



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 748 (Substitute S-2 as reported)
Senate Bill 749 (Substitute S-1 as reported)
Senate Bill 750 (Substitute S-1 as reported)
Sponsor: Senator Darwin L. Booher (S.B. 748)
Senator Dale W. Zorn (S.B. 749)
Senator Mike Nofs (S.B. 750)
Committee: Banking and Financial Institutions

CONTENT

Senate Bill 748 (S-2) would amend the Banking Code to do the following:

- Establish the "State Bank Union Regulatory Fund", and specify the disposition of fees, expenses, compensation, penalties, and appropriations to the Fund.
- Specify 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, the performance would be subject to regulation, examination, and enforcement by the Director.
- 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 from testifying, or being compelled to testify, in any private civil action concerning any confidential documents or materials.
- Allow the Director to share and receive documents or materials from other regulatory agencies, and enter into agreements covering the sharing and use of 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.
- 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.

The bill also specifies 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.

Senate Bill 749 (S-1) would amend the Banking Code to amend the definition of "affiliate" and add a definition of "derivative transaction".

The definition of "affiliate" includes a corporation, business trust, limited liability company, partnership, association, 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.

The bill would 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%.

"Affiliate" also would 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 Director after notice and an opportunity for a hearing.

Senate Bill 750 (S-1) 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. Currently, the limitation is determined on the basis of the par or face value of the securities.

The bill also provides 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 DIFS Director found that continuing to hold the investment would have an adverse effect on the safety and soundness of the bank, the Director could require the bank to develop a reasonable plan for the divestiture of the investment.

The bills are tie-barred, and each bill would take effect 90 days after its enactment.

MCL 487.11202 et al. (S.B. 748)
487.11201 (S.B. 749)
487.14301 (S.B. 750)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

Senate Bill 748 (S-2) would result in increased administrative burdens for the Department of Insurance and Financial Services and Department of Treasury related to the establishment of the State Bank Union Regulatory Fund.

Senate Bills 749 (S-1) and 750 (S-1) would have no fiscal impact on State or local government.

Date Completed: 2-29-16

Fiscal Analyst: Glenn Steffens

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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.