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## SENATE BILL NO. 1353

Offered January 14, 2009

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A *BILL to amend and reenact §§ 58.1-1205 and 58.1-1206 of the Code of Virginia, relating to deductions for purposes of computing net capital under the bank franchise tax.*

Patron—Wagner

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:****1. That §§ 58.1-1205 and 58.1-1206 of the Code of Virginia are amended and reenacted as follows:****§ 58.1-1205. Computation of net capital.**

The net capital of any bank shall be ascertained by adding together its capital, surplus, undivided profits, and one half of any reserve for loan losses net of applicable deferred tax to obtain gross capital and deducting therefrom (i) the assessed value of real estate as provided in § 58.1-1206, (ii) the book value of tangible personal property under § 58.1-1206, (iii) the pro rata share of government obligations as set forth in § 58.1-1206, (iv) the capital accounts of any bank subsidiaries under § 58.1-1206, (v) the amount of any reserve for marketable securities valuation which is included in capital, surplus and undivided profits as defined hereinabove to the extent that such reserve reflects the difference between the book value and the market value of such marketable securities on December 31 next preceding the date for filing the bank's return under § 58.1-1207, ~~and~~ (vi) the value of goodwill described under subdivision A 5 of § 58.1-1206, ~~and~~ (vii) *capital as recorded on the books of the bank that is stock warrants or other equity securities described under subdivision A 6 of § 58.1-1206.*

**§ 58.1-1206. Deductions from gross capital.**

A. There shall be deducted from the gross capital otherwise ascertainable under § 58.1-1205:

1. The assessed value of real estate if otherwise taxed in this Commonwealth which is owned by such bank, or is used or occupied by such bank, if held in the name of a majority-owned subsidiary of the bank or of a bank holding company which owns a majority of the capital stock of such bank or of any wholly-owned subsidiary of the bank holding company which owns the majority of the capital stock of such bank and the assessed value, up to the amount of the unencumbered equity, of real estate in the nature of improvements which are owned by the bank, or used or occupied by the bank and held by a majority-owned subsidiary or a bank holding company or a wholly-owned subsidiary of a bank holding company, even if assessed in the name of some other person because of the ownership of the underlying land by such person. Real estate used or occupied by a subsidiary or originally conveyed as collateral for loans made by a subsidiary of the bank and reacquired upon foreclosure of mortgage loans will be deemed to be used or occupied by the bank. The deduction for assessed value of real estate shall be the most recent assessment made prior to January 1 of the current bank franchise tax year for real estate owned by the bank or affiliate on January 1 of the current year.

2. The book value of tangible personal property which shall be held for lease and is otherwise taxed which is owned by such bank or in the name of a majority-owned subsidiary of the bank. If the bank does not own all the stock of such subsidiary, it shall be entitled to deduct only such portion of the assessed value of the real estate and the value of such tangible personal property as the common stock it owns in such subsidiary bears to the whole issue of common stock of such corporation.

3. An amount which shall equal the same percentage of the gross capital account, defined as its capital, surplus and undivided profits as set forth in § 58.1-1205 at December 31 next preceding as the obligations of the United States bear to the total assets of the bank. Such percentage of U.S. obligations shall be determined as of the four most recent (or less in case of a new bank) Reports of Condition and the percentage obtained shall be averaged. For purposes of computing such percentage, total assets shall not include the goodwill described in subdivision 5 *or any capital as described in subdivision 6*. The obligations of the United States as used herein shall include all obligations of the United States exempt from taxation under 31 U.S.C. § 3124, of the United States Constitution or any other statute, or any instrumentality or agency of the United States which obligations shall be exempt from state or local taxation under the United States Constitution or any statute of the United States.

4. The amount of retained earnings and surplus of subsidiaries to the extent included in the gross capital of the bank. In addition, any portion of the amount added to federal taxable income pursuant to subdivision B 9 of § 58.1-402 by a corporation that is for interest expenses and costs paid to the bank for a loan or other obligation made by the bank to such corporation shall be deducted from the gross capital of the bank provided that (i) at the time of payment of such portion to the bank, the bank was a

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59 related member of the corporation, and (ii) such portion has not otherwise been deducted from gross  
60 capital. For purposes of this subdivision, the terms "interest expenses and costs" and "related member"  
61 mean the same as those terms are defined in § 58.1-302.

62 5. Any amount equal to 90 percent of goodwill created in connection with any acquisition or merger  
63 occurring on or after July 1, 2001.

64 6. *Capital as recorded on the books of the bank as of January 1 that is stock warrants or other*  
65 *equity securities (i) issued by the bank to the United States government in consideration of financial*  
66 *assistance received from the United States government pursuant to the Emergency Economic*  
67 *Stabilization Act of 2008 and (ii) that were not issued by the bank to the Secretary of the Treasury of*  
68 *the United States in consideration of the Secretary's purchase, or commitment to purchase, certain*  
69 *troubled assets of the bank pursuant to such Act.*

70 B. For purposes of this section, "goodwill" shall be determined using generally accepted accounting  
71 principles.

72 **2. That the provisions of this act shall apply to bank franchise taxes payable to the**  
73 **Commonwealth or its political subdivisions on or after January 1, 2009.**