

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 806

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Regulation of Financial Institutions

DATE: March 27, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>McKay</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 806 makes the following changes to the regulation of financial institutions by the Office of Financial Regulation (OFR):

- Simplifies the process by which a financial institution can notify the OFR when re-designating its main or principal office.
- Specifies the ways semiannual assessments can be transmitted electronically and further specifies the dates by which assessments must be received by the OFR.
- Deletes the requirement that the OFR select an appraiser to conduct certain real-estate appraisals.
- Specifies the date by which an international banking corporation must provide its annual certification of capital accounts to the OFR.

II. Present Situation:

Florida Financial Institutions Codes

The Florida Office of Financial Regulation (OFR)'s Division of Financial Institutions charters and regulates entities that engage in financial institution business in Florida, in accordance with

the Florida Financial Institutions Codes (Codes), and the Florida Financial Institutions Rules, adopted by the Financial Services Commission.¹ 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 663, F.S. – International Banking;
- Chapter 665, F.S. – Capital Stock Associations; and
- Chapter 667, F.S. – Savings Banks.

As of June 30, 2014, the Division of Financial Institutions licenses and regulates 254 state-chartered financial institutions for safety and soundness:²

- 132 banks;
- 72 credit unions;
- 25 international bank offices; and
- 12 trust companies

Main or Principal Office

Paragraph 655.005(1)(q), F.S., provides the definition for “main office” or “principal office” of a financial institution as the main business office designated in its articles of incorporation or bylaws. The identified location is approved by the OFR in the case of a state financial institution, or by the appropriate federal regulatory agency in the case of a federal financial institution. When an institution desires to redesignate the location of its main office, it must file an amendment to its articles of incorporation or bylaws and provide the changes to the OFR for review and approval.³

Assessments

Section 655.047, F.S., requires each state financial institution to pay the OFR a semiannual assessment based on the total assets as shown on the statement of condition for each financial institution. The mailing of such assessments must be postmarked on or before January 31 and July 31 of each year. The current statute does not explicitly authorize the acceptance of semiannual assessment payments made to the OFR electronically; however, the OFR states in its agency analysis⁴ that electronic payment of assessments are currently accepted and most financial institutions have chosen to send payments electronically rather than U.S. standard mail.

Appraisals

Section 655.60, F.S., authorizes the OFR to request appraisals of real estate or other property held by any state financial institution when the OFR believes a state financial institution’s own

¹ Chapters 69U-100 through 69U-150, F.A.C.

² OFFICE OF FINANCIAL REGULATION, *Fast Facts* (2nd ed., Dec. 2014), available at: <http://flofr.com/StaticPages/documents/FastFacts2015.pdf>; last visited March 27, 2015.

³ Sections 655.043 and 658.23(6), F.S.

⁴ 2015 Legislative Bill Analysis of SB 806 by Office of Financial Regulation (March 13, 2015), on file with the Senate Commerce and Tourism Committee.

appraisals or evaluations of its ability to make payments may be excessive. The statute provides that an appraisal must be made by a licensed or certified appraiser or an appraiser that is selected by the OFR. The cost of the appraisal must be paid by the state financial institution directly to the appraiser upon the institution's receipt of a statement of appraisal cost. Following the completion of the appraisal, a copy of the appraisal report made by the OFR pursuant to this section is then furnished to the financial institution within a reasonable time, not exceeding 60 days.

Banks and Trust Companies

Section 655.005, F.S., provides that "executive officer" means an individual, whether or not the individual has an official title or receives a salary or other compensation, who participates or has authority to participate, other than in the capacity of a director, in the major policymaking functions of a financial institution. The term does not include an individual who may have an official title and may exercise discretion in the performance of duties and functions, including discretion in the making of loans, but who does not participate in the determination of major policies of the financial institution and whose decisions are limited by policy standards established by other officers, whether or not the policy standards have been adopted by the board of directors. The chair of the board of directors, the president, the chief executive officer, the chief financial officer, the senior loan officer, and every executive vice president of a financial institution, and the senior trust officer of a trust company, are presumed to be executive officers unless such officer is excluded, by resolution of the board of directors or by the bylaws of the financial institution, from participating, other than in the capacity of a director, in major policymaking functions of the financial institution and the individual holding such office so excluded does not actually participate therein. Section 658.19, F.S., which relates to application for authority to organize a bank or trust company, references "president," "chief executive officer" (if other than the president), such terms appear duplicative given the definition of "executive officer" provided in s. 655.005, F.S.

International Banking

Section 663.08, F.S., provides for the certification of capital accounts for international banking corporations having offices in Florida both prior to opening an office in this state and annually thereafter. The statute does not provide a specific due date for the required annual certification of capital accounts. According to the OFR, this has resulted in the OFR receiving the annual certifications at various times throughout the year, and has caused confusion for these institutions regarding the date for submission.

III. Effect of Proposed Changes:

Main Office Designation

Section 1 amends the definition of "main office" in s. 665.005(1)(q), F.S., which will give a financial institution the ability to submit to the OFR an application for a re-designation of its main or principal office. This application is intended to streamline such changes by removing the current process that requires institutions to amend their articles of incorporation or bylaws in order to make such re-designations with the OFR.

Assessments

Section 2 amends s. 655.047, F.S., to authorize a financial institution to make an electronic payment of semiannual assessments by a wire transfer, automated clearinghouse, or other electronic means, and requires that such electronic payments must be transmitted to the OFR on or before January 31 and July 31 of each year.

The bill also changes a current requirement that assessment payments sent by mail to the OFR must be *postmarked* on or before January 31 and July 31 of each year, to a requirement that mailed assessment payments must be *received by* the OFR on or before January 31 and July 31 of each year.

Appraisals

Section 3 amends s. 655.60, F.S., to remove the requirement that the OFR select an appraiser to perform the appraisal of real estate or other property held by a state financial institution. The section also no longer requires the cost of each appraisal to be approved in writing by the OFR. The changes in this section do not affect the requirement that institutions must still hire a licensed appraiser at the request of the OFR.

Applications for Authority to Organize Banks or Trust Companies

Section 4 removes the terms “president” and “chief executive officer” from the requirements for an application for authority to organize a bank or trust company in s. 658.19, F.S. Since “president” and “chief executive officer” are included within the defined term of “executive officer”⁵ elsewhere in the Codes, the bill deletes these two terms, and replaces them with the term “executive officer.”

Corrected Cross Reference Related to Trust Service Offices

Section 5 corrects a cross reference. Subsection 660.33(1), F.S., includes an obsolete cross-reference to s. 660.32, F.S., which has been repealed. This section updates the cross-reference to reference s. 658.26, F.S., which is currently applicable.

Certification of Capital Accounts for International Banking Corporations

Section 6 amends s. 663.08, F.S., to mandate that a required certification of capital accounts by international banking corporations must be received by the OFR on or before June 30th of each year. Current law does not contain a specific due date for these required certifications, so this deadline should provide clarity to the industry and allow the OFR to better manage and review such certifications.

⁵ Section 655.005(1)(g), F.S.

Reenactments

Sections **7 through 12** of the bill reenact the following statutory provisions, for the purposes of incorporating the changes made by the bill:

- **Section 7** reenacts subsection 655.960(8), F.S.
- **Section 8** reenacts paragraph 663.302(1)(a), F.S.
- **Section 9** reenacts subsection 658.165(1), F.S.
- **Section 10** reenacts subsection 665.013(3), F.S.
- **Section 11** reenacts subsection 667.003(3), F.S.
- **Section 12** reenacts subsection 658.12(4), F.S.

Effective Date

Section 13 provides that the effective date of the bill is October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The changes in Section 1 will allow a financial institution to notify the office of a re-designation of its main or principal office without having to amend its articles of incorporation or bylaws. This could provide a small saving to an institution when making such a change.

The changes in Section 2 that allow for the electronic payment of semiannual assessments may provide savings on postage costs to state financial institutions.

C. **Government Sector Impact:**

The OFR has indicated that clarifying the due date for statutorily required assessments may have an insignificant negative fiscal impact in terms of the potential reduction in fine collection from non-compliance. The streamlining of some processes may result in a positive fiscal impact in terms of decreased costs and staff time.⁶

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 655.005, 655.047, 655.60, 658.19, 660.33, and 663.08.

This bill reenacts the following sections of the Florida Statutes: 655.960, 663.302, 658.165, 665.013, 667.003, and 658.12.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 17, 2015:

Removed section 4 of the bill dealing with the reporting of elected or appointed officers of a Credit Union.

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁶ 2015 Legislative Bill Analysis of SB 806 by Office of Financial Regulation (March 13, 2015), on file with the Senate Commerce and Tourism Committee.