

HOUSE BILL REPORT

HB 1466

As Passed House:
March 1, 2011

Title: An act relating to the department of financial institutions' regulation of trust companies.

Brief Description: Allowing trust companies to be organized as, or convert to, limited liability companies under certain conditions.

Sponsors: Representatives Kirby and Bailey.

Brief History:

Committee Activity:

Business & Financial Services: 1/27/11, 1/28/11 [DP].

Floor Activity:

Passed House: 3/1/11, 96-1.

Brief Summary of Bill

- Allows a trust company or holding company of a trust company to form or convert to a limited liability company (LLC).
- Requires a trust company or holding company of a trust company to obtain the approval of the Director of the Department of Financial Institutions to organize as a LLC or convert to a LLC.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 12 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Blake, Condotta, Hurst, Parker, Pedersen, Rivers, Ryu and Stanford.

Staff: Alison Hellberg (786-7152).

Background:

A trust is a form of ownership of property that separates responsibility/control of the property from the benefits of ownership. Washington law defines a trust company as a corporation organized under the laws of the state engaged in trust business. In general terms, Washington

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law defines "trust business" as executing trusts of every description not inconsistent with the law. Trust companies also have powers and privileges conferred on banks. The Department of Financial Institutions (Department) regulates trust companies.

A limited liability company (LLC) is formed by one or more individuals or entities through a special written agreement. The agreement details the organization of the LLC including provisions for management, assignability of interests, and distribution of profits or losses.

In 2006 legislation was enacted that allows a bank, a savings bank, the holding company of a bank, or the holding company of a savings bank to form or convert to a LLC. The bank, savings bank, holding company of a bank, or holding company of a savings bank is required to obtain the approval of the Director of the Department (Director) to organize as a LLC or convert to a LLC.

Formation as a LLC or conversion to a LLC must be approved by the Director. The request is considered approved unless the Director disapproves within 90 days. To approve a request, the Director must find that the bank or holding company:

- will operate in a safe and sound manner;
- is perpetual in duration;
- is not otherwise subject to automatic termination, dissolution, or suspension upon the happening of some event;
- does not hold an owner liable for the debts, liabilities, and obligations of the bank or holding company in excess of the amount of the owner's investment;
- does not require the consent of any other owner of the bank or holding company in order to transfer an ownership interest;
- is able to comply with all applicable legal and regulatory requirements; and
- is able to obtain new investment funding if needed to maintain adequate capital.

A bank or holding company organized as a LLC under state law has all the rights, privileges, powers, duties, and obligations of a LLC, except that the LLC must comply with federal law or regulation respecting the organization of a federally insured depository institution as a LLC. In addition, it may not permit automatic dissolution or suspension of the LLC.

A member's interest in the bank or holding company may be transferred as if it were a share of stock in a corporation. If a member's interest in the bank or holding company is transferred, the person who receives the interest obtains the entire rights associated with the interest in the bank or holding company. All voting members are liable and responsible as fiduciaries of the LLC to the same extent that directors of a bank or holding company organized as a corporation are liable or responsible to the Department and applicable federal banking regulators.

If death, incapacity, or disqualification results in a complete dissociation of all members of the LLC, the LLC is deemed to remain in existence for the purpose of the Department or a federal agency exercising the powers and authorities of a receiver.

Summary of Bill:

A trust company or holding company of a trust company is added to the entities that may form or convert to a LLC. Trust companies must obtain the approval of the Director to organize as a LLC and are subject to the same requirements related to organizing as a LLC as banks and bank holding companies.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is a technical correction to the trust statutes. It allows trust companies to operate in the same way as banks are able to operate. The Department is comfortable with this bill from a regulatory perspective.

This is an anomaly in the law that was brought to the attention to the Department. When the law changed to allow banks to form as LLCs, trust companies were not at the table. There are more LLCs being formed in Washington today than corporations. The same is true around the country. Financial centers such as Delaware and South Dakota allow their trust companies to form as LLCs. The principal difference is in federal taxation; there is no difference in liability or state business and occupation tax. The flexibility in organization is important. This is not about avoiding liability.

(Opposed) None.

Persons Testifying: Catherine Mele Hetter, Department of Financial Institutions; and Karl Ege, Perkins Cole LLP.

Persons Signed In To Testify But Not Testifying: None.