

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 1555

(Chair, Economic Matters Committee)(By Request -  
Departmental - Labor, Licensing and Regulation)

Economic Matters

Finance

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**Financial Institutions - Enhanced Supervision - Branch Banking**

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This departmental bill (1) allows an out-of-state bank to open a *de novo* branch in Maryland only if that bank's home state has reciprocal laws; (2) creates an expedited application process for the establishment of a bank branch; (3) authorizes the Commissioner of Financial Regulation to issue civil penalties against banks and credit unions under specified circumstances; and (4) permits the commissioner to close a public hearing regarding the assessment of civil penalties in extraordinary circumstances.

The bill takes effect July 1, 2009.

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**Fiscal Summary**

**State Effect:** Potential minimal special fund revenue decrease beginning in FY 2010, likely offset by efficiencies in processing expedited applications. Potential minimal general fund revenue increase beginning in FY 2010 due to imposition of civil penalties. Expenditures are not directly affected.

**Local Effect:** The bill does not directly affect local finances or operations.

**Small Business Effect:** The Department of Labor, Licensing, and Regulation (DLLR) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

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## Analysis

### **Bill Summary:**

*Establishment of De Novo Branch by an Out-of-state Bank:* The bill allows an out-of-state bank to open a *de novo* branch in Maryland only if that bank's home state has reciprocal laws allowing a bank to open a *de novo* branch in its state. Notwithstanding this restriction, an out-of-state bank may establish a *de novo* branch in Maryland if the bank's application to establish a branch is approved by the Federal Deposit Insurance Company or the Office of the Comptroller of the Currency before July 1, 2009.

*Expedited Bank Branch Application Process:* The bill establishes an expedited bank branch application process for (1) an out-of-state bank opening a *de novo* branch in Maryland under the reciprocity provisions; and (2) a well-capitalized bank (as determined by a "CAMELS rating" of one or two). An expedited notice must be filed with the commissioner's office at least 30 days before the branch's intended opening date.

The commissioner may charge a nonrefundable \$400 branch fee for an expedited notice of a banking institution or other-state bank to open a branch in the State. The bill further allows a well-capitalized bank to open a branch in the State without the commissioner's approval 30 days after filing the expedited notice for the proposed branch. During the 30-day period in which the expedited notice is pending, the commissioner may request more information regarding the proposed bank branch or, alternatively, deny its application.

*Civil Penalties:* After notice and a hearing, the commissioner may assess a civil penalty against a bank or credit union that (1) violates a cease and desist order; or (2) engages in unsafe or unsound banking practices or in a practice that is injurious to the public interest. The civil penalty must be assessed by written notice and cannot exceed \$1,000 per violation and \$1,000 for each successive day that the violation continues. In determining the amount of the civil penalty, the commissioner must consider the seriousness of the violation, the good faith of the violator, any history of previous violations, the deleterious effect of the violation on the public and the credit union or banking industry, the violator's assets, and any other relevant factors. Civil penalties are paid to the general fund.

*Closure of Public Hearings in Extraordinary Circumstances:* The bill allows the commissioner, with the consent of the relevant banking institution or credit union, to close a hearing to the public in extraordinary circumstances. A hearing concerning the assessment of a civil penalty, a cease and desist order, or any other formal enforcement action may be closed to the public when the situation relates to the safety and soundness of the bank or credit union.

**Current Law:** An "other-state bank" means a bank chartered and primarily regulated by another state, whereas an "out-of-state bank" means a bank chartered under the National Bank Act with its main office in a state other than Maryland or an other-state bank.

A “*de novo* branch” is a branch of an out-of-state bank that (1) is originally established by the out-of-state bank as a branch; and (2) does not become a branch of the out-of-state bank as a result of the acquisition of an insured depository institution or the conversion, merger, consolidation of an insured depository institution.

A bank’s “home state” is where the main office of a national banking association is located, or as to a state-chartered bank, the state by which it is chartered. The term “CAMELS rating” refers to the composite rating adopted by the federal Financial Institutions Examination Council to evaluate an institution’s adequacy of capital, quality of assets, capability of management, quality and level of earnings, adequacy of liquidity, and sensitivity to market risk.

The commissioner is authorized to charge a \$600 branch fee for a notice of intention of a banking institution or other-state bank to open a branch in the State. A banking institution or an out-of-state bank may open a branch in this State by (1) opening a *de novo* branch; (2) purchasing an existing branch from a bank or an insured depository institution; or (3) converting former headquarters or retaining former branches after the purchase of all or substantially all of the assets of a bank or insured depository institution, or a merger or consolidation with a bank or depository institution.

A banking institution that proposes to open a branch in this State must file a notice of intention to open the branch with the commissioner at least 30 days before the intended opening date along with any information the commissioner requires to evaluate the proposed branch. In deciding whether to approve a proposed branch, the commissioner must consider whether the establishment will promote the public convenience, whether the applicant has sufficient capital to support the branch, and whether the applicant is generally complying with the Financial Institutions Article.

The commissioner may order a credit union or banking institution to cease and desist from an unsafe or unsound practice; a practice that is injurious to the public interest; or a violation of laws, rules, or regulation that the relate to the commissioner’s supervision of the institution. To protect depositors, stockholders or members, or the public, the commissioner may include a restriction on the withdrawal of money in a cease and desist order. The commissioner may also include in a cease and desist order a requirement that the officers or directors act affirmatively to correct any violation or practice.

Before a cease and desist order takes effect, the commissioner must give the bank or credit union an opportunity for a hearing. However, if the commissioner determines that the violation or practice requires immediate action to protect depositors, stockholders or members, or the public, the commissioner may issue a cease and desist order that is effective on service and must provide an opportunity for a hearing to rescind the order.

Under Maryland’s Open Meetings Act, with limited exceptions, a “public body” must meet in open session. A public body is any entity that (1) consists of at least two individuals; and

(2) is created by the Maryland Constitution; a State statute; a county charter; an ordinance; a rule, resolution, or bylaw; or an executive order of the Governor or of the chief executive authority of a political subdivision. Exclusions from the definition of “public body” include juries, the Governor’s cabinet and executive council, and single-member entities.

Public bodies may conduct closed sessions under specified circumstances, including discussing employment matters, consulting with legal counsel, and considering the investment of public funds. Before meeting in a closed session, the presiding officer of the public body must conduct a recorded vote on the closing of the session and make a written statement of the reason for closing the meeting. The public body may only meet in a closed session if a majority of its voting members who are present vote in favor of closing the session.

**Background:** Chapter 293 of 2008 established a nonlapsing special fund named the Banking Institution and Credit Union Regulation Fund. The special fund consists of all revenues received for the chartering and regulation of persons who engage in the business of a banking institution or credit union in the State and any other fee, assessment, or revenues received by the commissioner from banking institutions and credit unions under the Financial Institutions Article. The purpose of the special fund is to pay the costs and expenses incurred by the commissioner related to the regulation of banking institutions and credit unions. All such costs and expenses must be included in the State budget and may be made only by appropriation from the special fund approved by the General Assembly in the annual State budget, or by the budget amendment procedure. The Governor is required to appropriate funds in the annual State budget to the Division of Financial Regulation for the purpose of regulating banking institutions and credit unions.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Labor, Licensing, and Regulation; Department of Legislative Services

**Fiscal Note History:** First Reader - March 24, 2009  
ncs/ljm Revised - House Third Reader/Clarification - April 6, 2009

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Financial Institutions – Enhanced Supervision – Branch Banking

BILL NUMBER: HB 1555

PREPARED BY: Department of Labor, Licensing and Regulation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.