MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2116

2005 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2116

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2116

Senate Government and Veterans Affairs

☐ Conference Committee

Hearing Date January 14, 2005

Tape Number	Side A	Side B	Meter #
1	x		0 - 1220
Committee Clerk Signature	Diane Dawson		

Chairman Krebsbach opens hearing on **Bill 2116.**

Clara Jenkins Director of Business Division - see written testimony in favor of do pass.

Senator Lee - Asked if she would like to elaborate on the amendment **(meter #590)**

Jenkins - The amendment was requested by the Dept. Of Information Technology.

Their concern was that the language that was placed in this bill, may allude to some limitations or superseding a situation of anything that is in the electronic transaction Act, and it does not.

Senator Krebsbach - Chapter nine sixteen deals with electronic signatures and records?

Jenkins - yes

Senator Syverson - Asked how expansive are these reports.

Jenkins - One page report. No financial data.

Senator Krebsbach - Asked how many filing you have in this section.

Jenkins - 349 active Cooperatives, 7 delinquent.

Senator Nelson - Asked what kind of Coops are there

Jenkins - Named a few **(meter #829)**

Senator Brown - Also mentioned some cooperatives.

Harlan Fugelson- ND Association of Rural Electric Cooperatives.

Senator Nelson - Asked why aren't coops filing electronically

Fugelson - Unsure why . He said they have no problem with this legislation.

Senator Krebsbach Closed the hearing **(meter #1063)**

Senator Nelson -Motion to adopt the amendment

Senator Syverson - second motion

Called roll for adoption of the amendment (see attached) **(meter #1142)**

Senator Brown - Motion for do pass on amended bill

Senator Syverson - second

Called roll for do pass on 2116

Carrier will be **Senator Lee.**

(Meter #1220)

FISCAL NOTE

Requested by Legislative Council
12/23/2004

Bill/Resolution No.: SB 2116

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.*

To provide consistency among various business structures, this bill is to give cooperatives the same options, processes, and fee structure that now exist for all other business entities. Therefore, any additional revenue that might be generated will be minimal.

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 amount of expected revenue is minimal and none was included in the executive budget.

   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.*

No additional expenditures since the processes are already a part of normatl procedures

   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.*

There is no effect on the agency's budget request.

Name:	Al Jaeger	**Agency:**	Secretary of State
Phone Number:	328-3670	**Date Prepared:**	12/27/2004

Date: 1/14/05
Roll Call Vote #: 1

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

Senate **Government and Veterans Affairs** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 2116

Action Taken Approve Amendment

Motion Made By Senator Nelson Seconded By Senator Syverson

Senators	Yes	No	Senators	Yes	No
Karen K. Krebsbach, Chairman	X		Carolyn Nelson	X	
Richard L. Brown, Vice Chairman	X				
Judy Lee	X				
John O. Syverson	X				

Total (Yes) 5 No 0

Absent 6

Floor Assignment

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

P3 after line 8 insert: 5. The provisions of this chapter related to electronic records and electronic transactions do not

Date: 1/14/05
Roll Call Vote #: 2

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

Senate **Government and Veterans Affairs** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 2116

Action Taken Do Pass

Motion Made By Senator Brown Seconded By Senator Syverson

Senators	Yes	No	Senators	Yes	No
Karen K. Krebsbach, Chairman	V		Carolyn Nelson	X	
Richard L. Brown, Vice Chairman	V				
Judy Lee	X				
John O. Syverson	X				

Total (Yes) 5 No ~~0~~ 6

Absent 0

Floor Assignment Senator Lee

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

REPORT OF STANDING COMMITTEE

SB 2116: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2116 was placed on the Sixth order on the calendar.

Page 3, after line 8, insert:

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

Renumber accordingly

2005 HOUSE POLITICAL SUBDIVISIONS

SB 2116

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2116

House Political Subdivisions Committee

❑ Conference Committee

Hearing Date March 3, 2005

Tape Number	Side A	Side B	Meter #
2		x	3. 2 to 15.0
Committee Clerk Signature	Lauree L. Finke		

Minutes: **Rep.Devlin, Chairman** opened the hearing on SB 2116, a bill for an Act to create and enact section 10-15-01.1, a new subsection to section 10-15-36, a new subsection to section 10-15-54, and section 10-15-62 of the North Dakota Century Code, relating to legal recognition of electronic records and electronic signatures, exempting some information from open records laws, and fees for filing documents with the secretary of state; and to amend and reenact section 10-15-01 and subsection 1 of section 10-15-29 of the North Dakota Century Code, relating to definitions and officers of cooperative associations.

Clara Jenkins Director, Business Division, Secretary of State appearing for Al Jaeger the Secretary of State explained the bill. She followed very closely her prepared statement. A copu of her prepared remarks is attached. The bill allows the Secretary of State to legally accept electronic signatures on documents file in their office.

Rep. Ekstrom (7.8) Would this preclude the regular way of signing documents ?

Clara Jenkins No -- we will accept almost anything including pencil.

Rep.Devlin, Chairman (8.5) How many you get that you can't find the proper entity to return the check to ? What happens then does the entire amount go to abandoned property and then into the General fund.

Clara Jenkins - probably less than a half dozen -- we don't have that many left any more. We do have to transfer the entire amount to abandoned property division.

Rep. N. Johnson (9.0) Section 5 doesn't make sense because it is not a complete sentence.

Clara Jenkins --That is a new subsection to that section and when this is finally drafted that will find a number in the law.

Rep. Kaldor (10.1) I don't know who drafts these bill but does seem that could have been an amendment.

Rep. Ekstrom Section 10 -15 and it should or begins section 14 --no --- here she quotes the section from the code.

Rep. N. Johnson What qualifies as an electronic signature?

Clara Jenkins (11.5) that section was changes which reflects that electronic signature to anything the filer intended as his signature -- It is a font built into his computer -- it will be encrypted and may be almost anything or even an "x" if that was determined what he wanted.

Rep. Kaldor (12.2) Looking at the first draft of the bill as it was in the Senate -- what is the difference?

Clara Jenkins --the old difference is on page 3 -- the Information Technology Department wanted us to include that subsection 5 under 10-15-01.2 to be sure that nothing here was contrary to the electronic __?__.

There being no further testimony for nor against SB 2116 , **Rep.Devlin, Chairman** closed the hearing. (13.1).

Rep. Kretschmar moved a 'Do Pass" for SB 2116. **Rep. N. Johnson** seconded the motion. The motion carried on a roll call vote **11 ayes 0 nays 1 absent. Rep. N. Johnson** was designated to carry SB 2116 on the floor. End of record (15.0).

Date: March 3, 2005
Roll Call Vote:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2116

House POLITICAL SUBDIVISIONS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Kretschmar Seconded By Rep Johnson

Representatives	Yes	No	Representatives	Yes	No
Rep. Devlin, Chairman	✓		Rep. Ekstrom	✓	
Rep. Herbel, Vice Chairman	✓		Rep. Kaldor	✓	
Rep. Dietrich	✓		Rep. Zaiser	✓	
Rep. Johnson	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	A				
Rep. Pietsch	✓				
Rep. Wrangham	✓				

Total (Yes) 11 No 0

Absent 1

Floor Assignment Rep Johnson

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

REPORT OF STANDING COMMITTEE

SB 2116, as engrossed: Political Subdivisions Committee (Rep. Devlin, Chairman) recommends **DO PASS** (11 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2116 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2116

SB 2116

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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 14, 2005

TO: Senator Karen Krebsbach, Chairman,
and Members of the Senate Government and Veterans Affairs Committee

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

RE: SB 2116 – Relating to definitions and officers of cooperative associations

The adoption of this bill will do the following:

Amendment: After introduction of this bill, the Secretary of State became aware that an amendment was needed on page 3 after line 8. A copy of the amendment is attached to this testimony.

Section 1: Introduces electronic record and filing definitions to the Cooperative Association Act. These definitions are identical to the definitions currently appearing in the Business Corporation Act, the Limited Liability Company Act, the Nonprofit Corporation Act, and all of the partnership entity chapters of the North Dakota Century Code. The Cooperative Association Act is the only business entity chapter that does not presently contain a reference to electronic filings.

Although Chapter 9-16 of the North Dakota Century Code pertains to the Electronic Transaction Act and it enables the electronic filing of documents, the Secretary of State has never received a single cooperative filing by electronic means. Most cooperatives function with volunteer boards or boards that are minimally compensated, and rarely with legal counsel.

Therefore, by including limited electronic filing provisions within the Cooperative Association Act, it provides a more direct exposure to cooperative associations. This may motivate cooperatives to consider electronic filing of annual reports and other cooperative related filings with the Secretary of State.

Providing the electronic provisions in the same chapter by which cooperatives are governed is more efficient for the managing boards. In addition, it is also easier and more cost effective to instruct cooperatives in the filing processes when all relevant provisions pertaining to them are embodied in the same chapter of the Century Code.

Section 2: Confirms the legality of an electronic record. The amendment being offered to this section refers to Chapter 9-16 of the North Dakota Century Code and confirms that the electronic provisions provided in the Cooperative Association Act do not limit or supersede any provisions of Chapter 9-16.

Section 3: Allows a cooperative to maintain a treasurer only if their bylaws dictate the necessity of a treasurer. At present, a treasurer is required under North Dakota Century Code 10-15-19 subsection 1. Even with this requirement, there are cooperatives filing with the Secretary of State's office that indicate that they do not have a treasurer. Often they have a secretary or a manager filling the role of a treasurer, but they do not designate the position as the treasurer's position. By making the treasurer an optional position, it enables all cooperatives to be in compliance with state laws regarding officers.

Section 4: Enables the state to retain fees submitted for the filing of an annual report, even when the annual report cannot be filed because of deficient information or incorrect submission of fees. This same provision in this bill, as it relates to annual reports filed with the Secretary of State, is being proposed for all other business entity annual reports in a separate bill being introduced this session.

An annual report is for a cooperative's previous fiscal or calendar year. The filing fee is $20, or if filed after the due date, $25 or $35. When an annual report is rejected and the filing is never completed, the Secretary of State sends a minimum of four letters requesting completion. If no response is received, the entity is ultimately dissolved.

Under present law, if the filing process of the annual report is never completed and the entity is dissolved, the previously submitted fee must be refunded. However, because of the time that has elapsed, the state refund check most often cannot be cashed because the organization no longer has legal existence, and in most cases, the entity has ceased operations and the board has been disbanded. As a result, the check becomes an abandoned property and considerable administration costs have been incurred. Retention of the fee in these situations will offset the considerable expense that has already been expended in communicating with an entity, which is no longer operating.

Section 5: Establishes the same fee that is currently paid by all other business entities when they submit documents to the Secretary of State for pre-approval prior to the time of submission. With cooperative merger transactions, they often are quite complex and lengthy.

Section 6: Provides the same provision that now exists in all other business entity chapters, which maintains the confidentiality of social security or federal identification numbers that may be found within the cooperative records filed with the Secretary of State.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2116

Page 3, after line 8, insert:

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

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

March 3, 2005

TO: Rep. Devlin, Chairman,
and Members of the House Political Subdivisions Committee

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

RE: SB 2116 – Relating to definitions and officers of cooperative associations

The adoption of this bill will establish the same procedures and options for cooperative associations that now exist for all other business entities filed with the Secretary of State's office and it will do the following:

Section 1: Introduces electronic record and filing definitions to the Cooperative Association Act. These definitions are identical to the definitions currently appearing in the Business Corporation Act, the Limited Liability Company Act, the Nonprofit Corporation Act, and all of the partnership entity chapters of the North Dakota Century Code. The Cooperative Association Act is the only business entity chapter that does not presently contain reference to electronic filings.

Although Chapter 9-16 of the North Dakota Century Code pertains to the Electronic Transaction Act and enables the electronic filing of documents, the Secretary of State has never received a single cooperative filing by electronic means. A relatively large percentage of cooperatives function with volunteer boards, or boards that are minimally compensated, and rarely utilizing legal counsel.

Therefore, by including limited electronic filing provisions within the Cooperative Association Act, it provides a more direct exposure to cooperative associations. It may motivate them to consider the electronic filing of annual reports and the electronic submission of other cooperative related documents with the Secretary of State's office.

Providing the electronic provisions in the same chapter by which cooperatives are governed is more efficient for the managing boards. In addition, it is also easier and more cost effective to instruct cooperatives in the filing processes when all relevant provisions pertaining to them are embodied in the same chapter (Chapter 10-15) of the Century Code.

Section 2: Confirms the legality of an electronic record.

Section 3: Allows a cooperative to maintain a treasurer only if their bylaws dictate the necessity of a treasurer. At present, under N.D.C.C. §10-15-19(1), a cooperative is required to have a treasurer. Nevertheless, there are cooperatives filing reports with the Secretary of State's office indicating that they do not have a treasurer. Often they have a secretary or a manager filling the role of a treasurer, but they do not designate the position as the treasurer's position. By making the treasurer an optional position, it enables all cooperatives to more easily comply with state laws regarding officers.

Section 4: Enables the state to retain fees submitted for filing of an annual report, even when the annual report cannot be filed because of deficient information or incorrect submission of fees. This same provision, as it relates to annual reports filed with the Secretary of State, is being proposed for all other business entity annual reports in separate bills being introduced this session, HB 1273 and HB 1391 (which have both passed the House).

An annual report is for a cooperative's previous fiscal or calendar year. The filing fee is $20, or if filed after the due date, $25 or $35. When an annual report is rejected and the filing is never completed, the Secretary of State sends a minimum of four letters requesting completion. If no response is received, the entity is ultimately dissolved.

Under present law, if the filing process of the annual report is never completed and the entity is dissolved, the previously submitted fee must be refunded. However, because of the time that has elapsed, the state issued refund check most often cannot be cashed because the organization no longer has legal existence, the entity has ceased operations, and the board has been disbanded. As a result, the check becomes abandoned property and considerable administration costs have been incurred to refund money to a non-existent organization. Retention of the fee in these situations will offset the considerable expense that already expended in communicating with an entity, which is no longer operating.

Section 5: Establishes the same fee that is currently paid by all other business entities when they submit documents to the Secretary of State for pre-approval prior to the time of submission. With cooperative merger transactions, they often are quite complex and lengthy.

Section 6: Provides the same provision that now exists in all other business entity chapters, which maintains the confidentiality of social security or federal identification numbers that may be found within the cooperative records filed with the Secretary of State.

Your favorable consideration of this bill is requested.