

By Representative Bean

1                                   A bill to be entitled  
2           An act relating to security for public  
3           deposits; amending ss. 280.02, 280.04, 280.041,  
4           280.05, 280.051, 280.054, 280.055, 280.07,  
5           280.08, 280.09, 280.10, 280.11, 280.13, and  
6           280.16, F.S.; revising definitions; revising  
7           provisions requiring collateral for public  
8           deposits; providing for use of certain letters  
9           of credit; requiring additional collateral  
10          under certain circumstances; providing  
11          penalties; specifying certain agreements for  
12          use as collateral; prohibiting a qualified  
13          public depository from acting as its own  
14          custodian; authorizing use of certain letters  
15          of credit; providing requirements; revising  
16          triggering events for certain actions by the  
17          Treasurer; revising powers and duties of the  
18          Treasurer; clarifying grounds for suspension or  
19          disqualification of a qualified public  
20          depository; revising conditions for imposition  
21          of an administrative penalty; clarifying  
22          criteria for the Treasurer to issue certain  
23          orders; providing for contingent liability;  
24          clarifying procedures for payment of losses;  
25          providing for deposit of draws on letters of  
26          credit into the Public Deposits Trust Fund;  
27          revising procedures and requirements relating  
28          to effect of mergers, acquisitions, or  
29          consolidations; providing conditions for  
30          eligibility of certain letters of credit as  
31          collateral; clarifying requirements of

1 qualified public depositories; creating s.  
2 280.071, F.S.; creating the Qualified Public  
3 Depository Oversight Board; providing purposes;  
4 requiring the Treasurer to initiate selection  
5 of board members; providing for selection of  
6 board members by certain qualified public  
7 depositories; providing qualifications;  
8 providing powers and duties of the board;  
9 authorizing the Treasurer to adopt rules for  
10 certain purposes; providing an effective date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14 Section 1. Section 280.02, Florida Statutes, is  
15 amended to read:

16 280.02 Definitions.--As used in this chapter, the  
17 term:

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

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

26 (3)~~(2)~~ "Average daily balance" means the average daily  
27 balance of public deposits held during the reported month. The  
28 average daily balance must be determined by totaling, by  
29 account, the daily balances held by the depositor and then  
30 dividing the total by the number of calendar days in the  
31 month. Deposit insurance is then deducted from each account

1 balance and the resulting amounts are totaled to obtain the  
2 average daily balance.

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

12 (5)~~(4)~~ "Book-entry form" means that securities are not  
13 represented by a paper certificate but represented by an  
14 account entry on the records of a depository trust clearing  
15 system or, in the case of United States Government securities,  
16 a Federal Reserve Bank.

17 (6)~~(5)~~ "Capital account" means total equity capital,  
18 as defined on the balance-sheet portion of the Consolidated  
19 Reports of Condition and Income (call report) or the Thrift  
20 Financial Report, less intangible assets, as submitted to the  
21 regulatory banking authority.

22 (7)~~(6)~~ "Collateral-pledging level," for qualified  
23 public depositories, means the percentage of collateral  
24 required to be pledged as provided in s. 280.04 by a financial  
25 institution.

26 (8)~~(7)~~ "Current month" means the month immediately  
27 following the month for which the monthly report is due from  
28 qualified public depositories.

29 (9)~~(8)~~ "Custodian" means the Treasurer or any bank,  
30 savings association, or trust company that:

31

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

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

5 (c) Agrees to be subject to the jurisdiction of the  
6 courts of this state, or of courts of the United States which  
7 are located within this state, for the purpose of any  
8 litigation arising out of this chapter; and

9 (d) Has been approved by the Treasurer to act as a  
10 custodian.

11 (10)~~(9)~~ "Default or insolvency" includes, without  
12 limitation, the failure or refusal of a qualified public  
13 depository to pay any check or warrant drawn upon sufficient  
14 and collected funds by any public depositor or to return any  
15 deposit on demand or at maturity together with interest as  
16 agreed; the issuance of an order by any supervisory authority  
17 restraining such depository from making payments of deposit  
18 liabilities; or the appointment of a receiver for such  
19 depository.

20 (11)~~(10)~~ "Effective date of notice of withdrawal or  
21 order of discontinuance" pursuant to s. 280.11(3) means that  
22 date which is set out as such in any notice of withdrawal or  
23 order of discontinuance from the Treasurer.

24 (12)~~(11)~~ "Eligible collateral" means securities,  
25 Federal Home Loan Bank letters of credit, and cash,as  
26 designated in s. 280.13.

27 (13)~~(12)~~ "Financial institution" means, including, but  
28 not limited to, an association, bank, brokerage firm, credit  
29 union, industrial savings bank, savings and loan association,  
30 trust company, or other type of financial institution  
31 organized under the laws of this state or any other state of

1 the United States and doing business in this state or any  
2 other state, in the general nature of the business conducted  
3 by banks and savings associations.

4 (14)~~(13)~~ "Governmental unit" means the state or any  
5 county, school district, community college district, special  
6 district, metropolitan government, or municipality, including  
7 any agency, board, bureau, commission, and institution of any  
8 of such entities, or any court.

9 (15)~~(14)~~ "Loss to public depositors" means loss of all  
10 principal and all interest or other earnings on the principal  
11 accrued or accruing as of the date the qualified public  
12 depository was declared in default or insolvent.

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

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

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

28 (19)~~(16)~~ "Pledged collateral" means securities or cash  
29 held separately and distinctly by an eligible custodian for  
30 the benefit of the Treasurer to be used as security for  
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1 Florida public deposits. This includes maturity and call  
2 proceeds.  
3        (20)~~(17)~~ "Pledgor" means the qualified public  
4 depository and, if one is used, operating subsidiary.  
5        (21)~~(18)~~ "Pool figure" means the total average monthly  
6 balances of public deposits held by all qualified public  
7 depositories during the immediately preceding 12-month period.  
8        (22)~~(19)~~ "Previous month" means the month or months  
9 immediately preceding the month for which a monthly report is  
10 due from qualified public depositories.  
11        (23)~~(20)~~ "Public deposit" means the moneys of the  
12 state or of any county, school district, community college  
13 district, special district, metropolitan government, or  
14 municipality, including agencies, boards, bureaus,  
15 commissions, and institutions of any of the foregoing, or of  
16 any court, and includes the moneys of all county officers,  
17 including constitutional officers, that are placed on deposit  
18 in a bank, savings bank, or savings association and for which  
19 the bank, savings bank, or savings association is required to  
20 maintain reserves. This includes, but is not limited to, time  
21 deposit accounts, demand deposit accounts, and nonnegotiable  
22 certificates of deposit. Moneys in deposit notes and in other  
23 nondeposit accounts such as repurchase or reverse repurchase  
24 operations are not public deposits. Securities, mutual funds,  
25 and similar types of investments are not considered public  
26 deposits and shall not be subject to the provisions of this  
27 chapter.  
28        (24)~~(21)~~ "Public depositor" means the Treasurer or  
29 other chief financial officer or designee responsible for  
30 handling public deposits.  
31

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.

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

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1 percent of the pool figure multiplied by the depository's  
2 collateral-pledging level, plus the greater of:  
3       1. One hundred twenty-five percent of the average  
4 daily balance of public deposits in excess of capital  
5 accounts; or  
6       2. One hundred twenty-five percent of the average  
7 daily balance of public deposits in excess of 20 percent of  
8 the pool figure.  
9       (b) Twenty-five percent of the average monthly balance  
10 of public deposits.  
11       (c) One hundred twenty-five percent of the average  
12 daily balance of public deposits if the qualified public  
13 depository:  
14       1. Has been established for less than 3 years;  
15       2. Has experienced material decreases in its capital  
16 accounts; or  
17       3. Has an overall financial condition that is  
18 materially deteriorating.  
19       (d) Two hundred percent of an established maximum  
20 amount of public deposits that has been mutually agreed upon  
21 by and between the Treasurer and the qualified public  
22 depository.  
23       (e) Minimum required collateral of \$100,000.  
24       (f) As required in special instructions from the  
25 Treasurer.  
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

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

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. Section 280.041, Florida Statutes, is  
8 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

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. The  
8 pledged collateral shall be eligible collateral and shall be  
9 at least equal to the amount of required collateral.

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

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

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

29 5. The pledgor shall acknowledge that the Treasurer  
30 may, without notice to or consent by the pledgor, require the  
31

1 | custodian to hold principal payments and income for the  
2 | benefit of the Treasurer.

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

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

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

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

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

29 |             e. A withdrawal transaction requires the Treasurer's  
30 | prior approval. The market value of eligible collateral  
31 | remaining after the withdrawal shall be at least equal to the

1 amount of required collateral. A withdrawal transaction shall  
2 be executed for any release of collateral including maturity  
3 or call proceeds.

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

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

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

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

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

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

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

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

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



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.

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.

1           15. The custodian shall be bound by any other  
2 provisions found necessary for the Treasurer to have a  
3 perfected security interest in collateral under the Uniform  
4 Commercial Code.

5           ~~(3)(2)~~ With the approval of the Treasurer, a pledgor  
6 may deposit eligible collateral pursuant to an agreement with  
7 a Federal Reserve Bank. The Federal Reserve Bank agreement may  
8 require terms not consistent with subsection~~(2)~~ but may not  
9 subject the Treasurer to any costs or indemnification  
10 requirements~~(1)~~.

11           ~~(4)(3)~~ The Treasurer may require deposit or transfer  
12 of collateral into a custodial account established in the  
13 Treasurer's name at a designated custodian. This requirement  
14 for Treasurer's custody shall have the following  
15 characteristics:

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

17           (b) The custodian used must be a Treasurer's approved  
18 custodian that must:

19           1. Meet the definition of custodian.

20           2. Not be an affiliate of the qualified public  
21 depository.

22           3. Be bound under a distinct Treasurer's custodial  
23 contract.

24           (c) All deposit transactions require the approval of  
25 the Treasurer.

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

27           (e) The qualified public depository shall be  
28 responsible for all costs necessary to the functioning of the  
29 contract or associated with the confirmation of securities in  
30 the name of the Treasurer and acknowledges that these costs  
31

1 shall not be a charge against the Treasurer and may be  
2 deducted from the collateral or income earned if unpaid.

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

8 (a) The letter of credit shall meet the definition of  
9 eligible collateral.

10 (b) The qualified public depository shall agree that  
11 the Treasurer, as beneficiary, may, without notice to or  
12 consent by the qualified public depository, demand payment  
13 under the letter of credit if any of the triggering events  
14 listed in s. 280.041 occur.

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

19 (d) The qualified public depository shall arrange for  
20 the issue of letters of credit which meet the requirements of  
21 s. 280.13 and delivery to the Treasurer. All transactions  
22 involving letters of credit require the Treasurer's approval.

23 (e) The qualified public depository shall be  
24 responsible for all costs necessary in the use or confirmation  
25 of letters of credit issued on behalf of the Treasurer and  
26 acknowledges that these costs shall not be a charge against  
27 the Treasurer.

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

1       (g) The qualified public depository shall agree that  
2 any information, form, or report electronically transmitted to  
3 the Treasurer shall have the same enforceability as a signed  
4 writing.

5       (h) The qualified public depository shall submit proof  
6 that authorized individuals executed the letters of credit  
7 agreement on its behalf.

8       (i) The qualified public depository shall agree by  
9 resolution of the board of directors that the letters of  
10 credit agreements entered into for purposes of this section  
11 have been formally accepted and constitute official records of  
12 the qualified public depository.

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

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

25       (b) The qualified public depository fails to have  
26 adequate procedures and practices for the accurate  
27 identification, classification, reporting, and  
28 collateralization of public deposits.

29       (c) The custodian fails to provide or allow inspection  
30 and verification of documents, reports, records, or other  
31

1 information dealing with the pledged collateral or financial  
2 information.

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

8 (e) The custodian fails to hold income and principal  
9 payments made on securities held as collateral or fails to  
10 deposit or transfer such payments pursuant to the Treasurer's  
11 instructions.

12 (f) The qualified public depository defaults or  
13 becomes insolvent.

14 (g) The qualified public depository fails to pay an  
15 assessment.

16 (h) The qualified public depository fails to pay an  
17 administrative penalty.

18 (i) The qualified public depository fails to meet  
19 financial condition standards.

20 (j) The qualified public depository charges a  
21 withdrawal penalty to public depositors when the qualified  
22 public depository is suspended, disqualified, or withdrawn  
23 from the public deposits program.

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

27 (l) The qualified public depository pledges, deposits,  
28 or has issued insufficient or unacceptable collateral to meet  
29 required collateral within the required time ~~cover public~~  
30 ~~deposits.~~

31

1           (m) ~~Pledged~~ Collateral, other than a proper  
2 substitution, is released without the prior approval of the  
3 Treasurer.

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

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

12           (p) The custodian fails to provide sufficient  
13 confirmation information.

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

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

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

27           ~~(7)~~~~(5)~~ The Treasurer shall adopt rules to identify  
28 forms and establish procedures for collateral agreements and  
29 transactions, furnish confirmation requirements, establish  
30 procedures for using an operating subsidiary and agents, and  
31 clarify terms.

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

3 280.05 Powers and duties of the Treasurer.--In  
4 fulfilling the requirements of this act, the Treasurer has the  
5 power to take the following actions he or she deems necessary:

6 (1) Identify representative qualified public  
7 depositories and furnish notification for the qualified public  
8 depository oversight board selection pursuant to s. 280.071.

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

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

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

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

17 (d) ~~Establish collateral pledging levels based on~~  
18 ~~qualitative and quantitative standards; and~~

19 (e) ~~Restrict substitutions of collateral subject to~~  
20 ~~the approval of the Treasurer.~~

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

31



1 ~~possess knowledge, skill, and experience in one or more of the~~  
2 ~~following areas:~~

- 3       ~~(a) Financial analysis;~~  
4       ~~(b) Trend analysis;~~  
5       ~~(c) Accounting;~~  
6       ~~(d) Banking;~~  
7       ~~(e) Risk management; or~~  
8       ~~(f) Investment management.~~

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

28       ~~(2)(3) Establish goals and objectives and Provide~~  
29 other data for the qualified public depository oversight board  
30 duties pursuant to s. 280.071 regarding:

31

- 1           (a) Establishing standards for qualified public  
2 depositories and custodians.
- 3           (b) Evaluating requests for exceptions to standards  
4 and alternative participation agreements.
- 5           (c) Reviewing and recommending action for qualified  
6 public depository or custodian violations ~~as may be necessary~~  
7 ~~to assist the advisory committee established under subsection~~  
8 ~~(2) in developing standards for the program.~~
- 9           ~~(3)(4)~~ Review, implement, monitor, evaluate, and  
10 modify, ~~as needed~~, all or any part of the standards, ~~and~~  
11 policies, or recommendations of the qualified public  
12 depository oversight board ~~recommended by an advisory~~  
13 ~~committee.~~
- 14           ~~(4)(5)~~ Perform financial analysis of any qualified  
15 public depositories ~~depository as needed.~~
- 16           ~~(5)(6)~~ Require ~~such~~ collateral, or increase the  
17 collateral-pledging level, of any qualified public depository  
18 ~~as may be necessary to administer the provisions of this~~  
19 ~~chapter and to protect the integrity of the public deposits~~  
20 ~~program.~~
- 21           ~~(7)~~ ~~Establish a minimum amount of required collateral~~  
22 ~~as the Treasurer deems necessary to provide for the contingent~~  
23 ~~liability pool.~~
- 24           ~~(6)(8)~~ Decline to accept, or reduce the reported value  
25 of, collateral ~~as circumstances may require~~ in order to ensure  
26 the pledging or depositing of sufficient marketable collateral  
27 and acceptable letters of credit ~~to meet the purposes of this~~  
28 ~~chapter.~~
- 29           ~~(7)(9)~~ Maintain perpetual inventory of ~~pledged~~  
30 collateral and perform monthly market valuations and quality  
31 ratings.

1           ~~(8)(10)~~ Monitor and confirm, ~~as often as deemed~~  
2 ~~necessary by the Treasurer, the pledged collateral with held~~  
3 ~~by third party custodians and letter of credit issuers.~~  
4           ~~(9)(11)~~ Move ~~Perfect interest in pledged~~ collateral by  
5 ~~having pledged securities moved~~ into an account established in  
6 the Treasurer's name upon the occurrence of one or more  
7 triggering events. ~~This action shall be taken at the~~  
8 ~~discretion of the Treasurer.~~  
9           (10) Issue notice to a qualified public depository  
10 that use of a custodian will be disallowed when the custodian  
11 has failed to follow collateral agreement terms.  
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 in:  
22           (a) The Public Deposits Trust Fund for purposes of  
23 paying losses to public depositors.  
24           (b) The Treasurer's Administrative and Investment  
25 Trust Fund for receiving payment of administrative penalties.  
26           (c) The Treasury Cash Deposit Trust Fund for purposes  
27 of eligible collateral.  
28           (14) Sell securities for the purpose of paying losses  
29 to public depositors not covered by deposit insurance.  
30  
31

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.

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

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.

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.

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1       (1) On July 31 of each year and as vacancies occur,  
2 the Treasurer shall initiate the selection of oversight board  
3 representation in the following manner:

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

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

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

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

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

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

28           (a) Have resources available for review of qualified  
29 public depository issues.

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



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

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

- 1       (b) Recommending approval or rejection to the  
2 Treasurer for exceptions that do not meet established  
3 standards. These requests for exceptions may be:  
4           1. Referred by the Treasurer; or  
5           2. Submitted directly by the qualified public  
6 depository seeking exception.  
7       (c) Issuing approvals or rejections for alternative  
8 participation agreements referred by the Treasurer.  
9       (d) Reviewing program violations and recommending that  
10 the Treasurer impose penalties and fines or issue corrective  
11 actions and administrative orders.  
12       (e) Studying public deposit program areas referred by  
13 the Treasurer.  
14       (f) Assessing qualified public depositories to pay for  
15 the implementation of standards established by the oversight  
16 board which exceed the resources of the public deposits  
17 program.  
18       (11) Official actions of the oversight board regarding  
19 the establishment of standards, exception and alternate  
20 participation agreement decisions, and recommendations  
21 concerning violations shall be:  
22           (a) Communicated to the Treasurer in writing.  
23           (b) Subject to approval of the Treasurer.  
24           (c) Implemented as public deposits program resources  
25 or payment described in subsection (10) above permit.  
26       (12) Members and alternate members shall be subject to  
27 the confidentiality requirement of s. 280.16 in the same  
28 manner as the Treasurer.  
29       (13) The Treasurer may adopt rules to establish  
30 procedures and forms for oversight board member and alternate  
31 member selection and oversight board functions.

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

4           280.08 Procedure for payment of losses.--When the  
5 Treasurer determines that a default or insolvency has  
6 occurred, he or she shall provide notice as required in s.  
7 280.085~~(1)~~and implement the following procedures:

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

17           (4) Each qualified public depository shall pay its  
18 assessment to the Treasurer within 7 business days after it  
19 receives notice of the assessment. If a depository fails to  
20 pay its assessment when due, the Treasurer shall satisfy the  
21 assessment by demanding payment under letters of credit or  
22 selling collateral ~~securities~~ pledged or deposited by that  
23 depository.

24           (7) Expenses incurred by the Treasurer in connection  
25 with a default or insolvency which are not normally incurred  
26 by the Treasurer in the administration of this act must be  
27 paid out of the amount paid under letters of credit or  
28 proceeds from the sale of ~~pledged~~ collateral.

29           Section 11. Section 280.09, Florida Statutes, is  
30 amended to read:

31           280.09 Public Deposits Trust Fund.--

1           (1) In order to facilitate the administration of this  
2 chapter, there is created the Public Deposits Trust Fund,  
3 hereafter in this section designated "the fund." The proceeds  
4 from the sale of securities or draw on letters of credit held  
5 ~~pledged~~ as collateral or from any assessment pursuant to s.  
6 280.08 shall be deposited into the fund. Any administrative  
7 penalty collected pursuant to this chapter shall be deposited  
8 into the Treasurer's Administrative and Investment Trust Fund.

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

30           Section 12. Section 280.10, Florida Statutes, is  
31 amended to read:

1           280.10 Effect of merger,or acquisition, or  
2 consolidation; change of name or address.--

3           (1) ~~When in the event~~ a qualified public depository is  
4 merged into, acquired by, or consolidated with a bank, savings  
5 bank, or savings association that is not a qualified public  
6 depository;;

7           (a) The resulting institution shall automatically  
8 become a qualified public depository subject to the  
9 requirements of the public deposits program., ~~and~~

10          (b) The contingent liability of the former institution  
11 shall be a liability of the resulting institution.

12          (c) The public deposits and associated collateral of  
13 the former institution shall be public deposits and collateral  
14 of the resulting institution.

15          (d) The resulting institution shall, within 90  
16 calendar 30 days after the effective date of the merger,  
17 acquisition, or consolidation, deliver to the Treasurer:~~the~~  
18 ~~resulting institution shall~~

19           1. Documentation ~~execute~~ in its own name ~~and deliver~~  
20 ~~to the Treasurer the contingent liability agreement required~~  
21 ~~by s. 280.07, and all information and documentation as may be~~  
22 ~~required for participation in the public deposits program; or.~~

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

1       (e) If the resulting institution does not meet  
2 qualifications to become a qualified public depository or does  
3 not submit required documentation within 90 calendar days  
4 after the effective date of the merger, acquisition, or  
5 consolidation, the Treasurer shall initiate mandatory  
6 withdrawal actions as provided in s. 280.11 and shall set an  
7 effective date of withdrawal that is within 180 days after the  
8 effective date of the acquisition, merger, or consolidation of  
9 the former institution.

10       (2) When a qualified public depository ~~which sells or~~  
11 ~~disposes of any of its Florida public deposits or collateral~~  
12 ~~securing such deposits in a manner not covered by subsection~~  
13 ~~(1), the qualified public depository originally holding the~~  
14 ~~public deposits branches to an institution that is not a~~  
15 ~~qualified public depository, and such branches continue to~~  
16 ~~hold public deposits, shall be responsible for:~~

17       (a) Ensuring the institution receiving such public  
18 deposits becomes a qualified public depository and meets  
19 collateral requirements with the Treasurer as part of the  
20 transaction.

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

23  
24 A qualified public depository that fails to meet such  
25 responsibilities shall ~~and~~ continue to collateralize and  
26 report such public deposits until the receiving purchasing  
27 institution becomes a qualified public depository and  
28 collateralizes the deposits or the deposits are returned to  
29 the governmental public unit. The qualified public depository  
30 ~~shall notify the Treasurer of any acquisition of its branches~~  
31 ~~on its next monthly report after the final approval by the~~

1 ~~appropriate regulator if the acquisition includes public~~  
2 ~~deposits.~~

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

7 (4) Collateral subject to a collateral depository  
8 ~~pledge~~ agreement may not be released by the Treasurer or the  
9 custodian until the assumed liability is evidenced by the  
10 deposit of collateral pursuant to the collateral depository  
11 ~~pledge~~ agreement of the successor entity. The reporting  
12 requirement and pledge of collateral will remain in force  
13 until the Treasurer determines that the liability no longer  
14 exists. The surviving or new qualified public depository  
15 shall be responsible and liable for all of the liabilities and  
16 obligations of each qualified public depository merged with or  
17 acquired by it.

18 (5) Each qualified public depository shall report any  
19 change of name and address to the Treasurer on a form provided  
20 by the Treasurer regardless of whether the name change is a  
21 result of an acquisition, or merger, or consolidation.  
22 Notification of such change must be made within 30 calendar  
23 days after the effective date of the change ~~on its next~~  
24 ~~monthly report.~~

25 (6) The Treasurer shall adopt rules establishing  
26 procedures for mergers, acquisitions, consolidations, and  
27 changes in name and address, providing forms, and clarifying  
28 terms.

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

31



1           280.11 Withdrawal from public deposits program; return  
2 of pledged collateral.--

3           (1) A qualified public depository may withdraw from  
4 the public deposits program by giving written notice to the  
5 Treasurer. The contingent liability, required collateral, and  
6 reporting requirements of the depository withdrawing from the  
7 program shall continue for a period of 12 months after the  
8 effective date of the withdrawal, except that the filing of  
9 reports may no longer be required when the average monthly  
10 balance of public deposits is equal to zero. Notice of  
11 withdrawal shall be mailed or delivered in sufficient time to  
12 be received by the Treasurer at least 30 days before the  
13 effective date of withdrawal. The Treasurer shall timely  
14 publish the withdrawal notice in the Florida Administrative  
15 Weekly which shall constitute notice to all depositors. The  
16 withdrawing depository shall not receive or retain public  
17 deposits after the effective date of the withdrawal until such  
18 time as it again becomes a qualified public depository. The  
19 Treasurer shall, upon request, return to the depository that  
20 portion of the collateral pledged that is in excess of the  
21 required collateral as reported on the current public  
22 depository monthly report. Losses of interest or other  
23 accumulations, if any, because of withdrawal under this  
24 section shall be assessed and paid as provided in s.  
25 280.09(2).

26           Section 14. Section 280.13, Florida Statutes, is  
27 amended to read:

28           280.13 Eligible collateral ~~eligible for pledge by~~  
29 ~~banks and savings associations.--~~

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

- 1           (a) Direct obligations of the United States  
2 Government.
- 3           (b) Obligations of any federal agency that are fully  
4 guaranteed as to payment of principal and interest by the  
5 United States Government.
- 6           (c) Obligations of the following federal agencies:  
7           1. Farm credit banks.  
8           2. Federal land banks.  
9           3. The Federal Home Loan Bank and its district banks.  
10          4. Federal intermediate credit banks.  
11          5. The Federal Home Loan Mortgage Corporation.  
12          6. The Federal National Mortgage Association.  
13          7. Obligations guaranteed by the Government National  
14 Mortgage Association.
- 15          (d) General obligations of a state of the United  
16 States, or of Puerto Rico, or of a political subdivision or  
17 municipality thereof.
- 18          (e) Obligations issued by the Florida State Board of  
19 Education under authority of the State Constitution or  
20 applicable statutes.
- 21          (f) Tax anticipation certificates or warrants of  
22 counties or municipalities having maturities not exceeding 1  
23 year.
- 24          (g) Public housing authority obligations.
- 25          (h) Revenue bonds or certificates of a state of the  
26 United States or of a political subdivision or municipality  
27 thereof.
- 28          (i) Corporate bonds of any corporation that is not an  
29 affiliate or subsidiary of the qualified public depository.
- 30          (2) In addition to the securities listed in subsection  
31 (1), the Treasurer may, in his or her discretion, allow the

1 pledge of the following types of securities. The Treasurer  
2 shall, by rule, define any restrictions, specific criteria, or  
3 circumstances for which these instruments will be acceptable.  
4 (a) Securities of, or other interests in, any open-end  
5 management investment company registered under the Investment  
6 Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended  
7 from time to time, provided the portfolio of such investment  
8 company is limited to direct obligations of the United States  
9 Government and to repurchase agreements fully collateralized  
10 by such direct obligations of the United States Government and  
11 provided such investment company takes delivery of such  
12 collateral either directly or through an authorized custodian.  
13 (b) Collateralized Mortgage Obligations.  
14 (c) Real Estate Mortgage Investment Conduits.  
15 (3) Except as to obligations issued by or with respect  
16 to which payment of interest and principal is guaranteed by  
17 the United States Government or obligations of federal  
18 agencies listed in subsection (1), the debt obligations  
19 mentioned in this section shall be rated in one of the four  
20 highest classifications by an established, nationally  
21 recognized investment rating service.  
22 (4) To be eligible as collateral under this section,  
23 all debt obligations shall be interest bearing or accruing.  
24 (5) Letters of credit issued by a Federal Home Loan  
25 Bank are eligible as collateral under this section provided  
26 that:  
27 (a) The letter of credit has been delivered to the  
28 Treasurer in the standard format approved by the Treasurer.  
29 (b) The letter of credit meets required conditions of:  
30 1. Being irrevocable.  
31

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

7           3. Being issued, presentable, and payable at a Federal  
8 Home Loan Bank in U.S. dollars. Presentation may be made by  
9 the beneficiary submitting the original letter of credit,  
10 including any amendments, and the demand in writing, by  
11 overnight delivery.

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

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

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

18           7. Containing a statement that it is subject to and  
19 governed by the laws of the State of Florida and that, in the  
20 event of any conflict with other laws, the laws of the State  
21 of Florida will control.

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

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

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

29           (d) The Federal Home Loan Bank issuing the letter of  
30 credit agrees to provide confirmation upon request from the  
31 Treasurer. Such confirmation shall be provided within 15

1 working days after the request, in a format prescribed by the  
2 Treasurer, and shall require no identification other than the  
3 qualified public depository's name and location.

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

7 (f) The qualified public depository, if notified by  
8 the Treasurer, shall not be allowed to use letters of credit  
9 if the Federal Home Loan Bank fails to pay a draw request as  
10 provided for in the letters of credit or fails to properly  
11 complete a confirmation of such letters of credit.

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

17 (7)(5) The Treasurer may disapprove any security that  
18 does not meet the requirements of this section or any rule  
19 adopted pursuant to this section or any security for which no  
20 current market price can be obtained from a nationally  
21 recognized source deemed acceptable to the Treasurer or cannot  
22 be converted to cash.

23 (8) The Treasurer shall adopt rules defining  
24 restrictions and special requirements for eligible collateral  
25 and clarifying terms.

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

29 280.16 Requirements of qualified public depositories;  
30 confidentiality.--  
31

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

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

5           1. Identify the account as a "Florida public deposit"  
6 on the deposit account record with the name of the public  
7 depositor or provide a unique code for the account for such  
8 designation.

9           2. When the form prescribed by the Treasurer for  
10 acknowledgment of receipt of each public deposit account is  
11 presented to the qualified public depository by the public  
12 depositor opening an account, the qualified public depository  
13 shall execute and return the completed form to the public  
14 depositor.

15           3. When the acknowledgment of receipt form is  
16 presented to the qualified public depository by the public  
17 depositor due to a change of account name, account number, or  
18 qualified public depository name on an existing public deposit  
19 account, the qualified public depository shall execute and  
20 return the completed form to the public depositor within 45  
21 calendar days after such presentation.

22           4. When the acknowledgment of receipt form is  
23 presented to the qualified public depository by the public  
24 depositor on an account existing before July 1, 1998, the  
25 qualified public depository shall execute and return the  
26 completed form to the public depositor within 45 calendar days  
27 after such presentation.

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

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

31

1 (3) Any information contained in a report of a  
2 qualified public depository required under this chapter or any  
3 rule adopted under this chapter, together with any information  
4 required of a financial institution that is not a qualified  
5 public depository, shall, if made confidential by any law of  
6 the United States or of this state or any other state or  
7 territory of the United States, be considered confidential and  
8 exempt from the provisions of s. 119.07(1) and not subject to  
9 dissemination to anyone other than the Treasurer or the  
10 Qualified Public Depository Oversight Board under the  
11 provisions of this chapter; however, it is the responsibility  
12 of each qualified public depository and each financial  
13 institution from which information is required to inform the  
14 Treasurer of information that is confidential and the law  
15 providing for the confidentiality of that information, and the  
16 Treasurer does not have a duty to inquire into whether  
17 information is confidential.

18 Section 16. This act shall take effect October 1,  
19 2001.

20 \*\*\*\*\*

21 HOUSE SUMMARY

22  
23 Revises provisions relating to security for public  
24 deposits. Revises qualifications and criteria for  
25 qualified public depositories. Authorizes Federal Home  
26 Loan Bank letters of credit as eligible collateral.  
27 Revises powers and duties of the Treasurer. Creates the  
28 Qualified Public Depository Oversight Board and provides  
29 for selection and powers and duties of members. See bill  
30 for details.  
31