

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 437 Pub.Rec./International Financial Institutions
SPONSOR(S): Commerce Committee; Insurance & Banking Subcommittee; Raulerson
TIED BILLS: CS/CS/HB 435 **IDEN./SIM. BILLS:** CS/CS/CS/SB 738

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Hinshelwood	Luczynski
2) Oversight, Transparency & Administration Subcommittee	14 Y, 0 N	Whittaker	Harrington
3) Commerce Committee	23 Y, 0 N, As CS	Hinshelwood	Hamon

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) regulates “financial institutions”, the definition of which is expanded in companion bill CS/CS/HB 435 to include two new entities called an “international trust entity” and a “qualified limited service affiliate.”

The bill creates public record exemptions related to each of those new entities in order to make the following information confidential and exempt from public disclosure:

- Any personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of an international trust company representative office or a qualified limited service affiliate or which appears in records relating to reports of examinations, operations, or condition of an international trust company representative office or a qualified limited service affiliate, including working papers.
- Any portion of a list of names of the shareholders or members of an affiliated international trust entity or a qualified limited service affiliate.
- Information received by the OFR from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

The bill provides for the release of such confidential and exempt information to specified entities. It also provides that a person who willfully discloses information made confidential and exempt by this act commits a felony of the third degree.

The bill also substantially amends the applicable public record exemptions in s. 655.057, F.S., by specifying that the exemptions are not only confidential and exempt from s. 119.071(1), F.S., but also from article I, section 24(a) of the Florida Constitution.

The bill provides for repeal of the newly created and expanded exemptions on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides public necessity statements as required by the Florida Constitution.

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates new public record exemptions and expands existing exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.³

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁴

Examination & Investigative Duties of the Office of Financial Regulation (OFR)

The OFR regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.⁵ The OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes and the rules promulgated thereunder.⁶ The OFR also ensures that state financial institutions (i.e. financial institutions chartered or organized by the state of Florida) comply with state and applicable federal requirements for safety and soundness.

"Financial institution" is defined as "a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq."⁷

¹ FLA. CONST. art. I, s. 24(c).

² See s. 119.15, F.S.

³ s. 119.15(6)(b), F.S.

⁴ s. 119.15(3), F.S.

⁵ s. 20.121(3)(a)2., F.S.

⁶ chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.

⁷ s. 655.005(1)(i), F.S.

Among its duties, the OFR is required to conduct examinations of the condition of each state financial institution at least every 18 months.⁸ In relation to state financial institutions that also have a federal regulator, the OFR may accept an examination of a state financial institution made by an appropriate federal regulatory agency, and may conduct joint or concurrent examinations with federal agencies.⁹ However, at least once during every 36-month period, the OFR must conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report.¹⁰

In addition to performing regular examinations, the OFR may also make investigations which it deems necessary to determine whether a person has violated or is about to violate any provision of the financial institutions codes or the rules promulgated thereunder.¹¹

Public Record Exemptions for Documents Relating to Financial Institutions Generally

In the course of performing examinations of financial institutions and engaging in investigations, the OFR generates many documents of a sensitive nature that fall under the definition of “public record.” Two categories of such documents are “reports of examination, condition, or operation” and “working papers.” An “examination report” is any record “submitted to or prepared by the [OFR] as part of its duties performed pursuant to s. 655.012 [providing general supervisory power] or s. 655.045(1) [requiring the OFR to perform examinations].”¹² “Working papers” are defined as

the records of the procedures followed, the tests performed, the information obtained, and the conclusions reached in an examination or investigation performed under s. 655.032 [relating to investigations] or s. 655.045 [relating to examinations]. Working papers include planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution as defined in s. 655.005(1), and schedules or commentaries prepared or obtained in the course of such examination or investigation.¹³

Pursuant to s. 655.057, F.S., working papers and reports of examination, operation, and condition are currently confidential and exempt from the public records disclosure requirements of s. 119.07(1), F.S.¹⁴ Such documents may only be released to specified parties under certain circumstances, but any such information or records obtained from the OFR that is confidential must be maintained as confidential and exempt from s. 119.07(1), F.S.¹⁵ Although reports of examination are generally confidential and exempt from public disclosure, the statute provides that reports of examination must be released by the OFR within 1 year after the appointment of a liquidator, receiver, or conservator to the financial institution.¹⁶ However, any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution must be redacted because this information remains confidential and exempt from the public records disclosure requirements of s. 119.07(1), F.S.¹⁷

Section 655.057, F.S., also provides that “all records and information relating to an investigation by the [OFR] are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be active.”¹⁸ Even after an investigation is completed or ceases to be active, portions of the covered documents remain confidential and exempt from public disclosure under s. 119.071(1), F.S., to the

⁸ s. 655.045(1), F.S.

⁹ s. 655.045(1)(a), F.S.

¹⁰ *Id.*

¹¹ s. 655.032(1), F.S.

¹² s. 655.057(12)(a), F.S.

¹³ s. 655.057(12)(d), F.S.

¹⁴ s. 655.057(2), F.S.

¹⁵ *Id.*

¹⁶ s. 655.057(2)(g), F.S.

¹⁷ *Id.*

¹⁸ s. 655.057(1), F.S.

extent that the documents would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information¹⁹ or the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures.

If an investigation relates to an informal enforcement action, once such investigation is completed or ceases to be active, the informal enforcement action²⁰ itself is confidential and exempt from s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution to the extent that disclosure would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information²¹ or the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures. This exemption for informal enforcement actions is already subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.²²

Section 655.057, F.S., provides that trade secrets which comply with the procedure specified in s. 655.0591, F.S., and which are held by the OFR in accordance with its statutory duties are confidential and exempt from s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution.²³ This exemption for trade secrets is already subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.²⁴

Additionally, the following information is made confidential and exempt from s. 119.071(1), F.S.:

- The list of members of a credit union or mutual association.²⁵
- Any portion of a list of shareholders of a bank, trust company, or stock association which reveals the identities of the shareholders.²⁶
- Any confidential documents supplied to the OFR or to employees of any financial institution by other state or federal governmental agencies.²⁷

Notwithstanding the above exemptions, s. 655.057, F.S., specifies information that may be provided to particular parties under certain circumstances.²⁸ However, any such information or records obtained from the OFR that is confidential must be maintained as confidential and exempt from s. 119.07(1), F.S.²⁹

¹⁹ "Personal financial information" is defined as "1. Information relating to the existence, nature, source, or amount of a person's personal income, expenses, or debt. 2. Information relating to a person's financial transactions of any kind. 3. Information relating to the existence, identification, nature, or value of a person's assets, liabilities, or net worth." s. 655.057(12)(c), F.S.

²⁰ "Informal enforcement action" is defined as "a board resolution, a document of resolution, or an agreement in writing between the office and a financial institution which: 1. The office imposes on an institution when the office considers the administrative enforcement guidelines in s. 655.031 and determines that a formal enforcement action is not an appropriate administrative remedy; 2. Sets forth a program of corrective action to address one or more safety and soundness deficiencies and violations of law or rule at the institution; and 3. Is not subject to enforcement by imposition of an administrative fine pursuant to s. 655.041." s. 655.057(12)(b), F.S.

²¹ See s. 655.057(12)(c), F.S., *supra* definition of "personal financial information" note 19.

²² s. 655.057(14), F.S.

²³ s. 655.057(4), F.S.

²⁴ s. 655.057(14), F.S.

²⁵ s. 655.057(7), F.S.

²⁶ s. 655.057(8), F.S.

²⁷ s. 655.057(9), F.S.

²⁸ s. 655.057(5), F.S.

²⁹ *Id.*

State Regulation of International Banking Offices and International Trust Company Representative Offices (ITCROs)

International banking is regulated under ch. 663, F.S., which currently has two parts: part I relates to international banking corporations (IBCs), and part II relates to international development banks. An IBC is “a banking corporation organized and licensed under the laws of a foreign country. . . . 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 financial institutions codes.”³⁰ The OFR does not regulate an IBC, i.e., the home country institution, except to the extent that an IBC seeks to establish an office in Florida.

IBCs include foreign depository institutions that engage in banking activities and may have trust powers that were granted to it by the country where the foreign institution is organized. This type of IBC may operate through a variety of business models, which must be licensed by the OFR³¹ and include the following:

- International representative offices - Permissible activities include promoting or assisting the deposit-taking, lending, or other financial or banking activities of an IBC; serving as a liaison in Florida between an IBC and its existing and potential customers; soliciting business for the IBC and its subsidiaries and affiliates; providing information to customers concerning their accounts; answering questions; receiving applications for extensions of credit and other banking services; transmitting documents on behalf of customers; and making arrangements for customers to transact business on their accounts. However, a representative office may not conduct any banking or trust business in Florida.³²
- International administrative offices - Permissible activities include administering personnel and operations; engaging in data processing or recordkeeping activities; and negotiating, approving, or servicing loans or extensions of credit and investments.³³ Additionally, this type of office may engage in any activities permissible for an international representative office.³⁴
- International bank agencies - Permissible activities include making loans, extensions of credit, or investments; acting as custodian; furnishing investment management and investment advisory services to nonresident persons whose principal places of business or domicile are outside the United States and to resident entities or persons with respect to international or foreign investments; receiving specified types of deposits; and, with prior authorization from the OFR, accepting appointments as trustee by nonresident persons and exercising trust powers with respect to such fiduciary accounts.³⁵ Additionally, this type of office may engage in any activities permissible for an international administrative office.³⁶
- International branches - An international branch has the same rights and privileges as a federally licensed international branch.³⁷ Additionally, this type of office may engage in any activities permissible for an international bank agency.³⁸

IBCs also include “offshore” international non-depository trust companies or similar business entities. Currently, an ITCRO is the only type of office through which an international trust company or similar business entity may directly operate in Florida. An ITCRO is an office of an IBC or trust company organized and licensed under the laws of a foreign country which office is established or maintained in Florida for engaging in non-fiduciary activities described in s. 663.0625, F.S. An ITCRO also includes any affiliate, subsidiary, or other person that engages in such activities on behalf of such IBC or trust company from an office located in Florida.³⁹

³⁰ s. 663.01(6), F.S.

³¹ ss. 663.04 and 663.05, F.S.

³² s. 663.062, F.S.

³³ s. 663.063, F.S.

³⁴ s. 663.06(5)(c), F.S.

³⁵ s. 663.061, F.S.; Rule 69U-140.008, F.A.C.

³⁶ s. 663.06(5)(b), F.S.

³⁷ s. 663.064, F.S.

³⁸ s. 663.06(5)(a), F.S.

³⁹ s. 663.01(9), F.S.

ITCROs are not banks and may not accept deposits, make loans, or act as a fiduciary. The activities of a licensed ITCRO are limited to engaging in non-fiduciary activities that are ancillary to the trust business of the IBC or trust company.⁴⁰ The permissible activities for an ITCRO include:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an IBC 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 IBC 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 (Commission).⁴¹

An ITCRO's representatives and employees may not act as a fiduciary, which means they may not do such things as accept the fiduciary appointment, execute the fiduciary documents that create the fiduciary relationship, or make discretionary decisions regarding the investment or distribution of fiduciary accounts.⁴²

There are currently 2 international administrative offices, 8 international bank agencies, 6 international representative offices, and 6 international bank branches licensed with the OFR.⁴³ To date, no ITCROs are licensed with the OFR.⁴⁴

CS/CS/HB 435 (2017)

CS/CS/HB 435 is the companion bill that revises regulations under ch. 663, F.S. CS/CS/HB 435 relocates the regulation of ITCROs in part I of ch. 663, F.S., to a newly-created part III in order to separate the regulation of ITCROs from the regulation of international representative offices, international administrative offices, international bank agencies, and international branches. The provisions under the newly created part III were copied from current part I, including amendments to part I that are proposed in CS/CS/HB 435, and the language was tailored to apply to trust business. CS/CS/HB 435 also creates part IV of ch. 663, F.S., to provide a regulatory framework for a new kind of entity called a qualified limited service affiliate (of international trust entities). CS/CS/HB 435 does not amend part II of ch. 663, F.S.

An international trust entity is an international trust company or organization, or any similar business entity, 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 where such entity is organized and supervised. A qualified limited service affiliate is a person or entity that is qualified to perform specified permissible activities related to or for the benefit of one or more affiliated international trust entities.

Such permissible activities include:

- 1) Marketing and liaison services related to or for the benefit of the affiliated international trust entities, directed exclusively at professionals and current or prospective nonresident clients of an affiliated international trust entity;
- 2) Advertising and marketing at trade, industry, or professional events;
- 3) Transmission of documents between the international trust entity and its current or prospective clients or a designee of such clients; and
- 4) Transmission of information about the trust or trust holdings of current clients between current clients or their designees and the international trust entity.

⁴⁰ s. 663.0625, F.S.

⁴¹ No such additional activities have been approved by the OFR or promulgated by rule.

⁴² s. 663.0625, F.S.

⁴³ OFFICE OF FINANCIAL REGULATION, *Financial Institution Search*, at

<https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (search conducted Apr. 17, 2017).

⁴⁴ *Id.*

A qualified limited service affiliate is prohibited from engaging in the following activities:

- 1) Advertising and marketing related to or for the benefit of the international trust entity which are directed to the general public;
- 2) Acting as a fiduciary, including, but not limited to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts;
- 3) Accepting custody of any trust property or any other good, asset, or thing of value on behalf of the affiliated international trust entity, its subsidiaries or affiliates, or subsidiaries and affiliates of the qualified limited service affiliate;
- 4) Soliciting business within this state from the general public related to or for the benefit of an affiliated international trust entity;
- 5) Adding a director, an executive officer, a principal shareholder, a manager, a managing member, or an equivalent position to the qualified limited service affiliate without prior written notification to the OFR;
- 6) Commencing services for an international trust entity without complying with applicable requirements;
- 7) Providing services for any international trust entity that is in bankruptcy, conservatorship, receivership, liquidation, or a similar status under the laws of any country; or
- 8) Otherwise conducting banking or trust business.

Effect of the Bill

Companion bill CS/CS/HB 435 creates two new entity types: an “international trust entity” and a “qualified limited service affiliate.” Accordingly, this bill creates new statutes containing public record exemptions related to each of those entities. The first set of public record exemptions created by the bill are for an ITCRO, which is the only type of office through which an international trust entity can *directly* operate a marketing and liaison office in Florida. The second set of public record exemptions created by the bill are for a qualified limited service affiliate (of international trust entities), which is a person or entity that is qualified to perform specified permissible activities *related to or for the benefit of* one or more affiliated international trust entities but which is a separate legal entity from the international trust entity.

Because CS/CS/HB 435 also expands the definition of “financial institution” to include both an “international trust entity” and a “qualified limited service affiliate”, this bill makes certain existing public record exemptions in s. 655.057, F.S., subject to the Open Government Sunset Review Act and sets the exemptions for repeal on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Public Record Exemptions Relating to an ITCRO

Within part III of ch. 663, F.S., as created by CS/CS/HB 435, the bill creates s. 663.416, F.S., to provide public record exemptions related to an ITCRO. Specifically, the bill makes the following information held by the OFR confidential and exempt from s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution:

- 1) Any personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of an international trust company representative office or in records relating to reports of examinations, operations, or condition of an ITCRO, including working papers.
- 2) Any portion of a list of names of the shareholders or members of an affiliated international trust entity.
- 3) Information received by the OFR from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

The term “reports of examinations, operations, or condition” means records submitted to or prepared by the OFR as part of its duties performed pursuant to s. 655.012, F.S., relating to the OFR’s general supervisory powers, or s. 655.045, F.S., relating to the OFR’s examination authority. The term “working papers” is defined as the records of the procedure followed, the tests performed, the information obtained, and the conclusions reached in an investigation or examination performed under s. 655.032, F.S., relating to the OFR’s investigative authority, or s. 655.045, F.S., relating to the OFR’s examination authority. The term includes planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution, as defined in s. 655.005, F.S., and schedules or commentaries prepared or obtained in the course of such investigation or examination.

Information made confidential and exempt by s. 663.416, F.S., may be disclosed by the OFR:

- 1) To the authorized representative or representatives of the ITCRO under examination, which authorized representative or representatives must be identified in a resolution or by written consent of the board of directors, or the equivalent, of the international trust entity.
- 2) To a fidelity insurance company, upon written consent of the board of directors, or the equivalent, of the international trust entity.
- 3) To an independent auditor, upon written consent of the board of directors, or the equivalent, of the international trust entity.
- 4) To the liquidator, receiver, or conservator for the international trust entity, if a liquidator, receiver, or conservator is appointed. However, any portion of the information which discloses the identity of a customer or prospective customer of the international trust entity, or a shareholder or member of the international trust entity, must be redacted by the OFR before releasing such portion to the liquidator, receiver, or conservator.
- 5) To a law enforcement agency in furtherance of the agency’s official duties and responsibilities.
- 6) To the appropriate law enforcement or prosecutorial agency for the purpose of reporting any suspected criminal activity.
- 7) Pursuant to a legislative subpoena. A legislative body or committee that receives records or information pursuant to such a subpoena must maintain the confidential status of the records or information, except in a case involving the investigation of charges against a public official subject to impeachment or removal, in which case the records or information may be disclosed only to the extent necessary as determined by such legislative body or committee.

Nothing in s. 663.416, F.S., prevents or restricts the publication of a report required by federal law.

A person who willfully discloses information made confidential and exempt by s. 663.416, F.S., commits a third-degree felony.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that it is a public necessity to protect personal identifying information of existing customers, prospective customers, shareholders, or members of the affiliated international trust entity. Disclosure of such information could defame or jeopardize the personal and financial safety of those individuals and their family members. Additionally, placing the personal identifying information of these individuals within the public domain would increase the security risk that those individuals or their families could become the target of criminal activity.

The public necessity statement further specifies that it is a public necessity to protect information received from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law. Disclosure of such information would deter other regulatory bodies from communicating vital information to the OFR and would cause the OFR to violate existing information-sharing agreements governing the sharing of confidential supervisory information.

The bill provides for repeal of the exemptions in s. 663.416, F.S., on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Public Record Exemptions Relating to a Qualified Limited Service Affiliate

Within part IV of ch. 663, F.S., as created by CS/CS/HB 435, the bill creates s. 663.540, F.S., to provide public record exemptions related to a qualified limited service affiliate. The bill makes the following information held by the OFR confidential and exempt from s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution:

- 1) Any personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of a qualified limited service affiliate or in records relating to reports of examinations, operations, or condition of a qualified limited service affiliate, including working papers.
- 2) Any portion of a list of names of the shareholders or members of a qualified limited service affiliate.
- 3) Information received by the OFR from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

The term "reports of examinations, operations, or condition" means records submitted to or prepared by the OFR as part of its duties performed pursuant to s. 655.012, F.S., relating to the OFR's general supervisory powers, or s. 663.537, F.S., relating to the OFR's examination authority. The term "working papers" is defined as the records of the procedure followed, the tests performed, the information obtained, and the conclusions reached in an investigation or examination performed under s. 655.032, F.S., relating to the OFR's investigative authority, or s. 663.537, F.S., relating to the OFR's examination authority. The term includes planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution, as defined in s. 655.005, F.S., and schedules or commentaries prepared or obtained in the course of such investigation or examination.

Information made confidential and exempt by s. 663.540, F.S., may be disclosed by the OFR:

- 1) To the authorized representative or representatives of the qualified limited service affiliate under examination, which authorized representative or representatives must be identified in a resolution or by written consent of the board of directors, if the qualified limited service affiliate is a corporation, or of the managers, if the qualified limited service affiliate is a limited liability company.
- 2) To a fidelity insurance company, upon written consent of the qualified limited service affiliate's board of directors, if the qualified limited service affiliate is a corporation, or of the managers, if the qualified limited service affiliate is a limited liability company.
- 3) To an independent auditor, upon written consent of the qualified limited service affiliate's board of directors, if the qualified limited service affiliate is a corporation, or of the managers, if the qualified limited service affiliate is a limited liability company.
- 4) To the liquidator, receiver, or conservator for a qualified limited service affiliate, if a liquidator, receiver, or conservator is appointed. However, any portion of the information which discloses the identity of a customer of the affiliated international trust entity, or a shareholder or member of the qualified limited service affiliate, must be redacted by the OFR before releasing such portion to the liquidator, receiver, or conservator.
- 5) To a law enforcement agency in furtherance of the agency's official duties and responsibilities.
- 6) To the appropriate law enforcement or prosecutorial agency for the purpose of reporting any suspected criminal activity.
- 7) Pursuant to a legislative subpoena. A legislative body or committee that receives records or information pursuant to such a subpoena must maintain the confidential status of the records or information, except in a case involving the investigation of charges against a public official subject to impeachment or removal, in which case the records or information may be disclosed only to the extent necessary as determined by such legislative body or committee.

Nothing in s. 663.540, F.S., prevents or restricts the publication of a report required by federal law.

A person who willfully discloses information made confidential and exempt by s. 663.540, F.S., commits a third-degree felony.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that it is a public necessity to protect personal identifying information of existing and prospective customers of an affiliated international trust entity or shareholders or members of a qualified limited service affiliate. Disclosure of such information could defame or jeopardize the personal and financial safety of those individuals. Additionally, placing the personal identifying information of these individuals within the public domain would increase the security risk that those individuals or their families could become the target of criminal activity.

The public necessity statement further specifies that it is a public necessity to protect information received from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law. Disclosure of such information would deter other regulatory bodies from communicating vital information to the OFR and would cause the OFR to violate existing information-sharing agreements governing the sharing of confidential supervisory information.

The bill provides for repeal of the exemptions in s. 663.540, F.S., on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Public Record Exemptions for Documents Relating to Financial Institutions Generally

Companion bill CS/CS/HB 435 expands the definition of “financial institution” to include both an “international trust entity” and a “qualified limited service affiliate”, which in turn expands the scope of records subject to public record exemptions in s. 655.057, F.S., that relate to financial institutions generally. As a result of this substantial amendment of existing exemptions, the bill makes the applicable public record exemptions in s. 655.057, F.S., subject to the Open Government Sunset Review Act and sets the exemptions for repeal on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also substantially amends the applicable public record exemptions in s. 655.057, F.S., by specifying that the exemptions are not only confidential and exempt from s. 119.071(1), F.S., but also from article I, section 24(a) of the Florida Constitution.

Specifically, the bill amends the following subsections of s. 655.057, F.S.:

- Subsection (1), which makes records and information relating to an investigation by the OFR confidential and exempt until the investigation is completed or ceases to be active.
- Subsection (2), which provides that reports of examinations, operations, or condition, including working papers, or portions thereof, 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 this state are confidential and exempt.
- Subsection (5), which specifies information that may be provided to particular parties under certain circumstances but requires that any such information or records obtained from the OFR that is confidential must be maintained as confidential and exempt.
- Subsection (9), which provides that any confidential documents supplied to the OFR or to employees of any financial institution by other state or federal governmental agencies are confidential and exempt.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that it is a public necessity to protect portions of records relating to a completed or inactive investigation by the OFR which would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information, reveal the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures; reports of examinations, operations, or condition, including working papers, or portions thereof, 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 this state; any portion of such reports which discloses the

identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution; and materials supplied to the OFR or to employees of any financial institution by other state or federal governmental agencies.

An exemption from public records requirements prevents gaps in the law by providing the same protections to international trust entities and limited services affiliates which are afforded to other financial institutions, thereby preventing any disadvantage to these similarly regulated entities in comparison to other entities currently defined as "financial institutions." An exemption from public records requirements for reports of examinations, operations, or condition, including working papers, is necessary to ensure the OFR's ability to effectively and efficiently administer its examination and investigation duties. Public disclosure of records and information relating to an examination or investigation by the OFR could expose the subject financial institution to unwarranted damage to its good name or reputation and impair its safety and soundness, as well as the safety and soundness of the financial system in the state. Public disclosure of records and information relating to an investigation by the OFR which could jeopardize the integrity of another active investigation or reveal investigative techniques or procedures of the OFR would impair the OFR's ability to effectively and efficiently administer certain of its duties. Any portion of a record or information relating to an investigation or examination which reveals personal financial information or the identity of a confidential source may defame, or cause unwarranted damage to the good name or reputation of, those individuals, or jeopardize their safety.

B. SECTION DIRECTORY:

Section 1. Creates s. 663.416, F.S., relating to public records exemption.

Section 2. Provides a public necessity statement.

Section 3. Creates s. 663.540, F.S., relating to public records exemption.

Section 4. Provides a public necessity statement.

Section 5. Amends s. 655.057, F.S., relating to records; limited restrictions upon public access.

Section 6. Provides a public necessity statement.

Section 7. Provides that the act will take effect on the same date that CS/CS/HB 435 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state government revenues.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal fiscal impact on OFR because staff responsible for complying with public record requests could require training related to the creation and expansion of public record exemptions. In addition, the OFR could incur costs associated with redacting the exempt information prior to the releasing the record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates new public record exemptions and expands current public record exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new public record exemptions and expands current public record exemptions; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law.

The bill creates public record exemptions for any personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of an international trust company representative office or a qualified limited service affiliate or which appears in records relating to reports of examinations, operations, or condition of an ITCRO or a qualified limited service affiliate, including working papers; and any portion of a list of names of the shareholders or members of an affiliated international trust entity or a qualified limited service affiliate. The public record exemptions would protect the information because disclosure of such information could defame or jeopardize the personal and financial safety of those individuals and their family members. Additionally, placing the personal identifying information of these individuals within the public domain would increase the security risk that those individuals or their families could become the target of criminal activity.

The bill creates public record exemptions for information received by the OFR from a person from another state or country or the Federal Government which is otherwise confidential or exempt

pursuant to the laws of that state or country or pursuant to federal law. The public record exemptions would protect the information because disclosure of such information would deter other regulatory bodies from communicating vital information to the OFR and would cause the OFR to violate existing information-sharing agreements governing the sharing of confidential supervisory information.

The bill substantially amends certain existing public record exemptions that are applicable to financial institutions generally. An exemption from public records requirements prevents gaps in the law and prevents any disadvantage to two newly created entities in comparison to other entities currently defined as “financial institutions.” An exemption from public records requirements for reports of examinations, operations, or condition, including working papers, is necessary to ensure the OFR's ability to effectively and efficiently administer its examination and investigation duties. Public disclosure of records and information relating to an examination or investigation by the OFR could expose the subject financial institution to unwarranted damage to its good name or reputation and impair its safety and soundness, as well as the safety and soundness of the financial system in the state. Public disclosure of records and information relating to an investigation by the OFR which could jeopardize the integrity of another active investigation or reveal investigative techniques or procedures of the OFR would impair the OFR's ability to effectively and efficiently administer certain of its duties. Any portion of a record or information relating to an investigation or examination which reveals personal financial information or the identity of a confidential source may defame, or cause unwarranted damage to the good name or reputation of, those individuals, or jeopardize their safety.

The exemptions created do not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2017, the Insurance & Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute reflects the removal of a duplicative public record exemption relating to a limited service affiliate and creates consistency in the definitions of “working papers.” The committee substitute also reflects technical and conforming changes to the statements of public necessity.

On April 19, 2017, the Commerce Committee considered one strike-all amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute adds the word “qualified” before each occurrence of the term “limited service affiliate” in order to conform to changes made in CS/CS/HB 435, and the committee substitute makes other minor conforming changes to match the Senate bill.

The staff analysis has been updated to reflect the committee substitute.