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**SFA****BILL ANALYSIS**

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Senate Bill 745 (Substitute S-1)  
Senate Bill 746 through 753 (as introduced 9-28-99)  
Sponsor: Senator Joanne G. Emmons (Senate Bills 745 & 748)  
          Senator Art Miller, Jr. (Senate Bill 746)  
          Senator Mike Rogers (Senate Bill 747)  
          Senator Glenn D. Steil (Senate Bills 749, 751, & 752)  
          Senator Dale L. Shugars (Senate Bills 750 & 753)  
Committee: Banking and Financial Institutions

Date Completed: 10-21-99

## **CONTENT**

**Senate Bill 745 (S-1) would repeal and recodify the Banking Code of 1969. The bill would establish the "Banking Code of 1999" to provide for the regulation of banks; prescribe their powers and duties; provide for bank structure and organization, and banking operations; and prescribe the powers and duties of the Financial Institutions Bureau (FIB) and its Commissioner in the regulation of banks.**

**Senate Bills 746 through 753 would amend various laws to replace references to the Banking Code of 1969, or Public Act 319 of 1969, with references to the "Banking Code of 1999". All of the bills are tie-barred to Senate Bill 745.**

Senate Bill 746 would amend the Natural Resources and Environmental Protection Act. Senate Bill 747 would amend the Michigan Consumer Protection Act. Senate Bill 748 would amend the Michigan Export Development Act. Senate Bill 749 would amend the Sale of Checks Act. Senate Bill 750 would amend the Michigan BIDCO Act. Senate Bill 751 would amend the Savings Bank Act. Senate Bill 752 would amend the Savings and Loan Act. Senate Bill 753 would amend the Estates and Protected Individuals Code.

An overview of Senate Bill 745 (S-1) follows.

### **Bank Operations**

The bill would revise and recodify provisions regarding the issuance of bank stock. Among other things, the bill would regulate the division of stocks into classes and series; require that a bank keep and maintain accurate records of shareholders' identities and submit that information to the Commissioner upon demand; require that certificates of stock be issued to every shareholder and transferable on the bank's books; allow the bank's directors to sell a shareholder's shares, 30 days after the shareholder refused or neglected to pay an assessment levied on the shares, and establish a list of priorities for distribution of the proceeds of the stock sale; provide that the bank's assessment and sale of a shareholder's stock would not be limited by provisions in the Uniform Commercial Code; allow preferred shareholders, by unanimous vote, to waive their right to unpaid dividends; and require that dividends be paid from net income (rather than net profits, as is currently required).

The bill also would do the following:

- Require every bank employee who handled money, accounts, or securities to be bonded. (Currently, the bonding requirement is for those employees “who can be bonded”).
- Require every bank to maintain a financial institutions bond sufficient to protect against loss.
- Limit all indemnification expenses of a bank to “actual and reasonable” expenses incurred by a director, officer, employee, or agent of the bank who was a party to a lawsuit or proceeding.
- Allow a bank’s board of directors to be elected with staggered terms of office. (This is not allowed under the current Code.)
- Allow a board of directors to meet in person or by electronic communication devices, rather than only in person. (The bill would continue to require a board to meet six times per year.)
- Allow the board of directors to appoint committees of its members to perform its duties; and require the board to appoint a member, who would be a full-time employee of the bank, to be chief executive officer to perform duties designated by the board.
- Specify that a bank could purchase or sell securities or other properties from or to its directors, in the ordinary course of business, if the terms of the transaction were not more favorable than those offered to others and the transaction were authorized by a majority of the bank’s directors.
- Prohibit a bank officer, director, or employee from receiving or agreeing to receive from a customer any gratuity or consideration in return for the procurement of a loan or other bank service.

#### Bank Organization and Structure

The bill would do the following:

- Specify that a bank holding company could file an application to organize a bank. Currently, only natural persons may incorporate to organize a bank.
- Provide that, after authorization by the Commissioner to commence business, a bank and its incorporators could request permission from the Commissioner for the bank to reimburse the incorporators for reasonable and necessary organizational expenses. The request would have to include an accounting of the funds spent by the incorporators, as prepared by an independent certified public accountant. The Commissioner could waive the requirements if the expenses of organization were to be paid by a bank holding company.
- Specify that after an approval of a bank application, two articles of incorporation would have to be submitted to the Commissioner, one to be retained by the FIB and one to be forwarded to the incorporators. (Currently, four articles must be submitted, including one that is forwarded to the Department of Treasury and one to the county clerk of the county where the bank is located.)
- Prescribe the procedures for submitting applications to the Commissioner for various required approvals under the bill, including approval to establish a bank or consolidate banks. An application would be accepted when it was considered by FIB to be complete; subsequent to acceptance the applicant could amend the application. The Commissioner would have to approve or disapprove an application within 100 days after acceptance; an applicant could not appeal that decision until the applicant had requested a reconsideration of the application.
- Provide that a bank could be converted to a stock association, stock savings bank, or national banking association, upon the affirmative vote of shareholders who represented over 50% of total shares. (Currently, a two-thirds majority is required.)

- Provide that a national banking association, stock association, or stock savings bank could be converted into a bank, upon the affirmative vote of shareholders who represented over 50% of total shares. (Currently, a two-thirds majority is required.)
- Reduce to 30 days (from 60 days) the opportunity for the Commissioner to object, in writing, to the establishment of a branch by a bank.
- Allow a national bank located in another state to establish and operate one or more branches in Michigan.
- Allow a bank to change the location of its principal office to any existing branch location within the State, with prior written notice to the Commissioner. (Currently, a bank must obtain the written approval of the Commissioner to change the location of its principal office.)

The bill also would retain current provisions that require any consolidating organizations that propose to form a consolidated bank to hold a separate meeting of the shareholders of each organization. While the bill would require that a notice of the meeting be mailed to each shareholder, as is currently required, the bill would not retain the current requirement that notice of the meeting be published once a week for the four weeks prior to the meeting. Notice would not be required if it were waived by the Commissioner; notice to an individual shareholder would not be required if the shareholder waived the notification requirement. A consolidated bank or organization could operate all branches and principal offices of the consolidating organizations without further notice to the Commissioner.

### Bank Powers

The bill would do the following:

- Specify that banks could engage in any aspect of the insurance and surety business. (Currently, the Code forbids the Commissioner from authorizing banks to engage in an insurance business; however, banks are allowed to sell insurance as provided in the Insurance Code.)
- Specify that banks would have powers granted by order or declaratory ruling of the Commissioner.
- Revise and rewrite the specific list of powers banks have and may exercise.
- Revise and rewrite procedures that must be followed regarding the voluntary dissolution of a bank, including provisions specifying the duties and responsibilities of a liquidator, the shareholders, the bank, the directors, and the Commissioner.
- Allow any number of depository institutions to organize a "bankers' bank", exclusively to serve the institutions and their officers and affiliates, that could provide trust services or other services authorized by the Commissioner, and require that the "bankers' bank" stock be owned by the member institutions.
- Allow a bank to sell one or more of its branches, or purchase a branch or branches from another institution. A bank would have to notify the Commissioner before it operated a purchased branch.
- Specify that an institution (a bank, foreign bank agency, or state foreign branch bank) subject to the bill would have the same tax exemptions as savings and loan associations under Public Act 156 of 1964. (Under that Act all personal property owned by, and mortgages and securities held by savings and loan associations are tax exempt.)

### FIB Operations and Commissioner Powers

The bill would do the following:

- Require each bank and its subsidiaries to be examined by the Commissioner or an authorized agent at least once every 18 months. (Currently, an examination must be conducted at least once per year.) The bill specifies that the Commissioner could make an examination of a bank holding company.
- Specify that the contents of an examination report would remain the property of FIB; dissemination of all or a part of a bank's examination for purposes other than the legitimate business purposes of the bank would be a violation of the bill, subject to administrative remedies granted to the Commissioner.
- Recodify current annual bank supervisory fees, but eliminate a provision that requires a refund of the fee for those banks that were not examined during the year.

- Allow the Commissioner to promulgate rules, rather than require promulgation as is currently prescribed.
- Allow the Commissioner by order or declaratory ruling to exceed the loan limit of a bank. (Currently, and as proposed in the bill, the total loans and extensions of credit by a bank to a person at no time may exceed 15% of the bank's capital and surplus.)
- Allow the Commissioner, by order or declaratory ruling, to authorize a bank to invest in assets other than those specifically allowed under the bill.

In addition, the bill would prohibit the Commissioner from accepting employment with a State-chartered depository financial institution, for six months from the date he or she left office.

#### General Provisions

The bill would not include references to industrial banks or to trust companies. Under the current Code, the distinction between banks and industrial banks or trust companies was abolished with the effective date of the Code (August 20, 1969), and neither industrial banks nor trust companies could be created after that date, though existing entities could continue.

The bill would not include a provision in the current Code that requires FIB employees to be bonded.

MCL 324.20101b (S.B. 746)  
445.904 (S.B. 747)  
447.152 (S.B. 748)  
487.904 (S.B. 749)  
487.1717 (S.B. 750)  
487.3102 (S.B. 751)  
491.107 et al. (S.B. 752)  
700.1214 (S.B. 753)

Legislative Analyst: G. Towne

#### FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz