HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 885 Transactions with Foreign Financial Institutions
SPONSOR(S): Trujillo
TIED BILLS: **IDEN./SIM. BILLS:** SB 1482

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N	Hinshelwood	Luczynski
2) Commerce Committee			

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) charters, licenses, and regulates various entities that engage in financial institution business in Florida. As part of its examination and oversight duties, the OFR also ensures that Florida-chartered financial institutions comply with state and applicable federal requirements for safety and soundness, as well as federal Bank Secrecy Act/anti-money laundering laws and economic and trade sanctions administered by the U.S. Treasury.

The bill imposes certain reporting requirements on a financial institution chartered in this state which maintains a correspondent account or a payable-through account with a foreign financial institution owned by a country under a U.S. Treasury sanctions program. Such a financial institution must, within 5 business days, identify and report the source of every transaction that passes through the foreign correspondent account to the OFR, and certify that the source does not involve any confiscated property, as defined in the Cuban Liberty and Democratic Solidarity Act of 1996.

The bill has an indeterminable fiscal impact on the state. The bill has no impact on local governments and an indeterminable impact on the private sector.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The U.S. Dual Banking System

The U.S. dual banking system allows commercial banks to become chartered (organized) under either federal or state law.

- National banks are chartered under federal law, i.e., the National Bank Act.[1] Their primary federal regulator is the Office of the Comptroller of the Currency (OCC), an independent agency within the U.S. Department of the Treasury (U.S. Treasury).
- State-chartered banks are chartered under the laws of the state in which the bank is headquartered.
    - The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System (FRB).
    - The primary federal regulator for non-members is the Federal Deposit Insurance Corporation (FDIC).[2]

In addition to having a federal regulator, state-chartered banks are regulated by their chartering state. In Florida, the state regulatory agency for financial institutions is the Office of Financial Regulation (OFR).[3] The OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes (Codes) and the rules promulgated thereunder.[4] The OFR also ensures that Florida-chartered financial institutions comply with state and applicable federal requirements for safety and soundness.[5] The OFR does not regulate federally chartered financial institutions or financial institutions chartered by other states.

Competitive Equality

The Codes contain a unique provision that ensures competitive equality for Florida-chartered financial institutions with their nationally-chartered counterparts. If a state law places a Florida-chartered financial institution at a competitive disadvantage with their nationally chartered counterparts, the Codes authorizes the OFR to grant Florida-chartered financial institutions the authority to make any loan or investment or exercise any power which they could make or exercise as if they were nationally

[1]The National Bank Act of 1964 (12 U.S.C. § 24 Seventh) gives enumerated powers and "all such incidental powers as shall be necessary to carry on the business of banking" to nationally chartered banks. To prevent inconsistent or intrusive state regulation from impairing the national system, Congress provided: "No national bank shall be subject to any visitorial powers except as authorized by Federal law." *Id.* at § 484(a).
[2]12 U.S.C. § 1813(q).
[3]s. 20.121(3)(a)2., F.S.
[4]Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.
[5]While the Codes do not specifically define "safety and soundness," the Codes define "unsafe and unsound practice" as "any practice or conduct found by the office to be contrary to generally accepted standards applicable to a financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved." *See* s. 655.005(1)(y), F.S. For a discussion of the FDIC's approach to unsafe or unsound practices, see FDIC's Risk Management Manual of Examination Policies, Section 15.1, at: https://www.fdic.gov/regulations/safety/manual/section15-1.pdf (last visited Mar. 11, 2017).

chartered, and provides they are entitled to the same privileges and protections granted to their national counterparts.[6] In addition, this provision states:

> In issuing an order or rule under this section, the office or commission shall consider the importance of maintaining a competitive dual system of financial institutions and whether such an order or rule is in the public interest.[7]

Regulations Relating to Financial Transactions

Federal Bank Secrecy Act/Anti-Money Laundering Regulations (BSA/AML) Relating to Correspondent Accounts, Payable-Through Accounts, and Foreign Financial Institutions Under U.S. Treasury Sanctions

The Financial Crimes Enforcement Network (FinCEN) is a bureau within the U.S. Treasury whose mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.[8] FinCEN administers the federal Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the "Bank Secrecy Act" or "BSA"), which requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering. The BSA was amended by the USA PATRIOT Act of 2001 to include additional measures to prevent, detect, and prosecute terrorist-related activities and international money laundering.

BSA/AML programs are an important component of safety and soundness supervision, "due to the reputational, regulatory, legal, and financial risk exposure to a bank involved in money laundering schemes or willfully violating the BSA statute."[9]

The BSA requires all U.S. financial institutions to maintain comprehensive risk management and AML compliance programs, including:

- Maintaining risk management policies and procedures, namely, "Know Your Customer" (KYC), Customer Due Diligence (CDD), and Customer Identification Programs (CIPs);
- Keeping records of cash purchases of negotiable instruments;
- Filing reports of cash transactions exceeding $10,000 (daily aggregate amount);
- Designating a BSA compliance officer and training programs for the financial institution's employees; and
- Reporting suspicious activity that might signify money laundering, terrorist financing, tax evasion, or other criminal activities. FinCEN regulations provide that banks must file a suspicious activity report (SAR) if it involves at least $5,000, and the bank knows, suspects, or has reason to suspect that the transaction involves funds derived from illegal activities, is intended or conducted in order to hide or disguise funds or assets derived from illegal activities, is designed to evade BSA or other regulatory requirements, or has no business or apparent lawful purpose.

Some examples of potentially suspicious activity are:

- A customer uses unusual or suspicious identification documents that cannot be readily verified.
- Funds transfer activity occurs to or from a financial institution located in a higher risk jurisdiction distant from the customer's operations.
- The currency transaction patterns of a business show a sudden change inconsistent with normal activities.
- Goods or services purchased by the business do not match the customer's stated line of business.

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[6] s. 655.061, F.S.
[7] *Id.*
[8] FinCEN, *Mission*, https://www.fincen.gov/about/mission (last visited Mar. 11, 2017).
[9] FEDERAL DEPOSIT INSURANCE CORPORATION, *Bank Secrecy Act Examination Program Overview*, https://www.fdic.gov/regulations/examinations/bsa/index.html (last visited Mar. 11, 2017).

- Customers conducting business in higher-risk jurisdictions.
- Official embassy business conducted through personal accounts.
- Multiple accounts are used to collect and funnel funds to a small number of foreign beneficiaries, both persons and businesses, particularly in higher-risk locations.[10]

Federal and state banking regulators oversee BSA/AML recordkeeping and reporting requirements as part of their examination duties. In addition, if the U.S. Treasury finds "reasonable grounds" exist for concluding that a non-U.S. jurisdiction or any financial institution operating outside of the U.S. is of "primary money laundering concern," the U.S. Treasury may subject U.S. financial institutions to special measures, including prohibitions or conditions on opening or maintaining certain correspondent or payable-through accounts.[11] The BSA/AML requires U.S. financial institutions to take certain customer identification and due diligence measures regarding correspondent and payable-through accounts, if the U.S. Treasury determines transactions that involve jurisdictions outside of the U.S. to be of "primary money laundering concern."[12] Further, financial institutions in the U.S. are required to have enhanced due diligence procedures for a correspondent account that is established, maintained, administered, or managed in the U.S. for a foreign bank.[13]

FinCEN has estimated that there are approximately 300 financial institutions in the U.S. that provide correspondent banking services to foreign financial institutions. Correspondent banking is essential to the U.S. and international financial systems by facilitating transactions critical for remittances, economic development, and trade finance. However, the complexity of these relationships (particularly in the intermediate layers) and the typical lack of relationship with the payment originator raises significant risks and customer due diligence obligations that some correspondent accounts can be exploited to facilitate illegal proceeds through the U.S.[14]

Florida Control of Money Laundering in Financial Institutions Act

The Florida Control of Money Laundering in Financial Institutions Act incorporates federal BSA/AML recordkeeping and reporting requirements for Florida-chartered financial institutions, and sets forth administrative remedies, criminal sanctions, and civil money penalties that are enforced by the OFR.[15]

In 2014, the Legislature amended the Florida Control of Money Laundering in Financial Institutions Act to include the BSA/AML provisions relating to terrorist financing, as enacted by the USA PATRIOT Act of 2001. The legislation also added language requiring Florida-chartered financial institutions to have a BSA/AML compliance officer who is responsible for the institution's BSA/AML policies and procedures. Further, it adds that the financial institution's board of directors is responsible for the efficacy of the BSA/AML program.

[10]Federal Financial Institutions Examination Council, *Bank Secrecy Act/Anti-Money Laundering Examination Manual, Appendix F: Money Laundering and Terrorist Financing "Red Flags,"* https://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_106.htm (last visited Mar. 11, 2017).
[11]31 U.S.C. §5318A(e)(1)(B) and (C) define "correspondent account" and "payable-through account" as:
"Correspondent account" means an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution.
"Payable-through account" means an account, including a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act), opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.
[12]31 U.S.C. § 5318A(b).
[13]31 C.F.R. § 1010.610.
[14]U.S. Department of the Treasury, *2015 National Money Laundering Risk Assessment*, pp. 40-41.
[15]s. 655.50, F.S.

State Regulations for Correspondent Accounts, Payable-Through Accounts, and Transactions Relating to Iran or Terrorism

Section 655.968, F.S, requires that a financial institution chartered in this state which maintains a correspondent account or a payable-through account with a foreign financial institution must establish due diligence policies, procedures, and controls reasonably designed to detect whether the United States Secretary of the Treasury has found that the foreign financial institution knowingly:

(a) Facilitates the efforts of the Government of Iran, including efforts of Iran's Revolutionary Guard Corps, to acquire or develop weapons of mass destruction or their delivery systems;
(b) Provides support for an organization designated by the United States as a foreign terrorist organization;
(c) Facilitates the activities of a person who is subject to financial sanctions pursuant to a resolution of the United Nations Security Council imposing sanctions on Iran;
(d) Engages in money laundering to carry out any activity in this list;
(e) Facilitates efforts by the Central Bank of Iran or any other Iranian financial institution to carry out an activity in this list; or
(f) Facilitates a significant transaction or provides significant financial services for Iran's Revolutionary Guard Corps or its agents or affiliates, or any financial institution, whose property or interests in property are blocked pursuant to federal law in connection with Iran's proliferation of weapons of mass destruction, or delivery systems for those weapons, or Iran's support for international terrorism.

Additionally, each financial institution chartered in this state must annually certify that the financial institution has adopted and substantially complies with the due diligence policies, procedures, and controls required by s. 655.968, F.S., and the rules adopted thereunder,[16] and that to the best knowledge of the financial institution, the financial institution does not maintain a correspondent account or a payable-through account with a foreign financial institution that knowingly engages in any act described above.[17]

Office of Foreign Assets Control (OFAC) and U.S. Sanctions Programs

The Office of Foreign Assets Control is another bureau of the U.S. Treasury that administers and enforces numerous economic and trade sanctions, based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the United States' national security, foreign policy, or economy. These sanctions can be either comprehensive or selective, as well as program-based (e.g., counter narcotics trafficking, counterterrorism, or cyber-related) or geographically targeted, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals. Currently, the OFAC administers over 20 country-specific sanctions programs, including Cuba.[18]

The OFAC regulations are broad in scope. All U.S. persons (including U.S. citizens and permanent resident aliens regardless of where they are located) and entities within the U.S., all U.S. incorporated entities and their foreign branches must comply with OFAC regulations. This means that all financial institutions, regardless of whether they are federally chartered or state chartered, are also bound. U.S. persons, including U.S. financial institutions, are required to "block" (freeze) targeted property which means that title to the blocked property remains with the target, but the exercise of powers and privileges normally associated with ownership is prohibited without OFAC authorization. Blocking immediately imposes an across-the-board prohibition against transfers or dealings of any kind with

[16] *See* Rule 69U-100.964, F.A.C.
[17] s. 655.968(4), F.S.
[18] For a list of current OFAC sanctions programs, see U.S. DEPARTMENT OF THE TREASURY, *Resource Center: Sanctions Programs and Country Information*, at: https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx (last visited Mar. 11, 2017).

regard to the property.[19] Every transaction that a U.S. financial institution engages in is subject to OFAC regulations. If a bank knows or has reason to know that a target is party to a transaction, the bank's processing of the transaction would be unlawful.[20]

In addition, OFAC regulations prohibit financial institutions from doing business with specific individuals, groups, and entities that are owned or controlled by, or acting for or on behalf of, targeted countries, known as the Specially Designated Nationals (SDNs) and Blocked Persons List. The OFAC can designate individuals and entities as SDNs and Blocked Persons, regardless of whether their country of residence is listed as a state sponsor of terrorism.

U.S./Cuba Relations and Recent Normalization Policy

In 1917, Congress enacted the Trading With the Enemy Act (TWEA) to empower the President to regulate and embargo trade with foreign nations.[21] To date, the only nation that remains designated as an enemy under TWEA is Cuba. With respect to Cuba, the President has repeatedly exercised the TWEA power through the comprehensive Cuban Assets Control Regulations (CACR regulations), which the U.S. Treasury first adopted in 1963 and enforces through its OFAC. Together, the TWEA and the CACR regulations are the main mechanism of domestic enforcement of the U.S. trade embargo against Cuba.

The CACR regulations define "confiscated property"[22] and prohibits U.S. nationals,[23] permanent resident aliens, and U.S. agencies from knowingly making a loan, extending credit or providing other financing for the purpose of financing transactions involving "confiscated property" the claim to which is owed by a U.S. national, except for financing by a U.S. national owning such a claim for a transaction permitted under U.S. law.[24]

In 1996, Congress enacted the Cuban Liberty and Democratic Solidarity Act ("Libertad Act" or the "Helms-Burton Act"), which continued the embargo against Cuba indefinitely and "effectively suspend[ed]…the requirement that the President revisit the embargo each year."[25] A significant aspect of the Libertad Act is that it creates a private cause of action by which U.S. nationals with claims to "confiscated property" in Cuba may file suit in U.S. courts against persons that may be "trafficking" in that property. However, no suits have ever been filed under this provision because the Libertad Act permits the President of the United States to suspend the provision every six months, an act that every U.S. President has routinely taken.[26] Most recently, on January 4, 2017, former Secretary of State John Kerry notified Congress that President Obama had suspended the lawsuit provision for another six months, effective February 1, the date that the previous six-month suspension expired.[27]

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[19]U.S. DEPARTMENT OF THE TREASURY, *OFAC FAQs: General Questions*, at https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#basic (last visited Mar. 11, 2017).
[20]U.S. DEPARTMENT OF THE TREASURY, *OFAC FAQs: Sanctions Compliance – Additional Questions from Financial Institutions #44 and 45*, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_compliance.aspx#other_fi (last visited Mar. 11, 2017).
[21]ch. 106, 40 Stat. 411 (1917) (codified as amended at 50 U.S.C. app. §§ 1–6, 7–39, 41–44).
[22]31 C.F.R. §§ 515.311(b) and 515.336.
[23]The term U.S. national generally includes: (1) A subject or citizen of the United States or any person who has been domiciled in or a permanent resident of the United States; (2) A United States partnership, association, corporation, or other organization; (3) Any organization's office or other sub-unit that is located within the United States; (4) Any person to the extent that such person was or has been acting or purporting to act directly or indirectly for the benefit or on behalf of any national of the United States; (5) Any other person who there is reasonable cause to believe is a "national," as so defined. *See* 31 C.F.R. § 515.302.
[24]31 C.F.R. § 515.208.
[25]22 U.S.C. §§ 6021-6091. *See United States v. Plummer*, 221 F.3d 1298, 1308 n.6 (11th Cir. 2000).
[26]22 U.S.C. § 6085(b). *See also* Mimi Whitefield, *One of Obama's parting acts: Suspending lawsuit provision of Helms-Burton*, MIAMI HERALD (Feb. 6, 2017), http://www.miamiherald.com/news/nation-world/world/americas/cuba/article131092324.html (last visited Mar. 11, 2017).
[27]*Id.*

Claims of U.S. nationals against the Cuban government may be certified under Title V of the International Claims Settlement Act of 1949 to the Foreign Claims Settlement Commission, a quasi-judicial, independent agency within the U.S. Department of Justice. Since its inception, the commission has approved nearly $2 billion in awards (excluding accrued interest) for claims against the Cuban government.[28] However, the U.S. has not yet settled these claims with Cuba.[29]

On December 17, 2014, the United States and Cuba announced an agreement to normalize relations, and the White House directed the U.S. Treasury and the U.S. Department of Commerce to amend their regulations to reestablish certain economic development measures such as commercial air travel, telecommunications, business operations in Cuba, and remittances.[30]

Since 1982, the U.S. has listed Cuba on its list of state sponsors of terrorism. On May 29, 2015, the U.S. removed Cuba from that list.[31]

A number of CACR regulations related to financial intuitions have been amended since the announcement of normalization of U.S. relations with Cuba, including:

- January 2015 – The CACR regulations were amended to allow U.S. banks to open correspondent accounts in Cuban banks for authorized transactions, and to permit U.S. travelers to use U.S. debit and credit cards in Cuba.[32] However, the portion of the CACR regulations that now permits a U.S. bank to open a correspondent account in Cuban banks does not authorize the establishment and maintenance of accounts in the U.S. by, on behalf of, or for the benefit of, Cuba or a Cuban national.[33]
- September 2015 – The CACR regulations were amended to allow banking institutions to open and maintain accounts for Cuban individuals for use while the Cuban national is located outside of Cuba, and to allow authorized travelers to open and maintain accounts in Cuba in order to access funds for authorized transactions in Cuba.[34]
- March 2016 – The CACR regulations were amended to allow:
    - U.S. banking institutions to process "u-turn payments" in which Cuba or a Cuban national has an interest. The amendments authorize funds transfers from a bank outside the U.S. that pass through one or more U.S. financial institutions before being transferred to a bank outside the U.S., where neither the originator nor the beneficiary is a person subject to U.S. jurisdiction.[35]
    - U.S. banking institutions to process U.S. dollar monetary instruments, including cash and travelers' checks, presented indirectly by Cuban financial institutions. Additionally, correspondent accounts at third-country financial institutions used for such transactions may now be denominated in U.S. dollars.[36]

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[28]U.S. DEPARTMENT OF JUSTICE, *Foreign Claims Settlement Commission of the U.S.: Completed Programs – Cuba*, https://www.justice.gov/fcsc/claims-against-cuba (last visited Mar. 11, 2017).
[29]*Id.* Recently, the U.S. and Cuba held a second round of talks regarding these FCSC-certified claims as well as claims of the Government of Cuba against the U.S. related to the embargo. Arshad Mohammed & Sarah Marsh, *U.S., Cuba hold 'substantive' second round talks on claims*, REUTERS (July 29, 2016), http://www.reuters.com/politics/article/us-usa-cuba-idUSKCN1091ZV (last visited Mar. 11, 2017).
[30]THE WHITE HOUSE, *Statement by the President on Cuba Policy Changes* (Dec. 17, 2014), at https://www.whitehouse.gov/the-press-office/2014/12/17/statement-president-cuba-policy-changes (last visited Mar. 11, 2017).
[31]Carol Morello, *U.S. takes Cuba off list of state sponsors of terrorism*, WASHINGTON POST (May 29, 2015), https://www.washingtonpost.com/world/national-security/us-takes-cuba-off-list-of-state-sponsors-of-terrorism/2015/05/29/d718493a-0618-11e5-8bda-c7b4e9a8f7ac_story.html?utm_term=.087de2db6f58 (last visited Mar. 11, 2017).
[32]31 C.F.R. § 515.584.
[33]*Id.*
[34]31 C.F.R. §§ 515.560 and 515.585.
[35]31 C.F.R. § 515.584(d).
[36]31 C.F.R. § 515.584(g).

- U.S. banking institutions to open and maintain bank accounts in the U.S. for Cuban nationals in Cuba for the purposes of receiving payments in the United States for authorized or exempt transactions and to remit such payments back to Cuba.[37]

Following the January 2015 amendments to the CACR regulations, a Florida-chartered financial institution, Stonegate Bank (Stonegate), announced an agreement to establish a correspondent banking relationship with Banco Internacional de Comercio S.A. (BICSA), a bank owned by the Cuban government.[38] Stonegate's banking relationship with Cuba includes providing banking services for Cuba's embassy and diplomatic mission in the U.S.[39] Stonegate now offers debit and credit cards for use in Cuba.[40]

Despite developments in the relations between the U.S. and Cuba, due to the significant compliance risks under federal law described previously, financial institutions have generally expressed caution and skepticism in entering this market.[41]

Effect of the Bill

The bill creates s. 655.969, F.S., to impose certain reporting requirements on a financial institution chartered in this state which maintains a correspondent account or a payable-through account with a foreign financial institution owned by a country under a U.S. Treasury sanctions program. Such a financial institution must, within 5 business days, identify and report the source of every transaction that passes through the foreign correspondent account to the OFR, and certify that the source does not involve any confiscated property, as defined in the Cuban Liberty and Democratic Solidarity Act of 1996, which defines the following:

- "Confiscated"[42] means:
  (A) the nationalization, expropriation, or other seizure by the Cuban Government or ownership or control of property, on or after January 1, 1959--
    (i) Without the property having been returned or adequate and effective compensation provided; or
    (ii) Without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and
  (B) The repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959—
    (i) A debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;
    (ii) A debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or
    (iii) A debt which is incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.
- "Property" means: any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.[43]

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[37]31 C.F.R. § 515.584(h).
[38]Stonegate Bank, *Press Release: Stonegate Bank Announces Opening Of Correspondent Banking Relationship With Cuban Bank – Banco Internacional de Comercio S.A.* (July 22, 2015), https://www.stonegatebank.com/files/PressReleaseCubanCorrespondent.pdf (last visited Mar. 11, 2017).
[39]Nicholas Nehamas, *Banking on Cuba: Stonegate Bank sees more opportunities for growth*, MIAMI HERALD (Oct. 4, 2015), http://www.miamiherald.com/news/business/biz-monday/article37421685.html (last visited Mar. 11, 2017).
[40]Stonegate Bank, *Card Services: Credit Cards*, https://www.stonegatebank.com/credit_cards.htm (last visited Mar. 11, 2017); Stonegate Bank, *Press Release: Stonegate Bank and MasterCard Enable U.S.-Issued Debit Cards for Use in Cuba* (Nov. 19, 2015), https://www.stonegatebank.com/files/PressReleaseCubanCorrespondent.pdf (last visited Mar. 11, 2017).
[41]Mimi Whitefield, *Banking issues must be ironed out as U.S., Cuba repair relations*, MIAMI HERALD (Jan. 30, 2015), http://www.miamiherald.com/news/nation-world/world/americas/cuba/article9554120.html (last visited Mar. 11, 2017).
[42]22 U.S.C. § 6023(4).

B. SECTION DIRECTORY:

Section 1. Creates s. 655.969, F.S., relating to correspondent accounts with a foreign financial institution.

Section 2. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will increase compliance, monitoring, and reporting costs for financial institutions. The fiscal impact on the private sector could vary greatly based on the volume of transactions required to be reported to the OFR. Therefore, the fiscal impact on the private sector is indeterminable.

D. FISCAL COMMENTS:

The OFR would incur expenditures for reviewing and analyzing documentation submitted, assessing compliance with the statute, and taking any necessary action for non-compliance.[44] Additionally, the OFR's technology infrastructure would be affected due to the need to provide an electronic platform for submittal of information and the storage of information reported.[45] The fiscal impact on the OFR could vary greatly based on the volume of transactions collected, recorded, and tracked. Therefore, the fiscal impact to the agency is indeterminable.

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[43]22 U.S.C. § 6023(12). The definition of "property" excludes real property used for residential purposes unless, as of Mar. 12, 1996, the claim to the property is held by a U.S. national and the claim has been certified under title V of the International Claims Settlement Act or the property is occupied by an official of the Cuban Government or the ruling political party in Cuba.

[44]Office of Financial Regulation, Agency Analysis of 2017 House Bill 885 (Mar. 10, 2017).

[45]*Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Two federal decisions have addressed state legislation regarding Florida-Cuba relations:

- In 2008, Florida enacted amendments to the Florida Sellers of Travel Act ("Travel Act Amendments"), which placed restrictions on travel businesses in Florida as well as businesses providing services to individuals traveling to or sending humanitarian aid to families in certain designated "terrorist states." In *ABC Charters, Inc. v. Bronson*, 591 F.Supp.2d 1272 (S.D. Fla. 2008), a federal district court found that the law was aimed principally, if not solely, to travel to Cuba. The court enjoined enforcement of the Travel Act Amendments, concluding they will likely be found unconstitutional under the Foreign Affairs Provisions, the Supremacy Clause, the Foreign Commerce Clause, and the Interstate Commerce Clause of the U.S. Constitution.
- In 2012, Florida enacted a "Cuba amendment" to s. 287.135, F.S., to prohibit companies engaged in business operations in Cuba from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of $1 million or more. In *Odebrecht Const., Inc. v. Secretary, Fla. Dep't of Transp.*, 715 F.3d 1268 (11th Cir. 2013), the Eleventh Circuit Court of Appeals affirmed an injunction prohibiting enforcement of the Cuba Amendment. The court found that the Cuba Amendment was preempted by extensive federal statutory and administrative sanctions and would undermine the President's discretionary authority concerning federal policy toward Cuba.

The bill may implicate the same constitutional considerations as the statutes enjoined in the *ABC Charters* and *Odebrecht* decisions.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

While the legislation appears to relate to a correspondent or payable-through account associated with Cuba, as drafted, a financial institution would have to comply with the reporting requirements if it maintains a correspondent account or a payable-through account with a foreign financial institution owned by a country under a sanctions program, regardless of whether that country is Cuba. Additionally, the information reported to the OFR may be subject to public disclosure for lack of a public record exemption to cover such information.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES