Committee on Banking and Insurance

CS/HB 1121 — Financial Institutions

by Insurance and Banking Subcommittee and Rep. Ingram (CS/SB 1332 by Banking and Insurance Committee and Senator Richter)

The bill permits the Office of Financial Regulation to approve special stock offering plans if the capital stock of a state financial institution falls below par value and it cannot reasonably issue capital stock to restore the value of the shares. The bill permits the Office to approve a plan by a state financial institution that may call for stock splits, change voting rights, dividends, and the addition of new classes of stock. However, the plan must be approved by a majority vote of the financial institution's board of directors and holders of two-thirds of outstanding shares of capital stock. Nevertheless, the Office is required to assess the fairness of benefits of the plan, and disallow a plan that would not effectively restore capital stock prices to sufficient levels. In emergency situations, a failing financial institution does not have to perform a vote for the plan to be approved by the Office.

The bill creates s. 658.4185(3), F.S., to expand the prior approval privilege of charters from only officers to business entities. The bill allows holding companies to apply for prior approval to merge or acquire control of a failing financial institution. The bill mandates that an entity must file an application for prior approval and submit the $7,500 filing fee.

The bill creates s. 655.03855, F.S., which allows the Office to temporarily place a provisional director, for reasonable compensation by the financial institution, onto a state financial institution's board. Additionally, the bill allows the appointment of a provisional director if the director(s) are not equipped to operate the financial institution in a safe and sound manner. Nevertheless, prior to the placement of a provisional director, the Office must allow the financial institution 30 days to acquire the minimum amount of directors.

The bill eliminates the required examination of state financial institutions by the Office every 36 months. The bill requires that the Office perform examinations every 18 months, but the Office may accept examinations conducted by the appropriate federal regulatory agency. The bill moves the definition of "related interest" to s. 655.005,.F.S., and expands the definition of "related interest" to include relatives and those who reside in the same household of one who is in control of a financial institution. The bill specifies the types of capital and liabilities that a financial institution must use in order to calculate total amounts of capital and liability.

The bill makes the following conforming changes to comply with the Wall Street Reform Act:

The Wall Street Reform Act requires that state regulators allow for de novo banking for out-of-state financial institutions. To conform, the bill allows an out-of-state financial institution to establish a de novo bank without merging or acquiring a state financial institution. The bill also allows for the creation of additional branches in accordance with state law as if the out-of-state financial institution was chartered in Florida. The bill removes restrictions on the ability of out-of-state financial institutions to establish remote financial service units within Florida.

The Wall Street Reform Act prohibits state regulatory agencies from accepting the conversion of a charter of a federal financial institution when the converting financial institution is subject to regulatory action or a cease and desist order. To conform, the bill amends s. 655.411, F.S., by requiring the applicant to prove that the resulting financial institution will comply with all regulatory actions in effect before the date of conversion and that the appropriate federal regulatory agency does not object to the conversion.

The Wall Street Reform Act requires that in order to participate in the derivatives market, a state financial institution must consider borrower exposure in the evaluation of its risk. To conform, the bill adds the evaluation exposure to risk in derivative transactions.

The Wall Street Reform Act disallows the use of credit ratings in determining investment risk by requiring financial institutions to develop their own risk evaluations. To conform, the bill requires that all financial institutions develop and use internal policies and procedures to determine risk of investments, and prohibits the financial institution from using credit ratings as the sole means of determining investment risk.

The bill makes other technical conforming changes.

These provisions become law on July 1, 2011.
Vote: Senate 39-0; House 114-0