



Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

## DEPOSITORIES FOR PUBLIC FUNDS

**House Bills 4587 and 4588 as enrolled  
Public Acts 35 and 36 of 1997  
Sponsor: Rep. George Mans**

**House Bills 4589 and 4590 as enrolled  
Public Acts 37 and 38 of 1997  
Sponsor: Rep. Gloria Schermesser**

**House Bills 4591 and 4592 as enrolled  
Public Acts 39 and 40 of 1997  
Sponsor: Rep. Samuel Thomas III**

**House Bills 4593 and 4594 as enrolled  
Public Acts 41 and 42 of 1997  
Sponsor: Rep. William Callahan**

**House Bills 4595 and 4596 as enrolled  
Public Acts 43 and 31 of 1997  
Sponsor: Rep. Ilona Varga**

**House Bill 4597 as enrolled  
Public Act 44 of 1997  
Sponsor: Rep. David Jaye**

**House Bill 4598 as enrolled  
Public Act 45 of 1997  
Sponsor: Rep. Alvin Kukuk**

**House Bills 4599 and 4605 as enrolled  
Public Acts 46 and 51 of 1997  
Sponsor: Rep. John Gernaat**

**House Bill 4600 as enrolled  
Public Act 47 of 1997  
Sponsor: Rep. Andrew Richner**

**House Bill 4601 as enrolled  
Public Act 32 of 1997  
Sponsor: Rep. Timothy Walberg**

**House Bill 4602 as enrolled  
Public Act 48 of 1997  
Sponsor: Rep. Kim Rhead**

**House Bill 4603 as enrolled  
Public Act 49 of 1997  
Sponsor: Rep. Greg Kaza**

**House Bill 4604 as enrolled  
Public Act 50 of 1997  
Sponsor: Rep. Michael Griffin**

**Senate Bill 229 as enrolled  
Public Act 20 of 1997  
Sponsor: Sen. Joel Gougeon**

**Senate Bill 230 as enrolled  
Public Act 21 of 1997  
Sponsor: Sen. Jim Berryman**

**Senate Bill 233 as enrolled  
Public Act 22 of 1997  
Sponsor: Sen. Loren Bennett**

**Senate Bill 234 as enrolled  
Public Act 23 of 1997  
Sponsor: Sen. Michael J. Bouchard**

**House Committee: Commerce  
Senate Committee: Financial Services**

**Second Analysis (7-16-97)**

House Bills 4587-4605 and Senate Bills 229, 230, 233, and 234 (7-16-97)

## **THE APPARENT PROBLEM:**

The federal Riegle-Neal Interstate Banking and Branching Efficiency Act was signed into law in 1994. Among other things, the act allows interstate branching of bank operations by merger after June 1, 1997. (That is, a bank chartered in one state may acquire or merge with a bank or bank branch in another state without obtaining a charter in the other state.) However, the federal act provides for states to opt-in early or opt-out of interstate branching before June 1, 1997. Consequently, Public Act 202 of 1995 amended the Banking Code to provide for Michigan's early opt-in to interstate bank branching. That act allows out-of-state banks to establish branches in Michigan, and they have done so. The federal act and Michigan's opt-in to interstate bank branching are expected to provide equal footing to all financial institutions operating in the state. Michigan's Constitution and various state statutes, however, evidently may pose problems for the implementation of fair competition in some banking operations.

State surplus funds and funds of political subdivisions of the state may not be deposited in out-of-state, state-chartered banks or in out-of-state savings banks, savings and loan associations, or credit unions. The Michigan Constitution (Article IX, Section 20) requires that eligible depositories for state surplus funds be organized under Michigan or federal law. By statute, deposits of surplus funds of political subdivisions of the state may be deposited as is allowed for state surplus funds. Consequently, out-of-state, state-chartered financial institutions operating in Michigan under the provisions of the Riegle-Neal Act and Michigan's early opt-in to interstate branching may not receive deposits of state or local surplus funds. This situation may present potential competitive inequalities among financial institutions operating in Michigan and may prevent the state treasurer and treasurers of the state's political subdivisions from seeking higher rates of return on the deposit of public funds.

In addition, while Public Act 105 of 1855 mandates that the state treasurer require "good and ample security" of a financial institution before it is made a depository of state surplus funds, Public Act 40 of the First Extra Session of 1932 prohibits the taking of security for the deposit of local funds. This may prevent local treasurers from adequately protecting public funds against a financial institution's potential losses. Also, the various laws governing the deposit of public funds refer to different types of financial institutions, so that some funds may be deposited only in banks while others may be deposited in any "other depository".

various acts to delete these specific references and instead authorize these entities to deposit their funds into

A package of legislation has been introduced to remove the various obstacles to full implementation of interstate branch banking in Michigan.

## **THE CONTENT OF THE BILLS:**

House Bills 4587-4605 and Senate Bills 229, 230, 233, and 234 constitute a package of legislation related to implementation of interstate branch banking, as provided by Public Act 202 of 1995 and by the federal interstate branch banking law, known as the Riegle-Neal Act of 1994. In general, the bills would allow out-of-state banks that opened branches in Michigan to accept deposits of public funds, among other changes.

House Bill 4603 would amend the Banking Code (MCL 487.471 and 487.531). House Bill 4604 would amend the Savings Bank Act (MCL 487.3302 and 487.3508). Under those acts, banks and savings banks are prohibited from pledging their assets for the purpose of securing funds belonging to political subdivisions (local governments) of the state. The bills would amend the acts to specifically allow them to do so. In addition, House Bill 4605 would amend the Savings and Loan Act (MCL 491.300a and 491.606) to specifically allow savings and loan associations to pledge their assets to secure deposits by or for the credit of funds belonging to any political subdivision of the state.

Further, the House Bills 4603, 4604, and 4605 would specify that an out-of-state bank, savings bank, or savings and loan association could apply to organize a branch in Michigan by providing to the commissioner of financial institutions proof that its deposits are insured by an agency of the United States government. If the commissioner determined that the out-of-state entity was "safe and sound", that it was subject to regulation, and that there was an agreement for exchange of supervisory information between Michigan and the out-of-state entity's regulator, the commissioner would be required to provide the out-of-state bank, savings bank, or savings and loan with a certificate of organization and eligibility to accept deposits and investments of public funds of the state and local units of government.

Deposit of public funds. A number of statutes contain provisions authorizing local governments, schools, courts, and so forth to deposit their funds in various financial institutions. Some refer to "banks", others refer to "banks and trusts", and still others refer to "banks, savings and loans, and credit unions". The remainder of the bills in the package would amend

"financial institutions", which would be defined as a state or nationally chartered bank, state or federally

chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the federal government and which maintains a principal office or branch office located in Michigan under the laws of Michigan or of the United States.

In addition, a number of the bills would add language specifying that assets acceptable for pledging to secure [local governmental] funds would be considered acceptable to the state treasurer to secure deposits of state surplus funds.

House Bill 4587 would amend the Statutory Joint Account Act (MCL 487.714). House Bill 4588 would amend Public Act 114 of 1965, regarding the dry bean commission (MCL 290.557). House Bill 4589 would amend Public Act 59 of 1915, regarding highway construction (MCL 247.425). House Bill 4590 would amend Public Act 381 of 1925, regarding inter-county highway commissions (MCL 252.6). House Bill 4591 would amend the Code of Criminal Procedure (MCL 774.26c). House Bill 4592 would amend the McCauley-Traxler-Law-Bowman-McNeely Lottery Act (MCL 432.35).

House Bill 4593 would amend Public Act 70 of 1954, regarding agreements to purchase caskets and similar items (MCL 328.201). House Bill 4594 would amend Public Act 314 of 1965, regarding the investment of the assets of public employee retirement systems (MCL 38.1140c). House Bill 4595 would amend Public Act 99 of 1909, regarding county boards of commissioners (MCL 129.31 et al.). House Bill 4597 would amend Public Act 20 of 1943, regarding the investment of surplus funds of political subdivisions of the state (MCL 129.91). House Bill 4598 would amend Public Act 321 of 1909, regarding the deposit of public moneys belonging to villages (MCL 129.41 et al.). Senate Bill 229 would amend the Agricultural Commodities Marketing Act (MCL 290.658). Senate Bill 230 would amend the Charter Water Authority Act (MCL 121.17).

Senate Bill 234 would amend the Community College Act (MCL 389.142). In addition to the changes described above, Senate Bill 234 would allow the additional funds of a community college district to be invested in the commercial paper of an out-of-state corporation that is rated prime by one of the standard rating services, as well as one located within the state, as is currently allowed, or to be invested in investment pools, as provided under the Surplus Funds Investment Pool Act (MCL 129.111).

House Bill 4599 would amend Public Act 23 of 1934 (1st Extra Session), regarding the investment in bonds of the home owners' loan corporation (MCL 129.81). House Bill 4600 would amend the Revised School Code (MCL 380.622 et al.). House Bill 4602 would amend the Surplus Funds Investment Pool Act (MCL 129.112). Senate Bill 233 would amend Chapter 16 of the Revised Statutes of 1846 (MCL 41.77). In addition to the changes described above, House Bills 4599, 4600, and 4602 and Senate Bill 233 would specify that assets acceptable for pledging to secure deposits of funds under the acts being amended would be limited to: assets considered acceptable to the state treasurer to secure deposits of state surplus funds, securities issued by the federal home loan mortgage corporation, securities issued by the federal national mortgage association, securities issued by the government national mortgage association, and other securities considered acceptable to the depositor of funds and the financial institution.

House Bill 4596 would amend Public Act 40 of 1932 (1st Extra Session), regarding the designation of depositories for public moneys (MCL 129.12 et al.). In addition to the provisions described above, the bill would repeal a section of the act (MCL 129.13) that prohibits security in the form of collateral, surety bond, or other form from being taken for the deposit of public money.

House Bill 4601 would amend Public Act 105 of 1855, regarding the deposit of surplus state funds (MCL 21.143 et al.). In addition to the provisions described above, the bill would repeal a section of the act (MCL 21.145) that prohibits the state treasurer from depositing state surplus funds into a financial institution with total assets of more than \$10 million unless the financial institution files an affidavit stating whether it is subject to the federal home mortgage disclosure act, and if subject to the act, that it has complied with that act's requirements. Further, under House Bill 4601, the definition of "financial institution" as that term applies to repurchase agreements would generally conform with the definition of that term in the other bills in the package, i.e., a state or nationally chartered bank or state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the federal government, except that, under House Bill 4601, a financial institution would not have to maintain a principal office or branch office in Michigan in a transaction involving a repurchase agreement.

### **FISCAL IMPLICATIONS:**

The House Fiscal Agency (HFA) estimates that, while some of the bills may result in a future economic impact associated with increased competition in the banking

sector, the bills in general would have no impact on state funds. (4-18-97)

requirement that a financial institution, as defined, would

### **ARGUMENTS:**

#### **For:**

According to the Financial Institutions Bureau (FIB), these bills constitute a package of legislation designed to address the issue of public funds deposits in financial institutions operating in Michigan, regardless of the type of institution (e.g., bank, savings bank, or savings and loan association) or the chartering entity (e.g., an entity that is state-chartered, nationally chartered and based in Michigan, or chartered by another state but with a Michigan branch, or a branch of a nationally chartered institution based outside of Michigan). The bills would provide for a consistent definition of "financial institution" regarding the deposit of public funds so that funds could be deposited in various types of institutions with charters from various public entities. This would put all the financial institutions operating in Michigan on equal footing in this respect, and would allow treasurers to seek the best rates of return possible on the deposit of their public funds. The package also would provide guidance to township treasurers on the types of security they could seek from financial institutions, by specifying that assets acceptable to secure deposits of township funds would be limited to assets acceptable to the state treasurer to secure deposits of state surplus funds.

In addition, the package of bills would remove the statutory prohibition against local units' requesting a pledge of collateral from a financial institution and provide a statutory procedure for out-of-state institutions' Michigan branches to organize under Michigan law, thereby accommodating the constitutional prohibition against the deposit of state money in financial institutions other than those "organized under" Michigan or federal law. This package of bills would allow Michigan's banks to remain competitive with those of other states. In addition, Senate Bill 234 would allow community colleges greater flexibility in making investments by allowing them to invest in the commercial paper of out-of-state companies, and to form or join existing investment pools with other school districts.

#### **For:**

A number of the House bills in the package define "financial institution" to mean a state or nationally chartered bank, state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the federal government, and which maintains a principal office or branch office in Michigan under the laws of Michigan or of the United States. House Bill 4601 would delete the

have to be located in Michigan. This provision would only pertain to a repurchase agreement, which is a short-term investment tool involving the sale of a security under an agreement to repurchase it at a later date, or the purchase of a security under an agreement to sell it at a later date. It is used by a county or school district that has bond proceeds that it doesn't need to spend in the immediate future.

The Financial Institutions Bureau (FIB) explains the process as follows: municipalities and school districts may currently invest money from a bond issue in a collateralized repurchase agreement, under which a third-party bank holds collateral in the form of U.S. government securities, evaluates its value according to the terms of the agreement, and exchanges it for cash when so requested by the municipality or school district. Most collateralized repurchase agreements are offered by major New York investment banking and insurance companies, which have more expertise, practice greater economy of scale, and therefore are able to charge less than smaller state banks. According to the FIB, Michigan municipalities and school districts have followed the practice of using New York banks. The provisions of House Bill 4601 would allow this practice to continue.

Analysts: R. Young/D. Martens

---

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.