

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1100

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1100

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-11-99

Tape Number	Side A	Side B	Meter #
2		x	53.1 through
3	x		16.7
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes:

HB 1100 AUTHORITY OF STATE BANKING BOARD OR COMMISSIONER TO TAKE CORRECTIVE ACTION CONCERNING UNDERCAPITALIZED STATE BANKS.

Chairman BERG opened the hearing on the bill.

DAVID CLINTON, ND Banking Commission, testified in support of the bill.

(see attached written testimony)

REP. FROSETH asked if the state realizes under capitalization before the federal system does.

CLINTON responded that yes, in most cases the state examination will notice it.

REP. KLINE, asked if the reference in the bill was to state chartered banks.

CLINTON said yes, he was speaking of state chartered banks.

BERG asked at what date in time the FDIC Improvement act was passed.

CLINTON said that it was passed in 1992 and they did not know what to do at that time.

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House Industry, Business and Labor Committee

Bill/Resolution Number Hb 100

Hearing Date 1-11-99

BERG asked about the future and who would take the lead role in the process.

CLINTON said that the commission or the board would. CLINTON also agreed that the bill would not change the authority of groups involved.

MS. MARLYN FOSS, North Dakota Banking Association, testified in opposition to the bill and suggested amendments to the bill.

(see attached written testimony)

REP. KEMPENICH, asked if she was looking for a shorter time period.

FOSS said no, the 90 days is ok, but leave in temporary cease and disc est order if the institution is undercapitalized and other institutions. The complaint would be served within 5 days.

BERG requested information on who serves on the state banking board.

FOSS said that: 7 members serve, chairman is the commission of banking, 5 members are bankers who are members of FDIC, and 1 other lay member. All these people serving are appointed by the governor.

JOEL GILLBERTSON, Counsel for the Independent Banks of ND, testified in opposition to the bill. He asked that a group of board members should make the decision of closing down a bank instead of 1 person, the banking commissioner. This change is what the amendment does.

CHAIRMAN BERG closed the hearing on the bill.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1100 1-12 99

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-12-99

Tape Number	Side A	Side B	Meter #
2		x	569 - 980
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: Chairman Berg opened the discussion of HB 1100.

Rep. Froseth: This bill is basically the same as bill 1099, except it deals with state chartered banks. In this bill itself, it gives the commissioner the same authority.

Rep. Lemieux made a motion to adopt the amendments.

Rep. Ekstrom second the motion.

The voice vote was 14 yea, 0 nay, 1 absent.

The motion carries.

Rep. Lemieux made the motion for a Do Pass as Amended.

Rep. Severson second the motion.

The roll call was 14 yea, 0 nay, 1 absent. The motion carries.

Rep. Froseth will carry the bill.

PROPOSED AMENDMENTS TO HB 1100

Page 1, line 7, remove "commissioner or the"

Page 1, line 7, replace "a" with "an"

Page 1, line 7, remove "temporary"

Page 1, line 8, remove "cease and desist"

Page 1, line 8, remove "commissioner or the"

Page 1, line 12, remove "temporary cease and desist"

Page 1, line 13, remove "commissioner or"

Page 1, line 16, remove "commissioner or"

Page 1, line 20, remove "A temporary cease and desist order is effective immediately upon"

Page 1, replace lines 21 through 24 with:

"A bank which has been served with a complaint requesting the state banking board to issue a prompt corrective action order under this section may ask for a hearing before the board within five days after service of the complaint upon the bank. A request for a hearing must be granted and the hearing must be held not later than ten days after the request is filed with the board. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board may issue an order. The bank may appeal the board's order under this section to the district court of Burleigh County, North Dakota, within ten days after the board's order is served on the bank. The appeal is governed by chapter 28-32."

Page 2, remove lines 1 through 3

Renumber accordingly

Date: 1-12-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1100

House Industry, Business and Labor Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass as amended

Motion Made By Lemieux Seconded By Severson

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	/		Rep. Thorpe		
Vice Chair - Kempenich	/				
Rep. Brekke	/				
Rep. Eckstrom	/				
Rep. Froseth	/				
Rep. Glassheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Froseth

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

REPORT OF STANDING COMMITTEE

HB 1100: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1100 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "or commissioner"

Page 1, line 7, remove "commissioner or the" and replace "a temporary" with "an"

Page 1, line 8, remove "cease and desist" and remove "commissioner or the"

Page 1, line 12, remove "temporary cease and desist"

Page 1, line 13, remove "commissioner or"

Page 1, line 16, remove "commissioner or"

Page 1, line 20, replace "A temporary cease and desist order is effective immediately upon" with "A bank that has been served with a complaint requesting the state banking board to issue a prompt corrective action under this section may request a hearing before the board within five days after service of the complaint upon the bank. A request for a hearing must be granted and the hearing must be held not later than ten days after the request is filed with the board. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board may issue an order. The bank may appeal the board's order under this section to the district court of Burleigh County, North Dakota, within ten days after the board's order is served on the bank. The appeal is governed by chapter 28-32."

Page 1, remove lines 21 through 24

Page 2, remove lines 1 through 3

Renumber accordingly

1999 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1100

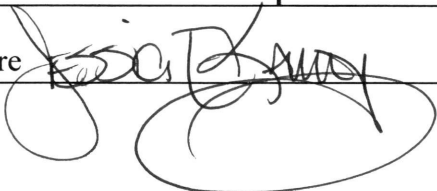
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1100

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date February 9, 1999

Tape Number	Side A	Side B	Meter #
1	x		0-1651
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on HB1100. All senators were present.

David Clinton introduced HB1100. His testimony is included. Senator Mathern asked him what is considered significantly undercapitalized. He said that a critically undercapitalized institution has a ratio of tangible equity to total assets that equal to or less than 2%, undercapitalized is less than 6%, significantly undercapitalized is less than 8%.

Marilynn Foss, North Dakota Bankers Association testified in a neutral position on HB1100. Senator Krebsbach asked her how long these numbers have been in effect. She told her that it was put into effect in 1991.

Joel Gilbertson, Credit Union Banks of North Dakota, testified to say that his group has no objection to the bills with the amendments.

Senator Mutch concluded the hearing on HB1100.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number Hb1100

Hearing Date February 9, 1999

Senator Krebsbach motioned for a do pass committee recommendation on the engrossed version of HB1100. Senator Sand seconded her motion. The motion was successful with a 7-0-0 vote.

Senator Mathern will carry the bill.

REPORT OF STANDING COMMITTEE (410)
February 15, 1999 1:51 p.m.

Module No: SR-30-2991
Carrier: D. Mathern
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1100, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1100 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

HB 1100

TESTIMONY FOR HOUSE BILL NO. 1100

House Industry, Business, and Labor Committee

Testimony of David E. Clinton, Assistant Commissioner, Department of Banking and Financial Institutions

House Bill No. 1100 authorizes the banking commissioner or the state banking board to take prompt corrective action concerning a state-chartered bank that is under-capitalized, significantly under-capitalized, or critically under-capitalized. In so doing, the bill grants to the banking commissioner and the state banking board authority similar to the authority that Congress has granted to the Federal Deposit Insurance Corporation (FDIC).

The FDIC Improvement Act, as recently amended, authorizes the FDIC to take various supervisory actions based on the capital level of the particular depository institution in order to protect the deposit insurance funds. When an insured institution has been classified as under-capitalized, the institution must file a written capital restoration plan with its federal banking agency. In the case of an insured institution that is significantly under-capitalized, the FDIC is authorized and directed to take strong administrative action. The FDIC may require the institution to re-capitalize by selling shares or other obligations or to merge with or be acquired by another insured institution. An insured institution that is critically under-capitalized is subject to additional restrictions on its activities including

extending credit for any highly leveraged transaction, materially changing its accounting methods, paying excessive compensation or bonuses, or paying interest on liabilities at an excessively high rate. Within 90 days after an insured institution becomes critically under-capitalized, the appropriate federal banking agency must either appoint a receiver or conservator, or demonstrate that some other action would be better to achieve the purposes of the Act.

By granting similar authority to the banking commissioner or the state banking board, House Bill No. 1100 serves to preserve the role of the state as primary supervisor and to further the purposes of the dual banking system. By design, House Bill No. 1100 is structured akin to the banking commissioner or state banking board's authority under North Dakota Century Code § 6-01-04.2(4) to issue temporary cease and desist orders if a bank is engaging in an unsafe or unsound practice likely to cause insolvency, substantial dissipation of assets, earnings, or capital of the institution. A state-chartered bank is afforded the same type of due process under House Bill No. 1100 as provided in Section 6-01-04.2. Although there are perhaps scenarios that would give rise to corrective action under either House Bill No. 1100 or Section 6-01-04.2, because of the need to harmonize state with federal law and for the need to provide greater flexibility to correct under-capitalized state-chartered banks, it seems prudent to have a specific state statute concerning prompt corrective action for under-capitalized state banks.

Based on the above, the Department stands in support of House Bill No. 1100 and requests a favorable "Do Pass" from the Committee.

TESTIMONY OF MARILYN FOSS

H B. 1100 - Prompt Corrective Action
(On Behalf of the North Dakota Bankers Association)

Chairman Berg, members of the House Industry, Business and Labor Committee, my name is Marilyn Foss. I am general counsel for the North Dakota Bankers Association and am appearing before you on its behalf.

The North Dakota Bankers Association (NDBA) has always supported legislation which is reasonably necessary for the state banking board to carry out its responsibilities for supervising state chartered banks. However, we are not generally in favor of adding laws if there is no real, identified problem which is addressed by a proposed new law. Additionally, while we recognize and respect the commissioner's function, the North Dakota legislative assembly has made the state banking board, rather than the commissioner, the body which is responsible for issuing orders to banks in critical, but non-emergency situations. We believe our laws as they are now established is how things should be and that this bill sidesteps these fundamentals.

After I had an opportunity to review the commissioner's bills, I wrote and asked him about several of them. I questioned the need for this bill and asked him why the PCA bill he was proposing for credit unions placed the sole responsibility for the issuance of a PCA order in the state credit union board after a hearing, rather than in the commissioner or the state banking board and without the opportunity for hearing as HB 1100 does. In response to my questions about why the bill was needed in light of the existing authority for cease and desist orders when

an institution is found to be engaging in an unsafe or unsound practice or is violating state law, the commissioner responded he “believe[s] in most cases the current supervisory authority is adequate, but to ensure harmony with federal law and the necessary flexibility embodied therein, the bill were drafted with this specific condition in mind.” The commissioner gave no example of a case where current law is inadequate to address the situation where a bank is undercapitalized. As to federal law the commissioner’s comments seem to me to be inapt because state and federal schemes for bank regulation are different. State chartered banks are subject to federal regulation by the FDIC or, in a few instances, by the Federal Reserve Board. While these federal regulators have a supervisory options which are available when they are faced with a problem bank, neither agency has the power to close a bank for violating an order. However, closing a bank for violating an order of the state banking board is an explicit power of that board and it applies to any order. Clearly, the hammer is now in the law.

Frankly, we also see this bill as being an unwarranted expansion of the commissioner’s power at the expense of state banks and state banking board authority. The bill permits a “prompt corrective action “ order to be issued by the commissioner without notice or hearing. In this, the commissioner says it is similar to a temporary cease and desist order. However, a temporary cease and desist order under section 6-01-04.2, N.D.C.C. requires the existence of an emergency. If there is a genuine emergency, i.e., the existence of a situation of insolvency or imminent insolvency, a temporary cease and desist order without opportunity for notice and a hearing may be appropriate. Situations which are subject to the “prompt corrective action” order as it is envisioned by the commissioner are clearly not emergencies. In his letter to me, the commissioner stated that the department expects that “the required capital plan will resolve most

difficulties of place the bank on track to resolve them. . . early, mitigating against the need to pursue permanent orders.” If this is the case, then it is clear that no “emergency” exists. If there is no emergency, then there is no reason for the PCA order to be issued without notice, without hearing or, by the commissioner without action by the state banking board.

In line with my testimony, I have prepared several amendments which I propose for this bill.

They accept the commissioner’s recommendation for explicit prompt corrective action authority, but place that authority in the state banking board with proceedings to be held generally in accordance with the administrative agencies practices act, but with shorter time limits. The proposed amendments also conform the PCA provisions for banks and credit unions to one another and avoids the situation where banks are subjected to different and potentially more onerous regulation than that which applies to state chartered credit unions.. NDBA requests the committee’s favorable consideration of these amendments. Thank you.

TESTIMONY FOR HOUSE BILL NO. 1100

Senate Industry, Business, and Labor Committee

Testimony of David E. Clinton, Assistant Commissioner, Department of Banking and Financial Institutions, in support of House Bill No. 1100.

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By granting similar authority to the banking commissioner or the state banking board, House Bill No. 1100 serves to preserve the role of the state as primary supervisor and to further the purposes of the dual banking system. By procedural design House Bill No. 1100 provides for an expedited appeal process for a bank that has been issued a prompt corrective action complaint to request a hearing before the State Banking Board. Such a request must be filed within five days after service of the complaint upon the bank.

Although there are perhaps scenarios that would give rise to corrective action under either House Bill No. 1100 or Section 6-01-04.2, because of the need to harmonize state with federal law and for the need to provide greater flexibility to correct under-capitalized state-chartered banks, it seems prudent to have a specific state statute concerning prompt corrective action for under-capitalized state banks.

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