HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 569 Investment of Public Funds
SPONSOR(S): General Government Policy Council, Insurance, Business & Financial Affairs Policy Committee, Roberson
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	17 Y, 0 N, As CS	Barnum	Cooper
2)	General Government Policy Council	14 Y, 0 N, As CS	Barnum	Hamby
3)	Full Appropriations Council on General Government & Health Care	31 Y, 0 N	Fox	Leznoff
4)	Finance & Tax Council		Wilson	Langston
5)				

SUMMARY ANALYSIS

Currently the Chief Financial Officer (CFO) may deposit state funds not required to meet disbursement needs in certificates of deposit in one or more banks or savings and loan associations designated as a qualified public depository by the CFO. The principal and interest must be insured by the Federal Deposit Insurance Corporation (FDIC). Local governments have the same option and requirement for FDIC insurance.

Statutory language limits the CFO's options if state-held securities are downgraded below a specified required rating level. This may force liquidation of positively performing securities in an unfavorable market.

Presently, any investment losses from securities or investments are offset against monthly earnings. Authority does not exist for the CFO to establish a reserve account against which such losses could be charged.

CS/CS/HB 569 expands the scope of the applicable *Florida Statutes* by providing an option for state and local government funds to be deposited into money market deposit accounts and other financial instruments insured by the FDIC. The magnitude of fiscal impact on state and local governments is indeterminate because the amount of accrued interest will be dependent upon the amount of principal invested, the interest rate being applied, and protocols for crediting interest.

The bill provides the CFO with the discretion to hold certain performing securities if their ratings are downgraded below the statutory required rating level and it is believed that holding such securities is in the interest of the State.

The Revenue Estimating Conference (REC) held on February 6, 2009 determined that this bill's fiscal impact for FY2009-10 on state funds was indeterminate. The REC further indicated that depending on the investment policies of the State Treasury, there will be differences in earnings related to the amount of funds invested in securities that have different terms and yields than those of certificates of deposit. Downgraded but performing assets, which are not required to be sold may provide additional revenues if held to maturity[1].

This bill is effective July 1, 2009.

[1] The Revenue Estimating Conference analysis dated on April 2, 2009, on file with the Full Appropriations Council on General Government and Health Care.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

State and local governments are authorized to deposit funds in excess of those required to meet disbursement needs or expenses in a qualified public depository. The term "qualified public depository" applies only to a bank, savings bank, or savings association which meets specific criteria. The criteria include designation as a qualified public depository by the CFO.[2,3] By definition, a credit union can not be a qualified public depository.

Florida Statutes provide that funds deposited in a qualified public depository can then be placed in certificates of deposit in one or more federally insured bank or savings and loan association.[4] A certificate of deposit is the only financial instrument authorized. The full amount of the principal and accrued interest must be insured by the FDIC, a federal government corporation created by the Glass-Steagall Act of 1933. FDIC insurance covers funds in deposit accounts, including checking and savings accounts, money market deposit accounts, and certificates of deposit in member banks. Banks are not mandated to be FDIC insured. FDIC insurance does not cover other financial products and services that insured banks may offer such as stocks, bonds, mutual fund shares, life insurance policies, annuities, or municipal securities. The current $250,000 standard insurance coverage amount is in effect through December 31, 2009. On January 1, 2010, the standard insurance coverage amount will return to $100,000 for all deposits except IRAs and certain retirement accounts, which will remain insured up to $250,000.[5]

Promontory Interfinancial Network was founded in 2002 by a former head of the U.S. Office of the Comptroller of the Currency, FDIC Chief of Staff, Vice Chairman of the Board of Governors of the Federal Reserve System, and Presidential Special Advisor and Special Counsel. With a stated goal of developing and providing creative solutions to issues confronting bank management, its current network includes nearly 3,000 members nationwide. Promontory Interfinancial Network offers a suite of services which includes Certificate of Deposit Account Registry Service (CDARS). Using CDARS, financial institutions can offer customers up to $50 million in FDIC insurance.[6] CDARS is a deposit-placement service designed to allow FDIC-insured depository institutions to accept deposits of more

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[2] s. 280.02(26), F.S.
[3] 69C-2.005, F.A.C.
[4] s. 17.57(7), F.S.
[5] FDIC Financial Institution Letter FIL-102-2008 dated October 3, 2008 on file with the Insurance, Business and Financial Affairs Policy Committee.
[6] http://www.promnetwork.com (Last visited March 3, 2009)

than $100,000 and obtain full coverage for the depositor by spreading the funds among as many separate FDIC insured institutions as necessary so that no institution holds more than $100,000, including principal plus interest, for each depositor. FDIC has issued an advisory opinion that deposits placed through the CDARS system would be insured on a pass-through basis under the FDIC's rules on the insurance coverage of agency or custodial accounts.[7] Statutory language provides for deposits consistent with FDIC's opinion.[8,9] All FDIC insured banks are not members of the CDARS network. Approximately 98% of Florida Bankers Association members are part of the CDARS network. Banks are charged fees for participation in the CDARS network, however a depositor incurs no fees.

Prior to investment of state funds by the CFO, *Florida Statutes* establish specific security rating criteria which must be met.[10] Once funds are invested, those rating criteria continue to apply. If, as a result of the downgrading of a security's rating, the requirement is no longer satisfied, the downgraded security is sold within 90 days unless it can otherwise be held as part of the 3 percent of total funds which need not meet the rating criteria.[11]

Proposed Change

CS/CS/HB 569 expands the options available to the CFO and local governments for deposit of surplus public funds by removing the requirement that funds only be placed in certificates of deposit. The requirement that the principal and any accrued interest be insured by the Federal Deposit Insurance Corporation remains. Replacing "certificate of deposit" with the broader term "financial instrument" allows for the inclusion of other deposit accounts insured by the FDIC. These would include checking and savings accounts, money market deposit accounts and certificates of deposit, as well as other financial instruments which are or may become eligible for insurance by the FDIC.

For money market deposit accounts, a service or product similar to CDARS, known as the Deutsche Bank Insured Deposit Program (Program), has been developed. Deutsche Bank Trust Company Americas, a fully owned subsidiary of Deutsche Bank AB, is the contracting entity and is authorized to act as administrator and intermediary bank for the Program. The Program provides for over $11 million of FDIC Insurance by allocating deposits to multiple participating program banks.[12] All FDIC insured banks do not participate in the Program. Approximately 5% of Florida Bankers Association members participate in the Program. A depositor incurs no fees for participating in the Program.

CS/CS/HB 569 provides the CFO with the discretion to hold certain securities[13] if their ratings are downgraded below the statutory required rating level and it is believed that holding such securities is in the interest of the State.

B. SECTION DIRECTORY:

Section 1. Amends s. 17.57(7), F.S., by expanding the options available for deposit of certain state public funds. It creates s. 17.57(8), F.S., authorizing the CFO to hold performing securities if their ratings are downgraded below the statutory required rating level.

Section 2. Amends s. 218.415(23), F.S., by expanding the options available for deposit of certain local government public funds.

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[7] FDIC Advisory Opinion 03-03 dated July 29, 2003 on file with the Insurance, Business and Financial Affairs Policy Committee.
[8] s. 17.57(7), F.S.
[9] s. 218.415(23), F.S.
[10] s. 17.57(2), F.S.
[11] s. 17.57(2)(v), F.S.
[12] Evolve Bank & Trust Deutsche Bank Insured Deposit Program Brochure 1-001887 on file with the Insurance, Business and Financial Affairs Policy Committee.
[13] Commercial paper of prime quality, bankers acceptances, corporate obligations or master notes, mortgaged-backed securities, asset-backed securities, obligations guaranteed by the federal government or obligations of United States agencies or instrumentalities, obligations of state and local governments, negotiable certificates, foreign bonds, and corporate convertible debt obligations.

Section 3. Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate regarding certificates of deposit and money market deposit accounts. Accrued interest is dependent upon the amount of principal, interest rate, and protocols for crediting interest.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate regarding certificates of deposit and money market deposit accounts. Accrued interest is dependent upon the amount of principal, interest rate, and protocols for crediting interest.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The REC held on April 2, 2009 determined that the bill's fiscal impact on state funds was indeterminate. The REC further indicated that depending on the investment policies of the State Treasury, there will be differences in earnings related to the amount of funds invested in securities that have different terms and yields than those of certificates of deposit. Downgraded but performing assets which are not required to be sold may provide additional revenues if held to maturity[14].

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

[14] The Revenue Estimating Conference analysis dated April 2, 2009, on file with the Full Appropriations Council on General Government and Health Care.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Department of Financial Services has noted that the terms "financial instruments" and "financial instrument" may be overly broad and could be interpreted to include instruments other than traditional deposit accounts which might qualify for FDIC insurance now or in the future. For example, there has been discussion at the national level of FDIC acting to guarantee or insure mortgage loans that are in, or at risk of, foreclosure.[15] According to the department, utilization of the terms "deposit accounts" and "deposit account" would provide clarity.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

At the March 27, 2009 meeting of the General Government Policy Council, the bill was adopted with one amendment.

The amendment removed language authorizing the CFO to establish a reserve account within the State Treasury for investment losses. It removed the potential Fiscal Year 2009-2010 impact of up to $38,008,311.

The analysis is drafted to the council substitute to the committee substitute.

[15] Department of Financial Services Bill Analysis and Financial Impact Statement dated February 18, 2009 on file with the Insurance, Business and Financial Affairs Policy Committee.