



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

STATE BANK PARITY

**House Bill 5872 (Substitute H-2)
First Analysis (5-21-96)**

**Sponsor: Rep. Gary L. Randall
Committee: Commerce**

THE APPARENT PROBLEM:

Michigan's depository financial institutions (i.e., banks, savings institutions, and credit unions) generally must meet similar operating requirements as set forth in state and federal laws or by state and federal regulators, and this is true particularly when institutions differ primarily due to their charter status (i.e., national banks vs. state banks). For instance, if a federally-chartered savings institution is allowed by federal law to indemnify its officers against liability for certain actions, a similar provision usually applies to state-chartered savings institutions and, often, is contained in laws governing the other types of financial institutions as well. This is known as "parity," and is intended to enable them to compete with each other on generally equal terms. Representatives of state-chartered banks have requested a number of changes to the Banking Code that would bring these banks into parity with other financial institutions regarding a number of issues or otherwise update the act to reflect federal requirements. In addition, other amendments have been requested pertaining to a state bank's ability to provide trust services and to keep confidential certain information obtained by a bank's compliance review committee.

THE CONTENT OF THE BILL:

The bill would amend the Banking Code (MCL 487.391 et al.) to authorize a state-chartered bank to do all of the following:

* Provide in its initial articles of incorporation, or by amending the articles by a vote of shareholders owning a majority of the total number of shares of each class of its outstanding capital stock, that in electing directors each shareholder could cast as many votes as the number of shares owned by the shareholder multiplied by the number of directors to be elected. In the shareholder's discretion, he or she could distribute his or her total number of votes cumulatively for one or more candidates.

* Purchase and hold shares of its own capital stock. Currently, this is prohibited except when a bank is holding shares previously purchased until disposed of in compliance with an existing stock option plan, or when

it is necessary to prevent loss upon a debt previously contracted in good faith.

* Permit a bank that has full trust powers to contract in writing to provide these services at the location of any other legal entity; currently, this may be done only with another in-state bank, out-of-state bank, national bank, association, or savings bank.

Tenancy savings accounts. Under the bill, one or more individuals could open a savings or checking account with a bank in the names of two or more minor or adult individuals. The contract for either of these types of accounts would have to 1) designate that money on deposit could be withdrawn by one or more of the depositors during the lifetimes of all of them, and 2) specify that the account and all additions to the account would be the property of the depositors as joint tenants, tenants by the entireties, or as tenants in common.

If the contract for such a savings or checking account did not specify the nature of the joint tenancy created, the account and all additions to it would be the property of the persons as joint tenants. In the absence of fraud or undue influence, the opening of an account would be conclusive evidence in an action or proceeding of the intention of all parties to vest title to the account and all additions to it in the survivor. Any or all depositors could obtain substitute evidence of such accounts or, upon the loss or destruction of evidence showing who owned the account, could pledge the account in whole or in part or execute a power of attorney with respect to the account, and depositors would have a similar right to make withdrawals from the account during the time all depositors to it were living.

The bill would delete a provision requiring a bank to conspicuously post certain information and regulations pertaining to savings deposits in each bank office where savings business is transacted, and to furnish a copy of the regulations to each savings depositor when an initial deposit is made.

Confidentiality of certain information. The bill would authorize a bank's officer or its board of directors to appoint a compliance review committee to evaluate loan

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underwriting standards, asset quality, financial reporting to federal or state regulatory agencies, compliance with the bank's policies, compliance with requirements under federal or state laws, or other related matters. Any information or material gathered, generated, created, produced, developed, or prepared by or for a compliance review committee by one or more bank employees or other persons retained by it to assist the committee in performing its functions would be considered compliance review material.

Under the bill, such material would be confidential and could not be discoverable or admissible in evidence in any civil action, except for information required by law to be maintained by or provided to a governmental entity to the extent that the law required it to disclose the information for discovery or as admissible evidence. The bill specifies that certain information and material would remain compliance review material even if it was delivered or disclosed to bank employees who were not members of the committee, to other professional advisors retained by the bank, or to others retained to assist the committee in performing its functions or evaluating it.

FISCAL IMPLICATIONS:

The Financial Institutions Bureau says the bill would not affect state or local budget expenditures. (5-17-96)

ARGUMENTS:

For:

The bill would update numerous provisions in the Banking Code to ensure that state-chartered banks have parity with other financial institutions regarding various operating requirements. For instance, under the bill shareholders in state banks could cast their votes for directors based on the total number of shares they owned times the number of directors to be elected, assuming this was approved by a majority of shareholders to be included in and allowed by a bank's articles of incorporation. Thus, a shareholder could direct all of his or her votes to one or more director candidates, just as shareholders in national banks are allowed to do. The bill would allow a state bank to own shares of its own stock, similar to a national bank, and includes language nearly identical to that found in the Savings and Loan Act that would allow state banks to offer tenant (or joint-ownership) accounts. Under the bill, state banks could offer trust services at the location of any other legal entity and would not be limited to providing them only at certain other depository financial institutions as the act currently specifies. Thus, such services could be made more widely available to consumers via credit unions or local supermarkets that

agreed to allow a state bank to offer them. And finally, the bill would delete a provision requiring banks to post certain information regarding the terms and conditions that apply to savings accounts, as federal law was recently amended requiring banks to furnish this information in another manner.

For:

The bill includes language specifying that information obtained or material gathered by a state bank's compliance review committee would be confidential. Currently, financial institutions are required by federal law to keep data on the number and types of loans they issue, and to keep track of certain other lending patterns to determine whether discriminatory lending practices are occurring. In fact, federal and state regulators periodically will send fake loan applicants to banks to determine if they are issuing fewer loans to, for instance, minority groups. Banks, however, also monitor themselves via compliance review committees that are used to perform similar tests and gather information regarding their lending patterns. However, state banks feel that, because they themselves gather such information in order to help them improve lending patterns that might suggest underrepresentation among certain groups, such information and material should remain confidential in order to prevent someone other than government regulators (for example, a competitor) from using it to harm the bank's reputation and credibility in the community.

POSITIONS:

The Financial Institutions Bureau supports the bill. (5-17-96)

The Michigan Bankers Association supports the bill. (5-20-96)

Comerica, a state-chartered bank in Detroit, supports the bill (5-20-96).

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.