

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: CS/SB 1170

INTRODUCER: Banking and Insurance Committee and Senator Hutson

SUBJECT: Florida Security for Public Deposits Act

DATE: March 15, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1170 revises provisions relating to the Florida Security for Public Deposits Act (act). The bill would expand the definition of “qualified public depository,” (or QPD) to allow credit unions to become eligible for the designation as a QPD by the Chief Financial Officer (CFO),¹ contingent upon meeting all of the requirements under the act. Pursuant to the act, state and local governments may deposit public funds in excess of those required to meet disbursement needs or expenses in a qualified public depository.

The bill provides criteria for the CFO to designate a credit union as a QPD. A credit union is required to submit its agreement of contingent liability and its collateral agreement to the CFO and meet the following requirements:

- The credit union must submit a signed statement from a public official of a state or local government indicating that, if the credit union is designated as QPD, the public official intends to deposit more than \$250,000 of public funds with the credit union.
- At least four other credit unions must have each submitted an agreement of contingent liability, a collateral agreement, and a signed statement from a public official of his or her intent to deposit more than \$250,000 of public funds with the credit union.

The bill requires the CFO to withdraw from a collateral agreement previously entered into with a credit union if fewer than five credit unions are designated as QPDs during any period of 90

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.

calendar days or longer. Within 10 days after the CFO's notification of such withdrawal, the QPD must return all public deposits that the credit union holds to the public official who deposited the funds. The CFO is authorized to limit the amount of public deposits any one credit union may hold in order to ensure that no single credit union holds an amount of public deposits, which may adversely affect the integrity of the program.

The bill requires credit unions to have a separate contingent liability from banks, savings banks and savings associations. Any credit union that is designated as a QPD and that is not insolvent would be required to guarantee public depositors against loss caused by the default or insolvency of other credit union QPDs. The bill requires the CFO to segregate and separately account for money in the Public Deposit Trust Fund (e.g., collateral proceeds, assessments, or administrative penalties) attributable to any bank, savings bank, or savings association from money attributable to credit unions.

Under current law, a QPD means a bank, savings bank, or savings association that meets specific criteria; therefore, credit unions are prohibited from becoming QPDs. According to advocates of the bill, 25 states have enacted laws that expressly allow credit unions to accept public deposits and allow public entities to deposit funds in credit unions.²

II. Present Situation:

State and local governments may deposit public funds in excess of those required to meet disbursement needs or expenses in a qualified public depository³ pursuant to the Florida Security for Public Deposits Act (act).⁴ For purposes of the act, the term, qualified public depository, means any bank, savings bank, or savings association that has deposit insurance pursuant to the Federal Deposit Insurance Act⁵ and meets other requirements.⁶ The act delineates the powers and duties of the CFO, and the requirements for qualified public depositories (QPDs) and public depositors to participate in the public deposits program.⁷ Under current law, the statutory definition of a QPD excludes a credit union; therefore, credit unions are not eligible to serve as a QPD in Florida.

The law provides that public deposits be made in a QPD unless exempted by law.⁸ Each QPD is required to pledge collateral⁹ at a level commensurate with the amount of public deposits¹⁰ held

² Credit Union National Association, *Public Deposits State Issues Brief* (Mar. 2016) (on file with Senate Committee on Banking and Insurance.)

³ Section 280.02(26). A list of active QPDs is available at

<http://www.myfloridacfo.com/division/treasury/collateralmanagement/documents/ListofActiveQPDs.pdf> (last viewed Mar. 12, 2017).

⁴ Chapter 280, F.S.

⁵ 12 U.S.C. ss. 1181 et. seq.

⁶ Rule 69C-2.005, F.A.C.

⁷ A public depositor, as defined in s. 280.02(24), F.S., is the official custodian of funds for a governmental unit who is responsible for handling public deposits. See s. 280.17, F.S. for the requirements of public depositors.

⁸ Section 280.03(1)(b), F.S.

⁹ Section 280.13, F.S. See also Rule 69C-2.007, F.A.C.

¹⁰ Section 280.02(23), F.S., defines the term, "public deposit," 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

and a measure of its financial stability, as determined by the CFO.¹¹ Florida's QPD program has four standard collateral pledging levels of 25, 50, 110, and 150 percent. The determination of a QPD's collateral pledge level involves consideration of a QPD's average financial condition ranking from two nationally recognized financial rating services as well as consideration of financial ratios, trends, and other pertinent information.¹² The QPDs with higher rankings and stronger financial condition will be eligible for the 50 and 25 percent collateral pledge levels, which is an advantage that helps in the areas of liquidity and asset management. A QPD may use cash, U.S. Treasury securities, U.S. agency securities, investment grade municipal and corporate bonds, as well as Federal Home Loan Bank letters of credit as collateral in Florida's public deposits program.¹³

The act contains numerous provisions to protect public depositors from losses caused by the default or insolvency of a qualified public depository.¹⁴ For example, each financial institution that is designated as a QPD, and that is not insolvent, is required to guarantee public depositors against loss caused by the default or insolvency of other qualified public depositories. Each QPD is required to execute a form prescribed by the CFO for such guarantee.¹⁵ The board of directors must approve the guarantee and the guarantee become an official record of the institution.

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.¹⁶ The CFO may suspend or disqualify a QPD. When the CFO determines that a default or insolvency of a QPD has occurred, the CFO must first satisfy losses to the public depositors 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 by imposing assessments against the other qualified public depositories.¹⁷

Regulation of Credit Unions

Chapter 657, F.S., is the Florida Credit Union Act (act), which authorizes the Office of Financial Regulation to regulate state-chartered credit unions. Chapter 657, F.S., provides that the purpose of a credit union¹⁸ 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.

officers, including constitutional officers, which are placed on deposit in a bank, savings bank, or saving association and for which the bank, savings bank, or savings association.

¹¹ Section 280.04, F.S. See also Rule 69C-2.024, F.A.C.

¹² The average financial condition ranking is based on a scale of 0-100. See Rule 69C-2.024, F.A.C. If a QPD has an average financial condition ranking of 20 or more, it is eligible to join the program. If the score is 0-15, the QPD must withdraw or meet specified corrective actions.

¹³ Section 280.13, F.S.

¹⁴ Section 280.05, F.S.

¹⁵ Section 280.07, F.S.

¹⁶ Section 280.041(6), F.S. 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.]

¹⁷ Section 280.08, F.S.

¹⁸ Section 657.003, F.S.

The 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 National Credit Union Share Insurance Fund (NCUSIF) insures deposits in a credit union. 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). The standard maximum share insurance amount is also \$250,000.¹⁹

Credit unions are not-for-profit organizations that exist to serve their members.²⁰ As part of the findings of the Credit Union Membership Act, Congress found that “credit unions, unlike many other participants in the financial services market, are exempt from Federal and most State taxes because they are member-owned, democratically operated, not-for-profit organizations generally managed by volunteer boards of directors and because they have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means.”²¹

III. Effect of Proposed Changes:

Section 1 revises definitions. The definition of the term, “qualified public depository,” is expanded to include credit unions. This change would allow credit unions to become QPDs and hold deposits of state and local governmental units. The section also provides technical, conforming changes. Currently, banks, savings banks, and savings associations are eligible to be designated as QPDs if certain conditions are met.

Section 2 provides criteria for the CFO to designate a credit union as a QPD. These provisions are designed to protect public deposits. The credit union is required to submit its agreement of contingent liability and its collateral agreement to the CFO and meet the following requirements:

- The credit union must submit a signed statement from a public official of a state or local government indicating that, if the credit union is designated as QPD, the public official intends to deposit more than \$250,000 of public funds with the credit union.
- At least four other credit unions must have each submitted an agreement of contingent liability, a collateral agreement, and a signed statement from a public official of his or her intent to deposit more than \$250,000 of public funds with the credit union.

The section also requires the CFO to withdraw from a collateral agreement previously entered into with a credit union if fewer than five credit unions are designated as QPDs during any period of 90 calendar days or longer. As a result, such a credit union loses its designation as a QPD, and must within 10 days after the CFO's notification of such withdrawal, return all public deposits that the credit union holds to the public official who deposited the funds.

Lastly, the section authorizes the CFO to limit the amount of public deposits any one credit union may hold in order to ensure that no single credit union holds an amount of public deposits, which may adversely affect the integrity of the program.

¹⁹ For Information about Share Insurance Fund, see <https://www.ncua.gov/services/Pages/share-insurance.aspx> (last viewed Mar. 12, 2017).

²⁰ See <https://www.mycreditunion.gov/about-credit-unions/Pages/How-is-a-Credit-Union-Different-than-a-Bank.aspx> (last viewed Mar. 14, 2017).

²¹ Pub. L. No. 105-219.

Sections 3 and 4 require any credit union that is designated as a QPD and that is not insolvent to guarantee public depositors against loss caused by the default or insolvency of other credit unions designated as QPDs. This provision creates separate mutual responsibility and contingent liability provisions for credit unions. Banks, savings banks, and savings associations are subject to a separate mutual responsibility and contingent liability provision.

In the event of a default or insolvency of a credit union QPD, any loss to public depositors would be satisfied through any applicable share insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting depository. The CFO may assess QPDs subject to the segregation of contingent liability provided in s. 280.07, F.S., for the total loss if the demand for payment or sale of collateral cannot be accomplished within 7 business days.

Section 5, relating to the Public Deposits Trust Fund (fund), requires the CFO to segregate and separately account for any collateral proceeds, assessments, or administrative penalties attributable to a credit union from any collateral proceeds, assessments, or administrative penalties attributable to any bank, savings bank, or savings association. The CFO is authorized to pay any losses to public depositors from the fund subject to these limitations.

Sections 6-14 provide technical conforming changes to allow credit unions to participate as QPDs and subject to oversight by the public deposit program under the CFO.

Sections 15-32 reenacts various sections of statutes to incorporate amendments to ch. 280, F.S.

Section 33 provides this act takes effective July 1, 2018.

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:

A credit union that becomes a qualified public depository and accepts public deposits, may generate additional income associated with the public deposits program. The expansion of eligible QPDs may provide additional options for state and local governments. It is unclear what the impact of the bill will be on the existing QPDs (banks, savings banks, or savings associations).

C. Government Sector Impact:

The DFS provided the following analysis²² regarding the fiscal impact of the bill, which would be effective July 1, 2018:

	FY 2017-18	FY 2018-19	FY 2019-20
Recurring Expenditures			
Financial ranking services to determine financial condition of credit unions.	\$5,728	\$5,728	\$5,728
Financial Examiner/Analyst II and annual expenses	\$62,388 \$10,583	\$62,388 \$6,317	\$62,388 \$6,317
Total Recurring Expenditures	\$78,699	\$74,433	\$74,433
Non-Recurring Expenditures	\$188,650	0	0
Modifications to the Collateral Administration program, the system used for account management, financial analysis, and collateral administration, to accommodate the addition of credit unions.			

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 280.02, 280.07, 280.03, 280.05, 280.052, 280.053, 280.055, 280.08, 280.085, 280.09, 280.10, 280.13, 280.17, 17.57, 24.114, 125.901, 136.01, 159.608, 175.301, 175.401, 185.30, 185.50, 190.007, 191.006, 215.34, 218.415, 255.502, 331.309, 373.553, 631.221, and 723.06115.

The bill creates section 280.042 of the Florida Statutes.

²² Department of Financial Services, *Analysis of SB 1170 (Mar. 9, 2017) (on file with Senate Committee on Banking and Insurance)*.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 14, 2017:

The CS establishes minimum requirements for credit unions to be designated as QPDs by the CFO and to maintain their designation. The bill provides the CFO with additional authority designed to protect public deposits held by credit union QPDs. The CFO is required to withdraw a previous collateral agreement previously entered into with a credit union if fewer than five credit unions are designated as QPDs during any period of 90 calendar days or longer. The CFO is authorized to limit the amount of public deposits of any one credit union may hold in order to ensure that no single credit union holds an amount of public deposits, which may adversely affect the integrity of the program.

The bill requires the CFO to segregate and separately account for any money of the Public Deposit Trust Fund attributable to a credit union from any money attributable to any bank, savings bank, or savings association.

- B. **Amendments:**

None.