

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 7020

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Office of Financial Regulation

DATE: January 11, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
<u>Johnson</u>	<u>Knudson</u>		BI Submitted as Comm. Bill/Fav
1. <u>Johnson</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 7020 saves from repeal two public record exemptions. The first relates to international trust entities and qualified limited service affiliates, which are types of financial institutions, and the second public record exemption relates to financial institutions generally. The Office of Financial Regulation (OFR) regulates these entities.

The public records exemption for international trust entities and qualified limited service affiliates applies to:

- Any personal identifying information of the customers or prospective customers of an affiliated international trust entity that appears in the records of an international trust company representative office or a qualified limited service affiliate.
- Any personal identifying information of the customers or prospective customers of an affiliated international trust entity that appears in records relating to reports of examinations, operations, or condition, including working papers, of an international trust company representative office or a qualified limited service affiliate.
- 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 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 records exemption for financial institutions, generally, applies to:

- Certain information held by OFR relating to investigations, reports of examinations, operations, or condition, including working papers, prepared by, or for the use of, OFR, or any state or federal agency responsible for the regulation or supervision of financial institutions in this state.
- Any confidential information supplied to OFR or to employees of any financial institution by other state or federal governmental agencies.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. The exemptions contained in ss. 655.057, 66.401, and 663.540, F.S., are scheduled to repeal on October 2, 2022. This bill removes the scheduled repeal to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 1, 2022.

II. Present Situation:

Public Records Law

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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws. The Public Records Act states that:

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

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records. Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to “perpetuate, communicate, or formalize knowledge of some type.”

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and

under supervision by the custodian of the public record. A violation of the Public Records Act may result in civil or criminal liability.

Only the Legislature may create an exemption to public records requirements. An exemption must be created by general law and must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act and confidential. Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹ with specified exceptions.² The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.³ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.⁴ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;⁵
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;⁶ or

¹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

² Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

³ Section 119.15(3), F.S.

⁴ Section 119.15(6)(b), F.S.

⁵ Section 119.15(6)(b)1., F.S.

⁶ Section 119.15(6)(b)2., F.S.

- It protects trade or business secrets.⁷

The Act also requires specified questions to be considered during the review process.⁸ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.⁹ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.¹⁰

Office of Financial Regulation

The Office of Financial Regulation (OFR) regulates financial institutions,¹¹ finance companies, money services businesses, and the securities industry.¹² The OFR is responsible for the regulation of various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes.¹³ In 2017, the Legislature created two new types of financial institutions, an international trust entity and a qualified limited service affiliate within the regulatory framework of international banking.¹⁴ In 2017, the Legislature also created two related public records exemptions in the international banking chapter,¹⁵ and substantially revised the current exemption relating to financial institutions in s. 655.057, F.S.¹⁶

Public Records Exemption for Financial Institutions Generally

⁷ Section 119.15(6)(b)3., F.S.

⁸ Section 119.15(6)(a), F.S. The specified questions are:

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

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ Section 119.15(7), F.S.

¹¹ Section 655.005(1)(i), F.S., provides that a financial institution means 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 entity, international trust company representative office, qualified limited service affiliate, 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.

¹² Section 20.121(3)(a)2., F.S.

¹³ Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.

¹⁴ Ch. 2017-83, Laws of Fla.

¹⁵ Parts III and IV of ch. 663, F.S.

¹⁶ Ch. 2017-84, Laws of Fla.

In the course of conducting an examination or an investigation of a financial institution, OFR generates many documents of a sensitive nature, such as records related to an investigation and “reports of examinations,¹⁷ conditions, or operations, which includes working papers.”¹⁸ In 2017, the Legislature amended s. 655.057, F.S., to specify that the exemptions are not only confidential and exempt from s. 119.071(1), F.S., but also exempt from Article I, section 24(a), of the Florida Constitution.¹⁹

Section 655.057(1), F.S., provides that “all records and information relating to an investigation by OFR are confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a), of the Florida Constitution until the investigation is completed or ceases to be active.”²⁰ Even after the completion of an investigation or the investigation ceases to be active, portions of the covered documents remain confidential and exempt from public disclosure under s. 119.071(1), F.S., and Article I, section 24(a), of the Florida Constitution to the extent that the documents:

- Would jeopardize the integrity of another active investigation;
- Impair the safety and soundness of the financial institution;
- Reveal personal financial information 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.²¹

Pursuant to s. 655.057(2), F.S., reports of examinations, operations, or condition, including working papers are confidential and exempt from the public records disclosure requirements of s. 119.07(1), F.S., and Article I, section 24(a), of the Florida Constitution.²² Such documents may only be released to specified parties under certain circumstances, but any such information or records obtained from OFR that is confidential must be maintained as confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a), of the Florida Constitution.²³ Although reports of examination are generally confidential and exempt from public disclosure, the statute provides that OFR must release reports of examination within 1 year after the appointment of a liquidator, receiver, or conservator to the financial institution.²⁴ However, any portion of such reports that discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution must be redacted by OFR because this information remains confidential and exempt from the public

¹⁷ An “examination report” is any record “submitted to or prepared by OFR as part of its supervisory duties performed pursuant to s. 655.012, F.S., or its examination authority pursuant to s. 655.045(1), F.S. See Section 655.057(12)(a), F.S.

¹⁸ Section 655.057(12), F.S., working papers include the records of the procedures followed, the tests performed, the information obtained, and the conclusions reached in an examination or investigation performed pursuant to s. 655.032 or s. 655.045, F.S.

¹⁹ Subsections (1), (2), (5), and (9) of s. 655.057, F.S.

²⁰ Section 655.057(1), F.S.

²¹ If an investigation relates to an informal enforcement action, once an investigation is completed or ceases to be active, the informal enforcement action is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, of the State 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 information 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. See s. 655.057(12), F.S.

²² Section 655.057(2), F.S.

²³ *Id.*

²⁴ Section 655.057(2)(g), F.S.

records disclosure requirements of s. 119.07(1), F.S., and Article I, section 24(a), of the Florida Constitution.²⁵

Section 655.057(9), F.S., provides that any confidential documents supplied to OFR or to employees of any financial institution by other state or federal governmental agencies is confidential and exempt from s. 119.071(1), F.S., and Article I, section 24(a), of the Florida Constitution.²⁶

Notwithstanding the above exemptions, s. 655.057(5), F.S., specifies information that may be provided to particular parties under certain circumstances. However, any such confidential information or records obtained from OFR must be maintained as confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a), of the Florida Constitution.²⁷

Public Record Exemptions for an International Trust Entity and a Qualified Limited Service Affiliate

For purposes of parts III²⁸ and IV²⁹ of ch. 663, F.S., an international trust entity is an international trust company or organization, or any similar business entity, or an affiliated³⁰ 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.³¹ Part IV defines a qualified limited service affiliate as a person or entity that is qualified under this part to perform the permissible activities outlined in s. 663.531, F.S., related to or for the benefit of an affiliated international trust entity.³²

Section 663.416(2), F.S., provides that the following information held by OFR is confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a), of the Florida Constitution:

- 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 (ITCRO)³³ or in records relating to reports of examinations, operations, or condition of an ITCRO, including working papers.
- Any portion of a list of names of the shareholders or members of an affiliated international trust entity.
- Information received by 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.³⁴

²⁵ *Id.*

²⁶ Section 655.057(9), F.S.

²⁷ Section 655.057(5), F.S.

²⁸ Section 663.401(3), F.S.

²⁹ Section 663.401(2), F.S.

³⁰ Section 663.401, F.S., defines affiliate.

³¹ Section 663.530(1)(c), F.S.

³² Section 663.530(1)(f), F.S.

³³ An international trust company representative office is an office of an international trust entity which is established or maintained in this state for the purpose of engaging in nonfiduciary activities described in s. 663.409, F.S. or any affiliate, subsidiary, or other person that engages in such activities on behalf of such international trust entity from an office located in this state. *See* s. 663.401(2), F.S.

³⁴ Section 663.416(3), F.S., authorizes OFR to release certain confidential and exempt information to specified persons.

Section 663.540(2), F.S., provides that the following information is confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a), of the Florida Constitution:

- 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 which appears in records relating to reports of examinations, operations, or condition, including working papers, of a qualified limited service affiliate papers.
- Any portion of a list of names of the shareholders or members of a qualified limited service affiliate.
- Information received by 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.³⁵

Open Government Sunset Review Findings and Recommendations

In 2021, the Senate Banking and Insurance Committee staff sent an Open Government Sunset Review Survey to the Office of Financial Regulation regarding the public records exemptions that are subject to OGSR. In their response, OFR recommends that the exemption remain in effect to protect sensitive information related to examinations and investigations by OFR, personal financial information, and sensitive information that is shared with OFR by other governmental agencies which remains the property of those agencies.³⁶

In regards to public records' request for OFR records exempted in sections 663.416 and 663.540, F.S., the OFR has not received any requests during the period of January 5, 2017 to July 23, 2021.³⁷ In regards to requests for public records regarding other financial institution records as described s. 655.057, F.S., OFR has received almost 200 requests for public records during the same period.³⁸

III. Effect of Proposed Changes:

Section 1 amends s. 663.416, F.S., to save from repeal and reenact the current public records exemption relating to personal identifying information of the customers or prospective customers of an affiliated international trust entity, which appear in the books or records of an ITCRO or in records relating to reports of examinations, operations, or conditions, including working papers, of an ITCRO.

Section 2 amends s. 663.540, F.S., to save from repeal and reenact the current public records exemption relating to a personal identifying information of the customers or prospective customers of an affiliated international trust entity, which appear in the books or records of a qualified limited service affiliate or in records relating to reports of examinations, operations, or conditions, including working papers, of a qualified limited service affiliate.

³⁵ Section 663.540(3), F.S., authorizes OFR to release of such confidential and exempt information to specified entities.

³⁶ Office of Financial Regulation, Response to OGSR Survey of OFR Public Records Exemptions (Sept. 30, 2021) (on file with Senate Banking and Insurance Committee).

³⁷ *Id.*

³⁸ *Id.* Only three of the requested records were completely confidential and exempt and were not provided.

Section 3 amends s. 655.057, F.S. to save from repeal and reenact the current public records exemptions in subsections (1), (2), (5), and (9) that apply to financial institutions, generally, relating to investigations, reports of examination, operations, condition, including working papers.

Section 4 provides an effective date of October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

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 bill creating or expanding an exemption to the public records requirements. This bill continues current public records exemptions beyond their current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemptions do not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

The governmental agency, Office of Financial Regulation, will continue to incur costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 663.416, 663.540, and 657.057.

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

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

None.

B. Amendments:

None.