

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1340**

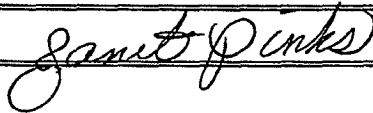
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: **March 19, 2007**

Recorder Job Number: **5232**

Committee Clerk Signature



Minutes:

Al Jaeger, Secretary of State

This type of legislation is permissive, it's a choice, and by passing this law you're building a ball field, we don't know as I've stated in the fiscal note, we have no idea where they're going to come from. The way we have it structured is that rather than making any changes to the budget to accommodate this, what we have suggested is that out of every fee that comes in my office gets 10% to put in the operating fund. Those of you who have seen the operating fund, my retail account. If we get one, we can cover the expense, if we get inundated by 100, or 20 or 50, we will have the revenue to cover expenses. If we really go way overboard and get many, many players, then what we'll do is that we will come through the process of emergency commission and the budget section and ask you to raise our spending authority if we needed to cover our expenses. The general services operating fund that I have in my budget has a ceiling, at the end of the biennium, any profit that I have in that account gets turned over into the general fund. If we get 5 or whatever the number might be, at the end of the biennium if I'd been able to cover all expenses in current appropriations, great, whatever we've generated into the fund, everything over \$75,000 gets turned into the general fund anyway. The thing we were concerned about is that there's no way before I could have stood before this committee

and asked for a general fund appropriation when we have no clue whether we'll have the funds. By doing it this way, whatever the traffic will bear, we will be able to cover the expenses associated with administering the law. At the end of the biennium, you'll get it anyway. We thought that would work the best. The bulk of it goes to the general fund, we have no way of knowing. We know we're going to have some, we know that there will be interest out there, but we have to wait and see, that's why I structured the bill the way it was. I'm excited about it because it is an option and if we get some players, all I can say, it is more than we had before. If we get none, we didn't lose any, either.

S Krebsbach: My recollection on all of this is that it has to voting rights, and is it correct in that fact that it gives the share holders MORE rights?

AI J: Yes, that's what it's all about. The testimony in the Judiciary was very detailed and extensive. Of all the copies of all the different testimony, it's a different structure. I can share with you numerous news stories where publicly traded corporations and their shareholders are up in arms right now and don't like the structure going on right now. I foresee there will be corporations that are going to look at this as an opportunity because you wonder if it is worth \$80,000, in a sense, we're selling a brand. Rather than being XYZ, that will indicate to investors that this is a company that is shareholder friendly. I would suspect some astute company is going to say, "you know, that is worth something to me if I can go out with all the controversy going on out there, publicly traded companies, I can go to investors and say, we're shareholder friendly." That's an option. If we know there are people that are against us and I'm puzzled by it because no one is forced to use it. As S Nething said, this body in the last 14 years has created options for the people in ND. Limited liabilities companies were created in 1993. We have almost 9,000 companies that choose one of these, they were options and this is just another option.

S Tallackson: How do you effect the fee? You said you have a range.

AI J: There is a formula based on stock and different things, there is a calculation made. If we land some really large accounts as in any stock exchange, they're going to hit the \$80,000 very easily. There is a ceiling, not more than \$80,000, there is a formula in there.

S Lindaas: What's the down side? Did anyone testify against it? What was their view?

AI J: Both the House and Senate. In the House, no one testified against it and in the Senate, when a person testified against it and the testimony attached to it was puzzling. There were comments that corporations would leave ND in droves. I thought, OK, we have 2, so they're going to leave in droves? I didn't understand that. The other comment was that there would be NO attorney in their right mind that would recommend this type of business. First of all, I would not be involved in it if I didn't think it was OK. You know my office has worked with a committee of the bar association. The person we've worked with is William Guy III, Attorney from Fargo. He has been involved with us from the beginning. He testified in favor of this bill in Senate Judiciary. This has gone through a lot of scrutiny. I do not understand the opposition. What I have read is not based, at all, with any type of accuracy. I don't know of any down side. The worst that could happen is that nobody will show up.

S Mathern: The corporations that are publicly trading, how did they come to be publicly trading in ND if they didn't have a vehicle as we are providing?

AI J: Essentially, what we did the incorporated under the previous laws that we had, which was possible. The constitution has previously dictated how the corporation could operate with shareholders. They consciously could operate with shareholders. If they consciously made a decision to go up to go ahead, but the fact that we only have 2 after 117 years, indicates our regular corporations, we're at an all time high. Our numbers are there, there's not going to be anybody that's going to be leaving in droves. They have to opt in, and it's very specific. Very

specific guidelines were set. It had to be a separate, stand-alone chapter and the articles specifically have to reference that chapter, the articles SPECIFICALLY have to reference that chapter. So there's NO misunderstanding as to what they're doing and that's free choice. If people are willing to pay \$80,000 a year and play in our ball field...why not?

S Lindaas: Are there other ball fields around the country in other states? Do they have the same set up, or the percentage?

Al J: This is the beauty of it right now. Different states have varying laws but would allow different forms of it. The fact is because they have the laws in place and they're scattered and what have you, the beauty of it is that we will have the ONLY stand-alone chapter that is very specific. There isn't any other state that has it as securely set out as this one has. Quite frankly, our founding fathers did us a favor, they put a restriction in the constitution that for 117 years we weren't very attracted to the business community. That's another thing that was said, that it's going to make ND look anti-business, I said, "ok, compared to what?" For 117 years we weren't very attractive to a publicly traded corporation. We're kind of a virgin in this area, we can come in and create this chapter that's not mixed with any other laws. Again, it's a choice if people want to come in and use it, let's give them that option.

S Holmberg: We would have used "ingénue" instead of virgin.

Cal Wilson, Non-Profit Corporation sponsoring the bill, Supports the bill & concept

I support what SOS has told you. I'm assuming he's answered all your questions. The value of this bill is that when this bill passes, the next day, the Wall Street Journal will make ND one of the premier business communities in the U.S., it's about time. There are unknown values that this can provide. There are unknown risks that the state faces by having this. It is the purest of the "win-win" situations for the state of ND, and can only say that I am proud to be a small part of this bill. The option part is wonderful, it is the opposite of what Delaware provides and since

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we have a publicly-traded corporation area, since we are probably with the smallest number of publicly-traded operations in the U.S., I'm sure, we've had "2," seems to me it's a wonderful opportunity in the state. The existing ones are grandfathered-in. There is no risk to any existing appropriations, there are only options and opportunities.

S Holmberg: No more testimony, we will close the hearing.

CLOSED

Motion for a DO PASS by S Mathern

Second by S Christmann

Roll Call for DO PASS ON HB 1340. Unanimous DO PASS

Bill goes back to Judiciary

Date:
Roll Call Vote #:

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

Senate Appropriations Committee

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Legislative Council Amendment Number _____

Action Taken DP

Motion Made By Math Seconded By Christmann

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter	✓	
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas	✓	
Senator Tony Grindberg, V Chrm			Senator Tim Mathern	✓	
Senator Randel Christmann	✓		Senator Larry J. Robinson	✓	
Senator Tom Fischer	✓		Senator Tom Seymour	✓	
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson	✓	
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Nothing ~~HB~~ Jud

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