

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 Fiscal Policy

BILL: SB 7054

INTRODUCER: Banking and Insurance Committee

SUBJECT: Central Bank Digital Currency

DATE: April 19, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Knudson</u>		BI Submitted as Comm. Bill/Fav.
2.	<u>Moody</u>	<u>Yeatman</u>	<u>FP</u>	Favorable

I. Summary:

SB 7054 aims to protect Floridians’ privacy and other rights by prohibiting a United States Federal Reserve central bank digital currency (CBDC), to the extent one is developed, and foreign CBDC from being treated as money under the Florida Uniform Commercial Code (Florida UCC). The bill defines CBDC in the Florida UCC, in summary, as a digital currency that is issued by the U.S. Federal Reserve, foreign reserve system, or other specified entity, or that is processed or validated directly by them. The bill excludes CBDC from the definition of “money” in s. 671.201, F.S.

The bill has no impact on state or local revenues and expenditures and an indeterminate impact on the private sector. See Section V. Fiscal Impact Statement.

The bill provides an effective date of July 1, 2023.

II. Present Situation:

Money in the United States

The U.S. Constitution provides Congress with the power to “...coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures.”¹ The Supreme Court has construed this provision to mean that Congress has exclusive power to regulate every phase of currency.² The Supreme Court has found that “the authority to impose requirements of uniformity and parity is an essential feature of the control of currency,” and Congress may do so by adopting legislation.³

¹ Art. I, s. 8, cl. 5, U.S. Constitution

² Congress.gov, *Constitution Annotated, Art1.S8.C5.1 Congress’s Coinage Power*, available at: [Congress's Coinage Power | Constitution Annotated | Congress.gov | Library of Congress](#) (last visited Mar. 31, 2023) (citing *Houston v. Moore*, 18 U.S. 1, 49 (1820); *Sturges v. Crowninshield*, 17 U.S. 122, 125 (1819)).

³ *Norman v. Baltimore & O.R. Co.*, 294 U.S. 240, 304 (1935) (citing *Veazie Bank v. Fenno*, 8 Wall. 533, 549, 19 L.Ed. 482).

On April 2, 1792, Congress adopted the Mint Act which established the coinage system and the dollar as the unit of U.S. currency.⁴ In 1793, the first U.S. coins were produced at the Philadelphia Mint and issued “Treasury notes” thereafter during times of financial stress, such as during the War of 1812, and the Mexican War of 1846.⁵ In 1861, the first paper money was issued.⁶

In 1931, Congress codified the Federal Reserve Act that established the United States’ Federal Reserve System and authorized the issuance of Federal Reserve notes which began in 1914.⁷ In 1871, Western Union introduced the electronic fund transfer system which enabled the first electronic payment.⁸

Money serves as a medium of exchange,⁹ a store of value,¹⁰ and a unit of account.¹¹ In the U.S., money takes multiple forms:

- Central bank money that is a liability of the Federal Reserve Bank that comes in the form of physical currency issued by the Federal Reserve and digital balances held by commercial banks at the Federal Reserve.
- Commercial bank money is generally used by the public and is the digital form of money held in accounts at commercial banks.
- Nonbank money is digital money held as balances at nonbank financial service providers which is usually transferred by firms on their own books by using technology, such as mobile apps.¹²

Most money, over 97%, in circulation today is transacted electronically where dollars deposited online are converted into a string of digital code by commercial banks.¹³ The digital processing of credit and debit card transactions and the creation of banking apps has resulted in many cash-based transactions being digitized.¹⁴

⁴ National Credit Union Administration, *History of the United States Currency*, available at: [History of United States Currency | MyCreditUnion.gov](https://www.nCUA.org/History-of-the-U.S.-Currency) (hereinafter cited as “NCUA Article on the History of the U.S. Currency”) (last visited Apr. 1, 2023).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ CSG Forte, *Electronic Payments: A Brief History*, Jul. 27, 2001, available at: [What Are Electronic Payments? | Electronic Payments History \(forte.net\)](https://www.forte.net/electronic-payments-history) (last visited Apr. 1, 2023).

⁹ “Medium of exchange” is defined as “anything generally accepted as payment in a transaction and recognized as a standard of value. Money is a medium of exchange. Garner, B., *Definition of Medium of Exchange*, Black’s Law Dictionary (11th ed. 2019), available at: [MEDIUM OF EXCHANGE | Secondary Sources | FE | Westlaw Edge](https://www.westlaw.com/definitions/medium-of-exchange) (last visited Apr. 1, 2023).

¹⁰ “Store of Value” is a “currency that can be stored and retrieved at a later date, without depreciating.” Amoussou, M., *What is a ‘Store of Value’?*, Securities.io, Jan. 4, 2023, [What is a ‘Store of Value?’ - Securities.io](https://www.securities.io/what-is-a-store-of-value/) (last visited Apr. 1, 2023).

¹¹ “Unit of account” means economics the function of money that enables the user to keep account and value transactions. Dictionary.com, *Unit of Account*, available at: [Unit of account Definition & Meaning | Dictionary.com](https://www.dictionary.com/terms/unit-of-account) (last visited Apr. 1, 2023).

¹² Board of Governors of the Federal Reserve System, *Money and Payments: The U.S. Digital Dollar in the Age of Digital Transformation*, Jan. 2022, available at: [Money and Payments: The U.S. Dollar in the Age of Digital Transformation \(federalreserve.gov\)](https://www.federalreserve.gov/money-and-payments) (hereinafter cited as “Federal Reserve Report on Money and Payments”) (last visited Apr. 1, 2023).

¹³ Mookerjee, A., *What if Central Banks Issued Digital Currency?*, Harvard Business Review, Oct. 15, 2021, available at: [What If Central Banks Issued Digital Currency? \(hbr.org\)](https://hbr.org/2021/10/what-if-central-banks-issued-digital-currency/) (last visited Apr. 1, 2023).

¹⁴ *Id.*

Digital Currencies

Digital currency is “a digital representation of value that is not available in physical form but which can be used as a medium of exchange, a unit of account, or a store of value.”¹⁵ Digital currency is transacted and stored electronically and therefore is not validated as legal tender¹⁶ in any jurisdiction.¹⁷ Under federal law, U.S. coins and currency, including Federal Reserve notes, but not foreign gold or silver, are “legal tender for all debts, public charges, taxes, and dues.”¹⁸

Digital currencies can be issued in two ways: centralized or decentralized. Most privately held digital currencies, usually referred to as cryptocurrencies such as Bitcoin, are decentralized. CBDC are centralized currencies issued by central banks.¹⁹ The Internal Revenue Service (IRS) lists cryptocurrency and stablecoins, but not CBDCs, as examples of digital assets²⁰ subject to taxable gains or losses that may result from transactions, such as the sale of cryptocurrency for fiat or an exchange of a digital asset for property, goods, or services.²¹

CBDC Generally

Westlaw defines CBDC as a digital or virtual currency that is “issued by a sovereign central bank as a digital representation of a certain denomination of fiat currency, such as one US dollar.”²² The value of CBDC is stable and the value changes only in relation to the underlying fiat currency changes in comparison to other fiat currencies.²³ Federal Reserve notes is the only U.S. currency still being manufactured today.²⁴ There are wholesale and retail CBDC. Wholesale CBDCs are primarily utilized by financial institutions and retail CBDCs are primarily used by individuals.²⁵

Proponents of CBDC claim it would accomplish goals of financial inclusion and promoting the U.S. currency’s international role as a reserve currency and a medium of exchange for

¹⁵ Westlaw, *Definition of Virtual Currency*, available at: [Virtual Currency | Practical Law \(westlaw.com\)](#) (last visited Apr. 1, 2023).

¹⁶ “Legal tender” is money approved in a country for the payment of debts, the purchase of goods, and other exchanges for value. Black’s Law Dictionary (11th ed. 2019), *Definition of Legal Tender*, available at: [LEGAL TENDER | Secondary Sources | FE | Westlaw Edge](#) (last visited Apr. 1, 2023).

¹⁷ *Id.*

¹⁸ 31 U.S.C. s. 5103.

¹⁹ Frankenfield, J., *Digital Currency Types, Characteristics, Pros & Cons, Future Uses*, Investopedia, Jan. 13, 2022, available at: [Digital Currency Types, Characteristics, Pros & Cons, Future Uses \(investopedia.com\)](#) (last visited Mar. 31, 2023).

²⁰ The IRS defines “digital asset” as “any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary. The Internal Revenue Service, *Digital Assets*, available at: [Digital Assets | Internal Revenue Service \(irs.gov\)](#) (last visited Apr. 1, 2023).

²¹ *Id.*

²² Westlaw, *Definition of Central Bank Digital Currency*, available at: [Central Bank Digital Currency \(CBDC\) | Practical Law \(westlaw.com\)](#) (last visited Apr. 1, 2023).

²³ *Id.*

²⁴ NCUA Article on the History of the U.S. Currency.

²⁵ CFI Team, *Central Bank Digital Currency (CBDC): A Form of Fiat Currency Issued by Central Banks*, CFI, Jan. 19, 2023, available at: [Central Bank Digital Currency \(CBDC\) - Overview, Types, Benefits \(corporatefinanceinstitute.com\)](#) (last visited Apr. 1, 2023).

international trade.²⁶ Others claim the issuance of a CBDC is not needed to digitize U.S. currency since U.S. currency is largely digital today.²⁷ Moreover, the issuance of a CBDC would fundamentally change the infrastructure of the U.S. banking and financial system by altering the relationship between citizens and the Federal Reserve.²⁸ According to the Acting Comptroller of the Currency Michael Hsu, the United States' current two-tier banking system (i.e. the use of commercial banks as intermediaries between the public and the Federal Reserve) "is not an accident. It is the result of a carefully architected monetary and banking system."²⁹ Further, the American Banking Association submits that a U.S. CBDC has uncertain benefits that are unlikely to be realized, there are costs associated with such a CBDC for which the Federal Reserve has not accounted, and there are more advantageous ways to achieve our shared objectives that minimize any potential risks.³⁰

Eleven countries have launched a CBDC, including the Bahamas, Jamaica, Nigeria, and eight Eastern Caribbean countries.³¹ Eighteen countries are operating pilot programs for CBDC, such as China, Russia, Hong Kong, Iran, Australia, and Singapore.³² The U.S. is reportedly in the development phase of a bank-to-bank digital currency.³³

CBDC in the U.S.

On March 9, 2022, President Biden issued an executive order directing federal agencies to assess and report, amongst other things, the benefits and potential risks of the development and integration of a CBDC in the U.S.³⁴ The report made four recommendations, including:

- Advance work on a U.S. CBDC should be pursued;
- Use of an instant payment system is encouraged;
- Regulation relating to a federal framework for payments should be established; and

²⁶ Federal Reserve Report on Money and Payments.

²⁷ Morgan, R., *ABA Comments on Federal Reserve Discussion Paper Money and Payments: The US Dollar in the Age of Digital Transformation*, p. 1, May 20, 2022, available at: [aba-comments-on-fed-discussion-paper-money-and-payments-05202022.pdf](https://www.aba.com/~/media/Files/2022/05/2022052022.pdf) (hereinafter cited as "ABA Comments on Federal Reserve Discussion Paper on Money and Payments") (last visited Apr. 1, 2023).

²⁸ *Id.*

²⁹ Acting Comptroller of the Currency Michael J. Hsu, Remarks Before the Institute of International Economic Law at Georgetown University Law Center, *Thoughts on the Architecture of Stablecoins*, at p. 4, Apr. 8, 2022, available at: [Acting Comptroller of the Currency Michael J. Hsu Remarks Before the Institute of International Economic Law at Georgetown University Law Center](https://www.occ.gov/news-issuances/speeches/2022/04/08-acting-comptroller-of-the-currency-michael-j.-hsu-remarks-before-the-institute-of-international-economic-law-at-georgetown-university-law-center) "Thoughts on the Architecture of Stablecoins" on April 8, 2022 (occ.gov) (last visited Apr. 1, 2023) (citing Cheng, J., and Torregrossa, J., *A Lawyer's Perspective on U.S. Payment System Evolution and Money in the Digital Age*, Feb. 4, 2022).

³⁰ ABA Comments on Federal Reserve Discussion Paper on Money and Payments at p. 4.

³¹ Atlantic Council, *Central Bank Digital Currency Tracker*, available at: [Central Bank Digital Currency Tracker - Atlantic Council](https://www.atlanticcouncil.org/central-bank-digital-currency-tracker/) (last visited Mar. 31, 2023).

³² *Id.*

³³ *Id.*; Lipsky, J., Kumar, A., *It's Official: The United State is Developing a Bank-to-Bank Digital Currency*, The Atlantic Council, Dec. 15, 2022, available at: [It's official: The United States is developing a bank-to-bank digital currency - Atlantic Council](https://www.atlanticcouncil.org/its-official-the-united-states-is-developing-a-bank-to-bank-digital-currency-atlantic-council/) (last visited Apr. 1, 2023).

³⁴ The American Presidency Project, *Executive Order 14067 – Ensuring Responsible Development of Digital Assets*, Mar. 9, 2022, available at: [Executive Order 14067—Ensuring Responsible Development of Digital Assets | The American Presidency Project \(ucsb.edu\)](https://www.americanpresidencyproject.org/14067-executive-order-ensuring-responsible-development-of-digital-assets/) (last visited Mar. 31, 2023).

- Improvement of cross-border payments should be prioritized.³⁵

Since the report, ten banks working with an organization that is part of the Federal Reserve Bank of New York recently participated in a test for 12 weeks of an interoperable digital money platform that operates exclusively in U.S. dollars. The ten banks include: BNY Mellon, Citi, HSBC, MasterCard, PNC Bank, Swift, TD Bank, Truist, U.S. Bank, and Wells Fargo.³⁶

Further, the Federal Reserve has developed the FedNow system which is an instant payment system that can “clear and settle payments in near real-time and at any time, any day of the year.”³⁷ FedNow is expected to launch in July 2023 and it will roll out in phases.³⁸ The Federal Reserve will begin the formal certification of financial institutions to participate in the system beginning the first week of April 2023.³⁹

U.S. legislation has recently been filed to restrict the federal government from pursuing a U.S. CBDC, such as a bill titled “CBDC Anti-surveillance Act” to prohibit the use of CBDC to implement monetary policy,⁴⁰ and other legislation that prohibits efforts to issue a U.S. CBDC.⁴¹

Uniform Commercial Code

2022 Amendments to Model Code

While the Federal Reserve has not made a decision about whether to issue a CBDC,⁴² the Uniform Law Commission (ULC) and American Law Institute (ALI) have drafted model amendments to the Uniform Commercial Code (UCC) to provide, amongst other things, updated rules for commercial transactions involving virtual currencies and other technological developments.⁴³ The UCC model amendments add to the definition of “money:”

“The term does not include an electronic record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of

³⁵ The U.S. Department of Treasury, Office of Public Affairs, *Fact Sheet: Treasury Report on the Future of Money and Payments*, Sept. 20, 2022, available at: [FactSheet-Treasury-Report-Future-Money-Payments.pdf](#) (last visited Mar. 31, 2023).

³⁶ PYMNTS, *10 US Banks Participating in Test of Interoperable Digital Money Platform*, Nov. 15, 2022, available at: [LTK Now Enables Delivery of Social Media Ads Via Creators' Accounts \(pymnts.com\)](#) (last visited Apr. 1, 2023).

³⁷ The Board of Governors of the Federal Reserve System, *FedNow Service*, available at: [Federal Reserve Board - FedNowSM Service](#) (last visited Mar. 31, 2023).

³⁸ The Board of Governors of the Federal Reserve System, *Federal Reserve Announces July Launch for the FedNow Service*, Mar. 15, 2023, available at: [Federal Reserve Board - Federal Reserve announces July launch for the FedNow Service](#), (last visited Mar. 31, 2023).

³⁹ *Id.*

⁴⁰ H.R. 1122, *CBDC Anti-Surveillance State Act (2023-2024)*.

⁴¹ See S. 967, *A Bill to Amend the Federal Reserve Act to Limit the Ability of Federal Reserve Banks to Issue Central Bank Digital Currency (2023-2024)*; Revell, E., *Ted Cruz Introduces Bill Blocking Fed from Adopting Central Bank Digital Currency*, FoxNews, Mar. 21, 2023, available at: [Ted Cruz introduces bill blocking Fed from adopting central bank digital currency | Fox Business](#) (last visited Apr. 1, 2023).

⁴² The Board of Governors of the Federal Reserve System, *Central Bank Digital Currency*, available at: [Federal Reserve Board - Central Bank Digital Currency \(CBDC\)](#) (last visited Mar. 31, 2023).

⁴³ Uniform Law Commission, *UCC, 2022 Amendments to*, available at: [UCC, 2022 Amendments to - Uniform Law Commission \(uniformlaws.org\)](#) (last visited Apr. 1, 2023).

exchange before the medium of exchange was authorized or adopted by the government.”⁴⁴

In other words, the definition of “money” in the UCC model amendment excludes digital currency that is recorded and transferrable before it has been authorized or adopted by the federal government. In effect, the UCC model amendment opens the door for the implementation of a U.S. CBDC while excluding any other digital currency not recorded and transferrable before it was authorized by the government (e.g. Bitcoin was transferrable before it was authorized by a government as currency).⁴⁵ These suggested model amendments have not been adopted by Florida.

Florida UCC

Florida’s UCC codified at chs. 670 - 680, F.S., regulates commercial and secured transactions in the state. Florida’s UCC currently defines “money” as “a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.”⁴⁶

III. Effect of Proposed Changes:

Section 1 creates the following definition of “central bank digital currency” in s. 671.201, F.S., of the Florida UCC general provisions:

“[A] digital currency, a digital medium of exchange, or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is made directly available to a consumer by such entities. The term includes a digital currency, a digital medium of exchange, or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is processed or validated directly by such entities.”

The definition of “money” in the Florida UCC under s. 671.201(24), F.S., is amended to exclude CBDC. Thus, the provisions relating to money under the Florida UCC do not apply to CBDC (as defined in the bill).

Sections 2 to 5 makes conforming cross-references to ss. 328.0015, 559.9232, 563.022, and 668.50, F.S.

Section 6 provides an effective date of July 1, 2023.

⁴⁴ Uniform Law Commission and the American Law Institute, *Uniform Commercial Code Amendments (2022)*, Mar. 24, 2023, p. 7, available at: [UCC Amendments \(2022\) Final Act with Comments_6.pdf](#) (last visited Apr. 1, 2023).

⁴⁵ *Id.* at pp. 13-14.

⁴⁶ Section 671.201(24), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

If the federal government enacts a U.S. CBDC, the bill could implicate the Supremacy Clause of the United States Constitution.⁴⁷ Notwithstanding whether or not the federal government enacts a U.S. CBDC, the bill could also implicate the Dormant Commerce Clause.⁴⁸

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CBDC, as defined in the bill, may not be used as “money” for purposes of the Florida UCC. This could have an indeterminate fiscal impact on financial transactions in Florida.

⁴⁷ “The Constitution’s Supremacy Clause provides that federal law is ‘the Supreme Law of the Land’ notwithstanding any state law to the contrary. This language is the foundation for the doctrine of federal preemption, according to which federal law supersedes conflicting state laws.” Congressional Research Service, *Federal Preemption: A Legal Primer*, Jul. 23, 2019, available at: [Federal Preemption: A Legal Primer \(congress.gov\)](https://www.congress.gov/legislation/summary/2019/07/23/federal-preemption-a-legal-primer) (last visited Apr. 1, 2023).

⁴⁸ “In contrast to the doctrine of preemption, which generally applies in areas where Congress has acted, the so-called Dormant Commerce Clause may bar state or local regulations even where there is no relevant congressional legislation. Although the Commerce Clause is framed as a positive grant of power to Congress and not an explicit limit on states’ authority, the Supreme Court has also interpreted the Clause to prohibit state laws that unduly restrict interstate commerce even in the absence of congressional legislation – i.e. where Congress is dormant...[Under the Dormant Commerce Clause,] states may not take actions that are facially neutral but unduly burden interstate commerce.” Constitution Annotation, *ArtI.S8.C3.7.1 Overview of Dormant Commerce Clause*, [Overview of Dormant Commerce Clause | Constitution Annotated | Congress.gov | Library of Congress](https://www.congress.gov/legislation/summary/2019/07/23/federal-preemption-a-legal-primer) (last visited Apr. 1, 2023).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 328.0015, 559.9232, 563.022, 668.50, and 671.201 of the Florida Statutes.

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.