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**Business & Financial Services Committee**

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**ESSB 5208**

**Brief Description:** Concerning banks, trust companies, savings banks, and savings associations, and making technical amendments to the laws governing the department of financial institutions.

**Sponsors:** Senate Committee on Financial Institutions, Housing & Insurance (originally sponsored by Senators Benton, Hobbs, Nelson, Hatfield, Mullet and Shin; by request of Department of Financial Institutions).

**Brief Summary of Engrossed Substitute Bill**

- Permits the Department of Financial Institutions (Department) to collect a semiannual assessment, as well as fees for services, from financial institutions.
- Modifies provisions related to bank and trust lending limits, including the transactions that constitute loans and extensions of credit, treatment of nonconforming loans, and authority to grant exceptions to lending limits.
- Modifies provisions related to federal parity and cross-parity with out-of-state charters and other institutions for banks, savings banks, trust companies, and savings and loan associations.
- Permits an out-of-state bank to establish or acquire a branch in Washington under the same circumstances as a state-chartered bank.
- Applies requirements for engaging in a trust business to individuals and entities other than corporations, and grants the Department authority to prohibit a person from engaging in trust business.
- Immunizes conservators from liability for acts done in good faith, and provides for supervisory direction and conservatorships over trust companies.

**Hearing Date:** 3/20/13

**Staff:** Alexa Silver (786-7190).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### Regulation of Banks and Trust Companies.

Under the dual system of banking, a commercial bank, savings bank, or savings and loan association (association) chooses whether to be chartered by the state in which it is located or by the federal government. The Department of Financial Institutions (Department), through its Division of Banks, regulates state-chartered commercial and savings banks, associations, and nondepository trust companies. The Office of the Comptroller of the Currency (OCC) regulates national banks and associations.

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 that may be exercised by an institution with respect to corporate governance and operational matters. Generally the types of powers and authorities held by banks and trust companies chartered in Washington are defined by reference to regulations adopted by the OCC and the Board of Governors of the Federal Reserve System (Federal Reserve).

A trust is a form of ownership of property that separates responsibility and control of the property from the benefits of ownership. Washington law defines a trust company as a corporation organized under the laws of the state that engages in trust business. In general terms, Washington law defines "trust business" as executing trusts of every description not inconsistent with the law. Trust companies also have the powers and privileges conferred on banks.

### Fees and Charges.

The Department charges a fee for examinations of banks, savings banks, trust companies, and associations. The fee, which must cover the estimated cost of the examination, is \$80.60 per hour for regular examinations and \$111.64 per hour for trust examinations. For banks and savings banks, the Department also recoups non-direct bank examination related expenses with a semiannual asset charge.

### Lending Limits.

At no time may the total loans and extensions of credit to one individual, business entity, or governmental agency exceed 20 percent of a bank or trust company's capital and surplus. Certain loans and extensions of credit are not included in this limit. The Department is authorized to adopt rules to establish different limits or requirements for particular categories of loans and extensions of credit. Where no Department rule governs a specific type of transaction, a bank must conform to the OCC rules. These limits do not apply to savings banks.

Different limits apply to associations. Not more than 20 percent of an association's assets may be invested in loans on such terms as it deems appropriate, and an association may not invest more than 2.5 percent of its assets in any loan or obligation to any one person, except with approval of the Director of the Department (Director).

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) revised lending limits under federal law to include any credit exposure arising from derivative transactions and securities financing transactions. The Dodd-Frank Act also provided that a state-chartered bank insured by the Federal Deposit Insurance Corporation (FDIC) may only

engage in derivative transactions if the state lending limits take into consideration credit exposure to derivatives. Last year the OCC amended its rule on lending limits to implement those changes, and the Department adopted its own rule in January 2013.

#### Interstate Branching.

An out-of-state bank or savings bank may establish or acquire branches in Washington if the laws of the bank's home state permit Washington banks to establish and maintain branches under substantially the same, or at least as favorable, terms and conditions.

#### Bank and Trust Powers.

Provisions for parity with federally chartered banks, trust companies, mutual savings banks, and associations generally grant the state-chartered institution the powers and authorities of the federally chartered institution up until a certain date. After that date, the state-chartered institution has the same powers and authorities only if the Director finds that the exercise of such powers is in the interest of the public and maintains fair competition between the respective types of institutions.

A bank or trust company may engage in business activities that national banks may engage in as of July 27, 2003, and are granted the same powers and authorities conferred, as of July 27, 2003, on a national bank doing business in Washington. A mutual savings bank has the powers and authorities that a national bank or mutual savings bank had until July 27, 2003. A trust company may exercise the powers and authorities granted to federally chartered trust companies as of June 11, 1998. An association may exercise the powers and authorities conferred, as of December 31, 1993, on a federal association doing business in Washington.

A bank may exercise the same powers and authorities as out-of-state state-chartered banks with branches in Washington, and a savings bank may exercise any power or authority that other savings banks or associations with branches in Washington may exercise under applicable state or federal law if, in the Director's opinion, such powers affect the operations of savings banks or the delivery of financial services in Washington.

A bank or trust company may exercise the powers and authorities of a mutual savings bank if the bank or trust notifies the Department and the Department finds that the exercise of such powers is in the interest of the public and maintains fair competition between the types of institutions. A mutual savings bank has the powers and authorities of a bank.

#### Supervisory Direction and Conservatorship.

The Department may place a bank or savings bank under its supervisory direction if the bank or savings bank: gives its consent; exceeded its powers; failed to comply with the law; or is in an unsafe condition that is hazardous to the public or its depositors and creditors. If a bank or savings bank under supervisory direction fails to comply with the Department's requirements, the Department may appoint a conservator. The conservator conducts the business of the bank or savings bank and takes steps to correct the conditions that necessitated the conservatorship. The conservator may take all necessary measures to protect and recover assets and property and may file and defend lawsuits as necessary.

#### **Summary of Bill:**

### Fees and Charges.

To cover operating costs and establish and maintain a reasonable reserve for the Division of Banks, the Department may charge and collect the costs of examination, filing and other service fees, and semiannual charges for recoupment of non-direct expenses related to the examination of financial institutions.

The Department must collect for services related to required filings, applications, requests for waiver, investigations, approvals, determinations, certifications, agreements, actions, directives, and orders made by the Director. Such collections must be made from banks, savings banks, trust companies, associations, holding companies, business development companies, agricultural lenders, and small business lenders.

In addition to fees for the actual cost of examination and fees for services, the Director may collect a semiannual charge for recoupment of non-direct expenses related to the examination of a bank, trust company, savings bank, or savings association. The charge must be based on the institution's assets. The rate for banks, savings banks, and savings associations must be the same. A separate rate may be charged to trust companies, but must be the same for all trust companies.

The Director establishes, sets, and adjusts the amounts of fees and charges by rule.

### Lending Limits.

A bank or trust company does not violate the lending limit if the loan or extension of credit would constitute an exception to the lending limit for national banks authorized by the OCC. The list of loans and extensions of credit that are excluded from the limit are deleted.

Defined terms have the same meaning as under federal regulations, except that "loans and extensions of credit" also include repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions between a bank and a borrower if the FDIC or the Federal Reserve require such treatment.

The Department has rulemaking authority with respect to: (1) setting standards for computation of time in relation to determining lending limits; and (2) implementing and incorporating other changes in lending limits necessary to conform to federal law.

These limits on loans and extensions of credit apply to savings banks and associations. The prohibition on an association investing more than 2.5 percent of its assets in a loan to one person is deleted.

### Nonconforming Loans and Extensions of Credit and Exceptions to the Lending Limit.

A loan or extension of credit that was within the limit when it was made is treated as nonconforming if it is no longer within the limit because: the bank or trust company's capital has declined; lenders or borrowers have subsequently merged; the applicable rules have changed; or collateral securing the loan or extension of credit has declined in value. A bank or trust company must make reasonable efforts to bring a nonconforming loan or extension of credit into conformity, unless it would be inconsistent with safe and sound banking practices. For loans that are nonconforming because of a decline in the value of the collateral, a bank or trust company must generally bring the loan into conformity within 30 days.

The Department may, by rule or interpretation, prescribe standards for treatment of nonconforming extensions of credit that are derivatives transactions or securities financing transactions and may rely on rules of the FDIC or the Federal Reserve.

If a bank's capital declines to the point that it seriously impairs the bank's ability to operate in the marketplace or serve the needs of its customers or community, the Director may grant temporary permission to fund loans and extensions of credit in excess of the limit. This emergency lending authority may be limited to particular types of loans and extensions of credit. The Director may also grant an exception to a bank's credit limit based on extenuating facts and circumstances, taking into consideration: the proposed transaction; how the exception would affect the bank's safety and soundness; how the exception would affect the bank's loan portfolio diversification; the competency of management; the marketability and value of the collateral; and the extenuating facts and circumstances.

#### Interstate Branching.

The Director must approve an out-of-state bank's application for a de novo branch or branch acquisition if the bank would be permitted to establish or acquire a branch if it were a bank chartered in Washington.

#### Bank and Trust Powers.

Banks and savings banks have the same powers and authorities conferred on national banks as of July 28, 2013, and a savings bank has the same powers and authorities conferred on a federal mutual savings bank as of July 28, 2013. Associations have the same powers and authorities conferred on federal associations as of July 28, 2013. Banks may engage in business activities determined by Congress or the Federal Reserve as of July 28, 2013, to be closely related to the business of banking.

If the Director makes a finding regarding the interest of the public and fair competition:

- a bank or savings bank has the same powers and authorities conferred on national banks, and a savings bank has the same powers and authorities conferred on a federal mutual savings bank, for powers conferred on the federal institutions after July 28, 2013; and
- a bank, savings bank, or trust company has the same powers and authorities as a corresponding out-of-state state-chartered institution operating in Washington.

An out-of-state state-chartered bank may engage in banking in Washington if the bank was lawfully engaged in banking in Washington on July 22, 2010. An out-of-state association may establish or acquire branches in Washington if it would be permitted to if it were a savings bank or association chartered in Washington.

A bank has the same powers and authorities as a savings bank without need for the Director to make a finding.

#### Trust Business and Supervision.

Requirements for engaging in a trust business are applied to a person (rather than a corporation) authorized to engage in a trust business. A person may not engage in a trust business except in compliance with the law governing trusts; however, this does not apply to: (1) an individual, sole proprietor, general partnership, or joint venture composed of individuals; (2) a person

conducting business as an attorney or law firm; or (3) a court-appointed guardian, conservator, trustee, or receiver.

The Director may prohibit a person from engaging in trust business if it harms or is likely to harm the general public or adversely affect the business of trust companies in Washington. The order may require the person to obtain a trust company charter. These provisions, however, do not apply to a person conducting business as: (1) an attorney or law firm; or (2) a court-appointed guardian, conservator, trustee, or receiver.

With the exception of an attorney or law firm, no person who solicits legal business may act as an executor, administrator, or guardian. A person who solicits legal business may not be appointed an executor, administrator, or guardian for a period of one year. A person who is authorized to engage in trust business and who solicits legal business is guilty of a gross misdemeanor.

"Trust company" is defined to include a limited liability company. In addition to the entities covered by current law, the definition of "person" means individuals and entities including, but not limited to, a sole proprietorship, joint venture, limited liability company, limited liability partnership, or trust.

#### Supervisory Direction and Conservatorship.

Provisions related to supervisory direction and conservatorship of banks are applied to trust companies. A conservator appointed to conduct the business of a bank, savings bank, or trust company is immune from criminal, civil, and administrative liability for any act done in good faith in the performance of the duties of conservator.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 10 and 25 relating to the powers of banks, which take effect if the Department finds that a federal agency has interpreted federal law to permit state-chartered banks to conduct a promotional contest of chance.