

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1340

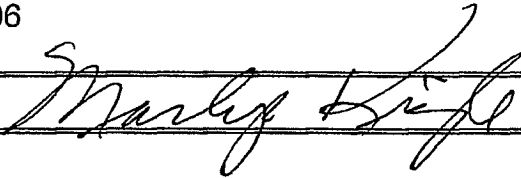
House Appropriations Committee

Check here for Conference Committee

Hearing Date: 2-10-2007

Recorder Job Number: 3306

Committee Clerk Signature



Minutes:

Chairman Svedjan: Called the meeting to order for HB 1340. He mentioned that this bill is one of the few bills that increase revenue.

Rep Klemin: Reviewed the bill. HB 1340 is a bill to create a new chapter of ND Law relating to publicly traded corporations. This bill would not have been possible previously because of the anti corporation provisions that we had in our ND Constitution. In the June 2006 election, 73% of our voters proved our amendment to article 12 of ND Constitution which brought North Dakota into the 21 Century with respect to how corporations are handled. North Dakota has always been a place where we have provided options to the people who want to do business in this state. We have numerous forms of methods of doing business, some we have proved over the last 10 to 20 years. For example we have sole proprietorships, corporations, limited liability companies, we have general partnerships, limited partnerships, limited liability partnerships, and limited liability limited partnerships. This bill provides us with another option, publicly traded corporations.

The state now only has 3 state chartered corporations. The reason for that is because of the provisions that we had on our Constitution. It is hoped that by adopting HB1340 we may be able to attract other publicly traded corporations to incorporate in North Dakota. In most of the publicly traded corporation now go to the state of Delaware. They don't go there to set up

business there but incorporate under Delaware Law. Delaware Law has long been a place where the corporate law has been favorable to corporations. When the incorporate in Delaware they are required to pay an annual franchise fee for publicly traded corporations. That franchise fee is currently \$160,000 a year for those corporations. What this bill does respect to the fiscal part of it is that it provides for an annual franchise fee and you will find this in the bottom of page 19 is where the annual franchise fee starts. This is based on the amount of stock that a publicly traded corporation is authorized to issue. It would range from a minimum \$60 to maximum of \$80,000 a year. Those franchise fees brought over 1 million dollars over 400 million dollars into the state of Delaware.

This bill 1340 does not change any of our excising laws it is purely an optional law.

Those publicly traded corporations that chose to come to North Dakota to incorporate here, it will have beneficial provisions for them. This is a completely optional statute; it is not required of any one to any thing.

What this bill does it creates certain shareholder rights that are not present in your regular corporation. As you know a corporation is owned by shareholders and shareholder elect the directors, directors select the officers and the officers run the company. This still works the same way. The difference is that under this bill there is some differences that how you elect directors. For example it allows you to vote no on the directors. Usually what happens now, is that you get a proxy statement from them or go to the corporate meeting instead, but you are presented with a slate of candidates and you have no other choice as to who those candidates are, you either vote for them or you don't vote for them.

Chairman Svedjan: This bill has a positive projected impact in terms of revenue. I do not understand there to be any negative revenue implications of this bill.

Rep Wald: Is there going to be an impact to the Secretary of State's Office or the Security Commissions office for additional work load? Was that discussed in your committee?

Rep Klemin: There will be more work for the Secretary of State but the amount of work that the Secretary of State's office will have to do is going to be paid for by those franchise fees, so it is still a net/net gain. As far as the Securities Commissioner, these corporations are going to be governed by the Federal Securities and Exchange Commission not by our local Securities Commission.

Rep Dahl: I would like to discuss why the monies in the FN will not be realized.

For starters: The proponents of the bill went out of the way in the hearing to disavow that we may even get one company. Here in the first biennium there is a projection of \$720,000 and he has the right to say that and he was honest in saying that essentially for 2 reasons. There are essentially 2 ways a publicly corporation is going to come to ND. The first is by choice.

What we have been told is that this bill is shareholder friendly and this is an economic development opportunity for North Dakota. However this is not a management friendly bill and it is the Board of Directors who makes the decisions if they are going to choose to reincorporate somewhere else. So it really wouldn't make sense for a corporation to reincorporate under a statute such as this.

Further companies can already do this in their articles of incorporation right now and there are not. So why would they, under a whole set of guidelines that they can't choose the wording of their own.

The 2nd way they could incorporate is by forced incorporation if the shareholders gain control of the company and would force the reincorporation. No one has ever done this in our country and there is case law that strongly suggests that the Internal Affairs Dept is the Constitutional mandate so that states can't simply intervene with a contract right of all or the majority of

Date: 2/9/07
 Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1340

House Appropriations Full Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass no engrossed

Motion Made By Wald Seconded By Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Representative Wald	✓		Representative Aarsvold		
Representative Monson	✓		Representative Gulleson		✓
Representative Hawken	✓				
Representative Klein	✓				
Representative Martinson	✓				
Representative Carlson			Representative Glassheim	✓	
Representative Carlisle	✓		Representative Kroeber	✓	
Representative Skarphol	✓		Representative Williams	✓	
Representative Thoreson	✓				
Representative Pollert	✓		Representative Ekstrom		✓
Representative Bellew	✓		Representative Kerzman		✓
Representative Kreidt	✓		Representative Metcalf	✓	
Representative Nelson	✓				
Representative Wieland	✓				

Total (Yes) 19 No 3

Absent 2

Floor Assignment Kutschman

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