

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 543 Boards of Directors of Banks

SPONSOR(S): Black

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 3 N	Fletcher	Lloyd
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

A bank failure is the closing of a bank by a federal or state banking regulatory agency, generally due to insolvency issues caused by the bank’s inability to meet its obligations to depositors and others. According to the Federal Deposit Insurance Corporation (FDIC), there have been 566 bank failures from 2001 through 2023.

To accept deposits, an institution must have a federal or state charter. Banks are chartered and regulated as national banks by the Office of the Comptroller of the Currency within the U.S. Department of the Treasury, or as state banks by a state regulator. A major component of both federal and state bank regulation is known as “safety and soundness” regulation, which is designed to promote bank profitability and avoid bank failures, thereby protecting the taxpayers and the stability of the financial system.

Under federal law, a bank must notify the appropriate federal agency of the proposed appointment of a director at least 30 days before such addition under certain circumstances. The agency must issue a notice of disapproval of the addition if the competence, experience, character, or integrity of such individual indicates it would not be in the best interests of the institution’s depositors or the public to have such individual as a director. Moreover, a federal bank’s regulator may serve upon a current director written notice of the regulator’s decision to remove such director from office if it is determined the director has engaged in certain activity.

Similar to federal laws, Florida law authorizes Office of Financial Regulation (OFR) to disapprove the proposed appointment of a director if the financial institution meets specified criteria. OFR is also authorized to issue and serve a complaint to remove a director of a financial institution if OFR has reason to believe such party is engaging in any specified conduct.

The bill provides that a person who has previously served on a board of directors of a bank doing business in Florida that has become insolvent is disqualified from serving on the board of directors of another bank for 5 years after the date the previous bank became insolvent.

The bill has no impact on state or local government revenues and expenses. It has an indeterminate negative and positive impact on the private sector.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Bank Failures

A bank failure is the closing of a bank by a federal or state banking regulatory agency.¹ Generally, a bank is closed when it is unable to meet its obligations to depositors and others.² According to the Federal Deposit Insurance Corporation (FDIC), there have been 566 bank failures from 2001 through 2023,³ five of which were in 2023.⁴

Dual Regulatory Oversight of Depository Institutions

To accept deposits, an institution must have a federal or state charter.⁵ Banks are chartered and regulated as national banks by the Office of the Comptroller of the Currency within the U.S. Department of the Treasury, or as state banks by a state regulator.⁶ A major component of bank regulation is known as “safety and soundness” regulation, which is designed to promote bank profitability and avoid bank failures, thereby protecting the taxpayers and the stability of the financial system.⁷

Florida’s Financial Institutions Codes⁸ apply to all state-authorized or state-chartered financial banks, trust companies, credit unions and related entities.⁹ The Office of Financial Regulation (OFR) licenses and regulates 200 financial entities, including 69 state-chartered banks as of January 2023.¹⁰ There are also 26 nationally-chartered banks and 3 nationally-chartered savings institutions operating in Florida as of September 2023.¹¹

Banks chartered by OFR must become members of the Federal Reserve or obtain insurance from the FDIC.¹² Thus, state-chartered banks are subject to a dual-regulatory system.¹³ Similarly, nationally-chartered banks are subject to certain regulatory authority by OFR when they are licensed to operate in Florida.¹⁴

Laws Relating to Directors

¹ Federal Deposit Insurance Corporation, *When a Bank Fails – Facts for Depositors, Creditors, and Borrowers*, <https://www.fdic.gov/consumers/banking/facts/> (last visited Feb. 1, 2024).

² *Id.*

³ Federal Deposit Insurance Corporation, *Bank Failures in Brief – Summary 2001 through 2023*, <https://www.fdic.gov/bank/historical/bank/> (last visited Feb. 1, 2024).

⁴ See Federal Deposit Insurance Corporation, *Failed Bank List*, <https://www.fdic.gov/resources/resolutions/bank-failures/failed-bank-list/> (last visited Feb. 1, 2024).

⁵ Congressional Research Service, *An Analysis of Bank Charters and Selected Policy Issues* (Jan. 21, 2022), <https://crsreports.congress.gov/product/pdf/R/R47014> (last visited Feb. 1, 2024).

⁶ Congressional Research Service, *Introduction to Financial Services: Banking* (updated Jan. 5, 2023), <https://crsreports.congress.gov/product/pdf/IF/IF10035> (last visited Feb. 1, 2024).

⁷ *Id.*

⁸ The Financial Institutions Codes include chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S. See s. 655.005(k), F.S.

⁹ S. 655.001(1), F.S.

¹⁰ Office of Financial Regulation, *Fast Facts: 2023 Edition*, <https://lofr.gov/sitePages/documents/FastFacts.pdf> (last visited Feb. 1, 2024).

¹¹ Federal Deposit Insurance Corporation, *FDIC State Tables*, <https://state-tables.fdic.gov/> (last visited Feb. 1, 2024).

¹² Ss. 658.22 and 658.38, F.S.

¹³ Office of the Comptroller of the Currency, *Who Regulates My Bank?* <https://www.helpwithmybank.gov/who-regulates-my-bank/index-who-regulates-bank.html> (last visited Feb. 1, 2024).

¹⁴ 12 C.F.R. § 7.4000(a)(1).

Under federal law, a depository institution holding company must notify the appropriate federal regulatory authority of the proposed appointment of a director at least 30 days before such addition under certain circumstances.¹⁵ The regulatory authority must issue a notice of disapproval of the addition if the competence, experience, character, or integrity of the individual indicates it would not be in the best interests of the institution's depositors or the public to have such individual as the bank's director.¹⁶ Moreover, a bank's federal regulator may serve upon a current director written notice of the regulator's decision to remove such director from office if it is determined the director has engaged in certain activity.¹⁷

Similar to federal laws, Florida law authorizes OFR to:

- Disapprove the proposed appointment of a director if the financial institution meets specified criteria, such as noncompliance with minimum capital requirements or otherwise operating in an unsafe and unsound condition;¹⁸ and
- Issue and serve a complaint to remove a director of a financial institution if OFR has reason to believe that such party is engaging or has engaged in any specified conduct, including, but not limited to, an unsafe or unsound practice, a prohibited act or practice, or a willful violation of any law relating to financial institutions.¹⁹

Under Florida law, any director removed from office pursuant to OFR's authority is not eligible for reelection to such position or to any official position with any financial institution in Florida, except with the written consent of OFR.²⁰

Effect of the Bill

The bill provides that a person who has previously served on a board of directors of a bank doing business in Florida that has become insolvent is disqualified from serving on the board of directors of another bank for 5 years after the date the previous bank became insolvent.

B. SECTION DIRECTORY:

Section 1. Amends s. 658.33, F.S., relating to directors, number, qualifications; officers.

Section 2. Provides an effective date of July 1, 2024.

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.

¹⁵ 12 U.S.C. § 1831i(a).

¹⁶ 12 U.S.C. § 1831i(e).

¹⁷ 12 U.S.C. § 1831i(b).

¹⁸ S. 655.0385, F.S.

¹⁹ S. 655.037, F.S.

²⁰ S. 655.037(7), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate positive impact on the private sector to the extent the bill benefits banks and consumers from not having directors that held a similar position at a bank that went insolvent.

The bill has an indeterminate negative impact on the private sector to the extent the bill prevents individuals from serving on a bank's board of directors when the individual was an innocent actor and did not contribute to a bank's insolvency (i.e., directors who, but for the bill, would serve as a director of a bank may have lost compensation). Further, banks may incur replacement costs to the extent that any current directors are disqualified under the provisions of the bill.

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 confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 15-17: As currently drafted, the language could have an unintended consequence of preventing innocent actors from serving on a bank's board of directors. An amendment could address this possibility by making clear that the prohibition against a former director serving applies only if the former director had an active role in contributing to the bank's insolvency.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES