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SFA BILL ANALYSIS

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House Bill 5800 (Substitute H-2 as reported without amendment)
House Bill 5835 (Substitute H-1 as reported without amendment)
Sponsor: Representative Andrew Richner
House Committee: Commerce
Senate Committee: Financial Services

Date Completed: 11-5-98

RATIONALE

Eleven member countries of the European Union (EU) have adopted a uniform currency called the euro. The countries have decided to provide a three-year period of transition, from January 1, 1999 through 2001, so that this currency's new monetary policy can be established and implemented. Until 2002, both the individual currencies of the countries and the euro will be in circulation. The rates of exchange for the various currencies when they are converted to euros will be set by the new central European bank.

During the time of transition from the national currencies to a single international currency, and continuing after the euro is in place, it will be necessary for parties to international contracts, financial transactions, and all manner of trade negotiations to have a clear understanding of the terms and value of their transactions, in order to conduct their business with fairness and certainty. Some people believe that it is necessary to enact statutory provisions that would ensure recognition of the European Union and its currency by American markets, give credibility to the euro, and ensure contract continuity.

CONTENT

House Bills 5800 (H-2) and 5835 (H-1) both would amend the Uniform Commercial Code to provide for conversion to the European currency the "euro" with respect to contracts, securities, or financial instruments and for the continuity of contracts after euro conversion. The bills are tie-barred.

Under the bills, "euro" would mean the currency of participating member states of the European Union that adopted a single currency in accordance with the Treaty on European Union. Member states would be those that had decided to adopt the euro, and other member states that may choose to participate. Also, "ECU" or "European Currency Unit" would mean "the currency basket that is from time to time used as the unit of account of the European Union as defined in European Council regulation no. 3320/94".

The bills would apply to all contracts, securities, and instruments, including contracts with respect to commercial transactions, and would not be displaced by any other Michigan law. In a circumstance of currency alteration other than the introduction of the euro, the bills would not create a negative inference or negative presumption regarding the validity or enforceability of a contract, security, or instrument denominated in whole or in part in a currency affected by that alteration. The bills would apply to a contract, security, and instrument entered into or issued before, on, or after the effective date of House Bill 5835 (H-1).

House Bill 5800 (H-2)

The bill specifies that, if a subject or medium of payment of a contract, security, or instrument were either the ECU or a currency that had been substituted or replaced by the euro, the euro would be a commercially reasonable substitute and substantial equivalent that could be used in determining the value of that currency or tendered at the conversion rate specified in and calculated according to the regulations adopted by the Council of the European Union.

Unless the parties to a contract, security, or instrument agreed otherwise, the tendering of money could be made only in euros or in the currency originally designated by the contract, security, or instrument, if that currency remained legal tender at the time of performance.

House Bill 5835 (H-1)

The bill specifies that the right under House Bill 5800 (H-2) to tender payment in the originally designated currency would not be affected if the currency had been substituted or replaced by the euro or the currency were considered a denomination of the euro and had a fixed conversion rate with respect to the euro.

None of the following could discharge or excuse performance under a contract, security, or instrument or give a party the right, unilaterally, to alter or terminate a contract, security, or instrument:

- -- The introduction of the euro.
- -- Tendering euros as authorized by House Bill 5800 (H-2) in connection with any obligation.
- -- Determining the value of an obligation in compliance with House Bill 5800 (H-2).
- -- Calculating or determining the subject or medium of payment of a contract, security, or instrument under House Bill 5800 (H-2) with reference to an interest rate or other calculation rate that had been substituted or replaced due to the introduction of the euro and that was a commercially reasonable substitute for and substantial equivalent to an original interest rate.

A reference to ECU in a contract, security, or instrument, without defining ECU, would be presumed to be a reference to the currency basket that was from time to time used as the unit of account of the European Community. The presumption would be rebuttable by showing that it was contrary to the intention of the parties.

When an agreement between parties to a contract specifically related to the introduction of the euro and was in conflict with the bill or House Bill 5800 (H-2), the agreement between the parties would control.

Proposed MCL 440.1210 (H.B. 5800)
Proposed MCL 440.1211 (H.B. 5835)

BACKGROUND

The following information was gleaned from various news and Internet sources.

Beginning January 1, 1999, 11 of the 15 nations that form the European Union will adopt a single European currency called the euro, a new currency created by the 12 founding members of the EU. The representative nations described their intent in a 1992 document called the Maastricht Treaty. Under the new system and single currency, monetary policy will be set by an international central bank located in Frankfurt, Germany. The bank's forerunner, the European Monetary Institute, is already in place and employs about 400 economists, statisticians, and computer experts whose task is to establish the structure for the new central bank and, eventually, to monitor the money supply, in a manner similar to the role played by the Federal Reserve Board in the United States. The Monetary Institute will be legally converted to a bank in January 1999. The national currencies of the 11 countries will remain in circulation for three more years to allow an orderly transition and rate of exchange, and will be entirely replaced by the euro in 2002.

Of the current 15 member nations of the EU, 11 have decided to adopt the unitary currency. Three of the 15 (Denmark, Great Britain, and Sweden) are waiting to see whether the euro is appropriate for the operation of their economies. One member nation, Greece, did not meet all of the qualifying economic indicators and will not participate in the use of the new currency.

The EU, formerly called the European Community, was established in 1967 with the merger of three separate trade and energy organizations originally created to rebuild Europe's devastated economies after World War II. The 15 current members of the European Union are Austria, Belgium, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and Sweden. (Norway was offered membership but declined to participate.) Ten other countries have applied to join, and the EU is expected to include at least 20 countries within the coming decade. In fact, six applicant countries (Bulgaria, the Czech Republic, Hungary, Poland, Romania, and Slovakia) already are called "associate members".

Decision-making in the EU is divided between supranational European institutions (the European Commission and the European Parliament, which are both administered by the EU) and government of the member states, which send representatives to the Council of Ministers. The Court of Justice serves as the final arbiter in legal matters or disputes among EU institutions or between EU institutions and member states.

Organizationally, the EU's executive branch is called the European Commission, which makes policy proposals and presents them to the Council of Ministers. The Council of Ministers is the main law-making body of the EU, although it cannot draft legislation. Instead, it accepts, rejects, or requests proposals from the Commission. The Council of the European Union (referred to in House Bill 5800 (H-2)) became an official part of the EU in 1987. At least once every six months, the Council holds summit meetings, which are convened by the country holding the presidency of the Council of Ministers. These summit meetings include the top leaders of the member states.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills are necessary and timely. They would provide for continuity of contracts and fair exchange rates during currency conversions, as the European Union moves to put its single currency, the euro, into place. Despite some opposition to this uncertain European economic policy and the potential for the reversal of some euro proponents' political fortunes, the proposed European monetary union and a single European currency appear to be inevitable. The EU movement has been under-way in various forms and to various degrees for more than three decades, and the European Council has already adopted the European Commission's first euro proposals, which include the eventual conversion of the ECU (the current composite "currency" and accounting unit) to the euro, and provisions for continuity of contracts once euro conversion has occurred. The United States, and individual states, should have laws in place to ensure a smooth transition to the new currency.

Opposing Argument

This shift in policy may be ill advised. Europe's controversial monetary union has not been coupled with a political union. Although there will be a central bank, there is no central government. Moreover, if the proposal for the central monetary policy were put to a popular vote in Europe today, the proposal very well could be defeated. Since some claim that the move for a single currency has been foisted on reluctant citizens by central bankers and global corporations, and does not emerge from popular consensus, there is some belief that the monetary union is likely to create or worsen policy conflicts and economic instability, especially if nations come to believe that they have relinquished too much of their national sovereignty. At best, the bills are premature. Euro conversion compliance should be delayed until after the new currency and monetary policy are implemented so that their effectiveness and success may be properly judged.

Opposing Argument

Some highly regarded economists continue to question the wisdom of a single European currency and uniform monetary policy for the nations of Europe. They expect that the move to a uniform currency will eventually fail, pointing out that the shift to a single currency will likely cause higher unemployment in some nations. They observe that high unemployment can now be cushioned by declining national interests rates and exchange rates, and that these national policies will no longer be possible after the European monetary union is in place and each nation's interest rate and rate of exchange is set by the central bank. Although proponents of the single currency suggest that a European Union is needed to serve as an economic counterbalance to the United States, and that employment mobility between EU countries will become increasingly flexible, others are less optimistic, arguing that the United States is very dissimilar to the collective nations of Europe. When unemployment rates increase in particular states or regions of the United States, the unemployed can move more easily to other states to find work. Europeans, unlike Americans, will not move as easily, if at all, because of language and cultural barriers, richer social welfare benefits, and strong unions.

Response: The bills would not affect whether the European nations will adopt the euro as a unified currency. That appears to be an accomplished deed. The bills merely would provide for the continuation of financial and contractual agreements after euro conversion.

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

Fiscal Analyst: E. Limbs

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