

STORAGE NAME: h4177.go

DATE: April 10, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4177

RELATING TO: Public Depositories

SPONSOR(S): Representative Maygarden and others

COMPANION BILL(S): CS/SB 1548(s)

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

- (1) FINANCIAL SERVICES YEAS 9 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

This bill would provide the following changes to the Florida Security for Public Deposits Act (the FSPD Act):

- public depositories would be required to perform various functions to certify, identify, and verify the funds they deposit in qualified public depositories;
- qualified public depositories would be required to develop procedures and practices for identifying, classifying, reporting, and collateralizing public deposits;
- the state Treasurer would be required to reconcile public deposit information provided by the public depositor and the qualified public depository in situations when the depository is in a weakened financial condition;
- the two three-member advisory committees, one for banks and one for savings and loan associations, would be combined to form one six-member committee; and
- the two separate contingent liability pools, one for banks and one for savings and loan associations, would be combined to form one contingent liability pool.

The fiscal impact of this bill is indeterminate, yet is expected to be de minimis.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The FSPD Act

The FSPD Act was enacted in 1981, and is found in chapter 280, Florida Statutes. The Treasurer is charged with administering the act. The FSPD Act protects time deposits and checking accounts of public depositors (the state, any county, school district, community college district, special district, metropolitan government, municipality, or court) in the event of a default or insolvency of a bank or savings association that operates as a public depository.

In 1997, the Legislature changed the definition of a "qualified public depository," permitting a bank, a savings bank, or savings association organized under the laws of any state, or territory of the United States with its principal place of business in Florida or a branch office in Florida, to become a qualified public depository and hold public deposits.

Various other investment laws for governmental units within the Florida Statutes limited the deposit of public funds only to Florida-chartered financial institutions. In 1997, in an effort to correct this situation, the Legislature amended s. 280.03 (1)(a), F.S., by adding the following language:

Notwithstanding the provisions of any other law, a public deposit as defined in s. 280.02(13) may be deposited in a qualified public depository as defined in 280.02(16).

Without this language, an out of state bank could have become a qualified public depository, but the governmental unit that used it for the deposit of public funds could have been in violation of its own investment laws.

Filing of, Review, and Analysis of Periodic Reports

Under current law, the Treasurer may require the filing of, and the inspection, review, or analysis of the following periodic reports:

- public depository monthly reports and schedules;
- quarterly regulatory reports from qualified public depositories;
- public depository annual reports; and
- public depositors annual reports.

Advisory committees

Under current law, the Treasurer has appointed two three-member committees, one for banks and one for savings and loan associations. The committees convene whenever necessary to review the overall financial condition of the participants and applicants in each of the respective industries and then recommend criteria to the Treasurer relating to the integrity of the public deposits program.

Assessments Due to Failures

Banks and savings and loan associations each have their own separate liability pool whereby members of either group are assessed a proportionate share of liability in the event of a failure of a member of that group. Losses to public depositors are satisfied first through any applicable deposit insurance and then through the sale of securities pledged by the defaulting depository. If the loss to public depositors is not covered by insurance or the proceeds of the sale, then the Treasurer assesses each of the other qualified public depositories of the same type as the defaulting depository.

An assessment for a member of either the bank pool or the savings and loan pool is represented as the percentage of:

$$\begin{array}{r}
 \text{The total amount of the loss} \quad X \quad \begin{array}{l} \text{The average share of public funds held by the public} \\ \text{depository during the previous 12 months} \\ \hline \text{The average total public deposits held by all} \\ \text{depositories of the same type during the same period} \end{array}
 \end{array}$$

As an example, if all public depositories in the hypothetical are banks, assume that Bank A defaulted and the total amount of the loss after insurance and the sale of securities is applied is \$1 million. The average share of public funds held by Bank B is \$500. The average total public deposits of all banks is \$5,000. The formula would be:

$$\begin{array}{r}
 \$1,000,000 \quad X \quad \begin{array}{l} \$ 500 \\ \hline \$5,000 \end{array}
 \end{array}$$

Bank B's assessment would be 1/10 of \$1,000,000 or \$100,000. The remaining, non-defaulting banks would then be assessed in proportion to their relative share.¹

B. EFFECT OF PROPOSED CHANGES:

This bill would provide the following changes to the FSPD Act:

The Public Deposits Program

- public depositors would be required to perform various functions to certify, identify, and verify the funds they deposit in qualified public depositories;
- qualified public depositories would be required to develop procedures and practices for identifying, classifying, reporting, and collateralizing public deposits; and
- the state Treasurer would be required to reconcile public deposit information provided by the public depositor and the qualified public depository in situations when the depository is in a weakened financial condition.

¹According to the Treasurer, the formula as drafted is flawed because the denominator should specifically exclude the defaulting bank.

The definition of a "qualified public depository" would be specifically referenced in sections 125.31, 136.01, 166.261, 218.345, 236.24, 255.502, and 331.309, F.S., providing for the investment of public funds by governmental units. Public funds that have been properly earmarked and are credited to the governing body in book entry form by the institution are currently required to be kept in a separate account and apart from the assets of the institution. Finally, in addition to depositories chartered by the Federal Government or the state, depositories chartered by any other state or territory of the United States that has a branch or principal place of business in the state may be used by public depositors as qualified depositories.

Filing of, Review, and Analysis of Periodic Reports

The Treasurer would be authorized to require the filing of the following periodic reports, and would be required to process such reports as provided:

- public depository monthly reports and schedules; the Treasurer would be required to review each of these reports;
- quarterly regulatory reports from qualified public depositories; the Treasurer would be required to analyze qualified public depositories ranked in the lowest category based on established financial condition criteria; these qualified public depositories represent the financially weakest qualified public depositories;
- qualified public depository annual reports and public depositors annual reports; the Treasurer would be required to compare the public deposit information reported by qualified public depositories and public depositors; the comparison for qualified public depositories would be conducted on the depositories ranked in the lowest category based on established financial condition of record on September 30.

Advisory committees

The two three-member committees, one for banks and one for savings and loan associations, would be combined to form one six-member committee.

Assessments Due to Failures

The two separate contingent liability pools, one for banks and one for savings and loan associations, would be combined to form one contingent liability pool. For purposes of assessments, the formula was changed technically to use defined terms in the statute. The formula was substantively changed to specifically exclude the "share" of public funds held by the defaulting bank.

See, Part II. E., SECTION-BY-SECTION RESEARCH, for more detailed analysis.

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?

No.

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

Yes.

Public depositors would be required to perform various functions to certify, identify, and verify the funds they deposit in qualified public depositories.

Qualified public depositories would be required to develop procedures and practices for identifying, classifying, reporting, and collateralizing public deposits.

The state Treasurer would be required to reconcile public deposit information provided by the public depositor and the qualified public depository in situations when the depository is in a weakened financial condition.

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

No.

b. If an agency or program is eliminated or reduced:

This bill does not eliminate or reduce an agency or program.

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

N/A

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

N/A

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

N/A

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?

Financial institutions designated as "qualified public depositories" would possibly incur indeterminate, administrative costs developing procedures and practices for identifying, classifying, reporting, and collateralizing public deposits.

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?

Yes.

Public depositors would be required to perform various functions to certify, identify, and verify the funds they deposit in qualified public depositories.

Qualified public depositories would be required to develop procedures and practices for identifying, classifying, reporting, and collateralizing public deposits.

The state Treasurer would be required to reconcile public deposit information provided by the public depositor and the qualified public depository in situations when the depository is in a weakened financial condition.

5. Family Empowerment:

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

This bill does not purport to provide services to families or children.

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

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

No.

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- 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:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends s. 125.31, s. 136.01, s. 159.09, s. 166.261, s. 218.345, s. 236.24, s. 255.502, s. 280.02, s. 280.03, s. 280.04, s. 280.05, s. 280.07, s. 280.08, s. 280.16, s. 280.17, s. 280.18, and s. 331.309, F.S.

E. SECTION-BY-SECTION RESEARCH:

Sections 1, 4, and 5.

Amends ss. 125.31(1)(c), 166.261(1)(c), and 218.345(1)(c), F.S., respectively, 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. These amendments remove unnecessary language describing the types of institutions in which these governmental units may invest.

Amends ss. 125.31(2)(a)2., and 166.261(2)(a)2., F.S., which requires 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. Current law permits the governing body to use a qualified public depository chartered by the Federal Government or the state. This section is amended to specifically include depositories chartered by any other state or territory of the United States that has a branch or principal place of business in the state.

Amends ss. 125.31(2)(b)., 166.261(2)(b)., and 218.345(2)(b)., F.S., which permits the board of county commissioners, the governing body of each municipality, and the governing body of each special district to receive bank trust receipts in return for investment of surplus funds in securities provided they have been properly earmarked. Current law permits the governing body to use a qualified public depository chartered by

the Federal Government or the state. This section is amended to specifically include bank depositories chartered by 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. Amends s. 136.01, F.S., providing that each county depository holding public funds shall be a qualified public depository as defined in s. 280.02, F.S. Due to the specific reference to the qualified public depository definition, this amendment removes language describing the types of institutions in which these governmental units may invest.

Section 3. Amends s. 159.09, F.S., which provides that any bank or trust company that is incorporated under Florida law may act as a depository and furnish indemnifying bonds or pledge securities as may be required by a governing body, pursuant to a trust agreement securing the issuance of certain bonds. Current law recognizes only banks or trust companies incorporated under the laws of the state. This amendment expands the scope of that section to permit a bank or trust company incorporated under the laws of any state or territory of the United States that has a branch or principal place of business in this state, to act as a depository.

Section 6. Amends s. 236.24(2)(a)3., F.S., 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. Due to the specific reference to the qualified public depository definition, this amendment removes language describing the types of institutions in which these governmental units may invest.

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

Amends s. 236.24(2)(b)3., F.S., which permits each school board to receive bank trust receipts in return for investment of surplus funds in securities provided they have been properly earmarked. Current law recognizes that only bank depositories chartered by the Federal Government or the state may hold issued receipts. This section is amended to specifically include bank depositories chartered by 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. Amends s. 255.502, F.S., changing one of 13 definitions of "authorized investments," as they relate to the Florida Building and Facilities Act (public property and publicly owned buildings). Paragraph (h) of subsection (4) of that section provides that savings accounts, or certificates of deposits may be deposited in qualified public depositories as defined in s. 280.02, F.S. Due to the specific reference to the qualified public depository definition, this amendment removes language describing the various types of financial institutions into which such investments may be placed.

Section 8. Amends s. 280.02, F.S., creating a new subsection (11), and defining a "governmental unit" within the FSPD Act. 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. This list of government entities is copied directly from the definition of "public deposit" in s. 280.02(13), F.S.

Amends s. 280.02(16), F.S., renumbering same to subsection (17), and adding one more requirement to a current list of five requirements for "qualified public depositories." This amendment requires qualified public depositories to have procedures and practices for accurately identifying, classifying, reporting, and collateralizing public deposits.

Section 9. Amends s. 280.03, F.S. All but one of the amendments to this section are technical in nature. The technical amendments remove unnecessary language and restate current law providing certain exemptions from the FSPD Act. The last amendment adds a fifth exemption for public deposits which are fully secured through federal regulations.²

Section 10. Amends s. 280.04, F.S., revising one of the four formulas that may be used by a qualified public depository in calculating the amount of collateral for public deposits it is required to pledge to the Treasurer. Rather than focus on a percentage of the total amount of public deposits held by the depository, the formula is changed to focus on the average monthly balance of those funds. Another change to the formula reflects the fact that the bill combines the two, separate contingent liability pools, one for banks and one for savings and loan associations, into one pool.

Section 11. Amends s. 280.05, F.S. Amendments to this section renumber the existing powers of the Treasurer within that section of law, adds two other powers, and provides numerous technical changes. Substantive amendments include:

Advisory committees

The two three-member committees, one for banks and one for savings and loan associations, would be combined to form one six-member committee. The terms for each member would be four years, changing the existing framework of staggered terms of two, three, and four years.

In addition, the two separate contingent liability pools, one for banks and one for savings and loan associations, would be combined to form one contingent liability pool.

Collateral Held by Custodians

The Treasurer is authorized to require custodians of collateral to hold interest and principal payments made on securities held as collateral, and to deposit these payments according to instructions from the Treasurer. The Treasurer may release collateral subject to sale and transfer of funds directly from the custodian to public depositors of a withdrawing depository.

² For instance, the Levy County Housing Authority receives moneys from the federal government through the Department of Housing and Urban Development. Federal regulations require that those moneys be 100 percent collateralized.

Filing of, Review, and Analysis of Periodic Reports

The Treasurer may require the filing of the following periodic reports, and process such reports as provided:

- public depository monthly reports and schedules; the Treasurer would be required to review each of these reports;
- quarterly regulatory reports from qualified public depositories; the Treasurer would be required to analyze qualified public depositories ranked in the lowest category based on established financial condition criteria; these qualified public depositories represent the financially weakest of the qualified public depositories;³
- qualified public depository annual reports and public depositors annual reports; the Treasurer would be required to compare the public deposit information reported by qualified public depositories and public depositors; the comparison for qualified public depositories would be conducted on the depositories ranked in the lowest category based on established financial condition of record on September 30.

This differs from current law in that the Treasurer would only be required to analyze qualified public depositories ranked in the lowest category based on established financial condition criteria, and to compare public deposit information reported by qualified public depositories and public depositors for the depositories ranked in the lowest category based on established financial condition of record on September 30, rather than having the discretion to inspect, analyze, or review qualified public depository reports.

Section 12. Amends s. 280.07, F.S., requiring that each qualified public depository execute an agreement of mutual responsibility (relating to the contingent liability pool) on a form prescribed by the Treasurer which shall be approved by the board of each qualified public depository and shall become an official record of the institution. The amendment further removes language reflecting the existence of two separate contingent liability pools.

Section 13. Amends s. 280.08, F.S., restating the requirement that the Treasurer validate claims in the event of a default or insolvency in accordance with the chapter.⁴ This section of the bill adds an option for the Treasurer to assess the qualified public depositories for the entire loss if the sale of securities pledged or deposited by the defaulting institution cannot be accomplished within seven business days.

The formula for determining the amount to assess the qualified public depositories in the event of a default or insolvency is amended. Current law multiplies the "total amount of the loss" by a percentage which represents the "average share of the public fund

³ The Treasurer relies upon two financial ranking services, Sheshunoff Information Services, Inc., and IDC Financial Publishing, Inc., to rank qualified public depositories. These services develop averages and rank institutions according to financial strength.

⁴ Under current law, public depositors are required to ensure that each account is properly identified as a public account and to notify the Treasurer of any public deposits which are held in a qualified public depository that is insolvent or in default.

deposits” divided by the “average total public deposits held by all depositories.” The revised formula would be the percentage of the “total amount of any remaining loss” multiplied by a percentage of the “average monthly balance of public funds held by each qualified public depository during the previous 12 month period” divided by the total average monthly balances held by all qualified public depositories (except the defaulting depository) for the same period. With the exception of specifically excluding the defaulting bank from the formula, these changes are technical.

Section 14. Amends s. 280.16, F.S., changing the section title from “Reports of public depositories” to “Requirements of qualified public depositories; confidentiality.”

This section of the bill expands the duties of qualified public depositories to require each depository to identify each account as a “Florida public deposit” on the deposit account record with the name of the public depositor, or provide a unique code for the account, beginning July 1, 1998.

This section provides other standards and deadlines for reports filed by each public depositor with each qualified public depository, and reports filed by each public depositor with the Treasurer. For instance, qualified public depositories are required to complete acknowledgment of receipt forms and return said forms to public depositors within 45 days of their receipt. Qualified public depositories are required to file an annual report containing public account information with each public depositor no later than October 30. The existing requirement of filing a similar annual report with the Treasurer is changed from November 15 to no later than November 30, and expands the scope of the report to include any information in a report format prescribed by the Treasurer.

The section of law providing for the confidentiality of these reports is expanded to include reports made confidential by any law of any other state in which the financial institution is chartered.

Section 15. Amends s. 280.17, F.S., changing the section title from “Requirements for public depositors” to “Requirements for public depositors; notice to public depositors and governmental units; loss of protection.”

Public depositors 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 qualified public depository, and make certain that they can defend claims of public deposits status if the Treasurer has to assess depositories to pay for losses and the depositories refute the assessment.

Beginning July 1, 1998, public depositors are required to execute an identification form for each public account and obtain acknowledgment of such deposit from each depository. Public accounts existing before July 1, 1998, must have a form completed before September 30, 1998.

Public depositors are required to 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. Public depositors are required to review the list of qualified public depositories and transfer funds from an institution not on the list, or one that is shown to be withdrawing, to one on the list.

In instances of default or insolvency of a depository, public depositors are required to submit claim forms, identification numbers, and evidence of insurance with the Treasurer within 30 days of notification by the Treasurer.

Public depositors are required to confirm that public deposit information has been provided by each qualified public depository on an annual basis, on or before September 30, and that such information in is agreement with the public depositor's records. Discrepancies must be resolved on or before November 30.

The existing requirement of a public depositor filing an annual report with the Treasurer is expanded to include verification of public deposit information in a report format required by the Treasurer.

Although this section does not specify who will execute the mailing, this section of the bill provides that notices relating to the public deposits program shall be mailed to public depositors and governmental units annually.

Section 16. Amends s. 280.18, F.S., changing the section title from "Liability of public depositors and the state" to "Protection of public depositors; liability of the state".

This section of the bill provides a reference to the definition of public depositor in s. 280.02, F.S. This section expressly limits the liability of the state, the Treasurer, or a state agency, or any employee or agent of the aforementioned, for any action taken in the performance of their powers and duties under the act, to that as a public depositor.

Section 17. Amends s. 331.309, F.S., directing the board of the Spaceport Florida Authority to deposit public funds in qualified public depositories as defined in s. 280.02, F.S.

Section 18. Provides that this act shall take effect July 1 of the year enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The fiscal impact of the bill is indeterminate, yet is anticipated to be de minimis.

2. Recurring Effects:

The fiscal impact of the bill is indeterminate, yet is anticipated to be de minimis.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

The fiscal impact of the bill is indeterminate, yet is anticipated to be de minimis.

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:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Financial institutions designated as “qualified public depositories” would possibly incur indeterminate, administrative costs developing procedures and practices for identifying, classifying, reporting, and collateralizing public deposits.

2. Direct Private Sector Benefits:

Financial institutions designated as “qualified public depositories” could now receive public funds once the statutes limiting the investment of public funds by various governmental units in Florida-chartered institutions are amended to specifically authorize the placement of those funds in all “qualified public depositories.”

Collateralization requirements for qualified public depositories may be reduced due to the combining into one pool the two separate and distinct liability pools for banks and savings associations.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

None

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

V. COMMENTS:

Committee on Governmental Operations:

Language found on page 24, lines 14 and 15, of the bill expands an exemption for information contained in a report of a qualified public depository, to include information made confidential by any other state in which the financial institution is chartered. The current exemption only runs to information made confidential by any law of the United States or of this state.

An amendment has been prepared to remove this language from the bill since Article 1, Section 24, of the State Constitution requires that any expansion of an exemption be contained in a separate bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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