

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 Governmental Oversight and Accountability

BILL: CS/SB 738

INTRODUCER: Banking and Insurance Committee and Senators Mayfield and Steube

SUBJECT: Public Records/International Financial Institutions

DATE: March 24, 2017 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 738 creates public records exemptions for records related to international trust entities and limited service affiliates. The Office of Financial Regulation (OFR) must hold the following information confidential and exempt:

- Personal identifying information of the customer or prospective customers that appear in records relating to reports and working papers regarding examinations, the operations, or the condition of an international trust company representative office or limited services affiliate;
- The names of shareholders or members of an international trust company representative office or limited services affiliate;
- Information received by the OFR from a person from another state or country or the Federal Government that is confidential, or exempt pursuant to the laws of that state or country or pursuant to federal law; and
- Reports of examinations, operations, or condition of a limited service affiliate, including working papers.

The bill authorizes the OFR to disclose otherwise confidential and exempt information in specified circumstances.

The bill also revises the public records exemption for OFR records and information related to investigations and examinations of financial institutions, and confidential documents supplied by other state and federal agencies, to specify that such records are exempt from s. 24(a), Art. I of

the Florida Constitution. The revision is necessary because CS/SB 736 expands the definition of “financial institution” to include an “international trust entity” and “limited services affiliate,” thus expanding the existing public records exemption.

The public records exemptions created and amended by this bill are subject to the Open Government Sunset Review Act and repeal on October 2, 2022, unless the Legislature reviews and saves them from repeal through reenactment.

This bill requires a two-thirds vote from each chamber for passage because the bill creates a series of public records exemptions.

The bill will be effective on the same date CS/SB 736 takes effect, should that bill be adopted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

Regulation of the International Financial Services Market

Miami, the gateway to Latin America, is home to the second-largest banking and finance hub in the United States.²⁴ Estate, tax, and asset protection planning are important components of the region's financial sector, attracting international financial institutions from Europe, Latin America, and Canada serving individual, family, and business customers.

The OFR regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to protect consumers while preserving the integrity of Florida's markets and financial service industries. To achieve this goal, Florida law provides the OFR with regulatory authority over entities regulated under the Financial Institutions Codes (codes).²⁵

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ See http://bus.miami.edu/magazine/fall2014/features/miami_the_global_hub.html (Fall 2014) (last viewed Feb. 27, 2017).

²⁵ Financial Institutions Codes include chs. 655 relating to financial institutions generally, 657 relating to banks and trust companies, 660 relating to trust business, 662 family trust companies, 663 relating to international banking, 665 relating to associations, and 657 relating to savings banks.

International Banking Corporations

The OFR licenses and regulates international banking corporations²⁶ that transact business in Florida.²⁷ 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 jurisdictions, except to the extent that those foreign institutions seek to engage in the banking or trust business in Florida. If foreign institutions do so, they must obtain a Florida charter and comply with the provisions of ch. 663, F.S., and the applicable codes.

An international banking corporation may operate through a variety of business models, all of which are subject to licensure by the OFR.²⁸ These models include international bank agencies, international representative offices, international trust company representative offices (ITCRO), international administrative offices, and international branches. The definition of “financial institution”²⁹ includes an international banking corporation and all of these entities. As of February 2017, there were no ITCROs licensed with the OFR; however, two international administrative offices, nine international bank agencies, six international representative offices, and six international bank branches were licensed with the OFR.³⁰ In addition, the OFR qualified six entities for the moratorium on the OFR’s enforcement of licensing requirements for an international trust entity or related parties pursuant to s. 663.0441, F.S.³¹

If an international banking corporation (IBC) wants to operate an office in Florida, which includes an ITCRO, the IBC is required to meet minimum licensure requirements, and is subject to the examination and enforcement authority of the OFR. The OFR may not issue a license to an international banking corporation 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;
- Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered;³²

²⁶ 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.

²⁷ Sections 663.04 and 663.05, F.S.

²⁸ Section 663.06(1), F.S.

²⁹ Section 655.005(i), F.S.

³⁰ Office of Financial Regulation, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (last visited February 25, 2017).

³¹ The following entities qualified for the moratorium: JTC Miami Corporation, Citco Corporate Services, Inc., Amicorp Services Ltd., Corpag Services USA, Inc., Integritas Inc., and Cisa Latam LLC. Email correspondence from the OFR (Feb. 27, 2017) (on file with Senate Committee on Banking and Insurance).

³² Section 663.05(8), F.S., requires the OFR to establish general principles to evaluate the adequacy of supervision of an international banking corporation’s foreign establishments, and must address at a minimum, the capital adequacy, asset quality, management, earnings, liquidity, internal controls, audits, and foreign exchange operations and positions of the

- 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 that international banking corporations with offices in Florida are subject to the provisions of ch. 655, F.S., as though such corporations were state banks or trust companies.³³ 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.

International Bank Agencies and International Branches

International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution. These activities include making and servicing loans, acting as a custodian, furnishing investment advice, conducting foreign exchange activities and trading in securities and commercial paper.³⁴ An international branch has the same rights and privileges as a federally licensed international branch.³⁵

International Representative Offices and International Administrative Offices

International representative offices and international administrative offices perform activities that are more limited, such as soliciting business for the IBC, providing information to customers concerning their accounts, receiving applications for services, transmitting documents for customers, and arranging for customers to transact business on their accounts.³⁶ In addition to the powers delineated above, an administrative office may administer personnel and operations, engage in data processing and recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.³⁷

International Trust Company Representative Offices

An 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 nonfiduciary activities described in s. 663.0625, F.S.³⁸ An ITCRO may also include

international banking corporation. See Rule 69U-140.003, F.A.C., *Principles of Adequate Supervision of an International Banking Corporation's Foreign Establishment*.

³³ 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.

³⁴ Section 663.061, F.S.

³⁵ Section 663.064, F.S.

³⁶ Section 663.062, F.S.

³⁷ Section 663.063, F.S.

³⁸ In 2010, legislation was enacted to establish OFR's oversight responsibilities of "offshore" international non-depository trust companies that wanted to maintain an ITCRO in Florida [ch. 2010-9, Laws of Fla.]. The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities under the OFR. This legislation was in

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.³⁹ An ITCRO is not a bank 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, such as:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;
- Contacting existing or potential customers and 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; and
- Such other activities as may be approved by the OFR or rules of the Financial Services Commission (commission).⁴⁰

In 2016, the Legislature imposed a moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in ITCRO activities described in s. 663.0625, F.S., if certain conditions are met. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is defined to mean any international trust company, international business, international business organization, or affiliated or subsidiary entities that are 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.

Senate Bill 736 (2017)

CS/SB 738 provides public records exemptions that accompany the classification of international trust entities and limited service affiliates as financial institutions in CS/SB 736 (2017).

CS/SB 736 modernizes the regulatory framework of international financial services under the OFR, which will promote the growth of international financial services market in Florida. The bill revises provisions relating to the regulation of international banking corporations and international trust company representative offices (ITCROs) of international trust entities and creates a regulatory framework for limited service affiliates (LSAs). The LSAs are marketing and liaison offices that engage in activities for the benefit of an international trust entity (ITE). An ITE is an international trust company, an international business, an international business organization, or an affiliated or subsidiary entities 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. An ITCRO may conduct any nonfiduciary activities that are ancillary

response to the exposure of the \$8 billion dollar Ponzi scheme perpetrated by Allen Stanford. 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 in Miami, Florida.

³⁹ Section 663.01(9), F.S.

⁴⁰ Section 663.0625, F.S.

to the fiduciary business of its international trust entity, such as marketing and soliciting for fiduciary business on behalf of the ITE. The bill provides the following changes:

- Establishes oversight of limited service affiliates and offices of international trust entities.
- Provides an abbreviated application process to establish additional locations of an entity that meets certain conditions.
- Authorizes the OFR to implement a risk-based approach for capital requirements, which will allow the OFR to calculate capital requirements that reflect an entity's business model and its particular inherent risk profile.
- Provides the OFR with discretion to allow an after-the-fact licensure process of an entity in the event of an acquisition, merger, or consolidation, which would allow continuity of operations.
- Clarifies permissible activities of entities regulated under ch. 663, F.S.

III. Effect of Proposed Changes:

International Trust Entity Member and Customer Public Records Exemption Created in Section 633.416, F.S.

Section 1 creates a public records exemption that requires the OFR to hold confidential and exempt from disclosure specified information relating to international trust entities. The bill exempts the following from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Personal identifying information of the customer or prospective customers of an affiliated international trust entity. The exemption applies to all such information that appears in records relating to reports and working papers regarding examinations, the operations, or the condition of an international trust company representative office.
- The names of shareholders or members of an affiliated international trust entity.
- Information received by the OFR from a person from another state or country or the Federal Government that is confidential, or exempt pursuant to the laws of that state or country or pursuant to federal law.

The OFR may disclose information governed by the public records exemption to the following persons and in the following situations:

- The authorized representative of the international trust company representative office under examination, if identified by resolution or written consent of the board of directors, or the equivalent, of the international trust entity.
- A fidelity insurance company, upon written consent of the board of directors, or the equivalent, of the international trust entity.
- An independent auditor, upon written consent of the board of directors, or the equivalent, of the international trust entity.
- The liquidator, receiver, or conservator for the international trust entity, if the OFR redacts the personal identifying information of customers, prospective customers, shareholders, and members of the international trust entity.
- A law enforcement agency in furtherance of its official duties and responsibilities.
- Law enforcement or a prosecutorial agency, to report suspected criminal activity.

- Pursuant to a legislative subpoena. The legislative body or committee must maintain confidentiality. Disclosure may be made to the extent the legislative body or committee deems necessary in a case involving the investigation of charges against a public official subject to impeachment or removal.

The public records exemption does not prevent or restrict publication of a report required by federal law.

The willful disclosure of information made confidential and exempt by the bill is a third-degree felony punishable as provided in s. 775.082, F.S., 775.083, F.S., or s. 775.084, F.S.

The public records exemption is subject to the Open Government Sunset Review Act and is repealed effective October 2, 2022, unless the Legislature reviews and reenacts it.

Section 2 provides legislative findings that the public records exemption is a public necessity.

The bill justifies the public records exemption for personal identifying information of customers, prospective customers, shareholders, or members of the affiliated international trust entity because disclosure could defame or jeopardize the personal and financial safety of those individuals and their family members. Such individuals are often of high net worth and the target of criminal predators seeking their assets through extortion, kidnapping, and other crimes.

The bill justifies the public records exemption for public disclosure of information received by OFR from a person from another state or country or the Federal Government because disclosure may hinder the OFR's ability to receive information from other regulatory bodies and to engage in joint examinations with federal regulators.

Limited Service Affiliate Public Records Exemption Created in s. 633.540, F.S.

Section 3 creates a public records exemption that requires the OFR to hold confidential and exempt from disclosure specified information relating to limited service affiliates. The bill exempts the following from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Reports of examinations, operations, or condition of a limited service affiliate, including working papers.
- Personal identifying information of the customers and prospective customers of an affiliated international trust entity. The exemption applies to all such information that appears in records relating to reports and working papers regarding examinations, the operations, or the condition of a limited service affiliate.
- The names of shareholders or members of a limited service affiliate.
- Information received by the OFR from a person from another state or country or the Federal Government that is confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

The OFR may disclose information governed by the public records exemption to the following persons and in the following situations:

- The authorized representative of the limited service affiliate under examination, if identified by resolution or written consent of the board of directors or managers of the limited service affiliate.
- A fidelity insurance company, upon written consent of the board of directors or managers of the limited service affiliate.
- An independent auditor, upon written consent of the board of directors or managers of the limited service affiliate.
- The liquidator, receiver, or conservator for the limited service affiliate, if the OFR redacts the personal identifying information of customers, shareholders, and members of the limited service affiliate.
- A law enforcement agency in furtherance of its official duties and responsibilities.
- A law enforcement or a prosecutorial agency, to report suspected criminal activity.
- Pursuant to a legislative subpoena. The legislative body or committee must maintain confidentiality. Disclosure may be made to the extent the legislative body or committee deems necessary in a case involving the investigation of charges against a public official subject to impeachment or removal.

The public records exemption does not prevent or restrict publication of a report required by federal law.

The willful disclosure of information made confidential and exempt by the bill is a third-degree felony punishable as provided in s. 775.082, F.S., 775.083, F.S., or s. 775.084, F.S.

The public records exemption is subject to the Open Government Sunset Review Act and is repealed effective October 2, 2022, unless the Legislature reviews and reenacts it.

Section 4 provides legislative findings that the public records exemption is a public necessity.

The bill justifies the public records exemption for reports and working papers of examinations, operations, or condition of a limited service affiliate as being necessary for the OFR to effectively and efficiently examine and investigate under ss. 655.012, F.S., 655.032, F.S., and 663.537, F.S. Examinations and investigations deter fraud, ensure the safety and soundness of the financial system, and allow for early detection and corrective action of violations. During examinations and investigations, the OFR may receive sensitive personal and financial information that, if disclosed, could impair the OFR's ability to perform its statutory duties and impair the reputation of the limited services affiliate without warrant.

The bill justifies the public records exemption for personal identifying information of customers, prospective customers, shareholders, or members of a limited service affiliate because disclosure could defame or jeopardize the personal and financial safety of those individuals and their family members. Such individuals are often of high net worth and the target of criminal predators seeking their assets through extortion, kidnapping, and other crimes.

The bill justifies the public records exemption for public disclosure of information received by OFR from a person from another state or country or the Federal Government because disclosure

may hinder the OFR's ability to receive information from other regulatory bodies and to engage in joint examinations with federal regulators.

**Expansion of Public Records Exemption for Investigations of Financial Institutions
Amended in Section 655.057(1), (2), (5), and (15), F.S.**

Section 5 specifies that the existing public records exemption for records and information of an OFR investigation or examination of a financial institution, and confidential documents supplied by other state and federal agencies, are exempt from s. 24(a), Art. I of the State Constitution. The amendment is necessary because CS/SB 736 expands the definition of "financial institution" to include an "international trust entity" and "limited services affiliate," thus expanding the existing public records exemption. Expanding the public records exemptions also subjects them to an Open Government Sunset Review and repeal on October 2, 2022, unless the Legislature reviews and saves the exemptions from repeal by reenacting them.

Section 6 provides legislative findings that expanding the public records exemptions to international trust entities and limited services affiliates is a public necessity. Such entities should receive the same protections afforded to other financial institutions to prevent them from being disadvantaged. The exemption for reports of examinations, operations, or condition and associated working papers is needed to allow the OFR to administer its duties, which deter fraud and ensure the safety and soundness of the financial system. Disclosure of such records could cause unwarranted damage to the good name or reputation of a financial institution and impair its, and the financial system's, safety and soundness. Disclosure of records and information relating to an investigation could jeopardize the integrity of another investigation or reveal investigative techniques, to the detriment of the OFR's ability to administer its duties. Revealing personal financial information or a confidential source's identity could damage those persons or jeopardize their safety.

Effective Date

Section 7 makes the bill effective on the date CS/SB 736 or similar legislation takes effect during the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The criminal penalty provisions making it a felony to “willfully disclose confidential and exempt information” could be construed to be drafted too broadly. The intent of the language appears make it a felony to disclose confidential and exempt information in contravention of the relevant sections.

Paragraph 2 of Section 6 of this bill appears to be the public necessity statement corresponding to the inclusion of s. 24(a), Art. I of the State Constitution, however, this is not clearly expressed.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 655.057 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 663.416 and 663.540.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Banking and Insurance on March 6, 2017:

Links the bill to SB 736 and creates an effective date.

B. Amendments:

None.