

MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

2182

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2182

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2182**

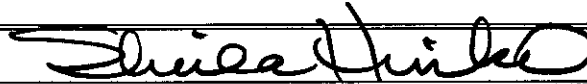
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 23, 2007**

Recorder Job Number: **1632**

Committee Clerk Signature



Minutes:

Rick Clayburgh – ND Bankers Association - In Favor

TESTIMONY # 1

Goes over testimony

S Heitkamp: Give me an example.

R Clayburgh: If there were a flu outbreak in Minot, could be contagious that the bank would close a few days. ATM delayed. This would allow bank to protect the bank and it's employees.

S Heitkamp: Do other states have this?

R Clayburgh: Not sure. This would allow bank to set up emergency facilities.

S Potter: Who would declare the emergency.

R Clayburgh: this would be for an epidemic, not a pandemic. Determination on bank.

Tim Karski - In Favor

3 days is not enough for some facilities.

Marilyn Foss - In Favor

This would be a code emergency. Defined term.

S Potter: So the bank president or manager could declare the situation?

M Foss: Yes

Motion Do Pass – S Hacker

Second – S Heitkamp

Bill Passed 6-0

Carrier – S Behm

REPORT OF STANDING COMMITTEE

SB 2182: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2182 was placed on the Eleventh order on the calendar.

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2182

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2182

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: 03-06-2007

Recorder Job Number: 4468/4471

Committee Clerk Signature

Dya M Thomas

Minutes:

Chairman Keiser opened the hearing on SB 2182.

Rick Clayburgh, President of the North Dakota Bankers Association, introduced the bill.

See written testimony.

Rep. Nottestad: Tell us, during the flood of 1997 in Grand Forks, we know that banks and credit unions went all over. How would the state banking commissioner and your department, how would they have been involved in that?

Clayburgh: It did happen and the banks were very quick to be able to respond. In many cases as you know, banks specifically were innovated by flood waters and it took some time for the community to re-establish but with a matter of hours, the financial community threw oversight and assistance were able to with the branches, provide assistance. For example, the then First National Bank which is now Alerus Financial, had offices, already branches outside of the area. It took some of the other banks a little longer but those banks work generally within the system. It did work. This allows the bank, that was under emergency declaration by the Governor and it was under emergency declaration and emergency towers that would prevent it in a situation. This is a little more specific, if there is a epidemic specific to just Grand Forks, say there was a measles outbreak that became very substantial it would allow the banks to

make the decision that we are shutting our operation down immediately today or we are going to close your instant cash locations today and they are taking the full legal responsibility to do that under the powers of fear, they are not going to wait for the Governor to make that emergency declaration. They will make that decision, notify the banking commissioner that they have done that but they are doing that in order to protect their customers, the employees, and the business. A great example might be not immediately after a situation a bank may literally have to launder money, wash money in order to eliminate any bacterial problem with it. So they can't immediately, they may have to shut down instant cash machines if they have a money shortage and then only disperse money through human means. It is just allowing the bank to be able to operate under that type of a scenario on the banks decision that the situation has occurred. Then immediately, not long after that, we would be in a type of a situation where the Governor would be calling an emergency situation.

Rep. Amerman: Without this position, this statute and new language, how does it work now?

Clayburgh: A bank for example can't be closed for longer than forty-eight hours and so they are open on Saturday and maybe have a state holiday on Monday, they couldn't be closed on Tuesday. Consumers have to have and our economy we have to be able to have access to our money and the dollar necessary. So there are very tight restrictions on banking operations on when it can be open and when they can close. That being said, in a situation today if there is a type of disaster, massive storm, tornadoes that would take out an entire community, it would require a current declaration by the Governor in order for emergency powers to come into play that would allow deviation from the current rules. Under this situation, an epidemic may start to occur, there may be some issues that are starting to percolate at the local level that is not fully enough to know that the state or national level that would allow the bank in the protection of their employees to say we are closing our office immediately and if they do that and they over

reacted to something and they shouldn't have, then they will have liability that they will have to face for that. This allows them that ability to do it to protect their asset prior to an emergency being declared. Once they have done that and we are in a full scale epidemic that is lasting longer than a sixty day period the bank can continue to do what they are doing, they may be setting up a branch in an area where they haven't been authorized to do it, but that in the sixty days, the commission of banking can say this is helping and we need to continue this operation and they are saying no, you have to shut down. Or the commissioner can also tell them to cease and desist immediately. They have done something that they shouldn't have. They have over reacted to something, the commissioner can tell them to return to normal operations immediately.

Rep. Thorpe: This looks like a really simple straight forward bill, is it patterned after national emergency or other areas in the state?

Clayburgh: Two fold, this came out of discussions that we watched after hurricane Katrina. As we both Marilyn and I have met with our counter parts and we talk about national preparedness in the cases of national emergency. On a side note, I happen to have authorization that if there is something that happens on a national monetary system; I have a code that I can get into the phone system under national security and not get interrupted. You get into areas where there has been an emergency and all of the circuits are loaded. We have the ability to get into that circuitry so we can make calls to make sure we can continue the free flow of dollars within our economy. This specific bill does not model legislation. It was specifically us saying we want to make sure North Dakota is prepared from that standpoint.

Rep. Zaiser: Are there any provisions like this for the credit unions?

Clayburgh: I can't speak to credit unions operations. They have rules and regulations that they follow. Some are comparable and some are similar. Specific to this, the credit unions

were very well aware of this legislation and we for the most part worked with the Credit Unions and their coming forward with legislation. They saw this in the Senate.

Rep. Keiser: On line thirteen, three business days. With telecommunications the way they are today, that seems like a really long time for letting the commissioner know that they have got some action that is in some sense outbreak. What is the rationale for the three days?

Clayburgh: That was actually in our discussion of putting this together; we drafted this legislation and consulted the commissioner's office and putting it together. I think that part of that is a standpoint of the ability to communicate. There was no heartburn from the commissioner's standpoint. Marilyn and Bob worked on this language together. It was just thinking that in a certain situation the last thing on the bankers mind may be to call the commissioner, it is more so to worry about the assets and employees and business. We didn't want to give them any time to make sure they got everything in place there before they had to think about getting a hold of the commissioner. This is not something that I anticipate our members using. There is quite a liability and they will use it quite carefully, but it will be situation that in a type of event that they want to make sure that they protect their assets, and we put more so in terms of an epidemic. If you are dealing with a situation, that all of the sudden, something is coming up quick and you realize and I hate to use the word bird flu or Asian flu, but if it's that type of situation that is very when you can pass it freely very quickly, contagious, it's a type of situation can just say we are closing.

Rep. Zaiser: I guess in concurring with Chairman Keiser's comment, are there any criteria; is there anything simple that would cause this to come into effect? Realizing that this is something you want to really handle with care and not put into effect frequently.

Clayburgh: I think in most cases the emergency powers of the Governor are going to probably be in effect before this was to occur. But this is really to address if something, this type of a

pandemic, we did not use, we used epidemic. Pandemic would mean state wide, you could be talking about an area that could be just affecting a county in the state and the state system could be operating just a little bit slower because the state may be allowing the local health district to try to deal with something and that the Governor's powers may not kick in right at the soon enough this would allow banks to make that decision. We have got to do something to protect our employees and our assets.

Rep. Vigesaa: Out in the rural areas a bank may have to move quite a distance, is there any duty on the commissioner to notify the other banks in that area that there is a bank coming in to do an operation because they had to vacate their own location?

Clayburgh: Not specifically in the statute, but the commissioner does, they do have their notification that they send out of what is going on within their agency each month.

I am also assuming that in most situations all of the local banks are going to understand what is happening and they are probably going to be dealing with similar situations. I know I'm not directly answering your question, the best way; I don't have the answer to that.

Rep. Vigesaa: What I was referring to was say if Cooperstown had something happened. Everybody is going to have to go to another community maybe thirty miles away or twenty miles away. They may not be aware of the situation in Cooperstown right away. I was wondering if there would be some notification necessary for that.

Clayburgh: As we put this bill together, we tried to make it as useful as possible without going overboard. I would see it more in terms of a bank closing and saying we are only going to run our operations out of the instant cash machine for a while instead of through our bank operations in which there are hour limits. I see it more in protecting, but it could also say maybe they had a situation where the downtown location has become infected and they can't

utilize that area so they could set up a trailer on the outskirts of town and set up a bank operation which they would do on a temporary basis until they could get back downtown.

Rep. Nottestad: I can site in 1997, we were invited to Larimore to share the credit union building with them. They gave us a desk in the corner and tellers cage and we operated our organization from theirs and I think it was virtually impossible to get a hold of people with word of mouth. It's weird, it just works.

Rep. Johnson: Your testimony mentions that you probably won't use it very much. What kind of liability are you?

Clayburgh: That was a discussion that we have had with the commissioner's office. I am sure that if you are the president of a bank and the board and you decide to close the operation down and somebody needs cash, they may have some cause of action against the bank, saying because you closed, I couldn't get my money right away and I wasn't able to do something.

Rep. Keiser: Do you have any heartburn if we change the three business days?

I cannot imagine in this day having a material change in the operation of a bank where people who bank at the bank aren't going to be calling the commissioner and I think it would be very embarrassing if they could fall back on the fact that they didn't have to call for three days. It seems to me we need to have better communications in an emergency.

Clayburgh: I don't believe there is any heartburn on that. It says within three days.

I might suggest before you do that, your assistant could call the commissioner's office and double check. There may have been some reason the three days was drafted.

There were no further questions from the committee.

There was no further support for the bill. There was no opposition. No action was taken at this time. Later that day, Rep. Keiser allowed for committee discussion on this bill.

Rep. Keiser: On line thirteen it says that they must notify you promptly in any case within three business days. Three business days, with Saturday and Sunday, would be a five day period which they could always fall back on, "we don't need to tell them for five days". That seems like an unreasonable period to me.

Tim Karsky, ND Banking Commissioner, spoke to provide information.

Karsky: When I talked to other commissioners, especially in Mississippi and Louisiana during hurricane Katrina last year, this is a result of some of that and it wouldn't be an epidemic, just in emergency. Some of the banks down there had to relocate and have meal service, cell phone service for quite a while, so they got notice after that and sometimes it could be longer than that, so I didn't have a problem with that portion of it. I would think that a majority of our banks in our state could probably give us notice immediately and the other thing that happened that was brought up in the case of those temporary offices, even the department can be wiped out where you won't get notice if there was a nuclear type thing or whatever so they just said if you want to amend it you can, I support it. I don't think it's an abuse of a temporary location. I think here we were just trying to work with the industry hopefully nothing like this would ever take place but in the case of a severe storm or epidemic that it might be the case.

Rep. Kasper moved a DO PASS. Rep. Dosch seconded.

Roll Call Vote: 14 yes. 0 no. 0 absent.

Carrier: Rep. Thorpe

REPORT OF STANDING COMMITTEE (410)
March 6, 2007 3:42 p.m.

Module No: HR-42-4576
Carrier: Thorpe
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2182: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2182 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2182

**TESTIMONY OF RICK CLAYBURGH
NORTH DAKOTA BANKERS ASSOCIATION
IN SUPPORT OF SB 2182**

Chairman Klein and members of the Committee, for the record I am Rick Clayburgh, President of the North Dakota Bankers Association. I am appearing before you today in support of Senate Bill 2182. Senator Nelson has introduced this legislation at the request of NDBA.

This bill adds a new section to Chapter 6-03 of the Century Code relating to the "Powers, Management, and Operations of Banks". It specifically provides state-chartered banks temporary powers in the case of an epidemic or other emergency.

Quite simply, SB 2182 allows a bank that operates in an area that is experiencing an epidemic or other emergency to adjust the bank's operations in any manner that is reasonable to protect the bank's customers, employees, assets, or business. Under this section a bank may temporarily close or relocate offices, employees, or operations. In addition, it may restrict access to facilities or services.

If a bank should take action under this section, it must notify the Commissioner of the Department of Financial Institutions of any actions the bank takes under this emergency authority. Any action taken by a bank under this section cannot exceed sixty days, unless extended by the Commissioner.

Mr. Chairman and members of the Committee, I thank you for your time and encourage your support of Senate Bill 2182.

I would be happy to answer any questions you may have.

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