SB 103

Department of Legislative Services

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FISCAL AND POLICY NOTE
Revised

Senate Bill 103 (Chair, Finance Committee)

Finance Economic Matters

Office of the Commissioner of Financial Regulation, the Banking Board, and the State Collection Agency Licensing Board - Sunset Extension and Program Evaluation

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This bill extends the termination dates for the Office of the Commissioner of Financial Regulation and the State Collection Agency Licensing Board by 10 years to July 1, 2022, and requires evaluation of both the commissioner's office and the board by July 1, 2021. The bill also requires the commissioner's office to implement and report on a risk-based mortgage lender licensee examination schedule. The board and the Attorney General's Office are required to monitor whether the Maryland Judiciary has determined if the Maryland Rules should be amended to strengthen protections for defendants in consumer debt collection cases and report any of the Judiciary's findings and recommendations. Finally, the bill repeals the Banking Board.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: General and special fund revenues and expenditures are maintained for the Office of the Commissioner of Financial Regulation and the State Collection Agency Licensing Board beyond FY 2012. Repeal of the Banking Board may result in a negligible decrease in special fund expenditures; however, increased operational efficiencies are anticipated for the commissioner's office. The Governor's proposed FY 2012 budget for the Division of Financial Regulation includes $8,851,031 for agency operations, of which $6,918,051 is financed with special funds and $1,932,980 is financed with general funds.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background:

Maryland Program Evaluation Act

The Office of the Commissioner of Financial Regulation, the Banking Board, and the State Collection Agency Licensing Board are 3 of the approximately 70 regulatory entities and activities currently subject to periodic evaluation under the Maryland Program Evaluation Act. The Act establishes a process better known as "sunset review" as most entities evaluated are also subject to termination, including the office and both boards, which are scheduled to terminate July 1, 2012. The sunset review process begins with a preliminary evaluation conducted by the Department of Legislative Services (DLS) on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an entity from further (or full) evaluation. If waived, legislation to reauthorize the entity typically is enacted. Otherwise, a full evaluation usually is undertaken the following year.

A full evaluation was prepared to assist the designated evaluation committees in determining whether to extend the termination date of the office and both boards and for what period of time. The office and both boards are part of the Department of Labor, Licensing, and Regulation (DLLR). Additionally, the Banking Board serves as an advisory body to the Commissioner of Financial Regulation, and the State Collection Agency Licensing Board is located within the commissioner's office.

Office of the Commissioner of Financial Regulation

The office is responsible for licensing, regulating, examining, and investigating mortgage lenders, consumer loan companies, sales finance companies, installment loan lenders, credit reporting agencies, and debt collection agencies. The office is the primary regulator of 48 Maryland State-chartered banks, 9 State-chartered credit unions, and 6 State-chartered trust companies. In addition to State-chartered financial institutions, the office licenses and regulates over 9,300 nondepository licensees, including mortgage lenders, brokers, services, and originators. In fiscal 2010, there were 1,478 licensed mortgage lenders and 5,007 licensed mortgage loan originators. The office is primarily supported by special funds (almost 80%). General funds continue to support some operations.

Risk-based Examination Schedule: The office has successfully transitioned to a nationwide mortgage licensing system. Chapter 4 of 2009 brought Maryland into compliance with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) and mandated that the office transition to the National Mortgage Licensing System and Registry (NMLSR), a web-based interface that utilizes a single set of applications and allows state-licensed mortgage lenders, brokers, and loan officers to apply for, update, and renew their licenses online. As of January 1, 2011, all states and U.S. territories use NMLSR.

Coinciding with the transition to NMLSR, the office eliminated a long-standing backlog of overdue mortgage lender examinations by the end of 2010. Pursuant to statute, the office must examine each mortgage lender licensee at least once every 36 months and each new mortgage lender licensee within 18 months of initial licensure.

Chapters 7 and 8 of 2008, which made a number of substantive changes to State law governing mortgage lending, required the commissioner to study the feasibility of scheduling mortgage lender examinations using a risk-based approach, one that categorizes licensees by the degree of risk that they pose to consumers and subjects those licensees to more frequent compliance examinations, rather than the calendar-based schedule currently required under law. As noted in its 2009 report to the General Assembly, the opportunity for the office to implement risk-based scheduling has been systematically enhanced through NMLSR.

State Collection Agency Licensing Board

The licensing board licenses and regulates debt collection agencies. The board licenses more than 1,400 collection agencies doing business in Maryland and enforces the Maryland Consumer Debt Collection Act. The board also mediates disputes between consumers and debt collection agencies. The board comprises five members and is chaired by the commissioner. Members are appointed to four-year terms and serve without compensation. The board is general funded by licensing revenue. The preliminary sunset evaluation noted concerns as to whether the licensing fees covered the costs of licensing and regulating collection agencies. DLLR introduced departmental legislation in the 2010 session to resolve the funding imbalance. Chapter 149 of 2010 required the board to set the licensing fee at an amount that will cover the board's costs, up to a maximum of $900 for a two-year license.

Debt Collection: In a comprehensive July 2010 report, the Federal Trade Commission (FTC) found that certain "debt collection litigation and arbitration practices appear to raise substantial consumer protection concerns." FTC reported that 65% to 85% of consumers who are sued for unpaid debts do not defend themselves in debt collection lawsuits. FTC found that complaints and attachments filed in debt collection cases often do not provide adequate information for consumers to answer complaints or for judges to rule on motions for default judgment.

FTC recommended that "courts more rigorously apply existing rules to require that collectors provide adequate information and that jurisdictions consider adopting rules mandating the information which must be included or attached to the complaint." Other than specifying activities in which a debt collector may not engage, Maryland law is mostly silent on the particulars of debt collection litigation. However, the Maryland Rules of Civil Procedure contain provisions that form the framework by which a debt collection lawsuit is filed and handled in court.

The Banking Board

The Banking Board is charged with advising the commissioner on matters relating to Maryland's banking industry and the regulation of State-chartered banks. However, the board has not convened in nearly four years, and four of its nine seats are currently vacant. Although State law requires the board to provide the commissioner with advice on the approval or disapproval of specified bank applications, board members rarely respond to the commissioner's requests for advice. Also, as an advisory body, the board's recommendations are not binding on the commissioner.

During the past 10 years, the depository corporate applications unit, which handles all official correspondence sent to members of the board, has mailed approximately 270 bank-related applications to board members. The unit has received only 16 responses from board members.

Since fiscal 2009, the board has been special funded. The repeal of the board may increase the operational efficiency of the commissioner's office as the duties of corresponding with the board will be eliminated from a full-time employee's responsibilities.

DLS Recommendations

The bill arises out of the recommendations proposed in the sunset evaluation of the office and both boards performed by DLS. In its report, DLS recommended that the Office of the Commissioner of Financial Regulation and the State Collection Agency Licensing Board's authority be continued and their termination dates be extended to July 1, 2022. The office has admirably confronted many challenges, including the stabilization of its mortgage-related special fund, and increased regulatory responsibilities while continuing to protect Maryland consumers. DLS also recommended the repeal of the Banking Board, the implementation of a risk-based examination schedule, and a review of the strength of consumer debt collection protections.

Additional Information

Prior Introductions: None.

Cross File: HB 358 (Chair, Economic Matters Committee) – Economic Matters.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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