# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 569 Investment of Public Funds
**SPONSOR(S):** Roberson
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 732

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| 1) | Insurance, Business & Financial Affairs Policy Committee | | Barnum | Cooper |
| 2) | General Government Policy Council | | | |
| 3) | Full Appropriations Council on General Government & Health Care | | | |
| 4) | Finance & Tax Council | | | |
| 5) | | | | |

## SUMMARY ANALYSIS


Currently the Chief Financial Officer may deposit state funds not required to meet disbursement needs in certificates of deposit in one or more bank or savings and loan association designated as a qualified public depository by the Chief Financial Officer. 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.

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.

This bill is effective July 1, 2009.

## 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 Chief Financial Officer.[1,2] 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.[3] A certificate of deposit is the only financial instrument authorized. The full amount of the principal and accrued interest must be insured by the Federal Deposit Insurance Corporation (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.[4]

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.[5] CDARS is a deposit-

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

placement service designed to allow FDIC-insured depository institutions to accept deposits of more 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.[6] Statutory language provides for deposits consistent with FDIC's opinion.[7,8] 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.

<u>Proposed Change</u>

HB 569 expands the options available to the Chief Financial Officer 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.[9] All FDIC insured banks do not participate in the Program. Approximately 5% of Florida Bankers Association members participate in the Deutsche Bank Insured Deposit Program. A depositor incurs no fees for participating in the Program.

B. SECTION DIRECTORY:

Section 1. Amends s. 17.57(7), F.S., by expanding the options available for deposit of certain state public funds.

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

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. Accrued interest is dependent upon the amount of principal, interest rate, and protocols for crediting interest.

2. Expenditures:

   None.

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[6] FDIC Advisory Opinion 03-03 dated July 29, 2003 on file with the Insurance, Business and Financial Affairs Policy Committee.
[7] s. 17.57(7), F.S.
[8] s. 218.415(23), F.S.
[9] Evolve Bank & Trust Deutsche Bank Insured Deposit Program Brochure 1-001887 on file with the Insurance, Business and Financial Affairs Policy Committee.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. 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:

None.

## 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.

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.[10] According to the department, utilization of the terms "deposit accounts" and "deposit account" would provide clarity.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

[10] 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.