

2009 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2243

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.2243

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 02/05/09

Recorder Job Number: 8952

Committee Clerk Signature *Katie Oliver*

Minutes:

Senator Nodland: I am Senator George Nodland from district 36 which represents the counties of rural Stark, Dunn, part of Morton, & part of Hettinger. I am here today to present a bill relating to counties accepting credit card payments and charging and enabling them to charge a fee for that transaction. I was a Commissioner in Stark County for 8 years, and we could use charge cards and we couldn't charge a fee to do those transactions. Today with the oil traffic and land men they have company credit cards and do transactions electronically. The counties are having problems with accepting those and not being able to charge fee.

Marilyn Foss: See testimony #1.

Senator Cook: Did you say that game and fish is able to charge a fee for the cost of the credit card use?

Marilyn Foss: Yes, I modeled the statute after that.

Senator Cook: Younger people use this all the time. You use a credit card?

Marilyn Foss: When I said that I was referring to debit cards.

Senator Cook: What would you say to the store that charged a fee to buy the coat?

Marilyn Foss: Retail is different. Government is collecting a sum that is set by a government body. Not required but allows government to collect whole amount of assessment. Again, if the person making the payment doesn't want to pay the fee they can to pay with cash or check

Senator Cook: Is there any benefit to accepting the credit card?

Marilyn Foss: They seem to feel that they would receive money more quickly and

Senator Nelson: It seems to me that not too long ago that gas stations could not have different prices if they paid with credit card. So if we charge a fee on top of what they are paying is there a problem with the contract that the counties would have if there are 2 different prices.

Marilyn Foss: My experience is quite a few gas stations in Fargo will give you a discount if you use a credit card. It may very well be contractual matters with the banks. This is enabling legislation but parties will have to work that out.

Senator Horne: What percent will the charge be?

Marilyn Foss: 2.75%

Senator Dever: Is that the maximum or could it vary?

Chuck Strout? President of Union State Bank in Hazen, the percentage charge varies on the agreement and transaction and agreement. I am not sure for sure.

Senator Nodland: Some of the issues, the credit card contract is dependent on the credit card, will vary some can be as low as 2%. I would assume that local banks would work at a lower charge. There is some negotiations, wire transfer have a fee. That is one of the real issues. Out of state owners who wire transfer, get 5% discount and another \$15 off because they can't collect transfer, it adds up to a bit of money.

Senator Cook: If someone came into your bank to do a transfer, I thought you charged the person who was getting it.

Senator Nodland: There could be a fee to both send and receive the money.

Senator Dever: The County is not receiving the money the bank is.

Chuck Strout: I am in support, through working with the county treasurer and seeing how banking is done today and managing money at the county level. Today Mercer County has a remote capture unit where they are making their deposits at the courthouse and electronically the images and they are showing up at her desk and our office. What services are there, how can we enhance that? Enabling legislation, I think it will help and improve matters at the county level. The system is used in Mercer County the customer has to dial the credit card company and it's icky. I can go to my grocery store and use my credit card and I think that is the technology that people expect. I frankly hope my kids don't have a credit card, but they do, and they are paying outrageous fees. Not knowing the business of managing your money. How many times have you been annoyed when you try to get money out of an ATM and you end up paying the \$1.50 fee?

Senator Dever: I think that what Senator Cook was saying is that when they come to the county and they have to pay the fee.

Chuck Strout: The disclosure is at the county now. They added on to the bill, there is a disclosure before they pay.

Darbie Berger: I am Darbie Berger, Mercer County Treasurer. We have official payments that manage our credit card payment, they have to put in their parcel number and the amount they pay, the 2.75% is based on parcel number. A lot of people come to the county and want to pay with their credit card over the counter. This is just another option for people to use if they want. There was no one else to speak on SB2243, Senator Dever closed the public hearing on

SB2243

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.2243

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 02/05/09

Recorder Job Number: 9383

Committee Clerk Signature

Kate Olive

Minutes:

Senator Dever: I see in Marilyn Foss's testimony that she had an amendment.

Senator Nelson: I am confused as to why some charge a fee and some don't?

Senator Cook: They are giving you a discount not to use your card.

Senator Nelson: What they are telling us that it is a contract with the credit card, how do these.

Senator Oehlke: At the gas station the price is on the pump.

Senator Nelson: There is a station in Moorhead that won't take credit cards.

Senator Dever: I don't take credit cards in my business.

Senator Nelson: It does get expensive and it gets up there.

Senator Cook: I think that it would send a bad message to those who came to pay and they ended up paying a \$3 fee.

Senator Dever: My business is state and federal government that uses credit cards now more than ever and we don't charge them extra for that.

Senator Nelson: I move a do not pass.

Senator Cook: Second.

The motion passed with 4-1 vote and the bill is carried by Senator Oehlke.

Date: 2-12-09
Roll Call Vote #: _____

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

2243
Carried
Oehike

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Nelson Seconded By Cook

Senators	Yes	No	Senators	Yes	No
Dick Dever	X		Dwight Cook	X	
Dave Oehike	X		Carolyn Nelson	X	
Robert M. Horne		X			

Total Yes 4 No 1

Absent _____

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE (410)
February 13, 2009 1:40 p.m.

Module No: SR-29-2670
Carrier: Oehlke
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2243: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO NOT PASS** (4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING).
SB 2243 was placed on the Eleventh order on the calendar.

2009 HOUSE POLITICAL SUBDIVISIONS

SB 2243

2009 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2243

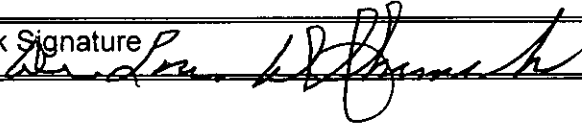
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 5, 2009

Recorder Job Number: 10807

Committee Clerk Signature



Minutes:

Chairman Wrangham: opened the hearing on SB 2243.

Senator Nodland: This bill allows the counties to charge a fee when someone makes a payment with a credit card. This wasn't allowed before. More and more people in western North Dakota in the oil industry are coming in to counties with large oil companies and they are going to a court reporter or recorder's office and they are getting a bunch of copies of different things and they want to pay with a credit card. Current law allows them to pay with their credit card, but they can't charge a fee. This bill authorizes counties to accept this payment with a credit card, wire transfer or any other electronic device. It designates someone in the county, a county auditor or another officer to be responsible to determine what cards are acceptable. This bill is modeled after ND Century Code Section 20-.1.03-32 which applies to hunting and fishing license. These people can order their hunting and fishing license on line through the state game and fish department and they won't be charged a fee. The counties will only be allowed what the credit card companies charge them. Why aren't they doing this already? They are attempting to do this already, but they can't get that credit card machine like other places and make it a real simple process for the person that is trying to pay. What about the state of North Dakota? The state Tax Commissioner charges 2.49% to pay your taxes on line.

You are paying that fee when you use a credit card. It is only a convenience. It is not encouraging people to get into the habit. The world is changing and younger people are using credit cards more and more. I use one because when I bought my new pickup I put it on my card because I get a pretty good discount of \$1800 off so more and more people are using it.

Rep. Jerry Kelsh: Some people pay their taxes on the 14th of February and two or three days later would that then renal the discount?

Senator Nodland: I don't think it would. Someone else could answer that.

Rep. Koppelman: Do you know if the merchants are charged to accept debt cards the same way they are a credit card?

Senator Nodland: Yes they are.

Rep. Koppelman: We just reviewed in the Administrative Rules Committee something that dealt with a particular agency of government accepting the on line pay service like PayPal and that sort of thing. That seems to be the next wave. Credit cards and things are innovative but not new and I think the younger generation more and more do payments that way. I am not sure this would allow that under the term electronic transfer, but if not would you object to adding that kind of a mechanism for paying these?

Senator Nodland: I assume it would. Everything has its own little terminology like bill pay and auto pay.

Rep. Zaiser: My concern is the rate that the consumer would pay. Would it be the established rate?

Senator Nodland: That rate is established by the credit card company. That is the rate they would negotiate with the bank.

Rep. Zaiser: I am concerned that the county would not have a fixed rate and make one ahead of time. The consumer would know ahead of time what it is.

Senator Nodland: That would have to be negotiated with the banking credit card company. If it changes and went higher the counties would have to pay the difference.

Rep. Jerry Kelsh: I know that some credit card do not audit. Some credit cards say in the agreement you cannot change it. Is that only by contract do you know. How is that done?

Senator Nodland: The bank can negotiate that amount that they would charge for fees, especially in ways that help the counties. People look at the fees and they know they are going to pay the fees.

Rep. Corey Mock: I know that the Universities over the year's students have been able to pay their tuition with credit cards. The same situation arose with fees. I know recently the UND has started charging fees to students that use their credit card. UND has actually limited it to certain credit cards like MasterCard and Discover to secure this rate. Are we saying that we will restrict which credit that they can use?

Senator Nodland: I don't think that is what we are trying to do. We are trying to get the auditor the discursions.

Rep. Klemin: This bill talks about accepting payment from four different categories; wire transfer, electronic transfer, debit card or credit cards. The bill is about fees but only talks about credit cards. It doesn't mention wire transfer or credit card fees at all so what is the intent?

Senator Nodland: I am going to reserve that to somebody with the bankers association, but I think this is the way the bill was drafted and this is supposed to represent all of it. Legislative council knew what we wanted.

Representative Heller: I just want to say I support this legislation. I think it is a good bill for the state and for the county.

Marilyn Foss: ND Bankers Association: (see testimony #1). Rep. Kelsh raised the issue of whether the contract with the percentage of fee charges. It is possible that there is a contract to do this. Right now I am researching this issue specifically. As Rep. Mock said UND has a charge and the exception appears to be to allow counties and state institutions to separately charge for this. When the merchants are accepting a card the merchants actually handles the cost of the service along with the cost of the goods. Course counties don't have the authority to adjust their tax rates or tuition rates. Some companies have it in their contract for counties and educational institutions to separately recover the charge. Rep. Zaiser you asked why we do not have it in statute like the tax department does. The Tax Department fee is not covered by statute. The Tax Department is getting their increases through the Bank of North Dakota for this program. So the 2.49 fee is the fee that is then worked out through the Bank of North Dakota that could go up or down. Rep. Mock addressed the university system and the issue of UND lending the part by designating the auditor to work with the county and local financial institutions and designate who that was and it is up to the city auditors discursion in negotiating for the fees. Rep. Klemin's question was to the fees being focused on credit cards. That is actually correct. We did offer an amendment in the Senate to focus on that issue, but frankly the Senate was hostile to OMB counties assessing the fee separately to them. I think there could be greater clarity in the bill regarding that issue on electronic and wire transfers. I would be happy to work with the committee to do an amendment on that point. A few months ago we did contact the Association of Counties and the county auditors and they were very enthusiastic at this point. How this works is rather than the counties working to get a contract agreement for their counties a third party would contract the financial institution and they would take care of it directly so that is how the system has been set up to essentially to work around

not skirting the law and allow the counties to accept these payments. They with financial institutions and possible negotiate more favorable terms for their customers.

Rep. Klemin: Can the debt cards be used since they are not mentioned?

Marilyn Foss: The Senate was resistant to the whole concept of recouping the fees they belong to the customer. So they did not adopt the amendment to make it clear as it relates to that kind of funds and wire transfers; they are not accepting them. We brought the issue to the whole senate because this might represent a do not pass. Honestly when we did that it was obvious the senate committee misunderstood the situation. The difference between the laws that pertain to the state; otherwise it pertains to the cities. There is a perception in Chapter 55 that political subdivisions can accept credit cards and then it says for the state the Bank of North Dakota will be the program and whatever and that is how the tax department program works and how the fee is added on. But there isn't similar language saying that the counties have an entity to work with on this point and there is not language in the current statues at all that address wire transfers and debit cards or any other kinds of payment beside credit cards. I was told the Senate committee when working on this bill contacted the Tax Department and they explained correctly that this was all handled by the Bank of North Dakota. The disconnect was that same statue does not work in the same way for counties so there was a misunderstanding.

Rep. Klemin: It says the county auditor or individual functioning as when the county commissioners probably would be making the decision as to whether they are going to allow that. Why the words deputy, clerk or assistant to the payment?

Marilyn Foss: We worked with the counties and Association of Counties in drafting the language and certainly it was our view that this activity on the part of the counties would be something that would be approved by the counties and that would be pretty constituent with

the counties and we did not want to take that discursion away from the counties. There may be a county where the county commissioners decided whether or not to get into this it is up to the county.

Rep. Klemin: The way it reads now the assistant clerk in the counties could make that decision. Isn't it more appropriate to just have the county make it and have the county commission make that decision?

Marilyn Foss: I would not object to that change.

Rep. Klemin: I am on line 9 it says the county auditor or individual can decide which credits to accept. Now some counties have appointed are designated. Why are we specifying a specific job title in this? Can't we leave this up to the county commissioner to decide what kind of person it would be.

Marilyn Foss: When we visited with the Association of Counties they said the county auditor would be the correct person to designate partly because most counties don't have separate treasurer; everybody has a person who is designated as the county auditor or can function as the county auditor even though they may have a different title. We thought it would be better to designate a specific person with the responsibility of who is doing it because of practicality the whole board of commissioners is not a practical designation to make when negotiating with the financial institution and credit card. I did this after working with the Association of Counties. If we are having every county negotiating fees there would be quite an impact.

Rep. Jerry Kelsh: I think by law the auditor is the manager of the county in the absent of the commission and that is probably why that was this way.

Marilyn Foss: We talked to the Association of Counties and said we would need an officer to do this and the county auditor was the one.

Aaron Burst: Association of Counties: We support this bill. This bill we did not have on our radar, but the Bankers Association brought this to our attention. We talked to the auditors and county commissioners specifically and they said this is something that would look good. There were a couple of things they pointed out to us to make this bill work we would have to abide by and one would be discretionary and that is why the word may is in there. Another county said they would not do this; we are not capable of doing this so we do not want to put them in a position of mandating the state credit cards for them. The knowledge was that the fee would be passed on to the consumer who used this choice. This is not a money making deal for the counties. We just wanted to pass on the cost to the consumer which we cannot do now. The county thought there was a potential that this could save the county some money in leg work in the long run if a number of people are using credit cards or debit cards there certainly would be less transactions and taking physical checks down to the bank so there would be some advantages not only for the consumer, but the county itself. We would have no objection to broaden this language to make sure that the township use a debit card in addition to a credit card. With regard to the auditor; we felt the auditor is the first stop or the secretary with the county commission the auditor is at the courthouse at all times. By law it says the person who would be either elected or appointed to that position so that would be fine too. I the county commission would get together and say we have passed a resolution that no how no way would a county be involved in electronic transfers I am assuming the auditor would not be taking that. It would still have to go to the county commissioners. This was not intended to write out the county commissioner's authority. Maybe the Association of Counties would be interested in negotiating with one vendor for this service. The state does use General Electronic but they have been bought by American Express and American Express is not always accepted so now we have to renegotiate; the state does.

Chuck Strom: President of Mercer County and I am the President of the Bank: Went over problems with using the phone to contact and pay a bill at the courthouse. The Official Payments Corporation has been doing business with the Treasurer's office in North Dakota. They charge twenty five cents for every parcel of land you pay your taxes on. Discussed cost and how it does cost allot to process. This legislation, from the banker's point of view, we would like to see the counties that want to be updated in the modern age of technology in banking should have the ability to do so. Today in Mercer county in the office of the Treasurer, by taking the deposits and putting them into the machine our deposit is in the bank. I think it is a good way to do business.

Rep. Jerry Kelsh: If I pay my taxes with a credit card you will get 2.75% off. The county would get 2.75% off? I am talking about right now without this bill. If I pay this would a debit card it would be the same thing. The debit card comes right out of my account when I pay it so what is fair about that?

Chuck Strom: I think that this company that I mentioned they calculate and they say it is illegal to charge you the customer the 2.75% so it does pay a few. The county doesn't pay it.

Rep. Jerry Kelsh: Why do they charge the same for fees when the debit card comes right out of the bank?

Chuck Storm: I don't know.

Valerie Brunmun: State Bank of North Dakota: We are going to use a debit or credit card you need an authorization at the county level and I am essentially saying that unless there that is a guarantee of payment.

Rep. Jerry Kelsh: A debit card says the money is in my account. A credit card does not. But if it is in there you still charge 2.75% no matter what. With a credit card they might not pay that bill.

Jack McDonald, Ind. Community Banks of North Dakota: This would give the local counties to deal with their local banks. We are in support of it.

Rick Clay burgh: NDBA: The purpose of the bill is to allow the county to deal with their customers the same way the state of North Dakota does. We ask for a favorable consideration for this bill.

Opposition: None

Neutral: None

Hearing closed.'

2009 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2243

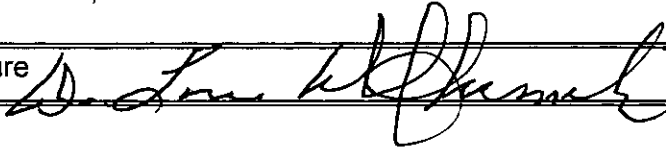
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 19, 2009

Recorder Job Number: 11247, 11254

Committee Clerk Signature



Minutes:

Chairman Wrangham reopened the hearing on SB 2243.

Rep. Klemin: (proposed amendment #1) went over the proposal.

Rep. Koppelman: Is discount exchange fee the correct terminology? Is that why we are changing it?

Rep. Klemin: It goes back to the debit and credit card terminology.

Rep. Jerry Kelsh: On lines 5 it says the county official, deputy, clerk or assistant I would like to put in the words after who by county commission will accept wire transfers.

Rep. Klemin: What the amendment does it take those words out? It says any councilman may accept payments so may is totally up to them.

Rep. Kretschmar: On line 9 where it says the county auditor or individual it seems to be consistent just say county is the term which credit cards are recognized.

Rep. Klemin: We looked at that but the party involved and the Banker's Association thought there should be some particular person who made that determination. It was the Association of Counties idea that it is the county auditor that is the person. We did not change that.

Rep. Conrad: The County can determine who that is; whether it is the auditor or someone else.

Rep. Klemin: We did not change that since it was the Association of Counties that decided that position of county auditor designated in this bill.

Rep. Kilichowski: The county auditor would take her or his direction from the county commissioners.

Rep. Jerry Kelsh: Is that clear that they can do that within the county to do that without the commission approving that or not?

Rep. Klemin: I am certain the county will know it would be up to them and it is up to them to decide.

Chairman Wrangham: I did have a question along those same lines of who would be responsible for making a decision on whether the county was going to do this or not. So the legislative intent is definitely that the county commission will make the decision and then probably work with the auditor to decide. The auditor could bring those proposals or whatever. Would that be correct legislative intent?

Rep. Klemin: Yes.

Motion Made to Move the Proposed amendment as attached by Rep. Klemin: Seconded by Rep. Koppelman
Voice Vote Carried.

Rep. Koppelman: I would like to propose another amendment. I know we have wire and electronic transfer, but I am not sure that covers it. I asked about the term and it is a term used for those kinds of payment services. I would like to insert that word and we are waiting for that word one other additional amendment that I would propose it on line 10 after the word cards insert the words other payment methods. We can wait until Mr. Wahlstad gets that term or not. The word I am talking about would probably go in line 3.

Chairman Wrangham: Maybe I understood the testimony wrong but they didn't want to go to PayPal or those other methods.

Rep. Jerry Kelsh: We wanted to keep a limit and have them probably accept only one type of card.

Rep. Koppelman: I did ask the question during the hearing and they said they wanted to do that, but they thought the language does cover it. I am not sure the language does cover it. If any of you get involved with eBay or other on line services and do auctions and all that kind of stuff, it is being used for a lot of other things now. It is a company called PayPal. It allows someone to go on line and offer a payment and they typically have a checking account or credit card attached to that PayPal account. Explained the procedure. The advantage to the county is they don't even have to worry about processing the credit card stuff etc. It just automatically sends the money to the county. The county would have to have an account as a PayPal merchant or whatever they are called so it is still all county decision. It is all up to the county anyway.

Rep. Kilichowski: Wouldn't electronic transfer cover that?

Rep. Koppelman: I think they thought it would and it may depending on how the law is interrupted. I am not sure if electronic is broad enough to cover the PayPal. Discussed what this is and how it works.

Rep. Kilichowski: I wonder if the auditor would want to accept the electronic transfer.

Chairman Wrangham: I think the electronic transfer already covers this.

Rep. Koppelman: If we can wait until Mr. Wahlstad comes back to us on the terminology that would be good.

Chairman Wrangham: Decision made to hold this bill until we get the correct wording for the payment method.

Hearing closed.

Job # 11254

Chairman Wrangham reopened the hearing on SB 2243.

Rep. Koppelman: The term is automated clearing house. It means services like PayPal. I would move that we add the worded automated clearing house after the word transfer on line 6 and also on line 10 after the word cards or other payment methods. Seconded by Rep. Hatlestad.

Voice voted carried.

Chairman Wrangham: We have 2243 before us as amended, amended and amended.

Do Pass As Amended Motion Made by Rep. Hatlestad: Seconded by Rep. Corey Mock

Vote: 12 yes 0 No 1 Absent Carrier: Rep. Hatlestad

Hearing closed.

X |

PROPOSED AMENDMENTS TO SENATE BILL NO. 2243

Page 1, line 5, remove "official, deputy, clerk, or assistant"

Page 1, line 7, replace "charged by" with ", exchange fee, or other fee incurred by the county"

Page 1, line 8, remove "the credit card issuer"

Renumber accordingly

Date: 3-19-09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2243

HOUSE POLITICAL SUBS COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By Rep Klemm Seconded By Rep Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. Wrangham			Rep. Conrad		
Vice Chair Rep. Headland			Rep. Kelsh		
Rep. Hatlestad			Rep. Kilichowski		
Rep. N. Johnson			Rep. Mock		
Rep. Klemm			Rep. Zaiser		
Rep. Koppelman					
Rep. Kretschmar					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Carrier: _____

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

*Voice Vote
Carried - attached proposed amend.*

March 19, 2009

V12
3/19/09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2243

Page 1, line 5, remove "official, deputy, clerk, or assistant"

Page 1, line 6, after the first underscored comma insert "automated clearinghouse,"

Page 1, line 7, replace "charged by" with ", exchange fee, or other fee incurred by the county"

Page 1, line 8, remove "the credit card issuer"

Page 1, line 10, after "cards" insert "or other payment methods"

Renumber accordingly

Date: 3-19-07
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2273

HOUSE POLITICAL SUBS COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By Rep Koppelman Seconded By Rep. Conrad

Representatives	Yes	No	Representatives	Yes	No
Ch. Wrangham			Rep. Conrad		
Vice Chair Rep. Headland			Rep. Kelsh		
Rep. Hatlestad			Rep. Kilichowski		
Rep. N. Johnson			Rep. Mock		
Rep. Klemin			Rep. Zaiser		
Rep. Koppelman					
Rep. Kretschmar					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Carrier: _____

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

*Vote carried!
Carried to add PAYPAL +
line 10" or other payment method.*

Date: 3-19-09
Roll Call Vote #: 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2273

HOUSE POLITICAL SUBS COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Ch. Wrangham	✓		Rep. Conrad	✓	
Vice Chair Rep. Headland	✓		Rep. Kesh	0	
Rep. Hatlestad	✓		Rep. Kilichowski	✓	
Rep. N. Johnson	✓		Rep. Mock	✓	
Rep. Klemin	✓		Rep. Zaiser	✓	
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Pietsch	✓				

Total (Yes) 12 No 0

Absent 1

Floor Carrier: Rep. Hatlestad

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

REPORT OF STANDING COMMITTEE

SB 2243: Political Subdivisions Committee (Rep. Wrangham, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2243 was placed on the Sixth order on the calendar.

Page 1, line 5, remove "official, deputy, clerk, or assistant"

Page 1, line 6, after the first underscored comma insert "automated clearinghouse."

Page 1, line 7, replace "charged by" with ", exchange fee, or other fee incurred by the county"

Page 1, line 8, remove "the credit card issuer"

Page 1, line 10, after "cards" insert "or other payment methods"

Renumber accordingly

2009 TESTIMONY

SB 2243

TESTIMONY OF MARILYN FOSS IN SUPPORT OF SENATE BILL NO. 2243

Chairman Dever, committee members, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. SB 2243 was introduced at NDBA's request.

The bill is straightforward. It gives counties explicit authority to accept payments that are made by wire transfer, electronic funds transfer, credit card, or debit card, in addition to payments made in cash or by check. The bill would apply to payment for any fee, compensation, tax or assessment that is due to the county. A county auditor is authorized to determine what "nationally recognized cards" will be accepted by the county and a service charge as appropriate. The service charge provision is to enable the county to recover any fees that are associated with accepting payments by methods other than cash or check.

Please note. Nothing in this bill requires a county to use the authority that is given by the bill. A county that does not want to change or expand the methods by which it accepts payments need not do so.

I would like to propose an amendment to the bill to make it clearer that a county may recover any fees it incurs in connection with an alternate payment type transaction from the person who has elected to use the payment method, not just a credit card transaction, a limitation that may be read into the bill as originally drafted.

As amended, the service charge authority would state: "A reasonable fee not exceeding the discount ,exchange fee, or other fee incurred by the county may be added to the payment as a service charge for the acceptance of payment by a method authorized by this section."

I also want to note that a person's obligation to pay a county is not discharged until the county has actually received payment or credit for the transaction.

It is my understanding that there are some counties in North Dakota that are now accepting payments by these alternate payment methods. However, there are other counties that are refraining from doing so because there isn't a specific enabling statute. After discussing this with the Association of Counties, it appeared that enabling legislation would clear things up and allow counties to adopt practices to enhance "customer convenience". Accordingly, we ask you to add the proposed amendments and to give the bill a Do Pass recommendation to the full Senate.

Thank you.

**TESTIMONY OF MARILYN FOSS
IN FAVOR OF SB 2243**

Chairman Wrangham, members of the committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. I am here to ask you to give a Do Pass recommendation to SB 2243.

SB 2243 was introduced to address two problems: Increasingly, people and businesses want to pay county payments by using a credit card, wire transfer or other electronic payment method instead of writing a check or paying in cash. Currently, the state law that authorizes county payments by credit cards is silent about wire transfer or other electronic transfer methods. Also, when county payments are made by credit card, wire transfer or other electronic payment method, the county may incur a fee for the service. This means the amount the county actually receives is reduced by the amount of the fee. For example, if a person pays a \$100 restaurant bill with a credit card, the amount that is credited to the restaurant is actually around \$97.50 because of the fees that are charged to process the transaction and to compensate the involved banks for the credit risk they incur – the risk that the card holder will not pay the credit card bill.

Similarly, if the county receives payment via a wire transfer, there may be a wire transfer fee imposed for the service. There is nothing in current law that specifically allows the county to recoup the applicable fees from the person who elected to pay by credit card or wire transfer and nothing that designates which county officer is to be responsible for the fee recoupment process.

SB 2243 1) authorizes counties to accept payments that are made by a credit card, and wire transfer, and other type of electronic funds transfer, 2) authorizes counties to pass associated fees through to the person who has chosen to make the payment by a method other than cash or check and 3) designates the county auditor as the officer who is responsible to determine what cards

will be accepted and the applicable service charge. Anyone who does not want to pay an additional fee may avoid it by paying by check.

One thing SB 2243 does not do is allow the counties to “make a profit” by charging fees. Under the bill, a county may not charge a fee that is higher than the fee the county incurs.

You may ask: “Isn’t this already being done?” Some counties are doing this indirectly by using third party vendors who charge a fee to the person who is making the county payment. Counties, themselves, must now absorb fees that they incur when someone chooses to pay by wire transfer or other form of electronic payment. With this bill, however, counties will be able to work directly with their local banks for credit card services. We also have NDCC section 54-06.08.2 which authorizes the state and its political subdivisions to accept payments made via a credit card. That statute designates Bank of North Dakota to take care of a credit card program for state agencies. The bank has done so and has designed that program so that the fees can be added to the charge that is made to the credit card. For example, the state tax commissioner’s web site states a 2.49% fee is added when taxes are paid via credit card. This statute resolves the problem for the state and its agencies. However, the statute does not designate any county officer to be responsible for a county program and does not address the fee issue for counties. The statute also does not address payments by wire transfer or other form of electronic payment and, again, does not specifically address related fees.

SB 2243 lets counties deal with their local banks to provide convenient service to customers as the state can now do. We ask you to give the bill a do pass recommendation.