

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1100

S. P. 374

In Senate, February 28, 1973

Referred to the Committee on Business Legislation. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Cox of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Relating to Bank Holding Companies.

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

R. S., T. 9, § 1233, additional. Title 9 of the Revised Statutes is amended by adding a new section 1233 to read as follows:

§ 1233. Acquisitions by bank holding companies of capital stock of trust companies, national banks and industrial banks

1. Approval. No corporation shall become or carry on the activities of a bank holding company, as defined in the Federal Bank Holding Company Act of 1956, 70 Stat. 133, 12 USC § 1841, as amended, unless and until said corporation shall have received prior approval to do so from the commissioner. An application for such approval shall be made in writing on such form and containing such information as the commissioner may prescribe. In determining whether or not to approve any such application, the commissioner shall take into consideration the declaration of policy contained in section 221 and the commissioner shall not approve an application to become or to carry on the activities of a bank holding company,

A. If such would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking in this State, or

B. If the effect of such would be substantially to lessen competition or to tend to create a monopoly or would in any other manner be in restraint or trade, unless the commissioner finds that the anticompetitive effects of the

proposed activities are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the commissioner shall take into consideration the financial and managerial resources and future prospects of the bank holding company and the banks concerned and convenience and needs of the community to be served. No corporation which, prior to the effective date of this section, shall have been authorized by the Board of Governors of the Federal Reserve System under the Federal Bank Holding Company Act of 1956, as amended, to be or to conduct business as a bank holding company, or both, shall be required to make application to the commissioner under this subsection.

2. Plan. A corporation organized under the laws of this State which is included within the definition of a bank holding company under the Federal Bank Holding Company Act of 1956, as amended, hereinafter in this section referred to as the "acquiring company", which desires to acquire all of the capital stock of one or more corporations organized under section 991 et seq. and section 2341 et seq., or which is defined as a national banking association under the Federal National Bank Act (18 Stat. 123; 12 USC § 38), as amended, shall submit to the commissioner a plan for the acquisition of such stock; provided that the submission of a plan shall be required only where it is contemplated that corporate action be taken by the stockholders of the corporation or corporations the capital stock of which is to be acquired, and no plan need be submitted where, under the contemplated method of acquisition, an exchange offer is to be made to the stockholders of such corporation which may be accepted by them individually without the necessity for corporation action.

3. —form, contents. Such plan, if required under subsection 2, shall be in writing and shall be set forth in a form prescribed by the commissioner. The plan shall identify each corporation, the stock of which is to be acquired, hereinafter in this section referred to as the "bank", which may, for the purpose of this section, mean more than one bank or an industrial loan company or companies, or both, as the context shall require, and shall prescribe the terms and conditions of the acquisition and the mode of carrying it into effect, including the manner of exchanging shares of capital stock of the bank for shares of capital stock or other securities of the acquiring company. The plan may provide for payment by the acquiring company of cash in lieu of issuance of fractional shares of stock thereof. At the time of submission of the plan, the acquiring company shall pay to the commissioner an investigation fee of \$500. There shall be submitted with the plan a certificate of the president or secretary of the acquiring company certifying that the plan has been approved by not less than a majority of the board of directors of the acquiring company. There shall also be submitted a certificate of the president or secretary of the bank certifying that the plan has been approved by not less than a majority of the board of directors of the bank and that, following such approval, the plan was thereafter submitted to the stockholders of the bank at a meeting of said stockholders duly called and

held upon at least 15 days' notice, which notice specified the time, place and object of the meeting. The certificate shall further state that such plan was at such meeting approved by a vote of the holders of at least $\frac{2}{3}$ of the outstanding capital stock of the bank.

4. —approval or disapproval. The commissioner, within 90 days after the filing of the plan together with the documents and certificate required in subsection 3, shall approve or disapprove the plan and shall forthwith notify the acquiring company. In determining whether or not to approve the plan, the commissioner shall conduct such investigation as he shall determine necessary and after such investigation, he shall approve such plan, unless it is found to be contrary to the declaration of policy set forth in Section 221 of this title, it would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking in this state, or the effect of such would be substantially to lessen competition or to tend to create a monopoly or would in any other manner be in restraint of trade, unless the commissioner finds that the anticompetitive effects of the proposed activities are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

5. —further approval. If any proposed transaction for which approval of the commissioner is required under this section also requires the filing of an application for the approval of the Board of Governors of the Federal Reserve System under the Federal Bank Holding Company Act of 1956, then a copy of such application for approval may be used to provide the information required under this section. The commissioner may require further information which he in his discretion deems necessary and which is not contained in such application.

6. When plan effective. No hearing shall be required by the commissioner in considering a plan submitted pursuant to this section, although the commissioner may order a hearing or hearings in his sole discretion. No persons shall be considered to be aggrieved by his failure to order a hearing. If the commissioner shall approve the plan, he shall endorse his approval on a copy thereof, shall give public notice thereof and 30 days thereafter, unless the effectiveness of the order is deferred pursuant to subsection 7, shall cause the plan, so approved, to be filed with the Secretary of State. The plan shall be effective upon the filing thereof with the Secretary of State, unless the plan requires the satisfaction of a condition or designates a particular date later than such filing as the effective date of the plan, in which case the plan shall become effective upon such later date or upon such condition, but only upon written certification filed with the Secretary of State by the acquiring company that the condition has been satisfied. In the event the commissioner shall disapprove the plan, he shall so order and shall specify in detail in his notification thereof to the acquiring company the reasons for such order of disapproval.

7. Appeal. Any party aggrieved by the approval or disapproval by the commissioner of the plan may, not later than 20 days following the entry of

such order, take appeal directly to the Superior Court of the County of Kennebec or the county in which the principal office of the acquiring company is located. Said court may grant a temporary restraining order delaying the effectiveness of the order of the commissioner, which restraining order shall by its terms expire within such time after entry, not to exceed 10 days, as the court shall fix unless, within the time so fixed, the order, for good cause shown, is extended by a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for any extension shall be entered of record. In case a temporary restraining order is granted, the matter shall be set down for hearing at the earliest possible time and shall take precedence over all matters, except older matters of the same character. Said court may affirm the order of the commissioner, may issue a temporary or permanent injunction against effectiveness of an order of approval, may direct the commissioner to reconsider his action of approval or disapproval or to consider additional evidence, proof of which is offered by any aggrieved party at the hearing before said court. If, in the opinion of the court, an order of disapproval was issued upon unlawful procedure or is not supported by substantial evidence specified in such order, the court may reverse or modify the order of disapproval.

8. Dissenting owner. If at the meeting of stockholders of the bank, the capital stock of which under the plan is to be acquired by the acquiring company, one or more owners of shares of such capital stock vote in opposition to the plan, a dissenting owner, then the dissenting owner shall be entitled to receive, in cash, the fair value of his shares of capital stock, if and when the acquisition contemplated by the plan becomes effective, but only if the dissenting owner makes written demand therefor to the president or secretary of the bank within 30 days after the effective date of said acquisition, such written demand being accompanied by a delivery of the certificates of capital stock duly endorsed for transfer to the bank or accompanied by appropriate transfer documents. The value of such shares shall be determined, as of the date of the meeting of stockholders at which the plan of acquisition was considered, by three appraisers, one to be selected by the dissenting owner, one by the board of directors of the bank and the 3rd by the 2 thus selected. The fair value agreed upon by any 2 of said 3 appraisers shall govern. If the appraisal is not completed within 90 days after the plan of acquisition becomes effective, the commissioner shall cause an appraisal to be made and fair value thereby determined shall be binding on the bank and on the dissenting owner. Any payment to a dissenting owner shall be made from an escrow account, to be established for the purpose by the board of directors of the bank from the funds of the bank.

STATEMENT OF FACT

The bank commissioner has jurisdiction over any merger where a state bank is involved, but under present law, has no direct jurisdiction where a bank holding company wishes to acquire a bank as a subsidiary. Such juris-

diction rests with the Federal Reserve System which must request the commissioner's review and advice for a particular transaction, but is not bound by it.

This legislation would require approval by the commissioner where a bank holding company wishes to acquire capital stock of a bank in a transaction where bank stockholders would vote on the plan. The bill also would require the commissioner's approval for the organization of a new bank holding company under state law.