

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1273

2005 HOUSE JUDICIARY

HB 1273

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1273

House Judiciary Committee

☐ Conference Committee

Hearing Date 2/2/05

Tape Number	Side A	Side B	Meter #
1	xx		48.8-end
1		xx	0-36
3	xx	xx	48-end/0-1.9

Committee Clerk Signature



Minutes: 13 members present, 1 member absent (Rep. Kingsbury).

Chairman DeKrey: We will open the hearing on HB 1273.

Al Jaeger, Secretary of State: Introduced HB 1391 and HB 1273. Back in 1993, limited liability companies didn't exist, today we have over 3,300 as a result of legislation that went through these chambers. Limited liability partnerships didn't exist as recently as 1995, 1997, and now we have 1,800. Essentially, this partnership has resulted in the creation of new entities that just expand the options available to those individuals that go into business and do entrepreneurship type activity. The first bill, there are things that apply procedurally to all of the different types of entities, so rather than having a separate bill for each entity, there's one bill and in many cases, there is a procedural change that applies across the board. One of the things that I've really encouraged is that we are consistent in our processes and application, regardless of what the entity is, and then that the laws that pertain to that particular entity is, in and of themselves, just for that entity, but our processes and procedures are consistent across the board

within all of them. We've strived to do that to a great extent. The second bill is a limited partnership bill and that's actually an outgrowth of the state council on uniform state laws and I asked the committee last session to refrain from introducing it, so that we could put it in a format that's in keeping with our practices and procedures, and still not losing the uniformity that the bill was striving for. I do want to acknowledge Clara Jenkins, who is the director of the business division. Clara has 30 years now with the Secretary of State's office, and she has a tremendous amount of hands-on experience and Bill Guy will be explaining the bills. These are two really good bills. I am going to introduce Joel Gilbertson, who is going to introduce Bill Guy on behalf of the Bar Association.

Chairman DeKrey: Thank you.

Joel Gilbertson: I would like to introduce William Guy, from the State Bar Association. We support this bill.

Chairman DeKrey: Thank you.

William Guy III, Chairman, ND State Bar Association: I'm here on behalf of the Task Force which has prepared the legislation, which if enacted would adopt the Uniform Limited Partnership Act of 2001 (see written testimony).

Representative Onstad: The new section of Limited Partnerships deals with LLC and LLLC, also.

William Guy: The Limited Partnership Act is the platform from which LLP derive their existence. The LLP derive their existence from the general partnership statute.

Representative Onstad: Is the managing partner the same as the general partner.

William Guy: In a limited partnership, the managing general partner, if there are multiple general partners, the managing general partner is typically in charge of day-to-day activities. In other partnerships, they are usually all general partners, so in other general partnerships, such as LLP, it is usually the one partner who's in charge of day-to-day operations. So they are similar, they have authority to act for the entity.

Representative Onstad: A partnership may have a board, for example, is that president considered a general partner, or is he president of the board and then they might have an additional manager, that might be the managing partner or general partner.

William Guy: In LLC, there are board of governors with officers like we have with corporations and the partnerships, there are no officers per se, and the general partners would be the equivalent of the board and then they may elect a managing general partner, which would be the equivalent of the president.

Chairman DeKrey: Thank you. Further testimony in support.

Clara Jenkins, Business Division Director, Secretary of State's Office: (see written testimony and amendments).

Representative Koppelman: The fees in the other bill, that were added for various conversions and activities that maybe weren't permitted under current law, where does the fee structure come from. Does your office have input in that and does it bear a correlation to workload and performing those tasks, or is it just kind of arbitrary, say we have filing fees and have a number.

Clara Jenkins: The fees relative to conversions were the same fees that are currently in place for mergers, and that transaction is going to be relatively the same.

Chairman DeKrey: Thank you. Further testimony in support of HB 1273. Testimony in opposition. We will close the hearing.

(Reopened later in the same session).

Chairman DeKrey: What are the committee's wishes in regard to HB 1273.

Representative Klemin: I move the Secretary of State's amendments.

Representative Koppelman: Seconded.

Chairman DeKrey: Motion carried.

Representative Klemin: I move a Do Pass as amended.

Representative Delmore: Seconded.

13 YES 0 NO 1 ABSENT DO PASS AS AMENDED CARRIER: Rep. Onstad

FISCAL NOTE
Requested by Legislative Council
02/09/2005

Amendment to: HB 1273

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$500	\$0	\$500	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill has its roots as a Uniform State Law. The changes proposed by the bill that are related to financial matters are to make the application of fees and options the same for limited partnerships as for other business entities registered with the Secretary of State's office.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The fee changes and options included in the bill are not expected to be significant.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

There are no additional expenditures that are expected to administer the proposed changes in the bill.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

No additional funds are required beyond what has been requested by the agency in its appropriation bill, HB 1002.

Name: Al Jaeger
Phone Number: 328-2900

Agency: Secretary of State
Date Prepared: 02/09/2005

FISCAL NOTE
Requested by Legislative Council
01/12/2005

Bill/Resolution No.: HB 1273

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$500	\$0	\$500	\$0	\$500	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill has its roots as a Uniform State Law. The changes proposed by the bill that are related to financial matters are to make the application of fees and options the same for limited partnerships as for other business entities registered with the Secretary of State's office.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

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The fee changes and options included in the bill are not expected to be significant.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

There are no additional expenditures that are expected to administer the proposed changes in the bill.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

No additional funds are required beyond what has been requested by the agency in its appropriation bill, HB 1002.

Name: Al Jaeger
Phone Number: 328-2900

Agency: Secretary of State
Date Prepared: 01/16/2005

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 1, line 5, replace "subsections 4 and" with "subsection"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 7, line 16, after the second underscored comma insert "activity."

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 8, line 21, replace "executed" with "signed"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 9, line 4, after "formed" insert "by two or more persons"

Page 9, line 13, after "formed" insert "by two or more persons"

Page 9, line 22, remove "the" and replace "another" with "a jurisdiction other than this"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 10, after line 7, insert:

"(3) If a general partnership, chapters 45-12 through 45-21;"

Page 10, line 8, replace "(3)" with "(4)"

Page 10, line 9, replace "(4)" with "(5)"

Page 10, line 10, replace "(5)" with "(6)"

Page 10, line 15, replace "an entity having" with "a partnership that is formed by two or more persons and which has"

Page 10, line 17, remove "by two or more persons"

Page 10, line 30, replace "an entity having" with "a partnership that is formed by two or more persons and which has"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 11, line 1, remove "by two or more persons"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 12, line 4, after "receive" insert "notice"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 14, after line 7, insert:

"d. A general partnership, its partnership interests;"

Page 14, line 8, replace "d." with "e."

Page 14, line 9, replace "e." with "f."

Page 14, line 15, replace "a share" with "the transferable interest" and replace "of the profits and losses of a" with an underscored period

Page 14, remove line 16

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 15, line 7, after the first "partnership" insert "or in the certificate of authority of a foreign limited partnership" and remove "of the limited partnership"

Page 15, line 27, after "and" insert "which"

Page 15, line 29, replace "Be" with "May be"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 17, line 25, remove "and"

Page 17, line 27, replace the underscored period with "": and"

Page 17, after line 27, insert:

"5. The provisions of this chapter relating to electronic records and electronic transactions do not limit or supersede any provision of chapter 9-16."

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 21, line 10, remove "business"

Page 21, line 25, after the fourth underscored comma insert "45-13-04.2,"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 22, line 31, after the third underscored comma insert "45-13-04.2,"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 23, line 14, replace "2" with "3"

Page 23, line 16, remove the underscored colon

Page 23, line 17, replace "a. By" with "by"

Page 23, line 19, replace "b. By" with "by"

Page 23, line 21, replace "c. By" with "by" and replace ", unless" with ", if"

Page 23, line 22, after "the" insert "new limited partnership" and remove "in which"

Page 23, line 23, remove "case"

Page 23, line 24, replace "2. A limited partnership that" with "3."

Page 23, remove lines 25 and 26

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 24, line 4, replace the underscored colon with an underscored period

Page 24, line 16, after "and" insert "the"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 30, line 19, replace "shall" with "must"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 37, after line 31, insert:

- "8. A limited partnership that files an amendment to change its name and which is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state shall change the name of the limited partnership in each of the foregoing registrations that is applicable when the limited partnership files an amendment to the certificate of limited partnership."

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 38, line 15, replace "singed" with "signed"

Page 38, line 25, replace "state" with "states"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 39, line 19, replace "on" with "one"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 41, line 10, replace "executed" with "signed"

Page 41, line 15, replace "executed" with "signed"

Page 41, line 24, replace "shall" with "must"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 43, line 17, after "all" insert "of"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 47, line 12, after "all" insert "of"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 52, line 12, replace "executed" with "signed"

Page 52, line 16, remove "from a transferee only if"

Page 52, line 17, replace "The" with "From a transferee only if the" and replace "execution of" with "signing"

Page 52, line 19, after the underscored comma insert "only if"

Page 52, line 21, replace "executed" with "signed"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 53, line 17, replace the first "of" with "on"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 72, line 11, replace "decease" with "deceased"

Page 72, line 30, replace "and" with "an"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 74, line 27, replace "executed" with "signed"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 75, line 6, remove the first underscored comma, after "and" insert "which", and remove the second "the owner"

Page 75, line 7, remove "of or"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 76, line 1, replace "office" with "officer"

Page 76, line 11, replace "office" with "officer"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 78, line 4, replace "article" with "chapter"

Page 78, line 16, replace "mortgager" with "mortgages"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 80, line 4, after the second "the" insert "foreign"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 82, line 7, replace "of" with "if the converting organization is"

Page 82, after line 18, insert:

"(3) A general partnership that is the converting organization was
formed;"

Page 82, line 19, replace "(3)" with "(4)"

Page 82, line 22, replace "(4)" with "(5)"

Page 82, line 25, replace "(5)" with "(6)"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 83, line 28, replace "45-10.2-102" with "45-10.2-104"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 84, line 1, replace "45-10.2-102" with "45-10.2-104"

Page 84, line 16, replace "and the" with ":

(2) The"

Page 84, line 17, replace "shall" with "must"

Page 84, line 19, replace "(2)" with "(3)"

Page 84, line 20, replace "(3)" with "(4)"

Page 84, line 25, after "conversion" insert "without the organizational records"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 85, line 20, replace "a" with "the appropriate"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 86, line 3, replace "45-10.2-103" with "45-10.2-104"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 87, line 5, replace "corporation incorporated" with "limited partnership formed"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 89, line 23, after "must" insert "be accompanied by the plan of merger without organizational records and must"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 90, line 14, replace "shall" with "must"

Page 90, line 27, replace "vest" with "vests"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 91, line 12, after "merger" insert "and"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 95, line 22, after the underscored comma insert "the foreign limited partnership,"

Page 95, line 24, after "partnership" insert ", foreign limited partnership."

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 96, line 1, after the second "partnership" insert "or foreign limited partnership"

Page 96, line 5, after "partnership" insert "or foreign limited partnership"

Page 96, line 7, after "partnership" insert "or foreign limited partnership"

Page 96, line 8, after "office" insert "or at the principal executive office if located in this state"

Page 96, line 11, after "partnership" insert "or foreign limited partnership"

Page 96, line 13, replace the first "the" with "an" and after "partnership" insert "or foreign limited partnership"

Page 96, line 14, after the underscored period insert:

"a."

Page 96, line 15, replace "a. Shall" with "(1) Must"

Page 96, line 17, replace "b. Shall" with "(2) Must"

Page 96, line 20, replace "c." with "(3)" and after "partnership" insert "or foreign limited partnership"

Page 96, line 22, replace "(1)" with "(a)"

Page 96, line 23, replace "(2)" with "(b)"

Page 96, after line 23, insert:

"(4) Is returnable in not less than thirty days, notwithstanding a shorter period specified in the process, notice, or demand."

Page 96, line 24, replace "d." with "b." and replace "certified" with "registered"

Page 96, line 25, after "partnership" insert "or foreign limited partnership"

Page 96, remove lines 27 and 28

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 97, line 11, after "partnership" insert "or foreign limited partnership"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 98, line 10, after the third "the" insert "certificate of limited partnership or"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 99, line 2, replace "terminated" with "dissolved"

Page 99, line 3, replace "termination" with "dissolution"

Page 99, line 11, replace "terminated" with "dissolved"

Page 99, line 12, replace "termination" with "dissolution"

Page 99, line 14, replace "terminated" with "dissolved"

Page 99, line 25, replace "terminated" with "dissolved"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 100, line 1, replace "termination" with "dissolution"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 101, line 20, replace "withdrawl" with "withdrawal"

Page 101, line 27, replace "termination" with "dissolution"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 102, line 21, after "partnership" insert "or foreign limited partnership"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 103, line 12, remove "domestic"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 104, line 3, replace "terminates" with "dissolves"

Page 104, line 11, replace "termination" with "dissolution"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 105, line 5, remove "domestic"

Page 105, line 8, replace the second "of" with "or"

Page 105, line 22, after "partnership" insert "or foreign limited partnership"

Page 105, line 25, after "partnership" insert "or foreign limited partnership"

Page 105, line 27, after "partnership" insert "or foreign limited partnership"

Page 105, line 29, after "partnership" insert "or foreign limited partnership"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 106, remove lines 4 through 7

Page 106, line 8, replace "**45-10.2-118**" with "**45-10.2-117**"

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 108, line 7, replace "Subsections 4 and" with "Subsection"

Page 108, line 8, replace "are" with "is"

Page 108, remove lines 9 and 10

House Amendments to HB 1273 - Judiciary Committee 02/07/2005

Page 114, line 12, remove "a."

Page 114, line 14, remove the overstrike over "~~a~~:" and remove "(1)"

Page 114, line 16, remove the overstrike over "~~b~~:", remove "(2)", and overstrike "termination" and insert immediately thereafter "dissolution"

Page 114, remove lines 19 through 22

Renumber accordingly

Date: 2/2/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1273

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass as Amended*

Motion Made By *Rep. Klemin* Seconded By *Rep. Delmore*

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	A		Representative Meyer	—	
Representative Bernstein	✓		Representative Onstad	—	
Representative Boehning	✓		Representative Zaiser	—	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment *Rep. Onstad*

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

REPORT OF STANDING COMMITTEE

HB 1273: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1273 was placed on the Sixth order on the calendar.

Page 1, line 5, replace "subsections 4 and" with "subsection"

Page 7, line 16, after the second underscored comma insert "activity."

Page 8, line 21, replace "executed" with "signed"

Page 9, line 4, after "formed" insert "by two or more persons"

Page 9, line 13, after "formed" insert "by two or more persons"

Page 9, line 22, remove "the" and replace "another" with "a jurisdiction other than this"

Page 10, after line 7, insert:

"(3) If a general partnership, chapters 45-12 through 45-21;"

Page 10, line 8, replace "(3)" with "(4)"

Page 10, line 9, replace "(4)" with "(5)"

Page 10, line 10, replace "(5)" with "(6)"

Page 10, line 15, replace "an entity having" with "a partnership that is formed by two or more persons and which has"

Page 10, line 17, remove "by two or more persons"

Page 10, line 30, replace "an entity having" with "a partnership that is formed by two or more persons and which has"

Page 11, line 1, remove "by two or more persons"

Page 12, line 4, after "receive" insert "notice"

Page 14, after line 7, insert:

"d. A general partnership, its partnership interests;"

Page 14, line 8, replace "d." with "e."

Page 14, line 9, replace "e." with "f."

Page 14, line 15, replace "a share" with "the transferable interest" and replace "of the profits and losses of a" with an underscored period

Page 14, remove line 16

Page 15, line 7, after the first "partnership" insert "or in the certificate of authority of a foreign limited partnership" and remove "of the limited partnership"

Page 15, line 27, after "and" insert "which"

Page 15, line 29, replace "Be" with "May be"

Page 17, line 25, remove "and"

Page 17, line 27, replace the underscored period with "; and"

Page 17, after line 27, insert:

"5. The provisions of this chapter relating to electronic records and electronic transactions do not limit or supersede any provision of chapter 9-16."

Page 21, line 10, remove "business"

Page 21, line 25, after the fourth underscored comma insert "45-13-04.2,"

Page 22, line 31, after the third underscored comma insert "45-13-04.2,"

Page 23, line 14, replace "2" with "3"

Page 23, line 16, remove the underscored colon

Page 23, line 17, replace "a. By" with "by"

Page 23, line 19, replace "b. By" with "by"

Page 23, line 21, replace "c. By" with "by" and replace ", unless" with ". If"

Page 23, line 22, after "the" insert "new limited partnership" and remove "in which"

Page 23, line 23, remove "case"

Page 23, line 24, replace "2. A limited partnership that" with "3."

Page 23, remove lines 25 and 26

Page 24, line 4, replace the underscored colon with an underscored period

Page 24, line 16, after "and" insert "the"

Page 30, line 19, replace "shall" with "must"

Page 37, after line 31, insert:

"8. A limited partnership that files an amendment to change its name and which is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state shall change the name of the limited partnership in each of the foregoing registrations that is applicable when the limited partnership files an amendment to the certificate of limited partnership."

Page 38, line 15, replace "singed" with "signed"

Page 38, line 25, replace "state" with "states"

Page 39, line 19, replace "on" with "one"

Page 41, line 10, replace "executed" with "signed"

Page 41, line 15, replace "executed" with "signed"

Page 41, line 24, replace "shall" with "must"

Page 43, line 17, after "all" insert "of"

Page 47, line 12, after "all" insert "of"

Page 52, line 12, replace "executed" with "signed"

Page 52, line 16, remove "from a transferee only if"

Page 52, line 17, replace "The" with "From a transferee only if the" and replace "execution of" with "signing"

Page 52, line 19, after the underscored comma insert "only if"

Page 52, line 21, replace "executed" with "signed"

Page 53, line 17, replace the first "of" with "on"

Page 72, line 11, replace "decease" with "deceased"

Page 72, line 30, replace "and" with "an"

Page 74, line 27, replace "executed" with "signed"

Page 75, line 6, remove the first underscored comma, after "and" insert "which", and remove the second "the owner"

Page 75, line 7, remove "of or"

Page 76, line 1, replace "office" with "officer"

Page 76, line 11, replace "office" with "officer"

Page 78, line 4, replace "article" with "chapter"

Page 78, line 16, replace "mortgager" with "mortgages"

Page 80, line 4, after the second "the" insert "foreign"

Page 82, line 7, replace "of" with "if the converting organization is"

Page 82, after line 18, insert:

"(3) A general partnership that is the converting organization was
formed."

Page 82, line 19, replace "(3)" with "(4)"

Page 82, line 22, replace "(4)" with "(5)"

Page 82, line 25, replace "(5)" with "(6)"

Page 83, line 28, replace "45-10.2-102" with "45-10.2-104"

Page 84, line 1, replace "45-10.2-102" with "45-10.2-104"

Page 84, line 16, replace "and the" with ";

(2) The"

Page 84, line 17, replace "shall" with "must"

Page 84, line 19, replace "(2)" with "(3)"

Page 84, line 20, replace "(3)" with "(4)"

Page 84, line 25, after "conversion" insert "without the organizational records"

Page 85, line 20, replace "a" with "the appropriate"

Page 86, line 3, replace "45-10.2-103" with "45-10.2-104"

Page 87, line 5, replace "corporation incorporated" with "limited partnership formed"

Page 89, line 23, after "must" insert "be accompanied by the plan of merger without organizational records and must"

Page 90, line 14, replace "shall" with "must"

Page 90, line 27, replace "vest" with "vests"

Page 91, line 12, after "merger" insert "and"

Page 95, line 22, after the underscored comma insert "the foreign limited partnership,"

Page 95, line 24, after "partnership" insert ", foreign limited partnership."

Page 96, line 1, after the second "partnership" insert "or foreign limited partnership"

Page 96, line 5, after "partnership" insert "or foreign limited partnership"

Page 96, line 7, after "partnership" insert "or foreign limited partnership"

Page 96, line 8, after "office" insert "or at the principal executive office if located in this state"

Page 96, line 11, after "partnership" insert "or foreign limited partnership"

Page 96, line 13, replace the first "the" with "an" and after "partnership" insert "or foreign limited partnership"

Page 96, line 14, after the underscored period insert:

"a."

Page 96, line 15, replace "a. Shall" with "(1) Must"

Page 96, line 17, replace "b. Shall" with "(2) Must"

Page 96, line 20, replace "c." with "(3)" and after "partnership" insert "or foreign limited partnership"

Page 96, line 22, replace "(1)" with "(a)"

Page 96, line 23, replace "(2)" with "(b)"

Page 96, after line 23, insert:

"(4)" Is returnable in not less than thirty days, notwithstanding a shorter period specified in the process, notice, or demand."

Page 96, line 24, replace "d." with "b." and replace "certified" with "registered"

Page 96, line 25, after "partnership" insert "or foreign limited partnership"

Page 96, remove lines 27 and 28

Page 97, line 11, after "partnership" insert "or foreign limited partnership"

Page 98, line 10, after the third "the" insert "certificate of limited partnership or"

Page 99, line 2, replace "terminated" with "dissolved"

Page 99, line 3, replace "termination" with "dissolution"

Page 99, line 11, replace "terminated" with "dissolved"

Page 99, line 12, replace "termination" with "dissolution"

Page 99, line 14, replace "terminated" with "dissolved"

Page 99, line 25, replace "terminated" with "dissolved"

Page 100, line 1, replace "termination" with "dissolution"

Page 101, line 20, replace "withdrawal" with "withdrawal"

Page 101, line 27, replace "termination" with "dissolution"

Page 102, line 21, after "partnership" insert "or foreign limited partnership"

Page 103, line 12, remove "domestic"

Page 104, line 3, replace "terminates" with "dissolves"

Page 104, line 11, replace "termination" with "dissolution"

Page 105, line 5, remove "domestic"

Page 105, line 8, replace the second "of" with "or"

Page 105, line 22, after "partnership" insert "or foreign limited partnership"

Page 105, line 25, after "partnership" insert "or foreign limited partnership"

Page 105, line 27, after "partnership" insert "or foreign limited partnership"

Page 105, line 29, after "partnership" insert "or foreign limited partnership"

Page 106, remove lines 4 through 7

Page 106, line 8, replace "45-10.2-118" with "45-10.2-117"

Page 108, line 7, replace "Subsections 4 and" with "Subsection"

Page 108, line 8, replace "are" with "is"

Page 108, remove lines 9 and 10

Page 114, line 12, remove "a."

Page 114, line 14, remove the overstrike over "~~a~~." and remove "(1)"

Page 114, line 16, remove the overstrike over "~~b~~", remove "(2)", and overstrike "termination"
and insert immediately thereafter "dissolution"

Page 114, remove lines 19 through 22

Renumber accordingly

2005 SENATE JUDICIARY

HB 1273

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1273

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 9, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 -2700

Committee Clerk Signature *Maria L Solberg*

Minutes: Relating to limited partnership/penalty * \$500

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Al Jager, Secretary of the State of ND - Introduced the bill (meter 49) This bill has taken two sessions to make perfect. Clara Jenkins and Bill Guy have spent countless hours working on this bill We end up with the longest bill each session.

Joel Gilbertson, Vogal Law Firm and State Bar Assoc. (meter 225) The state bar has worked on several bills over the years with the Secretary of State dept. Introduced Bill Guy

Bill Guy, Vogal Law Firm Moorhead MN (meter 290) Gave Testimony - Att. #1

Sen. Nelson questioned repealed on 45-12-01 and 45-12-01 integrating of when 45-10-01 was enacted. This is similar to what we have in 45 10.2-03. It integrates existing limited partnership into the new law. Discussed the integration of new laws.

Sen. Trenbeath asked in adopting our procedure are we still classified as uniform Law? Yes the Administrative aspect of the bills are tailored as they do in other states.

Sen. Nelson question Section 14 discussed the triple LC's?

Clara Jenkins, Dir. Business Division Secretary of States office (meter 1400) Gave testimony Att.#2 with Amendment requested by Legislative Council to change "who" with "what". The committee discussed that they thought the Legislative Council could have made this change. Discussion the aspects of "who" vs. "what" After reading the definition of who/what LC could have made the change. Debated proper a phrase of proper English (meter 1670)

Testimony in Opposition of the Bill

None

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Sen. Nelson made the motion to Pass the Amendment submitted by Clara **Senator Syverson** seconded the motion. All members except from **Sen. Trenbeath** were in favor motion passes.

Sen. Trenbeath made the motion to do pass as amended and **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Nelson**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Date: 3/9/5
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1273

Senate Judiciary

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass Amendment

Motion Made By Senator Nelson Seconded By Senator Syverson

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath		✓			

Total (Yes) 58 No 1 0

Absent 0

Floor Assignment

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

Date: 3/9/05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1273

Senate Judiciary

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass As Amended

Motion Made By Senator Trenbeath Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Nelson

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

REPORT OF STANDING COMMITTEE

HB 1273, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1273 was placed on the Sixth order on the calendar.

Page 40, line 25, replace "who" with "that"

Page 41, line 26, replace "who" with "that"

Page 52, line 30, replace "who" with "that"

Page 104, line 8, replace "who" with "that"

Renumber accordingly

2005 TESTIMONY

HB 1273

TESTIMONY OF WILLIAM L. GUY III., CHAIRMAN
NORTH DAKOTA BUSINESS ENTITY DRAFTING TASK FORCE
IN SUPPORT OF
HOUSE BILL NO. 1273

Mr. Chairman and members of the Committee, I am here on behalf of a task force which has prepared legislation which, if enacted, will adopt the Uniform Limited Partnership Act (2001) (the "Act") in North Dakota. The Act was proposed by the National Conference of Commissioners on Uniform State Laws and approved for enactment in all of the states in August, 2001. To date the Act has been enacted in 6 states, including the states of Minnesota and Iowa.

Our current limited partnership act, NDCC Chapter 45-10.1 is derived from the Uniform Limited Partnership Act (1976) as amended by the Commissioners on Uniform State Laws in 1985 and was enacted in North Dakota in 1985.

As with prior versions of the Uniform Limited Partnership Act, the 1976 version stood on the shoulders of the general partnership statute, NDCC Chapters 45-13 through 45-21. Thus, when using our current limited partnership act, the user needs to understand Chapters 45-13 through 45-21 and needs to know that the law governing limited partnerships in North Dakota requires the integration of those chapters with Chapter 45-10.1. Since limited partnerships are so different from general partnerships and are in such wide use, this approach is no longer appropriate.

One of the important attributes of the Act is that it is a stand alone chapter such as is the case with the chapters for business corporations, non profit corporations and limited liability companies.

As you know, this task force has worked diligently for a number of years to integrate the corporate, partnership and limited liability company statutes in North Dakota with one another so that, to the extent possible, definitions in one chapter mean the same in each of the others and administrative procedures (particularly with the office of the secretary of state) are as uniform as possible. One of our concerns was that, as good as the substantive law in the Act was, the administrative provisions as initially presented did not correlate with our other chapters. In preparing this legislation, we used the substantive provisions of the Act and borrowed from our current limited partnership law, Chapter 45-10.1 and from our other chapters for the administrative provisions of the Act and for the provisions that deal with the Office of the Secretary of State. We believe the result will be a substantial improvement in the limited partnership law of North Dakota while maintaining the same integration at the administrative level as was the case with Chapter 45-10.1.

Finally, we have presented to the Chair of your committee certain amendments which will be discussed by Clara Jenkins at the end of my presentation.

As noted above, our objective is to make this chapter as "user friendly" as possible to the general public by keeping the format and as many of its defined terms as possible either identical to or parallel with those of the states other principal business entities such as business corporations, non profit corporations and limited liability companies (LLC's).

If you wish, I will now cover some of the highlights of the Bill on a section by section basis.

Sections 1 through 5 of the Bill (pages 1 through 6) set out amendments to other business entity chapters that arise due to the enactment of Chapter 45-10.2. In fact, as you scan pages 1 through 6, you will see that generally the only change

made in these sections is to delete all references to sections in Chapter 45-10.1 and substitute in their place the counterpart sections in Chapter 45-10.2.

Section 1 of the Bill (beginning on page 1) makes that change with regard to the technical requirements for the corporate name of a business corporation in subsection 1 of section 10-19.1-13.

Section 2 of the Bill (beginning on page 2) makes a similar change to subsection 4 of section 10-19.1-14 which pertains to reservation of corporate names.

Section 3 of the Bill (beginning on page 3) is the limited liability counterpart of section 1 above (which pertained to business corporations) and amends subsections 1 and 5 of section 10-32-10 pertaining to the technical requirements for a limited liability company name.

Section 4 of the Bill (beginning on page 4) is the non profit corporation act counterpart of sections 1 and 3 of the Bill and amends subsections 1 and 5 of section 10-33-10 with respect to the corporate name of non profit corporations.

Section 5 of the Bill similarly amends section 43-07-19 with regard to nonresident contractors.

Section 6 of the Bill creates and enacts the Act as proposed Chapter 45-10.2. From this point onward I will be referring to the section numbers within Chapter 45-10.2. Please note that after many of the sections in Chapter 45-10.2 there appears a three digit number in parenthesis such as is the case at the bottom of page 6 with (101) which immediately follows 45-10.2-01. The (101)

reference is to section 101 of the Act. This coordination between the North Dakota Century Code section numbers and the section numbers of the Act has been used in many other uniform acts that have been enacted in North Dakota over the years.

45-10.1-01 (on page 6) provides that this chapter may be cited as the "North Dakota Uniform Limited Partnership Act (2001).

45-10.2-02 (beginning on page 7) is the definitions for Chapter 45-10.2.

1. **"Address"** is self explanatory and is the limited partnership (LP) counterpart of the same term used in our other business entity chapters.
2. **"Authorized electronic communication"** is identical to the same term used in our other business entity chapters.
3. **"Business"** is self explanatory.
4. **"Certificate of Limited Partnership"** is the document which is filed with the Secretary of State to cause a limited partnership to come into existence and is the counterpart to the articles of incorporation of a corporation or the articles of organization of a limited liability company.
5. **"Constituent Limited Partnership"** is a constituent organization that is a limited partnership.
6. **"Constituent Organization"** means an organization that is a party to a merger. For the definition of the term "Organization" see subsection 28 of this section.

7. **"Contribution"** refers to the benefit provided by a limited partner to the limited partnership, either as the price of admission or as a duty owed by the partner to the limited partnership after admission as a partner.
8. **"Converted Organization"** means the organization into which a converting organization converts. As you'll see later on in the chapter, the concept of "conversion" is similar to that of merger and is identical to the process that occurs when a general partnership becomes a limited liability partnership by filing a registration with the Secretary of State and or when a limited partnership (LP) becomes a limited liability limited partnership (LLLP) in North Dakota by amending its certificate of limited partnership into a certificate of limited liability limited partnership.
9. **"Converting Limited Partnership"** refers to a converting organization that is a limited partnership and that converts into another organization.
10. **"Converting Organization"** means an organization that converts into another organization through the process of conversion.
11. **"Debtor ⁱⁿ Bankruptcy"** has the meaning given to that term under federal bankruptcy law.
12. **"Distribution"** is a transfer of money or property from the limited partnership to a partner.

13. **"Domestic Organization"** is an organization created under the laws of this state ... again see subsection 28 for the definition of "organization".
14. **"Electronic"** is identical to the same term used in our other business entity chapters.
15. **"Electronic Communication"** is identical to the same term used in our other business entity chapters.
16. **"Electronic Record"** refers to a record (i.e. a document) created electronically and is identical to the same term used in our other business entity chapters.
17. **"Electronic signature"** is identical to the same term used in our other business entity chapters.
18. **"Filed with the Secretary of State"** is identical to the same term in our other business entity chapters.

19. **"Foreign Limited Liability Limited Partnership"** refers to a limited liability limited partnership (a LLLP or triple LP) formed in another jurisdiction. If you will recall, a limited liability limited partnership in North Dakota has its origin under Chapter 45-23 and is the process by which a limited partnership (such as those that would be created under Chapter 45-10.2) converts from an entity in which the general partners have personal liability (i.e. a limited partnership (LP)) into an entity in which the general partners have limited liability (i.e. limited liability limited partnership (LLLP)).
20. **"Foreign Limited Partnership"** refers to a limited partnership formed in another jurisdiction.
21. **"Foreign Organization"** is an organization created under the laws of another state again see subsection 28 for the definition of "organization".
22. **"General Partner"** is the partner in a limited partnership that is responsible for the management of the limited partnership and that has personal liability for his or her acts as a general partner. The other class of partners in a limited partnership are "limited partners" which is defined under subsection 25.
23. **"Governing Statute"** is
1. The statute in the North Dakota Century Code by which a domestic organization is governed and includes:

- Chapter 10-19.1 for business corporations;
 - Chapter 10-32 for limited liability companies,
 - This chapter for limited partnerships;
 - Chapter 45-22 for limited liability partnerships (LLPs);
 - and,
 - Chapter 45-23 for limited liability limited partnerships (LLLPs); and
2. With respect to foreign organizations is the counterpart statute of the foreign jurisdiction for the entity in question.
24. **“Limited Liability Limited Partnership (LLLP)”** is the entity which may be created under Chapter 45-23 or into which a limited partnership may convert pursuant to Chapter 45-23 and which gives limited liability to its general partners (unlike a limited partnership whose general partners have personal liability).
25. **“Limited Partner”** is the class of partner in a limited partnership which typically has a financial contribution but has no active involvement in management and which has limited liability with respect to the obligations of the partnership.
26. **“Limited Partnership”** is the entity which is the subject of the Act and of Chapter 45-10.2 and is a partnership having one or more general partners and one or more limited partners.
27. **“Notice”** is the counterpart of the same term used in our other

business entity chapters.

28. **"Organization"**, whether domestic or foreign:

- includes:
 - corporations;
 - limited liability companies (LLCs);
 - general partnerships (GPs);
 - limited partnerships (LPs);
 - limited liability partnerships (LLPs);
 - limited liability limited partnerships (LLLPs); and,
 - any other entities subject to a governing statute, but
- excludes: any non profit corporation, whether foreign or domestic.

29. **"Organizational Records"** refer to the documents which give structure to an organization and include:

- the partnership agreement for a general partnership (GP);
- the certificate of limited partnership and the partnership agreement for a limited partnership (LP);
- the articles of organization, by-laws or operating agreement and any member control agreement for a limited liability company (LLC);
- the articles of incorporation, by-laws and other agreements among the shareholders for business corporations; and

the basic records that create the organization and determine the internal governance in relations among its owners for other organizations.

30. **"Ownership Interest"** means:

- For a corporation, its shares;
- For a limited liability company (LLC), its membership interests;
- For a limited partnership (LP), its partnership interests;
- For a limited liability partnership (LLP), its partnership interests;
- and
- For a limited liability limited partnership (LLLP), its partnership interests.

31. **"Partner"** means either a general or a limited partner.

32. **"Partnership Agreement"** means the agreement among the partners, whether oral, implied or in a record concerning the limited partnership.

33. **"Partnership Interest"** means the transferable interest of a partner as defined under subsection 44.

34. **"Person Dissociated as a General Partner"** means a general partner who has ceased to be a general partner.

35. **"Personal Liability"** means personal liability for a debt of an organization which is imposed on a person by virtue of their ownership interest in the organization.

36. **"Principle Executive Office"** means the office from which the limited partnership conducts its business and if there is no such office, then its registered office and is the counterpart of the same term used in our other business entity chapters.
37. **"Record"** means information inscribed on a tangible document or that is stored electronically and is retrievable into tangible form and is identical to the same term used in our other business entity chapters.
38. **"Registered Office"** is the counterpart of the same term used in our other business entity chapters.
39. **"Required Information"** is the information that a limited partnership is required to maintain under this chapter and specifically under section 45-10.2-13.
40. **"Signed"** is identical to the same term used in our other business entity chapters.
41. **"State"** is self explanatory and is identical to the same term in our other business entity chapters.
42. **"Surviving Organization"** means an organization into which one or more other organizations are merged.
43. **"Transfer"** is self explanatory and is the counterpart of the same term in our other business entity chapters.
44. **"Transferable Interest"** (i.e. partnership interests) means the right of a partner to receive distributions.

45. **"Transferee"** is a person to whom a transferable interest (partnership interest) has been transferred.
46. **"Vote"** is self explanatory and is identical to the same term used in our other business entity chapters.
47. **"Written Action"** refers to a written document which causes action to be taken by the limited partnership once its signed by the required number of signers and is the counterpart of the same term used in our other business entity chapters.
48. **"45-10.2-03"** is in regards to the integration of Chapter 45-10.2 with existing limited partnerships formed under Chapter 45-10.1
- (1) After June 30, 2005, Chapter 45-10.1 may no longer be used to form a new limited partnership.
 - (2) Before January 1, 2006, Chapter 45-10.2 governs limited partnerships formed after June 30, 2005 and previously existing limited partnerships which elect to become subject to the new chapter.
 - (3) Except as otherwise provided in subsection 4, on and after January 1, 2006, Chapter 45-10.2 governs all limited partnerships in North Dakota.
 - (4) With respect to limited partnerships formed before July 1, 2005, the following rules apply

unless the partners have otherwise elected in the partnership agreement:

- (1) Subsection 3 of section 45-10.2-07 (which provides for perpetual duration of limited partnerships much as is the case with other entities) is inapplicable and previously existing limited partnerships have whatever duration they had at the time of their formation;
- (2) Sections 45-10.2-55 and 45-10.2-56 do not apply with respect to the right and power of a limited partner to dissociate from the limited partnership and instead dissociation will be governed by the law in existence immediately prior to the partnership becoming subject to Chapter 45-10.2;
- (3) Subsection 4 of section 45-10.2-57, pertaining to the expulsion of a general partner, by the unanimous consent of the other partners, does not apply;
- (4) Subsection 5 of section 45-10.2-57 pertaining to expulsion of a general

partner by judicial determination does not apply; and

- (5) Subsection 3 of section 45-10.2-66 pertaining to non judicial dissolution does not apply.

45-10.2-04 is a savings clause which provides that Chapter 45-10.2 does not affect any action that commenced prior to this chapter taking effect.

45-10.2-05 concerns the legal recognition of electronic records and is identical to the same section used in our other business entity chapters.

45-10.2-06 relates to "knowledge" and "notice" and is the counterpart of similar

sections that will be enacted in each of our other business entity chapters as a part of House Bill No. 1391.

This section, which will be new to each of our business entity chapters, does an excellent job of summarizing when entities and those involved with entities are deemed to have knowledge and notice.

As you read through this section carefully you will see that it is very straight forward but very detailed.

45-10.2-07 relates to the nature, purpose and duration of limited partnerships:

Subsection 1 makes clear that the limited partnership is a legal entity which is separate and distinct from its partners ... and is a carry over concept from Chapter 45-10.1.

Subsection 2 provides that a limited partnership may be organized for any lawful purpose except banking and insurance ... and is a carry over counterpart from Chapter 45-10.1.

Subsection 3 provides that a limited partnership has perpetual duration unless otherwise provided in its certificate of limited partnership and is a new concept for limited partnerships (which previously had specific and limited durations) but is a counterpart concept of our other business entity chapters.

45-10.2-08 provides that a limited partnership has the power to do all things necessary and convenient to carry out its activities.

45-10.2-09 provides that the law of this state governs the relations among partners and that, unless otherwise provided in this chapter, the general principles of law and equity pertain to limited partnerships.

45-10.2-10 sets forth the requirements for the name of a limited partnership and is the counterpart of similar sections in our other business entity chapters.

While there is no substantive difference between this section and its counterpart (section 108) in the Act, this section is an excellent example of a situation in which the current

administrative provisions pertaining to business entity names in our other business entity chapters was carried into Chapter 45-10.2.

Thus, Chapter 45-10.2 will be substantively identical to its counterpart sections in our other business entity chapters.

45-10.2-11 similarly provides that the process for reserved names for limited partnerships is identical to the counterpart of this section in our other business entity chapters.

45-10.2-12 provides that Chapter 45-10.2 governs the relations among the partners unless provided otherwise in the partnership agreement. However, there are a number of provisions of Chapter 45-10.2 which the partnership agreement may not alter including:

- The power of the limited partnership to sue and be sued;
- The governing law provisions set out in section 45-10.2-09;
- The requirements for the signing of records set forth in section 45-10.2-25;
- The information required to be maintained by the limited partnership or the right of access to that information by the partners;
- The duty of loyalty;
- The duty of care;
- The obligation of good faith and fair dealing;
- The power of a person to dissociate as a general partner;

- The power of a court to decree dissolution under certain circumstances;
- The requirement to wind up the business as provided in 45-10.2-68;
- Any unreasonable restriction on the right to maintain an action by a partner against the partnership;
- The right of a partner to approve a conversion or merger;
- The right of a general partner to consent to an amendment of the certificate of limited partnership that converts a limited partnership to a limited liability limited partnership; or
- That restricts any rights under this chapter of a person other than those of a partner or a transferee of a partner.

45-10.2-13 sets forth the “required information” that must be maintained by the limited partnership and is similar to its counterpart sections in our other business entity chapters.

45-10.2-14 makes clear that a partner may transact business with the limited partnership.

45-10.2-15 makes clear that a person may serve as both a general partner and a limited partner.

45-10.2-16 is a carry over section from 45-10.1 at the request of the Secretary of State which requires that general partners which are entities with governing statutes must be registered with the Office of the Secretary of State ... either as a domestic organization or as a foreign organization.

45-10.2-17 sets forth the requirements for the registered office and registered agent and is the counterpart of similar sections in our other business entity chapters.

45-10.2-18 sets forth the requirements for changes of registered office and/or registered agent, the resignation of the registered agent and the change of name or address of the registered agent and is the counterpart of similar sections in our other business entity chapters.

45-10.2-19 provides for actions by the partnership without a meeting and is the counterpart of a similar section in each of our other business entity chapters.

45-10.2-20 is in regards to remote communications for partner meetings and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-21 sets forth the requirements for consents and proxies of partners and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-22 provides for the acceptance of an act by a partner by the limited partnership and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-23 sets forth the requirements for the formation of a limited partnership and for the content of the certificate of limited partnership which is filed with the Secretary of State (thereby creating the legal existence of the limited partnership) and is similar to the counterpart sections for the creation of each of our other business entities.

45-10.2-24 sets forth the requirements for amending or restating the certificate of limited partnership.

45-10.2-25 sets forth the requirements for the signing of records and integrates with the definition of "signed" as set forth as subsection 40 of Section 45-10.2-02.

45-10.2-26 sets forth the provisions for signing and filing pursuant to judicial order and authorizes the court to require the signing of any record (document) required to be signed under this chapter and that if the person required to do so does not do so, then the court may order the Secretary of State to file the record without signature.

45-10.2-27 sets forth the details for delivery of records to the Secretary of State and for their filing. As with the other business entity chapters, filings with the Secretary of State are either effective on the date processed by the Office of the Secretary of State or at a specified date up to ninety (90) days subsequent to the processing date.

45-10.2-28 is a procedure taken from Minnesota Statutes which provides for the correction of an inaccurate or erroneous record (document) that was filed with the Secretary of State. Since this process will be very helpful both to the Office of the Secretary of State and to those who deal with the Office of the Secretary of State, a similar provision will be proposed for each of the other business entity chapters in House Bill No. 1391.

45-10.2-29 provides for damages if a person files a record with the Secretary of State which contains false information and another person suffers a loss due to reliance on that information.

45-10.2-30 authorizes the Secretary of State to issue certificates of existence which are the counterparts of the certificates of good standing provided for in our other business entity chapters.

45-10.2-31 sets forth how one becomes a limited partner in a limited partnership.

45-10.2-32 makes clear that a limited partner has no right or power to legally bind a limited partnership ... that being the prerogative of the general partner(s).

45-10.2-33 makes clear that limited partners have no liability for limited partner obligations ... in other words the limited partners have limited liability ... as opposed to the general partners who have personal liability.

45-10.2-34 sets forth the rights of limited partners and former limited partners to obtain information from the limited partnership.

45-10.2-37 sets forth how one becomes a general partner in a limited partnership.

45-10.2-38 makes clear that the general partner is an agent of the limited partnership and that the acts of a general partner will in fact bind the limited partnership.

45-10.2-39 makes clear that the limited partnership is liable for any actionable conduct of a general partner ... in other words the actions of a general partner can cause liability to the limited partnership.

45-10.2-40 makes clear that general partners are liable jointly and severally for all of the obligations of the limited partnership except that the general partner is not liable for obligations incurred prior to becoming a general partner.

45-10.2-41 sets forth the requirements for actions (law suits) by and against the partnership and its partners.

45-10.2-42 details the management rights of the general partner.

45-10.2-43 sets forth the rights of the general partners and former general partners to obtain information from the partnership.

45-10.2-44 sets forth the general standards of conduct for general partners and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-45 sets forth the requirements for the transfer of partnership property.

45-10.2-46 relates to the type of contribution which may be received by a partnership from a partner in exchange for a partnership interest ... which consists of anything of value.

45-10.2-47 makes clear that each partner is liable to the partnership for the contribution promised by the partner ... that if the contribution is non monetary and is not made, then for money equal to the value of that non monetary contribution.

45-10.2-48 provides that distributions by a limited partnership must be shared among the partners on the basis of the value of the contributions that each has made to the partnership.

45-10.2-49 provides that a partner has no right to any distribution prior to dissolution unless the partnership decides to make an interim distribution.

45-10.2-50 provides that a partner does not have a right to a distribution on account of dissociation (withdrawal from the partnership).

45-10.2-51 provides that a partner has no right to any distribution from a limited partnership in any form other than cash.

45-10.2-52 provides that when a partner becomes entitled to a distribution the partner has all remedies available to a creditor if the distribution is not in fact made.

45-10.2-53 provides that a limited partnership may not make distributions in violation of its limited partnership agreement nor may it make a distribution which would cause it to become insolvent.

45-10.2-54 provides that a general partner that consents to an improper distribution is personally liable to the partnership for the amount of the distribution which exceeds the amount that could have been distributed without violation of this section.

45-10.2-55 provides for the dissociation of a limited partner from the limited partnership ... both voluntarily and involuntarily ... and makes clear that while a person has the power to dissociate the person may not have the right to do so and may incur liabilities for doing so.

45-10.2-56 sets forth the effect of dissociation by a limited partner.

45-10.2-57 sets forth the occurrences which will result in the dissociation of a general partner from the limited partnership.

45-10.2-58 makes clear that a general partner may have the power to dissociate but may incur liability for a wrongful dissociation.

45-10.2-60 relates to the power to bind and the liability to the limited partnership prior to its dissolution by a person who has been dissociated as a general partner.

45-10.2-61 regards the liability of a dissociated general partner to other persons.

45-10.2-62 and **45-10.2-63** pertain to the transferability of a partnership interest by a partner.

45-10.2-64 pertains to the rights of a creditor of a partner and how creditors may enforce their rights and is the counterpart of Section 45-10.1-44 in our current limited partnership act.

45-10.2-65 makes clear that the personal representative of a deceased partner may exercise the rights of a transferee of the partnership interest held by the decedent.

45-10.2-66 sets forth the occurrences which will result in a non judicial dissolution of the limited partnership.

45-10.2-67 makes clear that the district court holds the authority to dissolve a limited partnership if it is not reasonably practicable to carry on its activities in conformity with its partnership agreement.

45-10.2-68 sets forth the procedure for winding up the business of a limited partnership that has begun dissolution.

45-10.2-69 provides that once the wind up of a dissolved partnership is complete then the dissolved limited partnership may deliver a statement of termination to the Secretary of State for filing.

45-10.2-70 pertains to the power of a general partner to bind the partnership after dissolution has begun.

45-10.2-71 sets forth the liability of a general partner to the partnership and to the other general partners after the dissolution of the limited partnership.

45-10.2-73 sets forth the process for publishing notice of dissolution and requesting that persons who have claims against the partnership present them in accordance with the notice and is the counterpart to similar sections in each of our other business entity chapters.

45-10.2-74 makes clear that any claim against the dissolved limited partnership which is barred against the partnership is also barred against a general partner ... in other words if a claimant cannot collect against the limited partnership due to the limited partnership having been dissolved, then a general partner is

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Claims against
dissolved Ltd.
partnership
pg 68-69

similarly protected.

45-10.2-75 refers to the disposition of assets of the partnership and sets forth the situations in which further contributions to the assets of the partnership are required.

45-10.2-76 makes clear:

- that the governing law of a foreign limited partnership is the law of the jurisdiction under which it is organized; and,
- that a foreign limited partnership may not engage in any business activity which is prohibited to a domestic limited partnership.

45-10.2-77 requires that the name of a foreign limited partnership must comply with the same requirements which govern a domestic limited partnership.

45-10.2-78 makes clear that a foreign limited partnership may not:

- Transact business within the state until it has received a certificate of authority from the Secretary of State;
- Transact any business in this state that is prohibited to a domestic limited partnership; and
- Be denied a certificate of authority because the laws of its jurisdiction of origin differ from those of this state.

45-10.2-79 sets forth the procedure for an application of certificate of authority by a foreign limited partnership.

45-10.2-80 sets forth the procedure for filing the certificate of authority with the Secretary of State.

45-10.2-81 sets forth the procedure for amending the certificate of authority by a foreign limited partnership.

45-10.2-82 makes clear that a foreign limited partnership is required to maintain a registered agent and a registered office in the same manner as a domestic limited partnership is required to do.

45-10.2-83 provides for the merger of a foreign limited partnership which is authorized to do business in this state.

45-10.2-84 provides for the conversion of a foreign limited partnership authorized to transact business in this state.

45-10.2-85 sets forth the effect of the cancellation of the certificate of authority held by a foreign limited partnership.

45-10.2-86 sets forth the activities which do not constitute the transaction of business in this state and is the counterpart to similar sections in each of our other business entity chapters.

45-10.2-87 sets forth procedure for the revocation of the certificate of authority of a foreign limited partnership and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-88 authorizes the Attorney General to maintain an action against a foreign limited partnership to prevent it from transacting business in this state in violation of this chapter and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-89 provides for legal action by a partner against the limited partnership.

45-10.2-90 provides for derivative actions by which a partner may maintain an action on behalf of the limited partnership under certain circumstances.

45-10.2-91 makes it clear that the derivative action may be only maintained by an individual who is in fact a partner at the time the action is commenced.

45-10.2-92 sets forth the particular requirements of the complaint in a derivative action.

45-10.2-93 governs the handling of the proceeds and expenses in a derivative action.

Sections 45-10.2-94 through 45-10.2-99 provide for the conversion of a limited partnership into another type of organization or for the conversion of another type of organization into a limited partnership.

This concept is similar to that of merger and is identical to the process by which general partnerships become limited liability limited partnerships upon the filing of a registration thereby which limited partnerships have become limited liability limited partnerships upon the filing of an amendment to the certificate of limited partnership.

After a conversion, the converted organization is the same entity for tax and legal purposes as the converting entity (i.e. the entity from which it converted).

45-10.2-94 sets forth the process of conversion by which an organization other than a limited partnership may convert itself into a limited partnership or by which a limited partnership may convert itself into another organization (except a general partnership or a non profit corporation) if the specified requirements are met.

45-10.2-95 details the requirements for the plan of conversion.

45-10.2-96 provides for approval for the plan of conversion and for its amendment.

45-10.2-97 sets forth the requirements for the preparation of and the filing of the articles of conversion.

45-10.2-98 provides the process for the abandonment of a conversion.

45-10.2-99 sets forth the effective date and effect of the conversion.

45-10.2-100 refers to the merger of a limited partnership with one or more other constituent organizations and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-101 sets forth provisions for the approval of the plan of merger as well as its amendment and abandonment.

45-10.2-102 sets forth the requirements for the articles of merger and for the filing of the articles with the Office of the Secretary of State.

45-10.2-103 sets forth the legal effect of a merger.

45-10.2-104 contains restrictions on approval of conversions and mergers and on the relinquishing of limited liability limited partnership (LLLP) status.

45-10.2-105 sets forth the liability of a general partner after a conversion or merger.

45-10.2-106 provides for the power of general partners to bind the organization after a conversion or merger.

45-10.2-107 provides for the service of process on a limited partnership and on any nonresident general partner of a limited partnership.

45-10.2-108 provides for the annual report of limited partnerships and foreign limited partnerships to the Secretary of State and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-109 sets forth the fee schedule for the filing of records with the Office of the Secretary of State and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-110 sets forth some of the duties of the Secretary of State with respect to the maintenance of limited partnership filings and indexes and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-111 sets forth the powers, the enforcement authority, penalty for violations and the appeal process for limited partnerships and their dealings with the Office of the Secretary of State and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-112 provides for certificates and certified copies from the Secretary of State being received into evidence and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-113 sets forth the requirement that the Secretary of State shall delete or obscure any social security number or federal tax identification number from any record before that record is released to the public and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-114 provides for forms to be furnished by the Secretary of State and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-115 requires audit reports of limited partnerships receiving state subsidies for the production of ethyl alcohol and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-116 states that in applying and construing this chapter consideration must be given to the need to promote uniformity among the various states which enact the statute.

45-10.2-118 integrates this chapter with Electronic Signatures In Global and National Commerce Act.

Sections 7 through 18 of this Bill again delete references to Chapter 45-10.1 and substitute references to 45-10.2 in their place and:

Section 7 so amends subsection 2 of 45-11-01;

Section 8 so amends subsections 1 and 5 of 45-13-04.1;

- Section 9 so amends subsection 3 of Section 45-21-01;
- Section 10 so amends subsections 4 and 5 of Section 45-21-02;
- Section 11 so amends subsections 1 and 5 of Section 45-22-04;
- Section 12 so amends subsections 11 and 15 of Section 45-23-01;
- Section 13 so amends Section 45-23-02;
- Section 14 so amends subsections 1 and 5 of Section 45-23-03;
- Section 15 so amends Section 45-23-04;
- Section 16 so amends Section 45-23-07;
- Section 17 so amends subsection 18 of Section 45-23-08 and also provides that fees paid to the Secretary of State with the filing of the annual report are not refundable if an annual report submitted to the Secretary of State cannot be filed because it fails to include required information and is the counterpart of similar sections being proposed in House Bill No. 1391 in each of our other business entity chapters;
- Section 18 so amends subsection 3 of section 54-44.09.

Section 19 repeals current limited partnership act, Chapter 45-10.1 and section 45-12-01 which integrated the current limited partnership act, Chapter 45-10.1, with limited partnerships that were in existence at the time of the enactment of Chapter 45-10.1 in 1985.

As you can see the legislation embodied in this Bill is very comprehensive and will provide limited partnerships in North Dakota with a freestanding chapter of the sort currently in force for business corporations, non profit corporations and limited liability companies. Thank you for the opportunity to address your committee. If you have any questions, I would be happy to answer them.

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February 2, 2005

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

FR: Clara Jenkins, Director, Business Division on behalf of Al Jaeger, Secretary of State

RE: Amendments to HB 1273

The amendments to HB 1273 are of a "housekeeping" nature and are proposed to accomplish the following:

- Correct several typographical errors
- Insert text that was inadvertently omitted during the drafting process
- Delete text that was inadvertently duplicated
- Correct several statutory reference codes
- Apply consistent use of terminology, especially for those terms that are specifically defined in section 45-10.2-02
- Improve format of the statutes making them more efficient for users
- Apply clarity to those sections when the provisions apply to both domestic and foreign limited partnerships

The Secretary of State respectfully requests the committee's favorable consideration on these amendments and HB 1273 as amended.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1273

Page 1, line 5, replace "subsections 4 and 5 of section 45-21-02" with

"subsection 5 of section 45-21-02"

Page 7, line 16, after "occupation" insert ", activity"

Page 8, line 21, replace "executed" with "signed"

Page 9, line 4, after "formed", insert "by two or more persons"

Page 9, line 13, after "formed", insert "by two or more persons"

Page 9, line 22, remove "the" and replace "another" with "a jurisdiction other than
this"

Page 10, after line 7, insert "(3) 'If a general partnership, chapters 45-12 through
45-21:'"

Page 10, line 8, replace "(3)" with "(4)"

Page 10, line 9, replace "(4)" with "(5)"

Page 10, line 10, replace "(5)" with "(6)"

Page 10, line 15, replace "an entity" with "a partnership formed by two or more
persons"

Page 10, line 17, remove "by two or more persons"

Page 10, line 30, replace "an entity" with "a partnership formed by two or more
persons"

Page 11, line 1, remove "by two or more persons"

Page 12, line 4, after "receive", insert "notice"

Page 14, after line 7, insert "d. A general partnership, its partnership interests,"

Page 14, line 8, replace "d." with "e."

Page 14, line 9, replace "e." with "f."

Page 14, line 15, replace "a share" with "the transferable interest", place a period after "partner", and remove "of the profits and losses of a"

Page 14, remove line 16

Page 14, line 20, replace "coowns" with "co-owns"

Page 14, line 29, replace "coowning" with "co-owning"

Page 15, line 7, after the first "partnership", insert "or in the certificate of authority of a foreign limited partnership", and remove "of the limited partnership"

Page 15, line 27, after "and", insert "which"

Page 17, after line 27, insert a subsection 5 as follows:

"5. The provisions of this chapter related to electronic records and electronic transactions do not limit or supersede any provision of chapter 9-16."

Page 21, line 10, remove "business"

Page 21, line 25, after "45-10.2-11", insert ", 45-13-04.2"

Page 22, line 31, after "45-10.2-11", insert ", 45-13-04.2"

Page 23, line 14, replace "2" with "3"

Page 23, line 21, move "unless" to line 22 and the remainder of the sentence to the left to be in the margin immediately below "c." of line 21

Page 23, line 24, replace "2" with "3", and remove "A limited partnership that"

Page 23, remove lines 25 and 26

Page 24, line 4, replace the colon with a period

Page 24, line 16, after "and", insert "the"

Page 37, after line 31, insert the following:

"8. A limited partnership that files an amendment to change its name, and is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state, shall change the name of the limited partnership in each of the foregoing registrations that is applicable when the limited partnership files an amendment to the certificate of limited partnership."

Page 38, line 15, replace "singed" with "signed"

Page 38, line 25, replace "state" with "states"

Page 39, line 19, replace "on" with "one"

Page 41, line 10, replace "executed" with "signed"

Page 41, line 15, replace "executed" with "signed"

Page 43, line 17, after "all", insert "of"

Page 46, line 22, replace "coowners" with "co-owners"

Page 47, line 12, after "all", insert "of"

Page 52, line 12, replace "executed" with "signed"

Page 52, line 16, remove "from a transferee only if"

Page 52, line 17, replace the initial "The" with "From a transferee only if the" , and

replace "execution" with "signing"

Page 52, line 19, after the comma, insert "only if"

Page 52, line 21, replace "executed" with "signed"

Page 53, line 7, after the comma, insert "then"

Page 53, line 17, replace the initial "of" with "on"

Page 72, line 11, replace "decease" with "deceased"

Page 72, line 30, replace "and" with "an"

Page 74, line 27, replace "executed" with "signed"

Page 75, line 6, remove the second "the owner"

Page 75, line 7, remove "of or"

Page 76, line 1, replace "office" with "officer"

Page 76, line 11, replace "office" with "officer"

Page 78, line 4, replace "article" with "chapter"

Page 78, line 16, replace "mortqager" with "mortgages"

Page 80, line 4, before the initial "limited", insert "foreign"

Page 82, line 7, replace "of" with "if the converting organization is"

Page 82, after line 18, insert:

"(3) A general partnership that is the converting organization was
formed."

Page 82, line 19, replace "(3)" with "(4)"

Page 82, line 22, replace "(4)" with "(5)"

Page 82, line 25, replace "(5)" with "(6)"

Page 83, line 28, replace "45-10.2-102" with "45-10.2-104"

Page 84, line 1, replace "45-10.2-102" with "45-10.2-104"

Page 84, line 16, after "conversion", insert a semicolon and remove "and the
name to which the name of the"

Page 84, line 17, before "converting", insert "(2) The name to which the name of
the"

Page 84, line 19, replace "(2)" with "(3)"

Page 84, line 20, replace "(3)" with "(4)"

Page 84, line 25, after "conversion", insert "without the organizational records"

Page 85, line 20, replace "a" with "the appropriate"

Page 86, line 3, replace "45-10.2-103" with "45-10.2-104"

Page 87, line 5, replace "corporation incorporated" with "limited partnership
formed"

Page 89, line 23, after "must", insert "be accompanied by the plan of merger
without organizational records, and must"

Page 90, line 27, replace "vest" with "vests"

Page 91, line 12, after "merger", insert ", and"

Page 95, line 22, after "partnership", insert ", the foreign limited partnership"

Page 95, line 24, after "partnership", insert ", on the foreign limited partnership,"
and after "or", insert "on a"

Page 96, line 1, after the second "partnership", insert "or foreign limited
partnership"

Page 96, line 5, after "partnership", insert "or foreign limited partnership"

Page 96, line 7, after "partnership", insert "or foreign limited partnership"

Page 96, line 8, after "office", insert "or at the principal executive office if located in this state"

Page 96, line 12, immediately before "cannot", insert "or foreign limited partnership"

Page 96, line 13, replace the initial "the" with "an" and after "partnership", insert "or foreign limited partnership"

Page 96, line 14, remove "Service on the secretary of state:"

Page 96, immediately after line 14, insert a new line 15 that reads:

"a. Service on the secretary of state:"

Page 96, line 15, replace "a." with "(1)" to create a new paragraph under subdivision a

Page 96, line 17, replace "b." with "(2)"

Page 96, line 20, replace "c." with "(3.)", and after "partnership", insert "or foreign limited partnership"

Page 96, line 22, replace "(1)" with "(a)"

Page 96, line 23, replace "(2)" with "(b)"

Page 96, immediately after line 23, insert a new paragraph under subdivision a to read as follows:

"(4) Is returnable in not less than thirty days, notwithstanding a shorter period specified in the process, notice, or demand."

Page 96, line 24, replace "d." with "b." and replace "certified" with "registered"

Page 96, line 25, after "partnership", insert "or foreign limited partnership"

Page 96, remove lines 27 and 28

Page 97, line 11, after "partnership", insert "or foreign limited partnership"

Page 98, line 11, immediately before "certificate", insert "certificate of limited partnership or"

Page 99, line 2, replace "terminated" with "dissolved"

Page 99, line 3, replace "termination" with "dissolution"

Page 99, line 11, replace "terminated" with "dissolved"

Page 99, line 12, replace "termination" with "dissolution"

Page 99, line 14, replace "terminated" with "dissolved"

Page 99, line 25, replace "terminated" with "dissolved"

Page 101, line 20, replace "withdraw" with "withdrawal"

Page 101, line 27, replace "termination" with "dissolution"

Page 102, line 21, after "partnership", insert "or foreign limited partnership"

Page 103, line 12, remove "domestic"

Page 104, line 3, replace "terminates" with "dissolves"

Page 104, line 11, replace "termination" with "dissolution"

Page 105, line 5, remove "domestic"

Page 105, line 8, replace the second "of" at the end of the line with "or"

Page 105, line 22, after "partnership", insert "or foreign limited partnership"

Page 105, line 25, after "partnership", insert "or foreign limited partnership"

Page 105, line 26, after "committee", insert "of this state"

Page 105, line 27, after "partnership", insert "or foreign limited partnership"

Page 105, line 29, after "partnership", insert "or foreign limited partnership"

Page 106, remove lines 4 through 7

Page 106, line 8, replace "45-10.2-118" with "45-10.2-117"

Page 108, line 7, replace "Subsections 4 and" with "Subsection"

Page 108, remove lines 9 and 10

Page 114, line 12, remove "a." and continue this line after line 11 with same margin and being part of subsection 18

Page 114, line 14, remove the overstrike over "~~a.~~" and remove "(1)"

Page 114, line 16, remove the overstrike over "~~b.~~" and remove "(2)"

Page 114, remove lines 19 through 22

Renumber accordingly

HH #1

TESTIMONY OF WILLIAM L. GUY III., CHAIRMAN
NORTH DAKOTA BUSINESS ENTITY DRAFTING TASK FORCE
IN SUPPORT OF
HOUSE BILL NO. 1273

Mr. Chairman and members of the Committee, I am here on behalf of a task force which has prepared legislation which, if enacted, will adopt the Uniform Limited Partnership Act (2001) (the "Act") in North Dakota. The Act was proposed by the National Conference of Commissioners on Uniform State Laws and approved for enactment in all of the states in August, 2001. To date the Act has been enacted in 6 states, including the states of Minnesota and Iowa.

Our current limited partnership act, Chapter 45-10.1 was derived from the Uniform Limited Partnership Act (1976) as amended by the Commissioners on Uniform State Laws in 1985 and was enacted in North Dakota in 1985.

As with prior versions of the Uniform Limited Partnership Act, the 1976 version stood on the shoulders of the general partnership statute, Chapters 45-13 through 45-21. Thus, when using our current limited partnership act, the user needs to understand Chapters 45-13 through 45-21 and needs to know that the law governing limited partnerships in North Dakota requires the integration of those chapters with Chapter 45-10.1. Since limited partnerships are so different from general partnerships and are in such wide use, this approach is no longer appropriate.

One of the important attributes of the Act is that it is a stand alone chapter such as is the case with the chapters for business corporations, non profit corporations and limited liability companies.

As you know, this task force has worked diligently for a number of years to integrate the corporate, partnership and limited liability company statutes in North Dakota with one another so that, to the extent possible, definitions in one chapter mean the same in each of the others and administrative procedures (particularly those involving the Office of the Secretary of State) are as uniform as possible. One of our concerns was that, as good as the substantive law in the Act was, the administrative provisions as initially presented did not correlate with our other chapters. In preparing this legislation, we used the substantive provisions of the Act and borrowed from our current limited partnership law, Chapter 45-10.1, and from our other chapters for the administrative provisions of the Act including those that deal with the Office of the Secretary of State. We believe the result will be a substantial improvement in the limited partnership law of North Dakota while maintaining the same integration at the administrative level as was the case with Chapter 45-10.1.

Finally, we have presented to the Chair of your committee certain amendments which will be discussed by Clara Jenkins at the end of my presentation.

As noted above, our objective is to make this chapter as "user friendly" as possible to the general public by keeping the format and as many of its defined terms as possible either identical to or parallel with those of the states other principal business entities such as business corporations, non profit corporations and limited liability companies (LLC's).

If you wish, I will now cover some of the highlights of the Bill on a section by section basis.

Sections 1 through 5 of the Bill (pages 1 through 6) set out amendments to other business entity chapters that arise due to the enactment of Chapter 45-10.2.

In fact, as you scan pages 1 through 6, you will see that generally the only change

made in these sections is to delete all references to sections in Chapter 45-10.1 and substitute in their place the counterpart sections in Chapter 45-10.2.

Section 1 of the Bill (beginning on page 1) makes that change with regard to the technical requirements for the corporate name of a business corporation in subsection 1 of section 10-19.1-13.

Section 2 of the Bill (beginning on page 2) makes a similar change to subsection 4 of section 10-19.1-14 which pertains to reservation of corporate names.

Section 3 of the Bill (beginning on page 3) is the limited liability counterpart of section 1 for business corporations and amends subsections 1 and 5 of section 10-32-10 setting out the technical requirements for a limited liability company name.

Section 4 of the Bill (beginning on page 4) is the non profit corporation act counterpart of sections 1 and 3 of the Bill and amends subsections 1 and 5 of section 10-33-10 with respect to the corporate name of non profit corporations.

Section 5 of the Bill similarly amends section 43-07-19 with regard to nonresident contractors.

Section 6 of the Bill creates and enacts the Act as proposed Chapter 45-10.2. From this point onward I will be referring to the section numbers within Chapter 45-10.2. Please note that after many of the sections in Chapter 45-10.2 there appears a three digit number in parenthesis such as is the case at the bottom of page 6 with (101) which immediately follows 45-10.2-01. The (101)

reference is to section 101 of the Act. This coordination between the North Dakota Century Code section numbers and the section numbers of the Act has been used in many other uniform acts that have been enacted in North Dakota over the years.

45-10.1-01 (on page 6) provides that this chapter may be cited as the "North Dakota Uniform Limited Partnership Act (2001)".

45-10.2-02 (beginning on page 7) is the definitions for Chapter 45-10.2.

1. **"Address"** is the limited partnership (LP) counterpart of the same term used in our other business entity chapters.
2. **"Authorized electronic communication"** is identical to the same term used in our other business entity chapters.
3. **"Business"** is self explanatory.
4. **"Certificate of Limited Partnership"** is the document which is filed with the Secretary of State to cause a limited partnership to come into existence and is the counterpart to the articles of incorporation of a corporation and to the articles of organization of a limited liability company.
5. **"Constituent Limited Partnership"** is a constituent organization that is a limited partnership.
6. **"Constituent Organization"** is an organization that is a party to a merger. For the definition of the term "Organization" see subsection 28 of this section.

7. **"Contribution"** refers to the benefit provided by a limited partner to the limited partnership, either as the price of admission to the limited partnership or as a duty owed by the partner to the limited partnership after admission as a partner.
8. **"Converted Organization"** means the organization into which a converting organization converts. As you'll see later on in the chapter, the concept of "conversion" is similar to that of merger and is identical to the process that occurs:
 - when a general partnership becomes a limited liability partnership by filing a registration with the Secretary of State; and,
 - when a limited partnership (LP) becomes a limited liability limited partnership (LLLP) in North Dakota by amending its certificate of limited partnership into a certificate of limited liability limited partnership.
9. **"Converting Limited Partnership"** refers to a converting organization that is a limited partnership and that converts into another organization through the process of conversion.
10. **"Converting Organization"** means an organization that converts into another organization through the process of conversion.
11. **"Debtor in Bankruptcy"** has the meaning given to that term under federal bankruptcy law.

12. **"Distribution"** is a transfer of money or property from the limited partnership to a partner.
13. **"Domestic Organization"** is an organization created under the laws of this state ... again see subsection 28 for the definition of "organization".
14. **"Electronic"** is identical to the same term used in our other business entity chapters.
15. **"Electronic Communication"** is identical to the same term used in our other business entity chapters.
16. **"Electronic Record"** refers to a record (i.e. a document) created electronically and is identical to the same term used in our other business entity chapters.
17. **"Electronic signature"** is identical to the same term used in our other business entity chapters.
18. **"Filed with the Secretary of State"** is identical to the same term in our other business entity chapters.

19. **"Foreign Limited Liability Limited Partnership"** refers to a limited liability limited partnership (a LLLP or triple LP) formed in another jurisdiction. If you will recall, a limited liability limited partnership in North Dakota has its origin under Chapter 45-23 and is the process by which a limited partnership (such as those that would be created under Chapter 45-10.2) converts from an entity in which the general partners have personal liability (i.e. a limited partnership (LP)) into an entity in which the general partners have limited liability (i.e. a limited liability limited partnership (LLLP)).
20. **"Foreign Limited Partnership"** refers to a limited partnership formed in another jurisdiction.
21. **"Foreign Organization"** is an organization created under the laws of another state again see subsection 28 for the definition of "organization".
22. **"General Partner"** is the partner in a limited partnership that is responsible for the management of the limited partnership and that has personal liability for his or her acts as a general partner. The other class of partners in a limited partnership are "limited partners" which is defined under subsection 25.
23. **"Governing Statute"** is
 1. The statute in the North Dakota Century Code by which a domestic organization is governed and is:

- Chapter 10-19.1 for business corporations;
 - Chapter 10-32 for limited liability companies;
 - This chapter for limited partnerships;
 - Chapter 45-22 for limited liability partnerships (LLPs);
 - and,
 - Chapter 45-23 for limited liability limited partnerships (LLLPs); and
2. With respect to foreign organizations is the counterpart statute of the foreign jurisdiction for the entity in question.
24. **“Limited Liability Limited Partnership (LLLP)”** is the entity which may be created under Chapter 45-23 or into which a limited partnership may convert pursuant to Chapter 45-23 and which gives limited liability to its general partners (unlike a limited partnership whose general partners have personal liability).
25. **“Limited Partner”** is the class of partner in a limited partnership which typically has a financial contribution but has no active involvement in management and which has limited liability with respect to the obligations of the partnership.
26. **“Limited Partnership”** is the entity which is the subject of the Act and of Chapter 45-10.2 and is a partnership having one or more general partners and one or more limited partners.
27. **“Notice”** is the counterpart of the same term used in our other

business entity chapters.

28. **"Organization"**, whether domestic or foreign:

- includes:
 - corporations;
 - limited liability companies (LLCs);
 - general partnerships (GPs);
 - limited partnerships (LPs);
 - limited liability partnerships (LLPs);
 - limited liability limited partnerships (LLLPs); and,
 - any other entities subject to a governing statute, but
- excludes: any non profit corporation, whether foreign or domestic.

29. **"Organizational Records"** refer to the documents which give structure to an organization and is:

- the partnership agreement for a general partnership (GP);
- the certificate of limited partnership and the partnership agreement for a limited partnership (LP);
- the articles of organization, by-laws or operating agreement and any member control agreement for a limited liability company (LLC);
- the articles of incorporation, by-laws and other agreements among the shareholders for business corporations; and

the basic records that create the organization and determine the internal governance in relations among its owners for other organizations.

30. **"Ownership Interest"** means:

- For a corporation, its shares;
- For a limited liability company (LLC), its membership interests;
- For a limited partnership (LP), its partnership interests;
- For a limited liability partnership (LLP), its partnership interests;
- and
- For a limited liability limited partnership (LLLP), its partnership interests.

31. **"Partner"** means either a general or a limited partner.

32. **"Partnership Agreement"** means the agreement among the partners, whether oral, implied or in a record concerning the limited partnership.

33. **"Partnership Interest"** means the transferable interest of a partner as defined under subsection 44.

34. **"Person Dissociated as a General Partner"** means a general partner who has ceased to be a general partner.

35. **"Personal Liability"** means personal liability for a debt of an organization which is imposed on a person by virtue of their ownership interest in the organization.

- 36. **"Principle Executive Office"** means the office from which the limited partnership conducts its business and if there is no such office, then its registered office and is the counterpart of the same term used in our other business entity chapters.
- 37. **"Record"** means information inscribed on a tangible document or that is stored electronically and is retrievable into tangible form and is identical to the same term used in our other business entity chapters.
- 38. **"Registered Office"** is the counterpart of the same term used in our other business entity chapters.
- 39. **"Required Information"** is the information that a limited partnership is required to maintain under this chapter and specifically under section 45-10.2-13.
- 40. **"Signed"** is identical to the same term used in our other business entity chapters.
- 41. **"State"** is identical to the same term in our other business entity chapters.
- 42. **"Surviving Organization"** means an organization into which one or more other organizations are merged.
- 43. **"Transfer"** is the counterpart of the same term in our other business entity chapters.
- 44. **"Transferable Interest"** (i.e. partnership interests) means the right of a partner to receive distributions.

45. **"Transferee"** is a person to whom a transferable interest (partnership interest) has been transferred.
46. **"Vote"** is identical to the same term used in our other business entity chapters.
47. **"Written Action"** refers to a written document which causes action to be taken by the limited partnership once its signed by the required number of partners and is the counterpart of the same term used in our other business entity chapters.
48. **"45-10.2-03"** (beginning on page 16) details the integration of new Chapter 45-10.2 with existing limited partnerships formed under old Chapter 45-10.1:
 1. After June 30, 2005, old Chapter 45-10.1 may no longer be used to form a new limited partnership.
 2. Before January 1, 2006, new Chapter 45-10.2 governs limited partnerships formed after June 30, 2005 and previously existing limited partnerships which elect to become subject to the new chapter.
 3. Except as otherwise provided in subsection 4, on and after January 1, 2006, new Chapter 45-10.2 governs all limited partnerships in North Dakota.
 4. With respect to limited partnerships formed

before July 1, 2005, the following rules apply unless the partners have otherwise elected in the partnership agreement:

1. Subsection 3 of section new 45-10.2-07 (which provides for perpetual duration of limited partnerships much as is the case with other entities) is inapplicable and previously existing limited partnerships have whatever duration they had at the time of their formation;
2. New Sections 45-10.2-55 and 45-10.2-56 do not apply with respect to the right and power of a limited partner to dissociate from the limited partnership and instead dissociation will be governed by the law in existence immediately prior to the partnership becoming subject to new Chapter 45-10.2;
3. Subsection 4 of new Section 45-10.2-57, pertaining to the expulsion of a general partner, by the unanimous consent of the other partners, does not apply;
4. Subsection 5 of new Section 45-10.2-57

pertaining to expulsion of a general partner by judicial determination does not apply; and

5. Subsection 3 of new Section 45-10.2-66 pertaining to non judicial dissolution does not apply.

45-10.2-04 (on page 17) is a savings clause which provides that new Chapter 45-10.2 does not affect any action that commenced prior to this chapter taking effect.

45-10.2-05 (beginning on page 17) concerns the legal recognition of electronic records and is identical to the same section used in our other business entity chapters.

45-10.2-06 (beginning on page 17) relates to "**knowledge**" and "**notice**" and is the counterpart of similar sections that will be enacted in each of our other business entity chapters as a part of House Bill No. 1391.

This section, which will be new to each of our business entity chapters, does an excellent job of summarizing when entities and those involved with entities are deemed to have knowledge and notice.

As you read through this section carefully you will see that it is very straight forward but very detailed.

45-10.2-07 (on page 20) relates to the nature, purpose and duration of

limited partnerships:

Subsection 1 makes clear that the limited partnership is a legal entity which is separate and distinct from its partners ... and is a carry over concept from old Chapter 45-10.1.

Subsection 2 provides that a limited partnership may be organized for any lawful purpose except banking and insurance ... and is a carry over counterpart from old Chapter 45-10.1.

Subsection 3 provides that a limited partnership has perpetual duration unless otherwise provided in its certificate of limited partnership and is a new concept for limited partnerships (which previously had specific and limited durations) but is a counterpart concept of our other business entity chapters.

45-10.2-08 (on page 20) provides that a limited partnership has the power to do all things necessary and convenient to carry out its activities.

45-10.2-09 (on page 20) provides that the law of this state governs the relations among partners and that, unless otherwise provided in this chapter, the general principles of law and equity pertain to limited partnerships.

45-10.2-10 (beginning on page 21) sets forth the requirements for the name of a limited partnership and is the counterpart of similar sections in our other business entity chapters.

While there is no substantive difference between this section

and its counterpart (section 108) in the Act, this section is an excellent example of a situation in which the current administrative provisions pertaining to business entity names in old Chapter 45-10.1 was carried into new Chapter 45-10.2.

Thus, new Chapter 45-10.2 will be substantively identical to its counterpart sections in our other business entity chapters.

45-10.2-11 (On page 24) similarly provides that the process for reserving partnership names is identical to the counterpart of this section in our other business entity chapters.

45-10.2-12 (beginning on page 24) provides that new Chapter 45-10.2 governs the relations among the partners unless provided otherwise in the partnership agreement. However, there are a number of provisions of new Chapter 45-10.2 which the partnership agreement may not alter including:

- The power of the limited partnership to sue and be sued;
- The governing law provisions set out in section 45-10.2-09;
- The requirements for the signing of records set forth in section 45-10.2-25;
- The information required to be maintained by the limited partnership or the right of access to that information by the partners;
- The duty of loyalty;
- The duty of care;
- The obligation of good faith and fair dealing;

- The power of a person to dissociate as a general partner;
- The power of a court to decree dissolution under certain circumstances;
- The requirement to wind up the business as provided in 45-10.2-68;
- Any unreasonable restriction on the right to maintain an action by a partner against the partnership;
- The right of a partner to approve a conversion or merger;
- The right of a general partner to consent to an amendment of the certificate of limited partnership that converts a limited partnership to a limited liability limited partnership; or
- That restricts any rights under this chapter of a person other than those of a partner or a transferee of a partner.

45-10.2-13 (beginning on page 26) sets forth the "required information" that must be maintained by the limited partnership and is similar to its counterpart sections in our other business entity chapters.

45-10.2-14 (on page 27) makes clear that a partner may transact business with the limited partnership.

45-10.2-15 (on page 27) makes clear that a person may serve as both a general partner and a limited partner.

45-10.2-16 (beginning on page 27) is a carry over section from old Chapter 45-10.1 at the request of the Secretary of State which requires that general partners which are entities with governing statutes must be registered with the Office of the Secretary of State ... either as a domestic organization or as a foreign organization.

45-10.2-17 (on page 28) sets forth the requirements for the registered office and registered agent and is the counterpart of similar sections in our other business entity chapters.

45-10.2-18 (beginning on page 28) sets forth the requirements for changes of registered office and/or registered agent, the resignation of the registered agent and the change of name or address of the registered agent and is the counterpart of similar sections in our other business entity chapters.

45-10.2-19 (beginning on page 29) provides for action by the partnership without a meeting and is the counterpart of a similar section in each of our other business entity chapters.

45-10.2-20 (beginning on page 30) relates to remote communications for partner meetings and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-21 (beginning on page 32) sets forth the requirements for consents and proxies of partners and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-22 (beginning on page 34) provides for the acceptance by the limited partnership of an act by a partner and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-23 (on page 36) sets forth the requirements for the formation of a limited partnership and for the content of the certificate of limited partnership which is filed with the Secretary of State (thereby creating the legal existence of the limited partnership) and is similar to the counterpart sections for the creation of each of our other business entities.

45-10.2-24 (beginning on page 37) sets forth the requirements for amending or restating the certificate of limited partnership.

45-10.2-25 (beginning on page 38) sets forth the requirements for the signing of records and integrates with the definition of "signed" as set forth as subsection 40 of Section 45-10.2-02.

45-10.2-26 (on page 40) sets forth the provisions for signing and filing pursuant to judicial order and authorizes the court to require the signing of any record (document) required to be signed under this chapter and that if the person required to do so does not do so, then the court may order the Secretary of State to file the record without signature.

45-10.2-27 (beginning on page 40) sets forth the details for delivery of records to the Secretary of State and for their filing. As with the other business entity chapters, filings with the Secretary of State are either effective on the date processed by the Office of the Secretary of State or at a specified date up to ninety

(90) days subsequent to the processing date.

45-10.2-28 (beginning on page 41) is a procedure taken from Minnesota Statutes which provides for the correction of an inaccurate or erroneous record (document) that was filed with the Secretary of State. Since this process will be very helpful both to the Office of the Secretary of State and to those who deal with the Office of the Secretary of State, a similar provision will be proposed for each of the other business entity chapters in House Bill No. 1391.

45-10.2-29 (on page 42) provides for damages if a person files a record with the Secretary of State which contains false information and if another person suffers a loss due to reliance on that information.

45-10.2-30 (beginning on page 42) authorizes the Secretary of State to issue certificates of existence which are the counterparts of the certificates of good standing provided for in our other business entity chapters.

45-10.2-31 (on page 43) sets forth how one becomes a limited partner in a limited partnership.

45-10.2-32 (on page 43) makes clear that a limited partner has no right or power to legally bind a limited partnership ... that being the prerogative of the general partner(s).

45-10.2-33 (on page 44) makes clear that limited partners have no liability for limited partner obligations ... in other words the limited partners have limited liability ... as opposed to the general partners who have personal liability.

45-10.2-34 (beginning on page 44) sets forth the rights of limited partners

and former limited partners to obtain information from the limited partnership.

45-10.2-35 (beginning on page 45) provides for the limited duties of the limited partners.

45-10.2-36 (beginning on page 46) sets for the consequences of a person who erroneously believes himself or herself to be a limited partner.

45-10.2-37 (on page 47) sets forth how one becomes a general partner in a limited partnership.

45-10.2-38 (beginning on page 47) makes clear that the general partner is an agent of the limited partnership and that the acts of a general partner will in fact bind the limited partnership.

45-10.2-39 (beginning on page 47) makes clear that the limited partnership is liable for any actionable conduct of a general partner ... in other words the actions of a general partner can cause liability to the limited partnership.

45-10.2-40 (on page 48) makes clear that general partners are liable jointly and severally for all of the obligations of the limited partnership except that the general partner is not liable for obligations incurred prior to becoming a general partner.

45-10.2-41 (beginning on page 48) sets forth the requirements for actions (law suits) by and against the partnership and its partners.

45-10.2-42 (beginning on page 49) details the management rights of the general partner.

45-10.2-43 (beginning on page 50) sets forth the rights of the general

partners and former general partners to obtain information from the partnership.

45-10.2-44 (beginning on page 51) sets forth the general standards of conduct for general partners and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-45 (beginning on page 52) sets forth the requirements for the transfer of partnership property.

45-10.2-46 (on page 53) relates to the type of contribution which may be received by a partnership from a partner in exchange for a partnership interest ... which consists of anything of value.

45-10.2-47 (on page 53) makes clear that each partner is liable to the partnership for the contribution promised by the partner ... that if the contribution is non monetary and is not made, then for money equal to the value of that non monetary contribution.

45-10.2-48 (on page 53) provides that distributions by a limited partnership must be shared among the partners on the basis of the value of the contributions that each has made to the partnership (i.e. pro rata).

45-10.2-49 (on page 53) provides that a partner has no right to any distribution prior to dissolution unless the partnership decides to make an interim distribution.

45-10.2-50 (on page 54) provides that a partner does not have a right to a distribution on account of dissociation (withdrawal from the partnership).

45-10.2-51 (on page 54) provides that a partner has no right to any

distribution from a limited partnership in any form other than cash.

45-10.2-52 (on page 54) provides that when a partner becomes entitled to a distribution the partner has all remedies available to a creditor if the distribution is not in fact made.

45-10.2-53 (beginning on page 54) provides that a limited partnership may not make distributions in violation of its limited partnership agreement nor may it make a distribution which would cause it to become insolvent.

45-10.2-54 (beginning on page 55) provides that a general partner that consents to an improper distribution is personally liable to the partnership for the amount of the distribution which exceeds the amount that could have been distributed without violation of this section.

45-10.2-55 (beginning on page 56) provides for the dissociation of a limited partner from the limited partnership ... both voluntarily and involuntarily ... and makes clear that while a person has the power to dissociate the person may not have the right to do so and may incur liabilities for doing so.

45-10.2-56 (beginning on page 57) sets forth the effect of dissociation by a limited partner.

45-10.2-57 (beginning on page 58) sets forth the occurrences which will result in the dissociation of a general partner from the limited partnership.

45-10.2-58 (beginning on page 60) makes clear that a general partner may have the power to dissociate but may incur liability for a wrongful dissociation.

45-10.2-59 (on page 61) sets forth the effect of dissociation of a general

partner.

45-10.2-60 (beginning on page 61) relates to the power to bind and the liability to the limited partnership prior to its dissolution by a person who has been dissociated as a general partner.

45-10.2-61 (beginning on page 62) relates to the liability of a dissociated general partner to other persons.

45-10.2-62 and 45-10.2-63 (beginning on page 63) relate to the transferability of a partnership interest by a partner.

45-10.2-64 (beginning on page 64) sets out the rights of a creditor of a partner and how creditors may enforce their rights and is the counterpart of old Section 45-10.1-44 in our current limited partnership act.

45-10.2-65 (on page 65) makes clear that the personal representative of a deceased partner may exercise the rights of a transferee of the partnership interest held by the decedent.

45-10.2-66 (beginning on page 65) sets forth the occurrences which will result in a non judicial dissolution of the limited partnership.

45-10.2-67 (on page 66) makes clear that the district court holds the authority to dissolve a limited partnership if it is not reasonably practicable to carry on its activities in conformity with its partnership agreement.

45-10.2-68 (beginning on page 66) sets forth the procedure for winding up the business of a limited partnership that has begun dissolution.

45-10.2-69 (on page 67) provides that once the wind up of a dissolved

partnership is complete then the dissolved limited partnership may (but need not) deliver a statement of termination to the Secretary of State for filing.

45-10.2-70 (beginning on page 67) relates to the power of a general partner to bind the partnership after dissolution has begun.

45-10.2-71 (on page 68) sets forth the liability of a general partner to the partnership and to the other general partners after the dissolution of the limited partnership.

45-10.2-72 (on page 69) provides for the procedure for giving notice to known claimants holding claims against a dissolved limited partnership (and is the counterpart to similar sections in each of our other business entity chapters).

45-10.2-73 (beginning on page 69) sets forth the process for publishing notice of dissolution and requesting that persons who have claims against the partnership present them in accordance with the notice and is the counterpart to similar sections in each of our other business entity chapters.

45-10.2-74 (on page 71) makes clear that any claim against the dissolved limited partnership which is barred against the partnership is also barred against a general partner ... in other words if a claimant cannot collect against the limited partnership due to the limited partnership having been dissolved, then a general partner is similarly protected.

45-10.2-75 (beginning on page 71) refers to the disposition of assets of the partnership and sets forth the situations in which further contributions to the assets of the partnership are required.

45-10.2-76 (beginning on page 72) makes clear:

- that the governing law of a foreign limited partnership is the law of the jurisdiction under which it is organized; and,
- that a foreign limited partnership may not engage in any business activity which is prohibited to a domestic limited partnership.

45-10.2-77 (on page 73) requires that the name of a foreign limited partnership must comply with the same requirements which govern a domestic limited partnership.

45-10.2-78 (on page 73) makes clear that a foreign limited partnership:

- May not transact business within the state until it has received a certificate of authority from the Secretary of State;
- May not transact any business in this state that is prohibited to a domestic limited partnership; and
- May not be denied a certificate of authority because the laws of its jurisdiction of origin differ from those of this state.

45-10.2-79 (beginning on page 73) sets forth the procedure for an application of certificate of authority by a foreign limited partnership.

45-10.2-80 (on page 74) sets forth the procedure for filing the certificate of authority with the Secretary of State.

45-10.2-81 (on page 75) sets forth the procedure for amending the certificate of authority by a foreign limited partnership.

45-10.2-82 (beginning on page 75) makes clear that a foreign limited

partnership is required to maintain a registered agent and a registered office in the same manner as a domestic limited partnership is required to do.

45-10.2-83 (on page 76) provides for the merger of a foreign limited partnership which is authorized to do business in this state.

45-10.2-84 (on page 76) provides for the conversion of a foreign limited partnership authorized to transact business in this state.

45-10.2-85 (beginning on page 76) sets forth the effect of the cancellation of the certificate of authority held by a foreign limited partnership.

45-10.2-86 (beginning on page 78) sets forth the activities which do not constitute the transaction of business in this state and is the counterpart to similar sections in each of our other business entity chapters.

45-10.2-87 (beginning on page 79) sets forth procedure for the revocation of the certificate of authority of a foreign limited partnership and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-88 (on page 80) authorizes the Attorney General to maintain an action against a foreign limited partnership to prevent it from transacting business in this state in violation of this chapter and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-89 (on page 80) provides for legal action by a partner against the limited partnership.

45-10.2-90 (on page 84) provides for derivative actions by which a partner may maintain an action on behalf of the limited partnership under certain circumstances.

45-10.2-91 (on page 81) makes clear that the derivative action may be only maintained by an individual who is in fact a partner at the time the action is commenced.

45-10.2-92 (on page 81) sets forth the particular requirements of the complaint in a derivative action.

45-10.2-93 (on page 81) governs the handling of the proceeds and expenses in a derivative action.

Sections 45-10.2-94 through 45-10.2-99 (beginning on page 81) provide for the conversion of a limited partnership into another type of organization or for the conversion of another type of organization into a limited partnership. This concept is similar to that of merger and is identical:

- to the process by which general partnerships become limited liability partnerships upon the filing of a registration; and,
- to the process by which limited partnerships become limited liability limited partnerships upon the filing of an amendment to the certificate of limited partnership.

45-10.2-94 (beginning on page 81) sets forth the process of conversion by which an organization other than a limited partnership may convert itself into a limited partnership or by which a limited partnership may convert itself into another organization (except a general partnership or a non profit corporation) if the specified requirements are met.

45-10.2-95 (beginning on page 83) details the requirements for the plan of conversion.

45-10.2-96 (on page 84) provides for approval for the plan of conversion and for its amendment.

45-10.2-97 (beginning on page 84) sets forth the requirements for the preparation of and the filing of the articles of conversion.

45-10.2-98 (beginning on page 86) provides the process for the abandonment of a conversion.

45-10.2-99 (beginning on page 87) sets forth the effective date and effect of the conversion.

45-10.2-100 (beginning on page 88) refers to the merger of a limited partnership with one or more other constituent organizations and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-101 (on page 89) sets forth provisions for the approval of the plan of merger as well as its amendment and abandonment.

45-10.2-102 (beginning on page 89) sets forth the requirements for the articles of merger and for the filing of the articles with the Office of the Secretary of

State.

45-10.2-103 (beginning on page 91) sets forth the legal effect of a merger.

45-10.2-104 (beginning on page 92) contains restrictions on approval of conversions and mergers and on the relinquishing of limited liability limited partnership (LLLP) status.

45-10.2-105 (beginning on page 93) sets forth the liability of a general partner after a conversion or merger.

45-10.2-106 (beginning on page 94) provides for the power of general partners to bind the organization after a conversion or merger.

45-10.2-107 (beginning on page 96) provides for the service of process on a limited partnership and on any nonresident general partner of a limited partnership.

45-10.2-108 (beginning on page 97) provides for the annual report of limited partnerships and foreign limited partnerships to the Secretary of State and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-109 (beginning on page 100) sets forth the fee schedule for the filing of records with the Office of the Secretary of State and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-110 (beginning on page 102) sets forth some of the duties of the Secretary of State with respect to the maintenance of limited partnership filings and indexes and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-111 (beginning on page 103) sets forth the powers, the enforcement

authority, penalty for violations and the appeal process for limited partnerships and their dealings with the Office of the Secretary of State and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-112 (on page 105) provides for certificates and certified copies from the Secretary of State being received into evidence and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-113 (on page 105) sets forth the requirement that the Secretary of State shall delete or obscure any social security number or federal tax identification number from any record before that record is released to the public and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-114 (beginning on page 105) provides for forms to be furnished by the Secretary of State and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-115 (on page 106) requires audit reports of limited partnerships receiving state subsidies for the production of ethyl alcohol and is the counterpart of similar sections in each of our other business entity chapters.

45-10.2-116 (on page 106) states that in applying and construing this chapter consideration must be given to the need to promote uniformity among the various states which enact the statute.

45-10.2-117 (on page 106) integrates this chapter with Electronic Signatures In Global and National Commerce Act.

Sections 7 through 18 (beginning on page 106) of this Bill again delete

references to Chapter 45-10.1 and substitute references to 45-10.2 in their place and:

- Section 7 so amends subsection 2 of 45-11-01;
- Section 8 so amends subsections 1 and 5 of 45-13-04.1;
- Section 9 so amends subsection 3 of Section 45-21-01;
- Section 10 so amends subsections 4 and 5 of Section 45-21-02;
- Section 11 so amends subsections 1 and 5 of Section 45-22-04;
- Section 12 so amends subsections 11 and 15 of Section 45-23-01;
- Section 13 so amends Section 45-23-02;
- Section 14 so amends subsections 1 and 5 of Section 45-23-03;
- Section 15 so amends Section 45-23-04;
- Section 16 so amends Section 45-23-07;
- Section 17 so amends subsection 18 of Section 45-23-08 and also provides that fees paid to the Secretary of State with the filing of the annual report are not refundable if an annual report submitted to the Secretary of State cannot be filed because it fails to include required information and is the counterpart of

similar sections being proposed in House Bill No. 1391
in each of our other business entity chapters; and,
Section 18 so amends subsection 3 of section
54-44.09.

Section 19 (on page 115) repeals the current limited partnership act, old Chapter 45-10.1 and old section 45-12-01 which integrated the current limited partnership act, old Chapter 45-10.1, with limited partnerships that were in existence at the time of the enactment of old Chapter 45-10.1 in 1985.

As you can see the legislation embodied in this Bill is very comprehensive and will provide limited partnerships in North Dakota with a freestanding chapter of the sort currently in force for business corporations, non profit corporations and limited liability companies. Thank you for the opportunity to address your committee. If you have any questions, I will be happy to answer those questions.

WLG:nlo

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

FR: Clara Jenkins, Director, Business Division, on behalf of Al Jaeger, Secretary of State

RE: Amendments to Engrossed HB 1273 – Limited Liability Partnerships

At the request of the Legislative Council, the attached amendments are offered in order to conform the bill to the correct syntax as it pertains to the definition of "person" in the Century Code.

In 1-01-49(8), person means "an individual, organization, government, political subdivision, or government agency or instrumentality."

Since it is generally understood that the use of the pronoun "who" refers to an individual, it is more accurate to use "that" instead of "who" in the context of the identified sections.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1273

Page 40, line 25, replace "who" with "that"

Page 41, line 26, replace "who" with "that"

Page 52, line 30, replace "who" with "that"

Page 104, line 8, replace "who" with "that"

Renumber accordingly