

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/CS/HB 675	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Regulatory Affairs Committee; Government Operations Subcommittee; Insurance & Banking Subcommittee; Broxson	115 Y's	0 N's
COMPANION BILLS:	CS/CS/HB 673; CS/CS/SB 1278	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 675 passed the House on April 28, 2014, as CS/CS/SB 1278.

The bill creates a limited public records exemption for informal enforcement actions as well as an exemption for trade secrets that are held by the Office of Financial Regulation in accordance with its statutory duties with respect to the Financial Institutions Codes. In addition, the bill defines examination report, informal enforcement action, working papers, and personal financial information.

The bill provides that the newly created exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

This bill and CS/CS/HB 673 were approved by the Governor on June 13, 2014, ch. 2014-99 and ch. 2014-91, L.O.F., and will become effective July 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Supervision of State-Chartered Financial Institutions

The Office of Financial Regulation (OFR) regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes (“Codes”), chapters 655 to 667, Florida Statutes. The OFR ensures Florida-chartered financial institutions’ compliance with state and federal requirements for safety and soundness.

The bill is linked to SB 1012. The linked bill amends a number of provisions throughout the Codes.

Current Public Records Exemptions Under the Codes

Currently, s. 655.057, F.S., contains the following public records exemptions:

- All records and information relating to an “active” investigation or examination are confidential and exempt.
- After an investigation or examination is no longer active, the following information remains confidential and exempt to the extent that disclosure would:
 - Jeopardize the integrity of another active investigation;
 - Impair the safety and soundness of the financial institution;
 - Reveal personal financial information;
 - Reveal the identity of a confidential source;
 - Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
 - Reveal investigative techniques or procedures.
- Reports of examination, operations, or condition, *including working papers* or portions thereof, that are prepared by or for the use of the OFR or any state or federal agency responsible for the regulation or supervision of financial institutions.
 - Current law provides exceptions for persons to whom these reports and working papers may be released.
- Examination, operation, or condition reports of a failed financial institution, which shall be released within 1 year after the appointment of a liquidator, receiver, or conservator. However, any portion which discloses the identities of depositors, bondholders, members, borrowers, or stockholders (other than directors, officers, or controlling stockholders) remains confidential and exempt.
- Florida-chartered credit unions and mutual associations are required to maintain and submit to the OFR a list of their members’ names and residences. This list of members is confidential and exempt.
- Florida-chartered banks, trust companies, and stock associations are required to maintain and produce to the OFR lists of their shareholders’ names, addresses, and number of shares held by each shareholder. Any portion of this list which reveals the shareholders’ identities is confidential and exempt.

In addition, s. 655.059, F.S., provides that the books and records of a financial institution are “confidential” and may only be made available to specified persons, including the OFR.¹ However, this is not a public records exemption from s. 119.07(1), F.S., because private organizations (such as financial institutions) are generally not subject to the Sunshine Law, unless the private organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity.² This statute merely prohibits financial institutions from disclosing its books and records to anyone other than the persons enumerated in s. 655.059(1)(a), F.S.

¹ In addition, s. 655.012(1)(b), F.S., grants the OFR access to all books and records of all persons over whom the OFR exercises general supervision as is necessary for the performance of the duties and functions of the OFR, as prescribed by the Codes.

² Florida Attorney General Opinion 07-27.

Effect of the Bill

Informal Enforcement Actions

The bill creates a limited exemption for “informal enforcement actions” by the OFR, which the bill defines as “a board resolution, document of resolution, or an agreement in writing between the office and a financial institution” that the office imposes on an institution after considering the administrative enforcement guidelines in s. 655.031, F.S., and determining that a formal enforcement action³ is not an appropriate enforcement remedy. However, the bill limits the exemption by providing that after an investigation relating to an informal enforcement action is completed or ceases to be active, an informal enforcement action is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, only to the extent that disclosure would result in certain events (i.e., impair the safety and soundness of the financial institution, reveal investigative techniques or procedures, etc.).

The public necessity statement provides that public disclosure of informal enforcement actions could erode public confidence in financial institutions in this state and may lead to a reduced level of protection of the interests of the depositors and creditors of financial institution. In addition, the public necessity statement provides that this exemption will, among other things, provide competitive equality to Florida-chartered institutions, because financial institutions that are federally chartered or chartered by other states are protected by those federal or state laws with regard to informal enforcement actions.⁴

Trade Secrets

The bill creates a public records exemption for trade secrets, as defined in s. 688.002, F.S., that comply with s. 655.0591, F.S.,⁵ and that are held by the OFR in accordance with its statutory duties with respect to the Codes. The public necessity statement provides that disclosure of these trade secrets could result in a competitive disadvantage and economic loss to a financial institution.

Definitions

In addition to creating a definition of “informal enforcement action” for the new exemption, the following terms are defined in the bill to clarify existing exemptions in s. 655.057, F.S.:

- Examination report,
- Working papers,⁶ and
- Personal financial information.

Statement of Public Necessity

Section 2 of the bill is the statement of public necessity as required by the State Constitution. It contains:

- Legislative findings that informal enforcement actions and trade secrets must be kept confidential and exempt; and
- Identified public purposes for exempting informal enforcement actions and trade secrets.

Open Government Sunset Review Act

³ Generally, the OFR initiates a formal enforcement action with a cease and desist order issued under s. 655.033, F.S., or a suspension or removal order under s. 655.037, F.S. Pursuant to s. 655.0321, F.S., the OFR is required to consider the public purposes stated in s. 119.14(4)(b), F.S., in determining whether the hearings, proceedings, and documents relating to these formal enforcement actions shall be closed/confidential and exempt from s. 286.011 and s. 119.071(1), F.S., respectively.

⁴ According to the OFR, federal courts have broadly construed 5 U.S.C. §552(b)(8) of the federal Freedom of Information Act, which exempts matters contained in or related to examination, operating, or condition reports prepared by federal financial supervisory and regulatory agencies. E-mail from the OFR (received October 18, 2014), on file with the Insurance & Banking Subcommittee.

⁵ CS/CS/SB 1012 creates s. 655.0591, F.S., to provide a statutory procedure when a person required to submit documents to the OFR pursuant to the Codes claims that such documents contain a trade secret.

⁶ The bill’s definition of “working papers” is substantially similar to the definition of “work papers” in s. 624.319(3)(b)1., F.S., of the Insurance Code.

The bill provides that the newly created public record exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's protection of trade secrets and informal enforcement actions may benefit Florida-chartered financial institutions, since disclosure of such information could result in a competitive disadvantage in the marketplace and reputational risk.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on the OFR, because OFR staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, the OFR could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.