

STORAGE NAME: h0823s1z.fs
DATE: June 17, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
FINANCIAL SERVICES
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 823, 2nd Engrossed
RELATING TO: Financial Matters (State Moneys/Investments)
SPONSOR(S): Committee on Finance & Taxation, Representative Gay & others
COMPANION BILL(S): SB 1056 (s)

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

- (1) FINANCIAL SERVICES YEAS 11 NAYS 0
- (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
- (3) FINANCE AND TAXATION YEAS 11 NAYS 0
- (4)
- (5)

I. FINAL ACTION STATUS:

The House passed CS/HB 823 (which was amended with the 1st engrossed version of HB 4177, Public Depositories, by Rep. Maygarden), by a vote of 117-0 on April 29, 1998. The Senate passed CS/HB 823 by a vote of 38-0 on April 30, 1998. It became law without the Governor's signature on June 17, 1998: Chapter 98-409, Laws of Florida.

II. SUMMARY:

The Department of Insurance, Division of Treasury operates the state's cash management and investment programs, which involve collecting funds from various state revenue sources, disbursing funds to pay state expenses, and investing the excess funds to maximize value.

The bill expands the investment options available to the Treasurer to an additional grade of corporate and government bonds, to longer term and convertible corporate bonds, and to dollar denominated foreign bonds. The bill provides that funds held by the Florida Birth-Related Neurological Injury Compensation Association are funds of the state of Florida and may be invested only in accordance with s. 215.47, F.S., relating to investments of state funds in authorized securities. Section 215.47, F.S., permits a wider variety of investments, including equity investments. The bill is estimated to increase returns from investments between \$1.5 million and \$1.8 million. The bill provides that escrow funds held by title agents and deposited in financial institutions may be invested in accordance with investment standards established in s. 18.10, F.S.

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

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

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Investments by the State Treasurer

The State Treasurer is required under Art. IV, § 4, Fla. Const., to keep all state funds and to disburse state monies only upon the order of the Comptroller. Section 18.10, F.S., directs the Treasurer to deposit state monies into qualified banks or savings and loan associations which meet the definition of "public depositories" in chapter 280, F.S. The Treasurer is under a duty to keep these monies fully invested or deposited, as the cash disbursement needs of the state allow, for maximum earnings and benefits to the state. Any funds not required for disbursements must be placed in qualified public depositories, so long as they agree to pay interest on these deposits at a minimum rate established by the Treasurer, pursuant to statute. If public depositories are unwilling to receive all or part of the funds and pay the Treasurer's minimum rate, the Treasurer is then authorized to invest the funds in specific securities. Earnings from these investments must be credited to the General Revenue Fund.

Section 20.13, F.S., designates the head of the Department of Insurance (hereinafter "DOI") as the Treasurer. The Division of Treasury in the DOI is responsible for implementing the responsibilities of the Treasurer in Chapter 18, F.S., which include the investment duties. The division contracts with outside investment managers to invest the excess funds which, according to the division, average \$9 billion in daily accounts. The investment managers generally must wait until a specific time of the day, when the public depositories have determined their deposits, before making investment decisions.

Section 18.10(2), F.S., restricts these investments to specific securities, or, to securities that meet general credit criteria, known as "investment grade" securities. These criteria are established through ratings from three national organizations, Standard and Poor's, Moody's and Fitch's. Their ratings are generally represented as: (I) "AAA" - the highest most secure rating, extremely strong investment potential; "AA" - very strong security which differs from AAA by a small degree; "A" - strong but susceptible to adverse economic conditions; and "BBB" - adequate investment potential with more susceptibility to adverse economic conditions. Securities rated in classifications lower than BBB are not considered investment grade. When the division's money managers invest in government-issued or corporate-issued securities, they are restricted under s. 18.10(2), to only those issuances with ratings in one of the three highest classifications. Additionally, present law restricts the Treasurer's authority to purchase state and local government bonds (also known as municipals) for the purpose of compliance with federal arbitrage restrictions on tax exempt security transactions. This law prohibits issuers of tax exempt securities from investing the proceeds of the sale to obtain higher returns than were paid on the tax exempt securities. Under section 18.10(2), the Treasurer can purchase municipals with proceeds of the state's tax exempt securities, and thereby comply with the federal arbitrage requirement.

Investments by the Florida Birth-Related Neurological Injury Compensation Association

Sections 766.301-.316, F.S., establish and regulate the Florida Neurological Injury Compensation program. The purpose of this program is to provide compensation,

irrespective of fault, for birth-related neurological injury claims and thus permit physicians to avoid costly medical malpractice premiums. Pursuant to subsection (5) (e) of s. 766.315, F.S., relating to powers of the board of directors to invest funds held by the Association, the board is authorized to invest funds in interest bearing accounts only. This limits the investments to bonds, notes and other interest bearing accounts.

Deposits of Escrow Funds by Title Agents

Under current law, title agents are required to deposit escrow amounts in “escrow trust accounts” in financial institutions that are located in the state and which are insured by an agency of the federal government [e.g., the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF)].¹

According to industry representatives and the Department of Banking and Finance, title agents routinely deposit escrow fund amounts from real estate transactions into what are called “sweep accounts” offered by financial institutions. “Sweep accounts” are so named because financial institutions may “sweep” these funds nightly into “treasury management accounts” which hold a multitude of deposits from many financial institutions which are then placed in various investments. The interest rate returns are typically higher in “swept” accounts than typical trust accounts which are not “swept.” The interest which is generated by these title agent escrow funds are returned to the agents. According to industry representatives, financial institutions routinely charge a fee for this service.

Technically, a “sweep account” is not an “escrow trust account.” Therefore, title agents who deposit escrow funds in “sweep accounts” would not be following the law regulating escrow trust funds.

The Florida Security for Public Deposits Act

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

¹Section 626.8473, F.S.

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:

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

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:

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

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.²

B. EFFECT OF PROPOSED CHANGES:

Investments by the State Treasurer

The investment options available to the Treasurer would be expanded to an additional grade of corporate and government bonds, to longer term and convertible corporate bonds, and to dollar denominated foreign bonds.

The Treasurer would be permitted to add BBB-rated securities, and longer-term corporate bonds as qualified investments. According to the Department of Banking and Finance, investment consultants will identify BBB-rated securities that offer attractive risk/return profiles, with stronger yields from longer-term corporate and intermediate local investments. The Treasurer is authorized to purchase municipal bonds for purposes other than compliance with federal arbitrage restrictions, and is authorized to invest in foreign, primarily European, bonds denominated in U.S. dollars to eliminate exchange risk. These bonds, known in the industry as "Yankee bonds," must meet minimum criteria, including registration with the Securities and Exchange Commission (SEC). Corporate convertible debt also qualifies for the first time as an investment vehicle if minimum criteria are met.

Investments by the Florida Birth-Related Neurological Injury Compensation Association

Funds that are held by the Florida Birth-Related Neurological Injury Compensation Association would be considered funds of the state of Florida and would be permitted to be invested only in accordance with s. 215.47, F.S., relating to investments of state funds in authorized securities. Section 215.47, F.S., permits a wider variety of investments, including equity investments. This provision is estimated to increase returns from investments between \$1.5 million and \$1.8 million.

Deposits of Escrow Funds by Title Agents

Title agents would be permitted to deposit escrow amounts in "sweep accounts" offered by financial institutions. According to the Department of Banking and Finance, all financial institutions that perform this "sweep account" service are either a member of the FDIC or the NCUSIF (e.g., banks or credit unions, respectively). Escrow funds held by title agents and deposited in financial institutions in "sweep accounts" may be invested in accordance with investment standards established in s. 18.10, F.S.

²According to the Treasurer, the formula as drafted is flawed because the denominator should specifically exclude the defaulting bank.

The Florida Security for Public Deposits Act

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.

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.

The Florida Security for Public Deposits Act

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?

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?

The Florida Security for Public Deposits Act

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?

Yes.

Investments by the Florida Birth-Related Neurological Injury Compensation Association

The bill provides that funds held by the Florida Birth-Related Neurological Injury Compensation Association may be invested only in accordance with s. 215.47, F.S., relating to investments of state funds in authorized securities. Section 215.47, F.S., permits a wider variety of investments, including equity investments. This provision is estimated to increase returns from investments between \$1.5 million and \$1.8 million.

Deposits of Escrow Funds by Title Agents

Title agents would be permitted to deposit escrow amounts in “sweep accounts” in financial institutions and comply with s. 626.8473, F.S., the section regulating the deposit of escrow fund amounts.

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

Yes.

The Florida Security for Public Deposits Act

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?

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:

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

- (1) parents and guardians?

Not applicable.

- (2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. STATUTE(S) AFFECTED:

Amends s. 18.10, s. 766.315, s. 626.8434, 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:

Section 1. Amends s. 18.10(2), F.S., to revise criteria for two securities in which the Treasurer may invest, corporate bonds and government bonds, and establishes criteria for investing in two new securities. Criteria for corporate bonds are revised to remove restrictions allowing purchase of intermediate term bonds only (maturity of 10 years or less), which effectively authorizes investment in longer term corporate bonds (maturity beyond 10 years). The bill also authorizes investment in corporate bonds which at least two of the national rating organizations have rated in one of the four highest rating classifications. Previously, only corporate bonds rated in one of the three highest classifications qualified. The bill revises criteria for investment in state and local government bonds (municipals) to those which meet the same rating criteria as for corporate bonds, except, if the municipal bonds have been rated by only one service, the bill authorizes the Treasurer to invest in AAA or AA rated bonds only, the two highest classifications. The bill allows more active investment in municipals by removing restrictions allowing the purchase of municipals solely to comply with federal investment requirements.

Criteria are established for investment in two additional securities -- bonds of foreign-owned corporations, and U.S. corporate bonds that are convertible into stock. The bill authorizes investments in foreign bonds which are: (i) denominated in U.S. dollars; (ii) registered with the U.S. SEC; and (iii) rated as long-term bonds by at least two of the national organizations in one of the four highest classifications, except if the bonds are rated by only one organization, the rating must be in one of the two highest classifications. The bill authorizes investment in convertible bonds if: (i) the issuing corporation is domiciled in the U.S.; and (ii) the same rating criteria is met as for foreign bonds.

Section 2. Amends s. 766.315, F.S., providing that funds held by the Florida Birth-Related Neurological Injury Compensation Association are funds of the state of Florida and may be invested only in accordance with s. 215.47, F.S., relating to investments of state funds in authorized securities.

Section 3. Amends s. 626.8473, F.S., providing that escrow funds held by title agents and deposited in financial institutions may be invested in accordance with investment standards established in s. 18.10, F.S.

Sections 4, 7, and 8.

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 5. 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 6. 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 9. 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 10. 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 11. 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 12. 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.³

Section 13. 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.

³ 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.

Section 14. 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.

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;⁴
- 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,

⁴ 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.

rather than having the discretion to inspect, analyze, or review qualified public depository reports.

Section 15. 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 16. 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.⁵ 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 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 17. 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.

⁵ 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.

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 18. 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 is in 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 19. 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 20. 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 21. Provides that the bill shall take effect on July 1 of the year in which enacted.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The fiscal impact of the Public Depository section of the bill is expected to be de minimis.

2. Recurring Effects:

After an independent study of its investment practices by a consultant, the Division of Treasury estimates that implementation of the investment strategies authorized in the bill should increase returns from investments between \$1.5 million to \$1.8 million per year.

The fiscal impact of the Public Depository section of the bill is expected to be de minimis.

3. Long Run Effects Other Than Normal Growth:

Increased returns in Treasury investments go directly in the General Revenue Fund, which may reduce the total revenue demands on the state.

4. Total Revenues and Expenditures:

See section A.2 above.

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:

None.

D. FISCAL COMMENTS:

None.

V. 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 to 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.

VI. COMMENTS:

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The difference between the original bill and CS/HB 823 is as follows:

The committee substitute corrects the effective date and reinserts existing law and continues the requirement that state funds not used for disbursements be deposited into public depositories.

The 1st engrossed version of CS/HB 823 added a provision whereby funds held by the Florida Birth-Related Neurological Injury Compensation Association are deemed funds of the state of Florida and may be invested only in accordance with s. 215.47, F.S., relating to investments of state funds in authorized securities.

The 2nd engrossed version of CS/HB 823 added a provision whereby escrow funds held by title agents and deposited in financial institutions may be invested in accordance with investment standards established in s. 18.10, F.S, and also incorporated the substance of HB 4177, 1st engrossed. The 1st engrossed version of HB 4177 differs from the original HB 4177 in that cross-references to the definition of "principal place of business" as defined in s. 658.12, F.S., were inserted in eight different places in the bill. In addition, the 1st engrossed version removed language in the bill which would have expanded a confidentiality of information exemption to any financial institution chartered in any other state. Since this would have been an expansion of the existing exemption that reaches only to information made confidential and exempt by any law of the United States or of this state, this proposed expansion would be required to be the subject of a separate bill.

VIII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

E. LEON JACOBS, JR.

STEPHEN HOGGE

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

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