

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1270

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1270

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 01-18-99

Tape Number	Side A	Side B	Meter #
1	x		2.2 - 10.3
3	x		6.3 - 12..1
Committee Clerk Signature <i>Lisa Howe</i>			

Minutes: Jim Schlosser: Executive Vice President of the ND Bankers Association, speaking for Marilyn Foss. Introduced bill 1270 relating to the corporate powers of a state-chartered trust company. See written testimony.

Joel Gilbertson: Exec. V. Pres. of Independent Community Banks of ND, for bill 1270.

Gary Preszler: Commissioner, Dept. of Banking and Financial Institutions. See written testimony and proposed amendments.

Rep. Keiser: Can you give one example where the board would not approve a request for an activity that federally chartered could do it and state chartered could not do it?

Mr. Preszler: In most cases I don't think we would take exception to it because we would not want our charter disadvantaged. There may be cases that do come along that do grant authorization for national banks.

Rep. Keiser: The wild card provision doesn't make much difference does it?

Mr. Preszler: The purpose again is to make sure that your state charter is not just helping credit unions and savings and loans. What we're doing is trying to make sure you're responsible to the industry or the market place. So if the federal regulator approves an activity that we can act on, if we don't believe it makes a sound, effective issue, then we can do that without having to wait until the legislature acts on that.

Chairman Berg: Closed the hearing.

Committee action on bill # 1270

Meter 6.3 - 12.1

Rep. Glassheim: Motion to adopt the amendments.

Rep. Stefonowicz: Second the motion.

Committee discussion:

Rep. Thorpe: The only problem with the amendment is that they couldn't say in the discussion a time when this was necessary, that they would have to approve or disapprove it.

Chairman Berg: As an overview: There is national chartered banks, savings and loans and trusts and state chartered banks savings and loans and trusts. At one point in time they had different functions and as we see this wild card authority, we don't see a lot of difference between the two entities. Congress is working with these. At some point in the future we will see all banks regulated on the federal level.

Rep. Klein: In the testimony, Mr. Preszler has in the first paragraph, Under the wild card authority, the State Banking Board and State Credit Union Board must approve the activity before the power may be exercised. I wonder if that wasn't the reason for putting that in to keep it consistent?

Page 3

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1270

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Rep. Glassheim: You are right as long as you're going to have a state banking board as an authority to regulate things. Then it should be consistent.

Voice vote: passed 15 - 0 on amendments.

Action on bill 1270.

Rep. Severson: Motion for a Do Pass as Amended.

Rep. Klein: Second the motion.

Motion carries.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1270
Department of Banking and Financial Institutions
January 15, 1999

Page 1, line 7, after “engage” insert “, subject to approval by the state banking board, notwithstanding any restriction elsewhere contained in this code”

Renumber accordingly

Date: 1-18-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1270

House Industry, Business and Labor Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass as amended

Motion Made By Severson Seconded By Klein

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	/		Rep. Thorpe		/
Vice Chair - Kempenich	/				
Rep. Brekke	/				
Rep. Eckstrom	/				
Rep. Froseth	/				
Rep. Glasheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 14 No 1

Absent —

Floor Assignment Severson

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

REPORT OF STANDING COMMITTEE (410)
January 20, 1999 11:47 a.m.

Module No: HR-12-0870
Carrier: Severson
Insert LC: 90589.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1270: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1270 was placed on the Sixth order on the calendar.

Page 1, line 6, replace "Engage" with "Notwithstanding any other provision of law and subject to approval by the state banking board, engage"

Renumber accordingly

1999 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1270

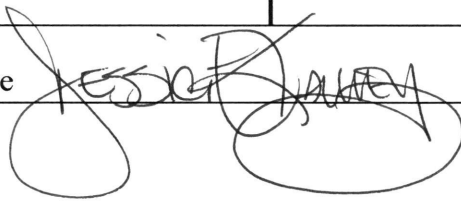
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1270

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date February 24

Tape Number	Side A	Side B	Meter #
1	x		340-935
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on HB1270. All senators were present.

Marilynn Foss testified in support of H1270. Her testimony is included. Senator Sand asked her what type of activity. She said that it was the investment of advisory services. Senator Mutch asked if the banks have this authority. Ms. Foss told him that it was not a specifically designed banking power.

Senator Mutch closed the hearing on HB1270.

Senator Mathern motioned for a do pass committee recommendation on HB1270. Senator Klein seconded her motion. The motion carried with a 6-0-1 vote,

Senator Mathern will carry the bill.

Date: 2/24/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
HOUSE BILL/RESOLUTION NO. 1270

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DD PASS

Motion Made By MATHEEN Seconded By KUEN

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern	X				
Senator Heitkamp	X				
Senator Thompson					

Total (Yes) 6 No 0

Absent 1

Floor Assignment MATHEEN

REPORT OF STANDING COMMITTEE (410)
February 25, 1999 10:58 a.m.

Module No: SR-34-3528
Carrier: D. Mathern
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1270, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1270 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

HB 1270

TESTIMONY OF MARILYN FOSS
HB 1270 - TRUST COMPANY POWERS
(On Behalf of the North Dakota Bankers Association)

Chairman Berg, members of the committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. I appear here this morning to **support** House Bill 1270.

By now you are well aware that the banking and financial services industry is one which is rapidly changing. State and federally chartered institutions are moving to keep up with one another and with their competitors. This bill is one which helps state chartered banks which have trust powers and independent state chartered trust companies keep up with their federally chartered counterparts. As it is drafted, it simply gives our state chartered trustees the powers to engage in any fiduciary activity which a federally chartered financial institution may engage.

Frankly, our current laws on fiduciary authority have stood up to the challenges of time extremely well. Section 6-05-08 hasn't been amended since 1983. The substantive powers which are in that section have been in effect considerably longer than that. The listed powers are generally flexible. However, federally chartered financial institution fiduciary powers are now being defined and expanded by federal regulation as federal institutions apply to their primary regulators (the OCC and OTS) for authority to engage in new fiduciary activities such as investment advisory services. Although it is quite flexible, the listed activities of Section 6-05-08 aren't very clear about things like investment advisory services. With HB 1270, the problem of uncertainty is solved.

I understand that the department of banking and financial institutions would like to add a qualification added to the language of HB 1270. Basically, the department wants the banking board to approve the new activities rather than having a blanket approval as is now provided by the bill. The amendment which the department proposes conforms the language of this "wild card" statute to those which now apply for banking powers and to credit unions. NDBA does not resist this qualification and would continue to support the bill if the committee decides to adopt language to require state banking board approval for activities authority under the trust wild card statute.

Thank you for your consideration.

Marilyn Foss

TESTIMONY FOR HOUSE BILL NO. 1270

House Industry, Business, and Labor Committee

Testimony of Gary D. Preszler, Commissioner, Department of Banking and Financial Institutions

House Bill No. 1270 is, commonly referred to as, a “wild card” provision intended to provide for North Dakota state chartered trust companies parity powers with federally chartered financial institutions. Similar “wild card” authority exists under state law for North Dakota state banks and credit unions, although House Bill No. 1270 differs from the bank and credit union “wild card” authority. Under those authorities, the State Banking Board and State Credit Union Board must approve the activity before the power may be exercised.

Specifically for state-chartered banks, Section 6-03-38 provides:

“In addition, the state banking board has power to authorize state banks engaging in any banking activity in which such banks could engage were they operated as national banks at the time such authority is granted, notwithstanding any restriction elsewhere contained in this code.” (Emphasis supplied.)

Similarly, the “wild card” authority for state-chartered credit unions under Section 6-06-06(11) provides:

“Credit unions may engage in any activity in which they could engage if they were federally-chartered, subject to rules that the state credit union board shall adopt.” (Emphasis supplied.)

Presently, there are only four North Dakota state-chartered trust companies and House Bill No. 1270 would only apply to those entities.

Upon review of powers of the Comptroller of the Currency for a federally chartered bank to exercise fiduciary activity, and the Office of Thrift Supervision to grant fiduciary powers for federally-chartered thrift associations, it is noteworthy both powers must be authorized and those institutions derive their authority under the authority granted to state banks and trust companies.

The attached proposed amendments establish parity for the state trust company’s “wild card” powers similar to existing state law for state-chartered banks and credit unions.

It is appropriate the authority rests with the State Banking Board as the Board has primary jurisdiction over state-chartered trust companies. I urge the Committee’s favorable consideration of the proposed amendments to House Bill No. 1270 providing the State Banking Board with authority to approve “wild card” authority for state-chartered trust companies.

TESTIMONY OF MARILYN FOSS
HB 1270 - TRUST COMPANY POWERS
(On Behalf of the North Dakota Bankers Association)

Chairman Mutch, members of the committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. I appear here this morning to **support** Engrossed House Bill 1270.

By now you are well aware that the banking and financial services industry is one which is rapidly changing. State and federally chartered institutions are moving to keep up with one another and with their competitors. This bill is one which helps state chartered banks which have trust powers and independent state chartered trust companies keep up with their federally chartered counterparts. It simply gives our state chartered trustees the powers to engage in any fiduciary activity which a federally chartered financial institution may engage with the approval of the state banking board..

Frankly, our current laws on fiduciary authority have stood up to the challenges of time extremely well. Section 6-05-08 hasn't been amended since 1983. The substantive powers which are in that section have been in effect considerably longer than that. The listed powers are generally flexible. However, federally chartered financial institution fiduciary powers are now being defined and expanded by federal regulation as federal institutions apply to their primary regulators (the OCC and OTS) for authority to engage in new fiduciary activities such as investment advisory services. Although it is quite flexible, the listed activities of Section 6-05-08 aren't very clear about things like investment advisory services. With HB 1270, the problem of uncertainty is solved because a state chartered bank which has fiduciary powers or a state chartered trust company has a means of obtaining explicit permission from the state banking board to engage in an activity not specifically listed in section 6-05-08 .

The type of authority which this bill provides ("wild card" authority) is currently provided in North Dakota law for state chartered banks (as to banking powers, not fiduciary powers) and credit unions in sections 6-08-38 and 6-06-06(11), respectively.

Thank you for your consideration.

Marilyn Foss