

**PROPOSED CHANGES TO THE
NORTH CAROLINA BANKING LAWS – CHAPTER 53 OF THE GENERAL STATUTES
ARTICLE 4A ADDRESSES GOVERNANCE OF A BANK AND ARTICLE 5A ADDRESSES BANK POWERS.**

Current Section(s)	Summary	New Section	Summary	Explanation of Change
Article 4A. Governance of a Bank.				
No Corresponding Section	N/A	53-4-1	New 53-4-1. Banks – Form of Organization. This section provides that a bank shall be formed as a corporation under NC law and that the provisions of the NC Business Corporations Act shall apply except where they are inconsistent with the business of banking or the safety and soundness of a bank.	This new section ensures that the NC corporation laws apply generally to banking except where the banking law is more specific or differs for reasons of safety and soundness. This minimizes conflicts and unnecessary duplications between the statutes. In addition, it removes the incentive to form a bank holding company to obtain the benefit of a more modern corporation law.
53-91.3. Directors defined; appointment of advisory directors.	The current section simply provides for election of directors and appointment of advisory directors. Advisory board members are allowed to participate in loan approvals relating to their markets, if authorized by the bank's board.	53-4-2	New 53-4-2. Banks Controlled by Board of Directors. This section provides that: (i) a bank shall operate under authority of the board of directors; (ii) board membership shall not be less than five, unless approved by the Commissioner; (iii) the board shall meet at least quarterly (with executive committee meetings during months when the board does not meet and monthly meetings of the loan committee); (iv) the duties, authorities and liabilities of a director shall be those imposed under Chapter 55, the NC Business Corporations Act, unless a different standard is imposed by other state or federal law; and (v) that the board may appoint an advisory board for bank branches. The authority and liability of the advisory board is limited by the extent to which such board has been delegated the authority by the bank board or directors.	This new section provides more clearly that a bank is under the control of the board of directors which may not be less than five, unless approved by the Commissioner, and provides for the frequency of meetings. Director authority and liability are consistent with NC corporation law unless a different standard is required for bank directors. Advisory directors do not have liability for acts or omissions unless that director undertakes delegated authority as a bank director.
53-78. Appointment of executive and loan committees by directors. 53-83. Examining committee of directors.	53-78 provides generally for an executive committee but a loan committee is optional. 53-83 provides that directors or shareholders shall annually appoint an examining committee.	53-4-3	New 53-4-3. Committees of Board of Directors. This section requires at minimum audit, executive, and loan committees (the latter of which may be the executive committee or the board as a whole) and such other committees as are appropriate. The Commissioner may require additional committees if they are reasonably necessary for good corporate governance, for safety and soundness reasons or to ensure compliance with applicable laws and regulations. Subsection (b) sets out factors for requiring additional committees.	The new section provides for certain minimum committees and for additional committees as may be necessary for safety and soundness. It also includes standards for requiring additional committees.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
53-79. Minutes of meetings of directors and executive and loan committees.	53-79, last amended in 1951, is a more lengthy provision of law requiring minutes of the board and committees to be recorded and maintained.	53-4-4	New 53-4-4. Minutes of Meetings of Directors and Committees. As rewritten, this provision more simply requires that minutes, and actions taken, be recorded and maintained for all board and board committees	The new provision is much clearer and to the point regarding minutes and action taken by the board and committees.
53-80. Qualification of directors. 53-81. Directors shall take oath.	53-80 requires directors to own "\$1,000" in book value of bank stock, unpledged and unencumbered, and one-half of the directors are required to be NC residents. Those who fail to hold the requisite shares lose their seat on the board, with exceptions for banks doing business before February 21, 1921. 53-81 requires directors to take an oath.	53-4-5	New 53-4-5. Qualification of Directors. This substantially rewrites G.S. 53-80. It removes the requirement that a director must own shares equal to "\$1,000 book value" of bank stock and that one-half of the directors must be residents of NC or a state in which a branch is located. The proposed provision of law requires three-quarters of the directors to be U.S. citizens and to meet the eligibility requirements for a director under Section 19 of the FDIC Act. Additionally, a director must consent to service of process in Wake County.	The reason for these changes is to eliminate the requirement to own "\$1,000 in book value," an arcane practice that is essentially meaningless in today's banking practices. It also eliminates the distinction to banks organized before or after 1921. Additionally, the qualification for directors is being revised consistent with Section 19 of the FDIC Act. This will open up the pool of potential directors. The directors oath has been eliminated.
53-82. Liability of directors.	53-82 currently provides for personal and individual liability to the bank, its shareholders or other persons if the director knowingly violates or permits officers, employees or agent to violate provisions of Chapter 53. As currently written, an aggrieved shareholder in any bank liquidation may bring an action to enforce this provision of law.	53-4-6	New 53-4-6. Liability of Directors. This provision carries forward the personal and individual liability language but eliminates the right of an aggrieved shareholder to bring an action for enforcement of this provision.	The change eliminates the option for an aggrieved shareholder to bring a cause of action to enforce this provision of law in the event of liquidation. Shareholders of banks have rights to sue under the NC Business Corporations Act. Further, in cases of liquidation, the FDIC retains significant power to subject directors found liable of malfeasance or negligence to significant fines and, in the worst cases, criminal referral.
53-87. Directors may declare dividends.	53-87 currently provides a dividend formula based on a surplus with banks having capital stock of less than \$15,000 and an alternate formula with those having a capital stock of more than \$15,000. This formula dates back to 1931.	53-4-7	New 53-4-7. Directors May Declare Distributions. This section replaces an outdated dividend formula in 53-87 and simply provides that if it does not reduce the bank's capital below the required level, the board may declare "distributions." By cross-reference to Chapter 55, a distribution is essentially payment of a dividend. See G.S. 55-1-40(6).	The purpose for this change is to bring the dividend formula into compliance with current banking and accounting practices. As more fully discussed below, reduction of a bank's capital below "required capital" will lead to significant heightened supervision.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
53-90. Officers and employees shall give bond.	53-90 currently requires officers and employees to give bond to the bank from a bonding company authorized to do business in NC. It also gives the bank a private right of action for any damages sustained.	53-4-8	New 53-4-8. Officers and Employees Shall Give Bond. This essentially restates the requirements for officers and employees to give a bond and requires a bond to be given by an agent of a bank.	The only difference between the current and proposed sections is that it adds a bond requirement for an agent and eliminates redundant language stating that the bank has the right to enforce the bond in court.
53-91.2. Loan to executive officers.	53-91.2 prohibits an extension of credit to executive officers unless it is on terms and conditions equal to employees and customers.	53-4-9	New 53-4-9. Affiliate Transactions. This section provides that a bank may extend credit and engage in transactions with affiliates, directors, executive officers, principal shareholders, and their respective immediate families only to the extent allowed under state or federal laws and regulations.	This is drafted to conform NC law to federal banking law which regulates this matter extensively.
No corresponding section	N/A	53-4-10	New 53-4-10. Examination of Board Composition, Structure and Conduct. This section adds a new provision of law that allows the Commissioner, as part of the examination process, to assess the competence, composition, number, independence, education and training of bank directors. The assessment is to be based on the size, complexity and nature of the bank's business as well as compliance with state and federal regulations.	This is a new provision of law that allows the Commissioner to assess the composition, background and education of the board of directors. It is intended to assure that boards use the latitude that the new law gives them appropriately and that they follow best practices.
53-50. Requirement of reserve fund. 53-51. Reserve and cash defined.	53-50 provides that banks which are not members of the Federal Reserve System (FRS) must maintain reserve requirements established by the Banking Commission by rule. Member banks must comply with FRS rules. There is a notice requirement if the bank falls below the required reserve fund. 53-51 defines the items in the reserve fund.	53-4-11	New 53-4-11. Reserve Fund. Member banks of the Federal Reserve must follow the limits imposed by the Federal Reserve Board. Non-member banks, which include most NC state-chartered banks, must meet the requirements established by the Commissioner. Subsections (b) and (c) require a reserve fund necessary for the safe and sound operation of a bank and determine which assets qualify for inclusion in the reserve fund. Subsection (d) provides that a bank that fails to meet its required reserve fund may not extend credit and the Commissioner may require it to fund reserves up to the required minimum. Finally, subsection (e) provides that if the reserve fund is not restored, the Commissioner may take regulatory action as provided under Article 8 (Supervision of Banks).	As rewritten, this provision expressly defines which assets qualify for the reserve fund and puts the bank on notice of what action may be taken against it if it fails to meet the reserve requirement.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
53-99.1. Confidential records.	53-99.1 defines a compliance review committee and prescribes its functions. It further provides that compliance review documents are not open for public inspection and are not discoverable or admissible in evidence in an action against a bank, its directors, officers, or employees, unless a court finds that the interests of justice require discovery or admission into evidence.	53-4-12	New 53-4-12. Compliance Review Committee. This section rewrites G.S. 53-99.1, "Confidential records." Subsection (a) provides that a bank or holding company may establish a compliance committee for the purpose of monitoring and reviewing state and federal laws, regulations, policies, government reporting and safe and sound banking practices. Subsection (b), consistent with current law, provides that compliance review documents are confidential and are not discoverable or admissible into evidence in a civil action. It also adds that review documents are not subject to inspection and copying, consistent with the NC Business Corporations Act, Article 16, and the members of the compliance review committee, or those acting under their direction, may not be required to testify as to contents and conclusions or actions taken or discussions conducted. If the documents are disclosed to a government agency, they retain their confidentiality. Subsection (c) allows a bank to waive this privilege except for documents confidential under the "Official Records" provisions of proposed G.S. 53-2-7. Waiver would also open the documents for inspection and copying under Article 16 of Chapter 55. Subsection (d) confirms that this confidentiality provision does not otherwise limit the discovery of non-confidential documents; and subsection (e) defines "compliance review documents."	This provision carries forward the current practice of requiring a bank to conduct internal compliance reviews and to prohibit discovery or admissibility of these reports. Additionally, members of the compliance review committee, or those acting under their direction, may not be called upon to testify as to the contents and conclusions. Consistent with Article 16 of the NC Business Corporations Act, review documents are not subject to inspection and copying. The bank can waive confidentiality except for confidential documents provided to the Commissioner. The policy is to encourage boards and managements to address problems. Disclosure could increase liability, which would discourage good conduct.
Article 5A. Powers of Banks.				
53-43. General powers.	53-43 provides a comprehensive list of powers which a state-chartered bank in NC may exercise in the course of their business.	53-5-1	New 53-5-1. Powers. This section lists seven express powers mostly adopted from the current law, including authority to engage in activities approved by the Commissioner, by rule, order or interpretation and authority, to engage in activities permissible for banks under the FDIC Act. Additionally, banks may engage in traditional bank activities, including powers of savings institutions and activities permitted for national banks. It also confirms that a bank has all powers "necessary and incident" to carry out the business of banking – a power long held by nationally chartered banks. There is an approval process for the grant of new powers, which may be waived for banks that are "well-capitalized and well-managed," and a notice process to begin a new business activity where prior federal approval is not required.	Traditional bank powers are carried forward; state-chartered bank powers are put on equal footing with national bank powers; and a process is put in place for new bank authority. This process can be waived for well-capitalized and well-managed banks.

Current Section(s)	Summary	New Section	Summary	Explanation of Change
53-44 through 46.1. Various investment powers.	These sections provide a comprehensive list of permissible investments which may be made by state-chartered banks in NC. The list includes state and federal agency bonds, mutual funds, and limitations on investments in stocks.	53-5-2	New 53-5-2. Investment Authority. This provision restates, for the most part, the investment authority for banks at G.S. 53-44 through 46.1. Subdivision (a)(1) permits investments in depository institutions, other specialized financial institutions, and federally chartered institutions under federal law or regulation, order or interpretation of the OCC. Subdivisions (a)(2) through (6) authorize investments in a variety of state and federal bonds; and subsection (b) permits investments in defined bank subsidiaries, subject to the terms and conditions in subdivisions (c)(1) and (2), and subsection (d). Subsection (e) has a notice provision for investment in operating subsidiaries and subsection (f) provides an exception, under stated circumstances, to the notice requirement for "well-capitalized and well-managed" banks. Subdivision (f)(2) nonetheless provides a notice requirement for operating subsidiaries established under an exception for prior approval. Subsection (g) provides that out-of-state bank subsidiaries which are subject to licensure or regulation other than under Chapter 53 are entitled to licensure on a non-discriminatory basis as any other non-bank entity engaged in the same activity.	As rewritten, this section codifies into one section the authority of a bank to invest in state and federal obligations, and authority to invest in bank subsidiaries. Since the original draft of the bill, further analysis needs to be considered. We will bring this section back to you at the February meeting for clarification.

OTHER STATUTORY REVISIONS

STATUTES WHICH HAVE BEEN REPEALED AND STATUTES WHICH HAVE BEEN REINSTATED

Current Statute	Explanation
53-43.1. Obligations of agencies supervised by Farm Credit Administration as securities for deposits of public funds.	Authority to collateralize public fund deposits is contained in new 53-6-3.
53-43.2. Obligations of agencies supervised by Federal Home Loan Bank Board as securities for deposits of public funds.	
53-43.3. Officers and employees; share purchase and option plans .	55-3-02 General Powers, subdivision (12) broad authorization for benefit plans.
53-43.4. Issuance of capital notes and debentures.	55-3-02 General Powers, subdivision (7) broad authorization for borrowing.
53-43.5. Minors' deposits and safe-deposit agreements.	Minors' accounts and safe deposit boxes are in 53-6-4; Safe deposit boxes more generally are addressed in 53-6-13.
53-43.7. Safe deposit boxes; unpaid rentals; procedures; escheats.	
53-43.6. School thrift or savings plans.	This section will be eliminated as unnecessary.
53-81. Directors shall take oath.	This section will be eliminated as unnecessary. Directors clearly have fiduciary duty to bank.

Current Statute	Explanation
53-83. Examining committee of directors.	This section will be eliminated because the subject matter will be carried forward in 53-4-3.
53-84. Depository designated by directors.	This section will be eliminated as unnecessary detail.
53-85. Shareholders' book.	This section will be eliminated as obsolete.
53-86. Directors, officers, etc., accepting fees, etc.	This section will be eliminated because the requirements of Regulation O cover this subject well.
53-88. Use of surplus.	This section will be eliminated as obsolete.
53-89. Overdrafts, payment by officer, etc.	This provision, while eliminated in the initial draft, will be added back to the revised law in Article 6A.
53-91.1. Assets to be written off.	This provision, while eliminated in the initial draft, will be added back to the revised law in Article 6A.