

**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.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: CS/SB 416

INTRODUCER: Banking and Insurance Committee and Senator Thurston

SUBJECT: Governance of Banks and Trust Companies

DATE: January 26, 2018

REVISED: \_\_\_\_\_

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

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/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 clarifies and revises the limitations on corporate investments.

For existing and new state-chartered banks and trust companies, the bill extends the period, from 3 to 5 years, during which certain officers and directors must have achieved at least 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 the requisite experience within the 3 years prior to the date of the application for charter. 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.

Lastly, the bill amends current law to clarify an ambiguity in the interpretation of investment limits relating to corporate obligations or corporate bonds. The bill clarifies that:

- The types of entities for which the limitation on investments in corporations applies are subsidiary corporations and affiliates.
- The limitation on investments in corporations applies to an aggregate of any combination of stocks, obligations, and other securities of subsidiary corporations and affiliates.
- The aggregate of such investments may not exceed 10 percent of the total assets of the bank.

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

## II. Present Situation:

The United States has a dual banking system, under which banks may be chartered by state or federal regulators.<sup>1</sup> State-chartered banks have both a state regulator and a federal regulator; the Office of Financial Regulation (OFR) is the state regulator of banks chartered in Florida. 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; the primary federal regulator for non-member state banks is the Federal Deposit Insurance Corporation.<sup>2</sup> National banks are chartered by the Office of the Comptroller of the Currency under the National Bank Act.<sup>3</sup>

### Regulation of State-Chartered Financial Institutions in Florida

The 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.<sup>4</sup> As of June 30, 2017, the Division of Financial Institutions within the OFR licensed 195 financial institutions.<sup>5</sup>

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.<sup>6</sup>

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<sup>1</sup> Julie Stackhouse, Federal Reserve Bank of St. Louis, *Why America's Dual Banking System Matters* (Sept. 19, 2017), <https://www.stlouisfed.org/on-the-economy/2017/september/americas-dual-banking-system-matters> (last visited Jan. 26, 2018).

<sup>2</sup> 12 U.S.C. § 1813(q).

<sup>3</sup> 12 U.S.C. § 38; 12 U.S.C. § 1813(q).

<sup>4</sup> Section 655.001, F.S.

<sup>5</sup> Office of Financial Regulation, *Fast Facts*, p. 4 (5<sup>th</sup> ed. Dec. 2017), <https://www.flofr.com/StaticPages/documents/FastFacts.pdf> (last visited Jan. 26, 2018). The OFR regulated 95 banks, 66 credit unions, 21 international bank offices, and 13 trusts.

<sup>6</sup> Section 655.005(1)(k), F.S.

## Qualifications of Officers and Directors

### *New or De Novo State-Chartered Bank or Trust Company*

Section 658.19, F.S., governs the organization of state-chartered banks and trust companies. An applicant must submit financial, business, and reasonably required biographical information for each proposed director, executive officer, and, if applicable, each trust officer. The OFR must approve the application if it finds the proposed bank's or trust company's officers and directors.<sup>7,8</sup>

- Evince sufficient financial experience, ability, standing, and reputation;
- Have sufficient business experience, ability, standing and reputation to indicate reasonable promise of successful operation of the bank or trust company;
- Have 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. 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 permit only one director to have direct financial institution experience within the last 3 years. The proposed president or chief executive 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.<sup>9</sup>

### *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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> A bank or trust company with more than \$150 million in total assets requires at least two directors, who are not also officers of the bank or trust company, to 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

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<sup>7</sup> Section 658.21, F.S.

<sup>8</sup> Office of Financial Regulation, Division of Financial Institutions, *Guide to Organizing a New State Bank in Florida* (Dec. 7, 2010), available at: <https://www.flofr.com/PDFs/guide.pdf> (last visited Jan. 26, 2018).

<sup>9</sup> Section 658.21(4), F.S.

<sup>10</sup> Section 658.33, F.S.

<sup>11</sup> Section 658.33(2), F.S.

<sup>12</sup> *Id.*

equivalent rank 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.<sup>13</sup>

### ***Nationally Chartered Bank or Trust Company***

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 the state or within 100-mile territory of the location of the association during their term of office. However, the Comptroller has the discretion to waive the residency and citizenship requirements as they apply to not more than a minority of the total number of directors.<sup>14</sup>

### **Permissible Investments**

A bank or trust company may invest its funds, subject to the limits of s. 658.67, F.S. These limits state that a bank or trust company may only invest:

- Up to 25 percent of its capital accounts in corporate obligations of any one corporation that is not its own affiliate or subsidiary; and
- Up to an aggregate of 10 percent of its total assets 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 a bank's first 3 years of existence, such investments may not exceed 5 percent of its total assets.<sup>15</sup>

The Financial Services Commission by rule, or the OFR by order, may further limit any type of investment made pursuant to this subsection if it finds that such investment would constitute an unsafe or unsound practice.<sup>16</sup> 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 when determining whether an investment is an unsafe or unsound practice.<sup>17</sup>

## **III. Effect of Proposed Changes:**

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

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<sup>13</sup> Section 658.33(5), F.S.

<sup>14</sup> See 12 U.S.C. s. 72 and 12 C.F.R. s. 5.20.

<sup>15</sup> Section 658.67(6), F.S.

<sup>16</sup> 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.

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

The bill applies the updated experience timeframe to two of the proposed directors listed on the bank or trust's application, who are not also its proposed officers. However, the OFR may apply this requirement to only one proposed director if at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 5 years, versus 3, before the date of the application.

**Section 2** amends s. 658.33, F.S., to require that at least a majority, rather than three-fifths, of the applicant bank or trust company's directors have resided in Florida for at least 1 year preceding their election to the bank's or trust's board of directors 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 s. 658.67, F.S., to revise the limits on a bank or trust's investments in corporate obligations or corporate bonds. The bill clarifies that a bank may invest:

- In subsidiary corporations and affiliates, unless otherwise prohibited by federal law;
- Only up to 10 percent of its total assets; and
- Only up to 5 percent of its total assets during the first 3 years of the bank's existence.

**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.<sup>18</sup>

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 Substantial Changes:

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

**CS by Banking and Insurance on January 16, 2018:**

The CS clarifies investment limitations relating to corporate obligations or corporate bonds and provides technical changes.

B. Amendments:

None.

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

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<sup>18</sup> Office of Financial Regulation, *2018 Analysis of SB 416* (Oct. 17, 2017). On file with Banking and Insurance Committee.