

**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.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 1390

INTRODUCER: Senator Martin

SUBJECT: Universal Regulatory Sandbox

DATE: March 17, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	_____	_____	<u>ATD</u>	_____
3.	_____	_____	<u>FP</u>	_____

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**I. Summary:**

SB 1390 creates ss. 288.9971-288.9983, F.S., to establish a universal regulatory sandbox, which allows businesses, to demonstrate innovative products, services, and business models while temporarily receiving a waiver or suspension of state laws or regulations.

The bill creates the Office of Regulatory Relief within the Department of Economic Opportunity to administer the universal regulatory sandbox and to act as a liaison between private businesses and applicable agencies to identify laws or regulations that could be waived or suspended for one year under the regulatory sandbox. The bill also creates the General Regulatory Sandbox Program Advisory Committee to advise and make recommendations to the office. Additionally, the bill provides the following:

- The scope of the regulatory sandbox;
- An annual report requirement to the President of the Senate and the Speaker of the House of Representatives;
- Consumer protection requirements;
- Requirements for exiting the regulatory sandbox; and
- Record keeping and reporting requirements.

The bill takes effect July 1, 2023, only if SB 1392 or similar legislation takes effect and if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. SB 1392 creates a new public records exemption and an open meeting exemption for information in a regulatory sandbox application that the office reasonably believes could result in economic harm to the applicant.

## II. Present Situation:

### Florida's Financial Technology Sandbox

In 2021, the Financial Technology Sandbox (sandbox) was created within the Office of Financial Regulation (OFR) 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.<sup>1</sup>

The sandbox allows a licensee<sup>2</sup> to make an innovative<sup>3</sup> financial product<sup>4</sup> or service available to consumers during a period that is initially 24 months but which can be extended one time for an additional 12 months.<sup>5</sup>

A sandbox licensee must be a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent or virtual mailbox, in Florida.<sup>6</sup>

Upon approval of a sandbox application certain rules and requirements are not applicable to the sandbox licensee during the sandbox period.<sup>7</sup>

The OFR may approve a sandbox application if one or more of the general laws enumerated in s. 559.952 (4)(a), F.S., prevent the innovative financial product or service from being made available to consumers and if all other requirements of the sandbox are met.<sup>8</sup>

A sandbox licensee may conduct business through electronic means, including through the Internet or a software application.<sup>9</sup>

Section 559.952 (5), F.S., provides rules for filing a sandbox application, as well as, standards that the OFR must follow while considering an application. The OFR is prohibited from approving an application in the following circumstances:

- The applicant had a prior sandbox application that was approved and that related to a substantially similar financial product or service;
- Any control person of the applicant was substantially involved in the development, operation, or management with another sandbox applicant whose application was approved and whose application related to a substantially similar financial product or service; or

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<sup>1</sup> See s. 559.952, F.S. See also Office of Financial Regulation, *Financial Technology Sandbox Innovator*, available at <https://lofr.gov/sitePages/FinancialTechnologySandbox.htm> (last visited Mar. 17, 2023).

<sup>2</sup> "Licensee" means a business entity that has been approved by OFR to participate in the Financial Technology Sandbox. See s. 559.952 (3)(i), F.S.

<sup>3</sup> "Innovative" means new or emerging technology, or new uses of existing technology, which provide a product, service, business model, or delivery mechanism to the public and which are not known to have a comparable offering in Florida outside of the Financial Technology Sandbox. See Section 559.952 (3)(h), F.S.

<sup>4</sup> A "financial product or service" is a product or service related to a consumer finance loan, money transmitter, or payment instrument seller, including mediums of exchange that are in electronic or digital form. See s. 559.952 (3)(f), F.S.

<sup>5</sup> See s. 559.952, F.S.

<sup>6</sup> Section 559.952 (3)(a), F.S.

<sup>7</sup> See s. 559.952 (4)(a), F.S.

<sup>8</sup> Section 559.952 (4)(b), F.S.

<sup>9</sup> Section 559.952 (4)(c), F.S.

- The applicant or any control person has failed to affirmatively demonstrate financial responsibility.<sup>10</sup>

For businesses whose sandbox application is approved, the OFR must specify the maximum number of consumers authorized to receive an innovative financial product or service, after consultation with the sandbox applicant. The OFR may not authorize more than 15,000 consumers to receive the financial product or service until the sandbox licensee has filed the first report required under the sandbox. After the filing of the report, if the licensee demonstrates adequate financial capitalization, risk management processes, and management oversight, the OFR may authorize up to 25,000 consumers to receive the financial product or service.<sup>11</sup> Additionally, s. 559.952 (6), F.S., requires the licensee to provide certain disclosures to a consumer before the consumer purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service through the sandbox.

A sandbox licensee must submit a report to the OFR twice a year, and the report must, at a minimum, include financial reports and the number of consumers who have received the financial product or service.<sup>12</sup>

A sandbox licensee remains subject to civil damages for acts and omissions arising from or related to any innovative financial product or services provided or made available by the licensee or relating to the sandbox, and all criminal and consumer protection laws and any other statute not specifically exempt under the sandbox.<sup>13</sup> Further, the OFR may, by order, revoke or suspend a licensee's approval to participate in the sandbox.<sup>14</sup>

### **Regulatory Sandboxes Generally**

The UK Financial Conduct Authority (FCA) is credited with establishing the first formal regulatory sandbox, and although there is not a uniform definition of a regulatory sandbox, the FCA has defined it as “a safe space in which businesses can test innovative products, services, business models and delivery mechanisms without immediately incurring all the normal regulatory consequences of engaging in the activity in question.”<sup>15</sup> In the United States (U.S.), the Consumer Financial Protection Bureau was the first regulatory agency to set up a dedicated fintech office to study fintech and provide assistance to promote consumer friendly innovation.<sup>16</sup> States in the U.S., such as Arizona, Kentucky, and Vermont have industry-specific regulatory sandboxes.<sup>17</sup> In 2021, Utah was the first state to create a general sandbox program.<sup>18</sup>

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<sup>10</sup> Section 559.952(5)(d), F.S.

<sup>11</sup> Section 559.952(5)(f), F.S.

<sup>12</sup> Section 559.952(8), F.S.

<sup>13</sup> Section 559.952(10), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> See Stanford Center on Philanthropy and Civil Society, *A Few Thoughts on Regulatory Sandboxes*, available at <https://pacscenter.stanford.edu/a-few-thoughts-on-regulatory-sandboxes/> (last visited Mar. 17, 2023).

<sup>16</sup> *Id.*

<sup>17</sup> See State Policy Network, *How Many States Have Regulatory Sandboxes?*, available at <https://spn.org/articles/what-is-a-regulatory-sandbox/> (last visited Mar. 17, 2023)

<sup>18</sup> Matthew Nicaud, *Regulatory “Sandbox” Reforms Advance Across the Nation* (June 23, 2021), available at <https://mspolicy.org/regulatory-sandbox-reforms-advance-across-the-nation/> (last visited Mar. 17, 2023).

### III. Effect of Proposed Changes:

#### Universal Regulatory Sandbox

The bill creates ss. 288.9971-288.9983, F.S., to establish a universal regulatory sandbox, which allows businesses, under the observation of regulators, to demonstrate innovative products, services, and business models while temporarily receiving a waiver or suspension of inapplicable laws or regulations.

The bill provides the following definitions:

- “Advisory committee” means the General Regulatory Sandbox Program Advisory Committee created in s. 288.9974, F.S.;
- “Applicable agency” means a department or agency of Florida that regulates a business activity and persons engaged in such business activity, including the issuance of licenses or other types of authorization, which the office determines would otherwise regulate a sandbox participant;
- “Applicant” means a person who applies to participate in the regulatory sandbox;
- “Blockchain technology” means the use of a digital database containing records of financial transactions, which can be simultaneously used and shared within a decentralized, publicly accessible network and can record transactions between two parties in a verifiable and permanent way;
- “Consumer” means a person who purchases or otherwise enters into a transaction or agreement to receive an offering pursuant to a demonstration by a sandbox participant;
- “Demonstrate” or “demonstration” means to temporarily provide an offering in accordance with the General Regulatory Sandbox Program created in s. 288.9975, F.S.;
- “Director” means the director of the Office of Regulatory Relief;
- “Financial product or service” has the same meaning as in s. 559.952(3), F.S.;<sup>19</sup>
- “Innovation” means the use or incorporation of a new or existing idea, a new or emerging technology, or a new use of existing technology, including blockchain technology, to address a problem, provide a benefit, or otherwise offer a product, production method, or service;
- “Insurance product or service” means an insurance product or insurance service that requires state licensure, registration, or other authorization under the Florida Insurance Code, including an insurance product or insurance service that includes a business model, delivery mechanism, or element that requires a license, registration, or other authorization to engage in an insurance business, act as an insurance producer or consultant, or engage in insurance adjusting;

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<sup>19</sup> Section 559.952(3), F.S., defines “financial product or service” as a product or service related to a consumer finance loan, as defined in s. 516.01, or a money transmitter or payment instrument seller, as those terms are defined in s. 560.103, including mediums of exchange that are in electronic or digital form. Section 516.01, F.S., defines “consumer finance loan” as a loan of money, credit, goods, or choses in action, including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of \$25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum. Section 560.103, F.S., defines “money transmitter” as means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, a payment instrument, or virtual currency for the purpose of acting as an intermediary to transmit currency, monetary value, a payment instrument, or virtual currency from one person to another location or person by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. The term includes only an intermediary that has the ability to unilaterally execute or indefinitely prevent a transaction, and “payment instrument seller” as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which sells a payment instrument.

- “Offering” means a product, production method, or service, including a financial product or service or an insurance product or service that includes an innovation;<sup>20</sup>
- “Office” means the Office of Regulatory Relief created in s. 288.9973, F.S.;
- “Product” means a commercially distributed good that is tangible personal property, the result of a production process, or passed through the distribution channel before consumption;
- “Production” means the method or process of creating or obtaining a good, which may include assembling, breeding, capturing, collecting, extracting, fabricating, farming, fishing, gathering, growing, harvesting, hunting, manufacturing, mining, processing, raising, or tapping a good;
- “Regulatory sandbox” means the General Regulatory Sandbox Program created in s. 288.9975, F.S., which allows a person to temporarily demonstrate an offering under a waiver or suspension of one or more state laws or regulations;
- “Sandbox participant” means a person whose application to participate in the regulatory sandbox is approved in accordance with this bill;
- “Secretary” means the Secretary of Economic Opportunity; and
- “Service” means any commercial activity, duty, or labor performed for another person.

### *Office of Regulatory Relief*

The bill creates the Office of Regulatory Relief (office) within the Department of Economic Opportunity (DEO). The office must be administered by a director, and the director must report to the secretary. Additionally, the director, with the approval of the secretary, is authorized to appoint a staff.

The bill provides that the office must do the following:

- Administer the office as provided in the bill;
- Administer the regulatory sandbox; and
- Act as a liaison between private businesses and applicable agencies to identify laws or regulations that could be waived or suspended under the regulatory sandbox.

The bill authorizes the office to do the following:

- Review laws and regulations that may unnecessarily inhibit the creation and success of new companies or industries and provide recommendations to the Governor and the Legislature on modifying or eliminating such laws and regulations;
- Create a framework for analyzing the risk level to the health, safety, and financial well-being of consumers related to permanently modifying or eliminating or temporarily waiving or suspending laws and regulations inhibiting the creation or success of new and existing companies or industries;
- Propose potential reciprocity agreements between states that use or are proposing to use similar regulatory sandboxes as created in this bill or the Financial Technology Sandbox created in s. 559.952, F.S.; and
- In accordance with ch. 120, F.S., and this bill, adopt rules regarding the following:
  - Administering the regulatory sandbox;<sup>21</sup> and

<sup>20</sup> The term does not include any service for which a license or authorization to practice law in this state is required under ch. 454, F.S.

<sup>21</sup> Administering the regulatory sandbox includes adopting rules regarding the application process and the reporting requirements of sandbox participants.

- Cooperating and consulting with other applicable agencies that administer regulatory sandboxes.

### ***Advisory Committee***

The bill creates the General Regulatory Sandbox Program Advisory Committee (committee) to make recommendations to the office, and provides that it must consist of the following 11 members:

- Six members who represent business interests from a variety of industries, appointed by the director;
- Three members who represent applicable agencies regulating businesses, appointed by the director;
- One member of the Senate, appointed by the President of the Senate; and
- One member of the House of Representatives, appointed by the Speaker of the House of Representatives.

The bill provides that the director may adjust the length of terms of appointments and reappointments to the committee so that approximately half of the committee is appointed every 2 years. However, members of the committee who are not legislators must be appointed to 4 year terms. Additionally, the director must select a chair of the committee on an annual basis.

The bill provides that a majority of the members of the committee constitutes a quorum for the purposes of conducting committee business, and the affirmative vote of a majority of the members constitutes the official action of the committee.

The bill establishes that the office must provide administrative staff support for the committee.

The bill prohibits a member from receiving compensation or benefits for the member's service. However, a member who represents business interests may receive per diem and travel expenses in accordance with s. 112.061, F.S.

### ***Application Requirements***

The bill creates the General Regulatory Sandbox Program (program), and provides that the office must do the following while administering the program:

- Consult with each applicable agency; and
- Enable a person to obtain legal protection and limited access to the market to demonstrate an offering without obtaining a license or other authorization that might otherwise be required.

The bill authorizes the office to do the following while administering the program:

- Enter into agreements with or adopt the best practices of corresponding federal regulatory agencies or agencies in other states that are administering similar programs; and
- Consult with businesses about existing or potential proposals for the program.

The bill provides that an applicant may contact the office to request a consultation regarding the program before submitting an application, and the office is authorized to provide assistance to an applicant.

The bill requires an applicant to submit an application in a form prescribed by the office that does the following:

- Confirms the applicant is subject to the jurisdiction of Florida;
- Confirms the applicant has established a physical or virtual location in Florida, from which the demonstration of an offering must be developed and performed and where all required records, documents, and data must be maintained;
- Contains relevant personal and contact information for the applicant, including the applicant's full legal name, address, telephone number, e-mail address, website address, and any other information required by the office;
- Discloses any criminal convictions of the applicant or of any person who seeks to participate with the applicant in the demonstration of an offering;
- Contains a description of the offering to be demonstrated, including statements regarding:
  - How the offering is subject to licensing, legal prohibition, or other authorization requirements outside of the program;
  - Each law or regulation that the applicant seeks to have waived or suspended while participating in the program;
  - How the offering would benefit consumers;
  - How the offering is different from other available offerings;
  - What risks might exist for consumers who use or purchase the offering;
  - How participating in the regulatory sandbox would enable a successful demonstration of the offering;
  - A description of the proposed demonstration plan, including estimated time periods for beginning and ending the demonstration;
  - Recognition that the applicant shall be subject to all laws and regulations pertaining to the applicant's offering after conclusion of the demonstration; and
  - How the applicant plans to end the demonstration and protect consumers if the demonstration fails;
- Lists each applicable agency that the applicant knows regulates the applicant's business; and
- Provides any other required information as determined by the office.

Additionally, the bill requires an applicant to file a separate application for each offering that the applicant wishes to demonstrate.

The bill provides that after an application is filed, the office is required to do the following:

- Classify, as a protected record, any part of the application that the office determines is nonpublic, confidential information that if disclosed would result in actual economic harm to the applicant;
- Consult with each applicable agency that regulates the applicant's business regarding whether more information is needed from the applicant; and
- Seek any additional information from the applicant that the office determines is necessary.

The bill requires the office to take the following actions no later than 5 business days after the day a complete application is received:

- Review the application and refer the application to each applicable agency that regulates the applicant's business;
- Provide to the applicant;

- An acknowledgement of receipt of the application;
- The identity and contact information of each applicable agency to which the application has been referred for review; and
- Provide public notice, on the office's website and through other appropriate means, of each law or regulation that the office is considering suspending or waiving pursuant to the application.

The bill requires an applicable agency to provide a written report to the director that includes the applicable agency's findings no later than 30 days after the day on which an applicable agency receives a complete application for review. The written report must do the following:

- Describe any identifiable, likely, and significant harm to the health, safety, or financial well-being of consumers against which the relevant law or regulation protects; and
- Make a recommendation to the office that the applicant be admitted or denied entrance into the program.

The bill authorizes the applicable agency to request an additional 5 business days to deliver the written report by providing notice to the director. However, the applicable agency may only request one extension per application.

The bill provides that if the applicable agency recommends an applicant be denied entrance into the program, the written report must include a description of the reasons for the recommendation, including why a temporary waiver or suspension of the relevant laws or regulations would potentially significantly harm the health, safety, or financial well-being of consumers and the likelihood of such harm occurring.

The bill establishes that if the applicable agency determines the consumer's health, safety, or financial well-being can be protected through less restrictive means than the existing laws or regulations, the applicable agency must provide a recommendation of how that can be achieved. Additionally, if an applicable agency fails to deliver a written report as required in the bill, the director must assume that the applicable agency does not object to the temporary waiver or suspension of the relevant laws or regulations for an applicant seeking to participate in the program.

The bill provides that an applicable agency may by written notice to the office:

- Within the 30 days after the day on which the applicable agency receives a complete application for review, or within 35 days if an extension has been requested by the applicable agency, reject an application if the applicable agency determines, in the applicable agency's sole discretion, that the applicant's offering fails to comply with standards or specifications:
  - Required by federal law or regulation; or
  - Previously approved for use by a federal agency; or
- Reject an application preliminarily approved by the office if the applicable agency:
  - Recommended rejection of the application in the applicable agency's written report; and
  - Provides in the written notice a description of the applicable agency's reasons why approval of the application would create a substantial risk of harm to the health or safety of consumers or would create unreasonable expenses for taxpayers.



The bill establishes that if an applicable agency rejects an application, then the office must deny the application. Additionally, upon receiving a written report, the director must provide the application and the written report to the committee.

The bill authorizes the director to call the committee to meet as needed, but not less than once per quarter if applications are available for review. After receiving and reviewing the application and each written report, the committee must provide a recommendation to the director as to whether the applicant should be admitted as a program participant.

The bill provides that in reviewing an application and each applicable agency's written report, the office must consult with each applicable agency and the committee before admitting an applicant into the program. The consultation with each applicable agency and the consultation with the committee may include seeking information about whether:

- The applicable agency has previously issued a license or other authorization to the applicant; or
- The applicable agency has previously investigated, sanctioned, or pursued legal action against the applicant.

Additionally, the office and the applicable agency must consider whether a competitor to the applicant is or has been a program participant and, if so, weigh that as a factor in favor of allowing the applicant to also become a participant.

In reviewing an application, the office must consider whether:

- The applicant's plan will adequately protect consumers from potential harm identified by an applicable agency in the applicable agency's written report;
- The risk of harm to consumers is outweighed by the potential benefits to consumers from the applicant's participation in the regulatory sandbox; and
- Laws or regulations that regulate an offering should not be waived or suspended even if the applicant is approved as a program participant, including applicable antifraud or disclosure laws or regulations.

The bill provides that an applicant becomes a program participant if the office approves the application and enters into a written agreement with the applicant describing the specific laws and regulations that are waived or suspended as part of the applicant's participation in the program. However, the office is prohibited from entering into a written agreement with an applicant that waives or suspends a tax, fee, or charge that is administered by the Department of Revenue.

The bill authorizes the director to deny any application for any reason, including if the director determines that the preponderance of evidence demonstrates that suspending or waiving enforcement of a law or regulation would cause a significant risk of harm to consumers. If the director denies an application, the office is required to provide the applicant with a written description of the reasons of such denial. Additionally, the denial of an application is not subject to agency or judicial review or ch. 120, F.S.

The bill requires the director to deny an application for participation in the program if:

- The director determines that the applicant should instead apply for the Financial Technology Sandbox; or
- The applicant or any person who seeks to participate with the applicant in the demonstration of an offering has been convicted of, or entered a plea of guilty or nolo contendere to any crime involving significant theft, fraud, or dishonesty if the crime bears a significant relationship to the applicant's or other participant's ability to safely and competently participate in the program

The bill provides that when an applicant is approved for participation in the program, the director must provide public notice of the approval on the Office's website and through other appropriate means. The public notice must state the following:

- The full legal name of the program participant;
- The industries represented by the program participant; and
- Each law or regulation that is suspended or waived for the program participant pursuant to the program approval.

Additionally, the office must post the following information on its website and also make the information available through other appropriate means:

- Documentation regarding the office's determination and grounds for approving each program participant; and
- Public notice regarding any program participant's termination of participation in the program.

### ***Scope of the Regulatory Sandbox***

The bill provides that if the office approves an application, the program participant has 12 months after the day on which the application was approved to demonstrate the offering described in the program participant's application. An offering that is demonstrated in the program is subject to the following:

- Each consumer must be a resident of Florida; and
- A law or regulation may not be waived or suspended if it would prevent a consumer from seeking restitution in the event that the consumer is harmed.

The bill clarifies that a program participant is not restricted from acting in accordance with a license or other authorization from another jurisdiction. Additionally, a program participant is deemed to possess an appropriate license or other authorization under the laws of Florida for the purposes of any provision of federal law requiring licensure or other authorization by the state.

The bill provides that during the demonstration period, a program participant is not subject to the enforcement of laws or regulations identified in the written agreement between the office and the program participant. A prosecutor may not file or pursue charges pertaining to a violation of law or regulation identified in the written agreement between the office and the program participant that occurs during the demonstration period. Further, an applicable agency may not file or pursue any punitive action against a program participant, including the imposition of a fine or the suspension or revocation of a license, for a violation of law or regulation that:

- Is identified as being waived or suspended in the written agreement between the office and the program participant; and
- Occurs during the demonstration period.

However, a program participant does not have immunity related to any criminal offense committed during the program participant's participation in the program. Additionally, a program participant who provides an offering that is a financial product or service must comply with all applicable federal laws and regulations governing consumer protection.

The bill establishes that by written notice, the office may terminate a program participant's participation in the program at any time and for any reason. Additionally, the office and the office's employees are not liable for any business losses or the recouping of application expenses or other expenses related to the program, including expenses for:

- Denying an applicant's application to participate in the program for any reason; or
- Terminating a program participant's participation in the program at any time and for any reason.

### ***Annual Report***

The bill requires the secretary to provide a written report by October 1 of each year to the President of the Senate and the Speaker of the House of Representatives that includes:

- Information regarding each program participant, including which industries each participant represents and each participant's anticipated or actual cost savings;
- Recommendations regarding any laws or regulations that should be permanently modified or eliminated;
- Information regarding consumer outcomes; and
- Recommendations for changes to the program or other office duties.

### ***Consumer Protection***

The bill requires a program participant to disclose the following to a consumer, before demonstrating an offering to a consumer:

- The full legal name and contact information of the program participant;
- That the offering is authorized under the regulatory sandbox and, if applicable, that the program participant does not hold a license or other authorization to provide an offering under laws or regulations that regulate offerings outside of the regulatory sandbox;
- That the offering is undergoing testing and may not function as intended and may expose the consumer to certain risks as identified by the applicable agency's written report;
- That the program participant is not immune from civil liability for any losses or damages caused by the offering;
- That the program participant is not immune from criminal prosecution for violations of laws or regulations that are not suspended or waived pursuant to program participation;
- That the offering is a temporary demonstration that may be discounted at the end of the demonstration period;
- The expected end date of the demonstration period; and
- That a consumer may file a complaint with the office regarding the offering being demonstrated and the office's telephone number and website address where a complaint may be filed.

The disclosures must be provided to a consumer in a clear and conspicuous format and, for an Internet or application-based offering, a consumer must acknowledge receipt of the disclosure before any transaction may be completed. Additionally, the office may require that a program participant make additional disclosures to a consumer.

### ***Requirements for Exiting***

The bill provides that at least 30 days before the end of the 12-month regulatory sandbox demonstration period, a program participant must:

- Notify the office that the program participant must exit the regulatory sandbox and discontinue the program participant's demonstration after the day on which the 12-month demonstration period ends; or
- Seek an extension.

If the office does not receive the required notification, the regulatory sandbox demonstration period ends at the end of the 12-month demonstration period. Additionally, if a demonstration includes an offering that requires ongoing duties, the program participant may continue to perform those duties but must be subject to enforcement by the laws or regulations that were waived or suspended pursuant to the regulatory sandbox.

### ***Extensions***

The bill establishes that no later than 30 days before the end of the 12-month regulatory sandbox demonstration period, a program participant may request an extension of the regulatory sandbox demonstration period. The office must grant or deny a request for an extension by the end of the 12-month regulatory sandbox demonstration period. Further, the office may grant an extension for not more than 12 months after the end of the regulatory sandbox demonstration period.

### ***Recordkeeping and Reporting***

The bill requires a program participant to retain records, documents, and data produced in the ordinary course of business regarding an offering demonstrated in the regulatory sandbox. If a program participant ceases to provide an offering before the end of a demonstration period, the program participant must notify the office and each applicable agency and report on actions taken by the program participant to ensure that consumers have not been harmed as a result of the offering.

The bill requires the office to establish quarterly reporting requirements for a sandbox participant, including reporting any consumer complaints filed. Additionally, the office may request records, documents, and data from a program participant and, upon the office's request, the program participant must make such records, documents, and data available for inspection by the office.

The bill establishes that a program participant must provide a written report to the office and each applicable agency detailing any incidents that resulted in harm to the health, safety, or financial well-being of a consumer. If a program participant fails to notify the office and each applicable agency of any incidents as described above, or the office or an applicable agency has

evidence that significant harm to a consumer has occurred, the office may immediately remove the program participant from the regulatory sandbox.

The bill provides that no later than 30 days after the day on which a program participant exits the regulatory sandbox, the program participant must submit a written report to the office and each applicable agency describing an overview of the program participant's demonstration, including any:

- Incidents of harm to consumers;
- Legal action filed against the participant as a result of the participant's demonstration; and
- Complaints filed with an applicable agency as a result of the participant's demonstration.

The bill provides that no later than 30 days after the day on which an applicable agency receives the quarterly reporting or a written report from a program participant, the applicable agency must provide a written report to the office on the demonstration that describes any statutory or regulatory reform the applicable agency recommends as a result of the demonstration. The office may remove a program participant from the regulatory sandbox at any time if the office determines that a program participant has engaged in, is engaging in, or is about to engage in any practice or transaction that violates this bill or that constitutes a violation of a law or regulation for which suspension or waiver has not been granted under the regulatory sandbox.

### ***Regulatory Relief Webpage***

The bill provides that the office must create and maintain on the DEO's website a web page that invites residents and businesses to make suggestions regarding laws and regulations that could be modified or eliminated to reduce the regulatory burden on residents and businesses.

The bill establishes that on at least a quarterly basis, the office must compile the results of suggestions from the web page and provide a written report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that describes the most common suggestions. In creating the report, the office and the advisory committee:

- Must ensure that nonpublic information of residents and businesses that make suggestions on the web page is not made public; and
- May evaluate the suggestions and provide analysis and suggestions regarding which laws and regulations could be modified or eliminated to reduce the regulatory burden on residents and businesses while still protecting consumers.

### ***The Department of Economic Opportunity***

The bill amends s. 20.60, F.S., to add the Office of Regulatory Relief to the divisions and offices of the DEO.

### ***Effective Date***

The bill takes effect July 1, 2023, only if SB 1392 or similar legislation takes effect and if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. SB 1392 creates a new public records exemption and an open meeting exemption for information in a regulatory sandbox application that the office reasonably believes could result in economic harm to the applicant.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

**Entering into Reciprocal Agreements with Other States**

Statutory authorization to enter reciprocal agreements with other states may potentially implicate the “nondelegation doctrine.” Article III, Section 1 of the Florida Constitution states that “[t]he legislative power of the state shall be vested in a legislature of the State of Florida.” The Florida Supreme Court has held that this constitutional provision requires that “primary policy decisions must be made by members of the legislature who are elected to perform those tasks, and administration of legislative programs must be pursuant to some minimal standards and guidelines....”<sup>22</sup>

The Legislature may constitutionally transfer subordinate functions to “permit administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions.”<sup>23</sup> However, the Legislature “may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law.”<sup>24</sup> Further, the nondelegation doctrine precludes the Legislature from delegating its powers “absent ascertainable minimal standards and guidelines.”<sup>25</sup> When the Legislature delegates power to another body, it “must clearly announce adequate standards to guide in the execution of the powers delegated.”<sup>26</sup>

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<sup>22</sup> *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla. 1978).

<sup>23</sup> *Microtel v. Fla. Pub. Serv. Comm'n*, 464 So.2d 1189, 1191 (Fla.1985) (citing *State, Dep't of Citrus v. Griffin*, 239 So.2d 577 (Fla.1970)).

<sup>24</sup> *Sims v. State*, 754 So.2d 657, 668 (Fla. 2000).

<sup>25</sup> *Dep't of Bus. Reg., Div. of Alcoholic Beverages and Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. 1st DCA 1985).

<sup>26</sup> *Martin*, 916 So.2d at 770.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill may have a fiscal impact on businesses that have a reduced regulatory structure by inclusion into the Universal Regulatory Sandbox. This could allow these businesses to be more successful or could result in the failure of the business.

**C. Government Sector Impact:**

The bill will have an indeterminate fiscal impact on the DEO, which will bear costs associated with the operation of the office. There may also be costs associated with advisory committee meetings, such as travel per diems.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill requires the office to provide public notice, on the office's website and through other "appropriate means," of each law or regulation that the office is considering suspending or waiving pursuant to the application. However, it is unclear what should be considered as other appropriate means.

The bill authorizes an applicable agency to reject an application by written notice to the office that was "preliminarily" approved by the office under certain circumstances. However, it is unclear when or how the office can preliminary approve an applicant.

The bill provides that a sandbox participant can request a 12-month extension of the regulatory sandbox demonstration period. However, it is unclear how many extensions a sandbox participant can be granted.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 288.9971, 288.9972, 288.9973, 288.9974, 288.9975, 288.9976, 288.9977, 288.9978, 288.9978, 288.9979, 288.9981, 288.9982, 288.9983.

This bill substantially amends section 20.60 of the Florida Statutes.

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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