

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1220

2015 HOUSE STANDING COMMITTEE MINUTES

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

HB 1220
1/20/2015
22223

- Subcommittee
 Conference Committee

Amanda Muesha

Explanation or reason for introduction of bill/resolution:

Acceptance of funds by closing agents in real estate transactions.

Minutes:

Attachment 1 and 2

Vice Chairman Sukut: Opens the hearing on HB 1220.

Chairman Keiser~District47: Introduces the bill. This bill will be easier. To take our new committee members back, we have had discussion and modification in the statute relative to the definition of good funds. The real-estate transactions have a lot of things happen. Property is transferred, ownership is also and at the closing it is important that the actual dollars are available for the transaction to be completed. We tightened it down last session and relative to the acceptance of funds by closing agents at real-estate transactions and what we are doing now is after two years of experience with the tightened definition we are coming back and asking your consideration of opening up a slight modification relative to what would qualify as good funds. There has been an attempt to write it tightly so that we are not creating new problems. We had previous transactions not valid. On line one may accept a cashier's check for loan funds if that check is delivered to the closing agent by a local issuing bank located in the same county as the closing agent or in the contiguous county. They know who they are working with then. The closing agent shall deposit the cashier's check in the agents scroll account with a local financial institution that makes the funds available for immediate withdrawal. This is what we are doing; we are making it legal now because they transactions need to continue.

Representative Hanson: What's the definition of locals for a local bank?

Chairman Keiser: I don't know. A local issuing bank assumes is implying that it is a local bank. Same county I believe?

Representative Boschee: When you refer to loans funds are you saying only funds that are on behalf of a loan or if I have cash that I am paying out of my savings count of 200,000? Would that qualify?

Chairman Keiser: Ask that question to my expert panel.

Representative M Nelson: The last line, "you shall deposit in the escrow account with a local financial institution that makes the funds available for immediate withdrawal. Do banks make cashier checks eligible for immediate withdrawal?"

Chairman Keiser: I assume on the local basis they participate with each other.

Representative Laning: If were to go to a noncontiguous county and wanted to buy property there, how would that be handled? Would they accept a cashier's check if the funds are not available immediately?

Chairman Keiser: That will depend on the parties involved. I would encourage you to ask every question of the parties that are requesting this.

Representative Ruby: The word "the check is delivered", does someone from the bank physically have to go hand it to them? Or since they know each other could they say I am sending it over and calling to verify?

Chairman Keiser: That's up to the individuals. I would personally be delivering it.

Barry Haugen-President of the Independent Community Banks of ND: (Attachment 1)

Representative M Nelson: Is there some difference in communication county to county? (Relating to contiguous counties)

Haugen: We want to go back to what have been done in years past. To avoid some of the inconvenience or regulatory issue, we want to go back to what has worked.

Representative M Nelson: I was thinking more of a trade area type of thing. So I couldn't accept one from a noncontiguous?

Haugen: The good funds law, with the appropriate law. Contiguous counties are the best that we could come up with.

Representative Boschee: We are running into a problem where people want to pay with a cashier's check. Would you be opposed to removing loan funds and allow for cash for people that have that?

Haugen: Cashier checks and cash are not the same.

Representative Boschee: The less cashed rewired? Which is an additional fee to the buyer? If it is under 50000 they can bring a cashier's check from a bank otherwise anything veer that requires.

Haugen: The good funds mean funds in any way of the following including United States currency. That is cash.

Chairman Keiser: The sediment is we're making cashier's check an option and its permissive may, why make the adjacent county stuff? If you're a closing agent and you have relation with a banker in Bismarck why couldn't you?

Haugen: Good question, if you go back to the permissive language "may" possible all other bets could be off.

Dave Mason Board Member of Independent Community Banks of ND: (Attachment 2).

Representative Louser: We encourage people to use local lenders. Following the law with good funds currently if we were not to pass this law, then in theory the lender would bring the funds to the closing 48 hours in advance of the closing or the closing would get delayed and you have a buyer waiting to move in, a seller whose packed and waiting, will people sit and wait or just not follow the law?

Mason: We are no longer doing wire transfers without other consideration without the passing of this law it would be a stop gap time period. That's why we have the good intent law In the first place to banks can work in an appropriate manner and people have funds we are confident in.

Nick Hacker~Guarentee & Title Company: We support the banks proposal to carve out a nitch to ensure the transactions are done well and we will bring some people in compliance of the law that are violating the law. We follow the letter of the law and we have local banks is rural communities where it is burdensome to issue a wire that morning before the transaction. There may be only a couple people working and they want to issue the cashier's check to issue the loan funds to bring that over for the closing. We know these folks. The good funds are a much lesser degree of collection of funds than clear funds, the purpose is to allow for certain types of different minatory uses of funds to come into a real-estate transaction and ensure the safety and soundness of that transaction. At the end of the day we hold a lot of money that is the banks, individuals... not ours. The purpose of the statute is to ensure that there is safety to how we are handling the funds. We request a modification; add "prior to closing of the transaction and dispercement of funds. Explains loan funds, regardless contiguous. To ensure that we deposited the check and it is immediate available for withdrawal before we give out the persons' proceeds. We are not encouraging title agents or closing companies to cause float and use float in their escrow account and that type of business as a closing agent is dangerous. These good fund statutes are common after the mortgage meltdown. Well over half the states have them. WE want to be user friendly. As the reason for the loan funds is that regardless if the cashier's check comes in, if we deposit those funds and they will take those funds right out of the account. The idea here is that we trust and know the local banker (contiguous counties) that their cashier's check for that portion of the funds is definitely good. They could write a cashier's check to us for the buyers funds that may have come into the back that morning, they deposit it into their account, the bank says sure we'll write you a cashier's check which they do not warrant, so the forms coming into the bank that check didn't clear correctly because it was a fraudulent cashiers' check for the closing funds, these are brought and they won't stand behind the cashier's check and it will be withdrawn from the account which would make us short again. That is why it is only for the loan funds as well as the contiguous counties.

Representative Louser: This is an indication outside the bank are suggesting that they have a trusting, working relationship with the local lenders. I'm wondering if these leave some interpretation for the closing agent to say we are good with someone and not with another. Do you see issues with that?

Hacker: I don't see issues with that. When a bank comes to town we are the first guys knocking on their door to make a relationship so we know them quickly. This is enabling language. It doesn't require the local title agent to accept the cashiers' check.

Rick Claybrough~North Dakota Association of Bankers: We are in support the bill and the small change. Prior to the closing of a transaction since the statute specifically defines a real-estate transaction should be a real-estate transaction or simple. Anything we can do to simplify the process would be important.

Maloy: I'm here to support the bill. We are not trying to water down the existing good funds law. We are working with local banks from which we can get clearing time on those checks. That is another issue with the contiguous counties. Checks are treated on a local basis.

Representative Louser: Do we see any issue with federal regulations and any requirements coming this year that would preclude this from being in effect?

Maloy: None that I'm aware of.

Jill Beck: We are in support of this bill. Our main deal is to get the buyer and the seller to the closing table and this will ease that process and open another opportunity to get that process going and not stall the loan closing.

Chairman Keiser: Closed the hearing

Chairman Keiser: Opened discussion for the bill.

Representative Sukkot: Motioned to adopt the amendment.

Representative Beadle: Seconded the motion

Chairman Keiser: There was a question as to whether we need to add transaction of funds. No?

A voice vote was taken: All in favor

The amendment was adopted

Representative Sukkot: Moved a do pass as amended

Representative Louser: Second

Representative Ruby: Obviously the amendment sets back the timeline, but in the beginning it says at or prior to closing. Wouldn't that amendment set the time to before?

Chairman Keiser: I think this is making the funds available in the last paragraph and earlier it deals with the acceptance of the cashiers' check.

Nick: There will need to be some renumbering done because they are subcategories under the chapter of number 4. The reason we don't need real estate transaction is if you reference it as a real estate transaction somewhere else but we want to make sure that the funds are at or available at the closing.

Representative Ruby: This is talking about prior to the closing. The agent may accept the check but in subsection two it is saying that the funds shall be deposited in the escrow account and then with your amendments prior to the closing of the transaction to the closing of the funds so...?

Nick: So we need to deposit the funds in our local escrow account which makes them immediately available for withdrawal. Not all banks will do that. Most of the banks that hold our escrow accounts for our company and market we are in the funds are immediately available, not collected just available to draw on. That is when we can proceed to disperse.

Chairman Keiser: I understand Representative Ruby's question. Is there a timing issue by adding this amendment because this specifically states at prior to the closing of the transaction and dispersment of funds, whereas earlier on it says at or prior to? Those are two different actions.

Mike: These are two different things when we say closing. Closing in live 7 is when we all sit down at the table and sign papers. When we talk about the amendment it means the actual confirmation final part of the transaction in which we are dispersing the funds. So I think that might be where the problem is. Maybe it should say prior to dispersment of funds you have to deposit the funds to the bank. The intent is the final transaction everybody signs and handing out checks and that the title company did give good checks. Make it read "Prior to dispersment of funds"

Representative Ruby: Motion to reconsider the actions by which we adopted the amendment

Representative Sukut: Seconded

A voice vote was taken: All in favor

The bill is back to the original form

Representative Sukut: Moved to adopt the new amendment.

Representative Kasper: Seconded the amendment

Representative Louser: So we are allowing the local lender to physically come to the closing with the check?

Chairman Keiser: Yes

Representative Louser: So in many cases where all the parties are at the closing table one party being the lender and they bring the check are we going to go through the process and then wait for someone from the title company to go to the bank and back before we disperse the loans?

Mike: Many times we are depositing that electronically from our office.

A voice vote was taken: All in favor

The amendments passed

Representative Sukut: Moves to pass as amended

Representative Kasper: Seconded the motion

A voice vote was taken: Yes 14, No 0, Absent 1 Representative Amerman

The bill will pass as amended

Representative Hanson will carry the bill

15.0722.01001
Title.02000

Adopted by the Industry, Business and Labor
Committee

January 20, 2015

8/20-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1220

Page 1, line 12, after the underscored comma insert "prior to the disbursement of funds"

Renumber accordingly

Date: Jan 20, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1200

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: at bottom

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep Sukut Seconded By Rep Beadle

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

Total (Yes) voice vote No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
line 12, prior to the motion passes

Date: Jan 20, 2015

Roll Call Vote: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1200

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

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

Other Actions: Reconsider reconsidered the motion

Motion Made By Ruby Seconded By Sukut

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

Total (Yes) VOICE VOTE No _____

Absent _____

Floor Assignment _____

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

reconsider the motion
voice vote

motion passes

Date: Jan 20, 2015

Roll Call Vote: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1220

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.0722.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider

Motion Made By Rep Sukut Seconded By Rep Kasper

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

Total (Yes) VOICE No _____

Absent _____

Floor Assignment _____

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

VOICE vote - Amendment passes

Date: Jan 20, 2015

Roll Call Vote: 4

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1220

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

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

Other Actions: Reconsider _____

Motion Made By Rep Sukut Seconded By Rep Kasper

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

Total (Yes) 14 No 0

Absent 1

Floor Assignment Hanson

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

REPORT OF STANDING COMMITTEE

HB 1220: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1220 was placed on the Sixth order on the calendar.

Page 1, line 12, after the underscored comma insert ". prior to the disbursement of funds"

Renumber accordingly

2015 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1220

2015 SENATE STANDING COMMITTEE MINUTES

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

HB 1220 Engrossed

2/16/2015

Job Number 23896

Subcommittee

Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Acceptance of funds by closing agents in real estate transactions

Minutes:

Attachments

Chairman Klein: Called the committee to order and opened the hearing.

Barry Haugen, President of the Independent Community Banks of North Dakota:
Written Testimony Attached (1). (1:36-3:43)

Senator Sinner: Asked how he defines a local financial institution.

Barry Haugen: The same definition that is in the Good Funds Law today. It is a thrift, local savings bank, credit union and bank as defined in the Good Funds Law.

Senator Sinner: As you know many multistate financial institutions issue their cashier checks on remote locations that do not have immediate access to those funds. How does that affect what we are doing here by changing the good funds law saying that the financial institution can issue a cashier's check any time prior to the closing?

Barry Haugen: At or prior to the closing.

Senator Sinner: Does that affect that at all for the closing agent?

Barry Haugen: It could and that is why the language is specifically permissive. The closing agent may accept so it would have to be agreed upon prior to the actual closing.

Senator Miller: Asked for a lesson in Good Funds Law.

Barry Haugen: Said he thought that is where the clarity aspect of this comes into play because the practice is still going on but some members have said that it isn't their interpretation and as such we are going to require a two closing system. Where in if you are the borrower; we had a signing to close the transaction so that the bank can then wire the funds to the closing agent and then have a second closing at the title company.(5:51-6:45)

David Mason, Vice President and Mortgage Banking Manager at American Bank Center and on the Board of Directors for the Independent Community Banks of North Dakota: Written Testimony Attached (2). He explained how the process works and stated that this allows for him, at the closing table, to have the paper work signed by the buyer and the cashier's check is then given to the closing agency to do the disbursements. (7:21-10:29)

Chairman Klein: Asked how this came about.

David Mason: The risk falls on the closing agent. The title company is pretty easy because they are insured, they are established but the term for a closing agent covers a large amount of people. It is anybody who is acting in that third party capacity for the transaction. We have to follow FDIC improvement act and it is about controlling funds and making sure deposited insured funds are under proper controls banking wise. (11:00-13:45)

Nick Hacker, North Dakota Guaranty and Title Company: In support of the bill. Said they are regulated in three different manners; one is they sell title insurance which is regulated by the Department of Insurance. They also conduct abstracting which is regulated by the Abstract Board of Examiners and they also conduct as a service to the lending industries the real estate closings. The real estate closings are generally regulated at the Federal level through the Consumer Finance Protection Bureau, Real Estate Settlement Procedures Act and Housing and Urban Development. They are heavily regulated but the one thing that is not done in North Dakota is the regulation of the settlement or closing procedures at the state level. He explained where the statute came from. (13:26-16:36)

Chairman Klein: You are working with everybody?

Nick Hacker: Yes we will at a closing table we will receive monies from the buyer and the buyer's lender and we will disperse the monies to the seller and that is how real estate transactions are handled in North Dakota, it is very timely and efficient. We want to insure that we can continue to do that in North Dakota.

Senator Miller: Asked if he liked the bill because it allows that local transaction and you don't have to get a wire service involved?

Nick Hacker: Exactly that is right. It makes this a lot easier when we have a local lender that wants to come to the real estate closings. We are trying to make the law fit a whole host of different situations.

Nancy Willis, Government Affairs Director for the North Dakota Association of Realtors: In support of the bill. They represent 1600 realtors and 250 affiliate members. They did work with Mr. Hacker and others to be aware of what this bill had and it helps expedite real estate transactions so they are in favor of the bill. (18:34-19:00)

Chairman Klein: Did you experience glitches in the last two years? We have been working on this issue for a couple of sessions now.

Nancy Willis: That is correct. Sometimes there are delays so this will help expedite that.

Rick Clayburgh, President of the North Dakota Bankers Association: They would like to be on record in support of the bill.

Chairman Klein: Closed the hearing.

Senator Miller: Moved a do pass.

Senator Campbell: Seconded the motion.

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

Senator Sinner will carry the bill.

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. Engrossed HB 1220**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Miller Seconded By Senator Campbell

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Sinner

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

REPORT OF STANDING COMMITTEE

HB 1220, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1220 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1220

January 20, 2015

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE
HB 1220

CHAIRMAN KEISER AND MEMBERS OF THE COMMITTEE:

My name is Barry Haugen and I am President of the Independent Community Banks of North Dakota (ICBND). Our membership totals about 60 independent community banks throughout North Dakota.

We support HB 1220 and urge the committee to issue a "Do Pass" regarding this legislation. We strongly believe that this bill provides the flexibility for local closing agents and local banks and financial institutions in the state to more efficiently close certain real estate transactions without sacrificing the safety and soundness of the transaction.

The plain language of the bill as drafted allows for closing agents to accept, as good funds, a cashier's check for loan funds at or prior to the closing that's drawn on a local financial institution. This includes bringing the cashier's check for loan funds to the actual closing as an acceptable form of good funds if the parties agree to such an arrangement.

I would now like to introduce David Mason. Mr. Mason is the Vice-President and Mortgage Banking Manager at American Bank Center in Bismarck and is also a member of the board of directors of the Independent Community Banks of North Dakota.

Thank you for the opportunity to testify on behalf of this bill.

Testimony provided by David Mason in regards to HB 1220

Mr. Chairman and members of the ND House Business and Labor Committee:

Thank you for the opportunity to present to you today. My name is David Mason and I represent the Independent Community Banks of North Dakota; I am also a local community banker in Bismarck, ND.

House Bill 1220 will amend the "Good Funds Law" in order to allow local banks to transact business with local title companies with the use of a cashiers check. This is essential for the smooth transition of real estate in the State of North Dakota.

Without this amendment some financial institutions, based on Federal Regulations, may require two closings in order to purchase real estate. The first closing would be solely for the loan documents to be signed in order for the financial institution to be able to wire funds to the closing agent. After the wire transfer is received, the closing agent would need to hold a subsequent closing for the purpose of actually transferring the real property. This "two closing process" creates obvious logistical issues when we are working with customers who may drive into town, have multiple owners, or other complexities to conduct these closings.

The proposed amendments in HB 1220 would go back to allowing closing agents the option to accept cashiers checks from local financial institutions, allowing that financial institution to present the cashiers check at the time in which the real estate transaction is being completed.

I ask that you support HB 1220.

Thank you.

February 16, 2015

SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
HB 1220

CHAIRMAN KLEIN AND MEMBERS OF THE COMMITTEE:

My name is Barry Haugen and I am President of the Independent Community Banks of North Dakota (ICBND). Our membership totals about 60 independent community banks throughout North Dakota.

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Thank you.