

Bill No. CS for SB 1670

Amendment No. Barcode 220334

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Constantine moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 280.02, Florida Statutes, is amended to read:

280.02 Definitions.--As used in this chapter, the term:

(1) "Affiliate" means an entity that is related through a parent corporation's controlling interest. The term also includes any financial institution holding company or any subsidiary or service corporation of such holding company.

(2) "Alternative participation agreement" means an agreement of restrictions that a qualified public depository completes as an alternative to immediately withdrawing from the public deposits program due to financial condition.

(3)~~(2)~~ "Average daily balance" means the average daily balance of public deposits held during the reported month. The average daily balance must be determined by totaling, by

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1 account, the daily balances held by the depositor and then
2 dividing the total by the number of calendar days in the
3 month. Deposit insurance is then deducted from each account
4 balance and the resulting amounts are totaled to obtain the
5 average daily balance.

6 (4)~~(3)~~ "Average monthly balance" means the average
7 monthly balance of public deposits held, before deducting
8 deposit insurance, by the depository during any 12 calendar
9 months. The average monthly balance of the previous 12
10 calendar months must be determined by adding the average daily
11 balance before deducting deposit insurance for the reported
12 month and the average daily balances before deducting deposit
13 insurance for the 11 months preceding that month and dividing
14 the total by 12.

15 (5)~~(4)~~ "Book-entry form" means that securities are not
16 represented by a paper certificate but represented by an
17 account entry on the records of a depository trust clearing
18 system or, in the case of United States Government securities,
19 a Federal Reserve Bank.

20 (6)~~(5)~~ "Capital account" means total equity capital,
21 as defined on the balance-sheet portion of the Consolidated
22 Reports of Condition and Income (call report) or the Thrift
23 Financial Report, less intangible assets, as submitted to the
24 regulatory banking authority.

25 (7)~~(6)~~ "Collateral-pledging level," for qualified
26 public depositories, means the percentage of collateral
27 required to be pledged as provided in s. 280.04 by a financial
28 institution.

29 (8)~~(7)~~ "Current month" means the month immediately
30 following the month for which the monthly report is due from
31 qualified public depositories.

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- 1 ~~(9)~~(8) "Custodian" means the Treasurer or any bank,
2 savings association, or trust company that:
- 3 (a) Is organized and existing under the laws of this
4 state, any other state, or the United States;
- 5 (b) Has executed all forms required under this chapter
6 or any rule adopted hereunder;
- 7 (c) Agrees to be subject to the jurisdiction of the
8 courts of this state, or of courts of the United States which
9 are located within this state, for the purpose of any
10 litigation arising out of this chapter; and
- 11 (d) Has been approved by the Treasurer to act as a
12 custodian.
- 13 ~~(10)~~(9) "Default or insolvency" includes, without
14 limitation, the failure or refusal of a qualified public
15 depository to pay any check or warrant drawn upon sufficient
16 and collected funds by any public depositor or to return any
17 deposit on demand or at maturity together with interest as
18 agreed; the issuance of an order by any supervisory authority
19 restraining such depository from making payments of deposit
20 liabilities; or the appointment of a receiver for such
21 depository.
- 22 ~~(11)~~(10) "Effective date of notice of withdrawal or
23 order of discontinuance" pursuant to s. 280.11(3) means that
24 date which is set out as such in any notice of withdrawal or
25 order of discontinuance from the Treasurer.
- 26 ~~(12)~~(11) "Eligible collateral" means securities,
27 Federal Home Loan Bank letters of credit, and cash, as
28 designated in s. 280.13.
- 29 ~~(13)~~(12) "Financial institution" means, including, but
30 not limited to, an association, bank, brokerage firm, credit
31 union, industrial savings bank, savings and loan association,

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1 trust company, or other type of financial institution
2 organized under the laws of this state or any other state of
3 the United States and doing business in this state or any
4 other state, in the general nature of the business conducted
5 by banks and savings associations.

6 (14)~~(13)~~ "Governmental unit" means the state or any
7 county, school district, community college district, special
8 district, metropolitan government, or municipality, including
9 any agency, board, bureau, commission, and institution of any
10 of such entities, or any court.

11 (15)~~(14)~~ "Loss to public depositors" means loss of all
12 principal and all interest or other earnings on the principal
13 accrued or accruing as of the date the qualified public
14 depository was declared in default or insolvent.

15 (16) "Market value" means the value of collateral
16 calculated pursuant to s. 280.04.

17 (17)~~(15)~~ "Operating subsidiary" means the qualified
18 public depository's 100-percent owned corporation that has
19 ownership of pledged collateral. The operating subsidiary may
20 have no powers beyond those that its parent qualified public
21 depository may itself exercise. The use of an operating
22 subsidiary is at the discretion of the qualified public
23 depository and must meet the Treasurer's requirements.

24 (18) "Oversight board" means the qualified public
25 depository oversight board created in s. 280.071 for the
26 purpose of safeguarding the integrity of the public deposits
27 program and preventing the realization of loss assessments
28 through standards, policies, and recommendations for actions
29 to the Treasurer.

30 (19)~~(16)~~ "Pledged collateral" means securities or cash
31 held separately and distinctly by an eligible custodian for

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1 the benefit of the Treasurer to be used as security for
2 Florida public deposits. This includes maturity and call
3 proceeds.

4 (20)~~(17)~~ "Pledgor" means the qualified public
5 depository and, if one is used, operating subsidiary.

6 (21)~~(18)~~ "Pool figure" means the total average monthly
7 balances of public deposits held by all qualified public
8 depositories during the immediately preceding 12-month period.

9 (22)~~(19)~~ "Previous month" means the month or months
10 immediately preceding the month for which a monthly report is
11 due from qualified public depositories.

12 (23)~~(20)~~ "Public deposit" means the moneys of the
13 state or of any county, school district, community college
14 district, special district, metropolitan government, or
15 municipality, including agencies, boards, bureaus,
16 commissions, and institutions of any of the foregoing, or of
17 any court, and includes the moneys of all county officers,
18 including constitutional officers, that are placed on deposit
19 in a bank, savings bank, or savings association and for which
20 the bank, savings bank, or savings association is required to
21 maintain reserves. This includes, but is not limited to, time
22 deposit accounts, demand deposit accounts, and nonnegotiable
23 certificates of deposit. Moneys in deposit notes and in other
24 nondeposit accounts such as repurchase or reverse repurchase
25 operations are not public deposits. Securities, mutual funds,
26 and similar types of investments are not considered public
27 deposits and shall not be subject to the provisions of this
28 chapter.

29 (24)~~(21)~~ "Public depositor" means the Treasurer or
30 other chief financial officer or designee responsible for
31 handling public deposits.

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1 (25)~~(22)~~ "Public deposits program" means the Florida
2 Security for Public Deposits Act contained in administration
3 of this chapter and any rule adopted under this chapter by or
4 on behalf of the Treasurer.

5 (26)~~(23)~~ "Qualified public depository" means any bank,
6 savings bank, or savings association that:

7 (a) Is organized and exists under the laws of the
8 United States, the laws of this state or any other state or
9 territory of the United States.

10 (b) Has its principal place of business in this state
11 or has a branch office in this state which is authorized under
12 the laws of this state or of the United States to receive
13 deposits in this state.

14 (c) Has deposit insurance under the provision of the
15 Federal Deposit Insurance Act, as amended, 12 U.S.C. ss. 1811
16 et seq.

17 (d) Has procedures and practices for accurate
18 identification, classification, reporting, and
19 collateralization of public deposits.

20 (e) Meets all the requirements of this chapter.

21 (f) Has been designated by the Treasurer as a
22 qualified public depository.

23 (27)~~(24)~~ "Reported month" means the month for which a
24 monthly report is due from qualified public depositories.

25 (28)~~(25)~~ "Required collateral" of a qualified public
26 depository means eligible collateral having a market value
27 equal to or in excess of the amount required ~~to be pledged~~
28 pursuant to s. 280.04 ~~as computed and reported monthly or when~~
29 ~~requested by the Treasurer.~~

30 (29)~~(26)~~ "Treasurer" means the Treasurer of the State
31 of Florida.

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1 ~~(30)(27)~~ "Treasurer's custody" is a collateral
2 arrangement governed by a contract between a designated
3 Treasurer's custodian and the Treasurer. This arrangement
4 requires collateral to be in the Treasurer's name in order to
5 perfect the security interest.

6 ~~(31)(28)~~ "Triggering events" are events set out in
7 section subsection 280.041(4) which give the Treasurer, ~~as~~
8 ~~pledgee,~~ the right to:

9 ~~(a)~~ Instruct the custodian to transfer securities
10 pledged, interest payments, and other proceeds of pledged
11 collateral not previously credited to the pledgor.

12 ~~(b)~~ Demand payment under letters of credit.

13 Section 2. Section 280.04, Florida Statutes, is
14 amended to read:

15 280.04 Collateral for public deposits; general
16 provisions.--

17 (1) The Treasurer shall determine the collateral
18 requirements and collateral pledging level for each qualified
19 public depository following procedures established by rule.
20 These procedures shall include numerical parameters for
21 25-percent, 50-percent, 125-percent, and 200-percent pledge
22 levels based on nationally recognized financial rating
23 services information and established financial performance
24 guidelines.

25 (2) A qualified public depository may not accept or
26 retain any public deposit which is required to be secured
27 unless it has deposited with the Treasurer eligible collateral
28 at least equal to the greater of:

29 (a) The average daily balance of public deposits that
30 does not exceed the lesser of its capital account or 20
31 percent of the pool figure multiplied by the depository's

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1 collateral-pledging level, plus the greater of:
2 1. One hundred twenty-five percent of the average
3 daily balance of public deposits in excess of capital
4 accounts; or
5 2. One hundred twenty-five percent of the average
6 daily balance of public deposits in excess of 20 percent of
7 the pool figure.
8 (b) Twenty-five percent of the average monthly balance
9 of public deposits.
10 (c) One hundred twenty-five percent of the average
11 daily balance of public deposits if the qualified public
12 depository:
13 1. Has been established for less than 3 years;
14 2. Has experienced material decreases in its capital
15 accounts; or
16 3. Has an overall financial condition that is
17 materially deteriorating.
18 (d) Two hundred percent of an established maximum
19 amount of public deposits that has been mutually agreed upon
20 by and between the Treasurer and the qualified public
21 depository.
22 (e) Minimum required collateral of \$100,000.
23 (f) An amount as required in special instructions from
24 the Treasurer to protect the integrity of the public deposits
25 program.
26 (3) Each qualified public depository shall report its
27 required collateral on the monthly report required in s.
28 280.16 and simultaneously pledge, deposit, or issue eligible
29 collateral needed.
30 (4)(3) Additional collateral is required within 2
31 business days ~~48 hours~~ if public deposits are accepted that

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1 would increase the qualified public depository's average daily
2 balance for the current month by 25 percent over the average
3 daily balance of the previously reported month.

4 (5)~~(4)~~ Additional collateral of 20 percent of required
5 collateral is necessary if a valuation date other than the
6 close of business as described below has been approved for the
7 qualified public depository and the required collateral is
8 found to be insufficient based on the Treasurer's valuation.

9 (6)~~(5)~~ Each qualified public depository shall value
10 its collateral in the following manner; it must:

11 (a) Use a nationally recognized source.

12 (b) Use market price, quality ratings, and pay-down
13 factors as of the close of business on the last banking day in
14 the reported month, or as of a date approved by the Treasurer.

15 (c) Report any material decline in value that occurs
16 before the date of mailing the monthly report, required in s.
17 280.16,to the Treasurer.

18 (d) Use 100 percent of the maximum amount available
19 under Federal Home Loan Bank letters of credit as market
20 value.

21 (7) A qualified public depository shall pledge,
22 deposit, or issue additional eligible collateral between
23 filing periods of the monthly report required in s. 280.16
24 when notified by the Treasurer that current market value of
25 collateral does not meet required collateral. The pledge,
26 deposit, or issuance of such additional collateral shall be
27 made within 2 business days after the Treasurer's
28 notification.

29 (8) A qualified public depository may be required to
30 return public deposits to governmental units and be suspended
31 or disqualified or subjected to administrative penalty as

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1 provided in s. 280.051 or s. 280.054 for failure to meet
2 required collateral.

3 (9) The Treasurer shall adopt rules for the
4 establishment of collateral requirements, collateral pledging
5 levels, required collateral calculations, and market value and
6 clarifying terms.

7 Section 3. Effective July 1, 2001, section 280.041,
8 Florida Statutes, is amended to read:

9 280.041 Collateral arrangements; agreements,
10 provisions, and triggering events.--

11 (1) Eligible collateral listed in s. 280.13 may be
12 pledged, deposited, or issued using the following collateral
13 arrangements as approved by the Treasurer for a qualified
14 public depository or operating subsidiary, if one is used, to
15 meet required collateral:

16 (a) Regular custody arrangement for collateral pledged
17 to the Treasurer pursuant to subsection (2).

18 (b) Federal Reserve Bank custody arrangement for
19 collateral pledged to the Treasurer pursuant to subsection
20 (3).

21 (c) Treasurer's custody arrangement for collateral
22 deposited in the Treasurer's name pursuant to subsection (4).

23 (d) Federal Home Loan Bank letter of credit
24 arrangement for collateral issued with the Treasurer as
25 beneficiary pursuant to subsection (5).

26 (e) Cash arrangement for collateral held by the
27 Treasurer or a custodian.

28 (2)~~(1)~~ With the approval of the Treasurer, a qualified
29 public depository or operating subsidiary, as pledgor, may
30 deposit eligible collateral with a custodian. A qualified
31 public depository shall not act as its own custodian. Except

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1 in the case of using a Federal Reserve Bank as custodian,
2 ~~which may require other collateral agreement provisions,~~the
3 following are necessary for the Treasurer's approval:

4 (a) A completed collateral agreement in a form
5 prescribed by the Treasurer in which the pledgor agrees to the
6 following provisions:

7 1. The pledgor shall own the pledged collateral and
8 acknowledge that the Treasurer has a perfected security
9 interest. The pledged collateral shall be eligible collateral
10 and shall be at least equal to the amount of required
11 collateral.

12 2. The pledgor shall grant to the Treasurer an
13 interest in pledged collateral for the purposes of this
14 section. The pledgor shall not enter into or execute any other
15 agreement related to the pledged collateral that would create
16 an interest in or lien on that collateral in any manner in
17 favor of any third party without the written consent of the
18 Treasurer.

19 3. The pledgor shall not grant the custodian any lien
20 that attaches to the collateral in favor of the custodian that
21 is superior or equal to the security interest of the
22 Treasurer.

23 4. The pledgor shall agree that the Treasurer may,
24 without notice to or consent by the pledgor, require the
25 custodian to comply with and perform any and all requests and
26 orders directly from the Treasurer. These include, but are not
27 limited to, liquidating all collateral and submitting the
28 proceeds directly to the Treasurer in the name of the
29 Treasurer only or transferring all collateral into an account
30 designated solely by the Treasurer.

31 5. The pledgor shall acknowledge that the Treasurer

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1 may, without notice to or consent by the pledgor, require the
2 custodian to hold principal payments and income for the
3 benefit of the Treasurer.

4 6. The pledgor shall initiate collateral transactions
5 on forms prescribed by the Treasurer in the following manner:

6 a. A deposit transaction of eligible collateral may be
7 made without prior approval from the Treasurer provided:
8 security types that have restrictions have been approved in
9 advance of the transaction by the Treasurer and simultaneous
10 notification is given to the Treasurer; and the custodian has
11 not received notice from the Treasurer prohibiting deposits
12 without prior approval.

13 b. A substitution transaction of eligible collateral
14 may be made without prior approval from the Treasurer
15 provided: security types that have restrictions have been
16 approved in advance of the transaction by the Treasurer; the
17 market value of the securities to be substituted is at least
18 equal to the amount withdrawn; simultaneous notification is
19 given to the Treasurer; and the custodian has not received
20 notice from the Treasurer prohibiting substitution.

21 c. A transfer of collateral between accounts at a
22 custodian requires the Treasurer's prior approval. The
23 collateral shall be released subject to redeposit in the new
24 account with a pledge to the Treasurer intact.

25 d. A transfer of collateral from a custodian to
26 another custodian requires the Treasurer's prior approval and
27 a valid collateral agreement with the new custodian. The
28 collateral shall be released subject to redeposit at the new
29 custodian with a pledge to the Treasurer intact.

30 e. A withdrawal transaction requires the Treasurer's
31 prior approval. The market value of eligible collateral

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1 remaining after the withdrawal shall be at least equal to the
2 amount of required collateral. A withdrawal transaction shall
3 be executed for any release of collateral including maturity
4 or call proceeds.

5 f. Written notice shall be sent to the Treasurer to
6 remove from the inventory of pledged collateral a pay-down
7 security that has paid out with zero principal remaining.

8 7. If pledged collateral includes definitive
9 (physical) securities in registered form which are in the name
10 of the pledgor or a nominee, the pledgor shall deliver the
11 following documents when requested by the Treasurer:

12 a. A separate certified power of attorney in a form
13 prescribed by the Treasurer for each issue of securities.

14 b. Separate bond assignment forms as required by the
15 bond agent or trustee.

16 c. Certified copies of resolutions adopted by the
17 pledgor's governing body authorizing execution of these
18 documents.

19 8. The pledgor shall be responsible for all costs
20 necessary to the functioning of the collateral agreement or
21 associated with confirmation of pledged collateral to the
22 Treasurer and acknowledges that these costs shall not be a
23 charge against the Treasurer or his or her interests in the
24 pledged collateral.

25 9. The pledgor, if notified by the Treasurer, shall
26 not be allowed to use a custodian if that custodian fails to
27 complete the collateral agreement, releases pledged collateral
28 without the Treasurer's approval, fails to properly complete
29 confirmations of pledged collateral, fails to honor a request
30 for examination of definitive pledged collateral and records
31 of book-entry securities, or fails to provide requested

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1 documents on definitive securities. The period for disallowing
2 the use of a custodian shall be 1 year.

3 10. The pledgor shall be subject to the jurisdiction
4 of the courts of the State of Florida, or of courts of the
5 United States located within the State of Florida, for the
6 purpose of any litigation arising out of the act.

7 11. The pledgor is responsible and liable to the
8 Treasurer for any action of agents the pledgor uses to execute
9 collateral transactions or submit reports to the Treasurer.

10 12. The pledgor shall agree that any information,
11 forms, or reports electronically transmitted to the Treasurer
12 shall have the same enforceability as a signed writing.

13 13. The pledgor shall submit proof that authorized
14 individuals executed the collateral agreement on behalf of the
15 pledgor.

16 14. The pledgor shall agree by resolution of the board
17 of directors that collateral agreements entered into for
18 purposes of this section have been formally accepted and
19 constitute official records of the pledgor.

20 15. The pledgor shall be bound by any other provisions
21 found necessary for a perfected security interest in
22 collateral under the Uniform Commercial Code.

23 (b) A completed collateral agreement in a form
24 prescribed by the Treasurer in which the custodian agrees to
25 the following provisions:

26 1. The custodian shall have no responsibility to
27 ascertain whether the pledged securities are at least equal to
28 the amount of required collateral nor whether the pledged
29 securities are eligible collateral.

30 2. The custodian shall hold pledged collateral in a
31 custody account for the Treasurer for purposes of this

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1 section. The custodian shall not enter into or execute any
2 other agreement related to the collateral that would create an
3 interest in or lien on that collateral in any manner in favor
4 of any third party without the written consent of the
5 Treasurer.

6 3. The custodian shall agree that any lien that
7 attaches to the collateral in favor of the custodian shall not
8 be superior or equal to the security interest of the
9 Treasurer.

10 4. The custodian shall, without notice to or consent
11 by the pledgor, comply with and perform any and all requests
12 and orders directly from the Treasurer. These include, but are
13 not limited to, liquidating all collateral and submitting the
14 proceeds directly to the Treasurer in the name of the
15 Treasurer only or transferring all collateral into an account
16 designated solely by the Treasurer.

17 5. The custodian shall consider principal payments on
18 pay-down securities and income paid on pledged collateral as
19 the property of the pledgor and shall pay thereto provided the
20 custodian has not received written notice from the Treasurer
21 to hold such principal payments and income for the benefit of
22 the Treasurer.

23 6. The custodian shall process collateral transactions
24 on forms prescribed by the Treasurer in the following manner:

25 a. A deposit transaction of eligible collateral may be
26 made without prior approval from the Treasurer unless the
27 custodian has received notice from the Treasurer requiring the
28 Treasurer's prior approval.

29 b. A substitution transaction of eligible collateral
30 may be made without prior approval from the Treasurer provided
31 the pledgor certifies the market value of the securities to be

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1 substituted is at least equal to the market value amount of
2 the securities to be withdrawn and the custodian has not
3 received notice from the Treasurer prohibiting substitution.

4 c. A transfer of collateral between accounts at a
5 custodian requires the Treasurer's prior approval. The
6 collateral shall be released subject to redeposit in the new
7 account with a pledge to the Treasurer intact. Confirmation
8 from the custodian to the Treasurer must be received within 5
9 business days of the redeposit.

10 d. A transfer of collateral from a custodian to
11 another custodian requires the Treasurer's prior approval. The
12 collateral shall be released subject to redeposit at the new
13 custodian with a pledge to the Treasurer intact. Confirmation
14 from the new custodian to the Treasurer must be received
15 within 5 business days of the redeposit.

16 e. A withdrawal transaction requires the Treasurer's
17 prior approval. A withdrawal transaction shall be executed for
18 the release of any pledged collateral including maturity or
19 call proceeds.

20 7. If pledged collateral includes definitive
21 (physical) securities in registered form, which are in the
22 name of the custodian or a nominee, the custodian shall
23 deliver the following documents when requested by the
24 Treasurer:

25 a. A separate certified power of attorney in a form
26 prescribed by the Treasurer for each issue of securities.

27 b. Separate bond assignment forms as required by the
28 bond agent or trustee.

29 c. Certified copies of resolutions adopted by the
30 custodian's governing body authorizing execution of these
31 documents.

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1 8. The custodian shall acknowledge that the pledgor is
2 responsible for all costs necessary to the functioning of the
3 collateral agreement or associated with confirmation of
4 securities pledged to the Treasurer and that these costs shall
5 not be a charge against the Treasurer or his or her interests
6 in the pledged collateral.

7 9. The custodian shall agree to provide confirmation
8 of pledged collateral upon request from the Treasurer. This
9 confirmation shall be provided within 15 working days after
10 the request, in a format prescribed by the Treasurer, and
11 shall require no identification other than the pledgor name
12 and location, unless the special identification is provided in
13 the collateral agreement.

14 10. The custodian shall be subject to the jurisdiction
15 of the courts of the State of Florida, or of courts of the
16 United States located within the State of Florida, for the
17 purpose of any litigation arising out of the act.

18 11. The custodian shall be responsible and liable to
19 the Treasurer for any action of agents the custodian uses to
20 hold and service collateral pledged to the Treasurer.

21 12. The custodian shall agree that any information,
22 forms, or reports electronically transmitted to the Treasurer
23 shall have the same enforceability as a signed writing.

24 13. The Treasurer shall have the right to examine
25 definitive pledged collateral and records of book-entry
26 securities during the regular business hours of the custodian
27 without cost to the Treasurer.

28 14. The responsibilities of the custodian for the
29 safekeeping of the pledged collateral shall be limited to the
30 diligence and care usually exercised by a banking or trust
31 institution toward its own property.

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1 15. If there is any change in the Uniform Commercial
2 Code, as adopted by law in this state, which affects the
3 requirements for a perfected security interest in collateral,
4 the Treasurer shall notify the custodian of such change. The
5 custodian shall have a period of 180 calendar days after such
6 notice to withdraw as custodian if the custodian cannot
7 provide the required custodial services.~~The custodian shall~~
8 ~~be bound by any other provisions found necessary for the~~
9 ~~Treasurer to have a perfected security interest in collateral~~
10 ~~under the Uniform Commercial Code.~~

11 ~~(3)(2)~~ With the approval of the Treasurer, a pledgor
12 may deposit eligible collateral pursuant to an agreement with
13 a Federal Reserve Bank. The Federal Reserve Bank agreement may
14 require terms not consistent with subsection (2) but may not
15 subject the Treasurer to any costs or indemnification
16 requirements~~(1)~~.

17 ~~(4)(3)~~ The Treasurer may require deposit or transfer
18 of collateral into a custodial account established in the
19 Treasurer's name at a designated custodian. This requirement
20 for Treasurer's custody shall have the following
21 characteristics:

22 (a) One or more triggering events must have occurred.

23 (b) The custodian used must be a Treasurer's approved
24 custodian that must:

25 1. Meet the definition of custodian.

26 2. Not be an affiliate of the qualified public
27 depository.

28 3. Be bound under a distinct Treasurer's custodial
29 contract.

30 (c) All deposit transactions require the approval of
31 the Treasurer.

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1 (d) All collateral must be in book-entry form.

2 (e) The qualified public depository shall be
3 responsible for all costs necessary to the functioning of the
4 contract or associated with the confirmation of securities in
5 the name of the Treasurer and acknowledges that these costs
6 shall not be a charge against the Treasurer and may be
7 deducted from the collateral or income earned if unpaid.

8 (5) With the approval of the Treasurer, a qualified
9 public depository may use Federal Home Loan Bank letters of
10 credit to meet collateral requirements. A completed agreement
11 that includes the following provisions is necessary for the
12 Treasurer's approval:

13 (a) The letter of credit shall meet the definition of
14 eligible collateral.

15 (b) The qualified public depository shall agree that
16 the Treasurer, as beneficiary, may, without notice to or
17 consent by the qualified public depository, demand payment
18 under the letter of credit if any of the triggering events
19 listed in s. 280.041 occur.

20 (c) The qualified public depository shall agree that
21 funds received by the Treasurer due to the occurrence of one
22 or more triggering events may be deposited in the Treasury
23 Cash Deposit Trust Fund for purposes of eligible collateral.

24 (d) The qualified public depository shall arrange for
25 the issue of letters of credit which meet the requirements of
26 s. 280.13 and delivery to the Treasurer. All transactions
27 involving letters of credit require the Treasurer's approval.

28 (e) The qualified public depository shall be
29 responsible for all costs necessary in the use or confirmation
30 of letters of credit issued on behalf of the Treasurer and
31 acknowledges that these costs shall not be a charge against

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1 the Treasurer.

2 (f) The qualified public depository shall be subject
3 to the jurisdiction of the courts of this state, or of courts
4 of the United States which are located within this state, for
5 the purpose of any litigation arising out of the act.

6 (g) The qualified public depository shall agree that
7 any information, form, or report electronically transmitted to
8 the Treasurer shall have the same enforceability as a signed
9 writing.

10 (h) The qualified public depository shall submit proof
11 that authorized individuals executed the letters of credit
12 agreement on its behalf.

13 (i) The qualified public depository shall agree by
14 resolution of the board of directors that the letters of
15 credit agreements entered into for purposes of this section
16 have been formally accepted and constitute official records of
17 the qualified public depository.

18 (6)(4) The Treasurer may demand payment under a letter
19 of credit or direct a custodian to deposit or transfer
20 collateral and proceeds of securities not previously credited
21 upon the occurrence of one or more triggering events provided
22 that, to the extent not incompatible with the protection of
23 public deposits, as determined in the Treasurer's sole and
24 absolute discretion, the Treasurer shall provide a custodian
25 and the qualified public depository with 48 hours' advance
26 notice before directing such deposit or transfer. These events
27 include:

28 (a) The Treasurer determines that an immediate danger
29 to the public health, safety, or welfare exists.

30 (b) The qualified public depository fails to have
31 adequate procedures and practices for the accurate

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1 identification, classification, reporting, and
2 collateralization of public deposits.

3 (c) The custodian fails to provide or allow inspection
4 and verification of documents, reports, records, or other
5 information dealing with the pledged collateral or financial
6 information.

7 (d) The qualified public depository or its operating
8 subsidiary fails to provide or allow inspection and
9 verification of documents, reports, records, or other
10 information dealing with Florida public deposits, pledged
11 collateral, or financial information.

12 (e) The custodian fails to hold income and principal
13 payments made on securities held as collateral or fails to
14 deposit or transfer such payments pursuant to the Treasurer's
15 instructions.

16 (f) The qualified public depository defaults or
17 becomes insolvent.

18 (g) The qualified public depository fails to pay an
19 assessment.

20 (h) The qualified public depository fails to pay an
21 administrative penalty.

22 (i) The qualified public depository fails to meet
23 financial condition standards.

24 (j) The qualified public depository charges a
25 withdrawal penalty to public depositors when the qualified
26 public depository is suspended, disqualified, or withdrawn
27 from the public deposits program.

28 (k) The qualified public depository does not provide,
29 as required, the public depositor with annual confirmation
30 information on all open Florida public deposit accounts.

31 (l) The qualified public depository pledges, deposits,

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1 or has issued insufficient or unacceptable collateral to meet
2 required collateral within the required time ~~cover public~~
3 ~~deposits.~~

4 (m) ~~Pledged~~ Collateral, other than a proper
5 substitution, is released without the prior approval of the
6 Treasurer.

7 (n) The qualified public depository, custodian,
8 operating subsidiary, or agent violates any provision of the
9 act and the Treasurer determines that such violation may be
10 remedied by a move of collateral.

11 (o) The qualified public depository, custodian,
12 operating subsidiary, or agent fails to timely cooperate in
13 resolving problems by the date established in written
14 communication from the Treasurer.

15 (p) The custodian fails to provide sufficient
16 confirmation information.

17 (q) The Federal Home Loan Bank or the qualified public
18 depository gives notification that a letter of credit will not
19 be extended or renewed and other eligible collateral equal to
20 required collateral has not been deposited within 30 days
21 after the notice or 30 days before expiration of the letter of
22 credit.

23 (r) The qualified public depository, if involved in a
24 merger, acquisition, consolidation, or other organizational
25 change, fails to notify the Treasurer or ensure that required
26 collateral is properly maintained by the depository holding
27 the Florida public deposits.

28 (s)~~(q)~~ Events that would bring about an administrative
29 or legal action by the Treasurer.

30 (7)~~(5)~~ The Treasurer shall adopt rules to identify
31 forms and establish procedures for collateral agreements and

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1 transactions, furnish confirmation requirements, establish
2 procedures for using an operating subsidiary and agents, and
3 clarify terms.

4 Section 4. Section 280.05, Florida Statutes, is
5 amended to read:

6 280.05 Powers and duties of the Treasurer.--In
7 fulfilling the requirements of this act, the Treasurer has the
8 power to take the following actions he or she deems necessary
9 to protect the integrity of the public deposits program:

10 (1) Identify representative qualified public
11 depositories and furnish notification for the qualified public
12 depository oversight board selection pursuant to s. 280.071.

13 ~~Establish criteria, based on the overall financial condition~~
14 ~~of the participant and applicants, as may be necessary, to~~
15 ~~protect the integrity of the public deposits program, to:~~

16 ~~(a) Refuse entry into the program by an applicant;~~

17 ~~(b) Order discontinuance of participation in the~~
18 ~~program by a qualified public depository;~~

19 ~~(c) Restrict the total amount of public deposits a~~
20 ~~depository may hold;~~

21 ~~(d) Establish collateral-pledging levels based on~~
22 ~~qualitative and quantitative standards; and~~

23 ~~(e) Restrict substitutions of collateral subject to~~
24 ~~the approval of the Treasurer.~~

25 ~~(2) Appoint a six-member advisory committee to review~~
26 ~~and recommend criteria to be used by the Treasurer for~~
27 ~~purposes stated in subsection (1) in order to protect public~~
28 ~~deposits and the depositories in the program. Each member~~
29 ~~selected to serve on the advisory committee must be a~~
30 ~~representative of his or her industry. Advisory committee~~
31 ~~members must represent active qualified public depositories,~~

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1 ~~not in the process of withdrawing from the public deposits~~
2 ~~program, in compliance with all applicable rules, regulations,~~
3 ~~and reporting requirements of this chapter. Members must~~
4 ~~possess knowledge, skill, and experience in one or more of the~~
5 ~~following areas:~~

6 ~~(a) Financial analysis;~~

7 ~~(b) Trend analysis;~~

8 ~~(c) Accounting;~~

9 ~~(d) Banking;~~

10 ~~(e) Risk management; or~~

11 ~~(f) Investment management.~~

12
13 ~~Members' terms shall be for 4 years. Any person appointed to~~
14 ~~fill a vacancy on the advisory committee may serve only for~~
15 ~~the remainder of the unexpired term. Any member is eligible~~
16 ~~for reappointment and shall serve until a successor qualifies.~~
17 ~~The advisory committee shall elect a chair and vice chair and~~
18 ~~shall also designate a secretary who need not be a member of~~
19 ~~the advisory committee. The secretary shall keep a record of~~
20 ~~the proceedings of the advisory committee and shall be the~~
21 ~~custodian of all printed materials filed with or by the~~
22 ~~advisory committee. Notwithstanding the existence of~~
23 ~~vacancies on the advisory committee, a majority of the members~~
24 ~~constitutes a quorum. The advisory committee shall not take~~
25 ~~official action in the absence of a quorum. Each member may~~
26 ~~name a designee to serve on the advisory committee on behalf~~
27 ~~of the member. However, any designee so named must meet the~~
28 ~~qualifications required of the selected member and be approved~~
29 ~~by the Treasurer. The advisory committee shall convene as~~
30 ~~needed.~~

31 ~~(2)(3) Establish goals and objectives and Provide~~

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1 ~~other~~ data for the qualified public depository oversight board
 2 duties pursuant to s. 280.071 regarding:

3 (a) Establishing standards for qualified public
 4 depositories and custodians.

5 (b) Evaluating requests for exceptions to standards
 6 and alternative participation agreements.

7 (c) Reviewing and recommending action for qualified
 8 public depository or custodian violations ~~as may be necessary~~
 9 ~~to assist the advisory committee established under subsection~~
 10 ~~(2) in developing standards for the program.~~

11 ~~(3)(4)~~ Review, implement, monitor, evaluate, and
 12 modify, ~~as needed,~~ all or any part of the standards, ~~and~~
 13 policies, or recommendations of the qualified public
 14 depository oversight board recommended by an advisory
 15 committee.

16 ~~(4)(5)~~ Perform financial analysis of any qualified
 17 public depositories ~~depository as needed.~~

18 ~~(5)(6)~~ Require ~~such~~ collateral, or increase the
 19 collateral-pledging level, of any qualified public depository
 20 ~~as may be necessary to administer the provisions of this~~
 21 ~~chapter and to protect the integrity of the public deposits~~
 22 ~~program.~~

23 ~~(7)~~ ~~Establish a minimum amount of required collateral~~
 24 ~~as the Treasurer deems necessary to provide for the contingent~~
 25 ~~liability pool.~~

26 ~~(6)(8)~~ Decline to accept, or reduce the reported value
 27 of, collateral ~~as circumstances may require~~ in order to ensure
 28 the pledging or depositing of sufficient marketable collateral
 29 and acceptable letters of credit ~~to meet the purposes of this~~
 30 ~~chapter.~~

31 ~~(7)(9)~~ Maintain perpetual inventory of ~~pledged~~

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1 collateral and perform monthly market valuations and quality
2 ratings.

3 ~~(8)(10) Monitor and confirm, as often as deemed~~
4 ~~necessary by the Treasurer, the pledged collateral with held~~
5 ~~by third party custodians and letter of credit issuers.~~

6 ~~(9)(11) Move Perfect interest in pledged collateral by~~
7 ~~having pledged securities moved into an account established in~~
8 ~~the Treasurer's name upon the occurrence of one or more~~
9 ~~triggering events. This action shall be taken at the~~
10 ~~discretion of the Treasurer.~~

11 (10) Issue notice to a qualified public depository
12 that use of a custodian will be disallowed when the custodian
13 has failed to follow collateral agreement terms.

14 ~~(11)(12) Furnish written notice to custodians of~~
15 ~~collateral to hold interest and principal payments made on~~
16 ~~securities held as collateral and to deposit or transfer such~~
17 ~~payments pursuant to the Treasurer's instructions.~~

18 ~~(12)(13) Release collateral held in the Treasurer's~~
19 ~~name, subject to sale and transfer of funds directly from the~~
20 ~~custodian to public depositors of a withdrawing depository.~~

21 (13) Demand payment under letters of credit for any of
22 the triggering events listed in s. 280.041 and deposit the
23 funds in:

24 (a) The Public Deposits Trust Fund for purposes of
25 paying losses to public depositors.

26 (b) The Treasurer's Administrative and Investment
27 Trust Fund for receiving payment of administrative penalties.

28 (c) The Treasury Cash Deposit Trust Fund for purposes
29 of eligible collateral.

30 (14) Sell securities for the purpose of paying losses
31 to public depositors not covered by deposit insurance.

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1 (15) Transfer funds directly from the custodian to
2 public depositors or the receiver in order to facilitate
3 prompt payment of claims.

4 (16) Require the filing of the following reports which
5 the Treasurer shall process as provided:

6 (a) Qualified public depository monthly reports and
7 schedules. The Treasurer shall review the reports of each
8 qualified public depository for material changes in capital
9 accounts or changes in name, address, or type of institution;
10 record the average daily balances of public deposits held; and
11 monitor the collateral-pledging levels and required
12 collateral.

13 (b) Quarterly regulatory reports from qualified public
14 depositories. The Treasurer shall analyze qualified public
15 depositories ranked in the lowest category based on
16 established financial condition criteria.

17 (c) Qualified public depository annual reports and
18 public depositor annual reports. The Treasurer shall compare
19 public deposit information reported by qualified public
20 depositories and public depositors. Such comparison shall be
21 conducted for qualified public depositories which are ranked
22 in the lowest category based on established financial
23 condition criteria of record on September 30. Additional
24 comparison processes may be performed as public deposits
25 program resources permit.

26 (d) Any related documents, reports, records, or other
27 information deemed necessary by the Treasurer in order to
28 ascertain compliance with this chapter.

29 (17) Verify the reports of any qualified public
30 depository relating to public deposits it holds when necessary
31 to protect the integrity of the public deposits program.

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1 (18) Confirm public deposits, to the extent possible
2 under current law, when needed.

3 (19) Require at his or her discretion the filing of
4 any information or forms required under this chapter to be by
5 electronic data transmission. Such filings of information or
6 forms shall have the same enforceability as a signed writing.

7 (20) Suspend or disqualify or disqualify after
8 suspension any qualified public depository that has violated
9 any of the provisions of this chapter or of rules adopted
10 hereunder.

11 (a) Any qualified public depository that is suspended
12 or disqualified pursuant to this subsection is subject to the
13 provisions of s. 280.11(2) governing withdrawal from the
14 public deposits program and return of pledged collateral. Any
15 suspension shall not exceed a period of 6 months. Any
16 qualified public depository which has been disqualified may
17 not reapply for qualification until after the expiration of 1
18 year from the date of the final order of disqualification or
19 the final disposition of any appeal taken therefrom.

20 (b) In lieu of suspension or disqualification, impose
21 an administrative penalty upon the qualified public depository
22 as provided in s. 280.054.

23 (c) If the Treasurer has reason to believe that any
24 qualified public depository or any other financial institution
25 holding public deposits is or has been violating any of the
26 provisions of this chapter or of rules adopted hereunder, he
27 or she may issue to the qualified public depository or other
28 financial institution an order to cease and desist from the
29 violation or to correct the condition giving rise to or
30 resulting from the violation. If any qualified public
31 depository or other financial institution violates a

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1 cease-and-desist or corrective order, the Treasurer may impose
2 an administrative penalty upon the qualified public depository
3 or other financial institution as provided in s. 280.054 or s.
4 280.055. In addition to the administrative penalty, the
5 Treasurer may suspend or disqualify any qualified public
6 depository for violation of any order issued pursuant to this
7 paragraph.

8 Section 5. Subsections (2) and (3) of section 280.051,
9 Florida Statutes, are amended to read:

10 280.051 Grounds for suspension or disqualification of
11 a qualified public depository.--A qualified public depository
12 may be suspended or disqualified or both if the Treasurer
13 determines that the qualified public depository has:

14 (2) Submitted reports containing inaccurate or
15 incomplete information regarding public deposits or ~~the~~
16 ~~securities pledged as~~ collateral for such deposits, capital
17 accounts, or the calculation of required collateral.

18 (3) Failed to maintain required ~~pledge~~ sufficient
19 collateral ~~to cover public deposits~~.

20 Section 6. Subsection (3) of section 280.054, Florida
21 Statutes, is amended to read:

22 280.054 Administrative penalty in lieu of suspension
23 or disqualification.--

24 (3) A qualified public depository ~~that violates s.~~
25 ~~280.04(5) or a custodian that violates s. 280.04(6)~~ is subject
26 to an administrative penalty in an amount not exceeding the
27 greater of \$1,000 or 10 percent of the amount of withdrawal,
28 not exceeding \$10,000, if the depository fails to provide
29 required collateral using eligible collateral and prescribed
30 collateral agreements or withdraws collateral without the
31 Treasurer's approval.

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1 Section 7. Paragraph (c) of subsection (1) of section
2 280.055, Florida Statutes, is amended to read:

3 280.055 Cease and desist order; corrective order;
4 administrative penalty.--

5 (1) The Treasurer may issue a cease and desist order
6 and a corrective order upon determining that:

7 (c) A qualified public depository pledges, deposits,
8 or arranges for the issuance of unacceptable collateral;

9 Section 8. Section 280.07, Florida Statutes, is
10 amended to read:

11 280.07 Mutual responsibility and contingent
12 liability.--Any bank or savings association that is designated
13 as a qualified public depository and that is not insolvent
14 shall guarantee public depositors against loss caused by the
15 default or insolvency of other qualified public depositories.
16 Each qualified public depository shall execute a form
17 prescribed by the Treasurer for such guarantee which shall be
18 approved by the board of directors and shall become an
19 official record of the institution.

20 Section 9. Section 280.071, Florida Statutes, is
21 created to read:

22 280.071 Qualified Public Depository Oversight Board;
23 purpose; identifying representative qualified public
24 depositories; member selection; responsibilities.--A Qualified
25 Public Depository Oversight Board is created comprised of six
26 members and six alternate members who represent the interests
27 of all qualified public depositories in safeguarding the
28 integrity of the public deposits program and preventing the
29 realization of loss assessments.

30 (1) On July 31 of each year and as vacancies occur,
31 the Treasurer shall initiate the selection of oversight board

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1 representation in the following manner:

2 (a) Categorize eligible qualified public depositories
3 into three groups according to average asset size. Eligible
4 qualified public depositories must be in compliance with all
5 requirements and shall not be suspended, disqualified,
6 withdrawing, or under an alternative participation agreement
7 in the public deposits program.

8 (b) Identify the two qualified public depositories in
9 each of the three groups that have the greatest shares of
10 contingent liability based on the average monthly balances of
11 public deposits reported pursuant to s. 280.16.

12 (c) Send notification to the six qualified public
13 depositories that have been identified.

14 (2) Each of the six representative qualified public
15 depositories shall select a member and alternate member for
16 the oversight board and give the Treasurer written information
17 on the selections within 30 calendar days of the Treasurer's
18 notice.

19 (3) If an identified qualified public depository
20 declines to select a member, does not respond within 30
21 calendar days, or becomes ineligible, the Treasurer shall
22 furnish notice to the Florida Bankers Association which shall
23 select a member and alternate member to represent that average
24 asset category within 30 calendar days.

25 (4) Each member and alternate member selected must:

26 (a) Have resources available for review of qualified
27 public depository issues.

28 (b) Possess knowledge, skill, and experience in one or
29 more of the following areas:

30 1. Financial analysis;

31 2. Trend analysis;

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1 3. Accounting;

2 4. Banking;

3 5. Risk management; or

4 6. Investment management.

5 (5) The oversight board members and alternate members
6 shall be subject to the Treasurer's approval.

7 (6) The alternate member shall act on the member's
8 behalf if the member is unable to perform oversight board
9 functions and shall have the same rights, duties, and
10 responsibilities as the member.

11 (7) Each member shall serve until a successor is
12 selected.

13 (8) Expenses incurred by a member in carrying out
14 duties of the oversight board shall be paid by his or her
15 representative qualified public depository.

16 (9) The oversight board shall organize, communicate,
17 and conduct meetings as follows:

18 (a) Elect a chair and vice chair.

19 (b) Designate a secretary who need not be a member of
20 the oversight board. The secretary shall:

21 1. Keep a record of communications and meeting
22 proceedings.

23 2. Act as custodian of all printed materials filed
24 with or by the oversight board.

25 (c) Communicate through electronic means and express
26 delivery services when possible.

27 (d) Meet upon call of the chair or any three members.

28 (e) Take no official action in the absence of a
29 quorum.

30 1. A quorum shall consist of the majority of voting
31 members of the oversight board.

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- 1 2. Each member shall have one vote.
- 2 3. A member shall not vote on issues directly related
3 to the qualified public depository he or she represents.
- 4 4. The Treasurer or his or her representative shall
5 vote as a member of the oversight board in the absence of a
6 quorum.
- 7 (10) The oversight board has the power and
8 responsibility to safeguard the integrity of the public
9 deposits program and prevent the realization of loss
10 assessments by:
- 11 (a) Establishing standards in the following areas:
- 12 1. Financial institution entry requirements;
- 13 2. Qualified public depository reporting requirements;
- 14 3. Qualitative and quantitative financial condition
15 requirements;
- 16 4. Custodian characteristic requirements and adherence
17 to collateral agreement terms;
- 18 5. Collateral-pledging levels and adequacy of required
19 collateral;
- 20 6. Collateral eligibility and restrictions;
- 21 7. Operating subsidiary and agent requirements;
- 22 8. Merger, acquisition, and name change requirements;
- 23 9. Participation restrictions;
- 24 10. Participation status and conditions for
25 suspension, disqualification, and mandatory withdrawal;
- 26 11. Penalties and fines; and
- 27 12. Corrective actions and administrative orders.
- 28 (b) Recommending approval or rejection to the
29 Treasurer for exceptions that do not meet established
30 standards. These requests for exceptions may be:
- 31 1. Referred by the Treasurer; or

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1 2. Submitted directly by the qualified public
2 depository seeking exception.

3 (c) Issuing approvals or rejections for alternative
4 participation agreements referred by the Treasurer.

5 (d) Reviewing program violations and recommending that
6 the Treasurer impose penalties and fines or issue corrective
7 actions and administrative orders.

8 (e) Studying public deposit program areas referred by
9 the Treasurer.

10 (f) Assessing qualified public depositories, as
11 provided in s. 280.08, to pay for the implementation of
12 standards established by the oversight board which exceed the
13 resources of the public deposits program.

14 (11) Official actions of the oversight board regarding
15 the establishment of standards, exception and alternate
16 participation agreement decisions, and recommendations
17 concerning violations shall be:

18 (a) Communicated to the Treasurer in writing.

19 (b) Subject to approval of the Treasurer.

20 (c) Implemented as public deposits program resources
21 or payment described in subsection (10) above permit.

22 (12) The Treasurer may adopt rules to establish
23 procedures and forms for oversight board member and alternate
24 member selection and oversight board functions.

25 Section 10. Paragraph (a) of subsection (3) and
26 subsections (4) and (7) of section 280.08, Florida Statutes,
27 are amended to read:

28 280.08 Procedure for payment of losses.--When the
29 Treasurer determines that a default or insolvency has
30 occurred, he or she shall provide notice as required in s.
31 280.085(1)and implement the following procedures:

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1 (3)(a) The loss to public depositors shall be
2 satisfied, insofar as possible, first through any applicable
3 deposit insurance and then through demanding payment under
4 letters of credit or the sale of collateral ~~securities~~ pledged
5 or deposited by the defaulting depository. The Treasurer may
6 assess qualified public depositories as provided in paragraph
7 (b) for the total loss if the demand for payment or sale of
8 collateral ~~securities~~ cannot be accomplished within 7 business
9 days.

10 (4) Each qualified public depository shall pay its
11 assessment to the Treasurer within 7 business days after it
12 receives notice of the assessment. If a depository fails to
13 pay its assessment when due, the Treasurer shall satisfy the
14 assessment by demanding payment under letters of credit or
15 selling collateral ~~securities~~ pledged or deposited by that
16 depository.

17 (7) Expenses incurred by the Treasurer in connection
18 with a default or insolvency which are not normally incurred
19 by the Treasurer in the administration of this act must be
20 paid out of the amount paid under letters of credit or
21 proceeds from the sale of ~~pledged~~ collateral.

22 Section 11. Section 280.09, Florida Statutes, is
23 amended to read:

24 280.09 Public Deposits Trust Fund.--

25 (1) In order to facilitate the administration of this
26 chapter, there is created the Public Deposits Trust Fund,
27 hereafter in this section designated "the fund." The proceeds
28 from the sale of securities or draw on letters of credit held
29 ~~pledged~~ as collateral or from any assessment pursuant to s.
30 280.08 shall be deposited into the fund. Any administrative
31 penalty collected pursuant to this chapter shall be deposited

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1 into the Treasurer's Administrative and Investment Trust Fund.

2 (2) The Treasurer is authorized to pay any losses to
3 public depositors from the fund, and there are hereby
4 appropriated from the fund such sums as may be necessary from
5 time to time to pay the losses. The term "losses," for
6 purposes of this chapter, shall also include losses of
7 interest or other accumulations to the public depositor as a
8 result of penalties for early withdrawal required by
9 Depository Institution Deregulatory Commission Regulations or
10 applicable successor federal laws or regulations because of
11 suspension or disqualification of a qualified public
12 depository by the Treasurer pursuant to s. 280.05(20) or
13 because of withdrawal from the public deposits program
14 pursuant to s. 280.11. In that event, the Treasurer is
15 authorized to assess against the suspended, disqualified, or
16 withdrawing public depository, in addition to any amount
17 authorized by any other provision of this chapter, an
18 administrative penalty equal to the amount of the early
19 withdrawal penalty and to pay that amount over to the public
20 depositor as reimbursement for such loss. Any money in the
21 fund estimated not to be needed for immediate cash
22 requirements shall be invested pursuant to s. 18.125.

23 Section 12. Section 280.10, Florida Statutes, is
24 amended to read:

25 280.10 Effect of merger, ~~or~~ acquisition, or
26 consolidation; change of name or address.--

27 (1) ~~When in the event~~ a qualified public depository is
28 merged into, acquired by, or consolidated with a bank, savings
29 bank, or savings association that is not a qualified public
30 depository:7

31 (a) The resulting institution shall automatically

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1 become a qualified public depository subject to the
2 requirements of the public deposits program., and

3 (b) The contingent liability of the former institution
4 shall be a liability of the resulting institution.

5 (c) The public deposits and associated collateral of
6 the former institution shall be public deposits and collateral
7 of the resulting institution.

8 (d) The resulting institution shall, within 90
9 calendar 30 days after the effective date of the merger,
10 acquisition, or consolidation, deliver to the Treasurer:~~the~~
11 ~~resulting institution shall~~

12 1. Documentation ~~execute~~ in its own name and deliver
13 ~~to the Treasurer the contingent liability agreement required~~
14 ~~by s. 280.07, and all information and documentation as may be~~
15 ~~required for participation in the public deposits program; or-~~

16 2. Written notice of intent to withdraw ~~if the~~
17 ~~resulting institution chooses not to remain a qualified public~~
18 ~~depository, or does not meet the requirements to become a~~
19 ~~qualified public depository, such institution shall comply~~
20 ~~with the procedures for withdrawal from the program as~~
21 ~~provided in s. 280.11 and a proposed effective date of~~
22 ~~withdrawal which shall be within 180 days after the effective~~
23 ~~date of the acquisition, merger, or consolidation of the~~
24 ~~former institution.~~

25 (e) If the resulting institution does not meet
26 qualifications to become a qualified public depository or does
27 not submit required documentation within 90 calendar days
28 after the effective date of the merger, acquisition, or
29 consolidation, the Treasurer shall initiate mandatory
30 withdrawal actions as provided in s. 280.11 and shall set an
31 effective date of withdrawal that is within 180 days after the

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1 effective date of the acquisition, merger, or consolidation of
2 the former institution.

3 (2) When a qualified public depository ~~which sells or~~
4 ~~disposes of any of its Florida public deposits or collateral~~
5 ~~securing such deposits in a manner not covered by subsection~~
6 ~~(1), the qualified public depository originally holding the~~
7 ~~public deposits branches to an institution that is not a~~
8 ~~qualified public depository, and such branches continue to~~
9 ~~hold public deposits, shall be responsible for:~~

10 (a) Ensuring the institution receiving such public
11 deposits becomes a qualified public depository and meets
12 collateral requirements with the Treasurer as part of the
13 transaction.

14 (b) Notifying the Treasurer within 30 calendar days
15 after the final approval by the appropriate regulator.

16
17 A qualified public depository that fails to meet such
18 responsibilities shall ~~and~~ continue to collateralize and
19 report such public deposits until the receiving purchasing
20 institution becomes a qualified public depository and
21 collateralizes the deposits or the deposits are returned to
22 the governmental public unit. The qualified public depository
23 ~~shall notify the Treasurer of any acquisition of its branches~~
24 ~~on its next monthly report after the final approval by the~~
25 ~~appropriate regulator if the acquisition includes public~~
26 ~~deposits.~~

27 (3) The qualified public depository shall notify the
28 Treasurer of any acquisition or merger within 30 calendar days
29 ~~on its next monthly report~~ after the final approval of the
30 acquisition or merger by its appropriate regulator.

31 (4) Collateral subject to a collateral depository

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1 ~~pledge~~ agreement may not be released by the Treasurer or the
2 custodian until the assumed liability is evidenced by the
3 deposit of collateral pursuant to the collateral depository
4 ~~pledge~~ agreement of the successor entity. The reporting
5 requirement and pledge of collateral will remain in force
6 until the Treasurer determines that the liability no longer
7 exists. The surviving or new qualified public depository
8 shall be responsible and liable for all of the liabilities and
9 obligations of each qualified public depository merged with or
10 acquired by it.

11 (5) Each qualified public depository shall report any
12 change of name and address to the Treasurer on a form provided
13 by the Treasurer regardless of whether the name change is a
14 result of an acquisition, or merger, or consolidation.
15 Notification of such change must be made within 30 calendar
16 days after the effective date of the change ~~on its next~~
17 ~~monthly report.~~

18 (6) The Treasurer shall adopt rules establishing
19 procedures for mergers, acquisitions, consolidations, and
20 changes in name and address, providing forms, and clarifying
21 terms.

22 Section 13. Subsection (1) of section 280.11, Florida
23 Statutes, is amended to read:

24 280.11 Withdrawal from public deposits program; return
25 of pledged collateral.--

26 (1) A qualified public depository may withdraw from
27 the public deposits program by giving written notice to the
28 Treasurer. The contingent liability, required collateral, and
29 reporting requirements of the depository withdrawing from the
30 program shall continue for a period of 12 months after the
31 effective date of the withdrawal, except that the filing of

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1 reports may no longer be required when the average monthly
2 balance of public deposits is equal to zero. Notice of
3 withdrawal shall be mailed or delivered in sufficient time to
4 be received by the Treasurer at least 30 days before the
5 effective date of withdrawal. The Treasurer shall timely
6 publish the withdrawal notice in the Florida Administrative
7 Weekly which shall constitute notice to all depositors. The
8 withdrawing depository shall not receive or retain public
9 deposits after the effective date of the withdrawal until such
10 time as it again becomes a qualified public depository. The
11 Treasurer shall, upon request, return to the depository that
12 portion of the collateral pledged that is in excess of the
13 required collateral as reported on the current public
14 depository monthly report. Losses of interest or other
15 accumulations, if any, because of withdrawal under this
16 section shall be assessed and paid as provided in s.
17 280.09(2).

18 Section 14. Section 280.13, Florida Statutes, is
19 amended to read:

20 280.13 Eligible collateral ~~eligible for pledge by~~
21 ~~banks and savings associations.--~~

22 (1) Securities eligible to be pledged as collateral by
23 banks and savings associations shall be limited to:

24 (a) Direct obligations of the United States
25 Government.

26 (b) Obligations of any federal agency that are fully
27 guaranteed as to payment of principal and interest by the
28 United States Government.

29 (c) Obligations of the following federal agencies:

- 30 1. Farm credit banks.
- 31 2. Federal land banks.

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- 1 3. The Federal Home Loan Bank and its district banks.
- 2 4. Federal intermediate credit banks.
- 3 5. The Federal Home Loan Mortgage Corporation.
- 4 6. The Federal National Mortgage Association.
- 5 7. Obligations guaranteed by the Government National
- 6 Mortgage Association.

7 (d) General obligations of a state of the United
 8 States, or of Puerto Rico, or of a political subdivision or
 9 municipality thereof.

10 (e) Obligations issued by the Florida State Board of
 11 Education under authority of the State Constitution or
 12 applicable statutes.

13 (f) Tax anticipation certificates or warrants of
 14 counties or municipalities having maturities not exceeding 1
 15 year.

16 (g) Public housing authority obligations.

17 (h) Revenue bonds or certificates of a state of the
 18 United States or of a political subdivision or municipality
 19 thereof.

20 (i) Corporate bonds of any corporation that is not an
 21 affiliate or subsidiary of the qualified public depository.

22 (2) In addition to the securities listed in subsection
 23 (1), the Treasurer may, in his or her discretion, allow the
 24 pledge of the following types of securities. The Treasurer
 25 shall, by rule, define any restrictions, specific criteria, or
 26 circumstances for which these instruments will be acceptable.

27 (a) Securities of, or other interests in, any open-end
 28 management investment company registered under the Investment
 29 Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended
 30 from time to time, provided the portfolio of such investment
 31 company is limited to direct obligations of the United States

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1 Government and to repurchase agreements fully collateralized
2 by such direct obligations of the United States Government and
3 provided such investment company takes delivery of such
4 collateral either directly or through an authorized custodian.

5 (b) Collateralized Mortgage Obligations.

6 (c) Real Estate Mortgage Investment Conduits.

7 (3) Except as to obligations issued by or with respect
8 to which payment of interest and principal is guaranteed by
9 the United States Government or obligations of federal
10 agencies listed in subsection (1), the debt obligations
11 mentioned in this section shall be rated in one of the four
12 highest classifications by an established, nationally
13 recognized investment rating service.

14 (4) To be eligible as collateral under this section,
15 all debt obligations shall be interest bearing or accruing.

16 (5) Letters of credit issued by a Federal Home Loan
17 Bank are eligible as collateral under this section provided
18 that:

19 (a) The letter of credit has been delivered to the
20 Treasurer in the standard format approved by the Treasurer.

21 (b) The letter of credit meets required conditions of:

22 1. Being irrevocable.

23 2. Being clean and unconditional and containing a
24 statement that it is not subject to any agreement, condition,
25 or qualification outside of the letter of credit and providing
26 that a beneficiary need only present the original letter of
27 credit with any amendments and the demand form to promptly
28 obtain funds, and that no other document need be presented.

29 3. Being issued, presentable, and payable at a Federal
30 Home Loan Bank in U.S. dollars. Presentation may be made by
31 the beneficiary submitting the original letter of credit,

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1 including any amendments, and the demand in writing, by
2 overnight delivery.

3 4. Containing a statement that identifies and defines
4 the Treasurer as beneficiary.

5 5. Containing an issue date and a date of expiration.

6 6. Containing a term of at least 1 year and an
7 evergreen clause that provides at least 60 days written notice
8 to the beneficiary prior to expiration date for nonrenewal.

9 7. Containing a statement that it is subject to and
10 governed by the laws of the State of Florida and that, in the
11 event of any conflict with other laws, the laws of the State
12 of Florida will control.

13 8. Containing a statement that the letter of credit is
14 an obligation of the Federal Home Loan Bank and is in no way
15 contingent upon reimbursement.

16 9. Any other provision found necessary under the
17 Uniform Commercial Code--Letters of Credit.

18 (c) Obligations issued by the Federal Home Loan Bank
19 remain triple A rated by a nationally recognized source.

20 (d) The Federal Home Loan Bank issuing the letter of
21 credit agrees to provide confirmation upon request from the
22 Treasurer. Such confirmation shall be provided within 15
23 working days after the request, in a format prescribed by the
24 Treasurer, and shall require no identification other than the
25 qualified public depository's name and location.

26 (e) The qualified public depository completes an
27 agreement covering the use of the letters of credit as
28 eligible collateral, as described in s. 280.041(5).

29 (f) The qualified public depository, if notified by
30 the Treasurer, shall not be allowed to use letters of credit
31 if the Federal Home Loan Bank fails to pay a draw request as

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1 provided for in the letters of credit or fails to properly
 2 complete a confirmation of such letters of credit.

3 (6) Cash held by the Treasurer in the Treasury Cash
 4 Deposit Trust Fund or by a custodian is eligible as collateral
 5 under this section. Interest earned on cash deposits that is
 6 in excess of required collateral shall be paid to the
 7 qualified public depository upon request.

8 (7)(5) The Treasurer may disapprove any security or
 9 letter of credit that does not meet the requirements of this
 10 section or any rule adopted pursuant to this section or any
 11 security for which no current market price can be obtained
 12 from a nationally recognized source deemed acceptable to the
 13 Treasurer or cannot be converted to cash.

14 (8) The Treasurer shall adopt rules defining
 15 restrictions and special requirements for eligible collateral
 16 and clarifying terms.

17 Section 15. Paragraph (a) of subsection (1), paragraph
 18 (b) of subsection (2), and subsection (3) of section 280.16,
 19 Florida Statutes, are amended to read:

20 280.16 Requirements of qualified public depositories;
 21 confidentiality.--

22 (1) In addition to any other requirements specified in
 23 this chapter, qualified public depositories shall:

24 (a) ~~Beginning July 1, 1998,~~ Take the following actions
 25 for each public deposit account:

26 1. Identify the account as a "Florida public deposit"
 27 on the deposit account record with the name of the public
 28 depositor or provide a unique code for the account for such
 29 designation.

30 2. When the form prescribed by the Treasurer for
 31 acknowledgment of receipt of each public deposit account is

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1 presented to the qualified public depository by the public
2 depositor opening an account, the qualified public depository
3 shall execute and return the completed form to the public
4 depositor.

5 3. When the acknowledgment of receipt form is
6 presented to the qualified public depository by the public
7 depositor due to a change of account name, account number, or
8 qualified public depository name on an existing public deposit
9 account, the qualified public depository shall execute and
10 return the completed form to the public depositor within 45
11 calendar days after such presentation.

12 4. When the acknowledgment of receipt form is
13 presented to the qualified public depository by the public
14 depositor on an account existing before July 1, 1998, the
15 qualified public depository shall execute and return the
16 completed form to the public depositor within 45 calendar days
17 after such presentation.

18 (2) The following forms must be made under oath:

19 (b) Collateral control agreements and letter of credit
20 agreements ~~The public depository pledge agreement.~~

21 (3) Any information contained in a report of a
22 qualified public depository required under this chapter or any
23 rule adopted under this chapter, together with any information
24 required of a financial institution that is not a qualified
25 public depository, shall, if made confidential by any law of
26 the United States or of this state, be considered confidential
27 and exempt from the provisions of s. 119.07(1) and not subject
28 to dissemination to anyone other than the Treasurer under the
29 provisions of this chapter; however, it is the responsibility
30 of each qualified public depository and each financial
31 institution from which information is required to inform the

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1 Treasurer of information that is confidential and the law
2 providing for the confidentiality of that information, and the
3 Treasurer does not have a duty to inquire into whether
4 information is confidential.

5 Section 16. Except as otherwise provided herein, this
6 act shall take effect October 1, 2001.

7

8

9 ===== T I T L E A M E N D M E N T =====

10 And the title is amended as follows:

11 Delete everything before the enacting clause

12

13 and insert:

14

A bill to be entitled

15

An act relating to security for public
16 deposits; amending ss. 280.02, 280.04, 280.041,
17 280.05, 280.051, 280.054, 280.055, 280.07,
18 280.08, 280.09, 280.10, 280.11, 280.13, and
19 280.16, F.S.; revising definitions; revising
20 provisions requiring collateral for public
21 deposits; providing for use of certain letters
22 of credit; requiring additional collateral
23 under certain circumstances; providing
24 penalties; specifying certain agreements for
25 use as collateral; prohibiting a qualified
26 public depository from acting as its own
27 custodian; authorizing a custodian to withdraw
28 as custodian under certain circumstances;
29 authorizing use of certain letters of credit;
30 providing requirements; revising triggering
31 events for certain actions by the Treasurer;

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1 revising powers and duties of the Treasurer;
2 clarifying grounds for suspension or
3 disqualification of a qualified public
4 depository; revising conditions for imposition
5 of an administrative penalty; clarifying
6 criteria for the Treasurer to issue certain
7 orders; providing for contingent liability;
8 clarifying procedures for payment of losses;
9 providing for deposit of draws on letters of
10 credit into the Public Deposits Trust Fund;
11 revising procedures and requirements relating
12 to effect of mergers, acquisitions, or
13 consolidations; providing conditions for
14 eligibility of certain letters of credit as
15 collateral; clarifying requirements of
16 qualified public depositories; creating s.
17 280.071, F.S.; creating the Qualified Public
18 Depository Oversight Board; providing purposes;
19 requiring the Treasurer to initiate selection
20 of board members; providing for selection of
21 board members by certain qualified public
22 depositories; providing qualifications;
23 providing powers and duties of the board;
24 authorizing the Treasurer to adopt rules for
25 certain purposes; providing effective dates.

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