

1 A bill to be entitled
 2 An act relating to public depositories; amending s.
 3 280.02, F.S.; providing additional definitions; amending
 4 s. 280.04, F.S.; revising collateral requirements for
 5 public deposits; amending s. 280.07, F.S.; providing
 6 criteria and procedures for a qualified public depository
 7 to become an electing public depository; providing for
 8 termination of an election to become an electing public
 9 depository; providing authority and duties of the Chief
 10 Financial Officer; amending s. 280.08, F.S.; providing for
 11 application to participating public depositories of
 12 procedures for payment of loss to public depositors;
 13 providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 280.02, Florida Statutes, is amended to
 18 read:

19 280.02 Definitions.—As used in this chapter, the term:

20 (1) "Affiliate" means an entity that is related through a
 21 parent corporation's controlling interest. The term also
 22 includes any financial institution holding company or any
 23 subsidiary or service corporation of such holding company.

24 (2) "Alternative participation agreement" means an
 25 agreement of restrictions that a qualified public depository
 26 completes as an alternative to immediately withdrawing from the
 27 public deposits program due to financial condition.

28 (3) "Average daily balance" means the average daily

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29 | balance of public deposits held during the reported month. The
30 | average daily balance must be determined by totaling, by
31 | account, the daily balances held by the depositor and then
32 | dividing the total by the number of calendar days in the month.
33 | Deposit insurance is then deducted from each account balance and
34 | the resulting amounts are totaled to obtain the average daily
35 | balance.

36 | (4) "Average monthly balance" means the average monthly
37 | balance of public deposits held, before deducting deposit
38 | insurance, by the depository during any 12 calendar months. The
39 | average monthly balance of the previous 12 calendar months must
40 | be determined by adding the average daily balance before
41 | deducting deposit insurance for the reported month and the
42 | average daily balances before deducting deposit insurance for
43 | the 11 months preceding that month and dividing the total by 12.

44 | (5) "Book-entry form" means that securities are not
45 | represented by a paper certificate but represented by an account
46 | entry on the records of a depository trust clearing system or,
47 | in the case of United States Government securities, a Federal
48 | Reserve Bank.

49 | (6) "Capital account" means total equity capital, as
50 | defined on the balance-sheet portion of the Consolidated Reports
51 | of Condition and Income (call report) or the Thrift Financial
52 | Report, less intangible assets, as submitted to the regulatory
53 | banking authority.

54 | (7) "Collateral-pledging level," for qualified public
55 | depositories, means the percentage of collateral required to be
56 | pledged as provided in s. 280.04 by a financial institution.

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57 (8) "Current month" means the month immediately following
58 the month for which the monthly report is due from qualified
59 public depositories.

60 (9) "Custodian" means the Chief Financial Officer or any
61 bank, savings association, or trust company that:

62 (a) Is organized and existing under the laws of this
63 state, any other state, or the United States;

64 (b) Has executed all forms required under this chapter or
65 any rule adopted hereunder;

66 (c) Agrees to be subject to the jurisdiction of the courts
67 of this state, or of courts of the United States which are
68 located within this state, for the purpose of any litigation
69 arising out of this chapter; and

70 (d) Has been approved by the Chief Financial Officer to
71 act as a custodian.

72 (10) "Default or insolvency" includes, without limitation,
73 the failure or refusal of a qualified public depository to pay
74 any check or warrant drawn upon sufficient and collected funds
75 by any public depositor or to return any deposit on demand or at
76 maturity together with interest as agreed; the issuance of an
77 order by any supervisory authority restraining such depository
78 from making payments of deposit liabilities; or the appointment
79 of a receiver for such depository.

80 (11) "Effective date of notice of withdrawal or order of
81 discontinuance" pursuant to s. 280.11(3) means that date which
82 is set out as such in any notice of withdrawal or order of
83 discontinuance from the Chief Financial Officer.

84 (12) "Electing public depository" means a qualified public

85 depository that has made the election under s. 280.07(2) and is
 86 in compliance with the collateral requirements of s. 280.04.

87 (13)~~(12)~~ "Eligible collateral" means securities, Federal
 88 Home Loan Bank letters of credit, and cash, as designated in s.
 89 280.13.

90 (14)~~(13)~~ "Financial institution" means, including, but not
 91 limited to, an association, bank, brokerage firm, credit union,
 92 industrial savings bank, savings and loan association, trust
 93 company, or other type of financial institution organized under
 94 the laws of this state or any other state of the United States
 95 and doing business in this state or any other state, in the
 96 general nature of the business conducted by banks and savings
 97 associations.

98 (15)~~(14)~~ "Governmental unit" means the state or any
 99 county, school district, community college district, special
 100 district, metropolitan government, or municipality, including
 101 any agency, board, bureau, commission, and institution of any of
 102 such entities, or any court.

103 (16)~~(15)~~ "Loss to public depositors" means loss of all
 104 principal and all interest or other earnings on the principal
 105 accrued or accruing as of the date the qualified public
 106 depository was declared in default or insolvent.

107 (17)~~(16)~~ "Market value" means the value of collateral
 108 calculated pursuant to s. 280.04.

109 (18)~~(17)~~ "Operating subsidiary" means the qualified public
 110 depository's 100-percent owned corporation that has ownership of
 111 pledged collateral. The operating subsidiary may have no powers
 112 beyond those that its parent qualified public depository may

113 | itself exercise. The use of an operating subsidiary is at the
 114 | discretion of the qualified public depository and must meet the
 115 | Chief Financial Officer's requirements.

116 | ~~(19)-(18)~~ "Oversight board" means the qualified public
 117 | depository oversight board created in s. 280.071 for the purpose
 118 | of safeguarding the integrity of the public deposits program and
 119 | preventing the realization of loss assessments through
 120 | standards, policies, and recommendations for actions to the
 121 | Chief Financial Officer.

122 | (20) "Participating public depository" means a qualified
 123 | public depository that is not an electing public depository on
 124 | the date the Chief Financial Officer determines the qualified
 125 | public depository to be in default or insolvent.

126 | ~~(21)-(19)~~ "Pledged collateral" means securities or cash
 127 | held separately and distinctly by an eligible custodian for the
 128 | benefit of the Chief Financial Officer to be used as security
 129 | for Florida public deposits. This includes maturity and call
 130 | proceeds.

131 | ~~(22)-(20)~~ "Pledgor" means the qualified public depository
 132 | and, if one is used, operating subsidiary.

133 | ~~(23)-(21)~~ "Pool figure" means the total average monthly
 134 | balances of public deposits held by all qualified public
 135 | depositories during the immediately preceding 12-month period.

136 | ~~(24)-(22)~~ "Previous month" means the month or months
 137 | immediately preceding the month for which a monthly report is
 138 | due from qualified public depositories.

139 | ~~(25)-(23)~~ "Public deposit" means the moneys of the state or
 140 | of any state university, county, school district, community

141 college district, special district, metropolitan government, or
 142 municipality, including agencies, boards, bureaus, commissions,
 143 and institutions of any of the foregoing, or of any court, and
 144 includes the moneys of all county officers, including
 145 constitutional officers, that are placed on deposit in a bank,
 146 savings bank, or savings association and for which the bank,
 147 savings bank, or savings association is required to maintain
 148 reserves. This includes, but is not limited to, time deposit
 149 accounts, demand deposit accounts, and nonnegotiable
 150 certificates of deposit. Moneys in deposit notes and in other
 151 nondeposit accounts such as repurchase or reverse repurchase
 152 operations are not public deposits. Securities, mutual funds,
 153 and similar types of investments are not considered public
 154 deposits and shall not be subject to the provisions of this
 155 chapter.

156 (26)~~(24)~~ "Public depositor" means the official custodian
 157 of funds for a governmental unit who is responsible for handling
 158 public deposits.

159 (27)~~(25)~~ "Public deposits program" means the Florida
 160 Security for Public Deposits Act contained in this chapter and
 161 any rule adopted under this chapter.

162 (28)~~(26)~~ "Qualified public depository" means any bank,
 163 savings bank, or savings association that:

164 (a) Is organized and exists under the laws of the United
 165 States, the laws of this state or any other state or territory
 166 of the United States.

167 (b) Has its principal place of business in this state or
 168 has a branch office in this state which is authorized under the

169 laws of this state or of the United States to receive deposits
 170 in this state.

171 (c) Has deposit insurance under the provision of the
 172 Federal Deposit Insurance Act, as amended, 12 U.S.C. ss. 1811 et
 173 seq.

174 (d) Has procedures and practices for accurate
 175 identification, classification, reporting, and collateralization
 176 of public deposits.

177 (e) Meets all the requirements of this chapter.

178 (f) Has been designated by the Chief Financial Officer as
 179 a qualified public depository.

180 (29)~~(27)~~ "Reported month" means the month for which a
 181 monthly report is due from qualified public depositories.

182 (30)~~(28)~~ "Required collateral" of a qualified public
 183 depository means eligible collateral having a market value equal
 184 to or in excess of the amount required pursuant to s. 280.04.

185 (31)~~(29)~~ "Chief Financial Officer's custody" is a
 186 collateral arrangement governed by a contract between a
 187 designated Chief Financial Officer's custodian and the Chief
 188 Financial Officer. This arrangement requires collateral to be in
 189 the Chief Financial Officer's name in order to perfect the
 190 security interest.

191 (32)~~(30)~~ "Triggering events" are events set out in s.
 192 280.041 which give the Chief Financial Officer the right to:

193 (a) Instruct the custodian to transfer securities pledged,
 194 interest payments, and other proceeds of pledged collateral not
 195 previously credited to the pledgor.

196 (b) Demand payment under letters of credit.

197 Section 2. Subsection (1) of section 280.04, Florida
 198 Statutes, is amended, and paragraph (g) is added to subsection
 199 (2) of that section, to read:

200 280.04 Collateral for public deposits; general
 201 provisions.—

202 (1) The Chief Financial Officer shall determine the
 203 collateral requirements and collateral pledging level for each
 204 qualified public depository following procedures established by
 205 rule. These procedures shall include numerical parameters for
 206 25-percent, 50-percent, 110-percent, 125-percent, and 200-
 207 percent pledge levels based on nationally recognized financial
 208 rating services information and established financial
 209 performance guidelines.

210 (2) A qualified public depository may not accept or retain
 211 any public deposit which is required to be secured unless it has
 212 deposited with the Chief Financial Officer eligible collateral
 213 at least equal to the greater of:

214 (g) One hundred percent of the average daily balance of
 215 public deposits if the qualified public depository is an
 216 electing public depository.

217 Section 3. Section 280.07, Florida Statutes, is amended to
 218 read:

219 280.07 Mutual responsibility and contingent liability.—

220 (1) Any bank or savings association that is designated as
 221 a participating ~~qualified~~ public depository and that is not
 222 insolvent shall guarantee public depositors against loss caused
 223 by the default or insolvency of other qualified public
 224 depositories. Each participating ~~qualified~~ public depository

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225 shall execute a form prescribed by the Chief Financial Officer
226 for such guarantee which shall be approved by the board of
227 directors and shall become an official record of the
228 institution.

229 (2) A qualified public depository becomes an electing
230 public depository upon written notice to the Chief Financial
231 Officer that the depository desires to be classified as an
232 electing public depository and complies with the collateral
233 requirements of s. 280.04 for an electing public depository. An
234 electing public depository is not subject to the cross-guaranty
235 pool requirements of a participating public depository, and any
236 security agreement, guarantee, or other agreement with the Chief
237 Financial Officer to the contrary shall be suspended while the
238 qualified public depository is an electing public depository. A
239 qualified public depository that makes the election shall be
240 treated as a participating public depository at any time it is
241 not in compliance with the collateral requirements of s. 280.04
242 applicable to an electing public depository.

243 (3) An electing public depository may terminate its
244 election and reenter the cross-guaranty pool by written notice
245 to the Chief Financial Officer. The Chief Financial Officer may
246 deny revocation of the election and reentry into the cross-
247 guaranty pool after considering the electing public depository's
248 level of capitalization, credit rating, or other bank-health
249 related factors. Upon revocation of the election, the Chief
250 Financial Officer shall release any excess collateral applicable
251 to the electing public depository's status.

252 Section 4. Subsections (3) and (4) of section 280.08,

253 Florida Statutes, are amended to read:

254 280.08 Procedure for payment of losses.—When the Chief
 255 Financial Officer determines that a default or insolvency has
 256 occurred, he or she shall provide notice as required in s.
 257 280.085 and implement the following procedures:

258 (3) (a) The loss to public depositors shall be satisfied,
 259 insofar as possible, first through any applicable deposit
 260 insurance and then through demanding payment under letters of
 261 credit or the sale of collateral pledged or deposited by the
 262 defaulting depository. The Chief Financial Officer may assess
 263 participating ~~qualified~~ public depositories as provided in
 264 paragraph (b) for the total loss if the demand for payment or
 265 sale of collateral cannot be accomplished within 7 business
 266 days.

267 (b) The Chief Financial Officer shall provide coverage of
 268 any remaining loss by assessment against the other participating
 269 ~~qualified~~ public depositories. The Chief Financial Officer shall
 270 determine such assessment for each participating ~~qualified~~
 271 public depository by multiplying the total amount of any
 272 remaining loss to all public depositors by a percentage which
 273 represents the average monthly balance of public deposits held
 274 by each participating ~~qualified~~ public depository during the
 275 previous 12 months divided by the total average monthly balances
 276 of public deposits held by all participating ~~qualified~~ public
 277 depositories, excluding the defaulting depository, during the
 278 same period. The assessment calculation shall be computed to six
 279 decimal places.

280 (4) Each participating ~~qualified~~ public depository shall

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281 pay its assessment to the Chief Financial Officer within 7
282 business days after it receives notice of the assessment. If a
283 depository fails to pay its assessment when due, the Chief
284 Financial Officer shall satisfy the assessment by demanding
285 payment under letters of credit or selling collateral pledged or
286 deposited by that depository.

287 Section 5. This act shall take effect July 1, 2010.