HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 1383 Transactions with Foreign Financial Institutions
SPONSOR(S): Regulatory Affairs Committee; Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Moraitis
TIED BILLS: HB 1385 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	9 Y, 3 N, As CS	Bauer	Luczynski
2) Government Operations Appropriations Subcommittee	9 Y, 0 N, As CS	Keith	Topp
3) Regulatory Affairs Committee	13 Y, 0 N, As CS	Bauer	Hamon

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes), and ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness, as well as federal Bank Secrecy Act/anti-money laundering laws and economic and trade sanctions administered by the U.S. Treasury. In addition, the OFR regulates international banking corporations (IBCs) that transact business in Florida.

International Banking & Trust Services: 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. An IBC may operate through a variety of business models, all of which must be licensed, and include international trust company representative offices (ITCROs). If an IBC wants to maintain any of these offices in this state, the IBC is required to meet licensure requirements, ongoing safety and soundness requirements, and is subject to the examination and enforcement authority of the OFR including state and federal anti-money laundering and anti-terrorism laws. In 2010, the OFR pursued legislation to strengthen oversight of international banking entities operating in Florida. Specifically, the 2010 legislation requires licensure (through the IBC) of ITCROs which are organized and licensed under the laws of a foreign country, but are established or maintained in Florida for engaging in non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as advertising, marketing, communicating with customers, and providing customer account service information for the IBC. ITCROs are not banks and may not accept deposits or make loans.

The bill creates a moratorium, until July 1, 2017, on the OFR's enforcement of ITCRO licensing requirements with respect to organizations or entities providing services to an "international trust entity" engaging in ITCRO activities, if such person who manages, controls, or is employed by such organization or entity meets certain requirements and provides written assurances to the OFR. The moratorium does not affect the OFR's authority to otherwise enforce applicable provisions of the Codes or to prevent the unlawful conduct of banking or trust business in Florida, fraud, and violations of anti-money laundering and anti-terrorism laws. The bill repeals the moratorium on July 1, 2017.

Correspondent & Payable-Through Accounts with Foreign Financial Institutions Under U.S. Sanctions: The bill requires Florida-chartered financial institutions that maintain correspondent or payable-through accounts with any foreign financial institution owned by a country under a U.S. Treasury sanctions program to identify and report the source of every transaction that passes through the foreign correspondent account to the OFR. The bill also requires the Florida institution to certify that the source does not involve any "confiscated property" as defined in federal law.

The bill has an indeterminate fiscal impact on the state. The bill has no impact on local governments and an indeterminate impact on the private sector.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background: The U.S. Dual Banking System

The U.S. dual banking system allows commercial banks to become chartered (organized) under either federal or state law.

- *National banks* are chartered under federal law, i.e., the National Bank Act.[1] 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.
- *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-members is the Federal Deposit Insurance Corporation (FDIC).[2]

Background: State Oversight of Financial Institutions

The Florida Office of Financial Regulation (OFR) 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. 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. – Associations
- Chapter 665, F.S. – Savings Banks

The OFR does not regulate federally chartered financial institutions and financial institutions that are chartered and regulated in other states. In addition, 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, pursuant to ch. 633, F.S.

The OFR ensures Florida-chartered financial institutions' (FI) compliance with state and federal requirements for safety and soundness. While the Codes do not specifically define "safety and soundness," the Codes define "unsafe and unsound practice" as:

> [A]ny practice or conduct found by the office to be contrary to generally accepted standards applicable to a financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved.[3]

[1] The National Bank Act of 1964 (12 U.S.C. § 24 Seventh) gives enumerated powers and "all such incidental powers as shall be necessary to carry on the business of banking" to nationally chartered banks. To prevent inconsistent or intrusive state regulation from impairing the national system, Congress provided: "No national bank shall be subject to any visitorial powers except as authorized by Federal law." Id. at § 484(a).

[2] 12 U.S.C. §1813(q).

[3] s. 655.005(1)(y), F.S. For a discussion of the FDIC's approach to unsafe or unsound practices, see FDIC's Risk Management Manual of Examination Policies, Section 15.1, at: http://www.fdic.gov/regulations/safety/manual/section15-1.html (last visited Feb. 26, 2016).

Competitive Equality

The Codes contain a unique provision that ensures competitive equality for Florida-chartered FIs with their nationally-chartered counterparts. If a state law places a Florida-chartered FI at a competitive disadvantage with their nationally chartered counterparts, the Codes authorizes the OFR to grant Florida-chartered FIs the authority to make any loan or investment or exercise any power which they could make or exercise as if they were nationally chartered, and provides they are entitled to the same privileges and protections granted to their national counterparts.[4] In addition, this provision states:

> In issuing an order or rule under this section, the office or commission shall consider the importance of maintaining a competitive dual system of financial institutions and whether such an order or rule is in the public interest.

Current Situation on International Banking Regulation

International Banking Corporations (IBCs)

The OFR regulates international banking corporations[5] (IBCs) that transact business in Florida. Such entities are subject to licensure by the OFR[6] 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 business of banking or trust business in Florida, which requires a Florida charter and compliance with the provisions of ch. 663, F.S., and the applicable provisions of the Codes.

An IBC may operate through a variety of business models, all of which must be licensed,[7] and include: international bank agencies;[8] international representative offices;[9] international trust company representative offices;[10] international administrative offices;[11] and international branches.[12] The definition of "financial institution" includes the following: international bank agency; international banking corporation; international branch; international representative office; international administrative office; and international trust company representative office.[13]

If an 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 IBC 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;

[4] s. 655.061, F.S.
[5] 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. See s. 663.01(6), F.S.
[6] ss. 663.04 and 663.05, F.S.
[7] s. 663.06(1), F.S.
[8] s. 663.061, F.S.
[9] s. 663.062, F.S.
[10] s. 663.0625, F.S.
[11] s. 663.063, F.S.
[12] s. 663.064, F.S.
[13] s. 655.005(i), F.S.

- Is adequately supervised[14] 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 in general that IBCs 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:

- s. 655.031, F.S., relating to administrative enforcement guidelines;
- s. 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses;
- s. 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access;
- s. 655.033, F.S., relating to cease and desist orders;
- s. 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person;
- s. 655.041, F.S., relating to administrative fines and enforcement; and
- s. 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.

"Adequate Supervision" of IBCs

A core aspect of the OFR's regulation of international banking entities is that the IBC is "adequately supervised" by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered. In 1993, the OFR's predecessor agency, the Department of Banking & Finance, promulgated a rule regarding principles of adequate supervision of an IBC's foreign establishments.[15] Currently, the statutory authority for an adequate supervision rule is found in s. 663.05(8), F.S., which requires the principles to be based upon the "need for cooperative supervisory efforts and consistent regulatory guidelines," and must address capital adequacy, asset quality, management, earnings, liquidity, internal controls, audits, and foreign exchange operations and positions of the IBC. However, this statutory authority does not require examination by the home-country regulatory authorities of any offices of the IBC in this state. The rule also provides that an IBC is "adequately supervised" if it is subject to "consolidated supervision" or "comprehensive supervision," which generally describes the robustness of the home country's supervision.

[14] Rule 69U-140.003, F.A.C., sets forth principles of adequate supervision of an IBC's foreign establishments, and is "based upon the need for cooperative supervisory efforts and consistent regulatory guidelines and shall address, at a minimum, the capital adequacy, asset quality, management, earnings, liquidity, internal controls, audits and foreign exchange operations and positions of the international banking corporation." s. 663.05(8), F.S.

[15] Rule 69U-140.003, F.A.C.

Financial Action Task Force (FATF)

The OFR's adequate supervision rule does not explicitly consider the designations by the Financial Action Task Force (FATF). In 1989, a Group of Seven (G7) summit established the FATF to examine and develop measures to combat money laundering. In 2001, the FATF expanded its mandate to incorporate efforts to combat terrorist financing. The FATF is an intergovernmental body by the ministers of its member jurisdictions, which currently totals 37 countries and includes the United States which became a member of the FATF in 1990. The FATF Secretariat, which is housed at the Organisation for Economic Co-operation and Development (OECD) in Paris, provides administrative support to the FATF.[16]

The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system, such as the proliferation of weapons of mass destruction. The FATF is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

They form the basis for a coordinated response to these threats to the integrity of the financial system and help ensure a level playing field. The FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.[17]

The FATF also identifies jurisdictions with strategic deficiencies in their anti-money laundering and financing of terrorism and proliferation measures. Jurisdictions subject to a FATF call on its members to apply counter-measures to protect the international financial system from the ongoing and substantial money laundering and terrorist financing risks emanating from these jurisdictions. In its most recent Public Statement (sometimes referred to as the FATF blacklist), the FATF identified Iran and the Democratic People's Republic of Korea (North Korea).[18] The FATF also identified the following jurisdictions as having strategic deficiencies: Afghanistan, Bosnia and Herzegovina, Guyana, Iraq, Lao PDR, Myanmar, Papua New Guinea, Syria, Uganda, Vanuatu, and Yemen.[19]

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.[20] An international branch has the same rights and privileges as a federally licensed international branch.[21]

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[16] The OECD's primary mission is to improve and promote economic policies among its members; as such, the OECD's focus is harmful tax practices, principally targeting the activities of tax havens.

[17] FINANCIAL ACTION TASK FORCE, *About: Who We Are and What We Do*, at: http://www.fatf-gafi.org/about/whoweare/ (last visited Feb. 29, 2016).

[18] FINANCIAL ACTION TASK FORCE, *FATF Public Statement – 19 February 2016*, at: http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-february-2016.html (last visited Feb. 29, 2016).

[19] FINANCIAL ACTION TASK FORCE, *Improving Global AML/CFT Compliance: on-going process – 19 February 2016*, at: http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-february-2016.html (last visited Feb. 29, 2016).

[20] s. 663.061, F.S.

[21] s. 663.064, F.S.

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.[22] An administrative office may provide personnel administration, data processing or recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.[23]

International Trust Company Representative Offices (ITCROs)

An 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 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.[24]

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.[25]

International Financial Services

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.[26] Industry representatives 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.[27]

[22] s. 663.062, F.S.
[23] s. 663.063, F.S.
[24] s. 663.01(9), F.S.
[25] Section 663.0625, F.S.
[26] Memorandum from McDonald Hopkins LLC, *International Trust Company Representative Offices* (Mar. 8, 2015), on file with Insurance & Banking Subcommittee staff.
[27] *Id.*

According to the Florida International Administrators Association (FIAA), 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 upon 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). Industry advocates 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 lawyers, accountants, and financial advisors - not the general public.[28] 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.[29] FIAA seeks to create a limited purpose ITCRO (LPITCRO) regulatory framework that would be subject to registration; clarify that the administrative and compliance services do not involve discretionary investment, 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.

Robert Allen Stanford & 2010 International Banking Legislation

In 2010, the Florida Legislature amended ch. 663, F.S., to establish the OFR's oversight responsibilities for "offshore" international non-depository trust companies that wish to establish an international trust company representative office (ITCRO) in Florida.[30] The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities. The legislation was due, in part, to the exposure of the $7 billion dollar Ponzi scheme perpetrated by former Texas billionaire Robert Allen Stanford.

Since the late 1990s, Stanford controlled an international group of privately-held financial services companies under the umbrella organization Stanford Financial Group, which included Stanford Trust Company Limited, a non-depository trust company organized under the laws of Antigua and Barbuda. In the 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. In late 1998, the Division of Banking of the Department of Banking and Finance (the OFR's predecessor agency) entered into a memorandum of understanding (MOU)[31] with the Stanford Trust Company Limited (Stanford Trust), an offshore trust company organized under the laws of Antigua and Barbuda. This MOU allowed the Stanford Trust to establish a trust representative office in Florida, and delineated permissible and impermissible activities.

The OFR, along with federal regulatory and law enforcement agencies, coordinated an investigation into the operations of Stanford Trust's Miami trust company representative offices. In 2009, Mr. Stanford was charged by the U.S. Securities and Exchange Commission for operating an $8 billion Ponzi scheme involving overvalued certificates of deposit (CD) issued by Stanford International Bank, LTD, located in Antigua. These CDs were marketed by representative offices in the U.S., some of which were located in Florida. The scheme is alleged to have involved over 30,000 clients in 136 countries on six continents. In 2012, Mr. Stanford was federally prosecuted and convicted of multiple

[28] *Id.*
[29] *Id.*
[30] Ch. 2010-9, Laws of Fla.
[31] Florida Department of Banking and Finance and Stanford Trust Company Limited, Memorandum of Agreement (Dec. 1998), on file with Insurance & Banking Subcommittee staff.

counts of mail and wire fraud, obstruction, and conspiracy (including conspiracy to commit money laundering). He was sentenced to 110 years in prison for orchestrating a 20-year investment fraud scheme in which he misappropriated over $7 billion from Stanford International Bank. Only recently did federal authorities and the U.S. receiver reach a settlement agreement to expedite the distribution of assets back to victims of Stanford's Ponzi scheme.[32]

In addition to attempting to address and prevent the type of scheme perpetrated by Mr. Stanford, the OFR also sought the legislation in 2010 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. The 2010 legislation sought to address those issues and brought ITCRO's under the already established regulatory oversight capabilities of the OFR. The OFR has the statutory 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. By specifically providing for the licensure of representative offices of international non-depository trust companies, the OFR was better positioned to provide for regulatory oversight of offshore trust companies and related operations in Florida. The 2010 ITCRO legislation also authorized the Financial Services Commission to adopt rules regarding other licensing standards that are considered necessary to ensure the safe and sound operations of the trust representative office (ITCRO) in this state.[33]

To date, no ITCROs are licensed with the OFR, although 2 international administrative offices, 10 international bank agencies, 6 international representative offices, and 6 international bank branches are currently licensed with the OFR.[34]

Limited Purpose International Trust Company Representative Offices (LPITCROs) Proposal

Industry representatives have indicated that the 2010 legislation created regulatory ambiguity for international trust companies and their Florida-based marketing offices, ITCROs, potentially subjecting them to the $20 million capital requirements for operating "what is essentially a marketing and liaison office in Florida."[35] FIAA seeks 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"; therefore, they should be exempt from its licensure and capital requirements, but still subject to appropriate registration and supervision by the OFR. HB 1383, as originally filed, amends ch. 663, F.S., to create a new entity known as limited purpose international trust company representative office (LPITCROs).

Under current law, an offshore entity that proposes the establishment of an ITCRO is required to obtain a license under ch. 663, F.S. The bill, as originally filed, would require only the onshore LPITCRO to be registered with the OFR. As a result, the operations and controlling shareholders of the offshore non-depository trust company would be unknown while allowing key regulatory oversight parameters such as capital requirements to be minimized, exposing unascertainable risk to consumers doing business in Florida. 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 OFR has expressed numerous policy, other regulatory, technical, and implementation concerns about the proposed LPITCRO regulatory framework.[36]

Effect of the Bill on ITCROs

[32] U.S. DEPARTMENT OF JUSTICE, *Pending Criminal Division Cases: U.S. v. Robert Allen Stanford et al.*, at http://www.justice.gov/criminal-vns/case/stanfordr (last visited February 3, 2016).
[33] s. 5, ch. 2010-9, Laws of Fla. To date, no rules have been adopted to implement ITCRO licensing standards or to adopt application forms for ITCROs.
[34] OFFICE OF FINANCIAL REGULATION, *Financial Institution Search*, at https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx (search conducted Jan. 28, 2016).
[35] Memorandum from McDonald Hopkins LLC (Mar. 8, 2015), on file with Insurance & Banking Subcommittee staff.
[36] Office of Financial Regulation, 2016 Agency Analysis of House Bill 1383, pp. 12-22 (Jan. 19, 2016).

Section 2 of the bill amends s. 663.01, F.S., to create a definition of "international trust entity" (ITE) to mean an international trust company, an international business, an international business organization, or an affiliated or subsidiary entity that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised. This subsection is repealed July 1, 2017.

Section 3 of the bill creates a new section of ch. 663, F.S., to impose a moratorium on the OFR's enforcement of ch. 663, F.S. until June 30, 2017, with respect to any ITCRO or any person who manages or controls or is employed by such ITCRO, if such person:

- Has been organized to conduct business in Florida since October 1, 2013;
- Has not been fined or sanctioned as a result of any complaint with the OFR or any other state or federal regulatory agency;
- Has not been convicted of a felony or ordered to pay a fine or penalty in any proceeding initiated by any local, state, foreign law enforcement or international agency within ten years before the effective date of the moratorium;
- Has not had any of its directors, executive directors, principal shareholders, or managers or employees arrested for, charged with, convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any offense that is punishable by imprisonment for one year or more, or to any offense involving money laundering, tax evasion, fraud, or that is otherwise related to the operation of a financial institution within ten years before the effective date of this section;
- Does not provide any services to any ITE that is in in bankruptcy, conservatorship, receivership, liquidation, or similar status under the laws of any country;
- Does not provide banking services or promote or sell investments or accept custody of assets;
- Does not act as a fiduciary, including but not limited to, accepting a fiduciary appointment, executing the fiduciary documents that create a fiduciary relationship, make discretionary decisions regarding the investment or distribution of fiduciary accounts; and
- Conducts those activities permissible for an ITCRO, as described in s. 663.0625, F.S.

Application Process for the Moratorium

An organization or entity that requests to qualify for this moratorium must notify the OFR in writing by July 1, 2016, and provide:

- Written proof the business has been organized and doing business in Florida since October 1, 2013;
- Name or names under which it conducts business in Florida;
- Address of the locations from which it conducts business and a detailed description of the activities being conducted at the locations; and
- Name of each ITE, the country it is organized, and its officers and directors for which the organization or entity provides services in Florida.

The organization or entity must also provide assurance about each of these ITEs including that the ITE:

- Has authority to engage in trust business;
- Is in good standing and lawfully exists under the laws of the jurisdiction it is authorized;
- Is not in bankruptcy, or similar status; and
- Is not operating under the direct control of the government or other regulatory authority within seven years before the date of the moratorium notification to the OFR.

The organization or entity must include with the required information a declaration under penalty of perjury signed by the executive officer or managing member that the information provided to the OFR is true and correct to the best of his or her knowledge.

The OFR's Role and Authority: Processing Requests for Moratorium

In processing the request to qualify for the moratorium, the OFR must confirm the following information provided by an organization, entity or the ITE:

- Each ITE is adequately supervised by the appropriate regulatory authority that has similar responsibilities in the foreign country in which it is organized, chartered or licensed, or has similar authorization by operation of law. An ITE with foreign establishments is considered to be adequately supervised if it is subject to consolidated supervision. Consolidated supervision is supervision which enables the appropriate regulatory authority, or equivalent or other similarly sanctioned body, organization, governmental entity or recognized authority that has similar responsibilities of the home country, to evaluate the safety and soundness of the ITE operations. Further, the bill provides additional requirements relating to adequate supervision.
- An ITE (including its officers or subsidiaries) is considered adequately supervised if it is subject to comprehensive supervision. The bill provides that comprehensive supervision is supervision that ensures the supervisory processes and procedures are designed to inform the home country supervisor about the ITE's financial condition, including capital position; asset management and asset administration; internal controls and audit; compliance with existing laws and regulations; and the capability of management. The bill provides additional requirements relating to comprehensive supervision.
- The jurisdiction of the ITE or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the ITE, is not listed on the Financial Action Task Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.

Upon receipt of a moratorium request, the OFR will review the information and request any additional information to complete the request for the moratorium within 30 days after receipt. The organization or entity must provide the additional information within 45 days after the receipt of the notice from the OFR. If the OFR does not request the additional information within 30 days after receipt, the moratorium request is deemed complete as of the date it was received. Within 20 days after receipt of any additional information requested, the OFR must deem the request complete or provide notification to the organization or entity that the information provided does not satisfy the OFR's request.

Within 90 days after receipt of a completed notification, the OFR must confirm with the organization or entity if they are or are not a party to the moratorium. If the OFR fails to notify the organization or entity within the 90 days whether the organization or entity is a party to the moratorium, then the organization or entity is considered a party to the moratorium.

OFR's Enforcement Authority

During the moratorium period, the OFR may conduct an onsite visitation of an organization or entity operating in Florida to confirm information provided to the OFR in deeming the organization or entity qualified for the moratorium. If the OFR finds that the organization or entity made a material misstatement in its request to qualify for the moratorium, the OFR must issue an immediate final order suspending the qualification of the organization or entity. The bill provides that the moratorium does not affect the OFR's authority to otherwise enforce the Financial Institutions Codes.

The bill provides that Section 3 of the bill is repealed July 1, 2017.

Current Situation on Correspondent & Payable-Through Accounts and Foreign Financial Institutions Under U.S. Treasury Sanctions

Federal Bank Secrecy Act/Anti-Money Laundering Regulations (BSA/AML)

The Financial Crimes Enforcement Network (FinCEN) is a bureau within the U.S. Department of the Treasury whose mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the *collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities*. While it shares some common goals with OFAC in terms of safeguarding American financial interests, FinCEN administers the federal Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the "Bank Secrecy Act" or "BSA"), which requires U.S. FIs to assist U.S. government agencies to detect and prevent money laundering. The BSA was amended by the USA PATRIOT Act of 2001 to include additional measures to prevent, detect, and prosecute terrorist-related activities and international money laundering.

BSA/AML programs are an important component of safety and soundness supervision, "due to the reputational, regulatory, legal, and financial risk exposure to a bank involved in money laundering schemes or willfully violating the BSA statute."[37]

The BSA requires all U.S. financial institutions to maintain comprehensive risk management and AML compliance programs, including:

- Risk management policies and procedures, namely, "Know Your Customer" (KYC), Customer Due Diligence (CDD), and Customer Identification Programs (CIPs);
- Keeping records of cash purchases of negotiable instruments;
- Filing reports of cash transactions exceeding $10,000 (daily aggregate amount);
- Designation of a BSA compliance officer and training programs for the FI's employees; and
- Reporting suspicious activity that might signify money laundering, terrorist financing, tax evasion, or other criminal activities. FinCEN regulations provide that banks must file a suspicious activity report (SAR) if it involves at least $5,000, and the bank knows, suspects, or has reason to suspect that the transaction involves funds derived from illegal activities, is intended or conducted in order to hide or disguise funds or assets derived from illegal activities, is designed to evade BSA or other regulatory requirements, or has no business or apparent lawful purpose.

Some examples of potentially suspicious activity are:

- A customer uses unusual or suspicious identification documents that cannot be readily verified.
- Funds transfer activity occurs to or from a FI located in a higher risk jurisdiction distant from the customer's operations.
- The currency transaction patterns of a business show a sudden change inconsistent with normal activities.
- Goods or services purchased by the business do not match the customer's stated line of business.
- Customers conducting business in higher-risk jurisdictions.
- Official embassy business conducted through personal accounts.
- Multiple accounts are used to collect and funnel funds to a small number of foreign beneficiaries, both persons and businesses, particularly in higher-risk locations.[38]

Federal and state banking regulators also oversee these recordkeeping and reporting requirements as part of their respective examination duties. In addition, if Treasury finds "reasonable grounds" exist for concluding that a non-U.S. jurisdiction or any financial institution operating outside of the U.S. is of "primary money laundering concern," Treasury may subject U.S. financial institutions to special measures, including prohibitions or conditions on opening or maintaining certain correspondent or payable-through accounts.[39] Specifically, the BSA/AML requires U.S. financial institutions to take certain customer identification and due diligence measures regarding *correspondent and payable-through accounts*, if the U.S. Treasury determines transactions that involve jurisdictions outside of the U.S. to be of "primary money laundering concern."[40]

FinCEN has estimated that there are approximately 300 financial institutions in the U.S. that provide correspondent banking services to foreign financial institutions. Correspondent banking is essential to the U.S. and international financial systems by facilitating transactions critical for remittances, economic development, and trade finance. However, the complexity of these relationships (particularly in the

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[37] FEDERAL DEPOSIT INSURANCE CORPORATION, *Bank Secrecy Act Examination Program Overview*, https://www.fdic.gov/regulations/examinations/bsa/ (last visited Feb. 29, 2016).

[38] Federal Financial Institutions Examination Council, *Bank Secrecy Act/Anti-Money Laundering Examination Manual, Appendix F: Money Laundering and Terrorist Financing "Red Flags,"* http://www.ffiec.gov/bsa_aml_infobase/pages_manual/olm_106.htm (last visited Feb. 26, 2016).

[39] 31 U.S.C. §5318A(e)(1)(B) and (C) define "correspondent account" and "payable-through account" as:
"Correspondent account" means an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution.
"Payable-through account" means an account, including a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act), opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

[40] 31 U.S.C. §5318A(b).

intermediate layers) and the typical lack of relationship with the payment originator raises significant risks and customer due diligence obligations that some correspondent accounts can be exploited to facilitate illegal proceeds through the U.S.[41]

Florida Control of Money Laundering in Financial Institutions Act

The Florida Control of Money Laundering in Financial Institutions Act incorporates federal BSA/AML recordkeeping and reporting requirements for Florida-chartered FIs, and sets forth administrative remedies, criminal sanctions, and civil money penalties that are enforced by the OFR.[42]

In 2014, the Legislature amended the Florida Control of Money Laundering in Financial Institutions Act to include the BSA/AML provisions relating to terrorist financing, as enacted by the USA PATRIOT Act of 2001. The legislation also added language requiring Florida-chartered FIs to have a BSA/AML compliance officer who is responsible for the institution's BSA/AML policies and procedures. Further, it adds that the financial institution's board of directors is responsible for the efficacy of the BSA/AML program. The bill also created a definition for the term "suspicious activity," adding that a suspicious activity report made under this section is entitled to the same confidentiality provided under the BSA/AML regulations. Additionally, the 2014 legislation conformed cross-references to terrorist financing provisions throughout the Codes.

Office of Foreign Assets Control (OFAC) and U.S. Sanctions Programs

The Office of Foreign Assets Control (OFAC) is another bureau of the U.S. Treasury that administers and enforces numerous economic and trade sanctions, based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the United States' national security, foreign policy, or economy. These sanctions can be either comprehensive or selective, as well as program-based (e.g., counter narcotics trafficking, counterterrorism, or cyber-related) or geographically targeted, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals. Currently, the OFAC administers over 20 country-specific sanctions programs, including Cuba.[43]

The OFAC regulations are broad in scope. All U.S. persons (including U.S. citizens and permanent resident aliens regardless of where they are located) and entities within the U.S., all U.S. incorporated entities and their foreign branches must comply with OFAC regulations. This means that all financial institutions, regardless whether they are federally chartered or state chartered, are also bound. U.S. persons, including U.S. financial institutions, are required to "block" (freeze) targeted property which means that title to the blocked property remains with the target, but the exercise of powers and privileges normally associated with ownership is prohibited without OFAC authorization. Blocking immediately imposes an across-the-board prohibition against transfers or dealings of any kind with regard to the property.[44] Every transaction that a U.S. financial institution engages in is subject to OFAC regulations. If a bank knows or has reason to know that a target is party to a transaction, the bank's processing of the transaction would be unlawful.[45]

In addition, OFAC regulations prohibit financial institutions from doing business with specific individuals, groups, and entities that are owned or controlled by, or acting for or on behalf of, targeted countries, known as the Specially Designated Nationals (SDNs) and Blocked Persons List. The OFAC can

[41] U.S. Department of the Treasury, *2015 National Money Laundering Risk Assessment*, pp. 40-41.
[42] s. 655.50, F.S.
[43] For a list of current OFAC sanctions programs, see U.S. DEPARTMENT OF THE TREASURY, *Resource Center: Sanctions Programs and Country Information*, at: https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx (last visited Feb. 26, 2016).
[44] U.S. DEPARTMENT OF THE TREASURY, *OFAC FAQs: General Questions*, at https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#basic (last visited Feb. 26, 2016).
[45] U.S. DEPARTMENT OF THE TREASURY, *OFAC FAQs: Sanctions Compliance – Additional Questions from Financial Institutions #44 and 45*, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_compliance.aspx#other_fi (last visited Feb. 29, 2016).

designate individuals and entities as SDNs and Blocked Persons, regardless whether their country of residence is listed as a state sponsor of terrorism.

U.S./Cuba Relations and Recent Normalization Policy

In 1917, Congress enacted the Trading With the Enemy Act (TWEA) to empower the President to regulate and embargo trade with foreign nations.[46] To date, the only nation that remains designated as an enemy under TWEA is Cuba. With respect to Cuba, the President has repeatedly exercised the TWEA power through the comprehensive Cuban Assets Control Regulations (CACR), which the U.S. Treasury first adopted in 1963 and enforces through its OFAC. Together, the TWEA and the CCAR are the main mechanism of domestic enforcement of the U.S. trade embargo against Cuba.

In 1996, Congress enacted the Cuban Liberty and Democratic Solidarity Act ("Libertad Act" or the "Helms-Burton Act"), which also continued the embargo indefinitely and "effectively suspends…the requirement that the President revisit the embargo each year."[47] A significant aspect of the Libertad Act is that it creates a private cause of action by which U.S. nationals with claims to "confiscated property" in Cuba may file suit in U.S. courts against persons that may be "trafficking" in that property. Such claims may be certified to the Foreign Claims Settlement Commission, a quasi-judicial, independent agency within the U.S. Department of Justice. Since its inception, the commission has approved nearly $2 billion in awards (principal only) for claims against the Cuban government; however, the U.S. has not yet settled these claims with Cuba.[48]

On December 17, 2014, the United States and Cuba announced an agreement to normalize relations, and the White House directed the U.S. Treasury and the U.S. Department of Commerce to amend their regulations to reestablish certain economic development measures such as commercial air travel, telecommunications, business operations in Cuba, and remittances.[49]
In January 2015, the U.S. Treasury's OFAC published amendments to CACR regulations to allow U.S. banks to open correspondent accounts in Cuban banks for certain transactions (such as supporting Cuban official missions in the U.S.), and to permit U.S. travelers to use U.S. debit and credit cards in Cuba.[50] Because the trade embargo remains in place, a correspondent account relationship must be established by U.S. financial institutions in order to transfer funds to Cuba.

Since 1982, the U.S. has listed Cuba on its list of state sponsors of terrorism. On May 29, 2015, the U.S. removed Cuba from that list.

In July 2015, following the newly amended CACR regulations, a Florida-chartered FI, Stonegate Bank, announced it was establishing a correspondent banking relationship with Banco Internacional de Comercio, a bank owned by the Cuban government. To date, Stonegate Bank's correspondent relationship with Banco Internacional de Comercio is strictly limited to U.S. embassy business.[51]

Despite these developments, due to the significant compliance risks under federal law described above, financial institutions have generally expressed caution and skepticism in entering this market.[52]

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[46] ch. 106, 40 Stat. 411 (1917) (codified as amended at 50 U.S.C. app. §§ 1–6, 7–39, 41–44).
[47] 22 U.S.C. §§ 6021-6091. *See United States v. Plummer*, 221 F.3d 1298, 1308 n.6 (11th Cir. 2000).
[48] U.S. DEPARTMENT OF JUSTICE, *Foreign Claims Settlement Commission of the U.S.: Completed Programs – Cuba*, https://www.justice.gov/fcsc/claims-against-cuba (last visited Feb. 29, 2016). Recently, the U.S. and Cuba began discussions regarding these FCSC-certified claims as well as unsatisfied U.S. court judgments against Cuba, claims of the U.S. government, as well as claims of the Government of Cuba against the U.S. related to the embargo. U.S. DEPARTMENT OF STATE, *United States and Cuba Hold Claims Talks in Havana* (Dec. 7, 2015), at http://www.state.gov/r/pa/prs/ps/2015/12/250426.htm (last visited Feb. 29, 2016).
[49] THE WHITE HOUSE, *Statement by the President on Cuba Policy Changes* (Dec. 17, 2014), at https://www.whitehouse.gov/the-press-office/2014/12/17/statement-president-cuba-policy-changes (last visited Feb. 26, 2016).
[50] 31 C.F.R. §515.584(a).
[51] Mimi Whitefield, *Broward's Stonegate Bank makes a banking breakthrough in Cuba*, MIAMI HERALD (Jul. 22, 2015), http://www.miamiherald.com/news/business/article28072318.html (last visited Feb. 29, 2016).
[52] Mimi Whitefield, *Banking issues must be ironed out as U.S., Cuba repair relations*, MIAMI HERALD (Jan. 30, 2015), http://www.miamiherald.com/news/nation-world/world/americas/cuba/article9554120.html (last visited Feb. 29, 2016).

Effect of the Bill on Correspondent & Payable-Through Accounts

Section 1 of the bill creates s. 655.969, F.S., to require Florida-chartered FIs that maintain correspondent or payable-through accounts with any foreign financial institution owned by a country under a U.S. Treasury sanctions program to identify and report the source of every transaction that passes through the foreign correspondent account to the OFR. The bill also requires the Florida-chartered FI to certify that the source does not involve any "confiscated property" as defined in the Libertad Act, which defines the following:

- "Confiscated"[53] means:
  (A) the nationalization, expropriation, or other seizure by the Cuban Government or ownership or control of property, on or after January 1, 1959--
    (i) Without the property having been returned or adequate and effective compensation provided; or
    (ii) Without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and
  (B) The repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959—
    (i) A debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;
    (ii) A debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or
    (iii) A debt which is incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.
- "Property" means: any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.[54]

The CACR contains an identical definition of "confiscated property," which has not been affected by the recent OFAC amendments pursuant to the White House normalization policy.[55] Additionally, the CACR still prohibits U.S. nationals, permanent resident aliens, and U.S. agencies from knowingly making a loan, extending credit or providing other financing for the purpose of financing transactions involving "confiscated property" the claim to which is owed by a U.S. national, except for financing by a U.S. national owning such a claim for a transaction permitted under U.S. law.[56]

B. SECTION DIRECTORY:

Section 1. Creates s. 655.969, F.S., regarding correspondent accounts with a foreign financial institution.

Section 2. Amends s. 663.01, F.S., relating to definitions.

Section 3. Creates s. 663.041, F.S., regarding reporting requirements and a licensing moratorium.

Section 4. Provides the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[53] 22 U.S.C. § 6023(4).
[54] 22 U.S.C. §6023(12). The definition of "property" excludes real property used for residential purposes unless, as of March 12, 1996, the claim to the property is held by a U.S. national and the claim has been certified under title V of the International Claims Settlement Act or the property is occupied by an official of the Cuban Government or the ruling political party in Cuba.
[55] 31 C.F.R. §§515.311(b) and 515.336.
[56] 31 C.F.R. §515.208.

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As noted above, all U.S. financial institutions, regardless of charter type, must comply with OFAC regulations (including the recently amended CACR regulations) and BSA/AML requirements. In addition to BSA/AML compliance, the OFR and the appropriate federal supervisory regulator (either the Federal Deposit Insurance Corporation or the Federal Reserve) periodically examine Florida-chartered FIs for safety and soundness (financial condition, capital adequacy, etc.), risk management, and for compliance in other areas such as information technology. The bank examination processes, by both state and federal financial institution examiners, includes procedures for examining and assessing a financial institution's policies, procedures, and processes for ensuring compliance with federal regulatory requirements and sanctions. For Florida-chartered FIs, the types of activities addressed in CACR would already be scrutinized as required by federal law and pursuant to state law based upon safety and soundness grounds, or under the Florida Control of Money Laundering in Financial Institutions Act.[57]
Section 1 of the bill, which requires only Florida-chartered FIs to identify and report all transactional information regarding certain correspondent and payable-through accounts, may have an indeterminate negative impact on the private sector, depending on the extent by which they maintain such account relationships.

As noted above, the OFR has the authority under current law to issue orders of general application to ensure competitive equality for Florida-chartered FIs.

Sections 2 and 3 of the bill, which creates a limited moratorium on ITCRO licensing requirements, has an indeterminate impact on the private sector.

D. FISCAL COMMENTS:

The OFR has indicated that Section 1 of the bill is broad and vague in industry scope and agency requirements. Specifically, the OFR states that the requirement is unclear as to the volume, type, and reporting format, as well as which sanctions are involved and what actions the OFR should take upon the information received. As such, Section 1 will likely has an indeterminate fiscal impact on the OFR, which could vary greatly based on the volume of transactions collected, recorded, and tracked by the OFR.[58]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments

[57] s. 655.50, F.S.
[58] Email from Jamie Mongiovi, Director of Communications & Governmental Relations, RE: Draft amendments to Moratorium bill, regarding amendments adopted in Regulatory Affairs Committee (Feb. 26, 2016).

2. Other:

Two federal decisions have addressed state legislation regarding Florida-Cuba relations:

- In 2008, Florida enacted amendments to the Florida Sellers of Travel Act ("Travel Act Amendments"), which placed restrictions on travel businesses in Florida as well as businesses providing services to individuals traveling to or sending humanitarian aid to families in certain designated "terrorist states." In *ABC Charters, Inc. v. Bronson*, 519, F.Supp.2d 1272 (S.D. Fla. 2008), a federal district court found that the law was aimed principally, if not solely, to travel to Cuba. The court enjoined enforcement of the Travel Act Amendments, concluding they will likely be found unconstitutional under the Foreign Affairs Provisions, the Supremacy Clause, the Foreign Commerce Clause, and the Interstate Commerce Clause of the U.S. Constitution.
- In 2012, Florida enacted a "Cuba amendment" to s. 287.4725, F.S., to prohibit companies engaged in business operations in Cuba from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of $1 million or more. In *Odebrecht Const., Inc. v. Secretary, Fla. Dep't of Transp*., 715 F.3d 1268 (11th Cir. 2013), the Eleventh Circuit Court of Appeals affirmed an injunction prohibiting enforcement of the Cuba Amendment. The court found that the Cuba Amendment was preempted by extensive federal statutory and administrative sanctions and would undermine the President's discretionary authority concerning federal policy toward Cuba.

Section 1 of the bill, requiring identification and reporting of certain correspondent and payable-through accounts, may implicate the same constitutional considerations as the statutes enjoined in the *ABC Charters* and *Odebrecht* decisions.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

See Fiscal Comments.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Insurance & Banking Subcommittee considered and adopted a proposed committee substitute (PCS) and an amendment to the PCS and reported the bill favorably as a committee substitute. The amended PCS created a moratorium on the OFR's enforcement of ch. 663, F.S., as they relate to ITCROs and persons related to ITCROS, if such person meets certain requirements and provides written assurances to the OFR. The moratorium does not affect the OFR's authority to otherwise enforce applicable provisions of the Codes or to prevent the unlawful conduct of banking or trust business in Florida, fraud, and violations of anti-money laundering and anti-terrorism laws. The amended PCS also directs the OFR to deliver a report to the Financial Services Commission, the Speaker of the House of Representatives, and the President of the Senate by September 1, 2016, regarding state and federal ITCRO laws and to list jurisdictions raising supervisory concerns for the OFR. The amended PCS contains a repeal date of July 1, 2017.

On February 22, 2016, the Government Operations Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed a requirement that the OFR deliver a report relating to state and federal ITCRO laws and to list any jurisdictions raising supervisory concerns to the Financial Services Commission, the Speaker of the House of Representatives, and the President of the Senate by September 1, 2016.

On February 25, 2016, the Regulatory Affairs Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Define "international trust entity,"

- Provide conditions and procedures for an organization or entity seeking to qualify for a moratorium with the OFR regarding the licensing requirements in ch. 663, F.S., as applied to ITCROs;
- Provide required criteria for the OFR to consider and confirm, including principles of adequate supervision;
- Provide specific timeframes for the OFR in processing requests for the moratorium and the availability of administrative remedies for organizations and entities seeking to qualify for the moratorium;
- Authorize the OFR to conduct onsite visitations during the moratorium and to issue immediate final orders upon findings of material false statements on a request for the moratorium;
- Provide a repeal date of July 1, 2017.
- Require Florida-chartered FIs which maintain correspondent or payable-through accounts with certain foreign financial institutions to identify and report every transaction source to the OFR, and to certify whether the source involves any "confiscated property" as defined in the Libertad Act.

This analysis is drafted to the committee substitute as passed by the Regulatory Affairs Committee.