

ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.nd.gov/sos



PHONE (701) 328-2900

FAX (701) 328-2992

E-MAIL sos@nd.gov

SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 24, 2007

TO: Rep DeKrey, Chairman, and Members of the House Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: HB 1340 – North Dakota Public Corporations Act

There are times in life when someone begins a journey not always knowing where the road will lead. I know I started a few of those journeys on several occasions. However, I also discovered, if one begins the journey for the right reasons, the road could lead to many unanticipated and very satisfying results.

Such a journey, for the right reasons, started in October 2001 and it traveled through two legislative sessions and two statewide elections. It ended when 73% of the voters in the June 2006 election approved an amendment to Article XII of the North Dakota Constitution.

Those of us working to accomplish this goal were not sure what would happen after the constitution was amended, but we knew this. Something needed to be done. We knew there were North Dakota companies incorporating in other states because of provisions in the state's constitution unfavorable to public corporations. As it is, North Dakota has only three state chartered public corporations. All other North Dakota based public corporations are chartered in other states.

Today, North Dakota is in the right place and the right time in history. The bill before you is here because the state's constitution was amended.

As I testified earlier for HB 1241, during the past eight legislative sessions, the Legislative Assembly adopted legislation drafted by the State Bar Association of North Dakota and my office, which resulted in the creation of limited liability companies, limited liability partnerships, and limited liability limited partnerships. In other words, these new business entities provided the state business entrepreneurs with options. Today, those options have been chosen by approximately 9,000 businesses.

North Dakota has provided options for its citizens. Now, it has an opportunity to provide an option to the nation with the adoption of HB 1340.

This bill does not change any of the state's existing laws. Corporations can still operate and still incorporate under the provisions of the state's business corporation act in Chapter 10-19.1. Foreign corporations, regardless of the state of charter, can still do business in North Dakota by filing the appropriate certificate of authority. What this bill does do is create, in law, a form of corporate governance focused on the concerns of shareholders and chosen by those corporations that wish to be chartered under those provisions. No corporation is forced to incorporate under this new chapter.

Since this bill was introduced, several individuals have asked me if the passage of this bill would make North Dakota appear to be an anti-business state. I have to ask, compared to what? For 117 years, the most anti-business corporation clause in the nation was in North Dakota's constitution. Now, North Dakota has an opportunity to provide business corporations with an option. To me, that is the correct image for being viewed as a business friendly state. We provide options.

I am not the expert on the governance structure in this bill. Others will provide that testimony. I also don't know how many corporations will take advantage of this law. I do know this. It is an option. No one is forced to use it. But, if they do, whether it is 5, 10 or 15, I have the best staff in the country and these corporations will experience the North Dakota way of doing things, i.e., efficient, friendly, and timely.