

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 Governmental Oversight and Accountability

BILL: SB 1014

INTRODUCER: Senator Perry

SUBJECT: Public Records/State Banks and State Trust Companies

DATE: February 5, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

Senate Bill 1014 makes confidential and exempt from public inspection and copying certain information received by the Office of Financial Regulation (OFR) pursuant to an application for authority to organize a new state bank or new state trust company under ch. 658, F.S., including:

- Personal financial information;
- A driver's license number, a passport number, a military identification number, or any other number or code issued on a government document used to verify identity;
- Books and records of a current or proposed financial institutions;
- The proposed business plan and supporting documentation; and
- Personal identifying information of certain proposed officers or proposed directors who are employed by, or actively participate in the affairs of, another financial institution, for a specified period of time.

The bill is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2029, unless the statute is reviewed and reenacted by the Legislature before that date. The bill provides a statement of public necessity as required by the Florida constitution.

The bill requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage because it creates a new public records exemption.

There is no anticipated fiscal impact on state, county, or municipal governments. Additional agency workload incurred in responding to public records requests should be absorbed by current personnel.

The bill is effective July 1, 2024.

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.¹ 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 who acts on behalf of the government.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ 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.⁴

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.⁵ 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:

[a]ll 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.”⁶

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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); see also *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ 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 provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

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*.¹³ 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.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

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,¹⁶ with specified exceptions.¹⁷ 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.¹⁸ 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.¹⁹ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST. art. I, s. 24(c).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ 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.

¹⁷ 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.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- It protects sensitive, personal information, the release of which 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;²¹ or
- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³ 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.²⁴ 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.²⁵

Confidential and Exempt Records in the Financial Institutions Codes

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.²⁶ To apply for authority to organize a new state-chartered bank or state-chartered trust company, the proposed directors must file a written application with the OFR. The application must include the:²⁷

- Name, residence, and occupation of each proposed director;
- Proposed corporate name;
- Community where the bank will be located, if available;
- Total initial capital;
- Proposed business plan; and
- Pro forma financial statements.

Each proposed executive officer, director, and controlling shareholder must also complete a detailed biographical and financial information, including but not limited to the names, home

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

²³ Section 119.15(6)(a), F.S. The specific 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?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ Section 20.121(3)(a)2., F.S.

²⁷ Section 658.19, F.S. and R. 69U-105.202, F.A.C.

addresses, current and past employment information, and statements of assets, liabilities, and net worth.²⁸ The OFR uses this information to determine whether the proposed directors and executives have the requisite experience, ability, standing, and reputation indicative of reasonable promise of a successful operation.

Books and records of currently-chartered financial institutions are confidential and may be made available for inspection and examination only in limited circumstances, for instance:²⁹

- To the OFR or its duly authorized representative;
- To any person duly authorized to act for the financial institution;
- To any federal or state instrumentality or agency authorized to inspect or examine the books and records of an insured financial institution;
- As compelled by a court of competent jurisdiction; and
- As compelled by legislative subpoena, as provided by law.

Current law also contains several provisions which make confidential and exempt from the Public Records Act certain records or information of financial institutions relating to:

- Investigations conducted by the OFR;³⁰
- Reports of examinations,³¹ operations, or condition, including working papers,³² or portions thereof, prepared by, or for the use of, the OFR or any state or federal agency responsible for the regulation or supervision of financial institutions³³ in Florida;³⁴
- Informal enforcement actions;^{35,36}
- Trade secrets³⁷ held by the OFR;³⁸
- Any portion of a required shareholder list which reveals the shareholders' identities;³⁹ and

²⁸ Section 658.19, F.S., *see also*, *Form OFR-U-10, Interagency Biographical and Financial Report*, <https://lofr.gov/sitePages/documents/OFR-U-10.pdf> (last visited Feb. 2, 2024).

²⁹ Section 655.059(1), F.S.

³⁰ Section 655.057(1), F.S.

³¹ "Examination report" is defined as records submitted to or prepared by the [OFR] as part of the [OFR's] duties performed pursuant to s. 655.012, F.S., or s. 655.045(1), F.S. Section 655.057(12)(a), F.S.

³² "Working papers" is defined as the records of the procedures followed, the tests performed, the information obtained, and the conclusions reached in an examination or investigation performed under s. 655.032, F.S., or s. 655.045, F.S. Working papers include planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution as defined in s. 655.005(1), F.S., and scheduled or commentaries prepared or obtained in the course of such examination or investigation.

³³ "Financial institution" is defined as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust 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. Section 655.005(1)(i), F.S.

³⁴ Section 655.057(2), F.S.

³⁵ "Informal enforcement actions" is defined as a board resolution, a document of resolution, or an agreement in writing between the office and a financial institution which meets certain criteria. Section 655.057(12)(b), F.S.

³⁶ Section 655.057(3), F.S.

³⁷ "Trade secrets" is defined as information, including a formula, pattern, compilation, program, device, method, technique, or process that meets specified criteria. Section 688.002(4), F.S. The trade secret must also comply with s. 655.0591, F.S.

³⁸ Section 655.057(4), F.S.

³⁹ Section 655.057(8), F.S.

- Confidential documents supplied to the OFR or to employees of any financial institution by other state or federal governmental agencies.⁴⁰

Any person who willfully discloses information made confidential commits a felony of the third degree.⁴¹ There is no provision in the Financial Institutions Codes which makes confidential or exempts from the Public Records Act information received by the OFR in relation to an application for authority to organize a new state bank⁴² or new state trust company.⁴³ While some of the information submitted as part of an application may constitute a trade secret, protected under s. 655.057(4), F.S., other information, such as a driver's license number or passport number, are not specifically protected in that context.

The exemptions do not prevent or restrict:⁴⁴

- Publishing certain reports that must be submitted to the OFR or that are required to be published by federal law or regulation;
- Providing records or information to any other state, federal, or foreign agency responsible for the regulation and supervision of financial institutions;
- Disclosing or publishing summaries of the economic condition or similar data of financial institutions;
- Reporting any suspicious criminal activity to appropriate law enforcement or prosecutorial agencies;
- Furnishing certain information requested by the Chief Financial Officer or specified agency of any financial institution that is, or has applied to be, designated as a qualified public depository; and
- Furnishing information to Federal Home Loan Banks regarding its member institutions.

Orders to produce confidential records or information issued by courts or administrative law judges must provide for inspection in camera by the court or administrative law judge. Other procedural safeguards are provided for in the Financial Institutions Codes to protect the confidentiality of the records or information, including provisions that an order directing the release of information is reviewable by the OFR.⁴⁵

The OFR must retain the original and any copies of examination reports, investigatory records, applications, and related information compiled by the OFR for at least 10 years.⁴⁶

⁴⁰ Section 655.057(9), F.S.

⁴¹ Section 655.057(13), F.S. A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

⁴² "State bank" is defined as any bank which has a subsisting bank charter issued pursuant to the provisions of the financial institutions codes or the general banking laws of this state in effect prior to the enactment of the financial institutions codes. Section 658.12(17), F.S.

⁴³ "State trust company" is defined as a corporation, other than a bank, which has a subsisting trust company charter issued pursuant to the provisions of the financial institutions codes or the applicable laws of the state in effect prior to the enactment of the financial institutions codes. Section 658.12(19), F.S.

⁴⁴ Section 655.057(5), F.S.

⁴⁵ Section 655.057(6), F.S.

⁴⁶ Section 655.057(10), F.S.

III. Effect of Proposed Changes:

Section 1 of the bill makes confidential and exempt from public disclosure certain information received by the Office of Financial Regulation (OFR) pursuant to an application for authority to organize a new state bank or new state trust company under ch. 658, F.S., including:

- Personal financial information;
- A driver license number, a passport number, a military identification number, or any other number or code issued on a government document used to verify identity;
- Books and records of a current or proposed financial institutions; and
- The proposed business plan and supporting documentation.

Section 1 of the bill also makes confidential and exempt from public disclosure personal identifying information of a proposed officer or director who is currently employed by, or actively participates in the affairs of, another financial institution received by the OFR pursuant to an application for authority to organize a new state bank or new state trust company under ch. 658, F.S., until the application is approved or the charter is issued. The term “personal identifying information” is defined as names, home addresses, e-mail addresses, telephone numbers, names of relatives, work experience, professional licensing and educational backgrounds, and photographs.

The bill is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2029, unless the statute is reviewed and reenacted by the Legislature before that date.

Section 2 of the bill provides that the Legislature finds it is a public necessity that the information referred to in section 1 of the bill be made confidential and exempt. The public necessity statement notes:

[t]he [OFR] may receive sensitive personal, financial, and business information in conjunction with its duties related to the review of applications for the organization or establishment of new state banks and new state trust companies. These exemptions from public records requirements are necessary to ensure the [OFR’s] ability to administer its regulatory duties while preventing unwarranted damage to the proposed state bank or proposed state trust company, or certain proposed officers or proposed directors of the proposed state bank or proposed state trust company, and other financial institutions in this state. The release of information that could lead to the identification of an individual involved in the potential establishment of a new state bank or new state trust company may subject such individual to retribution and jeopardize his or her current employment with, or participation in the affairs of, another financial institution. Thus, the public availability of such information has a chilling effect on the establishment of new state banks and new state trust companies. Further, the public availability of the books and financial records of a current or proposed financial institution in this state presents an unnecessary risk of harm to the business operations of such institution. Finally, the public availability of a proposed state bank’s or proposed state trust company’s business plan may cause competitive harm to such bank’s or trust’s company’s future business operations and presents an unfair competitive advantage for existing financial institutions that are not required to release such information.

The bill requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage because it creates a new public records exemption.

Section 3 of the bill provides for an effective date of July 1, 2024.

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, s. 24(c) of the State 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. The bill creates a new exemption and therefore, the bill will require a two-thirds vote to be enacted.

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. Section 2 of the bill contains a statement of public necessity.

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 exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law. The bill provides the specific information that would be made confidential and exempt to prevent unwarranted damage or unnecessary risk of harm to the proposed new state bank or new state trust company, or the proposed officer or director.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will be subject to the cost, to the extent imposed, associated with making the redactions in response to a public record request.

Those individuals or businesses that wish to protect trade secret information submitted to the OFR as part of their application to organize a new state bank or new state trust company under ch. 658, F.S., may no longer be required to use court processes to declare the information trade secret, and thus exempt from production as a public record.⁴⁷ The submitter will be able to rely on the public record exemption for specific information instead.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on local government. Staff responsible for compliance with public record requests may require training related to the new public record exemptions. Additionally, the OFR may experience additional workload associated with the redaction of exempt information prior to the release of a record. However, this workload should be absorbed as part of the day-to-day agency responsibilities, and offset by fees collected for the preparation and copying of public records.⁴⁸

The OFR reports that “the lack of protection for this sensitive information in Florida may influence an applicant to choose a national charter over a state charter.”⁴⁹ The new public records exemption may cause an increase in the number of applications for new state banks or state trust companies that the OFR receives.

VI. Technical Deficiencies:

The OFR is tasked with an investigation of the character of each proposed executive officer, director, and controlling shareholder of an applicant for a new state bank or state trust company. The duty to hold the name and other information of the director, etc., in a confidential and exempt manner may hinder the OFR’s ability to conduct criminal background checks and related investigations. The bill sponsor may wish to make the information contained in 655.057(5)(b)

⁴⁷ See, s. 655.0591, F.S.

⁴⁸ Section 119.07(2) and (4), F.S.

⁴⁹ Florida OFR, *SB 1014 Agency Analysis*, 4 (Jan. 10, 2024) (on file with the Senate Committee on Governmental Oversight and Accountability).

exempt, rather than confidential and exempt, from s. 119.07(1) and article I, section 24(a) of the Florida Constitution to allow for such investigative processes.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 655.057 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.