File No. 87

House Bill No. 5280

House of Representatives, March 23, 1998. The Committee on Banks reported through REP. MCCAVANAGH, 12th DIST., Chairman of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING BANK APPLICATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (i) of section 36a-70 of the general statutes, as amended by section 3 of public act 97-209, is repealed and the following is substituted in lieu thereof:

(i) If the application is approved by the approving authority, a temporary certificate of authority, valid for eighteen months, shall be issued to the organizers authorizing them to complete the organization of the Connecticut bank. The organizers shall thereupon file one copy of the temporary certificate of authority and one copy of the certificate of incorporation with the Secretary of the State. The [approving authority] COMMISSIONER may, upon the application of the organizers [before the termination of the eighteen-month period] and after a hearing thereon, extend, for cause, the period for which the temporary certificate of authority is valid.

Sec. 2. Section 36a-125 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Except as provided in subsection (i) of this section, any two or more Connecticut banks

may, with the approval of the commissioner, merge or consolidate into a single Connecticut bank. As used in this section, a "constituent temporary bank" means a constituent Connecticut bank that has a temporary certificate of authority but does not have a final certificate of authority to commence business, and a "constituent final bank" means a constituent Connecticut bank that has a final certificate of authority to commence business. Any plan of merger or consolidation approved by the commissioner shall specify whether the resulting bank shall operate as a bank and trust company, or a capital stock or mutual savings bank or savings and loan association.

(b) The governing board of each constituent final bank and the organizers of each constituent temporary bank proposing to merge or consolidate shall enter into an agreement, approved and executed by a majority of the governing board or all of the organizers, as the case may be, of each bank, prescribing the terms and conditions of such proposed merger or consolidation. Such agreement shall include the proposed certificate of incorporation of the resulting bank and shall state the name and corporate form of the resulting bank, the town in which its main office is located, the minimum and maximum number of directors and any other details necessary to effectuate such proposed merger or consolidation. In the case of a capital stock resulting bank, the agreement shall include the amount of capital stock with which the resulting bank shall commence business, the number of shares into which the capital stock is to be divided and the manner of converting the shares of the capital stock of the constituent banks into shares of the capital stock of the resulting bank and, if any shares of the capital stock of any of the constituent banks are not to be converted solely into shares of the capital stock of the resulting bank, the amount of cash, property or other securities of the resulting bank or the shares or other securities of any other corporation which the holders of such shares are to receive in exchange for or upon the conversion of such shares, which cash, property or other securities of the resulting bank, or shares or other securities of any other corporation, may be in addition to or in lieu of the shares of the

resulting bank. In the case of a merger or consolidation involving a mutual constituent bank and a capital stock constituent bank, if the resulting bank is to be a mutual bank, the agreement shall include the amount of cash or property of the resulting mutual bank which the holders of the shares of the capital stock constituent bank are to receive in exchange for such shares.

(c) Such agreement may provide for the effective date of the proposed merger or consolidation, which shall not be earlier than the filing of the agreement and the commissioner's approval in the office of the Secretary of the State. If the agreement does not provide an effective date, the merger or consolidation shall become effective on the first business day following the filing of the agreement and approval in the office of the Secretary of the State. In the case of capital stock constituent banks, the merger or consolidation agreement may provide that no new certificates of stock need be issued to holders of stock of the constituent bank which continues its corporate existence and that the certificates of stock of any other constituent bank may be deemed to be the certificates of stock of the resulting bank or any other corporation, provided that holders of certificates of stock of such other constituent bank shall be entitled to exchange their certificates of stock for certificates of stock of the resulting bank or such other corporation.

(d) In addition to the vote of the governing board or organizers as required by subsection (b) of this section, in the case of a capital stock constituent final bank, the merger or consolidation shall be approved by the affirmative vote of the holders of at least two-thirds of the issued and outstanding shares of each class of the capital stock. Such vote shall be taken at separate meetings of the shareholders called for the purpose of considering the proposed merger or consolidation, and not less than ten days' notice of the time, place and purpose of such meeting shall be mailed to the last-known address of each shareholder. Any person entitled to notice under this subsection may waive such notice in accordance with section 33-700. The vote may

approve the merger or consolidation either upon the terms of the agreement as approved and executed by the governing board or organizers or with such additions or amendments as may be so approved at such shareholders' or incorporators' meetings of each of the constituent banks.

(e) In the case of a merger or consolidation involving at least one mutual constituent bank, after adoption of the merger or consolidation agreement, notice thereof shall be published once each week for two consecutive weeks in one or more newspapers having a circulation in the town in which the main office of each such mutual constituent bank is located. Copies of the record of the meetings adopting the agreement of merger or consolidation, and setting forth the agreement in full, attested by the secretary and president of the respective meetings, shall be certified to and filed in the office of each such mutual constituent bank, there to remain, subject to public inspection, for fifteen days.

(f) Upon application by the constituent banks, and upon receipt of a copy of the agreement of merger or consolidation, certified by the secretaries of the respective constituent final banks and certified by the agents for the organizers of the respective constituent temporary banks as having been duly approved in accordance with [subsections (b) and (d)] SUBSECTION (b) of this section, [and of notification from the constituent banks that all approvals required under federal law, including approvals needed for insurance by the Federal Deposit Insurance Corporation or its successor agency, have been obtained and that any waiting period prescribed by federal law has expired,] the commissioner shall determine whether such merger or consolidation will promote public convenience, whether benefits to the public clearly outweigh possible adverse effects, including, but not limited to, an undue concentration of resources and decreased or unfair competition, and whether the terms thereof are reasonable and in accordance with law and sound public policy. The commissioner, if the commissioner so determines, shall approve the merger or consolidation. The commissioner shall not approve such merger or consolidation: (1) If it involves the acquisition of a Connecticut bank

that has not been in existence and continuously operating for at least five years, unless the commissioner waives this requirement; or (2) if the resulting bank including all insured depository institutions which are affiliates of the resulting bank, upon consummation of the merger or consolidation, would control thirty per cent or more of the total amount of deposits of insured depository institutions in this state, unless the commissioner permits a greater percentage of such deposits. In addition, the commissioner shall not approve such merger or consolidation unless the commissioner considers whether: (A) The investment and lending policies of the constituent banks, or the proposed investment and lending policies of the resulting bank, are consistent with safe and sound banking practices and will benefit the economy of this state; (B) the services or proposed services of the resulting bank are consistent with safe and sound banking practices and will benefit the economy of this state; (C) the constituent banks have sufficient capital to ensure, and agree to ensure, that the resulting bank will comply with applicable minimum capital requirements; (D) the constituent banks have sufficient managerial resources to operate the resulting bank in a safe and sound manner; and (E) the proposed merger or consolidation will not substantially lessen competition in the banking industry of this state. The commissioner shall not approve such merger or consolidation unless the commissioner makes the findings required by section 36a-34, AS AMENDED, and, in the case of a merger or consolidation of a mutual banking institution, determines that the interests of depositors are protected or served by the agreement of merger or consolidation. After approval of the merger or consolidation by the commissioner, a copy of the agreement and a copy of the commissioner's approval shall be filed in the office of the Secretary of the State. THE RESULTING BANK SHALL NOT COMMENCE BUSINESS UNTIL ITS INSURABLE ACCOUNTS AND DEPOSITS ARE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ITS SUCCESSOR AGENCY.

(g) Upon the completion of a merger or consolidation (1) the constituent banks shall become a Connecticut bank by the name provided in

the certificate of incorporation of the resulting bank; (2) the corporate existence of the constituent banks shall be continued by and in the resulting bank; (3) the resulting bank shall possess all the rights, privileges and franchises of each of the constituent banks including the authority to exercise fiduciary powers without further express authority of the commissioner, except that the resulting bank shall be empowered to exercise only those powers that are provided by the laws of this state to the resulting bank and trust company, savings bank or savings and loan association, as the case may be; (4) the entire assets, business, good will and franchises of each of the constituent banks shall be vested in the resulting bank without any deed or transfer, provided the constituent banks may execute such deeds or instruments of conveyance as may be convenient to confirm the same; (5) the resulting bank shall assume and be liable for all debts, accounts, undertakings, contractual obligations and liabilities of the constituent banks and shall exercise and be subject to all the duties, relations, obligations, trusts and liabilities of each of the constituent banks, whether as debtor, depository, registrar, transfer agent, executor, administrator, trustee or otherwise, and shall be liable to pay and discharge all such debts and liabilities, to perform all such duties and to administer all such trusts in the same manner and to the same extent as if the resulting bank had itself incurred the obligation or liability or assumed the duty, relation or trust; (6) all rights of creditors and all liens upon the property of any of such constituent banks shall be preserved unimpaired; and (7) the resulting bank shall be entitled to receive, accept, collect, hold and enjoy any and all gifts, bequests, devises, conveyances, trusts and appointments in favor of or in the name of any of such constituent banks whether made or created to take effect prior to or after such merger or consolidation, and the same shall inure to and vest in such resulting bank. No suit, action or other proceeding pending at the time of the merger or consolidation before any court or tribunal in which any of such constituent banks is a party shall be abated or discontinued because of such merger or

consolidation but may be continued and prosecuted to final effect by or against the resulting bank. The resulting bank shall have the right to use the name of any of the constituent banks whenever it can do any act or discharge any duty or obligation or endorse any right under such name more conveniently or with greater advantage to itself or to any person to whom it holds any relation of trust or owes any duty under any contract or conveyance, and no other corporation shall take or use the name of any of such constituent banks.

(h) Upon the effectiveness of the agreement of merger or consolidation, the shareholders, if any, of the constituent banks, except to the extent that they have received cash, property or other securities of the resulting bank or shares or other securities of any other corporation in exchange for or upon conversion of their shares, shall be shareholders of a capital stock resulting bank. Unless such agreement otherwise provides, the resulting bank may require each shareholder to surrender such shareholder's certificates of stock in the constituent bank and in that event no shareholder, until such surrender of that shareholder's certificates, shall be entitled to receive a certificate of stock of the resulting bank or to vote thereon or to collect dividends declared thereon, or to receive cash, property or other securities of the resulting bank, or shares or other securities of any other corporation. Any shareholder of any such constituent bank who dissents from the merger or consolidation is entitled to assert dissenters' rights under sections 33-855 to 33-872, inclusive. The rights and obligations of the objecting shareholders and the bank shall be determined in accordance with said sections. The stock of a capital stock resulting bank up to an amount of the combined stock of the constituent banks shall be exempt from any franchise tax.

(i) A mutual savings bank or a mutual savings and loan association and a capital stock bank shall not merge or consolidate if the resulting bank is to be a capital stock bank, unless prior to or as part of such merger or consolidation, the mutual savings bank or mutual savings and loan association first converts to a capital stock bank in accordance with section 36a-136, AS AMENDED BY

SECTION 4 OF THIS ACT, provided the commissioner may waive any of the provisions of section 36a-136, AS AMENDED BY SECTION 4 OF THIS ACT, if the commissioner certifies in writing that the protection of depositors and other creditors of one of the merging or consolidating banks or associations requires that the merger or consolidation proceed without delay. No such conversion shall be required if the resulting bank is to be a mutual savings bank or a mutual savings and loan association.

Sec. 3. Section 36a-135 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) (1) Any mutual savings bank, federal mutual savings bank, mutual savings and loan association, or federal mutual savings and loan association may convert into a mutual savings bank, federal mutual savings bank, mutual savings and loan association, or federal mutual savings and loan association, in accordance with the provisions of this section and any regulations the commissioner may adopt in accordance with chapter 54 as are necessary to allow such conversions on an equitable basis, provided this section does not apply to the conversion of a mutual federal bank into another mutual federal bank.

(2) Any conversion pursuant to this section involving the conversion of or to a federal mutual savings bank or federal mutual savings and loan association shall be authorized only if permitted by federal law and shall be subject to all requirements prescribed by federal law.

(3) The converting institution shall file with the commissioner a proposed plan of conversion, a copy of the proposed certificate of incorporation, and a certificate by the secretary of the converting institution that the proposed plan of conversion has been approved, in accordance with subdivision (4) of this subsection, by the governing board, and, in the case of a converting savings and loan association, federal savings bank or federal savings and loan association, the depositors or members thereof.

(4) The plan of conversion shall require the approval of a majority of the governing board of the converting institution. In the case of a converting savings and loan association, the plan

of conversion shall also require the favorable vote of not less than fifty-one per cent of the votes cast by depositors of such association at a special meeting called to consider such conversion. In the case of a converting federal savings bank or federal savings and loan association, the plan of conversion shall require any vote of depositors or members prescribed by federal law.

(5) In the case of a converting savings and loan association, any depositor may, within fifteen days after written notice given such depositor of such conversion, signify to such association, in writing, such depositor's dissent therefrom. Any such dissenting depositor shall not, as a result of the conversion, become a depositor of the converted institution, and shall be entitled to receive from the converted institution the value of such depositor's savings account in the converting association, to be ascertained by an appraisal, made as the governing board of the converted institution prescribes. If the value so fixed is not satisfactory to such depositor, such depositor may appeal to the commissioner, who shall make a reappraisal, which is final. If the reappraisal exceeds the value fixed by the governing board, the converted institution shall pay the expenses thereof. If the reappraisal does not exceed the value fixed by the governing board, the appellant shall pay the expenses thereof. The value so ascertained shall be a debt due such depositor from such converted institution. Any depositor of a converting association who does not dissent in accordance with this subdivision shall become a depositor of the converted institution and shall receive, without payment, a withdrawable deposit account or accounts in the converted institution equal in withdrawable amount to the withdrawal value of such depositor's deposit account or accounts in the converting association.

[(6) The commissioner, at the commissioner's discretion, may hold a public hearing on any proposed plan of conversion filed under this section.]

(b) In any conversion of a mutual savings bank or mutual savings and loan association to a

federal mutual savings bank or federal mutual savings and loan association under this section:

(1) The commissioner shall approve a conversion under this subsection if the commissioner determines that the converting institution has complied with all applicable provisions of law. [and that approvals needed for deposit insurance by the Federal Deposit Insurance Corporation or its successor agency have been obtained.]

(2) After receipt of the commissioner's approval, the converting institution shall promptly file such approval with the Secretary of the State and with the town clerk of the town in which its principal office is located. Upon such filing, and upon the receipt of all necessary approvals required under federal law, the converting institution shall cease to be a mutual savings bank or mutual savings and loan association and shall become a federal mutual savings bank or federal mutual savings and loan association, as the case may be. THE CONVERTED INSTITUTION SHALL NOT COMMENCE BUSINESS UNLESS ITS INSURABLE ACCOUNTS AND DEPOSITS ARE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ITS SUCCESSOR AGENCY.

(c) In any conversion under this section involving the conversion to a mutual savings bank or mutual savings and loan association:

(1) The commissioner shall approve a conversion under this subsection if the commissioner determines that: (A) The converting institution has complied with all applicable provisions of law; [and that approvals needed for deposit insurance by the Federal Deposit Insurance Corporation or its successor agency have been obtained;] (B) the converting institution has equity capital at least equal to the minimum equity capital required for the organization of a Connecticut bank; and (C) the proposed conversion will serve the public necessity and convenience.

(2) After receipt of the commissioner's approval, the converting institution shall promptly file such approval and its certificate of incorporation with the Secretary of the State and with the town clerk of the town in which its principal office is located. Upon such filing, the converting institution ceases to be the type of

institution from which it converted and becomes a mutual savings bank or mutual savings and loan association, as the case may be. THE CONVERTED INSTITUTION SHALL NOT COMMENCE BUSINESS UNLESS ITS INSURABLE ACCOUNTS AND DEPOSITS ARE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ITS SUCCESSOR AGENCY. Upon such conversion, the converted institution possesses all of the rights, privileges and powers granted to it by its certificate of incorporation and by the provisions of the general statutes applicable to the type of institution into which it converted, and all of the assets, business and good will of the converting institution are transferred to and vested in it without any deed or instrument of conveyance provided the converting institution may execute any deed or instrument of conveyance as is convenient to confirm such transfer. The converted institution is subject to all of the duties, relations, obligations, trusts and liabilities of the converting institution, whether as debtor, depository, registrar, transfer agent, executor, administrator, trustee or otherwise, and is liable to pay and discharge all such debts and liabilities, to perform all such duties and to administer all such trusts in the same manner and to the same extent as if the converted institution had itself incurred the obligation or liability or assumed the duty, relation or trust. All rights of creditors of the converting institution and all liens upon the property of such institution are preserved unimpaired and the converted institution is entitled to receive, accept, collect, hold and enjoy any and all gifts, bequests, devises, conveyances, trusts and appointments in favor of or in the name of the converting institution and whether made or created to take effect prior to or after the conversion.

(3) The persons named as directors in the certificate of incorporation of the converted institution shall be its directors until the first annual election of directors after the conversion or until the expiration of their terms as directors, and have the power to take all necessary actions and to adopt bylaws concerning the business and management of such converted institution.

Sec. 4. Subsection (j) of section 36a-136 of the general statutes is repealed and the following is substituted in lieu thereof:

(j) The commissioner shall approve a conversion under this section if the commissioner determines that: (1) The converting institution has complied with all applicable provisions of law; (2) the conversion would not result in any reduction of the converting institution's amount of equity capital, less any subordinated debt reorganized as bona fide capital; (3) the conversion would not result in a taxable reorganization of the converting institution under the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended; [(4) approvals needed for deposit insurance by the Federal Deposit Insurance Corporation or its successor agency have been obtained;] and [(5)] (4) the plan of conversion is fair to depositors. THE CONVERTED INSTITUTION SHALL NOT COMMENCE BUSINESS UNLESS ITS INSURABLE ACCOUNTS AND DEPOSITS ARE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ITS SUCCESSOR AGENCY.

Sec. 5. Section 36a-137 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) (1) Any capital stock Connecticut bank or capital stock federal bank may convert into any other capital stock Connecticut bank or capital stock federal bank upon the approval of the conversion by the commissioner, provided this section does not apply to the conversion of a capital stock federal bank to another capital stock federal bank. The requirements of the commissioner's approval and subdivisions (3) to (6), inclusive, of this subsection do not apply to the conversion of a capital stock Connecticut bank into a national banking association.

(2) Any conversion pursuant to this section involving the conversion of or to a capital stock federal bank shall be authorized only if permitted by federal law and shall be subject to all requirements prescribed by federal law.

(3) The converting bank shall file with the commissioner a proposed plan of conversion, a copy of the proposed certificate of incorporation and a certificate by the secretary of the converting

bank that the proposed plan of conversion and proposed certificate of incorporation have been approved in accordance with subdivision (4) of this subsection by the governing board and the shareholders.

(4) The plan of conversion and proposed certificate of incorporation shall require the approval of a majority of the governing board of the converting bank and, in the case of a converting Connecticut bank, the favorable vote of not less than two-thirds of the holders of each class of the bank's capital stock cast at a meeting called to consider such conversion. In the case of a converting federal bank, the plan of conversion shall require any vote of shareholders prescribed by federal law.

(5) Any shareholder of a converting Connecticut bank who, on or before the date of the shareholders' meeting to vote on such conversion, objects to the conversion by filing a written objection with the secretary of the bank may, within ten days after the effective date of such conversion, make written demand upon the converted bank for payment of such shareholder's stock; and thereafter such shareholder's rights shall be the same as those of a shareholder who dissents from the merger of two or more capital stock Connecticut banks.

[(6) The commissioner, in the commissioner's discretion, may hold a public hearing on any proposed plan of conversion under this section.]

(b) In any conversion under this section of a Connecticut capital stock bank to a capital stock federal bank other than a national banking association:

(1) The commissioner shall approve a conversion under this subsection if the commissioner determines that the converting bank has complied with all applicable provisions of law. [, and that approvals needed for deposit insurance by the Federal Deposit Insurance Corporation or its successor agency have been obtained.]

(2) After receipt of the commissioner's approval, the converting bank shall promptly file the approval with the Secretary of the State and with the town clerk of the town in which its principal office is located. Upon filing, and upon

the receipt of all necessary approvals required under federal law, the converting bank ceases to be a capital stock Connecticut bank and becomes a capital stock federal bank. THE CONVERTED BANK SHALL NOT COMMENCE BUSINESS UNTIL ITS INSURABLE DEPOSITS ARE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ITS SUCCESSOR AGENCY.

(c) In any conversion under this section involving the conversion to a capital stock Connecticut bank:

(1) The commissioner shall approve a conversion under this subsection if the commissioner determines that: (A) The converting bank has complied with all applicable provisions of law; [, and that approvals needed for deposit insurance by the Federal Deposit Insurance Corporation or its successor agency have been obtained;] (B) the converting bank has equity capital at least equal to the minimum equity capital for the organization of a Connecticut bank; and (C) the proposed conversion will serve public necessity and convenience.

(2) After receipt of the commissioner's approval, the converting bank shall promptly file such approval and its certificate of incorporation with the Secretary of the State and with the town clerk of the town in which its principal office is located. Upon such filing, the converting bank shall cease to be the type of bank from which it converted and shall become a bank and trust company, capital stock savings bank or capital stock savings and loan association, as the case may be. THE CONVERTED CONNECTICUT BANK SHALL NOT COMMENCE BUSINESS UNTIL ITS INSURABLE DEPOSITS ARE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ITS SUCCESSOR AGENCY. Upon such conversion, the converted Connecticut bank possesses all of the rights, privileges and powers granted to it by its certificate of incorporation and by the provisions of the general statutes applicable to the type of Connecticut bank into which it converted, and all of the assets, business and good will of the converting bank are transferred to and vested in it without any deed or instrument of conveyance, provided the converting bank may execute any deed or instrument of conveyance as is convenient to confirm such transfer. The converted Connecticut bank is

subject to all of the duties, relations, obligations, trusts and liabilities of the converting bank, whether as debtor, depository, registrar, transfer agent, executor, administrator, trustee or otherwise, and is liable to pay and discharge all such debts and liabilities, to perform all such duties and to administer all such trusts in the same manner and to the same extent as if the converted Connecticut bank had itself incurred the obligation or liability or assumed the duty, relation or trust. All rights of creditors of the converting bank and all liens upon the property of such bank are preserved unimpaired and the converted Connecticut bank is entitled to receive, accept, collect, hold and enjoy any and all gifts, bequests, devises, conveyances, trusts and appointments in favor of or in the name of the converting bank and whether made or created to take effect prior to or after the conversion.

(3) The persons named as directors in the certificate of incorporation shall be the directors of the converted Connecticut bank until the first annual election of directors after the conversion or until the expiration of their terms as directors, and shall have the power to take all necessary actions and to adopt bylaws concerning the business and management of such Connecticut bank.

(4) No such converted Connecticut bank shall exercise any of the fiduciary powers granted to Connecticut banks by law until express authority therefor has been given by the commissioner, unless such powers were legally exercised by the bank at the time of conversion.

(5) The franchise tax required to be paid by capital stock Connecticut banks on an increase of capital stock shall be paid upon the capital stock of any such converted Connecticut bank converting from a capital stock federal bank, the amount subject to such tax to be determined by deducting from the entire amount of such stock, the amount of the capital stock of the capital stock federal bank upon which such tax was paid during its existence as a capital stock Connecticut bank, if such capital stock federal bank came into existence by virtue of conversion from a capital stock Connecticut bank or by virtue of merger or

consolidation of a capital stock Connecticut bank with a capital stock federal bank.

(d) Notwithstanding the provisions of subsection (a) of this section, no reorganized savings institution shall have the power to convert into a bank and trust company, capital stock savings bank or capital stock savings and loan association, as the case may be.

Sec. 6. Subsection (c) of section 36a-138 of the general statutes is repealed and the following is substituted in lieu thereof:

(c) The commissioner shall approve a conversion under this section if the commissioner determines that: (1) The converting institution has complied with all applicable provisions of law; [and that approvals needed for deposit insurance by the Federal Deposit Insurance Corporation or its successor agency have been obtained;] (2) the proposed conversion will serve public necessity and convenience; and (3) in the case of a conversion to a mutual savings bank or mutual savings and loan association, the converting institution has equity capital at least equal to the minimum equity capital required for the organization of a Connecticut bank. THE CONVERTED INSTITUTION SHALL NOT COMMENCE BUSINESS UNTIL ITS INSURABLE DEPOSITS ARE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ITS SUCCESSOR AGENCY.

Sec. 7. Section 36a-185 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) The offer, invitation, request, agreement or acquisition referred to in section 36a-184 may be made unless the commissioner disapproves it within sixty days after the acquisition statement has been filed with the commissioner, or unless within the first thirty days of such sixty days the commissioner calls a public hearing [. The commissioner may call such a hearing in the commissioner's discretion and shall call such a hearing if the bank or holding company named in the acquisition statement:

(1) Files with the commissioner a written request for a hearing no later than fifteen days after the filing with the commissioner, or the receipt by the bank or holding company, of the acquisition statement, whichever is later; and

(2) With such written request, files a statement of issues of fact which, if proved, would constitute grounds for the commissioner's disapproval under subsection (d) of this section. Such hearing shall be called to commence within sixty days of the filing of the acquisition statement] IN ACCORDANCE WITH SECTION 11 OF THIS ACT. The offer, invitation, request, agreement or acquisition may be made prior to the expiration of the sixty-day disapproval period if the commissioner issues written notice of the commissioner's intent not to disapprove the action.

[(b) The commissioner shall give not less than fifteen days' notice of the public hearing to the person filing the acquisition statement and to the bank or holding company referred to in the acquisition statement. The commissioner may give, or may require that the person filing the acquisition statement give, not less than fifteen days' notice of the hearing to the shareholders of such bank or holding company and such other interested persons as may be designated by the commissioner to receive notice, in a form approved by the commissioner. The commissioner may, in the commissioner's discretion, require that a copy of the acquisition statement accompany the notice to the shareholders of such bank or holding company. If the hearing was requested by the person filing the acquisition statement, the notice to the shareholders of such bank or holding company and a copy of the acquisition statement, if required by the commissioner, shall be mailed to them by such bank or holding company at the expense of the person filing the statement.

(c) Any such hearing shall be conducted in accordance with chapter 54.

(d) The commissioner shall make a determination as promptly as practicable after the conclusion of such hearing. The determination shall state either that the commissioner disapproves the offer, invitation, request, agreement or acquisition or that the commissioner does not disapprove it.]

(b) The commissioner may disapprove any such offer, invitation, request, agreement or acquisition if the commissioner finds that:

(1) Upon completion of the acquisition, the bank referred to in the acquisition statement would be unable to satisfy the requirements for the issuance of a certificate of incorporation or a certificate of authority to carry on the business of banking to the same extent and in the same manner as it was authorized to carry on such business immediately prior to the acquisition;

(2) The financial condition of the acquiring person might jeopardize the financial stability of such bank or holding company, or prejudice the interests of depositors or security holders whose securities will not be acquired by the acquiring person;

(3) If a tender offer or exchange offer is contemplated, its terms are unfair and inequitable to the security holders of such bank or holding company;

(4) The plans or proposals which the acquiring person has to liquidate such bank or holding company, to sell its assets or to merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management, are unfair or prejudicial to depositors or to security holders of such bank or holding company;

(5) The competence, experience and integrity of the acquiring person are such that it would not be in the interest of the depositors or of the security holders of such bank or holding company or in the public interest for such offer, request, invitation, agreement or acquisition to be made; or

(6) The benefits to the public are clearly outweighed by the possible adverse effects, including, but not limited to, an undue concentration of resources and decreased or unfair competition.

[(e)] (c) The commissioner shall disapprove such offer, invitation, request, agreement or acquisition if: (1) It involves the acquisition of the voting securities or securities convertible into voting securities of a bank that has not been in existence and continuously operating for at least five years, or a holding company, the subsidiary banks of which have not been in existence and continuously operating for at least five years, unless the commissioner waives this

requirement or (2) the acquiring person, including all insured depository institutions which are affiliates of the person, upon consummation of the acquisition, would control thirty per cent or more of the total amount of deposits of insured depository institutions in this state, unless the commissioner permits a greater percentage of such deposits. In making the determination to disapprove or not to disapprove such offer, invitation, request, agreement or acquisition, the commissioner shall consider whether: (A) The investment and lending policies of the bank referred to in the acquisition statement are consistent with safe and sound banking practices and will benefit the economy of this state; (B) the services or proposed services of the bank referred to in the acquisition statement are consistent with safe and sound banking practices and will benefit the economy of this state; (C) the proposed acquisition will not substantially lessen competition in the banking industry of this state; and (D) the acquiring person, if such person would be the beneficial owner of twenty-five per cent or more of any class of voting securities of the bank or holding company referred to in the acquisition statement, (i) has sufficient capital to ensure, and agrees to ensure, that the bank referred to in the acquisition statement will comply with applicable minimum capital requirements, and (ii) has sufficient managerial resources to operate the bank or holding company referred to in the acquisition statement in a safe and sound manner. The commissioner shall disapprove such offer, invitation, request, agreement or acquisition unless the commissioner can make the findings required by section 36a-34, AS AMENDED.

Sec. 8. Subsection (b) of section 36a-192 of the general statutes, as amended by section 3 of public act 97-223, is repealed and the following is substituted in lieu thereof:

(b) (1) Notwithstanding any other provision of the general statutes, any mutual savings bank or mutual savings and loan association may reorganize so as to form a mutual holding company by: (A) Causing a nonstock corporation to be organized under the laws of this state; (B) (i) in the case of a mutual savings bank, causing such

nonstock corporation to form a reorganized savings institution by organizing a capital stock savings bank in accordance with section 36a-193, as amended by section 4 of [this act] PUBLIC ACT 97-223, or (ii) in the case of a mutual savings and loan association, causing such nonstock corporation to form a reorganized savings institution by organizing a capital stock savings and loan association in accordance with section 36a-193, as amended by section 4 of [this act] PUBLIC ACT 97-223; (C) causing such nonstock corporation to acquire a majority of the ordinary voting shares of such reorganized savings institution; and (D) merging the mutual savings bank or mutual savings and loan association with and into such reorganized savings institution in accordance with the provisions of subdivision (2) of this subsection and section 36a-125, AS AMENDED BY SECTION 2 OF THIS ACT, except that subsections (e), (f) and (i) of section 36a-125, AS AMENDED BY SECTION 2 OF THIS ACT, shall not apply.

(2) Upon application by the constituent banks, and upon receipt of a copy of the agreement of merger, [certified by the secretaries of the constituent banks as having been duly approved in accordance with subsections (b) and (d) of section 36a-125, and of notification from the constituent banks that all approvals needed for insurance by the Federal Deposit Insurance Corporation or its successor agency have been obtained and that any waiting period prescribed by federal law has expired,] the commissioner shall determine whether the terms of the merger are reasonable and in accordance with law and sound public policy. The commissioner, if the commissioner so determines, shall approve the merger. The commissioner shall not approve the merger of the mutual savings bank or mutual savings and loan association with and into the reorganized savings institution if: (A) The merger would be unfair or prejudicial to the depositors of the mutual savings bank or mutual savings and loan association; (B) the interest of the public will not be served by the merger; (C) disapproval is necessary to prevent unsafe and unsound banking practices; or (D) the financial or managerial resources of the constituent banks do not warrant approval of the merger. After approval of the merger by the commissioner, a copy of the

agreement and a copy of the commissioner's approval shall be filed in the office of the Secretary of the State. Upon completion of the merger, the nonstock corporation shall be a mutual holding company and persons who had ownership, liquidation or voting rights with respect to the mutual savings bank or mutual savings and loan association shall continue to have such rights solely with respect to such mutual holding company.

Sec. 9. Section 4 of public act 97-209 is repealed and the following is substituted in lieu thereof:

(a) Any community bank organized pursuant to subsection (r) of section 36a-70 of the general statutes, as amended by section 3 of [this act] PUBLIC ACT 97-209, may, upon the approval of the commissioner, expand its powers and operate without the limitations provided in subdivision (3) of subsection (r) of section 36a-70 of the general statutes, as amended by section 3 of [this act] PUBLIC ACT 97-209.

(b) A community bank that proposes to expand its powers shall file with the commissioner a proposed plan of expansion, a copy of the proposed certificate of incorporation and a certificate by the secretary of the community bank that the proposed plan of expansion and proposed certificate of incorporation have been approved in accordance with subsection (c) of this section.

(c) The proposed plan of expansion and proposed certificate of incorporation shall require the approval of a majority of the governing board of the community bank and the favorable vote of not less than two-thirds of the holders of each class of the bank's capital stock, if any, or, in the case of a mutual community bank, the corporators thereof, cast at a meeting called to consider such expansion.

(d) Any shareholder of a capital stock community bank that proposes to expand its powers who, on or before the date of the shareholders' meeting to vote on such expansion, objects to the expansion by filing a written objection with the secretary of such bank may, within ten days after the effective date of such expansion, make written demand upon the bank for payment of such shareholder's stock. Any such shareholder that

makes such objection and demand shall have the same rights as those of a shareholder who dissents from the merger of two or more capital stock Connecticut banks.

[(e) The commissioner, in the commissioner's discretion, may hold a public hearing on any proposed plan of expansion under this section.]

[(f)] (e) The commissioner shall approve an expansion of powers under this section if the commissioner determines that: (1) The community bank has complied with all applicable provisions of law; [and approvals needed for deposit insurance by the Federal Deposit Insurance Corporation or its successor agency have been obtained;] (2) the community bank has equity capital of at least five million dollars; (3) the community bank has received satisfactory ratings on its most recent state or federal safety and soundness examination and Community Reinvestment Act examination; and (4) the proposed expansion of powers will serve the public necessity and convenience.

[(g)] (f) After receipt of the commissioner's approval, the community bank shall promptly file such approval and its certificate of incorporation with the Secretary of the State and with the town clerk of the town in which its principal office is located. Upon such filing, the bank shall cease to be a community bank subject to the limitations provided in subdivision (3) of subsection (r) of section 36a-70 of the general statutes, as amended by section 3 of [this act] PUBLIC ACT 97-209, and shall be a Connecticut bank possessed of all rights, privileges and powers granted to it by its certificate of incorporation and by the provisions of the general statutes applicable to its type of Connecticut bank, and all of the assets, business and good will of the community bank shall be transferred to and vested in such Connecticut bank without any deed or instrument of conveyance, provided the Connecticut bank may execute any deed or instrument of conveyance as is convenient to confirm such transfer. Such Connecticut bank shall be subject to all of the duties, relations, obligations, trusts and liabilities of the community bank, whether as debtor, depository, registrar, transfer agent, executor, administrator or otherwise, and shall be liable to pay and

discharge all such debts and liabilities, to perform all such duties in the same manner and to the same extent as if the Connecticut bank had itself incurred the obligation or liability or assumed the duty or relation. All rights of creditors of the predecessor community bank and all liens upon the property of such bank shall be preserved unimpaired and the Connecticut bank shall be entitled to receive, accept, collect, hold and enjoy any and all gifts, bequests, devises, conveyances, trusts and appointments in favor of or in the name of the community bank and whether made or created to take effect prior to or after the expansion of powers.

[(h)] (g) The persons named as directors in the certificate of incorporation shall be the directors of such Connecticut bank until the first annual election of directors after the expansion of powers or until the expiration of their terms as directors, and shall have the power to take all necessary actions and to adopt bylaws concerning the business and management of such Connecticut bank.

[(i)] (h) No such Connecticut bank may exercise any of the fiduciary powers granted to Connecticut banks by law until express authority therefor has been given by the commissioner, unless such authority was previously granted to the predecessor community bank.

[(j)] (i) The franchise tax required to be paid by capital stock Connecticut banks upon an increase of capital stock shall be paid upon the capital stock of any such Connecticut bank, provided, any franchise tax paid by the predecessor community bank shall be subtracted from any amount owed under this subsection.

Sec. 10. Section 5 of public act 97-209 is repealed and the following is substituted in lieu thereof:

(a) (1) Any Connecticut credit union or federal credit union may convert into a mutual savings bank, a mutual savings and loan association, or a mutual community bank, as defined in subsection (r) of section 36a-70 of the general statutes, as amended by section 3 of [this act] PUBLIC ACT 97-209, in accordance with the provisions of this section.

(2) Any conversion of a federal credit union pursuant to this section shall be authorized only if permitted by federal law and shall be subject to all requirements prescribed by federal law.

(3) The converting credit union shall file with the commissioner: (A) A proposed plan of conversion which shall include current financial reports, current delinquent loan schedules, a combined financial report if applicable, a proposed business plan, a three-year financial forecast prepared by a certified public accounting firm or other professional firm approved by the commissioner, analyses of the regulatory effect of the conversion brought about by a change in the regulator, a method and schedule for terminating any nonconforming activities that would result from such conversion, and a provision requiring that for a period of at least two years after the effective date of the conversion, the converted mutual Connecticut bank shall not pay any fees or expenses to directors nor enter into any agreements with directors or their affiliates to provide any products or services to the converted mutual Connecticut bank; (B) a copy of the proposed certificate of incorporation and proposed bylaws; and (C) a certificate by the secretary of the converting credit union that the proposed conversion has been approved by the governing board and the members, in accordance with subdivision (4) of this subsection in the case of a converting Connecticut credit union, and in accordance with federal law in the case of a converting federal credit union.

(4) In the case of a converting Connecticut credit union, the plan of conversion shall require the approval of a majority of the governing board. After approving the plan of conversion, the governing board of the converting Connecticut credit union shall establish the date and time of a regular or special meeting of members for vote on the proposal. Written notice of the meeting at which the proposal is to be considered together with a mail ballot and a disclosure statement shall be hand-delivered or mailed to each member, at such member's last-known address as shown on the records of the converting Connecticut credit union, not more than thirty days nor less than fourteen days prior to the date of the meeting.

The notice, disclosure statement and mail ballot shall comply with the requirements of Appendix A to 12 CFR Part 708a, as from time to time amended, and shall be submitted to the commissioner for approval prior to distribution to members. Each member of the converting Connecticut credit union may cast one vote on the proposal. The affirmative vote of two-thirds of all the members voting, including those votes cast in person and those ballots properly completed and received by the converting Connecticut credit union prior to the time of the meeting, shall be required for approval of the conversion.

[(b) The commissioner, in the commissioner's discretion, may hold a public hearing on any proposed plan of conversion filed under this section.]

[(c)] (b) The commissioner shall not approve the conversion unless the commissioner makes the considerations, determinations and findings required by subsections [(d), (e) and (f)] (c), (d) AND (e) of this section.

[(d)] (c) The commissioner shall not approve the conversion unless the commissioner considers the following factors: (1) The population of the area to be served by the proposed mutual Connecticut bank; (2) the adequacy of existing banking facilities in the area to be served by the proposed mutual Connecticut bank; and (3) the character and experience of the proposed directors and officers.

[(e)] (d) The commissioner shall not approve the conversion unless the commissioner determines that: (1) The converting credit union has complied with all applicable provisions of law; (2) the converting credit union has equity capital at least equal to the minimum equity capital required for the organization of the type of mutual Connecticut bank to which it is converting; (3) the proposed conversion will serve the public necessity and convenience; (4) conditions in the locality in which the proposed mutual Connecticut bank will transact business afford reasonable promise of successful operation; and (5) the proposed directors and executive officers possess capacity and fitness for the duties and responsibilities with which they will be charged. If the commissioner cannot make such determination

with respect to any such proposed director or proposed executive officer, the commissioner may refuse to allow such proposed director or proposed executive officer to serve in such capacity in the proposed mutual Connecticut bank. As used in this subsection, "executive officer" means every officer of the proposed mutual Connecticut bank who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the proposed mutual Connecticut bank, regardless of whether such officer has an official title or whether such officer's title contains a designation of assistant or whether such officer serves without salary or other compensation. The vice president, the chief financial officer, secretary and treasurer of the proposed mutual Connecticut bank are presumed to be executive officers, unless, by resolution of the governing board or by the proposed mutual Connecticut bank's bylaws, any such officer is excluded from participation in major policy-making functions, other than in the capacity of a director of the proposed mutual Connecticut bank, and such officer does not actually participate in major policy-making functions.

[(f)] (e) The commissioner shall not approve the conversion unless the commissioner finds that the proposed mutual Connecticut bank will provide adequate services to meet the banking needs of all community residents, including low-income residents and moderate-income residents in accordance with a plan submitted by the converting credit union to the commissioner, in such form and containing such information as the commissioner may require. Upon receiving any such plan, the commissioner shall make the plan available for public inspection and comment at the Department of Banking and cause notice of its submission and availability for inspection and comment to be published in the department's weekly bulletin. With the concurrence of the commissioner, the converting credit union shall publish, in the form of a legal advertisement in a newspaper having a substantial circulation in the area, notice of such plan's submission and availability for public inspection and comment. The notice shall state that the inspection and comment period will last

for a period of thirty days from the date of publication. The commissioner shall not make such finding until the expiration of such thirty-day period. In making such finding, the commissioner shall consider, among other factors, whether the plan identifies specific unmet credit and consumer banking needs in the local community and specifies how such needs will be satisfied, provides for sufficient distribution of banking services among branches or satellite devices, or both, located in low-income neighborhoods, contains adequate assurances that banking services will be offered on a nondiscriminatory basis and demonstrates a commitment to extend credit for housing, small business and consumer purposes in low-income neighborhoods.

[(g)] (f) If the conversion is approved by the commissioner and the commissioner receives notification from the converting credit union that all approvals required under federal law, including approvals needed for deposit insurance by the Federal Deposit Insurance Corporation or its successor agency have been obtained and that any waiting period prescribed by federal law has expired, a certificate of authority to commence business shall be issued by the commissioner. After receipt of the certificate of authority, the converting credit union shall promptly file such certificate of authority and its certificate of incorporation with the Secretary of the State and with the town clerk of the town in which its principal office is located. Upon such filing, the license of the converting credit union shall automatically lapse and the converting credit union shall cease to be a credit union and shall become a mutual savings bank, mutual savings and loan association or mutual community bank, as the case may be. Upon such conversion, the converted mutual Connecticut bank shall possess all of the rights, privileges and powers granted to it by its certificate of incorporation and by the provisions of the general statutes applicable to the type of institution into which it converted, and all of the assets and business of the converting credit union shall be transferred to and vested in it without any deed or instrument of conveyance, provided the converting credit union may execute any deed or instrument of conveyance as is

convenient to confirm such transfer. The converted mutual Connecticut bank shall be subject to all of the duties, relations, obligations and liabilities of the converting credit union, whether as debtor, depository or otherwise, and shall be liable to pay and discharge all such debts and liabilities, to perform all such duties in the same manner and to the same extent as if the converted mutual Connecticut bank had itself incurred the obligation or liability or assumed the duty or relation. All rights of creditors of the converting credit union and all liens upon the property of such credit union shall be preserved unimpaired and the converted mutual Connecticut bank shall be entitled to receive, accept, collect, hold and enjoy any and all gifts, bequests, devises, conveyances and appointments in favor of or in the name of the converting credit union and whether made or created to take effect prior to or after the conversion.

[(h)] (g) Within ninety days after the conversion, the converted mutual Connecticut bank shall record a certificate, signed by the secretary and stating that the conversion is effective, in the office of the town clerk in each town in this state where the converted mutual Connecticut bank owns real property.

[(i)] (h) The converted mutual Connecticut bank may not exercise any of the fiduciary powers granted to Connecticut banks by law until express authority therefor has been given by the commissioner.

[(j)] (i) The converted mutual Connecticut bank may not convert to a capital stock bank for a period of three years following the date of the conversion from a Connecticut credit union or federal credit union to a mutual savings bank, mutual savings and loan association or mutual community bank, as the case may be.

Sec. 11. (NEW) (a) The Commissioner of Banking, in the commissioner's discretion, may hold a hearing in connection with any application filed with the commissioner and otherwise, with respect to any matter within the commissioner's jurisdiction, as the commissioner may determine. In the case of an acquisition pursuant to section 36a-184 of the general statutes, the commissioner

shall call such a hearing if the bank or holding company named in the acquisition statement:

(1) Files with the commissioner a written request for a hearing not later than fifteen days after the acquisition statement is filed with the commissioner or the acquisition statement is received by the bank or holding company, whichever is later; and

(2) With such written request, files a statement of issues of fact which, if proved, would constitute grounds for the commissioner's disapproval under subsection (b) of section 36a-185 of the general statutes, as amended by section 5 of this act. Such hearing shall be called to commence not later than sixty days after the filing of the acquisition statement.

(b) The commissioner shall give not less than fifteen days' notice of hearing held in connection with an acquisition pursuant to section 36a-184 of the general statutes to the person filing the acquisition statement and to the bank or holding company referred to in the acquisition statement. The commissioner may give, or may require that the person filing the acquisition statement give, not less than fifteen days' notice of the hearing to the shareholders of such bank or holding company and such other interested persons as may be designated by the commissioner to receive notice. Any such notice to shareholders and other interested persons shall be in a form approved by the commissioner. The commissioner may, in the commissioner's discretion, require that a copy of the acquisition statement accompany the notice to the shareholders of such bank or holding company. If the hearing was requested by the person filing the acquisition statement, the notice to the shareholders of such bank or holding company and a copy of the acquisition statement, if required by the commissioner, shall be mailed to the shareholders by such bank or holding company at the expense of the person filing the statement. The commissioner shall make a determination as promptly as practicable after the conclusion of such hearing. The determination shall state either that the commissioner disapproves the offer, invitation, request, agreement or acquisition or that the commissioner does not disapprove it.

(c) Any hearing held under this section shall be conducted in accordance with chapter 54 of the general statutes.

BA COMMITTEE VOTE: YEA 18 NAY 0 JF

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

* * * * *

FISCAL IMPACT STATEMENT - BILL NUMBER HB 5280

STATE IMPACT	None, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Department of Banking, State Treasurer, State Comptroller

EXPLANATION OF ESTIMATES:

The bill streamlines procedures for extending temporary certificates of authority to organize a bank. There is no workload impact as a result of the passage of this bill.

* * * * *

OLR BILL ANALYSIS

HB 5280

AN ACT CONCERNING BANK APPLICATIONS

SUMMARY: This bill streamlines procedures for extending temporary certificates of authority to organize a bank; provides more flexibility in the timing and coordination of approvals for bank mergers, consolidations, and conversions; and replaces specific authorizations for the banking commissioner to hold hearings at his discretion on various applications with a general authority to do this for any applications or matters in his jurisdiction.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Temporary Certificate Extensions

The bill allows the banking commissioner alone to grant an extension of a temporary certificate of authority for a new state-chartered bank in the process of organizing. Current law requires the "approving authority" which initially approves the temporary certificate to also approve the extension. For commercial banks and capital stock savings banks, the approving authority means a majority of the commissioner, the state treasurer, and the state comptroller. The commissioner is already the sole approving authority for other types of banks (capital stock and mutual savings and loan associations and mutual savings banks).

Timing of Approvals

The bill gives the commissioner more flexibility in the timing of his approval for certain bank applications. Current law requires him to obtain certification of shareholder approval before he approves a merger or consolidation. It also requires evidence of federal approvals needed for deposit insurance and of the expiration of any federally required waiting periods before he consents to a merger, consolidation, or a conversion from one type of bank to another or to or from a federal or state charter. By deleting these requirements, the bill allows the commissioner to coordinate with federal agencies that sometimes require his approval first. But it prohibits a bank from commencing business in its new form unless it has federal deposit insurance.

Hearings

The bill gives the commissioner general authority, at his discretion, to hold a hearing in connection with any application filed with him and with respect to any matter in his jurisdiction, as long as he conducts it according to the Uniform Administrative Procedure Act. This general authority replaces various specific references to the commissioner's authority to hold a hearing. But the bill maintains the specific procedure for holding hearings concerning acquisitions of banks and holding companies at the request of the entity being acquired, while making minor technical changes in it.

COMMITTEE ACTION

Banks Committee

Joint Favorable Report
Yea 18 Nay 0