

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 703 Regulation of Financial Institutions

**SPONSOR(S):** Insurance & Banking Subcommittee; Broxson

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 806

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 0 N, As CS	Bauer	Cooper
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee	16 Y, 0 N	Bauer	Hamon

### SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) charters and regulates 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 makes a number of minor clarifying changes to the Codes and streamlines several OFR regulatory processes. Specifically, the bill:

- Amends the definition of a financial institution "main office";
- Authorizes the electronic payment of assessments and clarifies payment deadlines;
- Eliminates the requirement that appraisal costs be approved by the OFR;
- Clarifies the definition of "executive officer";
- Corrects a cross-reference for trust service offices; and
- Provides a uniform due date for annual certifications of capital accounts required of international banking corporations.

The bill has an insignificant fiscal impact on state revenues and expenditures, and may have a positive impact on the private sector.

The bill provides an effective date of October 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

The Florida Office of Financial Regulation (OFR)'s Division of Financial Institutions charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes), and the Florida Financial Institutions Rules, adopted by the Financial Services Commission.<sup>1</sup> The specific chapters under the 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 663, F.S. – International Banking
- Chapter 665, F.S. – Capital Stock Associations
- Chapter 667, F.S. – Savings Banks

As of June 30, 2014, the Division of Financial Institutions licenses and regulates 254 state-chartered financial institutions for safety and soundness.<sup>2</sup>

- 132 banks
- 72 credit unions
- 25 international bank offices
- 12 trust companies

Under the U.S. dual banking system, banks may be chartered under either state or federal law:

- *National banks* are chartered under federal law (the National Bank Act). Their primary federal regulator is the Office of the Comptroller of the Currency (OCC), an independent agency within the U.S. Department of the Treasury.
  - With the enactment of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Office of Thrift Supervision (formerly the primary federal regulator for savings banks and savings and loans associations), was merged into other federal banking agencies on July 21, 2011.<sup>3</sup> Since then, the Office of the Comptroller of the Currency has assumed primary federal regulatory responsibility over *savings banks and savings and loans associations*, in addition to nationally-chartered banks.
- *State-chartered banks* are chartered under the laws of the state in which the bank is headquartered.
  - 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).
  - The primary federal regulator for non-member state banks is the Federal Deposit Insurance Corporation (FDIC).<sup>4</sup>

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<sup>1</sup> Chs. 69U-100 through 69U-150, Fla. Admin. Code. Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.

<sup>2</sup> OFFICE OF FINANCIAL REGULATION, *Fast Facts* (2<sup>nd</sup> ed., Dec. 2014), <http://flofr.com/StaticPages/documents/FastFacts2015.pdf>

<sup>3</sup> 12 U.S.C. §5412-5413.

<sup>4</sup> 12 U.S.C. §1813(q).

Credit unions may also be chartered under either state or federal law. *Federal credit unions* are chartered under the Federal Credit Union Act of 1934. Their primary federal regulator is the National Credit Union Administration (NCUA), which also operates and manages the National Credit Union Share Insurance Fund, which insures deposits for account holders in all federal credit unions and most state-chartered credit unions.<sup>5</sup>

Additionally, *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 those foreign institutions seek to engage in the business of banking or trust business in Florida, which requires a Florida charter and compliance with the provisions of chapter 663 of the Codes. Chapter 663 of the Codes set forth a variety of business models, each of which must be separately licensed by the OFR and abide by the permissible activities accorded to each license type.

### **Effect of the Bill**

The bill clarifies and streamlines several regulatory processes in the Codes for Florida-chartered financial institutions:

#### **Main Office Designation**

Currently, s. 665.005(1)(q), F.S., defines the “main office” or “principal office” of a financial institution to mean only the location designated in a financial institution’s articles of incorporation or bylaws. When a financial institution seeks to re-designate the location of its main office, it must file an amendment to its articles of incorporation or bylaws and obtain the OFR’s approval.<sup>6</sup> Additionally, banks and trust companies must obtain the OFR’s approval to relocate their main offices.<sup>7</sup>

The bill amends the definition of “main office” to include a subsequently re-designated location by way of a relocation application filed with the OFR, and thus eliminates the need to refile or amend its articles of incorporation and provide those to the OFR for approval. According to the OFR, this change would provide an easier, streamlined process for re-designating an institution’s main office.<sup>8</sup>

It is noted that this change does not affect state-chartered credit unions. Current law provides that a credit union may change its “principal place of business” by filing an amendment to its bylaws and obtaining the OFR’s approval. Credit unions are not required to file relocation applications with the OFR.<sup>9</sup>

#### **Assessments**

Currently, s. 655.047, F.S., requires every state financial institution to pay semiannual assessments to the OFR to cover the costs of regulation and supervision. Assessments are based on each institution’s total assets reflected on the statement of condition on the last business day in December and the last

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<sup>5</sup> NATIONAL CREDIT UNION ADMINISTRATION, *Share Information Fund Information, Reports, and Statements: FAQs*, <http://www.ncua.gov/DataApps/Pages/SI-FAQs.aspx> (last visited Feb. 22, 2015).

<sup>6</sup> ss. 655.043 and 658.23(6), F.S. (banks and trust companies). Banks and trust corporations may be formed as corporations or, under specified conditions, as limited liability companies in this state. *See* s. 658.16, F.S. Credit unions do not use articles of incorporations since they are cooperative, nonprofit associations, as opposed to corporations. *See* s. 657.003, F.S.

<sup>7</sup> Section 658.26(2), F.S., and Rules 69U-105.208 and 69U-105.406, F.A.C., set forth the requirements and procedures for relocating the main office of a bank or trust company.

<sup>8</sup> Office of Financial Regulation, Agency Analysis of 2015 House Bill 703, p. 4 (Feb. 19, 2015). It is noted that the Florida Business Corporation Act (ch. 607, F.S.) separately requires every corporation authorized to transact business in this state to designate its principal office in its articles of incorporation, and thereafter kept current in a sworn annual report filed with the Department of State. *See* ss. 607.01401(20) and 607.1622, F.S.

<sup>9</sup> ss. 657.008(1) and 657.0061, F.S. and Rule 69U-110.006(4), Fla. Admin. Code.

business day in June every year.<sup>10</sup> Currently, the Codes do not recognize the ability to pay semiannual assessments electronically, by wire transfer or automated clearinghouse, although the OFR does currently provide this benefit to its chartered financial institutions.<sup>11</sup> In addition, the Codes specify that semiannual assessments paid by mail must be postmarked on or before January 31 and July 31 each year.

Because most of the semiannual assessment payments are made to the OFR electronically, the bill codifies this practice into s. 655.047(2), F.S., and clarifies that the due date of *receipt* of these payments is on or before January 31 and July 31 of each year, rather than “postmarked by” such date. The bill retains the option to mail payments to the OFR, but specifies that mailed payments must also be *received* by January 31 and July 31 every year, not postmarked.

### Appraisals

Currently, s. 655.60, F.S., authorizes the OFR to require a financial institution to complete an appraisal of real estate or other property held by any state financial institution for certain reasons, such as when specific facts or information (with respect to real estate or other property held, secured loans, or lending), or in the OFR’s opinion, the state financial institution’s policies, practices, operating results, and trends give evidence that the state financial institution’s appraisals or evaluations of ability to make payments may be excessive. Other indicators that could trigger a mandatory appraisal include evidence that the institution’s lending or investment may be marginal, or that real estate held by the or assets secured by real estate are overvalued. If the OFR requires an appraisal, then the statute requires that the appraisal must be made by a licensed or certified appraiser selected by the OFR (unless otherwise ordered by the OFR), and also requires the OFR to first approve a statement of costs for such appraisal before the financial institution may pay for it.

However, in many situations, the OFR has found the requirement for regulatory approval of appraisal costs to be burdensome for financial institutions because of the resulting delay to the appraisal process. Additionally, financial institutions would likely have already contracted for the appraisal by the time the OFR reviews the statement of costs.<sup>12</sup>

The bill removes the requirement that the OFR pre-approve appraisal costs. This is consistent with the goals of s. 655.001(2)(h), F.S., which states that the Codes should promote the opportunity of financial institutions’ management to exercise their business judgment in conducting the affairs of the institution. However, the bill does *not* modify the requirements that the financial institution still furnish copies of required appraisals to the OFR and that the appraisals be conducted by licensed or certified appraisers. Additionally, the bill retains the statutory authority for the OFR to accept appraisals required by other regulatory or insuring agencies or corporations.

### Applications for authority to organize banks or trust companies

Currently, the Codes’ general definition of “executive officer” contains a presumption that certain named executives, including the president and the chief executive officer are executive officers, unless excluded from major policymaking functions by board resolution or by the institution’s bylaws, as well as actual non-participation in those major policymaking functions by the individual.<sup>13</sup>

One of the requirements to apply for authority to organize a state bank or trust company is to provide the OFR with certain financial, business, and biographical information of each proposed director, *chief executive officer (if other than the president)*, and trust officer.<sup>14</sup> Because the listing of non-president chief executive officer is confusing and duplicative of the Codes’ general definition of “executive officer,”

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<sup>10</sup> Assessment amounts and related matters are addressed in the following statutes and rules: s. 658.73(1), F.S. and Rule 69U-120.730, F.A.C. (banks and trust companies); s. 657.053, F.S. and Rule 69U-110.053, F.A.C. (credit unions); s. 663.12(2), F.S. and Rule 69U-140.020, F.A.C. (international banks).

<sup>11</sup> Office of Financial Regulation, Agency Analysis of 2015 House Bill 703, pp. 2, 4 (Feb. 19, 2015).

<sup>12</sup> *Id.* at p. 3; 2015 Legislative Proposal from OFR Division of Financial Institutions, p. 5 (Dec. 16, 2014).

<sup>13</sup> s. 655.005(1)(g), F.S.

<sup>14</sup> s. 658.19(1)(f), F.S.

the bill removes these terms from s. 658.19(1)(f), F.S., and replaces them with the term “executive officer,” which includes both president and chief executive officer.

### Trust service offices

Section 660.33(1), F.S., authorizes trust companies to maintain one or more trust service offices at the location of any state or federally chartered bank, association, or credit union that is organized under Florida or federal law and with its principal place of doing business in Florida. However, this provision contains an obsolete cross-reference to s. 660.32, F.S., which was repealed in 1992.<sup>15</sup>

The bill replaces that obsolete cross-reference with s. 658.26, F.S., which is the applicable cross-reference that authorizes trust companies to have principal offices and branch trust companies.

### Certification of capital accounts for international banking corporations

Currently, s. 663.08, F.S., requires licensed international banking corporations with offices in Florida to certify its capital accounts both before opening an office in this state and annually thereafter so long as a bank office is maintained in this state. However, the statute does not contain a specific due date for these annual certifications. This results in the OFR receiving the annual certifications at various times throughout the year and causes confusion for the institutions.<sup>16</sup>

The bill amends this statute to set a uniform annual deadline of “on or before June 30” for all international banking corporations to submit their required certification of capital accounts. The change provides clarity to international banking corporations, and will allow the OFR to better manage its review of certifications.<sup>17</sup>

### Reenactments

For the purpose of incorporating the changes made by the bill, the bill reenacts the following provisions of the Florida Statutes:

- Section 8 of the bill reenacts subsection 655.960(8), F.S.
- Section 9 of the bill reenacts paragraph 663.302(1)(a), F.S.
- Section 10 of the bill reenacts subsection 658.165(1), F.S.
- Section 11 of the bill reenacts subsection 665.013(3), F.S.
- Section 12 of the bill reenacts subsection 667.003(3), F.S.
- Section 13 of the bill reenacts subsection 658.12(4), F.S.

## B. SECTION DIRECTORY:

Section 1: Amends s. 655.005, F.S., relating to definitions.

Section 2: Amends s. 655.047, F.S., relating to assessments; financial institutions.

Section 3: Amends s. 655.60, F.S., relating to appraisals.

Section 4: Amends s. 658.19, F.S., relating to application for authority to organize a bank or trust company.

Section 5: Amends s. 660.33, F.S., relating to trust service offices.

Section 6: Amends s. 663.08, F.S., relating to certification of capital accounts.

Section 7: Reenacts s. 655.960, F.S., relating to definitions.

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<sup>15</sup> Ch. 92-303, Laws of Fla.

<sup>16</sup> Office of Financial Regulation, Agency Analysis of 2015 House Bill 703. (Feb. 19, 2015)

<sup>17</sup> *Id.*

Section 8: Reenacts s. 663.302, F.S., relating to applicability of state banking laws.

Section 9: Reenacts s. 655.165, F.S., relating to banker's banks; formation; applicability of financial institutions codes; exceptions.

Section 10: Reenacts s. 665.013, F.S., relating to applicability of chapter 658.

Section 11: Reenacts s. 667.003, F.S., relating to applicability of chapter 658.

Section 12: Reenacts s. 658.12, F.S., relating to definitions.

Section 13: Provides an effective date of October 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

According to the OFR, the bill may have an insignificant negative fiscal impact on revenues deposited into the Financial Institutions Regulatory Trust Fund. The bill clarifies the date that statutorily required financial assessments are due. The OFR indicates that the clarification of the due date will likely create a potential reduction in fine collection from non-compliance.<sup>18</sup> However, the loss in revenue would likely not exceed \$9,900 in any given year. Fines collected from late filed financial institution assessments from 2012 through 2014 are as follows:<sup>19</sup>

Semi-Annual Assessment Date	Number of Late Filed Financial Institution Assessments	Revenue Collection
June 30, 2012	10	\$ 6,100
December 31, 2012	5	\$ 3,800
June 30, 2013	3	\$ 2,100
December 31, 2013	3	\$ 3,900
June 30, 2014	4	\$ 2,000
December 31, 2014	4	\$ 1,200

#### 2. Expenditures:

The OFR indicates the bill has a potential positive, yet indeterminate fiscal impact on state expenditures caused by the streamlining of processes, resulting in potential savings of staff time within the OFR.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

<sup>18</sup> *Id.*

<sup>19</sup> Email correspondence with the Office of Financial Regulation (Mar. 3, 2015) on file with the Government Operations Appropriations Subcommittee.

The bill may have an indeterminate positive impact on the private sector due to process improvements, reduction in paperwork requirements and costs, and decreased compliance costs and fines due to bill's clarification of several provisions.<sup>20</sup>

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill. However, passage of the bill will require the Financial Services Commission to amend or update the following administrative rules to implement the bill's changes: Rule 69U-110.021, F.A.C.; Chapters 69U-100, 69U-105, 69U-120, and 69-140, Fla. Admin. Code.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2015, the Insurance & Banking Subcommittee considered and adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the original bill's section 4, which created a new statute requiring credit unions to notify OFR of certain newly elected or appointed personnel, due to a similar requirement already in current law.

The staff analysis has been updated to reflect the committee substitute as passed by the Insurance & Banking Subcommittee.

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<sup>20</sup> Office of Financial Regulation, Agency Analysis of 2015 House Bill 703. (Feb. 19, 2015)  
**STORAGE NAME:** h0703e.RAC  
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