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# FLORIDA LEGISLATURE

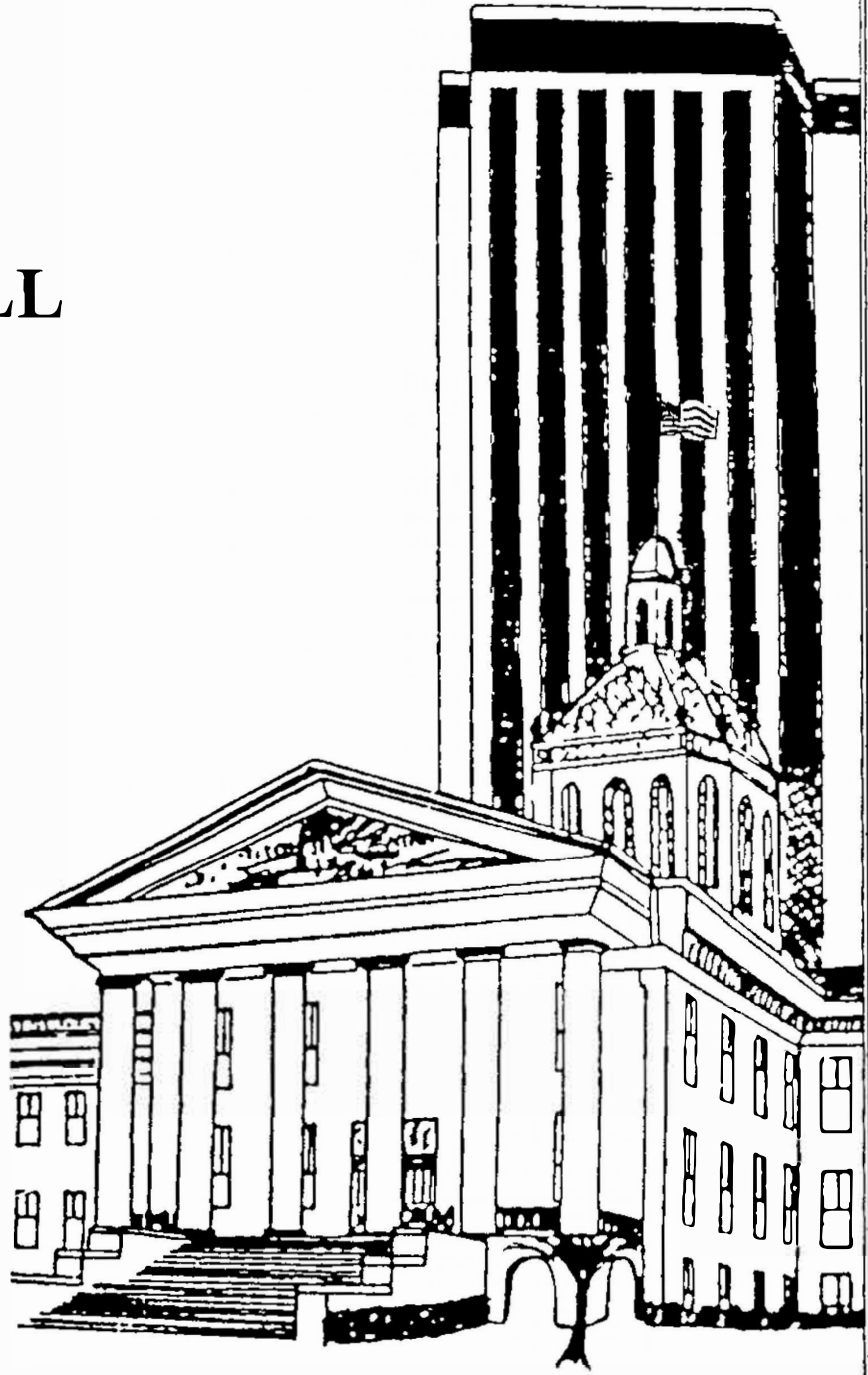
## FINAL LEGISLATIVE BILL INFORMATION

*1997 Regular Session*

*RE: Ch. 97-109*

*HB 397 (Passed)*

*SB 1042 (Substituted)*



prepared by:

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## HISTORY OF HOUSE BILLS

## H 389 (CONTINUED)

03/21/97 HOUSE On Committee agenda—Crime & Punishment (JC), 03/27/97, 1 00 pm, 21—HOB  
 03/27/97 HOUSE Comm Action Unanimously Favorable by Crime & Punishment (JC) —HJ 00399  
 04/02/97 HOUSE Now in Finance & Taxation (FRC) —HJ 00399  
 04/07/97 HOUSE On Committee agenda—Finance & Taxation (FRC), 04/11/97, 1 00 pm, Morris Hall  
 04/11/97 HOUSE Comm Action Favorable with 1 amendment(s) by Finance & Taxation (FRC) —HJ 00596  
 04/16/97 HOUSE Now in General Government Appropriations —HJ 00596  
 05/02/97 HOUSE Carried over to 1998 Session pursuant to House Rule 96, In House Committee on General Government Appropriations

## H 391 GENERAL BILL by Mackey (Similar S 1166)

Landscape Architecture, defines "planting design", exempts planting design, with certain restrictions, from regulation under provision re regulation of landscape architecture Amends 481 303, 329 Effective Date 10/01/1997

01/30/97 HOUSE Prefiled  
 02/17/97 HOUSE Referred to Business Regulation & Consumer Affairs (EIC), Agriculture (GRC)  
 03/04/97 HOUSE Introduced, referred to Business Regulation & Consumer Affairs (EIC), Agriculture (GRC) —HJ 00069  
 03/13/97 HOUSE Withdrawn from Business Regulation & Consumer Affairs (EIC), Agriculture (GRC) —HJ 00179, Filed and not referred —HJ 00179  
 05/01/97 HOUSE Withdrawn from further consideration —HJ 01731

## H 393 GENERAL BILL/CS/1ST ENG by Crime &amp; Punishment (JC) Morroni; Crist; (CO-SPONSORS) Feeney; Argenziano; Lynn; Fasano; Culp; Chestnut; Ziebarth; Harrington; Effman; Valdes; Wasserman Schultz (Identical 1ST ENG/S 0958, Compare CS/H 0049, H 1029, CS/S 0210, CS/S 1760)

Public Safety Information Act, creates said act, revises registration requirements for sexual predators, requires predator to register at driver's license office of HSMV following change in permanent or temporary residence & obtain driver's license or ID card, requires that DOC provide info to FDLE on sex offenders who are in custody or control of, or under supervision of, DOC or custody of private correctional facility on or after specified date, etc Amends FS Appropriation \$484,588 Effective Date 10/01/1997 except as otherwise provided

01/30/97 HOUSE Prefiled  
 02/21/97 HOUSE Referred to Governmental Rules & Regulations (GRC), Crime & Punishment (JC)  
 02/28/97 HOUSE On Committee agenda—Governmental Rules & Regulations (GRC), 03/05/97, 3 30 pm, 314—HOB  
 03/04/97 HOUSE Introduced, referred to Governmental Rules & Regulations (GRC), Crime & Punishment (JC) —HJ 00069, On Committee agenda—Governmental Rules & Regulations (GRC), 03/05/97, 3 30 pm, 314—HOB  
 03/05/97 HOUSE Comm Action Unanimously Favorable with 1 amendment(s) by Governmental Rules & Regulations (GRC) —HJ 00134  
 03/06/97 HOUSE Now in Crime & Punishment (JC) —HJ 00134  
 04/02/97 HOUSE On Committee agenda—Crime & Punishment (JC), 04/08/97, 3 30 pm, 21—HOB  
 04/08/97 HOUSE Comm Action Unanimously CS by Crime & Punishment (JC) —HJ 00596  
 04/16/97 HOUSE CS read first time on 04/16/97 —HJ 00590  
 04/17/97 HOUSE Pending Consent Calendar —HJ 00596, Placed on Governmental Responsibility Council Calendar —HJ 00664  
 04/24/97 HOUSE Read second time —HJ 00786, Amendment(s) adopted —HJ 00796  
 04/28/97 HOUSE Temporarily postponed, on Third Reading —HJ 01111  
 05/02/97 HOUSE Carried over to 1998 Session pursuant to House Rule 96, Placed on Governmental Responsibility Council Calendar, Ident./Sim./Compare Bill(s) passed, refer to SB 958 (Ch 97-299), CS/SB 1760 (Ch 97-276)

## H 395 GENERAL BILL/2ND ENG by Sembler; (CO-SPONSORS) Feeney, Kelly; Bronson (Similar S 0528)

Covenants/Homeowners' Associations, revises & adds definitions, protects certain covenants or restrictions from extinguishment, provides for preservation of certain covenants or restrictions under certain circumstances, authorizes certain homeowners' associations to file for preservation of covenants or restrictions on behalf of certain parcel owners, provides limitation, revises certain notice provisions to conform, provides exception Amends 712 01, 03, 05, 06 Effective Date 10/01/1997

01/30/97 HOUSE Prefiled  
 02/17/97 HOUSE Referred to Real Property & Probate (JC)  
 02/28/97 HOUSE On Committee agenda—Real Property & Probate (JC), 03/05/97, 2 00 pm, 413C  
 03/04/97 HOUSE Introduced referred to Real Property & Probate (JC) —HJ 00069, On Committee agenda—Real Property & Probate (JC) 03/05/97, 2 00 pm 413C

## H 396 (CONTINUED)

03/05/97 HOUSE Comm Action Unanimously Favorable with 1 amendment(s) by Real Property & Probate (JC) —HJ 00199  
 03/12/97 HOUSE Pending Consent Calendar —HJ 00199  
 03/17/97 HOUSE Available for Consent Calendar  
 03/19/97 HOUSE Placed on Consent Calendar—Temporarily postponed —HJ 00218, Available for Consent Calendar  
 03/20/97 HOUSE Placed on Justice Council Calendar —HJ 00259  
 04/03/97 HOUSE Read second time —HJ 00428, Amendment(s) adopted —HJ 00428  
 04/11/97 HOUSE Read third time —HJ 00512, Passed as amended, YEAS 117 NAYS 0 —HJ 00512  
 04/14/97 SENATE In Messages  
 04/24/97 SENATE Received, referred to Community Affairs, Judiciary —SJ 00601  
 04/28/97 SENATE Withdrawn from Community Affairs, Judiciary —SJ 00706, Substituted for SB 528 —SJ 00707, Read second time —SJ 00707, Amendment(s) adopted —SJ 00707  
 04/29/97 SENATE Read third time —SJ 00727, Passed as amended, YEAS 40 NAYS 0 —SJ 00727  
 04/29/97 HOUSE In returning messages  
 05/01/97 HOUSE Concurred —HJ 01485, Passed as amended, YEAS 119 NAYS 0 —HJ 01485, Ordered engrossed, then enrolled —HJ 01486  
 05/14/97 Signed by Officers and presented to Governor  
 05/30/97 Became Law without Governor's Signature, Chapter No 97-202

## H 397 GENERAL BILL by Lippman; Safley (Similar S 1042)

International Banking, provides for access to books & records of international banking corporations under certain circumstances, provides for liquidation of international bank agencies & branches, provides for possession of business & property by Banking & Finance Dept, provides for repudiation of contracts & for liability on repudiation or termination of contracts, etc Amends 655 059, 663 01, 07, creates 663 16- 181, repeals 663 02(2) Effective Date 10/01/1997

01/30/97 HOUSE Prefiled  
 02/21/97 HOUSE Referred to Financial Services (EIC), Civil Justice & Claims (JC), General Government Appropriations  
 02/27/97 HOUSE On Committee agenda—Financial Services (EIC), 03/04/97, 3 30 pm, Morris Hall  
 03/04/97 HOUSE Introduced, referred to Financial Services (EIC), Civil Justice & Claims (JC), General Government Appropriations —HJ 00069, On Committee agenda—Financial Services (EIC), 03/04/97, 3 30 pm, Morris Hall, Comm Action Unanimously Favorable by Financial Services (EIC) —HJ 00176  
 03/10/97 HOUSE Now in Civil Justice & Claims (JC) —HJ 00176  
 03/14/97 HOUSE On Committee agenda—Civil Justice & Claims (JC), 03/20/97, 1 00 pm, 102—HOB  
 03/20/97 HOUSE Comm Action Unanimously Favorable by Civil Justice & Claims (JC) —HJ 00341  
 03/26/97 HOUSE Now in General Government Appropriations —HJ 00341  
 04/01/97 HOUSE Withdrawn from General Government Appropriations —HJ 00355  
 04/02/97 HOUSE Pending Consent Calendar  
 04/04/97 HOUSE Available for Consent Calendar  
 04/16/97 HOUSE Placed on Consent Calendar, Read second and third times —HJ 00576, Passed, YEAS 115 NAYS 0 —HJ 00576  
 04/17/97 HOUSE Immediately certified —HJ 00600  
 04/17/97 SENATE In Messages, Received, referred to Banking and Insurance, Ways and Means —SJ 00527, Immediately withdrawn from Banking and Insurance, Ways and Means —SJ 00519, Substituted for SB 1042 —SJ 00519, Read second time —SJ 00519  
 04/24/97 SENATE Read third time —SJ 00537, Passed, YEAS 38 NAYS 0 —SJ 00537, Immediately certified —SJ 00537  
 04/24/97 HOUSE Ordered enrolled —HJ 00873  
 05/08/97 Signed by Officers and presented to Governor  
 05/24/97 Became Law without Governor's Signature, Chapter No 97-109

## H 399 GENERAL BILL/1ST ENG by Flanagan; (CO-SPONSORS) Feeney, Ziebarth, Wallace (Similar S 0596)

Florida Business Coordination Act, provides legislative findings & intent creates said act, provides definitions, requires Dept of State to create master business index for certain purposes, designates Secretary of State as custodian of index, provides duties of dept, requires Secretary of State to conduct study & develop legislation for certain purposes Effective Date 04/21/1997

01/30/97 HOUSE Prefiled  
 02/21/97 HOUSE Referred to Business Development & International Trade (EIC) Finance & Taxation (FRC) Transportation & Economic Development Appropriations

## HISTORY OF SENATE BILLS

- S 1034 GENERAL BILL** by Klein (Identical H 0489)  
Ad Valorem Tax/Agricultural Crops, provides that property appraiser, when considering specified use factors applicable to agricultural assessment, may rely on 5-year moving average data for certain crops Amends 193 461 Effective Date 01/01/1998  
 02/28/97 SENATE Prefiled  
 03/05/97 SENATE Introduced, referred to Agriculture, Commerce and Economic Opportunities, Ways and Means -SJ 00117  
 03/27/97 SENATE Withdrawn from Agriculture, Commerce and Economic Opportunities, Ways and Means -SJ 00287, Withdrawn from further consideration -SJ 00287
- S 1036 GENERAL BILL** by Klein (Identical H 0211)  
MV Registration/Odometer Readings, revises requirements re odometer readings for purposes of motor vehicle registration, provides additional requirements Amends 320 02 Effective Date Upon becoming law  
 02/28/97 SENATE Prefiled  
 03/05/97 SENATE Introduced, referred to Transportation -SJ 00117  
 04/29/97 SENATE Withdrawn from Transportation -SJ 00724, Withdrawn from further consideration -SJ 00724
- S 1038 GENERAL BILL** by Latvala (Similar H 1271)  
Drinking Water Revolving Loan TF/DEP, creates said trust fund within DEP, specifies purposes of trust fund Creates 403 8533 Effective Date 07/01/1997 if enacted by 3/5ths vote of membership of each house of Legislature  
 02/28/97 SENATE Prefiled  
 03/05/97 SENATE Introduced, referred to Natural Resources, Ways and Means -SJ 00117  
 03/31/97 SENATE On Committee agenda—Natural Resources, 04/02/97, 2 30 pm, Room-A(LL-37)—Not considered  
 04/08/97 SENATE On Committee agenda—Natural Resources, 04/10/97, 9 00 am, Room-A(LL-37)  
 04/10/97 SENATE Comm Action Favorable by Natural Resources -SJ 00473  
 04/11/97 SENATE Now in Ways and Means -SJ 00473  
 04/18/97 SENATE On Committee agenda—Ways and Means, 04/23/97, 2 00 pm, Room-EL  
 04/23/97 SENATE Comm Action -Favorable by Ways and Means -SJ 00584  
 04/24/97 SENATE Placed on Calendar -SJ 00584  
 04/28/97 SENATE Placed on Special Order Calendar -SJ 00709  
 04/29/97 SENATE Placed on Special Order Calendar -SJ 00709, -SJ 00938  
 04/30/97 SENATE Placed on Special Order Calendar -SJ 00938, -SJ 01096, House Bill substituted -SJ 01061, Laid on Table, Iden / Sim / Compare Bill(s) passed, refer to HB 1271 (Ch 97-232)
- S 1040 GENERAL BILL** by Scott (Identical H 0303, H 1789, Compare H 2043)  
District School Board Elections, requires certain school districts to elect school district board members from single-member residence areas Effective Date Upon becoming law  
 02/28/97 SENATE Prefiled  
 03/05/97 SENATE Introduced, referred to Education, Executive Business, Ethics and Elections -SJ 00117  
 03/07/97 SENATE On Committee agenda—Education, 03/11/97, 2 00 pm, Room-A(LL-37)—Temporarily postponed  
 05/02/97 SENATE Died in Committee on Education
- S 1042 GENERAL BILL** by Klein (Similar H 0397)  
International Banking, provides for access to books & records of international banking corporations under certain circumstances, provides for liquidation of international bank agencies & branches, provides for possession of business & property by Banking & Finance Dept, provides for repudiation of contracts & for liability on repudiation or termination of contracts, etc Amends 655 059, 663 01, 07, creates 663 16- 181, repeals 663 02(2) Effective Date 10/01/1997  
 02/28/97 SENATE Prefiled  
 03/05/97 SENATE Introduced, referred to Banking and Insurance, Ways and Means -SJ 00117  
 03/21/97 SENATE On Committee agenda—Banking and Insurance, 03/25/97, 9 00 am, Room-EL  
 03/25/97 SENATE Comm Action Favorable by Banking and Insurance -SJ 00315  
 03/26/97 SENATE Now in Ways and Means -SJ 00315  
 04/03/97 SENATE Withdrawn from Ways and Means -SJ 00324, Placed on Calendar  
 04/16/97 SENATE Placed on Special Order Calendar -SJ 00560  
 04/17/97 SENATE Placed on Special Order Calendar -SJ 00500, House Bill substituted -SJ 00519, Laid on Table, Iden / Sim / Compare Bill(s) passed, refer to HB 397 (Ch 97-109)
- S 1044 GENERAL BILL** by Rossini; (CO-SPONSORS) Meadows, Myers  
Foster Care Revenues requires that Children & Family Services Dept establish policies & procedures for certifying local funds used to match Title IV-E federal funds, requires that excess funds resulting from local match funds be returned to agency providing excess funds Amends 409 1671 Effective Date Upon becoming law  
 03/03/97 SENATE Prefiled
- S 1044 (CONTINUED)**  
 03/05/97 SENATE Introduced, referred to Children, Families and Seniors Ways and Means -SJ 00118  
 04/03/97 SENATE On Committee agenda—Children, Families and Seniors 04/07/97, 2 00 pm, Room-A(LL-37)  
 04/07/97 SENATE Comm Action Favorable by Children, Families and Seniors -SJ 00449  
 04/08/97 SENATE Now in Ways and Means -SJ 00449  
 04/25/97 SENATE Withdrawn from Ways and Means -SJ 00604, Placed on Calendar  
 05/02/97 SENATE Died on Calendar
- S 1046 GENERAL BILL** by Klein (Identical H 0577, Compare H 1011)  
Health Care/Universal Access, creates Fla Universal Health Access Plan, establishes Fla Universal Health Access & Cost Containment Commission, establishes Fla Universal Health Access Trust Fund accounts, provides eligibility for health benefits under plan, provides for covered & noncovered health services, provides access to participating providers, provides for reimbursement & revenues & premium determinations, instructs AHCA to seek federal waivers, etc Appropriation \$84,000 Effective Date 07/01/1997  
 03/03/97 SENATE Prefiled  
 03/05/97 SENATE Introduced, referred to Health Care, Banking and Insurance, Ways and Means -SJ 00118  
 05/02/97 SENATE Died in Committee on Health Care
- S 1048 GENERAL BILL/CS** by Community Affairs; Klein (Similar H 1133)  
Community Asset Protection Act, creates said act, provides that all records & procedures re transfer of assets or management authority of community organization to outside interests are open to public, provides definitions, legislative intent & notice, provides for inspection & copying records Effective Date 10/01/1997  
 03/03/97 SENATE Prefiled  
 03/05/97 SENATE Introduced, referred to Community Affairs, Judiciary -SJ 00118  
 03/21/97 SENATE On Committee agenda—Community Affairs, 03/25/97, 9 00 am, Room-A(LL-37)—Temporarily postponed  
 03/28/97 SENATE On Committee agenda—Community Affairs, 04/01/97, 9 00 am, Room-1C(309)  
 04/01/97 SENATE Comm Action CS by Community Affairs -SJ 00363, CS read first time on 04/03/97 -SJ 00375  
 04/02/97 SENATE Now in Judiciary -SJ 00363  
 05/02/97 SENATE Died in Committee on Judiciary
- S 1050 GENERAL BILL** by Silver (Similar H 1697)  
Partnerships/Secretary of State, defines terms "foreign limited liability partnership" & "limited liability partnership" & redefines term "statement", conforms statutory cross-references, provides for registration requirements & document filing fees, provides for partners' liability & for actions for & against partners, provides for purchase of dissociated interests, provides for conversions, provides for effect of merger, etc Amends Ch 620, 865 09 Effective Date Upon becoming law  
 03/03/97 SENATE Prefiled  
 03/05/97 SENATE Introduced, referred to Commerce and Economic Opportunities, Judiciary, Ways and Means -SJ 00118  
 04/03/97 SENATE On Committee agenda—Commerce and Economic Opportunities, 04/07/97, 2 00 pm, Room-EL  
 04/07/97 SENATE Comm Action Favorable by Commerce and Economic Opportunities -SJ 00448  
 04/09/97 SENATE Now in Judiciary -SJ 00448  
 04/28/97 SENATE Withdrawn from Judiciary -SJ 00664, Now in Ways and Means  
 04/29/97 SENATE Withdrawn from Ways and Means -SJ 00724, Placed on Calendar  
 05/02/97 SENATE Died on Calendar
- S 1052 GENERAL BILL/CS** by Education; Klein (Identical H 1949)  
School Boards/Civil Immunity, provides legislative intent, exempts district school board & its officers or employees, instructional personnel or staff, administrative personnel or other personnel, school volunteers or teacher's aides, or agents from certain liabilities for tort & other civil claims arising out of, & directly resulting from, use of school property or facilities for "recreational or community purposes," as defined, provides exception Effective Date Upon becoming law  
 03/03/97 SENATE Prefiled  
 03/05/97 SENATE Introduced, referred to Education, Judiciary, Governmental Reform and Oversight -SJ 00118  
 03/07/97 SENATE On Committee agenda—Education, 03/11/97 2 00 pm Room-A(LL-37)—Temporarily postponed  
 03/21/97 SENATE On Committee agenda—Education, 03/25/97, 12 30 pm Room-A(LL-37)  
 03/25/97 SENATE Comm Action CS by Education -SJ 00315 CS read first time on 03/27/97 -SJ 00318  
 03/27/97 SENATE Now in Judiciary -SJ 00315  
 05/02/97 SENATE Died in Committee on Judiciary

**STORAGE NAME:** h0397c.cjc  
**DATE:** March 19, 1997

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
COMMITTEE ON CIVIL JUSTICE AND CLAIMS  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #.** HB 397

**RELATING TO:** International Banking

**SPONSOR(S)** Representatives Lippman and Safley

**STATUTE(S) AFFECTED:** Sections 655.059, 663.01, 663.02, 663.07, 663.16-663.181, F.S.

**COMPANION BILL(S):** SB 1042 (s)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE**

- (1) FINANCIAL SERVICES YEAS 11 NAYS 0
- (2) COMMITTEE ON CIVIL JUSTICE AND CLAIMS YEAS 8 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

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**I SUMMARY**

This legislation authorizes home-country officials to inspect and examine the books and records of international banking corporations located in Florida. Also, the bill requires individuals performing functions similar to that of a representative office to be licensed as a representative office. Finally, this legislation provides specific procedures for the liquidation of international banking corporations. Timetables are set forth for the processing of claims against the liquidated corporation. The rights and obligations of third parties, particularly secured and unsecured creditors, are enumerated.

The fiscal impact of this legislation on state revenues is estimated to be positive but indeterminate. No fiscal impact on local revenues is expected.

## II SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

Section 655.059, Florida Statutes, provides that the books and records of a financial institution, other than an international banking corporation, are generally confidential but may be available for inspection under limited circumstances. These limited circumstances include inspection by the Department of Banking and Finance or a federal or state agency authorized to inspect an insured financial institution. In the case of an international banking corporation, home-country supervisors do not have access to these books and records. Florida is the only state in the nation not now allowing home-country supervisors such access.

Chapter 663, F.S., governs international banking in Florida. Section 663.04, F.S., requires an international banking organization to be chartered in a foreign jurisdiction and licensed by the Department of Banking and Finance to carry on business in Florida. The international banking organization transacts its business in Florida through an international banking agency, an international representative office, an international administrative office, an international branch, or a state-chartered investment company.

Section 663.061, F.S., allows an international agency to make any loan or investment which a bank organized in Florida would be permitted to do. An agency may also act as custodian and may furnish investment management and investment advisory services to any nonresident entities or persons whose principal place of business is located outside the United States. The international banking agency is prohibited from receiving deposits in Florida except from nonresident entities or persons.

Section 663.062, F.S., 1996 Supplement, allows an international representative office to promote or assist deposit-taking, lending, or other financial or banking activities of an international banking organization. The representative office is prohibited from conducting any banking business in Florida.

Section 663.063, F.S., allows an international administrative office to be established solely for the purposes of personnel administration and operations, data processing or record keeping activities, and negotiating, approving, or servicing loans and investments.

Section 663.064, F.S., allows international branches to be established. These branches may engage in all activities of a national bank but may not receive domestic retail deposits.

Section 663.065, F.S., allows a state-chartered investment company to be established for the purpose of engaging in international banking, lending or other financial activities.

International bank agencies, international branches and state-chartered investment companies are subject to the receivership and liquidation procedures in ch. 658, F.S. However, since most liquidations and receiverships in Florida are handled by the Federal Deposit Insurance Corporation (FDIC), the Department of Banking and Finance has no specific procedures for liquidation of an international banking corporation.

Section 658.79, F.S., authorizes the Department of Banking and Finance to take possession of an entity when the Department determines the entity is insolvent or imminently insolvent or is transacting business in an unsafe or unsound manner. Generally, the FDIC is appointed the receiver or liquidator of any state bank if any of the deposits are insured by the FDIC. Whenever the FDIC is appointed as receiver or liquidator, its rules and procedures are applicable.

Whenever the FDIC is not appointed receiver or liquidator, the Department must appoint the receiver or liquidator. The powers of a receiver, enumerated in s. 658.82, F.S., and the powers of a liquidator, enumerated in s. 658.83, F.S., include: taking possession of the books and records and assets of the entity; suing for and defending, compromising, and settling all claims involving the entity; selling the assets of the entity, subject to circuit court approval, and paying all expenses of receivership.

Section 658.84, F.S., sets the priority order for payment of claims against the bank. For unsecured claims the order of payment is (1) expenses of the liquidation or receivership, (2) state claims, (3) approved claims for a "deposit", (4) approved claims for other general creditors, (5) approved claims for obligations subordinate to deposits and other general liabilities, and (6) shareholders' claims.

#### B. EFFECT OF PROPOSED CHANGES:

Under this legislation, home-country officials will be authorized to inspect and examine the books and records of international banking corporations while maintaining the confidentiality of customer records. Individuals performing functions similar to that of a representative office will be required to be licensed as a representative office. Additionally, this legislation provides specific procedures for the liquidation of international banking corporations by the Department of Banking and Finance. Under current law, the Department relies on the FDIC to liquidate insured institutions. Since the international banking corporation is not insured, the FDIC has no authority to liquidate the international corporation.

Please see the Section-by-Section analysis for specific procedures regarding the liquidation process.

#### C. APPLICATION OF PRINCIPLES:

##### 1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly,

(1) any authority to make rules or adjudicate disputes?

This legislation authorizes the Department of Banking and Finance to promulgate rules relating to the liquidation of international banking organizations.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b If an agency or program is eliminated or reduced

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable

(2) what is the cost of such responsibility at the new level/agency?

Not applicable

(3) how is the new agency accountable to the people governed?

Not applicable

2. Lower Taxes

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No



3 Personal Responsibility.

- a Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4 Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5 Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable

- (2) Who makes the decisions?

Not applicable

- (3) Are private alternatives permitted?

Not applicable

- (4) Are families required to participate in a program?

Not applicable

(5) Are families penalized for not participating in a program?

Not applicable

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable

(2) service providers?

Not applicable

(3) government employees/agencies?

Not applicable

#### D. SECTION-BY-SECTION ANALYSIS.

Section 1 amends s 655 059, F S., to permit the home-country supervisor to inspect the books of an international banking corporation after proper notice to the Department of Banking and Finance

Section 2 amends s. 663.01, F.S., to expand the definition of "international representative office" to include any person who engages in banking activities in Florida on behalf of an international banking organization.

Section 3 amends s 663.07, F S , to grant the Department the authority to include international banking facility assets and liabilities in the calculation of total assets and total liabilities of an international bank agency or branch Under current law, facility assets and liabilities are generally excluded. Moreover, the section clarifies the Department's authority to require an international bank agency or international branch to meet capital equivalency requirements as well as asset maintenance requirements.

Section 4 creates ss. 663 16, 663 17, 663.171, 663 172, 663 173, 663 174, 663.175, 663 176, 663 177, 663 178, 663 18, and 663 181, F S , as follows

**663.16, F.S.**, provides definitions applicable to the liquidation process for international banks.

**663.17, F.S.**, provides the liquidation process for international banks. The circumstances under which the Department may take possession of an international bank are expanded to include: the bank has violated a law, has neglected or refused to comply with an order of the Department, and the corporation is in liquidation in another jurisdiction. Currently, the Department may take possession of a financial institution only when the financial institution is insolvent, imminently insolvent, or is transacting business in an unsound, unsafe, or unauthorized manner

This section authorizes the appointment of a single judge to oversee the liquidation process, requires the Department to give notice to known holders of assets of the bank, requires the holders to deliver such assets to the Department, specifies that certain claims will not be accepted by the Department, and allows limited wages of employees of the bank to be paid as soon as practicable

**663.171, F.S.**, permits the Department to repudiate or assume any contract of an international banking organization after the Department has taken possession of the organization

**663.172, F.S.**, sets forth the liability of the Department in repudiating or terminating contracts. Generally, the Department's liability will be limited to the actual direct compensatory damages. If a qualified financial contract is terminated or liquidated, the Department's liability is limited to actual direct compensatory damages, including normal and reasonable costs of cover or other reasonable measures. However, the qualified financial contract is subject to "netting" provisions, that is, the liability will be limited to the lesser of the global net payment obligation or the branch to agency or agency to agency net payment obligation

**663.173, F.S.**, permits a party with a perfected security interest in collateral pursuant to a qualified financial contract to retain and apply such collateral in satisfaction of any claims secured by the collateral

**663.174, F.S.**, sets forth the Department's liability in the repudiation of leases. Generally, a party to a lease which has been repudiated by the Department will be entitled to damages equal to the lesser of the amount of liquidated damages specified in the contract, one year's rent under the repudiated lease, or an amount equal to the rent for the remaining term of the lease.

**663.175, F.S.**, provides that upon the Department taking possession of an international banking corporation, most actions and legal proceedings against the corporation are stayed and enjoined. Legal action could be taken against the corporation for claims in the liquidation, criminal proceedings against the corporation, actions pursuant to a government's police power, enforcement of a non-money judgment obtained in a proceeding pursuant to a government's police power, a notice of tax deficiency, and actions by a secured creditor with a perfected security interest enforceable against third parties.

**663.176, F.S.**, establishes notice requirements for the Department in a liquidation proceeding. Generally, the Department must notify all persons with claims against the corporation to present such claims within four months of the date of the notice. All claimants must notify the Department in writing within the required time frame. No claim may be accepted if untimely filed

**663.177, F.S.**, establishes the procedures for the disposition of property held by the Department as a result of a liquidation. Generally, the Department must maintain the property for a period of one year. Upon lapse of one year, the Department may petition a circuit court for authorization to dispose of the property, including the sale of the property to satisfy a lien for nonpayment of rental or storage charges.

**663.178, F.S.**, establishes the criteria to be met before a claim may be accepted by the Department. Such criteria include a signed written statement under oath by the claimant and evidence of the agreement in the accounts, books or records of the corporation or the creditor provides documentary evidence. The circuit court is vested with the authority to prioritize the payment of claims. The Department must submit a list of all claims against the corporation to the circuit court. Any interest party may object to a claim within 40 days of the filing of the list. Unless the Department rejects the claim to which objections have been filed, the Department will have 60 days after the objection deadline to petition the circuit court as to the disposition of the claim. Also, at the lapse of the 60 days, the Department must approve or reject every claim. Within 30 days of acting on all claims, the Department must file a list actions on each claim.

**663.18, F.S.**, exempts the Department from the payment of any fees imposed by a sheriff, clerk or other public officer for the filing or executing of a document pertaining to the Department's exercise of liquidation powers.

**663.181, F.S.**, grants an international banking corporation ten days in which to apply to a circuit court for an order enjoining the Department from taking possession of it.

Section 5 repeals s. 663.02(2), F.S., relating to applying the liquidation and receivership provisions of ch. 658, F.S., to international banks. As drafted in this legislation, the liquidation procedures for international banks will be included in ch. 663, F.S.

Section 6 provides an effective date of October 1, 1997.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

1 Non-recurring Effects:

None

2 Recurring Effects:

Positive but indeterminate. Additional international representative offices may be licensed in Florida, resulting in additional fee revenue.

3 Long Run Effects Other Than Normal Growth:

None

4 Total Revenues and Expenditures:

Positive but indeterminate Additional international representative offices may be licensed in Florida, resulting in additional fee revenue

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE

1. Non-recurring Effects

None

2 Recurring Effects

None.

3 Long Run Effects Other Than Normal Growth

On the occasion that the Department of Banking and Finance must use its authority to liquidate an international banking corporation, local government revenues will be negatively impacted by an indeterminate amount by the exemption from local government fees in section 4 of the bill.

C DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1 Direct Private Sector Costs

None.

2 Direct Private Sector Benefits:

None

3 Effects on Competition, Private Enterprise and Employment Markets.

None

D FISCAL COMMENTS

IV CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION

**A. APPLICABILITY OF THE MANDATES PROVISION**

This legislation does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

**B REDUCTION OF REVENUE RAISING AUTHORITY:**

This legislation does not reduce the authority that municipalities or counties have to raise revenues in the aggregate

**C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This legislation does not reduce the percentage of a state tax shared with counties or municipalities

**V COMMENTS:**

The Civil Justice and Claims Committee staff reviewed HB 397 and concluded that the provisions relating to liability and sovereign immunity on repudiation or termination of contracts would provide the Department of Banking and Finance with the necessary guidance and tools to regulate international banks located in Florida.

**VI AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES**

**VII SIGNATURES:**

COMMITTEE ON FINANCIAL SERVICES  
Prepared by

Legislative Research Director

Michael A. Kliner

Stephen T. Hogge

AS REVISED BY THE COMMITTEE ON COMMITTEE ON CIVIL JUSTICE AND CLAIMS.  
Prepared by.

Legislative Research Director:

Bridget Edmond

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date March 20, 1997 Revised \_\_\_\_\_

Subject International Banking

Table with 4 columns: Analyst, Staff Director, Reference, Action. Row 1: Johnson, Deffenbaugh, BI, Favorable. Row 2: WM, Withdrawn.

I. Summary:

This legislation authorizes supervisors of international banking corporations with offices in Florida to inspect and examine the books and records of international banking corporations located in Florida. Also, the bill requires individuals performing functions similar to that of a representative office to be licensed as a representative office. Finally, this legislation provides specific procedures for the liquidation of international banking corporations. Timetables are set forth for the processing of claims against the liquidated corporation. The rights and obligations of third parties, particularly secured and unsecured creditors, are enumerated.

This bill substantially amends the following sections of the Florida Statutes: 655.059, 663.01, 663.07. This bill creates the following sections of the Florida Statutes: 663.16, 663.17, 663.171, 663.172, 663.173, 663.174, 663.175, 663.176, 663.177, 663.178, 663.18, 663.181. This bill repeals section 663.02 of the Florida Statutes.

II. Present Situation:

Section 655.059, Florida Statutes, provides that the books and records of a financial institution, are generally confidential but may be available for inspection under limited circumstances. These limited circumstances include inspection by the Department of Banking and Finance or a federal or state agency authorized to inspect an insured financial institution. In the case of an international banking corporation located in Florida, a home-country supervisor presently does not have access to these books and records.

Under the provisions of the Federal Deposit Insurance Corporation Act of 1991, the Federal Reserve Board may not approve an application for a foreign bank branch unless it determines that the foreign bank engages directly in the business outside of the United States and is subject to

comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country. Since current Florida law does not allow such a comprehensive consolidated supervision, this restriction impedes the ability of the home country supervisor to comply with the Federal Reserve requirement.

Chapter 663, F.S., governs international banking activities in Florida. Section 663.04, F.S., requires an international banking organization to be chartered in a foreign jurisdiction and licensed by the department to carry on business in Florida. An international banking organization in Florida is authorized to transact its business in Florida through an international banking agency, an international representative office, an international administrative office, an international branch, or a state-chartered investment company. There are presently 82 international banking offices in Florida. Twenty-five nations are represented among those offices.

Section 663.061, F.S., allows an international agency to make any loan or investment which a bank organized in Florida would be permitted to do. An agency may also act as custodian and may furnish investment management and investment advisory services to any nonresident entities or persons whose principal place of business is located outside the United States. The international banking agency is prohibited from receiving deposits in Florida except from nonresident entities or persons.

Section 663.062, F.S., 1996 Supplement, allows an international representative office to promote or assist deposit-taking, lending, or other financial or banking activities of an international banking organization. The representative office is prohibited from conducting any banking business in Florida. The definition of an international representative does not include persons who primarily conduct such activities outside of an international banking corporation's environment.

Section 663.063, F.S., allows an international administrative office to be established solely for the purposes of personnel administration and operations, data processing or record keeping activities, and negotiating, approving, or servicing loans and investments.

International bank agencies and international branches are subject to the receivership and liquidation procedures in ch. 658, F.S. However, since most liquidations and receiverships in Florida are handled by the Federal Deposit Insurance Corporation (FDIC), the department has no specific procedures for liquidation of an international banking corporation.

Section 658.79, F.S., authorizes the department to take possession of a state bank or trust company when the department determines the entity is insolvent or imminently insolvent or is transacting business in an unsafe or unsound manner. Generally, the FDIC is appointed the receiver or liquidator of any state bank if any of the deposits are insured by the FDIC. Whenever the FDIC is appointed as receiver or liquidator, its rules and procedures are applicable.

Whenever the FDIC is not appointed receiver or liquidator, the department must appoint the receiver or liquidator. The powers of a receiver, enumerated in s. 658.82, F.S., and the powers of a liquidator, enumerated in s. 658.83, F.S., include (1) taking possession of the books and



records and assets of the entity, (2) suing for and defending, compromising, and settling all claims involving the entity, (3) selling the assets of the entity, subject to circuit court approval, and (4) paying all expenses of receivership

Section 658.84, F.S., sets the priority order for payment of claims against a state bank or trust company. For unsecured claims the order of payment is (1) expenses of the liquidation or receivership, (2) state claims, (3) approved claims for a deposit, (4) approved claims for other general creditors, (5) approved claims for obligations subordinate to deposits and other general liabilities, and (6) shareholders' claims.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 655.059, F.S., to permit the home-country supervisor to inspect the books of an international banking corporation after proper notice to the department. Home-country supervisor is defined to mean the governmental entity in the corporation's home country with responsibility for the supervision and regulation of the corporation.

**Section 2.** Amends s. 663.01, F.S., to expand the definition of "international representative office" to include any person who engages in banking activities in Florida on behalf of an international banking organization.

**Section 3.** Amends s. 663.07, F.S., to grant the department the authority to include international banking facility assets and liabilities in the calculation of total assets and total liabilities of an international bank agency or branch. Under current law, facility assets and liabilities are generally excluded. The department is authorized to require an international bank agency operating in Florida to maintain reserves by the asset maintenance method or capital equivalency or both.

**Section 4.** Creates ss. 663.16, 663.17, 663.171, 663.172, 663.173, 663.174, 663.175, 663.176, 663.177, 663.178, 663.18, and 663.181, F.S.

Section 663.16, F.S., provides definitions applicable to the liquidation process for international banks.

Section 663.17, F.S., provides the liquidation process for international banks. The circumstances under which the department may take possession of an international bank are expanded to include those situations when the bank (1) has violated a law, (2) has neglected or refused to comply with an order of the department, (3) is insolvent or imminently insolvent, (4) is transacting business in an unsound, unsafe, or unauthorized manner, such that the corporation is threatened with imminent insolvency, or (5) the corporation is in liquidation in another jurisdiction. Currently, the department may take possession of a financial institution only if the financial institution is insolvent, imminently insolvent, or is transacting business in an unsound, unsafe, or unauthorized manner.

This section requires the department to give notice to known holders of assets of the bank, requires the holders to deliver such assets to the department, specifies that certain claims will not be accepted by the department, and allows limited wages of employees of the bank to be paid as soon as practicable

Section 663.171, F S , permits the department to repudiate or assume any contract of an international banking organization after the department has taken possession of the organization

Section 663.172, F S , sets forth the liability of the department in repudiating or terminating contracts. Generally, the department's liability will be limited to the actual direct compensatory damages determined as of the date the department took possession. If a qualified financial contract is terminated or liquidated, the department's liability is limited to actual direct compensatory damages, including normal and reasonable costs of cover or other reasonable measures. However, the qualified financial contract is subject to "netting" provisions, that is, the liability will be limited to the lesser of the global net payment obligation or the branch-to-agency or agency-to-agency net payment obligation

Section 663.173, F S , permits a party with a perfected security interest in collateral pursuant to a qualified financial contract to retain and apply such collateral in satisfaction of any claims secured by the collateral

Section 663.174, F S , sets forth the department's liability in the repudiation of leases. Generally, a party to a lease which has been repudiated by the department will be entitled to damages equal to the lesser of (1) the amount of liquidated damages specified in the contract, (2) one year's rent under the repudiated lease, (3) or an amount equal to the rent for the remaining term of the lease

Section 663.175, F S , provides that upon the department taking possession of an international banking corporation, most actions and legal proceedings against the corporation are stayed and enjoined. Legal action could be taken against the corporation for claims in the liquidation, criminal proceedings against the corporation, actions pursuant to a government's police power, enforcement of a non-money judgment obtained in a proceeding pursuant to a government's police power, a notice of tax deficiency, and actions by a secured creditor with a perfected security interest enforceable against third parties

Section 663.176, F.S., establishes notice requirements for the department in a liquidation proceeding. Generally, the department must notify all persons with claims against the corporation to present such claims within four months of the date of the notice. All claimants must notify the department in writing within the required time frame. No claim may be accepted if untimely filed.

Section 663.177, F S , establishes the procedures for the disposition of property held by the department as a result of a liquidation. Generally, the department must maintain the property for a period of 1 year. Upon a lapse of 1 year, the department may petition a circuit court for

authorization to dispose of the property, including the sale of the property to satisfy a lien for nonpayment of rental or storage charges.

Section 663 178, F.S., establishes the criteria to be met before a claim may be accepted by the department. Such criteria include a signed written statement under oath by the claimant and evidence of the agreement in the accounts, books or records of the corporation or the creditor provides documentary evidence. The circuit court is vested with the authority to prioritize the payment of claims. The department must submit a list of all claims against the corporation to the circuit court. Any interested party may object to a claim within 40 days of the filing of the list. Unless the department rejects the claim to which objections have been filed, the department will have 60 days after the objection deadline to petition the circuit court as to the disposition of the claim. Also, at the lapse of the 60 days, the department must approve or reject every claim. Within 30 days of acting on all claims, the department must file a list of actions on each claim.

Section 663 18, F.S., exempts the department from the payment of any fees imposed by a sheriff, clerk, or other public officer for the filing or executing of a document pertaining to the department's exercise of liquidation powers.

Section 663 181, F.S., grants an international banking corporation 10 days in which to apply to a circuit court for an order requiring the department show cause why the department should not be enjoined from continuing such possession.

**Section 5.** Repeals s. 663 02(2), F.S., relating to applying the liquidation and receivership provisions of ch. 658, F.S., to international banks.

**Section 6.** Provides an effective date of October 1, 1997.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions.**

None

##### **B. Public Records/Open Meetings Issues**

None

##### **C. Trust Funds Restrictions**

None

**V. Economic Impact and Fiscal Note:**

A Tax/Fee Issues.

None

B Private Sector Impact

The bill would provide a mechanism for the liquidation and payment of claims by businesses and individuals against an international agency

C. Government Sector Impact:

None

**VI. Technical Deficiencies:**

None

**VII. Related Issues:**

None

**VIII. Amendments:**

None