SB 14

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 14 (Chair, Finance Committee)(By Request - Departmental - Labor)

Finance Economic Matters

Financial Institutions - State Banks, Trust Companies, and Savings Banks - Incorporators

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This departmental bill reduces the number of incorporators, from 5 to 3, required to form a State bank or trust company, and from 15 to 3 to form a savings bank. The bill also repeals a requirement that each incorporator be a citizen of Maryland, and instead requires that at least one be a citizen of Maryland. The bill also repeals a provision that allows stockholders of a commercial bank to create up to two additional directorships (to be filled in the discretion of the board of directors). Finally, the bill makes conforming changes to the required elements of the articles of incorporation for a State bank, trust company, or savings bank.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: The bill does not materially affect State finances or operations.

Small Business Effect: The Maryland Department of Labor has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Current Law/Background: The Office of the Commissioner of Financial Regulation (OCFR) advises that, in order to incorporate, Maryland-chartered banks and savings banks are currently required to have 5 or more and 15 or more, respectively, Maryland residents for each institution acting as incorporators. In contrast, national banks only require 5 adults to act as incorporators; incorporating a regular corporation in Maryland only requires 1 adult. In addition, many states (including most surrounding states) require 3 or fewer individuals to incorporate a bank.

OCFR advises that, pursuant to Subtitle 4 of the Financial Institutions Article, the number of bank directors must be between 5 and 30 directors as set forth in a bank's charter or bylaws. Stockholders can authorize an additional 2 directorships (within the 5 to 30 limit) at any meeting. Existing law does not explicitly permit the directors of bank boards to reset (*i.e.*, increase or decrease the total number of directors established by the bank's original charter or bylaws). However, Maryland general corporate law does permit corporate boards to reset directorships. Because Subtitle 4 of the Financial Institutions Article does not specifically address the issue of a board's authority, there has been uncertainty among State banks as to whether bank boards have the same authority as is granted to general corporations incorporated under Maryland law.

OCFR advises the bill's change is warranted, because there are times when a bank board finds a person who would add value as a director but it cannot add them if there is not a vacancy. The prospective board member may not be added until the next shareholder meeting. Similarly, there are times when one or more vacancies occur on the board of a bank, and the board believes that filling them is not in the best interest of the bank and it would like to shrink the board.

Under current Maryland law, a bank's board has no power to add additional directorships (assuming that no vacancy exists) or to reduce the number of directorships. Instead, the board must either (1) wait until the next annual meeting of stockholders, ask stockholders to increase/decrease the number of directors, and elect that person to the board or (2) call a special meeting of stockholders for those purposes. However, banks are unlikely to go through the time and expense of calling a special meeting just to address this issue.

Boards of general Maryland corporations, under § 2-402(c)(2) of the Corporations and Associations Article, may make adjustments to their boards if they are so authorized in the corporation's charter or bylaws. It is common practice for Maryland corporations (including bank holding companies) to use that provision to quickly add or subtract members from the board when it makes sense to do so.

The bill is intended to modify the Financial Institutions Article so that the authority to adjust a bank board's size defaults to the requirements in the Corporations and Associations Article (providing that the majority of the directors then serving have the authority to alter the number of directors within the limits set by the bank's charter or bylaws).

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; Department of Legislative Services

Fiscal Note History: First Reader - January 20, 2020
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Financial Institutions - Commissioner of Financial Regulation - Corporate Activities

BILL NUMBER: Senate Bill 14

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PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

_X_ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This legislation will have a positive impact on the state's banking community as it will:

(1) Enhance the Maryland bank charter by making the incorporation process competitive with neighboring states and easier than that required for the establishment of a national bank; and

(2) Simplify corporate governance by clarifying that bank boards may modify the numbers serving on their respective boards as and when they deem necessary as provided by their charter or bylaws.