HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 677 Pub. Rec./Office of Financial Regulation
SPONSOR(S): Government Operations Subcommittee, Pilon
TIED BILLS: **IDEN./SIM. BILLS:** SB 1328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 0 N, As CS	Williamson	Williamson
2) Insurance & Banking Subcommittee		Barnum	Cooper
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law provides public record exemptions for the Office of Financial Regulation (OFR or office) for certain information obtained or created by OFR pursuant to its involvement in the charter, examination, or investigation of financial institutions. The exemptions vary among OFR's regulatory programs. Currently, the office does not have a public record exemption that would allow it to receive information from another state or federal government that is confidential or exempt pursuant to the laws of that state or pursuant to federal law.

The bill creates a public record exemption for the following information held by OFR:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Information that is received or developed by OFR as part of a joint or multiagency investigation or examination.

The bill authorizes OFR to obtain and use information in accordance with the requirements imposed as a condition of participating in a joint or multiagency examination or investigation.

The bill provides for retroactive application of the exemption. It provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Office of Financial Regulation

The Office of Financial Regulation (OFR or office) has regulatory oversight of banks, credit unions, trust companies, securities brokers, investment advisers, mortgage loan originators, money services businesses, retail installment sellers, consumer finance companies, debt collectors, and other financial service providers. The office has licensing authority and the authority to conduct examinations and investigations.

Other states and federal agencies also have regulatory oversight of many of these entities and individuals. In addition, many of the regulated entities operate in multiple states, thus, making inter-state cooperation essential to achieving comprehensive, efficient, and effective regulatory oversight.[3]

Current Public Record Exemptions

Current law provides public record exemptions for certain information obtained or created by OFR pursuant to its involvement in the charter, examination, or investigation of financial institutions.[4] The exemptions vary among OFR's regulatory programs.

Currently, the office does not have a public record exemption that would allow it to receive information from another state or federal government that is confidential or exempt pursuant to the laws of that state or pursuant to federal law. As such, OFR is limited in its capacity to participate in out-of-state or federal investigations due to its limited public record exemptions.

[1] Section 24(c), Art. I of the State Constitution.
[2] Section 119.15, F.S.
[3] Office of Financial Regulation Bill Analysis of HB 677, at 1.
[4] *See* ss. 560.129, 494.00125, 517.2015, 520.9965, and 655.057, F.S.

Effect of Bill

The bill creates a public record exemption for the following information held by OFR:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Information that is received or developed by OFR as part of a joint or multiagency investigation or examination.

Such information is confidential and exempt[5] from public records requirements.

The bill authorizes OFR to obtain and use information in accordance with the requirements imposed as a condition of participating in a joint or multiagency examination or investigation.

The bill provides for retroactive application of the public record exemption.[6] It provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.[7]

B. SECTION DIRECTORY:

Section 1 amends s. 119.0712, F.S., to create a public record exemption for the office.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2011.

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.

[5] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).

[6] The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

[7] Section 24(c), Art. I of the State Constitution.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement
Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The First Amendment Foundation's position on the bill is "neutral".

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2011, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The committee substitute clarifies that the public record exemption for information received from another state or a federal agency may only be protected if such information is confidential or exempt pursuant to the laws of that state or pursuant to federal law.

The analysis is drafted to the Committee Substitute.