96TH GENERAL ASSEMBLY
State of Illinois
2009 and 2010
HB5476


SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 5/3-1 from Ch. 15, par. 303-1
735 ILCS 30/15-5-46 new

Creates the Community Bank of Illinois Act. Provides that the Department of Financial and Professional Regulation shall operate the Community Bank of Illinois. Specifies the authority of the advisory board of directors to the Bank. Provides that the Secretary is to employ a president and employees. Contains provisions concerning the removal and discharge of appointees. Provides that State funds must be deposited in the Bank. Contains provisions concerning the nonliability of officers and sureties after deposit. Specifies the powers of the Bank. Contains provisions concerning the guaranty of deposits and the Bank's role as a clearinghouse, the authorization of loans the General Revenue Fund, bank loans to farmers, limitations on loans by the Bank, the name in which business is conducted and titles taken, civil actions, surety on appeal, audits, electronic fund transfer systems, confidentiality of bank records, the sale and leasing of acquired agricultural real estate, and the Illinois higher education savings plan. Provides that the Bank is the custodian of securities. Amends the Illinois State Auditing Act to require that the Auditor General must contract with an independent certified public accounting firm for an annual audit of the Community Bank of Illinois as provided in the Community Bank of Illinois Act. Amends the Eminent Domain Act to allow the Bank to acquire property by eminent domain.

LRB096 17956 MJR 33325 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR
AN ACT concerning financial regulation.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Community Bank of Illinois Act.

Section 5. Purpose. For the purpose of encouraging and promoting agriculture, commerce, and industry, the State shall engage in the business of banking, and for that purpose shall maintain a system of banking owned, controlled, and operated by it, under the name of the Community Bank of Illinois.

Section 10. Definitions: As used in this Act:

"Bank" means the Community Bank of Illinois.

"Department" means the Department of Financial and Professional Regulation.

"Secretary" means the Secretary of Financial and Professional Regulation.

Section 15. Department to operate Bank; business of Bank. The Department shall operate, manage, and control the Community Bank of Illinois, locate and maintain its places of business, of which the principal place must be within the State, and make and enforce orders, rules, regulations, and bylaws for the
transaction of its business. The business and financial transactions of the Bank, in addition to other matters specified in this Act, may include anything that any bank or bank holding company lawfully may do, except as it is restricted by the provisions of this Act. This Section may not be held in any way to limit or qualify either the powers of the Department granted by or the functions of the Bank as defined in this Act. The powers of the Department and the functions of the Bank must be implemented through actions taken and policies adopted by the Department of Financial and Professional Regulation.

Section 20. Declaration and finding of public purpose; Community Bank of Illinois advisory board of directors. To enlist the help of private enterprise and to encourage more active use of the purposes of this Act, the Governor shall appoint an advisory board of directors to the Community Bank of Illinois Act consisting of 7 persons, at least 2 of whom must be officers of banks, the majority of the stock of which is owned by Illinois residents, and at least one of whom must be an officer of a State-chartered or federally chartered financial institution. The Governor shall appoint a chairman, vice-chairman, and secretary from the advisory board of directors. The term of a director is 4 years. The Department shall define the duties of the advisory board of directors.
Section 25. Authority of the advisory board of directors to the Community Bank of Illinois. The advisory board of directors to the Community Bank of Illinois shall do all of the following:

(1) Meet regularly with the management of the Community Bank of Illinois to review the Bank's operations to determine whether recommendations should be made by the board to the Department relating to improved management performance, better customer service, and overall improvement in internal methods, procedures, and operating policies of the Bank.

(2) Make recommendations to the Department relating to the establishment of additional objectives for the operation of the Community Bank of Illinois.

(3) Make recommendations to the Department concerning the appointment of officers of the Community Bank of Illinois.

(4) Meet regularly with the Secretary to present any recommendations concerning the Community Bank of Illinois.

(5) In addition to the foregoing and pursuant to authorization from the Secretary, act on behalf of the Bank with respect to the powers and functions of the Bank.

Section 30. Secretary to employ president and employees; compensation, operation, and maintenance expenditures limited to appropriations, revenue, or capital. The Secretary shall
appoint a president, and may appoint and employ subordinate officers, employees, and agents as he or she may judge expedient and in the interests of the State, and shall define the duties, designate the titles, and fix the compensation of all such persons. The Secretary may designate the president or other officers or employees as its agent in respect to the functions of the Bank, subject to its supervision, limitation, and control. The total compensation of such appointees and employees, together with other expenditures for the operation and maintenance of the Bank, shall remain within the appropriation, revenues, or capital lawfully available for those purposes.

Section 35. Removal and discharge of appointees. The Secretary may remove and discharge any and all persons appointed in the exercise of the powers granted by this Act, whether by the Secretary or by the president of the Bank. All appointments and removals contemplated by this Act must be made as the Secretary deems fit to promote the efficiency of the public service.

Section 40. State funds must be deposited in the Community Bank of Illinois; income of the Bank. All State funds and funds of all State penal, educational, and industrial institutions must be deposited in the Community Bank of Illinois by the persons having control of those funds or must be deposited in
accordance with constitutional and statutory provisions. All income earned by the Bank for its own account on State moneys that are deposited in or invested with the Bank to the credit of the State must be credited to and become a part of the revenues and income of the Bank.

Section 45. Nonliability of officers and sureties after deposit. Whenever any public funds are deposited in the Community Bank of Illinois, the official having control of the public funds and the sureties on the bond of every such official shall be exempt from all liability by reason of loss of any such funds while so deposited.

Section 50. Guaranty of deposits; exemption from all taxation. All deposits in the Community Bank of Illinois are guaranteed by the State. Those deposits are exempt from State, county, and municipal taxes of any and all kinds.

Section 55. Bank as a clearinghouse. For banks that make the Community Bank of Illinois a reserve depositary, it may perform the functions and render the services of a clearinghouse, including all facilities for providing domestic and foreign exchange, and may rediscount paper, on those terms as the Department shall provide.

Section 60. Powers. The Community Bank of Illinois may:
(1) make, purchase, guarantee, or hold loans:

(A) to State-chartered or federally chartered lending agencies or institutions or any other financial institutions;

(B) to holders of Bank certificates of deposit and savings accounts up to 90% of the value of the certificates and savings accounts offered as security;

(C) to actual farmers who are residents of this State, if the loans are secured by recorded mortgages giving the Bank a first lien on real estate in Illinois in amounts not to exceed 80% of the value of the security;

(D) that are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities;

(E) that are eligible to be guaranteed under education. Loans made pursuant to this paragraph (E) may provide for interest that remains unpaid at the end of any period specified in the loan to be added to the principal amount of the debt and thereafter accumulate interest;

(F) to individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located in the State;

(G) under U.S. Public Law No. 99-198 as amended through December 31, 1996, to nonprofit corporations
for the purpose of relending loan funds to rural businesses;

(H) under Title 7, Code of Federal Regulations, part 1948, subpart C; part 1951, subparts F and R; and part 1955, subparts A, B, and C, as amended through December 31, 1996, to finance businesses and community development projects in rural areas;

(I) obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the Bank;

(J) to instrumentalities of this State;

(K) to an investment company created for completing a trust preferred securities transaction for the benefit of a financial institution located in this State; and

(L) as otherwise provided by this Act or other statutes;

(2) if the Bank is participating in the loan and the Bank deems it is in the best interests of the Bank to do so, purchase the remaining portion of the loan from a participating lender that is closed by regulatory action or from the receiver of the participating lender's assets;

(3) make agricultural real estate loans in order to participate in the agricultural mortgage secondary market program established pursuant to the federal Agricultural Credit Act amended through December 31, 1996;
(4) purchase participation interests in loans made or held by banks, bank holding companies, State-chartered or federally chartered lending agencies or institutions, any other financial institutions, or any other entity that provides financial services and meets underwriting standards that are generally accepted by State or federal financial regulatory agencies;

(5) invest its funds:

   (A) in conformity with policies of the Department;

   (B) in a public venture capital corporation organized and doing business in this State through the purchase of shares of stock; and

   (C) in Illinois alternative and venture capital investments and early-stage capital funds;

(6) buy and sell federal funds;

(7) lease, assign, sell, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, title to which has been acquired in any manner;

(8) acquire real or personal property or property rights by purchase, lease, or, subject to applicable law, the exercise of the right of eminent domain and may construct, remodel, and repair buildings;

(9) receive deposits from any source and deposit its funds in any bank or other financial institution.

(10) perform all acts and do all things necessary, convenient, advisable, or desirable to carry out the powers
expressly granted or necessarily implied in this Act through or by means of its president, officers, agents, or employees or by contracts with any person, firm, or corporation; and

(11) purchase mortgage loans on residential real property originated by financial institutions.

Section 65. Loans to General Revenue Fund authorized; continuing appropriation. The State Treasurer and the Director of the Governor's Office of Management and Budget may, when the balance in the General Revenue Fund is insufficient to meet legislative appropriations, execute and issue on behalf of the State evidences of indebtedness on the State General Revenue Fund that at no time may exceed the total principal amount of $10 million with principal maturity of not more than 12 months. As a condition precedent to the issuance and sale of the evidences of indebtedness, the State Treasurer must request and obtain a statement from the Director of the Governor's Office of Management and Budget and the Director of Revenue certifying that anticipated General Revenue Fund revenues for the balance of the fiscal year in which the evidences of indebtedness are to be issued will exceed the principal amount and interest on the evidences of indebtedness to be issued. The Department may in turn direct the Community Bank of Illinois to make loans to the General Revenue Fund by the purchase of the evidences of indebtedness at those rates of interest as the industrial
commission may prescribe. After evidences of indebtedness have been issued and sold pursuant to this Section, the Treasurer shall establish a fund for the repayment of the principal upon maturity and the interest when due. The Treasurer shall place all available General Revenue Fund revenues into this fund until the fund contains a sufficient balance for the repayment of the principal at maturity and interest when due, which moneys are hereby appropriated for this purpose.

Section 70. Bank loans to beginning farmers; revolving loan fund; requirements.

(a) A revolving loan fund must be maintained in the Community Bank of Illinois for the purpose of making or participating in loans to Illinois beginning farmers for the purchase of agricultural real estate, equipment, and livestock. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund of principal and interest on loans made from the fund are appropriated for the purpose of providing loans and to supplement the interest rate on loans to beginning farmers made by the Community Bank of Illinois Act under applicable law and in accordance with this Section.

(b) The revolving loan fund and loans made from the fund must be administered and supervised by the Bank. The Bank may deduct a service fee for administering the fund from interest payments received on loans. An application for a loan from the
fund must be made to the Bank and, upon approval, a loan must be made from the fund in accordance with this Section.

(c) A loan made from the fund may not exceed 80% of the appraised value of the agricultural collateral, with the actual percentage to be determined by the Bank. The Bank may do all things and acts and may establish additional terms and conditions necessary to make a loan under this Section. A loan made from the fund must have a first security interest.

(d) A loan made from the fund must have the interest rate fixed at 1% below the Bank's then current base rate for the first 5 years with a maximum rate of 6% per year and variable at 1% below the Bank's then current base rate for the second 5 years. During the second 5 years, the variable rate must be adjusted annually on the anniversary date. The rate during the remaining term of the loan floats at the Bank's base rate as in effect from time to time.

(e) The maximum term of a real estate loan is 25 years. The maximum term of a farm equipment or livestock loan is 7 years.

(f) The Department shall contract with a certified public accounting firm to audit the fund as necessary. The cost of the audit, and any other actual costs incurred by the Bank on behalf of the fund, must be paid for by the fund.

(g) The Bank shall adopt rules necessary to implement this Section.

Section 75. Name in which business conducted and titles
taken; execution of instruments. All business of the Bank must be conducted under the name of "The Community Bank of Illinois". Title to property pertaining to the operation of the Bank must be obtained and conveyed in the name of "The State of Illinois, doing business as the Community Bank of Illinois Act". Instruments must be executed in the name of the State. Within the scope of authority granted by the Department, the president may execute instruments on behalf of the Bank, including any instrument granting, conveying, or otherwise affecting any interest in or lien upon real or personal property. Other officers or employees of, and legal counsel to, the Bank may execute instruments on behalf of the Bank when authorized by the Department.

Section 80. Civil actions. Civil actions may be brought against the State on account of claims for relief claimed to have arisen out of transactions connected with the operation of the Community Bank of Illinois upon condition that the provisions of this Section are complied with. In such actions, the State must be designated as "The State of Illinois, doing business as The Community Bank of Illinois". The actions may be brought in the same manner and are subject to the same provisions of law as other civil actions.

Section 85. Surety on appeal, attachment, claim and delivery, and other cases in which undertaking required.
Provisions of law requiring that a surety or sureties be given on undertakings in actions on appeal, attachment, claim and delivery, and other cases in which an undertaking is required, are not applicable to the State of Illinois, doing business as The Community Bank of Illinois, as the party seeking relief. It is required to give its own undertaking without surety and to reimburse the adverse party when required by law.

Section 90. Examinations and audit reports. The Auditor General shall contract with an independent certified public accounting firm for an annual audit of the Community Bank of Illinois in accordance with generally accepted government auditing standards. The Auditor General shall audit annually or contract for an annual audit of the separate programs and funds administered by the Community Bank of Illinois. On request of the Auditor General, the Department shall assist the Auditor General in the auditing firm selection process, but the selection of the auditing firm is the Auditor General's responsibility. The auditor selected shall prepare an audit report that includes financial statements presented in accordance with the audit and accounting guide for banks and savings institutions issued by the American Institute of Certified Public Accountants. The auditor also shall prepare audited financial statements for inclusion in the comprehensive annual financial report for the State. The State auditor may conduct performance audits of the Community Bank of...
Illinois Act, including the separate programs and funds administered by the Bank. The Auditor General shall report the results of the audit to the Department and to the General Assembly. The Community Bank of Illinois or its separate programs and funds shall pay the costs of the audit. The Department shall examine the Community Bank of Illinois at least once each 24 months and conduct any investigation of the Bank that may be necessary. The Secretary shall report the examination results, and the results of any necessary investigation, to the Department as soon as practicable and to the legislative assembly. The Department shall charge a fee for any examination or investigation at an hourly rate to be set by the Secretary, sufficient to cover all reasonable expenses of the Department associated with the examinations and investigations provided for by this Section.

Section 95. Electronic fund transfer systems. The Community Bank of Illinois may establish, by rule adopted by the Department, a system to provide fund transfer services to its customers and to the customers of State-chartered and federally chartered banks located within the State of Illinois, and to other financial institutions otherwise authorized to utilize the services of electronic fund transfer systems. The Bank may acquire such equipment as is necessary to establish electronic fund transfer systems and may impose reasonable charges for services rendered to other banks under this Act as
may be established by the Department.

Section 100. Confidentiality of Bank records. The following records of the Community Bank of Illinois are confidential:

(1) Commercial or financial information of a customer, whether obtained directly or indirectly, except for routine credit inquiries or unless required by due legal process. As used in this item (1), "customer" means any person who has transacted or is transacting business with, or has used or is using the services of, the Community Bank of Illinois, or for whom the Community Bank of Illinois has acted as a fiduciary with respect to trust property.

(2) Internal or inter-agency memorandums or letters that would not be available by law to a party other than in litigation with the Bank.

(3) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a State or federal agency responsible for the regulation or supervision of any Bank activity.

(4) Information obtained from the Department that would not be available from that agency under applicable law.

(5) The report by a Bank officer or member of the Bank's advisory board of directors concerning personal
Section 105. Community Bank of Illinois; custodian of securities. Notwithstanding any other provision of law to the contrary, the Community Bank of Illinois shall replace the Treasurer as the custodian of all securities that are required to be deposited with the State except that the Treasurer is the custodian of all securities resulting from the investment of funds by the Treasurer, or except as otherwise required by this Section and by law.

Section 110. Sale and leasing of acquired agricultural real estate. The sale and leasing of agricultural real estate with an appraised value of $10,000 or more acquired by the Community Bank of Illinois through foreclosure or deed in lieu of foreclosure must be done in accordance with law and policies adopted by the Department. The sale and leasing of agricultural real estate with an appraised value of less than $10,000, acquired by the Community Bank of Illinois through foreclosure or deed in lieu of foreclosure, may be done in a manner as the Bank determines is appropriate given the circumstances. In the case of a lease by the party holding the right of redemption, that party has the right to purchase at any time.

Section 115. Illinois higher education savings plan; administration; rules; continuing appropriation. The
Community Bank of Illinois shall adopt rules to administer, manage, promote, and market a Illinois higher education savings plan. The Bank shall ensure that the Illinois higher education savings plan is maintained in compliance with Internal Revenue Service standards for qualified State tuition programs. The Bank, as trustee of the Illinois higher education savings plan, may impose an annual administrative fee to recover expenses incurred in connection with operation of the plan or for other programs deemed to promote attendance at an institution of higher education. Administrative fees received by the Bank are appropriated on a continuing basis to be used as provided in this Section. Contributions made during the taxable year to a higher education savings plan administered by the Bank, pursuant to the provisions of the plan, are eligible for an income tax deduction as provided by law. Information related to contributions is confidential except as is needed by the Director of Revenue for determining compliance with the income tax deduction as provided by law.

Section 900. The Illinois State Auditing Act is amended by changing Section 3-1 as follows:

(30 ILCS 5/3-1) (from Ch. 15, par. 303-1)
Sec. 3-1. Jurisdiction of Auditor General. The Auditor General has jurisdiction over all State agencies to make post audits and investigations authorized by or under this Act or
the Constitution.

The Auditor General has jurisdiction over local government agencies and private agencies only:

(a) to make such post audits authorized by or under this Act as are necessary and incidental to a post audit of a State agency or of a program administered by a State agency involving public funds of the State, but this jurisdiction does not include any authority to review local governmental agencies in the obligation, receipt, expenditure or use of public funds of the State that are granted without limitation or condition imposed by law, other than the general limitation that such funds be used for public purposes;

(b) to make investigations authorized by or under this Act or the Constitution; and

(c) to make audits of the records of local government agencies to verify actual costs of state-mandated programs when directed to do so by the Legislative Audit Commission at the request of the State Board of Appeals under the State Mandates Act.

In addition to the foregoing, the Auditor General may conduct an audit of the Metropolitan Pier and Exposition Authority, the Regional Transportation Authority, the Suburban Bus Division, the Commuter Rail Division and the Chicago Transit Authority and any other subsidized carrier when authorized by the Legislative Audit Commission. Such audit may
be a financial, management or program audit, or any combination thereof.

The audit shall determine whether they are operating in accordance with all applicable laws and regulations. Subject to the limitations of this Act, the Legislative Audit Commission may by resolution specify additional determinations to be included in the scope of the audit.

In addition to the foregoing, the Auditor General must also conduct a financial audit of the Illinois Sports Facilities Authority's expenditures of public funds in connection with the reconstruction, renovation, remodeling, extension, or improvement of all or substantially all of any existing "facility", as that term is defined in the Illinois Sports Facilities Authority Act.

The Auditor General may also conduct an audit, when authorized by the Legislative Audit Commission, of any hospital which receives 10% or more of its gross revenues from payments from the State of Illinois, Department of Healthcare and Family Services (formerly Department of Public Aid), Medical Assistance Program.

The Auditor General is authorized to conduct financial and compliance audits of the Illinois Distance Learning Foundation and the Illinois Conservation Foundation.

As soon as practical after the effective date of this amendatory Act of 1995, the Auditor General shall conduct a compliance and management audit of the City of Chicago and any
other entity with regard to the operation of Chicago O'Hare International Airport, Chicago Midway Airport and Merrill C. Meigs Field. The audit shall include, but not be limited to, an examination of revenues, expenses, and transfers of funds; purchasing and contracting policies and practices; staffing levels; and hiring practices and procedures. When completed, the audit required by this paragraph shall be distributed in accordance with Section 3-14.

The Auditor General shall conduct a financial and compliance and program audit of distributions from the Municipal Economic Development Fund during the immediately preceding calendar year pursuant to Section 8-403.1 of the Public Utilities Act at no cost to the city, village, or incorporated town that received the distributions.

The Auditor General must conduct an audit of the Health Facilities and Services Review Board pursuant to Section 19.5 of the Illinois Health Facilities Planning Act.

The Auditor General of the State of Illinois shall annually conduct or cause to be conducted a financial and compliance audit of the books and records of any county water commission organized pursuant to the Water Commission Act of 1985 and shall file a copy of the report of that audit with the Governor and the Legislative Audit Commission. The filed audit shall be open to the public for inspection. The cost of the audit shall be charged to the county water commission in accordance with Section 6z-27 of the State Finance Act. The county water
commission shall make available to the Auditor General its books and records and any other documentation, whether in the possession of its trustees or other parties, necessary to conduct the audit required. These audit requirements apply only through July 1, 2007.

The Auditor General must conduct audits of the Rend Lake Conservancy District as provided in Section 25.5 of the River Conservancy Districts Act.

The Auditor General must conduct financial audits of the Southeastern Illinois Economic Development Authority as provided in Section 70 of the Southeastern Illinois Economic Development Authority Act.

The Auditor General must contract with an independent certified public accounting firm for an annual audit of the Community Bank of Illinois as provided in Section 90 of the Community Bank of Illinois Act.

(Source: P.A. 95-331, eff. 8-21-07; 96-31, eff. 6-30-09.)

Section 905. The Eminent Domain Act is amended by adding Section 15-5-46 as follows:

(735 ILCS 30/15-5-46 new)

Sec. 15-5-46. Eminent domain powers in new Acts. The following provisions of law may include express grants of the power to acquire property by condemnation or eminent domain:
Community Bank of Illinois Act; Community Bank of Illinois; for purposes of the Act.