

2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2096

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2096
1/10/2011
12668

Conference Committee

Committee Clerk Signature

Eva Lettett

Explanation or reason for introduction of bill/resolution:

Relating to capital definitions, bank powers to elect employees, bank powers as to real estate, removal of banks to new locations, and loan limitations.

Minutes:

1 attached testimony – Robert J. Entringer

Chairman Klein: Called the meeting back to order

Bob Entringer, Commissioner of the Department of Financial Institutions: Testimony Attached.

Chairman Klein: Asked if he thought people might open a bank in a smaller community just to be able to open one up later in a bigger community. Is that what we are trying to avoid?

Bob Entringer: They would have to do that under a different section of the statute. They would have to prove that there is a need in the bigger city for further banking business and that it wouldn't injure another branch and establish that branch and still be profitable or be able to absorb any losses without impacting capital.

Senator Murphy: Does this have anything to do with banks out of state or on the borders with other states?

Bob: Simply deals with North Dakota charters.

Senator Laffen: Is there any significant differences between a Branch and the main Bank?

Bob: For all practical purposes no, but typically the main office is where the bookkeeping is located. Generally that is where the President is located but a Branch can do anything the main bank can do.

Senator Schneider: General question about derivatives, what kind of action are we seeing in North Dakota? What form do they take and how much?

Bob: We don't have any banks engaging in derivative transactions. In order to keep are lending limit, we have to include that in our statute.

Senator Schneider: Is that a result of Wall Street reform?

Bob: Yes it is. (Continues going over testimony) States that there is an amendment handed out and asked for any questions.

Chairman Klein: The amendment again, Bob was to?

Bob: Changing the exchange of the interest in real property for an interest in a LLC, when the bank owns the real property. See testimony.
Chairman Klein: Everyone understand that?

Senator Nodland: On that section 5 where you are changing the legal lending limit to tier one capital, do you think that will be anything substantial to the banks in North Dakota?

Bob: We probably have ten to fifteen banks that have an intangible that is included in their tier one. Whether they are all including that, I would guess maybe half of them are. What we would do is notify them. The law would become in effect August 1 and we would notify them well in advance of that.

Senator Nodland: You feel this is just a good lending practice that is why you are recommending it?

Bob: Yes, because on good will it never has to be written down, it has to be tested annually.

Chairman Klein: Anyone else in favor?

Marilyn Foss, General Council, North Dakota Bankers Association: We do support the bill in that we think the changes for the LLC and other real estate owned is simplified. For our state chartered banks the change to the lending limit because of federal Dot/Frank act, we are very strongly supported of that and worked at the federal level to keep in federal law this alternative for state chartered banks to have a lending limit that is set by state law. We are also supportive of that change.

Chairman Klein: So you approve of the bill as amended?

Marilyn: We are neutral on some of it and parts of it we really like.

Chairman Klein: Anyone else in support? Anyone else in opposition to Senate Bill 2096? With that we are going to close the hearing on 2096.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2096
1/10/2011
12712

Conference Committee

Committee Clerk Signature *Eva Letoff*

Explanation or reason for introduction of bill/resolution:

Relating to capital definitions, bank powers to elect employees, bank powers as to real estate, removal of banks to new locations, and loan limitations.

Minutes:

No attachments

Chairman Klein: Called the meeting back to order. We are adding the word derivative into the USC language, which is a result of the Dot/Frank financial rewrite. All it does is clarify the language and removes some wording.

Senator Murphy: Make a motion to accept the proposed amendments to Senate Bill 2096.

Chairman Klein: There is a motion to the amendment on 2096 as proposed by the Department of Financial Institutions, is there a second.

Senator Laffen: Seconded the motion

Roll Call Vote Taken

Pass 7-0

Senator Murphy: Move to adopt Senate Bill 2096.

Chairman Klein: For a do pass on Senate Bill 2096 as amended, is there a second?

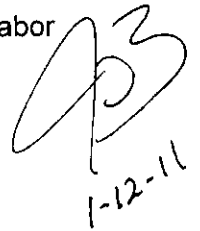
Senator Nodland: Seconded the motion

Roll Call Vote

Pass 7-0

Carry – Senator Nodland

January 12, 2011



Handwritten signature and date: 1-12-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2096

Page 4, line 7, remove "the commissioner may authorize"

Page 4, line 7, after "bank" insert "may apply to the commissioner for authority"

Page 4, line 9, remove ", subject to rules the state banking board may adopt"

Page 4, line 9, after the underscored period insert "If the commissioner's decision with respect to an application is unfavorable, the applicant bank may appeal the decision to the state banking board by filing a notice of appeal with the commissioner within twenty business days after the commissioner has notified the applicant bank of the decision."

Renumber accordingly

Date: 1/10/2011
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2096

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Murphy Seconded By Senator Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Nodland

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

REPORT OF STANDING COMMITTEE

SB 2096: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2096 was placed on the Sixth order on the calendar.

Page 4, line 7, remove "the commissioner may authorize"

Page 4, line 7, after "bank" insert "may apply to the commissioner for authority"

Page 4, line 9, remove ", subject to rules the state banking board may adopt"

Page 4, line 9, after the underscored period insert "If the commissioner's decision with respect to an application is unfavorable, the applicant bank may appeal the decision to the state banking board by filing a notice of appeal with the commissioner within twenty business days after the commissioner has notified the applicant bank of the decision."

Renumber accordingly

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2096

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2096
March 2, 2011
14859

Conference Committee

Committee Clerk Signature

Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Capital definitions, bank powers to elect employees, bank powers as to real estate, removal of banks to new locations and loan limitations.

Minutes:

Chairman Keiser: Opens the hearing on SB 2096.

Bob Entringer~Commissioner: (See attached testimony 1).

Representative Sukut: What is a derivative transaction?

Bob Entringer: I don't have a good example, an idea that I'm anticipating is a possible hedging transaction. We will know what it is when we see it.

Representative Boe: On page 4, lines 27-29, would they have the option of closing the other bank or would they leave it open?

Bob Entringer: They could close it but that would be in the application that that's what they are anticipating on doing. If they wanted to do that, they could apply and relocate to the other one.

Marilyn Foss~North Dakota Banker's Association: We do support the bill but we are not enthusiastic about the changes in capital and the lending limit.

Chairman Keiser: Can you count the derivatives as part of your capital?

Bob Entringer: If a borrower is using a derivative transaction and they are also borrowing money, what it requires is that derivative be included in their total liability.

Chairman Keiser: It becomes a liability rather than an asset?

Bob Entringer: Yes, for the borrower, so it's calculated against the bank's lending limit.

Chairman Keiser: Further questions? Anyone here to testify in support, in opposition, in neutral of SB 2096. Closes the hearing, what are the wishes of the committee?

Representative Ruby: Moves a Do Pass.

Representative Nathe: Second.

Chairman Keiser: Explains how derivatives got the country into a lot of trouble.

Representative Boe: The hedging is in the Ag industry.

Roll call was taken for a Do Pass on SB 2096 with 13 yeas, 0 nays, 1 absent and Representative Sukut is the carrier.

Date: March 2, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2096

House House Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Motion Made By Rep Ruby Seconded By Rep Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	Ab		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep Sukut

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

REPORT OF STANDING COMMITTEE

SB 2096, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2096 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2096



State of North Dakota

DEPARTMENT
of FINANCIAL
INSTITUTIONS

CSBS ACCREDITED 1993
NASCUS ACCREDITED 2000

MEMORANDUM

DATE: January 10, 2011
TO: Senate Industry, Business and Labor Committee
FROM: Robert J. Entringer, Commissioner
SUBJECT: Testimony in Support of Senate Bill No. 2096

Chairman Klein and members of the Senate Industry, Business and Labor Committee, thank you for the opportunity to testify in support of Senate Bill No. 2096.

Mr. Chairman and members of the Committee, Senate Bill No. 2096 relates to amendments primarily to Chapter 6-03 of the North Dakota Century Code relating to banks and banking.

Section 1 adds a definition of a derivative transaction on line 16, page 2, and defines a transaction as is defined in 12 USC 84b. I will discuss this definition later as it relates to amending the legal lending limit statute for banks. I would also point out that on page 3, line 12, we are amending the definition of Tier 1, 2, and 3 capital to the effective date of August 1, 2011.

Section 2 merely amends the powers Section of Chapter 6-03-02 of the North Dakota Century Code by eliminating the requirement of a Board of Directors to appoint a Cashier. We have found that this position title is somewhat antiquated and, in fact, most banks have a Chief Financial Officer instead of a Cashier. Therefore, we are proposing to eliminate this position.

As presently drafted Section 3 of Senate Bill No. 2096 would grants the Commissioner the authority to authorize a bank to exchange an interest in real property that it has acquired in satisfaction of a debt previously contracted for an interest in an entity it has created to dispose of the real property. We are finding in many cases when there are multiple banks involved in a credit it is easier to form an LLC and the banks involved in that credit exchange their interest in the property for an interest in the LLC. This enables one entity to transact the title to the property when it is ultimately sold. This makes it much easier and quicker to complete the transaction once a sale has occurred. We are however proposing to amend the language in the bill to remove the rulemaking authority and change it to an application process which the commissioner could approve. The amendment also gives the applicant the ability to appeal an adverse decision of the commissioner to the state banking board.

The amendment proposed in Section 4 clarifies that a bank may move its main office to any other location that is currently being operated as opposed to having to prove that there is not sufficient business at its present location for the profitable conduct of the bank which is found earlier in this section of the law. The statute would still require a bank which desires to relocate its main office to another location where it did not have an existing facility, to come before the State Banking Board and prove that there is not sufficient business for the profitable conduct of the bank in order to relocate the main office.

Section 5 amends the legal lending limit by tying it to Tier 1 capital which, as you recall, is defined under Section 6-01-02 of the North Dakota Century Code. This change eliminates a bank calculating its legal lending limit by including intangible assets such as goodwill for its legal lending limit. It has been the practice of the Department to advise banks to not include any intangible asset in the calculation of its legal lending limit and this amendment would clarify that. Further the amendment on lines 4 through 7 of page 5 include in the liability of a borrower any credit exposure arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or a securities borrowing transaction. This language was required to be included by

Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This language mirrors what is required to be included for national banks and, therefore, must be included in our legal lending limit; otherwise our legal lending limit would revert to the same as that in existence for a national bank.

Mr. Chairman, thank you for the opportunity to provide this testimony, and I would be happy to answer any questions the Committee may have.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2096

Page 4, line 7, replace "the commissioner may authorize a bank" with "a bank may apply to the commissioner for authority"

Page 4, line 9, remove ", subject to rules the state banking board may adopt" and after the period insert "If the commissioner's decision with respect to an application is unfavorable, the applicant bank may appeal the decision to the state banking board by filing a notice of appeal with the commissioner within twenty business days after the commissioner has notified the applicant bank of the decision."

Renumber accordingly

January 10, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2096

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Page 4, line 9, remove ", subject to rules the state banking board may adopt"

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Renumber accordingly



State of North Dakota

DEPARTMENT of FINANCIAL INSTITUTIONS

Testimony 1

Timothy J. Karsky
Commissioner

Robert J. Entringer
Assistant Commissioner

Douglas D. Grenz
Chief Examiner - Banks

Corey J. Krebs
Chief Examiner - Credit Unions

CSBS ACCREDITED 1993
NASCUS ACCREDITED 2000

MEMORANDUM

DATE: March 2, 2011
TO: House Industry, Business and Labor Committee
FROM: Robert J. Entringer, Commissioner
SUBJECT: Testimony in Support of Engrossed Senate Bill No. 2096

Chairman Keiser and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify in support of Engrossed Senate Bill No. 2096.

Mr. Chairman and members of the Committee, Engrossed Senate Bill No. 2096 relates to amendments primarily to Chapter 6-03 of the North Dakota Century Code relating to banks and banking.

Section 1 adds a definition of a derivative transaction on line 16 of page 2, and incorporating by reference the definition used in 12 USC 84(b)(3). I will discuss this definition later as it relates to amending the legal lending limit statute for banks. I would also point out that on page 3,

line 12, we are amending the definition of Tier 1, 2, and 3 capital to the effective date of August 1, 2011.

Section 2 merely amends the powers Section of Chapter 6-03-02 of the North Dakota Century Code by eliminating the requirement of a Board of Directors to appoint a Cashier. We have found that this position title is somewhat antiquated and, in fact, most banks have a Chief Financial Officer instead of a Cashier. Therefore, we are proposing to eliminate the requirement for this specific position.

As presently drafted, Section 3 of this Bill allows a bank to apply to the Commissioner for authority to exchange an interest in real property that it has acquired in satisfaction of a debt previously contracted, for an interest in an entity created specifically to dispose of the real property. We are finding in many cases when there are multiple banks involved in a credit it is easier to form an LLC and the banks involved in that credit exchange their interest in the property for an interest in the LLC. This enables one entity to transact the title to the property when it is ultimately sold. This makes it much easier and quicker to complete the transaction once a sale has occurred. This section also gives the applicant the ability to appeal an adverse decision of the commissioner to the state banking board.

The amendment proposed in Section 4 clarifies that a bank may apply to the State Banking Board for authority to move its main office to any other location that is currently being operated. This is in contrast to current law that would require a bank to prove that there is not sufficient business at its present location for the profitable conduct of the bank. The statute would still require a bank which desires to relocate its main office to another location where it did not have an existing facility, to come before the State Banking Board and prove that there is not sufficient business for the profitable conduct of the bank in order to relocate the main office.

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included by Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This language mirrors what is required to be included for national banks and, therefore, must be included in our legal lending limit; otherwise our legal lending limit would revert to the same as that in existence for a national bank.

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