly offer that as an amendment if that is the committee's wishes. The purpose is only made known once those corporations or corporation does something with the money. Either they give it to a measure committee or they make a direct expenditure with it. I think you see where we opted for leaving that out just because we think it is already covered.

**Rep. Klemin:** I just want to make sure I understand what you just said in regards to this question on page 2 is that 16.108.103.1. That particular section of the law is not being amended by this bill, right?

**Jim Silrum:** You are correct.

**Rep. Klemin:** So if this language is taken out here, that doesn't negate the fact that contribution statement may still be required under that other section.

**Jim Silrum:** You are correct because 03.1 is contribution statement required of persons in measure committees promoting passage or defeat of an initiated measure.

**Rep. Klemin:** So this is redundant to have this in here if it is already required in section 3.1.

**Jim Silrum:** Yes it is somewhat redundant; however, if I maybe so bold as to say what Rep. Mock was thinking is that what is not covered is when a corporation makes a give to another corporation, but nothing is done with that. Just by virtue of their giving a gift to another corporation, which is for political purposes is what is missing there. You are right, 03.1 does talk about this statement that is required of measure committees for promoting passage of an initiated measure, but currently I doubt that there has ever been a campaign contribution statement filed in which one corporation is simply reporting that they gave a gift for a political purpose to another corporation without something being done with that on the back end. That is where I think the gap still is.

**Claus Lempke, North Dakota Realtors:** We have a political action pack and certain money of that is set aside as Rep. Beadle knows for issues funds. We call it an issue and mobilization fund and we have been doing that for twenty five years. Also some of us do not want to contribute money into the political action funds because they don't believe in that; we will ask them to contribute anyway and put that in an issues fund. That fund has not been regulated at all. We have given money to sales tax proposal for Minot's flood issues. We have given money to sales tax proposal in Fargo for their flood protection and those are the kind of issues that would concern real estate. If there was a reduction in real estate taxes we supported that with these issues funds. It is run by a separate committee that looks at these and there are applications too. The latest one that I think applies well here; we were involved in the high fence hunting prohibition. We were against that proposal to change our constitution on the simple premise that it infringed on property rights. If you want to have cattle there or you want elk there or whatever you wanted it is an income that probably produces and income and it would be limited by the constitution. It was our issue and we didn't want to have that done. We did spend \$6000. Some of it came from the local committees because we divide our funds between the local; and state issues. All the dollars we had were collected and given to the high fence hunting opponents. It would have been great to see. Tons of money came from the proponents and everybody said from out of state money. It would have been nice to have this bill here to see where that money came from. We do vote with our heart on those issues when it is a lot out of state money it usually doesn't hold water for us. The \$50 exemption came because of the Lincoln Day dinner in Bismarck. It was a \$40 fee and a Senator wanted an exemption and it was eliminated. We think it is great. We don't have any trouble reporting what we are doing. We want to see the other side too so that is the reason we supported this bill. Collecting money is unusual; we don't think that needs to be reported because it is

not an issue. Why would anybody care who gives how much to this issues fund. The only time we would have to disclose something is when we are doing something with it. When we are supporting or opposing an issue. My personal opinion is that multi committees are multicandidate committees. It is not multi garden clubs, it is multicandidate committee. I would stand for any questions.

**Rep. Mock:** You are speaking on behalf of the Association of Realtors and not the university system.

**Claus Lembke:** Yes that is right.

**Rep. Mock:** You mentioned with the high fence measure and that you would be interested in where some of the money was coming from. It is my understanding that this bill doesn't really change that much. Can you point to where that would be?

**Claus Lembke:** It is on page 3, starts on line 13 where it says the name of the corporation, address, title of the measure which you oppose or supported, the amount of expenditure and the cumulative dollars etc. I see that as part of our report. I presume the Secretary of State will have a form for that.

**Rep. Mock:** I understand that measures committees already have to report contributions so that should already be known under current law. This wouldn't necessarily change a measure committee where they are receiving contributions as long as they are reportable. I don't see how that is being changed under this proposal.

**Claus Lembke:** On page 3, line 8 in this case it is a corporation. The ND Association of Realtors is incorporated and we are making expenditures for promoting. It says we must file these statements but before we didn't. We have been doing it for 25 years and never reported anything.

**Chairman Johnson:** This puts in where the corporations have to identify when they are supporting a measure and who that corporation is. Prior to this particular legislation if you were the measure committee you had to report, but if you were a corporation donating for a measure you didn't.

**Claus Lembke:** That is correct.

**Rep. Mock:** I am looking that the Secretary of State's testimony and it says that the removed language is reformatted from page 2 lines 8 through 21 and it placed under a new subsection for easier reading. I just wanted to be sure this is the reason you are stating your support.

**Chairman Johnson:** Did I mistake that Mr. Silrum?

**Jim Silrum:** A group that gives to a measure committee does not have a reporting requirement. If a corporation gives to a measure committee that corporation does not have a reporting requirement now nor will they in the future if this bill passes. Where that will show up is on that measure committee's required report it will show up that XYZ corporation gave to them a gift of this much money. That is the case now and will stay the same in the future. That is not being changed here. What is also not being changed is that

if a corporation makes a direct expenditure, then they have a reporting requirement because we wouldn't know about that unless they themselves had to report so if they are giving to a measures committee then the measure reports that they received a gift from that corporation. If they make a direct expenditure, and advertising by themselves, without going through a measure committee then the corporation itself has a reporting requirement. That is the case now and if this bill passes as it is, would be the case in the future.

**Rep. Koppelman:** Could you elaborate a little bit on what is included on page 3, line 8 when we talk about a corporation, a cooperative corporation, limited liability company or association. What is included under association?

**Jim Silrum:** Associations are specifically defined and means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons including labor unions, trade associations, professional associations or governmental association which is united for any purpose, business or object which assess any dues, membership fees, or license fees in any amount or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees or political parties. It is in 16.1-08.1.01 subsection 1.

Opposition: None

Hearing closed.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee  
Prairie Room, State Capitol

SB 2073  
March 18, 2011  
Job # 15645

Conference Committee

Committee Clerk Signature



## Minutes:

(Proposed amendment #1)

**Chairman Johnson:** Opened discussion on SB 2073.

**Rep. Klemin:** That direct expenditure definition that was put in was the one that was drafted by the Secretary of State's office and sent to us. The second amendment is on Page 4 of the bill at the end where it said made a contribution of \$50 or less to the committee in exchange for any meal or food item provided as part of a fund raising event. Technically if somebody served pretzels that would count as far as not having to report anything. The intention seems to be that this is where a meal is served. Not just a food item is served.

**Rep. Klemin Made a Motion to Move the amendments. Seconded by Rep. Zaiser:**

Discussion:

**Rep. Klemin:** The reason the first amendment is so long is that we can't just put in a new definition there. We have to put in the whole section on definitions and include it there so it is not quite as long as it really looks.

**Rep. Shirley Meyer:** So basically 5 is the only change in that?

**Voice vote carried.**

**Do Pass As Amended Motion Made by Rep. Maragos: Seconded by Rep. Beadle**

**Vote: 11 Yes 1 No 2 Absent Carrier: Rep. Klemin:**

March 18, 2011

VR  
3/18/11  
1063

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2073

Page 1, line 1, after "reenact" insert "section 16.1-08.1-01,"

Page 1, line 3, after "to" insert "the definition of direct expenditures and"

Page 1, after line 4, insert:

**"SECTION 1. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.
2. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:
  - a. A person holding public office;
  - b. A person who has publicly declared that person's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
  - c. A person who has formed a campaign or other committee for that person's candidacy for public office;
  - d. A person who has circulated a nominating petition to have that person's name placed on the ballot; and
  - e. A person who has, in any manner, solicited or received a contribution for that person's candidacy for public office, whether before or after the election for that office.
3. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to

that candidate, party, or committee from another candidate, party, or political committee or other source. The term "anything of value" includes any good or service of more than a nominal value. The term "nominal value" means the cost, price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:

- a. A loan of money from a bank or other lending institution made in the regular course of business.
  - b. Time spent by volunteer campaign or political party workers.
  - c. Money spent by a candidate on the candidate's own behalf.
  - d. Money or anything of value received for commercial transactions, including rents, advertising, or sponsorships made as a part of a fair market value bargained-for exchange.
  - e. Money or anything of value received by a candidate in that person's personal capacity, including pursuant to a contract or agreement made for personal or private employment purposes, and not received for a political purpose or to influence the performance of that person's official duty.
  - f. Contributions of products or services for which the actual cost or fair market value are reimbursed by a payment of money.
4. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations.
5. "Direct expenditure" means an expenditure made by a corporation, cooperative corporation, limited liability company, or association for the specific purpose of promoting passage or defeat of an initiated or referred measure without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of a measure committee.
6. "Expenditure" means a gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for the direct purpose of influencing the passage or defeat of a measure or the nomination for election, or election, of any individual to office. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure and includes the transfer of funds by a political committee to another political committee.
- 6-7. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.
- 7-8. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.

- 8-9. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures for political purposes and includes the following:
  - a. A political action committee, derived from a corporation, cooperative corporation, limited liability company, or an association that is prohibited from making direct contributions for political purposes under section 16.1-08.1-03.3, and which solicits or receives contributions or makes expenditures for political purposes;
  - b. A candidate committee, established to support an individual candidate seeking statewide office, that solicits or receives contributions for political purposes;
  - c. An organization governed by section 527 of the Internal Revenue Code [26 U.S.C. 527], which solicits or receives contributions or makes expenditures for political purposes;
  - d. A multicandidate political committee, established to support multiple groups or slates of candidates seeking public office, that solicits or receives contributions for political purposes; and
  - e. A measure committee that solicits or receives contributions for the purpose of aiding or opposing a measure to be voted upon by the voters of the state.

9-10. "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.

40-11. "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a state office or any position taken in any bona fide news story, commentary, or editorial.

44-12. "Public office" means every office to which persons can be elected by vote of the people under the laws of this state."

Page 4, line 5, remove "in"

Page 4, line 6, remove "exchange for any meal or food item provided"

Page 4, line 7, after "committee" insert "at which a meal is served"

Renumber accordingly



2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2073

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended  Adopt  
 Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Rep. Klemin Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

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

Absent \_\_\_\_\_

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

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

*Voice  
 Vote  
 Carried*

Date: 3-18-11  
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2073

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended  Adopt  
Amendment

Rerefer to Appropriations  Reconsider \_\_\_\_\_

Motion Made By Rep. Maragos Seconded By Rep. Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Kilichowski	✓	
Vice Chairman Hatelstad	✓		Rep. Shirley Meyer	✓	
Rep. Beadle	✓		Rep. Mock		
Rep. Devlin	✓		Rep. Zaiser		✓
Rep. Heilman	✓				
Rep. Klemin	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	—				
Rep. Maragos	✓				
Rep. Pietsch	✓				

Total (Yes) 11 No 1

Absent 2

Floor Assignment Rep. Klemin

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

**REPORT OF STANDING COMMITTEE**

**SB 2073, as engrossed: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (11 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2073 was placed on the Sixth order on the calendar.**

Page 1, line 1, after "reenact" insert "section 16.1-08.1-01,"

Page 1, line 3, after "to" insert "the definition of direct expenditures and"

Page 1, after line 4, insert:

**"SECTION 1. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

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  - c. A person who has formed a campaign or other committee for that person's candidacy for public office;
  - d. A person who has circulated a nominating petition to have that person's name placed on the ballot; and
  - e. A person who has, in any manner, solicited or received a contribution for that person's candidacy for public office, whether before or after the election for that office.
3. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source. The term "anything of value" includes any good or service of more than a nominal value. The term "nominal value" means the cost,

price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:

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  - e. Money or anything of value received by a candidate in that person's personal capacity, including pursuant to a contract or agreement made for personal or private employment purposes, and not received for a political purpose or to influence the performance of that person's official duty.
  - f. Contributions of products or services for which the actual cost or fair market value are reimbursed by a payment of money.
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5. "Direct expenditure" means an expenditure made by a corporation, cooperative corporation, limited liability company, or association for the specific purpose of promoting passage or defeat of an initiated or referred measure without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of a measure committee.
6. "Expenditure" means a gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for the direct purpose of influencing the passage or defeat of a measure or the nomination for election, or election, of any individual to office. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure and includes the transfer of funds by a political committee to another political committee.
- 6-7. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.
- 7-8. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.
- 8-9. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures for political purposes and includes the following:
- a. A political action committee, derived from a corporation, cooperative corporation, limited liability company, or an association that is prohibited from making direct contributions for political purposes

under section 16.1-08.1-03.3, and which solicits or receives contributions or makes expenditures for political purposes;

- b. A candidate committee, established to support an individual candidate seeking statewide office, that solicits or receives contributions for political purposes;
- c. An organization governed by section 527 of the Internal Revenue Code [26 U.S.C. 527], which solicits or receives contributions or makes expenditures for political purposes;
- d. A multicandidate political committee, established to support multiple groups or slates of candidates seeking public office, that solicits or receives contributions for political purposes; and
- e. A measure committee that solicits or receives contributions for the purpose of aiding or opposing a measure to be voted upon by the voters of the state.

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~~10-11.~~ "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a state office or any position taken in any bona fide news story, commentary, or editorial.

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Page 4, line 5, remove "in"

Page 4, line 6, remove "exchange for any meal or food item provided"

Page 4, line 7, after "committee" insert "at which a meal is served"

Renumber accordingly

2011 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2073

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

SB 2073  
4/8/11  
Job #16450

Conference Committee

Committee Clerk Signature 

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

**Relating to campaign contribution statements.**

**Minutes:**

**Senators:**

**Olafson  
Sorvaag  
Nelson**

**Representatives:**

**Klemin  
Maragos  
Kilichowski**

Representative Klemin explains the House action on the bill. He said the Secretary of State's office prepared the definition of "direct expenditure". He explains what they took out regarding meals. The committee discusses heavy appetizers verses a meal. Senator Olafson asks Jim Silrum of the Secretary of State's office to speak on why they needed the changes. He said his concerns are that even going back to the way their office suggested it there would be a problem. They concur with eliminating section four entirely.

**Representative Maragos** moves that the House recede from House amendments and further amend,

**Senator Nelson** seconded

Roll call vote- 6 yes, 0 no

**Senator Olafson** will carry

PROPOSED AMENDMENT TO SENATE BILL 2073

Page 1, line 1, after "reenact" insert "section 16.1-08.1-01,"

Page 1, line 3, after "to" insert "the definition of direct expenditures and"

Page 1, after line 4, insert:

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Prepared for: House Political Subdivisions Committee  
Prepared by: Jessica Braun, Legislative Intern, House Political Subdivisions Committee

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  - b. Time spent by volunteer campaign or political party workers.
  - c. Money spent by a candidate on the candidate's own behalf.
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  - b. A candidate committee, established to support an individual candidate seeking statewide office, that solicits or receives contributions for political purposes;
  - c. An organization governed by section 527 of the Internal Revenue Code

Prepared for: House Political Subdivisions Committee  
Prepared by: Jessica Braun, Legislative Intern, House Political Subdivisions Committee

- [26 U.S.C. 527], which solicits or receives contributions or makes expenditures for political purposes;
- d. A multicandidate political committee, established to support multiple groups or slates of candidates seeking public office, that solicits or receives contributions for political purposes; and
  - e. A measure committee that solicits or receives contributions for the purpose of aiding or opposing a measure to be voted upon by the voters of the state.
- ~~9-10.~~ "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.
- ~~10-11.~~ "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a state office or any position taken in any bona fide news story, commentary, or editorial.
- ~~11-12.~~ "Public office" means every office to which persons can be elected by vote of the people under the laws of this state."

Page 4, line 5, remove "in"

Page 4, line 6, replace "exchange for any meal or food item provided" with "where a meal is served"

Renumber accordingly

# 2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. 2073 as (re) engrossed

Date: 4-8-11

Roll Call Vote #: 1

**Action Taken**

- SENATE accede to House amendments
- SENATE accede to House amendments and further amend
- HOUSE recede from House amendments
- HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) 875 -- 877

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Maragos Seconded by: Nelson

Senators				Yes	No	Representatives				Yes	No
<u>Olafson</u>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		<u>Klein</u>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
<u>Sorevaag</u>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		<u>Maragos</u>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
<u>Nelson</u>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		<u>Kilichowski</u>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	

Vote Count: Yes 6 No 0 Absent \_\_\_\_\_

Senate Carrier Olafson House Carrier Maragos

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**SB 2073, as engrossed:** Your conference committee (Sens. Olafson, Sorvaag, Nelson and Reps. Klemin, Maragos, Kilichowski) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 875-877, adopt amendments as follows, and place SB 2073 on the Seventh order:

That the House recede from its amendments as printed on pages 875-877 of the Senate Journal and pages 1048-1050 of the House Journal and that Engrossed Senate Bill No. 2073 be amended as follows:

Page 1, line 1, after "reenact" insert "section 16.1-08.1-01,"

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

Page 1, line 2, remove ", and subsection 2 of section 16.1-08.1-03.8"

Page 1, line 3, after "to" insert "the definition of direct expenditures and"

Page 1, after line 4, insert:

**"SECTION 1. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.
2. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:
  - a. A person holding public office;
  - b. A person who has publicly declared that person's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
  - c. A person who has formed a campaign or other committee for that person's candidacy for public office;
  - d. A person who has circulated a nominating petition to have that person's name placed on the ballot; and
  - e. A person who has, in any manner, solicited or received a contribution for that person's candidacy for public office, whether before or after the election for that office.
3. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement,

express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source. The term "anything of value" includes any good or service of more than a nominal value. The term "nominal value" means the cost, price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:

- a. A loan of money from a bank or other lending institution made in the regular course of business.
  - b. Time spent by volunteer campaign or political party workers.
  - c. Money spent by a candidate on the candidate's own behalf.
  - d. Money or anything of value received for commercial transactions, including rents, advertising, or sponsorships made as a part of a fair market value bargained-for exchange.
  - e. Money or anything of value received by a candidate in that person's personal capacity, including pursuant to a contract or agreement made for personal or private employment purposes, and not received for a political purpose or to influence the performance of that person's official duty.
  - f. Contributions of products or services for which the actual cost or fair market value are reimbursed by a payment of money.
4. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations.
5. "Direct expenditure" means an expenditure made by a corporation, cooperative corporation, limited liability company, or association for the specific purpose of promoting passage or defeat of an initiated or referred measure without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of a measure committee.
6. "Expenditure" means a gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for the direct purpose of influencing the passage or defeat of a measure or the nomination for election, or election, of any individual to office. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure and includes the transfer of funds by a political committee to another political committee.
7. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.
- ~~7-8.~~ "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.

8-9. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures for political purposes and includes the following:

- a. A political action committee, derived from a corporation, cooperative corporation, limited liability company, or an association that is prohibited from making direct contributions for political purposes under section 16.1-08.1-03.3, and which solicits or receives contributions or makes expenditures for political purposes;
- b. A candidate committee, established to support an individual candidate seeking statewide office, that solicits or receives contributions for political purposes;
- c. An organization governed by section 527 of the Internal Revenue Code [26 U.S.C. 527], which solicits or receives contributions or makes expenditures for political purposes;
- d. A multicandidate political committee, established to support multiple groups or slates of candidates seeking public office, that solicits or receives contributions for political purposes; and
- e. A measure committee that solicits or receives contributions for the purpose of aiding or opposing a measure to be voted upon by the voters of the state.

9-10. "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.

40-11. "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a state office or any position taken in any bona fide news story, commentary, or editorial.

44-12. "Public office" means every office to which persons can be elected by vote of the people under the laws of this state."

Page 3, remove lines 28 through 31

Page 4, remove lines 1 through 7

Re-number accordingly

Engrossed SB 2073 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

SB 2073

2013 ①

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**SECRETARY OF STATE**  
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BISMARCK ND 58505-0500

January 12, 2011

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

FR: Al Jaeger, Secretary of State

RE: SB 2073 – Relating to Campaign Contribution Statements

Preliminary Note: Our understanding of the Supreme Court decision in Citizens United v. Federal Election Commission is that even though there has been a relaxation of the understanding in law regarding allowable electioneering communication expenditures by corporations, direct contributions by corporations to candidates, political parties, political committees, etc. is still prohibited. For example, this decision by the Supreme Court does allow a corporation, cooperative corporation, limited liability company, or association (all of which hereafter referred to as "corporation") to pay for a radio or television ad supporting a candidate, but it may not make a direct contribution to a candidate for any purpose in support of the candidate's pursuit of election.

Section 1, page 1, lines 9 through 11: The added language is intended to draw the reader of the law to 16.1-08.1-3.5 that allows corporations to make direct contributions to measure committees even though they may not make direct contributions to political parties, political committees or organizations.

Section 2, pages 1, 2, and 3: The main purpose for the requested change is to add clarity for the reading of the law pertaining to allowable corporate contributions and expenditures. The section is divided into three subsections:

1. Subsection 1, page 1, line 19 through page 2, line 21:
  - a. Allowable contributions to measure committees
  - b. Allowable expenditures for the promotion of general political philosophy – an example would be in support of "representative democracy"
  - c. The overstricken sentences on page 2, lines 8-21 are being moved to a new subsection 3 defining the reporting requirements for allowable direct expenditures by corporations
2. Subsection 2, page 2, line 22 through page 3, line 7: No changes are requested for this subsection outlining allowable corporate donations to political party building funds
3. Subsection 3, page 3, lines 8 through 27: The language on lines 8 through 12 are essentially the words that have been moved from subsection 2 with one small addition providing for a 48-hour reporting time frame in which the required statement must be filed with the Secretary of State. The list found on lines 13 through 27 include the elements on the direct expenditure reporting statement currently in use by our office for reporting purposes. An example of a direct expenditure would be a corporation buying a newspaper ad in support of an initiated measure.

Section 3, page 4, lines 4 through 7: This requested addition comes from calls received by our office this year from groups that first of all didn't know they needed to be registered with the Secretary of State as a multicandidate committee. The reason they became aware of this registration requirement is through our contact with them since the name of their committee appeared on campaign contribution statements submitted by a candidate. The new language will not remove the registration requirement of their committee, but it will eliminate the committee's need to record the name and address for any person attending a meal or bake sale in which the cost of the meal or bake sale item is less than \$25. As the law stands right now, these groups need to record this information in the event that the total from any individual attending these functions over the course of a year is greater than \$200, which is the amount triggering a reporting threshold concerning the contributor.



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March 10, 2011

TO: Rep Johnson, Chairman, and Members of the House Political Subdivision Committee

FR: Al Jaeger, Secretary of State

RE: SB 2073 – Relating to Campaign Contribution Statements

Section 1, page 1, lines 9 through 11: The added text in this section of the Century Code clarifies that contributions to a measures committee can be made by corporations, cooperative corporations, limited liability companies, or associations as allowed in N.D.C.C. § 16.1-08.1-3.5 (which is being changed in Section 2 of this bill).

Section 2, page 1, lines 21 through 24 and page 2, lines 1 through 4: The removed and added text clarifies the reading of the section in that contributions can be made to a measures committee by corporations, cooperative corporations, limited liability companies, or associations

Section 2, page 2, lines 8 through 21: The removed text is reformatted for easier reading under the new subsection 3 that appears on page 3, lines 8 through 27.

Section 2, page 3, lines 8 through 27: These lines represent the reformatted text removed from page 2, lines 8 through 21. The only addition to current law made in this new reformatted subsection is that a direct expenditure made by a corporation, cooperative corporation, limited liability company, or association to promote or defeat a measure must be reported within 48 hours. A direct expenditure is one that is not made as a contribution to a measure committee. Rather, it is an independent expenditure made by a corporation, cooperative corporation, limited liability company, or association to purchase (as an example), an advertisement that discloses their name and which promotes the passage or defeat of a measure.

Section 3, page 4, lines 4 through 7: According to state law (N.D.C.C. § 16.1-08.1-03.8), a multi-candidate political committee is a committee established to support multiple groups or slates of candidates seeking public office. As amended, this change would not require the committee to report any contributions of \$50 or less made to the multi-candidate committee in exchange for any meal or food item provided as part of a fundraising event.