

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 585 Applications for Authority to Organize a Bank or Trust Company  
**SPONSOR(S):** McClain  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 958

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Hinshelwood	Luczynski
2) Commerce Committee			

### SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) charters, licenses, and regulates various entities that engage in financial institution business in Florida, including state-chartered banks and trust companies. In order to form a new, or *de novo*, state-chartered bank or trust company, the law currently requires that a certain number of the proposed directors and the proposed president or chief executive officer have at least one year of relevant financial institution experience within the three years before the date of the application.

The banking industry has observed that a current barrier to the formation of a *de novo* state-chartered bank is a lack of qualified officers and directors due to the duration of non-compete clauses, generally two to three years, in comparison to the timeframe within which the proposed president or chief executive officer and a certain number of proposed directors must have at least one year of relevant financial institution experience. Upon the expiration of a non-compete clause in effect for more than two years, former directors and officers are not qualified to be a president or chief executive officer of a *de novo* state-chartered bank and are not qualified to be counted as a director of a *de novo* state-chartered bank who possesses the required financial institution experience because their one year of relevant financial institution experience must have been *within the last three years*.

The bill changes the timeframe within which to satisfy the required experience from three years to five years:

- The proposed president or chief executive officer must have at least one year of relevant financial institution experience *within the last five years*.
- At least two of the proposed directors who are not also proposed officers must have at least one year of relevant financial institution experience *within the last five years*. However, the OFR may allow only one director to have such experience if at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution *more than five years before the date of the application*.

The result of the bill is an expansion of the pool of individuals qualified to be a president or chief executive officer of a *de novo* state-chartered bank or trust company or qualified to be counted as a director of a *de novo* state-chartered bank or trust company who possesses relevant financial institution experience.

The bill has an indeterminate fiscal impact on the state. The bill has no impact on local governments and an indeterminate impact on the private sector.

The bill provides an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.<sup>1</sup> The OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes (Codes) and the rules promulgated thereunder.<sup>2</sup> The specific chapters under the Codes are:

- Chapter 655, F.S. – Financial Institutions Generally
- Chapter 657, F.S. – Credit Unions
- Chapter 658, F.S. – Banks and Trust Companies
- Chapter 660, F.S. – Trust Business
- Chapter 662, F.S. – Family Trust Companies
- Chapter 663, F.S. – International Banking
- Chapter 665, F.S. – Capital Stock Associations
- Chapter 667, F.S. – Savings Banks

As of June 30, 2016, the Division of Financial Institutions regulates 206 financial institutions:<sup>3</sup>

- 103 banks
- 67 credit unions
- 23 international bank offices
- 13 trust companies

##### *Formation of a New State-Chartered Bank or Trust Company*

In order to apply for authority to organize a *de novo* state-chartered bank or trust company, the proposed directors must file a written application with the OFR.<sup>4</sup> The application includes such information as the proposed corporate name; the community, including the street and number, if available, where the principal office of the proposed bank or trust company is to be located; the total initial capital; and detailed financial, business, and biographical information for each proposed director and executive officer.<sup>5</sup>

Upon the filing of an application, the OFR must make an investigation of:

- 1) The character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.
- 2) The need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located.
- 3) The ability of the primary service area to support the proposed bank or trust company and all other existing bank or trust facilities in the primary service area.<sup>6</sup>

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<sup>1</sup> s. 20.121(3)(a)2., F.S.

<sup>2</sup> Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.

<sup>3</sup> OFFICE OF FINANCIAL REGULATION, *Fast Facts* (4<sup>th</sup> ed., Dec. 2016),

<http://www.flofr.com/StaticPages/documents/FastFacts.pdf>.

<sup>4</sup> s. 658.19(1), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> s. 658.20(1), F.S.

After making such investigation, the OFR must approve an application if it finds the following:<sup>7</sup>

- 1) Local conditions indicate reasonable promise of successful operation for the proposed state bank or trust company.
- 2) The proposed capitalization is adequate, but at least:
  - a. \$8 million for a bank.
  - b. \$3 million for a trust company.
- 3) The proposed capital structure is in such form as the OFR may require, subject to certain minimum requirements.
- 4) Regarding officers and directors:
  - a. The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation.
  - b. None of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, F.S., relating to the control of money laundering and terrorist financing; ch. 896, F.S., relating to offenses related to financial institutions; or similar state or federal law.
  - c. At least two of the proposed directors who are not also proposed officers have had at least one year direct experience as an executive officer, regulator, or director of a financial institution *within the three years before the date of the application*. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution *more than three years before the date of the application*, the OFR may allow only one director to have direct financial institution experience *within the last three years*.
  - d. The proposed president or chief executive officer must have had at least one year of direct experience as an executive officer, director, or regulator of a financial institution *within the last three years*.
- 5) The corporate name of the proposed state bank or trust company is approved by the OFR.
- 6) Provision has been made for suitable quarters at the location in the application.

The banking industry has observed that a current barrier to the formation of a *de novo* state-chartered bank is a lack of qualified officers and directors due to the duration of non-compete clauses, generally two to three years, in comparison to the timeframe within which the proposed president or chief executive officer and a certain number of proposed directors must have at least one year of relevant financial institution experience. Directors and officers of a bank may be required to sign an employment contract containing a non-compete clause<sup>8</sup> that prohibits them from working in the banking sector for two to three years following separation from their current bank. Upon the expiration of a non-compete clause in effect for more than two years, such former directors and officers are not qualified to be a president or chief executive officer of a *de novo* state-chartered bank and are not qualified to be counted as a director of a *de novo* state-chartered bank who possesses at least one year of relevant financial institution experience because the one year of relevant financial institution experience must have been *within the last three years*, as currently required by s. 658.21(4), F.S.

### Effect of Proposed Changes

The bill amends section 658.21(4), F.S., to increase the timeframe within which a proposed president or chief executive officer and a certain number of proposed directors must have one year of relevant financial institution experience in order to organize a *de novo* state-chartered bank or trust company. The bill changes the timeframe within which to satisfy the required experience from three years to five years:

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<sup>7</sup> s. 658.21, F.S.

<sup>8</sup> Although generally a contract in restraint of trade or commerce is unlawful, the “enforcement of contracts that restrict or prohibit competition during or after the term of restrictive covenants, so long as such contracts are reasonable in time, area, and line of business, is not prohibited.” See ss. 542.18 and 542.335(1), F.S.

- The proposed president or chief executive officer must have at least one year of relevant financial institution experience *within the last five years*.
- At least two of the proposed directors who are not also proposed officers must have at least one year of relevant financial institution experience *within the last five years*. However, the OFR may allow only one director to have such experience if at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution *more than five years before the date of the application*.

The result of the bill is an expansion of the pool of individuals qualified to be a president or chief executive officer of a *de novo* state-chartered bank or trust company or qualified to be counted as a director of a *de novo* state-chartered bank or trust company who possesses relevant financial institution experience.

**B. SECTION DIRECTORY:**

**Section 1.** Amends section 658.21, F.S., relating to approval of application; findings required.

**Section 2.** Provides an effective date of July 1, 2017.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Expanding the pool of individuals who are qualified to serve as a director, president, or chief executive officer of a *de novo* state-chartered bank or trust company may have a positive impact on efforts to form new banks and trust companies chartered by the state of Florida. However, the fiscal impact of the bill is indeterminate at this time, as it is unknown how many state-chartered banks or trust companies may form as a result of these changes.

**D. FISCAL COMMENTS:**

In the event of the formation of a new state-chartered bank or trust company, the OFR would receive \$15,000 as a nonrefundable application fee. Additionally, each state-chartered bank and trust company must pay the OFR a semi-annual assessment of \$2,500 and a semi-annual assessment that is set by rule and varies depending on the bank's or trust company's assets. However, the fiscal impact of the bill is indeterminate at this time, as it is unknown how many state-chartered banks or trust companies may form as a result of changes made by the bill.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

#### **B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 20, 2017, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute reflects the removal of sections of the bill that would have allowed a state-chartered bank or trust company to be organized as a benefit corporation under part III of Florida Business Corporation Act (ch. 607, F.S.) The committee substitute also reflects a narrowed title.

The staff analysis has been updated to reflect the committee substitute.