House
Legislative
Analysis
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CREDIT UNION/PLAN OF CONVERSION

Senate Bill 464 (Substitute H-2)
First Analysis (6-14-01)

Sponsor: Sen. Shirley Johnson
House Committee: Insurance and Financial Services
Senate Committee: Banking and Financial Institutions

THE APPARENT PROBLEM:

The credit union act (MCL 490.1 et al.) provides for the organization, operation, and supervision of credit unions in the state. (As defined in the act, a credit union is a cooperative, nonprofit association, incorporated under the act for the purposes of encouraging thrift among its members, creating a source of credit at rates of interest not greater than the rates of interest permitted by the credit reform act, and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition.) The act provides 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 United States territory.

According to committee testimony, Rochester Hills Community Schools Credit Union would like to convert into a mutual savings bank. Although the Michigan Savings Bank Act (MCL 487.3701 et al.) provides for the conversion of a credit union into a mutual or stock savings bank, the Credit Union Act contains no provisions for such conversions. The credit union act does not explicitly permit other sorts of conversions that some people believe should be permitted.

THE CONTENT OF THE BILL:

Senate Bill 464 would amend the credit union act in three fundamental ways. First, the bill would revise the process allowing a credit union organized under state laws to convert into a credit union organized under federal laws, the laws of another U.S. state, or the laws of a U.S. territory, and it would extend the revised process to allow conversions to credit unions chartered under the laws of the District of Columbia or a United States protectorate. Second, the bill would allow a credit union organized under the laws of the District of Columbia or a United States protectorate to convert into a credit union organized under the laws of this state. Third, the bill would establish notification, voting, and approval procedures for a credit union's plan of conversion into a mutual savings bank or mutual savings association—i.e., a mutual for-profit depository institution—or a bank, stock savings bank, or stock savings and loan association—i.e., a stock for-profit depository institution.

Conversion into a credit union organized under the laws of another jurisdiction. Currently the process for a state credit union converting into a credit union organized under federal laws or the laws of any other state or territory of the United States works as follows: the board of directors of the credit union, by a majority vote of the entire board, must approve any conversion plan. Before voting, the board must give 30 days prior written notice to the credit union's members that it is considering a conversion. The notice, which may be included as part of any mailing sent to the members, must include a brief statement explaining why the board is considering the conversion and a brief statement of the major positive and negative effects of the proposed conversion. The notice must also inform the members that the board and the commissioner are soliciting comments on the plan. If the board approves the conversion plan, it submits the proposal to the commissioner of the Office of Financial and Insurance Services who is instructed to consider all comments submitted to him or her directly or to the board. The commissioner is directed to approve the plan, if he or she is satisfied that the plan contains information about the advantages and disadvantages of the proposed conversion and a statement indicating any substantial differences in powers. The commissioner must also be satisfied that the conversion would be made for sound economic reasons and would not be made in order to circumvent pending supervisory action

initiated by the commissioner because of a concern over the safety and soundness of the credit union. If the commissioner approves the conversion plan, the credit union calls a special meeting of the members to provide information on the conversion plan. At least 14 days before the special meeting, the credit union must mail to each member a notice of the meeting, a copy of the conversion plan, and a ballot with postage paid return envelope. After the meeting is held, the members are given until a specified date, at least 15 days after the meeting, to return their ballots.

If two thirds of the members who vote on the proposal vote for the proposal, by the end of the voting period, the conversion is considered approved by the members. A certified copy of consent or approval of the National Credit Union Administration or the regulatory authority of the state or territory—if required by the laws of the state or territory—and certified copies of all proceedings held by the board of directors and members of the credit union must be filed with the commissioner. Special provisions apply to a credit union that intends to maintain an office in the state after conversion. If all these requirements are met, the commissioner gives final approval, and the conversion takes effect.

The bill would change the process as follows: The process would apply not only to credit unions converting to credit unions organized under federal laws, or the laws of another U.S. state or a U.S. territory, but also to conversions to credit unions organized under the laws of the District of Columbia or a U.S. protectorate. Two-thirds of the entire board of directors—rather than a simple majority—would have to vote for the plan before it could be submitted to the commissioner for preliminary approval. The notice informing a credit union's members that the board of directors was considering a conversion could not be included in any other mailing sent to the members. The notice would have to include an explicit request for members' written comments on the proposed conversion, rather than a statement that the board and the commissioner are soliciting comments. The commissioner would have to be satisfied that a conversion was not made in order to circumvent a pending supervisory action initiated by the commissioner *or by any other regulatory agency* because of a concern over safety or soundness of the credit union. The commissioner would also have to be satisfied that the converted organization *was likely to be* economically viable. (This replaces the current requirement that the commissioner be satisfied that the conversion *would be made for* sound economic reasons.) The board would not be required to mail a copy of the conversion plan to its members along with the notice of the special meeting and the ballot. However, the notice would have to describe the reasons for the conversion, describe its positive and negative effects, and state how members could obtain a copy of the conversion plan. Moreover, the notice itself would have to state both the date by which the ballot had to be returned and the methods permitted for casting votes, which would include voting by mail or by an alternative method approved by the commissioner, or both.

After a vote in which 2/3 of the voting members voted for the plan, copies of member comments submitted to the credit union—in addition to the certified documents currently required—would have to be filed with the commissioner. The requirement that a certified copy of consent or approval of the federal regulatory authority or another regulatory authority (if required by the laws of the applicable jurisdiction) must be filed would no longer mention the National Credit Union Administration. Special requirements would still apply to a converted credit union that planned to keep an office in this state. The conversion would take effect if all required conditions were satisfied and the commissioner determined that notification and voting procedures were conducted accurately, fairly, and lawfully.

Reciprocity. The bill would allow a credit union organized under the laws of the district of Columbia or the laws of a United States protectorate to convert into a credit union organized under the laws of this state. Procedures for the conversion of credit unions organized under federal laws or the laws of another state or a United States territory (described above) would apply to such conversions.

Conversion to a mutual savings bank or mutual savings association. A credit union converting to a mutual savings bank or mutual savings association—i.e, a "mutual for-profit depository institution"—would also require approval of the commissioner and the affirmative vote of 2/3 of the members voting on the proposal. Procedures for such a conversion would be very similar to the procedures for state credit unions converting to credit unions organized under the laws of other jurisdictions, as described above. The following summary highlights elements of the process that would apply specifically to credit unions converting to mutual for-profit depository institutions. Except as required by the commissioner, these provisions would not apply to a credit union that submitted to the commissioner a plan of conversion into a mutual for-profit depository institution before the effective date of the act.

If a holding company was to be formed in connection with the conversion, regulations of the Federal Reserve Board of Governors or the Office of Thrift Supervision applicable to holding companies would also apply. The commissioner would be directed to grant preliminary approval to a board-approved conversion plan if, in addition to meeting the conditions required in the case of a conversion to a credit union organized under the laws of a different jurisdiction, one further condition was met; namely, the conversion plan would not provide any official of the credit union with any remuneration or other economic benefit in connection with the conversion.

Upon preliminary approval of the commissioner, the credit union would have to call a special informational meeting of the members, and mail to each member notice of the proposed conversion 90 days, 60 days, and 30 days before the date established for the member vote on the proposed conversion. Each notice would have to: state the positive and negative effects of the conversion; state whether the directors of the converted organization would receive compensation and state how to obtain further information about this; state that the proposed plan of conversion could be substantively amended or terminated by the board of directors; provide directions for obtaining a copy of the conversion plan; state the date of the special meeting—
which would be the date on which voting on the conversion plan would close; and provide other information, as required by the commissioner. The 30-day notice would also have to include the date, time, and place of the special member meeting, a ballot and postage-paid return envelope, and permissible methods of casting votes. The notice would not have to state the date by which ballots had to be returned. If the board substantially amended the conversion plan, at least 30 days before the vote, the credit union would have to provide members with a notice that accurately described the amended plan of conversion, providing all the information required for standard 30-day, 60-day, and 90-day notices. If the members approved the plan, certified documents and member comments would have to be filed with the commissioner—as required above—and the credit union would also be required to file evidence that the converted organization was eligible for federal insurance of deposits.

Conversion to a bank, stock savings bank, or stock savings and loan association. A credit union converting to a bank, stock savings bank, or stock savings and loan association—i.e., a "stock for-profit depository institution"—would also require approval of the commissioner and the affirmative vote of two-thirds of the members voting on the proposal. Procedures for such a conversion would be very similar to the procedures for credit unions converting to mutual for-profit depository institutions, as described above. (Unless otherwise indicated, notices required for conversions into stock for-profit depository institutions would have to include information specified below *in addition to* all the information required for notices for conversions into mutual for-profit depository institutions.) The following summary highlights elements of the process that would apply specifically to credit unions converting to stock for-profit depository institutions.

The bill would make no exceptions for a credit union that submitted to the commissioner a plan of conversion into a stock for-profit depository institution before the act took effect. Converting credit unions would be subject to regulations of the Federal Deposit Insurance Corporation (FDIC) regarding mutual-to-stock conversions. The notice informing the credit union's members that the board is considering a conversion would have to include a full and accurate description of the differences between a credit union and, as applicable, a bank, stock savings bank, or stock savings and loan association. The conversion plan submitted to the commissioner would have to include the following: the member eligibility date and the subscription offering priority established in connection with any proposed stock offering; a business plan, including a detailed discussion of how capital acquired in the conversion would 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 of the value of the credit union and the pricing of the stock to be sold in the conversion; a legal opinion that any proposed stock offering complies with state and federal law; and copies of the 30-day, 60-day, and 90-day notices to be sent to members. When deciding whether to preliminarily approve the conversion, the commissioner would have to be satisfied that the conversion plan fully and accurately described the differences between a credit union and a bank and that it did not permit loaning of funds or extending of credit to any person for the purposes of purchasing the capital stock of the association.

The required 30-day, 60-day, and 90-day notices would have to include the following: a statement as to whether the conversion plan would include a distribution of a portion of the credit union's net worth of members, and if so, the notice would have to describe the amount to be distributed, the form of distribution, and requirements for member eligibility

to receive the distribution; the par value and approximate number of shares of capital stock to be issued and sold under the proposed plan of conversion; a statement that savings and share account holders would continue to hold accounts in the converted organization identical as to dollar amount and general terms, and that their accounts would continue to be insured; a statement that borrowers' loans would be unaffected by conversion, and that the amount, rate, maturity, security, and other conditions would remain contractually fixed, as they existed before conversion.

Converted organizations. Currently the law states that upon conversion all property of the credit union is immediately vested in and becomes the property of the converted credit union. The converted credit union is considered a continuation of the same entity, and all rights, obligations, and relations of the credit union to or in respect to any person, state, creditor, member, depositor, trust, trustee, or beneficiary of any trust or fiduciary function remain. The law lists other specific ways in which the rights, obligations, and relations of the converted credit union would remain the same after conversion. The bill would extend all of these provisions to apply to a state credit union that converted to a credit union, a mutual for-profit depository institution, or a stock for-profit depository institution, as permitted in the bill. It would further specify that a collective bargaining agreement would remain unaffected by a conversion.

The bill would also allow the commissioner to require a converting credit union to divest itself of an asset that did not conform to the legal requirements relative to assets acquired and held by the converted organization. The commissioner would have to have good cause for requiring divestment and would have to act within one year of the conversion to require divestment. The bill would further require a converting credit union that was appointed in a fiduciary capacity by a court, or a governmental tribunal, agency, or officer to file an affidavit with the appointing authority. The affidavit would have to set forth the fact of conversion, the name and address of the converted organization, and the amount of its capital and surplus. The converted organization acting as a fiduciary by appointment of a court would be subject to removal by a court of competent jurisdiction.

MCL 490.1 et al.

HOUSE COMMITTEE ACTION:

The House Committee on Insurance and Financial Services adopted a substitute, H-2, which differs from the Senate-passed version of the bill in the following ways:

The Senate version would allow for members to submit ballots by mail or another method up to 15 days following the special meeting where the conversion plan was discussed for all types of conversion. The House committee version would instead require that all votes be submitted on or before the date of the special meeting in the case of credit union conversions into mutual for-profit depository institutions and stock for-profit depository institutions. Votes on conversions into credit unions organized under the laws of another jurisdiction could be submitted up to 15 days following the special meeting, or longer, depending on when the credit union decided to close the voting period.

The Senate version would require a simple majority of the entire board to approve a plan of conversion before submitting the plan to the commissioner for any type of conversion. The House substitute would require an affirmative vote of 2/3 of the entire board.

In both versions of the bill, the affirmative vote of 2/3 of the members voting on a conversion would be required, in the case of a conversion into a credit union organized under laws of another jurisdiction or a conversion into a mutual for-profit depository institution. The Senate version would establish a different standard for a vote on a credit union's conversion into a stock for-profit depository institution. Two-thirds of the members eligible to vote on such a conversion would have to vote for the conversion for the conversion to be considered approved by the credit union's members. The House committee version would instead create a uniform standard requiring the affirmative vote of 2/3 of those members who voted on the conversion to vote for the conversion for it to be considered approved.

The House committee version contains an additional provision exempting from the act a credit union that submitted to the commissioner a plan of conversion into a mutual for-profit depository institution before the effective date of the act.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on the state or on local units of government. (6-13-01)

ARGUMENTS:

For:

The Michigan Credit Union Act lacks provisions for credit unions that wish to convert into credit unions organized under the laws of the District of Columbia or a United States protectorate or into mutual for-profit or stock-for-profit institutions. Since a credit union, by definition, provides an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition, members should be allowed to convert their membership and ownership of the credit union into another financial institution. The bill would require affirmative votes of a 2/3 majority of the board of directors and a 2/3 majority of all members for approval of any conversion. Moreover, members would have to be kept informed of the progress of the approval process and notified of the various ways that a conversion would affect them. The Commissioner of the Office of Financial and Insurance Services would oversee the conversion process to ensure accuracy, fairness, and legality of all elements of the conversion process. Such requirements would not only ensure that members were provided with the means of making an informed decision about a conversion, but also protect the owners, members, and officers of a converted organization from allegations of unethical or illegal practices.

For:

The Senate version of the bill includes a provision that would allow for votes cast by mail or by an alternative method to be submitted up to 15 days after the special meeting at which votes would be accepted. According to committee testimony, this is inconsistent with existing National Credit Union Administration regulations. The House committee version would require that ballots be returned by the date of the membership vote.

For:

The Senate version of the bill would require an affirmative vote of 2/3 of the eligible members for approval of a conversion to a stock for-profit depository institution. This would create an inconsistency with the Michigan Savings Bank Act, which requires an affirmative vote of 2/3 of the voting members. The House committee version would conform to the requirement in the Savings Bank Act.

For:

The Senate version of the bill would not exempt credit unions with applications currently on file for converting into mutual for-profit depository institutions. Rochester Hills Community Schools Credit Union (RHCSCU) currently has an application on file and is in the midst of converting its charter into a charter of a mutual savings bank. Requiring RHCSCU to conform to the requirements in the bill would interrupt the progress of its conversion. The House version would make an exception for RHCSCU. (According to the Michigan Credit Union League, RHSCSU's is the only pending application.)

Against:

The bill would permit votes on a conversion to be submitted either at the special meeting or by mail or another method approved by the commissioner. Other methods might include voting by phone or voting by e-mail. There is some concern that a credit union might not allow voting by mail, thus requiring a credit union member to show up to the special meeting or vote by e-mail or by phone. This might be burdensome for some credit union members. The bill should state that permissible voting methods would have to include voting by mail, in addition to voting in person at a special meeting or voting by another method approved by the commissioner.

Reply:

It is anticipated that an amendment will be offered to address this issue.

POSITIONS:

The Office of Financial and Insurance Services supports the bill. (6-13-01)

The Michigan Credit Union League supports the bill. (6-13-01)

The Michigan Association of Credit Unions supports the bill. (6-13-01)

The Michigan League of Community Banks supports the bill. (6-13-01)

Analyst: J. Caver

■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.