

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7033 PCB OTM 19-11 OGSR/Family Trust Companies
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, Aloupis
TIED BILLS: **IDEN./SIM. BILLS:** SB 7056

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N	Moore	Harrington
1) Insurance & Banking Subcommittee	12 Y, 0 N	Hinshelwood	Luczynski
2) State Affairs Committee	22 Y, 0 N	Moore	Williamson

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

In 2014, the Legislature created a regulatory program to authorize families to form and operate family trust companies (FTCs) in this state, subject to various regulatory requirements, including a license or registration with the Office of Financial Regulation (OFR), maintenance of a principal place of business in Florida, and certain reporting requirements. As part of the new regulatory framework for FTCs, the Legislature created a public record exemption for the following information related to FTCs:

- Any personal identifying information appearing in records relating to a registration, an application, or annual certification of an FTC;
- Any personal identifying information appearing in records relating to an examination of an FTC;
- Any personal identifying information appearing in reports of examinations, operations, or conditions of an FTC;
- Any portion of a list of names of the shareholders or members of an FTC;
- Information received by OFR from a person from another state or nation or the federal government that is otherwise confidential or exempt pursuant to the laws of that state or nation or the federal government; and
- An emergency cease and desist order issued by OFR for an applicable violation of the Financial Institutions Codes, until the emergency order is made permanent, unless OFR finds that such confidentiality will result in substantial risk of financial loss to the public.

The bill reenacts the public record exemption, which will repeal on October 2, 2019, if this bill does not become law.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to administer effectively and efficiently a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Family Trust Companies

The Office of Financial Regulation (OFR) administers the Florida Financial Institutions Codes,⁶ which includes the regulation of trust companies. Trust companies are for-profit business organizations that are authorized to engage in trust business and to act as a fiduciary for the general public.⁷ Current law exempts certain records relating to OFR's investigations and examinations of trust companies (and other financial institutions) from public records disclosure.⁸

Several states allow families to form and operate private or family trust companies (FTCs), which provide trust services similar to those that can be provided by an individual trustee or a financial institution, but are owned exclusively by family members and may not provide fiduciary services to the public. These FTCs are generally formed to manage the wealth of high net-worth families in lieu of traditional individual or institutional trustee arrangements for a variety of personal, investment, regulatory, and tax reasons.

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I of the State Constitution.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Chapters 655-667, F.S., also referred to as "the Codes."

⁷ Section 658.12(21), F.S.

⁸ Section 655.057, F.S.

In 2014, the Legislature created a regulatory program to authorize families to form and operate FTCs in this state, subject to various regulatory requirements, including a license or registration with OFR, maintenance of a principal place of business in Florida, and certain reporting requirements.⁹ The three types of authorized FTCs are registered FTCs, licensed FTCs, and foreign licensed FTCs. These FTCs are prohibited from advertising and conducting trust business with the public.¹⁰ OFR is authorized to investigate applications for licensure or registration,¹¹ require annual certifications and other regulatory filings from licensees and registrants,¹² and conduct periodic examinations of FTCs.¹³

Public Record Exemption under Review

As part of the new regulatory framework for FTCs, in 2014 the Legislature created a public record exemption for the following information related to FTCs:

- Any personal identifying information appearing in records relating to a registration, an application, or annual certification of any FTC type;
- Any personal identifying information appearing in records relating to an examination of any FTC type;
- Any personal identifying information appearing in reports of examinations, operations, or conditions of any FTC type;
- Any portion of a list of names of the shareholders or members of any FTC type;
- Information received by OFR from a person from another state or nation or the federal government that is otherwise confidential or exempt pursuant to the laws of that state or nation or the federal government; and
- An emergency cease and desist order issued under s. 662.143, F.S.,¹⁴ until the emergency order is made permanent, unless OFR finds that such confidentiality will result in substantial risk of financial loss to the public.¹⁵

Such information is confidential and exempt¹⁶ from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.¹⁷

The confidential and exempt information may be released:

- To the authorized representative of the FTC under examination.
- To a fidelity insurance company, upon written consent of the board of directors or its managers.
- To an independent auditor, upon written consent of the board of directors or its managers.
- To a liquidator, receiver, or conservator for the FTC in the event of the appointment of a liquidator, receiver, or conservator.
- To any other state, federal, or foreign agency responsible for the regulation or supervision of the FTC.
- To a law enforcement agency in the furtherance of its official duties and responsibilities.
- To the appropriate law enforcement or prosecutorial agency for the purpose of reporting any suspected criminal activity.

⁹ Chapter 2014-97, L.O.F.; codified as ch. 662, F.S.

¹⁰ Section 662.134, F.S.; s. 662.131(2), F.S.

¹¹ Section 662.1215, F.S.

¹² Section 662.128, F.S.

¹³ Section 662.141, F.S.

¹⁴ Section 662.143, F.S., authorizes OFR to issue a cease and desist order to any FTC found to be in violation of any applicable provision of the Codes.

¹⁵ Chapter 2014-102, L.O.F.; codified as s. 662.148, F.S.

¹⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁷ Section 662.148(2), F.S.

- Pursuant to a legislative subpoena.¹⁸

The 2014 public necessity statement for the exemption provided that:¹⁹

Financial information and lists of names of family members, qualified participants, and shareholders, if available for public access could jeopardize the financial safety of the family members who are the subject of the information. Families with a high net worth are frequently the targets of criminal predators seeking access to their assets. It is important that the exposure of such families and family members to threats of extortion, kidnapping, and other crimes not be increased. Placing family names, private family business records and methodologies into the public domain would increase the security risk that a family could become the target of criminal activity.

Public disclosure of an examination, report of examination, or emergency cease and desist order could expose families to security risks, and could defame or cause unwarranted damage to the good name or reputation of the family that is the subject of the information.

Family trust companies often provide a consolidated structure for the ownership of an operating business owned by multiple family members. Placing those private business operations and methods in the public domain could jeopardize their business assets, methodologies, and practices.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2019, unless reenacted by the Legislature.²⁰

During the 2018 interim, subcommittee staff consulted with staff from OFR as part of its review under the Open Government Sunset Review Act. OFR recommended that the exemption be reenacted in order to protect the safety and financial security of families with FTCs in Florida as well as to encourage high net-worth families to maintain or establish FTCs in the state.

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby reenacting the public record exemption for the following information related to FTCs:

- Any personal identifying information appearing in records relating to a registration, an application, or annual certification of any FTC type;
- Any personal identifying information appearing in records relating to an examination of any FTC type;
- Any personal identifying information appearing in reports of examinations, operations, or conditions of any FTC type;
- Any portion of a list of names of the shareholders or members of any FTC type;
- Information received by OFR from a person from another state or nation or the federal government that is otherwise confidential or exempt pursuant to the laws of that state or nation or the federal government; and
- An emergency cease and desist order issued under s. 662.143, F.S.,²¹ until the emergency order is made permanent, unless OFR finds that such confidentiality will result in substantial risk of financial loss to the public.

¹⁸ Section 662.148(3), F.S.

¹⁹ Section 2, ch. 2014-102, L.O.F.

²⁰ Section 662.148(6), F.S.

²¹ Section 662.143, F.S., authorizes OFR to issue a cease and desist order to any FTC found to be in violation of any applicable provision of the Codes.

B. SECTION DIRECTORY:

Section 1. amends s. 662.148, F.S., relating to public record exemptions for FTCs.

Section 2. provides an effective date of October 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.