

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1340

### Senate Judiciary Committee

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Hearing Date: March 5, 2007

Recorder Job Number: 4405

Committee Clerk Signature

**Minutes:** Relating to Publicly traded corporation ND Century Code and Sec. of States general service fund.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following hearing:

#### **Testimony in Favor of the Bill:**

**Rep. Klemin**, Dist. #47 Intro the bill as the prime sponsor. This is an exciting new area that we should be getting into in respect to business associations in ND. Spoke of flexibility of organizations and this is another form to do businesses that corporations who are publicly traded may choose. He spoke to the fees the Secretary of State will receive and introduced Bill Clark who will review the bill for the committee.

**Al Jaeger**, ND Secretary of State – Att. #1

**William Clark Jr.** Att. #2a ND Corporate Governance Council, Vogal Law Firm. Reviewed the bill – Att. # 3; Sen. Nething asked who would use this? His response was that he did not know. He also submitted Corp. Accountability Report Att. #2b and a letter from Melvin A. Eisenberg, U of CA Att. #3c

**Sen. Nothing** stated in the property access portion, as he understands it, the bill would mandate a corporation utilizing this structure to include in its listing of candidates for director those nominated by 5% of its shareholders, who have owned it for at least two years. Yes and he reviewed the proxy statement ballot process. Mr. Clark continued with section 5 (meter 22:00) He spoke to the bill being a collection of leading ideas in its area and what the intent of the bill is trying to do; spoke to corporate radars, poison pills and proxy.

Att. #4 is a short overview of the bill.

**Sen. Nothing** spoke to the reimbursement portion of the bill (meter 26:47) and they discussed the process and gave a proxy election example. They spoke to the limitations on "poison pills" and what the chapter will permit (meter 29:00). The majority vote was discussed on page 6 (meter 30:00) and the anti-take-over provision.

**Sen. Fiebiger** asked could a public corporation sign on to this if it has such specific provisions? Why would they not do it the way they want to do it? (meter 33:00) Publicly traded organizations can do most of what is in this bill. **Mr. Clark** spoke to legislation passed in Delaware and other states he thought would make the changes. Problem is under FCC rules can submit one proposal a year. To do the whole set, it would take a large effort. What we are hoping is this will create a "brand" under which people investing into ND they guarantee the most responsive business to invest in, this is consistent with my studies of profitability.

Referred to current system and how you have to read through all of its detailed paperwork.

The marketplace would like this "Brand".

**Sen. Nothing** stated you can either take the whole law or go by current law and pick and chose what you want to do. They spoke to both processes (meter 36:50) Sen. Nothing asked how would you know who was what. (meter 37:20) If they file under 10-35 it is one step. This is identified in the "Article of Corporation".

**Sen. Fiebiger** questioned on the bottom of page 14, in the conduct and business of the share holders meeting, No. 3 How is "reasonable and fair" defined? They sound very vague. **Mr. Clark** responded that the language came from the model Business Corporation Act. This is recently adopted and we will find out what it means as states use it. We will probably get case law on this more so than any other provision.

**Jim Poolman**, ND Insurance Commissioner (meter 39:14) I am interested in this bill due to the regulatory aspects. As a state base insurance regulation, the hallmark is financial solvency. I think this legislation is innovated from the stand point of shareholder rights. Potential insurance companies from around the country who's shareholders are interested in the actions of companies. We a currently working on settlements from insurance companies, and he stated severe, where the shareholders have been at the verge of riots and want more say. They will look at ND to incorporate here. This is an optional piece of legislation. We are doing corporate governances' issues with some of our smaller local mutual companies. He gave the definition and spoke to them.

**William Guy III**, Spoke in support (meter 41:00) of the bill stating it will be good for ND with no discernable downsides, since it is optional.

**Testimony Against the bill:**

**Dave MacIver**, President of ND Chamber representing ND Chamber of Commerce (meter 42:12) – Att. #5, representing 16 other chambers across ND. Stated that this bill could do the reverse that it is intending. ND has 2 current companies that this would apply. Also submitted a letter from Mark Anderson's letter Att. # 6. Spoke of his corporate legal advisors. I am not an attorney and do not pretend to be one. I stand before you asking you to not vote for this piece of legislation, there are too many questions about this legislation that have yet to be resolved.

**Sen. Nething** stated that it would have been nice if Mr. Anderson was here to ask questions to. How can someone who is not involve in this, have his own business to run, and worry about someone else's opportunity? He continued, "Capital Insider" is your publication? Yes, **Mr. MacIver** replied.

**Sen. Nething:** On page 4, you list this on your hearing schedule and it is listed as "neutral".

**Mr. MacIver:** Yes we did as of last Thursday;

**Sen. Nething:** This article is dated March 2<sup>nd</sup>, Friday.

**Mr. MacIver:** I did not get to my staff in time, I apologize. **Sen. Nething** continued by asking how his organization decides if they are for or against, what is your process?

**Mr. MacIver:** It is to contact the people who are available along with presenting the information to our executive committee.

**Sen. Nething** asked that each member is contacted with the information?

**Mr. McIver:** Yes all those who speak for us are contacted; we also take a large amount of our information from the people around us. **Sen. Nething** continued to question; does your organization not have a legislative committee?

**Mr. McIver:** Yes, we have a legislative committee and it is near impossible to get them all together, they live across the state.

**Sen. Nething:** Your opinion is not from your legislative committee.

**Mr. McIver:** No sir, it is not.

**Sen. Fiebiger** asked (meter 48:37) stated the bill being optional, I do not understand your concerns. Why are you so concerned if they do not have to do it? He replied, as a non attorney, people are telling us, which even as optional people trying to incorporate out of state people from other states, if they chose to move in, will take a look at this as a detriment. This would be looked as an "anti" business state to them.

**Sen. Nething** asked if he had stated this in the house. No. The Sen. continued with his thoughts of this as another opportunity to do business and a handful of you do not. Are there any others in opposition? No, I guess the chamber stands alone.

**Testimony Neutral to the bill:**

**Rick Clayburgh**, ND Bankers Assoc. We have reached out to a number of attorneys across the country, our concern is to how this will impact economic development, our banks are very active with that. Spoke of conversations with the former governor Ed Schafer, and his work with his "charge of elimination of accumulative voting rights". With that gone what type of impact will this have with them? His concern is if we pass it, perhaps we should put a sunset on it to reevaluate it, if it does give us a "black eye". At that time if it did not, make it law. He spoke of the putting the legislation in as a study and passing it after, the findings are satisfied. It would still not address our concern; that other people in the country may wonder what ND is up to.

**Senator David Nething**, Chairman closed the hearing.