

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 85 Pub. Rec./New State Banks and New State Trust Companies

SPONSOR(S): Insurance & Banking Subcommittee, Barnaby and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1014

FINAL HOUSE FLOOR ACTION: 114 Y's

1 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/HB 85 passed the House on February 28, 2024, and subsequently passed the Senate on March 1, 2024.

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry. To apply for authority to organize a new state-chartered bank or state-chartered trust company, the proposed directors must file a written application with OFR. The application includes information such as the name, residence, and occupation of each proposed director; the proposed corporate name; the community, including the street and number, if available, where the principal office of the proposed bank is to be located; the total initial capital; the proposed business plan; and pro forma financial statements. Additionally, each proposed executive officer, director, and controlling shareholder must complete and submit detailed biographical and financial information, including, but not limited to, names, home addresses, current and past employment, and statements of assets, liabilities, and total net worth. OFR utilizes this information to ascertain whether the proposed directors and executives have the kind of experience, ability, standing, and reputation that indicates a reasonable promise of successful operation.

While some existing public record exemptions may apply to certain records received by OFR pursuant to an application to organize a new bank, current Florida law does not provide any public record exemptions specifically directed at such records. On the federal level, several exemptions exist to protect this information from disclosure. Presently, with the exception of some material for which the applicant may claim trade secret status, the majority of information contained within such an application is subject to public inspection and copying.

The bill creates a public record exemption for certain information received by OFR in an application for authority to organize a new state bank or new trust company. This information includes:

- Personal financial information;
- A driver license number, passport number, military identification number, or any other number or code issued on a government document used to verify identity;
- Books and records of a current or proposed financial institution;
- The proposed state bank's or proposed state trust company's proposed business plan; and

The personal identifying information of a prospective officer or director, currently affiliated with another financial institution, obtained through an application for a new state bank or state trust company, is exempt from public record requirements until the application is approved and the charter is issued. This includes names, addresses, emails, phone numbers, relatives' names, work history, professional licenses, education, and photographs.

The bill provides for repeal of the exemption on October 2, 2029, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

The bill was approved by the Governor on April 5, 2024, ch. 2024-62, L.O.F., and will become effective on July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Public Records

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may provide by general law an exemption² from public record requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.³

Current law also addresses the public policy regarding access to government records by guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.⁴ Furthermore, the Open Government Sunset Review (OGSR) Act⁵ provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁶ An identifiable public purpose is served if the exemption meets 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; or
- Protect trade or business secrets.⁷

Pursuant to the OGSR Act, a new public record exemption, or the substantial amendment of an existing public record exemption, is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.⁸

Office of Financial Regulation (OFR)

OFR regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.⁹ OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes (Codes) and the rules promulgated thereunder.¹⁰ The specific chapters under the Codes are:

- Chapter 655, F.S. – Financial Institutions Generally
- Chapter 657, F.S. – Credit Unions

¹ Art. I, s. 24(a), FLA. CONST.

² A "public record exemption" means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. See s. 119.011(8), F.S.

³ Art. I, s. 24(c), FLA. CONST.

⁴ See s. 119.01, F.S.

⁵ S. 119.15, F.S.

⁶ S. 119.15(6)(b), F.S.

⁷ *Id.*

⁸ S. 119.15(3), F.S.

⁹ S. 20.121(3)(a)2., F.S.

¹⁰ Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.

- Chapter 658, F.S. – Banks and Trust Companies
- Chapter 660, F.S. – Trust Business
- Chapter 662, F.S. – Family Trust Companies
- Chapter 663, F.S. – International Banking
- Chapter 665, F.S. – Capital Stock Associations
- Chapter 667, F.S. – Savings Banks

As of September 30, 2023, the Division of Financial Institutions regulates 198 financial institutions:¹¹

- 58 banks
- 66 credit unions
- 22 international bank offices
- 13 trust companies
- 27 family trust companies
- 10 qualified limited service affiliates

Regulation of Banks

Under the dual banking system in the United States, banks may be chartered under either state or federal law:

- *State-chartered banks* are chartered under the laws of the state in which the bank is headquartered. State-chartered banks have both a state regulator, which for banks chartered by the State of Florida is OFR, and a federal regulator. The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System (FRB), and the primary federal regulator for non-member state banks is the Federal Deposit Insurance Corporation (FDIC).¹²
- *National banks* are chartered by the Office of the Comptroller of the Currency (OCC) under the National Bank Act.¹³ As such, the OCC is the primary federal regulator for national banks.¹⁴

Confidential Treatment of Applications to Charter a National Bank

The federal Freedom of Information Act (FOIA)¹⁵ sets forth the process for obtaining federal agency records, unless the records or any portion thereof are protected from disclosure by one of the FOIA's nine exemptions or by one of its three special law enforcement record exclusions. The OCC has set forth its policies regarding the availability of information under FOIA, as well as procedures for requesting information, within 12 CFR Part 4, Subpart B. Under the OCC's FOIA regulations, the following records, or portions thereof, are exempt from disclosure:¹⁶

- 1) A record that is specifically authorized, under criteria established by an executive order, to be kept secret in the interest of national defense or foreign policy, and that is properly classified pursuant to that executive order;
- 2) A record relating solely to the internal personnel rules and practices of an agency;
- 3) A record specifically exempted from disclosure by statute (other than 5 U.S.C. § 552b), provided that the statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; establishes particular criteria for withholding, or refers to particular types of matters to be withheld; and, if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to 5 U.S.C. § 552(b)(3);

¹¹ Email from Ash Mason, Legislative and Cabinet Affairs Director, Office of Financial Regulation, RE: Request for Updated Numbers on HB 85 (Jan 10, 2024).

¹² 12 U.S.C. § 1813(q).

¹³ 12 U.S.C. § 38.

¹⁴ 12 U.S.C. § 1813(q).

¹⁵ 5 U.S.C. § 552 *et seq.*

¹⁶ 12 C.F.R. § 4.12(b).

- 4) A record that is privileged or contains trade secrets, or commercial or financial information, furnished in confidence, that relates to the business, personal, or financial affairs of any person;¹⁷
- 5) An intra-agency or interagency memorandum or letter not routinely available by law to a private party in litigation, including memoranda, reports, and other documents prepared by OCC employees, and records of deliberations and discussions at meetings of OCC employees, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;
- 6) A personnel, medical, or similar record, including a financial record, or any portion thereof, where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- 7) A record or information compiled for law enforcement purposes, but only to the extent that the OCC reasonably believes that producing the record or information may:
 - i. Interfere with enforcement proceedings;
 - ii. Deprive a person of the right to a fair trial or an impartial adjudication;
 - iii. Constitute an unwarranted invasion of personal privacy;
 - iv. Disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution that furnished information on a confidential basis;
 - v. Disclose information furnished by a confidential source, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation;
 - vi. Disclose techniques and procedures for law enforcement investigations or prosecutions, or disclose guidelines for law enforcement investigations or prosecutions if such disclosure reasonably could be expected to risk circumvention of the law; or
 - vii. Endanger the life or physical safety of any individual;
- 8) A record contained in or related to an examination, operating, or condition report prepared by, on behalf of, or for the use of the OCC or any other agency responsible for regulating or supervising financial institutions; and
- 9) A record containing or relating to geological and geophysical information and data, including maps, concerning wells.

An applicant submitting information to the OCC may request that specific information be treated as confidential when the materials are submitted.¹⁸ If the OCC does not consider the information to be confidential, the OCC may include that information in the public file after providing notice to the submitter.¹⁹ In addition, the OCC may, at its own initiative, determine that certain information should be treated as confidential and withhold that information from the public file.²⁰ While a filing is pending with the OCC, the OCC licensing office may provide the *public* portion of a filing to any person who requests it.²¹ The public file consists of those portions of the filing, supporting data, and supplementary information that was submitted by the applicant and by interested persons and not afforded confidential treatment.²²

An applicant is encouraged to request confidential treatment for portions of a filing containing personally identifiable information (PII).²³ The term “PII” refers to information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked or linkable to a specific individual.²⁴ Examples of PII include an individual’s first name or first initial and last name, social security number, passport number, credit card numbers, clearances, bank

¹⁷ Notice requirements regarding disclosure of confidential commercial information are contained in 12 C.F.R. § 4.16.

¹⁸ Office of the Comptroller of the Currency, *Comptroller’s Licensing Manual: General Policies and Procedures* (Apr. 2022) at 4, <https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-booklet-general-policies-and-procedures.html> (last visited Jan. 19, 2024).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 6.

²³ *Id.* at 4.

²⁴ *Id.*

numbers, biometrics (for example, fingerprints), date or place of birth, mother's maiden name, or medical data.²⁵

Each organizing group must disclose its proposed CEO to the OCC at the time the group files the charter application.²⁶ If the proposed CEO wants to have his or her name withheld from the public until the OCC grants preliminary conditional approval, the organizers should:²⁷

- Include a request for confidential treatment with the materials submitted in the charter application;
- Provide support for their request that disclosure would constitute an unwarranted invasion of personal privacy under exemption six of FOIA²⁸ or result in substantial competitive harm to the organizers or the proposed CEO under exemption four of FOIA;²⁹
- List in the application the criteria that were used in the selection process;
- Provide a detailed description of the person's background, experience, and qualifications in the public portion of the application that is sufficiently specific to permit matching the application information with the person once his or her identity is disclosed; and
- Discuss the proposed terms of employment for the CEO, including compensation and benefits.

Formation of a De Novo (New) State-Chartered Bank or State-Chartered Bank Trust Company

In order to apply for authority to organize a new state-chartered bank or state-chartered trust company, the proposed directors must file a written application with OFR on form OFR-U-1.³⁰ The application includes such information as the name, residence, and occupation of each proposed director; the proposed corporate name; the community, including the street and number, if available, where the principal office of the proposed bank or trust company is to be located; the total initial capital; the proposed business plan; and pro forma financial statements.³¹ Additionally, each proposed executive officer, director, and major shareholder must complete and submit an Interagency Biographical and Financial Report, Form OFR-U-10.³² This form requires extensive personal identification information and personal financial information, including, but not limited to names, home addresses, current and past employment, and statements of assets, liabilities, and total net worth.

Within 21 days after receipt of an application, OFR must file notice of the application in the Florida Administrative Register, and any person may request a hearing within 21 days after publication of the notice.³³ If a hearing is requested, the applicant must publish at its own expense a notice of the hearing in a newspaper of general circulation in the area affected by the application.³⁴

OFR utilizes the information contained in the application in order to make an investigation of:³⁵

- 1) The character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.
- 2) The need for bank facilities or additional bank facilities, as the case may be, in the primary service area where the proposed bank is to be located.
- 3) The ability of the primary service area to support the proposed bank and all other existing bank facilities in the primary service area.

²⁵ *Id.*

²⁶ Office of the Comptroller of the Currency, *Comptroller's Licensing Manual: Charters* (Dec. 2021) at 15-16, <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/charters.pdf> (last visited Jan. 19, 2024).

²⁷ *Id.*

²⁸ 12 C.F.R. § 4.12(b)(6).

²⁹ 12 C.F.R. § 4.12(b)(4).

³⁰ S. 658.19(1), F.S.; rule 69U-105.202(1), F.A.C. The form is available at <https://flofr.gov/sitePages/CommercialBanks.htm> (last visited Jan. 19, 2024).

³¹ *Id.*

³² *Id.*

³³ S. 120.80(3)(a)1., F.S.

³⁴ *Id.*

³⁵ S. 658.20(1), F.S.

After making such investigation, OFR must approve an application if it finds the following:³⁶

- 1) Local conditions indicate reasonable promise of successful operation for the proposed state bank.
- 2) The proposed capitalization is adequate, but at least \$8 million.
- 3) The proposed capital structure is in such form as OFR may require, subject to certain minimum requirements.
- 4) Regarding officers and directors:
 - a. The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation.
 - b. None of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, F.S., relating to the control of money laundering and terrorist financing; ch. 896, F.S., relating to offenses related to financial institutions; or similar state or federal law.
 - c. At least two of the proposed directors who are not also proposed officers have had at least one year of direct experience as an executive officer, regulator, or director of a financial institution within the five years before the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than five years before the date of the application, OFR may allow the applicant to have only one director who has direct financial institution experience within the last five years.
 - d. The proposed president or chief executive officer must have had at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last five years.
- 5) The corporate name of the proposed state bank or trust company is approved by OFR.
- 6) Provision has been made for suitable quarters at the location in the application.

Upon approval of an application, OFR issues a bank charter or trust company that is public record and contains the names of the bank's officers and members of the board of directors. The names of bank shareholders would continue to be confidential and exempt³⁷ from public record requirements pursuant to s. 655.057(2) and (8), F.S.³⁸

Current Public Record Exemptions Related to Financial Institutions

Presently, s. 655.057, F.S., contains a number of public record exemptions for certain records relating to OFR's regulation of financial institutions:

- Subsection 655.057(1), F.S., makes confidential and exempt records and information relating to active investigations. The records remain confidential and exempt after the investigation is completed or ceases to be active to the extent disclosure would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information, reveal the identity of a confidential source, defame or cause

³⁶ S. 658.21, F.S.

³⁷ There is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *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); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att'y Gen. Fla. 04-09 (2004).

³⁸ However, the name of a foreign national who proposes to own or control 10 percent or more of any class of a bank's voting securities, would become public pursuant to s. 120.80(3)(a)4., F.S.

unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures.

- Subsection 655.057(2), F.S., makes confidential and exempt reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, OFR or any other state agency or federal agency responsible for the regulation or supervision of financial institutions. However, this exemption provides for the following release of such reports:
 - The reports may be released to specified persons such as the financial institution under examination (or its holding company) and certain proposed acquirers of a financial institution.
 - The reports must be released within one year after the appointment of a liquidator, receiver, or conservator to the financial institution, except that portions of the reports which identify specified individuals such as depositors and stockholders remain confidential and exempt.
- Subsection 655.057(3), F.S., makes confidential and exempt OFR's informal enforcement actions 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, 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.
- Subsection 655.057(4), F.S., makes confidential and exempt trade secrets, as defined in s. 688.002, F.S., which comply with s. 655.0591, F.S., and are held by OFR in accordance with its statutory duties.
- Subsections 655.057(7) and (8), F.S., make confidential and exempt a list of stockholders or members of a financial institution.

Subsections 655.057(5) and (6), F.S., permit the following release of records or information which otherwise fall under exemptions provided in the statute:

- Publishing specified reports that are required to be submitted to OFR or that are required by applicable federal statutes or regulations to be published.
- 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.
- Providing records or information pursuant to an order of a court or an administrative law judge or pursuant to a legislative subpoena, according to specified procedures and restrictions.

While some of the above public record exemptions, or other public record exemptions provided in ch. 119, F.S., may apply to certain records received by OFR pursuant to an application to organize a new bank or trust company, current statutes do not provide a public record exemption specifically directed at such applications. Presently, with the exception of some material for which the applicant may claim trade secret status pursuant to s. 655.0591, F.S., all of the information received by OFR on form OFR-U-1 is subject to public inspection and copying. Additionally, significant portions of the information received by OFR on form OFR-U-10 are subject to public inspection and copying, with only certain information, such as social security numbers, passport numbers, home county identification numbers,

immigration file numbers, and certain financial disclosures being exempt from public record requirements.

Effect of the Bill:

The bill creates a public record exemption within s. 655.057, F.S., for certain information received by OFR pursuant to an application for authority to organize a new state bank or new trust company. Specifically, the bill provides that, *except for those portions that are otherwise public record*, the following information received by OFR pursuant to an application for authority to organize a new state bank or new trust company under ch. 658, F.S., is confidential and exempt from public record requirements:

- Personal financial information;
- A driver license number, passport number, military identification number, or any other number or code issued on a government document used to verify identity;
- Books and records of a current or proposed financial institution;
- The proposed state bank's or proposed state trust company's proposed business plan; and

The personal identifying information of a prospective officer or director, currently affiliated with another financial institution, obtained through an application for a new state bank or state trust company, is exempt until the application is approved and the charter is issued. This includes names, addresses, emails, phone numbers, relatives' names, work history, professional licenses, education, and photographs.

These exemptions either expand, or create more specific exemptions for the subject records. For example, driver license numbers are confidential and exempt for several purposes,³⁹ but there is not an exemption for driver license numbers held by OFR.

The exemption created in the bill only provides protection for information that is not otherwise public record. Upon approval of an application, OFR issues a bank charter or state trust that is a public record and contains the names of the bank's officers and members of the board of directors. The names of bank shareholders would continue to be confidential and exempt from public record requirements pursuant to s. 655.057(2) and (8), F.S.⁴⁰

The exemption is subject to the Open Government Sunset Review Act, and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

³⁹ Pursuant to section 97.0585(1)(c), F.S., driver license numbers which are held by an agency and obtained for the purpose of voter registration, are confidential and exempt from public record requirements. They are also made confidential and exempt if contained in a uniform traffic citation held by an agency. See section 316.650(11)(b)1., F.S.

⁴⁰ See *supra* note 38.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The proposed public record exemption may encourage and attract the formation of new banks or trust companies as Florida-chartered institutions, in which case the bill would have a positive impact on investment, employment, economic growth, and consumer access to financial services. However, the impact to the private sector is indeterminate.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the creation of the public record exemption. Agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would likely be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.