

SESSION OF 2008

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR SENATE BILL NO. 535**

As Recommended by Senate Committee on
Financial Institutions and Insurance

Brief*

Sub. for SB 535 would enact new law and amend existing statutes governing field of membership and the mergers, branching, and other procedures associated with the regulation of state-chartered credit unions.

Branching Requirements

The bill would create new requirements for the establishment and operation of a credit union branch and relocation of an existing branch, in accordance with the credit union's stated field of membership. A credit union would first be required to submit an application for the branch location and receive the approval of the Credit Union Administrator (the Administrator). The requirements for branch applicants established under the bill would include:

- **Application.** The credit union must first apply for and obtain approval of the Administrator. The application is to include proof of publication of notice that the applicant intends to file or has filed a branch application.
- **Publication.** The notice is to be published in a newspaper of general circulation in the county where the applicant proposes to locate a branch. The notice is to be in a form prescribed by the Administrator and is required to be published on the same day for two consecutive weeks. If

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

the credit union has a current CAMEL (Capital adequacy, Asset quality, Management, Earnings, and Liquidity) rating of 3, 4, or 5 (or the recognized regulatory equivalent, as defined in rules and regulations), the application also must contain a solicitation for written comments and provide for a comment period of no less than ten days after the date of the second publication.

- **Hearing.** Upon the receipt of the application and following the comment period (for those credit unions with the specified CAMEL rating), public notice must occur no less than ten nor more than 30 days prior to the date of the hearing, with proof of publication to be filed with the Administrator. The bill outlines the procedure for submitting evidence to the Administrator and the associated transcript.
- **Approval of the Application.** For those applications where a public hearing is not warranted, the Administrator would be required to approve or disapprove the application within 15 days of its receipt (but not prior to the end of the comment period). If a public hearing is held, the Administrator is to approve or disapprove the application within 60 days. The bill would provide the Administrator with the ability to extend this time frame under certain circumstances, including if the Administration finds that the reasonable probability of usefulness and success of the proposed branch. An appeal of the Administrator's action on the application would be permitted under the bill.
- **Definitions.** Among the definitions created by the bill, a "branch" would mean "any office, agency or other place of business located within this state, other than the place of business specified in the credit union's certificate of organization, at which deposits are received, checks paid, or money lent."
- **Rule and Regulation Authority.** The Administrator would be allowed to adopt rules and regulations necessary to implement the provisions required for review of branch applications.

Field of Membership

The bill would amend the definition in existing law (KSA 17-2205) to delete the limitation that “Credit union organizations shall be limited to groups (of both large and small membership) having a common bond of occupation or association or to groups residing within a well-defined neighborhood, community or rural district.” The bill would instead establish new criteria associated with defining the fields of membership for state-chartered credit unions, as described below.

- **Field of Membership Defined.** The bill would require a state-chartered credit union’s members to be linked by *occupation, association, or geographic area*. An “occupation” field of membership would include employees of the same employer, workers under contract with the same employer, businesses paid by the same employer on a continuing basis, or employees in the same trade, industry, or profession. An “association” field of membership would include members and employees of a recognized association as defined in such association’s charter, bylaws, or similar document. Those linked under a “geographic” field of membership may live, work, or worship in that geographic area; the geographic bond also applies to organizations of people who live, work, or worship in a specified geographic area. A credit union that chooses to be limited by a geographic field of membership could include one or more common bonds of occupation or association, if the employer or association is located in the geographic area of the credit union.
- **Criteria if Single Common Bond Cannot Be Established.** The bill would allow a group to include multiple common bonds of occupation or association and exceed 3,000 members, but only if the Administrator determines in writing that such group could not feasibly or reasonably establish a new single bond credit union. The Administrator would have to determine that the group lacks sufficient volunteer and other resources; does not meet criteria indicating a

likelihood of success, given its characteristics that may affect the credit union's financial viability and stability; or would be unlikely to be able to operate in a safe and sound manner.

- **Geographic Area.** The bill would specify that, except as provided in the exceptions outlined below, from and after July 1, 2008, no geographic area shall consist of any congressional district or the entire state of Kansas.

The geographic area of a credit union, in general, may include a single political jurisdiction or multiple contiguous political jurisdictions, until the aggregate total of the population of the geographic area reaches 500,000. However, if the headquarters of the credit union is located within a metropolitan statistical area (MSA) of more than one county, a different maximum population limit would apply. That limit would be determined by a formula: multiply the population of the most populous MSA within Kansas (i.e., the population of the Kansas City MSA counties within Kansas) by the fraction having 1 million as the numerator and 750,000 as the denominator. Current population numbers would be those of the adjusted federal census information presented to the Legislature by the Secretary of State.

The bill would require changes to certain current geographic fields of membership:

- A credit union with a statewide field of membership would be required, before January 1, 2009, to adopt a field of membership of contiguous political jurisdictions with an aggregate total population not to exceed 1.0 million. A credit union whose headquarters is not in a county that is part of an MSA may not include more than one MSA in its new field of membership.
- A credit union whose headquarters is located within an MSA as of February 1, 2008, could continue its field of membership if that field of membership includes multiple

contiguous political jurisdictions with an aggregate total population of not more than 1.0 million. If the total population of its political jurisdictions exceeded 1.0 million, the credit union would be required to change its field of membership, by January 1, 2009. The population of any county where a branch of the credit union is located would not be included in the 1.0 million population total.

- A credit union whose headquarters is *not* located within an MSA as of February 1, 2008, could continue its field of membership unless its field of membership includes multiple contiguous political jurisdictions having an aggregate total population of more than 1.0 million. If the total population of its political jurisdictions exceeded 1.0 million, the credit union would be required to change its field of membership, by January 1, 2009. The population of any county where a branch of the credit union is located would not be included in the 1 million population total. A credit union whose headquarters is not in a county that is part of an MSA may not include more than one MSA in its new field of membership.
- **Publication Requirements.** The bill would require any credit union that wanted to change or alter its field of membership to file an application with the Administrator and to furnish the Administrator with proof of publication in the *Kansas Register* related to that application. The application to the Administrator would be required to include the following elements: documentation showing that the proposed area or groups to be served would meet the field of membership requirements in this bill; *pro forma* financial statements for the first two years after the proposed change, including any assumption regarding growth in membership, shares, loans and assets; a marketing plan addressing how the proposed field of membership would be served; the financial services to be provided to members; a local map showing the locations of both the current and proposed headquarters and branches; and the anticipated financial

impact on the credit union in terms of need for additional employees and fixed assets. The notice to be published in the *Kansas Register* would, at a minimum, include the name and address of the applicant credit union and a description of the proposed change. The bill would require that the notice be published for two consecutive weeks, within 60 days prior to the proposed change.

- **Definitions.**

- A “metropolitan statistical area” would be an area so defined by the U.S. Census Bureau within the U.S. Department of Commerce, except that the bill would define an MSA for the purposes of the bill as only a multi-county MSA. (The Census Bureau lists Douglas County as a separate MSA; it would not be classified as an MSA by this bill.)
- A “political jurisdiction” would mean a city, county, township, or clearly identifiable neighborhood (such as the Fairfax district in Kansas City).
- “Population data” would be the official state population figures for the state, or any portion thereof, which are identical to the decennial census data from the enumeration conducted by the U.S. Census Bureau.

- **Exceptions.** In general, the bill would allow credit unions to continue to serve current members and groups.

- Any member or organization that is a member of any credit union that is in existence as of June 30, 2008, could continue to be a member of that credit union. The term “member” would refer to an individual and to any person who is a member of that individual’s immediate family as defined by the bylaws of the credit union on the effective date of the bill. If the bylaws of a credit union do not define “immediate family,” the bill would define that term as including spouse, parent, stepparent,

grandparent, child, stepchild, sibling, grandchild, or former spouse.

- Any branch of a credit union that is in existence as of February 1, 2008, could continue to operate in the county where it is located. A branch for which there has been a purchase or contract for land, acquisition or lease of a building, or adoption of drawings for construction or renovation would be considered to be in existence.
- Any member of any occupational or association group whose members constituted a portion of the membership of the credit union as of February 1, 2008, could continue to be eligible to become a member of the credit union. A patron of an organization is eligible for membership if the patron is an individual who uses the products and services of the organization that is included in the field of membership at the time the patron applies for membership.

Other Procedures

The bill also would amend two existing laws governing the regulation of credit unions to provide for additional merger procedures. Those procedures include:

- **Emergency mergers.** The bill would amend KSA 17-2206 to allow the Administrator to approve an emergency merger of credit unions, without regard to field of membership or other legal restraints, under certain circumstances. The credit union to be merged must have been determined to be in poor financial condition (CAMEL rating of 4 or 5) and determined to be undercapitalized in accordance with rules and regulations. The field of membership of the merged credit union would be retained by the continuing credit union.

- **Approval of other mergers.** The bill would amend KSA 17-2228 to require the Administrator to determine whether a merger consented to by credit unions would meet the requirements for field of membership set forth in this bill, before the Administrator certifies the merger.

Background

The substitute bill was recommended by the Senate Committee on Financial Institutions and Insurance. The substitute bill includes the recommendations of a subcommittee and further work by the Kansas Bankers Association and the Kansas Credit Union Association. The original version of the bill was introduced at the request of the Kansas Bankers Association.

Testimony from the Kansas Bankers Association on the content included in the substitute bill indicates that nine credit unions would have to make changes to their geographic fields of membership:

- Boeing Wichita Credit Union, Wichita;
- Credit Union 1 of Kansas, Topeka;
- Credit Unions United, Topeka;
- Educational Credit Union, Topeka;
- Golden Plains Credit Union, Garden City;
- Hutchinson Credit Union, Hutchinson;
- Kansas Super Chief Credit Union, Topeka;
- Medical Community Credit Union, Wichita; and
- Mid-American Credit Union, Wichita.

The testimony also included populations of the multi-county MSAs in Kansas:

- Kansas City MSA: Johnson, Franklin, Leavenworth, Linn, Miami, and Wyandotte Counties; total population of 740,364;
- Topeka MSA: Shawnee, Wabaunsee, Osage, Jefferson, and Jackson Counties; total population of 224,551; and

- Wichita MSA: Sedgwick, Butler, Harvey, and Sumner Counties; total population of 571,166.

The fiscal note prepared by the Division of the Budget on the original bill states that the passage of the bill would have some fiscal effect on the Kansas Department of Credit Unions. The portion of the note applicable to the substitute bill notes that the Department currently does not review applications or have public hearings. An estimate of a total expenditure increase of \$30,000 per year to implement the requirements of the bill was provided. The Department indicated it did not need any additional staff to process applications for membership changes. It also was noted by the Department that credit unions could elect to be established or change to a federal charter if the provisions of the bill were found to be costly or burdensome. Should these actions take place, there could be a reduction in the Department's revenues, which could cause the agency to increase its fees in order to maintain an adequate cash flow. Any fiscal effect resulting from this bill has not been included in *The FY 2009 Governor's Budget Report*.