

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 498

INTRODUCER: Judiciary Committee and Senator Grall

SUBJECT: Trust Fund Interest for Purposes Approved by the Supreme Court

DATE: March 12, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 498 establishes two interest rate options for financial institutions to select between when paying interest or dividends on lawyer or law firm trust accounts, known as the interest on trust accounts (IOTA). These accounts generate interest or dividends that fund a not-for-profit, tax-exempt entity, The Florida Bar Foundation, established by the Supreme Court, which provides free legal services to low-income individuals or for other purposes authorized by the Court.

The two interest rate alternatives under the bill are:

- The highest interest rate or dividend generally available from the institution to comparable business or consumer accounts or nonmaturing deposit accounts; or
- 25 percent of the federal funds target rate or 0.25 percent, whichever is higher, net of fees. As of March 1, 2025, the federal funds target rate is 4.25 – 4.50 percent; 25 percent of these rates would be 1.06 - 1.13 percent, respectively.

In 1981, the IOTA program was implemented by rules adopted by the Florida Supreme Court and is administered by The Florida Bar Foundation. Currently, The Florida Bar Rules prescribe criteria to determine whether a financial institution is eligible to participate in the voluntary IOTA program. One of the eligibility criteria is the minimum interest rate that must be paid by participating financial institutions. According to the Rules, when the Wall Street Journal Prime Rate (indexed rate) is between 3.25 and 4.99 percent, the minimum yield or interest rate paid net of all fees and service charges must be no less than 3.00 percent below the indexed rate. When

the indexed rate is 5.00 percent or above, the yield must be no less than 40 percent of the indexed rate in effect on the first business day of each month.

These provisions do not apply to interest rates that are established by written contract or obligations that are unrelated to the trust accounts described in this bill.

The bill takes effect upon becoming law.

## **II. Present Situation:**

### **The Jurisdiction of the Florida Supreme Court, The Florida Bar, and the IOTA Program**

The State Constitution grants exclusive jurisdiction to the Florida Supreme Court to regulate the admission of people to practice law in the state. The Court also has exclusive jurisdiction to discipline those people once they are admitted to practice law.<sup>1</sup> Florida is a mandatory bar state and all members who are admitted to practice in Florida must be members of The Florida Bar.<sup>2</sup>

The Florida Supreme Court has established the “authority and responsibilities of The Florida Bar” in the *Rules Regulating the Florida Bar*.<sup>3</sup> Chapter 5 contains the “Rules Regulating Trust Accounts,” which all attorneys who maintain trust accounts must abide by. Funds that are placed in an attorney’s trust account produce interest income exclusively for the IOTA program. Once generated, the interest funds are swept by The Florida Bar directly into the Bar’s foundation, Funding Florida Legal Aid.

The Florida Bar created the non-profit, tax-exempt corporation, The Florida Bar Foundation (Foundation), in 1956, and subsequently changed the name of the Foundation to Funding Florida Legal Aid in 2023. The Foundation functions to increase legal access for people with limited means by funding legal services, developing programs, and supporting legal aid providers selected by the foundation for grant awards. The Foundation’s primary financial support comes from the IOTA program, but donations are also received from attorneys, law firms, corporations, foundations, and individuals.<sup>4</sup>

### **Interest on Trust Accounts (IOTA) Program and Funding Florida Legal Aid (FFLA)**

#### ***Background on Attorney Trust Accounts***

A trust account is a short-term account set up by an attorney in which he or she deposits funds on behalf of a client. The account generally contains funds that are combined such as a retainer payment, discovery or litigation costs paid in advance, filing fees, or a settlement award. The amount of money in the account changes often because deposits and withdrawals are made

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<sup>1</sup> FLA. CONST. art. V, s. 15. The Court conducts these official functions through two separate entities: the Florida Board of Bar Examiners and The Florida Bar.

<sup>2</sup> The Florida Bar, *Frequently Asked Questions*, <https://www.floridabar.org/about/faq/> (last visited March 7, 2025).

<sup>3</sup> The Florida Bar, *Rules Regulating the Florida Bar*, [https://www-media.floridabar.org/uploads/2025/02/2025\\_06-DEC-RRTFB-12-30-2024.pdf](https://www-media.floridabar.org/uploads/2025/02/2025_06-DEC-RRTFB-12-30-2024.pdf). The Rules are divided into 21 chapters consisting of 807 pages.

<sup>4</sup> FFLA, Funding Florida Legal Aid, *Leadership and Funding for Justice in Florida*, <https://fundingfla.org/about-ffla/ffla-overview/> (last visited March 7, 2025).

frequently. These fees may not be commingled with an attorney's operating account but must be kept separately.

A trust account has been described as an “unusual” creation that is significantly different from other accounts. Although an attorney opens the account and is responsible for managing the funds in the account, he or she is not technically the owner of the funds.<sup>5</sup> While an attorney is not the owner of the account, and therefore not entitled to interest generated by the account, neither is the client entitled to interest generated by the funds. The U.S. Court of Appeals for the Eleventh Circuit issued a decision in 1987 determining that a client was not entitled to the interest generated in a trust account.<sup>6</sup>

How the accounts may be regulated or restricted has presented a quandary for almost 200 years. The earliest attempt to regulate trust accounts can be traced to the Legislative Council of the Territory of Florida in 1828. In 1936, the Florida Supreme Court incorporated the regulation of trust accounts into the Court's rules. Additional measures were adopted over the years to ensure that attorneys, acting as “trustees” would not misuse their clients' funds or neglect to return them when requested to do so by the client.<sup>7</sup>

### ***The Evolution of Interest Earned on Trust Accounts***

Trust accounts have evolved from simple accounts that earned no interest and benefitted no one in particular to today's accounts in which The Florida Bar, with Florida Supreme Court approval, mandates participation by attorneys, establishes the interest rates, and requires that the interest be remitted to The Florida Bar's foundation, Funding Florida Legal Aid.

For many years, attorneys deposited their clients' funds in non-interest-bearing checking accounts because trying to apportion multiple clients' interest earnings on short-term deposits was too complex. However, in 1978 and in response to a petition by The Florida Bar,<sup>8</sup> the Florida Supreme Court amended the Bar rules and authorized attorneys to invest trust funds held for their clients to generate investment income that would, among other things, provide legal aid to the poor and help provide student loans.<sup>9</sup> Participation in the program would be voluntary. The interest payments would be transmitted directly from the financial institutions to The Florida Bar Foundation. In implementing these changes, Florida became the first state in the nation to adopt an interest on trust accounts program, commonly called IOTA.<sup>10</sup> After several adjustments were made, the program became operational in 1981 and permitted *voluntary* participation by

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<sup>5</sup> *In re* Amendments to the Rules Regulating the Florida Bar-Miscellaneous: The Florida Bar's Response to the Florida Bankers Association's Motion for Rehearing, Case No. SC22-1292 (April 14, 2023), <https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/baa8ed04-2926-4922-b099-9d51fd7ab2ae/docketentrydocuments/a8e413ea-a6d4-417f-a1b0-2536bb7c9292> (last visited Mar. 27, 2025).

<sup>6</sup> *Cone v. State Bar of Florida*, 819 F.2d 1002 (11th Cir. 1987).

<sup>7</sup> *A Petition of Florida Bar*, 356 So. 2d 799 (Mem), 800-801 (Fla. 1978). (The lengthier case style is *In re Interest on Trust Accounts, A Petition of The Florida Bar to Amend the Code of Professional Responsibility and the Rules Governing the Practice of Law*.)

<sup>8</sup> More specifically, the petition to amend the rules was brought by the Board of Governors of The Florida Bar with the concurrence of the Board of Directors of The Florida Bar Foundation.

<sup>9</sup> *In re Interest on Trust Accounts, A Petition of The Florida Bar*, 356 So. 2d 799 (Mem) (Fla. 1978).

<sup>10</sup> *Id.* at 800-801.

attorneys and their firms.<sup>11</sup> In 1989, the Rules were amended and participation in the program became *mandatory* for all attorneys.<sup>12</sup>

The next significant development occurred in 2001 when the trust account rules were amended to define financial institutions that are eligible to hold IOTA accounts. These eligible institutions were limited to the institutions that pay IOTA account depositors “the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance” or other eligibility requirements. In essence, The Florida Bar Foundation was asking that IOTA accounts be placed on an equal par with non-IOTA accounts in an institution.<sup>13</sup> Financial institutions may impose charges and fees on IOTA accounts, as described below:<sup>14</sup>

The following charges and fees have been defined as “reasonable” and are the only service charges or fees permitted to be deducted from interest earned on IOTA accounts. These service charges or fees may be deducted from IOTA account interest only at such rates and under such circumstances as is the financial institution’s customary practice for all its interest-bearing checking account customers:

- Per check charge.
- Per deposit charge.
- Fee in lieu of minimum balance.
- Federal deposit insurance fee.

Financial institutions also may recoup special costs for their participation in IOTA through deduction of a reasonable IOTA handling or administrative fee.<sup>15</sup>

## **2023 Amendments to Interest on Trust Accounts Rule**

### ***The Florida Bar’s Position***

The Florida Bar petitioned the Court on October 3, 2022, to amend the IOTA rules. The stated goal of the proposed amendments was to “include all possible accounts that can be used as trust accounts” and “ensure the highest possible interest is available for IOTA accounts.”<sup>16</sup> The net effect of these amendments would be to increase funding to the Bar’s legal aid funding organization, Funding Florida Legal Aid.

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<sup>11</sup> It should be noted that the establishment of IOTA or IOLTA (Interest on Lawyers’ Trust Accounts as they are called in other states) was possible only after Congress made changes to federal banking laws in 1980 that allowed certain checking accounts to pay interest. American Bar Association, *Interest on Lawyers’ Trust Accounts*, [https://www.americanbar.org/groups/interest\\_lawyers\\_trust\\_accounts/overview/](https://www.americanbar.org/groups/interest_lawyers_trust_accounts/overview/) (last visited Mar. 27, 2025). See also *Matter of Interest on Trust Accounts*, 402 So. 2d 389 (Mem) (Fla. 1981).

<sup>12</sup> *Matter of Interest on Trust Accounts: Petition to Amend the Rules Regulating the Florida Bar*, 538 So. 2d 448, 449-450, (Fla. 1989).

<sup>13</sup> *Amendment to Rules Regulating the Florida Bar—Rule 5-1.1(e)--IOTA*, 797 So. 2d 551 (Fla. 2001).

<sup>14</sup> Funding Florida Legal Aid, Iota, for Lawyers and Law Firms, <https://fundingfla.org/iota/attorneys-lawfirms/> (last visited Mar. 24, 2025).

<sup>15</sup> *Id.*

<sup>16</sup> *In re Amendments to the Rules Regulating the Florida Bar – Miscellaneous: Petition to Amend the Rules Regulating the Florida Bar*, Case No. SC2022-1292 (10/03/2022), <https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/baa8ed04-2926-4922-b099-9d51fd7ab2ae/docketentrydocuments/60ddf5a7-6ae4-425a-a90b-2cebce635bd0> (last visited Mar. 27, 2025).

On March 16, 2023, the Florida Supreme Court adopted amendments to *Rules Regulating the Florida Bar*, including provisions regulating trust fund accounts. The amendments:

- Expand the definition of an interest or dividend-bearing account to include a business or consumer deposit account, non-maturing deposit, an investment product, a daily financial institution repurchase agreement or a money market account.<sup>17</sup>
- Require eligible institutions to maintain IOTA accounts that pay the highest interest rate or dividend generally available from the institution to its non-IOTA business or consumer account customers when IOTA accounts meet or exceed the same minimum balance qualifications.<sup>18</sup>
- Mandate that eligible institutions tie minimum interest rates for IOTA accounts to the Wall Street Journal Prime Rate (indexed rate).<sup>19</sup>

The formula to determine interest rates and dividends based on the Wall Street Journal Prime Rate is described by the amendments as follows:

When the Wall Street Journal Prime Rate (“indexed rate”) is between 325 and 499 basis points (3.25% and 4.99%), the minimum interest rate paid net of all fees and service charges (“yield”) must be no less than 300 basis points (3.00%) below the indexed rate in effect on the first business day of each month. When the indexed rate is 500 basis points (5.00%) or above, the yield must be no less than 40% of the indexed rate in effect on the first business day of each month.<sup>20</sup>

The Wall Street Journal Prime Rate is a lending rate.<sup>21</sup> To establish this rate, the Wall Street Journal regularly surveys the 30 largest banks in the United States to determine what interest rate they are charging their customers with the highest-rated credit for short-term loans.<sup>22</sup> When 75 percent of the 30 banks change their prime rate, the Wall Street Journal changes its rate.<sup>23</sup> As of March 5, 2025, the Wall Street Journal Prime Rate is 7.5 percent.<sup>24</sup>

In a January 16, 2024, article published in the *Florida Bar News*, the amended rule was explained this way:

For instance, under the amended rule, when prime rate is between 3.25% and 5%, then the trust account rate banks pay out is between .25% and 2%, a 3% gain. After that the gains get even better for banks. At a 7% interest rate, for example, banks will pay out 2.8%, a 4.2% gain.<sup>25</sup>

<sup>17</sup> R. Regulating Fla. Bar Rule 5-1.1(g)(1)(E).

<sup>18</sup> R. Regulating Fla. Bar Rule 5-1.1(g)(5)(A).

<sup>19</sup> R. Regulating Fla. Bar Rule 5-1.1(g)(5)(B).

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

<sup>21</sup> Fulton Bank, *What Is Wall Street Journal Prime Rate and Why It Matters* <https://www.fultonbank.com/Education-Center/Managing-Credit-and-Debt/Prime-rate-and-why-it-matters> (last visited March 7, 2025).

<sup>22</sup> Bankrate, Wall Street Journal Prime rate (Mar. 18, 2025), [Wall Street Prime Rate | WSJ Current Prime Rate Index](https://www.bankrate.com/finance/wall-street-journal-prime-rate/) (last visited Mar. 24, 2025).

<sup>23</sup> *Id.*

<sup>24</sup> The Wall Street Journal, *WSJ-Markets*, <https://www.wsj.com/markets/bonds> (last visited March 5, 2025).

<sup>25</sup> Florida Bar News, *Measure Would Have Florida’s CFO Set the Rate Paid on Iota Accounts* (Jan. 16, 2024) <https://www.floridabar.org/the-florida-bar-news/measure-would-have-floridas-cfo-set-the-rate-paid-on-iota-accounts/> (last visited Mar. 27, 2025).

Another article explained the rule change in these terms:

As a result of this change, for a financial institution to be eligible to participate in the program, it must pay a minimum interest rate of 3.00% when the Wall Street Journal Prime Rate (index rate) is between 3.25% and 4.99%. When the index rate is above 5.00%, to stay eligible, financial institutions are required to pay a minimum interest rate equal to 40% of the index rate.<sup>26</sup>

### ***Florida Bankers Association's Challenge to the 2023 Rule Amendments***

One criticism of the amended rule is that the Wall Street Journal Prime Rate is a benchmark for *lending purposes* and is not used to set *deposit* account interest rates. As a result, the interest rate is significantly higher than interest rates paid for other deposits.

The Florida Bankers Association (FBA) filed a motion for rehearing on March 31, 2023, stating that it did not receive adequate or meaningful notice of the proposed IOTA amendments.<sup>27</sup> The FBA contended that the amended rules, while admirable, would “have a significant and negative impact on participating banks” and go far beyond its intended purpose. The FBA argued that basing the interest rate for IOTA accounts on the Wall Street Journal’s Prime Rate would mean that the minimum interest paid on IOTA accounts would be significantly higher than any other interest rate offered by a bank on consumer or business accounts. The FBA also argued that the judicial branch had violated the separation of powers doctrine and encroached impermissibly on the executive branch’s power to regulate banks through the Office of Financial Regulation, the Department of Financial Services, and the Financial Services Commission.

The new rule became effective on May 15, 2023, and remains in effect. The Court allowed comments from interested parties until November 1, 2023, and directed The Florida Bar to file a report on the status of the implementation of the rules.

### ***Negotiation Attempts Have Failed to Reach a Compromise***

According to documents filed in the Florida Supreme Court, the Florida Bankers Association and The Florida Bar have attempted for months to reach a compromise rate that is agreeable to both parties. This has resulted in an impasse and no compromise has been reached.<sup>28</sup> On August 7, 2024, the Court denied the Florida Bankers Association for rehearing.

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<sup>26</sup> The Bank of Tampa, *Invested in You*, <https://www.bankoftampa.com/iota/> (last visited March 7, 2025).

<sup>27</sup> *In re: Amendments to Rules Regulating the Florida Bar 5-1.1*; Florida Bankers Association’s Motion), Case No. SC22- 1292 (Mar. 31, 2023), [70f6bc15-9b6e-41b5-8c56-65db9b750a31](https://www.flcourts.gov/cases/70f6bc15-9b6e-41b5-8c56-65db9b750a31) (flcourts.gov) (last visited Mar. 27, 2025).

<sup>28</sup> *In re Amendments to the Rules Regulating the Florida Bar*, The Florida Bankers Association’s Comment to the Florida Bar’s Report on Implementation Status, Case No: SC2022-1292, <https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/baa8ed04-2926-4922-b099-9d51fd7ab2ae/docketentrydocuments/f5381851-24da-4ff6-932d-487a9ca0b99c> (last visited Mar. 27, 2025).

**IOTA Data for Funding Florida Legal Aid*****Amounts Received by FFLA From the IOTA Program***

Funding Florida Legal Aid supplied the information below on remittances from the IOTA accounts. The fiscal year begins July 1 and ends June 30 of the following year.

FY 2018-19	\$12,711,423
FY 2019-20	\$16,233,686
FY 2020-21	\$7,749,737
FY 2021-22	\$9,498,692
FY 2022-23	\$45,547,390
FY 2023-24	\$279,656,155

Information for FY 2024-25 is only partially complete. However, for remittances received from July 2024 through January 2025, FFLA reports total receipts of \$155,378,419.<sup>29</sup> It is significant to note that the IOTA collections increased by \$234,108,765 between fiscal year 2022-23 and fiscal year 2023-24 due to the newly implemented funding formula authorized by the Supreme Court in May 2023 for the benefit of the Foundation.<sup>30</sup>

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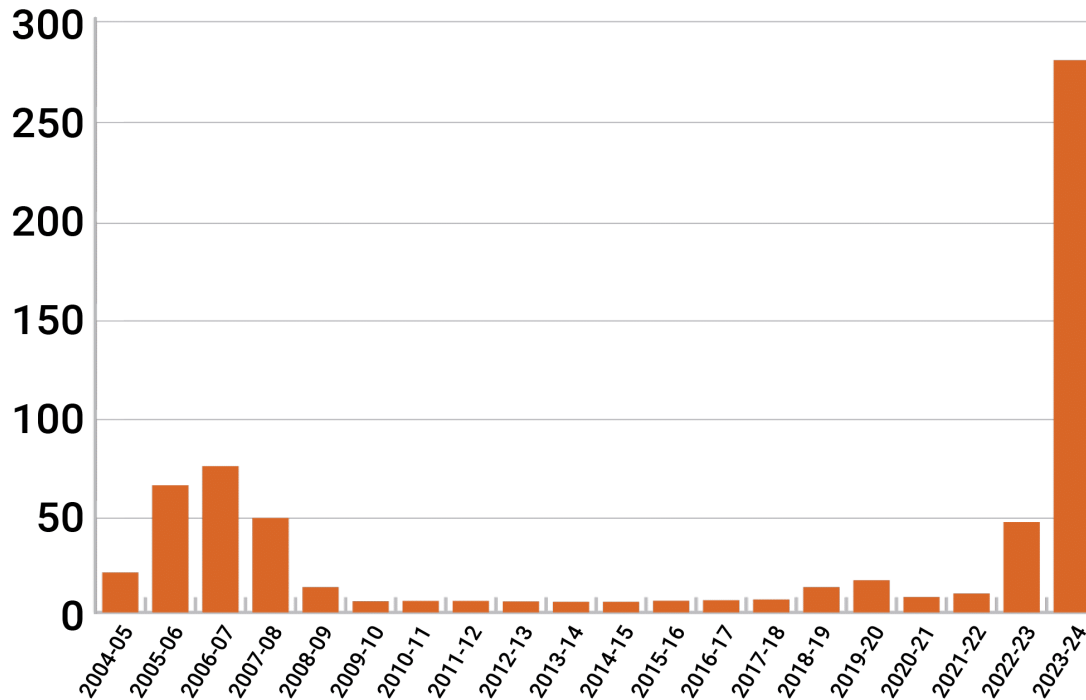
<sup>29</sup> Email from Amanda Fraser, Governmental Consultant on behalf of Funding Florida Legal Aid (March 5, 2025) (on file with the Senate Committee on Banking and Insurance).

<sup>30</sup> *In re* Amendments to the Rules Regulating the Florida Bar – Miscellaneous: The Florida Bar’s Report on Implementation Status (April 2, 2024) Case No: SC2022-1292, <https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/baa8ed04-2926-4922-b099-9d51fd7ab2ae/docketentrydocuments/e5b1ae2c-d317-4a98-8c2e-79231698b18d> (last visited Mar. 27, 2025).



The FFLA shows with the chart below how the annual revenue collections through the IOTA program have changed over the years:<sup>31</sup>

### IOTA Collections in Millions



### *Participating Banking Institutions and IOTA Program Accounts*

The number of financial institutions participating in the IOTA program has increased since the interest formula was amended in May 2023.

April 2023	151 <sup>32</sup>
December 2023	162 <sup>33</sup>
December 2024	170 <sup>34</sup>

According to the FFLA, the program has grown by a net of 16 banks since the IOTA interest formula was amended in 2023.<sup>35</sup> Four banks have withdrawn from the program since the

<sup>31</sup> Florida Funding Legal Aid, Financial Stewardship, <https://fundingfla.org/about-ffla/ffla-finances/> (last visited March 10, 2025).

<sup>32</sup> Email from Amanda Fraser, Governmental Consultant on behalf of Funding Florida Legal Aid (Mar. 27, 2025) (on file with Senate Committee on Banking and Insurance).

<sup>33</sup> Email from Amanda Fraser, Governmental Consultant on behalf of Funding Florida Legal Aid, *SB 498 Fiscal Analysis from FFLA* (March 5, 2025) (on file with the Senate Committee on Banking and Insurance).

<sup>34</sup> *Id.*

<sup>35</sup> *Supra* at 33.



adoption of the 2023 IOTA amendment.<sup>36</sup> The number of trust accounts in the FFLA system as of January 2025 is 33,823.<sup>37</sup>

### ***Receipts and Disbursements by Funding Florida Legal Aid***

Funding Florida Legal Aid received \$279,656,155 in IOTA collections for the fiscal year ending June 30, 2024. The Court granted FFLA's request to distribute \$94,832,278 to qualified organizations and place the remaining \$142,875,455 in reserve for the benefit of present and future organizations. The Court found the proposed distribution and additional reserve amount was reasonably prudent to promote stability in distribution of IOTA funds. According to the Court's administrative order, this represents a 145 percent increase over the previous year's distribution.<sup>38</sup>

### **Trust Account Programs in Other States**

According to the American Bar Association (ABA), interest paid on trust account programs, sometimes called IOLTA, or Interest on Lawyers' Trust Accounts, are found in all 50 states, Washington, D.C., Puerto Rico, and the U.S. Virgin Islands. The ABA estimates that, since 1981, these programs have generated over \$4 billion to fund legal services for people living in poverty, often through legal aid and pro bono programs.<sup>39</sup> According to the Foundation, most states that have a safe harbor rate, have rates that range from 50 - 55 percent of the Federal Funds Target Rate (FFR) up to one percent of the FFR.<sup>40</sup> The programs in Texas and Georgia are described below.

### ***Texas***

In Texas, the Access to Justice Foundation administers the IOLTA program, which was established in 1984 by the Supreme Court of Texas.<sup>41</sup> As of July 1, 1989, all Texas attorneys handling qualifying client funds must establish an IOLTA account, unless a low balance exempts them.<sup>42</sup> Pursuant to the Supreme Court of Texas, attorneys must hold IOLTA accounts in eligible banks, which are those that pay interest rates comparable to other similar situated accounts. The attorney, or law firm, establishing the interest-bearing demand account, must attempt in good faith to obtain a rate of interest payable on the account not less than the rate paid by the depository institution to other depositors with accounts of similar size.<sup>43</sup> A higher rate offered by the institution on deposits meeting certain time requirements or minimum amounts, such as those offered in the form of certificates of deposit, may be obtained if there is no impairment of the right to withdraw or transfer principal immediately, other than the statutory notification

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *In Re: FFLA-FY 2023-24 IOTA Collections, Request for Approval of Additional Reserve Amount*, No. AOSC24-70, (Oct. 4, 2024) <https://supremecourt.flcourts.gov/content/download/2441648/file/AOSC24-70.pdf>.

<sup>39</sup> American Bar Association, *Interest on Lawyers' Trust Accounts, Overview, The Impact of IOLTA*, [https://www.americanbar.org/groups/interest\\_lawyers\\_trust\\_accounts/overview/](https://www.americanbar.org/groups/interest_lawyers_trust_accounts/overview/).

<sup>40</sup> Email from Amanda Fraser, Governmental Consultant on behalf of Funding Florida Legal Aid, *SB 498 Fiscal Analysis from FFLA* (March 5, 2025) (on file with the Senate Committee on Banking and Insurance).

<sup>41</sup> [Directory of IOLTA Programs \(americanbar.org\)](https://www.americanbar.org/groups/interest_lawyers_trust_accounts/overview/) (last visited Mar. 27, 2025).

<sup>42</sup> Texas Access to Justice Foundation, [TAJF- Funding \(teajf.org\)](https://teajf.org/) (last visited Mar. 27, 2025).

<sup>43</sup> See State Bar of Texas Rules, Article XI, Sections 5-6. [In the Supreme Court \(teajf.org\)](https://teajf.org/) (last visited Mar. 27, 2025).

requirements generally applicable to those accounts, even though interest may be lost because of the withdrawal or transfer.<sup>44</sup>

### ***Georgia***

Pursuant to the Georgia Supreme Court rules, the Georgia Bar Foundation administers the IOLTA program.<sup>45</sup> On any IOLTA account, the rate of interest payable may not be less than:

- The highest interest rate or dividend generally available from the approved institution to its non-IOLTA customers for each IOLTA account that meets the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, the institution may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers if such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers; or
- Alternatively, an institution may choose a rate equal to the greater of 0.65% per annum or a benchmark interest rate, net of allowable reasonable fees, set by the Foundation, which shall be expressed as a percentage (index) of the federal funds target rate, as established from time to time by the Federal Reserve Board. In order to maintain an overall comparable rate, the Foundation will periodically, but not less than annually, publish its index. The index shall initially be 65 percent of the federal funds target rate.
- Approved institutions may choose to pay rates higher than comparable rates discussed above.<sup>46</sup>

### **Chief Financial Officer**

The State Constitution provides that the Chief Financial Officer (CFO) serves as the chief fiscal officer of the state. The CFO is a member of the cabinet and is responsible for settling and approving accounts against the state and keeping all state funds and securities.<sup>47</sup> The CFO serves as the head of the Department of Financial Services (DFS).<sup>48</sup>

Additionally, the CFO is required by statute to set the rate of interest that will be payable on judgments or decrees for the calendar quarter beginning January 1 each year. The CFO must adjust the rate quarterly on April 1, July 1, and October 1, by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 400 basis points to the average federal discount rate.<sup>49</sup> As of January 1, 2025, the annual interest rate is 9.38 percent.<sup>50</sup>

### **Financial Services Commission**

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<sup>44</sup> *Id.*

<sup>45</sup> Supreme Court of Georgia, Rule 15-103, prescribes the rate of interest paid. [ORDER-2014\\_1\\_FINAL\\_with-State-Bar-Edits1.pdf \(gasupreme.us\)](#) (last visited Mar. 27, 2025).

<sup>46</sup> *Id.*

<sup>47</sup> FLA. CONST. art. IV, s. 4(c).

<sup>48</sup> Section 20.121(1), F.S.

<sup>49</sup> Section 55.03(1), F.S.

<sup>50</sup> My Florida CFO, *Current Judgment Interest Rates*, <https://myfloridacfo.com/division/aa/audits-reports/judgment-interest-rates> (last visited March 4, 2025).

The Financial Services Commission (commission) is composed of the Governor, the Attorney General, the CFO, and the Commissioner of Agriculture.<sup>51</sup> Commission members serve as the agency head for purposes of rulemaking under ch. 120, F.S.<sup>52</sup> The Office of Financial Regulation (OFR) and the Office of Insurance Regulation (OIR)<sup>53</sup> are units under the commission.<sup>54</sup> Each director or commissioner of the OIR and OFR, respectively, is the agency head for purposes of final agency action under chapter 120, F.S., for all areas within the regulatory authority delegated to the director's office.<sup>55</sup>

Although the commission is created within the DFS, the commission is not subject to the control, supervision, or direction by the DFS in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.<sup>56</sup> Further, the DFS is required to provide administrative and information systems support to the offices.<sup>57</sup>

### **State and Federal Regulation of Financial Institutions**

The OFR regulates state-chartered banks, credit unions, other financial institutions, finance companies, and the securities industry.<sup>58</sup> The Division of Financial Institutions within OFR charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the Financial Institutions Code.<sup>59</sup>

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

- *State-chartered banks*<sup>60</sup> 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, and the primary federal regulator for non-member state banks is the Federal Deposit Insurance Corporation.<sup>61</sup>

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<sup>51</sup> Section 20.121(3), F.S.

<sup>52</sup> Section 20.121(3)(c), F.S.

<sup>53</sup> Pursuant to s. 20.121(3)(a)1., F.S., the OIR is responsible for all activities concerning health maintenance organizations, life and health insurers, property and casualty insurers, and other risk-bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the Florida Insurance Code.

<sup>54</sup> Section 20.121(3)(a), F.S.

<sup>55</sup> Section 20.121(3)(c), F.S.

<sup>56</sup> Section 20.121(3), F.S.

<sup>57</sup> Section 20.121(3)(e), F.S.

<sup>58</sup> Section 20.121(3)(a)2., F.S.

<sup>59</sup> Pursuant to s. 655.005(1)(k), F.S., the term, "financial institutions code," means chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.

<sup>60</sup> Like banks, credit unions can be organized under a state or federal charter. The National Credit Union Administration is an independent federal agency that insures deposits at federally insured credit unions, protects the members who own credit unions, and charters and regulates federal credit unions. 12 U.S.C. § 1753.

<sup>61</sup> 12 U.S.C. § 1813(q).

- *National banks*<sup>62</sup> are chartered by the Office of the Comptroller of the Currency (OCC) under the National Bank Act.<sup>63</sup> As such, the OCC is the primary federal regulator for national banks.<sup>64</sup>

A trust company is a business organization, other than a bank, which is authorized by lawful authority to engage in the business of acting as a fiduciary.<sup>65</sup> Trust companies are chartered by states, and the state regulator for trust companies chartered by the state of Florida is the OFR. Trust companies do not have a federal regulator.

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

The bill provides two interest rate alternatives for financial institutions to select between when paying interest or dividends on a lawyer or law firm trust account. The interest or dividends will be remitted to an entity established by the Florida Supreme Court that facilitates free legal services to low-income people or a program that is consistent with other court-authorized purposes.

If a financial institution holds a lawyer's or law firm's trust account, it must quarterly select which of the two options it will pursue.

#### **Alternative One – Measured with Deposit Rate Interest**

The first interest-rate option requires the financial institution to pay the highest interest rate or dividend that is generally available to its comparable business or consumer accounts or nonmaturing deposit accounts if the trust account meets or exceeds the same minimum balance or other account requirements. Under this option, the institution must submit a rate validation sheet and affidavit to the Chief Financial Officer by the tenth day of each quarter attesting that it will pay at least the same interest on the trust accounts that it pays on comparable business or consumer accounts or nonmaturing deposit accounts. The affidavit must attest that the rate information submitted on the rate validation sheet is true and factual. The Chief Financial Officer must verify that the rate validation sheet and affidavit have been received by the Department of Financial Services.

#### **Alternative Two – Measured with Federal Funds Target Rate or a Set Rate (Safe Harbor Rates)**

The second interest rate option must be set at 25 percent of the federal funds target rate determined by the Federal Open Market Committee of the Federal Reserve System or 0.25 percent, whichever is higher, net of fees. The interest rate option at 25 percent of the federal funds target rate would be 1.06 - 1.13 percent (25 percent of 4.25 and 4.50 percent, respectively). The "federal funds target rate" is the interest rate that commercial banks charge one another for

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<sup>62</sup> National banks are authorized to exercise "all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes." 12 U.S.C. § 24 (Seventh).

<sup>63</sup> 12 U.S.C. § 38.

<sup>64</sup> 12 U.S.C. § 1813(q).

<sup>65</sup> Section 658.12(20) and (21), F.S.

short-term loans or the interest rate that banks use to borrow or lend their excess reserves to one another overnight to meet the reserve balance requirements.<sup>66</sup> As of March 19, 2025, the Federal Open Market Committee of the Federal Reserve has not changed the federal funds target rate, and it remains at 4.25 percent to 4.50 percent.<sup>67</sup> If an institution selects this rate alternative, it is not required to submit a rate validation sheet to the CFO.

Under this option, the Chief Financial Officer must determine the interest rate on the first day of December, March, June, and September. That rate will take effect on the first day of the following January, April, July, and October, respectively. Within 3 days after determining the interest rate under this option, the Chief Financial Officer must inform the entity established by the Florida Supreme Court as to what the interest rate will be for the upcoming quarter.

These rate alternatives do not apply to interest rates that have been established by written contracts or obligations unrelated to the trust accounts described in this bill.

The bill takes effect upon becoming law.

#### **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:**

##### **Separation of Powers**

The State Constitution divides the powers of state government into three branches: the legislative, executive, and judicial branches. The Constitution prohibits a person in one branch from exercising any powers that belong to the other two branches of government unless it is expressly provided.<sup>68</sup>

<sup>66</sup> Investopedia, *Federal Funds Rate: What It Is, How It's Determined, and Why It's Important* (Jan. 27, 2025) <https://www.investopedia.com/terms/f/federalfundrate.asp>.

<sup>67</sup> Board of Governors of the Federal Reserve System, *Federal Reserve Issues FOMC Statement* (Mar. 19, 2025) [Federal Reserve Board - Federal Reserve issues FOMC statement](#) (last visited Mar. 24, 2025).

<sup>68</sup> FLA. CONST. art. II, s. 3.

The Florida Supreme Court, under s. 15 of Article V of the State Constitution, has the “exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.” The Supreme Court exercises this responsibility through The Florida Bar and its rules. If the bill is determined to be a regulation of attorneys or the practice of law, it may be declared unconstitutional.

### **Federal Preemption/Regulation of Federally Chartered Financial Institutions**

The bill creates s. 655.97, F.S., within the Financial Institutions Code (code).<sup>69</sup> The code generally applies to the regulation of state-chartered financial institutions by the Office of Financial Regulation. The provisions of the bill require the Chief Financial Officer (CFO) to establish rates of interest on trust accounts (IOTA) that are established by lawyers at participating or eligible institutions. Chapter 17, F.S., prescribes the duties of the CFO.

The National Banking Act was enacted by Congress to facilitate a national banking system.<sup>70</sup> The Office of the Comptroller of the Currency is the federal agency charged with regulating national banks and savings associations.<sup>71</sup> The National Credit Union Administration is an independent federal agency that insures deposits at federally insured credit unions, protects the members who own credit unions, and charters and regulates federal credit unions. It is unclear whether the regulation of rates of interest on trust accounts within the code would be applicable to federally chartered financial institutions, such as national banks, savings associations, or credit unions.

The U.S. Supreme Court has reviewed the federal constitutional foundations of the national banking system, and reaffirmed that national bank powers are not normally limited by state law.<sup>72</sup> The Court concluded that “where Congress has not expressly conditioned the grant of ‘power’ upon a grant of state permission, the Court has ordinarily found that no such condition applies.”<sup>73</sup> Further, in another case, the Court concluded, “We find no indication that Congress intended to make this phase of national banking [deposit-taking] subject to local restrictions, as it has done by express language in several other instances.”<sup>74</sup>

If the bill is determined to be a regulation of financial institutions, The Florida Bar may be required to revise its rules governing the obligations of attorneys to establish IOTA accounts or the eligibility of financial institutions to participate in the IOTA program. However, federal law may preempt the application of the bill to the regulation of federally chartered financial institutions. The OFR does not have primary regulatory authority over nationally chartered institutions.

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<sup>69</sup> Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.

<sup>70</sup> *Marquette Nat’l Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299 (1978).

<sup>71</sup> 12 USC s. 1 *et seq.*

<sup>72</sup> *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 32 (1996) (the history of the legal concept of national bank powers “is one of interpreting grants of both enumerated and incidental ‘powers’ to national banks as grants of authority not normally limited by, but rather ordinarily preempting, contrary state law”). See also *Franklin Nat’l Bank v. New York*, 347 U.S. 373 (1954).

<sup>73</sup> *Barnett*, 517 U.S. at 34.

<sup>74</sup> See also *Franklin Nat’l Bank v. New York*, 347 U.S. 373 (1954).

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

None.

**B. Private Sector Impact:**

The bill provides that financial institutions may opt out of the higher interest rate required by the Florida Bar Rules for attorneys by selecting alternative rates set by the Chief Financial Officer (CFO). As a result, financial institutions participating in the program may see greater profits under this bill, be able to pay higher interest rates to other customers, or charge lower fees for services. In contrast, Funding Florida Legal Aid will likely see a significant reduction in the interest revenue it receives to fund its legal aid programs, and other authorized programs.

According to the FFLA,<sup>75</sup> the proposed safe harbor rates contained in the bill (25 percent of the Federal Funds Target Rate or FFR) are the lowest in the country by half. Most states who have safe harbor plans have rates that range from .55 or 55% to up to 1.00 percent of the FFR. The state with the lowest safe harbor rate, Pennsylvania, provides a safe harbor rate of .50 percent of the FFR.

**C. Government Sector Impact:**

Indeterminate. The financial institution filings submitted to the CFO under this bill could be subject to OFR review during the normal course of a state-chartered financial institution examination. This would be similar to the current practice of OFR collecting and examining DFS pledge worksheets completed by institutions relating to public deposits. However, the OFR does not have primary regulatory authority over nationally chartered institutions.<sup>76</sup>

**VI. Technical Deficiencies:**

The bill establishes two interest rate alternatives that financial institutions must pay on lawyer or law firm trust accounts, known as the interest on trust account (IOTA) program. The bill requires the Chief Financial Officer to determine the interest rate of the second rate alternative for financial institutions participating in the IOTA program. It is unclear whether the Legislature can regulate federally chartered financial institutions, which are not subject to regulation by the Office of Financial Regulation (OFR). Further, the CFO does not appear to have regulatory jurisdiction of state-chartered financial institutions, which is under the jurisdiction of the OFR.

If a financial institution selects second rate alternative provided in the bill, it must submit a rate validation sheet and affidavit to the CFO that it will pay at least the same interest on IOTA accounts that it is paying on its comparable business or consumer accounts. The affidavit must

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<sup>75</sup> *Id.*

<sup>76</sup> Office of Financial Regulation, *Analysis of SB 498* (Mar. 26, 2025) (on file with Senate Banking and Insurance Committee).



attest that the rate information submitted on the rate validation sheet is true and factual. Institutions must file a quarterly election, but no date is specified for the second option. It is unclear what happens if a financial institution does not timely file an interest rate election. There does not appear to be a default interest rate. It is unclear what specific information would be required on the “rate validation sheet.”

The bill does not provide the Financial Services Commission with authority to adopt rules or forms to implement these reporting requirements. It is unclear whether the Department of Financial Services has the authority to adopt rules that apply to state-chartered financial institutions regulated under ch. 655, F.S.

## **VII. Related Issues:**

In the event the Supreme Court declined to amend Rule 5-1.1(g) in accordance with the bill, it is unclear whether attorneys would still be subject to disciplinary action for failing to follow Florida Bar Rules and establishing IOTA accounts with a financial institution paying lower interest pursuant to the bill.

It is also possible that the effect of the bill may be to require the use of federally chartered financial institutions. The bill limits the interest that state-chartered financial institutions may offer on ITOA accounts. If such limitations are not in compliance with the requirements of the Rules Regulating the Florida Bar, then attorneys would need to maintain such accounts in federally chartered financial institutions, which are not subject to the requirements of ch. 655, F.S.

## **VIII. Statutes Affected:**

This bill creates section 655.97 of the Florida Statutes.

## **IX. Additional Information:**

### **A. Committee Substitute – Statement of Substantial Changes:** (Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS by Judiciary on March 12, 2025:**

The committee substitute differs from the underlying bill by:

- Removing references to Interest on Trust Account programs and Funding Florida Legal Aid.
- Requiring the institutions that choose the first interest rate alternative program submit an affidavit to the Chief Financial Officer in addition to the rate validation sheet.
- Clarifying that the Chief Financial Officer sets the interest rate only on the second interest rate alternative, not both interest rate alternatives.
- Clarifying that the bill is a regulation of financial institutions and is not a regulation of The Florida Bar.

B. Amendments:

None.

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

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