

By Senator Constantine

9-750-01

1 A bill to be entitled
2 An act relating to security for public
3 deposits; revising the Florida Security for
4 Public Deposits Act; amending s. 280.02, F.S.;
5 defining terms; amending s. 280.04, F.S.;
6 revising general provisions relating to
7 collateral for public deposits; amending s.
8 280.041, F.S.; prescribing requirements for
9 collateral arrangements; prescribing
10 requirements for Federal Reserve Bank
11 agreements; allowing the use of letters of
12 credit under certain conditions; revising the
13 description of triggering events that result in
14 the Treasurer's requiring certain deposits or
15 transfers for the purpose of properly
16 maintaining collateral; amending s. 280.05,
17 F.S.; revising the powers and duties of the
18 Treasurer; amending s. 280.051, F.S.;
19 specifying the grounds for suspending or
20 disqualifying a qualified public depository;
21 amending s. 280.054, F.S.; describing acts for
22 which a qualified public depository is subject
23 to an administrative penalty; amending s.
24 280.055, F.S.; revising grounds for the
25 issuance of cease and desist orders and
26 corrective orders; amending s. 280.07, F.S.;
27 providing for contingent liability of a
28 qualified public depository; creating s.
29 280.071, F.S.; creating the Qualified Public
30 Depository Oversight Board; providing the
31 purpose of the board; providing for identifying

1 representative qualified public depositories;
2 providing for member selection and
3 responsibilities; providing for rulemaking by
4 the Treasurer; amending s. 280.08, F.S.;
5 prescribing the procedure for payment of losses
6 after a default or insolvency has occurred;
7 conforming a cross-reference; amending s.
8 280.09, F.S.; providing for deposit into the
9 Public Deposits Trust Fund of the draw on
10 letters of credit held as collateral;
11 conforming a cross-reference; amending s.
12 280.10, F.S.; providing for the effect of
13 consolidations of a qualified public depository
14 with an institution that is not such a
15 depository; providing for rulemaking; amending
16 s. 280.11, F.S.; conforming a cross-reference;
17 amending s. 280.13, F.S.; providing collateral
18 requirements for letters of credit issued by a
19 Federal Home Loan Bank; amending other
20 collateral requirements; providing for
21 rulemaking; amending s. 280.16, F.S.;
22 eliminating a date that is no longer relevant;
23 prescribing requirements of qualified public
24 depositories, including confidentiality
25 requirements; providing an effective date.

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27 Be It Enacted by the Legislature of the State of Florida:

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

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1 280.02 Definitions.--As used in this chapter, the
2 term:

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

7 (2) "Alternative participation agreement" means an
8 agreement to restrictions which a qualified public depository
9 must complete as an alternative to withdrawing immediately
10 from the public deposits program due to the public
11 depository's financial condition.

12 ~~(3)~~~~(2)~~ "Average daily balance" means the average daily
13 balance of public deposits held during the reported month. The
14 average daily balance must be determined by totaling, by
15 account, the daily balances held by the depositor and then
16 dividing the total by the number of calendar days in the
17 month. Deposit insurance is then deducted from each account
18 balance and the resulting amounts are totaled to obtain the
19 average daily balance.

20 ~~(4)~~~~(3)~~ "Average monthly balance" means the average
21 monthly balance of public deposits held, before deducting
22 deposit insurance, by the depository during any 12 calendar
23 months. The average monthly balance of the previous 12
24 calendar months must be determined by adding the average daily
25 balance before deducting deposit insurance for the reported
26 month and the average daily balances before deducting deposit
27 insurance for the 11 months preceding that month and dividing
28 the total by 12.

29 ~~(5)~~~~(4)~~ "Book-entry form" means that securities are not
30 represented by a paper certificate but represented by an
31 account entry on the records of a depository trust clearing

1 system or, in the case of United States Government securities,
2 a Federal Reserve Bank.

3 (6)~~(5)~~ "Capital account" means total equity capital,
4 as defined on the balance-sheet portion of the Consolidated
5 Reports of Condition and Income (call report) or the Thrift
6 Financial Report, less intangible assets, as submitted to the
7 regulatory banking authority.

8 (7)~~(6)~~ "Collateral-pledging level," for qualified
9 public depositories, means the percentage of collateral
10 required to be pledged as provided in s. 280.04 by a financial
11 institution.

12 (8)~~(7)~~ "Current month" means the month immediately
13 following the month for which the monthly report is due from
14 qualified public depositories.

15 (9)~~(8)~~ "Custodian" means the Treasurer or any bank,
16 savings association, or trust company that:

17 (a) Is organized and existing under the laws of this
18 state, any other state, or the United States;

19 (b) Has executed all forms required under this chapter
20 or any rule adopted hereunder;

21 (c) Agrees to be subject to the jurisdiction of the
22 courts of this state, or of courts of the United States which
23 are located within this state, for the purpose of any
24 litigation arising out of this chapter; and

25 (d) Has been approved by the Treasurer to act as a
26 custodian.

27 (10)~~(9)~~ "Default or insolvency" includes, without
28 limitation, the failure or refusal of a qualified public
29 depository to pay any check or warrant drawn upon sufficient
30 and collected funds by any public depositor or to return any
31 deposit on demand or at maturity together with interest as

1 | agreed; the issuance of an order by any supervisory authority
2 | restraining such depository from making payments of deposit
3 | liabilities; or the appointment of a receiver for such
4 | depository.

5 | (11)~~(10)~~ "Effective date of notice of withdrawal or
6 | order of discontinuance" pursuant to s. 280.11(3) means that
7 | date which is set out as such in any notice of withdrawal or
8 | order of discontinuance from the Treasurer.

9 | (12)~~(11)~~ "Eligible collateral" means securities,
10 | Federal Home Loan Bank letters of credit, and cash, as
11 | designated in s. 280.13.

12 | (13)~~(12)~~ "Financial institution" means, including, but
13 | not limited to, an association, bank, brokerage firm, credit
14 | union, industrial savings bank, savings and loan association,
15 | trust company, or other type of financial institution
16 | organized under the laws of this state or any other state of
17 | the United States and doing business in this state or any
18 | other state, in the general nature of the business conducted
19 | by banks and savings associations.

20 | (14)~~(13)~~ "Governmental unit" means the state or any
21 | county, school district, community college district, special
22 | district, metropolitan government, or municipality, including
23 | any agency, board, bureau, commission, and institution of any
24 | of such entities, or any court.

25 | (15)~~(14)~~ "Loss to public depositors" means loss of all
26 | principal and all interest or other earnings on the principal
27 | accrued or accruing as of the date the qualified public
28 | depository was declared in default or insolvent.

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

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1 ~~(17)~~~~(15)~~ "Operating subsidiary" means the qualified
2 public depository's 100-percent owned corporation that has
3 ownership of pledged collateral. The operating subsidiary may
4 have no powers beyond those that its parent qualified public
5 depository may itself exercise. The use of an operating
6 subsidiary is at the discretion of the qualified public
7 depository and must meet the Treasurer's requirements.

8 (18) "Oversight board" means the Qualified Public
9 Depository Oversight Board created under s. 280.071 for the
10 purpose of safeguarding the integrity of the public deposits
11 program and preventing the realization of loss assessments
12 through standards, policies, and recommendations for action
13 made to the Treasurer.

14 ~~(19)~~~~(16)~~ "Pledged collateral" means securities or cash
15 held separately and distinctly by an eligible custodian for
16 the benefit of the Treasurer to be used as security for
17 Florida public deposits. This includes maturity and call
18 proceeds.

19 ~~(20)~~~~(17)~~ "Pledgor" means the qualified public
20 depository and, if one is used, operating subsidiary.

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

24 ~~(22)~~~~(19)~~ "Previous month" means the month or months
25 immediately preceding the month for which a monthly report is
26 due from qualified public depositories.

27 ~~(23)~~~~(20)~~ "Public deposit" means the moneys of the
28 state or of any county, school district, community college
29 district, special district, metropolitan government, or
30 municipality, including agencies, boards, bureaus,
31 commissions, and institutions of any of the foregoing, or of

1 any court, and includes the moneys of all county officers,
2 including constitutional officers, that are placed on deposit
3 in a bank, savings bank, or savings association and for which
4 the bank, savings bank, or savings association is required to
5 maintain reserves. This includes, but is not limited to, time
6 deposit accounts, demand deposit accounts, and nonnegotiable
7 certificates of deposit. Moneys in deposit notes and in other
8 nondeposit accounts such as repurchase or reverse repurchase
9 operations are not public deposits. Securities, mutual funds,
10 and similar types of investments are not considered public
11 deposits and shall not be subject to the provisions of this
12 chapter.

13 (24)~~(21)~~ "Public depositor" means the Treasurer or
14 other chief financial officer or designee responsible for
15 handling public deposits.

16 (25)~~(22)~~ "Public deposits program" means the Florida
17 Security for Public Deposits Act set forth in administration
18 of this chapter and any rules adopted under this chapter ~~by or~~
19 ~~on behalf of the Treasurer.~~

20 (26)~~(23)~~ "Qualified public depository" means any bank,
21 savings bank, or savings association that:

22 (a) Is organized and exists under the laws of the
23 United States, the laws of this state or any other state or
24 territory of the United States.

25 (b) Has its principal place of business in this state
26 or has a branch office in this state which is authorized under
27 the laws of this state or of the United States to receive
28 deposits in this state.

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

1 (d) Has procedures and practices for accurate
2 identification, classification, reporting, and
3 collateralization of public deposits.

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

5 (f) Has been designated by the Treasurer as a
6 qualified public depository.

7 (27)~~(24)~~ "Reported month" means the month for which a
8 monthly report is due from qualified public depositories.

9 (28)~~(25)~~ "Required collateral" of a qualified public
10 depository means eligible collateral having a market value
11 equal to or in excess of the amount required ~~to be pledged~~
12 pursuant to s. 280.04 ~~as computed and reported monthly or when~~
13 ~~requested by the Treasurer.~~

14 (29)~~(26)~~ "Treasurer" means the Treasurer of the State
15 of Florida.

16 (30)~~(27)~~ "Treasurer's custody" means is a collateral
17 arrangement governed by a contract between a designated
18 Treasurer's custodian and the Treasurer. This arrangement
19 requires collateral to be in the Treasurer's name in order to
20 perfect the security interest.

21 (31)~~(28)~~ "Triggering events" are events set out in
22 section 280.041 ~~subsection 280.041(4)~~ which give the
23 Treasurer, ~~as pledgee,~~ the right to:

24 (a) Instruct the custodian to transfer securities
25 pledged, interest payments, and other proceeds of pledged
26 collateral not previously credited to the pledgor; and-

27 (b) Demand payment under letters of credit.

28 Section 2. Section 280.04, Florida Statutes, is
29 amended to read:

30 280.04 Collateral for public deposits; general
31 provisions.--

1 (1) The Treasurer shall determine the collateral
2 requirements and collateral pledging level for each qualified
3 public depository following procedures established by rule.
4 These procedures shall include numerical parameters for
5 25-percent, 50-percent, 125-percent, and 200-percent pledge
6 levels based on nationally recognized financial rating
7 services information and established financial performance
8 guidelines.

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

13 (a) The average daily balance of public deposits that
14 does not exceed the lesser of its capital account or 20
15 percent of the pool figure multiplied by the depository's
16 collateral-pledging level, plus the greater of:

17 1. One hundred twenty-five percent of the average
18 daily balance of public deposits in excess of capital
19 accounts; or

20 2. One hundred twenty-five percent of the average
21 daily balance of public deposits in excess of 20 percent of
22 the pool figure.

23 (b) Twenty-five percent of the average monthly balance
24 of public deposits.

25 (c) One hundred twenty-five percent of the average
26 daily balance of public deposits if the qualified public
27 depository:

28 1. Has been established for less than 3 years;

29 2. Has experienced material decreases in its capital
30 accounts; or

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1 3. Has an overall financial condition that is
2 materially deteriorating.

3 (d) Two hundred percent of an established maximum
4 amount of public deposits that has been mutually agreed upon
5 by and between the Treasurer and the qualified public
6 depository.

7 (e) Minimum required collateral of \$100,000.

8 (f) As required in special instructions from the
9 Treasurer.

10 (3) Each qualified public depository shall report its
11 required collateral on the monthly report required under s.
12 280.16 and shall simultaneously pledge, deposit, or issue
13 eligible collateral as needed.

14 (4)~~(3)~~ Additional collateral is required within 2
15 business days ~~48 hours~~ if public deposits are accepted that
16 would increase the qualified public depository's average daily
17 balance for the current month by 25 percent over the average
18 daily balance of the previously reported month.

19 (5)~~(4)~~ Additional collateral of 20 percent of required
20 collateral is necessary if a valuation date other than the
21 close of business as described below has been approved for the
22 qualified public depository and the required collateral is
23 found to be insufficient based on the Treasurer's valuation.

24 (6)~~(5)~~ Each qualified public depository shall value
25 its collateral in the following manner; it must:

26 (a) Use a nationally recognized source.

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

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1 (c) Report any material decline in value that occurs
2 before the date of mailing the monthly report required under
3 s. 280.16 to the Treasurer.

4 (d) Use 100 percent of the maximum amount available
5 under Federal Home Loan Bank letters of credit as market
6 value.

7 (7) A qualified public depository shall pledge,
8 deposit, or issue additional eligible collateral between
9 filing periods of the monthly report required under s. 280.16
10 when notified by the Treasurer that the current market value
11 of collateral does not meet the collateral requirements. The
12 pledge, deposit, or issuance of this additional collateral
13 must be made within 2 business days after the Treasurer's
14 notification.

15 (8) A qualified public depository may be required to
16 return public deposits to governmental units and may be
17 suspended or disqualified or subjected to administrative
18 penalty as provided in ss. 280.051 and 280.054 for failure to
19 meet the collateral requirements.

20 (9) The Treasurer shall adopt rules for the
21 establishment of collateral requirements, collateral pledging
22 levels, required collateral calculations, and market value,
23 and rules that clarify related terms.

24 Section 3. Section 280.041, Florida Statutes, is
25 amended to read:

26 280.041 Collateral arrangements; agreements,
27 provisions, and triggering events.--

28 (1) Eligible collateral listed in s. 280.13 may be
29 pledged, deposited, or issued using the following collateral
30 arrangements as approved by the Treasurer for a qualified
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1 public depository or an operating subsidiary, if one is used,
2 to meet collateral requirements:

3 (a) Regular custody arrangement. Collateral is to be
4 pledged to the Treasurer pursuant to subsection (2).

5 (b) Federal Reserve Bank custody arrangement.
6 Collateral is to be pledged to the Treasurer pursuant to
7 subsection (3).

8 (c) Treasurer's custody arrangement. Collateral is to
9 be deposited in the Treasurer's name pursuant to subsection
10 (4).

11 (d) Federal Home Loan Bank letter of credit
12 arrangement. Collateral is to be issued with the Treasurer as
13 beneficiary pursuant to subsection (5).

14 (e) Cash arrangement. Collateral is to be held by the
15 Treasurer or a custodian.

16 (2)(1) With the approval of the Treasurer, a qualified
17 public depository or operating subsidiary, as pledgor, may
18 deposit eligible collateral with a custodian. A qualified
19 public depository may not act as its own custodian. Except in
20 the case of using a Federal Reserve Bank as custodian, ~~which~~
21 ~~may require other collateral agreement provisions,~~ the
22 following are necessary for the Treasurer's approval:

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

26 1. The pledgor shall own the pledged collateral. The
27 pledged collateral shall be eligible collateral and shall be
28 at least equal to the amount of required collateral.

29 2. The pledgor shall grant to the Treasurer an
30 interest in pledged collateral for the purposes of this
31 section. The pledgor shall not enter into or execute any other

1 agreement related to the pledged collateral that would create
2 an interest in or lien on that collateral in any manner in
3 favor of any third party without the written consent of the
4 Treasurer.

5 3. The pledgor shall not grant the custodian any lien
6 that attaches to the collateral in favor of the custodian that
7 is superior or equal to the security interest of the
8 Treasurer.

9 4. The pledgor shall agree that the Treasurer may,
10 without notice to or consent by the pledgor, require the
11 custodian to comply with and perform any and all requests and
12 orders directly from the Treasurer. These include, but are not
13 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 pledgor shall acknowledge that the Treasurer
18 may, without notice to or consent by the pledgor, require the
19 custodian to hold principal payments and income for the
20 benefit of the Treasurer.

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

23 a. A deposit transaction of eligible collateral may be
24 made without prior approval from the Treasurer provided:
25 security types that have restrictions have been approved in
26 advance of the transaction by the Treasurer and simultaneous
27 notification is given to the Treasurer; and the custodian has
28 not received notice from the Treasurer prohibiting deposits
29 without prior approval.

30 b. A substitution transaction of eligible collateral
31 may be made without prior approval from the Treasurer

1 provided: security types that have restrictions have been
2 approved in advance of the transaction by the Treasurer; the
3 market value of the securities to be substituted is at least
4 equal to the amount withdrawn; simultaneous notification is
5 given to the Treasurer; and the custodian has not received
6 notice from the Treasurer prohibiting substitution.

7 c. A transfer of collateral between accounts at a
8 custodian requires the Treasurer's prior approval. The
9 collateral shall be released subject to redeposit in the new
10 account with a pledge to the Treasurer intact.

11 d. A transfer of collateral from a custodian to
12 another custodian requires the Treasurer's prior approval and
13 a valid collateral agreement with the new custodian. The
14 collateral shall be released subject to redeposit at the new
15 custodian with a pledge to the Treasurer intact.

16 e. A withdrawal transaction requires the Treasurer's
17 prior approval. The market value of eligible collateral
18 remaining after the withdrawal shall be at least equal to the
19 amount of required collateral. A withdrawal transaction shall
20 be executed for any release of collateral including maturity
21 or call proceeds.

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

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

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

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1 b. Separate bond assignment forms as required by the
2 bond agent or trustee.

3 c. Certified copies of resolutions adopted by the
4 pledgor's governing body authorizing execution of these
5 documents.

6 8. The pledgor shall be responsible for all costs
7 necessary to the functioning of the collateral agreement or
8 associated with confirmation of pledged collateral to the
9 Treasurer and acknowledges that these costs shall not be a
10 charge against the Treasurer or his or her interests in the
11 pledged collateral.

12 9. The pledgor, if notified by the Treasurer, shall
13 not be allowed to use a custodian if that custodian fails to
14 complete the collateral agreement, releases pledged collateral
15 without the Treasurer's approval, fails to properly complete
16 confirmations of pledged collateral, fails to honor a request
17 for examination of definitive pledged collateral and records
18 of book-entry securities, or fails to provide requested
19 documents on definitive securities. The period for disallowing
20 the use of a custodian is 1 year.

21 10. The pledgor shall be subject to the jurisdiction
22 of the courts of the State of Florida, or of courts of the
23 United States located within the State of Florida, for the
24 purpose of any litigation arising out of the act.

25 11. The pledgor is responsible and liable to the
26 Treasurer for any action of agents the pledgor uses to execute
27 collateral transactions or submit reports to the Treasurer.

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

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1 13. The pledgor shall submit proof that authorized
2 individuals executed the collateral agreement on behalf of the
3 pledgor.

4 14. The pledgor shall agree by resolution of the board
5 of directors that collateral agreements entered into for
6 purposes of this section have been formally accepted and
7 constitute official records of the pledgor.

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

11 (b) A completed collateral agreement in a form
12 prescribed by the Treasurer in which the custodian agrees to
13 the following provisions:

14 1. The custodian shall have no responsibility to
15 ascertain whether the pledged securities are at least equal to
16 the amount of required collateral nor whether the pledged
17 securities are eligible collateral.

18 2. The custodian shall hold pledged collateral in a
19 custody account for the Treasurer for purposes of this
20 section. The custodian shall not enter into or execute any
21 other agreement related to the collateral that would create an
22 interest in or lien on that collateral in any manner in favor
23 of any third party without the written consent of the
24 Treasurer.

25 3. The custodian shall agree that any lien that
26 attaches to the collateral in favor of the custodian shall not
27 be superior or equal to the security interest of the
28 Treasurer.

29 4. The custodian shall, without notice to or consent
30 by the pledgor, comply with and perform any and all requests
31 and orders directly from the Treasurer. These include, but are

1 not limited to, liquidating all collateral and submitting the
2 proceeds directly to the Treasurer in the name of the
3 Treasurer only or transferring all collateral into an account
4 designated solely by the Treasurer.

5 5. The custodian shall consider principal payments on
6 pay-down securities and income paid on pledged collateral as
7 the property of the pledgor and shall pay thereto provided the
8 custodian has not received written notice from the Treasurer
9 to hold such principal payments and income for the benefit of
10 the Treasurer.

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

13 a. A deposit transaction of eligible collateral may be
14 made without prior approval from the Treasurer unless the
15 custodian has received notice from the Treasurer requiring the
16 Treasurer's prior approval.

17 b. A substitution transaction of eligible collateral
18 may be made without prior approval from the Treasurer provided
19 the pledgor certifies the market value of the securities to be
20 substituted is at least equal to the market value amount of
21 the securities to be withdrawn and the custodian has not
22 received notice from the Treasurer prohibiting substitution.

23 c. A transfer of collateral between accounts at a
24 custodian requires the Treasurer's prior approval. The
25 collateral shall be released subject to redeposit in the new
26 account with a pledge to the Treasurer intact. Confirmation
27 from the custodian to the Treasurer must be received within 5
28 business days of the redeposit.

29 d. A transfer of collateral from a custodian to
30 another custodian requires the Treasurer's prior approval. The
31 collateral shall be released subject to redeposit at the new

1 | custodian with a pledge to the Treasurer intact. Confirmation
2 | from the new custodian to the Treasurer must be received
3 | within 5 business days of the redeposit.

4 | e. A withdrawal transaction requires the Treasurer's
5 | prior approval. A withdrawal transaction shall be executed for
6 | the release of any pledged collateral including maturity or
7 | call proceeds.

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

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

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

17 | c. Certified copies of resolutions adopted by the
18 | custodian's governing body authorizing execution of these
19 | documents.

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

26 | 9. The custodian shall agree to provide confirmation
27 | of pledged collateral upon request from the Treasurer. This
28 | confirmation shall be provided within 15 working days after
29 | the request, in a format prescribed by the Treasurer, and
30 | shall require no identification other than the pledgor name
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1 and location, unless the special identification is provided in
2 the collateral agreement.

3 10. The custodian 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 custodian shall be responsible and liable to
8 the Treasurer for any action of agents the custodian uses to
9 hold and service collateral pledged to the Treasurer.

10 12. The custodian 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 Treasurer shall have the right to examine
14 definitive pledged collateral and records of book-entry
15 securities during the regular business hours of the custodian
16 without cost to the Treasurer.

17 14. The responsibilities of the custodian for the
18 safekeeping of the pledged collateral shall be limited to the
19 diligence and care usually exercised by a banking or trust
20 institution toward its own property.

21 15. The custodian shall be bound by any other
22 provisions found necessary for the Treasurer to have a
23 perfected security interest in collateral under the Uniform
24 Commercial Code.

25 (3)~~(2)~~ With the approval of the Treasurer, a pledgor
26 may deposit eligible collateral pursuant to an agreement with
27 a Federal Reserve Bank. The Federal Reserve Bank agreement
28 may:

29 (a) Require terms not consistent with subsection
30 (2)~~(1)~~.

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1 (b) Not subject the Treasurer to any costs or
2 indemnification requirements.

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

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

9 (b) The custodian used must be a Treasurer's approved
10 custodian that must:

11 1. Meet the definition of custodian.

12 2. Not be an affiliate of the qualified public
13 depository.

14 3. Be bound under a distinct Treasurer's custodial
15 contract.

16 (c) All deposit transactions require the approval of
17 the Treasurer.

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

19 (e) The qualified public depository shall be
20 responsible for all costs necessary to the functioning of the
21 contract or associated with the confirmation of securities in
22 the name of the Treasurer and acknowledges that these costs
23 shall not be a charge against the Treasurer and may be
24 deducted from the collateral or income earned if unpaid.

25 (5) With the approval of the Treasurer, a qualified
26 public depository may use Federal Home Loan Bank letters of
27 credit to meet collateral requirements. A completed agreement
28 that includes the following provisions is necessary for the
29 Treasurer's approval:

30 (a) The letter of credit must meet the definition of
31 eligible collateral.

1 (b) The qualified public depository must agree that
2 the Treasurer, as beneficiary, may, without notice to or
3 consent by the qualified public depository, demand payment
4 under the letter of credit if any of the triggering events
5 listed in s. 280.041 occurs.

6 (c) The qualified public depository must agree that
7 funds received by the Treasurer due to the occurrence of one
8 or more triggering events may be deposited in the Treasury
9 Cash Deposit Trust Fund for purposes of eligible collateral.

10 (d) The qualified public depository must arrange for
11 the issuance of letters of credit that meet the requirements
12 of s. 280.13 and for their delivery to the Treasurer. All
13 transactions involving letters of credit require the
14 Treasurer's approval.

15 (e) The qualified public depository must be
16 responsible for all costs necessary to the use or confirmation
17 of letters of credit issued on behalf of the Treasurer and
18 must acknowledge that these costs will not be a charge against
19 the Treasurer.

20 (f) The qualified public depository must be subject to
21 the jurisdiction of the courts of this state, or of courts of
22 the United States which are located within this state, for the
23 purpose of any litigation arising out of this act.

24 (g) The qualified public depository must agree that
25 any information, form, or report that is electronically
26 transmitted to the Treasurer has the same enforceability as a
27 signed writing.

28 (h) The qualified public depository must submit proof
29 that authorized individuals executed the letters of credit
30 agreement on its behalf.

31

1 (i) The qualified public depository must agree by
2 resolution of its board of directors that the letters of
3 credit agreements entered into for purposes of this section
4 have been formally accepted and constitute official records of
5 the qualified public depository.

6 ~~(6)(4)~~ The Treasurer may demand payment under a letter
7 of credit or direct a custodian to deposit or transfer
8 collateral and proceeds of securities not previously credited
9 upon the occurrence of one or more triggering events provided
10 that, to the extent not incompatible with the protection of
11 public deposits, as determined in the Treasurer's sole and
12 absolute discretion, the Treasurer shall provide a custodian
13 and the qualified public depository with 48 hours' advance
14 notice before directing such deposit or transfer. These events
15 include:

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

18 (b) The qualified public depository fails to have
19 adequate procedures and practices for the accurate
20 identification, classification, reporting, and
21 collateralization of public deposits.

22 (c) The custodian fails to provide or allow inspection
23 and verification of documents, reports, records, or other
24 information dealing with the pledged collateral or financial
25 information.

26 (d) The qualified public depository or its operating
27 subsidiary fails to provide or allow inspection and
28 verification of documents, reports, records, or other
29 information dealing with Florida public deposits, pledged
30 collateral, or financial information.

31

1 (e) The custodian fails to hold income and principal
2 payments made on securities held as collateral or fails to
3 deposit or transfer such payments pursuant to the Treasurer's
4 instructions.

5 (f) The qualified public depository defaults or
6 becomes insolvent.

7 (g) The qualified public depository fails to pay an
8 assessment.

9 (h) The qualified public depository fails to pay an
10 administrative penalty.

11 (i) The qualified public depository fails to meet
12 financial condition standards.

13 (j) The qualified public depository charges a
14 withdrawal penalty to public depositors when the qualified
15 public depository is suspended, disqualified, or withdrawn
16 from the public deposits program.

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

20 (l) The qualified public depository pledges, deposits,
21 or has issued insufficient or unacceptable collateral to meet
22 collateral requirements within the prescribed time ~~cover~~
23 ~~public deposits.~~

24 (m) ~~Pledged~~ Collateral, other than a proper
25 substitution, is released without the prior approval of the
26 Treasurer.

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

31

1 (o) The qualified public depository, custodian,
2 operating subsidiary, or agent fails to timely cooperate in
3 resolving problems by the date established in written
4 communication from the Treasurer.

5 (p) The custodian fails to provide sufficient
6 confirmation information.

7 (q) The Federal Home Loan Bank or the qualified public
8 depository gives notification that a letter of credit will not
9 be extended or renewed, and other eligible collateral equal to
10 required collateral has not been deposited within 30 days
11 after the notice is given or 30 days before the expiration of
12 the letter of credit.

13 (r) The qualified public depository involved in a
14 merger, acquisition, consolidation, or other organizational
15 change fails to notify the Treasurer or to ensure that
16 required collateral is properly maintained by the depository
17 holding the Florida public deposits.

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

20 ~~(7)(5)~~ The Treasurer shall adopt rules to identify
21 forms and establish procedures for collateral agreements and
22 transactions, furnish confirmation requirements, establish
23 procedures for using an operating subsidiary and agents, and
24 clarify terms.

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

27 280.05 Powers and duties of the Treasurer.--In
28 fulfilling the requirements of this act, the Treasurer has the
29 power to take the following actions, as he or she considers
30 necessary:
31

1 (1) Identify representative qualified public
2 depositories and furnish notification for the selection of the
3 Qualified Public Depository Oversight Board pursuant to s.
4 280.071.

5 ~~(1) Establish criteria, based on the overall financial~~
6 ~~condition of the participant and applicants, as may be~~
7 ~~necessary, to protect the integrity of the public deposits~~
8 ~~program, to:~~

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

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

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

14 ~~(d) Establish collateral pledging levels based on~~
15 ~~qualitative and quantitative standards; and~~

16 ~~(e) Restrict substitutions of collateral subject to~~
17 ~~the approval of the Treasurer.~~

18 ~~(2) Appoint a six-member advisory committee to review~~
19 ~~and recommend criteria to be used by the Treasurer for~~
20 ~~purposes stated in subsection (1) in order to protect public~~
21 ~~deposits and the depositories in the program. Each member~~
22 ~~selected to serve on the advisory committee must be a~~
23 ~~representative of his or her industry. Advisory committee~~
24 ~~members must represent active qualified public depositories,~~
25 ~~not in the process of withdrawing from the public deposits~~
26 ~~program, in compliance with all applicable rules, regulations,~~
27 ~~and reporting requirements of this chapter. Members must~~
28 ~~possess knowledge, skill, and experience in one or more of the~~
29 ~~following areas:~~

30 ~~(a) Financial analysis;~~

31 ~~(b) Trend analysis;~~

- 1 ~~(c) Accounting;~~
2 ~~(d) Banking;~~
3 ~~(e) Risk management; or~~
4 ~~(f) Investment management.~~

5
6 ~~Members' terms shall be for 4 years. Any person appointed to~~
7 ~~fill a vacancy on the advisory committee may serve only for~~
8 ~~the remainder of the unexpired term. Any member is eligible~~
9 ~~for reappointment and shall serve until a successor qualifies.~~
10 ~~The advisory committee shall elect a chair and vice chair and~~
11 ~~shall also designate a secretary who need not be a member of~~
12 ~~the advisory committee. The secretary shall keep a record of~~
13 ~~the proceedings of the advisory committee and shall be the~~
14 ~~custodian of all printed materials filed with or by the~~
15 ~~advisory committee. Notwithstanding the existence of vacancies~~
16 ~~on the advisory committee, a majority of the members~~
17 ~~constitutes a quorum. The advisory committee shall not take~~
18 ~~official action in the absence of a quorum. Each member may~~
19 ~~name a designee to serve on the advisory committee on behalf~~
20 ~~of the member. However, any designee so named must meet the~~
21 ~~qualifications required of the selected member and be approved~~
22 ~~by the Treasurer. The advisory committee shall convene as~~
23 ~~needed.~~

24 ~~(2)(3) Establish goals and objectives and Provide~~
25 ~~other data for the Qualified Public Depository Oversight~~
26 ~~Board's duties, pursuant to s. 280.071, of:~~

27 ~~(a) Establishing standards for qualified public~~
28 ~~depositories and custodians.~~

29 ~~(b) Evaluating requests for exceptions to standards~~
30 ~~and alternative participation agreements.~~

31

1 (c) Reviewing and recommending action concerning a
2 violation committed by a qualified public depository or
3 custodian ~~as may be necessary to assist the advisory~~
4 ~~committee established under subsection (2) in developing~~
5 ~~standards for the program.~~

6 ~~(3)(4)~~ Review, implement, monitor, evaluate, and
7 modify, ~~as needed,~~ all or any part of the standards, ~~and~~
8 policies, or recommendations of the Qualified Public
9 Depository Oversight Board ~~recommended by an advisory~~
10 ~~committee.~~

11 ~~(4)(5)~~ Perform financial analysis of ~~any~~ qualified
12 public depositories ~~depository as needed.~~

13 ~~(5)(6)~~ Require ~~such~~ collateral, or increase the
14 collateral-pledging level, of any qualified public depository
15 ~~as may be necessary to administer the provisions of this~~
16 ~~chapter and to protect the integrity of the public deposits~~
17 ~~program.~~

18 ~~(7)~~ ~~Establish a minimum amount of required collateral~~
19 ~~as the Treasurer deems necessary to provide for the contingent~~
20 ~~liability pool.~~

21 ~~(6)(8)~~ Decline to accept, or reduce the reported value
22 of, collateral ~~as circumstances may require~~ in order to ensure
23 the pledging or depositing of sufficient marketable collateral
24 and acceptable letters of credit ~~to meet the purposes of this~~
25 ~~chapter.~~

26 ~~(7)(9)~~ Maintain perpetual inventory of pledged
27 collateral and perform monthly market valuations and quality
28 ratings.

29 ~~(8)(10)~~ Monitor and confirm collateral with, ~~as often~~
30 ~~as deemed necessary by the Treasurer, the pledged collateral~~
31

1 ~~held by third party~~ custodians and issuers of letters of
2 credit.

3 ~~(9)(11) Move collateral~~ Perfect interest in pledged
4 ~~collateral by having pledged securities moved~~ into an account
5 established in the Treasurer's name upon the occurrence of one
6 or more triggering events. This action shall be taken at the
7 discretion of the Treasurer.

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

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

16 ~~(12)(13)~~ Release collateral held in the Treasurer's
17 name, subject to sale and transfer of funds directly from the
18 custodian to public depositors of a withdrawing depository.

19 (13) Demand payment under letters of credit for any of
20 the triggering events listed in s. 280.041 and deposit the
21 funds into the Public Deposits Trust Fund for purposes of
22 paying losses to public depositors, into the Treasurer's
23 Administrative and Investment Trust Fund for receiving payment
24 of administrative penalties, and into the Treasury Cash
25 Deposit Trust Fund for purposes of eligible collateral.

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

28 (15) Transfer funds directly from the custodian to
29 public depositors or the receiver in order to facilitate
30 prompt payment of claims.

31

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

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

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

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

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

26 (17) Verify the reports of any qualified public
27 depository relating to public deposits it holds when necessary
28 to protect the integrity of the public deposits program.

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

31

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

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

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

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

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

1 or other financial institution as provided in s. 280.054 or s.
2 280.055. In addition to the administrative penalty, the
3 Treasurer may suspend or disqualify any qualified public
4 depository for violation of any order issued pursuant to this
5 paragraph.

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

8 280.051 Grounds for suspension or disqualification of
9 a qualified public depository.--A qualified public depository
10 may be suspended or disqualified or both if the Treasurer
11 determines that the qualified public depository has:

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

16 (3) Failed to maintain required collateral ~~pledge~~
17 ~~sufficient collateral to cover public deposits.~~

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

20 280.054 Administrative penalty in lieu of suspension
21 or disqualification.--

22 (3) A qualified public depository ~~that violates s.~~
23 ~~280.04(5) or a custodian that violates s. 280.04(6)~~ is subject
24 to an administrative penalty in an amount not exceeding the
25 greater of \$1,000 or 10 percent of the amount of withdrawal,
26 not exceeding \$10,000, if it:-

27 (a) Fails to provide required collateral using
28 eligible collateral and prescribed collateral agreements; or

29 (b) Withdraws collateral without the Treasurer's
30 approval.

31

1 Section 7. Section 280.055, Florida Statutes, is
2 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 (a) A qualified public depository has requested and
8 obtained a release of pledged collateral without approval of
9 the Treasurer;

10 (b) A bank, savings association, or other financial
11 institution is holding public deposits without a certificate
12 of qualification issued by the Treasurer;

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

15 (d) A custodian has released pledged collateral
16 without approval of the Treasurer;

17 (e) A qualified public depository or a custodian has
18 not furnished to the Treasurer, when the Treasurer requested,
19 a power of attorney or bond power or bond assignment form
20 required by the bond agent or bond trustee for each issue of
21 registered certificated securities pledged and registered in
22 the name, or nominee name, of the qualified public depository
23 or custodian; or

24 (f) A qualified public depository; a bank, savings
25 association, or other financial institution; or a custodian
26 has committed any other violation of this chapter or any rule
27 adopted pursuant to this chapter that the Treasurer determines
28 may be remedied by a cease and desist order or corrective
29 order.

30 (2) Any qualified public depository or other bank,
31 savings association, or financial institution or custodian

1 that violates a cease and desist order or corrective order of
2 the Treasurer is subject to an administrative penalty not
3 exceeding \$1,000 for each violation of the order. Each day
4 the violation of the order continues constitutes a separate
5 violation.

6 Section 8. Section 280.07, Florida Statutes, is
7 amended to read:

8 280.07 Mutual responsibility and contingent
9 liability.--Any bank or savings association that is designated
10 as a qualified public depository and that is not insolvent
11 shall guarantee public depositors against loss caused by the
12 default or insolvency of other qualified public depositories.
13 Each qualified public depository shall execute a form
14 prescribed by the Treasurer for such guarantee which shall be
15 approved by the board of directors and shall become an
16 official record of the institution.

17 Section 9. Section 280.071, Florida Statutes, is
18 created to read:

19 280.071 Qualified Public Depository Oversight Board;
20 purpose; identifying representative qualified public
21 depositories; member selection and responsibilities.--There is
22 created a Qualified Public Depository Oversight Board,
23 consisting of six members and six alternate members who
24 represent the interests of all qualified public depositories
25 in safeguarding the integrity of the public deposits program
26 and preventing the realization of loss assessments.

27 (1) On July 31 of each year and as vacancies occur,
28 the Treasurer, in order to initiate the selection of oversight
29 board representation, shall:

30 (a) Categorize eligible qualified public depositories
31 into three groups according to average asset size. Eligible

1 qualified public depositories must be in compliance with all
2 requirements and cannot be suspended, disqualified, or
3 withdrawn from, or under an alternative participation
4 agreement in, the public deposits program.

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

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

11 (2) Each of the six representative qualified public
12 depositories shall select a member and an alternate member of
13 the oversight board and shall give the Treasurer written
14 information concerning the selections within 30 calendar days
15 after the Treasurer's notice.

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

22 (4) Each member and alternate member must:

23 (a) Have resources available for review of qualified
24 public depository issues.

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

27 1. Financial analysis;

28 2. Trend analysis;

29 3. Accounting;

30 4. Banking;

31 5. Risk management; or

- 1 6. Investment management.
- 2 (5) The oversight board members and alternate members
3 are subject to approval by the Treasurer.
- 4 (6) The alternate member must act on the member's
5 behalf if the member is unable to perform oversight board
6 functions, and has the same rights, duties, and
7 responsibilities as the member.
- 8 (7) Each member shall serve until a successor is
9 selected.
- 10 (8) Expenses incurred by a member in carrying out
11 duties of the oversight board shall be paid by his or her
12 representative qualified public depository.
- 13 (9) The oversight board shall organize, communicate,
14 and conduct meetings as follows:
- 15 (a) Elect a chair and vice-chair.
- 16 (b) Designate a secretary, who need not be a member of
17 the oversight board. The secretary shall:
- 18 1. Keep a record of communications and meeting
19 proceedings.
- 20 2. Act as custodian of all printed materials filed
21 with or by the oversight board.
- 22 (c) Communicate through electronic means and express
23 delivery services whenever possible.
- 24 (d) Meet upon call of the chairman or any three
25 members.
- 26 (e) Take no official action in the absence of a
27 quorum.
- 28 1. A quorum consists of the majority of voting members
29 of the oversight board.
- 30 2. Each member has one vote.
- 31

1 3. A member may not vote on issues directly related to
2 the qualified public depository that he or she represents.

3 4. The Treasurer or his or her representative shall
4 vote as a member of the oversight board in the absence of a
5 quorum.

6 (10) The oversight board has the power and
7 responsibility to safeguard the integrity of the public
8 deposits program and prevent the realization of loss
9 assessments by:

10 (a) Establishing standards in the following areas:

11 1. Financial institution entry requirements;

12 2. Qualified public depository reporting requirements;

13 3. Qualitative and quantitative financial condition
14 requirements;

15 4. Custodian characteristic requirements and adherence
16 to collateral agreement terms;

17 5. Collateral-pledging levels and adequacy of required
18 collateral;

19 6. Collateral eligibility and restrictions;

20 7. Operating subsidiary and agent requirements;

21 8. Merger, acquisition, and name change requirements;

22 9. Participation restrictions;

23 10. Participation status and conditions for
24 suspension, disqualification, and mandatory withdrawal;

25 11. Penalties and fines; and

26 12. Corrective actions and administrative orders.

27 (b) Recommending to the Treasurer the approval or
28 rejection of requests for exceptions that do not meet
29 established standards. These requests for exceptions may be:

30 1. Referred by the Treasurer; or

31

1 2. Submitted directly by the qualified public
2 depository that is seeking the 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 to pay for
11 the implementation of standards established by the oversight
12 board which exceed the resources of the public deposits
13 program.

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

18 (a) Communicated to the Treasurer in writing.

19 (b) Subject to the approval of the Treasurer.

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

22 (12) Members and alternate members are subject to the
23 confidentiality requirement of s. 280.16 in the same manner as
24 the Treasurer.

25 (13) The Treasurer may adopt rules establishing
26 procedures and forms for the selection of members and
27 alternate members of the oversight board and governing
28 functions of the oversight board.

29 Section 10. Section 280.08, Florida Statutes, is
30 amended to read:

31

1 280.08 Procedure for payment of losses.--When the
2 Treasurer determines that a default or insolvency has
3 occurred, he or she shall provide notice as required in s.
4 280.085 ~~s. 280.085(1)~~ and implement the following procedures:

5 (1) The Treasurer, in cooperation with the Department
6 of Banking and Finance or the receiver of the qualified public
7 depository in default, shall ascertain the amount of funds of
8 each public depositor on deposit at such depository and the
9 amount of deposit insurance applicable to such deposits.

10 (2) The potential loss to public depositors shall be
11 calculated by compiling claims received from such depositors.
12 The Treasurer shall validate claims on public deposit accounts
13 which meet the requirements of s. 280.17 and are confirmed as
14 provided in subsection (1).

15 (3)(a) The loss to public depositors shall be
16 satisfied, insofar as possible, first through any applicable
17 deposit insurance and then through demanding payment under
18 letters of credit or the sale of collateral securities pledged
19 or deposited by the defaulting depository. The Treasurer may
20 assess qualified public depositories as provided in paragraph
21 (b) for the total loss if the demand for payment or sale of
22 collateral securities cannot be accomplished within 7 business
23 days.

24 (b) The Treasurer shall provide coverage of any
25 remaining loss by assessment against the other qualified
26 public depositories. The Treasurer shall determine such
27 assessment for each qualified public depository by multiplying
28 the total amount of any remaining loss to all public
29 depositors by a percentage which represents the average
30 monthly balance of public deposits held by each qualified
31 public depository during the previous 12 months divided by the

1 total average monthly balances of public deposits held by all
2 qualified public depositories, excluding the defaulting
3 depository, during the same period. The assessment calculation
4 shall be computed to six decimal places.

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

12 (5) The Treasurer shall distribute the funds to the
13 public depositors of the qualified public depository in
14 default according to their validated claims. The Treasurer, at
15 his or her discretion, may make partial payments to public
16 depositors that have experienced a loss of public funds which
17 payments are critical to the immediate operations of the
18 public entity. The public depositor requesting partial payment
19 of a claim shall provide the Treasurer with written
20 documentation justifying the need for partial payment.

21 (6) Public depositors receiving payment under the
22 provisions of this section shall assign to the Treasurer any
23 interest they may have in funds that may subsequently be made
24 available to the qualified public depository in default. If
25 the qualified public depository in default or its receiver
26 provides the funds to the Treasurer, the Treasurer shall
27 distribute the funds, plus all accrued interest which has
28 accumulated from the investment of the funds, if any, to the
29 depositories which paid assessments on the same pro rata basis
30 as the assessments were paid.

31

1 (7) Expenses incurred by the Treasurer in connection
2 with a default or insolvency which are not normally incurred
3 by the Treasurer in the administration of this act must be
4 paid out of the amount paid under letters of credit or
5 proceeds from the sale of ~~pledged~~ collateral.

6 Section 11. Section 280.09, Florida Statutes, is
7 amended to read:

8 280.09 Public Deposits Trust Fund.--

9 (1) In order to facilitate the administration of this
10 chapter, there is created the Public Deposits Trust Fund,
11 hereafter in this section designated "the fund." The proceeds
12 from the sale of securities or draw on letters of credit held
13 ~~pledged~~ as collateral or from any assessment pursuant to s.
14 280.08 shall be deposited into the fund. Any administrative
15 penalty collected pursuant to this chapter shall be deposited
16 into the Treasurer's Administrative and Investment Trust Fund.

17 (2) The Treasurer is authorized to pay any losses to
18 public depositors from the fund, and there are hereby
19 appropriated from the fund such sums as may be necessary from
20 time to time to pay the losses. The term "losses," for
21 purposes of this chapter, shall also include losses of
22 interest or other accumulations to the public depositor as a
23 result of penalties for early withdrawal required by
24 Depository Institution Deregulatory Commission Regulations or
25 applicable successor federal laws or regulations because of
26 suspension or disqualification of a qualified public
27 depository by the Treasurer pursuant to s. 280.05 ~~s.~~
28 ~~280.05(20)~~ or because of withdrawal from the public deposits
29 program pursuant to s. 280.11. In that event, the Treasurer
30 is authorized to assess against the suspended, disqualified,
31 or withdrawing public depository, in addition to any amount

1 authorized by any other provision of this chapter, an
2 administrative penalty equal to the amount of the early
3 withdrawal penalty and to pay that amount over to the public
4 depositor as reimbursement for such loss. Any money in the
5 fund estimated not to be needed for immediate cash
6 requirements shall be invested pursuant to s. 18.125.

7 Section 12. Section 280.10, Florida Statutes, is
8 amended to read:

9 280.10 Effect of merger, or acquisition, or
10 consolidation; change of name or address.--

11 (1) When ~~in the event~~ a qualified public depository is
12 merged into, acquired by, or consolidated with a bank, savings
13 bank, or savings association that is not a qualified public
14 depository; ~~7~~

15 (a) The resulting institution automatically becomes
16 ~~shall become~~ a qualified public depository subject to the
17 requirements of the public depository program. ~~7 and~~

18 (b) The contingent liability of the former institution
19 shall be a liability of the resulting institution.

20 (c) The public deposits and associated collateral of
21 the former institution shall be public deposits and collateral
22 of the resulting institution.

23 (d) The resulting institution shall, within 90
24 calendar ~~30~~ days after the effective date of the merger,
25 acquisition, or consolidation, ~~the resulting institution shall~~
26 ~~execute in its own name and~~ deliver to the Treasurer:

27 1. ~~the contingent liability agreement required by s.~~
28 ~~280.07, and all information and Documentation~~ in its name as
29 may be required for participation in the public deposits
30 program; or

31

1 2. Written notice of intent to withdraw. ~~If the~~
2 ~~resulting institution chooses not to remain a qualified public~~
3 ~~depository, or does not meet the requirements to become a~~
4 ~~qualified public depository, such institution shall comply~~
5 ~~with the procedures for withdrawal~~ from the program as
6 provided in s. 280.11 and a proposed effective date of
7 withdrawal which must be within 180 days after the effective
8 date of the acquisition by, merger into, or consolidation with
9 the former institution.

10 (e) If the resulting institution does not meet the
11 requirements for becoming a qualified public depository or
12 does not submit the required documentation within 90 calendar
13 days after the effective date of the merger, acquisition, or
14 consolidation, the Treasurer shall initiate mandatory
15 withdrawal actions as provided in s. 280.11 and shall set an
16 effective date of withdrawal that is within 180 days after the
17 effective date of the acquisition by, merger into, or
18 consolidation with the former institution.

19 (2) When a qualified public depository ~~which sells or~~
20 ~~disposes of any of its Florida public deposits or collateral~~
21 ~~securing such deposits in a manner not covered under~~
22 subsection (1):

23 (a) The qualified public depository that originally
24 held the public deposits ~~its branches to an institution that~~
25 ~~is not a qualified public depository, and such branches~~
26 ~~continue to hold public deposits, shall be responsible for:~~

27 1. Ensuring that the institution that receives such
28 public deposits becomes a qualified public depository and
29 meets collateral requirements with the Treasurer as part of
30 the transaction.

31

1 2. Notifying the Treasurer within 30 calendar days
2 after the final approval by the appropriate regulator.

3 (b) A qualified public depository that fails to meet
4 those responsibilities shall ~~and~~ continue to collateralize and
5 report such public deposits until the receiving ~~purchasing~~
6 institution becomes a qualified public depository and
7 collateralizes the deposits or the deposits are returned to
8 the governmental public unit. ~~The qualified public depository~~
9 ~~shall notify the Treasurer of any acquisition of its branches~~
10 ~~on its next monthly report after the final approval by the~~
11 ~~appropriate regulator if the acquisition includes public~~
12 ~~deposits.~~

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

17 (4) Collateral subject to a collateral depository
18 ~~pledge~~ agreement may not be released by the Treasurer or the
19 custodian until the assumed liability is evidenced by the
20 deposit of collateral pursuant to the collateral depository
21 ~~pledge~~ agreement of the successor entity. The reporting
22 requirement and pledge of collateral will remain in force
23 until the Treasurer determines that the liability no longer
24 exists. The surviving or new qualified public depository
25 shall be responsible and liable for all of the liabilities and
26 obligations of each qualified public depository merged with or
27 acquired by it.

28 (5) Each qualified public depository shall report any
29 change of name and address to the Treasurer on a form provided
30 by the Treasurer regardless of whether the name change is a
31 result of an acquisition, ~~or~~ merger, or consolidation.

1 Notification of such change must be made within 30 calendar
2 days after the effective date of the change on its next
3 monthly report.

4 (6) The Treasurer shall adopt rules establishing
5 procedures for mergers, acquisitions, consolidations, and
6 changes in name and address, for providing forms, and for
7 clarifying terms.

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

10 280.11 Withdrawal from public deposits program; return
11 of pledged collateral.--

12 (1) A qualified public depository may withdraw from
13 the public deposits program by giving written notice to the
14 Treasurer. The contingent liability, required collateral, and
15 reporting requirements of the depository withdrawing from the
16 program shall continue for a period of 12 months after the
17 effective date of the withdrawal, except that the filing of
18 reports may no longer be required when the average monthly
19 balance of public deposits is equal to zero. Notice of
20 withdrawal shall be mailed or delivered in sufficient time to
21 be received by the Treasurer at least 30 days before the
22 effective date of withdrawal. The Treasurer shall timely
23 publish the withdrawal notice in the Florida Administrative
24 Weekly which shall constitute notice to all depositors. The
25 withdrawing depository shall not receive or retain public
26 deposits after the effective date of the withdrawal until such
27 time as it again becomes a qualified public depository. The
28 Treasurer shall, upon request, return to the depository that
29 portion of the collateral pledged that is in excess of the
30 required collateral as reported on the current public
31 depository monthly report. Losses of interest or other

1 accumulations, if any, because of withdrawal under this
2 section shall be assessed and paid as provided in s. 280.09 ~~s.~~
3 ~~280.09(2)~~.

4 Section 14. Section 280.13, Florida Statutes, is
5 amended to read:

6 280.13 Eligible Collateral ~~eligible for pledge by~~
7 ~~banks and savings associations.--~~

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

10 (a) Direct obligations of the United States
11 Government.

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

15 (c) Obligations of the following federal agencies:

- 16 1. Farm credit banks.
- 17 2. Federal land banks.
- 18 3. The Federal Home Loan Bank and its district banks.
- 19 4. Federal intermediate credit banks.
- 20 5. The Federal Home Loan Mortgage Corporation.
- 21 6. The Federal National Mortgage Association.
- 22 7. Obligations guaranteed by the Government National
23 Mortgage Association.

24 (d) General obligations of a state of the United
25 States, or of Puerto Rico, or of a political subdivision or
26 municipality thereof.

27 (e) Obligations issued by the Florida State Board of
28 Education under authority of the State Constitution or
29 applicable statutes.

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1 (f) Tax anticipation certificates or warrants of
2 counties or municipalities having maturities not exceeding 1
3 year.

4 (g) Public housing authority obligations.

5 (h) Revenue bonds or certificates of a state of the
6 United States or of a political subdivision or municipality
7 thereof.

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

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

15 (a) Securities of, or other interests in, any open-end
16 management investment company registered under the Investment
17 Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended
18 from time to time, provided the portfolio of such investment
19 company is limited to direct obligations of the United States
20 Government and to repurchase agreements fully collateralized
21 by such direct obligations of the United States Government and
22 provided such investment company takes delivery of such
23 collateral either directly or through an authorized custodian.

24 (b) Collateralized Mortgage Obligations.

25 (c) Real Estate Mortgage Investment Conduits.

26 (3) Except as to obligations issued by or with respect
27 to which payment of interest and principal is guaranteed by
28 the United States Government or obligations of federal
29 agencies listed in subsection (1), the debt obligations
30 mentioned in this section shall be rated in one of the four
31

1 highest classifications by an established, nationally
2 recognized investment rating service.

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

5 (5) A letter of credit issued by a Federal Home Loan
6 Bank is eligible as collateral under this section if:

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

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

10 1. Being irrevocable.

11 2. Being clean and unconditional, which includes
12 containing a statement that it is not subject to any
13 agreement, condition, or qualification outside of the letter
14 of credit and providing that a beneficiary need only present
15 the original letter of credit with any amendments and the
16 demand form to promptly obtain funds and that no other
17 document need be presented.

18 3. Being issued, presentable, and payable at a Federal
19 Home Loan Bank in U.S. dollars. Presentation may be made by
20 the beneficiary's submitting the original letter of credit,
21 including any amendments, and the demand in writing, by
22 overnight delivery.

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

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

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

30 7. Containing a statement that it is subject to and
31 governed by the laws of the State of Florida and that, in the

1 event of any conflict with other laws, the laws of the State
2 of Florida will control.

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

6 9. Any other provision found necessary under the
7 Uniform Commercial Code: Letters of Credit.

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

10 (d) The Federal Home Loan Bank that issues the letter
11 of credit agrees to provide confirmation upon request from the
12 Treasurer. This confirmation must be provided within 15
13 working days after the request is made, in a format prescribed
14 by the Treasurer, and must require no identification other
15 than the name and location of the qualified public depository.

16 (e) The qualified public depository completes an
17 agreement covering the use of the letter of credit as eligible
18 collateral, as described in s. 280.041(5).

19 (f) The qualified public depository, if notified by
20 the Treasurer, shall not be allowed to use a letter of credit
21 if the Federal Home Loan Bank fails to pay a draw request as
22 provided for in the letter of credit or fails to properly
23 complete a confirmation of such a letter of credit.

24 (6) Cash held by the Treasurer in the Treasury Cash
25 Deposit Trust Fund or by a custodian is eligible as collateral
26 under this section. Interest earned on cash deposits which is
27 in excess of required collateral must be paid to the qualified
28 public depository upon request.

29 (7)(5) The Treasurer may disapprove any security or
30 letter of credit that does not meet the requirements of this
31 section or any rule adopted pursuant to this section or any

1 security for which no current market price can be obtained
2 from a nationally recognized source deemed acceptable to the
3 Treasurer or which cannot be readily converted to cash.

4 (8) The Treasurer shall adopt rules prescribing
5 restrictions and special requirements for eligible collateral,
6 and clarifying terms.

7 Section 15. Section 280.16, Florida Statutes, is
8 amended to read:

9 280.16 Requirements of qualified public depositories;
10 confidentiality.--

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

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

15 1. Identify the account as a "Florida public deposit"
16 on the deposit account record with the name of the public
17 depositor or provide a unique code for the account for such
18 designation.

19 2. When the form prescribed by the Treasurer for
20 acknowledgment of receipt of each public deposit account is
21 presented to the qualified public depository by the public
22 depositor opening an account, the qualified public depository
23 shall execute and return the completed form to the public
24 depositor.

25 3. When the acknowledgment of receipt form is
26 presented to the qualified public depository by the public
27 depositor due to a change of account name, account number, or
28 qualified public depository name on an existing public deposit
29 account, the qualified public depository shall execute and
30 return the completed form to the public depositor within 45
31 calendar days after such presentation.

1 4. When the acknowledgment of receipt form is
2 presented to the qualified public depository by the public
3 depositor on an account existing before July 1, 1998, the
4 qualified public depository shall execute and return the
5 completed form to the public depositor within 45 calendar days
6 after such presentation.

7 (b) Within 15 days after the end of each calendar
8 month, or when requested by the Treasurer, submit to the
9 Treasurer a written report, under oath, indicating the average
10 daily balance of all public deposits held by it during the
11 reported month, required collateral, a detailed schedule of
12 all securities pledged as collateral, selected financial
13 information, and any other information that the Treasurer
14 determines necessary to administer this chapter.

15 (c) Provide to each public depositor annually, not
16 later than October 30, the following information on all open
17 accounts identified as a "Florida public deposit" for that
18 public depositor as of September 30, to be used for
19 confirmation purposes: the federal employer identification
20 number of the qualified public depository, the name on the
21 deposit account record, the federal employer identification
22 number on the deposit account record, and the account number,
23 account type, and actual account balance on deposit. Any
24 discrepancy found in the confirmation process shall be
25 reconciled before November 30.

26 (d) Submit to the Treasurer annually, not later than
27 November 30, a report of all public deposits held for the
28 credit of all public depositors at the close of business on
29 September 30. Such annual report shall consist of public
30 deposit information in a report format prescribed by the
31 Treasurer. The manner of required filing may be as a signed

1 writing or electronic data transmission, at the discretion of
2 the Treasurer.

3 (e) Submit to the Treasurer not later than the date
4 required to be filed with the federal agency:

5 1. A copy of the quarterly Consolidated Reports of
6 Condition and Income, and any amended reports, required by the
7 Federal Deposit Insurance Act, 12 U.S.C. ss. 1811 et seq., if
8 such depository is a bank; or

9 2. A copy of the Thrift Financial Report, and any
10 amended reports, required to be filed with the Office of
11 Thrift Supervision if such depository is a savings and loan
12 association.

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

14 (a) The agreement of contingent liability.

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

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

1 Treasurer does not have a duty to inquire into whether
2 information is confidential.

3 Section 16. This act shall take effect upon becoming a
4 law.

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6 *****

7 SENATE SUMMARY

8 Revises the Florida Security for Public Deposits Act,
9 which is set out in ch. 280, F.S. Allows letters of
10 credit to be security for public deposits, under
11 specified conditions, and allows cash to serve as
12 security for public deposits. Creates the Qualified
13 Public Depository Oversight Board. Provides for
14 rulemaking by the Treasurer. (See bill for details.)
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