

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 619 Pub. Rec./Application for a De Novo Banking Charter

**SPONSOR(S):** Insurance & Banking Subcommittee, Barnaby

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 512

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 5 N, As CS	Hinshelwood	Luczynski
2) Government Operations Subcommittee	12 Y, 1 N	Roth	Smith
3) Commerce Committee			

### SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry. In order to apply for authority to organize a new state-chartered bank, the proposed directors must file a written application with the OFR. The application includes such information as the name, residence, and occupation of each proposed director; the proposed corporate name; the community, including the street and number, if available, where the principal office of the proposed bank is to be located; the total initial capital; the proposed business plan; and pro forma financial statements. Additionally, each proposed executive officer, director, and major shareholder must complete and submit detailed biographical and financial information, including but not limited to names, home addresses, current and past employment, and statements of assets, liabilities, and total net worth. The OFR utilizes this information to ascertain whether the proposed directors and executives have the kind of experience, ability, standing, and reputation that indicates a reasonable promise of successful bank operation.

While some existing public record exemptions may apply to certain records received by the OFR pursuant to an application to organize a new bank, current statutes do not provide a public record exemption specifically directed at such applications. Presently, with the exception of some material for which the applicant may claim trade secret status, the majority of information on an application is subject to public inspection and copying.

The bill creates a public record exemption for certain information received by the OFR pursuant to an application for authority to organize a new state bank and makes such information confidential and exempt. However, existing statutory provisions would permit the release of the information for certain purposes and to certain persons, such as furnishing information to other agencies responsible for the regulation or supervision of financial institutions, reporting suspected criminal activity to law enforcement and prosecutorial agencies, and providing information pursuant to an order of a court or an administrative law judge or pursuant to a legislative subpoena. Additionally, the exemption created in the bill only provides protection for records and information that are not otherwise public record. Upon approval of an application, the OFR issues a bank charter that is a public record and contains the names of the banks officers and members of the board of directors.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date. It also provides a public necessity statement as required by the Florida Constitution.

The bill may have a minimal negative fiscal impact on state government. The bill has an indeterminate but likely positive impact on the private sector.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; 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, s. 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).<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption and must be no more broad than necessary to accomplish its purpose.<sup>2</sup>

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 Act<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

##### Office of Financial Regulation (OFR)

The OFR regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.<sup>6</sup> 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 (Codes) and the rules promulgated thereunder.<sup>7</sup> The specific chapters under the Codes are:

- Chapter 655, F.S. – Financial Institutions Generally
- Chapter 657, F.S. – Credit Unions
- Chapter 658, F.S. – Banks and Trust Companies
- Chapter 660, F.S. – Trust Business
- Chapter 662, F.S. – Family Trust Companies
- Chapter 663, F.S. – International Banking
- Chapter 665, F.S. – Capital Stock Associations
- Chapter 667, F.S. – Savings Banks

---

<sup>1</sup> Art. I, s. 24(c), Fla. Const.

<sup>2</sup> Art. I, s. 24(c), Fla. Const.

<sup>3</sup> S. 119.15, F.S.

<sup>4</sup> S. 119.15(6)(b), F.S.

<sup>5</sup> S. 119.15(3), F.S.

<sup>6</sup> S. 20.121(3)(a)2., F.S.

<sup>7</sup> Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.

As of June 30, 2020, the Division of Financial Institutions regulates 197 financial institutions:<sup>8</sup>

- 69 banks
- 66 credit unions
- 21 international bank offices
- 15 trust companies
- 16 family trust companies
- 10 qualified limited service affiliates

### *Regulation of Banks*

Under the dual banking system in the United States, banks may be chartered under either state or federal law:

- *State-chartered banks* are chartered under the laws of the state in which the bank is headquartered. State-chartered banks have both a state regulator, which for banks chartered by the state of Florida is the OFR, and a federal regulator. The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System (FRB), and the primary federal regulator for non-member state banks is the Federal Deposit Insurance Corporation (FDIC).<sup>9</sup>
- *National banks* are chartered by the Office of the Comptroller of the Currency (OCC) under the National Bank Act.<sup>10</sup> As such, the OCC is the primary federal regulator for national banks.<sup>11</sup>

### *Confidential Treatment of Applications to Charter a National Bank*

The federal Freedom of Information Act (FOIA)<sup>12</sup> sets forth the process for obtaining federal agency records, unless the records or any portion thereof are protected from disclosure by one of the FOIA's nine exemptions or by one of its three special law enforcement record exclusions. The OCC has set forth its policies regarding the availability of information under FOIA, as well as procedures for requesting information, within 12 CFR Part 4, Subpart B. Under the OCC's FOIA regulations, the following records, or portions thereof, are exempt from disclosure:<sup>13</sup>

- 1) A record that is specifically authorized, under criteria established by an executive order, to be kept secret in the interest of national defense or foreign policy, and that is properly classified pursuant to that executive order;
- 2) A record relating solely to the internal personnel rules and practices of an agency;
- 3) A record specifically exempted from disclosure by statute (other than 5 U.S.C. § 552b), provided that the statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; establishes particular criteria for withholding, or refers to particular types of matters to be withheld; and, if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to 5 U.S.C. § 552(b)(3);
- 4) A record that is privileged or contains trade secrets, or commercial or financial information, furnished in confidence, that relates to the business, personal, or financial affairs of any person;<sup>14</sup>
- 5) An intra-agency or interagency memorandum or letter not routinely available by law to a private party in litigation, including memoranda, reports, and other documents prepared by OCC employees, and records of deliberations and discussions at meetings of OCC employees, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;
- 6) A personnel, medical, or similar record, including a financial record, or any portion thereof, where disclosure would constitute a clearly unwarranted invasion of personal privacy;

---

<sup>8</sup> Office of Financial Regulation, *Fast Facts* (2021 ed.), <https://www.flofr.com/sitePages/documents/FastFacts.pdf>.

<sup>9</sup> 12 U.S.C. § 1813(q).

<sup>10</sup> 12 U.S.C. § 38.

<sup>11</sup> 12 U.S.C. § 1813(q).

<sup>12</sup> 5 U.S.C. § 552 *et. seq.*

<sup>13</sup> 12 C.F.R. § 4.12(b).

<sup>14</sup> Notice requirements regarding disclosure of confidential commercial information are contained in 12 C.F.R. § 4.16.

- 7) A record or information compiled for law enforcement purposes, but only to the extent that the OCC reasonably believes that producing the record or information may:
  - i. Interfere with enforcement proceedings;
  - ii. Deprive a person of the right to a fair trial or an impartial adjudication;
  - iii. Constitute an unwarranted invasion of personal privacy;
  - iv. Disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution that furnished information on a confidential basis;
  - v. Disclose information furnished by a confidential source, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation;
  - vi. Disclose techniques and procedures for law enforcement investigations or prosecutions, or disclose guidelines for law enforcement investigations or prosecutions if such disclosure reasonably could be expected to risk circumvention of the law; or
  - vii. Endanger the life or physical safety of any individual;
- 8) A record contained in or related to an examination, operating, or condition report prepared by, on behalf of, or for the use of the OCC or any other agency responsible for regulating or supervising financial institutions; and
- 9) A record containing or relating to geological and geophysical information and data, including maps, concerning wells.

An applicant submitting information to the OCC may request that specific information be treated as confidential when the materials are submitted.<sup>15</sup> If the OCC does not consider the information to be confidential, the OCC may include that information in the public file after providing notice to the submitter.<sup>16</sup> In addition, the OCC may, at its own initiative, determine that certain information should be treated as confidential and withhold that information from the public file.<sup>17</sup> While a filing is pending with the OCC, the OCC licensing office may provide the *public* portion of a filing to any person who requests it.<sup>18</sup> The public file consists of those portions of the filing, supporting data, and supplementary information that was submitted by the applicant and by interested persons and not afforded confidential treatment.<sup>19</sup>

An applicant is encouraged to request confidential treatment for portions of a filing containing personally identifiable information (PII).<sup>20</sup> The term “PII” refers to information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked or linkable to a specific individual.<sup>21</sup> Examples of PII include an individual’s first name or first initial and last name, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics (for example, fingerprints), date or place of birth, mother’s maiden name, or medical data.<sup>22</sup>

Each organizing group must disclose its proposed CEO to the OCC at the time the group files the charter application.<sup>23</sup> If the proposed CEO wants to have his or her name withheld from the public until the OCC grants preliminary conditional approval, the organizers should:<sup>24</sup>

---

<sup>15</sup> Office of the Comptroller of the Currency, *Comptroller’s Licensing Manual: General Policies and Procedures* (Oct. 2019) at 4, <https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-booklet-general-policies-and-procedures.html> (last visited Mar. 19, 2021).

<sup>16</sup> *Id.*

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

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 6.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Office of the Comptroller of the Currency, *Comptroller’s Licensing Manual: Charters* (Oct. 2019) at 14-15, <https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-booklet-charters.html> (last visited Mar. 19, 2021).

<sup>24</sup> *Id.*

- Include a request for confidential treatment with the materials submitted in the charter application;
- Provide support for their request that disclosure would constitute an unwarranted invasion of personal privacy under exemption six of FOIA<sup>25</sup> or result in substantial competitive harm to the organizers or the proposed CEO under exemption four of FOIA;<sup>26</sup>
- List in the application the criteria that were used in the selection process;
- Provide a detailed description of the person's background, experience, and qualifications in the public portion of the application that is sufficiently specific to permit matching the application information with the person once his or her identity is disclosed; and
- Discuss the proposed terms of employment for the CEO, including compensation and benefits.

### *Formation of a De Novo (New) State-Chartered Bank*

In order to apply for authority to organize a new state-chartered bank, the proposed directors must file a written application with the OFR on form OFR-U-1.<sup>27</sup> The application includes such information as the name, residence, and occupation of each proposed director; the proposed corporate name; the community, including the street and number, if available, where the principal office of the proposed bank is to be located; the total initial capital; the proposed business plan; and pro forma financial statements.<sup>28</sup> Additionally, each proposed executive officer, director, and major shareholder must complete and submit an Interagency Biographical and Financial Report, Form OFR-U-10.<sup>29</sup> This form requires extensive personal identification information and personal financial information, including but not limited to names, home addresses, current and past employment, and statements of assets, liabilities, and total net worth.

Within 21 days after receipt of an application, the OFR must file notice of the application in the Florida Administrative Register, and any person may request a hearing within 21 days after publication of the notice.<sup>30</sup> If a hearing is requested, the applicant must publish at its own expense a notice of the hearing in a newspaper of general circulation in the area affected by the application.<sup>31</sup>

The OFR utilizes the information contained in the application in order to make an investigation of:<sup>32</sup>

- 1) The character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.
- 2) The need for bank facilities or additional bank facilities, as the case may be, in the primary service area where the proposed bank is to be located.
- 3) The ability of the primary service area to support the proposed bank and all other existing bank facilities in the primary service area.

After making such investigation, the OFR must approve an application if it finds the following:<sup>33</sup>

- 1) Local conditions indicate reasonable promise of successful operation for the proposed state bank.
- 2) The proposed capitalization is adequate, but at least \$8 million.
- 3) The proposed capital structure is in such form as the OFR may require, subject to certain minimum requirements.
- 4) Regarding officers and directors:
  - a. The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation.

<sup>25</sup> 12 C.F.R. § 4.12(b)(6).

<sup>26</sup> 12 C.F.R. § 4.12(b)(4).

<sup>27</sup> S. 658.19(1), F.S.; rule 69U-105.202(1), F.A.C. The form is available at <https://www.flofr.com/sitePages/CommercialBanks.htm>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> S. 120.80(3)(a)1., F.S.

<sup>31</sup> *Id.*

<sup>32</sup> S. 658.20(1), F.S.

<sup>33</sup> s. 658.21, F.S.

- b. None of the proposed officers or directors has 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; ch. 896, F.S., relating to offenses related to financial institutions; or similar state or federal law.
  - c. At least two of the proposed directors who are not also proposed officers have had at least one year of direct experience as an executive officer, regulator, or director of a financial institution within the five years before the date of the application. 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 five years before the date of the application, the OFR may allow the applicant to have only one director who has direct financial institution experience within the last five years.
  - d. The proposed president or chief executive officer must have had at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last five years.
- 5) The corporate name of the proposed state bank is approved by the OFR.
  - 6) Provision has been made for suitable quarters at the location in the application.

Upon approval of an application, the OFR issues a bank charter that is a public record and contains the names of the banks officers and members of the board of directors. The names of bank shareholders would continue to receive confidential and exempt treatment pursuant to s. 655.057(2) and (8), F.S.<sup>34</sup>

In 2018, the OFR received its first two banking applications since 2009. Three applications were received annually in 2019 and 2020.<sup>35</sup> Based on data provided by the OFR, the chart below depicts the new bank application activity since 2001 for Florida.

Year	Number of New Banking Applications	Number of New Banks Opened
2001	8	11
2002	11	8
2003	13	10
2004	19	16
2005	25	18
2006	21	18
2007	12	18
2008	6	7
2009	2	2
2010	0	0
2011	0	0
2012	0	0
2013	0	0
2014	0	0
2015	0	0
2016	0	0
2017	0	0
2018	2	1
2019	3	0
2020	3	1

*Current Public Record Exemptions Related to Financial Institutions*

<sup>34</sup> However, the name of a foreign national who proposes to own or control 10 percent or more of any class of a bank's voting securities, would become public pursuant to s. 120.80(3)(a)4., F.S.

<sup>35</sup> *Id.*

Presently, s. 655.057, F.S., contains a number of public record exemptions for certain records relating to OFR's regulation of financial institutions:

- Subsection 655.057(1), F.S., makes confidential and exempt records and information relating to active investigations. The records remain confidential and exempt after the investigation is completed or ceases to be active to the extent disclosure 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.
- Subsection 655.057(2), F.S., makes confidential and exempt reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, the OFR or any other state agency or federal agency responsible for the regulation or supervision of financial institutions. However, this exemption provides for the following release of such reports:
  - The reports may be released to specified persons such as the financial institution under examination (or its holding company) and certain proposed acquirers of a financial institution.
  - The reports must be released within one year after the appointment of a liquidator, receiver, or conservator to the financial institution, except that portions of the reports which identify specified individuals such as depositors and stockholders remain confidential and exempt.
- Subsection 655.057(3), F.S., makes confidential and exempt the OFR's informal enforcement actions 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 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.
- Subsection 655.057(4), F.S., makes confidential and exempt trade secrets, as defined in s. 688.002, F.S., which comply with s. 655.0591, F.S., and are held by the OFR in accordance with its statutory duties.
- Subsections 655.057(7) and (8), F.S., make confidential and exempt a list of stockholders or members of a financial institution.

Subsections 655.057(5) and (6), F.S., permit the following release of records or information which otherwise fall under exemptions provided in the statute:

- Publishing specified reports that are required to be submitted to the OFR or that are required by applicable federal statutes or regulations to be published.
- Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions.
- Disclosing or publishing summaries of the condition of financial institutions and general economic and similar statistics and data, provided that the identity of a particular financial institution is not disclosed.
- Reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement and prosecutorial agencies.
- Furnishing information upon request to the Chief Financial Officer or the Division of Treasury of the Department of Financial Services regarding the financial condition of any financial institution that is, or has applied to be, designated as a qualified public depository pursuant to ch. 280, F.S.
- Furnishing information to Federal Home Loan Banks regarding its member institutions pursuant to an information sharing agreement between the Federal Home Loan Banks and the OFR.
- Providing records or information pursuant to an order of a court or an administrative law judge or pursuant to a legislative subpoena, according to specified procedures and restrictions.

While some of the above public record exemptions, or other public record exemptions provided in ch. 119, F.S., may apply to certain records received by the OFR pursuant to an application to organize a new bank, current statutes do not provide a public record exemption specifically directed at such applications. Presently, with the exception of some material for which the applicant may claim trade

secret status pursuant to s. 655.0591, F.S., all of the information received by the OFR on form OFR-U-1 is subject to public inspection and copying. Additionally, significant portions of the information received by the OFR on form OFR-U-10 is subject to public inspection and copying, with only certain information, such as social security numbers, passport numbers, home county identification numbers, immigration file numbers, and certain financial disclosures being exempted from public records requirements.

## Effect of the Bill

The bill creates a public record exemption within s. 655.057, F.S., for certain information received by the OFR pursuant to an application for authority to organize a new state bank. Specifically, the bill provides that, *except for those portions that are otherwise public record*, the following information received by the OFR pursuant to an application for authority to organize a new state bank under ch. 658, F.S., is confidential and exempt<sup>36</sup> from public record requirements:

- Personal financial information.
- A driver license number, a passport number, a military identification number, or any other similar number issued on a government document used to verify identity.
- Books and records of a current or proposed financial institution.
- The personal identifying information of a shareholder, subscriber, proposed officer, or proposed director of the proposed state bank when such information has been marked by the applicant as confidential when submitted to the OFR. The term "personal identifying information" means names, home addresses, e-mail addresses, telephone numbers, names of relatives, work experience, professional licensing and educational backgrounds, and photographs.
- The proposed state bank's business plan and any attached supporting documentation when such information has been marked by the applicant as confidential when submitted to the OFR.

Section 655.057(12)(c), F.S., currently defines "personal financial information" to mean:

- Information relating to the existence, nature, source, or amount of a person's personal income, expenses, or debt.
- Information relating to a person's financial transactions of any kind.
- Information relating to the existence, identification, nature, or value of a person's assets, liabilities, or net worth.

Although the information covered by this new public record exemption is confidential and exempt, existing provisions of s. 655.057, F.S., permit the following release of records or information which otherwise fall under exemptions provided in the statute:

- Publishing specified reports that are required to be submitted to the OFR or that are required by applicable federal statutes or regulations to be published.
- Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions.
- Disclosing or publishing summaries of the condition of financial institutions and general economic and similar statistics and data, provided that the identity of a particular financial institution is not disclosed.
- Reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement and prosecutorial agencies.
- Furnishing information upon request to the Chief Financial Officer or the Division of Treasury of the Department of Financial Services regarding the financial condition of any financial institution that is, or has applied to be, designated as a qualified public depository pursuant to ch. 280, F.S.

---

<sup>36</sup> There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. See Op. Att'y Gen. Fla. 85-62 (1985).



- Furnishing information to Federal Home Loan Banks regarding its member institutions pursuant to an information sharing agreement between the Federal Home Loan Banks and the OFR.
- Providing records or information pursuant to an order of a court or an administrative law judge or pursuant to a legislative subpoena, according to specified procedures and restrictions.

As previously stated, the exemption created in the bill only provides protection for records and information that are not otherwise public record. Upon approval of an application, the OFR issues a bank charter that is a public record and contains the names of the banks officers and members of the board of directors. The names of bank shareholders would continue to receive confidential and exempt treatment pursuant to s. 655.057(2) and (8), F.S.<sup>37</sup>

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date. It also provides a statement of public necessity as required by the Florida Constitution.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 655.057, F.S., relating to records; limited restrictions upon public access.

**Section 2.** Provides a statement of public necessity.

**Section 3.** Provides an effective date of July 1, 2021.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

See Fiscal Comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The proposed public record exemption may encourage and attract the formation of new banks as Florida-chartered institutions, in which case the bill would have a positive impact on investment, employment, economic growth, and consumer access to financial services. However, the impact to the private sector is indeterminate.

#### D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public record exemption. Agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

<sup>37</sup> See *supra* note 34.

### 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, s. 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 exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

###### Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

###### Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public record exemption for certain information received by the OFR pursuant to an application for authority to organize a new state bank. The purpose of the exemption is to protect sensitive personal, financial, and business information that the OFR receives in conjunction with its duties related to the review of applications for the organization or establishment of new state banks. As such, the bill appears to be no broader than necessary to accomplish its purpose.

#### B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2021, the Insurance & Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

- Aligns the House bill with the Senate bill.
- More clearly identifies the categories of records and information covered by the exemption, which makes the exemption more feasible for the record custodian.
- More completely covers the sensitive personal, financial, and business information contained in an application to establish a new state-chartered bank.
- Conforms the statement of public necessity to the changes made to the exemption.

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