

By Senator Hutson

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1 A bill to be entitled
2 An act relating to public deposits; amending s.
3 280.02, F.S.; redefining terms; adding credit unions
4 meeting certain criteria to a list of qualified public
5 depositories; amending s. 280.03, F.S.; conforming a
6 provision to changes made by the act; creating s.
7 280.042, F.S.; specifying criteria for a credit union
8 to be designated as a qualified public depository by
9 the Chief Financial Officer; requiring the Chief
10 Financial Officer to withdraw from a collateral
11 agreement with a credit union under certain
12 circumstances; specifying a requirement and a
13 procedure for a credit union that is a party to a
14 withdrawn collateral agreement; authorizing the Chief
15 Financial Officer to limit, for certain purposes, the
16 amount of public deposits held by a credit union;
17 amending ss. 280.05, 280.052, 280.053, and 280.055,
18 F.S.; conforming provisions to changes made by the
19 act; amending s. 280.07, F.S.; revising and specifying
20 the mutual responsibility and contingent liability of
21 financial institutions designated as qualified public
22 depositories; amending ss. 280.08 and 280.085, F.S.;
23 conforming provisions to changes made by the act;
24 amending s. 280.09, F.S.; requiring the Chief
25 Financial Officer to segregate and separately account
26 for certain amounts attributable to credit unions in
27 the Public Deposits Trust Fund; amending ss. 280.10,
28 280.13, and 280.17, F.S.; conforming provisions to
29 changes made by the act; reenacting ss. 17.57(1), (2),

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30 and (7) (a); 17.58(1) and (2); 17.62; 17.68(4) and (5);
 31 24.114(1); 125.901(3) (e) and (f); 136.01; 159.608(11);
 32 175.301; 175.401(8); 185.30; 185.50(8); 190.007(3);
 33 191.006(16); 215.322(4); 215.34(2); 218.415(16) (c),
 34 (17) (c), and (23) (a); 255.502(4) (h); 331.309(1) and
 35 (2); 373.553(2); 420.0005(1); 420.5087(7);
 36 420.5088(4); 420.5089(1); 420.525(1); 631.221;
 37 655.057(5) (e); 723.06115(3) (c); 895.09(4); and
 38 1009.971(5) (d), F.S., to incorporate the amendment
 39 made to s. 280.02, F.S., in references thereto;
 40 providing an effective date.

41

42 Be It Enacted by the Legislature of the State of Florida:

43

44 Section 1. Subsections (6), (10), (21), (23), and (26) of
 45 section 280.02, Florida Statutes, are amended to read:

46 280.02 Definitions.—As used in this chapter, the term:

47 (6) "Capital account" or "tangible equity capital" means
 48 total equity capital, as defined on the balance-sheet portion of
 49 the Consolidated Reports of Condition and Income (call report),
 50 or net worth, as described in the National Credit Union
 51 Administration 5300 Call Report, less intangible assets, as
 52 submitted to the regulatory financial ~~banking~~ authority.

53 (10) "Custodian" means the Chief Financial Officer or a
 54 bank, credit union, savings association, or trust company that:

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

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

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59 (c) Agrees to be subject to the jurisdiction of the courts
60 of this state, or of the courts of the United States which are
61 located within this state, for the purpose of any litigation
62 arising out of this chapter; and

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

65 (21) "Pool figure" means the total average monthly balances
66 of public deposits held by all banks, savings banks, or savings
67 associations, or held separately by all credit unions, ~~qualified~~
68 ~~public depositories~~ during the immediately preceding 12-month
69 period.

70 (23) "Public deposit" means the moneys of the state or of
71 any state university, county, school district, community college
72 district, special district, metropolitan government, or
73 municipality, including agencies, boards, bureaus, commissions,
74 and institutions of any of the foregoing, or of any court, and
75 includes the moneys of all county officers, including
76 constitutional officers, which are placed on deposit in a bank,
77 credit union, savings bank, or savings association. This
78 includes, but is not limited to, time deposit accounts, demand
79 deposit accounts, and nonnegotiable certificates of deposit.
80 Moneys in deposit notes and in other nondeposit accounts such as
81 repurchase or reverse repurchase operations are not public
82 deposits. Securities, mutual funds, and similar types of
83 investments are not public deposits and are not subject to this
84 chapter.

85 (26) "Qualified public depository" means a bank, credit
86 union, savings bank, or savings association that:

87 (a) Is organized and exists under the laws of the United

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88 States, ~~or~~ the laws of this state, or the laws of any other
89 state or territory of the United States.

90 (b) Has its principal place of business in this state or
91 has a branch office in this state which is authorized under the
92 laws of this state or of the United States to receive deposits
93 in this state.

94 (c) Is insured by the Federal Deposit Insurance Corporation
95 or the National Credit Union Share Insurance Fund ~~Has deposit~~
96 ~~insurance pursuant to the Federal Deposit Insurance Act, as~~
97 ~~amended, 12 U.S.C. ss. 1811 et seq.~~

98 (d) Has procedures and practices for accurate
99 identification, classification, reporting, and collateralization
100 of public deposits.

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

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

104 Section 2. Paragraph (a) of subsection (3) of section
105 280.03, Florida Statutes, is amended to read:

106 280.03 Public deposits to be secured; prohibitions;
107 exemptions.—

108 (3) The following are exempt from the requirements of, and
109 protection under, this chapter:

110 (a) Public deposits deposited in a bank, credit union, or
111 savings association by a trust department or trust company which
112 are fully secured under trust business laws.

113 Section 3. Section 280.042, Florida Statutes, is created to
114 read:

115 280.042 Credit union designations as qualified public
116 depositories; withdrawal by the Chief Financial Officer from

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117 collateral agreements; limits on public deposits.-

118 (1) The Chief Financial Officer may not designate a credit
119 union as a qualified public depository unless, at the time the
120 credit union submits its agreement of contingent liability and
121 its collateral agreement, all of the following requirements are
122 met:

123 (a) The credit union submits a signed statement from a
124 public depositor indicating that if the credit union is
125 designated as a qualified public depository, the public
126 depositor intends to deposit public funds with the credit union.

127 (b) At least four other credit unions have each submitted
128 an agreement of contingent liability, a collateral agreement,
129 and a signed statement from a public depositor indicating that
130 if the credit union is designated as a qualified public
131 depository, the public depositor intends to deposit public funds
132 with the credit union.

133 (2) The Chief Financial Officer must withdraw from a
134 collateral agreement previously entered into with a credit union
135 if, during any 90 calendar days, the combined total of the
136 number of credit unions designated as qualified public
137 depositories and the number of eligible credit unions applying
138 to be designated as qualified public depositories is less than
139 five.

140 (3) A credit union that is a party to a collateral
141 agreement from which the Chief Financial Officer withdraws in
142 accordance with subsection (2) may no longer be designated as a
143 qualified public depository. Within 10 business days after the
144 Chief Financial Officer notifies the credit union that the Chief
145 Financial Officer has withdrawn from the collateral agreement,

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146 the credit union must return all public deposits that the credit
147 union holds to the public depositor who deposited the funds. The
148 notice provided for in this subsection may be sent to a credit
149 union by regular mail or by e-mail.

150 (4) The Chief Financial Officer may limit the amount of
151 public deposits that a credit union may hold in order to make
152 sure that no single credit union holds an amount of public
153 deposits that might adversely affect the integrity of the public
154 deposits program.

155 Section 4. Subsection (11) of section 280.05, Florida
156 Statutes, is amended to read:

157 280.05 Powers and duties of the Chief Financial Officer.—In
158 fulfilling the requirements of this act, the Chief Financial
159 Officer has the power to take the following actions he or she
160 deems necessary to protect the integrity of the public deposits
161 program:

162 (11) Sell securities for the purpose of paying losses to
163 public depositors not covered by deposit or share insurance.

164 Section 5. Subsection (1) of section 280.052, Florida
165 Statutes, is amended to read:

166 280.052 Order of suspension or disqualification;
167 procedure.—

168 (1) The suspension or disqualification of a bank, credit
169 union, or savings association as a qualified public depository
170 must be by order of the Chief Financial Officer and must be
171 mailed to the qualified public depository by registered or
172 certified mail.

173 Section 6. Paragraph (c) of subsection (1) and paragraph
174 (c) of subsection (2) of section 280.053, Florida Statutes, are

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175 amended to read:

176 280.053 Period of suspension or disqualification;
177 obligations during period; reinstatement.—

178 (1)

179 (c) Upon expiration of the suspension period, the bank,
180 credit union, or savings association may, by order of the Chief
181 Financial Officer, be reinstated as a qualified public
182 depository, unless the cause of the suspension has not been
183 corrected or the bank, credit union, or savings association is
184 otherwise not in compliance with this chapter or any rule
185 adopted pursuant to this chapter.

186 (2)

187 (c) Upon expiration of the disqualification period, the
188 bank, credit union, or savings association may reapply for
189 qualification as a qualified public depository. If a
190 disqualified bank, credit union, or savings association is
191 purchased or otherwise acquired by new owners, it may reapply to
192 the Chief Financial Officer to be a qualified public depository
193 before ~~prior to~~ the expiration date of the disqualification
194 period. Redesignation as a qualified public depository may occur
195 only after the Chief Financial Officer has determined that all
196 requirements for holding public deposits under the law have been
197 met.

198 Section 7. Section 280.055, Florida Statutes, is amended to
199 read:

200 280.055 Cease and desist order; corrective order;
201 administrative penalty.—

202 (1) The Chief Financial Officer may issue a cease and
203 desist order and a corrective order upon determining that:

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204 (a) A qualified public depository has requested and
205 obtained a release of pledged collateral without approval of the
206 Chief Financial Officer;

207 (b) A bank, credit union, savings association, or other
208 financial institution is holding public deposits without a
209 certificate of qualification issued by the Chief Financial
210 Officer;

211 (c) A qualified public depository pledges, deposits, or
212 arranges for the issuance of unacceptable collateral;

213 (d) A custodian has released pledged collateral without
214 approval of the Chief Financial Officer;

215 (e) A qualified public depository or a custodian has not
216 furnished to the Chief Financial Officer, when the Chief
217 Financial Officer requested, a power of attorney or bond power
218 or bond assignment form required by the bond agent or bond
219 trustee for each issue of registered certificated securities
220 pledged and registered in the name, or nominee name, of the
221 qualified public depository or custodian; or

222 (f) A qualified public depository; a bank, credit union,
223 savings association, or other financial institution; or a
224 custodian has committed any other violation of this chapter or
225 any rule adopted pursuant to this chapter that the Chief
226 Financial Officer determines may be remedied by a cease and
227 desist order or corrective order.

228 (2) Any qualified public depository or other bank, credit
229 union, savings association, or financial institution or
230 custodian that violates a cease and desist order or corrective
231 order of the Chief Financial Officer is subject to an
232 administrative penalty not exceeding \$1,000 for each violation

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233 of the order. Each day the violation of the order continues
234 constitutes a separate violation.

235 Section 8. Section 280.07, Florida Statutes, is amended to
236 read:

237 280.07 Mutual responsibility and contingent liability.—

238 (1) A ~~Any~~ bank, savings bank, or savings association that
239 is designated as a qualified public depository and that is not
240 insolvent shall guarantee public depositors against loss caused
241 by the default or insolvency of other banks, savings banks, or
242 savings associations that are designated as qualified public
243 depositories.

244 (2) A credit union that is designated as a qualified public
245 depository and that is not insolvent shall guarantee public
246 depositors against loss caused by the default or insolvency of
247 other credit unions that are designated as qualified public
248 depositories.

249

250 Each qualified public depository shall execute a form prescribed
251 by the Chief Financial Officer for such guarantee which must
252 ~~shall~~ be approved by the board of directors and must ~~shall~~
253 become an official record of the institution.

254 Section 9. Subsections (1) and (3) of section 280.08,
255 Florida Statutes, are amended to read:

256 280.08 Procedure for payment of losses.—When the Chief
257 Financial Officer determines that a default or insolvency has
258 occurred, he or she shall provide notice as required in s.
259 280.085 and implement the following procedures:

260 (1) The Division of Treasury, in cooperation with the
261 Office of Financial Regulation of the Financial Services

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262 Commission or the receiver of the qualified public depository in
263 default, shall ascertain the amount of funds of each public
264 depositor on deposit at such depository and the amount of
265 deposit or share insurance applicable to such deposits.

266 (3) (a) The loss to public depositors shall be satisfied,
267 insofar as possible, first through any applicable deposit or
268 share insurance and then through demanding payment under letters
269 of credit or the sale of collateral pledged or deposited by the
270 defaulting depository. The Chief Financial Officer may assess
271 qualified public depositories as provided in paragraph (b),
272 subject to the segregation of contingent liability in s. 280.07,
273 for the total loss if the demand for payment or sale of
274 collateral cannot be accomplished within 7 business days.

275 (b) The Chief Financial Officer shall provide coverage of
276 any remaining loss by assessment against the other qualified
277 public depositories. The Chief Financial Officer shall determine
278 such assessment for each qualified public depository by
279 multiplying the total amount of any remaining loss to all public
280 depositors by a percentage which represents the average monthly
281 balance of public deposits held by each qualified public
282 depository during the previous 12 months divided by the total
283 average monthly balances of public deposits held by all
284 qualified public depositories, excluding the defaulting
285 depository, during the same period. The assessment calculation
286 must ~~shall~~ be computed to six decimal places.

287 Section 10. Subsection (4) of section 280.085, Florida
288 Statutes, is amended, and subsection (1) of that section is
289 republished, to read:

290 280.085 Notice to claimants.—

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291 (1) Upon determining the default or insolvency of a
292 qualified public depository, the Chief Financial Officer shall
293 notify, by first-class mail, all public depositors that have
294 complied with s. 280.17 of such default or insolvency. The
295 notice must direct all public depositors having claims or
296 demands against the Public Deposits Trust Fund occasioned by the
297 default or insolvency to file their claims with the Chief
298 Financial Officer within 30 days after the date of the notice.

299 (4) The notice required in subsection (1) is not required
300 if the default or insolvency of a qualified public depository is
301 resolved in a manner in which all Florida public deposits are
302 acquired by another insured bank, credit union, savings bank, or
303 savings association.

304 Section 11. Section 280.09, Florida Statutes, is amended to
305 read:

306 280.09 Public Deposits Trust Fund.—

307 (1) In order to facilitate the administration of this
308 chapter, there is created the Public Deposits Trust Fund,
309 hereafter in this section designated "the fund." The proceeds
310 from the sale of securities or draw on letters of credit held as
311 collateral or from any assessment pursuant to s. 280.08 must
312 ~~shall~~ be deposited into the fund. The Chief Financial Officer
313 shall segregate and separately account for any collateral
314 proceeds, assessments, or administrative penalties attributable
315 to a credit union from any collateral proceeds, assessments, or
316 administrative penalties attributable to any bank, savings bank,
317 or savings association. Any administrative penalty collected
318 pursuant to this chapter shall be deposited into the Treasury
319 Administrative and Investment Trust Fund.

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320 (2) The Chief Financial Officer is authorized to pay any
321 losses to public depositors from the fund, subject to the
322 limitations provided in subsection (1), and there are hereby
323 appropriated from the fund such sums as may be necessary from
324 time to time to pay the losses. The term "losses," for purposes
325 of this chapter, must ~~shall~~ also include losses of interest or
326 other accumulations to the public depositor as a result of
327 penalties for early withdrawal required by Depository
328 Institution Deregulatory Commission Regulations or applicable
329 successor federal laws or regulations because of suspension or
330 disqualification of a qualified public depository by the Chief
331 Financial Officer pursuant to s. 280.05 or because of withdrawal
332 from the public deposits program pursuant to s. 280.11. In that
333 event, the Chief Financial Officer is authorized to assess
334 against the suspended, disqualified, or withdrawing public
335 depository, in addition to any amount authorized by any other
336 provision of this chapter, an administrative penalty equal to
337 the amount of the early withdrawal penalty and to pay that
338 amount over to the public depositor as reimbursement for such
339 loss. Any money in the fund estimated not to be needed for
340 immediate cash requirements shall be invested pursuant to s.
341 17.61.

342 Section 12. Subsections (1) and (3) of section 280.10,
343 Florida Statutes, are amended to read:

344 280.10 Effect of merger, acquisition, or consolidation;
345 change of name or address.—

346 (1) When a qualified public depository is merged into,
347 acquired by, or consolidated with a bank, credit union, savings
348 bank, or savings association that is not a qualified public

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349 depository:

350 (a) The resulting institution shall automatically become a
351 qualified public depository subject to the requirements of the
352 public deposits program.

353 (b) The contingent liability of the former institution
354 shall be a liability of the resulting institution.

355 (c) The public deposits and associated collateral of the
356 former institution shall be public deposits and collateral of
357 the resulting institution.

358 (d) The resulting institution shall, within 90 calendar
359 days after the effective date of the merger, acquisition, or
360 consolidation, deliver to the Chief Financial Officer:

361 1. Documentation in its name as required for participation
362 in the public deposits program; or

363 2. Written notice of intent to withdraw from the program as
364 provided in s. 280.11 and a proposed effective date of
365 withdrawal which shall be within 180 days after the effective
366 date of the acquisition, merger, or consolidation of the former
367 institution.

368 (e) If the resulting institution does not meet
369 qualifications to become a qualified public depository or does
370 not submit required documentation within 90 calendar days after
371 the effective date of the merger, acquisition, or consolidation,
372 the Chief Financial Officer shall initiate mandatory withdrawal
373 actions as provided in s. 280.11 and shall set an effective date
374 of withdrawal that is within 180 days after the effective date
375 of the acquisition, merger, or consolidation of the former
376 institution.

377 (3) If the default or insolvency of a qualified public

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378 depository results in acquisition of all or part of its Florida
379 public deposits by a bank, credit union, savings bank, or
380 savings association that is not a qualified public depository,
381 the bank, credit union, savings bank, or savings association
382 acquiring the Florida public deposits is subject to subsection
383 (1).

384 Section 13. Subsection (1) of section 280.13, Florida
385 Statutes, is amended to read:

386 280.13 Eligible collateral.—

387 (1) Securities eligible to be pledged as collateral by
388 qualified public depositories ~~banks and savings associations~~
389 shall be limited to:

390 (a) Direct obligations of the United States Government.

391 (b) Obligations of any federal agency that are fully
392 guaranteed as to payment of principal and interest by the United
393 States Government.

394 (c) Obligations of the following federal agencies:

395 1. Farm credit banks.

396 2. Federal land banks.

397 3. The Federal Home Loan Bank and its district banks.

398 4. Federal intermediate credit banks.

399 5. The Federal Home Loan Mortgage Corporation.

400 6. The Federal National Mortgage Association.

401 7. Obligations guaranteed by the Government National
402 Mortgage Association.

403 (d) General obligations of a state of the United States, or
404 of Puerto Rico, or of a political subdivision or municipality
405 thereof.

406 (e) Obligations issued by the Florida State Board of

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407 Education under authority of the State Constitution or
408 applicable statutes.

409 (f) Tax anticipation certificates or warrants of counties
410 or municipalities having maturities not exceeding 1 year.

411 (g) Public housing authority obligations.

412 (h) Revenue bonds or certificates of a state of the United
413 States or of a political subdivision or municipality thereof.

414 (i) Corporate bonds of any corporation that is not an
415 affiliate or subsidiary of the qualified public depository.

416 Section 14. Paragraph (b) of subsection (4) of section
417 280.17, Florida Statutes, is amended to read:

418 280.17 Requirements for public depositors; notice to public
419 depositors and governmental units; loss of protection.—In
420 addition to any other requirement specified in this chapter,
421 public depositors shall comply with the following:

422 (4) If public deposits are in a qualified public depository
423 that has been declared to be in default or insolvent, each
424 public depositor shall:

425 (b) Submit to the Chief Financial Officer for each public
426 deposit, within 30 days after the date of official notification
427 from the Chief Financial Officer, the following:

428 1. A claim form and agreement, as prescribed by the Chief
429 Financial Officer, executed under oath, accompanied by proof of
430 authority to execute the form on behalf of the public depositor.

431 2. A completed public deposit identification and
432 acknowledgment form, as described in subsection (2).

433 3. Evidence of the insurance afforded the deposit pursuant
434 to the Federal Deposit Insurance Act or the Federal Credit Union
435 Act, as appropriate.

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436 Section 15. For the purpose of incorporating the amendment
437 made by this act to s. 280.02, Florida Statutes, in references
438 thereto, ss. 17.57(1), (2), and (7) (a); 17.58(1) and (2); 17.62;
439 17.68(4) and (5); 24.114(1); 125.901(3) (e) and (f); 136.01;
440 159.608(11); 175.301; 175.401(8); 185.30; 185.50(8); 190.007(3);
441 191.006(16); 215.322(4); 215.34(2); 218.415(16) (c), (17) (c), and
442 (23) (a); 255.502(4) (h); 331.309(1) and (2); 373.553(2);
443 420.0005(1); 420.5087(7); 420.5088(4); 420.5089(1); 420.525(1);
444 631.221; 655.057(5) (e); 723.06115(3) (c); 895.09(4); and
445 1009.971(5) (d), Florida Statutes, are reenacted.

446 Section 16. This act shall take effect July 1, 2020.