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NEW BANKING CODE

Senate Bill 745 with House committee amendment
First Analysis (11-30-99)

Sponsor: Sen. Joanne G. Emmons
House Committee: Insurance and Financial Services
Senate Committee: Banking and Financial Institutions

THE APPARENT PROBLEM:

It has been 30 years since Michigan's Banking Code has been thoroughly revised. In that time the financial institutions landscape has changed dramatically. As the Financial Institutions Bureau has pointed out, 30 years ago banks were protected from competition and their products and prices heavily regulated. Since then, FIB spokespersons note, the old limits on pricing (interest paid to customers and interest charged) have been removed; new banking products have been developed; technological innovations have changed how products are delivered and how banks communicate, internally and externally; new powers have been acquired that have allowed banks to enter new markets and to branch geographically. This means, say banking specialists, bankers now face new competition. Once safe in protected territories, banks now face head-to-head competition from out-of-region and out-of-state banks. Savings and loans and credit unions have changed and grown, as well. There are also competitors from outside banking: insurance companies, mutual fund companies, mortgage companies, and in-house financing arms of manufacturers offer consumers products similar to those once available primarily through banks. The regulation of the industry has necessarily changed too. As the FIB points out, "Bank examiners who routinely counted cash during a bank examination now assess banks' risk management. Once conducted entirely on-site at a bank, much of an examination now consists of off-site reviews and analyses enabled by microcomputer technology and electronic communications."

The Banking Code of 1969 has been amended (or "band-aided", as some say) over the years in response to changing circumstances. Over the past several years, state regulators have worked with the industry and the legislature to construct a new Banking Code, one that will be better organized and easier to work with, and that will more appropriately reflect today's banking world.

THE CONTENT OF THE BILL:

The bill would create the Banking Code of 1999 and repeal the Banking Code of 1969. It would retain many of the current Banking Code provisions while altering the organization of the code. The current Banking Code comprises eight chapters; the new code would have five chapters, with each chapter divided into separate "parts". (A skeletal outline of the new code appears at the end of this section of the analysis.)

The new code contains the following statement of policy: "It is the policy of this state that the business of all banking organizations shall be supervised and regulated in a manner that insures the safe and sound conduct of business, to conserve their assets, <u>promote competition among banking organizations</u>, to maintain public confidence in the business, and to protect the public interest and the interests of depositors, creditors, and shareholders." (Emphasis added)

The current code contains a similar statement but makes it a policy to "eliminate unsound and destructive competition among . . . banking organizations."

Among other things, the bill would:

– – Specify that a bank holding company could apply to organize a bank.

– – Provide that a bank could be converted to a stock association, stock savings bank, or national banking association (or one of those entities could become a bank) with a majority vote of shareholders, rather than a two-thirds vote, as now.

– – Revise the procedures under which the voluntary dissolution of a bank can take place; the process is currently referred to as voluntary liquidation.

– – Allow a number of depository institutions to organize a "bankers' bank" exclusively to serve the institutions or their officers, directors, employees and affiliates, and allow depository institutions to organize a bank to engage exclusively in providing trust services and other services. The stock of the bankers' bank would have to be owned exclusively by depository institutions.

– – Require banks to be examined at least every 18 months (rather than annually).

– – Allow the commissioner of the FIB to expand bank powers by order or declaratory ruling rather than by rule. The commissioner's rule-making authority would be permissive rather than mandatory. (This means the new code would say the commissioner "may" promulgate certain rules rather than "shall" promulgate rules.)

– – Permit a bank's board of directors to meet either in person or electronically, and allow board terms to be staggered.

– – Delete a provision that prohibits the commissioner from authorizing banks to engage in the sale or service of insurance. Existing provisions dating from 1994 would be retained permitting banks to engage in any aspect of the insurance and surety business as an agent, broker, solicitor, or insurance counselor, and to own an insurance agency (all subject to the terms of the Insurance Code).

– – Retain the prohibition on the commissioner's accepting employment with a state-chartered depository institution for six months after leaving office; and tighten other conflict-of-interest provisions on FIB employees.

– – Specify that all personal property owned by banks is exempt from taxation (as provided for in the General Property Tax Act) and that all mortgages or other securities held by banks are exempt from all municipal or other taxes under state law. These are parallel to provisions in the Savings Bank Act, enacted in 1996.

– – Revise and recodify provisions regarding the issuance of bank stock.

– – Alter the procedures by which banks can establish branches, including reducing the time for the commissioner to object to branching proposals from 60 days to 30 days.

– – Reduce filing requirements and streamline application procedures for establishing and organizing a bank.

– – Eliminate the current capital requirements for the formation of a bank and instead require the commissioner to evaluate "whether the capital structure of the proposed bank is adequate for the conduct of its business." Surplus requirements would be maintained.

– – Require all bank employees involved in the handling of money, accounts, or securities of the bank to be bonded by an authorized surety company and require every bank to maintain a financial institutions bond sufficient to protect against loss.

– – Delete specific provisions regarding interest rates paid on deposits and charged on loans and provide that a bank "may collect interest and charges on loans and extensions of credit as permitted by the laws of this state or of the United States to any person." (This reflects current practice.)

The following is a brief outline of the organization of the Banking Code of 1999.

Chapter 1:

Part 1 – – Short Title and General Provisions.

Part 2 – – Definitions

Chapter 2 : Financial Institutions Bureau

Part 1 – – Administration

Part 2 – – General Powers

Part 3 – – Enforcement Powers

Part 4 – – Receiverships and Conservatorships

Chapter 3: Bank Organization and Structure

Part 1 – – Formation

Part 2 – – Articles of Incorporation

Part 3 – – Dissolution

Part 4 – – Term Extension

Part 5 – – Officers and Directors

Part 6 – – Shareholders

Part 7 – – Consolidation and Conversion

Part 8 – – Capital

Part 9 – – Administration

Chapter 4: Banking Powers

Part 1 – – General Provisions

Part 2 – – Loans

Part 3 – – Investments

Part 4 – – Trusts

Chapter 5: Foreign Banks

HOUSE COMMITTEE ACTION:

The House Committee on Insurance and Financial Services adopted one amendment, adding an effective date of March 1, 2000.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency reports that the bill would have no fiscal impact on state or local government. (Floor analysis dated 10-25-99)

ARGUMENTS:

For:

The bill is a modernization and reorganization of the state's 30-year-old Banking Code, reflecting the many changes in the industry and in the regulation of financial institutions. Its supporters say it contains no controversial provisions. Instead, the bill removes obsolete provisions, adapts to new technologies, allows greater flexibility in regulation and banking operations, and acknowledges the changes in the marketplace in which banks and bankers conduct business. It also provides a more logical statutory structure, one that will be easier to use. The current code has been adapted over the past three decades in a piecemeal fashion to meet changing circumstances, and Senate Bill 745 will consolidate and reorganize those adaptations into a cleaned-up new statute.

The Financial Institutions Bureau has said, "Perhaps the most significant aspect of [the bill] is that it provides increased flexibility to both banks and the Bureau to respond to changing circumstances as we enter the next century. For example, it would permit bank boards of directors to conduct meetings electronically. It would allow the Commissioner, in acting on applications to exercise new powers, to take into consideration competition banks face not only from other depository institutions but also from mortgage companies and other financial service providers. Instead of fixed capital levels for new bank formation, the modernization would allow for capital requirements that accommodate to the nature of the business to be conducted. It would allow the Commissioner to stretch the time between examinations of healthy banks up to 18 months."

The new code, according to the FIB, "would provide a framework that will enable banks to continue to be strong, healthy competitors in the financial services marketplace".

Against:

An amendment was proposed in the House Insurance and Financial Services Committee that would have prohibited a commissioner of the Financial Institutions Bureau from working with a state-chartered bank for two years after leaving office; the current "revolving door" provision is for six months only. This would be a greater safeguard against conflicts of interest by the chief state banking regulator.

Response:

On the contrary, if the provision is to be dealt with, it should be deleted entirely. The state benefits enormously from the willingness of people with practical banking experience to interrupt their careers, sometimes at considerable financial sacrifice, to serve as regulators. To deny these people the opportunity to return to their careers is unfair. Moreover, it discourages talented people from considering state service.

POSITIONS:

The Financial Institutions Bureau, within the Department of Consumer and Industry Services, supports the bill. (11-10-99)

The Michigan Bankers Association supports the bill. (11-10-99)

The Michigan League of Community Banks has indicated its support for the bill. (11-10-99)

Analyst: C. Couch

■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.