

BANKING CODE REVISIONS FOR STATE BANKS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 748 (Substitute S-2)
Sponsor: Sen. Darwin Booher

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 749 (Substitute S-1)
Sponsor: Sen. Dale W. Zorn

Senate Bill 750 (Substitute S-1)
Sponsor: Sen. Mike Nofs

House Committee: Financial Services
Senate Committee: Banking and Financial Services
Revised as of 5-6-16

(Enacted as Public Acts 175, 176, and 177 of 2016)

REVISED SUMMARY:

Senate Bill 748

Senate Bill 748 would amend the Banking Code to do the following:

- Establish in statute the "State Bank Regulatory Fund," which would be administered by the Department of Financial and Insurance Services (DIFS). The fund would consist of fees, expenses, compensation, penalties and fines received, as well as appropriations and donations, and interest and earnings from investments. The Fund would be located in the Department of Treasury, which would direct fund investments
- Require that DIFS use the money in the State Bank Regulatory Fund only for bank regulatory purposes upon appropriation, as determined by the director. Money in the fund at the close of a fiscal year would remain in the fund and not revert to the General Fund.
- Specify that the annual supervisory fee to be paid by banks could not exceed
 - 1/40 of 1% of the total assets of the bank as reported by it in 2016,
 - 1/20 of 1% in 2017,
 - 3/40 of 1% in 2018 and 2019, and
 - 1/10 of 1% in 2020 and in subsequent years.

The current maximum annual supervisory fee is \$0.25 for every \$1,000 of a bank's total assets.

- Specify in statute that if an institution under the jurisdiction of the director of the Department of Insurance and Financial Services (DIFS) engaged a service provider to perform services, whether on or off the premises, the performance would be

subject to regulation, examination, and enforcement by the director as if those services were performed on the financial institution's own premises.

- Define "service provider" to mean a person providing any of the following: data processing; activities that support financial services, including lending, funds transfer, fiduciary activities, trading activities, and deposit-taking; internet-related services, including web services and electronic bill payments, mobile applications, system and software development and maintenance, and security monitoring; and other banking-related activities.
- Allow the director or an authorized agent to examine an affiliate or bank holding company of an institution under the director's jurisdiction.
- Specify that contents of a report of an examination of a bank and examination-related documents and materials would remain the property of the director, would be confidential and privileged, would not be subject to the Freedom of Information Act or subpoena, and would not be subject to discovery in any private civil action.
- Prohibit the director, or any person under the director's authority, from testifying, or being compelled to testify, in any private civil action concerning any confidential documents or materials received.
- Allow the director to share and receive documents or materials from other regulatory agencies, state, federal and international law enforcement agencies and enter into agreements covering the sharing and use of information.
- Require the director maintain any confidential information received with notice that the information the director receives are confidential from the source of the information. Disclosure of any documents to the director would not be a waiver of any claim of confidentiality in those documents.
- Prohibit a person to which confidential and privileged documents are disclosed from further dissemination of those documents or information.
- Specify that a person on which a demand for production of confidential information is made, by subpoena, order or other judicial process withhold production and notify the director of the demand. The director could intervene to enforce limitations, seek withdrawal or termination of the attempt to compel production of the information.
- Require any request for discovery or disclosure of confidential and privileged documents or materials to be made to the director, and require the director to determine within 21 days whether to disclose the information.
- Specify that the director's refusal to disclose confidential information would be subject to judicial review, including in camera review of the documents or materials. The director could immediately appeal any court order compelling

disclosure of confidential information and the order would be automatically stayed pending the outcome of the appeal

- Allow the director to suggest best practices or other improvements in the operation of a bank in an addendum to a report of examination.
- Specify that the manner in which a bank addressed issues concerning its operations would be within the exercise of the bank's business judgment, except as otherwise required.
- Prohibit the director from taking action against a bank based on its failure or refusal to follow a best practice or recommendation.
- Require the director to issue guidance pertaining to the bank examinations.

Senate Bill 749

Senate Bill 749 (MCL 487.11201) would amend the Banking Code to amend the definition of "affiliate" and add a definition of "derivative transaction."

Currently, the definition of "affiliate" includes a corporation, business trust, limited liability company, or similar organization to which any of the following apply:

- An organization owns or controls either a majority of its voting shares or more than 50% of the number of shares voted for the election of its directors, trustees, or other individuals who exercise similar functions at the preceding election.
- Control of the organization is held through stock ownership or any other manner by the shareholders or members of an organization that own or control a majority of the shares of or the ownership interest in that organization, more than 50% of the shares voted at the most recent election, or a majority of the ownership vote at the most recent election.
- The organization owns or controls either a majority of the shares of capital stock or other ownership interest of an organization, or more than 50% of the shares voted of the total ownership vote for the election of directors at the preceding election.

Senate Bill 749 would add partnerships and associations to the definition and refer to ownership or control of more than 25%, instead of a majority, of an organization's voting shares or ownership interest; and would refer to a majority of shares voted, rather than more than 50%.

Further, the term would also mean a corporation, business trust, limited liability company, partnership, association, or similar organization in which control of the organization is held by the power to exercise, directly or indirectly, a controlling influence over the management or policies of the organization, as determined by the commissioner after notice and an opportunity for a hearing.

The bill would define "derivative transaction" to mean any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

Senate Bill 750

Under the Banking Code (MCL 487.11201), a bank may purchase, sell, underwrite, and hold investment securities that are obligations in the form of bonds, notes, or debentures of a type and to the extent permitted by the act.

Senate Bill 750 would amend the Banking Code to specify that the statutory limitation on the amount of investment securities of any one obligor or maker that may be held by a bank would be determined on the basis of generally accepted accounting principles, unless otherwise directed or permitted in writing by the director for safety and soundness reasons. Currently, the limitation is determined on the basis of the par or face value of the securities.

The bill also says that if a bank invested money in a security, obligation, or other instrument that at the time was permitted under the Code, the investment subsequently became impermissible because of a change in circumstances or law, and the director finds that continuing to hold the investment would have an adverse effect on the safety and soundness of the bank, then the director could require the bank to develop a reasonable plan for the divestiture of the investment.

The bills are tie-barred, meaning neither would take effect unless both are enacted into law. The bills would take effect 90 days after enactment.

FISCAL IMPACT:

Senate Bill 748, as passed by the Senate, would not have an immediate fiscal impact on the Department of Insurance and Financial Services (DIFS) since the formula modified by SB 748 (S-2) for determining the maximum supervisory fees during 2016 is equivalent to the formula established under current law. Furthermore, DIFS does not currently assess the maximum supervisory fees and, during 2015, collected just over half of the amount of revenue that it could have collected if it levied the maximum fees as authorized by statute.

Over the long run, the formulas established by SB 748 (S-2) to determine the maximum supervisory fees during 2017, 2018 & 2019, and 2020 and beyond would potentially result in revenue that is double, triple, and quadruple the maximum revenue, respectively, that could have been generated via the formula under current law. However, DIFS has stated that it does not currently nor does it intend to assess the statutory maximum supervisory fees since doing so would place the state at a competitive disadvantage vis-à-vis the federal bank regulator and could provoke some state-chartered banks into converting to nationally-charted banks.

Senate Bills 749 and 750 would have no fiscal impact.

Legislative Analyst: E. Best
Fiscal Analysts: Paul B.A. Holland

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