R&S

L.D. 1763

DATE: 3/3/94 (Filing No. H-790)

BANKING & INSURANCE

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1308, L.D. 1763, Bill, "An Act to Provide Enhanced Enforcement Powers in the Maine Banking Laws"

Amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

'**Emergency preamble. Whereas,** Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there may exist situations within state-chartered financial institutions that may warrant officer or director removal; and

Whereas, there may exist situations within state-chartered financial institutions that may warrant closure and liquidation; and

Whereas, it is essential to align the state statutes with federal statutes and procedures in order to permit state regulators to act in concert with federal regulators in developing a timely resolution to problematic situations; and

Whereas, current funding of the Bureau of Banking from semiannual assessments creates an uneven flow of revenue disproportionate with the operational costs of the bureau; and

Whereas, changing the frequency of assessment evens the flow of revenue to the Bureau of Banking to better coincide with the bureau's operational costs; and

Whereas, it is essential that the Bureau of Banking maintain enforcement tools and a funding mechanism in order to adequately supervise all state-chartered financial institutions; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 9-B MRSA §214, sub-§2, as amended by PL 1991, c. 669, §1 and affected by §2, is further amended to read:

2. Semiannual assessment on financial institutions.

A. To provide for the balance of the reasonable expenses incurred to fulfill the bureau's duty pursuant to this Title, including general regulatory costs, overhead, transportation and general office and administrative expenses, the superintendent shall assess ~~semiannually~~ each financial institution under the superintendent's supervision at the annual rate of at least 6¢ for each $1,000 of the total of average assets, as defined by the superintendent. The frequency of assessment may coincide with the frequency of filing periodic financial reports with the bureau but may not be more frequent than quarterly. The superintendent may raise the minimum assessment rate of 6¢ for each $1,000 of the total of average assets by promulgating rules pursuant to section 251 at such time as economic conditions warrant such an increase. In no event may the semiannual assessment be less than $25.

B. ~~For the period ending the last day of June in each year the assessment must be made on or before the first day of August next following and for the period ending the last day of December in each year the assessment must be made on or before the first day of February next following. The superintendent shall immediately notify the financial institution of the assessment. The assessment so made must be paid semiannually to the Treasurer of State within 10 days next following the first days of August and February in each year.~~ An assessment pursuant to paragraph A may be made on or before the assessment date for the period prescribed as follows:

	Period ending	Assessment date
Quarterly	March 31st	May 1st
	June 30th	August 1st
	September 30th	November 1st
	December 31st	February 1st
Semiannually	June 30th	August 1st
	December 31st	February 1st

The superintendent shall immediately notify the financial institution of the assessment. The assessment must be paid to the Treasurer of State within 10 days following the assessment date.

Sec. 2. 9-B MRSA §232, sub-§1, as enacted by PL 1975, c. 500, §1, is repealed and the following enacted in its place:

1. Grounds for removal. The superintendent may serve written notice of intent to remove an officer or director from office or to prohibit further participation by the officer or director in any manner in the conduct of the affairs of a financial institution if:

A. In the opinion of the superintendent, that officer or director has directly or indirectly:

(1) Violated a law, rule, regulation or cease and desist order that has become final;

(2) Engaged in or participated in any unsafe or unsound practice; or

(3) Committed or engaged in any act, omission, or practice that constitutes a breach of the fiduciary duty of the officer or director;

B. By reason of the violation, practice or breach of fiduciary duty described in paragraph A:

(1) The financial institution has suffered or will probably suffer financial loss or other damage;

(2) The interests of the financial institution's depositors have been or could be prejudiced; or

(3) The officer or director has received financial gain or other benefit by reason of the violation, practice or breach of fiduciary duty;

R. of S.

C. The violation, practice or breach of fiduciary duty described in paragraph A involves personal dishonesty on the part of the officer or director or demonstrates willful or continuing disregard by the officer or director for the safety or soundness of the financial institution; and

D. In the opinion of the superintendent, that officer or director has evidenced personal dishonesty and unfitness to continue as an officer or director of the financial institution by conduct with respect to another business entity that resulted, or is likely to result, in substantial financial loss or other damage.

Sec. 3. 9-B MRSA §368-A is enacted to read:

§368-A. Federal Deposit Insurance Corporation; acquisition of stock

The superintendent may waive the provisions of section 314; section 315, subsection 4; section 1013; and section 1015 when common or preferred stock, including stock warrants or stock rights for common or preferred stock, is issued to or acquired by the Federal Deposit Insurance Corporation in settlement of any liability, fixed or contingent, of a financial institution to the Federal Deposit Insurance Corporation or in connection with the insolvency or liquidation of the financial institution.

Sec. 4. 9-B MRSA §1018, as enacted by PL 1975, c. 500, §1, is amended to read:

§1018. Exclusion

The superintendent may ~~premulgate regulations excluding~~ exclude financial institution holding companies or other companies from the provisions of this chapter~~, under conditions comparable to those provided in either the Bank Holding Company Act of 1956 or section 408 of the National Housing Act, where~~ when control of a Maine financial institution arises out of the acquisition of shares in a fiduciary capacity, or in connection with an underwriting of securities or proxy solicitation, or in securing or collecting a debt. When control of a Maine financial institution arises in connection with securing or collecting a debt, the acquiring institution or company may be excluded from the provisions of this chapter if the acquiring institution or company divests the securities within two years of acquisition. The superintendent may grant requests for up to three one-year extensions.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

FISCAL NOTE

The Bureau of Banking will incur some minor additional costs to administer new requirements pertaining to the removal of certain bank officials, new assessment dates and certain changes relating to the bureau's regulatory responsibilities for banks with significant financial difficulties. These costs can be absorbed within the bureau's existing budgeted resources.'

STATEMENT OF FACT

This amendment changes the semiannual period for assessments payable to the Bureau of Banking for most financial institutions to a quarterly period in order to smooth the flow of revenue to the bureau and diminish the need for higher cash balances. This amendment establishes an assessment period that coincides with the frequency of reporting financial data.

The amendment also clarifies state law governing insolvency and liquidation of a financial institution and provides the Bureau of Banking with additional flexibility to negotiate with the Federal Deposit Insurance Corporation in the resolution of such a problem.

This amendment also adds a fiscal note to the bill.