

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1154

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1154

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 13, 2009

Recorder Job Number: 6861

Committee Clerk Signature

*Allen Lettany*

**Chairman Keiser:** Opened the hearing on HB 1154 regarding definitions for the department of financial institutions.

**Bob Entringer~Assistant Commissioner, Department of Financial Institutions.** See attachment.

**Representative Boe:** The long and short of this, the only one who is going to use this is the Bank of North Dakota?

**Entringer:** It would provide that definition for the Bank of North Dakota, but we would use it internally. We would update so we can use the definitions.

**Representative Boe:** I guess if this adversely other banks, we will hear from them next.

**Chairman Keiser:** I have heart burn by this last little word "by rule". Why do it by rule?

**Entringer:** The reason I did it by rule, it's my understanding, if we tie it to federal law, it stays as of the date the bill is passed.

**Chairman Keiser:** I think you right unless you say "based on current federal regulations propagated by such & such". I would ask that you run it by the attorney general. The rules get out of control.

**Entringer:** You're right and we won't have problem with it.

**Chairman Keiser:** If that's our intent, just say it.

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House Industry, Business and Labor Committee

Bill/Resolution No. 1154

Hearing Date: January 13, 2009

**Entringer:** It would be easier.

**Jack McDonald~Independent Banks of North Dakota.** We do support HB 1164. It will put state chartered bank on the same footing as the national banks. He should check with the attorney general.

**Chairman Keiser:** You're right.

**Anyone here to testify in opposition of HB 1154? Neutral?**

**We will close the hearing on HB 1154.**

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1154

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

**Hearing Date:** January 19, 2009

**Recorder Job Number:** 7192 Starting at 19:25 on digital recording.

Committee Clerk Signature

*Ellen Helms*

**Chairman Keiser:** Opened the work session on HB 1154 regarding definitions for the Department of Financial Institutions.

Provided copies of the rewritten amendments. See attachment.

**Representative Boe:** Motions to accept the amendments.

**Representative Vigesaa:** Second.

All in favor all aye's.

**What are the wishes of the committee?**

Committee Roll Call with 13 yea's, 0 no's, 0 absent and Representative Boe is the carrier.

January 19, 2009

VR  
1/19/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1154

Page 1, line 6, replace "by the state banking" with "under title 12, Code of Federal Regulations,  
part 325, in effect on August 1, 2009."

Page 1, remove line 7

Renumber accordingly

Date: Jan 19 - 2009  
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1154

House House, Business & Labor Committee

☐ Check here for Conference Committee

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

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Vice Rep Kasper Seconded By Rep Ruby

| Representatives          | Yes | No | Representatives          | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Keiser          | x   |    | Representative Amerman   | x   |    |
| Vice Chairman            | x   |    | Representative Boe       | x   |    |
| Representative Clark     | x   |    | Representative Gruchalla | x   |    |
| Representative N Johnson | x   |    | Representative Schneider | x   |    |
| Representative Nottestad | x   |    | Representative Thorpe    | x   |    |
| Representative Ruby      | x   |    |                          |     |    |
| Representative Sukut     | x   |    |                          |     |    |
| Representative Vigesaa   | x   |    |                          |     |    |
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Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep Boe

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

**REPORT OF STANDING COMMITTEE**

**HB 1154: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1154 was placed  
on the Sixth order on the calendar.

Page 1, line 6, replace "by the state banking" with "under title 12, Code of Federal Regulations,  
part 325, in effect on August 1, 2009."

Page 1, remove line 7

Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1154



## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1154

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 16, 2009

Recorder Job Number: 9516

Committee Clerk Signature

*Eva Lebelt*

Minutes:

Bob Entringer, Assistant Commissioner, Department of Financial Institutions in support of Engrossed House Bill 1154. Written testimony attached.

Chairman Klein: You didn't have any definitions to go by and you just needed some sort of rules that you could lean toward as you referred to the three types of capital?

Bob: That's correct. Especially with that bill the Bank of North Dakota introduced. Used the term tier one capital and so we wanted to provide that definition in the statute.

Senator Andrist: Am I right in assuming that tier one, two and three are different measurements for determining the basic strength of the bank's financial statement. Each one is more difficult to reach?

Bob: Not necessarily more difficult to reach. There are ratios that we as regulators look at when we're measuring bank capital for example we will use a tier one leverage ratio. So we will only use the components of tier one capital to determine what that ratio is. But when we measure total risk based capital we use all three components. They aren't necessarily harder to achieve there are limits for example under the allowance for lease losses you can't use more than one and a quarter percent of your total risk based assets.

Senator Wanzek: With the entrepreneur loan guarantees did the bank say that they would only guarantee loans that equal five percent of the Bank of North Dakota tier one capital?

Bob: I believe that's how the bill is written. The reasoning as I understand it is they don't have come in every session and raise the limit it's tied to their tier one which will hopefully continue to grow.

Senator Wanzek: That would be that capital number times five percent is the limit that they would allow for loans out there that they are guaranteeing that are beginning entrepreneur loans. That has no reflection on some of these guarantee loans there is an originating bank.

Bob: It doesn't apply to the bank that is originating the loan the limit is strictly within the bank of North Dakota.

Chairman Klein: You aren't looking at gray area or tweaking this? This has been carefully laid out so all institutions know what these tiers are?

Bob: That's correct.

Senator Potter: How often does title twelve part three twenty five change?

Bob: When it does change we will have to come in and amend, change this bill so it ties to regulation.

Senator Horne: This is to help the Bank of North Dakota conduct its business in a more certain bases based on these Federal tier guidelines?

Bob: That was one of the primary reasons we introduced the legislation because of the Bank of North Dakota bill but it will help us too because these definitions apply to all of our state chartered banks.

Marilyn Foss, North Dakota Bankers Association: We support the bill.

Jack McDonald, Independent Community Banks: We also support the bill for the purposes stated earlier by Bob.

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Senate Industry, Business and Labor Committee  
Bill/Resolution No. 1154  
Hearing Date: February 16, 2009

Chairman Klein: We're going to close the hearing on House Bill 1154.

Senator Andrist: I will move a do pass.

Senator Potter: I will second.

Row Call Vote: Yes: 7 No:0 Absent:0

Floor Assignment: Senator Potter.

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Date: 2/16/09Roll Call Vote #: 1

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1154**

Senate

Committee

**Industry, Business and Labor**

☐ Check here for Conference Committee

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

Action Taken

**Pass****Do Not Pass****Amended**

 Motion Made By Senator Andrist Seconded By Senator Potter

| Senator                        | Yes | No | Senator                 | Yes | No |
|--------------------------------|-----|----|-------------------------|-----|----|
| Senator Jerry Klein - Chairman | ✓   |    | Senator Arthur H. Behm  | ✓   |    |
| Senator Terry Wanzek - V.Chair | ✓   |    | Senator Robert M. Horne | ✓   |    |
| Senator John M. Andrist        | ✓   |    | Senator Tracy Potter    | ✓   |    |
| Senator George Nodland         | ✓   |    |                         |     |    |
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 Total (Yes) 7 No 0

 Absent 0

 Floor Assignment Senator Potter

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

**REPORT OF STANDING COMMITTEE**

**HB 1154, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).** Engrossed HB 1154 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1154

1-13-2009

TESTIMONY FOR HOUSE BILL NO. 1154

House Industry, Business and Labor Committee

Testimony of Bob Entringer, Assistant Commissioner, Department of Financial Institutions in support of House Bill No. 1154

Chairman Keiser and members of the House Industry, Business and Labor Committee, my name is Bob Entringer, Assistant Commissioner for the North Dakota Department of Financial Institutions. I am here today to testify and urge your support in favor of House Bill No. 1154.

Mr. Chairman and members of the Committee, House Bill No. 1154 relates to a definition for the terms Tier 1, tier 2 and tier 3 capital. The reason for adding these definitions is the Bank of North Dakota has introduced a bill, Senate Bill 2100, which provides an aggregate limit for beginning entrepreneur loan guarantees by the Bank of North Dakota of up to 5% of the bank's Tier 1 Capital. Currently state law does not define Tier 1 Capital and rather than have the Bank of North Dakota provide a definition we thought it best to have the banking regulator introduce the legislation defining capital components.

We are proposing to define the terms using the same definitions used by our counterpart federal regulators; we prefer to define the terms through the administrative rule-making process so that we are able to alter the

definitions between legislative sessions should the federal regulators alter their definitions.

The following are the components of the 3 components of capital per federal regulations; I have asterisked the components that currently comprise our North Dakota banks capital accounts:

Tier 1:

- Common stockholders' equity;\*
- Noncumulative perpetual preferred stock and any related surplus;\*
- Minority interest in equity accounts of consolidated subsidiaries;
- Less: All intangible assets other than certain mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships;\*
- Less: Certain credit-enhancing interest only strips and nonfinancial equity investments required to be deducted from capital;
- Less: Certain deferred tax assets.\*

Tier 2:

- Allowance for loan and lease losses;\*
- Unrealized gains on certain equity securities;
- Cumulative perpetual and long-term preferred stock (original maturity of 20 years or more) and any related surplus;



- Auction rate and similar preferred stock (both cumulative and non-cumulative);
- Hybrid capital instruments (including mandatory convertible debt securities);
- Term subordinated debt and intermediate-term preferred stock (original weighted average maturity of five years or more).\*

Deductions from the Sum of Tier 1 and Tier 2 Capital:

- Investments in banking and finance subsidiaries that are not consolidated for regulatory capital purposes.
- Intentional, reciprocal cross-holdings of capital securities issued by banks.
- Other deductions (such as investment in other subsidiaries or joint ventures) as determined by supervisory authority.

Tier 3 Capital is defined in the FDIC Rules and Regulations as subordinated debt that is unsecured; is fully paid up; has an original maturity of at least two years; is not redeemable before maturity without prior approval by the FDIC; includes a lock-in clause precluding payment of either interest or principal (even at maturity) if the payment would cause the issuing bank's risk-based capital ratio to fall or remain below the minimum required under appendix A of this

part [Part 325 of the FDIC Rules and Regulations]; and does not contain and is not covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices. To date we have never seen Tier 3 Capital in our banks.

While the majority of the components are currently not used or included in the capital components of our North Dakota state charters, we do want to include those items in the definitions so if the need arises the items are already defined in administrative rule.

Mr. Chairman and members of the Committee, I'd be happy to answer any questions that you may have.

Thank you.

Any current or former officer, director, or employee suspended or removed from any position pursuant to this section is not eligible, while under suspension or removal, to occupy any position within a financial corporation or institution in North Dakota until the suspension or removal is terminated by the department of financial institutions or board.

PROPOSED AMENDMENTS TO HOUSE BILL 1154

Page 1, line 6, remove "by the state banking"

Page 1, line 7, replace "board by rule" with "under title 12, Code of Federal Regulations, part 325, in effect on August 1, 2009"

Renumber accordingly

2-16-2009

TESTIMONY FOR ENGROSSED HOUSE BILL NO. 1154

Senate Industry, Business and Labor Committee

Testimony of Bob Entringer, Assistant Commissioner, Department of Financial Institutions in support of Engrossed House Bill No. 1154

Chairman Klein and members of the Senate Industry, Business and Labor Committee, my name is Bob Entringer, Assistant Commissioner for the North Dakota Department of Financial Institutions. I am here today to testify and urge your support in favor of Engrossed House Bill No. 1154.

Mr. Chairman and members of the Committee, Engrossed House Bill No. 1154 relates to a definition for the terms Tier 1, tier 2 and tier 3 capital. The reason for adding these definitions is twofold; first, the Bank of North Dakota has introduced a bill, Senate Bill 2100, which provides an aggregate limit for beginning entrepreneur loan guarantees by the Bank of North Dakota of up to 5% of the bank's Tier 1 Capital. Currently state law does not define Tier 1 Capital so we felt it would be best to have the banking regulator introduce the legislation. Secondly, including these definitions will allow us to make future updates to our statutes and we will be using the same language as our federal counterparts.

The Engrossed bill defines the terms using title 12 of the Code of Federal Regulations and the following are the components of the 3 "tiers" of

capital per federal regulations; I have asterisked the components that currently comprise our North Dakota banks capital accounts:

Tier 1:

- Common stockholders' equity;\*
- Noncumulative perpetual preferred stock and any related surplus;\*
- Minority interest in equity accounts of consolidated subsidiaries;
- Less: All intangible assets other than certain mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships;\*
- Less: Certain credit-enhancing interest only strips and nonfinancial equity investments required to be deducted from capital;
- Less: Certain deferred tax assets.\*

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- Allowance for loan and lease losses;\*
- Unrealized gains on certain equity securities;
- Cumulative perpetual and long-term preferred stock (original maturity of 20 years or more) and any related surplus;
- Auction rate and similar preferred stock (both cumulative and non-cumulative);

- Hybrid capital instruments (including mandatory convertible debt securities);
- Term subordinated debt and intermediate-term preferred stock (original weighted average maturity of five years or more).\*

Deductions from the Sum of Tier 1 and Tier 2 Capital:

- Investments in banking and finance subsidiaries that are not consolidated for regulatory capital purposes.
- Intentional, reciprocal cross-holdings of capital securities issued by banks.
- Other deductions (such as investment in other subsidiaries or joint ventures) as determined by supervisory authority.

Tier 3 Capital is defined in the FDIC Rules and Regulations as subordinated debt that is unsecured; is fully paid up; has an original maturity of at least two years; is not redeemable before maturity without prior approval by the FDIC; includes a lock-in clause precluding payment of either interest or principal (even at maturity) if the payment would cause the issuing bank's risk-based capital ratio to fall or remain below the minimum required under appendix A of this part [Part 325 of the FDIC Rules and Regulations]; and does not contain and is not covered by any covenants, terms, or restrictions that

are inconsistent with safe and sound banking practices. To date we have never seen Tier 3 Capital in our banks.

Mr. Chairman and members of the Committee, I'd be happy to answer any questions that you may have.

Thank you.