

**Testimony of Rick Clayburgh**  
**North Dakota Bankers Association**  
**SB 2266**  
**March 29, 2023**

Chairman Louser and members of the House Industry, Business and Labor Committee, for the record, I am Rick Clayburgh, President and CEO of the North Dakota Bankers Association (NDBA). I am here today on behalf of NDBA's sixty-three member banks to express our opposition to SB 2266.

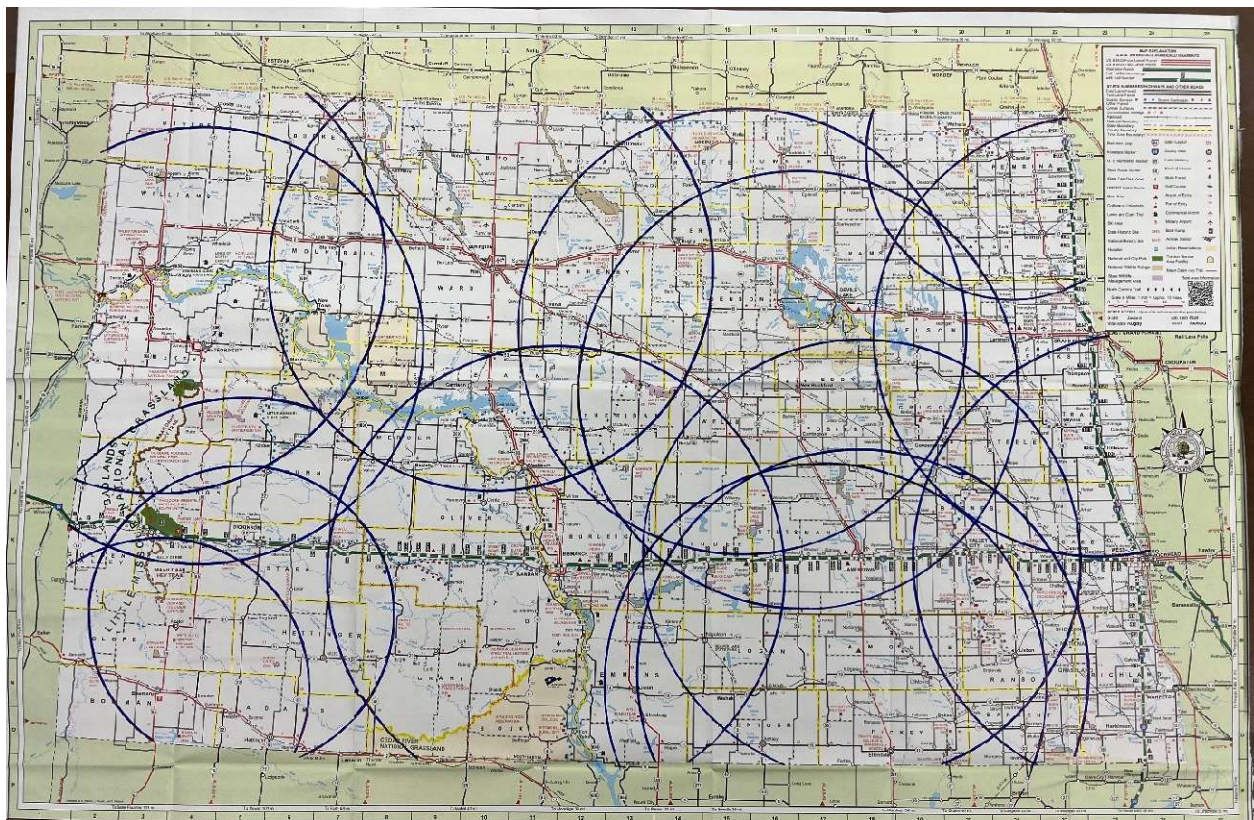
In 2005, the Legislature passed SB2263, which was a joint effort by the North Dakota Bankers Association and the North Dakota Credit Union League to better define the field of membership for state chartered, community credit unions. The main purpose was to remove the ambiguity and provide clarity in the statute and administrative rules governing the field of membership. At the time, the credit union board faced a number of legal and administrative industry challenges to the board's interpretation of the statute.

Prior to 2005, NDCC 6-06-07 provided that membership of a state chartered, community-based credit union was "limited to groups having a common bond of occupation or association or to groups within a well-defined rural or urban district." That was statutory language of limitation that had applied for years in North Dakota. During that time, the state credit union board administrative regulations defined a "well defined rural or urban district" as a 50-mile radius from the credit union's main office. Then the board policy changed and expanded that to a 75-mile radius. Although credit union board rules stated otherwise, it appeared at the time that the board was approving branch applications that allowed "leapfrogging," and did, in fact, expand credit union geographic territories so they no longer bore any resemblance to a rural or urban district. The 2005 legislation codified the credit union board's 75-mile radius standard and clarified that branching was limited to within that radius.

States restrict field-of-membership because credit unions by law have a relatively narrow mission of serving low- and modest-income individuals and communities. Because of their mission, credit unions are not subject to the same level of regulatory oversight or taxation that community banks face. While some will try to argue that North Dakota has one of the strictest field-of-membership statutes, nothing could be further from the truth. Across the country, community-based credit union field of membership

is restricted by statute. 78% of states restrict field of membership around similar language focused on well-defined neighborhood, community, or rural district, which is much like North Dakota's old statutory language.

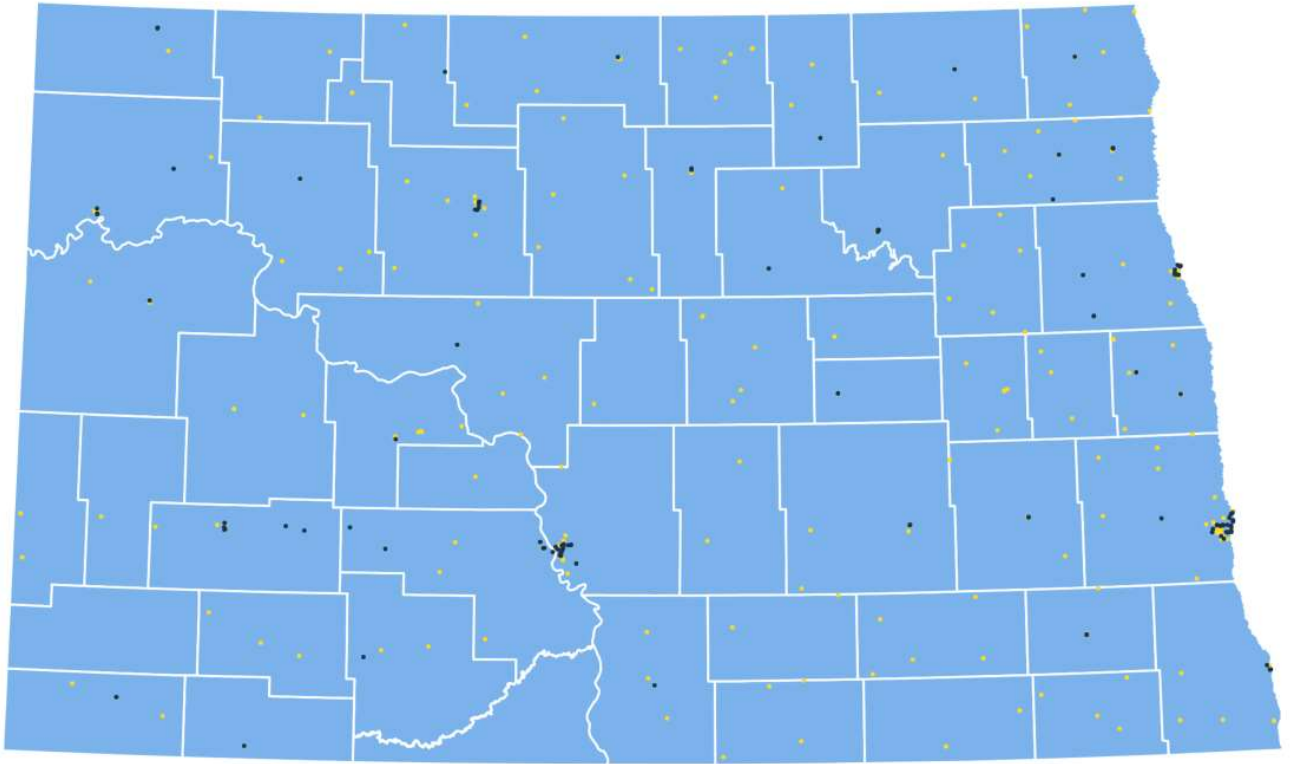
What public policy needs would be served by SB 2266? None! We are well aware of the credit unions' lobbying efforts nationwide to water down field-of-membership requirements. However, there is no public benefit to expanding the credit union field-of-membership radius here in North Dakota. Some have argued it's to address a "financial desert in North Dakota". No such desert exists. North Dakota citizens are already being served by the number and distribution of financial institutions throughout the state. In North Dakota, there are 19 State Chartered Credit Unions with 111 branches. In addition, there are 77 State and National Banks in ND with 392 branches in 175 communities. More than 80% of North Dakota communities with populations greater than 100 people are served by a bank.



This map shows the area of state coverage the 75-mile FOM radius provides. Note – this is not inclusive of all community credit unions FOM or branches.

# North Dakota

## BRANCH LOCATIONS OF NORTH DAKOTA BANKS



Chartered By: ● Federal ● State

This map shows bank branches in North Dakota in 2020 – It does not include the main bank, just branches.

So, what would SB 2266 do? In simple terms, it would increase an already unfair competitive advantage by nearly tripling the square mile area in which an income tax-exempt credit union competes with a tax paying bank. North Dakota credit unions are thriving in great part because of that income tax exemption.

The credit unions would have you believe they do not pay taxes because they are pass-through businesses for tax purposes as they are “not-for-profit, member-owned financial cooperatives that return earnings back to their members in the form of lower rates, lower fees, and dividends.”

In reality, the tax-exempt status afforded credit unions is given by the United States Internal Revenue Code which states specifically, "Credit unions without capital stock organized and operated for mutual purposes and without profit." IRC § 501(c)(14)(A).

Like today's credit unions, mutual savings and savings and loan associations used to have tax exempt status. However, in 1951, the United States Congress removed the exemption when it was determined those institutions had outgrown their tax-exempt status because of their direct competition to obtain customers of tax paying financial institutions. "At the present time, mutual savings banks are in active competition with commercial banks and life insurance companies for the public savings, and they compete with many types of taxable institutions in the security and real estate markets. As a result, your committee believes that the continuance of the tax-free treatment now accorded mutual savings banks would be discriminatory." (Senate Report No. 781, 1951-2 C.B. 476).

North Dakota law currently requires credit union membership to show a common bond or limited geographical location of 75 miles. North Dakota credit unions have thrived under the current law, growing in both locations and assets. Make no doubt about it, North Dakota credit unions are actively competing with North Dakota banks. The credit union competitive strength is, in part, because they can maintain their profits and price their loans and deposits cheaper than tax paying North Dakota banks. Can you imagine the pricing advantages all businesses would have if they didn't have to pay tax on their profits?

Mr. Chairman and committee members, NDBA believes expanding the credit union field-of-membership provides no significant public benefit and only exacerbates an unfair competitive advantage. Therefore, we urge the committee not to amend SB 2266 and give it a "Do Not Pass" recommendation.

Thank you for your consideration of my testimony.





NORTH DAKOTA  
**BANKERS**  
ASSOCIATION

## Vote “NO” on SB 2266

### Background

North Dakota’s current credit union field of membership law was enacted in 2005 and codified the 75-mile radius that had been adopted by the State Credit Union Board to remove ambiguity and provide clarity. The 2005 legislation established that a credit union could branch only within their field of membership. This provision was enacted to prohibit credit unions from using branching to leapfrog across the state to the detriment of smaller credit unions.

### Credit Unions Have Been Growing

According to the state department of financial institutions, state credit union assets, loan activity and numbers of physical locations in North Dakota have grown somewhat more than those of state-chartered banks in recent years.

### Current Field of Membership is Clear and Fair

The credit union lobby is arguing that North Dakota’s field of membership is the most restrictive in the country. However, during the committee hearing, the department of financial institutions confirmed current North Dakota law is clear and is not the most restrictive state law.

### ND Citizens Already Have Access to Credit Unions

The credit union lobby believes they need expanded membership to ensure citizens’ financial needs are covered. The facts show that North Dakota citizens, border to border, have complete access to have their financial needs served. In every corner of the state, individual citizens have multiple choices to join a credit union. Across North Dakota, there are 19 State Chartered Credit Unions with 111 branches and there are 77 State and National Banks in ND with 392 branches in 175 communities.

### Un-Level Playing Field

The credit unions have testified they support SB 2266 because it will allow them grow even bigger and compete better with banks. Credit unions acknowledge their income tax-free status and exclusion from bank regulations are an advantage they want to keep and expand **without any leveling** of the legal or regulatory playing field.

### Bottom Line

1. Banks are not afraid of competition – they want **fair** competition.
2. CRA is one example of a federal law that applies to banks but not credit unions. Since banks must comply with **costly regulations** like CRA, maybe it is time to have credit unions comply with the same regulations to make sure they are serving their communities.
3. Credit union income is not subject to either state or federal income taxes. All North Dakota bank income is fully subject to federal and state income taxation.
4. **Credit Unions: once a member, always a member!** If a member of a credit union moves out of their credit union’s field of membership, they can still be a member and conduct business with that credit union.



# 75 Mile Field of Membership Radius from Maddock, ND – Increased to 125 Miles

