

**JOINT RESOLUTION RELATED TO
FINANCIAL INSTITUTIONS**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Jeff Alexander

LONG TITLE

General Description:

This resolution affirms certain actions taken by the Legislature and urges congressional action regarding financial institutions.

Highlighted Provisions:

This resolution:

- ▶ affirms the Legislature's decision to establish a classification of "nonexempt credit unions" and encourages Congress to adopt a similar approach;
- ▶ urges Congress to examine the rulings of the National Credit Union Administration and take appropriate action;
- ▶ urges Congress to recognize and affirm the authority of states and local governments to determine whether federally chartered credit unions may be taxed the same as state chartered credit unions;
- ▶ urges Congress to provide a principled, fair, and equitable tax structure for financial institutions that allows the state to determine what state and local taxes shall apply to financial institutions;
- ▶ requests that if Congress elects to retain the current tax structure for financial institutions unchanged, it provide Utah and other states with a thorough, detailed, and reasoned explanation;
- ▶ requests that Congress in determining monies provided to the state by the federal government take into account revenues that may be lost to the state as a result of



28 federal tax policy and regulations related to financial institutions;

29 ▶ urges Congress to fully and carefully consider the principles, policies,
30 circumstances, and conditions identified and referenced in this resolution and
31 promptly act; and

32 ▶ provides for the distribution of the resolution.

33 **Special Clauses:**

34 None



36 *Be it resolved by the Legislature of the state of Utah:*

37 WHEREAS, the financial institution industry is a critical part of Utah's economy;

38 WHEREAS, the state is benefitted by and relies upon a diversity of financial
39 institutions within the state including the existence of a strong credit union industry and a
40 healthy commercial bank industry;

41 WHEREAS, nationally, the competitive environment for banks and credit unions has
42 changed significantly since the first credit unions were formed in the early 1900's;

43 WHEREAS, the rise and scope of federal credit unions is rooted in the Federal Credit
44 Union Act of 1934, as amended over the years;

45 WHEREAS, the early credit unions started as small groups of people who shared a
46 close and meaningful "common bond" such as occupations, the neighborhood where they lived,
47 or a church they attended;

48 WHEREAS, such persons were less able to obtain loans from other financial
49 institutions because of low income and the perceived high risk of default and were, therefore,
50 especially vulnerable to usury lending practices by those that might unfairly take advantage of
51 such conditions;

52 WHEREAS, a credit union chartered in this state is required to be a cooperative,
53 nonprofit association, incorporated to:

- 54 (1) encourage thrift among its members;
55 (2) create sources of credit at fair and reasonable rates of interest; and
56 (3) provide an opportunity for its members to use and control their resources on a
57 democratic basis in order to improve their economic and social condition;

58 WHEREAS, Congress has previously found that:

59 (1) the credit union movement in America began as a cooperative effort to serve the
60 productive and provident credit needs of individuals of modest means;

61 (2) maintaining a meaningful affinity or common bond between members is critical to
62 the fulfillment of the public mission of credit unions including promoting thrift and credit
63 extension; and

64 (3) credit unions are exempt from federal and most state taxes because they are
65 member-owned, democratically operated, not-for-profit cooperative organizations generally
66 managed by volunteer boards and because they have historically had the specified mission of
67 meeting the credit and savings needs of their members, especially persons of modest means;

68 WHEREAS, financial institutions are subject to regulation by different federal
69 governmental entities depending on their structure, charter, and identity as a financial
70 institution;

71 WHEREAS, the National Credit Union Administration charters and regulates federally
72 chartered credit unions and as insurer oversees state chartered credit unions;

73 WHEREAS, commercial banks are subject to a variety of federal regulators depending
74 on their charter including the Office of the Comptroller of the Currency, the Federal Reserve
75 Board, or the Federal Deposit Insurance Corporation;

76 WHEREAS, the National Credit Union Administration has expanded its determination
77 of what has historically constituted a well-defined local community for purposes of defining a
78 field of membership to include large geographic areas;

79 WHEREAS, the broad field of membership established by the National Credit Union
80 Administration allows state chartered credit unions to easily convert to a federal charter,
81 putting state chartered credit unions at a disadvantage because of factors such as:

82 (1) differences in tax treatment of federally chartered credit unions; and

83 (2) differences in the regulations of member business lending;

84 WHEREAS, the U.S. Supreme Court held in 1998 that the original intent of the Federal
85 Credit Union Act was to require a more narrow interpretation of credit unions' common bond
86 and field of membership than what now exists under legislation adopted by Congress;

87 WHEREAS, commercial banks are subject to taxes on the federal, state, and local level;

88 WHEREAS, under the Internal Revenue Code, federal or state chartered credit unions
89 are exempt from paying federal income taxes;

90 WHEREAS, under the Federal Credit Union Act, as amended in 1937, states are
91 prohibited from imposing certain taxes on federal credit unions;

92 WHEREAS, in Utah, federally chartered and state chartered credit unions do not pay
93 state income taxes;

94 WHEREAS, credit unions pay property taxes;

95 WHEREAS, federally chartered credit unions do not pay sales and use taxes;

96 WHEREAS, if a state or Congress were to find that taxation of some credit unions is
97 justified, the General Accounting Office has reported that as a cooperative, credit unions can
98 avoid all such taxation by returning excess funds to its members either directly or indirectly by
99 reducing loan rates, increasing deposit rates, or both;

100 WHEREAS, the state and not the federal government should control and determine
101 public policy affecting the imposition of state taxes;

102 WHEREAS, all taxes on financial institutions, including both credit unions and
103 commercial banks, should be examined to determine whether a different and more principled
104 approach to taxing could lessen the tax burden wherever possible;

105 WHEREAS, federal tax policies and regulations related to financial institutions can
106 result in the erosion of state and local tax bases;

107 WHEREAS, the possible erosion of the state tax base because of federal tax policy and
108 regulations related to financial institutions can result in lost revenues to the state;

109 WHEREAS, the loss of revenues to the state impacts the state's ability to meet the
110 essential needs of its citizens including the funding of education;

111 WHEREAS, all income tax revenues collected by the state are constitutionally
112 dedicated in Utah to funding education;

113 WHEREAS, the funding of education is a top priority of the Legislature and, therefore,
114 all exemptions from paying income tax are carefully scrutinized by the Legislature;

115 WHEREAS, the federal encroachment into state policy areas regarding financial
116 institutions is not limited to taxation but also includes preemption of state regulation of the
117 business activities of financial institutions within the state;

118 WHEREAS, this federal encroachment raises constitutional issues under the 10th
119 Amendment and the Supremacy Clause;

120 WHEREAS, by creating the classification of "nonexempt" credit unions in H.B. 162,

121 Financial Institutions Amendments (2003 Gen. Sess.), the Utah Legislature has recognized that
122 some credit unions have grown so large that there may no longer be a meaningful affinity or
123 common bond;

124 WHEREAS, any credit union in the state that would have been a "nonexempt" credit
125 union as of May 2003, has since converted to a federal charter; and

126 WHEREAS, the Financial Institutions Task Force has found that because of the
127 conversion of many state chartered credit unions to federal chartered credit unions, significant
128 issues of tax policy and competitive fairness among financial institutions now need to be
129 addressed at the federal level:

130 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah
131 affirms its decision to establish a classification of "nonexempt credit unions" because of the
132 foreseeable need to potentially differentiate between small credit unions and those that may
133 grow so large as to have lost a meaningful affinity or bond and encourages Congress to adopt a
134 similar approach.

135 BE IT FURTHER RESOLVED that the Legislature urges Congress to examine the
136 rulings of the National Credit Union Administration regarding "common bond" and field of
137 membership to determine whether those rulings are overbroad and inconsistent with the
138 original intent of the Federal Credit Union Act and take appropriate action, including
139 examining whether there should be a restructuring of the National Credit Union
140 Administration.

141 BE IT FURTHER RESOLVED that the Legislature urges Congress to recognize and
142 affirm the authority of states and local governments to determine whether federally chartered
143 credit unions may be taxed the same as state chartered credit unions according to state law and
144 related policy considerations.

145 BE IT FURTHER RESOLVED that the Legislature urges Congress to provide a
146 principled, fair, and equitable tax structure for financial institutions, including credit unions
147 and commercial banks alike, that allows the states to determine what state and local taxes shall
148 apply to financial institutions whether state or federally chartered.

149 BE IT FURTHER RESOLVED that the Legislature requests that if Congress elects to
150 retain the current tax structure for financial institutions unchanged, it provide Utah and other
151 states with a thorough, detailed, and reasoned explanation for maintaining that tax structure

152 without alteration.

153 BE IT FURTHER RESOLVED that the Legislature requests that Congress in
154 determining monies provided to the state by the federal government for programs, including
155 education programs, take into account revenues that may be lost to the state as a result of
156 federal tax policy and regulations related to financial institutions.

157 BE IT FURTHER RESOLVED that the Legislature urges Congress to fully and
158 carefully consider the principles, policies, circumstances, and conditions identified and
159 referenced in this resolution and promptly act as needed in order to remedy the same.

160 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Majority
161 Leader of the United States Senate, the Speaker of the United States House of Representatives,
162 and the members of Utah's congressional delegation.

Legislative Review Note
as of 12-7-04 8:44 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Legislative Committee Note
as of 12-08-04 3:14 PM

The Financial Institutions Task Force recommended this bill.

Fiscal Note
Bill Number HJR001

Joint Resolution Related to Financial Institutions

18-Jan-05

8:56 AM

State Impact

Mailing requirements of this resolution can be handled within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst