

2013 HOUSE INDUSTRY, BUSINESS, AND LABOR

HB 1085

2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1085
January 15, 2013
Job 17198

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Definition for a financial corporation; to authorize lease financing of public facilities

Minutes:

Attachments 1, 2

0:00 to 0:50 Question from Chairman Keiser to Bob Entringer regarding HB 1084 fiscal note

0:51 Opened hearing on HB 1085

Bob Entringer, Director of North Dakota Department of Financial Institutions: Support HB 1085. Refer to attached testimony 1.

Chairman Keiser: Questions?

12:42 **Representative Kasper:** Section 18 on the lease financing of public facilities. Can you explain why we need to expand the opportunities for banks to go into the lease back arrangements?

Bob Entringer: The issue was one of parity. A national bank could do this, and so we had a state-chartered bank that wanted to engage in that type of activity and had had a request to do that. So we authorized it under banking board's parity order, and rather than just leaving it in that order, we decided we should codify that.

Representative Kasper: So it's to make the state banks equal in ability with national banks?

Bob Entringer: Exactly.

13:30 **Representative Sukut:** In that same section, do you know if a school district would be able to engage in a lease contract with the simple action of just the school board or if they would have to go through establishing a building authority in order to participate in this lease?

Bob Entringer: I do not know; I would have to look at the public financing authority.

14:13 **Representative Sukut:** In reading the bill, can you give me an example of a financial corporation?

Bob Entringer: It covers every other entity that we license: collection agencies, payday lenders, money transmitters, debt settlement service providers, and money brokers (audio unclear 14:42)

14:53 **Representative Frantsvog:** In your testimony regarding Section 13 which addresses appraisal requirements. (Read from written testimony provided by Bob Entringer.) As you may know, financial institutions have a real problem in getting appraisals. Is there anything in here that can ease that requirement? You make some comments "if required by the federal Financial Reform, Recovery, and Enforcement Act of 1989." Is there any way we can change those requirements to make it easier for a financial institution to get an appraisal? What I'm looking for is something to ease the restrictions on the banks. They are holding up loans. The whole process is getting bogged down waiting for these appraisals.

16:28 **Bob Entringer:** Unfortunately the answer is no. The federal law is pretty specific. I could remove the reference to the federal law, but it would still apply. If the federal law requires them to get a certified appraisal, they have to get it. What we have done in instances where a bank has ordered an appraisal and we come in and do an examination, review the file, and there is no appraisal in the file, we will cite the violation of the law, but we are not going to do anything about it because they are trying to get the appraisal. We are well aware of the problems banks face getting appraisals. I have talked to bankers who have waited nine months to get a certified appraisal. Changing this section does not eliminate the federal requirements.

Chairman Keiser: To follow up on Representative Frantsvog's question, in Subsection 2, where you don't have to meet the requirements of Subsection 1, then bank must obtain an appropriate evaluation. What is that?

17:50 **Bob Entringer:** It can be done in-house as long as that person is qualified to appraise that type of property and is not involved in the lending process or voting on that particular credit. So they can do them in-house if it's not required under the federal law.

Chairman Keiser: What does qualified in-house mean?

Bob Entringer: Essentially, they have done appraisals for years. Bankers have done this for years. If it's a very complex type of property, that's a whole different ball game. If it's a home or a business within their community and they're familiar with values of buildings and that type of thing, they can do those appraisals.

18:34 **Representative Frantsvog:** To follow up on Chairman Keiser's comments, so if you go into a financial institution and you see this process that the Chairman discussed and you don't see the appraisal in there, is that satisfactory to your review?

Bob Entringer: If there is no appraisal and one would be required, it would not be satisfactory. But if it is not required under federal law a certified appraisal and someone within the bank does the appraisal, we're okay with that as long as it seems appropriate.

19:20 **Chairman Keiser:** Questions? I have a couple. To clarify, you are already collecting the money and then you are transferring it to the treasurer just to have the treasurer transfer it back to you on civil penalties. (Bob Entringer confirmed.) So we were just eliminating that redundancy?

Bob Entringer: What happened last session is the treasurer's office changed some language where we collect our assessments from our banks and our credit unions. They used to be mailed directly to the state treasurer, and then if there was a discrepancy, they had to check with us. So we cleaned that process up and felt we may as well clean the rest of it up. That's the process we've been following. The money comes to us; we have to deposit it in the fund with the state treasurer.

Chairman Keiser: And the state treasurer will still have at least the requirement to have oversight and to make sure the funds are being accounted for properly?

Bob Entringer: That is correct.

22:33 **Chairman Keiser:** I can't speak for the other committee members, but there is no question that on Section 18, we need to get clarification that we are not creating an opportunity to circumvent local control. I don't care if national banks can do it. We should be referencing some other section of the code that says this can only be done subject to meeting the requirements found for public input on bond issues, etcetera. The schools take 60% right now. This could be the ultimate loophole if we pass it without making some reference. We need to look into something there. I will ask Representative Boschee to work with you to make sure we have that right. Questions?

Support:

21:54 **Rick Clayburgh, president and CEO of the North Dakota Bankers' Association:** We did meet with and work with the Department of Financial Institutions. We have no objection, and we support the legislation.

22:15 **Jack McDonald, on behalf of the Independent Community Banks of North Dakota:** Our board also met with Bob Entringer and his aids, and we have no objections to the bill and we support it.

22:35 **Steve Halvorson, Heartland Trust Company in Fargo:** My interest here is in 6-08-27. With my Fargo location, I would like to move into Minnesota and have a physical location, but I think that has been prohibited until this language. I have not had input to this language, but I am willing to live with this and will assume that the language should work for us should an opportunity arise for us to go into another state.

23:28 **Jeff Olson, Credit Union Association of the Dakotas:** We have no opposition to the bill as well.

Opposition:

Chairman Keiser: Read into the record an e-mail from Kelly Schmidt, state treasurer, in support of the bill. Attachment 2

Hearing closed.

Chairman Keiser: We will get to work on some of these questions as quickly as possible. We will bring this bill back up.

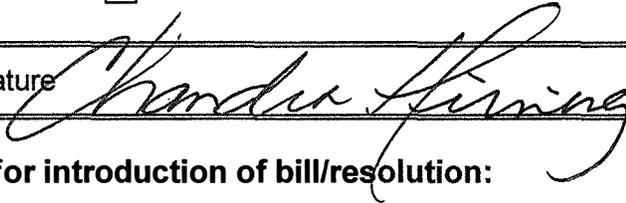
2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1085
January 16, 2013
Job 17309

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Definition for a financial corporation; to authorize lease financing of public facilities

Minutes:

Attachment 1

Committee called back into session.

Chairman Keiser: This is a working session. We bring back bills on which still need decisions.

1:20 **Representative Boschee:** Provided overview on HB 1085 and reviewed previous discussion. Some of the big questions we had regarded page 11, starting with line 17. There was a question on whether or not this new amendment allows state banks to work with municipalities, school buildings, and other groups to finance projects for the community. There was a concern that that may circumvent the public authority or whatever local authority there is to new buildings in a community. We proposed an amendment (attachment 1) in working with the Department of Financial Institutions. Reviewed proposed amendment. After having talked to legislative management and our code reviser, he had a few questions. But at the will of the committee, if we feel that that this amendment would reduce the ability for this new amendment to circumvent local control as part of the building of public facilities.

3:10 **Chairman Keiser:** Any reaction from the committee on this language?

Representative Kasper: The way I understand building authority, the building authority in the city of Fargo has authority under law and does not go away unless the school board itself disbands it. Therefore, I do not see that this amendment solves the concern that a number of have that you could circumvent building public buildings by using a building authority. I think the issue is still there because it does have the authority under law to enter into such a lease. I have concern that this does not accomplish what my concern would be.

4:16 **Representative Amerman:** Representative Kasper, the building authority in your school district in Fargo, if they want to build a building they can, is that the one where you don't go to the public for a vote and so on? Is that unique to Fargo?

Representative Kasper: No, that is not unique to Fargo. There are, I think, 29 building authorities in North Dakota. There could be more created. The political entity could create a building authority. It is an anomaly under I think Section 63-02 or 63-20 of the federal statute.

Representative M. Nelson: Gives background to situation in Fargo surrounding the approval of a mill levy.

Chairman Keiser: I think we need to keep this section as it is written. This section simply is trying to create a level playing field allowing state-chartered banks to exercise the same authority that a federally-chartered bank has. I believe in equity and allowing state-chartered banks to do this. What I do think we need, though, is to place in here a reference to the right section of code that says if you use this format or if the funding is coming from a federally-chartered banks, it does require 60% majority vote of the people, or along those lines. I think we are trying to amend this, and that is not the write strategy. We need this to create the level playing field. Then we need to get something that says that you can use these tools, if the people approve it. That's just my feeling. I need you to see if there isn't a way that...it might be an entirely different bill because it's really getting into public construction, not banking. This is the banking section of the bill. We could reference back to this.

7:59 **Rick Clayburgh, North Dakota Bankers Association:** We are talking about a couple different issues here. Specifically, the statute allows the bank to have ownership in the lease, but there is no restriction on the bank loaning money to a local authority or private equity people doing that. We are just talking about a specific issue about a bank's involvement in ownership in leasing a building to (audio unclear) public entity. This is one part of a bigger picture.

Chairman Keiser: What do you think, committee members?

Representative Kreun: Are you suggesting that Representative Boschee reword this?

Chairman Keiser: Leave this in, and then reference a different section. It may have to go in a different section of the code. We can put it in this bill, and it can reference the tax law or the public building construction or school bonding or whatever. There has to be a way that we do not inadvertently create a loophole for schools to use.

2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1085
January 28, 2013
Job 17790

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Definition for a financial corporation; to authorize lease financing of public facilities

Minutes:

Attachment

Chairman Keiser: Provided review of HB 1085. The question which came up was on page 11 about leasing and financing of public facilities. They were trying to create a level playing field with federally chartered banks.

1:30 **Representative Boschee:** Presented proposed amendment, 13.8014.01002. This proposed amendment is to tighten up a potential loophole. Read amendment.

Representative Boschee **moves to adopt amendment** 13.8014.01002. Representative Gruchalla **seconded**.

Representative Sukut: Are we opening the door for a school district either to proceed with facilities by bonding or to borrow the money directly from a bank? They still have to do it with a vote of the people?

Representative Boschee: This is providing another opportunity for financing but still requiring approval by the electorate.

Chairman Keiser: Currently, federally-chartered banks can do this. We cannot control that. We are allowing state-chartered banks to do what federally-chartered banks can do. Where we can control it is to add this language to state that it can be done but must meet all the current requirements a political subdivision has relative to bonding and construction.

Representative Kreun: It's another tool in the toolbox without changing any of the requirements.

Chairman Keiser: Without this amendment, I think a school could enter into an agreement because they are not committing any dollars directly. They would be signing the lease, making payments, and circumventing what we have done as a statute.

Voice vote on the motion to adopt the amendment. All in favor.

Chairman Keiser: The amendments are on the bill. We have HB 1085 as amended before us. What are the wishes of the community?

Representative Gruchalla: Did we pass the emergency clause on this, or did we want to?

Chairman Keiser: It's not in the bill. I do not remember that discussion discussion. What would be the rationale to pass an emergency clause? The department did not request it, to my knowledge. A reason to have one would be the amendment we just adopted to preclude a political subdivision from entering into this agreement prior to August 1.

Representative Kreun: I think if an emergency clause might be moot. If you have to go through the process of gaining public approval, it would take more than August to get that done.

Chairman Keiser: Without the emergency clause, that amendment does not take effect until August 1. Between now and August 1, you could circumvent it.

Representative Ruby: Would you put the emergency clause just on that section?

Motion to do pass HB 1085 as amended: Motion made by Representative Boschee and seconded Representative Vigesaa.

Roll call vote:

Yes: 11

No: 0

Absent: 4

Carrier: Representative Boschee

1/28/13
JMC

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1085

Page 11, after line 23, insert

"A governing body of a political subdivision may not enter an agreement with a federally chartered financial institution or state-chartered bank for lease of any property or structure to be used by the political subdivision unless the agreement has been approved by a vote of at least sixty percent of the qualified electors of the political subdivision voting on the question if the agreement is for acquisition, improvements, or construction of any property or structure for which an election would be required if the municipality undertook the acquisition or construction project through issuance of bonds of the municipality. The governing body of a city or county may not supersede this section under home rule authority."

Renumber accordingly

Date: 1-28-2013

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1085**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

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

Motion Made By Boschee Seconded By Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser			Rep. Bill Amerman		
Vice Chairman Gary Sukut			Rep. Joshua Boschee		
Rep. Thomas Beadle			Rep. Edmund Gruchalla		
Rep. Rick Becker			Rep. Marvin Nelson		
Rep. Robert Frantsvog					
Rep. Nancy Johnson					
Rep. Jim Kasper					
Rep. Curtiss Kreun					
Rep. Scott Louser					
Rep. Dan Ruby					
Rep. Don Vigesaa					

Voice

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

Page 11 after line 23 13-8014.01002

Date: 1-28-2013

Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1085**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number 13-8014.01002

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

Motion Made By Boschee Seconded By Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson		ab
Rep. Robert Frantsvog		ab			
Rep. Nancy Johnson	✓				
Rep. Jim Kasper		ab			
Rep. Curtiss Kreun	✓				
Rep. Scott Louser		ab			
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 11 No 0

Absent 4

Floor Assignment Boschee

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

REPORT OF STANDING COMMITTEE

HB 1085: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). HB 1085 was placed on the Sixth order on the calendar.

Page 11, after line 23, insert

"A governing body of a political subdivision may not enter an agreement with a federally chartered financial institution or state-chartered bank for lease of any property or structure to be used by the political subdivision unless the agreement has been approved by a vote of at least sixty percent of the qualified electors of the political subdivision voting on the question if the agreement is for acquisition, improvements, or construction of any property or structure for which an election would be required if the municipality undertook the acquisition or construction project through issuance of bonds of the municipality. The governing body of a city or county may not supersede this section under home rule authority."

Renumber accordingly

2013 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1085

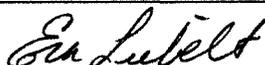
2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1085
March 6, 2013
Job Number 19476

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to providing a definition for a financial corporation and to authorize lease financing of public facilities by a state chartered bank

Minutes:

Testimony Attached

Robert J. Entringer, Commissioner of the Department of Finance: Written Testimony Attached (1). (:25-11:00)

Senator Laffen: Asked Robert Entringer to explain that section a little more. If I am reading it now it sounds like a public entity could lease finance but it needs voter approval?

Robert Entringer: Said let me explain what the current parity order authorizes. The language in section eighteen on lines 17 through 23 is what is currently in the parity order that the banking board issued. That language mirrors exactly what is allowed by a national bank and that is where they get the parity authority. (11:10-13:08)

Senator Laffen: Said right now a building authority does not need voter approval. That is the advantage of a building authority is they can figure out how to finance within their existing revenues they can use that as a tool. Is this bill making that change or is it somewhere else making that change?

Robert Entringer: Said as he understands it the language is identical to what is in House Bill 1286. My personal opinion is this language is misplaced. I don't know who would think to look in the banking code to regulations relating to the public authorities requirement to get a vote.

Senator Andrist: Asked if he was saying that 1286 will now require building authorities to submit their proposals to voters and this does the same thing.

Robert Entringer: Said as I understand it the language on lines 24-31 is the same language in 1286.

Senator Andrist: Asked if that is what 1286 does.

Robert Entringer: Said he believes so. He continues going over his written testimony (15:50-18:32).

Rick Clayburgh, President and CEO of the North Dakota's Bankers Association: In support of the bill. They had suggested to the House committee on the bill not to clutter up the banking statutes with a political issue that has happened in a community in the state and that it could be addressed in other sections of code and does not need to be repeated in here. They are trying to clean up their section that deals with banking in the state and they just a soon it not be in their statute that deals with the banks. (18:50-21:00)

Jim Larson, Director of Finance and Human Resources Fargo Park District: Opposed to section 18 of the bill. Written Testimony Attached (2). (21:40-24:26)

Senator Andrist: Said when you construct in this fashion don't you create a long term obligation. It isn't a lease, if your finances should change a down turn in the economy you can't walk away from it can you?

Jim Larson: Said yes we can. What happens is they don't make a payment on it and then the bank or financial institution has control of that asset until the term of that lease. The problem would be their credit rating would be nonexistent and they could not borrow going forward if they would make such a mistake. (25:00-26:00)

Senator Sinner: Asked if this section of the bill pertains to the acquisition or lease of all different categories of assets and if this would affect one of those leases.

Jim Larson: Said it could possibly affect that. The only time they could use the general obligation bond without a vote of the public is if we refinance special assessments that are held by the city. All other uses of the general obligation bond would require the vote. (26:56-27:31)

Chairman Klein: Asked if he was opposition to 1286.

Jim Larson: Said yes that is correct because one of the components is; while they speak of the building authority the secondary line in there is indirect financing. At this time we are not clear of what the terminology is stating there. Would it come back into a lease or does it mean through a pass through of using a building authority to basically lease your facility. We believe that has the potential of requiring a vote as well. The park districts are not required to go to the public for a vote to build a facility, other political subdivisions might but the park district is not unless they are doing the financing through a general obligation bond.

Chairman Klein: Said if we are going to amend this out it could conceivably do the same thing in 1286 that you don't want to have done in 1085.

Senator Sorvaag: Said first he would put the disclaimer in that he is on the board of the Fargo park district. He asked for Jim Larson to clarify that the municipal leases that have been done; they don't have to go through a building authority. We are doing standalones.

Jim Larson: Said that is correct they are not required to go through a building authority. We are commissioned vote and does require the approval of the commission. It is an annual appropriation.

Patrick Ward, General Counsel for Bismarck Parks and Recreation Districts: Said they also have trouble with the same lines in the bill. They will also be expressing some concerns with 1286. (30:00-31:32)

Senator Andrist: Asked if these leases have long term obligations for the taxpayers.

Pat Ward: Said that they certainly have obligations under the lease that the park board but we lease all kinds of properties.

Senator Andrist: Said what you are saying is unless we remove this you won't be able to lease equipment?

Pat Ward: Said it isn't very clear and especially if it is considered a companion bill to 1286.

Senator Andrist: Said I can understand leasing equipment. I can't understand building schools without a vote of the people or large park facilities if that is included. That is what I am trying to clarify in my mind if this has abusive possibilities.

Pat Ward: Said their position on this bill is that this should just be taken out of this bill and we should address all of the various permutations under 1286.

Chairman Klein: Closed hearing.

2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1085
March 6, 2013
Job Number 19485

Conference Committee

Committee Clerk Signature

Eva Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to providing a definition for a financial corporation and to authorize lease financing of public facilities by a state chartered bank

Minutes:

Discussion

Chairman Klein: Said he does understand the direction or the reason that was added. It would seem to me that the advocates for measure two were about providing for oversight for all these issues that relate to spending in North Dakota. However, I do understand that this is really an odd place for this particular section and I am trying to reconcile that part of the bill with 1286. I want everyone to take a look at that and have some discussion so I know if I need to visit with some House members.

Senator Sinner: Said he thinks it is just a totally inappropriate place for this language, in this bill. I think it belongs in the statute that deals with the public entities and not that deal with the banking regulations. I don't think the public entities will look here and I think by the time the banks might discover this it might be too late anyway.

Senator Laffen: Said I don't think it belongs in this section.

Chairman Klein: Said it would have been nice to have the advocates for that section here because we didn't hear the prose just people in opposition.

Senator Sorvaag: Said he echoes what is being said. It doesn't belong here. It obviously caught everyone off guard of why it showed up in a bank agency bill. Whether this is right or not is being addressed in another bill, 1286.

Senator Andrist: Said on the surface he doesn't disagree except he thinks it would be well to have a conversation with Representative Carlisle to what is different about this in 1286 and would prefer they defer action.

Chairman Klein: Said we will probably do that.

2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1085
March 11, 2013
Job Number 19708

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to providing a definition for a financial corporation and to authorize lease financing of public facilities by a state chartered bank

Minutes:

Amendment and Vote

Chairman Klein: Opened discussion on 1085. This was the housekeeping bill for the bankers. Everything seemed to be in order except when we came to page eleven, lines 24 through 31.

Senator Sinner: Said at the request of the Chairman and several other members of the committee I had the amendment drafted to delete the part on page eleven, line 24 through 31 regarding the sixty percent qualification for a bond.

Chairman Klein: Said it was a housekeeping bill for the bank commissioner.

Senator Sorvaag: Said he would agree with what was done and it doesn't belong in the banking bill.

Senator Sinner: Moved to adopt the amendment, 13.8014.02001.

Senator Laffen: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0

Senator Laffen: Moved a do pass as amended.

Senator Unruh: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent - 0

Floor Assignment: Senator Sinner

13.8014.02001
Title.03000

Prepared by the Legislative Council staff for
Senator Sinner

March 11, 2013



Handwritten signature and date: 3/12/13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1085

Page 1, line 3, after the semicolon insert "and"

Page 1, line 4, after the fifth comma insert "and"

Page 1, line 5, after the first comma insert "and"

Page 2, line 1, after the comma insert "and"

Page 11, remove lines 24 through 31

Renumber accordingly

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1085**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8014.02001

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

Motion Made By Senator Sinner Seconded By Senator Laffen

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1085**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8014.02001

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

Motion Made By Senator Laffen Seconded By Senator Unruh

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Sinner

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

REPORT OF STANDING COMMITTEE

HB 1085, as engrossed: 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). Engrossed HB 1085 was placed on the Sixth order on the calendar.

Page 1, line 3, after the semicolon insert "and"

Page 1, line 4, after the fifth comma insert "and"

Page 1, line 5, after the first comma insert "and"

Page 2, line 1, after the comma insert "and"

Page 11, remove lines 24 through 31

Renumber accordingly

2013 TESTIMONY

HB 1085



State of North Dakota

DEPARTMENT of FINANCIAL INSTITUTIONS

①
HB 1085
1-15-2013 am

Robert J. Entringer
Commissioner

Aaron K. Webb
Assistant Commissioner

I. Lise Kruse
Chief Examiner - Banks

Corey J. Krebs
Chief Examiner - Credit Unions

CSBS ACCREDITED 1993
NASCUS ACCREDITED 2000

MEMORANDUM

DATE: January 15, 2013
TO: House Industry, Business and Labor Committee
FROM: Robert J. Entringer, Commissioner
SUBJECT: Testimony in Support of House Bill No. 1085

Chairman Keiser and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify in support of House Bill No. 1085.

Mr. Chairman and members of the Committee, House Bill No. 1085 includes amendments to Chapters 6-01, 6-03, 6-05 and 6-08 of the North Dakota Century Code relating to banks and banking. As some background, our Department along with all other 50 state banking regulators are members in an organization called the Conference of State Bank Supervisors (CSBS). In addition to being a member, our Department maintains accreditation through CSBS. As part of the accreditation process, our Department is expected to periodically review our laws, and

determine whether changes are appropriate. Many of the proposed changes in this bill come as a result of this review. I would also like to note that prior to filing these bills, the Department met with various staff and members of the North Dakota Bankers Association and Independent Community Banks of North Dakota to review our proposed legislation. As a result of the feedback received at these meetings, the Department made various modifications to the original draft.

Section 1 of the Bill incorporates the term “financial corporation” within section 6-01-01 to clarify that local governing bodies are prohibited from adopting or enforcing resolutions or ordinances that involve any entities regulated by the Department.

Section 2 of the Bill provides a definition for the term “financial corporation”. While this term has existed in the statute for many years, it has never been defined. As drafted, this definition would serve as a catch-all for entities regulated by the Department which do not fit under the definitions of “financial institution” or “credit union”. The purpose of this change is to ensure that enforcement tools given to the Department under Chapter 6-01 will apply to all entities regulated by the Department.

Section 3 of the Bill updates language contained in section 6-01-04 relating to the powers and duties of the state banking board and state credit

union board. Since there are two separate boards, the amendment does away with using the generic term “board”, and instead addresses each board by name (State Banking Board and State Credit Union Board). Further, the amendment clarifies that the State Banking Board has regulatory authority over both financial institutions and trust companies.

Section 4 of the Bill removes duplicative language found under subsection 1 of section 6-01-04.3. In addition, 6-01-04.3(1)(f) is modified in order to authorize the Commissioner or Board to assess civil money penalties against a credit union or its employees who intentionally file inaccurate or misleading call reports. The foregoing change is meant to mirror an enforcement tool already existing for banks. The first change found under subsection 4 of section 6-01-04.3 is intended to clean up criteria used in setting the amount of civil money penalties, specifically providing that the Commissioner or Board will consider the existence of good faith and the gravity of the violation and any previous violations. The second change to this subsection relates to the collection of civil money penalties. Currently, it is the Department which collects the payment of civil money penalties, and remits them to the State Treasurer to be deposited into the financial institutions regulatory fund. This change would codify this process. As is the case with all other provisions within this bill relating to

the State Treasurer, the Department met with Ms. Schmidt's Office to discuss the changes.

Section 5 of the Bill modifies section 6-01-05 (taking of testimony and enforcement of orders) expanding the term "board" to include both the State Banking Board and State Credit Union Board, and providing that the section applies to all entities regulated by the Department. Additionally, the section is amended to provide that all orders made by the Commissioner are operative immediately, and remain in place until modified, amended, or annulled by the Commissioner or a court of competent jurisdiction. This change provides a consistent treatment of orders issued by the Department.

Section 6 of the Bill expands the current language found under 6-01-06 (appointment of receivers) to once again name both Boards and to specify that the section applies to all entities under each Board's regulatory supervision.

Section 7 of the Bill incorporates the definition of "financial institution" within the context of section 6-01-09. In doing so, the amendment removes surplus language.

Section 8 of the Bill removes a reference to the "office of the assistant commissioner" and replaces it with "department of financial institutions".

The Assistant Commissioner is currently responsible to act as secretary and record-keeper for the State Banking Board, State Credit Union Board, and the Department of Financial Institutions. Based on the foregoing, this amendment would have no substantive affect.

Sections 9 and 12 of the Bill replace the term “chief deputy examiner” with “assistant commissioner”. The purposes of these changes are to create uniformity of title within the chapter.

Section 10 of the Bill amends section 6-01-14 (deputies controlled by commissioner – reports) in a manner similar to sections previous addressed, with modifications aimed at recognizing the two departmental boards and incorporating definitional changes covering all regulated parties.

Section 11 of the Bill contains two minor changes to section 6-01-15, aimed at creating consistency of terminology used under the chapter.

Section 13 of the Bill addresses appraisal requirements relating to loans made on real estate. The purpose of this amendment is not to change the current requirements, but to provide banks with a clearer standard. As written, banks would still need to receive a certified appraisal for any real estate loan equal to or greater than two hundred and fifty thousand dollars if required by the federal Financial Reform, Recovery, and

Enforcement Act of 1989. For all loans not falling under the requirements of the above standard, the bank would only be required to obtain an appropriate evaluation of real property collateral. Finally, regardless of the value of the loan, the Commissioner would be able to issue an order requiring a certified appraisal when it is determined to be necessary based on safety and soundness concerns. Based on the foregoing procedure, the bank would be afforded due process.

Section 14 of the Bill makes two non-substantive changes to section 6-03-11 (conversion, consolidation, or merger). The first change merely removes a reference to the definitional section of the banking code. It was determined that this reference was unnecessary due to the fact that the definition would be applied regardless of whether a reference was present. The second change removes language referring to the state treasurer. This language is being removed because it serves no function. Since the statute provides that the funds are to be deposited in the financial institutions regulatory fund, they will by default be transferred to the state treasurer.

Section 15 of the Bill provides for a situation that is not addressed under the statute. While the Department interprets the current law to allow for a bank to relocate its main office to another location within the same

corporate city limits, there is currently no specific statute authorizing this type of relocation. As amended, section 6-03-13 would provide a clear process by which a bank could apply to the State Banking Board for authority to relocate its main office to another location within the same corporate city limits.

Section 16 of the Bill removes language within section 6-03-27 (list of shareholders to be kept and filed) which is outdated or duplicative in nature. The first modification occurs under subsection 1, and deals with a bank's duty to retain a list of the names and addresses of all shareholders of the banking institution. Since bank in North Dakota are no longer required to employ a "cashier", the term is removed, providing that it is the president who would now be responsible for maintaining the shareholder list. The second modification to this section comes through the elimination of subsection 2. The deleted language in this subsection deals directly with change of control. Since a change of control application is more fully addressed under section 6-08-08.1, this language is duplicative, and becomes unnecessary.

Section 17 of the Bill amends language found under the section of the code dealing with reserve funds. The purpose of this amendment is to codify an administrative rule that already addresses this requirement.

Under N.D.A.C. § 13-02-02-01 a bank is required to maintain reserves in an amount equal to that required by the board of governors of the federal reserve system. This federal requirement is addressed under the Federal Reserve Board's Regulation D.

Section 18 of the Bill creates a new section to chapter 6-03 relating to lease financing of public facilities. In March of 2011, the State Banking Board authorized, by order issued under its parity power (NDCC 6-03-02.3), state-chartered banks to engage in lease financing of public facilities subject to limitations relating to ultimate ownership of the property and legal lending limits. The purpose of this section is to codify the State Banking Board approved activity.

Sections 19, 21, 22 and 23 of the Bill all provide changes relating to the removal of references to the State Treasurer within the trust company statute.

Section 6-05-04.1 deals with the right of action against a surety deposit of a state-chartered trust company required to be maintained under 6-05-04. The amendment to section 6-05-04.1 (Bill section 19) reflects the current practice of having the Department receive and hold securities deposited by any institution engaging in trust business in North Dakota.

Section 6-05-26 is being amended (Bill section 21) in order to provide that any increase in capital stock must be reported to the state banking board, and not the state treasurer. This change is logical since the state banking board is the applicable regulator.

Section 6-05-28 provides for the collection of examination fees relating to state-chartered trust companies. Based on the fact that these fees are currently remitted to the Department for deposit into the financial institution regulatory fund, the amendment (Bill section 22) more accurately reflects current process.

Finally, 6-05-29 outlines the duties required of the commissioner when violations of law are discovered by way of examination. This section references the existing security deposit submitted by the state-chartered trust company, and the ability of the Commissioner to require additional security. Again, the purpose of the amendment (Bill section 23) to 6-05-29 is to more accurately reflect the current procedure of submitting the security deposit with the Department.

Section 20 of the Bill replaces a term which is no longer commonly used. Specifically, the term "cestui que" is replaced with "beneficiary". This change has no substantive effect.

Section 24 of the Bill addresses a matter brought to the attention of the Department in the recent past. As currently written, section 6-08-27 expressly prohibits an out-of-state trust company from establishing a physical location within North Dakota. Because most states have a reciprocity provision within their statute (similar to the one being proposed under this section of the Bill), the current prohibition in 6-08-27 results in the inability for North Dakota chartered trust companies to establish branches in other states. The language proposed in this section would allow out-of-state trust companies to branch into our state, and would have the effect of opening the door for North Dakota trust companies to branch into other states.

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

② 1085
1-15-2013 am

Schmidt, Kelly L.

From: Schmidt, Kelly L.
Sent: Friday, January 11, 2013 1:29 PM
To: Keiser, George J.
Cc: Oehlke, Jeb D.
Subject: HB 1085 Hearing

Rep. Keiser,

Due to scheduling conflicts, we are unable to provide a representative from the State Treasurer's Office for the hearing on HB 1085. We have worked in cooperation with the Department of Financial Institutions to ensure language is appropriate as it relates to the Office of State Treasurer and would support this bill.

Thank you. ~K~

Kelly Schmidt
Treasurer
State of North Dakota

*"Far and away the best prize that life has to offer
is the chance to work hard at work worth doing"*
~ Teddy Roosevelt

Office of State Treasurer
600 E. Boulevard Ave. #120
Bismarck, ND 58505
Voice: 701-328-2643
Fax: 701-328-3002
www.nd.gov/ndtreas

PROPOSED AMENDMENT TO HOUSE BILL NO. 1085

1

1-16-13pm

Page 11, line 20, after "having" insert "the authority under law to enter unto such a lease and"

Renumber accordingly.

13.8014.01002
Title.

① 1-28-2013 1-28-2013
Prepared by the Legislative Council staff for
Representative Boschee
January 22, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1085

Page 11, after line 23, insert

"A governing body of a political subdivision may not enter an agreement with a federally chartered financial institution or state-chartered bank for lease of any property or structure to be used by the political subdivision unless the agreement has been approved by a vote of at least sixty percent of the qualified electors of the political subdivision voting on the question if the agreement is for acquisition, improvements, or construction of any property or structure for which an election would be required if the municipality undertook the acquisition or construction project through issuance of bonds of the municipality. The governing body of a city or county may not supersede this subsection under home rule authority."

Renumber accordingly



State of North Dakota
DEPARTMENT
of FINANCIAL
INSTITUTIONS

Robert J. Entringer
Commissioner

Aaron K. Webb
Assistant Commissioner

I. Lise Kruse
Chief Examiner - Banks

Corey J. Krebs
Chief Examiner - Credit Unions

CSBS ACCREDITED 1993
NASCUS ACCREDITED 2000

MEMORANDUM

DATE: March 6, 2013
TO: Senate Industry, Business and Labor Committee
FROM: Robert J. Entringer, Commissioner
SUBJECT: Testimony in Support of House Bill No. 1085

Chairman Klein and members of the Senate Industry, Business and Labor Committee, thank you for the opportunity to testify in support of House Bill No. 1085.

Mr. Chairman and members of the Committee, House Bill No. 1085 includes amendments to Chapters 6-01, 6-03, 6-05 and 6-08 of the North Dakota Century Code relating to banks and banking. As some background, our Department along with all other 50 state banking regulators are members in an organization called the Conference of State Bank Supervisors (CSBS). In addition to being a member, our Department maintains accreditation through CSBS. As part of the accreditation process, our Department is expected to periodically review our laws, and

determine whether changes are appropriate. Many of the proposed changes in this bill come as a result of this review. I would also like to note that prior to filing these bills, the Department met with various staff and members of the North Dakota Bankers Association and Independent Community Banks of North Dakota to review our proposed legislation. As a result of the feedback received at these meetings, the Department made various modifications to the original draft.

Section 1 of the Bill incorporates the term “financial corporation” within section 6-01-01 to clarify that local governing bodies are prohibited from adopting or enforcing resolutions or ordinances that involve any entities regulated by the Department.

Section 2 of the Bill provides a definition for the term “financial corporation”. While this term has existed in the statute for many years, it has never been defined. As drafted, this definition would serve as a catch-all for entities regulated by the Department which do not fit under the definitions of “financial institution” or “credit union”, including collection agencies, deferred presentment service providers (payday lenders), money brokers, money transmitters, mortgage loan originators, debt settlement providers, and trust companies. The purpose of this change is to ensure

that enforcement tools given to the Department under Chapter 6-01 will apply to all entities regulated by the Department.

Section 3 of the Bill updates language contained in section 6-01-04 relating to the powers and duties of the state banking board and state credit union board. Since there are two separate boards, the amendment does away with using the generic term “board”, and instead addresses each board by name (State Banking Board and State Credit Union Board). Further, the amendment clarifies that the State Banking Board has regulatory authority over both financial institutions and trust companies.

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penalties. Currently, it is the Department which collects the payment of civil money penalties, and remits them to the State Treasurer to be deposited into the financial institutions regulatory fund. This change would codify this process. As is the case with all other provisions within this bill relating to the State Treasurer, the Department met with Ms. Schmidt's Office to discuss the changes.

Section 5 of the Bill modifies section 6-01-05 (taking of testimony and enforcement of orders) expanding the term "board" to include both the State Banking Board and State Credit Union Board, and providing that the section applies to all entities regulated by the Department. Additionally, the section is amended to provide that all orders made by the Commissioner are operative immediately, and remain in place until modified, amended, or annulled by the Commissioner or a court of competent jurisdiction. This change provides a consistent treatment of orders issued by the Department.

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Section 11 of the Bill contains two minor changes to section 6-01-15, aimed at creating consistency of terminology used under the chapter.

Section 13 of the Bill addresses appraisal requirements relating to loans made on real estate. The purpose of this amendment is not to change the current requirements, but to provide banks with a clearer standard. As written, banks would still need to receive a certified appraisal for any real estate loan equal to or greater than two hundred and fifty thousand dollars if required by the federal Financial Reform, Recovery, and Enforcement Act of 1989. For all loans not falling under the requirements of the above standard, the bank would only be required to obtain an appropriate evaluation of real property collateral. Finally, regardless of the value of the loan, the Commissioner would be able to issue an order requiring a certified appraisal when it is determined to be necessary based on safety and soundness concerns. Based on the foregoing procedure, the bank would be afforded due process.

Section 14 of the Bill makes two non-substantive changes to section 6-03-11 (conversion, consolidation, or merger). The first change merely removes a reference to the definitional section of the banking code. It was determined that this reference was unnecessary due to the fact that the definition would be applied regardless of whether a reference was present. The second change removes language referring to the state treasurer. This language is being removed because it serves no function. Since the

statute provides that the funds are to be deposited in the financial institutions regulatory fund, they will by default be transferred to the state treasurer.

Section 15 of the Bill provides for a situation that is not addressed under the statute. While the Department interprets the current law to allow for a bank to relocate its main office to another location within the same corporate city limits, there is currently no specific statute authorizing this type of relocation. As amended, section 6-03-13 would provide a clear process by which a bank could apply to the State Banking Board for authority to relocate its main office to another location within the same corporate city limits.

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change of control. Since a change of control application is more fully addressed under section 6-08-08.1, this language is duplicative, and becomes unnecessary.

Section 17 of the Bill amends language found under the section of the code dealing with reserve funds. The purpose of this amendment is to codify an administrative rule that already addresses this requirement. Under N.D.A.C. § 13-02-02-01 a bank is required to maintain reserves in an amount equal to that required by the board of governors of the federal reserve system. This federal requirement is addressed under the Federal Reserve Board's Regulation D.

Section 18 of the Bill creates a new section to chapter 6-03 relating to lease financing of public facilities. In March of 2011, the State Banking Board authorized, by order issued under its parity power (NDCC 6-03-02.3), state-chartered banks to engage in lease financing of public facilities subject to limitations relating to ultimate ownership of the property and legal lending limits. The purpose of this section is to codify the State Banking Board approved activity. It should be noted that the second paragraph in this section was added by the House IBL committee and incorporates within this section a voting requirement which applies to the governing body of a political subdivision. This addition mirrors language contained in

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House Bill 1286, which is to be enacted under section 21-03-06.1 of the North Dakota Century Code.

Sections 19, 21, 22 and 23 of the Bill all provide changes relating to the removal of references to the State Treasurer within the trust company statute.

Section 6-05-04.1 deals with the right of action against a surety deposit of a state-chartered trust company required to be maintained under 6-05-04. The amendment to section 6-05-04.1 (Bill section 19) reflects the current practice of having the Department receive and hold securities deposited by any institution engaging in trust business in North Dakota.

Section 6-05-26 is being amended (Bill section 21) in order to provide that any increase in capital stock must be reported to the state banking board, and not the state treasurer. This change is logical since the state banking board is the applicable regulator.

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Finally, 6-05-29 outlines the duties required of the commissioner when violations of law are discovered by way of examination. This section references the existing security deposit submitted by the state-chartered trust company, and the ability of the Commissioner to require additional security. Again, the purpose of the amendment (Bill section 23) to 6-05-29 is to more accurately reflect the current procedure of submitting the security deposit with the Department.

Section 20 of the Bill replaces a term which is no longer commonly used. Specifically, the term "cestui que" is replaced with "beneficiary". This change has no substantive effect.

Section 24 of the Bill addresses a matter brought to the attention of the Department in the recent past. As currently written, section 6-08-27 expressly prohibits an out-of-state trust company from establishing a physical location within North Dakota. Because most states have a reciprocity provision within their statute (similar to the one being proposed under this section of the Bill), the current prohibition in 6-08-27 results in the inability for North Dakota chartered trust companies to establish branches in other states. The language proposed in this section would allow out-of-state trust companies to branch into our state, and would have

the effect of opening the door for North Dakota trust companies to branch into other states.

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



**Testimony of Jim Larson, Director of Finance & Human Resources
Fargo Park District
To Senate Industry, Business & Labor Committee
In Opposition to Section 18 of HB 1085
Wednesday, March 6, 2013**

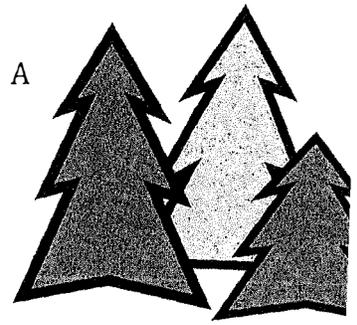
- Park Board**
 Barb Johnson, Commissioner
 Joel Vettel, Commissioner
 Ron Sorvaag, Commissioner
 Mary Johnson, Commissioner
 Joe Deutsch, Commissioner
 Chris Kennelly, Clerk

Administration

- Roger Gress,
Executive Director
- Jim Larson,
Director of Finance/Human
Resources
- Dave Leker,
Director of Parks
- Clay Whittlesey,
Director of Recreation
- Carolyn Boutain,
Director of Cultural Activities
- Kevin Boe,
General Manager Courts Plus
Fitness Center
- Brian Arett,
Director Fargo Senior Services
- Amy Rasmussen,
Administrative Assistant

Chairman Klein and Members of the Committee, my name is Jim Larson, and I am director of finance and human resources for the Fargo Park District. We are opposed only to Section 18 of House Bill 1085 (page 11, lines 15-31).

The language referenced above in House Bill 1085, particularly lines 24-31, requires a 60% voter approval for a lease for the acquisition, improvements, or construction of any property or structure for which an election would be required if the municipality undertook the acquisition or construction project through issuance of bonds of the municipality. If the Park District is to issue General Obligation bonds, it does require a 60% vote. General Obligation bonds are to be paid back through taxes or other resources of the political subdivision. The risk to the bond holder is minimal because it is the responsibility of the taxpayer in the end to make sure the bonds are paid, thus a vote is prudent. When a lease is issued, the risk to the taxpayer is significantly reduced. The financial institution issuing the lease takes the majority of the risk should there be non-performance by the Park District. At the end of the lease term, the asset being leased is owned by the Park District regardless of payments being made. When a lease is issued by the financial institution, they have a high responsibility to make sure the political subdivision is capable of making the lease payments. If a Park District uses a lease to acquire or improve an asset, it does not provide any additional mill levy authority but only uses existing financial resources of the Park District. A Park District receives financial resources from various resources. For example, in 2011 the Fargo Park District received 36% of its operating revenues from non-tax sources. The professional staff of the financial



institution will scrutinize a Park District's ability to make the lease payments at a very high level. If they don't see the Park District's ability to make the lease payments within their current level of authority, they probably will not provide the lease.

The lease has been a functional financial tool allowing Park Districts to provide recreation and leisure services through facilities to the youth and adult citizens of their community. We have elected officials who scrutinize financial obligations of this type who are qualified to represent the voters as to approving or not approving a lease.

The Fargo Park District is opposed to Section 18 of HB 1085 and urges the committee to amend this section out of the bill. I would be happy to answer any questions. Thank you.