
OLR Bill Analysis

sSB 1109

AN ACT CONCERNING BANKS.

SUMMARY:

This bill makes various changes to the banking law.

The bill authorizes a Connecticut bank to merge with its non-bank affiliates, as long as the result of the merger is a Connecticut bank.

It changes reporting requirements for Connecticut banks, credit unions, and credit union service organizations that outsource electronic data processing services.

The bill expands the types of agreements that the banking commissioner may enter into, alone or with federal agencies, regarding Connecticut banks, credit unions, and credit union service organizations that are insolvent or meet other specified criteria. In regards to a Connecticut bank, the bill allows the commissioner to enter such agreements in conjunction with the Federal Reserve.

It extends the current \$500 fee for relocation of an in-state branch of a Connecticut bank to the relocation of an out-of-state branch of a Connecticut bank.

The bill extends by two years the application deadline for the conditional preliminary approval of expedited banks that are organized primarily to acquire failed banks, from September 30, 2011 to September 30, 2013. It permits a single application for the conditional preliminary approval of more than one such bank. Current law requires a separate application for each conditional preliminary approval. The bill also applies the current 18-month expiration of the conditional preliminary approval to all such banks, not just those that have not begun business or consummated an initial acquisition. By law, the commissioner can extend the approval beyond 18 months.

The bill amends loan-to-value limits for installments made by Connecticut banks for construction loans.

The bill removes certain references to federal regulations in the restrictions on Connecticut banks making loans to insiders.

It changes the notice requirement for Connecticut banks that invest a controlling interest in entities that are limited to banking functions.

The bill:

1. adds to the list of regulatory orders or agreements that trigger higher collateral requirements for qualified public depositories,
2. deletes a provision regarding how to determine the amount of public deposits held for purposes of those requirements,
3. adds provisions regarding when the amounts must be determined and when deficiencies must be cured, and
4. provides that any private insurance used to secure public deposits must be taken into account upon the failure of a qualified public depository.

It authorizes the banking commissioner to require criminal background checks for the principals, executive officers, and directors of (1) nonbank corporations authorized to act as trustees and (2) business and industrial development corporations. It also extends to senior management the commissioner's authority to require fingerprints for criminal background checks of key personnel in Connecticut credit unions.

The bill also makes minor and technical changes.

EFFECTIVE DATE: July 1, 2011 for the provisions regarding background checks; October 1, 2011 for the provisions regarding electronic data processing, construction loan installments, and insider loans; upon passage for the remaining provisions.

§ 1 — ELECTRONIC DATA PROCESSING

By law, Connecticut banks, credit unions, and credit union service organizations that outsource electronic data processing services must enter into a written contract with the servicer, whether the work is done on- or off-premises. Current law requires such entities to promptly send to the banking commissioner a copy of the contract. The bill eliminates this requirement, instead requiring such entities to promptly notify the commissioner of any material change in their electronic data processing services.

§ 2 — BANKING COMMISSIONER AGREEMENTS FOLLOWING INVESTIGATION

By law, the banking commissioner may enter into various agreements with Connecticut banks, credit unions, or credit union service organizations, either alone or in conjunction with specified federal agencies, if the commissioner makes certain findings after examining or investigating the financial entity (see below). The bill expands the list of permissible agreements to include (1) consent orders for such financial entities and (2) the issuance of preliminary warning letters to Connecticut credit unions or credit union service organizations. It also adds the Federal Reserve Bank or its successor as a permissible federal agency with which the commissioner may act in regards to an agreement or other specified arrangement with a Connecticut bank.

By law, the commissioner may take such actions upon finding that the entity (1) has failed to file a report on time; (2) is insolvent; (3) has violated any banking law, regulation, rule, or order; or (4) has engaged or participated in, or is engaging or participating in, an unsafe and unsound practice.

§ 5 — CONSTRUCTION LOANS BY CONNECTICUT BANKS

The law allows Connecticut banks to make construction mortgage loans in installments as the work progresses, at the lender's discretion. The law also sets loan-to-value ratio limits for such installments. Current law prohibits the ratio of the installment total to the property's current value from exceeding the greater of (1) 50% or (2) the final loan's proportion to the completed property value. The bill deletes

option (1).

By law, these limits do not apply to loans of up to 24 months, or 36 months if approved by the banking commissioner. Different limits apply for loans insured by the Federal Housing Administration (CGS § 36a-261(k)). Different limits also apply for loans where the borrower has an agreement with a housing authority, secured by a commitment of the U.S. Department of Housing and Urban Development, to construct housing and sell the property to the housing authority upon completion (CGS § 36a-261(o)).

§ 6 — INSIDER LOANS

State law subjects Connecticut banks to federal regulations limiting insider loans. The bill repeals an exception that refers to a federal regulation on civil penalties. It also makes a technical change.

State law prohibits a Connecticut bank's or its affiliates' executive officers, directors, or principal shareholders from knowingly receiving, or knowingly permitting any of that person's related interests to receive, from a Connecticut bank, directly or indirectly, any extension of credit that violates the federal restrictions. It further prohibits an executive officer, director, employee, agent, or other person from participating in bank affairs that violate the federal restrictions.

§ 7 — NOTICE REQUIREMENT FOR BANK INVESTMENTS IN CONTROLLING INTEREST IN ENTITIES LIMITED TO BANKING FUNCTIONS

By law, subject to certain restrictions, Connecticut banks may purchase or hold for their own accounts equity securities and equity mutual funds. A bank must notify the commissioner, in writing, 24 hours before making such an investment that would result in the bank having invested in the aggregate in 25% or more of a corporation's equity securities. The bill excludes from the notice requirement a bank's investment in a controlling interest in an entity whose functions are limited to those that the bank may carry on directly in the exercise of its express or incidental powers. By law, such investments require the banking commissioner's approval.

For this purpose, the law defines a controlling interest as at least 51% of the equity securities issued by the entity, unless the commissioner determines that under the circumstances, a lesser percentage constitutes effective working control of the entity.

§§ 8-10 — PUBLIC DEPOSITS AND QUALIFIED PUBLIC DEPOSITORIES

Definitions

The bill adds two new definitions to the law's provisions regarding the protection of public deposits. It defines "business day" as any day other than a Saturday, Sunday, or day when a financial institution is closed as required or authorized by federal or state law. It defines "close of business" as the time at which a financial institution closes for regular business operations on a business day.

Collateral Requirement

By law, a qualified public depository is a bank, Connecticut or federal credit union, or out-of-state bank with a Connecticut branch that receives or holds public deposits and (1) segregates eligible collateral for public deposits or (2) arranges for a letter of credit to be issued.

The bill adds to the list of regulatory orders or agreements that trigger higher collateral requirements for public depositories. The law requires qualified public depositories to maintain collateral equal to a specified percentage of their public deposits. The percentage is based primarily on their risk-based capital ratio. Qualified public depositories must maintain collateral equal to at least 120% of public deposits they hold if they are subject to a cease and desist order or have entered into a stipulation and agreement or a letter of understanding and agreement with a bank or credit union supervisor. The bill also imposes this collateral requirement on qualified public depositories that are subject to a consent order or preliminary warning letter, or have entered into a memorandum of understanding with a bank or credit union supervisor.

The bill changes the method for determining these collateral

requirements. Under current law, the amount of public deposits a depository holds must be determined based on the greater of (1) the public deposits reported on the most recent written report filed with the banking commissioner pursuant to law or (2) the average of the public deposits reported on the four most recent written reports. The bill eliminates these methods and instead provides that the amount must be determined at the close of business on the day the depository receives a public deposit. It further provides that deficiencies in the required collateral requirements must be cured by the close of business on the following business day.

Procedure Upon Loss

By law, the banking commissioner must pay public officers of public deposits, pursuant to specified procedures, when the commissioner determines that there has been (1) an order of supervisory authority restraining a qualified public depository from making payments of deposit liabilities or (2) the appointment of a receiver for a qualified public depository.

The bill adds to the list of insurance policies the commissioner must consider upon the failure of a public depository. Among other required procedures after such an event, each public depositor having funds on deposit in the depository must provide the banking commissioner with verified statements of such deposits disclosed by its records, plus information concerning letters of credit issued to the public depositor. The bill also requires such public depositors to provide the commissioner with information about private insurance policies used to secure public deposits.

By law, the commissioner must then determine the net amount of such public deposits after deducting deposit insurance and amounts received or to be received by the public depositor pursuant to a letter of credit. The bill also requires the commissioner to deduct amounts received pursuant to private insurance policies.

§§ 11, 12, AND 14 — CRIMINAL BACKGROUND CHECKS

Nonbank Corporations Authorized to Act as Trustees and Business and Industrial Development Corporations

The bill permits the banking commissioner to require criminal background checks for the principals, executive officers, and directors of nonbank corporations authorized to act as trustees and business and industrial development corporations at any time, including when the corporations or organizations are applying for licenses. The commissioner may require fingerprinting or any other method of positive identification the State Police requires to conduct the background check. The background check must comply with existing law on procedures for background checks.

By law, a business and industrial development corporation is a person approved or seeking approval by the federal Small Business Administration (SBA) as a participating lender under the SBA's loan guarantee programs.

Connecticut Credit Unions

The bill allows the banking commissioner to require fingerprints from a Connecticut credit union's senior management, for use in criminal background checks. By law, the senior management includes the credit union's president or chief executive officer, vice president or vice CEO, chief financial officer, credit manager, and anyone occupying a similar status or performing a similar function (CGS § 36a-435b(18)). The law already authorizes the commissioner to require background checks of credit union organizers, directors, and appointed directors.

The law specifies that the commissioner may require the fingerprinting at any time, including in connection with an application to organize the credit union. The background check must comply with existing law on procedures for background checks.

§ 15 — MERGER OF BANK WITH NON-BANK AFFILIATE

The bill allows a Connecticut bank to merge with one or more of its non-bank affiliates, as long as the result of the merger is a Connecticut bank. The bill provides that the merger must comply with current law

on bank mergers, with the following exception: regarding corporate procedure, including the rights of dissenting members or shareholders asserting appraisal rights, the bill requires the merging affiliate to comply with the laws of its state or jurisdiction of organization. The merging affiliate must also comply with other applicable laws regarding mergers in the affiliate's state or jurisdiction of organization.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/15/2011)