

# MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2263

2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2263

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2263

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-25-05

Tape Number	Side A	Side B	Meter #
2		xxx	0-end
3	xxx		
Committee Clerk Signature <i>Yisa VanBerkom</i>			

Minutes: **Chairman Mutch** opened the hearing on SB 2263. All Senators were present.

**SB 2263** relates to the field membership of state-chartered credit unions.

**Jim Schlosser**, Executive Vice President of the North Dakota Bankers Association,

introduced the bill. See testimony of Marilyn Foss, General Counsel, which Jim read as she could not be present.

**Senator Fairfield** : What is your dog in this fight? Why do you feel you need to have this?

**Jim**: When we have expansion by a credit union, into an area that is serviced by one or more banks, and we look at the statute and we don't think that is a well applied rules. We don't think they are following the law of only being able to expand seventy five miles. We feel we have a responsibility to point that out and we haven't been very successful with the credit union board.

**Senator Heitkamp** : In Hankinson, their home base is Jamestown, so what would this bill do to them?

**Jim:** As I indicated, everything that is in place now, will remain in place.

**Senator Heitkamp :** I have good friends back home in the banking industry, so I am trying to read what they lost? I'm not seeing a big loss from the banking industry.

**Jim:** In some counties, it's a non issue. In other areas, it's a huge issue. Competition is good and I think many times our institutions look and the credit union industry was approved in the depression days with the intent of allowing people to come together. Communities and credit unions are larger now and there should be some restriction, if they have this tax advantage.

**Senator Heitkamp:** I'm still not seeing what my banking friend, Jeff Stein, has lost. If he lost the ability of stopping credit unions from coming into Hankinson, then I could see where he lost.

**Jim:** If this would have been in place, I believe the Jamestown credit union would have been limited to seventy five miles with in Jamestown.

**Donald Foresberg, Executive Vice President of Independent Community Banks of North Dakota (ICBND),** spoke in support of the bill. See attached testimony.

**Senator Heitkamp :** Why the seventy five miles? In western North Dakota, that isn't that far.

**Donald:** I was under the understanding that that was the rules that they were operating under at the time.

**Senator Espegard :** Is this bill not just clarification? This has been a contended issue for many years.

**Don:** Yes. That is my understanding. We don't have full agreement on behalf of our entire membership, the majority would go along with this.

**Chairman Mutch :** This would only effect if a credit union wanted to put a branch some place, they couldn't go beyond seventy five miles of the home base?

**Don:** Correct. Unless there was a merger and this doesn't prevent mergers.

**Greg Tschider, ND Credit Union League,** spoke in support of the bill. See attached testimony.

**Senator Heitkamp :** What if you were in Grand Forks and jumped to Hillsboro, and now you say Hillsboro is your main office? Could you be in Grand Forks and Fargo?

**Greg:** If you had the Grand Forks field of membership and it was large enough that it included Hillsboro, but you could not then hop to Fargo.

**Senator Heitkamp :** What if you claimed Hillsboro was your main office?

**Greg:** It's not your field of membership. The question is "what are the fields of membership?"

This law says you can only put branches within your field of membership. The only way you could get to Fargo would be to merge with community chartered credit union, in Fargo.

**Senator Espgaard :** Difference in a federally chartered credit union?

**Greg:** My understanding is they work with county areas. That's what happened with the credit union in Minot, they gave them counties instead of a radius.

**Senator Fairfield :** In rule, it says seventy five miles, but isn't it basically the same language in the rule then?

**Greg:** It says seventy five miles.

**Senator Fairfield :** How does this clarify more than the rule does?

**Greg:** One of the concerns that has come up through all the discussions is that the bankers have said that the state credit union board can change that to one hundred and fifty tomorrow. That is their big concern.

**Chairman Mutch allowed opposition to be heard.**

**Denton Zubke, CEO, Dakota West Credit Union, Watford City,** spoke in opposition to the bill. See attached testimony.

**Senator Espegard :** I think this bill addresses, one part, 6-06-07, talks about membership of credit union. All this bill proposes to do be agreed with by both "a well defined area". What you are saying is that their really shouldn't be a well defined area and if you find a distressed credit union in Fargo, you ought to be able to go down and get it. Most of the things that you have done here, you could have done under this. The majority of the people here are saying that this is good for all. So are totally opposed to having a "well defined area"?

**Denton:** No, I'm certainly well with in following the dictates of the century code. I think that the state credit union board has a done a very good job since 1988 with their field of membership policy, and I am not in favor of taking that power away from them.

**Senator Espegard :** How would you well define your rural area then?

**Denton:** I could draw you a map and show you, that I have a seventy five mile radius of Watford City, ND. I have a fifty mile radius of Grenora, Parshall and Turtle Lake.

**Chairman Mutch :** You could still acquire other smaller credit unions?

**Denton:** That's part of my point in the reason that the large credit unions aren't here, this strips every economic opportunity that a small credit union has and forces them to merge with the larger ones.

**Chairman Mutch :** They wouldn't merge unless they were in financial trouble?

**Denton:** Exactly, but I'm saying they have no other alternatives, they are forced to merge. This falls on the backs of small credit unions.

**Senator Heitkamp :** Is there some middle ground here? If we look at west of the river, should it

be broadened to more than seventy five?

**Denton:** I don't see anything wrong with the way we have been conducting business the last sixteen years, so why should we be trying to put together a bill and change things that we do not know what the outcome will be?

**Chairman Mutch :** That would be in the event that this distressed credit union and closed their doors completely, otherwise this law wouldn't effect them.

**Tim Karsky, Dept. of Financial Institutions,** was neutral and spoke only to clarify committee questions.

**Tim:** This bill would not prohibit the merger you are talking about.

**Senator Espegard :** (addressing Denton) It doesn't seem like you really have a problem as to what your practice has been?

**Denton:** For my business practice, I agree, but, I'm saying for that small credit union that is sitting out in rural North Dakota, dealing with consumers and providing them service, if a financial institution pulls out of some small community seventy miles away and all of the sudden the small community has no financial institution. No bank is going to come in there. They left because it isn't profitable. This credit union seventy miles away may want to go there and establish a branch. When they get there, they can only add members that are five miles away. This restricts the smaller credit unions in the state to the federally chartered credit unions.

**Erin Olstad, Elm River Credit Union, Kindred and Paige ND,** stated her opposition to the bill.

**Erin:** We are asking you to vote "no" on this bill to keep the control in the state credit union board, where they can make decisions based on each individual credit unions, as their needs come before the board.

**Deb Mathern, NDCUL/FPSFCU,** spoke in opposition to the bill.

**Deb:** This is an anti-consumer bill. I am asking why the banks in North Dakota should choose where our consumers can do business. Why should someone in Flasher or Ray have less choices than someone in Bismarck or Fargo? As I hear this discussion, the bill is very poorly written. I would like at best to see it go back for a rewrite.

**Senator Espegard :** When this bill came up, I saw the two associations as agreeing on something. So I thought that would get rid of some contention. I certainly didn't sign on this bill to be contentious with credit unions. They do a great job and I thought they were getting together.

**Chairman Mutch :** With federally chartered credit unions, they are not affected by this?

**Deb:** No they are not.

**Senator Klein:** If we don't do anything, you are going to have bigger fights than you already have. This way, Denton will know that he is working within his guidelines as per law, rather than law.

**Tim Karsky:** There are twenty six state chartered credit unions in the state. The bill doesn't affect federally chartered credit unions. State charters have the ability to get members within that well defined group or rural urban area. Prior to the 1990's, credit unions did not have to come to the state credit union board or to the department to establish branches. A lot of credit unions under bylaws have their membership as defined as a trade area. This is where the confusion started.



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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2263

Hearing Date 1-25-05

**Senator Krebsbach:** What solution would you offer then?

**Tim:** I don't have an answer for you. Under the old system, they would be able to apply to the state credit union board and apply for an expansion of field of membership. That's when they addressed that.

**The committee received the testimony of Leslie Oliver, however she did not speak.**

**Chairman Mutch closed the hearing. No action was taken.**

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2263

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-26-05

Tape Number	Side A	Side B	Meter #
2		XX	800
Committee Clerk Signature <i>Lisa Van Berkom</i>			

Minutes: **Chairman Mutch allowed committee discussion on SB 2263. All Senators were present. SB 2263 relates to field membership of state-chartered credit unions.**

**Senator Espegard:** This bill seems to be pretty well supported by all of the institutions. I realize there is some heart burn there from Denton Zubke.

**Senator Heitkamp :** Is there anything we can do mileage wise, even if we separate the state, west to east?

**Senator Espegard :** I realize what you are trying to do because some rural areas are really restricted by mileage, but some of the largest credit unions are in Minot and Bismarck. Denton can expand if he buys a troubled credit union.

**Senator Klein:** The gal from Flasher has the opportunity to go to Bismarck. Denton was concerned with the issue of a bank closer and them not having the ability to pick that up, but how often does that happen. It's been over twenty years since a credit union picked up a bank.

**Senator Espegard moved a DO PASS. Senator Klein seconded.**

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Senate Industry, Business and Labor Committee  
Bill/Resolution Number SB 2263  
Hearing Date 1-25-05

**Roll Call Vote: 6 yes. 1 no. 0 absent.**

**Carrier: Senator Klein**

Date: 1-26-05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2263

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number ~~2263~~

Action Taken Do Pass

Motion Made By Espegard Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Senator Mutch, Chairman	X		Senator Fairfield		X
Senator Klein, Vice Chairman	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Nething	X				
Senator Espegard	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Klein

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

**REPORT OF STANDING COMMITTEE (410)**  
January 27, 2005 8:14 a.m.

**Module No: SR-18-1163**  
**Carrier: Klein**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2263: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2263 was placed on the Eleventh order on the calendar.**

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2263

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2263

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-1-05

Tape Number	Side A	Side B	Meter #
2	x		21.-end
2		x	0-29.1
Committee Clerk Signature <i>Jody Reube</i>			

Minutes:

**Chairman Keiser:** opened the hearing on SB 2263. 13 committee members were present, 1 absent (DOSCH).

**Jim Schlosser, North Dakota Bankers Association:** Appeared in support of bill and provided a written statement (SEE ATTACHED TESTIMONY).

**Greg Tschider, North Dakota Credit Union League:** Appeared in support of bill and provided a written statement (SEE ATTACHED TESTIMONY).

**Don Forsberg, Executive V.P., Community Banks of North Dakota:** Appeared in support of bill, this bill is a compromise, there is no question about that, but it is something that we can live with.

**Denton Zubke, CEO, Dakota West Credit Union, Watford City, North Dakota:** Appeared in opposition of SB 2263 and provided a written statement (SEE ATTACHED TESTIMONY).

**Erin Olstad, Elm River Credit Union:** Appeared in opposition of SB 2263. I'm here to offer living proof that this bill could have and will hurt us in the future, I am the manager of Elm River Credit Union, our main office is located in Page, we were 3.7 million in assets at the time we established the branch office in Kindred, which is on the very edge of our field of membership, 7 years later we are now 11 million in assets and we have 800 new members in that branch. The growth in our assets and numbers saved our Page operation, but now offer 2 operations, debit, credit cards, and online financial services which we could not afford prior to this, obviously we needed the area south of Kindred to have a shot at being successful. Our league office never gave us an opportunity, to voice our opinion regarding this bill, a select few made this decision trust me. They are maintaining a position that hurts our credit union as well as many other credit unions, it is for this reason among others, that we were another one to withhold our dues, and that's how strongly our board of directors felt about this bill.

**Darla Schafer, Manager, Credit Union, Flasher:** Appeared in opposition of SB 2263. We serve several small communities to the west of the Bismarck area. We truly believe in our credit unions, our philosophy is people helping people, and our members do make a difference. Our communities are getting smaller, in another 20 years how are we to know what the state of North Dakota is going to look like. We don't want to merge, we want to stay in our own community.

**Representative Kasper:** Were you asked to be involved?

**Darla Schafer:** We were not asked. This bill was a surprise to us, the last meeting we had, we were told there wasn't anything coming up in legislation this year.

**Tim Skarsky, Commissioner, Dept. of Financial Institutions:** Appeared neutral on SB 2263.

The first bill that came to our attention, we were opposed because it did restrict some of the



mergers, and I can tell you that we are going to lose another credit union in about 40-45 days, so we are going to see a lot more mergers, so we need to have the ability for these credit unions to merge.

**Representative Kasper:** If this bill was to pass how would this radius be determined?

**Tim Skarsky:** Credit Unions within a 75 mile radius can merge, but who is going to want to merge if you can't put up any other branches in that area.

Hearing closed.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2263

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-2-05

Tape Number	Side A	Side B	Meter #
2		x	34.5-36.6

Committee Clerk Signature *Jody Reutke*

Minutes:

**Chairman Keiser:** Reconvened on SB 2263.

**Representative Ruby:** I move a DO PASS on SB 2263.

**Representative Boe:** I SECOND the DO PASS motion on SB 2263

Motion carried. **VOTE: 10-YES 3-NO 1-Absent (DOSCH).**

**Representative Nottestad will carry the bill on the floor.**

Hearing closed.

Date: 3-2-05

Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2263

House INDUSTRY, BUSINESS AND LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do PASS

Motion Made By Rep. Ruby Seconded By Rep. Boe

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman		X
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe		X
Rep. M. Dosch	A				
Rep. G. Froseth		X			
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigessaa	X				

Total (Yes) 10 No 3

Absent (1) Rep. Dosch

Floor Assignment Rep. Nottestad

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

**REPORT OF STANDING COMMITTEE (410)**  
March 2, 2005 2:49 p.m.

**Module No: HR-38-4005**  
**Carrier: Nottestad**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2263: Industry, Business and Labor Committee (Rep. Kelsner, Chairman) recommends DO PASS (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). SB 2263 was placed on the Fourteenth order on the calendar.**

2005 TESTIMONY

SB 2263

# TESTIMONY IN SUPPORT OF SENATE BILL NO. 2263

GREG TSCHIDER, ND CREDIT UNION LEAGUE

*Same  
given to the  
House*

Mr. Chairman and Members of the Senate Industry, Business, and Labor Committee, I am Greg Tschider and I represent the North Dakota Credit Union League.

This bill is intended to incorporate existing credit union regulations in state law and provide specificity in regards to fields of membership, merging, and branching.

This bill does not in any way affect existing credit union branches nor restrict or decrease existing fields of membership of the credit unions.

With this bill, credit unions will continue to be able to branch within their existing fields of membership. For example, Citizens Community Credit Union has its home office in Devils Lake and thus has a field of membership around Devils Lake. Citizens Community Credit Union also has an additional field of membership of a 40 mile radius around Larimore. The City of Grand Forks is within the 40 mile radius of Larimore. Therefore, Citizens Community Credit Union may establish branches in Grand Forks, or any other communities within the 40 mile radius of Larimore. However, if Citizens Community Credit Union establishes a branch in south Grand Forks, Citizens Community Credit Union cannot expand its field of membership from that branch for another 40, 50, or 75 miles and thus expand its field of membership to include Hillsboro or Mayville.

Thus, credit unions can establish as many branches within their field of membership as they desire, however the credit unions existing field of membership will not expand except in the following cases:

1. Some credit unions only have a field of membership of 50 miles. Those credit unions can now elect to expand to a 75 mile radius of the home office.

2. Mergers. In the event of a merger, the surviving credit union may elect to add the field of membership of the other credit union. Again, if the additional field of membership is added, the surviving credit union can open branches anywhere within the combined field of membership. However, as stated above, the branch will not add another field of membership radius around the branch.

Mr. Chairman and members of the Committee, this bill is a compromise which recognizes the status quo of the credit unions in regards to branches, location, and field of membership. It also provides that credit unions can continue to merge and provides that credit unions can continue to establish branches within the total field of membership of the respective credit unions. However, in the future branches cannot be used to expand the geographic field of membership of a credit union.

Thank you.

**INDEPENDENT COMMUNITY BANKS OF NORTH DAKOTA**

**TESTIMONY OF DONALD FORSBERG**

**In Favor of SB 2263**

Good Morning Chairman Mutch and members of the Industry Business and Labor Committee. For the record my name is Donald Forsberg, I am the Executive Vice President of Independent Community Banks of North Dakota (ICBND). ICBND is a trade association for state and national banks who are "Independent" for purposes of eligibility. Independent generally means making primary customer and strategic decisions within the bank's geographic area within North Dakota; being represented by a charter within North Dakota; being committed to improvement of its marketing area and generally having the majority of its loans in the local service area from which its deposits are drawn.

I am here on behalf of the membership of ICBND to support SB 2263 which attempts to more clearly define the meaning of a geographic common bond which historically is one of the basic requirements for credit unions receiving and retaining their "tax exempt" status. This bill also gives all "interested persons" including banks a reasonable opportunity to be involved in hearings for credit union applications to expand their field of membership.

Currently, section 6-06-07 of the NDCC defines the common bond for geographic based credit unions as "groups within a well defined rural or urban district". In the view of bankers, there has been a movement across the country by some credit unions to more liberally define this common bond.



This bill would define the geographic limitation of field of membership without seriously infringing on credit union growth or membership. The bill still allows for credit union mergers outside of this limit and allows the merged institution to retain their separate membership fields. The bill also "grandfathers in" credit unions and their branches in existence prior to January 1, 2005 with no changes to their field of membership or branch location.

In summary, this bill more clearly define the field of membership and also allows banks to submit data, views and arguments for any proposed merger resulting in an expansion of membership. We respectfully ask that you give this bill a DO PASS recommendation.

This concludes my testimony and I will attempt to answer any questions you may have.

**Testimony on SB 2263**  
**Senate Industry, Business and Labor Committee**  
**January 25, 2005**

Chairman Mutch, Vice Chairman Klein and members of the Senate Industry, Business and Labor Committee, thank you for the opportunity to testify on SB 2263. My name is Leslie Oliver, and I represent St. Alexius Credit Union in Bismarck, North Dakota. I am here to testify against SB 2263.

We have been told that this is a time of renewed commitment to economic development in North Dakota. In Governor Hoeven's recent State of the State Address, he talked about the proposed expansion to the Centers of Excellence Program, aggressive economic development efforts beginning at the local level, and the importance of investing in priorities that will help North Dakota businesses grow, prosper and be competitive.

SB 2263 places an unnecessary and unjustified limitation on North Dakota's open charter credit unions, particularly those serving individuals in rural areas. SB 2263 wholly redefines the membership requirements for open charter credit unions, limiting membership to those individuals residing within a seventy-five mile radius of the home office of the credit union. Moreover, SB 2263 prohibits a credit union from establishing a branch office outside the seventy five mile radius, or from expanding the geographic field of membership.

This bill presumes that there are serious problems in need of solutions - either North Dakota open charter credit unions have an unfair advantage competing with other financial institutions, or these credit unions are exercising unchecked expansion, which require legislative limitations. In reality, the problems SB 2263 seeks to remedy do not exist.

SB 2263 will likely have less impact upon the state's larger open charter credit unions, because these credit unions either operate in the larger population centers, or have established branch offices throughout the state which will be unaffected by this bill. The brunt of SB 2263 will fall on the small rural credit unions operating in dwindling population centers. Our state's economic development requires a business climate that promotes existing businesses and attracts new businesses, especially in our rural areas. SB 2263, if passed, would be a significant impediment to this effort.

SB 2263 is unnecessary, unfair and unreasonable. I respectfully request a Do Not Pass vote on SB 2263.

Thank you.

Leslie Bakken Oliver  
Vogel Law Firm  
U.S. Bank Building  
200 N. 3<sup>rd</sup> St., Ste. 201  
Bismarck, ND 58501  
(701) 258-7899

## TESTIMONY OF MARILYN FOSS IN FAVOR OF SB 2263

Chairman Mutch, members of the IBL Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. I am here to ask you to give SB 2263 a Do Pass recommendation. SB 2263 is a joint effort by NDBA and the North Dakota Credit Union League to better define the field of membership for state chartered, community credit unions and to take some of the "interpretation" out of the current statute. The compromise NDBA and the NDCUL have agreed upon will not affect any credit union location that is open today or approved before the end of 2004 and it will not prevent mergers in which a larger, viable credit union absorbs a smaller, non viable credit union. What it should do, however, is substantially decrease instances of "leapfrogging" whereby a community credit union expands its geographic area of operations by, in essence, branching from a branch.

Credit union field of membership is restricted by law. This is because credit unions are supposed to have a relatively narrow mission and because credit unions are not subject to a variety of taxes that are paid by banks and savings associations. Currently, North Dakota law provides that membership of a state chartered, community credit union is limited to groups within a well defined rural or urban district. This has been the language of limitation that has applied for many years. For almost as many years, state credit union board regulations defined a "well defined rural or urban district" as a 50 mile radius from the credit union's main office. Then board policy changed and expanded that to a 75 mile radius. Although credit union board rules stated otherwise, we held the view that the board was approving branch applications that did, in fact, expand credit union geographic territories so several no longer bear any resemblance to **a rural or urban district**.

SB 2263 codifies the 75 mile geographic radius into law and provides that branches may not be used to expand a community credit union authorized geographic field of membership. However, the bill also recognizes that there are a number of smaller credit unions which are probably going to lose their viability over time; they will need to merge with a larger credit union. That may be impeded if the survivor credit union can't operate an office in the territory of the merged credit union. Accordingly, the bill allows the survivor credit union to assume the field of membership of a merged credit union and to branch within that field of membership.

I think one of the most difficult legislative tasks is writing laws that mean the same thing to several readers. We have passed this bill by Commissioner Karsky. At least he, Mr. Tschider and I appear to agree what it says. I can assure you, for us, that is progress and warrants our support of the bill. I'd be happy to respond to your questions. Thank you.

# Dakota West

## CREDIT UNION

**Main Office**  
P.O. Box 1496  
Watford City, ND 58854  
701-444-6484 • 800-411-7590

**Grenora Branch**  
P.O. Box 278  
Grenora, ND 58845  
701-694-3373 • 800-699-3442

**New Town Branch**  
P.O. Box 958  
New Town, ND 58763  
701-627-3737

**Turtle Lake Branch**  
P.O. Box 99  
Turtle Lake, ND 58575  
701-448-9220

January 21, 2005

Senate Industry, Business and Labor Committee  
Duane Mutch Chairman  
Committee Members

RE: SB2263

Dear Senators,

March 18, 1988 the State Credit Union Board adopted a Field of Membership Policy which restricted Credit Unions to a seventy-five mile radius of the principal office and a 50 mile radius of the branch office. This was a very strict interpretation of Section 06-06-07 of the century code. During this process it was discovered that some credit unions had field of memberships as trade area, trade territory or vicinity which was ambiguous and was subsequently defined to mean 50 miles. On June 23, 1988 Commissioner Gary Preszler issued a memorandum that clarified that even though trade territory was left out of the rule making process in March it also would be defined to mean a 50 mile radius. Some have mistaken this memorandum to mean that 50 miles is the largest radius available and this is not true. There are five other ways of defining geographic boundaries which include city, county, township, highway boundaries, or a specifically stated radius of the principal office. We have lived under these restrictions for 16 years and have managed. Contrary to bank trade association's contention, the State Credit Union Board has done a very good job through all these years of following these rules, and even though as credit unions, we do not like them, we abide by them.

This bill is nothing more than an attempt to restrict credit unions even further to take away every economic alternative that they have to remain viable, stabilize their asset base, and diversify their loan portfolio. The uncontrolled expansion that the banking associations complain of does not exist. It is simply a phrase to convince others to restrict and remove any form of competition. This is in spite of the fact that the banking industry is reporting record profit years and has for the last decade. From the FDIC website for December 31, 2003, North Dakota state and nationally chartered banks had \$20.7 billion in assets in comparison to credit unions \$1.3 billion.



AMERICA'S  
CREDIT UNIONS™

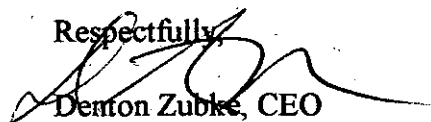
*Where people are worth more than money.™*

The unfortunate thing is that this bill falls on the backs of small credit unions in rural North Dakota. The 8 largest credit unions based on 12-31-03 statistics, control 875 million in assets (65%) with 48 credit unions controlling 462 million (35%). Of the 48 credit unions, seventeen are federally chartered and fourteen are closed charters and are not impacted. So 17 credit unions controlling 14% of the assets or \$189,422,000 bear the brunt of this regulation. The 8 largest already are operating in the largest population centers of North Dakota. Thus by restricting the smaller credit union's ability to survive, the only option will be merging with another credit union. We already have a situation in Bismarck where two of the largest credit unions have went head to head, bidding on how much of the merging credit union's equity will be distributed to the members in the merging process. Small credit unions will become a bidding contest. Only the largest will be able to compete.

Please do not restrict what few alternatives rural credit unions and communities have to survive. Without the option of being able to establish a branch in a community that another financial institution has vacated or may not be serving competitively you compromise consumers ability to choose, do nothing for the economic viability of rural communities and will over a period of years force us into a situation where only a few large credit unions exist.

This is a bad bill which has a disparately negative impact on small credit unions across the state and accomplishes absolutely nothing good. Please give this bill the DO NOT PASS that it deserves.

Respectfully,

  
Denton Zubke, CEO  
Dakota West Credit Union  
Watford City, ND 58854  
701-444-6484

**6-06-07. Membership in credit union.** The membership of a credit union consists of the incorporators and such other persons as may be elected to membership. Each member shall subscribe to and pay the initial installment on at least one share in the credit union, and pay the entrance fee as provided by the bylaws of the credit union. Organizations, incorporated or otherwise, composed principally of the same general group as the credit union membership may be members therein. Credit union membership is limited to groups having a common bond of occupation or association or to groups within a well-defined rural or urban district. The board shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning a proposed application for a credit union to expand its field of membership.

**6-06-08. State credit union board to supervise credit unions - Reports - Examinations - Fees.**

1. Credit unions and the permanent loan funds of credit unions, if any, are under the supervision of the commissioner. Credit unions shall report to the commissioner when called by the commissioner, and at least twice each year. The commissioner shall prescribe the forms for the reports. The reports must be received by the commissioner within thirty days of the call. At the discretion of the commissioner, a call may be complied with by submission of a photocopy of the call report submitted to the national credit union administration, or a printout retrieved from computer facilities in the department of financial institutions and connected to those of the national credit union administration. The commissioner may call for special reports from any credit union whenever in the commissioner's judgment it is necessary to obtain complete knowledge of the condition of the credit union. Every credit union that fails to make and transmit any report required in pursuance of this section shall forfeit and pay to the state a penalty of two hundred dollars for delinquency. The commissioner may waive the penalty for reports filed late, not exceeding three business days beyond the due date required by this section.
2. Credit unions must be examined at least once each twenty-four months by the commissioner. In lieu of the examinations herein required, the commissioner may accept any examination made or obtained by the national credit union administration, and may in the commissioner's discretion conduct a joint examination with the national credit union administration.
3. If it is determined through an examination or otherwise that the credit union is violating the provisions of this chapter, or is insolvent, the state credit union board may serve notice on the credit union of its intention to revoke the charter. If such violations continue for a period of fifteen days after such notice, the board may revoke the charter and take possession of the business and property of such credit union, and shall maintain possession then until such time as it permits the reinstatement of the charter and the continuation of business by the credit union, or until its affairs finally are liquidated. The board may take similar action if any required report remains in arrears for more than fifteen days.
4. Every state credit union, including North Dakota central credit union, placed under the jurisdiction and control of the state credit union board and the commissioner by the provisions of this title shall pay a yearly assessment. This assessment is to be determined by the state credit union board as necessary to fund that portion of the department's budget relating to the regulation of state-chartered credit unions. The assessment must be paid to the state treasurer within thirty days of each June thirtieth. Credit unions that have not been examined by the commissioner or the state credit union board for three years prior to any assessment date are not required to pay the assessment. The state treasurer shall report the payments of fees to the commissioner, and if any credit union is delinquent more than twenty days in making payment, the board may make an order suspending the

**13-03-13-11. Examinations.** A credit union shall allow the commissioner or the commissioner's examiner, at the commissioner's discretion, to inspect or examine all the books or records of the credit union service organization for the purpose of determining compliance with this chapter and to determine the value of the credit union's investment or loans.

**History:** Effective December 1, 1992.

**General Authority:** NDCC 6-01-04

**Law Implemented:** NDCC 6-01-04, 6-01-09, 6-06-06, and 6-06-08

## **CHAPTER 13-03-14 FIELD OF MEMBERSHIP**

### Section

13-03-14-01	Definitions
13-03-14-02	Field of Membership Expansion
13-03-14-03	Application to Expand Field of Membership
13-03-14-04	Waiver

### **13-03-14-01. Definitions.**

1. "Branch", for the purpose of this chapter, means any credit union facility which is established apart from the principal office where credit union business is transacted, not including remote electronic facilities, such as automated teller facilities, point of sale terminals, etc.
2. "Closed charter" means a credit union charter issued to serve groups having a common bond of occupation or association.
3. "Geographical boundaries" means the outer perimeters of the area which may be served as expressed in the field of membership authority and may be expressed by city, county, township; or highway boundaries, or as a vicinity or trade area or trade territory which are defined as a radius of fifty miles [80.47 kilometers], or a specifically stated radius from the principal office of the credit union.
4. "Open charter" means a credit union charter issued to serve groups within a well-defined rural or urban district.
5. "Principal office" means the location or place of business, or both, in which the credit union was organized and stated on the certificate of organization or any amendments thereto and recorded with the secretary of state.

**History:** Effective April 1, 1988; amended effective September 1, 1988.

General Authority: NDCC 6-01-04  
Law Implemented: NDCC 6-06-06, 6-06-07

**13-03-14-02. Field of membership expansion.**

1. A North Dakota state-chartered credit union may expand its field of membership subject to approval of the state credit union board and in accordance with the provisions of this chapter and North Dakota Century Code chapter 6-06.
2. The state credit union board, when considering the expansion of a charter, shall consider the following:
  - a. If the expansion is for an open charter, the exact geographical boundaries, expressed by city, county, township, or highway boundaries, or a stated radius from the principal or branch office, must be clearly spelled out;
  - b. The negative impact to any other state or federally chartered credit union in the expanded area;
  - c. The expressed need in the expansion area;
  - d. Any expressed opposition to the expansion by any other credit union;
  - e. If the expansion is for an open charter, whether the area being considered is satisfactorily served by a currently operating credit union;
  - f. The credit union must demonstrate the ability to succeed in expanding their field of membership;
  - g. Relevant public comment in favor of or in opposition to expanding the field of membership; and
  - h. Any other factor that the state credit union board deems pertinent.

History: Effective April 1, 1988; amended effective October 1, 1997.  
General Authority: NDCC 6-01-04  
Law Implemented: NDCC 6-06-06, 6-06-07

**13-03-14-03. Application to expand field of membership.** A credit union wishing to expand its field of membership shall comply with the following:

1. Approval to expand the field of membership must be given by the board of directors of the credit union by a majority of that board;



2. After approval by the credit union's board of directors, application must be made to the state credit union board to expand its field of membership. The necessary forms for "application for field of membership expansion", including the business plan and the financial impact to the credit union and as required in subsection 3, may be secured from the department of banking and financial institutions;
3. The application to expand the field of membership must be accompanied by the necessary documents for amendment of bylaws as required by North Dakota Century Code section 6-06-04;
4. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board of an open charter application, cause a notice of the proposed field of membership expansion to be published in the official newspaper of the county or counties affected by the proposed charter expansion. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board of a closed charter application, cause a notice of the proposed field of membership expansion to be published in the eight major newspapers in the state set forth in subdivisions a through h of subsection 1 of section 13-01.1-04-01. However, if a closed charter credit union intends to limit its expansion into specified geographical areas within the state, the notice must only be published in the official newspaper of the county or counties affected by the proposed expansion; and
5. The notice must specify the time and place of the meeting of the state credit union board at which the application for the charter expansion will be acted upon. Comments may be submitted to the board concerning the application, or a written request for an opportunity to be heard before the board may be submitted. The board may, when it believes it to be in the public interest, order a hearing to be held.

History: Effective April 1, 1988; amended effective October 1, 1997.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06, 6-06-07

**13-03-14-04. Waiver.** The state credit union board, in the exercise of its discretion, may waive the provisions of this chapter when such waiver is in the best interests of a failing institution.

History: Effective April 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-08.2

DEPARTMENT OF  
BANKING AND FINANCIAL INSTITUTIONS

MEMORANDUM

TO: North Dakota State-Chartered Credit Unions

FROM: Gary D. Preszler, Commissioner

SUBJECT: State Credit Union Board Field of Membership  
Policy and Regulation

DATE: June 23, 1988

Chapter 13-03-14, North Dakota Administrative Code, (N.D.A.C.) **Field of Membership**, effective April 1, 1988, was previously mailed to you. The State Credit Union Board (Board) has requested that further clarification is needed so that you are aware of the implications to credit unions.

Section 6-06-07, North Dakota Century Code, (N.D.C.C.) required a credit union's field of membership to be limited to groups having a common bond or occupation or association or to groups within a well defined rural or urban district. Twenty-four credit unions had stated in their bylaws a field of membership, as trade area, trade territory or vicinity of some community. Because of the lack of any definition for trade area, trade territory or vicinity, several problems were developing which the Board concluded were not in conformance with Section 6-06-07, N.D.C.C. Consequently, the Board when promulgating Chapter 13-03-14, N.D.A.C., by definition of "Geographical boundaries" defined trade area and vicinity to be a fifty (50) mile radius from the principal office. Trade territory was inadvertently omitted during the rule-making process but the rule is presently being corrected to also include trade territory as a fifty (50) mile radius from the main office. This definition applies now to those 24 credit unions and there is no grandfathering provisions. Therefore, if this situation applies to your credit union and is unacceptable, you would have to amend your bylaws.

Enclosed please find a copy of the "Field of Membership Policy" adopted by the Board at its March 18, 1988, meeting which sets forth the maximum field of membership for an "open charter" that is acceptable by the Board. This policy will be used by the Board when considering approving amendments to the bylaws. If your credit union is considering expanding your field of membership including those twenty-four that have trade area, trade territory or vicinity, you should be guided by the Board's Field of Membership Policy.

If you have any questions, please feel free to call myself, Assistant Commissioner Bob Keim, or Chief Examiner - Credit Unions Jim Laidlaw, 224-2253.

GDP:bw

Enc.

## FIELD OF MEMBERSHIP POLICY

The following sets forth the North Dakota State Credit Union Board policy on maximum acceptable field of memberships for North Dakota state-chartered credit unions. This policy is intended to provide uniformity for the State Credit Union Board approving field of membership changes within the bylaws of the credit union and to assure compliance with Section 6-06-07, North Dakota Century Code, restricting field of membership to a "common bond of occupation or association or to groups within a well-defined rural or urban district," and Chapter 13-03-14, North Dakota Administrative Code.

The following definitions shall apply in the use of this policy and are set forth as follows:

- (1) "Open charter" shall mean a credit union charter issued to serve groups within a well defined rural or urban district.
- (2) "Branch" shall mean any credit union facility, which is established apart from the principal office, where credit union business is transacted, not including remote electronic facilities such as automated teller facilities, point of sale terminals, etc.
- (3) "Principal office" shall mean the location and/or place of business in which the credit union was organized and stated on the certificate of organization or any amendments thereto and recorded with the Secretary of State.

The maximum field of membership for the principal office of a North Dakota state-chartered open charter credit union shall be a radius of seventy-five (75) miles. The maximum field of membership for a branch(s) of the credit union shall be a radius of fifty (50) miles of that branch, unless the branch was a result of a merger with the credit union. The merged credit union's field of membership shall be adopted by the surviving credit union. If the merged credit union's principal office is maintained as a branch, the previous field of membership of the merged credit union shall be permitted, or a radius of fifty (50) miles.

Adopted by the North Dakota State Credit Union Board at its meeting of March 18, 1988.

ATTEST: Signed by Robert E. Keim  
Robert E. Keim, Secretary

**CHAPTER 13-03-15  
BRANCHING**

Section

13-03-15-01	Definitions
13-03-15-02	Establishment of a Branch
13-03-15-03	Location of Branch
13-03-15-04	Application to Establish a Branch
13-03-15-05	Waiver

**13-03-15-01. Definitions.**

1. "Branch", for the purpose of this chapter, means any credit union facility which is established apart from the principal office where credit union business is transacted, not including remote electronic facilities, such as automated teller facilities, point of sale terminals, etc.
2. "Closed charter" means a credit union charter issued to serve groups having a common bond of occupation or association.
3. "Geographical boundaries" means the outer perimeters of the area which may be served as expressed in the field of membership authority and may be expressed by city, county, township, or highway boundaries, or a stated radius from the principal office of the credit union.
4. "Open charter" means a credit union charter issued to serve groups within a well defined rural or urban district.
5. "Principal office" means the location or place of business, or both, in which the credit union was organized and stated on the certificate of organization or any amendments thereto and recorded with the secretary of state.

History: Effective April 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

**13-03-15-02. Establishment of a branch.**

1. Any North Dakota state-chartered credit union may establish a branch facility subject to approval of the state credit union board and in accordance with the provisions of this chapter.

2. All branch facility advertising and building signs must state the identity of the credit union and facility. For example, (name of credit union) (location of main office) "Branch". Those credit unions that already have a sign on the branch building need not change the sign until actual renovation or a sign change is made if a significant cost is necessary to comply with this section.

History: Effective April 1, 1988; amended effective October 1, 1990.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

#### **13-03-15-03. Location of branch.**

1. Branches of "closed charter" credit unions established pursuant to the provisions of this chapter, must be reasonably necessary in order to properly serve units of the field of membership which are not being properly served by the principal credit union office. The location of such office shall not be restricted except that, in the judgment of the state credit union board, it must be located so as to accomplish the above.
2. Branches of "open charter" credit unions must be located within the geographical boundaries which are authorized by the charter. The establishment of such branch facility may not, of itself, expand the geographical boundaries of the credit union's field of membership.

History: Effective April 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

#### **13-03-15-04. Application to establish a branch.**

1. A credit union wishing to establish a branch shall comply with the following:
  - a. Approval to establish the branch must be given by the board of directors of the credit union by a majority of that board;
  - b. After approval by the credit union's board of directors, application must be made to the state credit union board to establish the branch. The necessary forms for "application to establish a branch", including the business plan and the financial impact to the credit union, may be secured from the department of banking and financial institutions;
  - c. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board, cause to be published a notice in the official newspaper of the county or counties affected by the proposed branch expansion. The notice must specify the field of membership, and, if an open charter, the geographical boundaries; and

d. The notice must specify the time and place of the meeting of the state credit union board at which the application for establishing the branch will be acted upon. Written comments may be submitted to the board concerning the application, or a written request for an opportunity to be heard before the board may be submitted. The board may, when it believes it to be in the public interest, order a hearing to be held.

2. The state credit union board, when considering the branching of a credit union, shall consider the following:

- a. If the branch is for an open charter, and if the application to establish the branch is accompanied by an application to expand the field of membership, the exact geographical boundaries, expressed by city, county, township, or highway boundaries, or a stated radius from the branch office, must be clearly spelled out;
- b. The negative impact to any other state or federally chartered credit union in North Dakota;
- c. The expressed need in the branching area;
- d. Any expressed opposition to the branch by any other credit union in North Dakota;
- e. If the branch is for an open charter, whether the area being considered is satisfactorily served by a currently operating credit union;
- f. The credit union must demonstrate ability to succeed with the branch; and
- g. Any other factor that the state credit union board deems pertinent.

History: Effective April 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

**13-03-15-05. Waiver.** The state credit union board, in the exercise of its discretion, may waive the provisions of this chapter when such waiver is in the best interests of a failing institution.

History: Effective April 1, 1988.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

**SB2263 – TESTIMONY OF JIM SCHLOSSER  
NORTH DAKOTA BANKERS ASSOCIATION**

SB2263 is a joint effort by NDBA and the North Dakota Credit Union League to better define the field of membership for state chartered, community credit unions and to take some of the “interpretation” out of the current statute. The compromise NDBA and the NDCUL have agreed upon will not affect any credit union location that is open today or approved before the end of 2004 and it will not prevent mergers in which a larger, viable credit union absorbs a smaller, non viable credit union. What it will do, however, is substantially decrease instances of “leapfrogging” whereby a community credit union expands its geographic area of operations by, in essence, branch from a branch.

Credit union field of membership is restricted by law. This is because credit unions by law have a relatively narrow mission and because credit unions are not subject to a variety of taxes that are paid by banks and savings associations. Currently, North Dakota statutes provide that membership of a state chartered, community credit union is limited to groups within a well defined rural or urban district. This has been the language of limitation that has applied for many years. For almost as many years, state credit union board regulations defined a “well defined rural or urban district” as a 50 mile radius from the credit union’s main office. Then board policy changed and expanded that to a 75 mile radius. Although credit union board rules state otherwise, it appeared to many that the board was approving branch applications that allowed “leap-frogging,” and did, in fact, expand credit union geographic territories so they no longer bear any resemblance to a **rural or urban district**.

SB 2263 codifies the 75 mile geographic radius into law and provides that branches may not be used to expand a community credit union with a geographic field of

membership. However, the bill also recognizes that there are a number of smaller credit unions which are probably going to lose their viability over time; they will need to merge with a larger credit union. That may be impeded if the survivor credit union can't operate an office in the territory of the merged credit union. Accordingly, the bill allows the survivor credit union to assume the field of membership of a merged credit union and to branch within that field of membership.

I think one of the most difficult legislative tasks is writing laws that mean the same thing to several readers. We have reviewed the bill with Commissioner Karsky, and he, along with Mr. Tschider of the North Dakota Credit Union League, agree on its intent. The North Dakota Bankers Association requests your support of the bill.





# Dakota West CREDIT UNION

P.O. Box 1496 • Watford City, ND 58854 • 1-800-411-7590

March 1, 2005

House Industry, Business and Labor Committee  
George Keiser, Chairman  
Committee Members

RE: SB2263

Dear Representatives,

You do not know how troubling it is for me to stand and testify against our own trade association. I do not want to be here. I represent a group of people that do not want to be here. We feel like we have been betrayed by the very organization that is charged with protecting us legislatively. They have become a poor steward of that responsibility.

Let's look at this bill for what it isn't first. This is not a compromise. Webster defines compromise as "to adjust or settle by mutual concessions. The challenge would be to find the concession the banking industry made. I challenge anyone in this room, in the banking industry, in the state of North Dakota to show me the concession the banking industry has made. There is none!

This bill isn't good for credit unions. It ties the hands of small credit unions leaving them with only one economic alternative when their future looks bleak. That option is merging with a larger institution. It also is destroying our trade association as a number of credit unions are refusing to pay dues and it appears as though more will do the same next year.

This bill is not good for the Department of Financial Institutions as it removes any discretion the State Credit Union Board has, for example allowing a credit union to move into a community that does not have financial services. It also is not good for the state chartering system for credit unions as it may encourage some credit unions to seek a federal charter from the National Credit Union Administration, thus leaving the Department of Financial Institutions regulatory agency.

Frankly this bill is not good for the banking industry. The trade association is making a feeble attempt to justify to their members that they are restricting us. This is not restricting the credit unions that the banking industry seems to be the most concerned about, namely the large ones in the metropolitan areas. That is where all the assets are already. This creates a system that only allows mergers, thus making the large credit unions larger.

**Grenora Branch**  
P.O. Box 278  
Grenora, ND 58845  
1-800-699-3442

**New Town Branch**  
P.O. Box 958  
New Town, ND 58763  
701-627-3737

**Turtle Lake Branch**  
P.O. Box 99  
Turtle Lake, ND 58575  
701-448-9220

**Washburn Branch**  
P.O. Box 1187  
Washburn, ND 58577  
701-462-8187

**Riverdale Branch**  
P.O. Box 564  
Riverdale, ND 58564  
701-654-7541

What does this bill do!!

It gives the banking industry the right to intervene in any future field of membership expansions. Every action that comes before the State Credit Union Board has the potential of being contested and tied up for months and maybe years with arguments, hearings and requests for unnecessary data.

Will the credit union industry also have the right to intervene in everything the banking industry is doing? Absolutely not!

This bill amounts to handcuffs on a few small credit unions. If they have a field of membership of fifty miles, are in a rural area and a small community is sixty-five miles away, they will have to first fight the banking industry to get a field of membership for seventy five miles and when they do they will only be able to serve residents an additional ten miles from that branch. If they have a seventy-five mile radius and decide they want to place a branch in a small community sixty-five miles away possibly because a bank has vacated the community, they will only be allowed to serve members an additional ten miles past that community.

Looking at 06-06-07 in its original format, it gives credit unions the right to conduct business in this state. One would question where the seventy-five miles came from in the first place. In 1988 Commissioner Gary Preszler and State Credit Union Board adopted a Field of Membership Policy which restricting credit unions to a seventy-five mile radius of the principal office and fifty miles of a branch office. This was a very strict interpretation of Section 06-06-07 of the century code. We have lived under these restrictions for 16 years and have managed. Contrary to bank trade association's contention, the State Credit Union Board has done a very good job through all these years of following these rules, and even though we do not like them, we abide by them.

The problem is that banks do not want credit unions conducting business in this state. I too would love to eliminate every form of competition so that I had a complete control.

The banks are trying to remove what few economic alternatives small rural credit unions have for survival. They do not realize they are forcing them to merge with the larger credit unions. They are also establishing a process of allowing intervention in credit union business by the banking industry. It is akin to letting the fox in the hen house. It is akin to allowing the rural electrics to regulate the private utilities or vice versa.

We need your help and protection. Please. I am asking you to give this the do not pass that it deserves.

Respectfully,

Denton Zubke, CEO