HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 431 Office of Financial Regulation
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Hinshelwood	Luczynski

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry. The 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 and the rules promulgated thereunder. The bill makes the following changes to the financial institutions codes:

- Permits a foreign national to appear through video conference, rather than in person, at a hearing regarding the foreign national's proposal to have a controlling interest in a current or proposed state bank or trust company.
- Provides the OFR an additional 90 days to comply with the examination requirement for financial institutions if the federal regulator suspends or cancels a scheduled examination.
- Requires each director of a financial institution to review and sign a report of examination.
- Clarifies provisions relating to a financial institution's acquisition of another financial institution's assets or liabilities.
- Amends the definition of "financial institution" for purposes of the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.
- Relocates and clarifies a provision relating to a credit union's reporting of names and addresses of newly elected or appointed officers and directors.
- Permits OFR to approve a bank or trust company based on the intended "target market"; currently, OFR must consider the geographic area from which the bank or trust company intends to draw deposits and accounts.
- Allows the OFR to waive the experience requirement for a proposed president or CEO of a new bank or trust company pursuant to specified considerations about the person and the proposed institution.
- Provides a process for persons to seek approval to own a controlling interest in a financial institution in the event of inheritance of such controlling interest.
- Defines "de novo branch" in the context of permissibility of interstate bank branching by state-chartered banks.
- Permits certain family trust companies to maintain a deposit account at an insured bank or credit union located anywhere in the United States, regardless of whether the bank or credit union has a principal office or branch in Florida.
- Amends the deadline for a family trust company to file an annual renewal.
- Permits certain international bank offices licensed by OFR to maintain required assets in an insured bank located anywhere in the United States, not just those banks that are located in Florida.
- Updates reference to the name of a list of international jurisdictions that have weak measures to combat money laundering and terrorist financing, and requires a specified licensed entity to suspend its activities relating to a jurisdiction on that list.

The bill has an indeterminate fiscal impact on state and local governments and the private sector.

The bill provides an effective date of July 1, 2022

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] The 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 and the rules promulgated thereunder.[2] The specific chapters under the financial institutions codes are:

- Chapter 655, F.S. – Financial Institutions Generally
- Chapter 657, F.S. – Credit Unions
- 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 June 30, 2020, the Division of Financial Institutions regulates 197 financial institutions:[3]

- 69 banks
- 66 credit unions
- 21 international bank offices
- 15 trust companies
- 16 family trust companies
- 10 qualified limited service affiliates

Formation and Regulation of a Florida-Chartered Bank or Trust Company

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 the 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).[4]
- *National banks* are chartered by the Office of the Comptroller of the Currency (OCC) under the National Bank Act.[5] As such, the OCC is the primary federal regulator for national banks.[6]

A trust company is a business organization, other than a bank, which is authorized by lawful authority to engage in the business of acting as a fiduciary.[7] Trust companies are chartered by states, and the state regulator for trust companies chartered by the state of Florida is the OFR. Trust companies do not have a federal regulator.

[1] S. 20.121(3)(a)2., F.S.
[2] Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.
[3] Office of Financial Regulation, *Fast Facts* (2021 ed.), https://flofr.gov/sitePages/documents/FastFacts.pdf.
[4] 12 U.S.C. § 1813(q).
[5] 12 U.S.C. § 38.
[6] 12 U.S.C. § 1813(q).
[7] S. 658.12(20) and (21), F.S.

In order to apply for authority to organize a new state-chartered bank or trust company, the proposed directors must file a written application with the OFR.[8] The application includes such information as the name, residence, and occupation of each proposed director; the name and residence of the proposed president and chief executive officer, if known; 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.[9]

The OFR utilizes the information contained in the application in order to make an investigation of:[10]

1) The character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.
2) The need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area[11] where the proposed bank or trust company is to be located.
3) The ability of the primary service area to support the proposed bank or trust company and all other existing bank or trust facilities in the primary service area.

The OFR evaluates the viability of the business plan in light of current conditions in the primary service area and the metropolitan statistical area or county, as well as in the industry in general.[12]

After making such investigation, the OFR must approve an application if it finds the following:[13]

1) Local conditions indicate reasonable promise of successful operation for the proposed state bank or trust company.
2) The proposed capitalization is adequate, but at least $8 million for a bank and at least $3 million for a trust company.
3) The proposed capital structure is in such form as the 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, the 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 is approved by the OFR.
6) Provision has been made for suitable quarters at the location in the application.

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[8] S. 658.19(1), F.S.; rule 69U-105.202(1), F.A.C..
[9] *Id.*
[10] S. 658.20(1), F.S.
[11] "Primary service area" is defined by agency rule as "the smallest geographical area from which the proposed state bank, savings bank or association expects to draw approximately seventy-five percent of its deposits. Said term also means the smallest geographical area from which a state trust company expects to draw approximately 75 percent of the asset value of its fiduciary accounts. It should be drawn around a natural customer base and should not be unrealistically delineated to exclude competing financial institutions or to include areas of concentrated population." R. 69U-105.001(9), F.A.C.
[12] Office of Financial Regulation, Agency Analysis of 2022 Senate Bill 1680 (Jan. 12, 2022).
[13] s. 658.21, F.S.

Due to technological advancements, the banking industry has become increasingly interconnected and more digitally driven; many customers no longer engage with their bank exclusively through brick and mortar branches.[14] In order to remain competitive, many financial institutions have adopted online banking platforms and apps.[15] Despite the advent of online banking, the financial institutions codes remain premised on a brick and mortar centric business plan.[16]

In recent years, the banking industry both in Florida and nationally has consolidated.[17] As mergers and acquisitions occur in the banking industry, executives are commonly subjected to non-compete agreements that may last several years.[18] Because a proposed president or chief executive officer must have requisite experience within a five-year time frame, the current statutory timeframe narrows the pool of otherwise qualified potential executive officers who may serve in that capacity at a new Florida-chartered bank.[19] Groups of individuals seeking to organize a new bank have found the five-year requirement an impediment to finding quality president or CEO candidates.[20] This timeframe is not required for nationally chartered banks.[21] Further, for existing Florida-chartered banks, the OFR may waive the timeframe after considering the overall experience and expertise of the proposed officer and the condition of the bank or trust company.[22]

Interstate Bank Branching by State-Chartered Banks

A Florida-chartered bank may establish and maintain a de novo branch (new branch) or acquire a branch in a state other than Florida. To do so, the Florida-chartered bank must submit an application and fee to the OFR and receive the OFR's approval.[23]

A bank chartered by a state other than Florida may establish and maintain a de novo branch or acquire a branch in Florida upon compliance with Florida's limited liability company or corporations laws relating to doing business in Florida as a foreign business entity.[24] No application is filed with the OFR.

Currently, Florida law does not contain a definition for "de novo branch". Under FDIC regulations, "de novo branch" is defined[25] as a branch of a state bank which:

1) Is originally established by the State bank as a branch; and
2) Does not become a branch of such bank as a result of:
    a. The acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or
    b. The conversion, merger, or consolidation of any such institution or branch.

Acquisition of Control of a Florida-Chartered Bank or Trust Company

A person or group of persons is considered to have a controlling interest over a state bank or state trust company if any of the following are true:[26]

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[14] Office of Financial Regulation, *supra* note 12.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] "The president, chief executive officer, or any other person, regardless of title, who has equivalent rank or leads the overall operations of [an existing] bank or trust company must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years. *This requirement may be waived by the office after considering the overall experience and expertise of the proposed officer and the condition of the bank or trust company, as reflected in the most recent regulatory examination report and other available data*." S. 658.33(5), F.S. (emphasis added).
[23] S. 658.2953(11)(a) and (b), F.S.
[24] S. 658.2953(11)(c), F.S.
[25] 12 U.S.C. § 1828(d)(4)(C).
[26] Ss. 658.27(2) and 658.28(2), F.S.

- They directly or indirectly own, control, or have the power to vote 25 percent or more of any class of voting securities of the institution.
- They control, in any manner, the election of a majority of the directors, trustees, or other governing body of the institution; they own, control, or have the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution.
- The OFR determines, after notice and opportunity for a hearing, that the person or persons directly or indirectly exercises a controlling influence.

A person or group of persons who proposes to purchase or acquire a controlling interest in a state bank or trust company may not acquire such an interest until they have submitted an application to the OFR and have been approved.[27] In order to be approved, an applicant must have the reputation, character, experience, and financial responsibility to control and operate the bank or trust company in a legal and proper manner and in such a way that would not jeopardize the interests of the stockholders, depositors, and creditors of the institution, or the public.[28] Conviction for certain crimes, such as money laundering, is a disqualifier.[29]

If a foreign national proposes to own or control 10 percent or more of a class of voting securities of a new state bank or trust company, or proposes to acquire a controlling interest in an existing state bank or trust company, the OFR must conduct a public hearing at which the foreign national must appear in person.[30] The failure of a foreign national to appear is grounds for denial.[31]

In certain situations, the presumption of control may be rebutted. A person or group of persons who proposes to own, control, or have the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution may rebut the presumption of control by notifying the OFR of the proposal and presenting information rebutting control at an informal conference.[32] If, after the conference, the OFR determines that such person or group of persons will exercise a controlling influence over the bank, such person or persons will be required to file an application for change of control.[33]

Florida law does not currently contemplate the acquisition of a controlling interest without prior approval.[34] However, not every such acquisition is planned.[35] Shares may pass to an unapproved owner by operation of law, such as by way of inheritance.[36] For example, if a controlling shareholder dies and their shares pass to an unapproved beneficiary, the unapproved beneficiary commits an unavoidable, technical violation of statute upon becoming the owner of the shares.[37]

Formation and Regulation of Credit Unions

Like banks, credit unions accept deposits and make loans, and can be state-chartered or federally-chartered:

- *State-chartered credit unions* may be formed under the Florida Credit Union Act (FCUA), which became law in 1980.[38] The FCUA provides that "[a] credit union is a cooperative, nonprofit association, organized . . . for the purposes of encouraging thrift among its members, creating sources of credit at fair and reasonable rates of interest, and providing an opportunity for its members to use and control their resources on a democratic basis in order to improve their

[27] S. 658.28(1), F.S.
[28] S. 658.28(1)(b), F.S.
[29] S. 658.28(1)(c), F.S.
[30] S. 120.80(3)(a)4., F.S.
[31] *Id.*
[32] Ss. 658.27(2)(c) and 658.28(3), F.S.
[33] S. 658.28(3), F.S.
[34] Office of Financial Regulation, *supra* note 12.
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.

economic and social condition."[39] State-chartered credit unions have both a state regulator, the OFR, and a federal regulator, the National Credit Union Association (NCUA).
- *Federally-chartered credit unions* are chartered under the Federal Credit Union Act of 1934[40] and are regulated by the NCUA.

For Florida-chartered credit unions, the executive officers are elected by the board of directors at the organizational meeting, and new officers may be elected at each annual meeting of the board of directors.[41] The terms of executive officers are one year, or until their successors are chosen and have been duly qualified.[42] Within 30 days after election or appointment, a record of the names and addresses of the members of the board, members of committees, all officers of the credit union, and the credit manager must be filed with the OFR on forms prescribed by the Financial Services Commission (commission).[43]

Formation and Regulation of Family Trust Companies

A family trust company is a corporation or limited liability company that is exclusively owned by family members, acts as a fiduciary to serve family members, and generally may not serve as a fiduciary for a person that is not a family.[44] Family trust companies are usually formed to manage the wealth of high net-worth families in lieu of traditional individual or institutional trustee arrangements for a variety of personal, investment, regulatory, and tax reasons.

There are three types of family trust companies authorized under Florida law:
- *Licensed family trust companies*: A family trust company may elect to be a licensed family trust company if the company desires to be subject to the regulatory oversight of the OFR, and it must file an application for licensure with the OFR.[45] With respect to a licensed family trust company, the OFR is responsible for regulating, supervising, and examining the company.[46]
- *Foreign licensed family trust company*: A foreign licensed family trust company is licensed by and has its principal place of business in a state other than Florida, is operated in accordance with applicable laws of its licensing state, is subject to supervision by the state in which the principal place of business is located, and is not a subsidiary of a foreign country.[47] A foreign licensed family trust company must register with the OFR before beginning operations in this state.[48] The OFR's oversight role is limited to ensuring that fiduciary services provided by the foreign licensed family trust company are restricted to family members and authorized related interests and not to the general public.[49]
- *Registered family trust company*: A family trust company that is not a foreign licensed family trust company and does not apply to become a licensed family trust company must register with the OFR before beginning operations in this state.[50] The OFR's oversight role is limited to ensuring that fiduciary services provided by the registered family trust company are restricted to family members and authorized related interests and not to the general public.[51]

[39] s. 657.003, F.S.
[40] Pub. L. 73-467, codified at 12 U.S.C. § 1751 *et seq.*
[41] S. 657.022(1), F.S.
[42] S. 657.022(2), F.S.
[43] S. 657.028(6), F.S. The commission is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S. The commission members are the OFR's agency head for the purpose of rulemaking. S. 20.121(3)(c), F.S.
[44] S. 662.111(12), F.S.
[45] Ss. 662.102(2) and 662.121, F.S.
[46] S. 662.102(3)(a), F.S.
[47] S. 662.111(15)(c), F.S.
[48] S. 662.122(2), F.S.
[49] S. 662.102(3)(b), F.S.
[50] S. 662.122(1), F.S.
[51] S. 662.102(3)(b), F.S.

All three types of family trust companies must maintain a deposit account with a state-chartered or national financial institution that has a principal or branch office in this state.[52]

Within 45 days after the end of each calendar year, all three types of family trust companies are required to file an annual renewal application.[53] Currently, the timing of renewal does not account for when the initial application was filed. Thus, a family trust company may have to submit a renewal application shortly after becoming licensed or registered in this state.

Formation and Regulation of International Banking Offices

One type of financial institution regulated by the OFR is an international banking corporation (IBC) that transacts business in Florida. An IBC is "a banking corporation organized and licensed under the laws of a foreign country."[54] The OFR does not regulate the IBC, i.e., the home-country depository institution, itself but rather the offices that the IBC establishes in Florida. Florida's regulation of IBC offices are designed to provide for appropriate supervision and regulatory oversight to ensure that financial services activities of IBCs in this state are conducted responsibly and in a safe and sound manner.[55]

IBCs may operate in Florida through a variety of business models, which must be licensed by the OFR[56] and include the following:

- International representative offices - Permissible activities include:[57]
  - Promoting or assisting the deposit-taking, lending, or other financial or banking activities of an IBC;
  - Serving as a liaison in Florida between an IBC and its existing and potential customers;
  - Soliciting business for the IBC and its subsidiaries and affiliates;
  - Providing information to customers concerning their accounts;
  - Answering questions;
  - Receiving applications for extensions of credit and other banking services;
  - Transmitting documents on behalf of customers; and
  - Making arrangements for customers to transact business on their accounts.

  However, a representative office may not conduct any banking or trust business in Florida.[58]
- International administrative offices - Permissible activities include:[59]
  - Administering personnel and operations;
  - Engaging in data processing or recordkeeping activities; and
  - Negotiating, approving, or servicing loans or extensions of credit and investments.

  Additionally, this type of office may engage in any activities permissible for an international representative office.[60]
- International bank agencies - Permissible activities include: [61]
  - Making loans, extensions of credit, or investments;
  - Acting as custodian;
  - Furnishing investment management and investment advisory services to nonresident persons whose principal places of business or domicile are outside the United States and to resident persons with respect to international, foreign, or domestic investments;
  - Receiving specified types of deposits; and
  - With prior authorization from the OFR, accepting appointments as trustee by nonresident persons and exercising trust powers with respect to such fiduciary accounts.

  Additionally, this type of office may engage in any activities permissible for an international administrative office or international representative office.[62]

[52] S. 662.1225(1)(d) and (2)(d), F.S.
[53] S. 662.128(1), F.S.
[54] S. 663.01(6), F.S.
[55] S. 663.001(2), F.S.
[56] Ss. 663.04 and 663.05, F.S.
[57] S. 663.062, F.S.
[58] *Id.*
[59] S. 663.063, F.S.
[60] S. 663.063(2), F.S.
[61] S. 663.061, F.S.; Rule 69U-140.008, F.A.C.

- International branches - An international branch has the same rights and privileges as a federally licensed international branch.[63] Additionally, this type of office may engage in any activities permissible for an international bank agency, international administrative office, or international representative office.[64]

If an IBC desires to maintain any of the above offices in this state, the IBC is required to meet minimum licensure requirements, and its offices in Florida are subject to the examination and enforcement authority of the OFR. The OFR may not issue a license to an IBC for one of the above offices unless the IBC: [65]

- In the case of an international bank agency or branch, holds an unrestricted license to receive deposits from the general public in the foreign country under the laws of which the IBC is organized and chartered;
- Has been authorized by the foreign country's bank regulatory authority to establish the proposed international bank office;
- Is adequately supervised by the central bank or bank regulatory agency in the foreign country in which the IBC is organized and chartered; and
- Meets minimum capital requirements.

International bank agencies and international branches are required to maintain dollar deposits or investment securities with one or more banks in this state equal to the greater of:[66]

- $4 million dollars; or
- 7 percent of the total liabilities of the international bank agency or international branch excluding accrued expenses and amounts due and other liabilities to affiliated branches, offices, agencies, or entities.

Formation and Regulation of Florida Offices Performing Services for an International Trust Entity

An international trust entity is an international trust company or organization, or any similar business entity, or an affiliated or subsidiary entity that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws where such entity is organized and supervised.[67] A qualified limited service affiliate is a person or entity that is qualified to perform specified permissible activities related to or for the benefit of one or more affiliated international trust entities.[68] Such permissible activities include:[69]

1) Marketing and liaison services related to or for the benefit of the affiliated international trust entities, directed exclusively at professionals and current or prospective nonresident clients of an affiliated international trust entity;
2) Advertising and marketing at trade, industry, or professional events;
3) Transmission of documents between the international trust entity and its current or prospective clients or a designee of such clients; and
4) Transmission of information about the trust or trust holdings of current clients between current clients or their designees and the international trust entity.

A qualified limited service affiliate is prohibited from engaging in the following activities:[70]

1) Advertising and marketing related to or for the benefit of the international trust entity which are directed to the general public;
2) Acting as a fiduciary, including, but not limited to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts;

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[62] S. 663.061(1), F.S.
[63] S. 663.064(2), F.S.
[64] S. 663.064(3), F.S.
[65] Ss. 663.05(8) and 663.055(1)-(2), F.S.
[66] S. 663.07, F.S.
[67] S. 663.530(1)(c), F.S.
[68] S. 663.530(1)(f), F.S.
[69] S. 663.531(1), F.S.
[70] S. 663.531(2), F.S.

3) Accepting custody of any trust property or any other good, asset, or thing of value on behalf of the affiliated international trust entity, its subsidiaries or affiliates, or subsidiaries and affiliates of the qualified limited service affiliate;
4) Soliciting business within this state from the general public related to or for the benefit of an affiliated international trust entity;
5) Adding a director, an executive officer, a principal shareholder, a manager, a managing member, or an equivalent position to the qualified limited service affiliate without prior written notification to the OFR;
6) Commencing services for an international trust entity without complying with applicable requirements;
7) Providing services for any international trust entity that is in bankruptcy, conservatorship, receivership, liquidation, or a similar status under the laws of any country; or
8) Otherwise conducting banking or trust business.

In order to qualify as a qualified limited service affiliate, a proposed qualified limited service affiliate must file a written notice that includes the name under which the proposed qualified limited service affiliate will conduct business in this state; a copy of the articles of incorporation or articles of organization, or the equivalent, of the proposed qualified limited service affiliate; the physical address where the proposed qualified limited service affiliate will conduct business; the mailing address of the proposed qualified limited service affiliate; the name and biographical information of each director, executive officer, manager, managing member, or equivalent position of the proposed qualified limited service affiliate; the number of officers and employees of the proposed qualified limited service affiliate; a detailed list and description of the activities to be conducted by the proposed qualified limited service affiliate; background information for certain individuals; information related to each international trust entity for which the proposed qualified limited service affiliate will provide services; and other information as the office reasonably requires.[71] Additionally, the notice to the OFR must include: [72]

- A declaration under penalty of perjury signed by the executive officer, manager, or managing member of the proposed qualified limited service affiliate that, to the best of his or her knowledge the jurisdiction of the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity is not listed on the Financial Action Task Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.
- Proof that the jurisdictions where the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or that facilitate the financial services functions, banking, or fiduciary activities of the international trust entity are not listed on the Financial Action Task Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.

Under current law, the OFR does not have a means of prohibiting the qualified limited service affiliate from providing services to an international trust entity in a jurisdiction that is included on the Financial Action Task Force's list of international jurisdictions that have weak measures to combat money laundering and terrorist financing.

Examination of Florida Financial Institutions

The OFR is required to conduct an examination of the condition of each state financial institution at least every 18 months, though the OFR may conduct more frequent examinations based upon the risk profile of the financial institution, prior examination results, or significant changes in the institution or its operations.[73] For state financial institutions that have a federal regulator, the OFR is permitted to accept an examination performed by the federal regulator or to conduct a joint or concurrent examination of the state financial institution with the federal regulator.[74] The result is that the OFR may alternate with

[71] S. 663.532(1), F.S.
[72] *Id.*
[73] S. 655.045(1), F.S.
[74] S. 655.045(1)(a), F.S.

the federal regulator such that, while the state financial institution is examined at least every 18 months, the OFR itself performs the examination every 36 months.

Such alternating, joint, or concurrent examination reduces regulatory burden on the financial institutions subject to dual regulation, and the OFR works in coordination with these federal agencies when possible.[75] Many of these federal regulators have policies in place authorizing them to alter examination schedules based on emergency conditions, for example following a major disaster or emergency.[76] Many of the documents which the OFR examiners must analyze are kept in paper files.[77] The lack of digital copies and the confidential nature of these documents often necessitates that examiners be physically present in the financial institution to perform the examination.[78] Most recently, the COVID-19 pandemic up-ended examination schedules; however, Florida examiners commonly face obstacles when attempting to perform in-person examinations during hurricane season, where weather hazards and property damage create an unsafe environment.[79] Unlike the federal regulators, the OFR does not have a method by which it can delay an examination due to such hazards.[80]

After the examination of the state financial institution is complete, a copy of the report of examination must be furnished to the entity examined and must be presented to the board of directors at its next meeting.

Acquisition of Assets or Liabilities of a Financial Institution

Current law requires the OFR's approval for a financial entity to acquire all or substantially all of the assets of, or assume all or any part of the liabilities of, any other financial institution.[81] A mutual financial institution may not sell all or substantially all of its assets to a stock financial institution until it has first converted into a capital stock financial institution.[82] These provisions of current law have generated confusion for the industry, as the term "substantially all" is not defined.[83] The OFR regularly receives questions from industry participants regarding the application of these provisions; financial institutions have asked what percentage meets the threshold of "substantially all," and how to calculate that percentage.[84]

Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act (Act)

The Act is found within the financial institutions codes in s. 655.50, F.S. The purpose of the Act is to require the submission to the OFR of certain reports and the maintenance of certain records of customers, accounts, and transactions involving currency or monetary instruments or suspicious activities if such reports and records deter using financial institutions to conceal, move, or provide proceeds obtained from or intended for criminal or terrorist activities and if such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.[85] The Act applies to financial institutions as defined under the federal anti-money laundering laws.[86] The federal definition of "financial institution" is very broad and encompasses entities beyond the scope of those regulated under the financial institutions codes. For example, the federal definition includes entities not regulated by the OFR at all, such as a travel agency, a casino, and the United States Postal Service.[87] The federal definition also includes entities which the OFR does regulate but does so under different chapters of law, not the financial institutions codes, such as a broker or dealer in securities (regulated

[75] Office of Financial Regulation, *supra* note 12.
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] S. 655.414, F.S.
[82] S. 655.414(6), F.S.
[83] Office of Financial Regulation, *supra* note 12.
[84] *Id.*
[85] S. 655.50(2), F.S.
[86] S. 655.50(3)(c), F.S.; 31 U.S.C. § 5312.
[87] 31 U.S.C. § 5312(a)(2)(Q), (V), and (X).

by the OFR under ch. 517, F.S.) and various money services businesses (regulated by the OFR under ch. 560, F.S.).[88] Chapter 560, F.S., relating to money services businesses, contains a statute similar to the Act.[89] Thus, both statutes may be read to apply to these entities, which may generate confusion for the industry.[90]

Effect of the Bill

Examinations of Florida Financial Institutions (Section 4)

The bill provides the OFR an additional 90 days to comply with the examination requirement for state financial institutions if the federal regulator suspends or cancels a previously scheduled examination. In such case, the requirement is deemed met by the federal agency conducting the examination or upon the OFR conducting the examination instead.

The bill clarifies language within the requirement that the report of examination be furnished to the entity examined by replacing the term "entity" with "state financial institution". Additionally, the bill requires that each director review the report and acknowledge receipt of the report and such review by signing and dating the prescribed signature page of the report and returning a copy of the signed page to the OFR.

Acquisition of Assets or Liabilities of a Financial Institution (Section 5)

The bill amends provisions relating to the acquisition of assets and liabilities such that OFR's approval is needed if a financial institution acquires 50 percent or more of the assets of, liabilities of, or a combination of assets and liabilities of, another financial institution. The bill provides that a mutual financial institution may not sell 50 percent or more of its assets to a stock financial institution until it has first converted to a capital stock financial institution. These provisions will no longer include the ambiguous phrase "substantially all". The bill also provides that the percentages of assets or liabilities must be calculated based on the most recent quarterly reporting date.

Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act (Section 6)

The bill amends the definition of "financial institution" for purposes of the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act by pointing to the definition of "financial institution in s. 655.001, F.S., and removing OFR-regulated entities whose permissible activities do not involve monetary transactions.

Credit Union Reporting of Elected or Appointed Officers, Directors, Etc. (Sections 7 and 8)

The bill relocates and clarifies a provision relating to a credit union's reporting of names and addresses of newly elected or appointed officers, directors, etc. Specifically, the bill provides that, within the 30 days following the annual meeting or any other meeting at which any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, the credit union must submit to the OFR the names and residence addresses of the elected or appointed person or persons on a form adopted by the commission and provided by the OFR.

Target Market (Sections 9, 10, and 11)

The bill introduces the concept of a "target market" for a proposed state bank or trust company and defines "target market" as the group of clients or potential clients from whom:

(a) A bank or proposed bank expects to draw deposits and to whom the bank or proposed bank focuses or intends to focus its marketing efforts; or

[88] 31 U.S.C. § 5312(a)(2)(H), (J), (K), (R).
[89] S. 560.123, F.S.
[90] Office of Financial Regulation, *supra* note 12.

(b) A trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or association expects to draw its fiduciary accounts and to whom the trust company, the trust department of a bank or association, the proposed trust company, or the proposed trust department of a bank or association focuses or intends to focus its marketing efforts.

In addition to the considerations under current law that are based largely on a geographic location, the bill allows the OFR to evaluate the following considerations with regard to approving an application for a new state bank or trust company:

- The need for the target market that the proposed state bank or trust company intends to engage with in business;
- The ability of the target market to support the proposed state bank or trust company and all other existing bank or trust facilities that serve the same target market; and
- Whether the target market conditions indicate reasonable promise of successful operations for the proposed state bank or trust company.

Proposed President or Chief Executive Officer of a New State-Chartered Bank or Trust Company (Section 11)

The bill allows the OFR to waive the experience requirement for a proposed president or CEO of a new state bank or trust company after considering:

1) The adequacy of the overall experience and expertise of the proposed president or chief executive officer;
2) The likelihood of successful operation of the proposed state bank or trust company;
3) The adequacy of the proposed capitalization;
4) The proposed capital structure;
5) The experience of the other proposed officers and directors; and
6) Any other relevant data or information.

Amending this requirement will allow organizers of new state banks the ability to attract higher quality president or CEO candidates and, therefore, make new bank formations more feasible in today's competitive business environment.[91]

Acquisition of Control of a Florida-Chartered Bank or Trust Company (Sections 1 and 12)

When a hearing is required regarding a foreign national's proposal to own or control 10 percent or more of a class of voting securities of a new state bank or trust company, or on a foreign national's proposal to acquire a controlling interest in an existing state bank or trust company, the bill permits the foreign national to participate through video conferencing in lieu of appearing in person.

The bill provides a process for seeking approval to own a controlling interest in a financial institution in the event of inheritance of such controlling interest. If a person or a group of persons, directly or indirectly, acquires a controlling interest in a state bank or state trust company, through probate or trust, the person or group of persons must notify the OFR within 90 days after acquiring such an interest. Such an interest does not give rise to a presumption of control until the person or group of persons votes the shares or the OFR has issued a certificate of approval in response to an application for change in control.

Interstate Bank Branching by State-Chartered Banks (Section 13)

The bill defines "de novo branch" for purposes of Florida law regarding interstate bank branching by Florida-chartered banks and banks chartered by other states. The definition is based on the definition for "de novo branch" within FDIC regulations.

[91] Office of Financial Regulation, *supra* note 12.

The bill amends the catchline of a subsection of the statute in order to clarify application of the subsection. The subsection relates to interstate bank branching by both Florida-chartered banks and banks chartered by other states. The catchline currently uses the term "state bank", which is defined to mean a Florida-chartered bank; the term does not capture banks chartered by other states.

Family Trust Companies (Sections 14 and 15)

The bill expands the banking options of a registered family trust company and a licensed family trust company by allowing these entities to maintain a deposit account at an insured bank or credit union located anywhere in the United States, regardless of whether the bank or credit union has a principal office or branch in Florida.

The bill amends the deadline for a family trust company to file an annual renewal such that the renewal application is due no later than 45 days after the anniversary of the filing of either the initial application or the prior year's renewal application.

Location of an International Bank Agency's or International Branch's Required Minimum Assets (Section 16)

The bill expands the banking options for an international bank agency or an international branch regarding the location of required minimum dollar deposits or investment securities. The bill permits these entities to maintain the required assets in an insured bank located anywhere in the United States, not just those banks that are located in Florida.

Qualified Limited Service Affiliates (Section 17)

The bill updates two references to the name of a list of international jurisdictions that have weak measures to combat money laundering and terrorist financing. The bill also requires a qualified limited service affiliate to suspend its activities relating to an international trust entity in a jurisdiction on that list. Such a suspension must remain in effect until the jurisdiction is removed from the list.

Conforming Changes (Sections 2, 3, 18)

The bill conforms cross-references to reflect amendments to the definitions in s. 658.12, F.S.

Reenactment (Section 19)

The bill reenacts s. 658.165, F.S., for the purpose of incorporating the amendment made by the bill to s. 658.20, F.S.

Effective Date (Section 20)

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1. Amends s. 120.80, F.S., relating to exceptions and special requirements; agencies.

Section 2. Amends s. 475.01, F.S., relating to definitions.

Section 3. Amends s. 518.117, F.S., relating to permissible investments of fiduciary funds.

Section 4. Amends s. 655.045, F.S., relating to examinations, reports, and internal audits; penalty.

Section 5. Amends s. 655.414, F.S., relating to acquisition of assets; assumption of liabilities.

Section 6. Amends s. 655.50, F.S., relating to Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.

Section 7. Amends s. 657.021, F.S., relating to board of directors; executive committee.

Section 8. Amends s. 657.028, F.S., relating to activities of directors, officers, committee members, employees, and agents.

Section 9. Amends s. 658.12, F.S., relating to definitions.

Section 10. Amends s. 658.20, F.S., relating to investigation by office.

Section 11. Amends s. 658.21, F.S., relating to approval of application; findings required.

Section 12. Amends s. 658.28, F.S., relating to acquisition of control of a bank or trust company.

Section 13. Amends s. 658.2953, F.S., relating to interstate branching.

Section 14. Amends s. 662.1225, F.S., relating to Requirements for a family trust company, licensed family trust company, or foreign licensed family trust company.

Section 15. Amends s. 662.128, F.S., relating to annual renewal.

Section 16. Amends s. 663.07, F.S., relating to asset maintenance or capital equivalency.

Section 17. Amends s. 663.532, F.S., relating to qualification.

Section 18. Amends s. 736.0802, F.S., relating to duty of loyalty.

Section 19. Reenacts s. 658.165, F.S., relating to banker's banks; formation; applicability of financial institutions codes; exceptions.

Section 20. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may encourage and attract the formation of new financial institutions as Florida-chartered institutions, in which case the OFR's revenues would be positively affected through application fees and annual assessments. However, the sum of increased revenue is indeterminate.

2. Expenditures:

   The bill may encourage and attract the formation of new financial institutions as Florida-chartered institutions, in which case the OFR's expenditures would increase for the cost of regulation and oversight of such new institutions. However, the sum of increased expenditures is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may encourage and attract the formation of new financial institutions 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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 7 requires the commission to adopt a form for a credit union to report to OFR the names and residence addresses of persons elected or appointed at the credit union's annual meeting.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES