

HOUSE BILL REPORT

SHB 1759

As Passed House:

March 11, 2003

Title: An act relating to financial institution law parity.

Brief Description: Providing financial institution law parity.

Sponsors: By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Schual-Berke and Benson).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/18/03, 2/28/03 [DPS].

Floor Activity:

Passed House: 3/11/03, 91-1.

Brief Summary of Substitute Bill

- Grants state chartered banks the same powers and authorities conferred upon state chartered thrifts.
- Clarifies existing law by explicitly granting to state chartered banks and thrifts those powers and authorities that are available to federally chartered financial institutions.
- Allows state chartered financial institutions to charge the maximum interest rate allowable for federally chartered financial institutions.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Schual-Berke, Chair; Simpson, Vice Chair; Benson, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Cairnes, Carrell, Cooper, Hatfield, Hunter, Roach and Santos.

Staff: Thamas Osborn (786-7129).

Background:

Banking regulation generally. Banks and mutual savings banks (thrifts) are chartered either by the state in which they are located or by the federal government. The institution chooses which type of charter under which it will operate. If the institution is state-chartered, both the state banking regulatory authority and the Federal Deposit Insurance Corporation (FDIC) are authorized to regulate and examine the institution. In this state, the Department of Financial Institutions (DFI) is the state regulator of state-chartered banks and thrifts. National banks are regulated and examined by the Office of the Comptroller of the Currency (OCC) as well as the FDIC. Federally chartered thrifts are regulated by the Office of Thrift Supervision (OTS) and the FDIC regarding federally insured deposits.

Under both state and federal laws, the various types of financial institutions are subject to different regulations regarding organization, governance, and business activities. The regulations governing financial institutions include grants of powers and authorities, – which is a term of art that refers to the powers and authorities that may be exercised by an institution with respect to corporate governance and operational matters. Generally speaking, the types of "powers and authorities" held by banks and thrifts chartered in Washington are defined by reference to federal regulations promulgated by the OCC and the FDIC.

Banks and thrifts contrasted. State regulations pertaining to banks and thrifts are somewhat different with respect to corporate organization, investments, mergers, as well as the powers and authorities conferred upon each type of financial institution. Unlike a bank, a thrift is operated for the benefit of its members and may be mutually owned by its members, though many are not. Additionally, the "powers and authorities" of thrifts are slightly more extensive than those of banks. For example, there is no maximum limit on the amount of any *single* loan that may be issued by a thrift, whereas banks do have a maximum limit. Also, a state chartered thrift is granted parity with the powers and authorities granted to state banks, but not vice versa.

Parity with federal financial institutions. Under current state law, both state chartered banks and thrifts are explicitly granted parity with federally chartered banks regarding the powers and authorities they may exercise in the course of doing business. Specifically, state banks and thrifts are granted the same powers and authorities conferred “ as of August 31, 1994 “ upon federal banks doing business in this state. State banks and thrifts may also exercise the same powers and authorities granted to federal banks *after* that date, but only if the DFI determines that the exercise of such powers is in the interests of the public and maintains fair competition between the respective types of institutions.

Interest rate regulation/federal preemption. Washington has relatively straightforward usury statutes that generally limit interest rates to a maximum of either 12 percent or an amount determined via a formula tied to the Federal Reserve System. However, federal law preempts state usury statutes with respect to most transactions involving state and

federally chartered financial institutions. Under federal law, financial institutions are allowed to charge the highest interest rate allowed for any lender in that state for a similar transaction, and allows out-of-state financial institutions to charge the highest rate allowed in their home state. In other words, out-of-state institutions can *export* the highest allowable rate in their home states to other states, which has the effect of raising the interest rate limits for other institutions as well. As a practical matter, therefore, state usury statutes are not applicable to most transactions involving either state or federal financial institutions.

Summary of Substitute Bill:

Parity between state banks and thrifts. The key feature of the bill is that it explicitly creates *cross parity* with respect to the powers and authorities that may be exercised by state banks and thrifts. In other words, through a series of cross references in several sections of the bill, state banks and thrifts are explicitly given equivalent powers and authorities. However, in order for a bank to exercise the powers and authorities of a thrift, the bank must provide 30 days notice be given to the DFI, which must then make the following findings regarding the exercise of such powers and authorities:

- that the exercise is in the best interests of consumers and the general public; and
- that the exercise maintains the fairness of competition and parity between banks and thrifts.

Parity between state and federal banks. A state bank may exercise all powers and authorities conferred “ as of the effective date of the act “ to federal banks doing business in this state. In order for a state bank to exercise the powers and authorities conferred to federal banks after the effective date of the act, the bill requires that notice be given to the DFI, which must make the following findings regarding the exercise of such powers and authorities:

- that the exercise is in the best interests of the public; and
- that the exercise maintains the fairness of competition and parity between banks and thrifts.

Parity between state thrifts and federal banks. The parity provision regarding state thrifts and federal banks is identical to the parallel state bank provision, except that state thrifts are granted parity with *all* federal banks, and not just those doing business in this state.

Parity between state thrifts and federal thrifts. A state thrift may exercise all powers and authorities conferred “ as of the effective date of the act “ upon federal thrifts. A state thrift may exercise the powers and authorities conferred “ after the effective date of the act “ upon federal thrifts, provided notice is given to the DFI and specified findings are made.

Interest rates. State financial institutions are explicitly allowed to charge the maximum

interest rate allowable for federally chartered financial institutions.

Merger of thrifts with financial holding companies. State thrifts are granted the authority to merge with a financial holding company.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (Original bill) This bill will be good for commerce because it will create a level playing field for all financial institutions, both state and federal, doing business in this State. It will enable state chartered banks, thrifts, and credit unions to be more competitive with their federal counterparts. Furthermore, it will have the effect of encouraging financial institutions to locate here and will ensure that we keep the institutions we currently have. Also, it will enable the Federal Home Loan Bank to remain in Seattle and will therefore help to create more affordable housing for the citizens of this State. The bill will not have any significant effect on interest rates.

Testimony Against: None.

Testified: Greg Pierce, Washington Financial League; Gary Parker, Washington Mutual; Stacy Augustine, Washington Credit Union League; Denny Eliason, Washington Banker's Association; Catherine Mele-Hetter and Linda Jekel, Department of Financial Institutions; and Nick Federici, Washington Low-Income Congress.