

2005 DRAFTING REQUEST

Bill

Received: **07/27/2005**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Robin Vos (608) 266-9171**

By/Representing: **Janine Hale**

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - banking inst.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Vos@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Out-of-state branch banking

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 10/24/2005	csicilia 10/24/2005		_____			State
	mkunkel 10/26/2005	kfollett 10/26/2005		_____			
/1	mkunkel 12/16/2005	kfollett 12/16/2005	jfrantze 10/26/2005	_____	lnorthro 10/26/2005		State
/2			rschluet 12/16/2005	_____	lnorthro 12/16/2005		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	mkunkel 12/19/2005 mkunkel 01/31/2006	jdyer 12/19/2005 kfollett 01/31/2006	pgreensl 12/19/2005	_____	sbasford 12/19/2005		State
/4			rschluet 01/31/2006	_____	sbasford 01/31/2006	sbasford 01/31/2006	

FE Sent For: *at intro*
2/9

<END>

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*PA
 Please jacket
 11/4
 - MOK*

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/1	mkunkel 12/16/2005	kfollett 12/16/2005	jfrantze 10/26/2005	_____	Inorthro 10/26/2005		State
/2		14 kf 1/3/05	rschluet 12/16/2005	_____	Inorthro 12/16/2005		State

[Handwritten signature]
 12/16

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Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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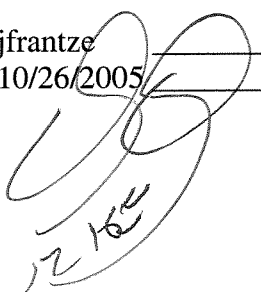
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Instructions:

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/?	mkunkel	1/1 g f 10/26		J Seb 10/26			

FE Sent For:

<END>

- 2534

Kunkel, Mark

From: Hale, Janine
Sent: Wednesday, July 27, 2005 3:13 PM
To: Kunkel, Mark
Subject: RE: Draft request for De Novo Branching legislation

Mark,

That is fine. Thanks for the feedback. I'll look for your update.

Janine

*Janine L. Hale
Office of State Representative Robin Vos
304 North, State Capitol
P.O. Box 8953
Madison, WI 53708
608-266-9171 - office
1-888-534-0063 - toll-free
608-282-3663 - fax
janine.hale@legis.state.wi.us*

From: Kunkel, Mark
Sent: Wednesday, July 27, 2005 2:53 PM
To: Rep.Vos
Subject: RE: Draft request for De Novo Branching legislation

Okay. I have a few other things to get done this week and next, so I don't think I can look at this until the week after next. I'll make a note to give you an update on my progress the week after next, if that is okay.

-- Mark

-----Original Message-----

From: Rep.Vos
Sent: Wednesday, July 27, 2005 2:52 PM
To: Kunkel, Mark
Cc: Vos, Robin
Subject: Draft request for De Novo Branching legislation

Mark,

Rep. Vos would like to request a draft of legislation that would allow an out-of-state bank to open or acquire a branch office in Wisconsin under certain conditions. Attached are documents relating to a proposed draft such legislation. Please let me know if you have any questions or need clarification. Please note that I will be out of the office July 28th - August 8th, but will be checking messages.

Thank you,

08/22/2005

Janine Hale

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Kunkel, Mark

From: Rep.Vos
Sent: Wednesday, July 27, 2005 2:52 PM
To: Kunkel, Mark
Cc: Vos, Robin
Subject: Draft request for De Novo Branching legislation
Attachments: De Novo draft march2905.DOC; De Novo background summary.doc

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Thank you,

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AN ACT CONCERNING FINANCIAL REGULATION:

PURPOSE: Under current Wisconsin law, out-of-state banks, including state banks and national banks, generally may not establish de novo or acquire a branch office facility in Wisconsin. This Act would allow an out-of-state bank to open or acquire a branch office in Wisconsin if the Division of Banking of the Wisconsin Department of Financial Institutions determines that the home state's laws are reciprocal with Wisconsin's interstate branching laws. This reciprocity determination would be made by the Division of Banking on a state-by-state basis. Once a reciprocity determination is made by the Division of Banking for a particular home state, an out-of-state bank located in that home state may rely on this authority to open or acquire a branch facility in Wisconsin by filing an initial notice with the Division of Banking. Subsequent branch facilities may be opened or acquired in Wisconsin by the same out-of-state bank without having to file any further notice with the Division of Banking. Many other states presently have interstate branching laws that would likely be determined to be reciprocal with Wisconsin's laws. No out-of-state state or national bank will be able to open or acquire a branch facility in Wisconsin unless there has been a finding of reciprocity for such bank's home state by the Division of Banking, and unless such bank has filed an initial notice with the Division of Banking.

In addition to allowing out-of-state banks to establish or acquire branch facilities in Wisconsin following a finding of reciprocity by the Division of Banking and the filing of an initial notice by the out-of-state bank, the new law also amends current Wisconsin law on the subject of interstate bank acquisitions. Presently Wisconsin law prohibits an out-of-state banking organization from acquiring a Wisconsin bank unless the Wisconsin bank has been in existence and in continuous operation for at least five (5) years. This Act changes existing law by eliminating the 5-year age requirement in the acquisition by an out-of-state banking organization of a Wisconsin bank, if the home state of the out-of-state banking organization has laws that are determined by the Division of Banking to be reciprocal with Wisconsin's laws.

Section 1. Wisconsin Statutes are amended by adding a new Section 221.0904, as follows:

Section 221.0904 Out-of-state banks establishing branches.

- (1) **General.** No out-of-state bank shall establish a branch in this state, unless:
- (a) the laws of the home state of such out-of-state bank permit such out-of-state bank to establish a branch in this state; and
 - (b) the laws of the home state of such out-of-state bank permit a state bank to establish a branch in that state pursuant to terms and conditions that are deemed by the division to be reciprocal as provided in sub. (2) of this section,

and any notice requirements prescribed in sub. (3) of this section have been complied with by the out-of-state bank.

- (2) **Reciprocity Determination.** The determination of whether the interstate branching laws of a home state of an out-of-state bank are reciprocal as required in sub (1) of this section shall be made in writing by the division. The division shall not make a finding of reciprocity unless the division determines that the laws of the home state permit a bank in this state to establish a branch in the home state under terms and conditions that are substantially similar to the provisions of this section. The division shall consider, at a minimum, whether the laws of the home state discriminate in any way against a bank chartered under this chapter and whether the laws of the home state impose administrative or regulatory burdens that are substantially more restrictive than those imposed by this section on an out-of-state bank seeking to establish a branch in this state. The division shall periodically publish a list of states that the division has determined have reciprocal interstate branching laws. If the division has not made a reciprocity determination for a particular home state, an out-of-state bank chartered in such state must file a request, on a form prescribed by the division, for a reciprocity determination, and obtain a reciprocity determination from the division before establishing a branch in this state pursuant to sub. (1) of this section.
- (3) **Notice to Division.** Before an out-of-state bank may establish its first branch in this state pursuant to sub (1) of this section, the out-of-state bank must first file notice of the proposed branch facility with the division. The division may prescribe the form of such notice and may accept a copy of a notice or application provided by the out-of-state bank to its chartering authority or to its appropriate federal banking agency. Subsequent branch facilities of the same out-of-state bank may be established in Wisconsin without filing any further notices with the division.
- (4) **Additional Branching Authority.** After an out-of-state bank lawfully establishes a branch in this state pursuant to the provisions of this section, such out-of-state bank may establish and maintain additional branches in this state to the same extent as a bank chartered under this chapter.
- (5) **Definitions.** Terms used in this section shall have the definitions provided in s. 221.0903(1).

* * * * *

Section 2. Wisconsin Statutes are revised by adding new subparagraphs (jg), (Lg) and (mcm) to Section 221.901(2), amending subparagraph (a) to Section 221.0901(8) and by adding

new subparagraphs (d), (e) and (f) to Section 221.0901(8), such that the revised sections shall read as follows:

Sec. 221.0901(2). Definitions

(jg) “Home state” means:

1. With respect to an out-of-state bank, the state in which the bank is chartered.
2. With respect to an out-of-state bank holding company, the state in which the total deposits of all banking subsidiaries of such company are the largest.

(Lg) “Out-of-state bank” means a bank that is not an in-state bank.

(mcm) “Out-of-state banking organization” means an out-of state bank or an out-of-state bank holding company.

Sec. 221.0901(8). Age Requirement

- (a) Except as otherwise provided in pars. (b), (c) and (d), the division may not approve an application under sub. (3) (a), other than an application by an in-state bank holding company or in-state bank, unless the in-state bank to be acquired, or all in-state bank subsidiaries of the in-state bank holding company to be acquired, have as of the proposed date of acquisition been in existence and in continuous operation for at least 5 years.
- (b) Except as otherwise provided in this paragraph, the division may approve an application under sub. (3) (a) for an acquisition of an in-state bank holding company that owns one or more in-state banks that have been in existence for less than 5 years, if the applicant divests itself of those in-state banks within 2 years after the date of acquisition of the in-state bank holding company by the applicant. This paragraph does not apply if the applicant is an in-state bank holding company or in-state bank.
- (c) Paragraphs (a) and (b) do not apply to an in-state bank that is the surviving bank of a merger with an in-state bank that had been in existence and continuous operation for at least 5 years at the time of the merger or would have been in existence and in continuous operation for at least 5 years as of the proposed date of acquisition, if the merger had not taken place.
- (d) Paragraph (a) does not apply to the merger or acquisition by an out-of-state banking organization of all or substantially all of the assets of an in-state bank or an in-state bank holding company that owns one or more in-state banks if:

1. The laws of the home state of the out-of-state banking organization permit an in-state bank or an in-state bank holding company to acquire an out-of-state banking organization in the home state; and
 2. The laws of the home state of the out-of-state banking organization permit an in-state bank or an in-state bank holding company to acquire an out-of-state banking organization in that home state pursuant to terms and conditions that are deemed by the division to be reciprocal as provided in par. (e).
- (e) The determination of whether the interstate banking laws of a home state of an out-of-state banking organization are reciprocal as required in par. (d) shall be made in writing by the division. The division shall not make a finding of reciprocity unless the division determines that the laws of the home state permit an in-state bank or an in-state bank holding company to merge with or acquire an out-of-state banking organization under terms and conditions that are substantially similar to the provisions of this section. The division shall consider, at a minimum, whether the laws of the home state discriminate in any way against an in-state bank or an in-state bank holding company under this chapter and whether the laws of the home state impose administrative or regulatory burdens that are substantially more restrictive than those imposed by this section on an out-of-state banking organization seeking to merge or acquire an in-state bank or an in-state bank holding company. The division shall periodically publish a list of states that the division has determined have reciprocal interstate banking laws. If the division has not made a reciprocity determination for a particular home state, an out-of-state banking organization located in that home state must file a request, on a form prescribed by the division, for a reciprocity determination, and obtain a reciprocity determination from the division before merging or acquiring an in-state bank or an in-state bank holding company pursuant to par. (d) of this section.

Section 3. Wisconsin Statutes are revised by amending Sections 221.0302(3) and 221.0302(4), such that the revised sections shall read as follows:

Sec. 221.0302(3). Transfer. A bank may transfer a branch bank to any other bank located in this state, or a bank located in another state to the extent that the state has reciprocal interstate branching laws, as determined by the division in accordance with s. 221.904.

Sec. 221.0302(4). Out-Of-State-Branches. A bank may establish a branch bank in another state in accordance with the requirements in the state where the branch is to be located.

BACKGROUND INFORMATION: LEGISLATION PERMITTING INTERSTATE DE NOVO BRANCHING ON A RECIPROCAL BASIS

PREFACE

In response to Riegle-Neal, Wisconsin passed 1995 Wisconsin Act 336 to implement nationwide interstate banking. Act 336 eliminated the nine-state region for interstate banking acquisitions that had previously been in place since the mid 1980's. In addition, Act 336 created a state concentration limit, which prohibits the approval of any acquisition, which could result in the applicant controlling more than 30% of the deposits of insured depository institutions in the state.

Under current law entry into Wisconsin for the purposes of interstate branching can only be accomplished through the acquisition of a whole institution that has been in existence for 5 years.

BACKGROUND

Wisconsin community banks located on or near borders with neighboring states have indicated a desire to establish branches across state lines as a logical progression of their natural market areas. Wisconsin laws currently allow Wisconsin banks to branch into other states ("host states"), but the laws of the host states must permit the Wisconsin banks to establish such out-of-state branches. Very few states, and no state contiguous to Wisconsin, allow Wisconsin banks to cross state lines unless the laws of Wisconsin are reciprocal with those of the other state. To be reciprocal, Wisconsin law would have to permit banks from the other state to establish branches in Wisconsin under comparable conditions. Wisconsin law currently does not permit de novo branching in Wisconsin by out-of-state banks, and therefore Wisconsin banks cannot establish branches in other states.

Regarding states that are contiguous to Wisconsin, the immediate effect of legislation that would allow out-of-state banks to branch into Wisconsin on a reciprocal basis would be to allow Wisconsin banks to branch into Michigan and Illinois. Illinois recently passed this law after 85% of the community banks supported the change. Iowa and Minnesota currently do not have this reciprocal agreement.

Points in Support of Reciprocal Interstate Branching Legislation

1. Current law favors large banks and large bank holding companies. The ability for a bank or bank holding company to enter markets across state lines, including entering Wisconsin from out-of-state already exists. Since 1995, out-of-state banks have been allowed to enter Wisconsin by purchasing an existing charter. Many large banking corporations have established a presence in Wisconsin by acquiring existing banks. Once established, they have the ability to maintain and increase their number of statewide branches.

However, for most small to mid-sized community banks and their holding companies, entry into other states by acquisition is not a viable option. This disparity has compelled the Conference of State Bank Supervisors (CSBS) to support national interstate branching authority for all banks. In addition the Wisconsin Department of Financial Institutions (DFI) supports this change.

2. Current law permits federally chartered savings associations to establish de novo branches anywhere in the country without the necessity of acquiring a charter in the target state by purchase or merger. Therefore, enactment of the proposal would create parity between Wisconsin commercial banks and federal thrift institutions in those states that are reciprocal with Wisconsin.
3. Current law permits Wisconsin state chartered credit unions to establish branch offices outside of Wisconsin under a reciprocity provision with other states. Thus credit unions have broader branching authority than Wisconsin banks.
4. For more than ten years, Wisconsin has permitted unrestricted branching throughout the state by Wisconsin banks. Community banks have learned how to successfully operate in this unrestricted branching environment.

Kunkel, Mark

From: Hale, Janine
Sent: Wednesday, October 05, 2005 3:45 PM
To: Kunkel, Mark
Subject: RE: Draft request for De Novo Branching legislation

Hi Mark,

Just touching base on the status of this draft. Can you give me any idea when Rep. Vos might receive something?

Thanks,
Janine

*Janine L. Hale
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1-888-534-0063 - toll-free
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1-888-534-0063 - toll-free
608-282-3663 - fax
janine.hale@legis.state.wi.us

Tomorrow
10/27

D-NOTE

2005 BILL

- 3534/1

RM
NOT
RUN

Reger

1 **AN ACT to amend** 221.0302 (3), 221.0302 (4) and 221.0901 (8) (a); and **to create**
 2 221.0901 (2) (jm), 221.0901 (2) (Lm), 221.0901 (2) (mm), 221.0901 (8) (d) and (e),
 3 221.0904 and 227.01 (13) (zw) of the statutes; **relating to:** regulation of bank
 4 branches, mergers and acquisitions of banks, providing an exemption from
 5 rule-making procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, an out-of-state bank may operate a branch in this state only if the out-of-state bank has acquired a Wisconsin bank. (A Wisconsin bank is a bank chartered under the laws of Wisconsin. An out-of-state bank is a bank chartered under the laws of another state or a bank chartered under federal law that has its principal place of business in another state.) An out-of-state bank may acquire a Wisconsin bank by merging or consolidating with a Wisconsin bank or holding company or acquiring the shares or assets of a Wisconsin bank or holding company. With certain exceptions, such acquisitions are subject to the prior approval of the Division of Banking (division) in the Department of Financial Institutions.

This bill allows an out-of-state bank to establish a branch in this state without acquiring a Wisconsin bank, but only if all of the following conditions are satisfied: 1) the laws of the home state of the out-of-state bank allow the out-of-state bank to establish a branch in this state; 2) the division determines that the laws of the home state are reciprocal to Wisconsin law with respect to establishing branches; and 3) the out-of-state bank gives prior notice to the division as specified in rules promulgated by the division.

BILL

Regarding the second condition, the bill prohibits the division from determining that a home state's laws are reciprocal unless the division finds that the home state's laws allow a Wisconsin bank to establish a branch in that state under terms and conditions that are substantially similar to Wisconsin law. In making this determination, the division must consider, at a minimum, whether the laws of the home state discriminate against Wisconsin banks or impose regulatory burdens that are substantially more restrictive than Wisconsin law. The bill requires the division to periodically publish a list of states that the division determines are reciprocal. If the division has not determined whether the laws of an out-of-state bank's home state are reciprocal, the bill allows the out-of-state bank to request that the division make such a determination.

If an out-of-state bank establishes a branch in this state as provided under the bill, the bill allows the out-of-state bank to establish additional branches in this state to the same extent as current law allows a Wisconsin bank to establish branches. Also, the out-of-state bank is not required to provide notice to the division before establishing any additional branches.

The bill also changes the requirements under current law that apply to an out-of-state bank's acquisition of a Wisconsin bank. Under current law, with certain exceptions, an out-of-state bank may acquire a Wisconsin bank only if the Wisconsin bank has been in existence and in continuous operation for at least five years.

The bill creates a new exception to this requirement. Under the bill, an out-of-state bank may acquire a Wisconsin bank that has been in existence and in continuous operation for less than five years if all of the following conditions are satisfied: 1) the laws of the home state of the out-of-state bank allow a Wisconsin bank to acquire a bank in the home state; and 2) the division determines that the laws of the home state are reciprocal to Wisconsin law with respect to mergers and acquisitions. The bill also allows a holding company of an out-of-state bank to acquire a Wisconsin bank or holding company of a Wisconsin bank under the same conditions.

Regarding the second condition, the bill prohibits the division from determining that a home state's laws are reciprocal unless the division finds that the home state's laws allows a Wisconsin bank to merge or acquire a bank in that state under terms and conditions that are substantially similar to Wisconsin law. (Under the bill, the home state of a holding company of an out-of-state bank is the state in which the total deposits of all banking subsidiaries of the holding company are the largest.) In making the determination regarding reciprocity, the division must consider, at a minimum, whether the laws of the home state discriminate against Wisconsin banks or impose regulatory burdens that are substantially more restrictive than Wisconsin law. The bill requires the division to periodically publish a list of states that the division determines are reciprocal. If the division has not determined whether the laws of an out-of-state bank's home state are reciprocal, the bill allows the out-of-state bank to request that the division make such a determination.

The bill also does the following:

BILL

1. The bill allows the division to make the determinations described above regarding reciprocity without promulgating rules.

2. The bill allows a Wisconsin bank to transfer an existing branch to a bank located in another state only if the division has determined, as described above, that the other state's laws are reciprocal with respect to establishing branches.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 221.0302 (3) of the statutes is amended to read:

2 221.0302 (3) TRANSFER. A bank may transfer a branch bank to any other bank
3 located in this state with the approval of the division. A bank may transfer a branch
4 bank to a bank located in another state only if the division has determined under s.
5 221.0904 (3) (b) that the state's laws are reciprocal regarding establishing branches.

6 **SECTION 2.** 221.0302 (4) of the statutes is amended to read:

7 221.0302 (4) OUT-OF-STATE BRANCHES. A bank may establish a branch bank in
8 another state with the approval of the division and the appropriate bank regulator
9 in the state where the branch is to be established.

10 **SECTION 3.** 221.0901 (2) (jm) of the statutes is created to read:

11 221.0901 (2) (jm) "Home state" means, with respect to an out-of-state bank,
12 the state in which the bank is chartered and, with respect to an out-of-state bank
13 holding company, the state in which the total deposits of all banking subsidiaries of
14 the company are the largest.

15 **SECTION 4.** 221.0901 (2) (Lm) of the statutes is created to read:

16 221.0901 (2) (Lm) "Out-of-state bank" means a bank that is not an in-state
17 bank.

18 **SECTION 5.** 221.0901 (2) (mm) of the statutes is created to read:

BILL

1 221.0901 (2) (mm) "Out-of-state banking organization" means an
2 out-of-state bank or out-of-state bank holding company.

3 **SECTION 6.** 221.0901 (8) (a) of the statutes is amended to read:

4 221.0901 (8) (a) Except as provided in pars. (b) ~~and~~, (c), and (d), the division
5 may not approve an application under sub. (3) (a), other than an application by an
6 in-state bank holding company or in-state bank, unless the in-state bank to be
7 acquired, or all in-state bank subsidiaries of the in-state bank holding company to
8 be acquired, have as of the proposed date of acquisition been in existence and in
9 continuous operation for at least 5 years.

10 **SECTION 7.** 221.0901 (8) (d) and (e) of the statutes are created to read:

11 221.0901 (8) (d) Paragraph (a) does not apply to the merger or acquisition by
12 an out-of-state banking organization of all or substantially all of the assets of an
13 in-state bank, or of an in-state bank holding company that owns one or more
14 in-state banks, if all of the following apply:

15 1. The laws of the home state of the out-of-state banking organization allow
16 an in-state bank or in-state bank holding company to acquire an out-of-state
17 banking organization in the home state.

18 2. The division determines under par. (e) that the laws of the home state of the
19 out-of-state banking organization are reciprocal with respect to mergers and
20 acquisitions.

21 (e) 1. The division shall periodically publish a list of states that the division has
22 found have laws that are reciprocal for purposes of par. (d) 2. An out-of-state
23 banking organization with a home state for which the division has made no such
24 determination may request, on a form prescribed by the division, that the division
25 make a determination regarding the home state.

BILL

1 2. The division shall make determinations under subd. 1. in writing. The
2 division may not determine that the laws of a state are reciprocal under subd. 1.
3 unless the division finds that the laws of that state allow an in-state bank or in-state
4 bank holding company to merge with or acquire an out-of-state banking
5 organization under terms and conditions that are substantially similar to the terms
6 and conditions under this section. In making such a finding, the division shall
7 consider, at a minimum, whether the laws of that state discriminate in any way
8 against an in-state bank or in-state bank holding company and whether the laws
9 of that state impose regulatory burdens that are substantially more restrictive than
10 the requirements under this section that apply to an out-of-state banking
11 organization seeking to merge or acquire an in-state bank or in-state bank holding
12 company.

13 **SECTION 8.** 221.0904 of the statutes is created to read:

14 **221.0904 Out-of-state banks establishing branches. (1) DEFINITIONS.** In
15 this section:

16 (a) “Home state” has the meaning given in s. 221.0903 (1) (b).

17 (b) “Out-of-state bank” has the meaning given in s. 221.0903 (1) (d).

18 (c) “State bank” has the meaning given in s. 221.0903 (1) (e).

19 **(2) IN GENERAL.** No out-of-state bank may establish a branch in this state
20 unless all of the following apply:

21 (a) The laws of the home state of the out-of-state bank allow the out-of-state
22 bank to establish a branch in this state.

23 (b) The division determines under sub. (3) (b) that the laws of the home state
24 of the out-of-state bank are reciprocal with respect to a state bank establishing a
25 branch in that state.

BILL

1 (c) The out-of-state bank complies with the notice requirements under sub. (4).

2 (3) RECIPROCITY. (a) The division shall periodically publish a list of states that
3 the division has found have laws that are reciprocal for purposes of sub. (2) (b). An
4 out-of-state bank with a home state for which the division has made no such
5 determination may request, on a form prescribed by the division, that the division
6 make a determination regarding the home state.

7 (b) The division shall make determinations under par. (a) in writing. The
8 division may not determine that the laws of a state are reciprocal under par. (a)
9 unless the division finds that the laws of that state allow a state bank to establish
10 a branch in the state under terms and conditions that are substantially similar to the
11 terms and conditions under this section. In making such a finding, the division shall
12 consider, at a minimum, whether the laws of that state discriminate in any way
13 against a state bank and whether the laws of that state impose regulatory burdens
14 that are substantially more restrictive than the requirements under this section that
15 apply to an out-of-state bank seeking to establish a branch in this state.

16 (4) NOTICE. (a) Except as provided in par. (b), an out-of-state bank may not
17 establish a branch in this state without providing prior notice to the division. The
18 division shall promulgate rules specifying the requirements and procedures for
19 making such notice. The rules shall allow an out-of-state bank to provide notice by
20 submitting to the division a copy of any notice or application regarding the proposed
21 branch that the out-of-state bank submits to the regulatory authority of its home
22 state or the appropriate federal regulatory authority.

23 (b) If an out-of-state bank establishes a branch in this state pursuant to this
24 section, the out-of-state bank is not required to provide notice for any subsequent
25 branches established in this state.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3534/1dn
MDK:...

gf

Date

Rep. Vos:

This is the companion to LRB-2939/1.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

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FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3534/1dn
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Rep. Vos:

This is the companion to LRB-2939/1.

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State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-3534/1

MDK:kjf:jf

2005 BILL

1 AN ACT *to amend* 221.0302 (3), 221.0302 (4) and 221.0901 (8) (a); and *to create*
2 221.0901 (2) (jm), 221.0901 (2) (Lm), 221.0901 (2) (mm), 221.0901 (8) (d) and (e),
3 221.0904 and 227.01 (13) (zw) of the statutes; **relating to:** regulation of bank
4 branches, mergers and acquisitions of banks, providing an exemption from
5 rule-making procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, an out-of-state bank may operate a branch in this state only if the out-of-state bank has acquired a Wisconsin bank. (A Wisconsin bank is a bank chartered under the laws of Wisconsin. An out-of-state bank is a bank chartered under the laws of another state or a bank chartered under federal law that has its principal place of business in another state.) An out-of-state bank may acquire a Wisconsin bank by merging or consolidating with a Wisconsin bank or holding company or acquiring the shares or assets of a Wisconsin bank or holding company. With certain exceptions, such acquisitions are subject to the prior approval of the Division of Banking (division) in the Department of Financial Institutions.

This bill allows an out-of-state bank to establish a branch in this state without acquiring a Wisconsin bank, but only if all of the following conditions are satisfied: 1) the laws of the home state of the out-of-state bank allow the out-of-state bank to establish a branch in this state; 2) the division determines that the laws of the home state are reciprocal to Wisconsin law with respect to establishing branches; and 3) the out-of-state bank gives prior notice to the division as specified in rules promulgated by the division.

BILL

Regarding the second condition, the bill prohibits the division from determining that a home state's laws are reciprocal unless the division finds that the home state's laws allow a Wisconsin bank to establish a branch in that state under terms and conditions that are substantially similar to Wisconsin law. In making this determination, the division must consider, at a minimum, whether the laws of the home state discriminate against Wisconsin banks or impose regulatory burdens that are substantially more restrictive than Wisconsin law. The bill requires the division to periodically publish a list of states that the division determines are reciprocal. If the division has not determined whether the laws of an out-of-state bank's home state are reciprocal, the bill allows the out-of-state bank to request that the division make such a determination.

If an out-of-state bank establishes a branch in this state as provided under the bill, the bill allows the out-of-state bank to establish additional branches in this state to the same extent as current law allows a Wisconsin bank to establish branches. Also, the out-of-state bank is not required to provide notice to the division before establishing any additional branches.

The bill also changes the requirements under current law that apply to an out-of-state bank's acquisition of a Wisconsin bank. Under current law, with certain exceptions, an out-of-state bank may acquire a Wisconsin bank only if the Wisconsin bank has been in existence and in continuous operation for at least five years.

The bill creates a new exception to this requirement. Under the bill, an out-of-state bank may acquire a Wisconsin bank that has been in existence and in continuous operation for less than five years if all of the following conditions are satisfied: 1) the laws of the home state of the out-of-state bank allow a Wisconsin bank to acquire a bank in the home state; and 2) the division determines that the laws of the home state are reciprocal to Wisconsin law with respect to mergers and acquisitions. The bill also allows a holding company of an out-of-state bank to acquire a Wisconsin bank or holding company of a Wisconsin bank under the same conditions.

Regarding the second condition, the bill prohibits the division from determining that a home state's laws are reciprocal unless the division finds that the home state's laws allows a Wisconsin bank to merge or acquire a bank in that state under terms and conditions that are substantially similar to Wisconsin law. (Under the bill, the home state of a holding company of an out-of-state bank is the state in which the total deposits of all banking subsidiaries of the holding company are the largest.) In making the determination regarding reciprocity, the division must consider, at a minimum, whether the laws of the home state discriminate against Wisconsin banks or impose regulatory burdens that are substantially more restrictive than Wisconsin law. The bill requires the division to periodically publish a list of states that the division determines are reciprocal. If the division has not determined whether the laws of an out-of-state bank's home state are reciprocal, the bill allows the out-of-state bank to request that the division make such a determination.

The bill also does the following:

BILL

1. The bill allows the division to make the determinations described above regarding reciprocity without promulgating rules.

2. The bill allows a Wisconsin bank to transfer an existing branch to a bank located in another state only if the division has determined, as described above, that the other state's laws are reciprocal with respect to establishing branches.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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17 bank.

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BILL**SECTION 5**

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2 out-of-state bank or out-of-state bank holding company.

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5 may not approve an application under sub. (3) (a), other than an application by an
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18 2. The division determines under par. (e) that the laws of the home state of the
19 out-of-state banking organization are reciprocal with respect to mergers and
20 acquisitions.

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22 found have laws that are reciprocal for purposes of par. (d) 2. An out-of-state
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BILL

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6 and conditions under this section. In making such a finding, the division shall
7 consider, at a minimum, whether the laws of that state discriminate in any way
8 against an in-state bank or in-state bank holding company and whether the laws
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22 bank to establish a branch in this state.

23 (b) The division determines under sub. (3) (b) that the laws of the home state
24 of the out-of-state bank are reciprocal with respect to a state bank establishing a
25 branch in that state.

BILL**SECTION 8**

1 (c) The out-of-state bank complies with the notice requirements under sub. (4).

2 (3) RECIPROCITY. (a) The division shall periodically publish a list of states that
3 the division has found have laws that are reciprocal for purposes of sub. (2) (b). An
4 out-of-state bank with a home state for which the division has made no such
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9 unless the division finds that the laws of that state allow a state bank to establish
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20 submitting to the division a copy of any notice or application regarding the proposed
21 branch that the out-of-state bank submits to the regulatory authority of its home
22 state or the appropriate federal regulatory authority.

23 (b) If an out-of-state bank establishes a branch in this state pursuant to this
24 section, the out-of-state bank is not required to provide notice for any subsequent
25 branches established in this state.

Kunkel, Mark

From: Rep.Vos
Sent: Monday, November 14, 2005 2:48 PM
To: Kunkel, Mark
Cc: 'Robin Vos'
Subject: RE: Draft review: LRB 05-2939/P1 Topic: Branches of out-of-state banks

Mark,

Rep. Vos would also like the same change made to the Assembly companion bill LRB 3534/1.

Thank you,

Janine Hale

*Janine L. Hale
Office of State Representative Robin Vos
304 North, State Capitol
P.O. Box 8953
Madison, WI 53708
608-266-9171 - office
1-888-534-0063 - toll-free
608-282-3663 - fax
janine.hale@legis.state.wi.us*

From: Risch, Jay
Sent: Wednesday, November 09, 2005 4:33 PM
To: Kunkel, Mark
Cc: Hale, Janine
Subject: FW: Draft review: LRB 05-2939/P1 Topic: Branches of out-of-state banks

Mark,

Would you make this one final change to the draft? Thanks -

Jay

From: Daryll Lund [mailto:daryll@communitybankers.org]
Sent: Tuesday, November 08, 2005 10:57 AM
To: Risch, Jay
Subject: RE: Draft review: LRB 05-2939/P1 Topic: Branches of out-of-state banks

Hi Jay,

We are suggesting one change to the definition of a "bank" to exclude industrial loan company or industrial bank. These charters are receiving a lot of scrutiny in Congress right now because of an application Wal-Mart filed this summer. Because of that fact we would like to clarify the language in our bill.

11/14/2005

Daryll J. Lund
President & CEO
Community Bankers of Wisconsin
608-833-4229
daryll@communitybankers.org