SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1260

SPONSOR: Banking and Insurance Committee and Senator King

SUBJECT: Financial Institutions

DATE: March 20, 2001 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Favorable/CS
2.			FT	
3.				
4.				
5.				
6.				

I. Summary:

The committee substitute provides the following changes to the Banking Code, which provides for the regulation of financial institutions:

1. Increases the minimum capitalization requirements for de novo banks, from $4 million to $6 million for an institution located in a county with a metropolitan statistical area, and from $2 million to $4 million for an institution located elsewhere. Mandates that organizing directors subscribe to 25 percent of capital stock. Eliminates an application and filing fee for relocation of a bank's main office if it is operating in a safe and sound manner. Requires at least two proposed directors to have recent regulatory experience.

2. Provides that the pay-on-death account provisions of the Florida Statutes would apply to and govern deposits in trust, affecting only deposits made to an account created after December 31, 1994.

3. Amends s. 655.50, F.S., relating to the Florida Control of Money Laundering in Financial Institutions Act, to conform state financial transaction reporting requirements to the federal reporting standards.

4. Allows the department to return a substantially incomplete application to an applicant; allows resubmission of the application within 30 days without payment of an additional fee.

5. Eliminates the description of a "strong and well-managed" institution, and replaces "strong and well-managed" with "operating in a safe and sound manner."

6. Eliminates the current requirement in s. 658.34(4), F.S., which requires the approval of the department for the issuance of previously un-issued stock to declare or pay dividends. However, the bill would require dividends declared or paid from previously un-issued stock to comply with provisions of s. 658.34, F.S., (shares of capital stock) and s. 658.37, F.S., (dividends and surplus).

7. Increases the percent of capital stock a one-bank holding company may accept as collateral on a loan from any one borrower from 10 to 15 percent of the capital of the one-bank holding company, if the stock is listed and traded on a recognized exchange. If a loan is collateralized by capital stock that is not listed on a recognized exchange, the one-bank holding company would be permitted to accept loans with such collateral up to a maximum of 10 percent of the capital of the one-bank holding company.

8. Permits a one-bank holding company to make a loan using its own stock as collateral, as long as the loan would not be used for the purchase of additional stock.

This bill substantially amends the following sections of the Florida Statutes: 655.043, 655.411, 658.23, 658.48, 655.50, 658.12, 658.165, 658.19, 658.21, 658.235, 658.25, 658.26, 663.066, 658.34, 658.73, and 663.09. Section 655.81, F.S., is repealed.

II. Present Situation:

Disposition of Deposits

Currently, the Florida Statutes contain two provisions which govern the disposition of certain deposits upon the death of the depositor. These statutory provisions include sections dealing separately with deposits in trust and pay-on-death accounts.

Section 655.81, F.S. (deposits in trust), provides that deposits made by any person describing himself or herself as a trustee, without further written notice of the existence and terms of a legally valid trust, may be paid by the institution to the person for whom the deposit was stated to have been made, in the event the person described as the trustee dies. The section further provides that in the case of a credit union, deposits may be held in the name of a member in trust for a beneficiary. That beneficiary, however, unless a member of the credit union in his or her own right, will not incur the duties or privileges of membership.

In addition, s. 655.82, F.S. (pay-on-death accounts), governs the disposition of accounts which are designated "pay-on-death." That section defines a "pay-on-death designation" as the designation of:

1. A beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries; or

2. A beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

The section further defines a "beneficiary" as a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as a trustee.

Since s. 655.82(3)(b), F.S., provides that "…in an account with a pay-on-death designation, … on the death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries," deposits in trust contemplated by s. 655.81, F.S., also fall within the operation of s. 655.82, F.S., dealing with pay-on-death accounts, in that deposits in trust must be paid to surviving beneficiaries upon the death of a named trustee.

According to proponents of the bill and the Department of Banking and Finance, deposits in trust generate documentary and record keeping costs associated with the application of probate laws. In contrast, deposits in pay-on-death accounts pass directly to a beneficiary by operation of law, and like deposits passing to a surviving owner of a joint account with right of survivorship, are not subject to probate. Furthermore, both the department and bill proponents maintain that operation of the statutory provision dealing with pay-on-death accounts, which the Legislature passed in 1994, was meant to include deposits in trust.

Banker's Banks

The Florida Statutes provide a definition of a "banker's bank" which limits the class of customers to which the banker's bank is authorized to provide services. A banker's bank, as defined by s. 658.12(3), F.S., is a bank insured by the Federal Deposit Insurance Corporation, or a holding company which owns or controls such an insured bank, when the stock of such bank or holding company is owned exclusively by other banks, and such bank or holding company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and employees. Under the provisions of s. 658.165, F.S., a banker's bank is generally subject to the provisions of the financial institutions codes and rules, except as otherwise specifically provided.

Banker's banks (only one operates in Florida) exist solely to serve smaller community banks. According to the Department of Banking and Finance, in some cases, banker's banks were providing loans both to, and on behalf of, banks that had not yet secured final regulatory approval. It is the department's position that this practice is of questionable legality.

According to the department, unchartered organizations not only borrow from banker's banks, but also contract with the banker's bank to loan money on their behalf. Once the organization receives final regulatory approval, and has sufficient capital, it purchases the outstanding loans from the banker's bank. This practice allows a new financial institution to immediately own debt and recognize these debts as assets upon officially opening for business.

Issuance of Stock, Stock Dividends, and Options

Under the provisions of s. 658.34, F.S., relating to the issuance of capital stock shares, with the approval of the department, a bank may issue less than all of the number of authorized shares. However, such authorized but unissued shares may be issued to provide stock options, as

provided in s. 658.35, F.S.; to declare or pay a stock dividend with the approval of the department; or to increase the capital of the bank or trust company, with the approval of the department. Section 658.37, F.S., authorizes the directors of any bank or trust company to declare dividends based upon the aggregate of the net profits of the preceding 2 years combined with its retained net profits.

Financial Institutions Reporting Requirements

Section 655.50, F.S., requires financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures, and authorizes certain exemptions under the authority of 31 U.S.C. 5313. The Florida Statutes, however, impose a requirement on banks to report currency transactions over the amount of $10,000 while the federal scheme grants broad exemptions and requires reporting of "suspicious activity."

The provisions of 31 U.S.C. 5313(d) through (g), added to the Bank Secrecy Act in 1994, concern the exemption of transactions by certain customers of depository institutions. 31 U.S.C. 5313(d) (sometimes called the "mandatory exemption" provision) states that the Secretary of the Treasury shall exempt a depository institution from the requirement to report currency transactions with respect to transactions between the depository institution and four specified categories of customers, while 31 U.S.C. 5313(e) (sometimes called the "discretionary exemption" provision) authorizes the Secretary of the Treasury to exempt a depository institution from the requirement to report transactions in currency between it and a qualified business customer. A "qualified business customer," for purposes of the discretionary exemption provision, is a business that:

1. Maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act) at the depository institution;
2. Frequently engages in transactions with the depository institution which are subject to the reporting requirements of subsection (a); and,
3. Meets criteria that the Secretary determines are sufficient to ensure that the purposes of this subchapter are carried out without requiring a report with respect to such transactions.

Section 8(s)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(s)(1)), as amended by section 2596(a)(2) of the Crime Control Act of 1990 (Pub. L. 101-647), mandates that the Office of the Comptroller of the Currency (OCC) issue regulations requiring banks under its supervision to establish and maintain internal procedures that are reasonably designed to ensure and monitor compliance with the Bank Secrecy Act. Effective "Know Your Customer" programs serve to facilitate compliance with the Bank Secrecy Act.

Bank or Trust Company Applications/Capitalization/Director Requirements/Loans

Under the provisions of chapter 658, F.S., an applicant seeking authority to organize a bank or trust company must submit an application with a non-refundable filing fee of $15,000 to the department. The department then examines the application and undergoes an exhaustive examination process to determine the viability of the applicant to organize an institution.

According to the department, applications with deficiencies are returned to the applicant, who may then resubmit the corrected application along with another non-refundable application fee.

Among the findings required by the department to grant authority for a bank and trust company is appropriate minimum capitalization. Section 658.21, F.S., sets a minimum capitalization for a bank at no less than $4 million for an institution located in a county with a metropolitan statistical area, and $2 million for an institution located elsewhere. The department, by policy, requires minimum capitalization at $6 million and $4 million, respectively, which is FDIC standards. As a result, the department has required banks to meet the higher standards to ensure that the FDIC insures the banks.

The capital structure has minimum requirements as well. Paid-in capital must be in an amount not less than 50 percent of its total capital accounts, paid-in surplus must be in an amount not less than 20 percent of its paid-in capital, and there must be a fund designated as undivided profits in an amount not less than 5 percent of its paid-in capital. Proposed officers must have sufficient financial institution experience. A director who is not a proposed officer must have at least 1-year executive or regulatory experience in banking within 3 years of the application. The department may waive this requirement if the director has "very substantial" experience in banking. The department determines the viability of the proposed applicant against the backdrop of the Uniform Financial Institutions Rating System, commonly known as the CAMELS rating system. The existing CAMELS rating system produces a composite rating of an institution's overall condition and performance by assessing five components: Capital adequacy, Asset quality, Management administration, Earnings, Liquidity, and Sensitivity to Market Risk. A CAMELS score of "1" is the best overall rating while a rating of "5" is the very worst.

With regards to generating investment support, under current law directors must complete the new bank or trust company's stock offering and file with the department a final list of subscribers at least 30 days prior to the issuance of the stock.

The bank or trust company is required to open for business no later than 6 months after commencing its corporate existence. The department has the discretion to extend that deadline for an additional 6 months for good cause shown. In any case, the institution must be opened for business no later than 1 year after its corporate existence is commenced.

Section 658.48, F.S., authorizes banks to make loans and extensions of credit, with or without security, subject to certain limitations. Presently, one-bank holding companies can make loans collateralized by capital stock in amount up to 10 percent of the capital account of the one-bank holding company. In addition, no loans can be made by a bank on an unsecured basis for the purpose of purchasing shares of its own capital stock, stock of its own one-bank holding company, or its obligations subordinate to deposits. Banks are also not permitted to make loans on the security of the shares of its own capital stock, stock of its own one bank holding company, or of its obligations subordinate to deposits.

Bank Branching, Relocation, and Consolidation

Currently, every bank or trust company that desires to open a branch office must file with the department a branch application with applicable fees, unless that institution is run in a "safe and sound manner" as determined by the department in accordance with its administrative rules. Rule 3C-105.402, F.A.C. The rule states that a safe and sound financial institution is an institution that has been in operation for at least 24 months, is well-capitalized, has adequate management, has received an aggregate rating at the institution's most recent state or federal safety and soundness examination (CAMELS rating) of no less than "2," and is not the object of any enforcement action.

Strong, well-managed institutions pay reduced fees for branch applications, and reduced application fees for relocation of offices. For instance, a bank run in a safe and sound manner need only to send the department a notice at least 30 days prior to the branch's opening.

An office may relocate upon prior notice and approval by the department upon filing the appropriate fees and application for relocation. An application for the relocation of an office that has not been in operation for more than 24 months shall be published in the Florida Administrative Weekly. A relocation application filed by a "strong, well-managed" state bank or trust company shall be deemed approved if not denied within 10 days of receipt by the department. The phrase "strong, well-managed" is defined as an institution that has been in operation for at least 24 months, is well capitalized, has received a satisfactory rating at the institution's most recent state or federal safety and soundness examination, and is not the object of any enforcement actions. Section 658.26 (6), F.S.

An established branch office may consolidate with another established branch office that is located within a mile of each other with 30 days prior notice, and any other information required by the department.

Finally, the department receives continuous requests for a "certificate of good standing" from entities that require some certification that a financial institution is licensed to conduct business in the state. The department reports that its out-of-pocket expense for issuing these certificates is $25 for each request.

III. Effect of Proposed Changes:

Section 1. Amends s. 655.043, F.S., to eliminate an obsolete requirement that a corporate name must be reserved with the Secretary of State.

Section 2. Provides that the Legislature's intent that the pay-on-death account provisions of the Florida Statutes would apply to and govern deposits in trust. That intent language further provides that references to the deposits in trust statute in any depository agreement would be interpreted as referring to the pay-on-death accounts statute. The bill's provisions would affect only deposits made to an account created after December 31, 1994.

Upon the death of a named trustee deposits in trust may pass directly to beneficiaries by operation of law, which may relieve financial institutions holding these accounts from certain record keeping burdens associated with probate.

Section 3. Amends s. 655.411, F.S., to eliminate an obsolete requirement that a corporate name must be reserved with the Secretary of State.

Section 4. Amends s. 655.50, F.S., to require financial institutions to record information relevant to the person whose transactions are exempt rather than the transaction itself, tracking the federal standard for financial transaction reporting.

Section 5. Amends s. 658.12, F.S., to allow banker's banks to provide services to financial institutions rather than depository institutions. The term, "depository institutions," is not defined in the Banking Code. The term, "financial institution," is defined to include state and federal associations, banks, savings banks, trust companies, international bank agency, or credit union.

Section 6. Amends s. 658.165, F.S., to authorize a banker's bank to provide services on behalf of the expanded class of entities, from depository institutions to financial institutions.

Section 7. Amends s. 658.19, F.S., to provide a bank or trust company applicant a one-time opportunity to correct an initial application for authority to organize without incurring additional fees if resubmission occurs within 60 days after the department returns the application.

Section 8. Amends s. 658.21, F.S., to increase the minimum capitalization requirements for de novo banks, from $4 million to $6 million for an institution located in a county with a metropolitan statistical area, and from $2 million to $4 million for an institution located elsewhere. This section requires that at least 25 percent of total capital at opening be directly controlled by the organizing directors of the bank, and at least 25 percent of a bank holding company's capital account to be so controlled if the bank is owned by a single-bank holding company. This section removes from the proposed capital structure of a bank or trust company, language requiring an existing fund designated as undivided profits equal in an amount to not less than 5 percent of its paid in capital. This section increases from one to two, the minimum number of proposed directors (who are not proposed officers) that are required to have at least 1 year executive or regulatory experience in banking within 3 years of the application. The department may waive this requirement if at least one of the proposed directors has substantial experience in banking.

Section 9. Amends s. 658.23, F.S., to eliminate an obsolete requirement to reserve a corporate name with the Secretary of State.

Section 10. Amends s. 658.235, F.S., to require directors to have completed the new bank or trust company's stock offering and to file with the department a final list of subscribers at least 30 days prior to opening the institution. Current law required the stock offering and list of subscribers sent to the department at least 30 days prior to the issuance of the stock.

Section 11. Amends s. 658.25, F.S., to increase the amount of time that a bank or trust company must open for business after commencement of its corporate existence, from 6 months to 1 year. Language providing department discretion to extend the deadline is removed.

Section 12. Amends s. 658.26, F.S., to clarify that a bank that wishes to open a branch but does not meet the requirements for the branch notification process (e.g., not operating in a safe and sound manner, as defined) must file a written application with fees to the department. This section also eliminates the requirement that a relocation application for a main office that has not been in existence for more than 24 months be published in the Florida Administrative Weekly. This section eliminates the description of a "strong and well-managed" institution, and replaces "strong and well-managed" with "operating in a safe and sound manner." This section eliminates language permitting branch offices to consolidate if they are within 1 mile of each other, made obsolete by the operating in a safe and sound manner standard.

Section 13. Transfers s. 663.066, F.S., regarding the acquisition or ownership of a state bank by an international banking corporation, and renumbers same as s. 658.285, F.S.

Section 14. Amends s. 658.34, F.S., to require dividends declared or paid from previously un-issued stock to comply with provisions of s. 658.34, F.S., (shares of capital stock) and s. 658.37, F.S., (dividends and surplus), and eliminates the current requirement in s. 658.34(4), F.S., making approval of the department necessary for the issuance of previously un-issued stock to declare or pay dividends.

Section 15. Amends s. 658.73, F.S., to eliminate a $750 filing fee for each application for a branch of a strong, well managed state bank or trust company if it is operating in a safe and sound manner. This section eliminates the requirement that an applicant who will establish more than 10 branch locations in the state pay a fee of $100 for each branch location. This section also eliminates language permitting the department to refund up to half an application fee if the applicant withdraws the application prior to publication in the Florida Administrative Weekly. The fee for relocating a state bank or state trust company not operating in a safe and sound manner is increased from $250 to $750. This section also establishes a $25 fee for "certificates of good standing;" the fee is waived for law enforcement and regulatory agencies.

Section 16. Amends s. 663.09, F.S., to remove language that subjects an international banking corporation to an administrative fine for filing an untimely financial audit.

Section 17. Amends s. 655.48, F.S., to permit one-bank holding companies to make a loan to any one borrower on the security of capital stock, listed and traded on a recognized exchange, for up to 15 percent of the capital of the one-bank holding company. If a loan is collateralized by capital stock that is not listed on a recognized exchange, the one-bank holding company would be permitted to accept loans with such collateral up to a maximum of 10 percent of the capital of the one-bank holding company. Presently, one-bank holding companies may allow a borrower to use capital stock as collateral for a loan up to 10 percent of the capital of the one-bank holding company. The section would also authorize a one-bank holding company to make a loan using its own stock as collateral, as long as the loan would not be used for the purchase of additional stock.

Section 18. Repeals s. 655.81, F.S., pertaining to deposits in trust. See, Section 2, above.

Section 19. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill increases the fee from $250 to $750 to relocate the main office of a state bank or trust company that is not operating in a safe and sound manner. According to the department, since these fees were instituted in 1997, only 10 applications have been received.

The bill eliminates a $100 per branch fee for each branch, in excess of ten, included in a purchase and assumption application. Since this provision was implemented in 1997, the department has received only 13 applications.

B. Private Sector Impact:

The bill standardizes state financial transaction reporting with federal standards, which may reduce reporting expenses. Organizers filing a de novo bank or trust company application may avoid duplicative fee expenses through a one-time opportunity to correct an initial application for authority to organize if resubmission occurs within 60 days after the department returns the application.

The bill increases the minimum capitalization requirements for de novo banks, from $4 million to $6 million for an institution located in a county with a metropolitan statistical area, and from $2 million to $4 million for an institution located elsewhere. The bill requires that at least 25 percent of total capital at opening be directly controlled by the organizing directors of the bank, and at least 25 percent of a bank holding company's capital account to be so controlled if the bank is owned by a single-bank holding company.

De novo institutions may incur additional organizational expense as this bill increases from one to two, the number of proposed directors (who are not proposed officers) that are required to have at least 1 year executive or regulatory experience in banking within 3 years of the application. This is a safety and soundness issue, however, so any expense may be offset by the security of experienced leadership.

Banks that operate in a safe and sound manner would save an application and filing fee expense for relocation of a bank's main office.

The bill may relieve some of the administrative cost to financial institutions associated with record keeping made necessary by Florida's probate laws. In addition, the bill would codify the practice of banker's banks, which lend to, and on behalf of, certain pre-chartered organizations, enhancing the possibility of their survival as new banks.

Entities requiring a "certificate of good standing" from the department would incur a $25 expense.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.