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SFA



BILL ANALYSIS

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Senate Bill 464 (as enrolled)
Sponsor: Senator Shirley Johnson
Senate Committee: Banking and Financial Institutions
House Committee: Insurance and Financial Services

PUBLIC ACT 105 of 2001

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RATIONALE

Although Michigan's Savings Bank Act provides for the conversion of a State-chartered credit union into a mutual or stock savings bank, the credit union Act did not contain any procedures for such a conversion. The credit union Act does provide for the conversion of a State-chartered credit union into a Federally chartered credit union or into a credit union chartered in another state or a U.S. territory. Some people believe members of a credit union also should be allowed to convert their organization into another type of financial institution, subject to certain approval, notification, and voting procedures.

approve any conversion plan before submitting it to the Commissioner for preliminary review. At least 30 days before voting on the plan, the board must notify the credit union's members that it is considering a conversion. The notice must be mailed to the members and may not be included with other mailings. The notice must include a brief statement as to why the board is considering conversion, a brief statement of the major positive and negative effects of the proposed conversion, and a request for members' written comments on the proposed conversion.

CONTENT

The bill amended the credit union Act to establish notification, voting, and approval procedures for a credit union's plan of conversion into a mutual savings bank or mutual savings association, or a bank, stock savings bank, or stock savings and loan association.

Preliminary Approval. The OFIS Commissioner must review the contents of the conversion plan and member comments on it and grant preliminary approval before the credit union board presents the conversion plan to the members for a vote. The Commissioner may grant preliminary approval of the contents of the plan only if he or she is satisfied of all of the following:

Mutual Savings Bank or Association

Conversion. With the approval of the Commissioner of the Office of Financial and Insurance Services (OFIS) and two-thirds of the members voting on the proposal, a credit union may convert, under the bill, into a mutual savings bank or mutual savings association. If a holding company is to be formed in connection with the conversion, the conversion is subject to the regulations of the Federal Reserve Board of Governors or of the Office of Thrift Supervision applicable to holding companies.

- The plan discloses to the members information concerning the advantages and disadvantages of the proposed conversion and indicates any material differences in powers.
- The conversion would not be made to circumvent a pending supervisory action that is initiated by the Commissioner or other regulatory agency because of concern over safety and soundness of the credit union.
- The conversion plan does not provide any official of the credit union with any remuneration or other economic benefit in connection with the conversion.
- The converted organization is likely to be economically viable.

The credit union's board of directors, by a two-thirds vote of the entire board, must

Special Meeting Notice. Upon preliminary approval of the contents of the conversion plan, the credit union must call a special meeting of the members to provide information on the plan, and must mail to each member notice of the proposed conversion 90 days, 60 days, and 30 days before the date of the special meeting. Each notice must include the following:

- A statement of the positive and negative effects of the proposed conversion.
- A statement whether the directors of the converted organization will receive compensation and that interested persons may obtain more detailed information from the credit union at its offices or by other methods having the prior approval of the Commissioner.
- A statement that the proposed conversion plan may be substantively amended by the board of directors as a result of comments from regulatory authorities or otherwise before the meeting, and that the proposed plan may be terminated by the board.
- Directions for obtaining copies of the conversion plan.
- The date of the special meeting and a statement that the vote on the conversion will close on that date.
- Other information as required by the Commissioner.

The 30-day notice must include the date, time, and place of the special member meeting; a ballot and postage-paid return envelope; and the methods permitted for casting votes. If the conversion plan is substantively amended by the board of directors, the credit union must give members information about the amended plan at least 30 days before the vote on the proposal.

Member Votes. In addition to accepting member votes at the special meeting and by mail, with prior approval of the Commissioner, the credit union may accept member votes on the conversion proposal by an alternative method that is reasonably calculated to ensure that each member has an opportunity to vote. The credit union must file all of the following with the Commissioner:

- Certified copies of records of all proceedings held by the board of directors and members of the credit union.
- Copies of member comments submitted to

the credit union.

- A certified copy of consent or approval of the Federal regulatory authority or the regulatory authority of the applicable state, territory, or protectorate of the U.S., if the consent or approval is required by the laws of the applicable jurisdiction.
- Evidence that the converted organization is eligible for Federal insurance of deposits.

Approval. If all of the preceding conditions have been met, and the Commissioner determines that notices to members were accurate, timely, and not misleading, and that conduct of the vote on the conversion plan was fair and lawful, the Commissioner must approve the conversion and the conversion will become effective.

Except as otherwise required by the Commissioner, the preceding provisions do not apply to a credit union that submitted to the Commissioner a plan of conversion into a mutual savings bank or mutual savings association before the bill's effective date.

Bank; Stock Savings Bank, or Savings & Loan Association

Conversion. With the approval of the Commissioner and two-thirds of the members voting on the proposal, a credit union may convert, subject to the bill and the regulations of the Federal Deposit Insurance Corporation regarding mutual-to-stock conversions, into a bank, stock savings bank, or stock savings and loan association. If a holding company is to be formed in connection with the conversion, the conversion also is subject to the regulations of the Federal Reserve Board of Governors or of the Office of Thrift Supervision applicable to holding companies.

The credit union's board of directors, by a two-thirds vote of the entire board, must approve any conversion plan before submitting it to the OFIS Commissioner for preliminary review. At least 30 days before voting on the plan, the board must notify the credit union's members that it is considering a conversion. The notice must be mailed separately from any other mailing sent to the credit union's membership. The notice must include a brief statement as to why the board is considering conversion; a brief statement of the major positive and negative effects of the proposed conversion; a full and accurate

description of the differences between a credit union and a bank, savings bank, or savings and loan association; and a request for members' written comments on the proposed conversion.

Conversion Plan. The conversion plan must include the following:

- The member eligibility record date and the subscription offering priority established in connection with any proposed stock offering.
- A business plan, including a detailed discussion of how the capital acquired in the conversion will be used, expected earnings for at least a three-year period following the conversion, and a justification for any proposed stock repurchases.
- A full appraisal report, prepared by an independent appraiser, of the value of the credit union and the pricing of the stock to be sold in the conversion transaction.
- A legal opinion that any proposed stock offering complies with State and Federal law.
- Copies of notices of the conversion plan to be provided to members (described below).

Preliminary Approval. The OFIS Commissioner must review the contents of the conversion plan and member comments on it and grant preliminary approval before the credit union board presents the plan to the members for a vote. The Commissioner must grant preliminary approval of the contents of the plan only if he or she is satisfied of all of the following:

- The plan discloses to the members information concerning the advantages and disadvantages of the proposed conversion, fully and accurately describes the differences between a credit union and a bank, and indicates any material differences in powers.
- The conversion would not be made to circumvent a pending supervisory action that is initiated by the Commissioner or other regulatory agency because of a concern over the safety and soundness of the credit union.
- The plan does not provide any official of the credit union with any remuneration or other economic benefit in connection with the conversion.
- The plan does not permit the converting

credit union to loan funds or otherwise extend credit to any person to purchase the capital stock of the association.

- The converted organization is likely to be economically viable.

Special Meeting Notice. Upon preliminary approval of the contents of the conversion plan, the credit union must call a special meeting of the members to vote on the plan, and must mail to each member notice of the proposed conversion 90 days, 60 days, and 30 days before the date of the special meeting. Each notice must include the following:

- A statement of the positive and negative effects of the proposed conversion.
- A statement as to whether the plan includes a distribution of a portion of the credit union's net worth to members. If the plan provides for a distribution, the notice must describe the amount to be distributed, the form of the distribution, and requirements for member eligibility to receive a distribution.
- A statement as to whether the directors of the converted organization will receive compensation and that interested persons may obtain more detailed information from the credit union at its offices or by other methods having the prior approval of the Commissioner.
- The par value and approximate number of shares of capital stock to be issued and sold under the proposed plan.
- A statement that savings and share account holders will continue to hold accounts in the converted organization identical as to dollar amount and general terms, and that their accounts will continue to be insured.
- A statement that borrowers' loans will be unaffected by the conversion, and that the amount, rate, maturity, security, and other conditions will remain contractually fixed as they existed before the conversion.
- A statement that the proposed conversion plan may be substantively amended by the board of directors as a result of comments from regulatory authorities or otherwise before the meeting, and that the proposed plan may be terminated by the board.
- Directions for obtaining copies of the plan.
- The date of the special meeting and a statement that the vote on the conversion will close on that date.
- Other information as required by the Commissioner.

The 30-day notice must include the date, time, and place of the special member meeting; a ballot and postage-paid return envelope; and the methods permitted for casting votes. If the board substantively amends the conversion plan, the credit union must give members notice containing the information described above that accurately describes the amended plan, at least 30 days before the vote on the proposal.

Member Votes. In addition to accepting member votes at the special meeting and by mail, with the prior approval of the Commissioner, the credit union may also accept member votes on the conversion proposal by an alternative method that is reasonably calculated to ensure that each member has an opportunity to vote. The credit union must file all of the following with the Commissioner:

- Certified copies of records of all proceedings held by the board of directors and members of the credit union.
- Copies of member comments submitted to the credit union.
- A certified copy of consent or approval of the Federal regulatory authority or the regulatory authority of the applicable state, territory, or protectorate of the U.S., if the consent or approval is required by the laws of the applicable jurisdiction.
- Evidence that the converted organization is eligible for Federal insurance of deposits.

Approval. If all of the preceding conditions have been met, and the Commissioner determines that notices to members were accurate, timely, and not misleading, and that conduct of the vote on the conversion plan was fair and lawful, Commissioner must approve the conversion and the conversion will become effective.

Credit Union Charter Conversion

The Act allows a credit union organized under it to convert into a credit union chartered under Federal law, the laws of another state, or the laws of a U.S. territory. The bill also allows conversion into a credit union chartered under the laws of the District of Columbia or a U.S. protectorate.

In addition, the bill amended the procedures for conversion into a credit union chartered

under the laws of another jurisdiction, to bring them into conformity with the new requirements for conversion into a bank or savings and loan association. For example, notice of the conversion previously could be included with another mailing sent to the membership, but must be sent separately under the bill; and the credit union may accept member votes at a special meeting, by mail, or, with the Commissioner's approval, by an alternative method.

Other Provisions

The bill provides that, if a conversion becomes effective, all of the credit union's property and rights are vested in the converted organization; the converted credit union is considered to be a continuation of the same entity; all of the credit union's rights and obligations in respect to any person remain unimpaired; and the conversion does not release the credit union from any liabilities created by law or incurred by it before the conversion, or any tax imposed by the State up to the date of the conversion. Previously, these provisions applied to the conversion of a credit union into a credit union chartered under the laws of another jurisdiction. Under the bill, the provisions apply to that type of conversion, as well as the conversion of a credit union into a bank or savings and loan association.

The bill permits the Commissioner, for good cause, to require a converting credit union, within one year following conversion, to divest itself of an asset that does not conform to the legal requirements relative to assets acquired and held by the converted organization.

The bill specifies that, if a converting credit union was appointed in a fiduciary capacity by a court or governmental tribunal, agency, or officer, the converted organization must file an affidavit with the appointing authority setting forth the fact of conversion, the name and address of the converted organization, and the amount of its capital and surplus. A converted organization acting as a fiduciary by appointment of a court is subject to removal by a court of competent jurisdiction.

MCL 490.1a et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Reportedly, the Rochester Hills Community Schools Credit Union has filed an application to convert to a mutual savings bank. Although this was permitted by the Savings Bank Act, the conversion procedures under the credit union Act did not apply to that type of conversion. The bill fills this gap by authorizing the conversion of a credit union into a mutual savings bank or mutual savings association, or a bank, stock savings bank, or stock savings and loan association, and establishing approval, notification, and voting procedures. This will ensure that credit union members receive full disclosure of the reasons for a conversion, receive accurate and timely notification before a vote, and have an opportunity for input during the conversion process.

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

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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.