

## CHAPTER 98-409

### Committee Substitute for House Bill No. 823

An act relating to financial matters; amending s. 18.10, F.S., which provides requirements for deposit and investment of state money; revising the standards that certain corporate obligations and state and local government obligations must meet to be qualified for such investment; authorizing investment in certain foreign bonds and certain convertible debt obligations of corporations domiciled in the United States; amending s. 766.315, F.S.; providing that the investment of funds by the Florida Birth-Related Neurological Injury Compensation Association is subject to the provisions of s. 215.47, F.S.; amending s. 626.8473, F.S.; providing for funds to be held in trust by a title insurance agent to be held in the same manner required for deposits of state funds; amending ss. 125.31, 136.01, 159.09, 166.261, 218.345, 236.24, 255.502, and 331.309, F.S.; providing for deposit of certain public funds in qualified public depositories or certain chartered depositories; amending s. 280.02, F.S.; defining governmental unit; revising the definition of qualified public depository; amending s. 280.03, F.S.; requiring deposit of public deposits into qualified public depositories; providing exemptions; amending s. 280.04, F.S.; clarifying certain collateral requirements; amending s. 280.05, F.S.; revising provisions providing powers and duties of the Treasurer; amending s. 280.07, F.S.; requiring qualified public depositories to execute a form for certain purposes; amending s. 280.08, F.S.; revising procedures for payment of losses; amending s. 280.16, F.S.; providing requirements for qualified public depositories; amending s. 280.17, F.S.; revising requirements for public depositors; amending s. 280.18, F.S.; providing for protection from loss to public depositors; limiting liability of the state and the Treasurer; providing an effective date.

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

Section 1. Subsection (2) of section 18.10, Florida Statutes, is amended to read:

18.10 Deposits and investments of state money.—

(2) The Treasurer shall make funds available to meet the disbursement needs of the state. Funds which are not needed for this purpose shall be placed in qualified public depositories that will pay rates established by the Treasurer at levels not less than the prevailing rate for United States Treasury securities with a corresponding maturity. In the event money is available for interest-bearing time deposits or savings accounts as provided herein and qualified public depositories are unwilling to accept such money and pay thereon the rates established above, then such money which qualified public depositories are unwilling to accept shall be invested in:

(a) Direct United States Treasury obligations.

- (b) Obligations of the Federal Farm Credit Banks.
- (c) Obligations of the Federal Home Loan Bank and its district banks.
- (d) Obligations of the Federal Home Loan Mortgage Corporation, including participation certificates.
- (e) Obligations guaranteed by the Government National Mortgage Association.
- (f) Obligations of the Federal National Mortgage Association.
- (g) Commercial paper of prime quality of the highest letter and numerical rating as provided for by at least one nationally recognized rating service.
- (h) Time drafts or bills of exchange drawn on and accepted by a commercial bank, otherwise known as “bankers acceptances,” which are accepted by a member bank of the Federal Reserve System having total deposits of not less than \$400 million or which are accepted by a commercial bank which is not a member of the Federal Reserve System with deposits of not less than \$400 million and which is licensed by a state government or the Federal Government, and whose senior debt issues are rated in one of the two highest rating categories by a nationally recognized rating service and which are held in custody by a domestic bank which is a member of the Federal Reserve System.
- (i) ~~Intermediate-term~~ Corporate obligations or corporate master notes of any corporation within the United States, if the long-term obligations of such corporation are rated by at least two nationally recognized rating services in any one of the four ~~three~~ highest classifications. However, if such obligations are rated by only one nationally recognized rating service, then the obligations shall be rated in any one of the two highest classifications.
- (j) Obligations of the Student Loan Marketing Association.
- (k) Obligations of the Resolution Funding Corporation.
- (l) Asset-backed or mortgage-backed securities of the highest credit quality.
- (m) Any obligations not previously listed which are guaranteed as to principal and interest by the full faith and credit of the United States Government or are obligations of United States agencies or instrumentalities which are rated in the highest category by a nationally recognized rating service.
- (n) Commingled no-load investment funds or no-load mutual funds in which all securities held by the funds are authorized in this subsection.
- (o) Money market mutual funds as defined and regulated by the Securities and Exchange Commission.
- (p) Obligations of state and local governments rated in any of the four ~~three~~ highest classifications by at least two ~~one or more~~ nationally recognized rating services ~~if their purchase is for the purpose of meeting federal~~

investment requirements for funds accumulated from bonds or other obligations. However, if such obligations are rated by only one nationally recognized rating service, then the obligations shall be rated in any one of the two highest classifications.

(q) Derivatives of investment instruments authorized in paragraphs (a) through (m).

(r) Covered put and call options on investment instruments authorized in this subsection for the purpose of hedging transactions by investment managers to mitigate risk or to facilitate portfolio management.

(s) Negotiable certificates of deposit issued by financial institutions whose long-term debt is rated in one of the three highest categories by at least two nationally recognized rating services, the investment in which shall not be prohibited by any provision of chapter 280.

(t) Foreign bonds denominated in United States dollars and registered with the Securities and Exchange Commission for sale in the United States, if the long-term obligations of such issuers are rated by at least two nationally recognized rating services in any one of the four highest classifications. However, if such obligations are rated by only one nationally recognized rating service, the obligations shall be rated in any one of the two highest classifications.

(u) Convertible debt obligations of any corporation domiciled within the United States, if the convertible debt issue is rated by at least two nationally recognized rating services in any one of the four highest classifications. However, if such obligations are rated by only one nationally recognized rating service, then the obligations shall be rated in any one of the two highest classifications.

(v)(t) Securities not otherwise described in this subsection. However, not more than 3 percent of the funds under the control of the Treasurer shall be invested in securities described in this paragraph.

These investments may be in varying maturities and may be in book-entry form. Investments made pursuant to this subsection may be under repurchase agreement. The Treasurer is authorized to hire registered investment advisers and other consultants to assist in investment management and to pay fees directly from investment earnings. Investment securities, proprietary investment services related to contracts, performance evaluation services, investment-related equipment or software used directly to assist investment trading or investment accounting operations including bond calculators, telerates, Bloombergs, special program calculators, intercom systems, and software used in accounting, communications, and trading, and advisory and consulting contracts made under this section are exempt from the provisions of chapter 287.

Section 2. Paragraph (e) of subsection (5) of section 766.315, Florida Statutes, is amended to read:

766.315 Florida Birth-Related Neurological Injury Compensation Association; board of directors.—

(5)

(e) Any Funds held on behalf of the plan are funds of the State of Florida. The association may only invest plan funds in the investments and securities described in s. 215.47, and shall be subject to the limitations on investments contained in that section must be invested in interest-bearing investments by the association. All income derived from such investments will be credited to the plan.

Section 3. Subsection (3) of section 626.8473, Florida Statutes, is amended to read:

626.8473 Escrow; trust fund.—

(3) All funds received by a title insurance agent to be held in trust shall be immediately placed in an ~~escrow trust account~~ in a financial institution that is located within this state and is a member of the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. These funds shall be invested in an escrow account in accordance with the investment requirements and standards established for deposits and investments of state funds in s. 18.10 insured by an agency of the federal government and located within this state, where the funds shall be kept until disbursement thereof is properly authorized.

Section 4. Paragraph (c) of subsection (1) and subsection (2) of section 125.31, Florida Statutes, are amended to read:

125.31 Investment of surplus public funds; regulations.—

(1) Unless otherwise authorized by law or by ordinance, the board of county commissioners shall, by resolution to be adopted from time to time, invest and reinvest any surplus public funds in its control or possession in:

(c) Interest-bearing time deposits or savings accounts in qualified public depositories as defined in s. 280.02 ~~banks organized under the laws of this state, in national banks organized under the laws of the United States and doing business and situated in this state, in savings and loan associations which are under state supervision, or in federal savings and loan associations located in this state and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as may be prescribed by law;~~

(2)(a) Every security purchased under this section on behalf of the governing body of a county shall be properly earmarked and:

1. If registered with the issuer or its agents, shall be immediately placed for safekeeping in a location which protects the governing body's interest in the security;

2. If in book entry form, shall be held for the credit of the governing body of the county by a depository chartered by ~~either~~ the Federal Government,

or the state, or any other state or territory of the United States, that has a branch or principal place of business in this state as defined in s. 658.12, and shall be kept by the depository in an account separate and apart from the assets of the financial institution; or

3. If physically issued to the holder but not registered with the issuer or its agents, shall be immediately placed for safekeeping in a safe-deposit box in a financial institution in this state that maintains adequate safe-deposit box insurance.

(b) The board of county commissioners may also receive bank trust receipts in return for investment of surplus funds in securities. Any trust receipts received must enumerate the various securities held together with the specific number of each security held. The actual securities on which the trust receipts are issued may be held by any bank depository chartered by the United States Government, or the State of Florida, or any other state or territory of the United States, that has a branch or principal place of business in this state as defined in s. 658.12 ~~their designated agents.~~

Section 5. Section 136.01, Florida Statutes, is amended to read:

136.01 County depositories.—Each county depository shall be a qualified public depository as defined in s. 280.02 for the following Any bank or savings association organized under the laws of this state or of the United States and authorized to do business in this state which, as to the various funds herein referred to, conforms to the requirements of chapter 280 is authorized to accept county deposits. These funds include: county funds; funds of all county officers, including constitutional officers; funds of the school board; and funds of the community college district board of trustees. This enumeration of funds is made not by way of limitation, but of illustration; and it is the intent hereof that all funds of the county, the board of county commissioners or the several county officers, the school board, or the community college district board of trustees be included.

Section 6. Section 159.09, Florida Statutes, is amended to read:

159.09 Trust agreement.—In the discretion of the governing body, each or any issue of such bonds may be secured by a trust agreement by and between the unit and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside the state. Such trust agreement may pledge or assign the revenues to be received, but shall not convey or mortgage any project or any part thereof. Either the ordinance or resolution providing for the issuance of revenue bonds or such trust agreement may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the unit and the governing body thereof in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of this state, or any other state or territory of the United States, that has a branch or principal place of business in this state as defined in s. 658.12, to act as such depository and to furnish such indemnifying bonds or to pledge

such securities as may be required by the governing body. Such ordinance or resolution or such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, if any, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations. In addition to the foregoing, such ordinance or resolution or such trust agreement may contain such other provisions as the governing body may deem reasonable and proper for the security of bondholders. Except as in this part otherwise provided, the governing body may provide, by ordinance or resolution or by such trust agreement, for the payment of the proceeds of the sale of the bonds and the revenues of the project to such officer, board or depository as it may determine for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust agreement may be treated as a part of the cost of operation of the project affected by such trust agreement.

Section 7. Paragraph (c) of subsection (1) and subsection (2) of section 166.261, Florida Statutes, are amended to read:

166.261 Municipalities; investments.—

(1) Unless otherwise authorized by law or by ordinance, the governing body of each municipality shall, by resolution to be adopted from time to time, invest and reinvest any surplus public funds in its control or possession in:

~~(c) Interest-bearing time deposits or savings accounts in qualified public depositories as defined in s. 280.02 banks organized under the laws of this state, in national banks organized under the laws of the United States and doing business and situated in this state, in savings and loan associations which are under state supervision, or in federal savings and loan associations located in this state and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as may be prescribed by law;~~

(2)(a) Every security purchased under this section on behalf of the governing body of a municipality shall be properly earmarked and:

1. If registered with the issuer or its agents, shall be immediately placed for safekeeping in a location which protects the interest of the governing body in the security;

2. If in book entry form, shall be held for the credit of the governing body of the municipality by a depository chartered by ~~either the Federal Government, or the state, or any other state or territory of the United States, that has a branch or principal place of business in this state as defined in s. 658.12,~~ and shall be kept by the depository in an account separate and apart from the assets of the financial institution; or

3. If physically issued to the holder, but not registered with the issuer or its agents, shall be immediately placed for safekeeping in a safe-deposit box in a financial institution in this state that maintains adequate safe-deposit box insurance.

(b) The governing body may also receive bank trust receipts in return for investment of surplus funds in securities. Any trust receipts received must enumerate the various securities held, together with the specific number of each security held. The actual securities on which the trust receipts are issued may be held by any bank depository chartered by the United States Government, ~~or the State of Florida, or any other state or territory of the United States, that has a branch or principal place of business in this state as defined in s. 658.12, or their designated agents.~~

Section 8. Paragraph (c) of subsection (1) and paragraph (b) of subsection (2) of section 218.345, Florida Statutes, are amended to read:

218.345 Special districts; investments.—

(1) The governing body of each special district shall, by resolution to be adopted from time to time, invest and reinvest any surplus public funds in its control or possession in:

(c) ~~Interest-bearing time deposits or savings accounts in qualified public depositories as defined in s. 280.02 banks organized under the laws of this state, in national banks organized under the laws of the United States and doing business and situated in this state, in savings and loan associations which are under state supervision, or in federal savings and loan associations located in this state and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as may be prescribed by law;~~

(2)

(b) The governing body may also receive bank trust receipts in return for investment of surplus funds in securities. Any trust receipts received must enumerate the various securities held, together with the specific number of each security held. The actual securities on which the trust receipts are issued may be held by any bank depository chartered by the United States Government, ~~or the State of Florida, or any other state or territory of the United States, that has a branch or principal place of business in this state as defined in s. 658.12, or their designated agents.~~

Section 9. Paragraphs (a) and (b) of subsection (2) of section 236.24, Florida Statutes, are amended to read:

236.24 Sources of district school fund.—

(2)(a) Unless otherwise authorized by law or by ordinance, each school board shall, by resolution to be adopted from time to time, invest and reinvest any surplus public funds in its control or possession in:

1. The Local Government Surplus Funds Trust Fund;
2. Negotiable direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States Government at the then prevailing market price for such securities;

3. ~~Interest-bearing time deposits or savings accounts in qualified public depositories as defined in s. 280.02 banks organized under the laws of this state, in national banks organized under the laws of the United States and doing business and situated in this state, in savings and loan associations which are under state supervision, or in federal savings and loan associations located in this state and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as may be prescribed by law;~~

4. Obligations of the federal farm credit banks; the Federal Home Loan Mortgage Corporation, including Federal Home Loan Mortgage Corporation participation certificates; or the Federal Home Loan Bank or its district banks or obligations guaranteed by the Government National Mortgage Association;

5. Obligations of the Federal National Mortgage Association, including Federal National Mortgage Association participation certificates and mortgage pass-through certificates guaranteed by the Federal National Mortgage Association; or

6. Securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended from time to time, provided the portfolio of such investment company or investment trust is limited to obligations of the United States Government or any agency or instrumentality thereof and to repurchase agreements fully collateralized by such United States Government obligations, and provided such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian.

(b)1. Securities purchased by any such school board under the authority of this law shall be delivered by the seller to the school board or its appointed safekeeper. The safekeeper shall be a qualified bank or trust company chartered to operate as such by the State of Florida, any other state or territory of the United States, or the United States Government, that has a branch or principal place of business in this state as defined in s. 658.12. The safekeeper shall issue documentation for each transaction, and a monthly statement detailing all transactions for the period.

2. Securities physically delivered to the school board shall be placed in a safe-deposit box in a bank or other institution located within the county and duly licensed and insured. Withdrawals from such safe-deposit box shall be only by persons duly authorized by resolution of the school board.

3. The school board may also receive bank trust receipts in return for investment of surplus funds in securities. Any trust receipts received must enumerate the various securities held together with the specific number of each security held. The actual securities on which the trust receipts are issued may be held by any bank depository chartered by the United States Government, ~~or the State of Florida, or any other state or territory of the United States, that has a branch or principal place of business in this state~~ as defined in s. 658.12, or their designated agents.



Section 10. Paragraph (h) of subsection (4) of section 255.502, Florida Statutes, is amended to read:

255.502 Definitions; ss. 255.501-255.525.—As used in this act, the following words and terms shall have the following meanings unless the context otherwise requires:

(4) “Authorized investments” means and includes without limitation any investment in:

(h) Savings accounts in, or certificates of deposit of, qualified public depositories as defined in s. 280.02 ~~any bank, savings bank, or savings and loan association which is incorporated under the laws of this state or organized under the laws of the United States and is doing business and situated in this state, the accounts of which are insured by the Federal Government or an agency thereof,~~ in an amount that does not exceed 15 percent of the net worth of the institution, or a lesser amount as determined by rule by the State Board of Administration, provided such savings accounts and certificates of deposit are secured in the manner prescribed in chapter 280.

Investments in any security authorized in this subsection may be under repurchase agreements or reverse repurchase agreements.

Section 11. Subsections (11) through (19) of section 280.02, Florida Statutes, are renumbered as subsections (12) through (20), respectively, a new subsection (11) is added to said section, and present subsection (16) is renumbered and amended, to read:

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

(11) “Governmental unit” means the state or any county, school district, community college district, special district, metropolitan government, or municipality, including any agency, board, bureau, commission, and institution of any of such entities, or any court.

~~(17)~~(16) “Qualified public depository” means any bank, savings bank, or savings association that:

(a) 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.

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

(c) Has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss. 1811 et seq.

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

~~(e)~~(d) Meets all the requirements of this chapter.

(f)(e) Has been designated by the Treasurer as a qualified public depository.

Section 12. Section 280.03, Florida Statutes, is amended to read:

280.03 Public deposits to be secured; prohibitions; exemptions ~~exceptions~~.—

(1)(a) All public deposits shall be secured as provided in this chapter when public depositors comply with the requirements of this chapter.

(b) Public deposits shall be made in a qualified public depository unless exempted by law. Notwithstanding the provisions of any other law, a public deposit as defined in s. 280.02(13) may be deposited in a qualified public depository as defined in s. 280.02(16).

(2)(b) Public funds shall not be deposited directly or indirectly in negotiable certificates of deposit. Except as otherwise provided by law, no public deposit may be made except in a qualified public depository.

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

(a) Public deposits deposited in a bank or savings association by a trust department or trust company which are fully secured under trust business laws. Every public deposit held by a trust company, which trust company has legal title thereto and is subject to the applicable provisions of chapters 658 and 660 or such federal laws that are applicable to trusts and trust companies, in trust or in escrow pursuant to the provisions of any written trust indenture or escrow agreement authorized by law, unless provided otherwise in the documents or proceedings authorizing the terms of and the execution of the trust indenture or escrow agreement, and

(b) Moneys of the System Trust Fund, as defined in s. 121.021(36), are exempt from the requirements of this chapter.

(c)(3) Public deposits held outside the country are exempt from the requirements and protection of this chapter.

(d)(4) Wire transfers and transfers of funds for a period not exceeding 7 days solely for the purpose of paying registrars and paying agents are exempt from the requirements of this chapter.

(e) Public deposits which are fully secured under federal regulations.

Section 13. Paragraph (d) of subsection (1) of section 280.04, Florida Statutes, is amended to read:

280.04 Collateral for public deposits; general provisions.—

(1) Every qualified public depository shall deposit with the Treasurer eligible collateral equal to or in excess of the required collateral of the depository to be held subject to his or her order. The Treasurer, by rule, shall establish minimum required collateral pledging levels and shall notify each

qualified public depository of its required pledging level. Each qualified public depository shall calculate the amount of its required collateral based upon any one or any combination of the following formulas:

(d) One hundred twenty-five percent of the average daily balance of public deposits in excess of 20 percent of the total average monthly balances of public deposits held by all qualified public depositories of the same type, i.e., banks or savings associations. The Treasurer shall determine the total average monthly balances of public deposits held during based on the immediately preceding 12-month period average. That 12-month average amount must be disseminated to the qualified public depositories at such time and in such manner as the Treasurer determines appropriate.

Section 14. Section 280.05, Florida Statutes, is amended to read:

280.05 Powers and duties of the Treasurer.—In fulfilling the requirements of this act, the Treasurer has the power to:

(1)(6) Establish criteria, based on the overall financial condition of the participant and applicants, as may be necessary, to protect the integrity of the public deposits program, to:

- (a) Refuse entry into the program by an applicant;
- (b) Order discontinuance of participation in the program by a qualified public depository;
- (c) Restrict the total amount of public deposits a depository may hold;
- (d) Establish collateral-pledging levels based on qualitative and quantitative standards; and
- (e) Restrict substitutions of collateral subject to the approval of the Treasurer.

(2)(9) Appoint a six-member two separate three-member advisory committee committees, one for banks and one for savings associations, to review and recommend criteria to be used by the Treasurer for purposes stated in subsection (1) (6) in order to protect public deposits and the depositories in the program. Each member selected to serve on the an advisory committee must be a representative of his or her respective industry. Advisory committee members must represent active qualified public depositories, not in the process of withdrawing from the public deposits program, in compliance with all applicable rules, regulations, and reporting requirements of this chapter. Members must possess knowledge, skill, and experience in one or more of the following areas:

- (a) Financial analysis;
- (b) Trend analysis;
- (c) Accounting;
- (d) Banking;

- (e) Risk management; or
- (f) Investment management.

Members' terms shall be for 4 years, ~~except that in making the initial appointments, the Treasurer shall appoint from each group one member to serve 2 years, one member to serve 3 years, and one member to serve 4 years.~~ Any person appointed to fill a vacancy on the advisory committee ~~committees~~ may serve only for the remainder of the unexpired term. Any member is eligible for reappointment and shall serve until a successor qualifies. ~~The Treasurer shall appoint a member of each advisory committee to serve as its initial chair.~~ The ~~Thereafter,~~ each advisory committee shall elect a chair and vice chair and shall also designate a secretary who need not be a member of the advisory committee. The ~~Each~~ secretary shall keep a record of the proceedings of ~~the his or her~~ advisory committee and shall be the custodian of all printed materials filed with or by the advisory committee. Notwithstanding the existence of vacancies on the advisory committee, a majority of the members constitutes a quorum. ~~The~~ Neither advisory committee ~~shall not may~~ take official action in the absence of a quorum. Each member may name a designee to serve on the advisory committee on behalf of the member. However, any designee so named must meet the qualifications required of the selected member and be approved by the Treasurer. The advisory committee ~~committees~~ shall convene as needed.

~~(3)(40)~~ Establish goals and objectives and provide other data as may be necessary to assist the advisory committee ~~committees~~ established under subsection ~~(2)~~ (9) in developing standards for the program.

~~(4)(11)~~ Review, implement, monitor, evaluate, and modify, as needed, all or any part of the standards and policies recommended by an advisory committee.

~~(5)(16)~~ Perform financial analysis of any qualified public depository as needed.

~~(6)(4)~~ Require such collateral, or increase the collateral-pledging level, of any qualified public depository as may be necessary to administer the provisions of this chapter and to protect the integrity of the public deposits program.

~~(7)(18)~~ Establish a minimum amount of required collateral as the Treasurer deems necessary to provide for the contingent liability pool ~~pools~~.

~~(8)(2)~~ Decline to accept, or reduce the reported value of, collateral as circumstances may require in order to ensure the pledging of sufficient marketable collateral to meet the purposes of this chapter.

~~(9)(15)~~ Maintain perpetual inventory of pledged collateral and perform monthly market valuations and quality ratings.

~~(10)(13)~~ Monitor and confirm, as often as deemed necessary by the Treasurer, the pledged collateral held by third party custodians.

~~(11)~~(17) Perfect interest in pledged collateral by having pledged securities moved into an account established in the Treasurer's name. This action shall be taken at the discretion of the Treasurer.

(12) Furnish written notice to custodians of collateral to hold interest and principal payments made on securities held as collateral and to deposit or transfer such payments pursuant to the Treasurer's instructions.

(13) Release collateral held in the Treasurer's name, subject to sale and transfer of funds directly from the custodian to public depositors of a withdrawing depository.

~~(14)~~(7) Sell pledged securities, or move pledged securities to an account established in the Treasurer's name, for the purpose of paying losses to public depositors not covered by deposit insurance or to perfect the Treasurer's interest in the pledged securities.

~~(15)~~(8) Transfer funds directly from the custodian to public depositors or the receiver in order to facilitate prompt payment of claims.

~~(16)~~(14) Require the filing of and inspect, review, or analyze the following reports which the Treasurer shall process as provided:

(a) Qualified public depository monthly reports and schedules. The Treasurer shall review the reports of each qualified public depository for material changes in capital accounts or changes in name, address, or type of institution, record the average daily balances of public deposits held, and monitor the collateral-pledging levels and required collateral.

(b) Quarterly regulatory reports from qualified public depositories. The Treasurer shall analyze qualified public depositories ranked in the lowest category based on established financial condition criteria.

(c) Qualified public depository annual reports and public depositor annual reports. The Treasurer shall compare public deposit information reported by qualified public depositories and public depositors. Such comparison shall be conducted for qualified public depositories which are ranked in the lowest category based on established financial condition criteria of record on September 30. Additional comparison processes may be performed as public deposits program resources permit.

~~(d) Public depositors annual reports.~~

~~(d)~~(e) Any related documents, reports, records, or other information deemed necessary by the Treasurer in order to ascertain compliance with this chapter.

(17)(4) Verify the reports of any qualified public depository relating to public deposits it holds when necessary to protect the integrity of the public deposits program.

~~(18)~~(12) Confirm public deposits, to the extent possible under current law, when needed.

(19) Require Allow at his or her discretion the filing of any information or forms required under this chapter to be by electronic data transmission. Such filings of information or forms shall have the same enforceability as a signed writing.

~~(20)(3)~~ Suspend or disqualify or disqualify after suspension any qualified public depository that has violated any of the provisions of this chapter or of rules adopted hereunder.

(a) Any qualified public depository that is suspended or disqualified pursuant to this subsection is subject to the provisions of s. 280.11(2) governing withdrawal from the public deposits program and return of pledged collateral. Any suspension shall not exceed a period of 6 months. Any qualified public depository which has been disqualified may not reapply for qualification until after the expiration of 1 year from the date of the final order of disqualification or the final disposition of any appeal taken therefrom.

~~(b) If the Treasurer finds that one or more grounds exist for the suspension or disqualification of a qualified public depository, he or she may, In lieu of such suspension or disqualification, impose an administrative penalty upon the qualified public depository as provided in s. 280.054.~~

(c) If the Treasurer has reason to believe that any qualified public depository or any other financial institution holding public deposits is or has been violating any of the provisions of this chapter or of rules adopted hereunder, he or she may issue to the qualified public depository or other financial institution an order to cease and desist from the violation or to correct the condition giving rise to or resulting from the violation. If any qualified public depository or other financial institution violates a cease-and-desist or corrective order, the Treasurer may impose an administrative penalty upon the qualified public depository or other financial institution as provided in s. 280.054 or s. 280.055. In addition to the administrative penalty, the Treasurer may suspend or disqualify any qualified public depository for violation of any order issued pursuant to this paragraph.

~~(5) Allow an exception to public deposit limitations of any qualified public depository that has contracted with the Treasurer to clear the receipts of the State of Florida to the extent, and only to the extent, that clearing the receipts would violate this chapter.~~

Section 15. Section 280.07, Florida Statutes, is amended to read:

280.07 Mutual responsibility.—Any bank or savings association that is designated as a qualified public depository and that is not insolvent shall guarantee public depositors against loss caused by the default or insolvency of other qualified public depositories of the same type. Each qualified public depository shall execute a form prescribed by the Treasurer for such guarantee which shall be approved by the board of directors and shall become an official record of the institution. The Treasurer shall maintain separate and totally independent contingent liability agreements, one such agreement exclusively for banks and another exclusively for savings associations.

Section 16. Subsections (2) and (3) of section 280.08, Florida Statutes, are amended to read:

280.08 Procedure for payment of losses.—When the Treasurer determines that a default or insolvency has occurred, he or she shall provide notice as required in s. 280.085(1) and implement the following procedures:

(2) The potential loss to public depositors shall be calculated by compiling claims received from such depositors. The Treasurer shall validate claims on public deposit accounts which meet the requirements of s. 280.17 and are confirmed as provided in subsection (1). Such claims shall be validated by the Treasurer.

(3)(a) The loss to public depositors shall be satisfied, insofar as possible, first through any applicable deposit insurance and then through the sale of securities pledged or deposited by the defaulting depository. The Treasurer may assess qualified public depositories as provided in paragraph (b) for the total loss if the sale of securities cannot be accomplished within 7 business days.

~~(b)(3) If the loss to public depositors is not covered by such insurance or the proceeds of such sale, The Treasurer shall provide coverage of any the remaining loss by assessment against the other qualified public depositories of the same type as the depository in default. However, if the sale of securities cannot be accomplished within 7 days, the Treasurer may proceed with the assessment to qualified public depositories. The Treasurer shall determine such assessment for each qualified public depository shall be determined by multiplying the total amount of any remaining the loss to all public depositors by a percentage which represents the average monthly balance share of public fund deposits held by each that qualified public depository during the previous 12 months divided by the average total average monthly balances of public deposits held by all qualified public depositories, excluding the defaulting depository, of the same type during the same 12-month period. The assessment calculation shall be computed to six decimal places.~~

Section 17. Section 280.16, Florida Statutes, is amended to read:

280.16 Requirements Reports of qualified public depositories; confidentiality.—

(1) In addition to any other requirements specified in this chapter, qualified public depositories shall:

(a) Beginning July 1, 1998, take the following actions for each public deposit account:

1. Identify the account as a "Florida public deposit" on the deposit account record with the name of the public depositor or provide a unique code for the account for such designation.

2. When the form prescribed by the Treasurer for acknowledgment of receipt of each public deposit account is presented to the qualified public depository by the public depositor opening an account, the qualified public

depository shall execute and return the completed form to the public depositor.

3. When the acknowledgment of receipt form is presented to the qualified public depository by the public depositor due to a change of account name, account number, or qualified public depository name on an existing public deposit account, the qualified public depository shall execute and return the completed form to the public depositor within 45 calendar days after such presentation.

4. When the acknowledgment of receipt form is presented to the qualified public depository by the public depositor on an account existing before July 1, 1998, the qualified public depository shall execute and return the completed form to the public depositor within 45 calendar days after such presentation.

(b)(4) Within 15 days after the end of each calendar month, or when requested by the Treasurer, each qualified public depository shall submit to the Treasurer a written report, under oath, indicating the average daily balance of all public deposits held by it during the reported month, required collateral, a detailed schedule of all securities pledged as collateral, selected financial information, and any other information that the Treasurer determines necessary to administer this chapter.

(c) Provide to each public depositor annually, not later than October 30, the following information on all open accounts identified as a "Florida public deposit" for that public depositor as of September 30, to be used for confirmation purposes: the federal employer identification number of the qualified public depository, the name on the deposit account record, the federal employer identification number on the deposit account record, and the account number, account type, and actual account balance on deposit. Any discrepancy found in the confirmation process shall be reconciled before November 30.

(d)(2) Submit to the Treasurer annually, not later than November 30 15, each qualified public depository shall cause to be delivered to the Treasurer, from the president or chief executive officer of the depository or a person qualified to conduct audits, a report statement of all public deposits held for the credit of all public depositors at the close of business on September 30 each year. Such annual report shall consist of public deposit information in a report format prescribed by the Treasurer. The manner of required filing may be as a signed writing or electronic data transmission, at the discretion of the Treasurer.

(e)(3) In addition to the reports required in subsections (1) and (2), each qualified public depository shall Submit to the Treasurer not later than within 10 days after the date it is required to be filed with the federal agency:

1.(a) A copy of the quarterly Consolidated Reports of Condition and Income, and any amended reports, required by the Federal Deposit Insurance Act, 12 U.S.C. ss. 1811 et seq., if such depository is a bank; or



~~2.(b)~~ A copy of the Thrift Financial Report, and any amended reports, required to be filed with the Office of Thrift Supervision if such depository is a savings and loan association.

~~(2)(4)~~ ~~In addition to the requirements of subsection (1),~~ The following forms must be made under oath:

(a) The agreement of contingent liability.

(b) The public depository pledge agreement.

~~(c) The public depository change of name, address, and type of institution.~~

~~(3)(5)~~ Any information contained in a report of a qualified public depository required under this chapter or any rule adopted under this chapter, together with any information required of a financial institution that is not a qualified public depository, shall, if made confidential by any law of the United States or of this state, be considered confidential and exempt from the provisions of s. 119.07(1) and not subject to dissemination to anyone other than the Treasurer under the provisions of this chapter; however, it is the responsibility of each qualified public depository and each financial institution from which information is required to inform the Treasurer of information that is confidential and the law providing for the confidentiality of that information, and the Treasurer does not have a duty to inquire into whether information is confidential.

Section 18. Section 280.17, Florida Statutes, is amended to read:

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

(1)(a) Each official custodian of moneys, that meet the definition of a public deposit under s. 280.02, shall ensure such moneys are placed in a qualified public depository unless the moneys are exempt under the laws of this state.

(b) Each depositor, asserting that moneys meet the definition of a public deposit provided in s. 280.02 and are not exempt under the laws of this state, is responsible for any research or defense required to support such assertion.

(2)(4) Beginning July 1, 1998, each public depositor shall take the following actions for each public deposit account: must

(a) Ensure that the name of the public depositor is on the account or certificate or other form provided to the public depositor by the qualified public depository in a manner sufficient to identify that the account is a Florida public deposit.

(b) Execute a form prescribed by the Treasurer for identification of each public deposit account and obtain acknowledgment of receipt on the form from the qualified public depository at the time of opening the account. Such

public deposit identification and acknowledgment form shall be replaced with a current form as required in subsection (3). A public deposit account existing before July 1, 1998, must have a form completed before September 30, 1998.

(c) Maintain the current public deposit identification and acknowledgment form as a valuable record. Such form is mandatory for filing a claim with the Treasurer upon default or insolvency of a qualified public depository.

(3) Each public depositor shall review the Treasurer's published list of qualified public depositories and ascertain the status of depositories used. A public depositor shall, for status changes of depositories:

(a) Execute a replacement public deposit identification and acknowledgment form, as described in subsection (2), for each public deposit account when there is a merger, acquisition, name change, or other event which changes the account name, account number, or name of the qualified public depository.

(b) Move and close public deposit accounts when an institution is not included in the authorized list of qualified public depositories or is shown as withdrawing.

(4)(2) Whenever public deposits are ~~Each public depositor who has assets on deposit~~ in a qualified public depository that has been declared to be in default or is insolvent, ~~each public depositor shall:~~ must

(a) Notify the Treasurer ~~of that fact~~ immediately by telecommunication after receiving notice of the default or insolvency from the receiver of the depository with subsequent written confirmation and a copy of the notice.

(b) Submit to the Treasurer for each public deposit, within 30 days after the date of official notification from the Treasurer, the following:

1. A claim form and agreement, as prescribed by the Treasurer, executed under oath, accompanied by proof of authority to execute the form on behalf of the public depositor.

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

3. Evidence of the insurance afforded the deposit pursuant to the Federal Deposit Insurance Act.

(5)(3) Each public depositor shall confirm annually that public deposit information as of the close of business on September 30 has been provided by each qualified public depository and is in agreement with public depositor records. Such confirmation shall include the federal employer identification number of the qualified public depository, the name on the deposit account record, the federal employer identification number on the deposit account record, and the account number, account type, and actual account balance on deposit. Public depositors shall request such confirmation information

from qualified public depositories on or before the fifth calendar day of October and shall allow until October 31 to receive such information. Any discrepancy found in the confirmation process shall be reconciled before November 30.

(6) Each public depositor shall submit, not later than November 30 15, an annual report to each public depositor shall notify the Treasurer which shall include:

(a) The of its official name, mailing address, and federal employer identification number of the public depositor, and account balances at the close of business on September 30.

(b) Verification that confirmation of public deposit information as of September 30, as described in subsection (5), has been completed.

(c) Public deposit information in a report format prescribed by the Treasurer. The manner of required filing may be as a signed writing or electronic data transmission, at the discretion of the Treasurer.

(d) Confirmation that a current public deposit identification and acknowledgment form, as described in subsection (2), has been completed for each public deposit account and is in the possession of the public depositor. This notification shall include the name of the institutions with whom accounts are established and, for each institution listed, the account name, number, balance, type, and federal employer identification number.

(7)(4) Notices relating to the public deposits program shall be mailed to public depositors and governmental units from a list developed annually from:

(a) Public depositors that filed an annual report under subsection (6).

(b) Governmental units existing on September 30 that had no public deposits but filed an annual report stating "no public deposits".

(c) Governmental units A public entity established during the year that filed an annual report as a new governmental unit or otherwise furnished in writing to the Treasurer shall furnish its official name, address, and federal employer identification number to the Treasurer prior to making any public deposit.

(8)(5) If a public depositor does not comply with this section on each public deposit account, the protection from loss provided in s. 280.18 is not effective as to that public deposit account depositor.

Section 19. Section 280.18, Florida Statutes, is amended to read:

280.18 Protection Liability of public depositors; liability of and the state.—

(1) When public deposits are made in accordance with this chapter, there shall be protection from loss to public depositors, as defined in s. 280.02, no public depositor shall be liable for any loss thereof resulting from the default

~~or insolvency of any qualified public depository in the absence of negligence, malfeasance, misfeasance, or nonfeasance on the part of the public depositor depositor's part or on the part of his or her agents or employees.~~

~~(2) The liability of the state, the Treasurer, or any state agency, or any employee or agent of the state, the Treasurer, or a state agency, for any action taken in the performance of their powers and duties under this chapter shall be limited to that as a public depositor. Under no circumstance is the state, or any state agency or subdivision of the state, liable for all or any portion of any loss resulting from the default or insolvency of a qualified public depository.~~

Section 20. Subsection (2) of section 331.309, Florida Statutes, is amended to read:

331.309 Treasurer; depositories; fiscal agent.—

(2) The board is authorized to select as depositories in which the funds of the board and of the authority shall be deposited any qualified public depository as defined in s. 280.02 ~~banking corporation or other financial institution organized under the laws of the state, or under the laws of the United States and doing business in the state,~~ upon such terms and conditions as to the payment of interest by such depository upon the funds so deposited as the board may deem just and reasonable. The funds of the authority may be kept in or removed from the State Treasury upon written notification from the chair of the board to the state Comptroller.

Section 21. This act shall take effect July 1 of the year in which enacted.

Became a law without the Governor's approval June 17, 1998.

Filed in Office Secretary of State June 11, 1998.