

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7045 PCB GOS 22-10 OGSR/Information on Financial Institutions, Affiliated International Trust Entities, and Qualified Limited Service Affiliates/OFR

**SPONSOR(S):** Government Operations Subcommittee, Fabricio

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 7020

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	11 Y, 5 N	Villa	Toliver
1) Insurance & Banking Subcommittee	14 Y, 0 N	Hinshelwood	Luczynski
2) State Affairs Committee			

### 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.

The Office of Financial Regulation (OFR) regulates “financial institutions,” the definition of which was expanded in 2017 to include two new entities called an “international trust entity” and a “qualified limited service affiliate.” Public record exemptions were created for each of the new entities that make the following information confidential and exempt from public disclosure:

- Any personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of an international trust company representative office (ITCRO) or a qualified limited service affiliate (QLSA) or which appears in records relating to reports of examinations, operations, or condition of an ITCRO or a QLSA, including working papers.
- Any portion of a list of names of the shareholders or members of an affiliated international trust entity or a QLSA.
- Information received by OFR from a person from another state or country or the Federal Government which is otherwise confidential and exempt pursuant to the laws of that state or country or pursuant to federal law.

As a result of international trust entities and QLSAs being included within the definition of “financial institution,” the following public record exemptions in s. 655.057, F.S., relating to financial institutions generally were amended in 2017 to incorporate the new definition:

- Records and information relating to an investigation by OFR until the investigation is completed or ceases to be active.
- Reports of examinations, operations, and condition, including working papers, or portions thereof, prepared by, or for the use of, OFR or any state or federal agency responsible for the regulation or supervision of financial institutions in Florida.
- Information that may be provided to particular parties under certain circumstances.
- Confidential documents supplied to OFR or to employees of any financial institution by other state or federal governmental agencies.

The bill saves from repeal the above-described public record exemptions, which will repeal on October 2, 2022, if this bill does not become law.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)<sup>1</sup> 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.<sup>2</sup>

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 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>3</sup>

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.<sup>4</sup> 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 created, then a public necessity statement and a two-thirds vote for passage are not required.

##### Office of Financial Regulation

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.<sup>5</sup> OFR's Division of Financial Institutions charts, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes and the rules promulgated thereunder.<sup>6</sup> OFR also ensures that state financial institutions (i.e. financial institutions<sup>7</sup> chartered or organized by the state of Florida) comply with state and applicable federal requirements for safety and soundness.

As part of its general supervisory powers, OFR has access to all state financial institutions' books and records necessary for the performance of its duties and functions prescribed under the financial institutions codes.<sup>8</sup> Among its duties, OFR is required to conduct examinations of the condition of each state financial institution at least every 18 months.<sup>9</sup> In relation to state financial institutions that also have a federal regulator, OFR may accept an examination of a state financial institution made by an

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Article I, s. 24(c), FLA. CONST.

<sup>5</sup> Section 20.121(3)(a)2., F.S.

<sup>6</sup> Chapters 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.

<sup>7</sup> "Financial institution" is defined as "a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq." Section 655.005(1)(i), F.S.

<sup>8</sup> Section 655.012(1)(b), F.S.

<sup>9</sup> Sections 655.045(1) and 663.537, F.S.

appropriate federal regulatory agency, and may conduct joint or concurrent examinations with federal agencies.<sup>10</sup> However, at least once during every 36-month period, OFR must conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report.<sup>11</sup>

In addition to performing regular examinations, OFR may also make investigations which it deems necessary to determine whether a person has violated or is about to violate any provision of the financial institutions codes or the rules promulgated thereunder.<sup>12</sup>

#### International Trust Entities, International Trust Company Representative Offices, and Qualified Limited Service Affiliates

In 2017, the Legislature expanded the definition of “financial institution” to include two new entities called an “international trust entity” and a “qualified limited service affiliate.”<sup>13</sup> An international trust entity is an international trust company or organization, or any similar business entity, or an affiliated or subsidiary entity that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws where such entity is organized and supervised.<sup>14</sup> Currently, an international trust entity can operate in Florida either directly through an international trust company representative office (ITCRO) or indirectly through a qualified limited service affiliate (QLSA).<sup>15</sup>

An ITCRO is defined as an office of an international trust entity which is established or maintained in Florida for the purpose of engaging in specified nonfiduciary activities, or any affiliate, subsidiary, or other person that engages in such activities on behalf of such international trust entity from an office located in Florida. Permissible activities of an ITCRO include:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international trust entity;
- Contacting existing or potential customers;
- Answering questions and providing information about matters related to customer accounts;
- Serving as a liaison in Florida between the international trust entity and its existing or potential customers; and
- Engaging in any other activities approved by OFR or under rules of the Financial Services Commission.<sup>16</sup>

An ITCRO’s representatives and employees may not act as a fiduciary, which means they may not do such things as accept fiduciary appointment, execute the fiduciary documents that create the fiduciary relationship, or make discretionary decisions regarding the investment or distribution of fiduciary accounts.<sup>17</sup>

A QLSA, on the other hand, is a separate legal entity from the international trust entity and is defined as a person or entity that is qualified to perform specified permissible activities related to or for the benefit of one or more affiliated international trust entities.<sup>18</sup> Such permissible activities include:

- Marketing and liaison services related to or for the benefit of the affiliated international trust entities, directed exclusively at professionals and current or prospective nonresident clients of an affiliated international trust entity;
- Advertising and marketing at trade, industry, or professional events;

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<sup>10</sup> Section 655.045(1)(a), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 655.032(1), F.S.

<sup>13</sup> Chapter 2017-83, L.O.F.

<sup>14</sup> Section 663.401(3), F.S.

<sup>15</sup> Prior to 2017, the equivalent of an international trust entity, an offshore non-depository trust company, was included within the definition of an International Banking Corporation (IBC) and governed under that regulatory framework. However, given the distinct nature of the two entities, the Legislature separated them and relocated the regulations related to licensed offices of an international trust entity, i.e., ITCROs, from the regulations related to licensed offices of an IBC. The Legislature also created a new kind of entity called a QLSA (of an international trust entity).

<sup>16</sup> Section 663.409(1), F.S.

<sup>17</sup> Section 663.409(2), F.S.

<sup>18</sup> Section 663.530(1)(f), F.S.

- Transmitting documents between the international trust entity and its current or prospective clients or a designee of such clients; and
- Transmitting information about the trust or trust holdings of current clients between current clients or their designees and the international trust entity.<sup>19</sup>

A QLSA is prohibited from engaging in the following activities:

- Advertising and marketing related to or for the benefit of the international trust entity which are directed to the general public.
- Acting as a fiduciary, including, but not limited to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts.
- Accepting custody of any trust property or any other good, asset, or thing of value on behalf of the affiliated international trust entity, its subsidiaries or affiliates, or subsidiaries and affiliates of the qualified limited service affiliate.
- Soliciting business within this state from the general public related to or for the benefit of an affiliated international trust entity.
- Adding a director, an executive officer, a principal shareholder, a manager, a managing member, or an equivalent position to the qualified limited service affiliate without prior written notification to OFR.
- Commencing services for an international trust entity without complying with applicable requirements.
- Providing services for any international trust entity that is in bankruptcy, conservatorship, receivership, liquidation, or a similar status under the laws of any country.
- Otherwise conducting banking or trust business.<sup>20</sup>

#### Public Record Exemptions under Review

##### *International Trust Company Representative Offices and Qualified Limited Service Affiliates*

As a result of the Legislature creating two new entity types, the below-described public record exemptions were created relating to each of those entities that make the following information confidential and exempt from public disclosure:

- Any personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of an ITCRO or a QLSA or which appears in records relating to reports of examinations, operations, or condition<sup>21</sup> of an ITCRO or a QLSA, including working papers.<sup>22</sup>
- Any portion of a list of names of the shareholders or members of an affiliated international trust entity or a QLSA.
- Information received by OFR from a person from another state or country or the Federal Government which is otherwise confidential and exempt pursuant to the laws of that state or country or pursuant to federal law.<sup>23</sup>

The information made confidential and exempt by the public record exemptions may be disclosed by OFR:

- To the authorized representative or representatives of the ITCRO or QLSA under examination. The authorized representative or representatives must be identified in a resolution or by written consent of the board of directors, or the equivalent, of the international trust entity or QLSA;

<sup>19</sup> Section 663.531(1), F.S.

<sup>20</sup> Section 663.531(2), F.S.

<sup>21</sup> “Reports of examination, operations, and condition” is defined to mean records submitted to or prepared by OFR as part of OFR’s duties performed pursuant to ss. 655.012, 655.045, or 663.537, F.S. Sections 663.416(1)(a) and 663.540(1)(a), F.S.

<sup>22</sup> “Working papers” is defined to mean the records of the procedures followed, the tests performed, the information obtained, and the conclusions reached in an investigation or examination performed under ss. 655.032, 655.045, or 663.537, F.S. The term includes planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution, as defined in s. 655.005, and schedules or commentaries prepared or obtained in the course of such investigation or examination. Sections 663.416(1)(b) and 663.540(1)(b), F.S.

<sup>23</sup> Chapter 2017-84, L.O.F.; codified as ss. 663.416(2) and 663.540(2), F.S.

- To a fidelity insurance company, upon written consent of the board of directors, or the equivalent, of the international trust entity or QLSA;
- To an independent auditor, upon written consent of the board of directors, or the equivalent, of the international trust entity or QLSA;
- To the liquidator, receiver, or conservator for the international trust entity or QLSA, if a liquidator, receiver, or conservator is appointed. However, any portion of the information which discloses the identity of a customer or prospective customer of the international trust entity, or a shareholder or member of the international trust entity or QLSA, must be redacted by OFR before releasing such portion to the liquidator, receiver, or conservator;
- To a law enforcement agency in furtherance of the agency's official duties and responsibilities;
- To the appropriate law enforcement or prosecutorial agency for the purpose of reporting any suspected criminal activity; and
- Pursuant to a legislative subpoena. A legislative body or committee that receives records or information pursuant to such a subpoena must maintain the confidential status of the records or information, except in a case involving the investigation of charges against a public official subject to impeachment or removal, in which case the records or information may be disclosed only to the extent necessary as determined by such legislative body or committee.<sup>24</sup>

Nothing in the public record exemptions prevent or restrict the publication of a report required by federal law.<sup>25</sup>

A person who willfully discloses information made confidential and exempt by the public record exemptions commits a felony of the third degree.<sup>26</sup>

The 2017 public necessity statement<sup>27</sup> for the exemptions provides that:

The individuals served by the affiliated international trust entity are often individuals of high net worth. Individuals of high net worth and shareholders or members of financial institutions are frequently the targets of criminal predators seeking access to their assets. It is important that the exposure of such individuals and their family members to threats of extortion, kidnapping, and other crimes not be increased. Placing the personal identifying information of these individuals within the public domain would increase the security risk that those individuals or their families could become the target of criminal activity. . . . [Furthermore,] [t]he office frequently engages in joint examinations with federal regulators. If such information were subject to disclosure to the public, not only would such disclosure deter other regulatory bodies from communicating vital information to the office, but the office would violate existing information-sharing agreements governing the sharing of confidential supervisory information.<sup>28</sup>

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2022, unless reenacted by the Legislature.

### *Financial Institutions Generally*

As a result of the Legislature creating two new entity types – international trust entities and QLSAs – the below-described public record exemptions in s. 655.057, F.S., relating to financial institutions generally were amended following the incorporation of those two entities into the definition of “financial institution.”<sup>29</sup>

<sup>24</sup> Sections 663.416(3) and 663.540(3), F.S.

<sup>25</sup> Sections 663.416(4) and 663.540(4), F.S.

<sup>26</sup> Sections 663.416(5) and 663.540(5), F.S.

<sup>27</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption state with specificity the public necessity justifying the exemption.

<sup>28</sup> Chapter 2017-84, L.O.F.

<sup>29</sup> Chapter 2017-84, L.O.F.

Section 655.057(1), F.S., which provides a public record exemption for all records and information relating to an investigation by OFR until the investigation is completed or ceases to be active.<sup>30</sup> After an investigation is completed or ceases to be active, portions of the covered documents remain confidential and exempt<sup>31</sup> from public disclosure to the extent that disclosure would:

- Jeopardize the integrity of another active investigation;
- Impair the safety and soundness of the financial institution;
- Reveal personal financial information;<sup>32</sup>
- Reveal the identity of a confidential source;
- Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
- Reveal investigative techniques or procedures.

Section 655.057(2), F.S., which provides a public record exemption for reports of examinations,<sup>33</sup> operations, or condition, including working papers,<sup>34</sup> or portions thereof, prepared by, or for the use of, the office or any state or federal agency responsible for the regulation or supervision of financial institutions in Florida. However, examination, operation, or condition reports must be released by OFR within one year after the appointment of a liquidator, receiver, or conservator to the financial institution except any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution. Additionally, such reports or papers or portions thereof may be released to:

- The financial institution under examination;
- Any holding company of which the financial institution is a subsidiary;
- Proposed purchasers if necessary to protect the continued financial viability of the financial institution, upon prior approval by the board of directors of such institution;
- Persons proposing in good faith to acquire a controlling interest in or to merge with the financial institution, upon prior approval by the board of directors of such financial institution;
- Any officer, director, committee member, employee, attorney, auditor, or independent auditor officially connected with the financial institution, holding company, proposed purchaser, or person seeking to acquire a controlling interest in or merge with the financial institution; or
- A fidelity insurance company, upon approval of the financial institution's board of directors. However, a fidelity insurance company may receive only that portion of an examination report relating to a claim or investigation being conducted by such fidelity insurance company.

Section 655.057(9), F.S., which provides that any confidential documents provided to OFR or to employees of any financial institution by other state or federal governmental agencies are confidential

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<sup>30</sup> An investigation is considered "active" while such investigation is being conducted by OFR with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if OFR is proceeding with reasonable dispatch, and there is a good faith belief that action may be initiated by OFR or other administrative or law enforcement agency. Section 655.057(1), F.S.

<sup>31</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 Rivera 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. 04-09 (2004).

<sup>32</sup> "Personal financial information" is defined to mean: information relating to the existence, nature, source, or amount of a person's personal income, expenses, or debt; information relating to a person's financial transactions of any kind; or information relating to the existence, identification, nature, or value of a person's assets, liabilities, or net worth. Section 655.057(12)(c), F.S.

<sup>33</sup> "Examination report" is defined to mean "records submitted to or prepared by the office as part of the office's duties performed pursuant to s. 655.012 or s. 655.045(1)." Section 655.057(12)(a), F.S.

<sup>34</sup> "Working papers" is defined to mean "the records of the procedures followed, the tests performed, the information obtained, and the conclusions reached in an examination or investigation performed under s. 655.032 or s. 655.045. Working papers include planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution as defined in s. 655.005(1), and schedules or commentaries prepared or obtained in the course of such examination or investigation." Section 655.057(12)(d), F.S.

and exempt from public record requirements. Such information may only be made public with the consent of the agency that owns the documents.

Section 655.057(5), F.S., which specifies that the above-described public record exemptions do not prevent or restrict OFR from:

- Publishing reports that are required to be submitted to OFR pursuant to s. 655.045(2), F.S., or required by applicable federal statutes or regulations to be published.<sup>35</sup>
- Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions.
- Disclosing or publishing summaries of the condition of financial institutions and general economic and similar statistics and data, provided that the identity of a particular financial institution is not disclosed.
- Reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement and prosecutorial agencies.
- Furnishing information upon request to the Chief Financial Officer or the Division of Treasury of the Department of Financial Services regarding the financial condition of any financial institution that is, or has applied to be, designated as a qualified public depository pursuant to ch. 280, F.S.
- Furnishing information to Federal Home Loan Banks regarding its member institutions pursuant to an information sharing agreement between the Federal Home Loan Banks and OFR.

However, any such information or records obtained from OFR that is confidential must be maintained as confidential and exempt from public record requirements.

A person who willfully discloses information made confidential by the foregoing public record exemptions commits a felony of the third degree.<sup>36</sup>

The 2017 public necessity statement<sup>37</sup> for the exemption provides that:

An exemption from public records requirements prevents gaps in the law by providing the same protections to international trust entities and qualified limited service affiliates which are afforded to other financial institutions, thereby preventing any disadvantage to these similarly regulated entities in comparison to other entities currently defined as “financial institutions.” . . . Public disclosure of records and information relating to an examination or investigation by the office could expose the subject financial institution to unwarranted damage to its good name or reputation and impair its safety and soundness, as well as the safety and soundness of the financial system in the state.<sup>38</sup>

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2022, unless reenacted by the Legislature.

#### Open Government Sunset Review

During the 2021 interim, the House Government Operations Subcommittee staff conducted an interview with staff from OFR as part of its review under the Open Government Sunset Review Act. According to OFR staff, there are currently 12 international trust entities operating in Florida. OFR staff indicated that the exemptions are functioning well and that OFR has not received any complaints regarding the exemptions. OFR staff recommended the exemptions be reenacted to protect the sensitive information shared with the agency in the course of administering its examination and investigative duties, to maintaining information sharing practices between OFR and other regulatory bodies, and to protect the

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<sup>35</sup> See r. 69U-120.0451, F.A.C., providing for the quarterly filing of Call Reports.

<sup>36</sup> Section 655.057(13), F.S.

<sup>37</sup> Article I, s. 24(c), Fla. Const., requires each public record exemption state with specificity the public necessity justifying the exemption.

<sup>38</sup> Chapter 2017-84, L.O.F.

personal identifying information of individuals served by an international trust entity and shareholders or members of certain financial institutions.

### **Effect of the Bill**

The bill removes the scheduled repeal dates of the public record exemptions relating to ITCROs and QLSAs specifically, thereby maintaining the public record exemptions for the personal identifying information of individuals served by an international trust entity and shareholders or members of certain financial institutions; as well as information received by OFR from other regulatory entities that is confidential and exempt under the laws of that entity's jurisdiction.

The bill also removes the scheduled repeal date of certain public record exemptions in s. 655.057, F.S., that were amended in 2017 to incorporate the addition of international trust entities and QLSAs within the definition of "financial institution." The following exemptions that relate to financial institutions generally are maintained by the bill:

- Records and information relating to an investigation by OFR until the investigation is completed or ceases to be active.
- Reports of examinations, operations, and condition, including working papers, or portions thereof, prepared by, or for the use of, OFR or any state or federal agency responsible for the regulation or supervision of financial institutions in Florida.
- Information that may be provided to particular parties under certain circumstances.
- Confidential documents supplied to OFR or to employees of any financial institution by other state or federal governmental agencies.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 655.057, F.S., to save from repeal certain public record exemptions relating to financial institutions.

Section 2 amends s. 663.416, F.S., to save from repeal the public record exemption for certain sensitive information of an international trust entity held by OFR.

Section 3 amends s. 663.540, F.S., to save from repeal the public record exemption for certain sensitive information of an international trust entity and QLSA held by OFR.

Section 4 provides an effective date of October 1, 2022.

## **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:

The bill does not authorize or require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.