15.8025.01000

FISCAL NOTE
Requested by Legislative Council
12/19/2014

Bill/Resolution No.: SB 2084

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$11,000	$0	$12,000
Expenditures	$0	$0	$0	$11,000	$0	$12,000
Appropriations	$0	$0	$0	$0	$0	$0

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties	$0	$0	$0
Cities	$0	$0	$0
School Districts	$0	$0	$0
Townships	$0	$0	$0

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill permits the Department to assess a fee for special visitations of a credit union. Fiscal impact would include the Department expenditures for the credit union visitation including examiner and office staff hours, travel and transportation expenses.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 3 of the bill amends Section 6-06-08 by adding a new subsection which allows the commissioner to assess a fee to a credit union if the commissioner determines that more than one visit, inspection, or examination is necessary to promote the safety and soundness of a credit union during a twelve month period. The fee is based upon examiner and office staff time for the visitation as well as travel and transportation expenses. The assumptions for the fiscal impact is based upon the number of visitations conducted during the 2014 calendar year.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Department will charge the credit union for time used and travel expense for follow-up cost to an examination.

Hours for 24 months 180 hours at $45 $8,100
Travel expense,(mileage, hotel, meals) $2,900

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Department expenditure of time used and travel expense for follow-up cost to an examination.

Hours for 24 months 180 hours at $45 $8,100
Travel expense,(mileage, hotel, meals) $2,900

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

This bill will have no change to the Department appropriation.

Name: Joan Becker

Agency: Department of Financial Inst

Telephone: 701/328-9958

Date Prepared: 12/23/2014

2015 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2084

2015 SENATE STANDING COMMITTEE MINUTES

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

SB 2084
1/21/2015
Job Number 22253

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to the investigation of bank holding companies and fee for credit union examinations

Minutes:

Attachments

Chairman Klein: Opened the hearing.

Robert J. Entringer, Commissioner: Written Testimony Attached (1). (:37-10:05)

Senator Campbell: If you have a troubled bank can you examine that or does this bill now allow you to do that?

Robert J. Entringer: The department does not have specific examination authority. We can request information from the holding company but we don't have examination authority. This will allow us to conduct an investigation. So if something comes to our attention and actually I anticipate this either coming through a Federal Reserve examination of the holding company or possibly we may see something that may trigger an investigation. We've had this authority since the early nineties and have never had an issue where we needed to proceed with an investigation of the holding company. We have had a situation where there has been an officer of the bank removed but was still an officer of the holding company. This power would now allow us to remove that person from the holding company because they can still control the bank through the holding company.

Senator Campbell: So you won't add this to your existing audits?

Robert J. Entringer: We brought this legislation before the state banking board and that was an issue, they specifically said no we don't want increase regulatory burden, so we don't want you to have examination authority. So we can request the information but we are looking at the minutes, the stock book and probably the check book. That is about all we are looking at when we request information from a holding company. (12:05-13:00)

Senator Campbell: Section eight; is that a Federal deal you are complying with?

Robert J. Entringer: We did have a newly chartered trust company in 2013 and they are using this option. It brought it to my attention and I don't think it's fair. You charter a new bank, the money is there before you get your charter, should be the same for a trust company.

Chairman Klein: What is the track record are we doing well as far as banks having issues out there?

Robert J. Entringer: I feel like the luckiest commissioner in the nation. We haven't had any failures through the banking crisis, some struggles but nobody even got close to failing. We rate our banks and our credit unions on a camel scale of 1 to 5 composite rating, 5 being the worst, 1 being the best. We don't have any 3, 4, or 5 rated banks. We have a couple of 3 and 4 rated credit unions but nothing that is causing me concern.

Marilyn Foss, North Dakota Bankers Association: In support of the legislation. (14:50-17:03)

Jeff Olson, Credit Union Association of the Dakotas: In support of the bill. We represent 38 credit unions in the state of North Dakota and 20 of them are state chartered and fall under the regulation of the department of financial institutions. We also represent 215 thousand credit union members in the state. He concurs with the testimony offered by Commissioner Entringer in that familiarity and consistency is crucial in the examination process for our members. (17:50-18:48)

Barry Haugen, President of the Independent Community Banks of North Dakota: In support of the bill. (19:31-19:55)

Chairman Klein: Closed the hearing.

Senator Sinner: Moved a do pass.

Senator Murphy: Seconded the motion.

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

Senator Sinner will carry the bill.

Date: 1/21/2015
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2084

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation:
☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Sinner Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	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

SB 2084: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2084 was placed on the Eleventh order on the calendar.

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2084

2015 HOUSE STANDING COMMITTEE MINUTES

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

SB 2084
3/9/2015
24466

☐ Subcommittee
☐ Conference Committee

Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Investigation of bank holding companies & fees for credit union examinations; definitions, prompt corrective action for state banks, examination of technology service providers & investment of state banks; subscribed capital stock must be paid in by annuity, safe deposit, surety, & trust companies.

Minutes: Attachment 1

Chairman Keiser: Opens the SB 2084.

Bob Entringer~Commissioner-Department of Financial Institutions: (Attachment 1).

8:55

Representative Laning: Have we had any failures in the past 12 months?

Entringer: No.

Representative Kasper: Page 3 of your testimony, how do you find out there is a problem if you don't do the investigation?

Entringer: During the regular examination of the bank, we do request information on the holding company. From our perspective, it's an examination, but we don't have that specific authority, so we call it a review. Another is, Federal Reserve Banks have the authority to charter as well as supervise bank holding companies, so we can see it through their examination.

Representative Kasper: Are you comfortable with your authority looking at holding companies at this point with this bill?

Entringer: I am.

Chairman Keiser: Page 5, line 19, that broad authority. Should it be market conducts examine where it is targeted and relative only to those businesses, credit union, bank or

any other financial institutions in our state that you have a question about or do you need the full authority to review everything because this gives this to you?

Entringer: Our intent is to only review those entities that are providing services to our banks. With the staff we have currently, we would never examine a company like Pfizer on our own. We may participate if the federal regulators would allow us to. We are honestly looking at 2 or 3 companies that we would actually go in and examine.

Representative Ruby: This section 5, can you explain why banks are being cited under the current language and what is this change doing?

Entringer: What we see is a banks limitation with a corporate bond is $200,000. They may purchase a bond for $202,000 and so it has to be booked at $202,000, until that premium is amortized down to the $200,000, it over their limitation. The limitation is calculated as of the date they purchased that bond. If the limitation goes up in the future it doesn't change for that bond. We are citing those violations and the only way to correct it is to amortize that premium they can't write it off. This would eliminate those violations.

Chairman Keiser: Anyone else here to testify in support of SB 2084?

Greg Tschider~Credit Unions Association: The credit unions have discussed this and we support this bill. We feel they are fair but do we like all the regulations, absolutely not, but are stuck with the federal government. The amount of regulation that keep coming down and because of it, the department needs more authority to do the work it needs to do so that all financial institutions in North Dakota are in conformity with federal law.

Marlyn Foss~North Dakota Bankers Association: As the commissioner testified, we did go over these changes with him and we endorse the bill.

Barry Haugen~Independent Community Banks of ND: Our association supports the bill as presented.

Chairman Keiser: Anyone else here to testify in support of SB 2084, opposition, neutral. Closes the hearing on SB 2084, what are the wishes of the committee?

Representative Lefor: Moves a Do Pass.

Representative Ruby: Seconded.

Representative Becker: My concern is review of all their books if they are conducting only a portion of their businesses, are they forced to allow these folks to examine all their books?

Chairman Keiser: This gives the department to authority to request all of that information but however they testify that they were only interested in the relevant information.

Representative Becker: If the ability is granting the government agency but they say we wouldn't do that, we can never assume that.

Roll call was taken for a Do Pass on SB 2084 with 12 yes, 0 no, 3 absent and Representative Louser will carry the bill.

Date: Mar 9, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2084

House Industry, Business & Labor Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description:

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations

Other Actions: ☐ Reconsider ☐

Motion Made By Rep Lefor Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser	X	
Representative Beadle	X		Representative Ruby	X	
Representative Becker	X		Represenative Amerman	X	
Representative Devlin	X		Representative Boschee	X	
Representative Frantsvog	Ab		Representative Hanson	Ab	
Representative Kasper	X		Representative M Nelson	Ab	
Representative Laning	X				

Total (Yes) 12 No 0

Absent 3

Floor Assignment Rep Louser

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

REPORT OF STANDING COMMITTEE

SB 2084: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2084 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2084

#1

MEMORANDUM

DATE: January 21, 2015

TO: Senate Industry, Business and Labor Committee

FROM: Robert J. Entringer, Commissioner

SUBJECT: Testimony in Support of Senate Bill No. 2084

Chairman Klein and members of the Senate Industry, Business and Labor Committee, thank you for the opportunity to testify in support of Senate Bill No. 2084.

Mr. Chairman and members of the Committee, Senate Bill No. 2084 includes amendments to Chapters 6-01, 6-03, 6-05, 6-06 and 6-08 of the North Dakota Century Code relating to depository financial institutions. As some background, our Department along with all other 49 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. Our most recent accreditation occurred last year, and while our department received very positive results,

the CSBS accreditation team provided a few recommendations relating to the department's regulation of banks; many of the proposed changes in this bill come as a result of these recommendations. I would also like to note that prior to filing these bills, the department met with various staff and committee 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 would create a definition for "Technology service providers" within section 6-01-02 in order to outline the scope of the amendment I will address under section 4 of this Bill. This definition was modeled after terminology currently used by the Federal Deposit Insurance Corporation.

Section 2 of the Bill provides for an amendment to the prompt corrective action section (6-01-04.4) of the banking statute. The amendment to this section only serves to update the federal definitions incorporated by reference within the section.

Section 3 of the Bill was drafted in response to a recommendation of the CSBS accreditation team. While the accreditation team noted that the department routinely conducts substantial reviews of bank holding

#1

companies based on its authority to request holding company information from a bank being examined, they recommended that the department seek examination authority and enforcement powers relating to bank holding companies. As a result of this recommendation, the department sought the input of the bank trade associations and reviewed various regulatory structures. After completing our review, the department decided to introduce legislation which would implement limited authority to conduct investigations of holding companies which own a North Dakota state chartered bank. As written, the department would only conduct an investigation after receiving information material to the safety and soundness of a bank holding company. Further, the proposed legislation would allow the department to pursue penalties already existing for all other financial institutions under the supervision of the department.

Section 4 of the Bill was also drafted in response to the recommendations of the CSBS accreditation team. The proposed amendment to section 6-01-09 would allow the department to examine the books and records of any technology service provider which provides services to financial institutions and corporations under the supervision of the department. The purpose of this section would be to allow the department to evaluate the technology service provider's risk management

systems and controls and also review the entity's compliance with applicable laws that could have an impact on North Dakota financial institutions and corporations. This section would allow the department to either participate with federal regulators, or conduct the review at the department level. I would note that this authority already exists for companies providing services to state chartered credit unions under 6-06-08.3.

Section 5 of the Bill modifies section 6-03-47.2 relating to investment limitations of state banks, and was drafted in response to an issue that has been cited on various bank exams. Based on the wording of the current law, our department has cited violations of this section based on the bank not accounting for the premium paid on bonds which resulted in the book value exceeding the limitation in the statute. As amended, the law would set the investment limitation for bonds, notes or debentures at the lessor of the book value or face value of the investment at the time of purchase, removing any confusion relating to the accounting of premiums paid or discounts received on the bond.

Section 6 of the Bill would add a subsection to 6-06-08 addressing the ability of the department to charge fees to credit unions for additional visitations, inspections or examinations. As proposed, this section would

allow the commissioner to bill for reasonable expenses of the department if the commissioner determines that more than one visitation, inspection, or examination is necessary to promote the safety and soundness of the credit union during a twelve-month period. This authority would provide the department with a tool to promote a fair allocation of regulatory fees among the credit unions. The department already has this authority as it relates to state chartered banks, which is currently found under section 6-01-17.2.

Section 7 of the Bill addresses various provisions of section 6-08-08.1 relating to the sale or purchase of banking associations; this is also referred to as the "change of control" statute. Control for the purposes of this statute means a person or entity has the power to vote (or otherwise control) 25% or more of any class of voting securities of the bank. The amendment to subsection 1 of 6-08-08.1 would create uniformity between state and federal law. Currently, federal law only requires a notice of change of control where a person purchases or otherwise acquires control of a banking institution. Alternatively, as written, our law requires a change of control both in situations where a party acquires control or loses control of a banking association. Since most situations address both purchase/acquisition and sale/disposition, the department felt that it did not make sense to require two applications for the same transaction.

#1

The amendment to subsection 3 of 6-08-08.1 addresses the timeframe that applications must be processed by the department. As written, the statute requires the state banking board to approve or deny an application within sixty days of the mailing of the notice of completeness by the commissioner. As a general rule the state banking board meetings will fall within the sixty day timeframe discussed above, however, there have been circumstances where the chairman of the state banking board was required to call a special meeting of the state banking board in order to meet the statutory timeframe. In these cases, the amendment included within this section would serve to extend the timeframe to the next regularly rescheduled board meeting, saving the department time and money.

The amendment to subsection 7 of 6-08-08.1 merely removes a duplicative definition already contained within section 6-01-02 of the banking code.

Finally, the language of subsection 8 of 6-08-08.1 is based on exemptions found under federal law. This section allows an exemption from the application process for control acquired as a result of inheritance, gift, or in satisfaction of debt previously contracted in good faith. Under these circumstances, the acquirer will only need to provide the commissioner with notice of the acquisition. However, the subsection

#1

provides the commissioner with the authority to require an application to the board whenever deemed necessary.

Section 8 of the Bill repeals section 6-05-25 of the trust company statute, which relates to payment of subscribed capital stock. As written, this section allows a trust company a period of two years in which to have the full amount of their subscribed capital stock paid in. The repeal of this section is based on the fact that the capital stock of a banking association must be paid in at the time of organization (6-02-03), even though the deposits of the bank are FDIC insured. In contrast, the deposits received by a trust company are only protected by the paid in capital, the surety bond, and whatever insurance the company decides to buy. As such, the department feels that based on principles of safety and soundness, the trust company capital should be paid at the time of organization.

Finally, included within our Bill is a fiscal note outlining the Bill's impact on the agency appropriation. As you can see from the fiscal note, the fiscal impact relates to the credit union examination fee outlined in section 6 of the Bill. As a result of this change, the Department anticipates revenue of $12,000 for the upcoming 24 months. This amount accounts for the billing of 180 departmental hours at $45/hour, totaling $8,100, and travel expenses (mileage, hotel, and meals) of $2,900.

#1

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

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 9, 2015

TO: House Industry, Business and Labor Committee

FROM: Robert J. Entringer, Commissioner

SUBJECT: Testimony in Support of Senate Bill No. 2084

Chairman Keiser and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify in support of Senate Bill No. 2084.

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positive results, the CSBS accreditation team provided a few recommendations relating to the department's regulation of banks; many of the proposed changes in this bill come as a result of these recommendations. I would also like to note that prior to filing these bills, the department met with various staff and committee 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 would create a definition for "Technology service providers" within section 6-01-02 in order to outline the scope of the amendment I will address under section 4 of this Bill. This definition was modeled after terminology currently used by the Federal Deposit Insurance Corporation.

Section 2 of the Bill provides for an amendment to the prompt corrective action section (6-01-04.4) of the banking statute. The amendment to this section only serves to update the federal definitions incorporated by reference within the section.

Section 3 of the Bill was drafted in response to a recommendation of the CSBS accreditation team. While the accreditation team noted that the

department routinely conducts substantial reviews of bank holding companies based on its authority to request holding company information from a bank being examined, they recommended that the department seek examination authority and enforcement powers relating to bank holding companies. As a result of this recommendation, the department sought the input of the bank trade associations and reviewed various regulatory structures. After completing our review, the department decided to introduce legislation which would implement limited authority to conduct investigations of holding companies which own a North Dakota state chartered bank. As written, the department would only conduct an investigation after receiving information material to the safety and soundness of a bank holding company. Further, the proposed legislation would allow the department to pursue penalties already existing for all other financial institutions under the supervision of the department.

Section 4 of the Bill was also drafted in response to the recommendations of the CSBS accreditation team. The proposed amendment to section 6-01-09 would allow the department to examine the books and records of any technology service provider which provides services to financial institutions and corporations under the supervision of the department. The purpose of this section would be to allow the

department to evaluate the technology service provider's risk management systems and controls and also review the entity's compliance with applicable laws that could have an impact on North Dakota financial institutions and corporations. This section would allow the department to either participate with federal regulators, or conduct the review at the department level. I would note that this authority already exists for companies providing services to state chartered credit unions under 6-06-08.3.

Section 5 of the Bill modifies subsection 1 of section 6-03-47.2 relating to investment limitations of state banks, and was drafted in response to an issue that has been cited on various bank exams. Based on the wording of the current law, our department has cited violations of this section based on the bank not accounting for the premium paid on bonds which resulted in the book value exceeding the limitation in the statute. As amended, the law would set the investment limitation for bonds, notes or debentures at the lessor of the book value or face value of the investment at the time of purchase, removing any confusion relating to the accounting of premiums paid or discounts received on the bond.

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visitations, inspections or examinations. As proposed, this section would allow the commissioner to bill for reasonable expenses of the department if the commissioner determines that more than one visitation, inspection, or examination is necessary to promote the safety and soundness of the credit union during a twelve-month period. This authority would provide the department with a tool to promote a fair allocation of regulatory fees among the credit unions. The department already has this authority as it relates to state chartered banks, which is currently found under section 6-01-17.2.

Section 7 of the Bill addresses various provisions of section 6-08-08.1 relating to the sale or purchase of banking associations; this is also referred to as the "change of control" statute. Control for the purposes of this statute means a person or entity has the power to vote (or otherwise control) 25% or more of any class of voting securities of the bank. The amendment to subsection 1 of 6-08-08.1 would create uniformity between state and federal law. Currently, federal law only requires a notice of change of control where a person purchases or otherwise acquires control of a banking institution. Alternatively, as written, our law requires a change of control both in situations where a party acquires control or loses control of a banking association. Since most situations address both

purchase/acquisition and sale/disposition, the department felt that it did not make sense to require two applications for the same transaction.

The amendment to subsection 3 of 6-08-08.1 addresses the timeframe that applications must be processed by the department. As written, the statute requires the state banking board to approve or deny an application within sixty days of the mailing of the notice of completeness by the commissioner. As a general rule the state banking board meetings will fall within the sixty day timeframe discussed above, however, there have been circumstances where the chairman of the state banking board was required to call a special meeting of the state banking board in order to meet the statutory timeframe. In these cases, the amendment included within this section would serve to extend the timeframe to the next regularly scheduled board meeting, saving the department time and money.

The amendment to subsection 7 of 6-08-08.1 merely removes a duplicative definition already contained within section 6-01-02 of the banking code.

Finally, the language of subsection 8 of 6-08-08.1 is based on exemptions found under federal law. This section allows an exemption from the application process for control acquired as a result of inheritance, gift, or in satisfaction of debt previously contracted in good faith. Under

these circumstances, the acquirer will only need to provide the commissioner with notice of the acquisition. However, the subsection provides the commissioner with the authority to require an application to the board whenever deemed necessary.

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Finally, included within our Bill is a fiscal note outlining the Bill's impact on the agency appropriation. As you can see from the fiscal note, the fiscal impact relates to the credit union examination fee outlined in section 6 of the Bill. As a result of this change, the Department anticipates revenue of $12,000 for the upcoming 24 months. This amount accounts for

the billing of 180 departmental hours at $45/hour, totaling $8,100, and travel expenses (mileage, hotel, and meals) of $2,900.

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