

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 12, 1998

Revised: 03/30/98 _____

Subject: Public Depositories

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Lombardi</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	<u> </u>	<u> </u>	<u>BI</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>WM</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The committee substitute amends several sections of Florida Statutes which pertain to the "Florida Security for Public Deposits Act." The Florida Security for Public Deposits Act protects Florida's governmental units from loss of public deposits in qualified public depositories (QPDs). The bill eliminates the separation between banks and savings associations in the program; creates a procedure for identification and acknowledgment of public deposits; directs the reader to reference s. 280.02, F.S., defining qualified public depositories for brevity, and eliminates unnecessary language duplication; and authorizes the Treasurer to hold interest and principal payments on collateral and release collateral directly to public depositors of a withdrawing QPD.

This act takes effect July 1, 1998.

This bill amends sections 125.31, 136.01, 159.09, 166.261, 218.345, 236.24, 255.502, 331.309, 280.02, 280.03, 280.04, 280.05, 280.07, 280.08, 280.16, 280.17, 280.18, Florida Statutes.

II. Present Situation:

The Cabinet Office of the Treasurer is established in s. 4, Art. IV, Fla. Const. The Treasurer is directed to keep all state funds and securities and to disburse state monies only upon the order of the Comptroller. Section 20.13, F.S., designates the Treasurer as the Insurance Commissioner, Treasurer, and State Fire Marshal and names the Treasurer as the head of the Department of Insurance. The law also directs the Treasurer to administer the Government Employees Deferred Compensation Plan through the Division of the Treasury.

Chapter 18, F.S., delineates many duties of the Treasurer. Among the duties assigned by law is the investment of state monies in excess of those needed to pay the immediate debts of the state.

These excess funds include monies from the General Revenue Fund, trust accounts, and various other accounts of state agencies and other public and quasi-public entities. The law authorizes the Treasurer to charge a fee for managing excess state monies.

Pursuant to s. 18.10(2), F.S., the Treasurer is directed to invest these excess funds in qualified public depositories that will pay rates established by the Treasurer at levels not less than the prevailing rate for United States Treasury securities with a corresponding maturity. In the event additional money is available and qualified public depositories are unwilling to accept such money and pay the rates established by the Treasurer, the Treasurer is authorized to invest the money in specific investment products.

The law also directs the Treasurer to establish qualifications to designate banks and savings and loan associations as qualified public depositories. Section 280.02, F.S., outlines the procedures a financial institution must follow to be designated as a qualified public depository. A qualified public depository is defined to mean any bank or savings association organized and existing under the laws of Florida that has its principal place of business in Florida or has a branch office which is authorized under the laws of Florida or any other state or territory of the United States to receive deposits.

To qualify as a qualified public depository, a financial institution must provide specific information to the Department of Insurance describing the assets of the institution. A qualified public depository is also required to collateralize a specified portion of the public monies on deposit so that the designated portion of the public deposits is immediately available should the need arise. The percentage of public funds that a financial institution must collateralize varies depending upon the assets of the institution, among other requirements.

III. Effect of Proposed Changes:

Sections 1, 4 and 5: Sections 125.31(c), 166.261(c), and 218.345(c), F.S., are amended, directing the board of county commissioners, the governing body of each municipality, and the governing body of each special district, respectively, to invest and reinvest surplus public funds in interest-bearing time deposits or savings accounts of qualified public depositories as defined in s. 280.02, F.S.

Sections 125.31(2)(a)2. and 166.261(2)(a)2., F.S., provide that public funds that have been properly earmarked and credited to the governing body in book entry form by the institution must be kept in a separate account and apart from the assets of the institution. This section is amended to include depositories chartered by the Federal Government, the state, or any other state or territory of the United States, that has a branch or principal place of business in the State of Florida.

Sections 125.31(2)(b), 166.261(2)(b), and 218.345(2)(b), F.S., provide that the board of county commissioners, the governing body of each municipality, and the governing body of each special district, respectively, may also receive bank trust receipts in exchange for investment of public

funds provided they have been properly earmarked. This section is amended to include bank depositories chartered by the United States Government, the State of Florida, or any other state or territory of the United States, that has a branch or principal place of business in the state, holding the actual securities on which the trust receipts are issued.

Section 2: Section 136.01, F.S., is amended to deem county depositories as a qualified public depository as defined in s. 280.02, F.S.

Section 3: Section 159.09, F.S., amends that any trust company or bank incorporated under the laws of the State of Florida, or any state or territory of the United States, that has a branch or principal place of business in this state, may act as a depository and may furnish indemnifying bonds or pledge collateral securities as may be required by the governing body.

Section 6: Section 236.24(2)(a)3., F.S., is amended directing each school board to invest and reinvest surplus public funds in interest-bearing time deposits or savings accounts of qualified public depositories as defined in s. 280.02, F.S.

Section 236.24(2)(a)6.(b)1., F.S., provides that securities purchased with surplus public funds be delivered by the seller to the school board or designated safekeeper. This section is amended to include qualified banks and trust companies chartered to operate by the State of Florida, any other state or territory of the United States, or the United States Government, that has a branch or principal place of business in the State of Florida as safekeepers.

Section 236.24(2)(a)6.(b)3., F.S., provides that each school board may also receive bank trust receipts in exchange for investment of public funds provided they have been properly earmarked. This section is amended to include bank depositories chartered by the United States Government, the State of Florida, or any other state or territory of the United States, that has a branch or principal place of business in the state, holding the actual securities on which the trust receipts are issued.

Section 7: Section 255.502(4)(h), F.S., is amended to provide for authorized investment in savings accounts or certificates of deposits with any bank, savings bank, or savings and loan association which is a qualified public depository as defined in s. 280.02, F.S.

Section 8: Section 280.02(11), F.S., is added to define the term “Governmental unit.” Governmental unit means the state or any county, school district, community college district, special district, metropolitan government, or municipality, including any agency, board, bureau, commission, and institution of any such entities, or any court.

Section 280.02(17)(d), F.S., is added under the definition of “qualified public depository.” This section requires qualified public depositories (QPDs) to have procedures and practices for accurately identifying, classifying, reporting and collateralizing public deposits. Qualified public depositories will also be required to identify accounts as Florida public deposits on the deposit account record with the name of the public depositor, or uniquely code the account for proper

designation; to execute a public identification and acknowledgment form for each public deposit account within certain time limitations after the presentation by the public depositor; and to annually provide confirmation of public deposit account information to each public depositor.

Section 9: Section 280.03, F.S., is amended to provide an exemption from the Public Deposits Program for public deposits which are fully secured through federal regulations. This eliminates unnecessary duplication of collateral at the federal and state level. Other exemptions include: public deposits in a bank or savings association by a trust company or trust department fully secured under business trust laws; moneys of the System Trust Fund¹ as defined in s. 121.021(36), F.S.; public deposits held outside the country; and wire transfers and transfers of funds solely for paying registrars and agents.

Section 10: Section 280.04, F.S., establishes the minimum required collateral pledging levels for qualified public depositories, and eliminates the distinction of two separate liability pools for banks and savings associations to form one liability pool. Subsection (1)(d), of this section, which details the formula used for calculating minimum required pledging levels for QPDs, is amended to conform the existing language to the current calculation practiced by the Treasurer.

Section 11: Section 280.05, F.S., is amended to eliminate the separation between banks and savings associations in the Public Deposits Program. The bill combines the two three-member advisory committees into one six-member committee, but leaves its purpose unchanged. Members shall be appointed by the Treasurer for a 4-year term and absent a quorum the committee may not take action. The Treasurer is also directed to review QPD monthly reports and schedules for material changes in capital accounts; changes in name, address, or type of institution; recording average daily balances of public deposits held, and monitoring the collateral-pledging levels and required collateral. The bill would require the Treasurer to compare, analyze, and review public deposits information reported quarterly by QPDs and information reported by public depositors only for those QPDs ranked in the lowest category based on established financial condition criteria. The Treasury, at its discretion, may require the filing of reports by electronic data transmission. Additionally, the Treasurer's powers are amended to include: to hold, deposit, or transfer interest and principal payments for collateral pledged to the Treasurer, deposited with the Treasurer, or held in the Treasurer's name; and release collateral subject to sale and transfer of funds directly from the custodian to public depositors of a withdrawing depository.

Section 12: Section 280.07, F.S., is amended to eliminate the separation between banks and savings associations in The Public Deposits Program regarding mutual liability. Banks and savings associations as one will guarantee and protect against the default or insolvency of all other banks and savings associations. QPDs will be required to guarantee public deposits by executing a form prescribed by the Treasurer and approved by the QPD's board of directors acknowledging the guarantee. The document will become an official document of the institution.

¹The "System Trust Fund" is a fund established by the State Treasury to hold and invest contributions paid by members and employers and paying those benefits to its members or their beneficiaries.

Section 13: Section 280.08, F.S., is amended requiring the Treasurer to validate claims on public deposit accounts meeting the requirements² of s. 280.17, F.S. Additionally, clarifying language is added to exclude the defaulting depository from the assessment calculation for QPDs regarding the remaining losses of an insolvency or default.

Section 14: Section 280.16, F.S., changes the section title from “Reports of public depositories” to “Requirement of qualified public depositories; confidentiality.” The section is amended and reorganized to require additional specified actions on behalf of QPDs regarding public deposit accounts. Effective July 1, 1998, QPDs will be required to classify the public depositor as a “Florida public deposit” on the deposit account record along with the name of the public depositor or a unique code distinguishing the public depositor; and execute and return the Treasurer’s acknowledgment of “receipt of public deposit account form” to the public depositories under certain conditions and within statutory time limits. In addition, the QPD is required to provide certain information annually not later than October 30, on all open accounts identified as “Florida public deposits” on September 30, for confirmation purposes and to provide reconciliation if discrepancies are found. The report will then be submitted to the Treasurer.

Section 15: Section 280.17, F.S., changes the section title from “Requirements for public depositories” to “Requirement for public depositories; notice to public depositories and governmental units; loss of protection.” The section is amended to require public depositories to assume greater responsibility for the protection of public deposits. Public depositories will be required to make certain their funds deposited meet the definition of “public deposit” and are not exempt under any law; ensure that their deposits are placed in a QPD; make certain that they can defend claims of public deposit status if the Treasurer has to assess depositories to pay for losses and the depositories refute the assessment; and execute and maintain a public identification and acknowledgment form for each public deposit account with up-to-date information in order for the account to be protected by the public deposits program.

Section 16: Section 280.18, F.S., the section title, is changed from “Liability of public depositories and the state” to “Protection of public depositories; liability of the state.” The section is amended to indemnify those public depositories who make public deposits in accordance with this chapter. The state, the Treasury, any state agency, and employees thereof, taking actions in conjunction with performing duties under this section are indemnified the same as a public depositor.

Section 17: Section 331.309, F.S., is amended requiring the board of the Spaceport Florida Authority to select QPDs as defined in s. 280.02, F.S., for the deposit of public funds.

Section 18: This act takes effect July 1, 1998.

²Section 280.17, F.S., requires the public depositor to ensure that the name of the public depositor is on the account or on the certificate or that a form provided by the QPD is properly executed in a manner that will enable the deposit to be identified as a public deposit; to notify the Treasurer of public deposits held in QPDs that are in default or are insolvent after receipt of notice from the QPD.

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:

Collateral requirements for institutions who originally held more than 20% of any one of the two liability pools may be reduced. With the combining of the two separate and distinct liability pools for banks and savings associations in section 11 of the bill, the likelihood of an institution holding more than 20% of the entire liability pool is reduced. Institutions holding more than 20% of the total average monthly balances of public deposits must pledge additional collateral. If collateral pledging requirements are reduced, the institution may have greater leveraging ability and an opportunity to generate a higher margin on its spread.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Auditor General recommended in Report #12891 that the Treasurer perform a periodic comparison between the information in Public Depositor Reports to the Treasurer and the Public Depository Annual Reports. However, division management concluded that the legislature would not approve funding for such a sizeable request for additional resources for this purpose.

To facilitate the comparison of records as recommended in the audit report, division management will propose requiring the public units to independently confirm their public deposits with the QPDs annually and send a report that includes verification that confirmation has been completed to the division.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
