

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 999 Public Depositories  
**SPONSOR(S):** Insurance & Banking Subcommittee, Ingram  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1976

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	8 Y, 6 N, As CS	Barnum	Cooper
2) Economic Affairs Committee			

### SUMMARY ANALYSIS

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 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 (CFO). Under current law, by statutory definition, a credit union cannot be a qualified public depository.

The law provides that funds deposited in a qualified public depository can then be placed in financial deposit instruments in one or more federally insured bank or savings and loan association. The full amount of the principal and accrued interest must be insured by the Federal Deposit Insurance Corporation. The standard maximum deposit insurance amount is \$250,000.

When a qualified public depository accepts or retains a public deposit which is required to be secured, it deposits collateral with a custodian in an amount determined according to statutory guidelines. In lieu of utilizing a custodian, other collateral options include an irrevocable letter of credit and cash to be held in the Treasury Cash Deposit Trust Fund.

Public depositors are protected against loss caused by the default or insolvency of a qualified public depository. Losses are satisfied first through any applicable deposit insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting depository. If that is insufficient, the CFO provides coverage through assessment against the other qualified public depositories.

Chapter 657, F.S. is the Florida Credit Union Act (Act). Per the Act, the purpose of a credit union is to encourage thrift among its members, create sources of credit at fair and reasonable rates of interest, and provide an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition.

The shares in a credit union are insured by the National Credit Union Share Insurance Fund, which is managed by the National Credit Union Administration. The standard maximum share insurance amount is \$250,000.

CS/HB 999 expands the definition of "Qualified public depository", which will make a credit union eligible to apply for designation by the CFO as a qualified public depository. Approval for designation would be contingent upon meeting all provisions and requirements specified by law. After designation as a qualified public depository, a credit union will be eligible to receive deposits of state and local government funds in excess of those required to meet disbursement needs or expenses.

The bill expands the deposit insurance requirement for a qualified public depository to include the National Credit Union Share Insurance Fund.

The bill expands the current mutual responsibility and contingent liability provision to encompass any financial institution rather than only banks and savings associations.

The fiscal impact on state and local governments is indeterminate. The impact on a credit union which becomes a qualified public depository may be positive.

The bill provides for an effective date of July 1, 2011.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0999a.INBS

DATE: 4/4/2011

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background:**

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 (CFO).<sup>1, 2</sup> Under current law, by statutory definition, a credit union cannot be a qualified public depository.

The law provides that funds deposited in a qualified public depository can then be placed in financial deposit instruments<sup>3</sup> in one or more federally insured bank or savings and loan association.<sup>4</sup> 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. With enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act on July 21, 2010, the standard maximum deposit insurance amount was permanently raised to \$250,000.<sup>5</sup> 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.

When a qualified public depository accepts or retains a public deposit which is required to be secured, it must deposit collateral<sup>6</sup> with custodians in an amount determined according to statutory guidelines.<sup>7</sup> The collateral requirements include calculations based upon a financial condition ranking which is used to calculate the qualified public depository's financial strengths and weaknesses.<sup>8</sup> Two nationally recognized financial institution rating services are used to rank the financial condition of each participant and applicant. This ranking is based on a scale of 0 to 100. Currently, Financial Information Systems and IDC Financial Publishing rating services are used. Criteria for eligible collateral and restrictions are detailed in statute<sup>9</sup> and the Florida Administrative Code.<sup>10</sup>

Banks, savings associations, and trust companies that hold collateral for qualified public depositories pledged to secure public deposits are described as "regular" custodians. Qualified public depositories can select the "regular" custodians they wish to use and submit Collateral Control Agreement to them for signatures. These collateral control agreements, available through the Department of Financial Services website,<sup>11</sup> contain the requirements for custodians holding pledged collateral.

In lieu of utilizing a "regular" custodian, other collateral options include an irrevocable letter of credit and cash to be held in the Treasury Cash Deposit Trust Fund.<sup>12</sup> Interest earned on cash deposited into this Fund is to be prorated and paid to the depositing entities.<sup>13</sup>

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<sup>1</sup> s. 280.02(26), F.S.

<sup>2</sup> 69C-2.005, F.A.C.

<sup>3</sup> Financial deposit instruments 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.

<sup>4</sup> s. 17.57(7), F.S.

<sup>5</sup> H.R. 4173, Public Law 111-203, Sec. 335.

<sup>6</sup> s. 280.13, F.S.

<sup>7</sup> s. 280.04(2), F.S.

<sup>8</sup> 69C-2.024, F.A.C.

<sup>9</sup> s. 280.13, F.S.

<sup>10</sup> 69C-2.007, F.A.C.

<sup>11</sup> [https://apps.fldfs.com/CAP\\_Web/PublicDeposits/reg\\_custodian\\_info.aspx](https://apps.fldfs.com/CAP_Web/PublicDeposits/reg_custodian_info.aspx) (Last visited on March 30, 2011).

<sup>12</sup> s. 280.13, F.S.

<sup>13</sup> s. 17.60(2), F.S.

A Qualified Public Depository Oversight Board is created in law for the purpose of safeguarding the integrity of the Public Deposits Program and preventing the need for loss assessments. The board consists of six members. The CFO nominates two members and alternates from each of three groups of eligible qualified public depositories, categorized by average asset size. If the qualified public depository fails to respond or declines the nomination, the Florida Bankers Association selects a member and alternate to represent that average asset category.<sup>14</sup>

Public depositors are protected against loss caused by the default or insolvency of a qualified public depository. Losses are satisfied first through any applicable deposit insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting depository. If that is insufficient, the CFO provides coverage through assessment against the other qualified public depositories.<sup>15, 16</sup>

Chapter 657, F.S. is the Florida Credit Union Act (Act). Per the Act, the purpose of a credit union<sup>17</sup> is to encourage thrift among its members, create sources of credit at fair and reasonable rates of interest, and provide an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition.<sup>18</sup> This is consistent with U.S. Congressional findings that their specified mission is to meet the credit and savings needs of consumers, especially persons of modest means.<sup>19</sup>

The shares in a credit union<sup>20</sup> are insured by the National Credit Union Share Insurance Fund (NCUSIF). Established by Congress in 1970 to insure member share accounts at federally insured credit unions, the NCUSIF is managed by the National Credit Union Administration (NCUA) under the direction of the three-person NCUA Board. NCUA regulates, charters, and insures the nation's federal credit unions. In addition, NCUA insures state-chartered credit unions that desire and qualify for federal insurance. The standard maximum share insurance amount is also \$250,000.

#### **Effect of the bill:**

CS/HB 999 expands the definition of "Qualified public depository" by substituting the term "financial institution" for "bank, savings bank, or savings association". This will make credit unions eligible to apply for designation by the CFO as a qualified public depository. Approval for designation would be contingent upon meeting all provisions and requirements specified by statute and the Florida Administrative Code. After designation as a qualified public depository, a credit union will be eligible to receive deposits of state and local government funds in excess of those required to meet disbursement needs or expenses.

The bill expands the deposit insurance requirement for a qualified public depository to include the National Credit Union Share Insurance Fund.

The bill expands the current mutual responsibility and contingent liability provision to encompass any financial institution rather than only banks and savings associations.

The bill adds a reporting requirement specific to credit unions to the Public Deposits Program. The reporting is consistent with the existing unique requirements for a bank and a savings and loan association.

The bill provides for an effective date of July 1, 2011.

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<sup>14</sup> s. 280.071, F.S.

<sup>15</sup> s. 280.07, F.S.

<sup>16</sup> s. 280.08, F.S.

<sup>17</sup> s. 657.002(4), F.S. – Credit union is defined as a cooperative society organized pursuant to the Florida Credit Union Act.

<sup>18</sup> s. 657.03, F.S.

<sup>19</sup> Pub. L. 105–219, § 2, Aug. 7, 1998, 112 Stat. 913.

<sup>20</sup> s. 657.02(10), F.S. – "Shares" means the money placed into the credit union by members on which dividends may be paid.

## B. SECTION DIRECTORY:

- Section 1. Amends s. 280.02, F.S., by revising definitions.
- Section 2. Amends s. 280.052, F.S., by conforming terms.
- Section 3. Amends s. 280.053, F.S., by conforming terms.
- Section 4. Amends s. 280.07, F.S., by expanding entities operating under mutual responsibility and contingent liability.
- Section 5. Amends s. 280.10, F.S., by conforming terms.
- Section 6. Amends s. 280.13, F.S., by conforming terms.
- Section 7. Amends s. 280.16, F.S., by providing for credit union reporting.
- Section 8. Amends s. 280.17, F.S., by providing for credit union evidence of insurance.
- Section 9. Provides an effective date of July 1, 2011.

## 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:<sup>21</sup>

Recurring: \$4,000 per fiscal year for the cost of “credit union ranking” from two services that are used to calculate financial strengths and weaknesses in order to determine the pledge percent of the collateral requirement.

Non-recurring: Indeterminate cost to modify the Collateral Administration Program in order to accommodate credit unions in the analysis and collateral tracking process.

### 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:

A credit union which becomes a qualified public depository and is utilized by state or local governments for the deposit of funds, may generate income for the credit union from those deposits.

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<sup>21</sup> Department of Financial Services HB 999 Bill Analysis updated March 28, 2011, on file with the Insurance & Banking Subcommittee.

### **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:**

- Enactment of this legislation will necessitate rule-making. Chapter 69C-2, F.A.C. provides procedures for administering the Florida Security for Public Deposits Act. Almost all of the 20 rules contain specific reference to “a bank or savings association” rather than “a financial institution”, the all-encompassing term substituted in the bill.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

At the March 30, 2011 meeting of the Insurance & Banking Subcommittee, one strike-all amendment was proposed and adopted.

The strike-all amendment:

- Retained all provisions of the original bill.
- Substituted the term “financial institution”, as necessary, to conform Chapter 280, F.S. to the bill’s provision making a credit union eligible to participate as qualified public depository.
- Added a reporting requirement specific to credit unions.
- Removed an incorrect reference to the Federal Savings and Loan Insurance Corporation.
- Made other changes of a technical nature.

The analysis is drafted to the Committee Substitute.