

STORAGE NAME: h0443.jud

DATE: March 31, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 443

RELATING TO: Trust Powers

SPONSOR(S): Representative Flanagan

COMPANION BILL(S): CS/SB 990 (s)

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

- (1) FINANCIAL SERVICES 8 YEAS 0 NAYS
- (2) REAL PROPERTY AND PROBATE 6 YEAS 0 NAYS
- (3) JUDICIARY
- (4)
- (5)

I. SUMMARY:

This bill effectively reenacts a provision scheduled for repeal September 1, 1999, which exempts certain banks or associations and trust companies from a prohibition against corporations conducting trust business in Florida. Specifically, the bill affirms this exemption for those banks or associations and trust companies resulting from an interstate merger transaction with a Florida bank under s. 658.2953, F.S., that have trust powers. Additionally, the bill incorporates this language into a restatement of the existing statutory language which exempts from this prohibition banks or associations and trust companies incorporated in Florida and national banking or federal associations located in Florida, which have trust powers.

This bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 658.12(20), F.S., describes the "trust business" as the business of acting as a fiduciary. Section 658.12(8), F.S., defines fiduciary as meaning a trustee, committee, guardian, custodian, conservator, or other personal representative of a person, property, or estate; registrar or transfer agent for evidences of indebtedness, and stocks and bonds; fiscal or financial agent; investment adviser; trustee in bankruptcy; assignee for creditors; or holder of any other position of trust.

Section 660.41, F.S., prohibits all corporations from acting as trustees in Florida for decedents, as receivers or trustees under appointment of any court, as assignees, receivers, or trustees in a bankruptcy situation, or as fiscal agencies, transfer agents, or registrars of any municipal or private corporation under certain conditions. This section then provides a variety of exemptions from this prohibition. Specifically exempted from the prohibition are banks or associations and trust companies incorporated in Florida and national banking or federal associations located in Florida, which have trust powers. When Florida authorized interstate banking in the state in 1994, interstate bank mergers produced financial services entities with trust powers which were neither incorporated in the state nor nationally chartered.

Section 658.2953(14)(b), F.S., authorizes an out-of-state bank branch to exercise in Florida all trust powers acquired as a result of an interstate merger with one or more Florida banks with trust powers. Section 18 of Chapter 97-30, Laws of Florida, further provides that banks or associations and trust companies resulting from an interstate merger transaction with a Florida bank under s. 658.2953, F.S., that have trust powers are not prohibited from exercising any of the trustee powers provided in s. 660.41, F.S. However, section 18 of Chapter 97-30, Laws of Florida (CS/HB 541), also includes a repeal of this provision effective September 1, 1999.

B. EFFECT OF PROPOSED CHANGES:

This bill retains a provision scheduled for repeal September 1, 1999, which exempts certain banks or associations and trust companies from a prohibition against corporations conducting trust business in Florida. Specifically, the bill amends s. 660.41, F.S., to affirm this exemption for banks or associations and trust companies resulting from an interstate merger transaction with a Florida bank under s. 658.2953, F.S., that have trust powers. Additionally, the bill incorporates this language into a restatement of the existing statutory language which exempts from this prohibition banks or associations and trust companies incorporated in Florida and national banking or federal associations located in Florida, which have trust powers. The effect of this legislation will be to retain the current application of the prohibition exemption.

The effective date of the bill is September 1, 1999.

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?

No

(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?

The bill does not reduce or eliminate an agency or program.

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

N/A

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

N/A

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?

The bill will maintain the ability of current providers of trust services to provide such services in the future.

- 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?

The bill does not purport to provide services to families or children.

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

- 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?

The bill does not create or change a program providing services to families or children.

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 660.41, F.S.

E. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

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:

None

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:

None

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill 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:

The bill will not reduce the authority of municipalities and counties to raise revenues.

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

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 3, 1999, the Committee on Financial Services adopted one amendment to HB 443. The amendment provides that an out-of-state national bank with trust offices in Florida that is lawfully conducting trust business in the state and that has been approved by the Office of the Comptroller of the Currency does not have to be physically located in the state. This has the effect of codifying in Florida law a current practice which is authorized under Federal banking laws.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

Susan F. Cutchins

AS REVISED BY THE COMMITTEE ON Real Property and Probate:

Prepared by:

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J. Marleen Ahearn, Ph.D., J.D.

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AS FURTHER REVISED BY THE COMMITTEE ON JUDICIARY:

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