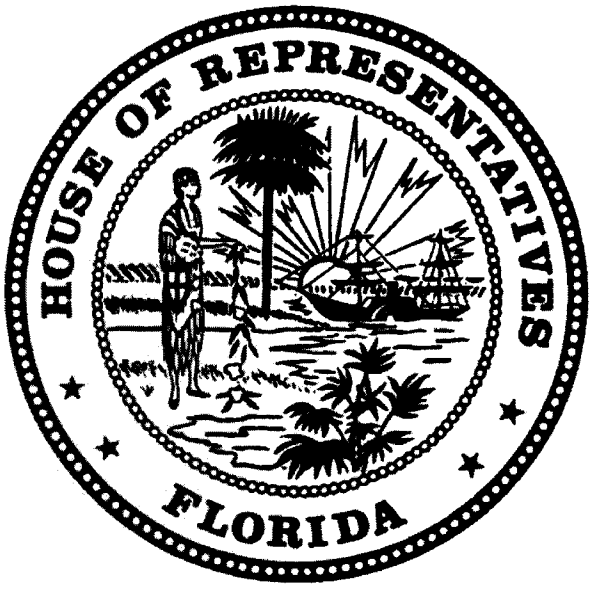

Commerce Committee

Thursday, January 11, 2018
10:30 AM – 12:30 PM
Webster Hall (212 Knott)

Meeting Packet

Richard Corcoran
Speaker

Jim Boyd
Chair

The Florida House of Representatives

Commerce Committee

Richard Corcoran
Speaker

Jim Boyd
Chair

Meeting Agenda

Thursday, January 11, 2018
10:30 am – 12:30 pm
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

HB 193 Mortgage Brokering by Stark

CS/HB 329 Motor Vehicle Insurance Coverage Exclusions by Ponder

HB 405 Linear Facilities by Williamson

CS/HB 455 Governance of Banks and Trust Companies by McClain

V. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4870

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 193 Mortgage Brokering
SPONSOR(S): Stark
TIED BILLS: **IDEN./SIM. BILLS:** SB 282, SB 314

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Hinshelwood	Luczynski
2) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) licenses and regulates various aspects of the non-depository financial services industries, including individuals and businesses engaged in the mortgage business pursuant to ch. 494, F.S. The OFR also oversees the Securities and Investor Protection Act, ch. 517, F.S., which regulates the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms.

In August 2016, the OFR issued a declaratory statement that determined the petitioner would be in violation of ch. 494, F.S., if it were to start compensating its financial advisors for certain mortgage loan originator activities that are purely incidental to the otherwise authorized securities and investment activities of the petitioner and its financial advisors, unless such persons were dually licensed under ch. 494, F.S. The declaratory statement concluded that both the compensation and the referral aspect of the facts presented required that the petitioner be licensed as either a mortgage broker or mortgage lender and that its financial advisors be licensed as mortgage loan originators.

The bill exempts a securities dealer, investment advisor, or an associated person registered under ch. 517, F.S., from regulation under ch. 494, F.S., if such person, in the normal course of conducting securities business with a corporate or individual client:

1) Solicits or offers to solicit a mortgage loan from a securities client or refers a securities client to a depository institution, certain regulated subsidiaries that are owned and controlled by a depository institution, institutions regulated by the Farm Credit Administration, a licensed mortgage broker, a licensed mortgage lender, or a registered loan originator; and
2) Does not accept or offer to accept an application for a mortgage loan, negotiate or offer to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiate or offer to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

Any solicitation or referral made pursuant to the exemption must be made in compliance with ch. 517, F.S.; the federal Real Estate Settlement Procedures Act; and any applicable federal law or general law of this state.

The bill has no impact on local governments. The bill has an indeterminate fiscal impact on the private sector and the state. The OFR believes that any loss of licensure revenues will be insignificant.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Regulation of Non-Depository Mortgage Business

The OFR regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] The OFR's Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including individuals and businesses engaged in the mortgage business.

Under ch. 494, F.S., the OFR licenses and regulates the following individuals and businesses engaged in the mortgage business outside of a depository financial institution:

- *Loan originator*[2] – An individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain. The term includes an individual who is required to be licensed as a loan originator under the S.A.F.E. Mortgage Licensing Act of 2008. The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower.
- *Mortgage broker*[3] – A person conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.
- *Mortgage lender*[4] – A person making a mortgage loan or servicing a mortgage loan for others, or, for compensation or gain, directly or indirectly, selling or offering to sell a mortgage loan to a noninstitutional investor. A mortgage lender may act as a mortgage broker.[5]

In order to obtain licensure as a mortgage *loan originator*, an individual must:[6]

- Complete a 20-hour prelicensing class;[7]
- Pass a written test (cost: $110);[8]
- Submit an application form;
- Submit a nonrefundable application fee of $195 plus a $20 nonrefundable fee for the Mortgage Guaranty Trust Fund;
- Submit fingerprints, the cost of which is borne by the applicant; and
- Authorize access to his or her credit report, the cost of which is borne by the applicant.

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[1] s. 20.121(3)(a)2., F.S.
[2] s. 494.001(17), F.S.
[3] s. 494.001(22), F.S.
[4] s. 494.001(23), F.S.
[5] s. 494.0073, F.S.
[6] s. 494.00312, F.S.
[7] The cost of prelicensing courses may vary by course provider, but one such course provider charges $349 for the required 20-hour course. *See* MortgageEducation.com, *Mortgage Loan Originator Courses*, https://www.mortgage-education.com/StatePage.aspx?StateCode=FL (last visited Nov. 7, 2017).
[8] Nationwide Multistate Licensing System & Registry, *Uniform State Test (UST) Implementation Information*, http://mortgage.nationwidelicensingsystem.org/profreq/testing/Pages/UniformStateTest.aspx (last visited Nov. 7, 2017).

In order to obtain licensure as a *mortgage broker*, a person must:[9]

- Submit an application form, which must designate a qualified principal loan originator;
- Submit a nonrefundable application fee of $425 plus a $100 nonrefundable fee for the Mortgage Guaranty Trust Fund;
- Submit fingerprints for each of the applicant's control persons, the cost of which is borne by the person subject to the background check; and
- Authorize access to the credit reports of each of the applicant's control persons, the cost of which is borne by the applicant.

In order to obtain licensure as a *mortgage lender*, a person must:[10]

- Submit an application form, which must designate a qualified principal loan originator;
- Submit a nonrefundable application fee of $500 plus a $100 nonrefundable fee for the Mortgage Guaranty Trust Fund;
- Submit fingerprints for each of the applicant's control persons, the cost of which is borne by the person subject to the background check;
- Submit a copy of the applicant's financial audit report for the most recent fiscal year, which must document that the applicant has a net worth of at least $63,000 if the applicant is not seeking a servicing endorsement, or at least $250,000 if the applicant is seeking a servicing endorsement; and
- Authorize access to the credit reports of each of the applicant's control persons, the cost of which is borne by the applicant.

All of the above licenses must be renewed annually by December 31.[11] In order to renew:

- A mortgage *loan originator* license, an individual must submit a renewal form and a nonrefundable renewal fee of $150 plus a $20 nonrefundable fee for the Mortgage Guaranty Trust Fund; provide documentation of completion of at least 8 hours of continuing education courses;[12] and authorize access to his or her credit report, the cost of which is borne by the licensee.[13]
- A *mortgage broker* license, a person must submit a renewal form and a nonrefundable renewal fee of $375 plus a $100 nonrefundable fee for the Mortgage Guaranty Trust Fund; submit fingerprints for any new control persons who have not been screened; and authorize access to the credit reports of each of the mortgage broker's control persons, the cost of which is borne by the licensee.[14]
- A *mortgage lender* license, a person must submit a renewal form and a nonrefundable renewal fee of $475 plus a $100 nonrefundable fee for the Mortgage Guaranty Trust Fund; submit fingerprints for any new control persons who have not been screened; submit proof that the mortgage lender continues to meet the applicable net worth requirement; and authorize access to the credit reports of each of the mortgage lender's control persons, the cost of which is borne by the licensee.[15]

The following persons are currently exempt from regulation under ch. 494, F.S.:[16]

a) Any person operating exclusively as a registered loan originator[17] in accordance with the S.A.F.E. Mortgage Licensing Act of 2008.

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[9] s. 494.00321, F.S.
[10] s. 494.00611, F.S.
[11] ss. 494.00312(7), 494.00321(7), and 494.00611, F.S.
[12] The cost of continuing education courses may vary by course provider, but one such course provider charges $129 for the required 8-hour course. *See* MortgageEducation.com, *Mortgage Loan Originator Courses*, https://www.mortgage-education.com/StatePage.aspx?StateCode=FL (last visited Nov. 7, 2017).
[13] s. 494.00313, F.S.
[14] s. 494.00322, F.S.
[15] s. 494.00612, F.S.
[16] s. 494.00115(1), F.S.

b) A depository institution, certain regulated subsidiaries that are owned and controlled by a depository institution, or institutions regulated by the Farm Credit Administration.
c) The Federal National Mortgage Association; the Federal Home Loan Mortgage Corporation; any agency of the Federal Government; any state, county, or municipal government; or any quasi-governmental agency that acts in such capacity under the specific authority of the laws of any state or the United States.
d) An attorney licensed in this state who negotiates the terms of a mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client.
e) A person involved solely in the extension of credit relating to the purchase of a timeshare plan.
f) A person who performs only real estate brokerage activities and is licensed or registered in this state under part I of ch. 475, F.S., unless the person is compensated by a lender, a mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator.

The following persons are currently exempt from the mortgage lender licensing requirements of ch. 494, F.S.:
a) A person acting in a fiduciary capacity conferred by the authority of a court.
b) A person who, as a seller of his or her own real property, receives one or more mortgages in a purchase money transaction.
c) A person who acts solely under contract and as an agent for federal, state, or municipal agencies for the purpose of servicing mortgage loans.
d) A person who makes only nonresidential mortgage loans and sells loans only to institutional investors.
e) An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.
f) An individual selling a mortgage that was made or purchased with that individual's funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.

Federal Regulation of the Mortgage Industry

Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act)

The provisions in ch. 494, F.S., relating to the regulation of mortgage loan originators are consistent with the federal SAFE Act, which was enacted on July 30, 2008.[18] The SAFE Act was designed to enhance consumer protection and reduce fraud through the setting of minimum standards for the licensing and registration of mortgage loan originators.[19] Mortgage loan originators who work for an insured depository institution (e.g., a bank or credit union) or its owned or controlled subsidiary that is regulated by a federal banking agency, or for an institution regulated by the Farm Credit Administration, must comply with federal registration requirements; all other mortgage loan originators are licensed by the states so long as minimum requirements for licensing and renewal are maintained.[20] Both federal

[17] A "registered loan originator" is "a loan originator who is employed by a depository institution, by a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or by an institution regulated by the Farm Credit Administration, and who is registered with and maintains a unique identifier through the [Nationwide Mortgage Licensing System and Registry]." s. 494.001(31), F.S. A registered loan originator must comply with federal registration requirements rather than the loan originator licensing requirements under ch. 494, F.S.
[18] 12 U.S.C. §§ 5101 *et seq.*
[19] 12 C.F.R. § 1008.1(b).
[20] Nationwide Multistate Licensing System & Registry, *SAFE Mortgage Licensing Act of 2008*, http://mortgage.nationwidelicensingsystem.org/safe/Pages/default.aspx (last visited Nov. 7, 2017); 12 C.F.R. §§ 1008.101 – 1008.203.

registration and state licensing must be accomplished through the same online registration system, the Nationwide Mortgage Licensing System and Registry (NMLS).[21]

Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA)

TILA's regulations[22] are intended to:[23]

- Promote the informed use of consumer credit by requiring disclosures about its terms and cost,
- Ensure that consumers are provided with greater and more timely information on the nature and costs of the residential real estate settlement process, and
- Effect certain changes in the settlement process for residential real estate that will result in more effective advance disclosure to home buyers and sellers of settlement costs.

TILA affords consumers certain protections, including:

- Giving consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling.[24]
- Requiring a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling.[25]
- Imposing limitations on open-end credit plans secured by the consumer's dwelling and on "high-cost" mortgages secured by the consumer's principal dwelling.[26]
- Requiring that a loan estimate be provided within three business days from application.[27]
- Requiring that a closing disclosure be provided to consumers three business days before loan consummation.[28]

RESPA's regulations[29] are intended to require certain timely disclosures regarding the nature and costs of the real estate settlement process. Due to the overlapping disclosure requirements in RESPA and TILA relating to most closed-end consumer credit transactions secured by real property, disclosures and forms for these types of transactions have been integrated and are governed by TILA regulations.[30]

RESPA generally prohibits the payment of unearned fees and kickbacks for the referral of settlement service business.[31] The term "settlement service business" broadly covers services that are provided in connection with a real estate transaction.[32] However, RESPA provides certain exceptions to the prohibition on unearned fees and kickbacks, including "an employer's payment to its own employees for any referral activities."[33]

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[21] Consumer Financial Protection Bureau, *CFPB Consumer Laws and Regulations: SAFE Act*, http://files.consumerfinance.gov/f/201203_cfpb_update_SAFE_Act_Exam_Procedures.pdf, at 1 (last visited Nov. 7, 2017).
[22] 12 C.F.R. Part 1026.
[23] 12 C.F.R. § 1026.1(b).
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] Consumer Financial Protection Bureau, *CFPB Consumer Laws and Regulations: TILA*, https://s3.amazonaws.com/files.consumerfinance.gov/f/201503_cfpb_truth-in-lending-act.pdf, at 4 (last visited Nov. 7, 2017).
[28] *Id.*
[29] 12 C.F.R. Part 1024.
[30] Consumer Financial Protection Bureau, *2013 Integrated Mortgage Disclosure Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/2013-integrated-mortgage-disclosure-rule-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/ (last visited Nov. 7, 2017).
[31] 12 C.F.R. 1024.14(b).
[32] 12 C.F.R. 1024.2(b).
[33] 12 C.F.R. 1024.14(g)(vii).

Federal Securities Regulation

The federal Securities Exchange Act of 1934 ('34 Act) requires registration of securities market participants like broker-dealers and exchanges.[34] Generally, any person acting as "broker" or "dealer" as defined in the '34 Act must be registered with the United States Securities and Exchange Commission (SEC) and join a self-regulatory organization (SRO), like the Financial Industry Regulatory Authority (FINRA) or a national securities exchange. The '34 Act broadly defines "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," which the SEC has interpreted to include involvement in any of the key aspects of a securities transaction, including solicitation, negotiation, and execution.[35] A "dealer" is "any person engaged in the business of buying and selling securities . . . for such person's own account through a broker or otherwise."[36] Certain entities in the securities industry are often referred to as "broker-dealers" because the institution is a "broker" when executing trades on behalf of a customer, but is a "dealer" when executing trades for its own account. In addition to being registered with the SEC, broker-dealers must comply with state registration requirements.

State Securities Regulation

In addition to federal securities laws, "Blue Sky Laws" are state laws designed to protect investors against fraudulent sales practices and activities by requiring companies making offerings of securities to register their offerings before they can be sold in that state and by requiring licensure for brokerage firms, their brokers, and investment adviser representatives.[37]

In Florida, the OFR's Division of Securities oversees the Securities and Investor Protection Act, ch. 517, F.S. ("the Act"), which regulates the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms.

The Act requires the following individuals or businesses to be registered with the OFR under s. 517.12, F.S., in order for such persons to sell or offer to sell any securities in or from offices in this state, or to sell securities to persons in this state from offices outside this state:[38]

- "Dealers," which include:[39]
    - Any person, other than an associated person registered under ch. 517, F.S., who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
    - Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer.
- "Investment advisers," which:[40]
    - Include any person who receives compensation, directly or indirectly, and engages for all or part of her or his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services.

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[34] *Id.*

[35] 15 U.S.C. §§ 78c(4) and 78o. U.S. SECURITIES AND EXCHANGE COMMISSION, *Guide to Broker-Dealer Registration*, http://www.sec.gov/divisions/marketreg/bdguide.htm#II (last visited Nov. 7, 2017).

[36] 15 U.S.C. §§ 78c(5).

[37] U.S. SECURITIES AND EXCHANGE COMMISSION, *Blue Sky Laws*, http://www.sec.gov/answers/bluesky.htm (last visited Nov. 7, 2017).

[38] s. 517.12(1), F.S.

[39] s. 517.021(6)(a), F.S. The term "dealer", as defined under Florida law, encompasses the definitions of "broker" and "dealer" under federal law.

[40] s. 517.021(14)(a), F.S.

    - Does not include a "federal covered adviser."[41]
- "Associated persons," which include:[42]
    - With respect to a dealer or investment adviser, any of the following:
        - Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;
        - Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or
        - Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in this section.
    - With respect to a federal covered adviser, any person who is an investment adviser representative and who has a place of business in this state.

Wells Fargo Declaratory Statement

In May 2016, Wells Fargo Advisors, LLC (Wells Fargo), filed a petition for a declaratory statement[43] with the OFR to determine whether it would be in compliance with ch. 494, F.S., if it were to start compensating its financial advisors for certain mortgage loan originator activities that are purely incidental to the otherwise authorized securities and investment activities for Wells Fargo and its financial advisors.[44]

Wells Fargo is a full-service broker-dealer firm subject to supervision by the SEC and the OFR.[45] Wells Fargo is indirectly owned by Wells Fargo & Co., a bank holding company that also owns certain national banks.[46] Therefore, Wells Fargo is affiliated with such banks through common ownership.[47]

Despite the fact that Wells Fargo holds a mortgage broker license and many of its financial advisors hold a mortgage loan originator license, Wells Fargo and its financial advisors do not:[48]

- Solicit the general public for mortgage loans;
- Solicit lenders on behalf of borrowers;
- Take, complete, accept, or assist in preparing applications for any mortgage loans;
- Negotiate the interest rate, terms or conditions for new or existing mortgage loans; or
- Offer any mortgage loans to borrowers.

Securities clients may raise issues about other financial matters, such as a business need or a residential mortgage.[49] If such questions are presented, the financial advisors may inform securities clients that the affiliated banks make mortgage loans, and they may provide bank-approved material.[50]

If a securities client does contact an affiliated bank regarding a mortgage loan and ultimately obtain mortgage financing, Wells Fargo provides additional compensation to the financial advisor who

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[41] s. 517.021(9) and (14)(b)9., F.S. A federal covered adviser must be registered under federal law and must provide a notice-filing to the OFR. ss. 517.021 and 517.1201, F.S.
[42] s. 517.021(2)(a), F.S.
[43] "Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances." s. 120.565(1), F.S.
[44] *In Re Petition for Declaratory Statement, Wells Fargo Advisors, LLC*, Case No. 66425, p. 1 & 4-6 (Fla. OFR Aug. 15, 2016).
[45] *Id.* at 2.
[46] *Id.* at 3.
[47] *Id.*
[48] *Id.* at 3 & 5.
[49] *Id.* at 3.
[50] *Id.* at 3-4.

interacted with the particular client.[51] Neither Wells Fargo nor its financial advisor, however, receive a fee of any kind from either the securities client obtaining the mortgage loan, or the affiliated bank making the mortgage loan.[52] Wells Fargo and its financial advisor do not have any additional involvement with the affiliated banks' mortgage loan origination process.[53]

The declaratory statement concluded that both the compensation and the referral aspect of the above set of facts require that Wells Fargo be licensed as either a mortgage broker or mortgage lender and that its financial advisors be licensed as mortgage loan originators.[54]

Effect of the Bill

The bill exempts a securities dealer, investment advisor, or an associated person registered under ch. 517, F.S., from regulation under ch. 494, F.S., if such person, in the normal course of conducting securities business with a corporate or individual client:

1) Solicits or offers to solicit a mortgage loan from a securities client or refers a securities client to a depository institution, certain regulated subsidiaries that are owned and controlled by a depository institution, institutions regulated by the Farm Credit Administration, a licensed mortgage broker, a licensed mortgage lender, or a registered loan originator; and
2) Does not accept or offer to accept an application for a mortgage loan, negotiate or offer to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiate or offer to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

Any solicitation or referral made pursuant to the exemption must be made in compliance with ch. 517, F.S.; the federal Real Estate Settlement Procedures Act; and any applicable federal law or general law of this state.

B. SECTION DIRECTORY:

Section 1. Amends s. 494.00115, F.S., relating to exemptions.

Section 2. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have an impact on local government revenues.

[51] *Id.* at 4.
[52] *Id.*
[53] *Id.*
[54] *Id.* at 8.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill provides an exemption from the loan originator and mortgage broker license requirements for certain individuals and businesses in the securities industry. This exemption would result in those individuals and businesses no longer needing to maintain a license as a mortgage loan originator or mortgage broker, which would decrease licensing costs for the affected individuals and businesses. Correspondingly, the OFR would not collect such licensing fees or incur costs of regulatory oversight for those individuals and businesses. It is unknown how many individuals and businesses will forego the currently required dual licensure. Therefore, the impact to the private sector and the state is indeterminate. However, the OFR believes that any loss of licensure revenues will be insignificant.[55]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The body of this bill is identical to language that was included in CS/CS/HB 747 (2017) as enrolled and sent to the Governor. The 2017 bill included more amendments to ch. 494, F.S., than what is contained in this bill. The Governor vetoed the 2017 bill on June 26, 2017, for reasons relating to portions of the 2017 bill that are not contained in this bill.[56] Relating to the language that is contained in this bill, the Governor's veto letter noted that the "legislation makes positive changes to reduce regulations for securities dealers and investment advisors . . . ."[57]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[55] Office of Financial Regulation, Agency Analysis of 2018 House Bill 193 (Oct. 9, 2017).
[56] Letter from Rick Scott, Governor of the state of Fla., to Ken Detzner, Sec'y of State (June 26, 2017), http://www.flgov.com/wp-content/uploads/2017/06/HB-747-Veto-Letter.pdf (last visited Nov. 7, 2017).
[57] *Id.*

A bill to be entitled

An act relating to mortgage brokering; amending s. 494.00115, F.S.; providing an exemption from regulation under parts I and II of ch. 494, F.S., for certain securities dealers, investment advisors, and associated persons; providing requirements for certain solicitations and referrals; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2) and (3) of section 494.00115, Florida Statutes, are renumbered as subsections (3) and (4), respectively, and a new subsection (2) is added to that section to read:

494.00115 Exemptions.—

(2)(a) A securities dealer, an investment advisor, or an associated person registered under s. 517.12 is exempt from regulation under this part and part II of this chapter if such person, in the normal course of conducting securities business with a corporate or an individual client:

1. Solicits or offers to solicit a mortgage loan from a securities client or refers a securities client to an entity exempt under paragraph (1)(b), a licensed mortgage broker, a licensed mortgage lender, or a registered loan originator; and

2. Does not accept or offer to accept an application for a mortgage loan, negotiate or offer to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiate or offer to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

(b) Any solicitation or referral made pursuant to this subsection must comply with chapter 517; the federal Real Estate Settlement Procedures Act, 12 U.S.C. ss. 2601 et seq.; and any applicable federal law or general law of this state.

Section 2. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 329 Motor Vehicle Insurance Coverage Exclusions
SPONSOR(S): Insurance & Banking Subcommittee; Ponder
TIED BILLS: **IDEN./SIM. BILLS:** SB 518

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Lloyd	Luczynski
2) Commerce Committee		Lloyd	Hamon

SUMMARY ANALYSIS

Part XI of ch. 627, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., the Financial Responsibility Law of 1955, establish motor vehicle coverage requirements. Owners and operators of motor vehicles must maintain the ability to respond in damages at specified minimum amounts for personal injury protection, bodily injury or death, and property damage.

Motor vehicle insurance includes two types of coverage: financial responsibility (i.e., bodily injury, death, and property damage or BI/PD) and no-fault (i.e., personal injury protection or PIP). A policy providing coverage for bodily injury, death, and property damage is required to provide coverage for individuals named on the policy and anyone operating a motor vehicle listed on the policy when the operator has the express or implied permission of the insured motor vehicle owner. A policy providing PIP coverage is required to cover persons operating the insured motor vehicle and relatives residing in the same household as the named insured (i.e., policyholder) in addition to anyone specifically named on the policy that are not otherwise required to be covered by law. For motor vehicle policies covering BI/PD, PIP, or both, neither the policyholder nor the insurer can exclude an individual required to be covered by law.

Because there is no authority under the motor vehicle insurance laws for an insurer to exclude coverage of a specific individual (i.e., an excluded named driver), the insurer must choose not to write a policy in order to avoid specific individuals unless the practice is unfair discrimination. This results in consumers who reside with an individual who is a high insurance risk being denied opportunities to purchase motor vehicle insurance or having to pay more because they live with individuals whom the policyholder or insurer would like to exclude from the policy. Additionally, policyholders may have their policy cancelled if the license or registration of a co-resident is suspended or revoked.

The bill authorizes the specific exclusion of named drivers from private passenger motor vehicle insurance coverages, except for periods when the excluded named driver is not operating a covered vehicle (e.g., when they are a passenger in the vehicle), it is unfairly discriminatory, or it is inconsistent with filed underwriting guidelines. A named insured on the policy is required to consent in writing to the exclusion of a named driver. The bill requires insurers to list excluded named drivers on the policy's declarations page or on a policy endorsement. Individuals who are named as excluded drivers on a particular policy would need to secure their insurance obligations under another policy.

The bill does not appear to have a fiscal impact on state or local government. It has positive and negative impacts on the private sector.

The bill has an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Part XI of ch. 627, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., the Financial Responsibility Law of 1955, establish motor vehicle coverage requirements. Owners and operators of motor vehicles must maintain the ability to respond in damages at specified minimum amounts for personal injury protection, bodily injury or death, and property damage.

A policy may exclude coverage of a specific motor vehicle owned by the insured, including damages to covered individuals occupying it that result from operation of the excluded motor vehicle.[1] A policyholder may choose not to insure particular motor vehicles for various reasons, such as the vehicle is unregistered or is covered under another policy.

Motor vehicle insurance includes two types of coverage: financial responsibility (i.e., bodily injury, death, and property damage or BI/PD) and no-fault (i.e., personal injury protection or PIP). A policy providing coverage for bodily injury, death, and property damage is required to provide coverage for individuals named on the policy and anyone operating a motor vehicle listed on the policy when the operator has the express or implied permission of the insured motor vehicle owner.[2] A policy providing PIP coverage is required to cover persons operating the insured motor vehicle and relatives residing in the same household[3] as the named insured (i.e., policyholder) in addition to anyone specifically named on the policy that are not otherwise required to be covered by law.[4] For motor vehicle policies covering BI/PD, PIP, or both, neither the policyholder nor the insurer can exclude an individual required to be covered by law.

An insurer may cancel a motor vehicle insurance policy if the named insured or any operator who resides in the same household or customarily operates a motor vehicle insured under the policy has her or his driver license revoked or suspended.[5] An insured motor vehicle that is operated without the express or implied consent of the insured vehicle's owner is an uninsured/underinsured motor vehicle for purposes of uninsured/underinsured motor vehicle coverage.[6]

Because there is no authority under the motor vehicle insurance laws for an insurer to exclude coverage of a named individual (i.e., an excluded named driver), the insurer must choose not to write a policy in order to avoid specific individuals unless the practice is unfair discrimination.[7, 8] This results in consumers who reside with an individual who is a high insurance risk being denied opportunities to purchase motor vehicle insurance or having to pay more because they live with individuals whom the policyholder or insurer would like to exclude from the policy. Additionally, policyholders may have their policy cancelled if the license or registration of a co-resident is suspended or revoked.

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[1] s. 627.736(2), F.S. The insurer may also exclude coverage of injured persons if the person injured himself or herself intentionally or while committing a felony.
[2] s. 324.151(1), F.S.
[3] "Relative residing in the same household" means a relative of any degree by blood or by marriage who usually makes her or his home in the same family unit, whether or not temporarily living elsewhere. s. 627.732(6), F.S.
[4] ss. 627.736(1) and (4)(e) and 627.7407(5)(b), F.S.
[5] ss. 627.7275 and 627.728, F.S.
[6] If the policy excludes coverage of injuries to the named insured and their household relatives for injuries caused by a non-family member operating a named insured vehicle then the vehicle is an uninsured/underinsured motor vehicle for purposes of uninsured motor vehicle coverage. s. 627.727, F.S.
[7] s. 627.736(2), F.S.
[8] ss. 626.9541(1)(g) and 627.728(4)(c), F.S.

Effect of the Bill

The bill authorizes insurers and policyholders to exclude named drivers from a private passenger motor vehicle insurance policy. An individual would not be covered for damages that occur while operating a motor vehicle that is insured under a policy that excludes the individual by name. The bill prohibits exclusion for periods when the excluded named driver is not operating a motor vehicle covered under the policy (e.g., when they are a passenger in the vehicle), if the exclusion is unfairly discriminatory by law, as determined by the Office of Insurance Regulation (OIR), or if the exclusion is inconsistent with the underwriting guidelines filed by the insurer with OIR. A named insured on the policy is required to consent in writing to the exclusion of a named driver. The bill requires insurers to list excluded named drivers on the policy's declarations page or on a policy endorsement. Individuals who are named as excluded drivers on a particular policy would need to secure their insurance obligations under another policy.

B. SECTION DIRECTORY:

Section 1. Creates s. 627.747, F.S., relating to named driver exclusion.

Section 2. Amends s. 324.151, F.S., relating to motor vehicle liability policies; required provisions.

Section 3. Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 4. Amends s. 627.7407, F.S., relating to application of the Florida Motor Vehicle No-Fault Law.

Section 5. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may positively affect consumers by increased availability and/or lowered premiums of motor vehicle insurance written with named driver exclusions. However, high-risk consumers may experience increased application denials or higher premiums when they must secure their own coverage following exclusion from a policy.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 15, 2017, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably with a committee substitute. The amendment clarified that only one named insured is required to consent to the exclusion of another individual from coverage under a private passenger motor vehicle insurance policy.

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

A bill to be entitled

An act relating to motor vehicle insurance coverage exclusions; creating s. 627.747, F.S.; providing that private passenger motor vehicle policies may exclude certain identified individuals from specified coverages under certain circumstances; providing that such policies may not exclude coverage under certain circumstances; amending ss. 324.151, 627.736, and 627.7407, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 627.747, Florida Statutes, is created to read:

627.747 Named driver exclusion.—

(1) A private passenger motor vehicle policy may exclude an identified individual who is not a named insured from the following coverages while the identified individual is operating a motor vehicle, provided the identified individual is named on the declarations page or by endorsement, and a named insured consents in writing to such exclusion:

(a) Notwithstanding the Florida Motor Vehicle No-Fault Law, the personal injury protection coverage specifically applicable to the identified individual's injuries, lost wages,

and death benefits.

(b) Property damage liability coverage.

(c) Bodily injury liability coverage, if required by law and purchased by the named insured.

(d) Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the named insured has purchased such coverage.

(e) Any coverage the named insured is not required by law to purchase.

(2) A private passenger motor vehicle policy may not exclude coverage when:

(a) The identified individual is injured while not operating a motor vehicle;

(b) The exclusion is unfairly discriminatory under the Florida Insurance Code, as determined by the office; or

(c) The exclusion is inconsistent with the underwriting rules filed by the insurer pursuant to s. 627.0651(13)(a).

Section 2. Paragraph (a) of subsection (1) of section 324.151, Florida Statutes, is amended to read:

324.151 Motor vehicle liability policies; required provisions.—

(1) A motor vehicle liability policy to be proof of financial responsibility under s. 324.031(1), shall be issued to owners or operators under the following provisions:

(a) An owner's liability insurance policy must ~~shall~~

designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby granted, must ~~and shall~~ insure the owner named therein, and, except for a named driver excluded under s. 627.747, must insure any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner against loss from the liability imposed by law for damage arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles within the United States or the Dominion of Canada, subject to limits, exclusive of interest and costs with respect to each such motor vehicle as is provided for under s. 324.021(7). Insurers may make available, with respect to property damage liability coverage, a deductible amount not to exceed $500. In the event of a property damage loss covered by a policy containing a property damage deductible provision, the insurer shall pay to the third-party claimant the amount of any property damage liability settlement or judgment, subject to policy limits, as if no deductible existed.

Section 3. Subsection (1) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(1) REQUIRED BENEFITS.—An insurance policy complying with the security requirements of s. 627.733 must provide personal injury protection to the named insured, relatives residing in

the same household unless excluded under s. 627.747, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, subject to subsection (2) and paragraph (4)(e), to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits resulting from bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) *Medical benefits.*—Eighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices and medically necessary ambulance, hospital, and nursing services if the individual receives initial services and care pursuant to subparagraph 1. within 14 days after the motor vehicle accident. The medical benefits provide reimbursement only for:

1. Initial services and care that are lawfully provided, supervised, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, or a chiropractic physician licensed under chapter 460 or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. Initial services and care may also be provided by a person or entity licensed under part III of chapter 401 which provides emergency transportation and

treatment.

2. Upon referral by a provider described in subparagraph 1., followup services and care consistent with the underlying medical diagnosis rendered pursuant to subparagraph 1. which may be provided, supervised, ordered, or prescribed only by a physician licensed under chapter 458 or chapter 459, a chiropractic physician licensed under chapter 460, a dentist licensed under chapter 466, or, to the extent permitted by applicable law and under the supervision of such physician, osteopathic physician, chiropractic physician, or dentist, by a physician assistant licensed under chapter 458 or chapter 459 or an advanced registered nurse practitioner licensed under chapter 464. Followup services and care may also be provided by the following persons or entities:

a. A hospital or ambulatory surgical center licensed under chapter 395.

b. An entity wholly owned by one or more physicians licensed under chapter 458 or chapter 459, chiropractic physicians licensed under chapter 460, or dentists licensed under chapter 466 or by such practitioners and the spouse, parent, child, or sibling of such practitioners.

c. An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals.

d. A physical therapist licensed under chapter 486, based upon a referral by a provider described in this subparagraph.

e. A health care clinic licensed under part X of chapter 400 which is accredited by an accrediting organization whose standards incorporate comparable regulations required by this state, or

(I) Has a medical director licensed under chapter 458, chapter 459, or chapter 460;

(II) Has been continuously licensed for more than 3 years or is a publicly traded corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange; and

(III) Provides at least four of the following medical specialties:

(A) General medicine.

(B) Radiography.

(C) Orthopedic medicine.

(D) Physical medicine.

(E) Physical therapy.

(F) Physical rehabilitation.

(G) Prescribing or dispensing outpatient prescription medication.

(H) Laboratory services.

3. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. up to $10,000 if a physician licensed under chapter 458 or chapter 459, a dentist licensed

under chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced registered nurse practitioner licensed under chapter 464 has determined that the injured person had an emergency medical condition.

4. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. is limited to $2,500 if a provider listed in subparagraph 1. or subparagraph 2. determines that the injured person did not have an emergency medical condition.

5. Medical benefits do not include massage as defined in s. 480.033 or acupuncture as defined in s. 457.102, regardless of the person, entity, or licensee providing massage or acupuncture, and a licensed massage therapist or licensed acupuncturist may not be reimbursed for medical benefits under this section.

6. The Financial Services Commission shall adopt by rule the form that must be used by an insurer and a health care provider specified in sub-subparagraph 2.b., sub-subparagraph 2.c., or sub-subparagraph 2.e. to document that the health care provider meets the criteria of this paragraph. Such rule must include a requirement for a sworn statement or affidavit.

(b) *Disability benefits.*—Sixty percent of any loss of gross income and loss of earning capacity per individual from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in

obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his or her household. All disability benefits payable under this provision must be paid at least every 2 weeks.

(c) *Death benefits.*—Death benefits of $5,000 per individual. Death benefits are in addition to the medical and disability benefits provided under the insurance policy. The insurer may pay death benefits to the executor or administrator of the deceased, to any of the deceased's relatives by blood, legal adoption, or marriage, or to any person appearing to the insurer to be equitably entitled to such benefits.

Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section, and such insurer may not require the purchase of any other motor vehicle coverage other than the purchase of property damage liability coverage as required by s. 627.7275 as a condition for providing such benefits. Insurers may not require that property damage liability insurance in an amount greater than $10,000 be purchased in conjunction with personal injury protection. Such insurers shall make benefits and required property damage liability insurance coverage available through normal marketing channels. An insurer writing motor vehicle liability insurance in this state who fails to comply with such availability

requirement as a general business practice violates part IX of chapter 626, and such violation constitutes an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance. An insurer committing such violation is subject to the penalties provided under that part, as well as those provided elsewhere in the insurance code.

Section 4. Paragraph (a) of subsection (5) of section 627.7407, Florida Statutes, is amended to read:

627.7407 Application of the Florida Motor Vehicle No-Fault Law.—

(5) No later than November 15, 2007, each motor vehicle insurer shall provide notice of the provisions of this section to each motor vehicle insured who is subject to subsection (1). The notice is not subject to approval by the Office of Insurance Regulation. The notice must clearly inform the policyholder:

(a) That beginning on January 1, 2008, Florida law requires the policyholder to maintain personal injury protection ("PIP") insurance coverage and that this insurance pays covered medical expenses for injuries sustained in a motor vehicle crash by the policyholder, passengers, and relatives residing in the policyholder's household <u>unless excluded under s. 627.747</u>.

Section 5. This act shall take effect July 1, 2018.

COMMERCE COMMITTEE

CS/HB 329 by Rep. Ponder
Motor Vehicle Insurance Coverage Exclusions

AMENDMENT SUMMARY
January 11, 2019

Amendment 1 by Rep. Ponder (Line 18): The amendment requires that a policyholder, rather than a "named insured," consent to the coverage exclusion allowed by the bill and conforms other terminology in the bill to ensure consistent use throughout.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 329 (2018)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee)

Representative Ponder offered the following:

Amendment

Remove lines 18-37 and insert:

an identified individual from the following coverages while the identified individual is operating a motor vehicle, provided the identified individual is specifically excluded by name on the declarations page or by endorsement, and a policyholder consents in writing to such exclusion:

(a) Notwithstanding the Florida Motor Vehicle No-Fault Law, the personal injury protection coverage specifically applicable to the identified excluded individual's injuries, lost wages, and death benefits.

(b) Property damage liability coverage.

(c) Bodily injury liability coverage, if required by law and purchased by the policyholder.

(d) Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the policyholder has purchased such coverage.

(e) Any coverage the policyholder is not required by law to purchase.

(2) A private passenger motor vehicle policy may not exclude coverage when:

(a) The identified excluded individual is injured while not

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 405 Linear Facilities
SPONSOR(S): Williamson
TIED BILLS: **IDEN./SIM. BILLS:** SB 494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	11 Y, 1 N	Keating	Keating
2) Natural Resources & Public Lands Subcommittee	12 Y, 1 N	Moore	Shugar
3) Commerce Committee		Keating CK	Hamon K.W.H.

SUMMARY ANALYSIS

The Florida Electrical Power Plant Siting Act (PPSA) and the Florida Electric Transmission Line Siting Act (TLSA) establish centrally coordinated review processes for state and local permitting of certain electrical power plants and transmission lines. Under the PPSA, an application for certification of a site for a power plant and associated facilities must include a statement on the consistency of the site, and any associated facilities that constitute "development," with existing land use plans and zoning ordinances. Certain activities are excluded from the definition of development. Further, the PPSA and the TLSA authorize the establishment of conditions in an order granting certification, though both state that they do not affect in any way the ratemaking powers of the Public Service Commission (PSC).

In 2016, the Third District Court of Appeal (Court) determined that transmission lines associated with a proposed power plant under the PPSA constitute "development" and, thus, require review for consistency with existing local land use plans and zoning ordinances. This decision conflicts with the historical interpretation and application of the PPSA by administrative tribunals in Florida. Further, the Court determined that the siting board empowered by the PPSA would not infringe on the PSC's exclusive ratemaking jurisdiction if the siting board were to require, as a condition of certification, that a utility install such transmission lines underground at its own expense.

The bill appears to make the law consistent with the historical interpretation of the PPSA by amending two of the items excluded from the definition of "development" in relation to the PPSA:

- The bill provides that the exclusion for work done on established rights-of-way applies to established rights-of-way and corridors and to rights-of-way and corridors *to be established.*
- The bill provides that the exclusion for the creation of specified types of property rights applies to creation of distribution and transmission corridors.

The bill makes identical changes to the definition of "development" in the Florida Local Government Development Agreement Act.

The bill also establishes the standard to be used in authorizing variances in a site certification under the PPSA and under the TLSA. Further, the bill provides that the PPSA and the TLSA do not affect in any way the PSC's exclusive jurisdiction to require transmission lines to be located underground.

The bill does not appear to impact state or local government revenues or expenditures.

The bill provides that it will become effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Electrical Power Plant Siting Act[1] (PPSA) and the Florida Electric Transmission Line Siting Act[2] (TLSA) establish centrally coordinated review processes for state and local permitting of certain electrical power plants and transmission lines. These laws recognize the broad interests of the public that are addressed by various governmental bodies and agencies as well as the critical nature of the infrastructure at issue.[3] These laws intend to further the legislative goal of ensuring, through available and reasonable methods, that the location and operation of electrical power plants and transmission lines will produce minimal adverse effects on the environment and the public health, safety, and welfare and will not unduly conflict with the goals established by the applicable local comprehensive plans.[4] Both laws establish the Governor and Cabinet as the siting board responsible for approving or denying certification.[5]

Application of Local Land Use and Development Laws

Under the PPSA, an application for certification of a site for a power plant and associated facilities[6] must include a statement on the consistency of the site, and any associated facilities that constitute "development," with existing land use plans and zoning ordinances that were in effect on the date the application was filed and a full description of the consistency.[7] The application must identify those associated facilities that the applicant believes are exempt from the requirements of land use plans and zoning ordinances under the Community Planning Act provisions of ch. 163 and s. 380.04(3), F.S. Each affected local government must file a determination of the consistency of the site and non-exempt associated facilities with existing land use plans and zoning ordinances in effect on the date the application was filed. Any substantially affected person may file a petition with the designated administrative law judge (ALJ) to dispute the local government's determination.[8] If a petition is filed, the ALJ must hold a land use hearing at which the sole issue for determination is whether the proposed site or non-exempt associated facility is consistent and in compliance with existing land use plans and zoning ordinances.[9]

Associated facilities that do not constitute "development" are not subject to the land use consistency and compliance requirements. For purposes of this determination, "development" is defined in s. 380.04, F.S., and expressly excludes the following activities, among others:

- Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, renewing, or constructing on

[1] ss. 403.501-403.518, F.S.
[2] ss. 403.52-403.5365, F.S.
[3] *See* ss. 403.502 and 403.521, F.S.
[4] *Id.*
[5] ss. 403.509 and 403.529, F.S.
[6] "Associated facilities" means, for the purpose of certification, onsite and offsite facilities which directly support the construction and operation of the electrical power plant, such as electrical transmission lines, substations, and fuel unloading facilities; pipelines necessary for transporting fuel for the operation of the facility or other fuel transportation facilities; water or wastewater transport pipelines; construction, maintenance, and access roads; and railway lines necessary for transport of construction equipment or fuel for the operation of the facility. s. 403.503(7), F.S.
[7] s. 403.50665(1), F.S.
[8] s. 403.50665(2)(a), F.S.
[9] s. 403.508, F.S.

established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.[10]

- The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.[11]

Historically, administrative tribunals in Florida have held that siting of a transmission line does not constitute "development" and is thus exempt from application of the land-use-consistency provisions. One example of this interpretation is the following provision from a 2004 decision[12]:

> First, Gulf Power will create a new right-of-way for the powerline. A right-of-way is a 'right of access,' an easement, or an 'other right[] in land.' The creation of the right-of-way falls within § 380.04(3)(h). Second, Gulf Power will construct the powerline on the newly established right-of-way. Gulf Power is a utility engaged in the distribution or transmission of electricity. The construction of the powerline in the established right-of-way falls within § 380.04(3)(b). See, *Bd. of County Commrs. of Monroe County v. Dept. of Community Affairs*, 560 So.2d 240 (Fla. 3d DCA 1990); *Friends of Matanzas, Inc. v. Dept. of Environmental Protection*, 729 So.2d 437 (Fla. 5th DCA 1999), and *1000 Friends of Florida, Inc. v. St. Johns County*, 765 So.2d 216 (Fla. 5th DCA 2000), interpreting the similar exemption for road improvements within the right-of-way in § 380.04(3)(a), Fla. Stat. (2003).
>
> Therefore, the proposed powerline is not 'development' as defined in section 380.04, Fla. Stat. (2003).

This decision recognized two exclusions from the definition of "development": (1) the exclusion under s. 380.04(3)(h), F.S., for creating a right of access by establishing a right-of-way in the siting proceeding; and (2) the exclusion under s. 380.04(3)(b), F.S., for constructing a power line within established rights-of-way.[13] Other decisions have relied only on the exclusion for constructing a power line within an established right-of-way. For example, a 2008 decision[14] found the following:

> After certification of this project, TECO will acquire the necessary property interests in a ROW within the certified corridor for placement of the line. Construction of transmission lines on such established ROWs is excepted from the definition of 'development' in Section 163.3164(5), Florida Statutes. Accordingly, the provisions of the local comprehensive plans related to 'development' that have been adopted by the local governments crossed by the line are not applicable to this project.

In 2016, the Third District Court of Appeal (Court) took a different interpretation of the operative statutes.[15] In that case, Florida Power & Light Company (FPL) filed an application under the PPSA to obtain a permit to construct and operate two new nuclear generating units and associated facilities at Turkey Point, including new transmission lines. The siting board issued a final order of certification that, among other things, approved a back-up transmission corridor if adequate right-of-way could not be obtained in the primary corridor in a timely manner and at a reasonable cost. The final order did not consider local regulations and did not require FPL to underground its lines. The final order was

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[10] s. 380.04(3)(b), F.S.
[11] s. 380.04(3)(h), F.S.
[12] *In Re: Petition for Declaratory Statement filed by Hughes and Knowles*, No. DCA-03-DEC-295, 2004 Fla. ENV LEXIS 166, at *6-*7 (DCA April 9, 2004).
[13] *Id.* at *6.
[14] *In Re: Tampa Electric Company Willow Oak-Wheeler-Davis Transmission Line Siting Application No. TA07-15*, 2008 WL 3896725, Finding of Fact No. 50 (Fla. DOAH May 13, 2008), *adopted in toto* (Fla. Siting Bd. Aug. 1, 2008).
[15] *Miami-Dade County, v. In Re: Florida Power & Light Co.*, Nos. 3D14-1467, 3D14-1466, 3D14-1465, 3D14-1451 (Fla. 3d DCA April 20, 2016), *appeal denied.*; *See* http://www.3dca.flcourts.org/opinions/3D14-1467.pdf and https://efactssc-public.flcourts.org/casedocuments/2016/2277/2016-2277_disposition_137996.pdf, respectively.

appealed, and the Court reversed and remanded the final order. With respect to interpretation of the term "development," the Court found that the siting board erred as follows[16]:

- In the siting process, the siting board certifies a corridor, not a right-of-way, and the exclusion cannot be applied to the entire corridor.
- The record reflects that the corridor is made up of parcels within and outside established rights-of-way, so the siting board has no way of knowing whether construction will take place in a right-of-way or an easement.
- The exclusion is for work conducted on "established rights-of-way" and "as the City of Miami contends, were this Court to accept FPL's argument on this issue, that an established right-of-way is not the same as an existing right-of-way, this would make the word 'established' meaningless."

The effect of the Court's decision is to require, in a certification proceeding under the PPSA, that any associated transmission lines require review for consistency with existing land use plans and zoning ordinances that were in effect on the date the application was filed. This outcome conflicts with the consistent, historical implementation of the PPSA and appears to conflict with the legislative intent of this law.[17]

Local land use plans and ordinances create different classifications of property, each with different permitted uses. Each municipality and county establishes a different patchwork. As a result, the Court's decision may make it difficult, if not impossible, for a transmission line crossing the jurisdiction of multiple local governments to find a path that maintains its compliance with each local government's land use plans and ordinances.

Siting Board Authority to Impose Conditions

The PPSA and the TLSA authorize the siting board to include conditions in a certification,[18] but both provide an express statement that they do not affect in any way the ratemaking powers of the Public Service Commission (PSC) under ch. 366, F.S.[19]

In its decision, the Court also reversed and remanded the final order of certification based on a finding that the siting board erroneously determined that it did not have the power to require FPL to install the proposed transmission lines underground at its own expense. Specifically, the Court found:

> The general grant of power in the PPSA to "impose conditions" upon certification, other than those listed in the PPSA, gave the Siting Board the power to impose the condition of requiring that the power lines be installed underground, at FPL's expense. [Citation removed.] Undergrounding of the transmission lines is a condition upon certification encompassed by the Siting Board's ability to impose "site specific criteria, standards, or limitations" on FPL's project. As such, the Siting Board had the power to require it, contrary to the Siting Board's conclusion that it had no such power. Accordingly, reversal is required on this point.[20]

In rendering its decision, the Court distinguished a prior case in which the PSC's "exclusive and superior" authority to regulate public utility rates and service was found to preclude a local government from requiring, by ordinance, a public utility to bear the cost to place its power lines underground.[21] The Court determined that, unlike the local government in the prior case, the siting board has the power

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[16] *Miami-Dade County,* at 12-14.
[17] *See* Footnotes 3 and 4, *supra.*
[18] ss. 403.511 and 403.531, F.S.
[19] *Id.*
[20] *Miami-Dade County*, at 14-15.
[21] *See Florida Power Corp. v. Seminole County*, 579 So. 2d 105, 108 (Fla. 1991).

to impose such conditions. The Court further found that the siting board's power in no way infringes on the PSC's authority with regard to ratemaking.

Section 366.04(1), F.S., provides:

> The jurisdiction conferred upon the commission shall be *exclusive and superior to that of all other boards*, agencies, political subdivisions, municipalities, towns, villages, or counties, and, in case of conflict therewith, all lawful acts, orders, rules, and regulations of the commission shall in each instance prevail. (Emphasis supplied.)

This same statutory section establishes the PSC's jurisdiction over the rates and service of each public utility and over the planning, development, and maintenance of a coordinated electric grid to assure adequate and reliable electric service.

Placing transmission lines underground is more expensive than placing them overhead on poles.[22] The actual cost difference depends on the specific circumstances surrounding each particular transmission line site.[23] In its order certifying FPL's proposed Turkey Point facilities, the siting board noted the ALJ's finding of fact that undergrounding would cost roughly nine times more than overhead construction: $13.3-$18.5 million per mile compared to $1.5-$2.5 million per mile.[24]

In general, when a board or agency with regulatory authority over a public utility orders that utility to take actions that require it to incur costs, such costs are considered to be prudently incurred and are recovered in utility rates. Thus, if the siting board were to impose a requirement for a utility to place facilities underground, that decision would impact the PSC's ratemaking authority to determine whether the higher costs of undergrounding the facilities are prudent under the circumstances and to determine who will bear the burden of such costs. Further, imposing such a requirement impacts the PSC's authority to determine how undergrounding of a transmission line may affect electric grid reliability.

Effect of Proposed Changes

The bill amends the law to reflect the interpretation and implementation of the PPSA and the TLSA that was applied prior to the Third District Court of Appeals' *Miami-Dade County* decision, effectively eliminating any precedential value from that decision. The bill addresses two issues: (1) application of local land use and development laws in a siting proceeding; and (2) the authority of the siting board to order a transmission line to be installed underground.

The bill amends paragraphs 380.04(b) and (h), F.S., which contain the exclusions from "development" discussed above. The bill provides that the exclusion for construction on established rights-of-way applies to established rights-of-way and corridors and to rights-of-way and corridors *to be established*. It also provides that the exemption for the creation of specified types of property rights applies to creation of distribution and transmission corridors. The bill makes identical changes to s. 163.3221, F.S., which provides definitions for use in the Florida Local Government Development Agreement Act.[25]

The bill also amends ss. 403.511 and 403.531, F.S., which relate to the effect of certification under the PPSA and the TLSA, respectively. First, the bill specifies that the standard for granting variances in the certification process shall be the standard set forth in s. 403.201, F.S., which authorizes variances in the following conditions:

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[22] Edison Electric Institute, *Out of Sight, Out of Mind*, January 2013, *available at* http://www.eei.org/issuesandpolicy/electricreliability/undergrounding/Documents/UndergroundReport.pdf (last visited January 8, 2018).

[23] *Id.* at 29-30.

[24] *In Re: Florida Power & Light Company Turkey Point Units 6&7 Power Plant Siting Application No. PA03-45A3,* 2014 WL 2154563 (Fla. Siting Bd. May 19, 2014).

[25] The Florida Local Government Development Agreement Act provides for agreements between local governments and developers to improve the growth management and public planning processes.

- There is no practicable means known or available for the adequate control of the pollution involved;
- Compliance with the particular requirement or requirements from which a variance is sought will necessitate taking measures which, because of their extent or cost, must be spread over a considerable period of time. A variance granted for this reason shall prescribe a timetable for the taking of the measures required; or
- To relieve or prevent hardship of a kind other than those provided for above. Variances and renewals thereof granted under this provision are limited to a period of 24 months, except that certain variances may extend for the life of the permit or certification.

The bill also provides that the PPSA and the TLSA shall not affect in any way the PSC's exclusive jurisdiction to require transmission lines to be located underground.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.3221, F.S., relating to definitions in the Florida Local Government Development Agreement Act.

Section 2. Amends s. 380.04, F.S., relating to the definition of development.

Section 3. Amends s. 403.511, F.S., relating to the effect of certification under the Florida Electrical Power Plant Siting Act.

Section 4. Amends s. 403.531, F.S., relating to the effect of certification under the Florida Electric Transmission Line Siting Act.

Section 5. Provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill clarifies the application of local land use laws to transmission line corridors in siting cases under the PPSA and the TLSA. This may reduce expenses of siting and legal proceedings by providing certainty.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to linear facilities; amending s. 163.3221, F.S.; revising the definition of the term "development" to exclude work by certain utility providers on utility infrastructure on certain rights-of-way or corridors; revising the definition to exclude the creation or termination of distribution and transmission corridors; amending s. 380.04, F.S.; revising the definition of the term "development" to exclude work by certain utility providers on utility infrastructure on certain rights-of-way or corridors; revising the definition to exclude the creation or termination of distribution and transmission corridors; amending s. 403.511, F.S.; requiring the consideration of a certain variance standard when including conditions for the certification of an electrical power plant; clarifying that the Public Service Commission has exclusive jurisdiction to require underground transmission lines; amending s. 403.531, F.S.; requiring the consideration of a certain variance standard when including conditions for the certification of a proposed transmission line corridor; clarifying that the Public Service Commission has exclusive jurisdiction to require underground transmission lines; providing an effective

date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (4) of section 163.3221, Florida Statutes, is amended to read:

163.3221 Florida Local Government Development Agreement Act; definitions.—As used in ss. 163.3220-163.3243:

(4) "Development" means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.

(b) The following operations or uses shall not be taken for the purpose of this act to involve "development":

1. Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way.

2. Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, or renewing on established rights-of-way or corridors, or constructing on established or to be established rights-of-way or corridors, any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.

3. Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

4. The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

5. The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

6. A change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.

7. A change in the ownership or form of ownership of any parcel or structure.

8. The creation or termination of rights of access, riparian rights, easements, <u>distribution and transmission corridors,</u> covenants concerning development of land, or other rights in land.

Section 2. Paragraphs (b) and (h) of subsection (3) of section 380.04, Florida Statutes, are amended to read:

380.04 Definition of development.—

(3) The following operations or uses shall not be taken for the purpose of this chapter to involve "development" as defined in this section:

(b) Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, or renewing on established rights-of-way or corridors, or constructing on established or to be established rights-of-way or corridors, any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like. This provision conveys no property interest and does not eliminate any applicable notice requirements to affected land owners.

(h) The creation or termination of rights of access, riparian rights, easements, distribution and transmission corridors, covenants concerning development of land, or other rights in land.

Section 3. Paragraph (b) of subsection (2) and subsection (4) of section 403.511, Florida Statutes, are amended to read:

403.511 Effect of certification.—

(2)

(b)1. Except as provided in subsection (4), and in consideration of the standard for granting variances pursuant to s. 403.201, the certification may include conditions which constitute variances, exemptions, or exceptions from nonprocedural requirements of the department or any agency which were expressly considered during the proceeding, including, but not limited to, any site specific criteria, standards, or limitations under local land use and zoning approvals which

affect the proposed electrical power plant or its site, unless waived by the agency and which otherwise would be applicable to the construction and operation of the proposed electrical power plant.

2. No variance, exemption, exception, or other relief shall be granted from a state statute or rule for the protection of endangered or threatened species, aquatic preserves, Outstanding National Resource Waters, or Outstanding Florida Waters or for the disposal of hazardous waste, except to the extent authorized by the applicable statute or rule or except upon a finding in the certification order that the public interests set forth in s. 403.509(3) in certifying the electrical power plant at the site proposed by the applicant overrides the public interest protected by the statute or rule from which relief is sought.

(4) This act shall not affect in any way the Public Service Commission's ratemaking powers or its exclusive jurisdiction to require transmission lines to be located underground ~~of the Public Service Commission~~ under chapter 366; nor shall this act in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with applicable building construction codes.

Section 4. Paragraph (b) of subsection (2) and subsection (4) of section 403.531, Florida Statutes, are amended to read:

403.531 Effect of certification.—

(2)

(b) In consideration of the standard for granting variances pursuant to s. 403.201, the certification may include conditions that constitute variances and exemptions from nonprocedural standards or rules of the department or any other agency which were expressly considered during the certification review unless waived by the agency as provided in s. 403.526 and which otherwise would be applicable to the location of the proposed transmission line corridor or the construction, operation, and maintenance of the transmission lines.

(4) This act does not in any way affect the commission's ratemaking powers or its exclusive jurisdiction to require transmission lines to be located underground ~~of the commission~~ under chapter 366. This act does not in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with the National Electrical Safety Code, as prescribed by the commission.

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 455 Governance of Banks and Trust Companies
SPONSOR(S): Insurance & Banking Subcommittee; McClain
TIED BILLS: **IDEN./SIM. BILLS:** SB 416

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Hinshelwood	Luczynski
2) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

In order to form a *de novo* (new) state-chartered bank or trust company, the law currently requires that a certain number of the proposed directors and the proposed president or chief executive officer have at least one year of relevant financial institution experience within the three years before the date of the application. The banking industry has observed that a current barrier to the formation of a new state-chartered bank is a lack of qualified officers and directors due to the duration of non-compete clauses, generally two to three years, in comparison to the timeframe within which the proposed president or chief executive officer and a certain number of proposed directors must have at least one year of relevant financial institution experience. Upon the expiration of a non-compete clause in effect for more than two years, former directors and officers are not qualified to be a president or chief executive officer of a new state-chartered bank and are not qualified to be counted as a director of a new state-chartered bank who possesses the required financial institution experience because their one year of relevant financial institution experience must have been *within the last three years*. The banking industry has indicated that the same concern regarding availability of qualified officers and directors for new banks holds for existing banks, and there is a need to maintain parity between the officer and director requirements of a new bank and similar requirements for an existing bank.

In relation to both new and existing state-chartered banks and trust companies, the bill expands from three years to five years the timeframe within which certain officers and directors must have the required one year of relevant financial institution experience. The result of these changes is an expansion of the pool of individuals qualified to be president or chief executive officer of either a new or an existing state-chartered bank or trust company, or qualified to be counted as a director who possesses relevant financial institution experience for either a new or an existing state-chartered bank or trust company.

The bill requires that at least a *majority*, rather than three-fifths, of the directors of a state-chartered bank or trust company must have resided in this state for at least one year preceding their election and must continue to reside in this state for the duration of their time in office. This change will align the residency requirement for Florida state-chartered banks with the residency requirement for national banks.

Lastly, the bill amends current law in order to clarify an ambiguity in the interpretation of investment limitations relating to corporate obligations or corporate bonds. Specifically, the bill clarifies that:

- The types of entities for which the limitation on investments in corporations applies are subsidiary corporations and affiliates.
- The limitation on investments in corporations applies to an aggregate of any combination of stocks, obligations, and other securities of subsidiary corporations and affiliates.
- The aggregate of such investments may not exceed 10% of the total assets of the bank.

The bill has an indeterminate fiscal impact on the state and the private sector. The bill has no impact on local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] The OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes (Codes) and the rules promulgated thereunder.[2] The specific chapters under the Codes are:

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

As of June 30, 2017, the Division of Financial Institutions regulates 195 financial institutions:[3]

- 95 banks
- 66 credit unions
- 21 international bank offices
- 13 trust companies

Regulation of Banks

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

- *State-chartered banks* are chartered under the laws of the state in which the bank is headquartered. State-chartered banks have both a state regulator, which for banks chartered by the state of Florida is the Office of Financial Regulation, and a federal regulator. The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System (FRB), and the primary federal regulator for non-member state banks is the Federal Deposit Insurance Corporation (FDIC).[4]
- *National banks* are chartered by the Office of the Comptroller of the Currency (OCC) under the National Bank Act.[5] As such, the OCC is the primary federal regulator for national banks.[6]

Formation of a New State-Chartered Bank or Trust Company

In order to apply for authority to organize a new state-chartered bank or trust company, the proposed directors must file a written application with the OFR.[7] The application includes such information as the

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[1] s. 20.121(3)(a)2., F.S.
[2] chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.
[3] OFFICE OF FINANCIAL REGULATION, *Fast Facts* (5th ed., Dec. 2017), http://www.flofr.com/StaticPages/documents/FastFacts.pdf.
[4] 12 U.S.C. § 1813(q).
[5] 12 U.S.C. § 38.
[6] 12 U.S.C. § 1813(q).
[7] s. 658.19(1), F.S.

proposed corporate name; the community, including the street and number, if available, where the principal office of the proposed bank or trust company is to be located; the total initial capital; and detailed financial, business, and biographical information for each proposed director and executive officer.[8]

Upon the filing of an application, the OFR must make an investigation of:

1) The character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.
2) The need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located.
3) The ability of the primary service area to support the proposed bank or trust company and all other existing bank or trust facilities in the primary service area.[9]

After making such investigation, the OFR must approve an application if it finds the following:[10]

1) Local conditions indicate reasonable promise of successful operation for the proposed state bank or trust company.
2) The proposed capitalization is adequate, but at least:
    a. $8 million for a bank.
    b. $3 million for a trust company.
3) The proposed capital structure is in such form as the OFR may require, subject to certain minimum requirements.
4) Regarding officers and directors:
    a. The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation.
    b. None of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, F.S., relating to the control of money laundering and terrorist financing; ch. 896, F.S., relating to offenses related to financial institutions; or similar state or federal law.
    c. At least two of the proposed directors who are not also proposed officers have had at least one year direct experience as an executive officer, regulator, or director of a financial institution *within the three years before the date of the application*. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution *more than three years before the date of the application*, the OFR may allow only one director to have direct financial institution experience *within the last three years*.
    d. The proposed president or chief executive officer must have had at least one year of direct experience as an executive officer, director, or regulator of a financial institution *within the last three years*.
5) The corporate name of the proposed state bank or trust company is approved by the OFR.
6) Provision has been made for suitable quarters at the location in the application.

The banking industry has observed that a current barrier to the formation of a new state-chartered bank is a lack of qualified officers and directors due to the duration of non-compete clauses, generally two to three years, in comparison to the timeframe within which the proposed president or chief executive officer and a certain number of proposed directors must have at least one year of relevant financial institution experience. Directors and officers of a bank may be required to sign an employment contract containing a non-compete clause[11] that prohibits them from working in the banking sector for two to three years following separation from their current bank. Upon the expiration of a non-compete clause

[8] *Id.*
[9] s. 658.20(1), F.S.
[10] s. 658.21, F.S.
[11] Although generally a contract in restraint of trade or commerce is unlawful, the "enforcement of contracts that restrict or prohibit competition during or after the term of restrictive covenants, so long as such contracts are reasonable in time, area, and line of business, is not prohibited." *See* ss. 542.18 and 542.335(1), F.S.

in effect for more than two years, such former directors and officers are not qualified to be a president or chief executive officer of a new state-chartered bank and are not qualified to be counted as a director of a new state-chartered bank who possesses at least one year of relevant financial institution experience because the one year of relevant financial institution experience must have been *within the last three years*, as currently required by s. 658.21(4), F.S.

Qualifications of Officers and Directors of an Existing State-Chartered Bank or Trust Company

At any given time, a state-chartered bank or trust company must have at least five directors.[12] At least a majority of the directors must be citizens of the United States.[13] At least *three-fifths* of the directors must have resided in this state for at least one year preceding their election and must continue to reside in this state for the duration of their time in office.[14] For a bank or trust company with total assets of less than $150 million, at least one director who is not also an officer of the bank or trust company must have at least one year of direct experience as an executive officer, regulator, or director of a financial institution *within the last 3 years*.[15] For a bank or trust company with total assets of more than $150 million, at least two directors who are not also officers of the bank or trust company must have at least one year of direct experience as an executive officer, regulator, or director of a financial institution *within the last 3 years*.[16] The president, chief executive officer, or other person who has equivalent rank or leads the overall operations of a bank or trust company must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution *within the last 3 years*.[17]

The banking industry has indicated that the same concern regarding availability of qualified officers and directors for new banks holds for existing banks, and there is a need to maintain parity between the officer and director requirements of a new bank and similar requirements for an existing bank.

Permissible Investments for State-Chartered Banks

A bank is permitted to invest its funds, subject to certain limitations set forth in both Florida and federal law. The investment limitations under Florida law are found in s. 658.67, F.S., and include the following:

- "Up to 25 percent of the capital accounts of the purchasing bank . . . may be invested in . . . *[c]orporate obligations of any one corporation that is not an affiliate or subsidiary of the bank . . .* "[18]
- "Up to an aggregate of 10 percent of the total assets of a bank may be invested in the stock, *obligations*, or other securities *of subsidiary corporations or other corporations or entities*, except as limited or prohibited by federal law, and except that during the first 3 years of existence of a bank, such investments are limited to 5 percent of the total assets."[19]

The banking industry has observed ambiguity in the interpretation of the above investment limitations due to overlapping provisions relating to corporate obligations or corporate bonds. As a result of the inclusion of "other corporations or entities" in the latter investment limitation seen above, it is unclear whether that provision operates as a limitation on corporate obligations even of non-affiliates and non-subsidiaries, which are covered by the first investment limitation seen above.

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[12] s. 658.33(2), F.S.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] s. 658.33(5), F.S.
[18] s. 658.67(3)(b), F.S. (emphasis added).
[19] s. 658.67(6), F.S. (emphasis added).

Effect of Proposed Changes

Qualifications of Officers and Directors

The bill amends s. 658.21(4), F.S., to increase the timeframe within which a proposed president or chief executive officer and a certain number of proposed directors must have one year of relevant financial institution experience in order to organize a new state-chartered bank or trust company. The bill expands the timeframe within which to satisfy the required experience from three years to five years:

- The proposed president or chief executive officer must have at least one year of relevant financial institution experience *within the last five years.*
- At least two of the proposed directors who are not also proposed officers must have at least one year of relevant financial institution experience *within the last five years.* However, the OFR may allow the applicant to have only one director who has such experience if at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution *more than five years before the date of the application.*

Similarly, the bill amends s. 658.33(2) and (5), F.S., to increase the timeframe within which a president or chief executive officer and a certain number of directors must have one year of relevant financial institution experience in order to serve at an existing state-chartered bank or trust company. The bill expands the timeframe within which to satisfy the required experience from three years to five years:

- The president, chief executive officer, or other person who has equivalent rank or leads the overall operations of a bank or trust company must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution *within the last 5 years.*
- For a bank or trust company with total assets of less than $150 million, at least one director who is not also an officer of the bank or trust company must have at least one year of direct experience as an executive officer, regulator, or director of a financial institution *within the last 5 years.*
- For a bank or trust company with total assets of more than $150 million, at least two directors who are not also officers of the bank or trust company must have at least one year of direct experience as an executive officer, regulator, or director of a financial institution *within the last 5 years.*

The result of these changes is an expansion of the pool of individuals qualified to be president or chief executive officer of either a new or an existing state-chartered bank or trust company, or qualified to be counted as a director who possesses relevant financial institution experience for either a new or an existing state-chartered bank or trust company.

Residency Requirements for Directors

The bill amends s. 658.33(2), F.S., to require that at least a *majority*, rather than three-fifths, of the directors must have resided in this state for at least one year preceding their election and must continue to reside in this state for the duration of their time in office. This change will align the residency requirement for Florida state-chartered banks with the residency requirement for national banks.[20]

[20] The OCC's director qualifications statute states that "[e]very director must, during his whole term of service, be a citizen of the United States, and *at least a majority of the directors must have resided in the State, Territory, or District in which the association is located*, or within one hundred miles of the location of the office of the association, *for at least one year immediately preceding their election, and must be residents of such State* or within one-hundred-mile territory of the location of the association *during their continuance in office*, except that the Comptroller may, in the discretion of the Comptroller, waive the requirement of residency, and waive the requirement of citizenship in the case of not more than a minority of the total number of directors." 12 U.S.C. § 72 (emphasis added).

Permissible Investments for State-Chartered Banks

The bill amends s. 658.67(6), F.S., in order to clarify that:

- The types of entities for which the investment limitation of this subsection applies are subsidiary corporations and affiliates.
- The investment limitation of this subsection applies to an aggregate of any combination of stocks, obligations, and other securities of subsidiary corporations and affiliates.
- The aggregate of such investments may not exceed 10% of the total assets of the bank.

The bill also makes technical changes to s. 658.67(6), F.S., for further clarity.

B. SECTION DIRECTORY:

Section 1. Amends s. 658.21, F.S., relating to approval of application; findings required.

Section 2. Amends s. 658.33, F.S., relating to directors, number, qualifications; officers.

Section 3. Amends s. 658.67, F.S., relating to investment powers and limitations.

Section 4. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Expanding the pool of individuals who are qualified to serve as a director, president, or chief executive officer of a new state-chartered bank or trust company may have a positive impact on efforts to form new banks and trust companies chartered by the state of Florida. However, the fiscal impact of the bill is indeterminate at this time, as it is unknown how many state-chartered banks or trust companies may form as a result of these changes.

D. FISCAL COMMENTS:

In the event of the formation of a new state-chartered bank or trust company, the OFR would receive $15,000 as a nonrefundable application fee. Additionally, each state-chartered bank and trust company must pay the OFR a semi-annual assessment of $2,500 and a semi-annual assessment that is set by rule and varies depending on the bank's or trust company's assets. However, the fiscal impact of the

bill is indeterminate at this time, as it is unknown how many state-chartered banks or trust companies may form as a result of changes made by the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Subsection 658.67(6), F.S., which is amended by section 3 of the bill, currently allows the Financial Services Commission to further limit by rule any type of investment made pursuant to this subsection if it finds that such investment would constitute an unsafe or unsound practice. Subsection 658.67(6), F.S., as amended, maintains this rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In section 3 of the bill, the catchline for s. 658.67(6), F.S., does not accurately reflect that, as amended, the statute subsection relates to investments in subsidiary corporations and affiliates. The sponsor has indicated an intent to clarify the subsection catchline.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 15, 2017, the Insurance and Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute replaces "entities that provide services incidental to the business of banking" with "affiliates" in order to clarify that s. 658.67(6), F.S., limits permissible investments in subsidiaries and affiliates versus s. 658.67(3), F.S., which limits permissible investments in non-subsidiaries and non-affiliates.

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

A bill to be entitled

An act relating to governance of banks and trust companies; amending s. 658.21, F.S.; revising requirements relating to the financial institution experience of certain proposed directors and officers of a proposed bank or trust company; amending s. 658.33, F.S.; revising the residency requirement for certain directors of a bank or trust company; revising requirements relating to the financial institution experience of certain officers of a bank or trust company; amending s. 658.67, F.S.; revising instances during which a bank may not own certain stock, obligations, and other securities; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 658.21, Florida Statutes, is amended to read:

658.21 Approval of application; findings required.—The office shall approve the application if it finds that:

(4) The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise

of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the control of money laundering and terrorist financing; chapter 896, relating to offenses related to financial institutions; or similar state or federal law. At least two of the proposed directors who are not also proposed officers must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 5 ~~3~~ years before the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 5 ~~3~~ years before the date of the application, the office may modify the requirement and allow the applicant to have only one director who has ~~to have~~ direct financial institution experience within the last 5 ~~3~~ years. The proposed president or chief executive officer must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 ~~3~~ years.

Section 2. Subsections (2) and (5) of section 658.33, Florida Statutes, are amended to read:

658.33 Directors, number, qualifications; officers.—

(2) Not less than a majority of the directors must, during their whole term of service, be citizens of the United States,

and at least a majority ~~three-fifths~~ of the directors must have resided in this state for at least 1 year preceding their election and must be residents therein during their continuance in office. In the case of a bank or trust company with total assets of less than $150 million, at least one, and in the case of a bank or trust company with total assets of $150 million or more, two of the directors who are not also officers of the bank or trust company must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the last 5 ~~3~~ years.

(5) The president, chief executive officer, or any other person, regardless of title, who has equivalent rank or leads the overall operations of a bank or trust company must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 ~~3~~ years. This requirement may be waived by the office after considering the overall experience and expertise of the proposed officer and the condition of the bank or trust company, as reflected in the most recent regulatory examination report and other available data.

Section 3. Subsection (6) of section 658.67, Florida Statutes, is amended to read:

658.67 Investment powers and limitations.—A bank may invest its funds, and a trust company may invest its corporate funds, subject to the following definitions, restrictions, and

limitations:

(6) INVESTMENTS IN CORPORATIONS AND OTHER ENTITIES.—Except as limited or prohibited by federal law, ~~Up to an aggregate of 10 percent of the total assets of~~ a bank may invest ~~be invested~~ in the stock, obligations, and ~~or~~ other securities of subsidiary corporations and affiliates. The aggregate of such investments may not exceed 10 percent of the total assets of the bank. ~~or other corporations or entities, except as limited or prohibited by federal law, and except that~~ During the first 3 years of existence of a bank, such investments are limited to 5 percent of the total assets of the bank. The commission by rule, or the office by order, may further limit any type of investment made pursuant to this subsection if it finds that such investment would constitute an unsafe or unsound practice.

Section 4. This act shall take effect July 1, 2018.

COMMERCE COMMITTEE

CS/HB 455 by Rep. McClain
Governance of Banks and Trust Companies

AMENDMENT SUMMARY
January 11, 2018

Amendment 1 by Rep. McClain (line 77):

- Amends the catchline for s. 658.67(6), F.S., in order to accurately reflect that, as amended, the statute subsection relates to investments in subsidiary corporations and affiliates.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee

Representative McClain offered the following:

Amendment

Remove line 77 and insert:

(6) INVESTMENTS IN SUBSIDIARY CORPORATIONS AND AFFILIATES.—Except