

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 Banking and Insurance

BILL: SB 1104

INTRODUCER: Senator Flores

SUBJECT: Service of Process on Financial Institutions

DATE: February 8, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1104 changes the procedures for service of process on a financial institution. Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. This bill allows a financial institution to designate a place or registered agent within Florida as its central location for service of process. After a financial institution has designated a place or registered agent, such place or registered agent is the sole location for service of process. In order to establish a central location for service of process, the financial institution must file a notice with the Department of Financial Services (DFS) designating the central location. The notice must contain the central location's:

- Addressee name;
- Physical address;
- Telephone number;
- Business hours during which service of process will be accepted.

The bill requires the DFS to publish a list of all central locations on its website and requires the DFS to update the list within 15 days of receipt of a revocation or modification made by a financial institution. The DFS website must specify the date that the list was updated.

The bill provides that the designated central location is the proper venue for service of process for all types of service of process made on a financial institution.

If service cannot be made at the designated central location, the bill provides that service may be made to an officer of the financial institution at its principal place of business or at any other branch, office, or place of business in Florida. The bill provides that service can no longer be made on a financial institution's business agent or director.

II. Present Situation:

The U.S. dual banking system allows financial institutions to become chartered (organized) under either federal or state law. National banks are chartered under federal law. State-chartered banks are chartered under the laws of the state in which the bank is headquartered. Credit unions may also be either state or federally chartered.

In Florida, the Office of Financial Regulation (OFR), which is administratively housed within the DFS, is responsible for the regulation of financial institutions chartered and organized under Florida law and in accordance with the Florida Financial Institutions Codes for safety and soundness.¹ The OFR does not regulate national banks or banks that are chartered and regulated in other states. In addition, the OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent those foreign institutions seek to engage in the business of banking or trust business in Florida. State service of process laws apply to national banks and are not preempted by federal law.

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Section 655.0201, F.S., governs the manner in which service of process, notice, or demand may be made on financial institutions that transact business in Florida, whether state or nationally chartered. It provides that process may be served in accordance with chs. 48 (service of process), 49 (constructive service of process), 605 (limited liability companies), or part I of ch. 607 (corporations), F.S. Section 48.081, F.S., sets forth the order of priority of persons within a private corporation, domestic or foreign, who may be properly served:

- President or vice president, or other head of the corporation,
- Cashier, treasurer, secretary, or general manager,
- Any director,
- Any officer or business agent residing in the state.

Every Florida corporation and every foreign corporation qualified to do business in this state must designate a registered agent and registered office which must be kept open and available for receiving process during certain hours and days, in accordance with pt. 1, ch. 607, F.S.² The Financial Institutions Codes require Florida-chartered banks to be formed as a Florida corporation or as a limited liability company (LLC) in certain circumstances.³ Accordingly, s. 655.0201(1), F.S., also allows service of process to be made on financial institutions pursuant to ch. 605, F.S. (Florida Revised Limited Liability Company Act), or part I of ch. 607, F.S. (Florida Business Corporation Act). The LLC Act generally provides that process may be served on the entity's registered agent.⁴

Subsection 655.0201(2), F.S., allows, but does not require, a financial institution to designate a registered agent for service of process. If the financial institution does not have a registered agent, or the registered agent cannot be served with reasonable diligence, subsection

¹ See s. 20.121(3)(a)2, F.S. The Financial Institutions Codes are chapters 655, 657, 658, 660, 662, 663, 665, and 667, F.S.

² See s. 48.091, F.S.

³ See s. 658.16, F.S.

⁴ See ss. 605.0113 and 605.0117, F.S.

655.0201(2), F.S., authorizes service on any executive officer⁵ of the financial institution at its principal place of business in Florida.

If neither of the previously described alternatives is viable, the default alternative is to serve any officer,⁶ director, or business agent of the financial institution at its principal place of business or at any other branch, office, or place of business in this state.⁷

Finally, the statute provides that this section does not prescribe the only means of serving notice or demand on a financial institution.

A recent example of improper service of process on a financial institution in Florida is illustrated in the *Bank of America, N.A. v. Bornstein*⁸ decision from the Fourth District Court of Appeal. The plaintiff served a writ of garnishment on Bank of America through a bank teller at a West Palm Beach branch office, without showing that service was first attempted on the statutorily prescribed superior classes of persons who could have been served. Bank of America moved to quash service under the service of process statutes in the Codes and under ch. 48, F.S., asserting that the bank teller was not authorized to accept service on behalf of the bank. The appellate court concurred with the bank, finding service was improper.

III. Effect of Proposed Changes:

This bill allows a financial institution to designate a place or registered agent within Florida as its central location for service of process. After a financial institution has designated a place or registered agent, such place or registered agent is the sole location for service of process. In order to establish a central location for service of process, the financial institution must file a notice with the Department of Financial Services designating the central location. The notice must contain:

- Addressee name;
- Physical address;
- Telephone number;
- Business hours during which service of process will be accepted.

⁵ Section 655.005(1)(g), F.S., defines “executive officer” as “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.”

⁶ Section 655.005(1)(r), F.S., defines “officer” as “an individual elected or appointed to, or otherwise performing the duties and functions appropriate to, any position or office having the designation or title of chair of the board of directors, vice chair of the board of directors, chair of the executive committee, president, vice president, assistant vice president, cashier or assistant cashier, comptroller, assistant comptroller, trust officer, assistant trust officer, secretary or assistant secretary of a trust company, or any other office or officer designated in, or as provided by, the articles of incorporation or bylaws.”

⁷ See s. 655.0201(3), F.S.

⁸ 39 So.3d 500 (Fla. 4th DCA 2010).

The bill provides that the designated central location is the proper venue for service of process for all types of service of process made on a financial institution.

If service cannot be made at the designated central location, the bill provides that service may be made to an officer of the financial institution at its principal place of business or at any other branch, office, or place of business in Florida. The bill provides that service can no longer be made on a financial institution's business agent or director.

The bill repeals current law that provides for service of process against a financial institution pursuant to chapters 48, 49, 605, or part I of ch. 607, F.S.

The bill requires the DFS to publish a list of all central locations on its website and must update the list within 15 days of receipt of a revocation or modification made by a financial institution. The DFS website must specify the date that the list was updated.

Section 1 of this bill provides that "department" means the Department of Financial Services when used within the financial institutions codes.

Sections 3 and 4 of the bill correct statutory cross references to conform to changes made by the bill.

This bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact on the private sector is not known.

C. Government Sector Impact:

The bill requires the DFS to maintain and update the lists of central locations on its website. The DFS anticipates the DFS staff will field questions relating to the proper way to serve process on financial institutions. The fiscal impact is not known.⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Office of Financial Regulation expressed the following concerns:

- The bill potentially creates confusion for Florida's citizens, as the relevant information regarding service of process on corporations and other entities using fictitious names is already maintained by the Department of State, Division of Corporations, and is accessible online through their website at www.sunbiz.org.
- The bill appears to create a conflict with s. 20.121(3), F.S., which designates the Office of Financial Regulation as being responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry. The conflict is created due to the use of the term "department," which is referencing the Department of Financial Services and not the Office of Financial Regulation.
- The bill does not identify the minimum number of business hours during which service will be accepted at the designated central location. By not defining the hours, the ability to serve a financial institution could be unduly limited and could lead to abusive practices.
- The bill does not provide for an alternate means of service if the designated addressee is not present at the central location or an "officer" is not present at the financial institution's principal place of business, branch, office, or place of business in Florida.
- The proposed deletion of the language currently in s. 655.0201(4), F.S., and the deletion of reference to "notice or demand" may be problematic, as these changes may adversely impact other provisions of Florida law that require pre-suit notice or demand or advance notice as a condition to the establishment of a legal right. The deletion of the language currently in s. 655.0201(4), F.S., may also cause confusion and adversely impact the Office of Financial Regulation's ability to effect service under the financial institutions codes pursuant to s. 655.031, F.S. (administrative enforcement guidelines).¹⁰

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 655.005, 655.0201, 322.143, and 655.968.

⁹ See Department of Financial Services, SB 1104 Bill Analysis (January 14, 2016)(on file with the Committee on Banking and Insurance).

¹⁰ See Office of Financial Regulation, SB 1104 Bill Analysis (January 13, 2016)(on file with the Committee on Banking and Insurance).

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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