

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1393 Pub. Rec./Financial Technology Sandbox

SPONSOR(S): State Affairs Committee, Insurance & Banking Subcommittee, Grant, J. and others

TIED BILLS: CS/CS/CS/HB 1391 **IDEN./SIM. BILLS:** CS/CS/SB 1872

FINAL HOUSE FLOOR ACTION: 117 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 1393 passed the House on March 9, 2020, and subsequently passed the Senate on March 10, 2020.

CS/CS/CS/HB 1391, with which this bill is linked, creates the Financial Technology Sandbox (sandbox) within the Office of Financial Regulation (OFR). The sandbox is intended to allow financial technology innovators to test new products and services in a supervised, flexible regulatory sandbox using exceptions to specified general law and waivers of the corresponding rule requirements under defined conditions. The bill creates a public record exemption for the following information provided to and held by OFR in a sandbox application:

- The reasons why a general law enumerated in the sandbox statute prevents the innovative financial product or service from being made available to consumers; and
- Specified applicant information that OFR must consider in deciding whether to approve or deny an application for the sandbox.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation. The bill also clarifies that nothing in this public record exemption shall be construed to prevent OFR from disclosing a summary of the innovative financial product or service.

The bill provides for repeal of the exemption on October 2, 2025, unless reviewed and saved from repeal by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

The bill does not appear to have a fiscal impact on local governments and may have an insignificant fiscal impact on OFR.

The bill was approved by the Governor on June 30, 2020, ch. 2020-161, L.O.F., and will become effective on July 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Record Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a).¹ The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no more broad than necessary to accomplish its purpose.²

Furthermore, the Open Government Sunset Review Act³ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. The exemption may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.⁴

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁵

CS/CS/CS/HB 1391

CS/CS/CS/HB 1391, with which this bill is linked, creates the Financial Technology Sandbox (sandbox) within the Office of Financial Regulation (OFR). The sandbox is intended to allow financial technology innovators to test new products and services in a supervised, flexible regulatory sandbox using exceptions to specified general law and waivers of the corresponding rule requirements under defined conditions.

Before making an innovative financial product or service available in the sandbox, a business entity must file an application with OFR. In the sandbox application, the applicant must specify each provision of general law enumerated in the bill which currently prevents the innovative financial product or service from being made available to consumers and the reasons why those provisions of general law prevent the innovative financial product or service from being made available to consumers. The application must also contain sufficient information for OFR to evaluate, among other things, the following factors (specified applicant information):

- The nature of the innovative financial product or service proposed to be made available to consumers in the sandbox, including all relevant technical details.

¹ Art. I, s. 24(c), FLA. CONST.

² Art. I, s. 24(c), FLA. CONST.

³ S. 119.15, F.S.

⁴ S. 119.15(6)(b), F.S.

⁵ S. 119.15(3), F.S.

- The business plan proposed by the applicant, including company information, market analysis, and financial projections or pro forma financial statements, and evidence of the financial viability of the applicant.
- Whether the applicant has a sufficient plan to test, monitor, and assess the innovative financial product or service.

Effect of the Bill

The bill creates a public record exemption for certain information related to the sandbox. Specifically, the bill provides that the following information provided to and held by OFR in a sandbox application is confidential and exempt⁶ from public record requirements:

- The reasons why a general law enumerated in the sandbox statute prevents the innovative financial product or service from being made available to consumers; and
- Specified applicant information that OFR must consider in deciding whether to approve or deny an application for the sandbox.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation. The bill also clarifies that nothing in this public record exemption shall be construed to prevent OFR from disclosing a summary of the innovative financial product or service.

The public record exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature. Finally, the bill provides a public necessity statement as required by the State Constitution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

2. Expenditures:
The bill could have a minimal fiscal impact on OFR in handling records that qualify for the exemptions created by the bill. Staff responsible for complying with public record requirements may require training related to implementation of the exemptions. The costs, however, would likely be absorbed, as they are part of the day-to-day responsibilities of an agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁶ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. See Op. Att'y Gen. Fla. 85-62 (1985).

D. FISCAL COMMENTS:
None.