Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bills 748, 749, and 750 (as introduced 2-4-16)
Sponsor: Senator Darwin L. Booher (S.B. 748)
Senator Dale W. Zorn (S.B. 749)
Senator Mike Nofs (S.B. 750)
Committee: Banking and Financial Institutions

Date Completed: 2-16-16

CONTENT

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

- **Establish the "State Bank Union Regulatory Fund", and specify the disposition of money to and from the Fund.**
- **Allow the Director of the Department of Insurance and Financial Services (DIFS) to suggest best practices or other improvements in the operation of a bank in an addendum to a report of examination.**
- **Specify that the manner in which a bank addressed issues concerning its operations would be within the exercise of the bank's business judgment, except as otherwise required.**
- **Prohibit the Director from taking action against a bank based on its failure or refusal to follow a best practice or recommendation.**
- **Require the Director to issue guidance pertaining to the bank examinations.**

Senate Bill 749 would amend the Banking Code to make wording changes in definitions of terms used in the Code.

Senate Bill 750 would amend the Banking Code to allow the DIFS Director to require that a bank develop a plan for the divestiture of an investment that at the time of investment was permitted, but later became impermissible.

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

Below is a more detailed description of Senate Bills 748 and 750.

Senate Bill 748

State Bank Union Regulatory Fund

Currently, the fees, expenses, compensation, penalties, and fines collected under the Banking Code are not refundable, and must be paid into the State Treasury to the credit of the Department of Insurance and Financial Services, for its operations. The bill would eliminate the requirement that the money collected be paid into the State Treasury to the credit of DIFS.

The bill would establish the State Bank Union Regulatory Fund in the Department of Treasury. The Fund would consist of the following:

-- Fees, expenses, compensation, penalties, and fines received or collected under the Code.
-- Money appropriated to the Fund.
-- Donations of money made to the Fund from any source.
-- Interest and earnings from Fund investments.

Money in the Fund at the close of a fiscal year would remain in the Fund and would not revert to the General Fund. Upon appropriation, the Department of Financial and Insurance Services would have to use the money in the Fund only for bank regulatory purposes, as determined by the Director. The State Treasurer would have to direct the investment of the Fund, and DIFS would be its administrator for auditing purposes.

<u>Examination of Banks</u>

The Code specifies that each institution, and its subsidiaries and service entities, is subject to examination of its condition and affairs by the Director or his or her authorized agent at least once every 18 months. In addition, the Director must examine an institution under his or her jurisdiction when requested by its board of directors. The Director must ascertain whether the institution transacts its business in the manner prescribed by law and applicable rules. The Director may require the institution to furnish a copy of any report required by a Federal or State bank regulatory agency. The contents of a report of an examination and examination-related documents prepared or obtained during an examination remain the property of the Department.

The bill would allow the Director or his or her authorized agent, in an addendum to a report of an examination, to suggest best practices or other improvements in the operation of a bank that were not required by law or regulation or to address safety and soundness of the bank. The manner in which a bank addressed issues concerning its operations would be within the discretion of the bank in the exercise of its business judgment, except as required by law or regulation or to address a concern over safety and soundness. The Director could not take action against a bank under the Code based on its failure or refusal to follow a best practice or recommended improvement that was suggested informally by an examiner or that was contained in an addendum.

Within one year of the bill's effective date, the Director would have to issue guidance to promote consistency and due process in the examination process, including establishing guidelines that defined the scope of the process and clarified how examination issues would be resolved.

<u>Senate Bill 750</u>

A bank is permitted to purchase, sell, underwrite, and hold investment securities that are obligations in the form of bonds, notes, or debentures of a type and to the extent permitted by the Code.

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

MCL 487.12202 & 487.12203 (S.B. 748) Legislative Analyst: Jeff Mann
487.11201 (S.B. 749)
487.14301 (S.B. 750)

FISCAL IMPACT

Senate Bill 748

The bill would result in increased administrative burdens for the Department of Insurance and Financial Services (DIFS) and Department of Treasury related to the establishment of the State Bank Union Regulatory Fund. Currently, DIFS receives for the purpose of operations any fees, expenses, compensation, penalties, and fines collected under the Code. The bill would direct these to the Fund. As the Fund could be used only for bank regulatory purposes as determined by the Director, it is unclear what the fiscal impact, if any, would be with regard to DIFS.

Senate Bills 749 and 750

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Glenn Steffens

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