

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 251 Public Depositories
SPONSOR(S): Hager and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 918

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Bauer	Cooper
2) Regulatory Affairs Committee			

SUMMARY ANALYSIS

State and local governments are authorized to deposit funds in excess of those required to meet disbursement needs or expenses in a qualified public depository (QPD). The term "qualified public depository" applies only to a bank, savings bank, or savings association which meets specific criteria set forth in the Florida Security for Public Deposits Act, Chapter 280, Florida Statutes (the Act). The Chief Financial Officer (CFO) and the Department of Financial Services administer this Act.

Before a QPD may accept or retain a public deposit, it must pledge an irrevocable letter of credit or deposit collateral with a custodian approved by the CFO in an amount determined according to statutory guidelines. These collateral requirements protect public depositors (the state and local governments) against loss in the event of a default or insolvency of a QPD. Losses are satisfied first through any applicable federal deposit insurance, for which the standard maximum amount is \$250,000. Next, public depositors' losses are covered by the QPD's collateral, through the CFO's authority to demand payment under a letter of credit or to sell the collateral pledged or deposited by the defaulting QPD. Any remaining losses are then covered through the CFO's authority to impose assessments on the other solvent QPDs, who must agree to share mutual responsibility and contingent liability as a condition of being a QPD.

Under current law, by statutory definition, a credit union cannot be a qualified public depository. According to Chapter 657, F.S., the Florida Credit Union Act, the purpose of a credit union is to encourage thrift among its members, create sources of credit at fair and reasonable rates of interest, and provide an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition. Members' deposits in a credit union are insured by the National Credit Union Share Insurance Fund, which operates similarly to federal deposit insurance. The standard maximum share insurance amount is also \$250,000.

HB 251 expands the definition of "qualified public depository" to make a credit union eligible to apply for designation by the CFO as a QPD, as well as a custodian. The bill expands the deposit insurance requirement for a qualified public depository to include the National Credit Union Share Insurance Fund, and expands the current mutual responsibility and contingent liability provision to encompass any financial institution rather than only banks and savings associations.

The bill involves state government expenditures, and may have a positive but indeterminate impact on state and local revenues. The impact on credit unions which become qualified public depositories may be positive.

The bill provides for an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Depositories

Chapter 280, Florida Statutes, is the Florida Security for Public Deposits Act (“the Act”).¹ The Act authorizes eligible banks, savings banks, or savings associations to act as qualified public depositories (QPDs). A qualified public depository is any bank, savings bank, or savings association² that:

- Is organized and exists under the laws of the United States, the laws of this state or any other state or territory of the United State (i.e., state or federally chartered);
- Has its principal place of business in this state or has a branch office in this state which is authorized under the laws of this state or of the United States to receive deposits in this state.
- Has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss. 1811 et seq.
- Has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits;
- Meets all the requirements of the Act; and
- Has been designated by the Chief Financial Officer as a qualified public depository.³

Upon approval by the Chief Financial Officer (CFO), these banks, savings banks, and savings associations may accept “public deposits”⁴ from state and local governments. The Act does not permit credit unions to become QPDs, due to their absence from the definition of “qualified public depository.” Currently, there are 174 active QPDs in this state.⁵

Before a QPD accepts or retains a public deposit, it must deposit collateral with an approved custodian in an amount determined according to statutory guidelines.⁶ The Act’s collateral requirements protect public deposits against loss in the event of certain triggering events, most notably, a QPD’s insolvency or default.⁷ Losses are satisfied first through the standard maximum federal deposit insurance of \$250,000,⁸ and then through the CFO’s demand for payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD. Any shortfall would then be covered by the CFO’s authority to impose assessments against the other solvent QPDs, who must agree to share mutual responsibility and contingent liability as a condition of acting as a QPD.⁹

A “custodian” can be any state or federally chartered bank, savings association, and trust company that is approved by the CFO to hold the collateral that QPDs have pledged to secure public deposits.¹⁰ These are referred to as “regular” custodians. Subject to specific requirements, QPDs also have the option to pledge their collateral with custodians who are bound under a distinct custody contract directly with the CFO (“CFO’s

¹ Ch. 81-285, L.O.F.

² Although the Act does not define either “savings association” or “savings bank”, state and federal banking law define “savings association” to include savings banks. Section 665.0211, F.S.; 12 U.S.C. § 1813(3).

³ Section 280.02(26), F.S.

⁴ Public deposits include, but are not limited to, time deposit accounts, demand deposit accounts, and nonnegotiable certificates of deposits, but do not include moneys in deposit notes, securities, mutual funds, and similar investments. Section 280.02(23), F.S.

⁵ DFS Collateral Management, Active Qualified Public Depository List:

https://apps8.fldfs.com/CAP_Web/PublicDeposits/ActiveQPDDisplayList.aspx (last accessed March 1, 2013).

⁶ Section 280.04(2), F.S.; Chapter 69C-2, Florida Administrative Code.

⁷ Section 280.041(6), F.S.

⁸ With the enactment of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act on July 21, 2010, the standard maximum deposit insurance amount was permanently raised to \$250,000. See 12 U.S.C. § 1821(a)(1)E. Depository institutions engaged in the business of receiving deposits other than trust funds may apply for FDIC insurance. 12 U.S.C. § 1815(a)(1).

⁹ Section 280.07, F.S.

¹⁰ Section 280.02(9), F.S.

custodians”);¹¹ pursuant to an agreement with a Federal Reserve Bank;¹² or may use a Federal Home Loan Bank letter of credit that names the CFO as beneficiary. Currently, there are 34 regular custodians and 5 CFO’s custodians approved to participate in the public deposits program.¹³ The Act does not include credit unions within the class of institutions eligible to be either regular or CFO’s custodians.

The Department of Financial Services (DFS), as headed by the CFO, oversees the Act’s reporting and collateral pledging requirements through its uniform, statewide Public Deposits Program and Collateral Administration Section.¹⁴ In addition, the Act gives the CFO authority to take action against noncompliant QPDs, as well as financial institutions that accept public deposits without a certificate of qualification from the CFO. Additionally, the Act creates a six-member Qualified Public Depository Oversight Board for the purpose of safeguarding the integrity of the Public Deposits Program and preventing the need for loss assessments. In the event of loss to public depositors, the Act gives the CFO authority to oversee the payment of losses.

Credit Unions

Like banks, savings banks, and savings associations, credit unions accept deposits and make loans, and can be state-chartered or federally-chartered. Credit unions chartered in Florida are regulated by the Office of Financial Regulation pursuant to Chapter 657, F.S. According to ch. 657, F.S. the purpose of a credit union as a cooperative, nonprofit association is to encourage thrift among its members, create sources of credit at fair and reasonable rates of interest, and provide an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition.¹⁵

The National Credit Union Administration (NCUA) is an independent federal agency that regulates, charters and supervises federal credit unions. The NCUA also operates and manages the National Credit Union Share Insurance Fund, which insures deposits for account holders in all federal credit unions and most state-chartered credit unions.¹⁶ This insurance fund functions similarly to federal deposit insurance for banks, in that it is backed by the full faith and credit of the U.S. government and the standard maximum amount was also permanently established at \$250,000 by the Dodd-Frank legislation.¹⁷

Effect of HB 251

HB 251 expands the definition of “qualified public depository” by substituting the term “financial institution” for “bank, savings bank, or savings association” or “bank or savings association” throughout the Act. The Act defines “financial institution” as “including, but not limited to, an association, bank, brokerage firm, credit union, industrial savings bank, savings and loan association, trust company, or other type of financial institution organized *under the laws of this state or any other state of the United States and doing business in this state or any other state*, in the general nature of the business conducted by banks and savings associations” (emphasis added).¹⁸ This definition only includes state-chartered institutions.

Among the other state-chartered institutions listed in “financial institution,” this bill will enable state-chartered credit unions eligible to apply for designation as a QPD. Approval for designation would be contingent upon meeting all provisions and requirements specified in the Act and by rule.¹⁹ After designation as a QPD, a credit union will be eligible to receive deposits of state and local government funds in excess of those required to meet disbursement needs or expenses.

¹¹ Section 280.041(4), F.S.

¹² Section 280.041(3), F.S.

¹³ DFS Bureau of Collateral Management, at https://apps8.fldfs.com/CAP_Web/Default.aspx (last accessed February 21, 2013).

¹⁴ *Id.*

¹⁵ Section 657.003, F.S.

¹⁶ NCUA Share Information Fund Information, Reports, and Statements: <http://www.ncua.gov/DataApps/Pages/SI-FAQs.aspx> (last accessed February 22, 2013).

¹⁷ *See* 12 U.S.C. § 1767(k)(5).

¹⁸ Section 280.02(13), F.S.

¹⁹ Chapter 69C-2, F.A.C., consists of the Procedures for Administering the Florida Security for Public Deposits Act.

The bill also expands the definition of “custodian” by substituting the term “financial institution” for “bank, savings association, or trust company.” Since the Act defines “financial institution” to include state-chartered credit unions, the bill will make state-chartered credit unions eligible to hold collateral pledged by QPDs to secure public deposits.

The bill expands the deposit insurance requirement for a QPD to include the National Credit Union Share Insurance Fund for credit unions. The bill expands the current mutual responsibility and contingent liability provision to encompass any financial institution, rather than only banks and savings associations. By allowing credit unions to enter into the QPD “pool,” credit unions would be sharing contingent liability with banks, and vice versa.

The bill adds a reporting requirement specific to credit unions for the Public Deposits Program. The reporting is consistent with the existing unique requirements for a bank and a savings and loan association. To the extent the bill permits other financial institutions (besides banks, savings banks, savings associations, and credit unions) to qualify as QPDs, the bill does not address their financial reporting requirements.

The bill provides for an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Section 1: Amends s. 280.02, F.S., relating to definitions.

Section 2: Amends s. 280.03, F.S., relating to public deposits to be secured; prohibitions; exemptions.

Section 3: Amends s. 280.052, F.S., relating to order of suspension or disqualification; procedure.

Section 4: Amends s. 280.053, F.S., relating to period of suspension or disqualification; obligations during period; reinstatement.

Section 5: Amends s. 280.07, F.S., relating to mutual responsibility and contingent liability.

Section 6: Amends s. 280.10, F.S., relating to effect of merger, acquisition, or consolidation; change of name or address.

Section 7: Amends s. 280.13, F.S., relating to eligible collateral.

Section 8: Amends s. 280.16, F.S., relating to requirements of qualified public depositories; confidentiality.

Section 9: Amends s. 280.17, F.S., relating to requirements for public depositories; notice to public depositories and governmental units; loss of protection.

Section 10: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. Accrued interest is dependent upon the amount of principal, interest rate, and protocol for crediting interest to public depositories.

2. Expenditures:

According to DFS,²⁰ admitting credit unions into the DFS Public Deposits Program would require substantial modifications to the Collateral Administration Program (“CAP”), a sophisticated

²⁰ Telephonic conference with DFS staff (March 1, 2013). DFS Treasury and DFS Information Technology bill analyses (received February 28, 2012), on file with the Insurance & Banking Subcommittee staff.

computer application used for financial analysis and collateral tracking processes by DFS program staff. In 2004, CAP was developed by an outside vendor contracted with DFS at the cost of approximately \$1 million. CAP was designed specifically for the two institutions permitted to become QPDs (banks and savings associations), and contains financial analysis, coding, collateral and ranking information specific to banks and savings associations. Following initial development, DFS took ownership of the application and there are no recurring maintenance costs from the vendor.

However, due to the program staff's current workload and the complexity of the CAP application, it is expected that outside vendors would be required in order to modify CAP appropriately in time for the bill's effective date of July 1, 2013. These modifications would involve audit development, testing, and deployment. Additionally, while current program staff has expertise in financial analysis for banks and savings associations, the program does not have personnel with credit union expertise.

In addition, there would be an ongoing and indeterminate impact to CAP and program staff, to the extent other institutions within the definition of "financial institution" (other than credit unions) can qualify to be a QPD.

Non-recurring expenses related to the required modification of the CAP computer system would be approximately \$300,000.²¹ Additional immediate expenses would include:

- Approximately \$70,000 for a FTE at the Financial Examiner/Analyst level (\$55,375 salary and benefits),
- Additional annual expenses (\$10,000 for office rent, supplies, etc.), and
- The cost of a nationally recognized credit union ranking service, as required by s. 280.04(1), F.S. (\$4,000).

Recurring expenses: Following the bill's effective date, DFS expects additional recurring annual expenses of approximately \$66,000 for the FTE's salary/benefits, annual expenses, and credit union ranking services.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. Accrued interest is dependent upon the amount of principal, interest rate, and protocol for crediting interest to public depositors.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Allowing credit unions to accept public deposits may generate income for the credit unions, and provide more options for the public depositors.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

²¹ The fiscal impacts noted in previous staff analyses for similar bills filed in 2011 (HB 999) and 2012 (HB 669) were based only on the \$4,000 ranking costs and indeterminate recurring costs for CAP modifications. Until this year, the agency analyses did not include information technology impacts in their fiscal estimates.

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This 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:

None provided in the bill.

Enactment of this legislation will necessitate amendment of existing rules for the purpose of conforming language. Chapter 69C-2, F.A.C., which provides procedures for administering the Act, would have to be amended to conform definitions to provide for credit unions participating in the Public Deposits Program and to amend various forms utilized by the program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Act currently defines “financial institution” to include a brokerage firm, industrial savings bank, trust company, “or other type of financial institution” organized under state law and doing business in this state or any other state, in the general nature of the business conducted by banks and savings associations.”²² By substituting “financial institution” for “bank, savings banks, or savings association,” the bill would allow credit unions to act as QPDs; however, it would also allow the other listed institutions become QPDs. Brokerage firms are engaged in the purchase and sale of securities, and cannot accept deposits, and most trust companies are not insured by the FDIC as they are generally non-depository.²³ Secondly, the term “financial institution” is limited to only state-chartered institutions, while current law allows state and federally chartered banks, savings banks, and savings associations to become QPDs.

Additionally, current law permits only the CFO, banks, savings associations, and trust companies to act as custodians. Line 25 of the bill replaces these with “financial institution,” which would likewise also expand the scope of who could serve as a custodian.

The sponsor has indicated an intent to file amendments to clarify that the bill will allow state and federally chartered credit unions (as opposed to all financial institutions) to act as QPDs and custodians and are subject to the Act’s requirements for both.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²² Section 280.02(13), F.S.

²³ FDIC Trust Examination Manual, http://www.fdic.gov/regulations/examinations/trustmanual/section_10/section_x.html#D3 (last accessed February 23, 2013).