

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SB 1106

INTRODUCER: Senator Flores

SUBJECT: Limited Purpose International Trust Company Representative Offices

DATE: February 29, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Fav/CS
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	Pre-meeting

I. Summary:

SB 1106 creates entities known as Limited Purpose International Trust Company Representative Offices (Limited Purpose ITCRO), provides registration requirements, establishes capital and insurance requirements, and provides regulatory oversight responsibilities for the Office of Financial Regulation (OFR) in relation to these entities. A international trust company representative office (ITCRO) is an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country, which is established or maintained in Florida for engaging in non-fiduciary activities pursuant to s. 663.0625, F.S.

The bill provides that a Limited Purpose ITCRO is an office organized under the laws of Florida for engaging non-fiduciary activities, and which is not licensed as an international trust company representative office (ITCRO). The bill:

- Specifies a registered Limited Purpose ITCRO must maintain a minimum of \$100,000 capital account. Currently, the OFR will not approve an international banking corporation to operate an ITCRO in Florida unless it meets the \$20 million minimum capital requirement and meets other statutory requirements.
- Specifies a Limited Purpose ITCRO must secure a fidelity bond of at least \$500,000 to indemnify the company against loss due to dishonesty, fraudulent, or criminal act or an omission of officers, directors, and employees of the company.
- Prescribes permissible and impermissible activities for Limited Purpose ITCROs.
- Specifies a Limited Purpose ITCRO in operation as of October 1, 2016, must apply for registration before December 31, 2016, or cease doing business in Florida.
- Requires the OFR to conduct an investigation of applicants to confirm that the persons serving as officers or directors of the corporation or managers or members of a limited liability company have not been convicted of, or entered a plea of nolo contendere to, a crime involving fraud, misrepresentation, or moral turpitude.

- Specifies the OFR is authorized to take specified regulatory and enforcement actions to enforce the provisions of the bill.
- Provides that the OFR is not responsible for examining a Limited Purpose ITCRO or an affiliated international trust company regarding safety and soundness of its operations.

The Office of Financial Regulation (OFR) estimates that the bill will result in additional registration revenues of \$60,000 deposited into the Financial Institution's Regulatory Trust Fund for the 2016-2017 fiscal year and \$18,000 for registration renewals after the first year. The OFR can handle any additional duties provided in the bill within existing resources.

The bill takes effect on October 1, 2016.

II. Present Situation:

International Financial Services Market

A longstanding niche market within the international financial services market is the provision of fiduciary (trustee) services required for the implementation of estate, tax, and asset protection planning. These services traditionally have comprised the administration (documentation preparation, accounting, compliance, and accounting) for a trust and its underlying investments. Services such as banking, asset management, and tax advice are provided by third parties.¹ Proponents of the bill provided the following example:

Example: A family from Latin America purchasing a residence in Florida has a banking relationship with a Florida-based bank and is advised by Florida counsel. To avoid exposure to U.S. estate tax, the family will be advised to own the property through a non-U.S. company, as the shares in the non-U.S. company are not subject to U.S. estate tax. To provide for the family's long-term planning (local and foreign tax laws and political and security risks), the family may be advised to place the shares in the company's foreign trust.²

According to advocates of the bill, in the above example, responsibility for the administration of the trust and the underlying company is given to a trust company, which provides this service for an agreed fee. The trust company generally will be part of an organization that provides this service in multiple jurisdictions. The trust company, which acts as a trustee, is licensed and regulated in the jurisdiction in which it is domiciled. The trust company does not promote, sell, or accept any financial investments, money, or provide depository or custodial accounts.

The Florida-based marketing office for the aforementioned fiduciary services provided by a foreign trust company is an international trust company representative office (ITCRO). The advocates of the bill state that the primary function of the ITCRO of the foreign trust company and the organization of which it is a member is to market the trust company's services to

¹ Memorandum from McDonald Hopkins LLC, *International Trust Company Representative Offices*, (Mar. 8, 2015) (on file with Senate Committee on Banking and Insurance).

² *Id.*

lawyers, accountants, and financial advisors—not the general public.³ Because many of the families who establish foreign trusts travel to Miami, the ITCROs provide a convenient way for these families to monitor the services of the international trust company without having to travel to the jurisdiction where the trust company has its operations. Thus, advocates of the bill assert that ITCROs represent an important part of Miami’s role as the financial capital of the Americas and contribute in an important way to the state’s economy.⁴ The advocates would like to create a Limited Purpose ITCRO that would be subject to registration, clarify that the administrative and compliance services do not involve discretionary investment or distribution of funds and do not constitute the activities of a financial institution and should be exempt from licensure and capital requirements that apply to financial institutions.

State Regulation of International Banking Activities

The Office of Financial Regulation (OFR) is charged with regulating depository and non-depository financial institutions and financial service companies. One of the OFR’s primary goals is to protect consumers from financial fraud while preserving the integrity of Florida’s markets and financial service industries. To achieve this goal, Florida law provides the OFR with regulatory authority over entities regulated under the Financial Institutions Codes.⁵

International Banking Corporations

The OFR regulates international banking corporations⁶ that transact business in Florida. Such entities are subject to licensure by the OFR⁷ to transact business in Florida. International banking entities enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent that those foreign institutions seek to engage in the banking or trust business in Florida. If foreign institutions do so, they must obtain a Florida charter and comply with the provisions of ch. 663, F.S., and the applicable Financial Institution Codes.

An international banking corporation may operate through a variety of business models, all of which must be licensed.⁸ These models include international bank agencies,⁹ international representative offices,¹⁰ international trust company representative offices,¹¹ international

³ *Id.*

⁴ *Id.*

⁵ Financial Institutions Codes include chs. 655 relating to financial institutions generally, 657 relating to banks and trust companies, 660 relating to trust business, 662 family trust companies, 663 relating to international banking, 665 relating to associations, and 657 relating to savings banks.

⁶ An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities usual in connection with the business of banking in the country where such foreign institution is organized or operating. The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct trust business as defined in the codes, Section 663.01(6), F.S.

⁷ Sections 663.04 and 663.05, F.S.

⁸ Section 663.06(1), F.S.

⁹ Section 663.061, F.S.

¹⁰ Section 663.062, F.S.

¹¹ Section 663.0625, F.S.

administrative offices,¹² and international branches.¹³ The definition of “financial institution”¹⁴ includes international bank agency, an international banking corporation, international branch, international representative office, international administrative office, and international trust company representative office.

If an international banking corporation (IBC) wants to maintain any office in this state, including an international trust company representative office, the IBC is required to meet minimum licensure requirements, ongoing safety and soundness requirements, and is subject to the examination and enforcement authority of the OFR including state anti-money laundering and anti-terrorism laws. The OFR may not issue a license to an international banking corporation unless it:

- Holds an unrestricted license to conduct trust business in the foreign country under the law of which it is organized and chartered;
- Has been authorized by the foreign country's trust business regulatory authority to establish the proposed international trust representative office;
- Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered;
- Meets all requirements under the Financial Institutions Codes for the operation of a trust company or trust department as if it was a state-chartered trust company or bank authorized to exercise fiduciary powers; and
- Meets a minimum capital requirement of \$20 million.

Section 663.02, F.S., provides that international banking corporations having offices in Florida are subject to the provisions of ch. 655, F.S., as though such corporations were state banks or trust companies. Further, s. 663.02, F.S., provides that neither an international bank agency nor an international branch shall have any greater right under, or by virtue of s. 663.02, F.S., than is granted to banks organized under the laws of this state. Section 663.02, F.S., provides that it is the intent of the Legislature that the following provisions apply to such entities:

- Section 655.031, F.S., relating to administrative enforcement guidelines;
- Section 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses;
- Section 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access;
- Section 655.033, F.S., relating to cease and desist orders;
- Section 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person;
- Section 655.041, F.S., relating to administrative fines and enforcement; and
- Section 655.50, F.S., relating to the control of money laundering and terrorist financing; and any law for which the penalty is increased under s. 775.31 F.S., for facilitating or furthering terrorism.

¹² Section 663.063, F.S.

¹³ Section 663.064, F.S.

¹⁴ Section 655.005(i), F.S.

International Bank Agencies and International Branches

International bank agencies and international branches are permitted to conduct activities similar to those of a domestic bank. An international bank agency may make and service loans, act as a custodian, furnish investment advice, conduct foreign exchange activities and trade in securities and commercial paper.¹⁵ An international branch has the same rights and privileges as a federally licensed international branch.¹⁶

International Representative Offices and International Administrative Offices

International representative offices and international administrative offices perform activities that are more limited. An international representative office may solicit business, provide information to customers concerning their accounts, answer questions, receive applications for extensions of credit and other banking services, transmit documents on behalf of customers, and make arrangements for customers to transact business on their accounts.¹⁷ An administrative office may provide personnel administration, data processing or recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.¹⁸

International Trust Company Representative Offices

An ITCRO is an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country, which is established or maintained in Florida for engaging in non-fiduciary activities described in s. 663.0625, F.S. An ITCRO may also include any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in Florida.¹⁹

ITCROs are not banks and may not accept deposits or make loans. The activities of a licensed ITCRO are limited to engaging in the following non-fiduciary activities that are ancillary to the trust business of the international banking corporation:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;
- Contacting existing or potential customers;
- Answering questions and providing information about matters related to customer accounts;
- Serving as a liaison in Florida between the international banking corporation or trust company and its existing or potential customers (e.g., forwarding requests for distribution or changes in investment objectives, or forwarding forms and funds received from the customer); and
- Such other activities as may be approved by the OFR or rules of the Financial Services Commission.²⁰

¹⁵ Section 663.061, F.S.

¹⁶ Section 663.064, F.S.

¹⁷ Section 663.062, F.S.

¹⁸ Section 663.063, F.S.

¹⁹ Section 663.01(9), F.S.

²⁰ Section 663.0625, F.S.

2010 Legislation

In 2010, legislation was enacted to establish the OFR's oversight responsibilities for "offshore" international non-depository trust companies that wanted to maintain an ITCRO in Florida. The legislation,²¹ defined the ITCRO entity and established the licensing and regulatory and oversight requirements for these entities.

This legislation was due, in part, to the exposure of the \$8 billion dollar Ponzi scheme perpetrated by Allen Stanford.

Allen Stanford controlled an international group of privately held financial services companies under the umbrella organization Stanford Financial Group, which included Stanford Trust Company Limited (Stanford Trust), a non-depository trust company organized under the laws of Antigua and Barbuda. In late 1998, the Division of Banking within the Department of Banking and Finance²² entered into a memorandum of understanding (MOU)²³ with the Stanford Trust. This MOU allowed the Stanford Trust to establish a trust representative office in Florida, and delineated permissible and impermissible activities.

In this particular Ponzi scheme, certificates of deposits that promised above market rate returns were sold to customers of the Stanford Financial Group through offices in the United States and abroad with the sales of new accounts being used to fund payments on older certificates and fund Stanford's business operations and lifestyle. Because Florida law did not address representative offices of international non-depository trust companies at that time, Mr. Stanford was able to facilitate his scheme in Florida through the establishment of a representative office of Stanford Trust Company Limited in Miami, Florida. Stanford International Bank, LTD issued the certificates of deposit used to facilitate the scheme, which was also located in Antigua. The scheme is alleged to have involved over 30,000 clients in 136 countries on six continents.

In addition to attempting to address and prevent the type of scheme perpetrated by Mr. Stanford, the OFR also sought legislation in 2010 that amended ch. 663, F.S., to address issues posed by shadow banking activities conducted by unregulated entities in Florida that present a high risk of allowing money laundering, terrorist financing, and other illicit activities to go undetected.²⁴ The 2010 legislation sought to address those issues and brought ITCROs under the already-established regulatory oversight capabilities of the OFR. The OFR has the statutory regulatory responsibility for the licensing and oversight of international banking corporations that may or may not have trust powers and wish to establish representative offices, administrative offices, branches, and agencies in Florida. The law specifically provided for the licensure of representative offices of international non-depository trust companies, thereby increasing the regulatory oversight of offshore trust companies and related operations in Florida.²⁵

According to advocates of SB 1106, the 2010 legislation created regulatory ambiguity for trust companies and their Florida-based marketing offices, ITCROs, potentially subjecting them to the

²¹ Ch. 2010-9, Laws of Fla.

²² Predecessor of the Division of Financial Institutions of the Office of Financial Regulation.

²³ State of Florida, Department of Banking and Finance and Stanford Trust Company Limited, Memorandum of Agreement (Dec. 1998) (on file with Senate Committee on Banking and Insurance).

²⁴ Ch. 2010-9, Laws of Fla.

²⁵ Office of Financial Regulation, *2016 Legislative Agency Bill Analysis*, (Jan. 19, 2016) (on file with the Senate Committee on Banking and Insurance).

\$20 million capital requirements for operating “what is essentially a marketing and liaison office in Florida.”²⁶ The proponents want to clarify that ITCROs that do not promote, sell, or accept any financial investments, money, or provide depository or custodial accounts and are not “financial institutions” and thus should be exempt from its licensure and capital requirements, but still subject to appropriate registration and supervision by the OFR.²⁷ According to the OIR, currently, an offshore/international entity proposing to establish an ITCRO is required to obtain a license under Chapter 663. By requiring only the onshore Limited Purpose ITCRO to be registered, the operations and controlling shareholders of the offshore/international non-depository trust company are unknown and the potential risk to consumers doing business in Florida cannot be ascertained. The current process for regulation of international entities establishing representative offices in Florida provides for the identification and understanding of the offshore/international entity, not simply the registration of the representative office in Florida.

III. Effect of Proposed Changes:

The bill establishes entities known as Limited Purpose International Trust Company Representative Offices (Limited Purpose ITCROs) that would be subject to regulation by the Office of Financial Regulation (OFR), and creates supervisory oversight responsibilities for the OFR in relation to these entities.

Section 1 amends s. 663.01, F.S., and defines:

- An affiliated international trust company (i.e. the offshore entity with which the proposed Limited Purpose ITCROs would be affiliated.) as an international trust company that is a member of the same business organization of which the Limited Purpose ITCRO is also a member and that does not provide depository, investment management, or brokerage services in conjunction with its trust business. The definition of an affiliated international trust company states that it is not an international banking corporation, as presently defined.
- A Limited Purpose ITCRO as an office organized under the laws of this state, registered, and maintained in this state for engaging in non-fiduciary activities described in s. 663.0625(2), F.S., and which is not licensed as an ITCRO.

Sections 2 and 3 conform cross-references.

Section 4 amends s. 663.02, F.S., relating to the applicability of state banking laws, to provide that a Limited Purpose ITCRO is not subject to the financial institutions codes, except as otherwise expressly provided in Chapter 663, F.S. The section also provides that the OFR has general supervisory powers and rulemaking authority with regard to a Limited Purpose ITCRO and that certain limitations on public records disclosure apply to an ITCRO, except where the context of such provisions clearly indicate applicability only to banks or trust companies. Furthermore, the section establishes the OFR’s ability to investigate an entity to ensure that it does not violate Ch. 663, F.S., or applicable provisions of the financial institutions codes.

²⁶ Memorandum from McDonald Hopkins LLC (Mar. 8, 2015) (on file with Senate Committee on Banking and Insurance).

²⁷ *Id.*

Section 5 amends s. 663.03, F.S., to allow a Limited Purpose ITCRO to be organized as a corporation or a limited liability company. A Limited Purpose ITCRO would be subject to the Florida Business Corporation Act or the Florida Revised Limited Liability Company Act as though the Limited Purpose ITCRO were a foreign corporation or a foreign limited liability corporation, respectively.

Section 6 creates s. 663.045, F.S., to provide requirements for the registration of a Limited Purpose ITCRO and the requirements that the OFR must use for the approval or disapproval of an application for a Limited Purpose ITCRO. The section requires a Limited Purpose ITCRO to be registered but not licensed, and requires registration by an affiliate, subsidiary, or other person or business entity acting as an agent for, on behalf of, or for the benefit of the Limited Purpose ITCRO. The section requires a person to register with the OFR on forms prescribed by the OFR and requires that certain information be provided to the OFR in English that includes:

- The name of the proposed Limited Purpose ITCRO, which need not be in English.
- A copy of the articles of incorporation or articles of organization, as well as the bylaws or operating agreement of the proposed ITCRO.
- The physical address and mailing address of the proposed Limited Purpose ITCRO, which must be located in this state.
- A statement describing in detail the activities of the proposed Limited Purpose ITCRO.
- The name and biographical information of each individual who will initially serve as a director, an officer, a manager, or a member acting in a managerial capacity for the proposed Limited Purpose ITCRO.
- The name of the business organization to which the Limited Purpose ITCRO belongs, together with such biographical information as the Financial Services Commission or office may reasonably require by rule for each person who, together with related interests, owns or controls, directly or indirectly, 25 percent or more of the voting stock or nonvoting stock that is convertible into voting stock of the proposed Limited Purpose ITCRO.
- The regulatory authorities that any affiliated international trust company is subject to and proof of good standing with such regulatory authorities. Such proof must be written in English.
- The amount of the initial capital account of the proposed Limited Purpose ITCRO and the form in which the capital was paid and will be maintained, as stated in a review conducted by an independent certified public accountant licensed in this state.
- The type and amount of bonds or insurance that will be maintained by the proposed Limited Purpose ITCRO.
- A sworn statement signed by an executive officer of the applicant affirming that:
 - The proposed Limited Purpose ITCRO is not providing depository, investment management, or fiduciary services and is providing only the permissible activities authorized in s. 663.0625(2), F.S.
 - No director, officer, manager, or member of the proposed Limited Purpose ITCRO or of any affiliated international trust company served as a director, an officer, a manager, or a member acting in a managerial capacity for an ITCRO, an affiliated international trust company, or a financial institution that was licensed under the financial institutions codes, or by the Federal Government or any other state, the District of Columbia, a territory of the United States, or a foreign country, had that license suspended or revoked within ten years preceding the date of the application.

- No director, officer, or manager of, or member acting in a managerial capacity for, the proposed Limited Purpose ITCRO or an affiliated international trust company has been convicted of, or pled guilty of nolo contendere to, regardless of whether adjudication of guilt was entered by the court, or has been the subject of a civil penalty imposed for, a violation of the financial institutions codes or a crime involving fraud, misrepresentation, or moral turpitude.
- No director, officer, or manager of, or member acting in a managerial capacity for, the proposed Limited Purpose ITCRO, or affiliated international trust company, has had a professional license suspended or revoked within the ten years preceding the date of the application.
- All information contained in the application is true and correct to the best knowledge of the executive officer signing the sworn statement on behalf of the proposed Limited Purpose ITCRO.

Subsection (3) requires the OFR to conduct an investigation to confirm that the persons who will serve as directors or officers of the corporation or, if the applicant is a limited liability company, managers or members acting in a managerial capacity, have not:

- Been convicted of, or entered a plea of nolo contendere to, a crime involving fraud, misrepresentation, or moral turpitude.
- Been convicted of, or entered a plea of nolo contendere to, or been the subject of a civil penalty imposed for, a violation of the financial institutions codes.
- Been directors, officers, managers, or members of a trust company or financial institution licensed or chartered under the financial institutions codes or by the Federal Government or any other state, the District of Columbia, a territory of the United States, or a foreign country and whose license or charter was suspended or revoked within the ten years preceding the date of the application.
- Had a professional license suspended or revoked within the ten years preceding the date of the application.
- Made a false statement of material fact on the application.

Subsection (4) requires the OFR to register the applicant to operate as a Limited Purpose ITCRO if the OFR has confirmed the applicant has:

- Met the \$100,000 capital requirement;
- Met the requirements contained in s. 663.057, F.S., relating to maintenance of a principal office, a registered agent, state and local business licenses and permits, a deposit account, and Florida residence of at least one director or manager;
- Met the requirements of s. 663.058, F.S., relating to fidelity bonds and insurance; and
- Satisfied the criteria outlined in proposed subsection (3) above.

Subsection (10) provides that a registration under this chapter is valid for one year after the effective date.

Subsection (5) requires the OFR to notify an applicant in writing if the registration application is incomplete or if the OFR is unable to verify the information provided with the application. The applicant has 30 days after receipt of such notification to provide any required information. The OFR must deny the application if the applicant fails to timely provide such information.

Paragraph (6)(a) allows, notwithstanding the provisions of ch. 120, F.S., an application to be returned to the applicant one time for correction of substantial deficiencies, in which case the application may be resubmitted without payment of an additional fee if the application is resubmitted within 60 days. Paragraph (6)(b) allows an applicant to resubmit the application without an affiliated international trust company that is not in good standing with the relevant regulatory body or is organized and chartered in a jurisdiction that is listed on the Financial Action Task Force Public State or on its list of jurisdictions with deficiencies in anti-money laundering or counter-terrorist financing. The OFR must then allow registration of a Limited Purpose ITCRO, conditioned on it not conducting activities under s. 663.0625, F.S., with any such affiliated international trust companies that were removed from the original application.

Subsection (7) states that, notwithstanding s. 120.60(1), F.S., the OFR must approve or deny an application within 180 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions. An application not approved or denied within 180 days shall be deemed approved, subject to the satisfactory completion of conditions required by statute as a prerequisite to registration and approval of insurance coverage by the appropriate insurer.

Subsection (8) requires that if the OFR determines the criteria in subsection (3) have not been met, notice must be provided to the applicant of the intent to deny registration and of the applicant's right to request a hearing pursuant to ss. 120.569 and 120.57, F.S.

Subsection (9) requires that the applicant provide the OFR with a fidelity bond that meets the requirements of s. 663.058, F.S., before the OFR may grant approval of the registration.

Subsection (11) establishes that the OFR is not responsible for examining a Limited Purpose ITCRO or an affiliated international trust company regarding safety and soundness of its operations.

Subsection (12) provides that a Limited Purpose ITCRO in operation as of October 1, 2016, must apply for registration before December 31, 2016, or cease doing business in this state.

Section 7 amends subsection (3) of s. 120.80, F.S., to provide conforming changes to permit a Limited Purpose ITCRO registration.

Section 8 creates s. 663.046, F.S., providing the renewal process for a Limited Purpose ITCRO. A Limited Purpose ITCRO must file its annual renewal with the OFR, on a form prescribed by the Financial Services Commission, within 45 days before the expiration of its current registration. The renewal application must contain a sworn declaration by an executive officer, and the sworn declaration must:

- Attest that the Limited Purpose ITCRO has operated in full compliance with chs. 663 and 896, F.S., or similar state or federal law, or any related rule or regulation, and with all federal laws and regulations that apply to any client of the affiliated international trust company from who it has conducted activities under s. 663.0625(2), F.S.
- Describe any material changes to the information provided under s. 663.045, F.S., regarding its operations, principal place of business, directors, officers, managers, or members acting in

a managerial capacity or any affiliated international trust company since the date of registration.

- Demonstrate compliance with the minimum requirements for capital and insurance, as stated in a review prepared by an independent certified public account licensed in the state of Florida.

The annual registration renewal fee is \$1,500, which is deposited into the Financial Institutions' Regulatory Trust Fund pursuant to s. 655.049, F.S. Subsection (3) provides that the provisions of s. 663.045, F.S., relating to conduct of the investigation and issuance or denial of registration apply to a registration renewal under this section.

Section 9 amends s. 663.055, F.S., to make Limited Purpose ITCROs subject to rules adopted by the Financial Services Commission relating to capital accounts. The section also permits a Limited Purpose ITCRO to be organized with a capital account of not less than \$100,000, which must be in the form of cash or cash equivalents.

Section 10 creates s. 663.057, F.S., which defines requirements of operation and registration maintenance for a Limited Purpose ITCRO. A limited purpose ITCRO:

- Must maintain a principal office physically located in Florida where the OFR may access and examine original or true copies of all records and accounts of the Limited Purpose ITCRO in accordance with ch. 663, F.S.
- May maintain one or more branch offices within the state and must notify the OFR in writing at least 30 days before the establishment of such branch offices.
- Must maintain a registered agent who has an office in Florida.
- Must maintain a deposit account with a state-chartered or national financial institution that has a principal or branch office in Florida.
- Must maintain at least one director or manager who is a resident of Florida.

Section 11 creates s. 663.058, F.S., pertaining to fidelity bonds and insurance requirements. A Limited Purpose ITCRO is required to maintain a fidelity bond on all active officers, directors, managers, members acting in a managerial capacity, and employees of the company, regardless of whether they receive a salary or other compensation. The fidelity bond serves to indemnify the company against loss due to dishonest, fraudulent, or criminal acts or an omission on the part of such persons, whether acting alone or in combination with others.

An insurer authorized to do business in this state must issue the fidelity bond. The fidelity bond must be at least \$500,000. The fidelity bond must be in a form satisfactory to the OFR and shall be for the benefit of any claimants in this state against the applicant to secure the faithful performance of the obligations of the applicant regarding the receipt, handling and transmission of information and documents provided to the applicant. The aggregate liability of the fidelity bond may not exceed the principal sum of the bond. Claimants against the applicant may bring suit directly on the fidelity bond, or the Department of Legal Affairs may bring suit on behalf of the claimants. The applicant or the corporate surety, except upon written notice to the office, may not cancel the fidelity bond by registered mail. A cancellation may not take effect until 30 days after receipt by the OFR of the written notice.

Subsection (3) requires that within ten days after the payment of a fidelity bond claim, the corporate surety must give written notice to the OFR by registered mail of the payment with details sufficient to identify the claimant and the claim or judgment paid. If the principal sum of the bond is reduced by a recovery or payment, the applicant must furnish a new or additional bond so that the total or aggregate principal sum of the bond equals \$500,000. As an alternative, an applicant may furnish an endorsement executed by a corporate surety reinstating the bond to the required principal sum. Subsection (5) requires the Limited Purpose ITCRO to procure and maintain general liability insurance coverage under a corporate or group policy with a minimum of \$1 million per occurrence and a policy period aggregate limit of \$3 million in which it is listed as an insured, to cover the acts and omissions of officers, directors, managers, members acting in a managerial capacity, and employees, regardless of whether the person receives a salary or other compensation from the company.

Section 12 amends s. 663.0625, F.S., to add the Limited Purpose ITCRO entity and to restructure certain parts of the statute pertaining to the current ITCRO entity. Section 12 of the bill also creates subsection (2) of the statute to provide that a Limited Purpose ITCRO may conduct any of the following activities:

- Participate in or attend conferences, seminars, or events that are intended for industry or professional participants and are not advertised to the public for the purposes of marketing the services of an affiliated international trust company.
- Market the services of an affiliated international trust company to lawyers, accountants, banks, licensed financial advisors, and other wealth planning professionals who are licensed by a state, federal, or territorial government or certified by a recognized professional accrediting entity.
- In connection with the authorized activities described above, engage in name-recognition or branding activities in the form of signage or promotional materials that use the name of the affiliated international trust company or the name of the business organization of which the affiliated international trust company is a member.
- Assist clients or referred prospective clients of the affiliated international trust company in communicating with the affiliated international trust company, completing documentation relating to the trust relationship, and obtaining information about matters related to trust with which they are or may become associated. A Limited Purpose ITCRO may not have authority to accept such clients on behalf of the affiliated international trust company and may not otherwise bind the affiliated international trust company.
- Exercise the powers of a corporation under ch. 607, F.S., or a limited liability company under ch. 605, F.S., which are reasonably necessary to enable it to fully exercise a power enumerated in this section or authorized by ch. 663, F.S.
- Engage in any other activities consistent with this section, as prescribed by rule.

Subsection (3) is amended to:

- Cover employees, officers, or directors (rather than representatives and officers) of an ITCRO or a Limited Purpose ITCRO. These individuals may not act as a fiduciary, accept the fiduciary appointment, execute the fiduciary documents that create the fiduciary relationship, or make discretionary decisions regarding the investment or distribution of fiduciary accounts.

- Prohibit a Limited Purpose ITCRO from accepting custody of any property of the client of the affiliated international trust company on behalf of the affiliated international trust company and may not deliver such property to the affiliated international trust company.
- Prohibit a Limited Purpose ITCRO from soliciting business from the public on behalf of its affiliated international trust company in this state or advertise its services to the public in this state. However, this does not restrict the list of permissible activities for a Limited Purpose ITCRO.
- Prohibit a Limited Purpose ITCRO from using the words “bank,” “trust,” or the name of an affiliated international trust company as part of its company or fictitious name.
- Prohibit a Limited Purpose ITCRO from marketing to or discussing the services of an affiliated international trust company with any person who has not previously been referred to it by certain prescribed professionals or who is an existing client of an affiliated international trust company.

Subsection (4) requires that a Limited Purpose ITCRO provide the following written disclosure to a prospective or existing client of its affiliated international trust company: “(The name of the limited purpose international trust company representative office) and any affiliated international trust companies are not licensed or authorized to conduct the trust or fiduciary business in Florida.” The Financial Services Commission may establish by rule the criteria for the size and font of the required disclosure.

Section 13 amends s. 663.09, F.S., by creating new subsections relating to significant events and investigations of a Limited Purpose ITCRO. Subsection (5) requires a Limited Purpose ITCRO to file reports with the OFR as prescribed by rule. The rules may prescribe such reports to be subject to examination by the OFR as a condition of granting or maintaining the registration. Subsection (6) requires a Limited Purpose ITCRO to notify the office within 30 days of learning of the occurrence of any of the following significant events:

- Any civil, criminal, or administrative investigation or proceeding initiated by a regulatory or law enforcement authority against the Limited Purpose ITCRO.
- The addition, resignation, or termination of a director or manager, an executive officer, or a member acting in a managerial capacity.
- Any change in outside accountants who are used to verify capital accounts.
- Any interruption of fidelity bonding or insurance coverage.
- Any suspected criminal act perpetrated against the Limited Purpose ITCRO. No liability shall be incurred because of making a good faith effort to fulfill this disclosure requirement.
- The loss of the charter of any affiliated international trust company.
- The loss of good standing with the applicable regulatory authorities by any affiliated international trust company.
- A change in the company name or fictitious name of the Limited Purpose ITCRO.
- A change with respect to any of the statements certified under s. 663.045, F.S.

Subsection (7) requires that the disclosure form for significant events reporting shall be specified by rule, and an executive officer of the Limited Purpose ITCRO must swear that the form is authentic and accurate.

Subsection (8) allows the OFR to conduct an investigation of a Limited Purpose ITCRO at any time it deems necessary to determine whether a Limited Purpose ITCRO has engaged in any act prohibited under s. 663.0625, F.S.

Section 14 creates s. 663.095, F.S., pertaining to the revocation of registration of a Limited Purpose ITCRO to provide that any of the following constitutes grounds for revocation of registration:

- The company is not a Limited Purpose ITCRO as defined in ch. 663, F.S.
- A violation of ss. 663.055(5), 663.057, 663.058, or 663.0625, F.S.
- A violation of chapter 896, relating to financial transaction offenses, or any similar state or federal law or any related rule or regulation.
- A violation of any Financial Services Commission rule, which continues 30 days after written notice from the OFR.
- A violation of any order of the OFR, which continues 30 days after written notice from the OFR.
- A breach of any written agreement with the OFR.
- A prohibited act or practice under s. 663.0625, F.S.
- Failure to file annual reports or provide information or documentation to the OFR upon written request.
- Conviction of a felony or entry of a plea of guilty or nolo contendere, regardless of adjudication of guilt, by the Limited Purpose ITCRO, or its officers, directors, managers, or persons acting in a managerial capacity, or an affiliated international trust company in a state or federal court, or in the courts of a foreign country with which the United States maintains diplomatic relations which involves a violation of law relating to fraud, currency transaction reporting, money laundering, theft, or a moral turpitude and the charge is equivalent to a felony charge under state or federal law.

Upon a finding of the occurrence of any of these acts, the OFR may enter an order suspending the registration and provide notice of its intention to revoke the registration and of the right to a hearing pursuant to ss. 120.569 and 120.57, F.S. The OFR may immediately enter an order revoking the registration if there has been a violation or failure to disclose a violation relating to a change to any of the statements certified under s. 633.045, F.S.

The Limited Purpose ITCRO has 90 days to complete its affairs after its registration has been revoked, during which time the Limited Purpose ITCRO may not engage in any of the activities authorized under s. 663.0625, F.S., except to the extent required to provide notice that it is winding down its affairs in this state and to provide contact information of the persons who may be contacted for additional information. If after 90 days the company has not provided satisfactory proof to the OFR that it is no longer in operation, the OFR may seek an order from the circuit court for the annulment or dissolution of the company. Satisfactory proof consists of a corporate resolution authorizing dissolution, a certified copy of articles of dissolution filed with the Division of Corporations of the Department of State, or documentation confirming the closing of the Limited Purpose ITCRO.

Section 15 creates s. 663.096, F.S., defining cease and desist authority of the OFR as to a Limited Purpose ITCRO. The OFR may issue and serve a complaint upon a Limited Purpose ITCRO or any individual for conduct that:

- Indicates the company is not a Limited Purpose ITCRO as defined in chapter 663.
- Is a violation of s. 663.055(5), s. 663.057, s. 663.058, or s. 663.0625, F.S.
- Is a violation of any Financial Services Commission rule, which continues 30 days after written notice from the OFR.
- Is a violation of any order of the OFR, which continues 30 days after written notice from the OFR.
- Is a breach of any written agreement with the OFR.
- Is a prohibited act or practice pursuant to s. 663.0625, F.S.
- Is a failure to provide information or documents to the OFR upon written request within 30 days after such request or such longer time as specified by the request.
- Is a violation of chapter 896 or similar state or federal law or any related rule or regulation.

The complaint must contain a statement of facts and a notice of a right to a hearing pursuant to ss. 120.569 and 120.57, F.S. If no hearing is requested within the time allowed by ss. 120.569 and 120.57, F.S., or if the hearing is held and the OFR finds that any of the charges are true, the OFR may enter an order directing the Limited Purpose ITCRO or the individual named therein to cease and desist from engaging in the conduct complained of and to take corrective action.

The failure by the Limited Purpose ITCRO or the individual named in such order to respond to the complaint within the time allotted constitutes a default, and justifies the entry of a cease and desist order by the OFR. A contested or default cease and desist order is effective when the order is reduced to writing and served upon the licensed Limited Purpose ITCRO or the individual named therein. Uncontested cease and desist orders are effective as agreed by the OFR and the Limited Purpose ITCRO.

The OFR is authorized to issue an emergency cease and desist order if it finds that conduct described in Subsection (1) has occurred which presents an imminent danger to the public. The Limited Purpose ITCRO or individual named therein must immediately cease and desist from engaging in the conduct complained of and take corrective action. An emergency order is effective immediately upon service and remains in effect for 90 days. If, after issuance of an emergency order, the OFR begins nonemergency cease and desist proceedings under Subsection (1), the emergency order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

Subject to its rights under ch. 120, F.S., a Limited Purpose ITCRO will have 90 days to wind up its affairs after entry of an order to cease and desist operations. During the 90 days, it may not engage in any activities authorized under s. 663.0625, F.S., except to the extent required to provide notice that it is winding down its affairs in this state and to provide contact information of the persons who may be contacted for additional information. If, after 90 days, a Limited Purpose ITCRO has not provided proof satisfactory to the OFR that it has terminated operations, the OFR may seek an order from the circuit court for the annulment or dissolution of the company. Satisfactory proof consists of a corporate resolution authorizing dissolution, a certified

copy of articles of dissolution filed with the Division of Corporations of the Department of State, or documentation confirming the closing of the Limited Purpose ITCRO.

Section 16 creates s. 663.115, F.S., and allows a Limited Purpose ITCRO to discontinue business by filing with the OFR a certified copy of the resolution by the board of directors, or members or managers of a limited liability company, authorizing such action. The Limited Purpose ITCRO is required to voluntarily terminate its registration, which will operate to release the Limited Purpose ITCRO from any fidelity bonds it maintained.

Section 17 amends s. 663.12, F.S., to provide an initial registration fee of \$5,000 for a Limited Purpose ITCRO and to provide a fee amount for the conversion from registration to licensure.

Section 18 provides an effective date of October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other:

The bill is linked to SB 1094, a public records exemption bill. However, section 4 of SB 1106 appears to create or expand a public records exemption. While the Legislature may create an exemption to public records requirements, Article I, s. 24(c) of the State Constitution requires that laws creating public records exemptions contain only public records exemptions and an exemption be no broader than necessary to accomplish the stated purpose. In addition, the constitution requires a two-thirds vote of the House of Representatives and the Senate for final passage.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

SB 1106 creates a new registration filing fee of \$5,000 and a new annual registration renewal fee of \$1,500. According to the Florida International Administrators Association (FIAA), it has approximately 12 members. Based on this information, the Office of Financial Regulation (OFR) projected that there will be approximately \$60,000 in the

first year from initial registration filing fees and then \$18,000 in subsequent years from annual renewal fees.²⁸

B. Private Sector Impact:

Applicants to be a Limited Purpose ITCRO would incur an initial registration fee of \$5,000, a yearly registration renewal fee of \$1,500, and other indeterminate costs to satisfy registration and regulatory requirements. However, such entities would be subject to less regulatory and financial requirements than ITCROs.

C. Government Sector Impact:

While the bill provides additional duties for the OFR, no additional funds are needed to fulfill this workload. The OFR will utilize existing resources to cover any additional workload. Should the OFR see additional workload volume beyond the anticipated estimates, the OFR will reassess its funding needs and may request additional funding in future fiscal years.²⁹

VI. Technical Deficiencies:

Some terms in the bill are undefined, vague, or subject to multiple interpretations. See Section IV.D.; the bill appears to create or expand a public records exemption (lines 142-3).

VII. Related Issues:

The Office of Financial Regulation (OFR) has concerns regarding the regulatory framework of Limited Purpose ITCROs created in the bill.³⁰

According to the OFR, this legislation falls short of providing adequate standards with regard to the offshore/international entity or affiliated entities, and fails to utilize existing standards and requirements for licensure, operation, and regulatory oversight that serve to ensure prudent operations of an offshore/international entity or affiliated entities. The activities that would be permitted for a Limited Purpose ITCRO are activities that an offshore/international trust company may currently engage in through the operation of an ITCRO in Florida. By requiring only onshore Limited Purpose ITCROs to be registered, the operations and controlling shareholders of the offshore/international non-depository trust company would be unknown and the potential risk to consumers doing business in Florida cannot be ascertained.

The current process for regulation of international entities establishing representative offices in Florida provides for the identification and understanding of the offshore/international entity, not simply the registration of the representative office in Florida. The legislation does not clearly require that the offshore/international entity be identified. The legislation fails to require sufficient information (such as financial condition, activities, and ownership structure) regarding the offshore/international entity, affiliated entities, or members of the “business organization” of

²⁸ Office of Financial Regulation, *2016 Agency Legislative Bill Analysis* (Jan. 19, 2016) (on file with Senate Committee on Banking and Insurance).

²⁹ *Id.*

³⁰ *Id.*

which a Limited Purpose ITCRO is a “member.” This limits the OFR’s ability to assess the risk posed by the entities and the relationships between those entities, which may ultimately pose a risk to those doing business with the offshore trust company via the Florida-based Limited Purpose ITCRO. The bulk of the risks to consumers lies with the offshore entities, and their affiliated entities, whose activities are being marketed, yet this legislation proposes that the applicant be a Florida-based Limited Purpose ITCRO. By focusing regulatory attention on the onshore activities of a Limited Purpose ITCRO, the OFR would not be able to ascertain the risk posed by the offshore entities, and their affiliates, or the adequacy of supervision by their home country regulator.

The OFR believes that, by enacting the 2010 law, the Legislature established effective regulation of the activities of offshore trust companies that wish to have offices in Florida, and the current regulatory structure serves to impede fraudulent and other illicit activities that could be perpetrated by “offshore” international non-depository trust companies through the entities on Florida soil.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 663.01, 655.966, 662.111, 663.02, 663.03, 120.80, 663.055, 663.0625, 663.09, and 663.12.

This bill creates the following sections of the Florida Statutes: 663.045, 663.046, 663.057, 663.058, 663.095, 663.096, and 663.115.

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.