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Yubereca d. Lee
Operator's Signature

10-16-03
Date

2003 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2129

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10-16-03
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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2129

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 01-08-03

Tape Number	Side A	Side B	Meter #
1	x		2165-3190
Committee Clerk Signature <i>Luzalan Beckom</i>			

Minutes: Senator Mutch opened the hearing on SB 2129. All senators were present.

Testimony in support of SB 2129

The bill is sponsored by the Department of Financial Institutions. Tim Karsky, the Commissioner for the Department of Financial Institutions, introduced the bill.

He stated that SB 2129 proposes to remove the current limitation banks are subject to for the payment of dividends. See attached testimony.

Marilyn Foss of the ND Bankers Assoc. spoke in support of the bill.

Joel Gilbertson spoke on behalf of the Independent Community Banks of ND.

There was no opposing testimony. The hearing was closed.

Sen. Espgaard moved DO PASS. Sen. Every seconded.

Roll call vote: 7 yes. 0 no. 0 absent

Carrier: Sen. Espgaard

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10-16-03
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REPORT OF STANDING COMMITTEE (410)
January 8, 2003 11:00 a.m.

Module No: SR-02-0352
Carrier: Espegard
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2129: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends
DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2129 was placed
on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-02-0352

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10-16-03
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2003 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2129

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10-16-03
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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2129

House Industry, Business and Labor Committee

Conference Committee

Hearing Date February 26, 2003

Tape Number	Side A	Side B	Meter #
2		x	20.8-30.0

Committee Clerk Signature *Judith Hammer*

Minutes: **Chairman Kelsner** opened the hearing on SB 2129.

Bob Entringer, Ass't Commissioner for the Dept. of Financial Institutions, introduced SB 2129 and offered favorable support. (See attached). There is an emergency clause on this bill.

Rep. Boe: Are they still going to pay quarterly dividends?

Entringer: They can pay dividends as often as they want to as long as they are compliant with the other sections of the statute. Under current law, they couldn't do that, they had to declare a dividend in April, so that they had enough money to take care of both quarterly estimates.

Chairman Kelsner: Because of the federal timetable, in the second quarter, there occurs a situation where some state chartered banks who have certain organization structures, they are inadvertently paying two dividends in one quarter. But it's a timing issue and that would have put them in violation of the current law.

Rep. Kasper: How does a bank do that? Two in one quarter?

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10-16-03
Date

Page 2
House Industry, Business and Labor Committee
Bill/Resolution Number SB 2129
Hearing Date February 26, 2003

Entringer: Two federal tax estimates are due, there's no way for most individual shareholders to pay a quarterly estimate in April. In June, the 2nd quarterly estimate is due. It's in the second quarter that this can happen.

Marilyn Foss, General Counsel for the North Dakota Bankers Association, appeared to offer oral testimony in support of SB 2129. This exemplifies agency efforts to get out of micro managing business without affecting safety and soundness of their institutions. This does not allow banks to pay more dividends in a year than they can pay currently. It simply allows them flexibility.

Joel Gilbertson, Legal Counsel for Independent Community Banks of North Dakota, appeared to offer favorable support for SB 2129.

As there was no one else present to testify in support or in opposition to SB 2129, the hearing was closed.

Rep. Boe moved a **Do Pass**.

Rep. Dosch seconded the motion.

The results of the roll call vote were **12-0-2**.

Rep. Boe will carry this on the floor.

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10-16-03
Date

Date: 2/26/03
 Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 5129

House Industry, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Boe Seconded By Dosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Rep. Boe	✓	
Rep. Severson, Vice-Chair	✓		Rep. Ekstrom	✓	
Rep. Dosch	✓		Rep. Thorpe	✓	
Rep. Froseth			Rep. Zaiser		
Rep. Johnson	✓				
Rep. Kasper	✓				
Rep. Klein	✓				
Rep. Nottlestad	✓				
Rep. Ruby	✓				
Rep. Tieman	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Boe

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

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Yubereca J. Lee 10-16-03
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REPORT OF STANDING COMMITTEE (410)
February 27, 2003 1:47 p.m.

Module No: HR-35-3617
Carrier: Boe
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2129: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends
DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2129 was placed
on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-35-3617

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Y. Herrera d. Loo
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10-16-03
Date

2003 TESTIMONY

SB 2129

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10-16-03
Date

Senate Bill No. 2129

Good Morning Chairman Mutch and members of the Senate Industry, Business and Labor Committee, my name is Tim Karsky and I am the Commissioner for the Department of Financial Institutions. I am here to urge your support for Senate Bill No. 2129.

Senate Bill No. 2129 proposes to remove the current limitation banks are subject to for the payment of dividends. Currently banks are limited to the payment of dividends to no more frequently than quarterly. In the past this has not been a problem for most banks because the most common need for dividends was to service debt of the bank holding company. Typically the payments were not due more frequently than quarterly but may have been scheduled annually or semi-annually.

The Small Business Protection Act of 1996, enacted on August 20, 1996, amended Subchapter S of the Internal Revenue Code to allow banks, savings associations, and their parent holding companies to elect Subchapter S corporation status for federal income purposes beginning in 1997 if they meet certain eligibility criteria. As I am sure most of you know this means the income of the corporation is taxed at the individual's personal tax rate and the bank's that elected this tax status needed to dividend monies to the shareholders for quarterly tax payments or estimates. This is where the

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problem occurred. The federal tax payment dates are January 15, April 15, June 15, and September 15. The problem with the current law occurred during the second quarter when two tax payments or estimates were due because it is our interpretation the current law only allows one dividend per quarter. During examinations the Department's examiners have cited several violations of this law because many banks weren't aware they could not declare two dividends in one quarter. In order to have sufficient funds available for the shareholders to pay their tax estimates on April 15 and June 15, bank management had to declare a dividend large enough to take care of both estimates. This proposed amendment would remove this prohibition and resolve the problem for banks which elect or have elected Subchapter S corporation status.

As you will note in the statute, the dividends are still subject to the limitations of the chapter and so if the dividends exceed the combined net profits as defined under section 6-03-36, North Dakota Century Code, approval of the commissioner or state banking board must be sought.

Mr. Chairman, thank you for the opportunity to provide testimony on this bill and I would urge favorable consideration by the committee. If the members of the committee have any questions I would be happy to try to answer them.

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10-16-03
Date

2-26-03

Senate Bill No. 2129

Good Morning Chairman Keiser and members of the House Industry, Business and Labor Committee, my name is Bob Entringer and I am the Assistant Commissioner for the Department of Financial Institutions. I am here to urge your support for Senate Bill No. 2129.

Senate Bill No. 2129 proposes to remove the current limitation banks are subject to for the payment of dividends. Currently banks are limited to the payment of dividends to no more frequently than quarterly. In the past this has not been a problem for most banks because the most common need for dividends was to service debt of the bank holding company. Typically the payments were not due more frequently than quarterly but may have been scheduled annually or semi-annually.

The Small Business Protection Act of 1996, enacted on August 20, 1996, amended Subchapter S of the Internal Revenue Code to allow banks, savings associations, and their parent holding companies to elect Subchapter S corporation status for federal income purposes beginning in 1997 if they meet certain eligibility criteria. As I am sure most of you know this means the income of the corporation is taxed at the individual's personal tax rate and the bank's that elected this tax status needed to dividend monies to the shareholders for quarterly tax payments or estimates. This is where the problem occurred. The federal tax payment dates are January 15, April 15, June 15, and September 15. The problem with the current law occurred during the second quarter when two

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tax payments or estimates were due because it is our interpretation the current law only allows one dividend per quarter. During examinations the Department's examiners have cited several violations of this law because many banks weren't aware they could not declare two dividends in one quarter. In order to have sufficient funds available for the shareholders to pay their tax estimates on April 15 and June 15, bank management had to declare a dividend large enough to take care of both estimates. This proposed amendment would remove this prohibition and resolve the problem for the 44 state-chartered banks which have elected Subchapter S corporation status as well as banks which may elect Subchapter S status in the future.

As you will note in the statute, the dividends are still subject to the limitations of the chapter and so if the dividends exceed the combined net profits as defined under section 6-03-36, North Dakota Century Code, approval of the commissioner or state banking board must be sought.

Mr. Chairman, thank you for the opportunity to provide testimony on this bill and I would urge favorable consideration by the committee. If the members of the committee have any questions I would be happy to try to answer them.