2023 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1283

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1283
01/24/2023

Relating to fair access to financial products and services; and to provide a penalty.

Chairman Louser called to order 8:00 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey

Discussion Topics:

- Municipal Bonds
- Industry costs
- Environmental
- Carbon capture
- Global policies
- Charter banks
- Access to capital
- Strategies

In favor:
Representative Novak, District 33 prime bill sponsor with proposed amendment, #16826
Bette Grande CEO of Roughrider Policy Center, #16378, 16827
Jonathan Fortner, VP of Government Relations, ND Lignite Energy Council #15879

Opposed:
Lise Kruse, Commissioner, ND Department of Financial Institutions, #16386
Jon Godfread, Commissioner, ND Insurance Department with proposed amendment, #15668
Rick Clayburgh, ND Bankers Association, #15659
Jeff Olson, Dakota Credit Union Association (no written testimony)
Kelvin Hullet; Bank of North Dakota (no written testimony)

Additional written testimony:
Barry Haugen, Independent Community Banks of North Dakota, #15742

Chairman Louser adjourned the meeting 10:10 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1283
02/06/2023

Relating to fair access to financial products and services; and to provide a penalty.

Chairman Louser called to order 3:03 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey

Discussion Topics:

- Committee action

Representative Ostlie moved do not pass.
Representative Wagner seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	AB
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	N
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Motion passed 12-1-1.

Representative Warrey will carry the bill.

Chairman Louser adjourned the meeting 3:07 PM

Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1283: Industry, Business and Labor Committee (Rep. Louser, Chairman) recommends **DO NOT PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1283 was placed on the Eleventh order on the calendar.

TESTIMONY

HB 1283

North Dakota Bankers Association
Thursday, January 19, 2023

ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG): BANKERS' PERSPECTIVES

What Is ESG?

"ESG" is a concept which stands for "environmental, social, and governance." In very broad terms, it refers to considerations of sustainability-related risks and opportunities. It may include social considerations, such as equity, diversity and inclusion, as well as environmental factors such as the assessment and management of climate-related risks. Businesses in various industries have adopted ESG frameworks, driven in part by market expectations from customers, investors and employees.

How Did ESG Get Connected To Banking?

While the concept of ESG has been around for a while and is not limited to any particular type of business or industry, the "E" component has more recently been a hot topic in banking. This is due, in large part, to the Executive Order on Climate-Related Financial Risk, which was issued by the White House on May 20, 2021. The executive order indicates that it is the policy of the Biden Administration to advance disclosures of climate-related financial risk and mitigate such risk.

General Impact of Executive Order

Executive orders provide directives to executive agencies. In relevant part, the Executive Order on Climate-Related Financial Risk directs federal bank regulators to issue a report to the President on any efforts they are taking to integrate consideration of climate-related financial risk in their policies and programs. In other words, it directs the Federal Reserve, OCC, and FDIC to incorporate the consideration of climate-related risks when assessing banks' safety and soundness.

Response Of Federal Regulators

In response, the OCC, FDIC and Federal Reserve have all issued draft principles for banks with more than $100 billion in total consolidated assets. Just this week, the Federal Reserve Board launched its pilot climate scenario analysis exercise, which is being completed by the six largest U.S. Banks to gather information about climate risk management practices.

In other words, the largest U.S. banks will be the first to deal with climate related safety and soundness guidance in banking. They may challenge federal regulators during examinations or by engaging in litigation. We will be monitoring the federal regulators and responses from the big banks.

Are all Banks Required To Adopt Climate Related Risk Principals?

No. Right now, this is essentially the regulatory agenda of the current administration. There is no law or regulation requiring any bank to incorporate climate-related financial risks into their risk management frameworks. Additionally, the "principles" released by the federal regulators are inapplicable to North Dakota banks and need not be considered. Therefore, as of the present date, there is no law, rule, or regulation applicable to North Dakota banks regarding ESG.

Conclusion

North Dakota banks have always been and always will be supportive of North Dakota principles and industries. Our banks are comprised of generations of individuals and families raised in North Dakota. We are undeniably committed to the values and success of North Dakota, and are proud to serve the communities, individuals, and industries of the state. Our banks are, and have historically been, critical to the success of agriculture and every other industry in North Dakota.

The greatest risk to North Dakota Banks are the costs associated with regulatory compliance and litigation arising from these regulations, whether founded or unfounded.

Right now, there are no laws or regulations requiring North Dakota banks to incorporate ESG. North Dakota banks are not prohibited from doing business with certain individuals or industries, nor are they forced to do business with any particular individual or industry. We remain committed, as we have for generations, to the people, the principles, and the industries that make North Dakota strong.

HOUSE BILL NO. 1283

Presented by: **Jon Godfread, Insurance Commissioner**
North Dakota Insurance Department

Before: **House Industry, Business and Labor Committee**
Representative Louser, Chairman

Date: **January 24, 2023**

Good morning, Chairman Louser and members of the committee. My name is Jon Godfread, and I am the North Dakota Insurance Commissioner. I am here today in opposition to House Bill 1283.

As introduced, we have to oppose HB 1283 as it would place certain regulatory authority over the insurance industry in the Department of Financial Institutions rather than maintaining that authority with the Insurance Commissioner. Due to this, my team has worked with Rep. Novak to draft an amendment that would remove references to the insurance industry and Insurance Commissioner from Section 1 and create Section 2 of this bill, relating to the goal of prohibiting discrimination based solely on ESG and DE&I considerations in the insurance industry.

The only exception in the amendment is when environmental factors are applied as a part of sound underwriting and actuarial principles related to actual or reasonable anticipated loss experience. For example, someone wanting to insure a structure at the base of a cliff that is prone to landslides should expect to have that environmental risk factored into their underwriting and the insurance company could either set the premium accordingly or chose not to take on the risk at all.

If the amendment is adopted, I can support Section 2 of the bill. I have been an active participant at the national level in warning that the effect of ideological social policies espoused from boardrooms in New York, London, and Basel have a very real impact on this nation’s access to reliable energy sources.

Thank you, Chairman Louser. I am happy to answer any questions that you may have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1283

Page 1, line 1, after "6" insert "and subdivision e of subsection 7 of section 26.1-04-03"

Page 1, line 2, after "financial" insert "and insurance"

Page 1, line 9, after "union," insert "and"

Page 1, line 10, remove ", and any insurance company

Page 1, line 11, remove "registered and operating in this state under title 26.1"

Page 1, line 15, remove "provides insurance services,"

Page 2, line 6, remove "and the insurance"

Page 2, line 7, remove "commissioner"

Page 2, after line 23, insert:

"**SECTION 2.** Subdivision e of subsection 7 of section 26.1-04-03 of the North Dakota Century Code is created and enacted as follows:

e. Refusing to insure solely in consideration of the risk's environmental, social, and governance criteria; diversity, equity, and inclusion policies; or political and ideological factors, unless the refusal is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience."

Renumber accordingly

House Bill 1283

Presented by: Barry Haugen, President
Independent Community Banks of North Dakota ("ICBND")

Before: House Industry, Business and Labor Committee
Representative Scott Louser, Chairman

Date: January 24, 2023

Chairman Louser and members of the House Industry, Business and Labor Committee (Committee), my name is Barry Haugen, and I am President of the Independent Community Banks of North Dakota (ICBND). ICBND membership totals over 50 independent community banks throughout our state. ICBND opposes HB 1283 and requests a "Do Not Pass" recommendation from the Committee.

While we appreciate the bill sponsors' intent of guarantying financial services to all legal and viable enterprises, ICBND believes HB 1283 has significant unintended consequences for community banks in North Dakota, as well as for their individual and business customers.

Community banks are wholeheartedly in the business of doing business with industries that are critical to the economy of North Dakota. Our members do this every day through a relationship-based model. In addition, community banks are already subject to significant anti-discrimination laws including the Equal Credit Opportunity Act (ECOA) which applies to consumer and business lending activities. These laws are enforced by federal prudential regulators including the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of Currency (OCC) and the Federal Reserve Board (Fed).

Section 1 paragraph 1 of the bill includes some entities that are not under the purview of the Department of Financial Institutions of the State of North Dakota, including nationally chartered banks and thrift institutions, which immediately creates a problem. As a result, the legislation and its reporting requirements would unfairly apply only to state-chartered financial institutions.

Section 1 paragraph 2(a) would limit a community bank's decision to extend a financial product or service specifically to quantitative, impartial, risk-based financial standards. This flies in the face of the relationship-based model of community banking where decisions do not fit nicely into a defined decision matrix. Nor would we want them to. Lending decisions are often made based on the "character" of the borrower and that community bank's experience with the potential borrower or reputation of that potential borrower. Extensions of credit are often granted when these same "quantitative, impartial, risk-based financial standards" would not warrant extension of credit. And, at times, extension of credit is denied even though these aforementioned financial standards would have been met. Additionally, not every community bank has the expertise to effectively lend to every industry. For example, much of my personal history is in the fossil fuel pipeline and energy services business. Not every community bank would be comfortable lending to entities in this space not because of the industry, but because of their lack of lending expertise to that very unique industry.

Section 1 paragraph 3 further compromises the community banking model by requiring onerous and unnecessary reporting, at a minimum, for any decisions made upon "nonfinancial, nontraditional, and subjective measures". Who determines, and how do they determine, what defines "nontraditional" or "subjective" measures?

Section 1 paragraph 3(a) goes on to require disclosures be made not only to the Commissioner of financial institutions, but to the Insurance Commissioner. The Insurance Commissioner has no regulatory oversight authority over banking activities. This would require disclosure from the community bank to the two state agencies the "standards, guidelines, and criteria" used by the community bank to determine access to or denial of a financial product or service to a person in this state when that community bank used "standards or guidelines based on nonfinancial, nontraditional, and subjective measures".

So let's look at some real world anecdotal situations community banks deal with every day: One of our member banks regularly makes $100 or $200 loans to an elderly woman in its community, so she can afford her prescriptions. Her only income is social security. The bank does not charge her any loan fees and charges a reasonable interest rate. This loan is not a money maker and would be "high-risk" on paper. But the elderly customer pays her loans back time after time and the bank continues to make these loans because it's simply the right thing to do. This bill would require disclosure of this activity as it's certainly based on nontraditional and subjective underwriting. The need for disclosure may cause banks to shy away from making these "character" loans, which community banks make every day.

Many elderly and younger adults simply don't have credit scores. Our community banks extend credit to these situations every day because they know the individuals or the families. But under the requirements of Section 1 paragraph 3, disclosures would be required to the two agencies again. Again, we fear required disclosure would cause community banks to stop making these types of loans.

Countless farmers, ranchers and small business owners who don't qualify on paper for operating loans or to buy that new piece of equipment, especially when they are trying to get started, are extended credit not based on financial or traditional standards but based on a belief in their plan and the knowledge that their character is solid. They would likely not be afforded credit on some credit scoring matrix. This example too seems to require disclosure to the agencies.

I fully understand that reporting the above situations to the agencies is not the intent of the bill, but words matter and as written these would require disclosure by my interpretation. All of this additional disclosure obviously raises the costs to the Department of Financial Institutions, which will ultimately increase costs for community banks as the DFI is a special funds agency. The end-result of the proposed legislation may cause banks to reevaluate making the aforementioned loans based on the time, cost and complexity of reporting.

Finally, Section 1 paragraph 4 seeks to create a blacklist of community banks that have adopted standards or guidelines based on nonfinancial, nontraditional, and subjective measures on the DFI website. The community banks reflected in my anecdotal situations would find themselves on that list. I don't think this serves any constructive purpose.

Chairman Louser and members of the House Industry, Business and Labor Committee, ICBND opposes House Bill 1283 and requests the Committee give the bill a "Do Not Pass" recommendation. If the goal of the bill is to guarantee certain entities will continue to have access to credit, this bill misses the mark. Community banks are very much in favor of making loans to all entities that are legally permitted to do business, which includes those businesses in the fossil fuel energy and agriculture industries. In fact, our association and the greater national association we support are currently fighting for the right to continue to make the loans and to do so without the additional burden of assessing climate risk as part of the underwriting process.

Thank you for your time and attention.

Lignite Energy Council
LEADING THROUGH ADVOCACY AND INNOVATION

January 24, 2023

Chairman Louser and House Industry, Business and Labor Committee Members,

On behalf of the members of the Lignite Energy Council, I am submitting testimony today in support of House Bill 1283 due to the experiences that the lignite industry has had as it relates to the Environmental, Social and Corporate Governance (ESG) investment principles that are used by many large multinational financial institutions and insurance companies as guidance in their investment decision-making process.

Over the past five years, member companies of the Lignite Energy Council, which includes mining companies and electric generation facilities have experienced rate increases in the insurance products they use to protect their businesses in the range of 10 to 300%. These premium hikes have resulted in a significant increase in costs that did not exist a few years ago and do not appear to be tied solely to LEC member loss history.

With the rapid rise of insurance rates in the lignite industry, the added high costs are making lignite facilities less competitive in the marketplace. In part, these rates are increasing due to artificial pressures in the insurance and financial marketplace to exit fossil energy investments.

We applaud Representative Novak's efforts to engage in these important conversations and while we aren't experts in the details of banking legislation, we hope that stakeholders and the committee members can find common ground to help send a signal that the ESG discrimination will not continue against North Dakota's economic interests.

Thank you for your consideration,

Jonathan Fortner
Vice President of Government Relations

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701.258.7117 www.lignite.com LEC@lignite.com

Complaining about a problem without proposing a solution is called whining.
-Teddy Roosevelt

Roughrider POLICY CENTER

Bette B. Grande
President & CEO

Testimony before the House Industry, Business and Labor Committee
Regarding HB 1283
January 24, 2023

Chairman Louser and members of the House Industry, Business and Labor Committee:

My name is Bette Grande, I am the CEO of Roughrider Policy Center and Policy Director for the ProFamily Legislative Network, thank you for allowing me to testify on HB 1283.

You will probably hear today that HB 1283 is a 'solution looking for a problem'. You will hear that financial institutions in North Dakota are not using Environment, Social, and Governance methods or any form of social credit scoring.

If that is true HB 1283 requires nothing. It simply puts up a guardrail.

But, if financial service providers are fundamentally changing the way they do business the consumer should and must be notified, it is only fair.

The is no question that the ESG movement is spreading, just ask our lignite industry. In 2021 a representative of lignite testified that insurance premiums for coal companies were being raised without cause or incident. Large insurance companies are all in on ESG.

Last week in Davos at the annual meeting of the World Economic Forum the CEO of Bank of America spoke of new rules to reboot capitalism. And the European Union will finalize new ESG reporting rules that will trickle down the supply chain and impact North Dakota producers.

Reboot capitalism? We know what that means for our energy industry and production agriculture.

How much of this is happening in North Dakota? That is what HB 1283 will find out, it is a sunshine bill simply requiring disclosure to businesses and individuals in North Dakota.

This Bill does not dictate how a bank or insurance company operates or who they choose as a

customer, but it does require full disclosure of ESG or social credit criteria if a business implements those policies.

You will likely hear that HB1283 puts heavy regulations on independent banks, that is a scare tactic. If a bank continues to use traditional financial criteria with its customers, the Bill requires nothing. But if a bank chooses – or is forced to implement ESG criteria by its correspondent bank - it requires disclosure to consumers.

If it is no longer business as usual, consumers need to know. A small price to pay for transparency.

I am also provided supplemental Testimony with links to source material if you want to get a better handle on the ESG movement.

With that I am happy to answer any questions you may have.

For Liberty,

Bette Grande

Bette Grande is CEO of Roughrider Policy Center, North Dakota's Policy Think Tank, and

Policy Director for WallBuilders ProFamily Legislative Network

NORTH Dakota | Financial Institutions
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MEMORANDUM

DATE: January 24, 2023

TO: House Industry, Business and Labor Committee

FROM: Lise Kruse, Commissioner

SUBJECT: Testimony in Opposition of House Bill No. 1283

Chairman Louser and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify on House Bill No. 1283.

House Bill No. 1283 is related to fair access to financial products and services. Although the department is opposed to House Bill No. 1283, we understand the frustration and concern that this Bill is trying to address. The Bill is seeking to prevent discrimination by financial institutions based on political ideology. The department agrees that discrimination of any kind is

unacceptable, and that fair and equal access to financial services is of utmost importance.

Our department strives to be a regulatory agency with common sense. We want to take a balanced approached between making sure institutions are safe and sound and consumers are protected, and being business friendly. I believe we proved that last legislative session when we removed red tape and modernized our statute to ensure our financial institutions can operate without unnecessary regulatory burdens while at the same time not sacrificing the safety and soundness of our institutions. It is also evident since 92% of banks and 59% of credit unions headquartered in North Dakota have elected to be state-chartered. As I have testified before this Committee before, and as I am sharing in most of my testimonies this session, I am working very hard to prevent federal preemption.

It appears this Bill in particular is trying to stop unreasonable demands related to ESG, or environmental, social, and governance criteria. In North Dakota, of specific concern would be anything that limits our energy and agricultural industries. In the last few years on a national basis there has been a notion from certain segments wanting financial regulators like myself to make institutions restrict lending to certain industries that are not climate friendly. I disagree with that concept. First, I believe it infringes on a private business' right to choose who they do business with. Second, our examiners, who would be tasked with enforcing these restrictions, have finance and accounting backgrounds, they are not environmental scientists. Lastly, we need to focus on our main objective, to ensure the safety and soundness of our institutions, and leave political issues to you, our legislators and congressional delegates.

To date, federal bank and credit union regulators are not mandating any particular ESG policies for our institutions (SEC is not a bank regulator). Although, we expect institutions to have adequate risk management policies in place, I believe the institutions in North Dakota are well equipped to serve their customer base while balancing risk, and do not need any additional government intervention to ensure financial services are available to citizens. Our institutions have served their communities through droughts, floods, hailstorms, and tornadoes, and they have always shown up through the tough times, even operating out of a cash box when the electricity is out and systems are down. Climate challenges are something our institutions have always lived with, and they are familiar with how to mitigate those risks.

I am not aware of our department receiving any complaints from a citizen or a company in North Dakota, against any of the institutions we oversee related to ESG. It does not seem to be a problem with our local institutions. We are aware of some large national banks that have adopted ESG-related policies, which appears to be the intended target of this bill. Unfortunately, due to the federal government's preemption of state law, these large national banks would not be subject to this law. These additional regulations and the costs associated with them will be primarily felt by the local financial institutions who are not the group creating these ESG policies.

This Bill seems to make the government mandate that private businesses engage in specific financial transactions and force our local banks and credit unions to make loans they are not equipped for or have the expertise to manage, which cause a higher risk to the overall financial system. Our non-bank companies, most are not headquartered in North Dakota, operate across the nation and are subject to various states' laws and regulations. With the punitive nature of this Bill, and due to our small

population compared to the 38 million and 22 million population numbers in CA and NY, it is likely the national companies will refrain from doing business in North Dakota. The unintended consequence of this Bill is that it would make fewer financial services available to North Dakota citizens.

Overall, the language of this Bill is vague, which makes it difficult to enforce. Looking at Section 1 subsection 1, it is introducing a new definition of "financial institution." Although it states it is specific to this chapter, it causes confusion due to the definition of financial institution in 6-01-02, which appears in statute over 700 times. As mentioned earlier, a national bank will not need to follow any of the mandates set forth in this Bill due to the federal government's position that federal banking laws preempt state law. In line 10 it refers to "nondepository service provider," and I am not certain what that would be referring to. Is it a financial service provider such as payday lenders? Are other entities under the department's oversight included, such as collection agencies? Or is it a technology service provider so it is including supporting industries? Also, in line 15, financial institutions are now including insurance companies and anyone providing investment services. That means that our department will now regulate industries in conjunction with the Insurance Commissioner and the Securities Commissioner. Making industries operating in North Dakota subject to several financial regulators is adding red tape and bureaucracy, which seems incredibly inefficient.

Subsections 2.b and 2.c seem unclear, and I am uncertain how to enforce those sections. What does "financial interest" in line 24 mean? 2.c seems to be an incomplete sentence, but I am not sure what it intends to say for us to fix it.

Subsection 3, lines 2 and 3 appears to say that an institution cannot say no to a loan based on non-financial criteria. Banks and credit unions use

numerous criteria when they review a loan, and some of these are non-financial. Lenders will typically use something we refer to as the 5 Cs of credit when underwriting a loan (or 5 Ps, which are essentially the same). These have been in place for a long time, and some of these are non-financial. The 5 Cs are character (credit history, faithfulness in meeting financial obligations), capacity (repayment ability), capital (down payment ability), collateral (securing a loan), and conditions (length of time at employment, industry experience, future job stability, loan purpose). As you can see, the ones based on character and condition include non-financial standards. Also, does this Bill remove an institution's ability to refuse to do business with certain industries? Our financial institutions operate in various communities and have various levels of expertise and specializations. We have some institutions lacking expertise in hotel loans for example, and will likely decline lending to hotels. It does not mean that they dislike hotels or are discriminating. They lack the required expertise, and even capital, to manage such a loan. The same is true for energy-related loans. This bill seemingly makes it illegal to say no to a transaction simply because it is not a product or service the bank is capable of offering.

Subsection 3 a. requires institutions to report if they have ESG-related policies, which is then included on a published list. Section 2 of this bill made it illegal to have ESG related policies. Section 3 a. seems to be telling companies to essentially admit guilt, self-report the violation of section 2, which is then published. That is unusual in any regulatory framework I am familiar with.

Subsection 4 requires the department to publish a list of institutions that have "adopted standards or guidelines based on nonfinancial, nontraditional, and subjective measures." As explained earlier, lenders have

always used nonfinancial standards, so one can assume that every lender will be included on this list. If the bill is amended to be specific to any ESG policy, the list may not include every local company; however, one can assume many institutions may choose to have such a policy, especially if they operate outside of North Dakota. For our non-banks, it is especially likely that large public companies may have such policies if they need to appease investors. These policies could be internally focused, ensuring a diverse corporate board of directors for example, or they could be externally focused, dictating the business activity they are involved in. Enforcement of this bill could be problematic since the definitions of ESG are not standardized to know what type of policies are included.

Subsection 4 and the penalties section are where our fiscal note comes in. This will require an increase to our budget, and since we are a special funds agency, with the only source of revenue being assessments, licensing fees, and examination fees, we need to adjust what we charge to the industries. Historically, we have focused on safety and soundness and do not have a compliance team in our agency to examine for ESG policy or ESG loan denials. That changes with this Bill, and our exams will need to be expanded, both in team members and hours, to ensure compliance with this statute. Our department would need to hire additional FTEs – both for website maintenance and upkeep, and also for enforcement. We have oversight of over 7,000 entities, and adding estimates from the insurance and securities departments, we are looking at 12,195 entities. We would need to find out which company has a policy, what does that policy state, and has there been any denials. Therefore, we need to look at initial setup as well as ongoing oversight, and we tried to take a conservative approach in this estimate. To obtain the information from over 12,000 entities, and if

we assume 50% needs to be listed on our website, we are estimating a cost of $172,734 for initial set up. For the ongoing oversight and enforcement and assuming a standard exam cycle of once every 5 years, the estimated ongoing cost would be about $1.5 million. That is a 16% increase over our current budget.

To cover this additional cost, and since our fees are in statute, we will be requesting amendments to our nonbank statutes if this goes forward. It could be that our revenues would decrease due to companies no longer desiring a license in North Dakota, so we need to plan for that possibility, and we are trying to figure out what the correct amount could be for the increase. For sure, the assessments of our local banks and credit unions will need to go up. I am not aware of any other way to pay for this. We also need to establish a framework for reimbursement from the insurance and securities industries.

While well intentioned, this bill is subjecting companies to a blacklist and subjecting them to a punitive enforcement regulator. That may result in fewer financial services available. Since this statute will not apply to national banks, and the state assessments would increase, it could cause a charter switch. The bank could opt into the federal banking framework instead of the state banking framework, especially when the state government would add additional regulatory burden on our institutions which are not required by the federal government. I believe this bill will not have the effect of what we are trying to accomplish in North Dakota, and we need to make sure financial services are available to all our citizens. Creating a government blacklist of local financial institutions could shake the public's confidence in their financial institutions and cause a bank-run, which is what banking regulators should protect against. A bank failure is devastating for our

communities, and any North Dakota citizen with money deposited in excess of the insured limit could lose their money. We need to prevent that from happening.

Finally, North Dakota legislators have always recognized the necessity of keeping consumer financial transactions private, as evidenced in North Dakota's strong privacy laws in Chapter 6-08.1 covering disclosure of customer information. Similarly, disclosure of examination information by our department can cause undue harm on citizens as well as undermine trust in our financial institutions and the safety of our financial system. North Dakota Century Code 6-01-07.1 prohibits the department from sharing examinations and reports provided by financial institutions. This Bill, if passed, would cause a conflict with the two statutes, and I hope this committee will honor our citizens' and private businesses' right to financial privacy.

I will close by again saying I do appreciate the intention of this bill. This department has a long history of fighting federal preemption and pushing back against regulatory overreach such as ESG-related mandates. We understand the importance of all legal businesses to our economy. However, we don't see that this bill will be applicable to those companies discriminating against North Dakota businesses. Due to the many unintended consequences of this Bill, the Department respectfully opposes House Bill No. 1283.

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

23.0600.02002
Title.

Prepared by the Legislative Council staff for
Representative Novak
January 23, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1283

Page 1, line 1, after "6" insert ", a new subsection to section 6-06-07, and a new subdivision to subsection 7 of section 26.1-04-03"

Page 1, line 2, after "services" insert "and unfair discrimination in insurance business"

Page 1, line 7, replace ""financial institution"" with ""environmental, social, and governance""

Page 1, line 7, remove "any state bank, national bank,"

Page 1, remove lines 8 through 14

Page 1, line 15, replace "party payments, provides insurance services, or provides investment services" with "an investment strategy to encourage organizations to act responsibly based on the organization's environmental footprint, stance on social issues, and internal corporate governance"

Page 2, line 17, replace "**Penalties**" with "**Penalty**"

Page 2, line 20, remove "A financial institution that violates subsection 1 is guilty of a class B misdemeanor for"

Page 2, remove line 21

Page 2, line 22, remove "3."

Page 2, after line 23, insert:

"**SECTION 2.** A new subsection to section 6-06-07 of the North Dakota Century Code is created and enacted as follows:

A credit union may not deny membership, a loan, or services to a person that meets the scope and field of membership for that credit union based solely on subjective measures such as environmental, social, and governance criteria, diversity, equity, and inclusion policies, or political and ideological factors without providing notice to the person of the measures and criteria or factors used in making that determination.

SECTION 3. A new subdivision to subsection 7 of section 26.1-04-03 of the North Dakota Century Code is created and enacted as follows:

Refusing to insure solely in consideration of the risks relating to environmental, social, and governance criteria, diversity, equity, and inclusion policies, or political and ideological factors, unless the result of the application is of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience."

Renumber accordingly

Complaining about a problem without proposing a solution is called whining.
-Teddy Roosevelt

Roughrider POLICY CENTER

Bette B. Grande
President & CEO

Testimony before the House Industry, Business and Labor Committee
Regarding HB 1283
January 24, 2023

Chairman Louser and members of the House Industry, Business and Labor Committee:

My name is Bette Grande, I am the CEO of Roughrider Policy Center and Policy Director for the ProFamily Legislative Network, thank you for allowing me to testify on HB 1283.

You will probably hear today that HB 1283 is a 'solution looking for a problem'. You will hear that financial institutions in North Dakota are not using Environment, Social, and Governance methods or any form of social credit scoring.

If that is true HB 1283 requires nothing. It simply puts up a guardrail.

But, if financial service providers are fundamentally changing the way they do business the consumer should and must be notified, it is only fair.

The is no question that the ESG movement is spreading, just ask our lignite industry. In 2021 a representative of lignite testified that insurance premiums for coal companies were being raised without cause or incident. Large insurance companies are all in on ESG.

Last week in Davos at the annual meeting of the World Economic Forum the CEO of Bank of America spoke of new rules to reboot capitalism. And the European Union will finalize new ESG reporting rules that will trickle down the supply chain and impact North Dakota producers.

Reboot capitalism? We know what that means for our energy industry and production agriculture.

How much of this is happening in North Dakota? That is what HB 1283 will find out, it is a sunshine bill simply requiring disclosure to businesses and individuals in North Dakota.

This Bill does not dictate how a bank or insurance company operates or who they choose as a

customer, but it does require full disclosure of ESG or social credit criteria if a business implements those policies.

You will likely hear that HB1283 puts heavy regulations on independent banks, that is a scare tactic. If a bank continues to use traditional financial criteria with its customers, the Bill requires nothing. But if a bank chooses – or is forced to implement ESG criteria by its correspondent bank - it requires disclosure to consumers.

If it is no longer business as usual, consumers need to know. A small price to pay for transparency.

I am also provided supplemental Testimony with links to source material if you want to get a better handle on the ESG movement.

With that I am happy to answer any questions you may have.

For Liberty,

Bette Grande

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