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MEMORANDUM

DATE: January 8, 2025

TO: Senate Industry and Business Committee

FROM: Lise Kruse, Commissioner

SUBJECT: Testimony in Support of Senate Bill No. 2028

Chairman Barta and members of the Senate Industry and Business Committee, thank you for the opportunity to testify in support of Senate Bill No. 2028.

Mr. Chairman and members of the Committee, Senate Bill No. 2028 will amend sections of chapter 6-01 affecting the Department of Financial Institutions. In the 2023 session, legislators decided to study the possibility of having our department subject to continuing appropriation, due to the fact that the department is completely funded by private industry, and no taxpayer funds. It will also save legislator time during session. I am in favor of testing this structure. I believe it can be helpful for North Dakota, allowing our department to be more responsive in executing our legislative mandates, and meeting our industries' needs.

The department's appropriation will be determined by the state banking and state credit union boards in a joint meeting, with the commissioner providing regular reports to the legislature. I will share a PowerPoint presentation with you, which is what I presented to the Government Finance Committee.

Slide 2 is an overview of our department; we oversee banks, credit unions, trust companies, and numerous non-depositories (non-bank) licensees such as mortgage lenders, collection agencies, money transmitters, and payday lenders. There are three cost centers that each has a portion of our budget: Banks are at 70%, while credit unions and the non-depositories are at 15% each.

Our purpose and mission are to instill public confidence in the financial system – that customer deposits are invested in a safe and sound manner. Banks and credit unions are vital to the local community, which is why we all share the same goal: to keep banks and credit unions healthy and strong so they can best serve their customers and members.

Slide 3 shows what the regulatory landscape looks like in the United States. We are the state regulatory body – and we have counterparts on the

Federal level. In the U.S. we have a dual banking-system, where banks can choose to charter with the federal government – the OCC for banks and NCUA for credit unions – or the state. In ND over 90% of banks have chosen state oversight. A majority of credit unions are also state-chartered. They have chosen to be state-charted because they trust our department's ability to right-size regulation, our willingness to push back against problematic policy from Washington, and they appreciate the expertise of our local examiners.

We partner with the federal side – and work closely with the FDIC, Federal Reserve Bank of Minneapolis, and the NCUA. The strength of the dual banking system is that the federal government is there in joint oversight with us, the local presence, to provide local knowledge. That is what helps us fight for tailored regulation, where we don't apply a 'one-size fits all'. A $100 billion bank in NY city is way different than a $30 million bank in ND.

One of the challenges we have is if our department lacks resources to hold our own, the federal government will fill the gaps. What every bank and credit union can testify to, is that if our department is unable to fulfill exam mandates, for example if we lack IT expertise, the federal agency has to come in and examine the institution. That is problematic since we lose the local expertise – and especially if we have federal examiners unfamiliar with agriculture and our local economy. I also believe it is wrong to outsource our authority to the federal government.

Although we have excellent working relationships locally with our FDIC and Federal Reserve counterparts, when we look at Washington it gets more political and not so much in favor of states' rights. Having a strong North Dakota regulator is important to make sure we prevent federal pre-emption.

For our non-depositories, there is no federal regulator – other than a federal consumer enforcement agency (CFPB). CFPB is a rather new federal consumer protection agency set up under the Obama administration. I view them as ones that fill the holes where we don’t have jurisdiction. One of the biggest challenges that has intensified in the last few years, is to prevent federal government overreach. CFPB in the past few years has repeatedly been accused of authority overreach and is facing several lawsuits as a result. Their view of business and policy does not appear to align with our legislative values in ND – and it is important that we retain local oversight over the financial industry.

Due to these realities and the pressures we are facing to hold our own locally, I believe it is perfect timing to look at a continuing appropriations process for our department, which will make our agency more nimble and responsive.

Slide 4 gives an overview of our funding. The department is completely special funds, with no taxpayer funding. We collect assessments, which are fees on the industry. The State Banking Board sets the assessments for the bank cost center, the State Credit Union Board sets it for the credit union cost center, and the non-depository fees are set in statute by legislature. Our federal counterparts are set up similarly; however, they do not go through Congress for appropriations. This bill creates a similar structure for the department appropriations with an important difference, the additional oversight structure from the industry boards.

Slide 5 shows the structure of our department as stated in NDCC 6-01-01. Our department, and also my position as commissioner, are unique since the department is not just overseen by the commissioner – but is under the supervision of the state banking board, state credit union board, along with the commissioner. The State Banking Board was established in 1905, so it has been this way for 120 years.

Slide 6 outlines more detail on the structure. The commissioner is a cabinet position, appointed by the Governor. However, the legislative body also has a say in who holds this job since a Senate confirmation is required. The term is for four years. The State Banking Board and State Credit Union Board members are appointed by the governor. As detailed on Slides 7 and

8, each board has one public member, the rest of the members must be experienced industry executives. That means that everything I do, including our budget, is scrutinized by bank and credit union professionals. Therefore, we have significant accountability built in to make sure we manage our resources properly and responsibly, and also that we do our duties. If this bill passes and we are granted continuing appropriations, it is important to still have oversight, accountability, and a good process in place.

Slide 9 lists comparable agencies that have continuing appropriations. The federal regulators are structured this way and two other state banking departments: Oklahoma and Texas. I have had numerous conversations about the structure with the commissioners in Texas and Oklahoma – and they both state that it is working well, and they have had no issues. Texas and Oklahoma have similar economies to ours with agriculture and oil, and they also have some of the strongest banking departments in the nation. They have long-serving commissioners who have stepped up to lead other states when needed, they hold their own with their federal counterparts, and their departments also have good relationships with the industries they oversee.

We conducted a survey of those two departments to see what the differences were – which are presented on the next slides. To summarize, Oklahoma has a state banking board, which approves the budget and spending, and FTEs are approved by their OMB. The Texas department is overseen by the Finance Commission of Texas, whose members are both industry representative and from the general public. The budget and FTEs go to this commission for approval. In addition, the Texas commissioner has told me that he does extensive reporting to both the commission and to the overall legislature. He has stated that transparency with the legislature is essential. The legislature can take this structure away at any time, so they need to stay informed to ensure it is functioning well.

Slide 16 talks about controls. For this to be successful, there needs to be strong safeguards and controls in place. We need to have a framework of accountability to the boards and the legislature, which can be done by a good reporting structure, which is outlined in the bill. This way the legislature will still be informed and have control.

There are some natural guardrails in place if the boards approve our budget and spending – both against excessive spending, and also to protect against underfunding where we are unable to meet our legislative obligations. The approval comes from business executives with every incentive to keep costs down since it is their money we are spending. Since our institutions have an option to be a federal charter, we must also remain competitive to be the charter of choice. The boards also know what it takes to get the work done, and they know the disadvantages if they have a weak state regulator. If we are not properly funded, they know they will have to deal more with the federal government. The industry appreciates having our department well-staffed with knowledgeable examiners who understand our local economy. The boards also have an incentive to make sure the non-depository side is funded so that we have proper oversight over the non-banks, since those are the banks' and credit unions' competition, and they do not want these entities to be unregulated.

Slide 17, from my perspective, is why this is a good bill: It reduces your time where processes are already monitored. Our budget and spending are reviewed every other month by financial professionals and our proposed budget is reviewed prior to it being submitted for your approval. It will enhance the department's ability to be more responsive to changing economic and industry trends. We can react quickly when needed – especially in a crisis, such as bank failures. With legislative session only every other year, it is difficult for us to plan and react timely when conditions change – and it challenges us in protecting our citizens. This reduces the risk of federal preemption or us outsourcing our authority to the federal government. Flexibility with oversight results in a strong and accountable department, capable of pushing back against federal efforts to preempt. It also improves North Dakota's ability to influence emerging national issues. As an example, since Texas has had this in place for a while, they have had the ability to build staff in areas of need, such as IT and cybersecurity. They are a leader in this field. Some of the larger coastal states always appear to have plenty of resources and have a significant impact on national issues. But it is important that midwestern states also have the flexibility to step up to prevent only a few coastal states having the ability to dictate national issues that affect our local community institutions. We think this bill helps do this, as comparable structures have in Texas and Oklahoma, while building in important oversight and controls.

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

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WHO WE REGULATE

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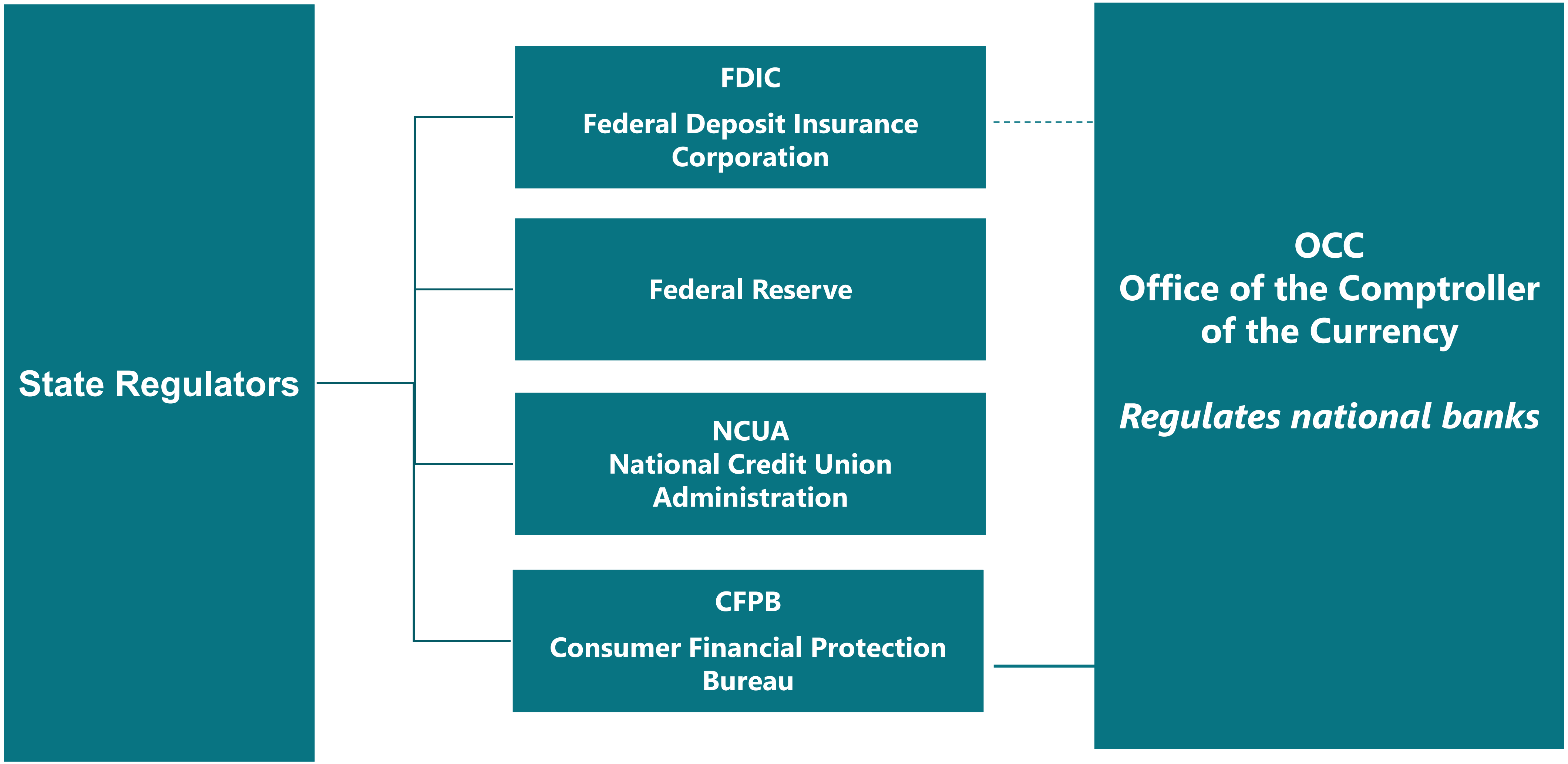
- **DFI**
  - Banks (58)
  - Trust Companies (4)
  - Credit Unions (16)
  - Money Brokers (423)
    Money Transmitters (183)
    Collection Agencies (613)
    Pay Day Lenders (25)
    Debt Settlement (3)
    Mortgage Loan Originators (3,983)

3 Cost Centers:

Banks/Trust Companies: 70% of budget
Credit Unions: 15% of budget
Non-depositories: 15% of budget

FINANCIAL REGULATIONS



FUNDING

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- Special Funds – no taxpayer funds
- Assessments – fees on the industry
  - Set by the State Banking Board for bank cost center
  - Set by the State Credit Union Board for credit union cost center
  - Set by legislature in statute for non-depository cost center

Federal regulators are set up similarly; however, they do not go through Congress for appropriations

STRUCTURE

North Dakota Century Code

6-01-01. Management and control - State department of financial institutions - Local ordinances preempted.

The state department of financial institutions is <u>under the supervision of the state banking board, state credit union board, and a chief officer designated as the commissioner of financial institutions</u>. The state department of financial institutions has charge of the execution of all laws relating to state banks, trust companies, credit unions, building and loan associations, mutual investment corporations, mutual savings corporations, banking institutions, and other financial corporations, exclusive of the Bank of North Dakota. A local governing body may not adopt or enforce a resolution or an ordinance regulating a financial institution, financial corporation, or credit union.

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STRUCTURE

- Commissioner appointed by Governor, confirmed by Senate
- Six State Banking Board members appointed by Governor
  - Five members experienced bank executives
  - One member public at large
- Four State Credit Union Board members appointed by Governor
  - Three members experienced credit union executives
  - One member public at large
- Commissioner serves as Chair of the boards

STRUCTURE

North Dakota Century Code

6-01-03. State banking board and state credit union board.

1. The state banking board consists of the commissioner and six members to be appointed by the governor, four of whom must each have had at least five years' experience in an executive capacity in the management of a state bank in the state of North Dakota, one of whom must have at least five years' experience in an executive capacity in the management of any state or national bank in North Dakota, and one of whom must be a laymember from the public at large. The term of office of the members of the board, other than the commissioner, is for a period of five years. In case of a vacancy in the board, by death, resignation, or removal of an appointed member, the vacancy must be filled by appointment by the governor for the unexpired term. The commissioner is the chairperson of the board and the attorney general is, ex officio, the attorney for the board. The assistant commissioner shall serve as its secretary.

STRUCTURE

North Dakota Century Code

6-01-03. State banking board and state credit union board.

2. The state credit union board consists of the commissioner and four members to be appointed by the governor. Two of the members of the state credit union board must have at least five years' experience as an officer, director, or committee member of a North Dakota state-chartered credit union, one member of the board must have had at least five years' experience as an officer, director, or committee member of a state-chartered or a federally chartered credit union, and one member of the board must be a laymember from the public at large. The term of office of appointed board members is five years. In case of a vacancy in the board, by death, resignation, or removal of an appointed member, the governor shall appoint an individual to fill the vacancy for the unexpired term. The commissioner chairs the board and the attorney general is, ex officio, the attorney for the board. The assistant commissioner shall serve as its secretary.

COMPARABLE AGENCIES

- Federal Regulators
- Oklahoma
  - State Banking Board/OMB
- Texas
  - Finance Commission of Texas

Question	North Dakota	Oklahoma	Texas
Size of Agency	35 FTEs - $5.6 million **annual** budget	40 FTEs - $7.8 million annual budget	220 FTEs - $30 million annual budget
Regulated Industries	Banks, credit unions, trust companies, money transmitters, mortgage lenders and servicers, money brokers, payday lenders, collection agencies, debt settlement providers	Banks, credit unions, trust companies, money transmitters, money order companies	Banks, trust companies, money transmitters, cemetery & prepaid funeral businesses
Years of alternative appropriations method	Not applicable	Since 2003 (Banking Department Revolving Fund (oscn.net))	Self-Directed, Semi-Independent (SDSI) agency since 2009 (Texas Finance Code Chapter 16)
Who approves budget	Legislature	State's budget office	Policymaking Body – Finance Commission of Texas (Texas Finance Code §16.003)
Who approves FTEs	Legislature	The state legislature authorizes up to 46 FTEs. Title 74 Okla. Stat. § 3601.1.B	Policymaking Body – Finance Commission of Texas as part of budgeting process

Question	North Dakota	Oklahoma	Texas
Who approves revenue source or amount used to offset expenditures	Self-funded from industry assessments set by the State Banking and State Credit Union Boards. Non-bank fees by legislature. NDCC 6-01-17 and NDCC 13	The agency is "self-funded" from industry assessments. The assessment rate is set by the State Banking Board each year. Title 6 Okla. Stat. § 211.A	The agency with oversight of the Policymaking Body – Finance Commission of Texas (Texas Finance Code §16.003).
Who serves on the Board, what is their background, and how are they selected	State Banking Board: 7 members State Credit Union Board: 5 members Appointed by Governor. Commissioner is chair and is confirmed by the Senate. Assistant Commissioner serves as non-voting secretary. One member of each board is from the general public. Four of the State Banking Board and three of the State Credit Union Board members must have experience in an executive capacity in management of a state bank/state credit union for at least five years; one member must have experience in an executive capacity in management of a state bank/credit union or a national bank/credit union for at least five years. The term of office of each Board member other than Commissioner is 6 years. NDCC 6-01-03	State Banking Board: 7 members State Credit Union Board: 5 member Appointed by the Governor with the advice and consent of the Senate. Commissioner is chair and is confirmed by the senate. One member is from the general public, must be a citizen of OK, 35 years or older. Five of the board members must be active officers of state banks or trust companies. (Same structure for credit union board). Provided, appointments to the Board (other than the Commissioner and lay member) shall only be made of individuals whose names are included in a list of twelve names submitted to the Governor by the Executive Committee of the Oklahoma Association of State Banks, a division of the Oklahoma Bankers Association. The term of office of each Board member other than Commissioner is 6 years. Title 6 Okla. Stat. § 202. 2	The Finance Commission of Texas (Finance Commission) originated in 1943, is not a state agency, but an oversight body of Texas citizens: 11 members Appointed by Governor, subject to Senate confirmation. The Commission is to include two banking executives, one savings executive, one consumer credit executive, one residential mortgage loan originator and six public members, one of whom must be a certified public accountant. Not more than two members may be residents of the same state senatorial district. (Texas Finance Code Chapter 11) Members serve overlapping, 6-year terms.

Question	North Dakota	Oklahoma	Texas
What other types of decisions does the Board make?	The law gives the Board powers to approve certain applications, hear appeals, conduct public hearings, assess civil penalties, clarify law through order or rule, and to set department assessment levels.	The Banking Board makes decisions on (i) bank and trust company charters (Title 6 Okla. Stat. § 310); (ii) mergers of state-chartered banks and trust companies (Title 6 Okla. Stat. § 1103); (iii) closing/liquidating a bank (Title 6 Okla. Stat. § 1202); (iv) adoption of rules governing banks and trust companies (Title 6 Okla. Stat. § 203); and (v) appeals from decisions of the Banking Commissioner (Title 6 Okla. Stat. § 203)	The Finance Commission appoints, monitors, and evaluates the performance of the banking commissioner, savings and mortgage lending commissioner, and consumer credit commissioner. The Finance Commission is responsible for implementing policies through its rulemaking authority carried out in accordance with the Administrative Procedures Act, Texas Government Code, Chapter 2001.
What type of information does the Board get from the Agency?	The Boards receive information regarding applications, the Department budget, status of examinations, strategic plans, and other updates from the Department.	The Banking Board has access to all records of the Banking Department. During each meeting of the Board, it is provided an update regarding the Department's budget, status of examinations, and a list of applications submitted by banks and trust companies.	Meeting information and a detailed packet is provided to members and the public on the Finance Commission's website prior to scheduled meeting date. The Finance Commission regularly receives an update on: the overall condition of the state's depository financial industry; state of the industries regulated by each of the Agencies; legislation that may affect an Agency or a regulated industry; internal and external audits performed along with discussion of outstanding audit issues; the Texas Financial Education Endowment Fund activities; Agencies' operations, including divisional memorandums that document and discuss examination activities, application and licensing activities, legal activities, staffing, consumer complaint activities; and recaps or minutes of advisory committee meetings. The Agencies also provide financial statements with budget comparisons, performance measure data and investment officer reports quarterly. The Agencies annually present a budget proposal and semi-annually the accomplishment reports.

Question	North Dakota	Oklahoma	Texas
How often does the agency meet with the Board?	The State Banking Board meets once every other month, with special meetings called if necessary. The State Credit Union Board meets once each quarter, with special meetings called if necessary.	The Banking Board is required to meet at least two times per year. However, pursuant to the Oklahoma Open Meetings Act, it schedules a regular meeting each month and will cancel a meeting if there is no application to be heard. On average, the Board meets approximately four times per year.	Texas Finance Code §11.106 requires that the Finance Commission meet at least six times a year.
How often does the agency report to the legislature?	Bi-annually	Annually	Bi-annually – during this period the agency provides testimony to various committees. Numerous discussions with individual legislators are held as needed or if any questions arise, whether during the session or in the interim.

Question	North Dakota	Oklahoma	Texas
What types of reports are provided?	To be determined	The agency provides an annual report to the Governor that lists various details about the institutions under supervision (banks, trust companies, credit unions, and money service businesses). The Banking Department also provides information to the Legislature in the form of a Budget Request, Budget Work Program, and other ad-hoc reports as requested	Texas Finance Code §16.005 prescribes the reports and recipients. Before the beginning of each regular session of the legislature, the agency submits to the legislature and the governor a report describing all of the agency's activities in the previous biennium. (1) an audit (which is also provided to the Office of the State Auditor); (2) a financial report of the previous fiscal year, including reports on financial condition and results of operations; (3) a description of all changes in fees imposed on regulated industries; (4) a report on changes in the regulatory jurisdiction of the agency, including the number of chartered financial institutions, license holders, and registrants subject to the agency's jurisdiction and any changes in those figures; and (5) a list of all new rules adopted or repealed. Not later than November 1 of each year, the agency is required to submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and the Legislative Budget Board a report that contains: (1) the salary for all financial regulatory agency personnel and the total amount of per diem expenses and travel expenses paid for all agency employees; (2) the total amount of per diem expenses and travel expenses paid for each member of the agency's policy-making body, provided that only one report must be submitted regarding the Finance Commission of Texas; (3) the agency's operating plan and annual budget; and (4) a detailed report of all revenue received and all expenses incurred by the financial regulatory agency in the previous 12 months.

Question	North Dakota	Oklahoma	Texas
Do the same rules of procurement, information technology, etc. apply to the agency as to other state agencies?	Yes	Yes	Yes – The Department must follow the same procurement standards held for all Texas state agencies.
Do FTEs have the same benefits as other state employees?	Yes	Yes	Yes – Employees are members of the Employees Retirement System of Texas.
What advantages and disadvantages have you observed for your agency using this alternative appropriations method?	To be determined	The primary advantage is control over the agency's own budget. This allows the agency to set salaries that are competitive with the federal bank regulatory agencies and to retain seasoned employees who are often pursued by financial institutions because of their bank regulatory expertise. Additionally, when the Department can retain an experienced workforce, it operates much more efficiently. Because of the efficiencies, it has been able to lower the assessments paid by banks and credit unions. So, while the staff is well compensated, the industry actually pays less for supervision. Disadvantages: We have experienced no disadvantages by being a self-funded agency.	The SDSI status has been instrumental over the past years in supporting the agency's efforts to fulfill its mission. Being a SDSI agency, the Department can respond effectively and timely to the changing dynamics in our economy and our regulated industries. This includes the ability to adjust budgets to implement immediate changes in staffing strategies as well as adjust salaries to retain, train, and attract qualified personnel, and strive for more competitive salary levels with the federal regulators.
What advantages and disadvantages would you say the legislative body has seen in using this alternative appropriations method?	To be determined	Advantages: Because of the efficiencies of state-bank supervision, during the past 30 years, 65 nationally-chartered banks have converted to an Oklahoma state charter. During that time, the financial institution assets under the supervision of the state has grown from less than $9 billion to almost $100 billion. Disadvantages: None have been brought to our attention.	It appears that in meetings with legislators that they appear satisfied with the process. The Department acknowledges that the SDSI status is a privilege and carries with it responsibilities that if not carried out properly, can result in losing this status.

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CONTROLS

- Accountability
- Reporting
- Incentive to keep costs down to remain competitive with Federal charter
- Incentive to keep a strong agency to prevent Federal involvement

WHY

Reasons for considering continuing appropriation:

- Reduce legislative time where process is otherwise monitored
- Enhance DFI response to changing economic and industry trends
- Reduce risk of federal preemption
- Improve ND's ability to influence emerging national issues

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