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SENATE BILL NO. 440

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 8, 2010)

(Patron Prior to Substitute—Senator Saslaw)

A BILL to amend the Code of Virginia by adding in Article 7 of Chapter 4.01 of Title 6.1 a section numbered 6.1-225.30:1, relating to credit unions; conversion to mutual savings institution.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 7 of Chapter 4.01 of Title 6.1 a section numbered 6.1-225.30:1, as follows:

§ 6.1-225.30:1. Conversion to a state mutual savings institution.

A. A state credit union is authorized to convert to a mutual savings institution organized under Chapter 3.01 (§ 6.1-194.1 et seq.) of this title.

B. As a condition to converting to a mutual savings institution, a credit union shall comply with the following requirements:

1. At least 60 days prior to a final vote by the board of directors to formally adopt a conversion proposal, the credit union shall send notice to the Commissioner and each member advising that the board is considering a possible conversion to a mutual savings institution. Such notice also shall be (i) published concurrently in a newspaper of general circulation in the credit union's service area; (ii) posted on the credit union's website; and (iii) posted in a conspicuous place in the lobby of each of the credit union's offices. The notice shall, at a minimum, contain the following information:

- a. A prominent legend in bold-face type that advises the members of a potential conversion;
- b. The electronic availability of information related to a potential conversion;
- c. A telephone number and e-mail address that members may use to request copies of the potential conversion information that is available by electronic means;
- d. The ability of members to submit written comments on the potential conversion; and
- e. A clear, concise, and impartial description of the potential conversion to be considered by the board.

2. The credit union shall post information related to a potential conversion on the credit union's principal Internet web site at least 60 days prior to a vote by the board of directors to adopt a proposal of conversion. The posted information shall, at a minimum, discuss:

- a. The business purposes that might be accomplished by a conversion;
- b. The differences between and similarities of a credit union and a mutual savings institution;
- c. An estimate of the anticipated conversion expenses;
- d. The methods by which a member may request a copy of the posted information;
- e. The method and timeline for members to submit written comments on the potential conversion;

and

f. The process that will be followed if the board formally adopts a conversion proposal.

3. The board shall provide members a reasonable opportunity to submit written comments relating to a potential conversion. The board may hold a special meeting to receive member input regarding the potential conversion. It is within the board's discretion to determine the type, number, duration, and location of any special meeting. Before taking a final vote on a conversion proposal, the board shall review and consider all written comments and any other member input received at any special meeting. The conversion resolution shall state that the board has reviewed and considered all such comments and input and has determined affirmatively that the conversion is in the best interests of the members.

4. Subsequent to the written comment period, the credit union shall adopt, by the affirmative vote of at least a majority of the members of its board of directors, a conversion proposal consistent with this section. The credit union shall notify the Commissioner of the board's approval of the proposal, and shall file an application in accordance with § 6.1-194.12 or § 6.1-194.114 and pay the accompanying fee in accordance with § 6.1-194.85 or § 6.1-194.149. In addition, the credit union shall send to the Commissioner as soon as reasonably practical (i) a budget of the anticipated conversion expenses including legal, postage and mailing, advertising, printing, consulting fees, examination and operating fees, and any overtime or other employee compensation to be paid exclusively as a result of the conversion; and (ii) any other information reasonably requested by the Commissioner.

5. At least 30 days prior to a vote by the members to formally adopt the conversion proposal, the credit union shall mail to each member a notice of a meeting of the members to consider the conversion proposal, advising the members of the board's adoption of the conversion proposal. The notice must include a prominent statement that the conversion will be decided by a vote of members eligible to vote on the proposal under the credit union's bylaws and that the affirmative votes of two-thirds of those

60 eligible members voting are required for approval unless the articles of incorporation require a greater
61 or lesser vote in which case the notice shall specify that percentage. However, in no case shall the
62 percentage vote be less than a majority of the members voting notwithstanding what is specified in the
63 articles of incorporation. The notice shall clearly inform the members that they may vote at the
64 members' meeting on the proposal or submit the written ballot included with the notice. Each eligible
65 member is entitled to one vote. With the notice, members shall be provided plain language disclosures
66 of material facts and information to be used as a basis for reaching an informed decision to vote on the
67 conversion, including but not limited to a summary of all information required by subdivision B 2. The
68 disclosures shall be submitted to the Commissioner. The Commissioner may suggest changes in the
69 disclosures prior to the documents being mailed to members.

70 6. A director, officer, committee member, agent, or senior management employee of the credit union,
71 and immediate family members of any such individuals, shall not, directly or indirectly, receive a fee,
72 commission, or other consideration, other than that person's usual salary or compensation, for aiding,
73 promoting, or assisting in a conversion under this section. A violation of this subdivision shall constitute
74 a prima facie violation of subsection A of § 13.1-870.

75 7. The corporate existence of a credit union converting under this section shall continue in its
76 successor. Each member shall be entitled to receive a share or deposit account or accounts in the
77 converted institution equal in amount to the value of accounts held in the former credit union subject to
78 any lien or right of offset held by the credit union.

79 8. The Commission shall approve the conversion if all of the conditions required by this section and
80 § 6.1-194.12 have been met, unless the Commission determines that, because of a concern over the
81 safety and soundness of the credit union, the conversion is not in the best interest of the credit union or
82 its members.

83 9. The eligible and voting members of the credit union must approve the conversion proposal by a
84 two-thirds affirmative vote of those voting, or such greater or lesser vote provided for under the articles
85 of incorporation, but in no event less than a majority of the members voting notwithstanding what the
86 articles of incorporation may specify. Such vote shall be by secret ballot and shall be conducted by an
87 independent entity, which may be such credit union's legal or accounting firm.

88 10. Following approval of the conversion by the members, the conversion shall become effective
89 when (i) the Commission shall have approved it, and (ii) any amendment of the articles of incorporation
90 of the credit union necessary to effect the conversion shall have become effective.

91 C. If any requirements for notice, meetings, voting or other requirements in this section are
92 inconsistent with the Virginia Nonstock Corporation Act (§ 13.1-800 et seq.), the provisions of this
93 section shall control.

94 **2. That the State Corporation Commission may promulgate additional notice requirements that**
95 **are not inconsistent with this act, and shall consider Part 708a of the National Credit Union**
96 **Administration Rules and Regulations for conversion of federally-insured credit unions to mutual**
97 **savings banks in determining whether to do so.**