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BILL



ANALYSIS

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House Bill 5853 (Substitute H-1 as passed by the House)

Sponsor: Representative Gary L. Randall

House Committee: Commerce

Senate Committee: Financial Services

Date Completed: 5-22-96

CONTENT

The bill would create the “Savings Bank Act” to provide for the incorporation, regulation, supervision, and internal administration of savings banks (State banking corporations organized or reorganized under the bill); prescribe the powers, rights, and immunities of savings banks; and prescribe the powers and duties of the Financial Institutions Bureau. Following is a brief overview of the bill’s provisions.

Administration

The Financial Institutions Bureau (FIB) would have jurisdiction over, and would have to execute the laws relating to, savings banks that transacted business in Michigan. The bill provides that it would be the duty of the FIB Commissioner to maximize the capacity of savings banks in Michigan to offer convenient and efficient financial services, to promote home ownership and economic development, and to ensure that savings banks remained competitive with other types of financial institutions and providers of financial services. Further, the Commissioner:

- Could appoint examiners and other employees to carry out the bill’s provisions; compensation and other expenses would have to be paid within appropriations made by the Legislature.
- Would be prohibited from being a shareholder or officer of a savings bank, or borrowing money from a savings bank.
- Could promulgate rules, and issue orders or declaratory rulings, as he or she considered necessary to enforce the bill.
- Would be required periodically to establish a schedule of annual supervisory fees, to be paid by savings banks, based on the estimated cost of supervision.
- Could issue orders to restrict actions that were determined to be violations of the bill or unsafe operating practices likely to cause insolvency or substantial loss of assets.
- Could initiate procedures to remove from office a director or officer of a savings bank who had, in the Commissioner’s opinion, engaged in unsafe or unsound practices or other conduct prohibited under the bill; and remove or suspend a director or officer under the conditions specified.

A savings bank would have to secure insurance for its deposit accounts prior to opening for business, unless the requirement were waived by the Commissioner. Further, a savings bank would have to satisfy an asset test as prescribed in the bill or as prescribed by an order or a

declaratory ruling of the Commissioner. A savings bank would be subject to examination by the Commissioner, with or without prior notice, one or more times a year.

Corporate Structure

One or more persons could form a corporation to conduct a savings bank business, and would have to file an application with the Commissioner. The Commissioner would have to examine the application and the qualifications of the applicant, and approve or disapprove the applicant within 100 days of receipt. Any number of depository institutions could apply to incorporate a savings bank, exclusively to serve depository institutions or their officers and employees. Upon approval of an application, at least two original articles of incorporation executed by a majority of the applicants would have to be submitted to the Commissioner. If the Commissioner found that the articles conformed to law and that all fees and charges had been paid, he or she would have to approve and file one of the original articles in his or her office and certify and forward one of the original articles to the incorporators. The bill prescribes various information that the articles would have to include.

Within 30 days after the approval and filing of its articles of incorporation, or as approved by the Commissioner, the savings bank would have to notify the Commissioner that all of its capital and surplus has been fully paid in and that it had complied with all the provisions of the bill. The Commissioner would have to make any examinations as deemed necessary, and if it appeared that the savings bank was lawfully entitled to commence business, the Commissioner, within 30 days after receiving the notice, would have to give the savings bank a certificate under the official seal of the Bureau that the savings bank had complied with all of the required provisions and was authorized to commence business.

The bill would authorize savings banks to issue shares of common and preferred stock, and prescribes the conditions for issuance.

The bill would require a savings bank to be managed by a board of at least five but not more than 25 directors, who would be elected in the first instance by the incorporators at a meeting held before the savings bank was authorized to commence business, and afterward at the annual meeting of the members or shareholders.

Under the bill, a solvent savings bank could go into liquidation and be closed upon expiration of its corporate charter or by the vote of a two-thirds majority of members or voting shares. In the event of a termination, the last board of directors immediately upon expiration of its corporate charter or adoption of the resolution by the members or shareholders would have to notify the Commissioner of the action.

Further, a savings bank could buy or sell assets. Pursuant to the requirements of the bill, a savings bank could sell all or substantially all of its assets to another savings bank, bank, out-of-state bank, national bank, or association; or purchase all or substantially all of the assets and assume the liabilities of another savings bank, bank, out-of-state bank, national bank, or association.

Savings Bank Powers

A savings bank would be authorized to engage in the business of banking and exercise all powers incidental to the business. The bill contains a list of the powers of a savings bank, including the power to: make contracts; sue and be sued; make and amend bylaws; make investments; make contributions for the public welfare or to other charitable organizations; act as an agent for the sale

or issuance of bonds; become a member of the Federal Reserve System and the Federal Home Loan Bank; sell mortgage loans; conduct business through subsidiaries; engage in any aspect of the insurance or surety business as an agent or broker; service loans; borrow money; own a real estate brokerage business; and issue certain securities.

Upon application, the Commissioner could grant to a savings bank full trust powers. The bill prescribes the powers that a savings bank would have in conducting a trust business.

Regulation

If the directors or officers of a savings bank knowingly violated or permitted any of the agents, officers, or directors to violate the bill's provisions or rules of the Commissioner, they would be liable in a personal and individual capacity for all damages to the savings bank or a shareholder.

The bill would allow the Commissioner to require reports for a savings bank whenever necessary to inform the Commissioner fully of the condition of the savings bank.

Further, the bill would provide for the regulation of capital requirements; stock savings banks impaired by losses; officers or employees of savings banks acting as agents for the sale of stock, or as lenders; employee bonding; the receipt of and withdrawal of deposits; the pledging of assets by a savings bank; and the transfer of a savings bank's assets.

Receiverships and Conservatorships

The bill would provide for the appointment of a conservator or receiver under certain conditions. If a savings bank had refused to pay its deposits or obligations in accordance with the terms under which the deposits or obligations were incurred, or whenever a savings bank became insolvent, had refused to submit its books, papers, and records for inspection by the Commissioner, appeared to the Commissioner to be in an unsafe or unsound condition, or failed to requalify as a savings bank regarding adequacy of assets, the Commissioner would have to appoint a conservator, or apply to the circuit court for the county in which the savings bank was located, for the appointment of a receiver.

The bill prescribes the powers and duties of both a receiver and conservator.

Consolidations and Conversions

Subject to the approval of the Commissioner, a savings bank could consolidate with any number of consolidating organizations to form a consolidated savings bank. The bill prescribes the conditions under which consolidations and conversions would be allowed and provides for the governing of those actions.

General Provisions

The bill provides that a savings bank subject to the provisions of the bill would not be governed by the provisions of Public Act 327 of 1931, which provides for the organization, regulation, and classification of general corporations. Further, the bill specifies that a savings bank would have the same tax exemptions as a savings and loan association has under Public Act 156 of 1964. Under Public Act 156 of 1964, all mortgages or other securities held by an association are exempt from taxation, as is the personal property of an association.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would increase the regulatory duties and therefore the administrative costs of the Financial Institutions Bureau of the Department of Consumer and Industry Services. These increased costs, however, would be offset by the supervisory fees the bill would allow the Commissioner to charge the new savings banks for this service.

Fiscal Analyst: M. Barsch

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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.