

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 611 Public Deposits  
**SPONSOR(S):** Botana  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 2 N	Fletcher	Lloyd
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

Unless exempted by law, state and local governments are required to deposit public funds in a qualified public depository (QPD) pursuant to the Florida Security for Public Deposits Act, ch. 280, F.S. (Act). The Act is administered by the Chief Financial Officer (CFO) and the Department of Financial Services (DFS).

Before a QPD accepts or retains a public deposit, it must deposit collateral with an approved custodian in an amount commensurate with the amount of public deposits held and the financial stability of the QPD. Currently, banks, savings banks, and savings associations are the only types of financial institutions eligible to be a QPD or a custodian for another QPD's pledged collateral.

The bill:

- Allows state-chartered and federally-chartered credit unions to become QPDs and custodians for another QPD's pledged collateral;
- Provides criteria a credit union must meet before the CFO can designate the credit union as a QPD;
- Requires credit union QPDs to make the same attestations required of other QPDs;
- Creates separate mutual responsibility and contingent liability provisions for credit union QPDs to prevent banks from sharing liability with credit unions in the event of a credit union QPD's default or insolvency, and vice versa; and
- Requires the CFO to segregate and separately account for any collateral proceeds, assessments, or administrative penalties attributable to a credit union from those attributable to any banks, savings bank, or savings association.

The bill has a significant fiscal impact. See *Fiscal Impact on State Government* section. Further, the bill does not include an appropriation to fund DFS's implementation and ongoing maintenance of credit unions as QPDs. The bill has an indeterminate fiscal impact on local governments and private sector.

The bill provides an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Public Depositories

Pursuant to the Florida Security for Public Deposits Act, ch. 280, F.S. (Act), and unless exempted therein, state and local governments are required to deposit public funds in a qualified public depository (QPD).<sup>1</sup> A QPD is any bank, savings bank, or savings association that:

- is organized and exists under the laws of the United States, the laws of this state, or any other state or territory of the United States (i.e., state or federally chartered);
- has its principal place of business in this state or has a branch office in this state which is authorized under Florida or federal laws to receive deposits in this state;
- has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended;<sup>2</sup>
- has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits;
- meets all the requirements of the Act; and
- has been designated by the Chief Financial Officer (CFO) as a QPD.<sup>3</sup>

Upon approval from the CFO, these banks, savings banks, and savings associations may accept “public deposits” from state and local governments. The Act does not permit credit unions to become QPDs, due to their absence from the definition of “qualified public depository.” As of December 1, 2023, there are approximately 117 active QPDs in this state.<sup>4</sup>

Before a QPD can accept or retain a public deposit, the QPD must deposit collateral with an approved custodian in an amount commensurate with the amount of public deposits held and the financial stability of the QPD.<sup>5</sup> The Act’s collateral requirements protect public deposits against loss in the event of certain triggering events, most notably, a QPD’s insolvency or default.<sup>6</sup> Losses are satisfied first through the standard maximum federal deposit insurance of \$250,000,<sup>7</sup> and then through the CFO’s demand for payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD. Any shortfall would then be covered by the CFO’s authority to impose assessments against the other solvent QPDs, who must agree to share mutual responsibility and contingent liability as a condition of acting as a QPD.<sup>8</sup>

A “custodian” can be the CFO or any state or federally chartered bank, savings association, or trust company approved by the CFO to hold collateral pledged by QPDs to secure public deposits.<sup>9</sup> Collateral may be pledged, deposited or issued using the following collateral agreements as approved the CFO to meet the requisite collateral:

- regular custody arrangement for collateral pledged to the CFO, subject to certain requirements;<sup>10</sup>
- Federal Reserve Bank custody arrangement for collateral pledged to the CFO, subject to certain requirements;<sup>11</sup>

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<sup>1</sup> S. 280.03(1)(b), F.S.

<sup>2</sup> 12 U.S.C. ss. 1811 *et seq.*

<sup>3</sup> S. 280.02(26), F.S.

<sup>4</sup> Email from Parker Powell, Deputy Director of Legislative Affairs, Department of Financial Services, RE: HB 3 Attestations (Dec. 1, 2023).

<sup>5</sup> S. 280.04, F.S. *See also* ch. 69C-2, F.A.C.

<sup>6</sup> S. 280.041(6), F.S.

<sup>7</sup> 12 U.S.C. § 1821(a)(1)(E).

<sup>8</sup> S. 280.07, F.S.

<sup>9</sup> Ss. 280.02(10) and 280.041(1)(a), F.S.

<sup>10</sup> S. 280.041(1)(a), F.S.

<sup>11</sup> S. 280.041(1)(b), F.S.

- CFO's custody arrangement for collateral deposited in the CFO's name, subject to certain requirements;<sup>12</sup>
- Federal Home Loan Bank letter of credit arrangement for collateral issued with the CFO as beneficiary, subject to certain requirements.<sup>13</sup>

DFS oversees the Act's reporting and collateral pledging requirements through its public deposits program and Bureau of Collateral Management.<sup>14</sup> The CFO has authority to act against noncompliant QPDs, as well as financial institutions that accept public deposits without a certificate of qualification from the CFO.<sup>15</sup> In the event of loss to public depositors, the CFO has the authority to oversee the payment of losses.<sup>16</sup>

### Required Attestation

Under the Act, QPDs are required to attest, under penalty of perjury and on a form prescribed by the CFO, whether the entity is in compliance with s. 280.02(26)(e) and (f).<sup>17</sup> Specifically, QPDs must attest that:

- The QPD makes determinations about the provision of services or the denial of services based on an analysis of risk factors unique to each customer or member;<sup>18</sup> and
- The QPD does not engage in the unsafe and unsound practice of denying or canceling its services to a person, or otherwise discriminating against a person in making available such services or in the terms or conditions of such services, on the basis of:
  - The person's political opinions, speech, or affiliations;
  - Except as otherwise provided in law, the person's religious beliefs, religious exercise, or religious affiliations;
  - Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or
  - The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on certain enumerated factors.<sup>19</sup>

### Regulation of Credit Unions

Like banks, savings banks, and savings associations, credit union accept deposits and make loans, and can be state-chartered or federally-chartered:

- State-chartered credit unions may be formed under the Florida Credit Union Act (FCUA), which became law in 1980.<sup>20</sup> The FCUA provides that "[a] credit union is a cooperative, nonprofit association, organized . . . for the purposes of encouraging thrift among its members, creating sources of credit at fair and reasonable rates of interest, and providing 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>21</sup> State-chartered credit unions have both a state regulator, the Office of Financial Regulation, and a federal regulator, the National Credit Union Association (NCUA).
- Federally-chartered credit unions are chartered under the Federal Credit Union Act of 1934<sup>22</sup> and are regulated by the NCUA.

In addition to regulating both state-chartered and federally-chartered credit unions, the NCUA also operates and manages the National Credit Union Share Insurance Fund (NCUSIF), which insures share (deposit) accounts for members of all federally-chartered credit unions and most state-chartered credit

<sup>12</sup> S. 280.041(1)(c), F.S.

<sup>13</sup> S. 280.041(1)(d), F.S.

<sup>14</sup> Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.

<sup>15</sup> S. 280.05, F.S.

<sup>16</sup> *Id.* at (10).

<sup>17</sup> S. 280.025, F.S.

<sup>18</sup> S. 280.02(26)(e), F.S.

<sup>19</sup> S. 280.02(26)(f), F.S.

<sup>20</sup> Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.

<sup>21</sup> S. 657.003, F.S.

<sup>22</sup> Public Law 73-467, codified at 12 U.S.C. § 1751 *et seq.*

unions.<sup>23</sup> All state-chartered credit unions operating in Florida must carry NCUSIF insurance.<sup>24</sup> The standard maximum share insurance amount is \$250,000.<sup>25</sup>

## Effect of the Bill

The bill makes state-chartered and federally-chartered credit unions eligible to become QPDs and custodian for another QPD's pledged collateral. Specifically, the bill creates s. 280.042, F.S., which provides criteria that a credit union must meet before the CFO can designate a credit union as a QPD. These criteria are designed to protect public deposits.

### Attestation Required

Beginning July 1, 2024, the bill requires credit union QPDs to make the same attestations required of other QPDs relating to the provision of services based on risk factors unique to each customer and the unsafe and unsound practice of denying or canceling services on the basis of environmental, social, or governance factors.

### Collateral Agreements

The bill requires a credit union QPD 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 depositor (i.e., a state or local government) indicating that, if the credit union is designated as a QPD, the public depositor intends to deposit public funds with the credit union; and
- There are at least four other credit unions that are designated as QPDs or have applied to be designated as QPDs and have submitted an agreement of contingent liability, a collateral agreement, and a signed statement from a public depositor of intent to deposit public funds with the credit union.

The CFO must withdraw from a collateral agreement previously entered into with a credit union if, during any 90 calendar days, the combined total of the number of credit unions designated as QPDs and the number of eligible credit unions applying to be designated as QPDs is less than five. As a result of the CFO's withdrawal, the 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 depositor who deposited the funds. Additionally, the CFO may limit the amount of public deposits any one credit union may hold in order to make sure that no single credit union holds an amount of public deposits that might adversely affect the integrity of the public deposits program.

### Shared Contingent Liability

In order to prevent credit unions from sharing contingent liability with banks, and vice versa, the bill creates separate mutual responsibility and contingent liability provisions for credit unions. Any credit union that is designated as a QPD and that is not insolvent must guarantee public depositors against loss caused by the default or insolvency of *other credit unions* that are designated as QPDs.

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.

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<sup>23</sup> Federally-chartered credit unions must be insured through NCUSIF, and state-chartered credit unions may be insured through NCUSIF, though some state-chartered credit unions may be insured by private insurance or guaranty corporations. See NCUA, *How Your Accounts Are Federally Insured*, <https://www.ncua.gov/files/publications/guides-manuals/NCUAHowYourAcctInsured.pdf> (last visited Jan. 5, 2024).

<sup>24</sup> Ss. 657.005(7), 657.008(5)(a)2., and 657.033(9), F.S.

<sup>25</sup> NCUA, *supra* note 20.

## Segregation of Penalties; Public Deposit Program

The bill requires the CFO to segregate and separately account for any collateral proceeds, assessments, or administrative penalties attributable to a credit union from those attributable to any bank, savings bank, or savings association. Subject to this segregation of funds requirement, the CFO is authorized to pay any losses to public depositors from the Public Deposits Trust Fund.

Lastly, the bill makes conforming changes to allow credit unions to participate in the public deposit program and to subject credit union QPDs to the regulatory oversight of the CFO.

### B. SECTION DIRECTORY:

- Section 1.** Amends s. 17.68, F.S., relating to Financial Literacy Program for Individuals with Developmental Disabilities.
- Section 2.** Amends s. 280.02, F.S., relating to definitions.
- Section 3.** Amends s. 280.025, F.S., relating to attestation required.
- Section 4.** Amends s. 280.03, F.S., relating to public deposits to be secured; prohibitions; exemptions.
- Section 5.** Creates s. 280.042, F.S., relating to credit union designations as qualified public depositories; withdrawal by the Chief Financial Officer from collateral agreements; limits on public deposits.
- Section 6.** Amends s. 280.05, F.S., relating to powers and duties of the Chief Financial Officer.
- Section 7.** Amends s. 280.052, F.S., relating to order of suspension or disqualification; procedure.
- Section 8.** Amends s. 280.053, F.S., relating to period of suspension or disqualification; obligations during period; reinstatement.
- Section 9.** Amends s. 280.055, F.S., relating to cease and desist order; corrective order; administrative penalty.
- Section 10.** Amends s. 280.07, F.S., relating to mutual responsibility and contingent liability.
- Section 11.** Amends s. 280.08, F.S., relating to procedure for payment of losses.
- Section 12.** Amends s. 280.085, F.S., relating to notice to claimants.
- Section 13.** Amends s. 280.09, F.S., relating to Public Deposits Trust Fund.
- Section 14.** Amends s. 280.10, F.S., relating to effect of merger, acquisition, or consolidation; change of name or address.
- Section 15.** Amends s. 280.13, F.S., relating to eligible collateral.
- Section 16.** Amends s. 280.17, F.S., relating to requirements for public depositors; notice to public depositors and governmental units; loss of protection.
- Sections 17-36.** Reenacts various sections of statutes to incorporate amendments to ch. 280, F.S.
- Section 37.** Provides an effective date of July 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

According to DFS, allowing credit unions to be QPDs will require \$269,828 for workload and programming costs:<sup>26</sup>

- \$188,650 in non-recurring expenditures for DFS's Office of Information Technology (OIT) to make:
  - Significant programming changes to the Collateral Administration Program (CAP), a computer application used to administer Florida's public deposits program.
  - Modifications to the Florida Planning Accounting, and Ledger Management (PALM) system to accommodate the required segregated accounting of collateral proceeds, assessments, or administrative penalties attributable to credit unions.
- \$5,728 in recurring expenditures for independent ranking service data on credit unions.
- \$75,450 in recurring expenditures for one additional Financial Examiner/Analyst II FTE, class code 1564, pay grade 023.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill's impact on local government revenues is indeterminate. However, a 2014 study by the Office of Program Policy Analysis and Government Accountability explained the potential positive impact to local government public depositors:

Federal and state tax differences between credit unions and banks may allow credit unions a competitive advantage when bidding for local government public deposits. Credit unions may also benefit from lower overhead costs since these institutions may use office space belonging to a sponsoring organization. The combined effect of lower taxes and overhead may allow credit unions to pay higher interest rates for public deposits and to provide other business services to local governments at a lower cost than banks.<sup>27</sup>

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Allowing credit unions to accept public deposits may generate additional income for the credit unions and provide more options for the public depositors. It is unclear what impact the bill will have on existing QPDs (banks, savings banks, or savings associations). The bill's impact on the private sector is indeterminate due to the number of variables involved in determining such impact.

### D. FISCAL COMMENTS:

None.

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<sup>26</sup> Email from Austin Stowers, Director of Legislative Affairs, Florida Department of Financial Services, RE: HB 987 – Public Deposits (Mar. 23, 2023). A bill analysis for the 2024 version of the bill has been requested from DFS.

<sup>27</sup> Office of Program Policy Analysis and Government Accountability, *Issues Related to Credit Unions Operating as Qualified Public Depositories*, Nov. 13, 2014, at 5.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

#### **B. RULE-MAKING AUTHORITY:**

The CFO has rulemaking authority to administer ch. 280, F.S. To add credit unions as QPDs, rulemaking is necessary to amend ch. 69C-2, F.A.C., and several forms incorporated by reference in the rules.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

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