

**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.)

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Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

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BILL: CS/CS/SB 732

INTRODUCER: Policy and Steering Committee on Ways and Means; Governmental Oversight and Accountability Committee and Senator Smith

SUBJECT: Investment of Surplus Public Funds

DATE: April 23, 2009

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Woodham	Burgess	BI	<b>Fav/1 amendment</b>
2.	Wilson	Wilson	GO	<b>Fav/CS</b>
3.	Frederick	DeLoach	GA	<b>Favorable</b>
4.	Frederick	Kelly	WPSC	<b>Fav/CS</b>
5.				
6.				

**Please see Section VIII. for Additional Information:**

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|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>                   | Technical amendments were recommended   |
|                              | <input type="checkbox"/>                   | Amendments were recommended             |
|                              | <input type="checkbox"/>                   | Significant amendments were recommended |

**I. Summary:**

This bill 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 increases the maximum percentage of funds that can be invested in securities under the control of the CFO, which are not specifically provided within s. 17.57(2), F.S., from 3 percent to 7 percent of the Treasury investment pool. The bill provides a July 1, 2010 expiration date of the rate increase. At that time, the increase will revert to the June 30, 2009 rate unless subsequent legislation is adopted to the contrary.

This bill creates a Treasury Investment Committee to administer the Treasury’s Investment Program and to make recommendations to the CFO on investment policy. It provides for duties,

responsibilities and has an annual reporting requirement to the CFO and the Joint Legislative Auditing Committee.

This bill removes limitations on the conditions under which state and local governments can deposit surplus funds in certain depository institutions.

This bill includes payroll debit cards under the requirements applicable to payment instruments for labor.

This bill substantially amends sections 17.52 (2) (v), 17.57(7), F.S., 218.415, and 532.01, Florida Statutes. The bill creates s. 17.575, Florida Statutes.

## **II. Present Situation:**

### **Deposits and Investments of State Money**

Prior to investments of state funds by the CFO, current law establishes specific security rating criteria which must be met. Once funds are invested, those rating criteria continue to apply. If as a result of downgrading a security's rating and 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 as provided in s. 17.57(2)(v), F.S.

Currently, s. 17.57(2)(v), Florida Statutes, allows 3 percent of the funds under the control of the CFO to be invested in securities not specifically provided within s. 17.57(2), F.S., These funds are commonly known as "basket clause" securities.

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.

### **Placement of Surplus State Funds in Certificates of Deposit**

Section 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)<sup>1</sup> 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.

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<sup>1</sup> 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.

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

### **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 deposit<sup>3</sup> with a qualified public depository<sup>4</sup> selected by the local government<sup>5</sup> if the transaction meets the following 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.<sup>6</sup>

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

Under ss. 17.57(7) and 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.<sup>7</sup> A qualified public depository in Florida is a bank, savings bank, or savings association which meets the following criteria:<sup>8</sup>

- 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.

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<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> As defined in s. 280.02(26), F.S.

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

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

<sup>7</sup> See ss. 17.57(7)(a), F.S. and 218.415(23)(a), F.S. respectively.

<sup>8</sup> See s. 280.02(26)(a)-(f)

- 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 accounts<sup>9</sup> in the amount of up to \$100,000 per depositor.<sup>10</sup> On October 3, 2008, the FDIC raised this amount to \$250,000 as an emergency measure.<sup>11</sup> 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.”<sup>12</sup>

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.<sup>13</sup> 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 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.<sup>14</sup> Depositors typically deal directly with

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

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

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

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

<sup>13</sup> 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.

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

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.<sup>15</sup>

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"<sup>16</sup> 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.<sup>17</sup> 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.

### **Devices Issued in Payment for Labor**

Section 532.01, F.S., recognizes a list of devices, which are applicable payment instruments for labor. These instruments include: any order, check, draft, note, memorandum, or other acknowledgement of indebtedness issued in payment of wages or salary due or to become due and must be negotiable and payable in cash on demand without discount.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 17.57 (2) (v), F.S., to increase the maximum percentage of funds that can be invested in securities under the control of the CFO, from 3 percent to 7 percent of the investment pool. This change will allow the CFO more flexibility in managing the investment of surplus public funds in today's dynamic financial markets.

This section of the bill also amends s. 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.

Additionally, the section removes a limitation on the conditions under which the state can deposit surplus funds in certain depository institutions. As a result of this change, the range of depository institutions available is increased.

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

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

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

**Section 2** provides for the expiration of the rate change in the amendment of s. 17.57(2)(v), F.S., on July 1, 2010, requiring the text of that paragraph to revert to that which is in existence on June 30, 2009, unless subsequent legislation is adopted to the contrary.

**Section 3** creates s. 17.575, F.S., which establishes a Treasury Investment Committee, made up of at least 5 members, to administer the Treasury's investment program and to make recommendations to the CFO regarding investment policy. This section provides for duties, responsibilities and annual reporting requirements of the Committee to the CFO and the Joint Legislative Auditing Committee. Creation of the Committee will provide transparency and a more accountable system of review of Treasury investments.

**Section 4** revises s. 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.

This section of the bill also removes a limitation on the conditions under which local governments can deposit surplus funds in certain depository institutions. As a result of this change, the range of depository institutions available is increased.

**Section 5** amends s. 532.01, F.S., to include payroll debit cards under the requirements applicable to payment instruments for labor. Recognition of the payroll debit card would provide protections to employees receiving the card as a method of payment, as it would require that the funds on the card be made available in cash without a fee on demand.

**Section 6** 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:**

The impact to the private sector is indeterminate. Should this bill prompt the CFO 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 expands their options through investments in other instruments insured by the Federal Deposit Insurance Corporation..

Providing the CFO with additional flexibility to manage the investment of surplus public funds in today's dynamic financial markets can potentially minimize state investment losses in an unfavorable market.

**VI. Technical Deficiencies:**

None.

**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.)

**CS by Policy and Steering Committee on Ways and Means on April 23, 2009:**

The committee substitute:

- increases the maximum percentage of funds that can be invested in securities under the control of the CFO for one year, from 3 percent to 7 percent of the Treasury investment pool; thus allowing the CFO more flexibility in managing investments of surplus funds in today's dynamic financial markets.
- establishes a transparent and more accountable system of review of Treasury investments through the creation of a Treasury Investment Committee, with specified duties, responsibilities and annual reporting requirements to the CFO and the Joint Legislative Auditing Committee.
- removes provisions relating to concurrent deposits by the state, units of local government and customers of other federally insured financial institutions.
- includes payroll debit cards under requirements applicable to payment instruments.

**CS by Governmental Oversight and Accountability Committee on March 31, 2009:**

The committee substitute 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.<sup>18</sup>

B. Amendments:

None.

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

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<sup>18</sup> See the list provided by the FDIC: <http://www.fdic.gov/consumer/consumer/information/fdiciorn.html>.