

**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 Banking and Insurance

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BILL: SB 1336

INTRODUCER: Senator Grall

SUBJECT: Interest on Trust Accounts

DATE: January 19, 2024

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AEG</u>	_____
3.	_____	_____	<u>FP</u>	_____

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**I. Summary:**

SB 1336 requires the Chief Financial Officer (CFO) to establish the interest rates that must be paid by financial institutions on trust accounts that attorneys use for the deposit of nominal or short-term client funds. The CFO is required to set the rate of interest on trust accounts (IOTA) quarterly. The bill requires the CFO to set the interest rate based on the higher of 68 points of the upper bound of the federal funds rate or 0.25 percent, and the annual percentage yield of such interest rate would be capped at 2.55 percent.

As an alternative to paying the established rate described above, a participating financial institutions may pay an annual percentage yield that is the higher of the highest interest rate or dividend generally available from the institution to its non-IOTA business or consumer account customers, or its non-maturing deposit account customers, or 0.25 percent, when IOTA accounts meet or exceed the same minimum balance or other eligibility qualifications.

The Interest on Trust Account (IOTA) program, was implement by rules adopted by the Florida Supreme Court in 1981, and is administered by Funding Florida Legal Aid. Currently, the rule prescribes that, when the Wall Street Journal Prime Rate (indexed rate) is between 3.25 and 4.99 percent, the minimum interest rate paid, net of all fees and service charges, must be no less than 3.00 percent below the indexed rate in effect on the first business day of each month. When the indexed rate is 5.00 percent or above, the yield must be no less than 40 percent of the indexed rate in effect on the first business day of each month. The interest generated on these trust accounts is used to fund legal assistance for low-income individuals, improvements in the administration of justice, and law student assistance. As of January 16, 2023, the indexed rate was 8.5 percent.

The fiscal impact on state and local governments is expected to be insignificant.

## II. Present Situation:

### Chief Financial Officer

The Chief Financial Officer (CFO) serves as the head of the Department of Financial Services. The CFO is a member of the Cabinet and is designated as the chief fiscal officer<sup>1</sup> of the state and is responsible for setting and approving accounts against the state and keeping all state funds and securities.<sup>2</sup>

### The Florida Supreme Court

The Supreme Court of Florida has the exclusive and ultimate authority<sup>3</sup> to regulate the admission of persons to the practice of law and the discipline of those persons who are admitted to practice.<sup>4</sup> The Court performs those official functions through two separate arms: the Florida Board of Bar Examiners, which screens, tests and certifies candidates for admission to the practice, and The Florida Bar, which is the investigative and prosecutorial authority in the lawyer regulatory process.<sup>5</sup>

### The Florida Bar

The Supreme Court of Florida establishes the authority and responsibilities of The Florida Bar, an official arm of the Court.<sup>6</sup> The purpose of The Florida Bar is to inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence.<sup>7</sup> The governing body of The Florida Bar is its Board of Governors consisting of 52 members.<sup>8</sup> The Board of Governors has exclusive authority to adopt matters of policy concerning the activities of the Bar, subject only to the limitations imposed by the Rules Regulating The Florida Bar, adopted by the Florida Supreme Court.

### *Funding Florida Legal Aid*

The Florida Bar Board of Governors created The Florida Bar Foundation in 1956 as a nonprofit corporation chartered to foster law-related public interest programs on behalf of Florida's legal profession. In 2023, the Foundation changed its name to Funding Florida Legal Aid (FFLA).<sup>9</sup> The FFLA is a 501(c)(3) nonprofit organization whose mission is to increase access to the justice system for people of limited means by funding legal services, developing tools and programs, and support legal aid providers and the courts. Of Florida's approximately 7.5 million households, over 1 million live in poverty, and over 4.2 million Floridians have an income that is

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<sup>1</sup> FLA. CONST. art. IV, s. 4.

<sup>2</sup> Section 17.001, F.S.

<sup>3</sup> FLA. CONST. art. V, s. 15.

<sup>4</sup> <https://www.floridabar.org/about/faq/> (last visited Jan. 15, 2024).

<sup>5</sup> *Id.*

<sup>6</sup> R. Regulating Florida Bar, Rule 1-2. (605 So.2d 252).

<sup>7</sup> *Id.*

<sup>8</sup> The Florida Bar, What we do (July 2023) <https://www.floridabar.org/about/faq/what-we-do/> (last visited Jan. 17, 2024).

<sup>9</sup> <https://fundingfla.org/about-ffla/ffla-overview/> (last visited Jan. 15, 2024).

below 125 percent of the Federal Poverty Level, making them eligible for services from one of Florida's civil legal aid organizations.<sup>10</sup>

The FFLA is required to distribute no less than 85 percent of IOTA funds collected in its fiscal year no later than six months after the end of its fiscal year.<sup>11</sup> The FFLA's fiscal year runs July 1 to June 30. On December 8, 2023, the board of directors of the FFLA approved the distribution of \$33,870,910 of IOTA funds to 35 Florida legal aid organizations.<sup>12</sup>

### ***Interest on Trust Accounts Program***

In 1978, the Board of Governors of The Florida Bar, with the concurrence of the Board of Directors of The Florida Bar Foundation, Inc., petitioned the Supreme Court requesting that the Court amend the rules governing the practice of law in Florida to authorize attorneys to invest trust funds held for clients in order to generate investment income for the benefit of public interest programs related to the legal profession.<sup>13</sup> In its opinion, *In re Interest on Trust Accounts*,<sup>14</sup> the Supreme Court found that the creation of the IOTA program was within the Court's constitutional authority to regulate the practice of law and adopted the nation's first Interest on Trust Accounts Program (IOTA).<sup>15</sup> After several minor amendments,<sup>16</sup> and delays due to uncertainty as to the appropriate federal income tax treatment of the interest payable to The Florida Bar Foundation, Florida's IOTA program, permitting the participation by lawyers and law firms, became operational in September 1981. Participation by financial institutions is voluntary; however, those that do participate must comply with the IOTA requirements, approved by the Supreme Court.

The rule requires all nominal or short-term funds of clients or third persons to be pooled into an interest-bearing account benefitting IOTA if the lawyer has determined that the funds cannot practicably be invested for the benefit of the client or third party.<sup>17</sup> However, client or third parties trust funds that lawyers have determined can earn income for the individual client or third person, in excess of the costs to secure such income, cannot be deposited into IOTA accounts.<sup>18</sup> Members of The Florida Bar are required to certify annually in writing on the annual membership fee statement that they are in compliance with, or exempt from, the provisions of the IOTA program, as set out in rule 5-1.1(g) Rules Regulating The Florida Bar.<sup>19</sup>

### ***2023 IOTA Amendments Adopted by the Florida Supreme Court***

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<sup>10</sup> IN RE: AMENDMENTS TO RULE REGULATING THE FLORIDA BAR 5-1.1(g). (June 18, 2021) [SC20-1543 Opinion \(flcourts.gov\)](#) (last visited Jan. 15, 2024).

<sup>11</sup> R. Regulating the Fla. Bar Rule 5.1-1(g).

<sup>12</sup> [FFLA to distribute \\$33.8 million in IOTA funds to 35 legal aid organizations | FFLA \(fundingfla.org\)](#) (last visited Jan. 19, 2024).

<sup>13</sup> Original jurisdiction vests in the Supreme Court pursuant to Art. V, s. 15, Fla. Const.

<sup>14</sup> *Supra* at 1.

<sup>15</sup> A Petition of Fla. Bar, 356 So. 2d 799 (Fla. 1978).

<sup>16</sup> A Petition of Fla. Bar, 372 So. 2d 67 (Fla. 1979).

<sup>17</sup> Under Bar Rule 5.1-1(g).

<sup>18</sup> FFLA, Interest on Trust Accounts Program [IOTA - Interest on Trust Accounts Program \(fundingfla.org\)](#) (last visited Jan. 18, 2024).

<sup>19</sup> [Attorneys Law Firms | FFLA \(fundingfla.org\)](#) (last visited Jan. 14, 2024).

In March 2023, the Florida Supreme Court<sup>20</sup> adopted amendments to rules regulating The Florida Bar, including the rule regulating the trust accounts in the following manner:

- Expands the definition of an interest or dividend-bearing trust account to include a business or consumer deposit account.<sup>21</sup>
- Requires eligible institutions to maintain IOTA accounts that pay the highest interest rate or dividend generally available from the institution to its non-IOTA business or consumer account customers, or its non-maturing deposit account customers when IOTA accounts meet or exceed the same minimum balance qualifications.<sup>22</sup>
- Requires eligible institutions to tie interest rates for IOTA accounts to specific indexed rate points.<sup>23</sup>

The amendments were set to take effect May 15, 2023. In determining the interest rates for IOTA accounts, the 2023 amended rules requires the following:

When the Wall Street Journal Prime Rate (indexed rate) is between 325 and 499 basis points (3.25 and 4.99), the minimum interest rate paid net of all fees and service charges (yield) must be no less than 300 basis points (3.00 percent) below the indexed rate in effect on the first business day of each month. When the indexed rate is 500 basis points (5.00 percent) or above, the yield must be no less than 40 percent of the indexed rate in effect on the first business day of each month.<sup>24</sup>

According to a recent Florida Bar News article, under the amended rule, when the prime rate is between 3.25 percent and 5.00 percent, then the trust account rate bank pay out is between .25 percent and 2.00 percent, resulting in a 3.00 gain. After that the gains at a 7.00 interest rate, for example, banks will pay out 2.8 percent, resulting in a 4.2 percent gain.<sup>25</sup>

Since the Court's rule went into effect in May 2023, the attorney trust accounts have earned more than \$60 million for civil legal aid, a significant increase compared to the \$9.5 million to \$16.2 million per year earned from 2018 to 2022.<sup>26</sup> According to The Florida Bar, the participation of banks is noteworthy, with only a minimal percentage (2.5 percent) of the 161 banks providing Florida attorney IOTA accounts discontinuing the service since the changes.<sup>27</sup>

Subsequently on March 31, 2023, the Florida Bankers Association (FBA) filed a motion<sup>28</sup> for a rehearing of the Court's March 16, 2023 opinion. As an alternative, the FBA seeks to file comments out of time or leave to reappear as amicus curiae on rehearing. The motion states that the use the Wall Street Prime Rate (index rate) means that the minimum interest rates paid on

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<sup>20</sup> SC22-1292 (Mar. 16, 2023).

<sup>21</sup> R. Regulating Fla. Bar Rule 5-1.1(g)(1)(E).

<sup>22</sup> R. Regulating Fla. Bar Rule 5-1.1(g)(5)(A).

<sup>23</sup> R. Regulating Fla. Bar Rule 5-1.1(g)(5)(B).

<sup>24</sup> *Id.*

<sup>25</sup> [Measure would have Florida's CFO set the rate paid on IOTA accounts – The Florida Bar](#) (Jan. 16, 2024) (last visited Jan. 19, 2024).

<sup>26</sup> Florida Bar, IOTA Rule White Paper, (Jan. 19, 2024) (on files with Senate Committee on Banking and Insurance Committee).

<sup>27</sup> *Id.*

<sup>28</sup> Florida Bankers Association's Motion, In Re: Amendments to Rules Regulating the Florida Bar 5-1.1 (Mar. 31, 2023), Case No. SC22-1292 [70f6bc15-9b6e-41b5-8c56-65db9b750a31 \(flcourts.gov\)](#) (last visited Jan. 19, 2024).

IOTA accounts are significantly higher than any other interest rate offered by any bank on consumer or business transactional accounts.<sup>29</sup> Thus, the FBA asserts that the implementation of the amendment will have a disproportionate negative effect by causing an abrupt and destabilizing decline in the number of banks participating, resulting in decreased choice for, and significant cost-shifting to, Florida law firms.<sup>30</sup>

The FBA motion also asserts that the 2023 IOTA amendment conflicts with the federal regulation of national banks and is thus federally preempted under the Supremacy Clause.<sup>31</sup> The FBA contends that the IOTA amendment in essence dictates the interest rates for national banks and is thus preempted because it seeks to control or otherwise prevent or significantly interfere with national banking powers.<sup>32</sup>

On April 14, 2023, The Florida Bar provided a response to the FBA's motion for rehearing.<sup>33</sup> The Bar maintains that this minimum rate is within the reasonable range of the fair market price to charge banks to receive the billions of dollars of capital in these lawyers' IOTA trust accounts.<sup>34</sup> Further, The Florida Bar contends that this rule does not compel any bank to offer this interest rate.<sup>35</sup> The Florida Bar asserts that by setting this objective standard, every lawyer has a goal that the Bar maintains is achievable, and these lawyers will now negotiate more aggressively to achieve what the Bar maintains is the fair market price.<sup>36</sup>

### **IOTA Programs in Other States**

According to the American Bar Association, interest on lawyers' trust accounts (IOLTA) or IOTA in Florida, currently operate in 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.<sup>37</sup> The Texas and Georgia program are described below.

In Texas, the Access to Justice Foundation administers the IOLTA program, which was established in 1984 by the Supreme Court of Texas.<sup>38</sup> As of July 1, 1989, all Texas attorneys handling qualifying client funds must establish an IOLTA account, unless a low balance exempts them.<sup>39</sup> Pursuant to the Supreme Court of Texas, attorneys must hold IOLTA accounts in eligible banks, which are those that pay interest rates comparable to other similar situated accounts. The attorney or law firm establishing the interest-bearing demand account must attempt in good faith to obtain a rate of interest payable on the account not less than the rate paid by the depository institution to other depositors with accounts of similar size.<sup>40</sup> A higher rate offered by the institution on deposits meeting certain time requirements or minimum amounts, such as those

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> The Florida Bar's Response to the FBA's Motion for Rehearing, Case No. SC22-1292. The Florida Supreme Court. (Apr. 14, 2023) [a8e413ea-a6d4-417f-a1b0-2536bb7c9292 \(flcourts.gov\)](https://www.flcourts.gov/cases/2023-04-14-a8e413ea-a6d4-417f-a1b0-2536bb7c9292) (last visited Jan. 15, 2024).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> American Bar Association, IOLTA Overview, [Overview \(americanbar.org\)](https://www.americanbar.org/iolta-overview) (last visited Jan. 17, 2024).

<sup>38</sup> [Directory of IOLTA Programs \(americanbar.org\)](https://www.americanbar.org/iolta-directory) (last visited Jan. 17, 2024).

<sup>39</sup> Texas Access to Justice Foundation, [TAJF- Funding \(teajf.org\)](https://www.teajf.org/funding) (last visited Jan. 17, 2024).

<sup>40</sup> See State Bar of Texas Rules, Article XI, Sections 5-6. [In the Supreme Court \(teajf.org\)](https://www.teajf.org/in-the-supreme-court) (last visited Jan. 17, 2024).

offered in the form of certificates of deposit, may be obtained if there is no impairment of the right to withdraw or transfer principal immediately, other than the statutory notification requirements generally applicable to those accounts, even though interest may be lost because of the withdrawal or transfer.<sup>41</sup>

Pursuant to the Georgia Supreme Court rules, the Georgia Bar Foundation administers the IOLTA program.<sup>42</sup> On any IOLTA Account, the rate of interest payable may not be less than

- The highest interest rate or dividend generally available from the approved institution to its non-IOLTA customers for each IOLTA account that meets the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, the institution may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers if such factors do not discriminate between IOLTA Accounts and accounts of non-IOLTA customers; or
- Alternatively, an institution may choose a rate equal to the greater of: 0.65% per annum or a benchmark interest rate, net of allowable reasonable fees, set by the Foundation, which shall be expressed as a percentage (index) of the federal funds target rate, as established from time to time by the Federal Reserve Board. In order to maintain an overall comparable rate, the Foundation will periodically, but not less than annually, publish its index. The index shall initially be 65% of the federal funds target rate.
- Approved institutions may choose to pay rates higher than comparable rates discussed above.<sup>43</sup>

### Current Market Interest Rates

As of January 16, 2023, the Wall Street Journal prime rate (indexed rate) was 8.5 percent. To determine this rate, the Wall Street Journal surveys the 30 largest banks, and when three-quarters of them (23) change, the WSJ changes its rate, effective on the day the Journal publishes the new rate. It's the most widely quoted measure of the prime rate, which is the rate at which banks will lend money to their most-favored customers.<sup>44</sup> The prime rate will move up or down in lock step with changes by the Federal Reserve Board.<sup>45</sup> The prime rate is an important index used by banks to set rates on many consumer loan products, such as credit cards or auto loans.

As of January 17, 2024, the Federal funds rate was 5.33 percent.<sup>46</sup> The Federal Reserve implements monetary policy primarily by influencing the federal funds rate, which is the interest rate that financial institutions charge each other for loans in the overnight market for reserves.<sup>47</sup>

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<sup>41</sup> *Id.*

<sup>42</sup> Rule 15-103, prescribes the rate of interest paid. [ORDER-2014\\_1\\_FINAL\\_with-State-Bar-Edits1.pdf \(gasupreme.us\)](#) (last visited Jan. 18, 2024).

<sup>43</sup> *Id.*

<sup>44</sup> [Wall Street Prime Rate | WSJ Current Prime Rate Index \(bankrate.com\)](#) (last visited Jan. 19, 2024).

<sup>45</sup> *Id.*

<sup>46</sup> [Federal Reserve Board - H.15 - Selected Interest Rates \(Daily\) - January 18, 2024](#) (last visited Jan. 19, 2024).

<sup>47</sup> Federal Reserve Bank of San Francisco, What is the Fed: Monetary Policy <https://www.frbsf.org/education/teacher-resources/what-is-the-fed/monetary-policy>. (2024) (last visited Jan. 18, 2024).

The daily effective federal funds rate is volume-weighted median of transaction-level data collected from depository institutions in the Report of Selected Money Market Rates.<sup>48</sup>

### III. Effect of Proposed Changes:

**Section 1.** Creates s. 655.97, F.S., relating to interest on trust accounts. The Chief Financial Officer (CFO) is required to set the rates, net of fees and service charges quarterly (December 1, March 1, June 1, and September 1) to be effective for January 1, April 1, July 1, and October 1, respectively. In establishing this rate, the CFO must use the highest of 68 percent of the upper bound of the federal funds rate or 25 basis points (0.25 percent). This rate is known as the compliance rate. The annual percentage yield of the established compliance rate may not exceed 255 basis points (2.55 percent).

In lieu of paying the established compliance rate, a financial institution may pay an annual percentage yield that is higher of: the highest interest rate or dividend generally available from the institution to its non-IOTA accounts, consumer accounts, or its non-maturing deposit accounts, or 25 basis points (0.25 percent), when IOTA accounts meet or exceed the same minimum balance or other eligibility requirements.

Once the compliance rate is set by the CFO, the CFO must notify Funding Florida Legal Aid of this rate. This rate does not apply to or effect an interest rate established by written contract or obligation not affecting IOTA accounts. If a financial institution selects the alternative interest rate described above, the institution must submit to Funding Florida Legal Aid the IOTA Rate Comparability Information form promulgated by The Florida Bar.

**Section 2.** The act takes effect July 1, 2024.

### 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.

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<sup>48</sup> *Id.*

## E. Other Constitutional Issues:

Currently, rules relating to the regulation of attorneys, including the interest on trust accounts (IOTA), are governed by rules adopted by the Florida Supreme Court. In *re* Interest on Trust Accounts, the Supreme Court found that the creation of the IOTA program was within the Court's constitutional authority to regulate the practice of law.<sup>49</sup>

### **Separation of Powers**

The Florida Constitution mandates separation of powers between branches of the Florida government. Article II, section 3 of the Florida Constitution provides:

“The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”

The separation of powers doctrine encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. The second is that no branch may delegate to another branch its constitutionally assigned power.<sup>50</sup> As a coequal branch of government, the judicial branch “is not an ‘agency’ subject to the supervision or control by another coequal branch of government.”<sup>51</sup>

### **Federal Preemption**

The bill creates s. 655.97, F.S., within the Financial Institutions Code (code).<sup>52</sup> The code generally applies to the regulation of state-chartered financial institutions by the Office Financial Regulation. The provisions of the bill require the Chief Financial Officer to establish rates of interest on trust accounts (IOTA) established by lawyers at participating or eligible institutions. Chapter 17, F.S., prescribes the duties of the Chief Financial Officer.

The National Banking Act was enacted by Congress to facilitate a national banking system.<sup>53</sup> The Office of the Comptroller of the Currency is the federal agency charged with regulating national banks and savings associations.<sup>54</sup> It is unclear whether the regulation of rates of interest on trust accounts within the code would be applicable to national banks and savings associations.

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<sup>49</sup> 356 So. 2d 799 (Fla. 1978) and 538 So. 2d 448 (Fla. 1989).

<sup>50</sup> *Chiles v. Children A, B, C, D, E, & F*, 589 So.2d 260, 264 (Fla.1991).

<sup>51</sup> *Times Pub. Co. v. Ake*, 645 So. 2d 1003, 1004 (Fla. 2d DCA 1994), 660 So. 2d 255 (Fla. 1995).

<sup>52</sup> Chs. 655, 657, 658, 660,662,663, 665, and 667, F.S.

<sup>53</sup> *Marquette Nat’l Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299 (1978).

<sup>54</sup> 12 USC s. 1 *et seq.*



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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

Line 27 of the bill refers to “eligible institutions;” however, the term is not defined in the bill. The creation of a definition or a reference to the term as defined in the Rules Regulating The Florida Bar would provide clarity.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 655.97 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.