

Regular Session, 2010

SENATE BILL NO. 484

BY SENATOR DUPLESSIS

BANKS/BANKING. Provides relative to payment of dividends or stock by state banks.
(8/15/10)

1 AN ACT

2 To amend and reenact R.S. 6:263, relative to capital, surplus, and dividends of state banks;
3 to provide relative to state bank dividends and stock purchased or redeemed; to
4 require capital surplus; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 6:263 is hereby amended and reenacted to read as follows:

7 §263. ~~Cash dividends~~ **Dividends**; stock ~~repurchase~~ **purchased** or ~~redemption~~
8 **redeemed**; capital surplus required

9 A. The board of directors of a state bank may not declare or pay any
10 **dividends in cash dividends or property** for a period of two years from the issuance
11 of its certificate of authority or ~~for such shorter period~~ as the commissioner may
12 prescribe. Thereafter, the board of directors of ~~any a~~ a state bank may ~~quarterly,~~
13 ~~semiannually, or annually~~ declare **or pay cash or property** dividends on **shares of**
14 its **capital** stock by complying with the provisions of this Section and the bank's
15 articles of incorporation and bylaws.

16 B. ~~No~~ **A state bank shall not declare or pay cash or property** dividends
17 ~~may be declared or paid, or purchase or redeem shares of its capital stock~~ unless

1 the bank has unimpaired surplus ~~equal to~~ **that equals or exceeds** fifty percent of the
 2 outstanding capital stock of the bank. The bank's unimpaired surplus shall not be
 3 reduced below fifty percent ~~by~~ **as a result of** the payment of any **combination of**
 4 cash ~~dividend~~ **or property dividends, or the purchase or redemption of any**
 5 **shares of its capital stock.**

6 C. A state bank ~~may purchase or redeem its own stock if after such purchase~~
 7 ~~or redemption the bank is in compliance with applicable statutory and regulatory~~
 8 ~~capital requirements, and its remaining unimpaired surplus equals or exceeds fifty~~
 9 ~~percent of the outstanding capital stock of the state bank remaining after such~~
 10 ~~purchase or redemption, provided that:~~

11 (1) Prior approval of the commissioner shall be required if the total of all
 12 **year-to-date** cash **or property** dividends declared and paid by the state bank and
 13 amounts used ~~to redeem or repurchase~~ **by** the state bank's stock ~~during any one year~~
 14 **bank to redeem or purchase shares of its capital stock** would exceed the total of
 15 **the bank's year-to-date** net profits ~~of that year~~ **income** combined with ~~the~~ **its** net
 16 profits **income** from the immediately preceding year. ~~For the purposes of this~~
 17 ~~Section, "net profits" is defined as the remainder of all earnings from current~~
 18 ~~operations and other assets, after deducting from the total thereof all current~~
 19 ~~operating expenses, paid and accrued cash dividends on preferred stock, if any, all~~
 20 ~~federal and state taxes, cash dividends on common stock paid or accrued, and~~ **all of**
 21 **the following:**

22 (a) Amounts paid or accrued ~~to redeem or repurchase stock~~ **for the payments**
 23 **of cash dividends.**

24 (b) **The value of all property paid in dividends.**

25 (c) **Amounts paid or accrued to redeem or purchase shares of the bank's**
 26 **capital stock** over the calculation period.

27 (2) Negative net profits **income** shall not be rounded to zero in the
 28 calculation.

29 (2) ~~D.~~ **D.** A state bank shall not purchase or redeem **shares of its capital** stock

1 when its combined capital stock and unimpaired surplus is **accounts are** less than,
 2 or such purchase or redemption would reduce its combined capital stock and
 3 unimpaired surplus **accounts** below, the aggregate amount payable on liquidation
 4 upon any issued shares which have a preferential right to participate in the assets in
 5 **the** event of liquidation and that remain after the purchase of **or** redemption **and**
 6 **cancellation** of any shares in connection therewith.

7 ~~(3) Stock which has been redeemed or repurchased must be accounted for~~
 8 ~~under the par method of accounting.~~

9 ~~(4) Stock purchased or redeemed is~~ **E. Shares of a state bank's capital stock**
 10 **acquired pursuant to R.S. 6:416(B) shall be** canceled and thereby restored to the
 11 status of authorized and unissued shares, ~~unless the articles provide otherwise, except~~
 12 ~~that stock of the state bank acquired pursuant to R.S. 6:416(B) shall be canceled~~
 13 upon the expiration of the period permitted under that Section unless prior to that
 14 date the stock had been disposed of by the state bank.

15 ~~(5) The redemption or repurchase of a state bank's own stock or the stock of~~
 16 ~~its parent company may not be effected for the sole purpose of speculation or to~~
 17 ~~evade any applicable requirements of federal or state law. Such acquisitions must~~
 18 ~~comply with all applicable federal and state securities laws.~~

19 **F. Shares of a state bank's capital stock purchased or redeemed by the**
 20 **bank shall be deemed cancelled and thereby restored to the status of authorized**
 21 **and unissued shares unless the bank's articles, bylaws, or a resolution of the**
 22 **board of directors provides that such shares may be held as treasury stock**
 23 **following the purchase or redemption thereof.**

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Alan Miller.

DIGEST

Present law prohibits the board of directors of a state bank from declaring or paying any cash dividends for a period of two years from the issuance of its certificate of authority or for such shorter period as the commissioner of financial institutions may prescribe. Thereafter, the board of directors of any state bank may quarterly, semiannually, or annually declare dividends on its stock by complying with the provisions of present law and the bank's articles of incorporation and bylaws.

Proposed law prohibits the board of directors of a state bank from declaring or paying any dividends in cash or property for a period of two years from the issuance of its certificate of authority or as the commissioner may prescribe. Thereafter, the board of directors of a state bank may declare or pay cash or property dividends on shares of its capital stock by complying with the provisions of present law, and proposed law, and the bank's articles of incorporation and bylaws.

Present law provides that no cash dividends may be declared or paid unless the bank has unimpaired surplus equal to 50% of the outstanding capital stock of the bank. The bank's unimpaired surplus shall not be reduced below 50% by the payment of any cash dividend.

Proposed law prohibits a state bank from declaring or paying cash or property dividends, or purchasing or redeeming shares of its capital stock unless the bank has an unimpaired surplus that equals or exceeds 50% of the outstanding capital stock of the bank. Proposed law further prohibits the bank's unimpaired surplus from being reduced below 50% as a result of the payment of any combination of cash or property dividends, or the purchase or redemption of any shares of its capital stock.

Present law authorizes a state bank to purchase or redeem its own stock if after such purchase or redemption the bank is in compliance with applicable statutory and regulatory capital requirements, and its remaining unimpaired surplus equals or exceeds 50% of the outstanding capital stock of the state bank remaining after such purchase or redemption, provided that:

1. Prior approval of the commissioner shall be required if the total of all cash dividends declared and paid by the state bank and amounts used to redeem or repurchase the state bank's stock during any one year would exceed the total of its net profits of that year combined with the net profits from the immediately preceding year. For the purposes of present law, "net profits" is defined as the remainder of all earnings from current operations and other assets, after deducting from the total thereof all current operating expenses, paid and accrued cash dividends on preferred stock, if any, all federal and state taxes, cash dividends on common stock paid or accrued, and amounts paid or accrued to redeem or repurchase stock over the calculation period. Negative net profits shall not be rounded to zero in the calculation.
2. A state bank shall not purchase or redeem its stock when its combined capital stock and unimpaired surplus is less than, or such purchase or redemption would reduce its combined capital stock and unimpaired surplus below, the aggregate amount payable on liquidation upon any issued shares which have a preferential right to participate in the assets in event of liquidation and that remain after the purchase of redemption and cancellation of any shares in connection therewith.
3. Stock which has been redeemed or repurchased must be accounted for under the par method of accounting.
4. Stock purchased or redeemed is canceled and thereby restored to the status of authorized and unissued shares, unless the articles provide otherwise, except that stock of the state bank acquired pursuant to R.S. 6:416(B) shall be canceled upon the expiration of the period permitted under that Section unless prior to that date the stock had been disposed of by the state bank.
5. The redemption or repurchase of a state bank's own stock or the stock of its parent company may not be effected for the sole purpose of speculation or to evade any applicable requirements of federal or state law. Such acquisitions must comply with all applicable federal and state securities laws.

Proposed law requires prior approval of the commissioner if the total of all year-to-date cash or property dividends declared and paid by the state bank, and amounts used by the state

bank to redeem or purchase shares of its capital stock exceeds the total of the bank's year-to-date net income combined with its net income from the immediate preceding year, after deducting all of the following:

1. Amounts paid or accrued for the payments of cash dividends.
2. The value of all property paid in dividends.
3. Amounts paid or accrued to redeem or purchase shares of the bank's capital stock over the calculation period.

Proposed law prohibits negative net income from being rounded to zero in the calculation.

Proposed law prohibits a state bank from purchasing or redeeming shares of its capital stock when its combined capital stock and unimpaired surplus accounts are less than, or such purchase or redemption would reduce its combined capital stock and unimpaired surplus accounts below the aggregate amount payable on liquidation upon any issued shares which have a preferential right to participate in the assets in the event of liquidation and that remain after the purchase or redemption of any shares.

Proposed law requires that shares of a bank's capital stock acquired pursuant to present law be cancelled and restored to the status of authorized and unissued shares upon the expiration of the period permitted under present law unless prior to that date the stock has been disposed of by the bank.

Proposed law requires that shares of a state bank's capital stock purchased or redeemed by the bank be deemed cancelled and thereby restored to the status of authorized and unissued shares unless the bank's articles, bylaws, or a resolution of the board of directors provides that such shares may be held as treasury stock following the purchase or redemption thereof.

Effective August 15, 2010.

(Amends R.S. 6:263)