

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 958

INTRODUCER: Senator Thurston

SUBJECT: Financial Institutions

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Pre-meeting
2.			RI	
3.			RC	

I. Summary:

SB 958 amends the Financial Institution Codes to expand the pool of eligible individuals qualified to be a president or chief executive officer or a director of a new state chartered bank or trust company in Florida subject to regulation of the Office of Financial Regulation (OFR). The OFR charters, licenses, and regulates various entities that engage in financial institution business in Florida, including state-chartered banks and trust companies. In order to form a new, state-chartered bank or trust company, the law currently requires that a certain number of the proposed directors and the proposed president or chief executive officer have at least 1 year of direct financial institution experience within 3 years prior to the submission of a bank or trust company application to the OFR. The bill extends the timeframe within which to satisfy the required experience from 3 to 5 years in the following manner:

- The proposed president or chief executive officer must have at least 1 year of direct financial institution experience *within the last 5 years*.
- At least two of the proposed directors who are not also proposed officers must have at least 1 year of direct financial institution experience *within the last 5 years*. However, the OFR may allow only one director to have such experience if at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution *more than 5 years before the date of the application*.

The bill also expands the applicability of the Florida Business Corporations Act to banks and trust companies to include all of the provisions of ch. 607, F.S., rather than only part I.

The bill has no fiscal impact on the Office of Financial Regulation.

II. Present Situation:

The Office of Financial Regulation (OFR) regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary

goals is to protect consumers while preserving the integrity of Florida's markets and financial service industries. To achieve this goal, Florida law provides the OFR with regulatory authority over entities regulated under the Financial Institutions Codes (codes). The codes include:

- Ch. 655, F.S., relating to financial institutions generally;
- Ch. 657, F.S., relating to credit unions;
- Ch. 658, F.S., relating to banks and trust companies;
- Ch. 660, F.S., relating to trust business;
- Ch. 663, F.S., relating to international banking;
- Ch. 665, F.S., relating to associations; and
- Ch. 667, F.S., relating to savings banks.¹

Section 658.19, F.S., prescribes the information required of an applicant to the OFR for authority to organize a banking corporation or trust company, which includes financial, business, and biographical information the commission or the OFR may reasonably require for each proposed director, executive officer, and, if applicable, each trust officer. The OFR must approve the application if it finds that certain criteria relating to local conditions, capitalization, paid-in capital-in surplus, qualifications of the proposed officer and directors, the corporate name of the proposed state bank or trust company, and provision of suitable quarters at the location in the application have been met.²

In regards to the background and experience of proposed officers and directors, proposed officers must have sufficient financial experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing and reputation to indicate reasonable promise of successful operation. Further, as a condition, none of the proposed officers and directors may not have been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, F.S., relating to the control of money laundering and terrorist financing; and ch. 896, F.S., relating to offenses against financial institutions.

At least two for the proposed directors who are not also proposed officers must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 3 years before the application date. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 3 years before the date of the application, the office may modify the requirement and allow only one director to have direct financial institution experience within the last 3 years. The proposed president or chief executive officer must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 3 years.³

Banks and trust companies seeking a Florida charter must submit certain materials to the OFR. Of these materials, these institutions must submit duly executed articles of incorporation together with the applicable filing fee.⁴ The OFR must provide the proposed directors with form articles of incorporation that include only those provisions required under s. 658.21, F.S. and part I of

¹ Section 655.005(1)(k), F.S.

² Section 658.21, F.S.

³ Section 658.21(4), F.S.

⁴ Section 658.23(1), F.S.

ch. 607, F.S. Chapter 607, F.S., is separated into three parts. The provisions of part I of ch. 607, F.S., govern corporations generally. The provisions of part II govern social purpose corporations, and the provisions of part III govern benefit corporations.

Currently, unless there is a direct conflict or the codes specifically supersede the provisions of part I, the application of the provisions of part I extends to state banks and trust companies formed under the financial institutions codes.⁵ Without limiting this requirement, stockholders, directors, and committees of state banks and trust companies may hold meetings in any manner authorized by part I of ch. 607, F.S.⁶ Further, any action by stockholders, directors, or committees required or authorized to be taken at a meeting may be taken without a meeting in any manner authorized by part I of ch. 607, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 658.21, F.S., to provide that a proposed president or chief executive officer must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within 5 years rather than 3 years of the application date for a state chartered bank or trust company.

Further, the section provides that at least two of the proposed directors who are not also proposed officers must have at least 1 year of direct financial institution experience within the last 5 years. However, the OFR may allow only one director to have such experience if at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 5 years before the date of the application.

Section 2 amends s. 658.23, F.S., relating to articles of incorporation, to provide that the form articles of incorporation that the OFR must provide to the proposed directors of a bank or trust company seeking a Florida charter must include only the provisions required under the section or under ch. 607, F.S., as a whole. The deletion of “part I of” means that the provisions regarding social purpose corporations and benefit corporations under parts II and III, respectively, will be required as well.

Section 3 amends s. 658.30, F.S., to expand the applicable provisions of ch. 607, F.S., to include parts II and III, along with part I. Subsection (1), as amended, provides that all provisions of ch. 607, F.S., are applicable to state banks and trust companies formed under the codes when there is no conflict and those parts not superseded by requirements of the codes. Subsection (2), as amended, provides that any action by stockholders, directors, or committees required or authorized to be taken at a meeting may be taken without a meeting in any manner authorized by ch. 607, F.S.

Section 4 provides the act will take effect July 1, 2017.

⁵ Section 658.30(1), F.S.

⁶ Section 658.30(2), F.S.

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 bill would expand the pool of eligible individuals who may qualify to serve as a director, president, or chief executive officer of a proposed state chartered bank or trust company.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

According to the OFR,⁷ sections 2 through 4 of this bill create numerous ambiguities and may create circumstances wherein it would be impossible for a bank or trust company to comply with Florida Statutes.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 658.21, 658.23, and 658.30.

⁷ Office of Financial Regulation, *2017 Legislative Analysis of SB 958* (Mar. 7, 2017).

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.
