

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 1490

INTRODUCER: Banking and Insurance Committee and Senator Garcia and others

SUBJECT: Federal Home Loan Banks

DATE: February 23, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
3.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1490 clarifies that the Office of Financial Regulation (OFR), is not prevented from providing otherwise confidential information to any Federal Home Loan Bank (FHLBank) regarding its member institutions pursuant to an information-sharing agreement. An FHLBank generally provides low cost loans, known as advances, to its members to fund residential housing finance and small business and community development activities. Members include thrift institutions, commercial banks, credit unions, insurance companies, and certified community development financial institutions. The OFR is required to execute an information-sharing agreement with the FHLBanks by August 1, 2016.

The bill may have a minimal fiscal impact to the OFR, which can be absorbed within existing resources.

II. Present Situation:

U.S. Banking System

The U.S. dual banking system allows commercial banks to become chartered under either federal or state law. National banks are chartered under federal law,¹ while state-chartered banks are chartered under the laws of the state in which the bank is headquartered.

National banks' primary federal regulator is the Office of the Comptroller of the Currency (OCC), an independent agency within the U.S. Department of the Treasury. 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-FRB member banks is the Federal Deposit Insurance Corporation (FDIC). Credit unions may be either state or federally chartered, and their primary federal regulator is the National Credit Union Administration.²

Office of Financial Regulation

In Florida, 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).³ The OFR does not regulate financial institutions that are nationally chartered or chartered 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.

The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness.⁴ Like its federal counterparts, the OFR conducts regular examinations of Florida institutions. The Codes require the OFR to examine each Florida financial institution during each 18-month period, although it may examine more frequently based on the institution's risk profile, prior exam history, or significant changes in the institution or its operations.⁵ The examinations primarily review the institution's condition as to its capital, asset quality, management, earnings, liquidity, and sensitivity (such as interest rate risk), based on a uniform supervisory rating system (CAMELS) used by state and federal financial institution regulators to classify a financial institution's overall condition.⁶ Upon completion of the examination, the regulator presents its findings and recommended corrective measures to the institution through a confidential examination report.

¹ The National Bank Act enumerates certain powers to nationally chartered banks and "all such incidental powers as shall be necessary to carry on the business of banking" 12 U.S.C. s. 24 Seventh. *See also NationsBank of North Carolina, N.A. v. Variable Life Annuity Ins. Co.*, 513 U.S. 251 (1995).

² 12 U.S.C. s. 1813(q). *See* U.S. Department of the Treasury, OCC, Answers and Solutions: *Who Regulates My Bank?*, available at <http://www.helpwithmybank.gov/national-banks/national-banks.html> (last visited 2/17/2016).

³ Chapters 655, 657, 658, 660, 663, 665, 667, F.S.

⁴ While the Codes do not specifically define "safety and soundness," s. 655.005(1)(y), F.S., defines "unsafe and unsound practice" for purposes of the Codes.

⁵ Section 655.045(1), F.S.

⁶ CAMELS is based on the Federal Financial Institutions Examination Council's Uniform Financial Institutions Rating System. Institutions are assessed on a 1 (best) to 5 (worst) rating system. *See* FDIC Financial Institution Letter FIL-105-96 (Dec. 26, 1996).

Confidentiality of Records and Information

Section 655.057, F.S., governs the confidentiality of records and information relating to investigations; informal enforcement actions; trade secrets; and reports of examination, operations, or condition, including working papers prepared by, or for the use of, the OFR or any state or federal agency responsible for the regulation or supervision of financial institutions in Florida. The statute generally provides that OFR records related to investigations and examination reports are confidential and exempt from s. 119.07(1), F.S.⁷

The law does not prevent or restrict the OFR from “furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions, including Federal Home Loan Banks.”⁸

The OFR routinely shares confidential supervisory information with other federal and state bank regulators in accordance with memoranda of understanding (MOUs) that maintain the confidential treatment that the documents or information would receive under the submitting agency’s applicable confidentiality laws.⁹ In particular, OFR examination reports routinely contain confidential information obtained from other bank regulators, and the OFR is obligated to protect such information pursuant to federal confidentiality restrictions and these MOUs. Willful release of confidential information is a third-degree felony under s. 655.057(13), F.S. Similar federal criminal sanctions may also apply if confidential information of federal bank regulators is improperly released.

Federal Home Loan Banks

The Federal Home Loan Bank (FHLBank) system is a group of government-sponsored enterprises comprised of 11 regional, federally chartered banks.¹⁰ Each FHLBank is owned by its members, which include thrift institutions, commercial banks, credit unions, insurance companies, and certified community development financial institutions.¹¹ Each FHLBank generally provides low cost loans, known as advances, to its members to fund residential housing finance and small business and community development activities.¹² In essence, they are the “bankers’ banks.” Over 7,200 financial institutions are members of the FHLBank System.¹³

To become a member of a regional FHLBank, a financial institution must meet certain eligibility requirements.¹⁴ Federal law requires the institution to demonstrate compliance with certain financial condition requirements by providing documentation such as regulatory financial

⁷ Except as otherwise provided in s. 655.057, F.S., and except for such portions of an investigation or report that are otherwise public record. Section 655.057(2) and (12)(a), F.S.

⁸ Section 655.057(5), F.S.

⁹ See, e.g., s. 655.057(9), F.S.; 12 C.F.R. parts 261 and 309.

¹⁰ 12 U.S.C. 1421 *et seq.* See also Federal Home Loan Bank, available at <http://www.fhlbanks.com/index.html> (last visited 2/17/2016).

¹¹ Federal Housing Finance Agency, *About FHLBank System*, available at <http://www.fhfa.gov/SupervisionRegulation/FederalHomeLoanBanks/Pages/About-FHL-Banks.aspx> (last visited 2/17/2016).

¹² 81 F.R. 3246 (Jan. 20, 2016), *Members of Federal Home Loan Banks*.

¹³ Federal Housing Finance Agency, *2015 FHFA Performance and Accountability Report*, p. 9, available at <http://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA-2015-PAR.pdf> (last visited 2/17/2016).

¹⁴ 12 U.S.C. s. 1424(a)(2)(B); 12 C.F.R. ss. 1263.6(a)(4) and 1263.11.

reports, financial statements, and regulatory examination reports. Members must also agree that examination reports by local, state, or federal bank regulators may be furnished by such authorities to the FHLBank or Federal Housing Finance Agency upon request.¹⁵ The Federal Housing Finance Agency is responsible for ensuring that the FHLBanks “operate in a financially safe and sound fashion,” and agency examiners assess the FHLBanks’ conditions and performance, governance, credit risks, market risks, and operational risks.¹⁶

According to the OFR, federal laws pertaining to FHLBanks do not address or protect the confidentiality of any information a FHLBank or the Federal Housing Finance Agency may obtain from a state agency.¹⁷ The OFR also states that while the Federal Housing Finance Agency would be considered a “federal agency responsible for the regulation of financial institutions” that the OFR is authorized by s. 655.057, F.S., to share certain confidential information with, a FHLBank is not federal agency responsible for the regulation of financial institutions. As a result, the OFR finds that there is uncertainty regarding the OFR’s ability to share information with the FHLBanks under s. 655.057, F.S. The OFR does not currently have an MOU with the Federal Housing Finance Agency or any FHLBank.¹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 655.057(5), F.S., to clarify that OFR is not prevented from providing otherwise confidential information to an FHLBank regarding its member institutions pursuant to an information-sharing agreement. This change correctly reflects the FHLBanks’ status of not being federal agencies responsible for the regulation of financial institutions.

Section 2 requires the OFR to execute an information-sharing agreement with the FHLBanks by August 1, 2016.

Section 3 provides that the bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

¹⁵ 12 C.F.R. s. 1263.31(b).

¹⁶ Federal Housing Finance Agency, *Federal Home Loan Bank System*, available at <http://www.fhfa.gov/SupervisionRegulation/FederalHomeLoanBanks> (last visited 2/17/2016).

¹⁷ Office of Financial Regulation, *Agency Legislative Bill Analysis of Senate Bill 1490* (Jan. 21, 2016). For example, the Freedom of Information Act does not apply to “matters that are...contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an *agency* responsible for the regulation or supervision of financial institutions.” 5 U.S.C. 552(b)(8). For purposes of the act, “agency” generally means an authority of the United States government (excluding its territories and possessions), but not of the states themselves. 5 U.S.C. 551(1).

¹⁸ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill's clarification of the OFR's ability to share information with the FHLBanks may expedite or facilitate financial institutions' membership applications to the FHLBanks and continued supervision by the Federal Housing Finance Agency.

C. Government Sector Impact:

The execution of an information-sharing agreement should allow the OFR and the FHLBanks to provide for the permissible use of supervisory information, restricted access, safekeeping, and other terms that will ensure the confidentiality of information shared. The impact to the OFR is minimal and can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 655.057 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 1, 2016:

The CS clarifies that the OFR's authority to share information with other state, federal, or foreign agencies responsible for the regulation or supervision of financial institutions no longer includes FHLBs, which correctly reflects the status of FHLBs as not being a financial institution regulator. The CS authorizes the OFR to furnish information to FHLBs regarding its member institutions, in accordance with an information-sharing

agreement between the FHLBs and the OFR. The OFR is required to execute the information-sharing agreement with the FHLBs by August 1, 2016.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
