

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1393 Pub. Rec./Financial Technology Sandbox

**SPONSOR(S):** State Affairs Committee, Insurance & Banking Subcommittee, Grant, J.

**TIED BILLS:** CS/CS/CS/HB 1391 **IDEN./SIM. BILLS:** CS/CS/SB 1872

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Hinshelwood	Cooper
2) State Affairs Committee	23 Y, 0 N, As CS	Toliver	Williamson

### SUMMARY ANALYSIS

CS/CS/CS/HB 1391 (2020), with which this bill is linked, creates the Financial Technology Sandbox (sandbox) within the Office of Financial Regulation (OFR). The sandbox is intended to allow financial technology innovators to test new products and services in a supervised, flexible, regulatory sandbox, using exceptions to specified general law and waivers of the corresponding rule requirements under defined conditions.

The bill creates a public record exemption for the following information provided to and held by OFR in a sandbox application:

- The reasons why the general law prevents the innovated financial product or service from being made available to consumers; and
- Specified applicant information that OFR must consider in deciding whether to approve or deny an application for the sandbox.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The bill provides for repeal of the exemption on October 2, 2025, unless reviewed and saved from repeal by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill does not appear to have a fiscal impact on local governments and may have an insignificant fiscal impact on OFR.

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

##### Public Record Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a).<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no more broad than necessary to accomplish its purpose.<sup>2</sup>

Furthermore, the Open Government Sunset Review Act<sup>3</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. The exemption may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer 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.<sup>4</sup>

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>5</sup>

##### CS/CS/HB 1391 (2020)

CS/CS/HB 1391 (2020), with which this bill is linked, creates the Financial Technology Sandbox (sandbox) within the Office of Financial Regulation (OFR). The sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible, regulatory sandbox, using exceptions to specified general law and waivers of the corresponding rule requirements under defined conditions.

Before making an innovative financial product or service available in the sandbox, a business entity must file an application with OFR. In the sandbox application, the applicant must specify each provision of general law enumerated in the bill which currently prevents the innovative financial product or service from being made available to consumers. The application must also contain sufficient information for OFR to evaluate the following factors (specified applicant information):

- The nature of the innovative financial product or service proposed to be made available to consumers in the sandbox, including all relevant technical details.
- The potential risk to consumers and the methods that will be used to protect consumers and resolve complaints during the sandbox period.

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<sup>1</sup> Art. I, s. 24(c), FLA. CONST.

<sup>2</sup> Art. I, s. 24(c), FLA. CONST.

<sup>3</sup> S. 119.15, F.S.

<sup>4</sup> S. 119.15(6)(b), F.S.

<sup>5</sup> S. 119.15(3), F.S.

- The business plan proposed by the applicant, including company information, market analysis, and financial projects or pro forma financial statements, and evidence of the financial viability of the applicant.
- Whether the applicant has the necessary personnel, adequate financial and technical expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or service.
- Whether any control person of the applicant, regardless of adjudication, has pled no contest to, has been convicted or found guilty of, or is currently under investigation for, fraud, a state or federal securities violation, a property-based offense, or a crime involving moral turpitude or dishonest dealing, in which case the sandbox application must be denied.
- A copy of the disclosures that will be provided to consumers.
- The financial responsibility of the applicant and any control person, including whether the applicant or any control person has a history of unpaid liens, unpaid judgments, or other general history of nonpayment of legal debts, including, but not limited to, having been the subject of a petition for bankruptcy under the United States Bankruptcy Code within the past seven calendar years.
- Any other factor OFR determines to be relevant.

### Effect of the Bill

The bill creates a public record exemption for certain information related to the sandbox. Specifically, the bill provides that the following information provided to and held by the office in a sandbox application is confidential and exempt<sup>6</sup> from public record requirements:

- The reasons why a general law enumerated in the sandbox statute prevents the innovated financial product or service from being made available to consumers; and
- Specified applicant information that OFR must consider in deciding whether to approve or deny an application for the sandbox.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The public record exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature. Finally, the bill provides a public necessity statement as required by the State Constitution.

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 559.952, F.S., as created in CS/CS/CS/HB 1391 (2020), relating to the sandbox.

**Section 2.** Provides a public necessity statement as required by the State Constitution.

**Section 3.** Provides that the bill will take effect on the same date that CS/CS/CS/HB 1391 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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<sup>6</sup> There is a difference between records the Legislature designates 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. Sch. Bd. 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 683, 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 Op. Att’y Gen. Fla.* 85-62 (1985).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill could have a minimal fiscal impact on OFR in handling records that qualify for the exemptions created by the bill. Staff responsible for complying with public record requirements may require training related to implementation of the exemptions. The costs, however, would likely be absorbed, as they are part of the day-to-day responsibilities of an agency.

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

#### 2. Other:

##### Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

##### Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a new public record exemption and includes a statement supporting the public necessity for the exemption.

##### Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates public record exemptions for certain records related to the sandbox. Disclosure of this information could adversely affect the business interests of a sandbox applicant and could injure the applicant in the marketplace if the information is made available to competitors.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 4, 2020, the Insurance & Banking Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed the statutes or rules waived under the Financial Technology Sandbox from the exemption. The amendment also made other technical changes to conform to the committee substitute for HB 1391.

On March 2, 2020, the State Affairs Committee adopted an amendment and reported the bill favorably as a committees substitute. The amendment narrowed the exemptions in the bill by removing the following:

- Comprehensive records that a sandbox participant must keep relating to the innovative financial product or service; and
- Any information related to the consultation between OFR and a sandbox participant regarding the maximum number of consumers authorized to receive the innovative financial product or service.

The amendment also conformed the public necessity statement to the public record exemption created by the bill.

The analysis is drafted to the committee substitute as approved by the State Affairs Committee.