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CROSS-BORDER DEPOSITORIES FOR LOCAL PUBLIC FUNDS

House Bill 4610 (Substitute H-3*) First Analysis (5-13-97)

Sponsor: Rep. Michael Nye
Committee: Commerce

THE APPARENT PROBLEM:

Public Act 40 of 1932 (1st Extra Session) requires county boards of commissioners (or boards of county auditors), township boards, school district boards, and legislative bodies of cities and villages to provide by resolution for the deposit of public money in one or more banks, savings and loan associations, or credit unions having their principal office in this state.

However, reportedly Amboy Township, in Hillsdale County, had been using a bank in Pioneer, Ohio, three miles away, until informed by the Department of Treasury that this was unlawful. The township since has been using a bank in Hillsdale, 20 miles away, and has requested legislation that would allow it to use the closer, Pioneer, bank.

THE CONTENT OF THE BILL:

The bill would amend Public Act 40 of 1932 (1st Extra Session) to permit a governmental unit to designate and deposit public money (including tax money) in one or more financial institutions that didn't maintain a principal office or branch office in Michigan if all of the following applied:

- (a) The governmental unit bordered another state;
- (b) The financial institution maintained a principal or branch office in the border state under Michigan or federal laws; and
- (c) There was no financial institution in the governmental unit.

The bill also would incorporate language to conform to other changes to the act proposed by House Bill 4596, which is part of a package of legislation introduced to remove the various obstacles to full implementation of interstate branch banking in Michigan (see BACKGROUND INFORMATION, below).

MCL 129.12

BACKGROUND INFORMATION:

The federal Riegle-Neal Interstate Banking and Branching Efficiency Act was signed into law in 1994. Among other things, the act will allow interstate branching of bank operations by merger after June 1, 1997. (That is, a bank chartered in one state may acquire or merge with a bank or bank branch in another state without obtaining a charter in the other state.) However, the federal act provides for states to opt-in early or opt-out of interstate branching before June 1, 1997. Consequently, Public Act 202 of 1995 amended the Banking Code to provide for Michigan's early opt-in to interstate bank branching. That act allows out-of-state banks to establish branches in Michigan, and they have done so. The federal act and Michigan's opt-in to interstate bank branching are expected to provide equal footing to all financial institutions operating in the state. Michigan's Constitution and various state statutes, however, evidently may pose problems for the implementation of fair competition in some banking operations.

State surplus funds and funds of political subdivisions of the state may not be deposited in out-of-state, state-chartered banks or in out-of-state savings banks, savings and loan associations, or credit unions. The Michigan Constitution (Article IX, Section 20) requires that eligible depositories for state surplus funds be organized under Michigan or federal law. By statute, deposits of surplus funds of political subdivisions of the state may be deposited as is allowed for state surplus funds. Consequently, out-of-state, state-chartered financial institutions operating in Michigan under the provisions of the Riegle-Neal Act and Michigan's early opt-in to interstate branching may not receive deposits of state or local surplus funds. This situation may present potential competitive inequalities among financial institutions operating in Michigan and may prevent the state treasurer and treasurers of the state's political subdivisions from seeking higher rates of return on the deposit of public funds.

In addition, while Public Act 105 of 1855 mandates that the state treasurer require "good and ample security" of a financial institution before it is made a depository of state surplus funds, Public Act 40 of the First Extra Session of 1932 prohibits the taking of security for the deposit of local funds. This may prevent local treasurers

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from adequately protecting public funds against a financial institution's potential losses. Also, the various laws governing the deposit of public funds refer to different types of financial institutions, so that some funds may be deposited only in banks while others may be deposited in any "other depository".

House Bills 4587-4605 and Senate Bills 229, 230, 233, and 234 constitute a package of legislation related to implementation of interstate branch banking, as provided by Public Act 202 of 1995 and by the federal interstate branch banking law, known as the Riegle-Neal Act of 1994. In general, the bills would allow out-of-state banks that opened branches in Michigan to accept deposits of public funds, among other changes.

House Bill 4596 would amend Public Act 40 of 1932 (1st Extra Session), regarding the designation of depositories for public moneys (MCL 129.12 et al.). In addition to the provisions described above, the bill would repeal a section of the act (MCL 129.13) that prohibits security in the form of collateral, surety bond, or other form from being taken for the deposit of public money.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill is expected to have no fiscal impact on the state, though some local units that are near (without bordering on) another state could conceivably see decreased interest earnings on deposits as their choice of financial institutions is limited. (5-5-97)

ARGUMENTS:

For:

The bill would allow local governments, like Amboy Township in Hillsdale County, that bordered on other states to use nearby out-of-state financial institutions to deposit public money rather than forcing them to use in-state financial institutions that might be considerably farther away. In this day and age, when financial institutions are undergoing significant transformations in their structure and services, it seems pointless to restrict these border communities from taking advantage of the convenience of nearby financial institutions just because the institution happens to be across the state border. The bill would allow this, while at the same time ensuring that any such financial institution so used would be nationally or federally chartered, with deposits being insured by the federal government.

POSITIONS:

The Financial Institutions Bureau (in the Department of Consumer and Industry Services) supports the bill. (5-8-97)

The Michigan League of Savings Institutions indicated support for the bill.

The Michigan Bankers Association supports the bill. (5-8-97)

Analyst: S. Ekstrom

■ 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.