

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 a custodian to withdraw
15 as custodian under certain circumstances;
16 authorizing use of certain letters of credit;
17 providing requirements; revising triggering
18 events for certain actions by the Treasurer;
19 revising powers and duties of the Treasurer;
20 clarifying grounds for suspension or
21 disqualification of a qualified public
22 depository; revising conditions for imposition
23 of an administrative penalty; clarifying
24 criteria for the Treasurer to issue certain
25 orders; providing for contingent liability;
26 clarifying procedures for payment of losses;
27 providing for deposit of draws on letters of
28 credit into the Public Deposits Trust Fund;
29 revising procedures and requirements relating
30 to effect of mergers, acquisitions, or
31 consolidations; providing conditions for

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

13

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

15

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

18 280.02 Definitions.--As used in this chapter, the
19 term:

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

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

28 (3)~~(2)~~ "Average daily balance" means the average daily
29 balance of public deposits held during the reported month. The
30 average daily balance must be determined by totaling, by
31 account, the daily balances held by the depositor and then

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

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

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

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

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

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

31

1 ~~(9)(8)~~ "Custodian" means the Treasurer or any bank,
2 savings association, or trust company that:

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

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

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

11 (d) Has been approved by the Treasurer to act as a
12 custodian.

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

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

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

29 ~~(13)(12)~~ "Financial institution" means, including, but
30 not limited to, an association, bank, brokerage firm, credit
31 union, industrial savings bank, savings and loan association,

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

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

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

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

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

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

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

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

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

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

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

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

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

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
31

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) An amount as required in special instructions from
25 the Treasurer to protect the integrity of the public deposits
26 program.
27 (3) Each qualified public depository shall report its
28 required collateral on the monthly report required in s.
29 280.16 and simultaneously pledge, deposit, or issue eligible
30 collateral needed.
31

1 ~~(4)(3)~~ Additional collateral is required within 2
2 business days ~~48 hours~~ if public deposits are accepted that
3 would increase the qualified public depository's average daily
4 balance for the current month by 25 percent over the average
5 daily balance of the previously reported month.

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

11 ~~(6)(5)~~ Each qualified public depository shall value
12 its collateral in the following manner; it must:

13 (a) Use a nationally recognized source.

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

17 (c) Report any material decline in value that occurs
18 before the date of mailing the monthly report, required in s.
19 280.16, to the Treasurer.

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

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

31

1 (8) A qualified public depository may be required to
2 return public deposits to governmental units and be suspended
3 or disqualified or subjected to administrative penalty as
4 provided in s. 280.051 or s. 280.054 for failure to meet
5 required collateral.

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

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

12 280.041 Collateral arrangements; agreements,
13 provisions, and triggering events.--

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

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

21 (b) Federal Reserve Bank custody arrangement for
22 collateral pledged to the Treasurer pursuant to subsection
23 (3).

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

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

29 (e) Cash arrangement for collateral held by the
30 Treasurer or a custodian.

31

1 (2)~~(1)~~ With the approval of the Treasurer, a qualified
2 public depository or operating subsidiary, as pledgor, may
3 deposit eligible collateral with a custodian. A qualified
4 public depository shall not act as its own custodian. Except
5 in the case of using a Federal Reserve Bank as custodian,
6 ~~which may require other collateral agreement provisions,~~ the
7 following are necessary for the Treasurer's approval:

8 (a) A completed collateral agreement in a form
9 prescribed by the Treasurer in which the pledgor agrees to the
10 following provisions:

11 1. The pledgor shall own the pledged collateral and
12 acknowledge that the Treasurer has a perfected security
13 interest. The pledged collateral shall be eligible collateral
14 and shall be at least equal to the amount of required
15 collateral.

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

23 3. The pledgor shall not grant the custodian any lien
24 that attaches to the collateral in favor of the custodian that
25 is superior or equal to the security interest of the
26 Treasurer.

27 4. The pledgor shall agree that the Treasurer may,
28 without notice to or consent by the pledgor, require the
29 custodian to comply with and perform any and all requests and
30 orders directly from the Treasurer. These include, but are not
31 limited to, liquidating all collateral and submitting the

1 proceeds directly to the Treasurer in the name of the
2 Treasurer only or transferring all collateral into an account
3 designated solely by the Treasurer.

4 5. The pledgor shall acknowledge that the Treasurer
5 may, without notice to or consent by the pledgor, require the
6 custodian to hold principal payments and income for the
7 benefit of the Treasurer.

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

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

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

25 c. A transfer of collateral between accounts at a
26 custodian requires the Treasurer's prior approval. The
27 collateral shall be released subject to redeposit in the new
28 account with a pledge to the Treasurer intact.

29 d. A transfer of collateral from a custodian to
30 another custodian requires the Treasurer's prior approval and
31 a valid collateral agreement with the new custodian. The

1 collateral shall be released subject to redeposit at the new
2 custodian with a pledge to the Treasurer intact.

3 e. A withdrawal transaction requires the Treasurer's
4 prior approval. The market value of eligible collateral
5 remaining after the withdrawal shall be at least equal to the
6 amount of required collateral. A withdrawal transaction shall
7 be executed for any release of collateral including maturity
8 or call proceeds.

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

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

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

18 b. Separate bond assignment forms as required by the
19 bond agent or trustee.

20 c. Certified copies of resolutions adopted by the
21 pledgor's governing body authorizing execution of these
22 documents.

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

29 9. The pledgor, if notified by the Treasurer, shall
30 not be allowed to use a custodian if that custodian fails to
31 complete the collateral agreement, releases pledged collateral

1 without the Treasurer's approval, fails to properly complete
2 confirmations of pledged collateral, fails to honor a request
3 for examination of definitive pledged collateral and records
4 of book-entry securities, or fails to provide requested
5 documents on definitive securities. The period for disallowing
6 the use of a custodian shall be 1 year.

7 10. The pledgor shall be subject to the jurisdiction
8 of the courts of the State of Florida, or of courts of the
9 United States located within the State of Florida, for the
10 purpose of any litigation arising out of the act.

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

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

17 13. The pledgor shall submit proof that authorized
18 individuals executed the collateral agreement on behalf of the
19 pledgor.

20 14. The pledgor shall agree by resolution of the board
21 of directors that collateral agreements entered into for
22 purposes of this section have been formally accepted and
23 constitute official records of the pledgor.

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

27 (b) A completed collateral agreement in a form
28 prescribed by the Treasurer in which the custodian agrees to
29 the following provisions:

30 1. The custodian shall have no responsibility to
31 ascertain whether the pledged securities are at least equal to

1 the amount of required collateral nor whether the pledged
2 securities are eligible collateral.

3 2. The custodian shall hold pledged collateral in a
4 custody account for the Treasurer for purposes of this
5 section. The custodian shall not enter into or execute any
6 other agreement related to the collateral that would create an
7 interest in or lien on that collateral in any manner in favor
8 of any third party without the written consent of the
9 Treasurer.

10 3. The custodian shall agree that any lien that
11 attaches to the collateral in favor of the custodian shall not
12 be superior or equal to the security interest of the
13 Treasurer.

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

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

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

29 a. A deposit transaction of eligible collateral may be
30 made without prior approval from the Treasurer unless the

31

1 custodian has received notice from the Treasurer requiring the
2 Treasurer's prior approval.

3 b. A substitution transaction of eligible collateral
4 may be made without prior approval from the Treasurer provided
5 the pledgor certifies the market value of the securities to be
6 substituted is at least equal to the market value amount of
7 the securities to be withdrawn and the custodian has not
8 received notice from the Treasurer prohibiting substitution.

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

15 d. A transfer of collateral from a custodian to
16 another custodian requires the Treasurer's prior approval. The
17 collateral shall be released subject to redeposit at the new
18 custodian with a pledge to the Treasurer intact. Confirmation
19 from the new custodian to the Treasurer must be received
20 within 5 business days of the redeposit.

21 e. A withdrawal transaction requires the Treasurer's
22 prior approval. A withdrawal transaction shall be executed for
23 the release of any pledged collateral including maturity or
24 call proceeds.

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

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

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 custodian's governing body authorizing execution of these
5 documents.

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

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

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

23 11. The custodian shall be responsible and liable to
24 the Treasurer for any action of agents the custodian uses to
25 hold and service collateral pledged to the Treasurer.

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

29 13. The Treasurer shall have the right to examine
30 definitive pledged collateral and records of book-entry
31

1 securities during the regular business hours of the custodian
2 without cost to the Treasurer.

3 14. The responsibilities of the custodian for the
4 safekeeping of the pledged collateral shall be limited to the
5 diligence and care usually exercised by a banking or trust
6 institution toward its own property.

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

17 ~~(3)~~(2) With the approval of the Treasurer, a pledgor
18 may deposit eligible collateral pursuant to an agreement with
19 a Federal Reserve Bank. The Federal Reserve Bank agreement may
20 require terms not consistent with subsection~~(2)~~ but may not
21 subject the Treasurer to any costs or indemnification
22 requirements~~(1)~~.

23 ~~(4)~~(3) The Treasurer may require deposit or transfer
24 of collateral into a custodial account established in the
25 Treasurer's name at a designated custodian. This requirement
26 for Treasurer's custody shall have the following
27 characteristics:

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

29 (b) The custodian used must be a Treasurer's approved
30 custodian that must:

31 1. Meet the definition of custodian.

1 2. Not be an affiliate of the qualified public
2 depository.

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

5 (c) All deposit transactions require the approval of
6 the Treasurer.

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

8 (e) The qualified public depository shall be
9 responsible for all costs necessary to the functioning of the
10 contract or associated with the confirmation of securities in
11 the name of the Treasurer and acknowledges that these costs
12 shall not be a charge against the Treasurer and may be
13 deducted from the collateral or income earned if unpaid.

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

19 (a) The letter of credit shall meet the definition of
20 eligible collateral.

21 (b) The qualified public depository shall agree that
22 the Treasurer, as beneficiary, may, without notice to or
23 consent by the qualified public depository, demand payment
24 under the letter of credit if any of the triggering events
25 listed in s. 280.041 occur.

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

30 (d) The qualified public depository shall arrange for
31 the issue of letters of credit which meet the requirements of

1 s. 280.13 and delivery to the Treasurer. All transactions
2 involving letters of credit require the Treasurer's approval.

3 (e) The qualified public depository shall be
4 responsible for all costs necessary in the use or confirmation
5 of letters of credit issued on behalf of the Treasurer and
6 acknowledges that these costs shall not be a charge against
7 the Treasurer.

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

12 (g) The qualified public depository shall agree that
13 any information, form, or report electronically transmitted to
14 the Treasurer shall have the same enforceability as a signed
15 writing.

16 (h) The qualified public depository shall submit proof
17 that authorized individuals executed the letters of credit
18 agreement on its behalf.

19 (i) The qualified public depository shall agree by
20 resolution of the board of directors that the letters of
21 credit agreements entered into for purposes of this section
22 have been formally accepted and constitute official records of
23 the qualified public depository.

24 (6)~~(4)~~ The Treasurer may demand payment under a letter
25 of credit or direct a custodian to deposit or transfer
26 collateral and proceeds of securities not previously credited
27 upon the occurrence of one or more triggering events provided
28 that, to the extent not incompatible with the protection of
29 public deposits, as determined in the Treasurer's sole and
30 absolute discretion, the Treasurer shall provide a custodian
31 and the qualified public depository with 48 hours' advance

1 notice before directing such deposit or transfer. These events
2 include:

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

5 (b) The qualified public depository fails to have
6 adequate procedures and practices for the accurate
7 identification, classification, reporting, and
8 collateralization of public deposits.

9 (c) The custodian fails to provide or allow inspection
10 and verification of documents, reports, records, or other
11 information dealing with the pledged collateral or financial
12 information.

13 (d) The qualified public depository or its operating
14 subsidiary fails to provide or allow inspection and
15 verification of documents, reports, records, or other
16 information dealing with Florida public deposits, pledged
17 collateral, or financial information.

18 (e) The custodian fails to hold income and principal
19 payments made on securities held as collateral or fails to
20 deposit or transfer such payments pursuant to the Treasurer's
21 instructions.

22 (f) The qualified public depository defaults or
23 becomes insolvent.

24 (g) The qualified public depository fails to pay an
25 assessment.

26 (h) The qualified public depository fails to pay an
27 administrative penalty.

28 (i) The qualified public depository fails to meet
29 financial condition standards.

30 (j) The qualified public depository charges a
31 withdrawal penalty to public depositors when the qualified

1 public depository is suspended, disqualified, or withdrawn
2 from the public deposits program.

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

6 (l) The qualified public depository pledges, deposits,
7 or has issued insufficient or unacceptable collateral to meet
8 required collateral within the required time ~~cover public~~
9 ~~deposits.~~

10 (m) ~~Pledged~~ Collateral, other than a proper
11 substitution, is released without the prior approval of the
12 Treasurer.

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

17 (o) The qualified public depository, custodian,
18 operating subsidiary, or agent fails to timely cooperate in
19 resolving problems by the date established in written
20 communication from the Treasurer.

21 (p) The custodian fails to provide sufficient
22 confirmation information.

23 (q) The Federal Home Loan Bank or the qualified public
24 depository gives notification that a letter of credit will not
25 be extended or renewed and other eligible collateral equal to
26 required collateral has not been deposited within 30 days
27 after the notice or 30 days before expiration of the letter of
28 credit.

29 (r) The qualified public depository, if involved in a
30 merger, acquisition, consolidation, or other organizational
31 change, fails to notify the Treasurer or ensure that required

1 collateral is properly maintained by the depository holding
2 the Florida public deposits.

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

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

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

12 280.05 Powers and duties of the Treasurer.--In
13 fulfilling the requirements of this act, the Treasurer has the
14 power to take the following actions he or she deems necessary
15 to protect the integrity of the public deposits program:

16 (1) Identify representative qualified public
17 depositories and furnish notification for the qualified public
18 depository oversight board selection pursuant to s. 280.071.

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

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

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

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

27 ~~(d) Establish collateral pledging levels based on~~
28 ~~qualitative and quantitative standards; and~~

29 ~~(e) Restrict substitutions of collateral subject to~~
30 ~~the approval of the Treasurer.~~

31

1 ~~(2) Appoint a six-member advisory committee to review~~
2 ~~and recommend criteria to be used by the Treasurer for~~
3 ~~purposes stated in subsection (1) in order to protect public~~
4 ~~deposits and the depositories in the program. Each member~~
5 ~~selected to serve on the advisory committee must be a~~
6 ~~representative of his or her industry. Advisory committee~~
7 ~~members must represent active qualified public depositories,~~
8 ~~not in the process of withdrawing from the public deposits~~
9 ~~program, in compliance with all applicable rules, regulations,~~
10 ~~and reporting requirements of this chapter. Members must~~
11 ~~possess knowledge, skill, and experience in one or more of the~~
12 ~~following areas:~~

13 ~~(a) Financial analysis;~~

14 ~~(b) Trend analysis;~~

15 ~~(c) Accounting;~~

16 ~~(d) Banking;~~

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

18 ~~(f) Investment management.~~

19
20 ~~Members' terms shall be for 4 years. Any person appointed to~~
21 ~~fill a vacancy on the advisory committee may serve only for~~
22 ~~the remainder of the unexpired term. Any member is eligible~~
23 ~~for reappointment and shall serve until a successor qualifies.~~
24 ~~The advisory committee shall elect a chair and vice chair and~~
25 ~~shall also designate a secretary who need not be a member of~~
26 ~~the advisory committee. The secretary shall keep a record of~~
27 ~~the proceedings of the advisory committee and shall be the~~
28 ~~custodian of all printed materials filed with or by the~~
29 ~~advisory committee. Notwithstanding the existence of~~
30 ~~vacancies on the advisory committee, a majority of the members~~
31 ~~constitutes a quorum. The advisory committee shall not take~~

1 ~~official action in the absence of a quorum. Each member may~~
2 ~~name a designee to serve on the advisory committee on behalf~~
3 ~~of the member. However, any designee so named must meet the~~
4 ~~qualifications required of the selected member and be approved~~
5 ~~by the Treasurer. The advisory committee shall convene as~~
6 ~~needed.~~

7 ~~(2)(3) Establish goals and objectives and Provide~~
8 ~~other data for the qualified public depository oversight board~~
9 ~~duties pursuant to s. 280.071 regarding:~~

10 ~~(a) Establishing standards for qualified public~~
11 ~~depositories and custodians.~~

12 ~~(b) Evaluating requests for exceptions to standards~~
13 ~~and alternative participation agreements.~~

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

18 ~~(3)(4) Review, implement, monitor, evaluate, and~~
19 ~~modify, as needed, all or any part of the standards, and~~
20 ~~policies, or recommendations of the qualified public~~
21 ~~depository oversight board recommended by an advisory~~
22 ~~committee.~~

23 ~~(4)(5) Perform financial analysis of any qualified~~
24 ~~public depositories depository as needed.~~

25 ~~(5)(6) Require such collateral, or increase the~~
26 ~~collateral-pledging level, of any qualified public depository~~
27 ~~as may be necessary to administer the provisions of this~~
28 ~~chapter and to protect the integrity of the public deposits~~
29 ~~program.~~

30
31

1 ~~(7) Establish a minimum amount of required collateral~~
2 ~~as the Treasurer deems necessary to provide for the contingent~~
3 ~~liability pool.~~

4 (6)(8) Decline to accept, or reduce the reported value
5 of, collateral as circumstances may require in order to ensure
6 the pledging or depositing of sufficient marketable collateral
7 and acceptable letters of credit to meet the purposes of this
8 chapter.

9 (7)(9) Maintain perpetual inventory of pledged
10 collateral and perform monthly market valuations and quality
11 ratings.

12 (8)(10) Monitor and confirm, as often as deemed
13 necessary by the Treasurer, the pledged collateral with held
14 by third party custodians and letter of credit issuers.

15 (9)(11) Move Perfect interest in pledged collateral by
16 having pledged securities moved into an account established in
17 the Treasurer's name upon the occurrence of one or more
18 triggering events. This action shall be taken at the
19 discretion of the Treasurer.

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

23 (11)(12) Furnish written notice to custodians of
24 collateral to hold interest and principal payments made on
25 securities held as collateral and to deposit or transfer such
26 payments pursuant to the Treasurer's instructions.

27 (12)(13) Release collateral held in the Treasurer's
28 name, subject to sale and transfer of funds directly from the
29 custodian to public depositors of a withdrawing depository.
30
31

1 (13) Demand payment under letters of credit for any of
2 the triggering events listed in s. 280.041 and deposit the
3 funds in:

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

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

8 (c) The Treasury Cash Deposit Trust Fund for purposes
9 of eligible collateral.

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

12 (15) Transfer funds directly from the custodian to
13 public depositors or the receiver in order to facilitate
14 prompt payment of claims.

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

17 (a) Qualified public depository monthly reports and
18 schedules. The Treasurer shall review the reports of each
19 qualified public depository for material changes in capital
20 accounts or changes in name, address, or type of institution;
21 record the average daily balances of public deposits held; and
22 monitor the collateral-pledging levels and required
23 collateral.

24 (b) Quarterly regulatory reports from qualified public
25 depositories. The Treasurer shall analyze qualified public
26 depositories ranked in the lowest category based on
27 established financial condition criteria.

28 (c) Qualified public depository annual reports and
29 public depositor annual reports. The Treasurer shall compare
30 public deposit information reported by qualified public
31 depositories and public depositors. Such comparison shall be

1 conducted for qualified public depositories which are ranked
2 in the lowest category based on established financial
3 condition criteria of record on September 30. Additional
4 comparison processes may be performed as public deposits
5 program resources permit.

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

9 (17) Verify the reports of any qualified public
10 depository relating to public deposits it holds when necessary
11 to protect the integrity of the public deposits program.

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

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

18 (20) Suspend or disqualify or disqualify after
19 suspension any qualified public depository that has violated
20 any of the provisions of this chapter or of rules adopted
21 hereunder.

22 (a) Any qualified public depository that is suspended
23 or disqualified pursuant to this subsection is subject to the
24 provisions of s. 280.11(2) governing withdrawal from the
25 public deposits program and return of pledged collateral. Any
26 suspension shall not exceed a period of 6 months. Any
27 qualified public depository which has been disqualified may
28 not reapply for qualification until after the expiration of 1
29 year from the date of the final order of disqualification or
30 the final disposition of any appeal taken therefrom.

31

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

4 (c) If the Treasurer has reason to believe that any
5 qualified public depository or any other financial institution
6 holding public deposits is or has been violating any of the
7 provisions of this chapter or of rules adopted hereunder, he
8 or she may issue to the qualified public depository or other
9 financial institution an order to cease and desist from the
10 violation or to correct the condition giving rise to or
11 resulting from the violation. If any qualified public
12 depository or other financial institution violates a
13 cease-and-desist or corrective order, the Treasurer may impose
14 an administrative penalty upon the qualified public depository
15 or other financial institution as provided in s. 280.054 or s.
16 280.055. In addition to the administrative penalty, the
17 Treasurer may suspend or disqualify any qualified public
18 depository for violation of any order issued pursuant to this
19 paragraph.

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

22 280.051 Grounds for suspension or disqualification of
23 a qualified public depository.--A qualified public depository
24 may be suspended or disqualified or both if the Treasurer
25 determines that the qualified public depository has:

26 (2) Submitted reports containing inaccurate or
27 incomplete information regarding public deposits or ~~the~~
28 ~~securities pledged as~~ collateral for such deposits, capital
29 accounts, or the calculation of required collateral.

30 (3) Failed to maintain required ~~pledge sufficient~~
31 collateral ~~to cover public deposits.~~

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

3 280.054 Administrative penalty in lieu of suspension
4 or disqualification.--

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

13 Section 7. Paragraph (c) of subsection (1) of section
14 280.055, Florida Statutes, is amended to read:

15 280.055 Cease and desist order; corrective order;
16 administrative penalty.--

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

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

21 Section 8. Section 280.07, Florida Statutes, is
22 amended to read:

23 280.07 Mutual responsibility and contingent
24 liability.--Any bank or savings association that is designated
25 as a qualified public depository and that is not insolvent
26 shall guarantee public depositors against loss caused by the
27 default or insolvency of other qualified public depositories.
28 Each qualified public depository shall execute a form
29 prescribed by the Treasurer for such guarantee which shall be
30 approved by the board of directors and shall become an
31 official record of the institution.

1 Section 9. Section 280.071, Florida Statutes, is
2 created to read:

3 280.071 Qualified Public Depository Oversight Board;
4 purpose; identifying representative qualified public
5 depositories; member selection; responsibilities.--A Qualified
6 Public Depository Oversight Board is created comprised of six
7 members and six alternate members who represent the interests
8 of all qualified public depositories in safeguarding the
9 integrity of the public deposits program and preventing the
10 realization of loss assessments.

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

14 (a) Categorize eligible qualified public depositories
15 into three groups according to average asset size. Eligible
16 qualified public depositories must be in compliance with all
17 requirements and shall not be suspended, disqualified,
18 withdrawing, or under an alternative participation agreement
19 in the public deposits program.

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

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

26 (2) Each of the six representative qualified public
27 depositories shall select a member and alternate member for
28 the oversight board and give the Treasurer written information
29 on the selections within 30 calendar days of the Treasurer's
30 notice.

31

1 (3) If an identified qualified public depository
2 declines to select a member, does not respond within 30
3 calendar days, or becomes ineligible, the Treasurer shall
4 furnish notice to the Florida Bankers Association which shall
5 select a member and alternate member to represent that average
6 asset category within 30 calendar days.

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

8 (a) Have resources available for review of qualified
9 public depository issues.

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

12 1. Financial analysis;

13 2. Trend analysis;

14 3. Accounting;

15 4. Banking;

16 5. Risk management; or

17 6. Investment management.

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

20 (6) The alternate member shall act on the member's
21 behalf if the member is unable to perform oversight board
22 functions and shall have the same rights, duties, and
23 responsibilities as the member.

24 (7) Each member shall serve until a successor is
25 selected.

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

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

31 (a) Elect a chair and vice chair.

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

3 1. Keep a record of communications and meeting
4 proceedings.

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

7 (c) Communicate through electronic means and express
8 delivery services when possible.

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

10 (e) Take no official action in the absence of a
11 quorum.

12 1. A quorum shall consist of the majority of voting
13 members of the oversight board.

14 2. Each member shall have one vote.

15 3. A member shall not vote on issues directly related
16 to the qualified public depository he or she represents.

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

20 (10) The oversight board has the power and
21 responsibility to safeguard the integrity of the public
22 deposits program and prevent the realization of loss
23 assessments by:

24 (a) Establishing standards in the following areas:

25 1. Financial institution entry requirements;

26 2. Qualified public depository reporting requirements;

27 3. Qualitative and quantitative financial condition
28 requirements;

29 4. Custodian characteristic requirements and adherence
30 to collateral agreement terms;

31

- 1 5. Collateral-pledging levels and adequacy of required
2 collateral;
- 3 6. Collateral eligibility and restrictions;
4 7. Operating subsidiary and agent requirements;
5 8. Merger, acquisition, and name change requirements;
6 9. Participation restrictions;
7 10. Participation status and conditions for
8 suspension, disqualification, and mandatory withdrawal;
9 11. Penalties and fines; and
10 12. Corrective actions and administrative orders.
- 11 (b) Recommending approval or rejection to the
12 Treasurer for exceptions that do not meet established
13 standards. These requests for exceptions may be:
- 14 1. Referred by the Treasurer; or
15 2. Submitted directly by the qualified public
16 depository seeking exception.
- 17 (c) Issuing approvals or rejections for alternative
18 participation agreements referred by the Treasurer.
- 19 (d) Reviewing program violations and recommending that
20 the Treasurer impose penalties and fines or issue corrective
21 actions and administrative orders.
- 22 (e) Studying public deposit program areas referred by
23 the Treasurer.
- 24 (f) Assessing qualified public depositories, as
25 provided in s. 280.08, to pay for the implementation of
26 standards established by the oversight board which exceed the
27 resources of the public deposits program.
- 28 (11) Official actions of the oversight board regarding
29 the establishment of standards, exception and alternate
30 participation agreement decisions, and recommendations
31 concerning violations shall be:

- 1 (a) Communicated to the Treasurer in writing.
2 (b) Subject to approval of the Treasurer.
3 (c) Implemented as public deposits program resources
4 or payment described in subsection (10) above permit.
5 (12) The Treasurer may adopt rules to establish
6 procedures and forms for oversight board member and alternate
7 member selection and oversight board functions.

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

11 280.08 Procedure for payment of losses.--When the
12 Treasurer determines that a default or insolvency has
13 occurred, he or she shall provide notice as required in s.
14 280.085(1) and implement the following procedures:

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 (4) Each qualified public depository shall pay its
25 assessment to the Treasurer within 7 business days after it
26 receives notice of the assessment. If a depository fails to
27 pay its assessment when due, the Treasurer shall satisfy the
28 assessment by demanding payment under letters of credit or
29 selling collateral ~~securities~~ pledged or deposited by that
30 depository.

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~~(20)~~or
28 because of withdrawal from the public deposits program
29 pursuant to s. 280.11. In that event, the Treasurer is
30 authorized to assess against the suspended, disqualified, or
31 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:--

15 (a) The resulting institution shall automatically
16 become a qualified public depository subject to the
17 requirements of the public deposits program. ~~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, deliver to the Treasurer: ~~the~~
26 ~~resulting institution shall~~

27 1. Documentation ~~execute~~ in its own name ~~and deliver~~
28 ~~to the Treasurer the contingent liability agreement required~~
29 ~~by s. 280.07, and all information and documentation as may be~~
30 ~~required for participation in the public deposits 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 shall be within 180 days after the effective~~
8 ~~date of the acquisition, merger, or consolidation of the~~
9 ~~former institution.~~

10 (e) If the resulting institution does not meet
11 qualifications to become a qualified public depository or does
12 not submit required documentation within 90 calendar days
13 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, merger, or consolidation of
18 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 by subsection
22 (1), the qualified public depository originally holding the
23 public deposits branches to an institution that is not a
24 qualified public depository, and such branches continue to
25 hold public deposits, shall be responsible for:

26 (a) Ensuring the institution receiving such public
27 deposits becomes a qualified public depository and meets
28 collateral requirements with the Treasurer as part of the
29 transaction.

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

1
 2 A qualified public depository that fails to meet such
 3 responsibilities shall ~~and~~ continue to collateralize and
 4 report such public deposits until the receiving ~~purchasing~~
 5 institution becomes a qualified public depository and
 6 collateralizes the deposits or the deposits are returned to
 7 the governmental ~~public~~ unit. ~~The qualified public depository~~
 8 ~~shall notify the Treasurer of any acquisition of its branches~~
 9 ~~on its next monthly report after the final approval by the~~
 10 ~~appropriate regulator if the acquisition includes public~~
 11 ~~deposits.~~

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

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

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

1 days after the effective date of the change ~~on its next~~
2 ~~monthly report.~~

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

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

9 280.11 Withdrawal from public deposits program; return
10 of pledged collateral.--

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

1 section shall be assessed and paid as provided in s.
2 280.09(2).

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

5 280.13 Eligible collateral ~~eligible for pledge by~~
6 ~~banks and savings associations.--~~

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

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

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

14 (c) Obligations of the following federal agencies:

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

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

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

29 (f) Tax anticipation certificates or warrants of
30 counties or municipalities having maturities not exceeding 1
31 year.

1 (g) Public housing authority obligations.

2 (h) Revenue bonds or certificates of a state of the
3 United States or of a political subdivision or municipality
4 thereof.

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

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

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

21 (b) Collateralized Mortgage Obligations.

22 (c) Real Estate Mortgage Investment Conduits.

23 (3) Except as to obligations issued by or with respect
24 to which payment of interest and principal is guaranteed by
25 the United States Government or obligations of federal
26 agencies listed in subsection (1), the debt obligations
27 mentioned in this section shall be rated in one of the four
28 highest classifications by an established, nationally
29 recognized investment rating service.

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

1 (5) Letters of credit issued by a Federal Home Loan
2 Bank are eligible as collateral under this section provided
3 that:

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

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

7 1. Being irrevocable.

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

14 3. Being issued, presentable, and payable at a Federal
15 Home Loan Bank in U.S. dollars. Presentation may be made by
16 the beneficiary submitting the original letter of credit,
17 including any amendments, and the demand in writing, by
18 overnight delivery.

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

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

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

25 7. Containing a statement that it is subject to and
26 governed by the laws of the State of Florida and that, in the
27 event of any conflict with other laws, the laws of the State
28 of Florida will control.

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

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

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

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

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

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

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

24 ~~(7)~~⁽⁵⁾ The Treasurer may disapprove any security or
25 letter of credit that does not meet the requirements of this
26 section or any rule adopted pursuant to this section or any
27 security for which no current market price can be obtained
28 from a nationally recognized source deemed acceptable to the
29 Treasurer or cannot be converted to cash.

30
31

1 (8) The Treasurer shall adopt rules defining
2 restrictions and special requirements for eligible collateral
3 and clarifying terms.

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

7 280.16 Requirements of qualified public depositories;
8 confidentiality.--

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

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

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

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

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

30 4. When the acknowledgment of receipt form is
31 presented to the qualified public depository by the public

1 depositor on an account existing before July 1, 1998, the
2 qualified public depository shall execute and return the
3 completed form to the public depositor within 45 calendar days
4 after such presentation.

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

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

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

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