

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By the Professional Staff of the Banking and Insurance Committee:

BILL: SB 732

INTRODUCER: Senator Smith

SUBJECT: Investment of Surplus Public Funds

DATE: March 16, 2009

REVISED: 3/18/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Woodham	Burgess	BI	Fav/1 amendment
2.			GO	
3.			GA	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... ☐ Statement of Substantial Changes
- B. AMENDMENTS..... ☒ Technical amendments were recommended
- ☐ Amendments were recommended
- ☐ Significant amendments were recommended

I. Summary:

Senate Bill 732 expands the means by which the Chief Financial Officer (CFO) of the State of Florida and local governments may invest excess public funds. The affected statutes currently specify that the CFO and local governments may place these funds only in certificates of deposit that are insured by the Federal Deposit Insurance Corporation (FDIC).

This bill changes the statutes to allow the CFO and local governments to place these funds in “financial instruments” insured by the FDIC.

This bill substantially amends the following sections of the Florida Statutes: s. 17.57(7), F.S. and s. 218.415 F.S.

II. Present Situation:

Placement of Surplus State Funds in Certificates of Deposit

Currently s. 17.57(7), F.S., allows the CFO to place “funds not needed for the disbursement needs of the state” in certificates of deposit with a qualified public depository (QPD)¹ as selected by the CFO under the conditions set out in s. 17.57(7)(b)-(e), F.S.:

- The QPD selected must place the funds in a certificate of deposit in one or more federally insured banks or savings and loans associations, for the account of the state.
- “The full amount of principal and accrued interest of each such certificate of deposit is insured” by the FDIC.
- The selected QPD is custodian for the state for such certificates of deposit.
- This QPD must have other depositors who are depositing funds from other federally insured financial institutions with this same QPD, and who are depositing an amount equal or greater than the amount deposited by the CFO.

These transactions are conducted in agreement with the other responsibilities, conditions, and powers bestowed on the CFO in s. 17.57, F.S.²

Placement of Surplus Funds in Certificates of Deposit by Local Governments

Presently, s. 218.415(23), F.S., allows local governments to place “any portion of surplus public funds” in certificates of deposit³ with a qualified public depository⁴ selected by the local government⁵ if the transaction meets conditions enumerated in s. 218.415(23)(b)-(e), F.S.

- The selected QPD places the funds in a certificate of deposit in one or more federally insured banks or savings and loans associations, for the account of the unit of local government making the deposit.
- “The full amount of principal and accrued interest of each such certificate of deposit is insured” by the FDIC.
- The selected QPD is custodian for the unit of local government for such certificates of deposit.
- This QPD must have other depositors, who are depositing funds from other federally insured financial institutions with this QPD, and who are depositing an amount equal or greater than the amount deposited by the unit of local government in question.

These transactions are undertaken in accordance with the other powers, conditions, and responsibilities, given to local governments in s. 218.415, F.S.⁶

¹ Section. 17.57(7)(a), F.S. This subheading is crucial. If the transaction does not take place with a QPD, the steps in s. 17.57(7)(b)-(e) cannot take place. The criteria for qualified public depositories are specified in s. 280.02(26), F.S. QPDs must be federally insured.

² This section is titled “Deposits and investments of state money” and requires the CFO, among other obligations, to invest such money “in order that the state may realize maximum earnings and benefits.” See s. 17.57(1), F.S.

³ The requirement that the funds be placed in certificates of deposit is not created in the paragraph of s. 218.415(23), F.S., but in subheadings (b) through (e) under it which specify where the funds may be placed.

⁴ As defined in s. 280.02(26), F.S.

⁵ This requirement is crucial. None of the steps listed in subheadings (b) through (e) can take place unless this is done.

Qualified Public Depositories in the Placement of Surplus Funds in Certificates of Deposit

Under s. 17.57(7), F.S., and s. 218.415(23), F.S., the CFO and local governments may place surplus funds in certificates of deposit, but only by means of a qualified public depository.⁷ A qualified public depository in Florida is a bank, savings bank, or savings association which meets the following criteria:⁸

- The depository is organized under the “laws of the United States, the laws of this state, or any other state or territory of the United States.”
- “Has its principal place of business in this state or has a branch office in this state” and is authorized under United States law or Florida law to receive deposits in this state.
- The depository must possess deposit insurance under the Federal Deposit Insurance Act. That is, they are FDIC insured.
- The depository must meet all other requirements in ch. 280, F.S.
- The institution in question has been designated a qualified public depository by the CFO.

QPDs are regulated by other provisions in ch. 280, F.S., and especially by s. 280.071, F.S., which places them under a Qualified Public Depository Oversight Board.

FDIC Insurance

Under standard practice, the FDIC insures checking accounts, savings accounts, money market deposit accounts, trusts, certificates of deposit, and IRA retirement accounts⁹ in the amount of up to \$100,000 per depositor.¹⁰ On October 3, 2008, the FDIC raised this amount to \$250,000 as an emergency measure.¹¹ The FDIC plans to return the upper limit to \$100,000 on January 1, 2010, except for “IRAs, and Certain Retirement Accounts, which will continue to be insured up to \$250,000 per owner.”¹²

Longstanding FDIC practice has been to insure only the deposit accounts discussed above. However, to address the current financial crisis the FDIC has taken steps to insure non-deposit instruments such as debt obligations and mortgage loans.¹³ It is unclear how long this policy change will stay in effect.

New Financial Instruments

This bill’s proponents point to new financial instruments, which will allow a depositor to place funds with a financial institution in an amount above and beyond the FDIC standard limit of \$100,000, or the emergency limit of \$250,000, and retain full FDIC insurance. These instruments

⁶ This section is titled “Local government investment policies,” and enumerates the conditions under which local governments may invest their funds.

⁷ See ss. 17.57(7)(a), F.S. and 218.415(23)(a), F.S. respectively.

⁸ See s. 280.02(26)(a)-(f)

⁹ <http://www.fdic.gov/consumer/consumer/information/fdiciorn.html>.

¹⁰ <http://www.fdic.gov/news/news/financial/2008/fil08102a.html>

¹¹ <http://www.fdic.gov/deposit/deposits/changes.html>

¹² <http://www.fdic.gov/news/news/financial/2008/fil08102a.html>

¹³ Department of Financial Services Bill Analysis and Fiscal Impact Statement on SB 732, page 2, dated 2/17/09; on file with the Florida Senate Banking and Insurance Committee.

do so by making use of a network of FDIC insured financial institutions. By splitting deposits into portions insurable by the FDIC, and spreading the money among as many other members of the network as necessary, these instruments secure full FDIC insurance for the total deposit amount. Proponents cite two examples of these instruments available on the market today.

The first is the Certificate of Deposit Account Registry Service (CDARS). The CDARS service was developed by the Promontory Interfinancial Network of greater Washington DC before the FDIC emergency insurance increase of October 3, 2008. The FDIC issued an advisory opinion that the deposits placed in the CDARS system would be insured on a pass through basis, much as the FDIC currently insures agency or custodial accounts.¹⁴ Depositors typically deal directly with one of the network banks in placing funds in the network. The bill's proponents report that 98 percent of Florida Bankers Association members are in the CDARS network.¹⁵

The other example of such an instrument is the Deutsche Bank Insured Deposit Program (IDP) offered by the Deutsche Bank Trust Company Americas (DBTCA). DBTCA is a fully owned subsidiary of Deutsche Bank AG. This product provides "over \$11 million of FDIC Deposit Insurance"¹⁶ by means of its network of financial institutions. The funds are placed in money market deposit accounts. According to the bill's proponents, five percent of Florida Bankers Association member banks are members of this IDP network.¹⁷ A major difference with CDARS is that depositors deal directly with DBTCA in placing funds with the network.

It should be pointed out that should either the CFO or local governments take advantage of such instruments those transactions will still come under the conditions laid out in statute; the requirement to deal with qualified public depositories in particular.

III. Effect of Proposed Changes:

Section 1

This section of the bill amends ss. 17.57(7)(b)-(e), F.S., which currently specifies the conditions under which the Chief Financial Officer may place funds "not needed to meet the disbursement needs of the state" in certificates of deposit.

This change allows the CFO to place these same funds in "financial instruments insured by the Federal Deposit Insurance Corporation" while holding such transactions to the same conditions currently in force.

As a result of this change the CFO could utilize instruments such as CDARS and the Deutsche Bank Insured Deposit Program.

¹⁴ FDIC Advisory Opinion 03-03 dated July 29, 2003, and on file with the Florida Senate Banking and Insurance Committee.

¹⁵ E-mail correspondence with the Florida Bankers Association, on file with Florida Senate Banking and Insurance Committee.

¹⁶ Evolve Bank and Trust Deutsche Bank Insured Deposit Program Brochure 1-001887 on file with the Florida Senate Banking and Insurance Committee.

¹⁷ E-mail correspondence with the Florida Bankers Association on file with the Florida Senate Banking and Insurance Committee.

Section 2

This section of the bill revises ss. 218.415(23)(b)-(e), F.S., which currently specifies the conditions under which local governments may place “any portion of surplus public funds” in certificates of deposit. The change permits local governments to place those same funds in “financial instruments insured by the Federal Deposit Insurance Corporation” while holding these transactions to the same conditions currently in force.

Local governments would be able to use products such as CDARS and Deutsche Bank’s Insured Deposit Program.

Section 3

Provides an effective date of July 1, 2009.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Private sector impact is difficult to determine. Should this bill prompt the CFO and/or local communities to place additional monies with Florida financial institutions those institutions would benefit.

C. Government Sector Impact:

Neither the CFO nor local governments are under any mandate to change their current investment policies. This bill would simply expand their options.

VI. Technical Deficiencies:

There are two ambiguities in the language of the bill.

The first ambiguity deals with the substitution of “financial instruments” and “financial instrument” for “certificates of deposit.” This language does not specify deposit accounts or deposit instruments. This presents two problems. First as previously discussed, the FDIC is now insuring certain instruments that are not traditional deposit accounts.¹⁸ Second, the language currently in statute dealing with both the CFO and local governments explicitly refers to deposits, depositories, and the act of depositing.¹⁹ This language is not significantly changed by the bill, and in light of the first problem it could lead to a further ambiguity in what the language in statute referring to deposits and depositories means.

The second ambiguity concerns the bill’s continuing use of the phrases “issued for its account” and “are issued.” These phrases are in existing statute referring specifically to certificates of deposit and they would remain in statute if this bill passes creating another possible uncertainty as to what sort of transactions the statute would then reference.²⁰

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 517868 by Banking and Insurance on March 17, 2009:

The amendment deletes the language referring to “financial instruments” or “financial instrument” and replaces it with the language referring to “financial deposit instruments” and “financial deposit instrument.” In so doing the amendment limits the new transactions authorized under this bill to FDIC insured deposit accounts.²¹

(WITH TITLE AMENDMENT)

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁸ Department of Financial Services Bill Analysis and Fiscal Impact Statement on SB 732, page 2, dated 2/17/09; on file with the Florida Senate Banking and Insurance Committee.

¹⁹ This concern is particularly relevant to the sections requiring a qualified public depository.

²⁰ Department of Financial Services Bill Analysis and Fiscal Impact Statement on SB 732, page 2; on file with the Florida Senate Banking and Insurance Committee.

²¹ See the list provided by the FDIC: <http://www.fdic.gov/consumer/consumer/information/fdiciorn.html>.