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BILL ANALYSIS

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House Bill 4976 (Substitute H-1 as reported without amendment)

Sponsor: Representative Jeff Mayes

House Committee: Banking and Financial Services

Senate Committee: Banking and Financial Institutions

Date Completed: 4-24-06

RATIONALE

Public Act 232 of 1978 provides for banks and savings and loan associations to suspend business in an emergency. Events that may give rise to an emergency include, for example, a major storm, a fire, a labor dispute, a robbery, or a crisis such as an epidemic or enemy attack. In 1999, while preparing for the possibility of a so-called "Y2K" event on January 1, 2000, staff of the former Financial Institutions Bureau (FIB) realized that the FIB Commissioner's power to close financial institutions under Public Act 232 was limited to banks and savings and loan associations, because credit unions and other types of financial institutions are not included in the Act. Since that time, the FIB and its successor agency, the Office of Financial and Insurance Services (OFIS), have been advocating an extension of the Act to all financial institutions. In addition, after the terrorist attacks of September 11, 2001, it became apparent that such an attack could require the closure of a financial institution. It has been suggested that the Act be amended to address those issues.

CONTENT

The bill would amend Public Act 232 of 1978 to extend it to "financial institutions", and include a terrorist attack among the emergencies that may trigger a suspension of business.

Emergency Closure

Under the Act, the OFIS Commissioner may authorize banks or savings and loan associations to close an office when it appears to the Commissioner that the action is required because an emergency exists or

may be impending. Under the bill, the Commissioner could authorize or order a financial institution to close an office or offices if he or she determined that the action was required because an emergency existed or could be impending.

The Act also provides that, when the chief executive officer (CEO) of a bank or association, or the officer serving in that capacity in the CEO's absence, is of the opinion that an emergency exists or is impending, the officer may determine not to open the office on a business or banking day or, if having opened, to close the office during the continuation of the emergency even if the OFIS Commissioner has not issued and does not issue a proclamation of emergency. The bank or association must give prompt notice of its action to the Commissioner or, in the case of a national bank, to the comptroller of the currency or, in the case of a Federal association, to the Federal home loan bank board.

The bill specifies, instead, that if the Commissioner had not made a determination of an emergency under the Act, and the CEO of a financial institution, or another officer designated by the financial institution for purposes of the Act, determined that an emergency existed or was impending, the officer could order that an office or offices of the financial institution be closed or not open. The financial institution would have to notify the Commissioner and any other appropriate governmental entity, as required by law. The financial institution would have to reopen as soon as the CEO or other designated officer determined that the

emergency had ended or as authorized or ordered by the Commissioner.

Definitions

The Act defines "emergency" as a condition or occurrence that may interfere physically with the conduct of normal business operations at an office of a bank or association, or that poses an imminent or existing threat to the safety and security of a person or property, or both. Under the bill, "emergency" would mean a condition or occurrence that has or may, directly or indirectly, interfere physically with the conduct of normal business operations of one or more offices of a financial institution, or that poses an imminent or existing threat to the safety and security of a person or property, or both.

Under the Act, an emergency may arise as a result of a fire, flood, earthquake, hurricane, tornado, wind, rain, snowstorm, labor dispute or strike, power failure, transportation failure, interruption of a communication facility, shortage of fuel, housing, food, or transportation, robbery or attempted robbery, actual or threatened enemy attack, epidemic or other catastrophe, riot, civil commotion, or any other act of lawlessness or violence. The bill would include a terrorist attack in the events that may give rise to an emergency. The bill also would delete reference to a shortage of transportation.

Under the bill, "financial institution" would mean a State-chartered bank, savings bank, credit union, or savings and loan association over which the OFIS Commissioner has regulatory authority for purposes of the Act.

The Act defines "bank" as a bank organized or reorganized under the Banking Code, or an industrial bank or trust company incorporated under previously existing State law, a branch or agency of a foreign banking organization, and, to the extent that the Act is not inconsistent with and does not infringe upon paramount Federal law, a national bank. "Association" means a State-chartered savings and loan association and to the extent that the Act is not inconsistent with and does not infringe upon paramount Federal law, a Federal savings and loan association. The bill would delete those definitions.

MCL 487.941-487.946

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

The bill would fill a void in current law, by extending Public Act 232 to more types of financial institutions. The emergency closure provisions under the Act refer only to banks and savings and loan associations, but other financial institutions under the regulatory control of OFIS, such as credit unions, are susceptible to the same types of emergencies that may interfere with a bank's business operations.

In addition, in light of the events of September 11, 2001, it is apparent that a terrorist attack could result in the need for an emergency closure of a financial institution. Adding a terrorist attack to the list of events that may trigger an emergency requiring the closure of a financial institution would reflect the political and economic realities of the 21st century.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

Fiscal Analyst: Maria 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.