

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 Committee on Banking and Insurance

BILL: SB 918

INTRODUCER: Senator Garcia

SUBJECT: Public Depositories

DATE: March 8, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Pre-meeting
2.			RC	
3.				
4.				
5.				
6.				

I. Summary:

SB 918 revises provisions relating to the Florida Security for Public Deposits Act by expanding the definition of “qualified public depository,” to mean a “financial institution,” which would allow credit unions and other entities to be eligible to apply for designation by the Chief Financial Officer (CFO)¹ as a qualified public depository, contingent upon meeting all provisions and requirements under the act. Under current law, a qualified public depository means a bank, savings bank, or savings association that meets specific criteria.

After designation as a qualified public depository, a credit union or other financial institution would be eligible to receive deposits of state and local government public funds. According to advocates of the bill, 33 states currently allow credit unions to act as public depositories.

This bill substantially amends the following sections of the Florida Statutes: 280.02, 280.03, 280.052, 280.53, 280.07, 280.10, 280.13, 280.16, and 280.17.

II. Present Situation:

State and local governments are authorized to deposit public funds in excess of those required to meet disbursement needs or expenses in a qualified public depository pursuant to the Florida Security for Public Deposits Act (act).² For purposes of the act, a QPD means any bank, savings

¹ The CFO is the head of the Department of Financial Services pursuant to s. 20.121(1), F.S. The Division of Treasury of the department is responsible for administering the Florida Security for Public Deposits Act.

² Chapter 280, F.S.

bank, or savings association that meets certain requirements.³ The act delineates the powers and duties of the CFO and the requirements that must be met by qualified public depositories (QPDs) and public depositors.⁴ The full amount of the deposit must be insured by the Federal Deposit Insurance Corporation (FDIC), a federal government corporation. In addition, each QPD is required to pledge collateral at a level commensurate with the amount of public deposits⁵ held and a measure of its financial stability, as determined by the CFO. The CFO may demand payment under a letter of credit or direct a custodian to deposit or transfer collateral and proceeds of securities not previously credited upon the occurrence of one or more triggering events as provided for in law.⁶ The act provides that when the CFO determines that a QPD default or insolvency has occurred, the loss to public depositors is to be satisfied, insofar as possible, 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 QPD.⁷ The CFO is to provide coverage of any remaining loss by use of amounts assessed and collected from the other QPDs.

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), which authorizes the Office of Financial Regulation to regulate state-chartered credit unions. According to the act, the purpose of a credit union⁸ 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.

Deposits in a credit union 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.

³ Section 280.02(26).

⁴ A public depositor is the official custodian of funds for a governmental unit who is responsible for handling public deposits.

⁵ A public deposit is defined as the moneys of the State or of any State university, county, school district, community college, special district, metropolitan governments, or municipality, including agencies, boards, bureaus, commissions, and institutions of any of the foregoing, or of any court, and includes the moneys of all county officers, including constitutional officers, that are placed on deposit in a bank, savings bank, or saving association and for which the bank, savings bank, or savings association is required to maintain reserves.

⁶ Examples of triggering events include those instances in which the CFO determines that an immediate danger to the public health, safety, or welfare exists; the QPD defaults or becomes insolvent; the QPD fails to pay an administrative penalty; the QPD fails to meet financial condition standards; and the QPD pledges, deposits, or has issued insufficient or unacceptable collateral to meet required collateral within the required time. [Section 280.041(6), F.S.]

⁷ Section 280.08, F.S.

⁸ Section 657.003, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 280.02, F.S., relating to definitions, to replace the terms, “bank,” “savings association,” “savings bank,” or “trust company” and to use the term, “financial institution.” Currently these entities are the only entities eligible to be QPDs. By using the term, “financial institution,” this would broaden the types of entities that would be eligible to become QPDs, to include credit unions. However, the term, “financial institution,” is not defined. Other conforming changes are provided.

Section 2 amends s. 280.03, F.S., relating to the exemptions from the requirements, and protection under, of the act, to exempt public deposits deposited in a financial institution by a trust department or trust company. Currently s. 280.03, F.S., provides an exemption from the requirements of ch. 280, F.S., for public deposits by a trust department or trust company made into a bank or savings association when those deposits are fully secured under the trust business laws. There is no provision for public deposits made into a credit union.

Section 3 amends s. 280.052, F.S., relating to orders to suspend or disqualify a bank or savings association that is a qualified public depository by replacing the term, “bank or savings association,” with the term, “financial institution.”

Section 4 amends s. 280.053, F.S., relating to the reinstatement and qualification of a bank or savings association that has been suspended or disqualified from acting as a qualified public depository, by replacing the term, “bank or savings association,” with the term, “financial institution.”

Section 5 amends s. 280.07, F.S., relating to mutual responsibility and guarantee of public depositories, to require any “financial institution” (instead of bank and savings association) that is designated as a qualified public depository must guarantee the public depositors against any default or insolvency of other qualified public depositories.

Section 6 amends s. 280.10, F.S., relating to merger, acquisition, or consolidation, to use the term “financial institution” in place of “bank, savings bank, or savings association.” This section addresses the effect of a bank, savings bank, or savings association that is a qualified public depository merging with, acquiring, or is consolidating with an entity that is not a qualified public depository.

Section 7 amends s. 280.13, F.S., relating to eligible collateral, to use the term “qualified public depositories” in place of “banks and savings associations.”

Section 8 amends s. 280.16, F.S. relating to reporting requirements of QPDs, to require the submission of a copy of the NCUA 5300 Call Report, and any amended reports, required to be filed with the NCUA, if such depository is a credit union. Currently, s. 280.16, F.S., lists the requirements that must be met by a qualified public depository, including a requirement that a qualified public depository submit to the Chief Financial Officer of Florida, a copy of the quarterly Consolidated Reports of Condition and Income, or a copy of the Thrift Financial Report as filed with federal banking regulatory agencies by a bank or savings association, respectively.

Section 9 amends s. 280.17, F.S., relating to notice requirements to public depositors and governmental units, to provide a technical conforming change. Presently, when a public deposit held in a QPD that has been declared in default or insolvent, each public depositor is required to submit to the CFO evidence of deposit insurance afforded the public deposit under the Federal Deposit Insurance Act, which is applicable to banks and savings associations. A reference to the Federal Credit Union Act is added for purposes of credit unions.

Section 10 provides that this act takes effective July 1, 2013.

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:

By revising the definition of “qualified public depository” to mean any financial institution, a broader range of entities would be eligible to become qualified public depositories, including credit unions, and offer their services to governmental entities.

According to information provided by advocates of the bill,⁹ 33 states authorize credit unions to accept public deposits. In 25 states, the laws expressly authorize public entities to deposit funds into credit unions as well as authorize credit unions to accept public deposits.

C. Government Sector Impact:

Not available. There would be an indeterminate cost associated with “credit union ranking” from outside services used by the Department of Financial Services to calculate financial strengths and weaknesses in order to determine the pledge percent of the collateral requirement. An indeterminate cost would be incurred to modify the Collateral

⁹ Credit Union National Association Survey of Public Deposit Laws. On file with Senate Committee on Banking and Insurance committee staff.

Administration Program in order to accommodate credit unions in the analysis and collateral tracking process.

VI. Technical Deficiencies:

Passage of this bill would result in any financial institutions, including a credit union, to become eligible to become a qualified public depository if certain requirements under ch. 280, F.S., were met. However, the term, financial institution is not defined.

Section 655.05(1)(i), F.S., defines the term, “financial institution” to mean a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq. It is unclear whether all of these types of entities would be eligible to become QPDs due to the limitations or restrictions on their activities, such as accepting deposits, pursuant to their state or federal charter.

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.