STORAGE NAME: H0535a.grr
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HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
ANALYSIS

BILL #: HB 535

RELATING TO: Banking/ Financial Institutions

SPONSOR(S): Representative C. Green

COMPANION BILL(S): CS/SB 1280 (Similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) FINANCIAL SERVICES YEAS 9 NAYS 0
(2) GOVERNMENTAL RULES AND REGULATIONS YEAS 7 NAYS 0
(3)
(4)
(5)

I. SUMMARY:

This bill makes the following changes to the state banking statutes:

Extends the period for financial institutions to make prior notification to the Department of Banking & Finance (DBF) of changes in the appointment of directors and executive officers from 30 to 60 days. Financial institutions which operate in a safe and sound manner are exempted from this requirement.

Exempts financial institutions which operate in a safe and sound manner from the requirement to notify the DBF of “significant events” as described in s. 655.948, F.S.

Exempts financial institutions which operate in a safe and sound manner from having to file an application and fee to open a branch office, but instead are directed to simply file a written notice to the DBF 30 days prior to opening a new branch.

Fiscal Impact. The agency estimates a revenue decrease estimated at $72,000 per year. Normally, these revenues would be deposited into the Financial Institutions’ Regulatory Trust Fund of the Department.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The DBF has regulatory authority over state-chartered commercial banks, credit unions, savings associations, nondeposit trust companies, international banking agencies, representative offices and administrative offices. State-chartered financial institutions are licensed, examined and regulated to ensure that private funds invested in Florida's state-chartered financial institutions are protected from potential loss due to failure or insolvency.

The DBF is charged with enforcing the Financial Institutions Codes (Codes) (Chapters 655, 657, 658, 660, 663 and 665, F.S.) for state-authorized or state-chartered financial institutions. Federal agencies have the similar responsibilities for federally-authorized or federally-chartered financial institutions. Table A lists the current breakdown of state financial institutions regulated by the Division, and the asset calculation for each group.

Table A. Current breakdown of financial institutions regulated by the Division of Banking and estimated assets of each.

Type of Institution	Number of Institutions	Cumulative Assets
Domestic banks	172	$37 billion
Savings and Loans	1	$200 million
Credit Unions	115	$4.8 billion
Non-deposit Trust Companies	16	$145 million
International banks	43	$19 billion
TOTAL	347	$61 billion

Source: Division of Banking, October, 1998

Federally-chartered financial institutions, most of which have the words "federal" or "national" in their titles, are regulated by federal agencies (e.g., the Federal Reserve, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervisor). State-chartered institutions which are members of the FDIC may be examined by that agency. The state Division of Banking coordinates with the various federal agencies to schedule institutional exams to avoid duplication of efforts.

Federal and state regulatory agencies have worked for many years to improve coordination and uniformity in many aspects of examination, supervision and regulation and to review and resolve other issues of mutual interest and concern. These efforts have addressed alternate examinations, timely processing of examination reports and applications, common report and application forms, joint enforcement actions, exchanges of information, and coordinated multibank holding company examinations. As early as October 1995, the FDIC, the Federal Reserve, and the Conference of State Bank Supervisors (CSBS) formed a state-federal working group to streamline and improve the coordination of the examination and supervision of state-chartered banks operating in an interstate environment. As a result, Florida works in tandem with, and coordinates examinations of, financial institutions.

The state banking statutes do not evenly address the distinction between financial institutions which may be characterized as “strong and well-managed[1],” and those which are not strong and well managed. As a result, state financial institutions which may fit the profile of “strong and well-managed” may be subject to the same requirements as do other financial institutions which may not fit that profile.

This analysis will focus on the following three business activities of financial institutions which are affected by the bill: the appointment of directors and executive officers, the required notification of “significant events,” and the process for establishing branches.

Appointment of Directors and Executive Officers[2]
State financial institutions are required to notify the DBF at least 30 days before the appointment of any person as director or executive officer if the institution:

- has been chartered for less than 2 years;
- has undergone a change in control or conversion within the preceding 2 years;
- is not in compliance with the minimum capital requirements applicable to such financial institution; or,
- is otherwise operating in an unsafe and unsound condition.

In 1992, the DBF implemented administrative rules to waive statutory reporting requirements for institutions that are operating in a safe and sound manner, however, there is no statutory authority to waive reporting requirements. According to the DBF, the current statutory reporting requirements related to the approval of bank directors and executive officers imposes additional, unnecessary regulatory scrutiny on business decisions made by management of institutions that are operating in a safe and sound manner.

Required Notification of Significant Events[3]
Currently, the DBF requires state financial institutions to disclose the occurrence of any of the following significant events within 30 days, or be subject to administrative sanction:

- the addition, resignation, or termination of a director, executive officer, independent internal auditor, or independent credit review officer;
- the acquisition or divestiture of an asset or assets the value of which exceeds 20% of capital;
- any change in general counsel or outside auditors who are used to certify financial statements;
- any interruption of fidelity insurance coverage;
- any credit extension to an executive officer and her or his related interests that, when aggregated with the amount of all other extensions of credit, exceeds 15% of the capital accounts of the financial institution;
- the failure to meet the minimum daily liquidity required of s. 658.68, F.S.;
- any suspected criminal act perpetrated against a financial institution, subsidiary, or service corporation;
- the acquisition or divestiture of a wholly owned or majority owned subsidiary or service corporation; or,
- the existence of any asset which is defined as a nonaccrual asset and which is in excess of 15% of total assets.

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[1]For instance, s. 655.005(1)(r), F.S., defines “unsafe or unsound practice.” Section 658.26(6)(e), F.S. (relating to bank and trust company branching) defines, for that section, a “strong, well managed” financial institution as an institution which has been in operation for at least 24 months, is well capitalized, has received a satisfactory rating at the institution’s most recent state or federal safety and soundness examination, and is not the object of any enforcement action.

[2]Section 655.0385, F.S.

[3]Section 655.948 (4), F.S.

The DBF currently exempts financial institutions that are operating in a safe and sound manner from the notice requirement. All newly chartered financial institutions, and financial institutions which have undergone a change in ownership which is not the result of a merger, consolidation or acquisition by an exempted financial institution[4], remain subject to the notice requirement for a period of 3 years.

According to the DBF, the notice requirement for newly chartered institutions is based on the greater probability of business failure occurring within the first two years of operation. As for merger, consolidation or acquisition, the DBF will not approve any of these actions unless the institution is found to be operating in a safe and sound manner. According to the DBF, the imposition of notice requirements in these situations imposes additional, unnecessary regulatory scrutiny on business decisions made by management of institutions that are operating in a safe and sound manner.

Branching Facilities[5]
Currently, the DBF requires a bank or trust company to file an application and a fee with the DBF for its approval before it may establish a branch office. Upon receipt of the branch application and nonrefundable fee, the DBF investigates the sufficiency of capital accounts in relation to the deposit liabilities of the bank, the sufficiency of earnings and earning prospects to support the branch, the sufficiency and quality of management, and substantial compliance with applicable laws governing their operations. In contrast, a branch application submitted by a strong, well managed institution, which is not denied within 10 working days after receipt, is deemed approved unless the DBF notifies the financial institution in writing that the application was not complete.

B. EFFECT OF PROPOSED CHANGES:

This bill makes the following changes to the state banking statutes:

Extends the period for financial institutions to make prior notification to the Department of Banking & Finance (DBF) of changes in the appointment of directors and executive officers from 30 to 60 days. Financial institutions which operate in a safe and sound manner are exempted from this requirement.

Exempts financial institutions which operate in a safe and sound manner from the requirement to notify the DBF of “significant events” as described in s. 655.948, F.S.

Exempts financial institutions which operate in a safe and sound manner from having to file an application and fee to open a branch office, but instead are directed to simply file a written notice to the DBF 30 days prior to opening a new branch.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

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[4]An exempted financial institution in this case would be one operating in a safe and sound manner.

[5]Section 658.26 (2)(c), F.S.

(1) any authority to make rules or adjudicate disputes?

Yes, the DBF is authorized to promulgate rules regarding exemptions from certain regulatory requirements for financial institutions that operate in a safe and sound manner. Current rulemaking language in HB 535 does not conform to current practice in identifying grants of rulemaking authority. The Committee on Governmental Rules and Regulations recommends an amendment to the bill to conform current language.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. <u>Lower Taxes:</u>

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

Yes, the bill eliminates the branch application fee for a financial institution which operates in a safe and sound manner.

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

   a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

      No

   b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

      No

4. Individual Freedom:

   a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

      Yes. Financial institutions that operate in a safe and sound manner are exempted from notifying the DBF of the appointment or employment of directors and executive officers, are exempted from notifying the DBF of "significant events" and are required to simply notify the DBF when opening a branch office.

   b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

      No

5. Family Empowerment:

   a. If the bill purports to provide services to families or children:

      (1) Who evaluates the family's needs?

          N/A

      (2) Who makes the decisions?

          N/A

      (3) Are private alternatives permitted?

          N/A

      (4) Are families required to participate in a program?

          N/A

      (5) Are families penalized for not participating in a program?

          N/A

   b. Does the bill directly affect the legal rights and obligations between family members?

      N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends s. 655.0385, s. 655.948, and s. 658.26, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 655.0385, F.S., increasing the time period for notifying the DBF of changes in the appointment of directors and executive officers, from 30 days before the appointment becomes effective, to 60 days. Regulated institutions which operate in a safe and sound manner are exempted from this requirement. The DBF is also authorized to implement rules.

Section 2. Amends s. 655.948, F.S., conforming the statute with current statutory practice of the DBF exempting financial institutions which operate in a safe and sound manner, from notifying the DBF of "significant events" as outlined in s. 655.948, F.S.

Section 3. Amends s. 658.26, F.S., exempting financial institutions which operate in a safe and sound manner from filing an application and fee to open a branch office, but instead are directed to simply file a written notice to the Department 30 days prior to opening a new branch.

Section 4. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Negligible.

2. Recurring Effects:

A reduction in workload for the DBF due to exempting institutions which operate in a safe and sound manner from notification requirements and branch office application examinations.

The agency estimates a revenue decrease estimated at $72,000 per year. Normally, these revenues would be deposited into the Financial Institutions' Regulatory Trust Fund of the Department.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

See Part III.A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None, although the financial institution industry would save an estimated $72,000 per year in application filing fees.

2. Direct Private Sector Benefits:

State financial institutions which operate in a safe and sound manner would no longer need to prepare and file branch applications, request Departmental approval for the appointment of certain management officials, and prepare and submit information concerning significant events.

3. Effects on Competition, Private Enterprise and Employment Markets:

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds of to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of municipalities and counties to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

The Committee on Financial Services introduced the following comments:
More specificity needs to be drafted into the rule making authority conferred upon the DBF on page 2, lines 13 and 14 of the bill.

The Committee on Governmental Rules and Regulations introduced the following comments:
The rulemaking language found on page 2, lines 13 and 14 of this bill conforms to current practice in identifying grants of rulemaking authority.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:	Staff Director:
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AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

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