



**Statement of the Massachusetts Bankers Association in Support of
H 955 - An Act Amending the Banking Laws and Related Statutes
Joint Committee on Financial Services
October 24, 2023**

On behalf of our more than 120 commercial, savings and cooperative banks and federal savings institution members with more than 72,000 employees located throughout the Commonwealth and New England, the Massachusetts Bankers Association (MBA) appreciates the opportunity to submit testimony in strong support of **H 955 - An Act Amending the Banking Laws and Related Statutes**.

As you know, in 2014 this Committee advanced legislation which ultimately became Chapter 482 of the Acts of 2014, a comprehensive update and modernization of the Commonwealth's banking laws for the first time in 30 years. Since that time, MBA-supported legislation has been introduced that included provisions suggested by MBA members or others that were identified too late in the legislative process to be included in the final modernization law including this bill before you today.

H 955 is a revised version of this legislation that includes several of the provisions from prior sessions along with language to address some additional issues that have been brought to our attention over the last two years. All told, this sixteen (16) section bill includes changes to the state's public deposits statutes, including authorizing the use of collateralized deposits or insured cash sweep programs for public funds; language codifying the authority of the Commissioner of Banks to allow state-chartered institutions to hold virtual annual meetings during a state of emergency; technical changes to the Limited Purpose Trust Company statute; provisions streamlining the Commonwealth's High-Cost Loan statute to reflect changes in federal law and the regulations of the federal Consumer Financial Protection Bureau (CFPB); provisions prohibiting core processors from including excessive penalties in service contracts; and clarifying that the board of a bank may elect or select certain officers. Several of these provisions are summarized for your benefit below.

Permitting Reciprocal Deposit Programs for Public Funds

H 955 contains provisions that would authorize the use of reciprocal deposit programs for public funds in the Commonwealth. These programs provide the opportunity for banking institutions to offer a fully insured deposit product for local governments through an Insured Cash Sweeps (ICS) program.

Under an ICS product, depositors are able to place funds through a local bank into FDIC-insured money market deposit accounts or demand deposit accounts in participating banks in other states, thus extending the federal deposit insurance to cover the entire amount. Funds through the ICS demand option are available on a daily basis and depositors may withdraw funds without penalty at any time. Depositor funds placed through the ICS savings option are placed in FDIC insured money market deposit accounts from which funds may be withdrawn up to six times a month, again without penalty.

Public funds laws in most states have been interpreted or amended in the last several years to authorize the deposit of public funds into money market deposit accounts or demand deposit accounts through a reciprocal deposit placement service such as ICS. The provisions in **H 955** would codify that these programs are statutorily approved in Massachusetts.

Allowing Virtual Annual Meetings During a State of Emergency

Section 7 of **H 955** adds three paragraphs to provide authority to govern the holding of an annual or a special meeting of a bank during a State of Emergency. It is a corporate governance issue directly related to events of the COVID-19 Pandemic.

The first paragraph governs the postponement of an institution's annual meeting. The second paragraph covers the holding of an annual meeting or a special meeting in a virtual or hybrid manner during the State of Emergency. In each paragraph all related actions to be taken are detailed. The third paragraph adds the necessary definitions for clarity in carrying out these special authorities. For the purposes of this statute, a financial institution is defined as a savings bank or co-operative bank in mutual form, a mutual holding company and its subsidiary banking institution and a bank in stock form.

Addressing Competitive Issues with Bank Core Processors

Section 8 of **H 955** seeks to address an issue of significant concern to community banks that also directly impacts their customers in many cases. In order to provide banking services to their customers, the vast majority of our member institutions must contract with a so-called “core processor” or “core vendor” that runs the bank’s core banking functions.

As in many industries, consolidation and acquisitions within these core processors has resulted in only a handful of large firms that offer these products and services. With rapid changes in technology, banks have become a captive audience to these vendors, and they have significant leverage over community banks. Many of these companies are using their market power to impose adverse contract terms on banks, including mandating lengthy terms, imposing punitive and excessive fees for breaking the contract, and requiring banks that do change providers to pay high fees for access to their own data so it can be transferred to the new vendor.

While banks and consumers do benefit from the expertise and products offered by these core processors, the adverse and costly aspects of the ‘captive’ contract negatively impact a bank’s profitability, which affects both the rates paid to depositors and by borrowers and the ability of the institution to invest in new products and services for its customers. In addition, regulatory agencies are charged with determining whether public convenience and advantage will be promoted by certain merger and acquisition transactions. The high costs of terminating a core processor agreement or the high costs of running two systems until one contract expires can be a consideration in this process and these contractual provisions should not infringe upon the duties of banking regulators to determine that transactions will promote a public advantage.

The language in the legislation attempts to prohibit the most egregious contractual provisions that have confronted community banks. While we acknowledge that it may be unusual for state government to intervene in contract issues, especially when one business is captive to another, Massachusetts law does address similar issues in other industries. Specifically, the provisions in **H 955** are modeled on the General Laws regulating the relationship between motor vehicle manufacturers, distributors and dealers (Chapter 93B); dealers’ agreements for the sale of gasoline (Chapter 93E); certain business practices between motion picture distributors and exhibitors (Chapter 93F); and certain equipment dealers (Chapter 93G).

While the industries and relationships may vary, it is important to note that the Legislature enacted these laws to prohibit certain substantially adverse contract provisions when the leverage between two business parties is significantly uneven. The provision in **H 955** seeks to extend similar protections in state law to community banks in their uneven relationship with core processors.

Reconciling Massachusetts High-Cost Mortgage Loan Act with Federal Law

While a number of provisions were included in Chapter 482 to reduce the regulatory burden on banks and other financial institutions by eliminating certain inconsistencies between similar state and federal laws while retaining the greater consumer protections under Massachusetts law, the bill did not alter the Commonwealth’s High Cost Mortgage Loan Act, Chapter 183C of the General Laws. Sections 13 through Section 15 of **H 955** provide the industry with consistency between Chapter 183C and the federal laws and regulations regarding higher-cost loans implemented by the Consumer Financial Protection Bureau (CFPB). The authorities of the Commissioner of Banks to enforce the Massachusetts High Cost Mortgage Loan Act are retained in the legislation.

Conclusion

MBA believes that the provisions included in **H 955** will complement the bank modernization law, recognize the necessity of continuing bank operations during a declared state or nationwide emergency, and provide state-chartered community banks in Massachusetts with additional flexibility so they can continue to compete in the financial services marketplace. We respectfully ask that the Committee give this bill a favorable report. Thank you again for considering our views on these important subjects.