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ROLL NUMBER

DESCRIPTION

2176

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2176

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2176**

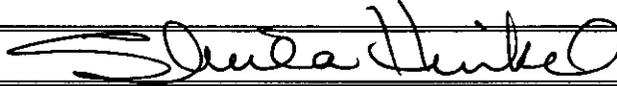
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 23, 2007**

Recorder Job Number: **1631**

Committee Clerk Signature



Minutes:

### **Marilyn Foss – General Counsel for ND Bankers Association – In Favor**

#### **TESTIMONY # 1 [Testimony until 10:10m]**

Explains how the needs are to be cleaned up. Local resolutions and ordinances. Regulation

will be a state function. Bill is protective of financial institutions and credit unions.

Sec. 2 & 3 speak of the wildcard statute for banks. [Explanation on 6:30m]

Wildcard statute in ND since 1985. Mechanism for banks and state banks to have same powers as national banks.

Sect. 3 suggested to remove language

**S Potter:** Can you give an example of what ordinance covers?

**M Foss:** Presented examples in CA; Talked about "fair lending issues." Makes regulations clear.

**S Klein:** By allowing state banks to have same power at national level without having to come to the legislature.

**M Foss:** Yes

**S Behm:** What is a "wild card?"

**M Foss:** Name we attached to this, used for changes.

**FAVOR?**

**Greg Tscheider – Mid America Credit Union Association - *In Favor***

He addressed S Potter. No written testimony presented. Gives suggestions of ordinances that are passed.

**S Heitkamp:** What about our local control? I understand the problem, what can we say to people to keep the power local?

**G Tscheider** – Financial institution. Such as Mandan and Bismarck might have different rates.

**Tim Karsky – Dept. Financial Institutions - *In Favor***

Addressed S Heitamp, national banks use parity law.



**REPORT OF STANDING COMMITTEE (410)**  
January 23, 2007 1:29 p.m.

**Module No: SR-15-1045**  
**Carrier: Hacker**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2176: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2176 was placed on the Eleventh order on the calendar.**

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2176

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2176**

## House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: **5 March 2007**

Recorder Job Number: **4336**

Committee Clerk Signature



Minutes:

**Chairman Kaiser opened the hearing of SB 2176.**

**Marilyn Foss, ND Bankers' Association, testified in favor of the bill. (Testimony Attached.)**

**Representative Amerman:** What is this wild card statute?

**Foss:** It's the section of law that says if a national bank has the power to do something because national bank law or regulation has changed, a state bank can do it too. It keeps state banks and national banks competitively equals in their powers.

**Representative Nottestad:** So competitive equality then is the sole purpose of it?

**Foss:** Yes. Competitive equality is the sole purpose for the change to the wild card statute.

**Representative Dosch:** Does this pretty much then eliminate the powers of the state banking board?

**Foss:** Not in any way. The statute specifically provides that the state bank board has the continued ability to supervise and regulate the new powers as well.

**Representative Dosch:** Is the state going to be able to enforce them or if they are following federal is this going to be a federal issue to enforce?

**Foss:** This does not change the state banking board's oversight responsibility. This is a state law. The state law has directed that the state banking board and commissioner will receive

the implementation and compliance of banks with the state laws and applicable federal regulations and federal law. It is not, in my view, a change which is essentially federalized precedence. It does not make state law subordinate to federal law.

**Representative Amerman:** The part where the local governing body may not adopt ordinances, is that something that is happening and if they do implement an ordinance, would that override what's in state statute?

**Foss:** It has happened in other states. In those states there has been quite a bit of litigation and generally speaking, federal law has been determined in those states to preempt state and local ordinance so those ordinances don't apply to nationally chartered banks creating an issue of competitive equity. What this says is that state law would preempt those without the litigation.

**Chairman Kaiser:** Representative Nottestad is carrying this. I'm going to have him run this by Janet Burke and see what their take is on this and whether or not we're giving our sovereignty. If she voices some concern about it, we will then go to the attorney general and get an answer.

**Representative Kasper:** On the bottom of page 1, it talks about activities that a state bank can do that any national bank can do. Are there other activities, services or products right now that national banks can provide that state banks in ND cannot provide?

**Foss:** One comes to mind is health savings accounts. In the interim between sessions the state banking commission issued a wild card order to allow state banks to operate under the same rules that national banks did except for joint marketing. Subsequently this Legislative body endorsed that.

**Chairman Kasper:** It seems the banking commissioner has done things under the wild card statute that allow the state banks to do what they need to do to compete. Why is now

important that we change the law as opposed to having the approval of the banking commissioner?

**Foss:** That is a matter of competitive equity between banks and credit unions because that is the legislative approach that was taken for credit unions. This is narrower than the credit union law but that is where the concept came from.

**Representative Johnson:** Currently if a national bank offers a product that a state bank does not provide, does it now have a state chartered that would go to the bank commissioner and he could say yes or no on whether they can offer it.

**Foss:** It generally works that state banks sees that a national bank can do this and comes to the state banking board and applies for permission.

**Representative Johnson:** How long does that process take?

**Foss:** It can take months.

**Chairman Kaiser:** We did have a bill that grants the banking commissioner much more authority to make decisions without the banking board.

**Foss:** I think that bill gave more authority relating to interstate branching.

**Tim Korsky, Commissioner for the Department of Financial Institutions, testified in favor of the bill.** I would like to give you three examples. If the bill on branching passes, I will have the authority to approve a branch. Just this week we were going to approve a branch for a state bank in Fargo in Fergus Falls MN and we got some concerns from some bankers in the community there so now we are going to a full blown hearing and that state banking board is going to have to act on that application anyway. The main thing I like about this bill is that we are moving that wild card section to a section that most people can find. For security investments and securities, there are times when the state banking board has set bigger restrictions just because a national bank may be able to invest in some type of investment.

We didn't feel comfortable on the state level so we might have said that even though a national

bank might be able to invest 25%, we've limited it to 15%. At times we have put greater

restrictions on banks. A national bank has a wild card also. Our lending limit in ND is higher than what a national bank can lend to individuals so the LCC says these banks in ND can't be disadvantaged so they can they lend to what the states can and they set various rules and regulations. The bill has worked well in the past and I think our board is very conservative that we don't want banks out there doing things that we don't know about or can't control.

**Representative Nottestad:** In your estimation then this bill, if passed, would not weaken your office or weaken the state banking board?

**Korsky:** No, I don't think so.

**Representative Dosch:** So what you are saying is although there may be a national law out there that would pass, the state banking board still has authority to set stricter limits. They don't have to accept exactly what comes down at the national level.

**Korsky:** We could do that and the time frame from the start of the process could be 9 months to a year.

**Chairman Kaiser:** If you read this language it says if they do it, I get to do it and you can't regulate it. You can have oversight. It says the state bank has the same power as a national bank.

**Korsky:** Right out of the chute, they can probably do that; but it also says the authority is subject to regulation by the state banking board.

**Chairman Kaiser:** We can say that, but that's not what this says. This says "I get to do it."

**Representative Kasper:** Along the same lines, that sentence in line 23 "the authority granted by this section is subject to regulation by the state banking board." It does not say "or recision."

**Korsky:** Let's say the OCC could invest in some type of 3<sup>rd</sup> or 4<sup>th</sup> real estate mortgage securities and they are eking out the 2% of capital, I would think the state banking board could

say yes, you can do that but you're going up to a larger % of capital and we can make it very restrictive. I do believe that's what the law says.

**Representative Kasper:** I don't agree with your interpretation based on the language in the bill.

**Korsky:** I'm not an attorney, but I know we've acted that way in the past.

**Chairman Kaiser:** You understand that under the wild card system, you had the authority. As I read this. . . .

**Greg Chider (sp? Did not sign in) representing Med America Credit Union League:** We are principally interested in amendment #1. This is kind of the anti-San Francisco bill. The San Francisco city council has been very active in trying to control to businesses and financial institutions through city regulations. None of cities are close to their activity, but we certainly don't want to give the opportunity. It would be very difficult to operate in an environment where we have one rule in Bismarck and another rule in Mandan. Financial institutions go back and forth and it would be very difficult. It is the authority of Legislature and we would like to make sure that is not abrogated in any way, shape or form.

**Representative Nottestad:** Is this model of legislation being put in throughout the US or is it something unique to ND?

**Chider:** I honestly don't know. It was something we thought we needed to have because of the problems that were popping up in other states. We just knew this was something we didn't want to have to face.

**Representative Zaiser:** On the same lines, are there any other cities that you know of that are contemplating what San Francisco is doing.

**Chider:** I don't know. If they really excitable like with the ATM fees then it makes national news. That's what happened in San Francisco. Obviously a lot of these have been thrown out by courts but it causes real havoc between the time the bill is passed and then the

Supreme Court finally gets it; you could be dealing with two years away. And, who wants to pay attorneys?

**Representative Amerman:** On lines 16 and 17, I want to throw this out. Say the national comes down with a regulation then the local governing body would be the state. So shouldn't this say "political sub" or something like that instead of the "local governing body?"

**Chider:** That's an interesting intellectual concept. This is a state law so state law would define what local subdivision is. The fact of the matter is if the federal government says you do "A" we do "A" because under the interstate commerce provision of the US constitution the federal courts have always interpreted that the feds have priority over state law.

**Chairman Kaiser closed the hearing of SB 2176.**

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No: **SB 2176**

### House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: **5 March 2007 (#2)**

Recorder Job Number: **4340**

Committee Clerk Signature



Minutes:

**Later on the same day Chairman Kaiser opened discussion of SB 2176.**

**Jennifer Clark:** I understand you have some question regarding Section 2.

**Chairman Kaiser:** In current law they are using the wild card position which is if the feds do something a bank can go to the bank board and request a wild card to do something until the legislature meets again so they can match the feds. But this reads differently.

**Clark:** Under our current system the Department of Financial Institutions still has the ultimate decision on whether they are going to grant that or not. My initial reading of this is that you automatically can strap on to the feds. That's my reading. Notwithstanding any other provision you get to do what the feds get to do. In the background there is always that discussion of what they can do today and if it changes you don't get those new powers or different powers. You lock into what federal powers are today. That's arguable. My reading of that last sentence on lines 23 and 24 is the regulation of those financial institutions. I was paging through that chapter and it seems there are all kinds of regulatory powers that are distinguishable from national powers of financial institutions. The regulation and governance of the bank would still be valid. That's my reading.

**Representative Johnson:** One of the questions we had was under that (lines 23 & 24) are they subject to regulation by the state banking board but could this be a recision of that authority.

**Clark:** My initial reading is that the banking board can't detract from the powers of the feds. You cannot adopt rules that change the powers from the federal level. You can do other things. You can regulate the governance of the bank and that's different than the powers of the bank.

**Representative Ruby:** We heard in testimony this was on parity with the credit unions. How long have credit unions had this?

**Clark:** I don't know.

**Representative Dosch:** On line 20, what exactly does that mean when it says, "notwithstanding any state laws to the contrary." Does that mean that the federal government comes in and says they can now sell used cars and if we have a state law that says no you can't, would that mean they can't or does it mean follow federal law.

**Clark:** In a broad sense "notwithstanding" means regardless of any other state law, it doesn't matter. I don't care what your state law is, this trumps it. So you get in to an interesting discussion. I can't speak with any certainty about how this would be interpreted.

**Representative Kasper:** Under current law, the banking board additional powers to the state banks. They could under state law say no. Is that correct?

**Clark:** I don't have a working knowledge of what they are doing at the Department of Financial Institutions, but I think under the current law the agency has the authority to make the determination. My reading is this removes that.

**Chairman Kaiser:** It would be an interesting scenario if this would pass and the feds said we're going to lift the cap on usury rates. The state banks would then be free to lift the caps as I read this.

**Clark:** It is limited to the powers we have today. That is what I think the Supreme Court does historically.

**Representative Vigesaa:** On line 24 where it says "subject to regulation" can regulation say "no"?

**Clark:** Had you not in the first sentence said "notwithstanding." That first sentence limits what the state agency can do.

**Kasper:** If we struck on page 1, line 20, "notwithstanding. . ." and just started on the next sentence. Then would we get to the point where we're not allowing federal law to trump state law?

**Clark:** I'm not exactly sure. You may have just muddied the waters then the question is what authority does the department have?

**Representative Ruby:** Then the agency would have the wild card authority only to the extent of what federal is at this time.

**Clark:** You need to understand that may not be how it is interpreted.

**Chairman Kaiser:** I would answer that, one of those interesting unintended consequences. If that is true, then they have also lost the wild card and the board can't change it.

**Representative Dosch:** I think part of their testimony was they are concerned about the local communities making different regulations. That seemed to be their issue, but the bill ties them to the federal. There seems to be two different things they are trying to accomplish. I don't know if they needed one to get to the other or is there some way that the local communities can't make up separate but . . . There are two different things here.

**Chairman Kaiser:** They are clearly dealing with two different things. They are concerned about the San Francisco things but on the other hand they want freedom on the other end.

**Representative Nottestad:** Marilyn made that clear.

**Representative Kasper:** I would suggest that we amend out Section 2 and go with Sections 1 and 3 of this bill.

**Representative Johnson:** I will go along with that but what I heard in testimony is that we have allowed credit unions so should we also level the playing field?

**Representative Ruby:** If we adopt the amendment suggested would we also to remove . . . ?

**Chairman Kaiser:** We would have to have Legislative Council work it up. We want them to maintain the wild card.

**Representative Ruby:** I didn't realize we had done that with the credit unions last session, but if we have we may have strapped them with regulations that were in effect as of last session.

**Representative Johnson:** That's only if somebody challenges it.

**Representative Kasper:** I make a motion that we delete Section 2 and amend the bill to conform to the deletion of Section 2.

**Representative Ruby:** I second.

**Representative Johnson:** I'm not sure I'm ready to do that yet.

**A roll call vote was taken: Yes: 8, No: 6, Absent: 0**

**Representative Kasper:** I move Do Pass as Amended.

**Representative Ruby:** I second.

**Representative Johnson:** Did we deal with the credit union part?

**Chairman Kaiser:** If the person moving and seconding will withdraw, we can entertain further amendments.

**Representatives Kasper and Ruby withdrew their motion and second.**

**Representative Zaiser:** I was out of the room, but I would not support the amendment to take this out. I move to reconsider the amendments

**Representative Thorpe:** I second.

**A roll call vote was taken to reconsider the amendment: Yes: 8, No: 6, Absent: 0**

**Representative Amerman:** Representative Johnson, your amendment—were you thinking of incorporate the credit unions? Is there something that needs to be drawn up for us to look at?

**Representative Johnson:** By removing this section you make it an unequal competition and banks. In my mind you are withdraw that permission from the credit unions. I don't have language and I'm sure how we should act on that. That's the concern I have.

**Representative Ruby:** I would say having some parity has some merit, but the reason I voted to remove this because I think it's more limited than what the current law is. I would be in favor of including the credit unions on this to give them that flexibility. By removing this and removing the similar language for credit unions gives both of them a better competitive edge in the long run. That's the way I'm reading it and Jennifer Clark has a similar thought on a previous bill that I had asked an opinion on. Language that seems to evolve with federal law really tends to limit them to what the law was at the time that we put that language in.

**Representative Amerman:** If we would have removed this, banks would not have to go to the wild card anymore, they could just do whatever the federal, is that correct?

**Representative Kaiser:** They could until challenged.

**Representative Amerman:** But the credit unions would still have to go to the financial gurus and get a wild card?

**Representative Boe:** If they were challenged in the future, then they would back up to today's date for the regulation at today not what they had changed to in the future.

**Representative Dosch:** If you amend that section out, then you basically throw the bill in to a conference committee and you get some time to answer some of those other questions.

**Chairman Kaiser:** We could hold it now if people would like a chance to talk. You could go to the Attorney General and then that becomes a formal thing. I don't think it's constitutional unless you interpret it to limiting it to the powers that exist today.

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House Industry, Business and Labor

Bill/Resolution No 2176

Hearing Date: 5 Mar 07

**Representative Dosch:** Then they are really not accomplishing what they want to because a month from now if something changes federally; they go back to this day.

**Chairman Kaiser:** They have a wild card now with permission. They would like to have a wild card without permission. That's what they attempted to do. This doesn't do that.

**Representative Zaiser:** I move to further amend by bringing that language back.

**Representative Thorpe:** I second.

**A voice vote was taken. The amendment was accepted.**

**Chairman Kaiser:** Now we have SB 2176 in its virgin form.

**Discussion Closed.**

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2176

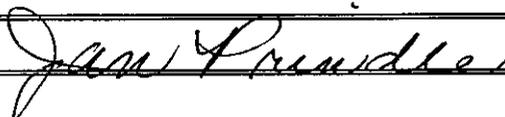
### House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: 5 March 2007

Recorder Job Number: 4344

Committee Clerk Signature



Minutes:

### Subcommittee on SB 2176.

**Chairman Kaiser:** We don't have an Attorney General's opinion. The "notwithstanding any state law to the contrary" is clear and convincing evidence that precludes anything else that happens even though it refers to some authority to regulate at the end of the chapter. If we do that and if it's challenged, the court's position will be, "well you can say that but all it gives them authority to do is enact legislation or rules or programs or in this case, powers that were available at the time the bill was passed and because we took away the wild card you would be locked in at where you are today.

**Marilyn Foss:** At the time the bill was passed exists under the current law today. I think everybody that looked at it thinks that that issue does exist.

**Chairman Kaiser:** We understand it's in the credit union. One of our decisions was to consider amending that portion out of the credit union to level the playing field and leave both parties with wild card capacity. You would have to go to the board to get approval for the wild card.

**Foss:** That would be okay with me. We have not had trouble with going to the banking board. If we are going to have to go back to the banking board then one of the things that we would like to be clear is that can approve a wild card activity and I'm sure the credit union

board wouldn't want the same as the credit union regulators but they didn't have to do it by rule. They can do it by order. It is not going and talking to the banking board or even their regulation that is issue to us. The issue to us really was "wait a minute; the credit union has got a section that they can engage in any activity in which they couldn't engage in if they are federally chartered." So the premise is you have the power if there are safety and soundness issues that come up to it. That's where the supervision of the banking board comes in is when what is the level. If the federal law says you can invest in one of these new GO bonds that small communities are going to issue with no limit of up to 100% of your capital, up to 200% of your capital with nothing. Then the idea is that the state banking board was not to say was it a wise thing to invest in the instrument but is there a safety and soundness limit that should apply. That's where the regulation comes. If there is a better way to do that, that's what we are trying to achieve. The premise from which we are starting from is federally chartered banks have this power and state chartered bank would have the power or can easily get the power. We are looking for the same kind of regulation scheme that applies.

**Chairman Kaiser:** We want to make it the same for both industries.

**Foss:** That would part of premise too—the framework for regulation should be the same. I'm not sure banks have a problem convincing the state banking board that we should be able to do it. It should apply across the board to the credit unions.

**Chairman Kaiser:** It would have to go through the courts to make a final determination.

**Foss:** We don't litigate that much.

**Chairman Kaiser.** But some body could. Wouldn't it terrible if we passed a law and then go on for two years that took away your wild card status and tied you to whatever was there today regardless of what the feds did.

**Foss:** That's the effect of it now.

**Jennifer Clark:** The Department of Financial Institutions still has regulatory authority over the banks even if we've given them a wild card? Do they have ongoing regulations to revoke the wild card at any time?

**Foss:** No he doesn't have the authority. The statute doesn't say. What the statute says now is that the state banking board has the power to authorize state banks to have engaged in activities and whatever. I would note this "notwithstanding any restriction elsewhere in this code" is in current law.

**Chairman Kaiser:** That's okay. That's different than saying notwithstanding what any other government entity does outside of state of ND. We have that all the time in code— notwithstanding any other exceptions, this bill applies.

**Foss:** It says, "In addition, the state banking board has the power to authorize state banks to engage directly or indirectly in any activities in which such banks could engage were they operated as national banks at the time the authority is granted notwithstanding any restriction elsewhere contained in this code." This code is not a change in law. We weren't trying to change any laws in drafting it. We were simply trying to move ourselves to same as the credit unions.

**Chairman Kaiser:** We want to honor the intent and are just nervous about it may not do what we think it does. We asked Jennifer (Clark) to come down and read this. Jennifer, maybe you could review this from your perspective what has happened in the past.

**Clark:** It doesn't happen that often. We usually talk about it more in academic sense. If push comes to shove and you get into a situation here is how the court decision will probably fall. I think that's the case here. You have taken away the department of financial institutions ability to have anything less than the federal. Under my quick reading of what we have right now it says that our department of financial institutions may grant it. It's there prerogative.

**Foss:** I think that's true. It's not very likely but I think it's true.

**Clark:** But you get the benefit then of saying I give this bank the authority to do what the feds are doing and I'm watching what the feds are doing and if they ever do something I don't like, I can take it away versus if we do it in code here you don't have the ability to take it away. You have lost it.

**Chairman Kaiser:** That's our fear we may or may not lock it in but if we do lock it in and that's the way the courts rule we have lost the wild card and we're back at the date that law was passed—that's the only power you have.

**Gary Tschider:** There's been a lot of talk about credit unions. The credit union law says credit unions may engage in any activity in which they could engage if they were federally chartered subject to rules of the state credit union board shall adopt.

**Chairman Kaiser:** That's a good one; I don't have a problem with that. This language is not that. I think we could defend that.

**Foss:** I'm willing to go to that.

**Tim Korsky:** We talked about this. I talked originally that I liked the ability of the board to approve that but we just redid all the rules on the credit union side and we did make a lot of stuff more restrictive. That's what I thought this language would do. If it doesn't, then I would be more for the other.

**Foss:** I don't object to going to language that takes the credit union language except that suggests that the credit union board can't do it by any way other than adopting regulations. We have not experienced resistance with the requests that have been made by the banking board in terms of willingness. They have done regulations too and we want the ability to get it by order.

**Korsky:** Ten to fifteen years ago we were under the impression that, especially on the credit union side, that even though a federal credit union could do something it was the interpretation that until the board adopted the rule you couldn't do it. Then we found out about two or four

years ago that we were wrong so we started this revision of the credit union rules and there it says you SHALL not. Sometimes we adopt by rule but it's better to have it in law. I don't mind that but sometimes I just don't like the idea of always having to adopt rules.

**Chairman Kaiser:** That's what Marilyn is saying.

**Foss:** It's expensive and when there's an order the interested party actually thought it was controversial.

**Tschider:** There are incidental ones where if we determined something that was an incidental power the board could do it. Some of these are probably the more power things.

**Chairman Kaiser:** Do you think that Jennifer should craft the language that might give you that flexibility for incidental stuff.

**Tschider:** We just want this work. We don't want to advance it and then find out we may have made a mistake.

**Chairman Kaiser:** I think the key is if you want to get it through the Committee is going to be there are some things that should be through rule.

**Representative Zaiser:** It's good to make it clear in the rewrite.

(Unstructured discussion.)

**End.**

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2176

## House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: 5 March 2007 (3)

Recorder Job Number: 4378

Committee Clerk Signature
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Minutes:

**Chairman Kaiser called the Committee back to session.** Let's take out SB 2176. This is the bill we heard this morning relating to financial institutions and they were trying to work around the wild card rule to get a kind of permanent status to the wild card rule. At 11:30 this morning we had a meeting. Rep. Thorpe, Nottestad, Johnson, Zaiser, Marilyn, Greg, Tim and Jennifer Clark from Legislative Council were there. We reviewed what our concerns were. On line 20 through 24 of the bill and they all agreed that the financial folks will work on it and come back with a suggestion on how to change it to achieve what we want. Marilyn, with that do you have copies for everybody.

**Marilyn Foss, on behalf of the ND Bankers Association,** distributed the proposed amendment: This document has been reviewed by Mr. Tschider for Mid American Credit Unions and has been signed off by Commissioner Korsky. We all think it's acceptable to us. I'll explain what we have done to address the Committee concerns.

As I understood there was concern essentially to make these operate in a less automatic function and that there would be a review by either the state banking board or the state credit union board before any wild card authority was given; and concerns that the wild card authority could be granted by order which is a much faster process than rulemaking although it is still subject to judicial appeal also the system for obtaining wild card authority be

the same for the state banks and the state credit unions. We do believe these amendments accomplish that. Note that first phrase replace reads, "Subject to authorizations by the state banking board, acting by order or rule" that is where we put in the state banking board needs to consider an application for wild card authority and they can either act by order or rule. Then it says "Subject to authorization by the state banking board a state bank has the same powers as the national bank and may engage directly or indirectly in any activity in which a bank could engage if it were nationally chartered." That is the same as the law is currently. The whole section is substantively the same as the law is currently. After the page 2, line 30 insert, this would be changing the credit union statute essentially to match the banking board statute. Currently the state credit union board can only act by rule so this adds additional flexibility and speed to their process for a credit union. The only difference between them in this respect is that the language for state banks says "may engage directly or indirectly" in any activity. The language for state credit unions does not have that directly or indirectly language. I pointed that out Mr. Tschider and the reason for that is credit unions don't use operating subsidiaries. That's the indirectly part of it. Credit unions just don't do that. They either do things directly or a through a non affiliated credit union service organization. That's how their structure operates and that's why the difference.

**Representative Amerman:** Is this the new section authorizing the credit union board . . . do you know if they would be able to do that? They don't have to have a membership vote or anything?

**Foss:** It is my understanding that they have not had member votes to cover activities to do the same thing that federal credit unions can do.

**Representative Dosch:** On line 2 of the proposed amendment, "authorization of the state banking board acting by order or rule, a state bank has the same power as a national bank." Should that be "the state bank may have the same powers. . ."? Since they are subject to the

authorization of the state banking board. On one hand they are saying subject to the state banking board's approval and in the next sentence you are saying they have the same power.

Which is it?

**Foss:** I would read that as if the state banking board says so, a state bank has the same powers. I wouldn't quibble if it is 'may' that's fine with me too.

**Chairman Kaiser:** I think that's right because if they authorize it, they have it.

**Representative Ruby:** Jennifer mentioned earlier about limiting the entities to the existing laws at this time or this permissive enough to allow for . . .

**Foss:** I think that issue exists and the only way to make it clearer if we are concerned about this, and mind you we've had provisions similar to this in our state banking law and credit union law almost 25 years or so and we've never had that trouble. There are two ways to deal with it. One way is to deal with it if there litigation and there is actually a court decision that drives that conclusion, I would truthfully expect it to be prospective and an opportunity to come back to the legislature and fix it. In some states what they do essentially every single year and pass this same section of law again.

**Chairman Kaiser:** I might point out that the state banking board is an official extension of the state legislature. We create it, we fund it, we empower it, authorize it and they are acting on our behalf. This language allows them both to give something as well as to rescind it. The key here as I understand Jennifer was that you can give and you can take. You have the power built into the statute using the extension of the state legislature created by it to do this and they can both give you something and take it away.

**Representative Ruby:** It seems to me that saying "subject to the authorization" may be the language that allows for that.

**Representative Dosch:** I guess I'm still trying to understand how this is different that what we are doing now by virtue of the wild card.

**Chairman Kaiser:** The significant difference here is "by order." Currently the wild card

requires a rule change. That means they have to go through the entire rules making process.

This would allow the board to use an order or a rule to make a wild card exception. This puts in to statute the wild card more directly than what currently exists. It currently exists almost by default. This is saying it does exist.

**Foss:** Our intention was never to make a big substantive change in the law the way it is. Our intention was to move it to somewhere where you find it. It was to move us and the credit unions to a system of regulation that was the same under the wild statute. It was not to make enormous changes in what the banking board could or could not do or how they would regulate this or whatever. We wanted to be clear that credit unions had more automaticity as it were. We were trying to have a single system for both of us and also move it out of the section that had become  $\frac{3}{4}$  of a page long where it was a sentence in a section to move it under the powers clause and relocate it so it would be easier to find. As I understood the concerns with the committee there was concern over this "notwithstanding any state law to the contrary" language. There was concern over that and there was concern making the same for us and the credit unions. I think this amendment accomplishes all of those things.

**Representative Thorpe:** Who drew up these amendments?

**Foss:** The banking commissioner and I worked on them then I showed them to Mr. Tschider who suggested some changes which we then did make and then showed it back to the banking commissioner. It was a group effort.

**Chairman Kaiser:** What are the wishes of the Committee?

**Representative Nottestad:** I move the amendment with the pencil correction on them.

(3 is crossed out and 4 is inserted.)

**Representative Johnson:** I second.

**A voice vote was taken. The amendment was accepted.**

Page 5

House Industry, Business and Labor

Bill/Resolution No **SB 2176**

Hearing Date: **5 Mar 07**

**Representative Nottestad: I move Do Pass as Amended.**

**Representative Clark: I second.**

**Chairman Kaiser:** This creates for the banks a little more flexibility than what they currently have and puts in to statute the wild card but there is nothing that this section allows that the feds haven't already done. The feds have to do it first and provide something and then the state chartered banks can match it.

**A roll call vote was taken: Yes: 12, No: 0, Absent: 2 (Boe and Zaiser).**

**Representative Nottestad will carry the bill.**

**Proposed Amendments to Senate Bill 2176**

Page 1, line 20, replace "Notwithstanding any state law to the" with "Subject to authorization by the state banking board, acting by order or rule, a state bank has the same powers as a national bank and may engage directly or indirectly in any activity in which a bank could engage if it were nationally chartered."

Page 1, remove lines 21 through 24

Page 2, after line 30, insert:

✓ "SECTION <sup>4</sup>~~3~~. AMENDMENT. Subsection 11 of section 6-06-06 is amended and reenacted as follows:

11. Subject to authorization by the state credit union board, acting by order or rule, a state Credit unions credit union has the same powers as a federal credit union and may engage in any activity in which they a credit union could engage if they it were federally chartered, subject to rules that the state credit union board shall adopt."

Renumber accordingly

March 5, 2007

**House Amendments to SB 2176 (70554.0101) - Industry, Business and Labor  
Committee 03/06/2007**

Page 1, line 3, after "6-03-38" insert "and subsection 11 of section 6-06-06"

Page 1, line 20, replace "Notwithstanding any state law to the" with "Subject to authorization by the state banking board, acting by order or rule, a state bank has the same powers as a national bank and may engage directly or indirectly in any activity in which a bank could engage if the state bank were nationally chartered."

Page 1, remove lines 21 through 24

**House Amendments to SB 2176 (70554.0101) - Industry, Business and Labor Committee  
03/06/2007**

Page 2, after line 30, insert:

**"SECTION 4. AMENDMENT.** Subsection 11 of section 6-06-06 of the North Dakota Century Code is amended and reenacted as follows:

11. ~~Credit unions~~ Subject to authorization by the state credit union board, acting by order or rule, a state credit union has the same powers as a federal credit union and may engage in any activity in which ~~they~~ a credit union could engage if ~~they~~ the credit union were federally chartered, subject to rules that the state credit union board shall adopt.

Renumber accordingly

Date: 3-5-07  
 Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2176

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amend Delete Section 2

Motion Made By Rep. Kasper Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson		X	Rep. Boe		X
Rep. Clark	X		Rep. Gruchalla		X
Rep. Dietrich	X		Rep. Thorpe		X
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad		X			
Rep. Ruby	X				
Rep. Vigasaa		X			

Total Yes 8 No 6

Absent 0

Floor Assignment Rep Nottestad

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

Date: 3-5-07  
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2176

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Reconsidered Amendments

Motion Made By Rep. Zaiser Seconded By Rep. Thorpe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark		X	Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch		X	Rep. Zaiser	X	
Rep. Kasper		X			
Rep. Nottestad		X			
Rep. Ruby		X			
Rep. Vigesaa	X				

Total Yes 8 No 6

Absent 0

Floor Assignment Rep. Nottestad

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

Date: 3-5-07  
Roll Call Vote #: \_\_\_\_\_

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2176

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass, as amended

Motion Made By Rep Nottestad Seconded By Rep Clark

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe		
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser		
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 12 No 0

Absent 2

Floor Assignment Rep. Nottestad

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

**REPORT OF STANDING COMMITTEE**

**SB 2176: Industry, Business and Labor Committee (Rep. Kelsner, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2176 was placed on the Sixth order on the calendar.

Page 1, line 3, after "6-03-38" insert "and subsection 11 of section 6-06-06"

Page 1, line 20, replace "Notwithstanding any state law to the" with "Subject to authorization by the state banking board, acting by order or rule, a state bank has the same powers as a national bank and may engage directly or indirectly in any activity in which a bank could engage if the state bank were nationally chartered."

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Renumber accordingly

2007 TESTIMONY

SB 2176

TESTIMONY OF MARILYN FOSS  
NORTH DAKOTA BANKERS ASSOCIATION  
SUPPORTING SENATE BILL 2176

Mr. Chairman , members of the IBL committee, my name is Marilyn Foss. I am general counsel for the North Dakota Bankers Association and am appearing before you this morning to ask you to give a DO PASS to SB 2176 which addresses the state regulation of financial institutions and credit unions and parity of state bank powers with those of national banks through what is known as the "wild card" statute.

Section 1 of the bill makes two changes to current law- one is housekeeping and the other is more substantive. Legislative council staff apparently decided that this bill presented the opportunity to clean up obsolete statutory references to the "state examiner" by deleting them from this statute. The "state examiner" is the commissioner of financial institutions. Overstriking this explanation in the code on page 1, at lines 11-12,, is simply legislative council's method for letting us know the rest of Code has already been cleaned up, so the explanation is no longer necessary.

The underscored language that is added at page 1, lines 16-17 is really more than housekeeping, however. With this addition it is clear that, in North Dakota, financial institution and credit union regulation is the province of the legislative assembly, not city councils or county commissions, just as regulation of federally chartered financial institutions is the province of the Congress, not the states and their political subdivisions. The preemption by state law protects financial institutions and credit unions from having to operate under a plethora of inconsistent or conflicting regulations as enacted by different political subdivisions and ensures that all citizens of North Dakota will have

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access to banking or credit union services and products on a uniform basis. Clarity about this has become more important in recent years because a single or bank or credit union may operate throughout North Dakota. They simply can't do that in a cost effective manner if they would have to expend their resources either trying to determine whether a locally or state rule or regulation applies to regulate their operations or, for example, trying to follow different rules for operations in Grand Forks than apply in Fargo or Minot.

Section 2 and 3 of the bill relate to the "wild card" statute for banks. In banking and credit union law a "wild card" statute is used to help state chartered institutions keep even with federally chartered institutions in terms of their powers to offer new products and services and the implementation of those powers. If memory serves me, I believe the North Dakota legislative assembly first adopted a "wild card" statute for banks in 1985. Credit unions have also had a wild card statute for many years.

The purpose of the proposed amendment to the wild card statute for banks is twofold:

First, is to make the bank wild card statute operate more like the credit card wild card statute now operates. . . That is to say more automatically. With this amendment, the like the credit card wild card statute, the bank wild card statute will state that a bank has the same powers as a national bank, instead of having the state banking board decide whether a state bank has new powers or not. However, the state banking board will continue to have the power to regulate a bank's implementation of the wild card powers. (The proposed amendment to the language of the bank wild card statute makes the rules

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for banks and credit unions more similar, but in my view actually provides the state banking board with more regulatory authority than has been left with the credit union board in the matter of wild card powers.)

The second purpose to the bill is to separate and relocate the bank wild card statute so that it can be more easily found. Currently the wild card language is included in section 6-03-38, a section that has been turned into a conglomeration of authorities, limitations and conditions. Over the years, the effect has been to make the wild card language hard to find and, perhaps, interpret. The relocation of the wild card statute into that part of the banking code that delineates state bank powers should improve its visibility and make its interpretation easier simply because it will be a stand alone section of law.

Thank you.

Marilyn Foss, Lobbyist No. 76  
North Dakota Bankers Association  
701-223-5305 or 355-4538  
marilyn@ndba.com

2176  
#1

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