

## Senate Bill 2266 Testimony

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Before: House Industry, Business and Labor Committee  
Rep. Scott Louser, Chairman

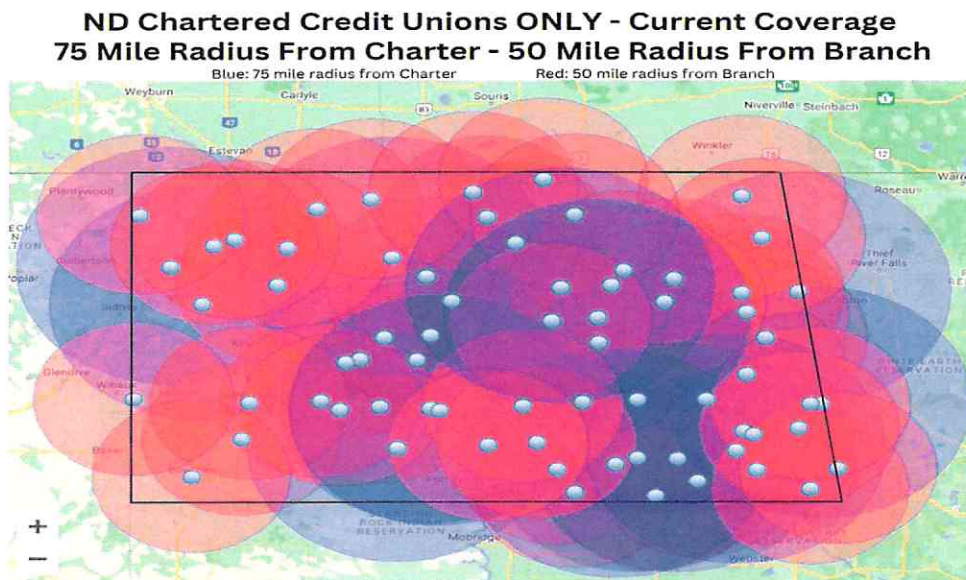
Date: March 29, 2023

Chairman Louser and members of the House Industry, Business and Labor Committee (Committee), my name is Jordan Nelson, and I would like to thank you for the opportunity to speak with you today regarding Senate Bill 2266 and some of the concerns I have on this proposal. I am a life-long North Dakota native, and a current resident of legislative district 38. Due to my concern for the unintended tax and public policy consequences I see this bill creating, I stand before you to respectfully request a "Do Not Pass" recommendation.

This bill, as amended by the state senate, the state-chartered field of membership (FOM) radius would increase by 50 miles from 75 to 125 miles. When looking at the credit union association website, they list seven reasons why this bill is needed.<sup>1</sup> If I may, I'd like to take a few minutes to look at the points made by the DCUA on this issue.

### **Points 1 and 2: North Dakota is "not open for business" to state chartered credit unions and that they are being "left behind"**

This argument certainly tugs at the heart strings, but when looking at the map of the current network of state-chartered credit unions and their fields of membership, it doesn't hold water. Indeed, the map below shows that there is not a single acre of the state of North Dakota that does not lie within a state-chartered credit union FOM as currently constructed under century code.



Between the robust branch network that state-chartered credit unions currently employ, and modern day online and mobile platforms, it has arguably never been easier for a citizen of North Dakota to be an active and participating member of a North Dakota headquartered credit union! For credit union members across this state, that's a great thing!

### **Points 3: Protecting financial choice in North Dakota**

The DCUA website discusses protecting "financial choice" for North Dakotans as an argument for this bill. We often hear talk about "financial deserts" that exist in other parts of the country. We have 64 banks (only one of which is over \$5 billion in assets) and 31 credit unions (18 state chartered) that call North Dakota home.<sup>ii</sup> Per capita, that is one insured financial institution for every 8,157 residents of the state. This is almost 75% less than the national per capita figure of one insured financial institution for every 34,867 residents of the US.<sup>iii</sup> I don't want to take you too far into the weeds on these numbers, but I present them to simply make the argument that access to financial services and financial choice in our state is great AS IT CURRENTLY STANDS under existing state law, and frankly I think that the vibrant spirit and culture of both North Dakota community banks and credit unions has everything to do with this.

### **Point 4: Allowing ND credit unions to remain relevant and competitive**

This is certainly an interesting argument for the credit union industry to make, and competitive apprehension is certainly something felt by many financial institutions within our state, but is this as much of an issue as the credit union industry is making it out to be? I was interested to see how "un-competitive" these institutions have been recently, so I did a little digging. I pulled call reports and financial profiles from the NCUA "Research a Credit Union" website for the five largest state-chartered credit unions to take a very informal look at their overall financial performance.<sup>iv</sup> You may be asking why I used the top 5? It's my opinion that these credit unions are likely to be the most significant beneficiaries of this bill if passed. In reviewing the results, this is what I found:

Aggregate 2022 asset growth rate: 7.43%

Aggregate 2022 shares (i.e., deposits) growth rate: 4.14%

Aggregate 2022 return on average assets: 0.86% (Four of the five met or exceeded their peer figure).

For banks under \$10 billion in the state, the results are as follows (courtesy of QwickRate<sup>v</sup>):

2022 asset growth rate: 2.94%

2022 deposit growth rate: 2.86%

2022 tax-affected return on average assets: 0.94%

In reviewing those figures, the argument that the most aggressive state-chartered credit unions can't compete just simply doesn't hold water. Credit Unions performed very favorably in 2022, and I don't believe that to be a one-year anomaly. These are complex, well managed institutions that will likely continue to grow whether their FOM is expanded or not. The vehicle for this growth may change depending on the action taken on this bill, but the result likely will still be a pattern of significant growth for the largest state-chartered credit unions.

**Point 5: Credit Unions: "The original financial protectors and financial first responders."**

The fifth argument that are made by the DCUA is that credit unions aren't driven to enrich investors, but rather they do right by their members. I'm not doubting that, however it comes off a bit "self-righteous" and paints a false picture of how our state's community banks serve their communities. As an unapologetically community focused bank, Peoples State Bank of Velva (PSB) has an absolute core belief that the only way that the bank will flourish is if our main streets and family farms also flourish! The competitive landscape for banking dictates that we must treat our customers well, or they'll find another bank (or credit union) that will treat them better. Simply put, relationships matter to us! Now it is true that we may operate with the intent of turning a profit, which we must do to generate the capital needed to safely run a bank, but when did that become such a bad thing? As a "dyed in the wool" capitalist, it's always been my belief that we want our small farms and businesses of the state to turn a profit so those profits can be re-invested back into our communities! Banks and their shareholders (most of whom call North Dakota home) routinely give hundreds of thousands of dollars of this profit to charitable initiatives in the communities they serve. Some of that is required by the Community Reinvestment Act (which Credit Unions do not have to follow, by the way)<sup>vi</sup>, but the main purpose for this philanthropy is for banks to add value to the communities they serve. I've been to most communities in North Dakota, and the contributions of our state's banks are absolutely apparent! These banks also pay income taxes into the state's coffers. To give a more specific illustration that pairs with the testimony you just heard from Barry Haugen, the owners of Peoples State Bank of Velva paid over \$70,000 in state income tax in 2022. We can have the taxation argument between banks and credit unions until the cows come home, but the fact of the matter is that the state income taxes paid in by C-Corp banks and S-Corp bank owners is a significant difference, and those dollars are utilized by our state to enrich the lives of everyone who calls North Dakota home.

**Point 6: Credit Union charter numbers are decreasing**

The sixth argument that was made by the DCUA referred to credit union numbers decreasing. I think this is true in many different facets of our state. Compared to 2005 (the date used by DCUA to compare credit union numbers), it's undoubtedly true that fewer schools, grocery stores, medical facilities, churches, grain elevators and even banks exist in the state today (to name just a few industries and groups). This is a challenge that existed before 2005, and it unfortunately won't go away with the passage of this bill. The fact remains that state-chartered credit unions (and banks for that matter) are free to construct branches in every small town that dots our landscape. Doing that is a decision for bank and credit union boards of directors that undoubtedly blends customer/member service with economics.

**Point 7: Credit Unions are not a threat to community banks.**

The final argument that DCUA makes is that credit unions are not a threat to community banks. They make the argument that they hold just 10% of the market share on deposits. Now as a tax-exempt entity I would expect credit unions to use those savings to pay significantly higher rates on deposits than taxpaying banks, however in my nine years of serving as the CFO of my bank, I have not found that to be the case. In fact, as of Thursday, March 23 PSB and Dacotah Bank had the highest yielding CD rate of any bank or open charter (federal and state) credit union in Minot or Velva<sup>vii</sup>. As the CFO of PSB, I oversee deposit pricing for the bank and negotiating rates with customers. Substantially all the calls that I get that pressure me on deposit rates come from customers being quoted rates by either community banks in our market or products offered by investment advisors. The DCUA also states that credit union membership in ND has grown by less than 8% since 2005, while nationally it has grown by 54%. I tend to think that this might just be due to the fact that our North Dakota's community banks do a better job of serving our communities than our counterparts do in other states with a large bank dominated landscape. With the access that our citizens have to state-chartered credit unions, I find it rather hard to believe that FOM restrictions are the cause of this problem.

Credit unions and banks perform largely identical functions nowadays thanks to regulatory changes that have been pushed through at both the federal and state levels over the years. Bills like this serve to tilt the playing field away from an income tax-paying industry toward an industry that does not pay state income tax. Our governor has been a big proponent of reforming our state's individual income tax system to provide relief to everyday North Dakotans. This bill would seem to run counter-productive to that initiative out of the governor's office. If the elimination of income tax for the majority of North Dakotans is a priority, then it is my opinion that we should be looking at ways to allow tax paying industries in the state to blossom to pick up some of the slack! If this bill passes, I have full confidence that the banks in our state will continue to compete and compete well just as they have for many decades. But this income tax preference will continue to weigh on their bottom lines, and less profit means less income tax owed to the state treasury.

When considering all these factors, it is easy to see in my eyes that many of these "stylish" arguments made by the credit unions fall a little short on "substance." Financial choice is not a shortfall of our state but rather a strength that we should celebrate! I think it is easy to see this in looking at who testified in favor of this bill in the companion senate hearing back in February. By my count every person who entered testimony was either a current or former financial institution employee (or spouse), a trade association director or a lobbyist. Not one consumer testified on either side of this bill. That's indicative of a bill that is a solution to a problem that does not currently exist in our state, and to me passing unnecessary laws is a textbook example of poor public policy. For those reasons I would respectfully urge no further amendments and a "do not pass" recommendation from this committee. Thank you so much for your time and attention to this bill, and I wish you all the best as you continue to progress through this legislative session.

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<sup>i</sup> [NDFOMModernization - DAKOTA CREDIT UNION ASSOCIATION \(dakcu.org\)](https://www.dakcu.org/NDFOMModernization)

<sup>ii</sup> [NorthDakotaStatePerformanceReport.pdf \(qwickrate.com\)](https://www.qwickrate.com/NorthDakotaStatePerformanceReport.pdf)

<sup>iii</sup> FDIC insured banks in the United States – 4,706 (From the 2023 Volume 17 Number 1 FDIC Quarterly), NCUA insured credit unions – 4,813 (NCUA Quarterly Credit Union Data Summary 2022 Q3), US Population Est. 331,900,000.

<sup>iv</sup> [Credit Union Locator & Research a Credit Union | NCUA](https://www.ncua.gov/credit-union-locator)

<sup>v</sup> [NorthDakotaStatePerformanceReport.pdf \(qwickrate.com\)](https://www.qwickrate.com/NorthDakotaStatePerformanceReport.pdf)

<sup>vi</sup> [Community Reinvestment Act Fact Sheet \(occ.gov\)](https://www.occ.gov/community-reinvestment-act)

<sup>vii</sup> As part of my job I analyze local deposit rates on a monthly (or more often if needed) basis to ensure the bank pays a competitive rate on our interest-bearing products. Failing to do so could result in deposit “flight” which, if severe enough, could endanger the safety and soundness of the bank.