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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 7, 1998 Revised: \_\_\_\_\_

Subject: Public Depositories

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Lombardi</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

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**I. Summary:**

The Florida Interstate Branching Act of 1996 (96-168, L.O.F.) authorized interstate branching into Florida through acquisition. Out-of-state banks and savings and loans were authorized to have branches in Florida. As a result, the definition of “qualified public depository” in chapter 280, F.S., was amended in 1997 to include banks and savings and loans chartered in other states and having a branch or a principal place of business in Florida to become qualified public depositories. Various other investment laws for governmental units within the Florida Statutes presently limit the deposit of public funds only to financial institutions chartered in Florida. The bill provides conforming and clarifying changes to authorize a financial institution that has a branch or principal place of business in Florida, as defined in s. 658.12, F.S., to act as a qualified public depository.

The bill also provides the following changes to the Florida Security for Public Deposit Act (ch. 280, F.S.):

Requires the public depositor to assume greater responsibility in the protection of their public deposits;

Requires qualified public depositories to have greater accountability in classifying, reporting, and the collateralization of public deposits and provide annual confirmation of public deposits accounts;

Requires the Treasurer to compare public deposits information reported annually by qualified public depositories and public depositors, only for those qualified public depositories ranked in the lowest category based on established financial condition criteria;

Combines the two three-member advisory committees (one for banks and one for savings and loans associations) to form one six-member committee; and

Combines the two separate contingent liability pools, one for banks and one for savings and loan associations, to form one contingent liability pool.

This bill amends the following sections of the Florida Statutes: 125.31, 136.01, 159.09, 166.261, 218.345, 236.24, 255.502, 331.309, 280.02, 280.03, 280.04, 280.05, 280.07, 280.08, 280.16, 280.17, and 280.18.

## **II. Present Situation:**

The Cabinet Office of the Treasurer is established in s. 4, Art. IV, Fla. Const. The Treasurer is directed to keep all state funds and securities and to disburse state monies only upon the order of the Comptroller. Section 20.13, F.S., designates the Treasurer as the Insurance Commissioner, Treasurer, and State Fire Marshal and names the Treasurer as the head of the Department of Insurance.

Chapter 18, F.S., delineates many duties of the Treasurer. Among the duties assigned by law is the investment of state monies in excess of those needed to pay the immediate debts of the state. These excess funds include monies from the General Revenue Fund, trust accounts, and various other accounts of state agencies and other public and quasi-public entities. The law authorizes the Treasurer to charge a fee for managing excess state monies.

Pursuant to s. 18.10, F.S., the Treasurer is directed to invest these excess funds 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 additional money is available and qualified public depositories are unwilling to accept such money and pay the rates established by the Treasurer, the Treasurer is authorized to invest the money in specific investment products.

Chapter 280, F.S., also directs the Treasurer to establish qualifications to designate banks and savings and loan associations as qualified public depositories. Chapter 280, F.S., outlines the procedures a financial institution must follow to be designated as a qualified public depository. Section 280.02, F.S., defines a qualified public depository to mean any bank, savings bank, or savings association organized and existing under the laws of the United States, or the laws of Florida or any territory of the United States that has its principal place of business in Florida or has a branch office which is authorized under the laws of Florida or any other state or territory of the United States to receive deposits, has deposit insurance (under the provisions of the Federal Deposit Insurance Act) and meets the criteria to be designated as a qualified public depository.

To qualify as a qualified public depository, a financial institution must provide specific information to the Department of Insurance describing the assets of the institution. A qualified public depository is also required to collateralize a specified portion of the public monies on deposit so

that the designated portion of the public deposits is immediately available should the need arise. The percentage of public funds that a financial institution must collateralize varies depending upon the assets of the institution, among other requirements.

The advisory committees (one for banks and one for savings and loan associations) convene to review the overall financial condition of the participants and applicants in each of the respective industries and recommend criteria to the Treasurer relating to the integrity of public deposits program.

Banks and savings and loan associations each have their own separate liability pool whereby members of either group are assessed a proportionate share of liability in the event of a failure of a member of that group. Losses to public depositors are satisfied first through any applicable deposit insurance and then through the sale of securities pledged by the defaulting depository. If the loss to public depositors is not covered by insurance or the proceeds of the sale, then the Treasurer assesses each of the other qualified public depositories of the same type as the defaulting depository.

### **III. Effect of Proposed Changes:**

**Sections 1, 4 and 5:** Sections 125.31, 166.261, and 218.345, F.S., are amended, to direct the board of county commissioners, the governing body of each municipality, and the governing body of each special district, respectively, to invest and reinvest surplus public funds in interest-bearing time deposits or savings accounts of qualified public depositories as defined in s. 280.02, F.S.

Sections 125.31 and 166.261, F.S., provide that public funds that have been properly earmarked and credited to the governing body in book entry form by the institution must be kept in a separate account and apart from the assets of the institution. This section is amended to include depositories chartered by the Federal Government, the state, or any other state or territory of the United States, that has a branch or principal place of business in the State of Florida, as defined in s. 658.12, F.S.

Sections 125.31, 166.261, and 218.345, F.S., provide that the board of county commissioners, the governing body of each municipality, and the governing body of each special district, respectively, may also receive bank trust receipts in exchange for investment of public funds provided they have been properly earmarked. This section is amended to include bank depositories chartered by the United States Government, the State of Florida, or any other state or territory of the United States, that has a branch or principal place of business in the state, as defined in s. 658.12, F.S., holding the actual securities on which the trust receipts are issued.

**Section 2:** Section 136.01, F.S., is amended to deem county depositories as a qualified public depository, as defined in s. 280.02, F.S.

**Section 3:** Section 159.09, F.S., is amended to authorize any trust company or bank incorporated under the laws of the State of Florida, or any 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, F.S., to act as a depository and furnish indemnifying bonds or pledge collateral securities as may be required by the governing body.

This expands the scope of that section to permit a financial institution chartered under the laws of any state or territory of the United States that has a branch or principal place of business in Florida, as defined in s. 658.12, F.S., to act as a depository.

**Section 6:** Section 236.24, F.S., is amended directing each school board to invest and reinvest surplus public funds in interest-bearing time deposits or savings accounts of qualified public depositories as defined in s. 280.02, F.S.

Section 236.24, F.S., provides that securities purchased with surplus public funds be delivered by the seller to the school board or designated safekeeper. This section is amended to include qualified banks and trust companies chartered 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 the State of Florida, as defined s. 658.12, F.S., as safekeepers.

Section 236.24, F.S., provides that each school board may also receive bank trust receipts in exchange for investment of public funds provided they have been properly earmarked. This section is amended to include bank depositories chartered by the United States Government, the State of Florida, or any other state or territory of the United States, that has a branch or principal place of business in the state, as defined in s. 658.12, F.S., holding the actual securities on which the trust receipts are issued.

**Section 7:** Section 255.502, F.S., is amended to provide for authorized investment in savings accounts or certificates of deposits with any bank, savings bank, or savings and loan association which is a qualified public depository as defined in s. 280.02, F.S.

**Section 8:** Section 280.02, F.S., is added to define the term, “governmental unit.” 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 such entities, or any court. The term, governmental entity, replaces two previously used terms, public entity and public unit.

Section 280.02, F.S., is amended to require a qualified public depositories (QPDs) to have procedures and practices for accurately identifying, classifying, reporting and collateralizing public deposits.

**Section 9:** Section 280.03, F.S., is amended to provide an exemption from the Public Deposits Program for public deposits which are fully secured through federal regulations. This eliminates unnecessary duplication of collateral at the federal and state level. Other exemptions include: public deposits in a bank or savings association by a trust company or trust department fully secured under business trust laws; moneys of the System Trust Fund as defined in s. 121.021(36),

F.S.; public deposits held outside the country; and wire transfers and transfers of funds solely for paying registrars and agents.

**Section 10:** Section 280.04, F.S., establishes the minimum required collateral pledging levels for qualified public depositories, and eliminates the distinction of two separate liability pools for banks and savings associations to form one liability pool. The formula used for calculating minimum required pledging levels for QPDs, is amended to conform the existing language to the current calculation practiced by the Treasurer.

**Section 11:** Section 280.05, F.S., is amended to eliminate the separation between banks and savings associations in the Public Deposits Program. The bill combines the two three-member advisory committees into one six-member committee, but leaves its purpose unchanged. Members shall be appointed by the Treasurer for a 4-year term and absent a quorum the committee may not take action. The Treasurer is also directed to review QPD monthly reports and schedules for material changes in capital accounts; changes in name, address, or type of institution; recording average daily balances of public deposits held, and monitoring the collateral-pledging levels and required collateral. The bill would require the Treasurer to compare, analyze, and review public deposits information reported quarterly by QPDs and information reported by public depositors only for those QPDs ranked in the lowest category based on established financial condition criteria. The Treasury, at its discretion, may require the filing of reports by electronic data transmission.

Additionally, the Treasurer's powers are amended to include: to hold, deposit, or transfer interest and principal payments for collateral pledged to the Treasurer, deposited with the Treasurer, or held in the Treasurer's name; and release collateral subject to sale and transfer of funds directly from the custodian to public depositors of a withdrawing depository.

**Section 12:** Section 280.07, F.S., is amended to reflect the combining of the two separate contingent liability pools. Qualified public depositories will be required to guarantee public deposits by executing a form prescribed by the Treasurer and approved by the QPD's board of directors. The document becomes an official record of the institution.

**Section 13:** Section 280.08, F.S., is amended to require the Treasurer to validate claims on public deposit accounts meeting the requirements of s. 280.17, F.S. Additionally, clarifying language is added to exclude the defaulting depository from the assessment calculation for QPDs regarding the remaining losses of an insolvency or default.

**Section 14:** Section 280.16, F.S., is amended to require additional specified actions on behalf of QPDs regarding public deposit accounts. This section of the bill requires each qualified public depository to identify each public deposit account as a "Florida public deposit" on the record with the name of the public depositor and a unique depositor code, beginning July 1, 1998. This section of the bill expands the duties of qualified public depositories to require each depository to identify each 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, beginning July 1, 1998.

This section provides other standards and deadlines for reports filed by each public depositor with each qualified public depository, and reports filed by each public depositor with the Treasurer. For instance, qualified public depositories are required to complete acknowledgment of receipt forms and return said forms to public depositors within 45 days of their receipt.

Qualified public depositories are required to file an annual report containing public account information with each public depositor no later than October 30. The deadline for filing the annual report required with the Treasurer is changed from November 15 to November 30. The Treasurer will prescribe the report format. The existing requirement of filing a report with the federal agency and with the Treasurer is changed from no later than 10 days after the date the report is required to be filed with the federal agency to no later than the date it is required to be filed with the federal agency.

**Section 15:** Section 280.17, F.S., is amended to require public depositors to assume greater responsibility for the protection of public deposits. Public depositors will be required to make certain their funds deposited meet the definition of “public deposit” and ensure that their deposits are placed in a QPD. Each depositor, asserting that moneys meet the definition of a public deposit and not exempt under the laws of Florida, is responsible for any research or defense required to support such assertion.

Beginning July 1, 1998, public depositors are required to execute an identification form for each public account and obtain acknowledgment of such deposit from each depository. Public accounts existing before July 1, 1998, must have a form completed before September 30, 1998.

Public depositors are required to maintain a public identification and acknowledgment form for each public deposit account with up-to-date information in order for the account to be protected by the public deposits program. Public depositors are required to review the list of qualified public depositories and transfer funds from an institution not on the list, or one that is shown to be withdrawing, to one on the list.

In instances of default or insolvency of a depository, public depositors are required to submit claim forms, identification numbers, and evidence of insurance with the Treasurer within 30 days of notification by the Treasurer.

Public depositors are required to confirm that public deposit information has been provided by each qualified public depository on an annual basis, on or before September 30, and that such information is in agreement with the public depositor’s records. Discrepancies must be resolved on or before November 30.

The existing requirement of a public depositor filing an annual report with the Treasurer is expanded to include verification of public deposit information in a report format required by the Treasurer.

Although this section does not specify who will execute the mailing, this section of the bill provides that notices relating to the public deposits program shall be mailed to public depositors and governmental units annually.

**Section 16:** Section 280.18, F.S., is amended to provide that protection from loss will be available to those public depositors who make public deposits in accordance with this chapter. The liability of the state, the Treasury, any state agency, and employees thereof, for taking actions in conjunction with performing duties under this section are limited to that as a public depositor.

**Section 17:** Section 331.309, F.S., is amended to require the board of the Spaceport Florida Authority to select QPDs as defined in s. 280.02, F.S., for the deposit of public funds.

**Section 18:** This act takes effect July 1 of the year in which enacted.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Financial institutions designated as “qualified public depositories” would possibly experience initial administrative costs developing practices and procedures for identifying, classifying, reporting, and collateralizing public deposits.

Collateral requirements for institutions who originally held more than 20 percent of any one of the two liability pools may be reduced due to the combining into one pool the two separate pools.

**C. Government Sector Impact:**

According to the Department of Insurance, additional staff and time will be required to review the Public Identification and Acknowledgment Form (for each public deposit account) provided by qualified public depositories and public depositors. However, the workload will depend on the number of public deposit accounts that each public depositor has with qualified public depositories, which cannot be determined at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Auditor General recommended in Report #12891 that the Treasurer perform a periodic comparison between the information in Public Depositor Reports to the Treasurer and the Public Depository Annual Reports. However, division management concluded that the Legislature would not approve funding for such a sizeable request for additional resources for this purpose.

To facilitate the comparison of records as recommended in the audit report, division management will propose requiring the public units to independently confirm their public deposits with the QPDs annually and send a report that includes verification that confirmation has been completed to the division.

**VIII. Amendments:**

None.