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 2430

INTRODUCER: Senator Smith

SUBJECT: Security for Public Deposits

DATE: March 21, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Messer	Burgess	BI	**Pre-meeting**
2.			GO	
3.			GA	
4.				
5.				
6.				

I. Summary:

In order for a bank or other depository institution to accept deposits of public (government) funds, the institution must meet certain requirements. These requirements include minimum collateral levels and participation in a contingent liability, or risk sharing pool. Through the risk sharing pool, all 214 institutions that are authorized to accept public deposits in this state must agree to pay for a portion of any loss of public funds resulting from another member of the pool becoming insolvent. This bill provides a process by which a highly collateralized member of the risk pool may opt out of participating in the pool while continuing to accept deposits of public funds.

This bill substantially amends the following sections of the Florida Statutes: 280.02, 280.04, 280.07, and 280.08.

II. Present Situation:

Public Deposits

Public deposits are defined by s. 280.02(23), F.S., as moneys of the state, local government units, or public school that are placed on deposit in a bank, savings bank, or savings association and for which the bank, savings bank, or savings association is required to maintain reserves. This includes, but is not limited to, time deposit accounts, demand deposit accounts, and nonnegotiable certificates of deposit. Moneys in deposit notes and in other non-deposit accounts such as repurchase or reverse repurchase operations are not public deposits. In addtion securities, mutual funds, and similar types of investments are not considered public deposits.

As of March 15, 2010, Florida public deposits totaled $25,879,733,913 and were spread out over 214 public depositories.[1]

Qualified Public Depositories (QPDs)

Public depositories are defined by s. 280.02(26), F.S., as any bank, savings bank, or savings association that:

- Is organized under the laws of the United States or any state or territory of the United States;
- Has its principal place of business in Florida or a branch office in Florida that is authorized under the laws of Florida or of the United States to receive deposits in Florida;
- Has deposit insurance through the FDIC;
- Has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits;
- Meets all the requirements of ch. 280, F.S.; and
- Has been designated by the Chief Financial Officer of Florida as a QPD.

Collateral Requirements

Section 280.04, F.S., sets out the collateral requirements for Florida QPDs. This statute sets out a risk based formula that guides the Department of Financial Services (DFS) in determining each QPD's collateral requirement. Depending on the financial stability of each QPD, the collateral requirement may range from 25% to 200% of the amount of public deposits held by the QPD.[2]

Once the amount of required collateral is determined by the Department of Financial Services, s. 280.041, F.S., sets forth the manner in which the collateral is to be pledged. Generally, the collateral must be pledged by the QPD and held by either the DFS or an agreed upon custodian. In the event that the QPD is unable to return the public funds, the collateral is retained by the DFS and is used to satisfy the lost funds, to the extent that the collateral is sufficient to do so. In the event that the collateral is insufficient to compensate for the lost funds, other QPDs will become liable for the lost funds via the contingent liability provision in s. 280.07, F.S.

Contingent Liability

Section 280.07, F.S., creates a mechanism by which all QPDs in the state share in any loss of public funds that result from the failure of a QPD. This section of the Florida Statutes provides specifically:

> "Any bank or savings association that is designated as a qualified public depository and that is not insolvent shall guarantee public depositors against loss caused by the default or insolvency of other qualified public depositories. Each qualified public depository shall execute a form prescribed by the Chief Financial Officer for such guarantee which shall be approved by the board of directors and shall become an official record of the institution."

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[1] Email sent to the Committee on Banking and Insurance on March 19, 2010 from Y. T. Toulon, Chief Bureau of Collateral Management, Division of Treasury, Department of Financial Services, on file with the Committee on Banking and Insurance.
[2] Section 280.04, F.S.

Importance of Collateral and Contingent Liability Protections

The collateral requirement and the contingent liability, or risk pool, requirement in ch. 280, F.S., protect public funds from being lost due to bank failure. This protection is particularly important due to the fact that in the last 10 years there have been over 200 bank failures in the United States.[3] Some QPDs have argued that the contingent liability requirement is unnecessary if the proper amount of collateral is pledged by each QPD. However, due to the high importance placed on protecting public funds, others argue that it is prudent to provide a second layer of protection via the contingent liability pool.

III. Effect of Proposed Changes:

Section 1: adds two new terms to the definitions section in s. 280.02, F.S. The new terms are "electing public depository" and "participating public depository." An "electing public depository" is defined as a QPD that has made the election to opt out of the provisions in s. 280.07(1), F.S., pursuant to the opt out requirements in the newly created s. 280.07(2), F.S. As such, "electing public depositories" will not share in the public deposit losses of other QPDs via the current contingent liability arrangement. A "participating public depository" is defined as any QPD that has not chosen to become an "electing public depository" and as such, is still subject to the contingent liability provisions in s. 280.07(1), F.S.

Section 2: amends s. 280.04(1), F.S., to provide for a new 110% collateral pledge level. Section 280.04(1), F.S., currently lists six formulas for calculating a QPD's required amount of collateral that must be pledged; this section adds a seventh by inserting the 110% level. This new collateral level would apply only to electing public depositories. This change may raise the amount of pledged collateral for QPDs that have opted to not participate in the risk pool.

The DFS has indicated that the new collateral pledge level in this section will require computer programming changes to the Collateral Administration Program (CAP) application. The computer programming changes will be required because the CAP application exists in order to recommend collateral pledge level changes based on the numerical rating parameters that s. 280.04(1), F.S., provides and the CAP is not currently programmed to use a 110% collateral pledge level.

Section 3: amends s. 280.07(1), F.S., to provide that only participating public depositories share potential contingent liability for public depositor losses caused by the failure of other qualified public depositories.

This section also creates two new subsections in s. 280.07, F.S. It provides that any qualified public depository, upon notification to the CFO may become an "electing" public depository after meeting the collateral pledge requirement in s. 280.04(1), F.S. This section also provides that an electing QPD may elect to change back to a participating public depository by similar notice.

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[3] According to the FDIC, there have been 223 banks taken over by the FDIC since October1, 2000. See http://www.fdic.gov/bank/individual/failed/banklist.html (last visited on March 21, 2010).

Section 4: amends s. 280.08, F.S., to provide that only participating public depositories shall be subject to the assessments that may be charged by the Chief Financial Officer when carrying out the contingent liability provisions in s. 280.07(1), F.S.

Section 5: provides that this act shall take effect July 1, 1020.

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 on the private sector is indeterminate, however it is potentially substantial. Allowing QPDs to opt out of the risk sharing pool will affect electing and participating public depositories in different ways.

Electing Public Depositories: These institutions will experience an increase in costs due to an increased collateral requirement; however they will also experience a decrease in potential liability due to their decision to not participate in the risk pool.

Participating Public Depositories: These institutions may experience an increase in liability through the risk sharing pool. Each time a QPD elects to not participate in the risk sharing pool the proportionate share of liability for the participating QPDs left in the pool will increase.

C. Government Sector Impact:

This bill removes one of the safeguards that are currently in statute to protect public funds from being lost due to bank failures. Allowing QPDs to opt out of participation in a shared liability pool may cause public funds that are deposited with QPDs to become less secure from risk of loss due to a bank failure.

The DFS has indicated that implementation of this bill would require two new full time positions with an estimated recurring cost of $102,836.02 annually and a one-time investment in computer programming expense of approximately $300,000.

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.)

None.

B. Amendments:

None.