



SECRETARY OF STATE
STATE OF NORTH DAKOTA
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March 5, 2007

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

FR: Al Jaeger, Secretary of State

RE: HB 1340 – North Dakota Public Corporations Act

Over the past several months, my office has been working with an ad-hoc committee to draft this legislation. I like it because it offers one more choice for businesses.

Offering choices is consistent with legislative action taken beginning with the 1993 legislative session. You may recall, in my testimony for HB 1241, I stated almost 9,000 businesses have chosen business structures that did not exist prior to that session. This is just another choice.

For 117 years, the state's constitution contained provisions mandating how a corporation could govern itself. Because of these mandates, there are only two publicly traded domestic chartered corporations in North Dakota.

After a five-year effort beginning in October 2001, two legislative sessions and two statewide elections, 73% of the voters approved an amendment to Article XII of the North Dakota Constitution removing the mandated form of corporate governance.

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 (without the previous constitutional restrictions). Foreign corporations, regardless of the state of charter, can still do business in North Dakota by filing the appropriate certificate of authority.

This bill creates a new chapter (Chapter 10-35) in the Century Code offering a form of corporate governance more focused on shareholder rights and chosen by those corporations that wish to be chartered under those provisions. No corporation is forced to incorporate under this new chapter. So that there is no misunderstanding, under the provisions of the bill, a corporation must specifically declare in its articles of incorporation it will be subject to the provisions of Chapter 10-35.

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? Since its statehood, the most anti-business publicly traded corporation clause in the nation was in North Dakota's constitution. Now, North Dakota has an opportunity to provide business corporations with one of two options. To me, that is the correct image for a business friendly state. That is, a choice.

I am not the expert on the governance structure in this bill. Others will provide that testimony. I also do not know how many corporations will take advantage of this new law. However, if they do, whether it is 5, 10 or 15 corporations, I have the best staff in the country. These corporations will experience the North Dakota way of doing things, i.e., efficient, friendly, cost-effective, and timely.