DEPARTMENT OF TAXATION
2009 Fiscal Impact Statement

1. **Patron** Frank W. Wagner

2. **Bill Number** SB 1353
   House of Origin:
   X **Introduced**
   _____ **Substitute**
   _____ **Engrossed**

   Second House:
   _____ **In Committee**
   _____ **Substitute**
   _____ **Enrolled**

3. **Committee** Senate Finance

4. **Title** Bank Franchise Tax; Deduction from Gross Capital

5. **Summary/Purpose:**

This bill would create a deduction from the gross capital of banks and trust companies for the purposes of the bank franchise tax for capital recorded on the books of the bank, as of January 1, that consists of stock warrants or other equity securities.

Such warrants and securities would be required to be issued by the bank to the United States government in consideration of financial assistance received from the United States government pursuant to the Emergency Economic Stabilization Act of 2008. Such warrants and securities issued by the bank to the Secretary of the Treasury of the United States in consideration of the Secretary's purchase, or commitment to purchase, certain troubled assets of the bank would not qualify.

This bill would be effective for bank franchise taxes payable on or after January 1, 2009.

6. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

7. **Budget amendment necessary:** Yes. (See Line 8.)
   Page 1, Revenue Estimates

8. **Fiscal implications:**

Administrative Impact

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Revenue Impact

This bill would generate an unknown revenue loss in both state and local revenues received from the Bank Franchise Tax through changing the calculation of net capital. The first payments affected by this bill would be June 1, 2009, and would impact Fiscal Year 2009 revenues.

According to the U.S. Treasury, fourteen financial institutions headquartered in Virginia have received funds under the Troubled Assets Relief Program, the program authorized by the Emergency Economic Stabilization Act of 2008, as of January 13, 2009. These institutions received slightly more than $4.02 billion. At least an additional six national financial institutions doing business in Virginia have also received funds. Without detailed information from the affected institutions, it is impossible to ascertain how the funds will impact these institutions' calculation of net capital.

9. Specific agency or political subdivisions affected:

Department of Taxation
All Cities, Counties and Towns

10. Technical amendment necessary: No.

11. Other comments:

Current Law

The Virginia bank franchise tax is imposed at a rate of 1% of the net capital of banks and trust companies, except for new banks. New banks are subject to a prorated rate depending on the date of the first transaction. Cities, counties and towns are permitted to impose a local bank franchise tax not to exceed 80% of the state rate. Banks and trust companies are granted a credit against the state tax equal to the local tax imposed.

Banks and trust companies pay the bank franchise tax in lieu of the Virginia corporate income tax, local business, professional, and occupational license tax, and the merchants' capital tax.

The net capital of any bank is 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. The following are deducted from the gross capital amount to obtain the net capital amount:

- the assessed value of real estate owned by the bank;
- the book value of tangible personal property owned by the bank;
- the pro rata share of United States government obligations;
- the capital accounts of any bank subsidiaries;

- the amount of any reserve for marketable securities valuation to the extent the reserve reflects the difference between the bank value and the market value of the securities on December 31 next preceding the date for filing the bank's return; and
- the value of goodwill.

<u>Emergency Economic Stabilization Act of 2008</u>

On October 3, 2008, President Bush signed the Emergency Economic Stabilization Act of 2008. This legislation provided up to $700 billion to the Secretary of the Treasury to establish the Troubled Asset Relief Program ("TARP"). This program allows for the purchase of troubled assets from financial institutions. The Treasury Secretary will receive equity shares in exchange. These funds also have been used to inject capital into banks in exchange for equity.

<u>Proposal</u>

This bill would create a deduction from the gross capital of banks and trust companies for the purposes of the bank franchise tax for capital recorded on the books of the bank, as of January 1, that consists of stock warrants or other equity securities.

Such warrants and securities would be required to be issued by the bank to the United States government in consideration of financial assistance received from the United States government pursuant to the Emergency Economic Stabilization Act of 2008. Such warrants and securities issued by the bank to the Secretary of the Treasury of the United States in consideration of the Secretary's purchase, or commitment to purchase, certain troubled assets of the bank would not qualify.

Therefore, under the provisions of this bill, this deduction would not be applicable to capital consisting of equity shares that have been provided in exchange for the purchase of trouble assets by TARP. To the extent that a bank provides equity shares in exchange for an injection of capital, however, the bank would be able to claim this deduction.

This bill would be effective for bank franchise taxes payable on or after January 1, 2009.

cc : Secretary of Finance

Date: 1/24/2009 JKL
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