

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1393 Pub. Rec./Financial Technology Sandbox

**SPONSOR(S):** Insurance & Banking Subcommittee; Grant, J.; Toledo

**TIED BILLS:** CS/CS/HB 1391 **IDEN./SIM. BILLS:** CS/CS/SB 1872

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Hinshelwood	Cooper
2) State Affairs Committee		Toliver	Williamson

### SUMMARY ANALYSIS

CS/CS/HB 1391 (2020), with which this bill is linked, creates the Financial Technology Sandbox (sandbox) within the Office of Financial Regulation (OFR). The sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible, regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

The bill creates public record exemptions for certain records related to the sandbox. Specifically, the bill provides that the following records are confidential and exempt from public record requirements:

- The reasons why the general law or rule requirements for which a waiver is sought prevent the innovative financial product or service from being made available to consumers;
- Specified applicant information that the OFR must consider in deciding whether to approve or deny an application for the sandbox;
- Comprehensive records that a sandbox participant must keep relating to the innovative financial product or service; and
- Any information related to the consultation between OFR and a sandbox participant regarding the maximum number of consumers authorized to receive the innovative financial product or service.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The bill provides for repeal of the exemptions on October 2, 2025, unless reviewed and saved from repeal by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill does not appear to have a fiscal impact on local governments and may have an insignificant fiscal impact on the state.

**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 exemption. The bill creates public record exemptions; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. 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.

##### Public Record Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a).<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no more broad than necessary to accomplish its purpose.<sup>2</sup>

Furthermore, the Open Government Sunset Review Act<sup>3</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. The exemption may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.<sup>4</sup>

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>5</sup>

##### CS/CS/HB 1391 (2020)

CS/CS/HB 1391 (2020), with which this bill is linked, creates the Financial Technology Sandbox (sandbox) within the Office of Financial Regulation (OFR). The sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible, regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

Before making an innovative financial product or service available in the sandbox, CS/CS/HB 1391 requires a person to file an application with OFR. In the application, the person must specify the general law or rule requirements for which a waiver is sought, and the reasons why these requirements prevent the innovative financial product or service from being made available to consumers. The application must also contain the following information (specified applicant information):

- The nature of the innovative financial product or service proposed to be made available to consumers in the sandbox, including all relevant technical details.
- The potential risk to consumers and the methods that will be used to protect consumers and resolve complaints during the sandbox period.

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<sup>1</sup> Art. I, s. 24(c), FLA. CONST.

<sup>2</sup> Art. I, s. 24(c), FLA. CONST.

<sup>3</sup> S. 119.15, F.S.

<sup>4</sup> S. 119.15(6)(b), F.S.

<sup>5</sup> S. 119.15(3), F.S.

- The business plan proposed by the applicant, including a statement regarding the applicant's current and proposed capitalization.
- Whether the applicant has the necessary personnel, adequate financial and technical expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or service.
- Whether any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service has pled no contest to, has been convicted or found guilty of, or is currently under investigation for, fraud, a state or federal securities violation, a property-based offense, or a crime involving moral turpitude or dishonest dealing.
- A copy of the disclosures that will be provided to consumers.
- The financial responsibility of any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service.
- Any other factor OFR determines to be relevant.

CS/CS/HB 1391 provides that if the application is approved, OFR may, on a case-by-case basis, specify the maximum number of consumers authorized to receive an innovative financial product or service, after consultation with the person who makes the financial product or service. CS/CS/HB 1391 also requires an applicant, if the product or service is approved, to maintain comprehensive records relating to the innovative product or service. The records must be kept for at least five years after the conclusion of the sandbox period.

### Effect of the Bill

The bill creates public record exemptions for certain records related to the sandbox. Specifically, the bill provides that the following records are confidential and exempt<sup>6</sup> from public record requirements:

- The reasons why the general law or rule requirements for which a waiver is sought prevent the innovative financial product or service from being made available to consumers;
- Specified applicant information that OFR must consider in deciding whether to approve or deny an application for the sandbox;
- Comprehensive records that a sandbox participant must keep relating to the innovative financial product or service; and
- Any information related to the consultation between OFR and a sandbox participant regarding the maximum number of consumers authorized to receive the innovative financial product or service.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The public record exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature. Finally, the bill provides a public necessity statement as required by the State Constitution.

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 560.214, F.S., as created in HB 1391 (2020), relating to the sandbox.

**Section 2.** Provides a public necessity statement as required by the State Constitution.

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<sup>6</sup> There is a difference between records the Legislature designates 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. Sch. Bd. 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 683, 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 statute. *See Op. Att'y Gen. Fla.* 85-62 (1985).

**Section 3.** Provides that the bill will take effect on the same date that CS/CS/HB 1391 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill could have a minimal fiscal impact on OFR in handling records that qualify for the exemptions created by the bill. Staff responsible for complying with public record requirements may require training related to implementation of the exemptions. The costs, however, would likely be absorbed, as they are part of the day-to-day responsibilities of an agency.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### 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 appear to affect county or municipal governments.

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 exemption. The bill creates new public record exemptions; 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 exemption. The bill creates new public record exemptions and includes a statement supporting the public necessity for these exemptions.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates public record exemptions for certain records related to the sandbox, which may include proprietary business information. Disclosure of this information would impair competition in the financial technology

industry and competitors could use the information to impede full and fair competition in the financial technology industry to the disadvantage of consumers.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Necessity Statement

The public necessity statement provides that it is necessary to protect an applicant's proprietary business information as it relates to their financial product or service. The bill, however, protects information that may not constitute proprietary business information.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 4, 2020, the Insurance & Banking Subcommittee adopted an amendment, and reported the bill favorably as a committee substitute. The amendment removed the statutes or rules waived under the Financial Technology Sandbox from the exemption. The amendment also made other technical changes to conform to the committee substitute for HB 1391.

The analysis is drafted to the committee substitute as approved by the Insurance & Banking Subcommittee.