

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 Banking and Insurance

BILL: SB 416

INTRODUCER: Senator Thurston

SUBJECT: Governance of Banks and Trust Companies

DATE: January 9, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 416 amends the Financial Institution Codes to expand the pool of eligible individuals who may qualify to serve as a director, president, or chief executive officer of a new or existing bank or trust company that is subject to regulation by the Office of Financial Regulation (OFR). Further, the bill revises the corporate investment limitations. The OFR licenses, and regulates various entities that engage in financial services in Florida, including state-chartered banks and trust companies.

For existing and new state-chartered banks and trust companies, the bill extends the lookback period from 3 to 5 years for certain officers and directors to have met the minimum 1 year of direct financial institution experience. Under current law, at least two of the proposed directors, who are not also proposed officers, must have had at least 1 year of direct financial institution experience within 3 years prior to the submission of a bank or trust company application to the OFR. Likewise, for existing state-chartered banks or trust companies, the president, chief executive officer, or any other person with an equivalent rank, must have had at least 1 year of direct experience within the last 3 years.

The bill requires that at least a majority, rather than three-fifths, of the directors of a state-chartered bank or trust company must have resided in this state for at least 1 year preceding their election and must continue their residency in Florida for the duration of their time in office. This change will align the residency requirement for Florida state-chartered banks with the residency requirement for national banks.

The bill has no fiscal impact on the Office of Financial Regulation.

II. Present Situation:

Regulation of State-Chartered Financial Institutions in Florida

The Office of Financial Regulation (OFR) regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to provide for and promote the safety and soundness of financial institutions while preserving the integrity of Florida's markets and financial service industries.¹ Florida law provides the OFR with regulatory authority over entities regulated under the Financial Institutions Codes (codes). The codes include:

- Ch. 655, F.S., relating to financial institutions generally;
- Ch. 657, F.S., relating to credit unions;
- Ch. 658, F.S., relating to banks and trust companies;
- Ch. 660, F.S., relating to trust business;
- Ch. 663, F.S., relating to international banking;
- Ch. 665, F.S., relating to associations; and
- Ch. 667, F.S., relating to savings banks.²

Qualifications of Officers and Directors

New or De Novo State-Chartered Bank or Trust Company. Section 658.19, F.S., prescribes the requirements to organize a state-chartered bank or trust company, which includes the submission of financial, business, and biographical information the Financial Services Commission or the OFR may reasonably require for each proposed director, executive officer, and, if applicable, each trust officer. The OFR must approve the application if it finds the proposed bank or trust company meets certain criteria including the qualifications of the proposed officers and directors.³

Section 658.21, F.S., requires that proposed officers and directors meet certain requirements in regards to their background and experience. Proposed officers must have sufficient financial experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing and reputation to indicate reasonable promise of successful operation. Further, as a condition, none of the proposed officers and directors may not have been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, F.S., relating to the control of money laundering and terrorist financing; and ch. 896, F.S., relating to offenses against financial institutions.

At least two of the proposed directors who are not also proposed officers must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 3 years before the application date. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 3 years before the date of the application, the office may modify the requirement and allow only one director to have direct financial institution experience within the last 3 years. The proposed president or chief executive

¹ Section 655.001, F.S.

² Section 655.005(1)(k), F.S.

³ Section 658.21, F.S.

officer must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 3 years.⁴

Existing State-Chartered Bank or Trust Company. A state-chartered bank or trust company must have at least five directors and at least a majority of the directors must be citizens of the United States.⁵ At least three-fifths of the directors must have resided in this state for at least 1 year preceding their election and must continue their residency in Florida for the duration of their time in office.⁶

A state-chartered bank or trust company with total assets of less than \$150 million must have at least one director who is not also an officer of the bank or trust company with at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the preceding 3 years.⁷ For a bank or trust company with total assets of more than \$150 million, at least two directors, who are not also officers of the bank or trust company, must have at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the last 3 years. The president, chief executive officer, or other person who has equivalent rank or leads the overall operations of a bank or trust company must have at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 3 years.⁸

The Office of the Comptroller of Currency (Comptroller) has different requirements relating to the directors or officers of a nationally chartered bank or trust company. Every director must be a citizen of the United States. At least a majority of the directors must have resided in the state, territory, or district in which the association is located, or within 100 miles of the location of the office of the association, for at least 1 year immediately preceding their election, and must be residents of such state or within 100-mile territory of the location of the association during their continuance in office. However, the Comptroller has the discretion to waive the requirement of residency, and waive the requirement of citizenship in the case of not more than a minority of the total number of directors.⁹

Permissible Investments

A bank may invest its funds, and a trust company may invest its corporate funds, subject to the limitations of s. 658.67, F.S. Up to 25 percent of the capital accounts of the purchasing bank may be invested in corporate obligations of any one corporation that is not an affiliate or subsidiary of the bank. Further, the codes currently permit up to an aggregate of 10 percent of all the total assets of a bank to be invested in the stock, obligations, or other securities of subsidiary corporations or other corporations or entities. These investment requirements are subject to two exceptions: 1) such investments may not exceed any limitation or prohibition of federal law; and 2) during the first 3 years of existence of a bank, such investments are limited to 5 percent of the total assets.¹⁰ The Financial Services Commission by rule, or the OFR by order, may further limit

⁴ Section 658.21(4), F.S.

⁵ Section 658.33, F.S.

⁶ Section 658.33(2), F.S.

⁷ *Id.*

⁸ Section 658.33(5), F.S.

⁹ See 12 U.S.C. s. 72 and 12 C.F.R. s. 5.20.

¹⁰ Section 658.67(6), F.S.

any type of investment made pursuant to this subsection if it finds that such investment would constitute an unsafe or unsound practice.¹¹ In making this determination, the OFR 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.¹²

III. Effect of Proposed Changes:

Section 1 amends s. 658.21, F.S., to require that a proposed president or chief executive officer must have at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within 5 years, rather than 3 years, of the application date for a state chartered bank or trust company.

Further, the bill provides that at least two of the proposed directors who are not also proposed officers must have at least 1 year of direct financial institution experience within the 5 years, rather than 3 years, prior to the application. However, the OFR may require only one director to have such experience if at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution within the last 5 years rather than the last 3 years.

Section 2 amends s. 658.33, F.S., to increase the lookback period within which a president or chief executive officer and a certain number of directors must have 1 year of relevant financial institution experience in order to serve at an existing state-chartered bank or trust company. The bill expands the period to satisfy the required experience from 3 years to 5 years, as follows:

- The president or chief executive officer, or other person who has equivalent rank or leads the overall operations of a bank or trust company must have at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years.
- For a bank or trust company with total assets of less than \$150 million, at least one director who is not also an officer of the bank or trust company must have at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the last 5 years.
- For a bank or trust company with total assets of more than \$150 million, at least two directors who are not also officers of the bank or trust company must have at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the last 5 years.

The bill also requires that at least a majority, rather than three-fifths, of the directors must have resided in Florida for at least 1 year preceding their election and must continue their residency in Florida for the duration of their time in office. This change will align the residency requirement for Florida state-chartered banks with the residency requirement of national banks.

Section 3 amends section 658.67, F.S. to revise the limitations of certain investments by prohibiting bank ownership of stock, obligations, or other securities issued by a single

¹¹ See s. 655.005(1), F.S. An unsafe or unsound practice is any practice or conduct found by the OFR 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.

¹² *Id.*

corporation or entity that have an aggregate par value greater than 10 percent of the total assets of such bank. Two exceptions relating to permissible investments are provided, namely, except as limited or prohibited by federal law, and during the first 3 years of existence of a bank, such investments are limited to 5 percent of total assets.

Section 4 provides the act will take effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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 would expand the pool of eligible individuals who may qualify to serve as an officer or director of a proposed or existing state chartered bank or trust company.

C. Government Sector Impact:

The bill has no fiscal impact on the Office of Financial Regulation.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 3 of the bill would permit a bank to own stocks, obligations, or other securities, but only during the first 3 years of its existence, and only up to 5 percent of its total assets to investments, which may create unintended consequences.¹⁴ Currently, newer banks may only invest up to 5 percent, whereas older banks may invest up to 10 percent of total assets, presumably based on the reasonable assumption that an established institution is better equipped to take on the

¹³ Office of Financial Regulation, *2018 Analysis of SB 416* (Oct. 17, 2017). On file with Banking and Insurance Committee.

¹⁴ *Id.*

additional risk inherent in investments. The move to a limitation on each such investment issued by each individual corporation or entity is a significant departure from the current limitation on the aggregate of all such investments. This change eliminates the total cap on such investments, which may lead to riskier investment behavior and unsafe and unsound practices; without a total cap a bank could invest 200 percent or more of its total assets, so long as they were diversified to the extent that such investments in each entity did not exceed 10 percent.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 658.21, 658.33, and 658.67.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.