

CHAPTER 2014-145

House Bill No. 7009

An act relating to security for public deposits; amending s. 280.02, F.S.; revising definitions; amending s. 280.03, F.S.; clarifying provisions exempting public deposits from state security requirements; amending s. 280.04, F.S.; revising the collateral-pledging level for public deposits; amending s. 280.05, F.S.; conforming provisions to changes made by the act; amending s. 280.051, F.S.; updating terms; repealing s. 280.071, F.S., relating to the Qualified Public Depository Oversight Board; amending s. 280.085, F.S.; providing that a notice of the default or insolvency of a qualified public depository is not required under certain circumstances; amending s. 280.10, F.S.; requiring information from a nonqualified bank, savings bank, or savings association that acquires public depository by default or insolvency; amending s. 280.11, F.S.; conforming cross-references; amending s. 280.16, F.S.; deleting certain provisions relating to required reports and forms; amending s. 280.17, F.S.; revising notice requirements for public depositors; revising restrictions on loss protection provisions in certain circumstances in which a public depositor fails to comply with the notice requirements; providing an effective date.

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

Section 1. Section 280.02, Florida Statutes, is amended to read:

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

(1) “Affiliate” means an entity that is related through a parent corporation’s controlling interest. The term also includes a ~~any~~ financial institution holding company or a ~~any~~ subsidiary or service corporation of such holding company.

(2) “Alternative participation agreement” means an agreement of restrictions that a qualified public depository completes as an alternative to ~~immediately~~ withdrawing from the public deposits program due to financial condition.

(3) “Average daily balance” means the average daily balance of public deposits held during the reported month. The average daily balance shall ~~must~~ be determined by totaling, by account, the daily balances held by the depositor and ~~then~~ dividing the total by the number of calendar days in the month. Deposit insurance is then deducted from each account balance and the resulting amounts are totaled to obtain the average daily balance.

(4) “Average monthly balance” means the average monthly balance of public deposits held, ~~before deducting deposit insurance~~, by the depository during any 12 calendar months. The average monthly balance of the previous 12 calendar months shall ~~must~~ be determined by adding the average daily

balance before deducting deposit insurance for the reported month and the average daily balances before deducting deposit insurance for the 11 months preceding that month and dividing the total by 12.

(5) “Book-entry form” means that securities are not represented by a paper certificate but represented by an account entry on the records of a depository trust clearing system or, in the case of United States Government securities, a Federal Reserve Bank.

~~(26)(6)~~ “Capital account” or “tangible equity capital” means total equity capital, as defined on the balance-sheet portion of the Consolidated Reports of Condition and Income (call report) ~~or the Thrift Financial Report~~, less intangible assets, as submitted to the regulatory banking authority.

(7) “Collateral-pledging level,” ~~for qualified public depositories~~, means the percentage of collateral required to be pledged by a qualified public depository as provided under in s. 280.04 ~~by a financial institution~~.

(8) “Current month” means the month immediately following the month for which the monthly report is due from qualified public depositories.

(9) “Custodian” means the Chief Financial Officer or a ~~any~~ bank, savings association, or trust company that:

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

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

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

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

(10) “Default or insolvency” includes, without limitation, the failure or refusal of a qualified public depository to pay a ~~any~~ check or warrant drawn upon sufficient and collected funds by a ~~any~~ public depositor or to return a ~~any~~ deposit on demand or at maturity together with interest as agreed; the issuance of an order by a ~~any~~ supervisory authority restraining such depository from making payments of deposit liabilities; or the appointment of a receiver for such depository.

(11) “Effective date of notice of withdrawal or order of discontinuance” pursuant to s. 280.11(3) means that date which is set out as such in any notice of withdrawal or order of discontinuance from the Chief Financial Officer.

(12) “Eligible collateral” means securities, Federal Home Loan Bank letters of credit, and cash, as designated in s. 280.13.

(13) “Financial institution” means, including, but not limited to, an association, bank, brokerage firm, credit union, industrial savings bank, savings and loan association, trust company, or other type of financial institution organized under the laws of this state or any other state of the United States and doing business in this state or any other state, in the general nature of the business conducted by banks and savings associations.

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

(15) “Loss to public depositors” means loss of all principal and all interest or other earnings on the principal accrued or accruing as of the date the qualified public depository was declared in default or insolvent.

(16) “Market value” means the value of collateral calculated pursuant to s. 280.04.

(17) “Operating subsidiary” means the qualified public depository’s 100-percent owned corporation that has ownership of pledged collateral. The operating subsidiary may not have powers beyond those that its parent qualified public depository may itself exercise. The use of an operating subsidiary is at the discretion of the qualified public depository and must meet the Chief Financial Officer’s requirements.

~~(18) “Oversight board” means the qualified public depository oversight board created in s. 280.071 for the purpose of safeguarding the integrity of the public deposits program and preventing the realization of loss assessments through standards, policies, and recommendations for actions to the Chief Financial Officer.~~

~~(18)~~(19) “Pledged collateral” means securities or cash held separately and distinctly by an eligible custodian for the benefit of the Chief Financial Officer to be used as security for Florida public deposits. This includes maturity and call proceeds.

~~(19)~~(20) “Pledgor” means the qualified public depository and, if one is used, operating subsidiary.

~~(20)~~(21) “Pool figure” means the total average monthly balances of public deposits held by all qualified public depositories during the immediately preceding 12-month period.

~~(21)~~(22) “Previous month” means the month or months immediately preceding the month for which a monthly report is due from qualified public depositories.

~~(22)~~(23) “Public deposit” means the moneys of the state or of any state university, county, school district, community college district, special district, metropolitan government, or municipality, including agencies, boards, bureaus, commissions, and institutions of any of the foregoing, or of any court, and includes the moneys of all county officers, including constitutional officers, which ~~that~~ are placed on deposit in a bank, savings bank, or savings association ~~and for which the bank, savings bank, or savings association is required to maintain reserves~~. This includes, but is not limited to, time deposit accounts, demand deposit accounts, and nonnegotiable certificates of deposit. Moneys in deposit notes and in other nondeposit accounts such as repurchase or reverse repurchase operations are not public deposits. Securities, mutual funds, and similar types of investments are not ~~considered public deposits and~~ are ~~shall not be subject to the provisions of~~ this chapter.

~~(23)~~(24) “Public depositor” means the official custodian of funds for a governmental unit who is responsible for handling public deposits.

~~(24)~~(25) “Public deposits program” means the Florida Security for Public Deposits Act contained in this chapter and any rule adopted under this chapter.

~~(25)~~(26) “Qualified public depository” means a ~~any~~ bank, savings bank, or savings association that:

(a) Is organized and exists under the laws of the United States or; 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 pursuant to ~~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) Meets all the requirements of this chapter.

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

~~(26)~~(27) “Reported month” means the month for which a monthly report is due from qualified public depositories.

~~(27)~~(28) “Required collateral” of a qualified public depository means eligible collateral having a market value equal to or in excess of the amount required under ~~pursuant to~~ s. 280.04.

~~(28)~~(29) “Chief Financial Officer’s custody” is a collateral arrangement governed by a contract between a designated Chief Financial Officer’s custodian and the Chief Financial Officer. This arrangement requires that collateral to be in the Chief Financial Officer’s name in order to perfect the security interest.

~~(29)~~(30) “Triggering events” are events set out in s. 280.041 which give the Chief Financial Officer the right to:

(a) Instruct the custodian to transfer securities pledged, interest payments, and other proceeds of pledged collateral not previously credited to the pledgor.

(b) Demand payment under letters of credit.

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

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

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

(e) Public deposits that ~~which~~ are fully secured by a collateral requirement under federal regulations.

Section 3. Subsections (1) and (2) of section 280.04, Florida Statutes, are amended to read:

280.04 Collateral for public deposits; general provisions.—

(1) The Chief Financial Officer shall determine the collateral requirements and ~~collateral-pledging~~ collateral-pledging level for each qualified public depository following procedures established by rule. These procedures ~~must~~ shall include numerical parameters for 25-percent, 50-percent, ~~110-percent~~ 125-percent, and ~~150-percent~~ 200-percent pledge levels based on nationally recognized financial rating services information and established financial performance guidelines.

(2) A qualified public depository may not accept or retain any public deposit ~~which is~~ required to be secured unless it deposits ~~has deposited~~ with the Chief Financial Officer eligible collateral at least equal to the greater of:

(a) The average daily balance of public deposits that does not exceed the lesser of its tangible equity capital ~~account~~ or 20 percent of the pool figure multiplied by the depository’s collateral-pledging level, plus the greater of:

1. One hundred ~~ten~~ twenty-five percent of the average daily balance of public deposits in excess of its tangible equity capital ~~accounts~~; or

2. One hundred ~~ten~~ twenty-five percent of the average daily balance of public deposits in excess of 20 percent of the pool figure.

(b) Twenty-five percent of the average monthly balance of public deposits.

(c) One hundred ~~ten~~ twenty-five percent of the average daily balance of public deposits if the qualified public depository:

1. Has been established for less than 3 years;
2. Has experienced material decreases in its tangible equity capital accounts; or
3. Has an overall financial condition that is materially deteriorating.

(d) ~~One Two~~ hundred fifty percent of an established maximum amount of public deposits which ~~that~~ has been mutually agreed upon by and between the Chief Financial Officer and the qualified public depository.

(e) Minimum required collateral of \$100,000.

(f) An amount as required in special instructions from the Chief Financial Officer to protect the integrity of the public deposits program.

Section 4. Present subsections (1), (2), (3), and (16) of section 280.05, Florida Statutes, are amended, and present subsections (4) through (15) and (17) through (20) are renumbered as subsections (1) through (12) and (14) through (17), respectively, to read:

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

~~(1) Identify representative qualified public depositories and furnish notification for the qualified public depository oversight board selection pursuant to s. 280.071.~~

~~(2) Provide data for the qualified public depository oversight board duties pursuant to s. 280.071 regarding:~~

~~(a) Establishing standards for qualified public depositories and custodians.~~

~~(b) Evaluating requests for exceptions to standards and alternative participation agreements.~~

~~(c) Reviewing and recommending action for qualified public depository or custodian violations.~~

~~(3) Review, implement, monitor, evaluate, and modify all or any part of the standards, policies, or recommendations of the qualified public depository oversight board.~~

(13)(16) Require the filing of the following reports, which the Chief Financial Officer shall process as provided:

(a) Qualified public depository monthly reports and schedules. The Chief Financial Officer shall review the reports of each qualified public depository for material changes in tangible equity 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 Chief Financial Officer 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 Chief Financial Officer shall compare public deposit information reported by qualified public depositories and public depositors. Such comparison shall be conducted for qualified public depositories that ~~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) Any related documents, reports, records, or other information deemed necessary by the Chief Financial Officer in order to ascertain compliance with this chapter.

Section 5. Subsections (2), (6), and (12) of section 280.051, Florida Statutes, are amended to read:

280.051 Grounds for suspension or disqualification of a qualified public depository.—A qualified public depository may be suspended or disqualified or both if the Chief Financial Officer determines that the qualified public depository has:

(2) Submitted reports containing inaccurate or incomplete information regarding public deposits or collateral for such deposits, tangible equity capital ~~accounts~~, or the calculation of required collateral.

(6) Failed to furnish the Chief Financial Officer with prompt and accurate information, or failed to allow inspection and verification of any information, dealing with public deposits or dealing with the exact status of its tangible equity capital ~~accounts~~, or ~~any~~ other financial information that the Chief Financial Officer determines necessary to verify compliance with this chapter or any rule adopted pursuant to this chapter.

(12) Failed to execute or have the custodian execute a collateral control ~~public depository~~ ~~pledge~~ agreement before ~~prior to~~ using a custodian.

Section 6. Section 280.071, Florida Statutes, is repealed.

Section 7. Section 280.085, Florida Statutes, is amended to read:

280.085 Notice to claimants.—

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

(2) A ~~No~~ claim against the Public Deposits Trust Fund is binding on the fund only if ~~unless~~ presented within 30 days after the date of the notice.

(3) This section does not affect any proceeding to:

(a) Enforce any real property mortgage, chattel mortgage, security interest, or other lien on property of a qualified public depository that is in default or insolvency; or

(b) Establish liability of a qualified public depository that is in default or insolvency to the limits of any federal or other casualty insurance protection.

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

Section 8. Present subsections (3) through (6) of section 280.10, Florida Statutes, are renumbered as subsection (4) through (7), respectively, and a new subsection (3) is added to that section, to read:

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

(3) If the default or insolvency of a qualified public depository results in acquisition of all or part of its Florida public deposits by a bank, savings bank, or savings association that is not a qualified public depository, the bank, savings bank, or savings association acquiring the Florida public deposits is subject to subsection (1).

Section 9. Subsection (3) of section 280.11, Florida Statutes, is amended to read:

280.11 Withdrawal from public deposits program; return of pledged collateral.—

(3) A qualified public depository which is required to withdraw from the public deposits program pursuant to s. ~~280.05(17)~~ 280.05(1)(b) shall not receive or retain public deposits after the effective date of withdrawal. The contingent liability, required collateral, and reporting requirements of the withdrawing depository shall continue until the effective date of withdrawal.

Notice of withdrawal (order of discontinuance) from the Chief Financial Officer shall be mailed to the qualified public depository by registered or certified mail. Penalties incurred because of withdrawal from the public deposits program shall be the responsibility of the withdrawing depository.

Section 10. Section 280.16, Florida Statutes, is amended to read:

280.16 Requirements of qualified public depositories; confidentiality.—

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

(a) 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 Chief Financial Officer 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) Within 15 days after the end of each calendar month, or when requested by the Chief Financial Officer, submit to the Chief Financial Officer 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 Chief Financial Officer deems determines necessary to administer this chapter.

(c) Provide to each public depositor annually by, ~~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 must ~~shall~~ be reconciled before November 30.

(d) Submit to the Chief Financial Officer annually by, ~~not later than~~ November 30, a report of all public deposits held for the credit of all public depositors at the close of business on September 30. Such annual report must ~~shall~~ consist of public deposit information in a report format prescribed by the Chief Financial Officer. The manner of required filing may be as a signed writing or electronic data transmission, at the discretion of the Chief Financial Officer.

~~(e) Submit to the Chief Financial Officer not later than the date required to be filed with the federal agency:~~

~~1. 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. 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) The following forms must be made under oath:

(a) The agreement of contingent liability.

(b) Collateral control agreements and letter of credit agreements.

(3) 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, is ~~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 Chief Financial Officer 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 shall ~~to~~ inform the Chief Financial Officer of information that is confidential and the law providing for the confidentiality of that information, and the Chief Financial Officer does not have a duty to inquire into whether information is confidential.

Section 11. 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 comply with the following:

(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) ~~Beginning July 1, 1998,~~ Each public depositor shall take the following actions for each public deposit account:

(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 Chief Financial Officer 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 Chief Financial Officer upon default or insolvency of a qualified public depository.

(3) Each public depositor shall review the Chief Financial Officer's published list of qualified public depositories and ascertain the status of depositories used. ~~A public depositor shall,~~ For status changes of depositories, a public depositor shall:

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

(a) Notify the Chief Financial Officer 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 Chief Financial Officer for each public deposit, within 30 days after the date of official notification from the Chief Financial Officer, the following:

1. A claim form and agreement, as prescribed by the Chief Financial Officer, 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) 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 must ~~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 must ~~shall~~ be resolved ~~reconciled~~ before November 30.

(6) Each public depositor shall submit ~~by, not later than~~ November 30, an annual report to the Chief Financial Officer which includes ~~shall include~~:

(a) The official name, mailing address, and federal employer identification number of the public depositor.

(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 Chief Financial Officer. The manner of required filing may be as a signed writing or electronic data transmission, at the discretion of the Chief Financial Officer.

(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.

(7) 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) A governmental unit ~~units~~ existing on September 30 ~~which that~~ had no public deposits but filed an annual report stating “no public deposits”.

(c) A governmental unit ~~units~~ established during the year that filed an annual report as a new governmental unit or otherwise furnished in writing to the Chief Financial Officer its official name, address, and federal employer identification number.

(8) 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. However, the protection from loss provided in s. 280.18 remains effective if a public depositor fails to present the form prescribed by the Chief Financial Officer for identification of public deposit accounts and the Chief Financial Officer determines that the defaulting or insolvent depository had classified, reported, and collateralized the account as a public deposit account.

Section 12. This act shall take effect July 1, 2014.

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.