

STORAGE NAME: h0397c.cjc

DATE: March 19, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMITTEE ON CIVIL JUSTICE AND CLAIMS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 397

RELATING TO: International Banking

SPONSOR(S): Representatives Lippman and Safley

STATUTE(S) AFFECTED: Sections 655.059, 663.01, 663.02, 663.07, 663.16-663.181, F.S.

COMPANION BILL(S): SB 1042 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES YEAS 11 NAYS 0
- (2) COMMITTEE ON CIVIL JUSTICE AND CLAIMS YEAS 8 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This legislation authorizes home-country officials to inspect and examine the books and records of international banking corporations located in Florida. Also, the bill requires individuals performing functions similar to that of a representative office to be licensed as a representative office. Finally, this legislation provides specific procedures for the liquidation of international banking corporations. Timetables are set forth for the processing of claims against the liquidated corporation. The rights and obligations of third parties, particularly secured and unsecured creditors, are enumerated.

The fiscal impact of this legislation on state revenues is estimated to be positive but indeterminate. No fiscal impact on local revenues is expected.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 655.059, Florida Statutes, provides that the books and records of a financial institution, other than an international banking corporation, are generally confidential but may be available for inspection under limited circumstances. These limited circumstances include inspection by the Department of Banking and Finance or a federal or state agency authorized to inspect an insured financial institution. In the case of an international banking corporation, home-country supervisors do not have access to these books and records. Florida is the only state in the nation not now allowing home-country supervisors such access.

Chapter 663, F.S., governs international banking in Florida. Section 663.04, F.S., requires an international banking organization to be chartered in a foreign jurisdiction and licensed by the Department of Banking and Finance to carry on business in Florida. The international banking organization transacts its business in Florida through an international banking agency, an international representative office, an international administrative office, an international branch, or a state-chartered investment company.

Section 663.061, F.S., allows an international agency to make any loan or investment which a bank organized in Florida would be permitted to do. An agency may also act as custodian and may furnish investment management and investment advisory services to any nonresident entities or persons whose principal place of business is located outside the United States. The international banking agency is prohibited from receiving deposits in Florida except from nonresident entities or persons.

Section 663.062, F.S., 1996 Supplement, allows an international representative office to promote or assist deposit-taking, lending, or other financial or banking activities of an international banking organization. The representative office is prohibited from conducting any banking business in Florida.

Section 663.063, F.S., allows an international administrative office to be established solely for the purposes of personnel administration and operations, data processing or record keeping activities, and negotiating, approving, or servicing loans and investments.

Section 663.064, F.S., allows international branches to be established. These branches may engage in all activities of a national bank but may not receive domestic retail deposits.

Section 663.065, F.S., allows a state-chartered investment company to be established for the purpose of engaging in international banking, lending or other financial activities.

International bank agencies, international branches and state-chartered investment companies are subject to the receivership and liquidation procedures in ch. 658, F.S. However, since most liquidations and receiverships in Florida are handled by the Federal Deposit Insurance Corporation (FDIC), the Department of Banking and Finance has no specific procedures for liquidation of an international banking corporation.

Section 658.79, F.S., authorizes the Department of Banking and Finance to take possession of an entity when the Department determines the entity is insolvent or imminently insolvent or is transacting business in an unsafe or unsound manner. Generally, the FDIC is appointed the receiver or liquidator of any state bank if any of the deposits are insured by the FDIC. Whenever the FDIC is appointed as receiver or liquidator, its rules and procedures are applicable.

Whenever the FDIC is not appointed receiver or liquidator, the Department must appoint the receiver or liquidator. The powers of a receiver, enumerated in s. 658.82, F.S., and the powers of a liquidator, enumerated in s. 658.83, F.S., include: taking possession of the books and records and assets of the entity; suing for and defending, compromising, and settling all claims involving the entity; selling the assets of the entity, subject to circuit court approval; and paying all expenses of receivership.

Section 658.84, F.S., sets the priority order for payment of claims against the bank. For unsecured claims the order of payment is (1) expenses of the liquidation or receivership, (2) state claims, (3) approved claims for a "deposit", (4) approved claims for other general creditors, (5) approved claims for obligations subordinate to deposits and other general liabilities, and (6) shareholders' claims.

B. EFFECT OF PROPOSED CHANGES:

Under this legislation, home-country officials will be authorized to inspect and examine the books and records of international banking corporations while maintaining the confidentiality of customer records. Individuals performing functions similar to that of a representative office will be required to be licensed as a representative office. Additionally, this legislation provides specific procedures for the liquidation of international banking corporations by the Department of Banking and Finance. Under current law, the Department relies on the FDIC to liquidate insured institutions. Since the international banking corporation is not insured, the FDIC has no authority to liquidate the international corporation.

Please see the Section-by-Section analysis for specific procedures regarding the liquidation process.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

This legislation authorizes the Department of Banking and Finance to promulgate rules relating to the liquidation of international banking organizations.

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(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 655.059, F.S., to permit the home-country supervisor to inspect the books of an international banking corporation after proper notice to the Department of Banking and Finance.

Section 2 amends s. 663.01, F.S., to expand the definition of "international representative office" to include any person who engages in banking activities in Florida on behalf of an international banking organization.

Section 3 amends s. 663.07, F.S., to grant the Department the authority to include international banking facility assets and liabilities in the calculation of total assets and total liabilities of an international bank agency or branch. Under current law, facility assets and liabilities are generally excluded. Moreover, the section clarifies the Department's authority to require an international bank agency or international branch to meet capital equivalency requirements as well as asset maintenance requirements.

Section 4 creates ss. 663.16, 663.17, 663.171, 663.172, 663.173, 663.174, 663.175, 663.176, 663.177, 663.178, 663.18, and 663.181, F.S., as follows:

663.16, F.S., provides definitions applicable to the liquidation process for international banks.

663.17, F.S., provides the liquidation process for international banks. The circumstances under which the Department may take possession of an international bank are expanded to include: the bank has violated a law, has neglected or refused to comply with an order of the Department, and the corporation is in liquidation in another jurisdiction. Currently, the Department may take possession of a financial institution only when the financial institution is insolvent, imminently insolvent, or is transacting business in an unsound, unsafe, or unauthorized manner.

This section authorizes the appointment of a single judge to oversee the liquidation process, requires the Department to give notice to known holders of assets of the bank, requires the holders to deliver such assets to the Department, specifies that certain claims will not be accepted by the Department, and allows limited wages of employees of the bank to be paid as soon as practicable.

663.171, F.S., permits the Department to repudiate or assume any contract of an international banking organization after the Department has taken possession of the organization.

663.172, F.S., sets forth the liability of the Department in repudiating or terminating contracts. Generally, the Department's liability will be limited to the actual direct compensatory damages. If a qualified financial contract is terminated or liquidated, the Department's liability is limited to actual direct compensatory damages, including normal and reasonable costs of cover or other reasonable measures. However, the qualified financial contract is subject to "netting" provisions; that is, the liability will be limited to the lesser of the global net payment obligation or the branch to agency or agency to agency net payment obligation.

663.173, F.S., permits a party with a perfected security interest in collateral pursuant to a qualified financial contract to retain and apply such collateral in satisfaction of any claims secured by the collateral.

663.174, F.S., sets forth the Department's liability in the repudiation of leases. Generally, a party to a lease which has been repudiated by the Department will be entitled to damages equal to the lesser of the amount of liquidated damages specified in the contract, one year's rent under the repudiated lease; or an amount equal to the rent for the remaining term of the lease.

663.175, F.S., provides that upon the Department taking possession of an international banking corporation, most actions and legal proceedings against the corporation are stayed and enjoined. Legal action could be taken against the corporation for claims in the liquidation, criminal proceedings against the corporation, actions pursuant to a government's police power, enforcement of a non-money judgment obtained in a proceeding pursuant to a government's police power, a notice of tax deficiency, and actions by a secured creditor with a perfected security interest enforceable against third parties.

663.176, F.S., establishes notice requirements for the Department in a liquidation proceeding. Generally, the Department must notify all persons with claims against the corporation to present such claims within four months of the date of the notice. All claimants must notify the Department in writing within the required time frame. No claim may be accepted if untimely filed.

663.177, F.S., establishes the procedures for the disposition of property held by the Department as a result of a liquidation. Generally, the Department must maintain the property for a period of one year. Upon lapse of one year, the Department may petition a circuit court for authorization to dispose of the property, including the sale of the property to satisfy a lien for nonpayment of rental or storage charges.

663.178, F.S., establishes the criteria to be met before a claim may be accepted by the Department. Such criteria include a signed written statement under oath by the claimant and evidence of the agreement in the accounts, books or records of the corporation or the creditor provides documentary evidence. The circuit court is vested with the authority to prioritize the payment of claims. The Department must submit a list of all claims against the corporation to the circuit court. Any interest party may object to a claim within 40 days of the filing of the list. Unless the Department rejects the claim to which objections have been filed, the Department will have 60 days after the objection deadline to petition the circuit court as to the disposition of the claim. Also, at the lapse of the 60 days, the Department must approve or reject every claim. Within 30 days of acting on all claims, the Department must file a list actions on each claim.

663.18, F.S., exempts the Department from the payment of any fees imposed by a sheriff, clerk or other public officer for the filing or executing of a document pertaining to the Department's exercise of liquidation powers.

663.181, F.S., grants an international banking corporation ten days in which to apply to a circuit court for an order enjoining the Department from taking possession of it.

Section 5 repeals s. 663.02(2), F.S., relating to applying the liquidation and receivership provisions of ch. 658, F.S., to international banks. As drafted in this legislation, the liquidation procedures for international banks will be included in ch. 663, F.S.

Section 6 provides an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Positive but indeterminate. Additional international representative offices may be licensed in Florida, resulting in additional fee revenue.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Positive but indeterminate. Additional international representative offices may be licensed in Florida, resulting in additional fee revenue.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

On the occasion that the Department of Banking and Finance must use its authority to liquidate an international banking corporation, local government revenues will be negatively impacted by an indeterminate amount by the exemption from local government fees in section 4 of the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This legislation does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This legislation does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This legislation does not reduce the percentage of a state tax shared with counties or municipalities.

V. **COMMENTS:**

The Civil Justice and Claims Committee staff reviewed HB 397 and concluded that the provisions relating to liability and sovereign immunity on repudiation or termination of contracts would provide the Department of Banking and Finance with the necessary guidance and tools to regulate international banks located in Florida.

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

VII. **SIGNATURES:**

COMMITTEE ON FINANCIAL SERVICES:

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