

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Regulatory Affairs
 2 Committee

3 Representative Broxson offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 655.057, Florida Statutes, is amended
 8 to read:

9 655.057 Records; limited restrictions upon public access.—

10 (1) Except as otherwise provided in this section and
 11 except for such portions thereof which are otherwise public
 12 record, all records and information relating to an investigation
 13 by the office are confidential and exempt from ~~the provisions of~~
 14 s. 119.07(1) until such investigation is completed or ceases to
 15 be active. For purposes of this subsection, an investigation is
 16 considered "active" while such investigation is being conducted
 17 by the office with a reasonable, good faith belief that it may

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18 lead to the filing of administrative, civil, or criminal
19 proceedings. An investigation does not cease to be active if the
20 office is proceeding with reasonable dispatch, and there is a
21 good faith belief that action may be initiated by the office or
22 other administrative or law enforcement agency. After an
23 investigation is completed or ceases to be active, portions of
24 the such records relating to the investigation are shall be
25 confidential and exempt from ~~the provisions of~~ s. 119.07(1) to
26 the extent that disclosure would:

- 27 (a) Jeopardize the integrity of another active
28 investigation;
- 29 (b) Impair the safety and soundness of the financial
30 institution;
- 31 (c) Reveal personal financial information;
- 32 (d) Reveal the identity of a confidential source;
- 33 (e) Defame or cause unwarranted damage to the good name or
34 reputation of an individual or jeopardize the safety of an
35 individual; or
- 36 (f) Reveal investigative techniques or procedures.
- 37 (2) Except as otherwise provided in this section and
38 except for such portions thereof which are public record,
39 reports of examinations, operations, or condition, including
40 working papers, or portions thereof, prepared by, or for the use
41 of, the office or any state or federal agency responsible for
42 the regulation or supervision of financial institutions in this
43 state are confidential and exempt from ~~the provisions of~~ s.

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44 119.07(1). However, such reports or papers or portions thereof
45 may be released to:

46 (a) The financial institution under examination;

47 (b) Any holding company of which the financial institution
48 is a subsidiary;

49 (c) Proposed purchasers if necessary to protect the
50 continued financial viability of the financial institution, upon
51 prior approval by the board of directors of such institution;

52 (d) Persons proposing in good faith to acquire a
53 controlling interest in or to merge with the financial
54 institution, upon prior approval by the board of directors of
55 such financial institution;

56 (e) Any officer, director, committee member, employee,
57 attorney, auditor, or independent auditor officially connected
58 with the financial institution, holding company, proposed
59 purchaser, or person seeking to acquire a controlling interest
60 in or merge with the financial institution; or

61 (f) A fidelity insurance company, upon approval of the
62 financial institution's board of directors. However, a fidelity
63 insurance company may receive only that portion of an
64 examination report relating to a claim or investigation being
65 conducted by such fidelity insurance company.

66 (g) Examination, operation, or condition reports of a
67 financial institution shall be released by the office within 1
68 year after the appointment of a liquidator, receiver, or
69 conservator to the ~~such~~ financial institution. However, any

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70 portion of such reports which discloses the identities of
71 depositors, bondholders, members, borrowers, or stockholders,
72 other than directors, officers, or controlling stockholders of
73 the institution, shall remain confidential and exempt from ~~the~~
74 ~~provisions of~~ s. 119.07(1).

75
76 Any confidential information or records obtained from the office
77 pursuant to this paragraph shall be maintained as confidential
78 and exempt from ~~the provisions of~~ s. 119.07(1).

79 (3) Except as otherwise provided in this section and
80 except for those portions that are otherwise public record,
81 after an investigation relating to an informal enforcement
82 action is completed or ceases to be active, informal enforcement
83 actions are confidential and exempt from s. 119.07(1) and s.
84 24(a), Art. I of the State Constitution to the extent that
85 disclosure would:

86 (a) Jeopardize the integrity of another active
87 investigation.

88 (b) Impair the safety and soundness of the financial
89 institution.

90 (c) Reveal personal financial information.

91 (d) Reveal the identity of a confidential source.

92 (e) Defame or cause unwarranted damage to the good name or
93 reputation of an individual or jeopardize the safety of an
94 individual.

95 (f) Reveal investigative techniques or procedures.

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96 (4) Except as otherwise provided in this section and
97 except for those portions that are otherwise public record,
98 trade secrets as defined in s. 688.002 which comply with s.
99 655.0591 and which are held by the office in accordance with its
100 statutory duties with respect to the financial institutions
101 codes are confidential and exempt from s. 119.07(1) and s.
102 24(a), Art. I of the State Constitution.

103 ~~(5)(3) The provisions of~~ This section does ~~de~~ not prevent
104 or restrict:

105 (a) Publishing reports required to be submitted to the
106 office pursuant to s. 655.045(2) (a) or required by applicable
107 federal statutes or regulations to be published.

108 (b) Furnishing records or information to any other state,
109 federal, or foreign agency responsible for the regulation or
110 supervision of financial institutions, including Federal Home
111 Loan Banks.

112 (c) Disclosing or publishing summaries of the condition of
113 financial institutions and general economic and similar
114 statistics and data, provided that the identity of a particular
115 financial institution is not disclosed.

116 (d) Reporting any suspected criminal activity, with
117 supporting documents and information, to appropriate law
118 enforcement and prosecutorial agencies.

119 (e) Furnishing information upon request to the Chief
120 Financial Officer or the Division of Treasury of the Department
121 of Financial Services regarding the financial condition of any

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122 financial institution that is, or has applied to be, designated
123 as a qualified public depository pursuant to chapter 280.

124
125 Any confidential information or records obtained from the office
126 pursuant to this subsection shall be maintained as confidential
127 and exempt from ~~the provisions of~~ s. 119.07(1).

128 (6) (a) ~~(4) (a)~~ Orders of courts or of administrative law
129 judges for the production of confidential records or information
130 shall provide for inspection in camera by the court or the
131 administrative law judge and, after the court or administrative
132 law judge has made a determination that the documents requested
133 are relevant or would likely lead to the discovery of admissible
134 evidence, such ~~said~~ documents shall be subject to further orders
135 by the court or the administrative law judge to protect the
136 confidentiality thereof. An ~~Any~~ order directing the release of
137 information is ~~shall be~~ immediately reviewable, and a petition
138 by the office for review of such order shall automatically stays
139 ~~stay~~ further proceedings in the trial court or the
140 administrative hearing until the disposition of such petition by
141 the reviewing court. If any other party files such a petition
142 for review, it operates ~~will operate~~ as a stay of such
143 proceedings only upon order of the reviewing court.

144 (b) Confidential records and information furnished
145 pursuant to a legislative subpoena shall be kept confidential by
146 the legislative body or committee that ~~which~~ received the
147 records or information, except in a case involving investigation

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148 of charges against a public official subject to impeachment or
149 removal, ~~and then~~ Disclosure of such information shall be only
150 to the extent determined necessary by the legislative body or
151 committee ~~to be necessary~~.

152 ~~(7)(5)~~ Every credit union and mutual association shall
153 maintain, in the principal office where its business is
154 transacted, full and correct records of the names and residences
155 of all the members of the credit union or mutual association.
156 Such records are ~~shall be~~ subject to the inspection of all the
157 members of the credit union or mutual association, and the
158 officers authorized to assess taxes under state authority,
159 during business hours of each business day. A current list of
160 members shall be made available to the office's examiners for
161 their inspection and, upon the request of the office, shall be
162 submitted to the office. Except as otherwise provided in this
163 subsection, the list of the members of the credit union or
164 mutual association is confidential and exempt from ~~the~~
165 ~~provisions of~~ s. 119.07(1).

166 ~~(8)(6)~~ Every bank, trust company, and stock association
167 shall maintain, in the principal office where its business is
168 transacted, full and complete records of the names and
169 residences of all the shareholders of the bank, trust company,
170 or stock association and the number of shares held by each. Such
171 records are ~~shall be~~ subject to the inspection of all the
172 shareholders of the bank, trust company, or stock association,
173 and the officers authorized to assess taxes under state

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174 authority, during business hours of each banking day. A current
175 list of shareholders shall be made available to the office's
176 examiners for their inspection and, upon the request of the
177 office, shall be submitted to the office. Except as otherwise
178 provided in this subsection, any portion of this list which
179 reveals the identities of the shareholders is confidential and
180 exempt from ~~the provisions of~~ s. 119.07(1).

181 (9)~~(7)~~ Materials supplied to the office or to employees
182 of any financial institution by other state or federal
183 governmental agencies, ~~federal or state,~~ shall remain the
184 property of the submitting agency or the corporation, and any
185 document request must be made to the appropriate agency. Any
186 confidential documents supplied to the office or to employees of
187 any financial institution by other state or federal governmental
188 agencies are, ~~federal or state,~~ shall be confidential and exempt
189 from ~~the provisions of~~ s. 119.07(1). Such information shall be
190 made public only with the consent of such agency or the
191 corporation.

192 (10)~~(8)~~ Examination reports, investigatory records,
193 applications, and related information compiled by the office, or
194 photographic copies thereof, shall be retained by the office for
195 ~~a period of~~ at least 10 years.

196 (11)~~(9)~~ A copy of any document on file with the office
197 which is certified by the office as being a true copy may be
198 introduced in evidence as if it were the original. The
199 commission shall establish a schedule of fees for preparing true

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200 copies of documents.

201 (12) For purposes of this section, the term:

202 (a) "Examination report" means records submitted to or
203 prepared by the office as part of the office's duties performed
204 pursuant to s. 655.012 or s. 655.045(1).

205 (b) "Informal enforcement action" means a board
206 resolution, a document of resolution, or an agreement in writing
207 between the office and a financial institution which:

208 1. The office imposes on an institution when the office
209 considers the administrative enforcement guidelines in s.
210 655.031 and determines that a formal enforcement action is not
211 an appropriate administrative remedy;

212 2. Sets forth a program of corrective action to address
213 one or more safety and soundness deficiencies and violations of
214 law or rule at the institution; and

215 3. Is not subject to enforcement by imposition of an
216 administrative fine pursuant to s. 655.041.

217 (c) "Personal financial information" means:

218 1. Information relating to the existence, nature, source,
219 or amount of a person's personal income, expenses, or debt.

220 2. Information relating to a person's financial
221 transactions of any kind.

222 3. Information relating to the existence, identification,
223 nature, or value of a person's assets, liabilities, or net
224 worth.

225 (d) "Working papers" means the records of the procedures

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226 followed, the tests performed, the information obtained, and the
227 conclusions reached in an examination or investigation performed
228 under s. 655.032 or s. 655.045. Working papers include planning
229 documentation, work programs, analyses, memoranda, letters of
230 confirmation and representation, abstracts of the books and
231 records of a financial institution as defined in s. 655.005(1),
232 and schedules or commentaries prepared or obtained in the course
233 of such examination or investigation.

234 (13)-(10) A Any person who willfully discloses information
235 made confidential by this section commits is guilty of a felony
236 of the third degree, punishable as provided in s. 775.082, s.
237 775.083, or s. 775.084.

238 (14) Subsections (3) and (4) are subject to the Open
239 Government Sunset Review Act in accordance with s. 119.15 and
240 are repealed on October 2, 2019, unless reviewed and saved from
241 repeal through reenactment by the Legislature.

242 Section 2. (1) The Legislature finds that it is a public
243 necessity that informal enforcement actions and trade secrets,
244 as defined in s. 688.002, Florida Statutes, be kept confidential
245 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
246 Article I of the State Constitution.

247 (2) Public disclosure of an informal enforcement action
248 could further impair the safety and soundness of a financial
249 institution that is subject to the action. Furthermore, the
250 public disclosure of this information could erode public
251 confidence in financial institutions and the financial

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252 institution system in this state and may lead to a reduced level
253 of protection of the interests of the depositors and creditors
254 of financial institutions. Maintaining informal enforcement
255 actions as confidential and exempt from s. 119.07(1), Florida
256 Statutes, and s. 24(a), Article I of the State Constitution will
257 provide to the financial institutions that are chartered by this
258 state the same protections as those already available to
259 financial institutions chartered under federal law and by other
260 states, maintain public confidence in financial institutions
261 subject to the financial institutions codes, protect the safety
262 and soundness of the financial institution system in this state,
263 protect the interests of the depositors and creditors of
264 financial institutions, promote the opportunity for state-
265 chartered financial institutions to be and remain competitive
266 with financial institutions chartered by other states or the
267 United States, and otherwise provide for and promote the
268 purposes of the financial institutions codes as set forth in s.
269 655.001, Florida Statutes.

270 (3) A trade secret derives independent economic value,
271 actual or potential, from not being generally known to, and not
272 readily ascertainable by, other persons who can obtain economic
273 value from the disclosure or use of the trade secret. Without an
274 exemption for a trade secret held by the office, that trade
275 secret becomes a public record when received and must be
276 divulged upon request. Divulging a trade secret under the public
277 records law would give business competitors an unfair advantage

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278 and destroy the value of that property, causing a financial loss
279 to the person or entity submitting the trade secret and
280 weakening the position of that person or entity in the
281 marketplace.

282 Section 3. This act shall take effect on the same date
283 that SB 1012 or similar legislation takes effect, if such
284 legislation is adopted in the same legislative session or an
285 extension thereof and becomes a law.

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T I T L E A M E N D M E N T

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Remove everything before the enacting clause and insert:

291

A bill to be entitled

292

An act relating to public records; amending s. 655.057, F.S.;

293

providing an exemption from public records requirements for

294

certain informal enforcement actions by the Office of Financial

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Regulation, to which penalties apply for willful disclosure of

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such confidential information; providing an exemption from

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public records requirements for certain trade secrets held by

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the office, to which penalties apply for willful disclosure of

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such confidential information; defining terms; providing for

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future legislative review and repeal of the section; providing a

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statement of public necessity; providing a contingent effective

302

date.