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SENATE BILL 5375

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Hobbs and Benton

Read first time 01/21/11. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to the department of financial institutions'  
2 regulation of trust companies; and amending RCW 30.08.025.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 30.08.025 and 2006 c 48 s 2 are each amended to read  
5 as follows:

6 (1) Notwithstanding any other provision of this title, if the  
7 conditions of this section are met, a bank, a trust company, or a  
8 holding company of a bank or a trust company, may be organized as, or  
9 convert to, a limited liability company under the Washington limited  
10 liability company act, chapter 25.15 RCW. As used in this section,  
11 "bank" includes an applicant to become a bank or holding company of a  
12 bank, "trust company" includes an applicant to become a trust company,  
13 and "holding company" means a holding company of a bank or trust  
14 company.

15 (2)(a) Before a bank, trust company, or holding company may  
16 organize as, or convert to, a limited liability company, the bank,  
17 trust company, or holding company must obtain approval of the director.

18 (b)(i) To obtain approval under this section from the director, the  
19 bank, trust company, or holding company must file a request for

1 approval with the director at least ninety days before the day on which  
2 the bank, trust company, or holding company becomes a limited liability  
3 company.

4 (ii) If the director does not disapprove the request for approval  
5 within ninety days from the day on which the director receives the  
6 request, the request is considered approved.

7 (iii) When taking action on a request for approval filed under this  
8 section, the director may:

9 (A) Approve the request;

10 (B) Approve the request subject to terms and conditions the  
11 director considers necessary; or

12 (C) Disapprove the request.

13 (3) To approve a request for approval, the director must find that  
14 the bank, trust company, or holding company:

15 (a) Will operate in a safe and sound manner; and

16 (b) Has the following characteristics:

17 (i) The certificate of formation and limited liability company  
18 require or set forth that the duration of the limited liability company  
19 is perpetual;

20 (ii) The bank, trust company, or holding company is not otherwise  
21 subject to automatic termination, dissolution, or suspension upon the  
22 happening of some event other than the passage of time;

23 (iii) The exclusive authority to manage the bank, trust company, or  
24 holding company is vested in a board of managers or directors that:

25 (A) Is elected or appointed by the owners;

26 (B) Is not required to have owners of the bank, trust company, or  
27 holding company included on the board;

28 (C) Possesses adequate independence and authority to supervise the  
29 operation of the bank, trust company, or holding company; and

30 (D) Operates with substantially the same rights, powers,  
31 privileges, duties, and responsibilities as the board of directors of  
32 a corporation;

33 (iv) Neither state law, nor the bank's, trust company's, or holding  
34 company's operating agreement, bylaws, or other organizational  
35 documents provide that an owner of the bank, trust company, or holding  
36 company is liable for the debts, liabilities, and obligations of the  
37 bank, trust company, or holding company in excess of the amount of the  
38 owner's investment;

1 (v) Neither state law, nor the bank's, trust company's, or holding  
2 company's operating agreement, bylaws, or other organizational  
3 documents require the consent of any other owner of the bank, trust  
4 company, or holding company in order for any owner to transfer an  
5 ownership interest in the bank, trust company, or holding company,  
6 including voting rights;

7 (vi) The bank, trust company, or holding company is able to obtain  
8 new investment funding if needed to maintain adequate capital;

9 (vii) The bank, trust company, or holding company is able to comply  
10 with all legal and regulatory requirements for a federally insured  
11 depository bank, trust company, or holding company of a federally  
12 insured depository bank, under applicable federal and state law; and

13 (viii) A bank, trust company, or holding company that is organized  
14 as a limited liability company shall maintain the characteristics  
15 listed in this subsection (3)(b) during such time as it is authorized  
16 to conduct business under this title as a limited liability company.

17 (4)(a) All rights, privileges, powers, duties, and obligations of  
18 a bank, trust company, or holding company, that is organized as a  
19 limited liability company, and its members and managers are governed by  
20 the Washington limited liability company act, chapter 25.15 RCW,  
21 except:

22 (i) To the extent chapter 25.15 RCW is in conflict with federal law  
23 or regulation respecting the organization of a federally insured  
24 depository institution as a limited liability company, such federal law  
25 or regulation supersedes the conflicting provisions contained in  
26 chapter 25.15 RCW in relation to a bank, trust company, or holding  
27 company organized as a limited liability company pursuant to this  
28 section; and

29 (ii) Without limitation, the following are inapplicable to a bank,  
30 trust company, or holding company organized as a limited liability  
31 company:

32 (A) Permitting automatic dissolution or suspension of a limited  
33 liability company as set forth in RCW 25.15.270(1), pursuant to a  
34 statement of limited duration which, though impermissible under  
35 subsection (3)(b)(i) of this section, has been provided for in a  
36 certificate of formation;

37 (B) Permitting automatic dissolution or suspension of a limited

1 liability company, pursuant to the limited liability company agreement,  
2 as set forth in RCW 25.15.270(2);

3 (C) Permitting dissolution of the limited liability company  
4 agreement based upon agreement of all the members, as set forth in RCW  
5 25.15.270(3);

6 (D) Permitting dissociation of all the members of the limited  
7 liability company, as set forth in RCW 25.15.270(4); and

8 (E) Permitting automatic dissolution or suspension of a limited  
9 liability company, pursuant to operation of law, as otherwise set forth  
10 in chapter 25.15 RCW.

11 (b) Notwithstanding (a) of this subsection:

12 (i) For purposes of transferring a member's interests in the bank,  
13 trust company, or holding company, a member's interest in the bank,  
14 trust company, or holding company is treated like a share of stock in  
15 a corporation; and

16 (ii) If a member's interest in the bank, trust company, or holding  
17 company is transferred voluntarily or involuntarily to another person,  
18 the person who receives the member's interest obtains the member's  
19 entire rights associated with the member's interest in the bank, trust  
20 company, or holding company including(~~(r)~~) all economic rights and all  
21 voting rights.

22 (c) A bank, trust company, or holding company may not by agreement  
23 or otherwise change the application of (a) of this subsection to the  
24 bank, trust company, or holding company.

25 (5)(a) Notwithstanding any provision of chapter 25.15 RCW or this  
26 section to the contrary, all voting members remain liable and  
27 responsible as fiduciaries of a bank, trust company, or holding company  
28 organized as a limited liability company, regardless of resignation,  
29 dissociation, or disqualification, to the same extent that directors of  
30 a bank, trust company, or holding company organized as a corporation  
31 would be or remain liable or responsible to the department and  
32 applicable federal banking regulators; and

33 (b) If death, incapacity, or disqualification of all members of the  
34 limited liability company would result in a complete dissociation of  
35 all members, then the bank (~~(or)~~), trust company, holding company, or  
36 (~~(both)~~) all three, as applicable is deemed nonetheless to remain in  
37 existence for purposes of the department or an applicable federal

1 regulator, or both, having standing under RCW 30.44.270 or applicable  
2 federal law, or both, to exercise the powers and authorities of a  
3 receiver for the bank, trust company, or holding company.

4 (6) For the purposes of this section, and unless the context  
5 clearly requires otherwise, for the purpose of applying chapter 25.15  
6 RCW to a bank, trust company, or holding company organized as a limited  
7 liability company:

8 (a) "Articles of incorporation" includes a limited liability  
9 company's certificate of formation, as that term is used in RCW  
10 25.15.005(1) and 25.15.070, and a limited liability company agreement  
11 as that term is used in RCW 25.15.005(5);

12 (b) "Board of directors" includes one or more persons who have,  
13 with respect to a bank, trust company, or holding company described in  
14 subsection (1) of this section, authority that is substantially similar  
15 to that of a board of directors of a corporation;

16 (c) "Bylaws" includes a limited liability company agreement as that  
17 term is defined in RCW 25.15.005(5);

18 (d) "Corporation" includes a limited liability company organized  
19 under chapter 25.15 RCW;

20 (e) "Director" includes any of the following of a limited liability  
21 company:

22 (i) A manager;

23 (ii) A director; or

24 (iii) Other person who has, with respect to the bank, trust  
25 company, or holding company described in subsection (1) of this  
26 section, authority substantially similar to that of a director of a  
27 corporation;

28 (f) "Dividend" includes distributions made by a limited liability  
29 company under RCW 25.15.215;

30 (g) "Incorporator" includes the person or persons executing the  
31 certificate of formation as provided in RCW 25.15.085(1);

32 (h) "Officer" includes any of the following of a bank, trust  
33 company, or holding company:

34 (i) An officer; or

35 (ii) Other person who has, with respect to the bank, trust company,  
36 or holding company, authority substantially similar to that of an  
37 officer of a corporation;

1           (i) "Security," "shares," or "stock" of a corporation includes a  
2 membership interest in a limited liability company and any certificate  
3 or other evidence of an ownership interest in a limited liability  
4 company; and

5           (j) "Stockholder" or "shareholder" includes an owner of an equity  
6 interest in a bank, trust company, or holding company, including a  
7 member as defined in RCW 25.15.005(8) and 25.15.115.

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