

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5907 (Substitute H-1 as passed by the House)
House Bill 5908 (Substitute H-1 as passed by the House)
House Bill 5909 (Substitute H-1 as passed by the House)
Sponsor: Representative Paul Wojno (H.B. 5907)
Representative Clark Bisbee (H.B. 5908)
Representative Alan Sanborn (H.B. 5909)
House Committee: Insurance and Financial Services
Senate Committee: Banking and Financial Institutions

Date Completed: 11-30-00

CONTENT

The bills would make a number of amendments to the Savings Bank Act that would be consistent with changes enacted by the Banking Code of 1999 (which repealed and recodified the Banking Code of 1969, upon which the Savings Bank Act was modeled). House Bill 5909 (H-1) would revise the Act's provisions regarding the organization of savings banks; conversion of savings banks to stock associations or other banking entities and vice versa; the operations of savings banks; savings bank powers; and indemnification of savings bank directors and employees. House Bill 5907 (H-1) would revise certain definitions in the Act and add others. House Bill 5908 (H-1) would extend the period between exams for savings banks and adjust the exam fee schedule.

Each bill is tie-barred to the others. Following is an overview of the bills.

House Bill 5909 (H-1)

Savings Bank Organization

The bill specifies that a depository institution (an out-of-state, national, association, savings, cooperative or industrial bank, or credit union) could apply to the Commissioner of the Office of Financial and Insurance Services (OFIS) for permission to organize a savings bank exclusively to serve depository institutions or their officers, directors, employees, and affiliates. (This is commonly known as a "banker's bank".) The application would have to be in a form prescribed by the Commissioner and include the information the Commissioner required. Further, the bill would allow any number of depository institutions to apply to organize a savings bank to engage exclusively in providing trust services

and other services as authorized by order or declaratory ruling of the Commissioner. The bill would not alter current provisions that allow a person (individual, corporation, limited liability company, governmental entity, partnership, limited liability partnership, or other legal entity) to apply to the Commissioner for permission to organize a savings bank.

Currently, a stock savings bank organized under the Act must have capital in an amount the Commissioner considers adequate on the basis of the population of the area and the anticipated nature of the bank's business, but not less than \$100,000. The bill would delete the \$100,000 minimum and the requirement that the amount be based on population and nature of the business. (A stock savings bank is authorized by its incorporation to issue capital stock.)

The bill provides that before a mutual savings bank was authorized to commence business, in addition to current requirements, the Commissioner would have to have received confirmation from the Federal Deposit Insurance Corporation (FDIC) that the accounts of the mutual savings bank were insured by the FDIC. (A mutual savings bank is a savings bank for which the articles of incorporation do not authorize the issuance of common or preferred stock.)

The Act provides procedures that a savings bank may take to liquidate. A savings bank that commences voluntary liquidation proceedings is considered to continue as a corporate body for three years from the start of the proceedings, to enable it to settle and close its affairs. The bill would shorten the time period by providing instead that a savings bank would continue as a corporate body for the lesser of three years from the start of liquidation proceedings, or the date the Commissioner certified

the bank's liquidation.

Currently, a savings bank whose term has expired by limitation, but that has not been dissolved and has inadvertently continued its active business beyond the term, may renew its corporate existence by amending its articles of incorporation with the consent of at least four-fifths of its members or the holders of at least four-fifths of its capital stock. The bill would revise this provision to require the consent of at least two-thirds of the bank's members or the holders of at least two-thirds of the outstanding shares.

Conversions

The Act provides for several forms of conversion, for instance, conversion of a savings bank to a stock association; a national banking association or Federal savings and loan to a State savings bank; or a mutual Federal savings and loan to a mutual State savings bank. In general, a conversion may not take place unless there is an affirmative vote of the shareholders who represent at least two-thirds of the total number of shares, or for a mutual savings bank, an affirmative vote of at least two-thirds of the bank's total membership. The bill would delete these requirements and instead allow conversions with the affirmative vote of the majority of votes cast. The bill specifies, however, that conversion to a stock savings bank from a mutual Federal or State savings and loan, or mutual Federal or State savings bank, would require the affirmative vote of two-thirds of the votes cast and the approval of the Commissioner.

Currently, some but not all conversions require the approval of the Commissioner, in addition to the required vote. These provisions would be retained.

Savings Bank Operations

The bill would allow the board of directors of a savings bank to authorize the issuance of stock without a stock certificate, if within a reasonable time after issuance, the savings bank provided shareholders with a written statement of the information that was required to be recorded on a certificate under the Act. The authorization would not have any effect on shares that were already represented by certificates, unless they were surrendered to the savings bank.

The bill provides that, in the case of the issuance of new stock, in voting upon the increase of capital stock, two-thirds of the shareholders entitled to vote would have power to fix the value of, and the price at which the stock would be subscribed and paid for by the shareholders, as well as the time and manner of the subscription and payment, and to authorize the directors to sell the stock. (Currently, these actions

may be taken by a majority vote of the shareholders.)

The bill would allow a savings bank to provide stock options for directors. Currently, stock options may be provided for employees; the bill would retain this provision.

Currently, an increase in capital stock by a savings bank is not effective until a certificate of the declaration, signed by the president, vice president, cashier, or assistant cashier of the savings bank, has been transmitted to and approved by the Commissioner. The bill would delete this provision.

The bill provides that dividends paid to shareholders of a savings bank under a "dividend reinvestment plan" would be subject to the Act regarding payment of dividends. (Under House Bill 5907 (H-1), a "dividend reinvestment plan" would be a plan that was offered solely to existing shareholders of the savings bank, that allowed the shareholders to reinvest dividends received under Section 316 of the Act in stock of the savings bank, and that could allow additional cash amounts to be contributed by the shareholders participating in the plan. Under Section 316, the board of directors of a savings bank may declare and pay dividends on the bank's common stock, subject to restrictions specified in that section.)

The bill would allow the board of directors of a savings bank to be elected for staggered terms, and would provide for director's terms of one, two, and three years. Currently, directors are elected each year at the annual shareholders' meeting. Further, the bill specifies that a savings bank's board of directors could fill a vacancy that occurred on the board, for the member's unexpired term. Currently, a replacement for a vacancy may be filled for the "current year". The bill also would allow the shareholders to vote to remove directors with or without cause, unless the articles of incorporation required that there be cause for removal.

Under the bill, a board of directors could 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.)

The bill specifies that a savings bank could purchase or sell securities or other property 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.

The bill provides that if a director or officer of a savings bank knowingly violated, or permitted any of the agents, officers, directors, or employees of the bank to violate, the Act or rules promulgated under

the Act, or an order or declaratory ruling of the Commissioner, every director and officer who participated in or assented to the violation would be held liable in his or her personal and individual capacity for all damages that the savings bank, any shareholder, or any other person sustained as a result of the violation. An action to recover damages would have to be brought within three years of the violation.

The bill specifies that all personal property owned by a savings bank would be exempt from taxation, and that all mortgages or other securities held by savings banks would be exempt from all municipal or other taxes under State laws. (These exemptions currently are granted to savings banks by reference to exemptions granted to savings and loan associations under Public Act 156 of 1964.)

Savings Bank Powers

The bill specifies that the liability of a depository institution or of its shareholders, directors, or officers, or the rights of creditors or other persons transacting business with the depository institution, could not be lessened or impaired as the result of a sale of assets. The bill also provides that the liability of any consolidating organization or of a shareholder, director, or officer of a consolidating organization, or the rights or remedies of its creditors, could not be altered or impaired as the result of a consolidation.

The bill would allow a savings bank that purchased or assumed all or substantially all of the assets or liabilities of a depository institution to retain, maintain, and operate the principal office or branches of the institution as branches of the savings bank, without providing notice to the Commissioner, provided it assumed the deposit liabilities of the institution maintained at the principal office or branches.

The bill specifies that the Commissioner could authorize a savings bank by order or declaratory ruling to exercise further powers consistent with the safe and sound conduct of the business of banking, or of a business related or incidental to banking, as were granted by U.S. law or the law of any state or political subdivision to financial service providers. The bill would eliminate a current provision that allows the Commissioner to issue rulings or orders, or promulgate rules, to permit savings banks to exercise powers not authorized under the Act.

The bill would allow a savings bank to relocate its principal office to any other location in the State that was not an existing branch location of the bank, upon prior written notice to the Commissioner. The Commissioner would have 60 days after receiving the notice to object to the relocation. Further, upon

prior written notice to the Commissioner, a savings bank could move its principal office to any existing branch in the State.

The bill would reduce from 60 to 30 days the time allowed for the Commissioner to object to written notice from a savings bank of its intent to establish a branch, or contract for branch services.

The bill specifies that an out-of-State savings bank or Federal savings bank could establish and operate one or more branches, and prescribes requirements that such a savings bank would have to follow. Each savings bank, out-of-State savings bank, and Federal savings bank operating a branch in Michigan would have to designate and maintain an agent located in the State upon whom process for judicial and administrative matters could be served; provide written notice containing the name and address of its agent to the Commissioner before commencing operations; and notify the Commissioner in writing of any change in its designated agent.

The bill would delete a provision that prohibits a savings bank from investing over 15% of its unimpaired capital or surplus (or over 15% of total capital in the case of a mutual savings bank), in the stock of a safe and collateral deposit company.

Under the bill, a savings bank that had been granted full trust powers could contract with any other legal entity to carry on trust services. (Currently, a savings bank may contract for trust services only with another bank or savings bank.) The bill also would repeal Section 425 of the Act, which requires a savings bank or out-of-State bank, before exercising trust powers, to deposit with the State Treasurer securities of at least 50% of the amount of its capital, or \$500,000, whichever is less; and provides for the disposition of the deposit if the savings bank goes into liquidation.

The bill would allow a savings bank to pledge its assets for the purpose of securing funds that belonged to a Federally recognized Indian tribe, and funds from the proceeds of a grant or loan from a U.S. department or agency that was conditioned upon the recipient's depositing the proceeds in an account secured by a pledge of assets by a depository institution. (These pledges could be made in addition to pledges currently allowed under the Act.)

Under the bill, a consolidated bank or consolidated organization could operate any branches and principal offices located in the State without providing notice under Section 417. (Under the bill, Section 417 would require a savings bank to give the Commissioner written notice of its intent to establish a branch.)

Indemnification

Under the Act, a savings bank may indemnify a person who was or is a party to (or threatened to be made a party to) civil, criminal, administrative, or investigative proceedings, against expenses for attorneys' fees, judgments, penalties, fines, and amounts paid in settlement. A savings bank also may indemnify a person who was or is a party to an action by reason of the fact that he or she is a director, officer, employee, or agent of the savings bank. Indemnification may not be made for a claim, issue, or matter in which a person has been found liable to the savings bank, unless the court determines upon application that the person is fairly and reasonably entitled to indemnification for the expenses the court considers proper. The bill would modify this provision to allow the court, upon receiving an application for indemnification and after giving any notice it considered necessary, to order indemnification if it determined that the person was fairly and reasonably entitled to it in view of all the relevant circumstances, whether or not he or she met applicable standards of conduct or was adjudged liable. If the person were adjudged liable, his or her indemnification would be limited to reasonable expenses incurred.

The Act also provides for payment by a savings bank to an officer, director, employee, or agent for expenses incurred in an action, suit, or proceeding, if it is ultimately determined that the person is not entitled to be indemnified by the savings bank. The bill provides, instead, that a savings bank could pay or reimburse the reasonable expenses incurred by a director, officer, employee, or agent who was a party to, or threatened to be made a party to, an action, suit, or proceeding in advance of final disposition if all of the following applied:

- The person furnished the savings bank a written affirmation of his or her good faith belief that he or she had met the applicable standards of conduct.
- The person furnished the savings bank with a written undertaking, executed personally or on his or her behalf, to repay the advance if it were ultimately determined that he or she did not meet the standard of conduct.
- A determination was made that the facts known to those making the determination would not preclude indemnification under the Act.

The bill also would allow a savings bank to indemnify partners and trustees.

House Bill 5907 (H-1)

The bill would define "LLC member" as a person with ownership interest under the Limited Liability Company Act; and would add a limited liability

company to the definition of a savings bank "affiliate".

The bill would include a "trust office" within the definition of a savings bank "branch"; and would define "trust office" as an office of a savings bank at which trust services were performed and at which deposits were not accepted, checks not paid, and money not lent.

House Bill 5908 (H-1)

The bill would reduce from at least once per calendar year to at least once every 18 months the frequency at which a savings bank is subject to examination by the Commissioner; revise the supervisory fee schedule; revise confidentiality for Bureau personnel; and revise current procedures regarding applications by savings banks seeking the approval of the Commissioner as required under the Act.

The Act requires a savings bank, based upon its total assets, to pay annual supervisory fees (not more than 25 cents for each \$1,000 of total assets based upon a schedule determined by the Commissioner, but at least \$1,000 per year). The bill would retain these provisions. Further, the Act requires that the supervisory fees be based on the estimated cost of supervision; requires that the fee be at least 4 cents per \$1,000 of total assets; and provides a credit for a savings bank that does not receive a supervisory examination during a calendar year. The bill would delete these provisions.

Currently, the Commissioner and all deputies, agents, and employees of the Bureau (the Office of Financial and Insurance Services) are required to keep secret all facts and information obtained in the course of their duties. The bill would extend this requirement to all former commissioners, deputies, agents, and employees.

MCL 487.3102 & 487.3103 (H.B. 5907)
487.3209 et al. (H.B. 5908)
487.3303 et al. (H.B. 5909)

Legislative Analyst: G. Towne

FISCAL IMPACT

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

Fiscal Analyst: M. Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.