

CHAPTER 280

SECURITY FOR PUBLIC DEPOSITS

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280.01 Short title.—This chapter may be cited as the “Florida Security for Public Deposits Act.”

History.—s. 3, ch. 81–285.

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

(1) “Average daily balance” means the average daily balance of public deposits held during the reported month. The average daily balance 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.

(2) “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 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.

(3) “Capital account” 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.

(4) “Collateral-pledging level,” for qualified public depositories, means that level of collateral determined and required to be pledged as provided in s. 280.04.

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

(6) “Custodian” means the Treasurer or 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 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 Treasurer to act as a custodian.

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

(8) “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 Treasurer.

(9) “Eligible collateral” means securities as designated in ss. 280.13 and 280.14.

(10) “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.

(11) “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.

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

(13) “Public deposit” means the moneys of the state or of any 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 offi-

cers, including constitutional officers, that are placed on deposit in a bank or savings association and for which the bank or savings association is required to maintain reserves, including, but not limited to, time deposit accounts, demand deposit accounts, and certificates of deposit. All certificates of deposit, whether negotiable or nonnegotiable, shall be considered deposits and shall be subject to the provisions of this chapter. Moneys used in repurchase or reverse repurchase operations are investments and are not public deposits as defined in this subsection.

(14) "Public depositor" means the Treasurer or other chief financial officer or designee responsible for handling public deposits.

(15) "Qualified public depository" means any bank or savings association organized and existing under the laws of this state and any bank or savings association organized under the laws of the United States that has its principal place of business in this state or has a branch office which is authorized under the laws of this state or of the United States to receive deposits in this state, that meets all of the requirements of this chapter, and that has been designated by the Treasurer as a qualified public depository.

(16) "Reported month" means the month for which a monthly report is due from qualified public depositories.

(17) "Required collateral" of a qualified public depository means eligible collateral having a market value equal to or in excess of the average daily balance times the depository's collateral-pledging level required pursuant to s. 280.04 as computed and reported monthly or when requested by the Treasurer or 25 percent of the average monthly balance, whichever is greater.

(18) "Treasurer" means the Treasurer of the State of Florida.

History.—s. 3, ch. 81-285; s. 7, ch. 83-122; s. 1, ch. 84-216; s. 1, ch. 85-259; s. 1, ch. 86-84; s. 1, ch. 87-409; s. 1, ch. 88-185; s. 5, ch. 90-357; s. 10, ch. 91-244.

280.03 Public deposits to be secured; exceptions.

(1) On and after January 1, 1982, all public deposits shall be secured as provided in this chapter. 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.

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

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

(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.

History.—s. 3, ch. 81-285; s. 8, ch. 83-122; s. 2, ch. 85-259; s. 55, ch. 86-152; s. 4, ch. 86-236; s. 2, ch. 87-409; s. 6, ch. 90-357; s. 2, ch. 93-75.

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. Unless the Treasurer has otherwise expressly established a minimum amount of required collateral or different collateral pledging levels and officially notified the affected qualified public depository, each qualified public depository shall calculate the amount of its required collateral based upon any one or any combination of the following formulas:

(a) Fifty percent of public deposits equal to or less than capital accounts, unless otherwise required by paragraph (b), paragraph (c), or paragraph (d).

(b) One hundred twenty-five percent of public deposits in excess of capital accounts.

(c) One hundred twenty-five percent of public deposits if the qualified public depository:

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

(d) One hundred twenty-five percent of public deposits in excess of 20 percent of the total public deposits held by all qualified public depositories of the same type, i.e., banks or savings associations. The Treasurer shall determine the total public deposits held based on the immediately preceding 12-month 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.

(2) With the approval of the Treasurer, a qualified public depository may deposit eligible collateral with a custodian subject to order of the Treasurer.

(a) If eligible collateral consisting of registered certificated securities is deposited, and:

1. The securities are held by the Treasurer or other custodian and are in the name of the qualified public depository, the Treasurer may require the qualified public depository owning the registered certificated securities to execute and deliver to the Treasurer a separate certified power of attorney or bond power or other bond assignment form required by the bond agent or bond trustee authorizing the Treasurer to transfer ownership of such securities for the purposes provided in this chapter. A certified copy of a corporate resolution or other resolution adopted by the qualified public depository's governing body authorizing the execution of the power of attorney or bond power or other bond assignment form for each issue of security must be delivered to the Treasurer with the certified power of attorney, bond power, or bond assignment.

2. The securities are held by a custodian other than the Treasurer and are in the name of the custodian or in the name of a nominee, the Treasurer may require the

custodian to execute and deliver to the Treasurer a separate certified power of attorney or bond power or other bond assignment form required by the bond agent or bond trustee authorizing the Treasurer to transfer ownership of such securities for the purposes provided in this chapter. A certified copy of a corporate resolution or other resolution adopted by the custodian's governing body authorizing the execution of the power of attorney or bond power or other bond assignment form for each issue of security must be delivered to the Treasurer with the certified power of attorney, bond power, or bond assignment.

(b) A qualified public depository may not accept any public deposit that would increase its average daily balance for the current month by 25 percent over the average daily balance for the previously reported month unless it deposits or has on deposit additional required collateral to secure such increase within 48 hours of the deposit.

(c) A qualified public depository may not accept or retain any public deposit which is required to be secured unless it has deposited eligible collateral equal to its required collateral pursuant to this chapter.

(3) For reporting purposes, each qualified public depository shall value its collateral at market value as of the close of business on the last banking day in the reported month, except that any extraordinary decline in value between such day and the date of mailing the monthly report to the Treasurer shall be considered and used for reporting purposes.

(4) Unless the Treasurer has officially notified the qualified public depository that a substitution may not be made, a substitution of collateral may be made by the qualified public depository at any time if the market value of the securities substituted is equal to or greater than the market value of the securities withdrawn. At the time of making a substitution, the depository shall submit a request for the substitution upon a form approved by the Treasurer and shall deliver the request to the custodian of the securities and to the Treasurer.

(5) Except in cases of substitution as provided in subsection (4), a qualified public depository may not withdraw collateral previously pledged without the prior approval of the Treasurer.

(6) A custodian other than the Treasurer holding securities as collateral for a qualified public depository shall not permit the depository to withdraw the collateral without the prior written approval of the Treasurer, except in cases of substitution as provided in subsection (4).

(7) A qualified public depository that violates subsection (5) or a custodian that violates subsection (6) is subject to the penalties provided in s. 280.054.

History.—s. 3, ch. 81-285; s. 9, ch. 83-122; s. 132, ch. 83-217; s. 3, ch. 85-259; s. 2, ch. 86-84; s. 3, ch. 87-409; s. 4, ch. 88-185; s. 7, ch. 90-357; s. 11, ch. 91-244; s. 188, ch. 95-148.

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

(1) 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.

(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.

(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 public depository that is suspended or disqualified pursuant to this subsection is subject to the provisions of s. 280.11 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.

(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.

(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.

(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.

(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.

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

(9) Appoint two separate three-member advisory 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 (6) in order to protect public deposits and the depositories in the program. Each member selected to serve on an advisory committee must be a representative of his or her respective industry and 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 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. Thereafter, each advisory committee shall elect a chair annually. Each advisory committee shall annually elect an advisory committee member to serve as vice chair and shall designate a secretary who need not be a member of the advisory committee. Each secretary shall keep a record of the proceedings of 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. Each advisory committee may not 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 committees shall convene as needed.

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

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

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

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

(14) Audit or verify the following reports:

- (a) Public depository monthly reports and schedules;

(b) Quarterly regulatory reports from qualified public depositories;

(c) Public depository annual reports; and

(d) Public depositors annual reports.

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

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

(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.

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

(19) 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.

History.—s. 3, ch. 81-285; s. 10, ch. 83-122; s. 4, ch. 85-259; s. 5, ch. 87-409; ss. 5, 14, ch. 88-185; s. 8, ch. 90-357; s. 12, ch. 91-244; s. 5, ch. 91-429; s. 189, ch. 95-148.

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 Treasurer determines that the qualified public depository has:

(1) Violated any of the provisions of this chapter or any rule adopted by the Treasurer pursuant to this chapter.

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

(3) Failed to pledge sufficient collateral to cover public deposits.

(4) Grossly misstated the market value of the securities pledged as collateral.

(5) Failed to pay any administrative penalty.

(6) Failed to furnish the Treasurer 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 capital accounts, or any other financial information that the Treasurer determines necessary to verify compliance with this chapter or any rule adopted pursuant to this chapter.

(7) Failed to furnish the Treasurer, when the Treasurer requested, with a power of attorney or bond power or other bond assignment form required by the bond agent, bond trustee, or other transferor for each issue of registered certificated securities pledged.

(8) Submitted reports signed by an unauthorized individual.

(9) Submitted reports without a certified or verified signature, or both, if required by law.

(10) Released a security without notice or approval.

(11) Failed to execute or have the custodian execute a public depository pledge agreement prior to using a custodian.

(12) Failed to give notification as required by s. 280.10.

History.—s. 6, ch. 87-409; s. 6, ch. 88-185; s. 13, ch. 91-244.

280.052 Order of suspension or disqualification; procedure.—

(1) The suspension or disqualification of a bank or savings association as a qualified public depository must be by order of the Treasurer mailed to the qualified public depository by registered or certified mail.

(2) The Treasurer shall notify, by first-class mail, all public depositors that have complied with s. 280.17 of any such disqualification or suspension.

(3) The procedures for suspension or disqualification shall be as set forth in chapter 120 and in the rules of the Treasurer adopted pursuant to this section.

(4) Whenever the Treasurer determines that an immediate danger to the public health, safety, or welfare exists, the Treasurer may take any appropriate action available to her or him under the provisions of chapter 120.

History.—s. 7, ch. 87-409; s. 14, ch. 91-244; s. 190, ch. 95-148.

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

(1)(a) The Treasurer may suspend a qualified public depository for any period that is fixed in the order of suspension, not exceeding 6 months. For the purposes of this section and ss. 280.051 and 280.052, the effective date of suspension or disqualification is that date which is set out as such in any order of suspension or disqualification.

(b) During the period of suspension, the contingent liability, required collateral, and reporting requirements of the suspended public depository remain in force under the same conditions as if the suspended depository had remained qualified.

(c) Upon expiration of the suspension period, the bank or savings association may, by order of the Treasurer, be reinstated as a qualified public depository, unless the cause of the suspension has not been corrected or the bank or savings association is otherwise not in compliance with this chapter or any rule adopted pursuant to this chapter.

(2)(a) A qualified public depository may be disqualified for a period of time not less than 1 year to be fixed in the order of disqualification.

(b) During the period of disqualification, the contingent liability, required collateral, and reporting requirements of the disqualified public depository remain in force under the same conditions as if the disqualified depository had remained qualified.

(c) Upon expiration of the disqualification period, the bank or savings association may reapply for qualification as a qualified public depository. If a disqualified bank or savings association is purchased or otherwise acquired by new owners, it may reapply to the Treasurer to be a qualified public depository prior to the expiration date of the disqualification period. Redesignation as a qualified public depository may occur only after the Treasurer has determined that all requirements for holding public deposits under the law have been met.

History.—s. 8, ch. 87-409; s. 15, ch. 91-244.

280.054 Administrative penalty in lieu of suspension or disqualification.—

(1) If the Treasurer finds that one or more grounds exist for the suspension or disqualification of a qualified public depository, the Treasurer may, in lieu of suspension or disqualification, impose an administrative penalty upon the qualified public depository.

(a) With respect to any nonwillful violation, such penalty may not exceed \$250 for each violation, exclusive of any restitution found to be due. If a qualified public depository discovers a nonwillful violation, the qualified public depository shall correct the violation; and, if restitution is due, the qualified public depository shall make restitution upon the order of the Treasurer and shall pay interest on such amount at the legal rate from the date of the violation. Each day a violation continues constitutes a separate violation.

(b) With respect to any knowing and willful violation of a lawful order or rule, the Treasurer may impose a penalty upon the qualified public depository in an amount not exceeding \$1,000 for each violation. If restitution is due, the qualified public depository shall make restitution upon the order of the Treasurer and shall pay interest on such amount at the legal rate. Each day a violation continues constitutes a separate violation.

(2) The failure of a qualified public depository to make restitution when due as required under this section constitutes a willful violation of this chapter. However, if a qualified public depository in good faith is uncertain whether any restitution is due or as to the amount of restitution due, it shall promptly notify the Treasurer of the circumstances. The failure to make restitution pending a determination of whether restitution is due or the amount of restitution due does not constitute a violation of this chapter.

(3) A qualified public depository that violates s. 280.04(5) or a custodian that violates s. 280.04(6) is subject to an administrative penalty in an amount not exceeding the greater of \$1,000 or 10 percent of the amount of withdrawal, not exceeding \$10,000.

History.—s. 9, ch. 87-409.

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

(1) The Treasurer may issue a cease and desist order and a corrective order upon determining that:

(a) A qualified public depository has requested and obtained a release of pledged collateral without approval of the Treasurer;

(b) A bank, savings association, or other financial institution is holding public deposits without a certificate of qualification issued by the Treasurer;

(c) A qualified public depository pledges unacceptable collateral;

(d) A custodian has released pledged collateral without approval of the Treasurer;

(e) A qualified public depository or a custodian has not furnished to the Treasurer, when the Treasurer requested, a power of attorney or bond power or bond assignment form required by the bond agent or bond trustee for each issue of registered certificated securities pledged and registered in the name, or nominee name, of the qualified public depository or custodian; or

(f) A qualified public depository; a bank, savings association, or other financial institution; or a custodian has committed any other violation of this chapter or any rule adopted pursuant to this chapter that the Treasurer determines may be remedied by a cease and desist order or corrective order.

(2) Any qualified public depository or other bank, savings association, or financial institution or custodian that violates a cease and desist order or corrective order of the Treasurer is subject to an administrative penalty not exceeding \$1,000 for each violation of the order. Each day the violation of the order continues constitutes a separate violation.

History.—s. 10, ch. 87-409; s. 7, ch. 88-185.

280.06 Penalty for violation of law, rule, or order to cease and desist or other lawful order.—

(1) The violation of any provision of this chapter, or any order or rule of the Treasurer, or any order to cease and desist or other lawful order is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) It is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, to knowingly and willfully give false information on any form made under oath and filed pursuant to this chapter with the intent to mislead the Treasurer in the administration or enforcement of this chapter.

(3) No action lies against the state, any state agency or instrumentality, or the Public Deposits Trust Fund for the submission of any false or fraudulent information, or for any misrepresentation made or given, by any qualified public depository or other financial institution or any officer, employee, or agent thereof, nor shall the same constitute any defense in law or in equity to payment of any assessment under this chapter.

History.—s. 11, ch. 87-409; s. 16, ch. 91-244.

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. The Treasurer shall maintain separate and totally independent contingent liability agreements, one such agreement exclusively for banks and another exclusively for savings associations.

History.—s. 3, ch. 81-285; s. 12, ch. 87-409.

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 and implement the following procedures:

(1) The Treasurer, in cooperation with the Director of the Division of Banking of the Department of Banking and Finance or the receiver of the qualified public depository in default, shall ascertain the amount of funds of each public depositor on deposit at such depository and the amount of deposit insurance applicable to such deposits.

(2) The potential loss to public depositors shall be calculated by compiling claims received from such depositors. Such claims shall be validated by the Treasurer. 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 by the defaulting depository.

(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 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. Such assessment shall be determined by multiplying the total amount of the loss to all public depositors by a percentage which represents the average share of public fund deposits held by that depository during the previous 12 months divided by the average total public deposits held by all depositories of the same type during the same 12-month period.

(4) Each qualified public depository shall pay its assessment to the Treasurer within 7 business days after it receives notice of the assessment. If a depository fails to pay its assessment when due, the Treasurer shall satisfy the assessment by selling securities pledged by that depository.

(5) The Treasurer shall distribute the funds to the public depositors of the qualified public depository in default according to their validated claims.

(6) Public depositors receiving payment under the provisions of this section shall assign to the Treasurer any interest they may have in funds that may subsequently be made available to the qualified public depository in default. If the qualified public depository in default or its receiver provides the funds to the Treasurer, the Treasurer shall distribute the funds, plus all accrued interest which has accumulated from the investment of the funds, if any, to the depositories which paid assessments on the same pro rata basis as the assessments were paid.

History.—s. 3, ch. 81-285; s. 5, ch. 85-259; s. 13, ch. 87-409; s. 8, ch. 88-185; s. 191, ch. 95-148.

280.085 Notice to claimants.—

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

(2) No claim against the Public Deposits Trust Fund is binding on the fund 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.

History.—s. 14, ch. 87-409; s. 17, ch. 91-244.

280.09 Public Deposits Trust Fund.—

(1) In order to facilitate the administration of this chapter, there is created the Public Deposits Trust Fund, hereafter in this section designated "the fund." The proceeds from the sale of securities pledged as collateral or from any assessment pursuant to s. 280.08 shall be deposited into the fund. Any administrative penalty collected pursuant to this chapter shall be deposited into the Treasurer's Administrative and Investment Trust Fund.

(2) The Treasurer is authorized to pay any losses to public depositors from the fund, and there are hereby appropriated from the fund such sums as may be necessary from time to time to pay the losses. The term "losses," for purposes of this chapter, shall also include losses of interest or other accumulations to the public depositor as a result of penalties for early withdrawal required by Depository Institution Deregulatory Commission Regulations or applicable successor federal laws or regulations because of suspension or disqualification of a qualified public depository by the Treasurer pursuant to s. 280.05 or because of withdrawal from the public deposits program pursuant to s. 280.11. In that event, the Treasurer is authorized to assess against the suspended, disqualified, or withdrawing public depository, in addition to any amount authorized by any other provision of this chapter, an administrative penalty equal to the amount of the early withdrawal penalty and to pay that amount over to the public depositor as reimbursement for such loss. Any money in the fund estimated not to be needed for immediate cash requirements shall be invested pursuant to s. 18.125.

History.—s. 11, ch. 83-122; s. 6, ch. 85-259; s. 4, ch. 86-84; s. 17, ch. 87-331; s. 15, ch. 87-409; s. 9, ch. 88-185; s. 18, ch. 91-244.

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

(1) In the event a qualified public depository is merged into, acquired by, or consolidated with a bank or savings association that is not a qualified public depository, the resulting institution shall become a qualified public depository, and the contingent liability of the former institution shall be a liability of the resulting institution. Within 30 days after the effective date of the merger, acquisition, or consolidation, the resulting institution shall execute in its own name and deliver to the Treasurer the contingent liability agreement required by s. 280.07. If the resulting institution chooses not to remain a qualified public depository, it shall comply with the procedures for withdrawal from the program as provided in s. 280.11.

(2) A qualified public depository which sells or disposes of its branches to an institution that is not a qualified public depository, and such branches continue to hold public deposits, shall be responsible for and continue to collateralize and report such public deposits until the purchasing institution becomes a qualified public depository or the deposits are returned to the public unit. The qualified public depository shall notify the Treasurer of any acquisition of its branches on its next monthly report after the final approval by the appropriate regulator if the acquisition includes public deposits.

(3) The qualified public depository shall notify the Treasurer of any acquisition or merger on its next monthly report after the final approval of the acquisition or merger by its appropriate regulator.

(4) Collateral subject to a depository pledge agreement may not be released by the Treasurer or the custodian until the assumed liability is evidenced by the deposit of collateral pursuant to the depository pledge agreement of the successor entity. The reporting requirement and pledge of collateral will remain in force until the Treasurer determines that the liability no longer exists. The surviving or new qualified public depository shall be responsible and liable for all of the liabilities and obligations of each qualified public depository merged with or acquired by it.

(5) Each qualified public depository shall report any change of name and address to the Treasurer on a form provided by the Treasurer regardless of whether the name change is a result of an acquisition or merger. Notification of such change must be made on its next monthly report.

History.—s. 12, ch. 83-122; s. 16, ch. 87-409; s. 9, ch. 90-357; s. 19, ch. 91-244.

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

(1) A qualified public depository may withdraw from the public deposits program by giving written notice to the Treasurer. The contingent liability, required collateral, and reporting requirements of the depository withdrawing from the program shall continue for a period of 12 months after the effective date of the withdrawal. Notice of withdrawal shall be mailed or delivered in sufficient time to be received by the Treasurer at least 30 days before the effective date of withdrawal. The Treasurer shall timely publish the withdrawal notice in the Florida Administrative Weekly which shall constitute notice to all depositors. The withdrawing depository shall not receive or retain public deposits after the effective date of the withdrawal until such time as it again becomes a qualified public depository. Beginning 30 days after the effective date of withdrawal and upon confirmation by the Treasurer that the withdrawing depository no longer holds any public deposits, the Treasurer shall, upon request, return to the depository that portion of the collateral pledged that is in excess of the required collateral as reported on the current public depository monthly report. Losses of interest or other accumulations, if any, because of withdrawal under this section shall be assessed and paid as provided in s. 280.09(2).

(2) A qualified public depository which has been disqualified pursuant to s. 280.051 shall not receive or retain public deposits after the effective date of the disqualification. Notice of and procedures for disqualification shall be made in accordance with ss. 280.052 and 280.053. Beginning 30 days after the effective date of disqualification and upon confirmation by the Treasurer that the disqualified public depository no longer holds any public deposits, the Treasurer shall, upon request, return to the depository that portion of the collateral pledged that is in excess of the required collateral as reported on the current public depository monthly report. Losses of interest or other accumulation, if any, because of disqualification shall be paid as provided in s. 280.09(2).

(3) A qualified public depository which is required to withdraw from the public deposits program pursuant to s. 280.05(6)(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 Treasurer 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.

History.—s. 3, ch. 81-285; s. 13, ch. 83-122; s. 5, ch. 86-84; s. 17, ch. 87-409; s. 10, ch. 88-185; s. 10, ch. 90-357; s. 20, ch. 91-244.

280.13 Collateral eligible for pledge by banks.—

(1) Securities eligible to be pledged as collateral by banks shall be limited to:

- (a) Obligations of the United States.
- (b) Obligations of any federal agency that are fully guaranteed as to payment of principal and interest by the United States.
- (c) Obligations of federal farm credit banks.
- (d) Obligations of federal land banks.
- (e) Obligations of the Federal Home Loan Bank and its district banks.
- (f) Obligations of federal intermediate credit banks.
- (g) Obligations of the Federal Home Loan Mortgage Corporation, including participation certificates.
- (h) Obligations of the Federal National Mortgage Association, including participation certificates.
- (i) Obligations guaranteed by the Government National Mortgage Association.
- (j) General obligations of a state of the United States, or of Puerto Rico, or of a political subdivision or municipality thereof.
- (k) Obligations issued by the Florida State Board of Education under authority of the State Constitution or applicable statutes.
- (l) County or municipal tax anticipation certificates or warrants having maturities not exceeding 1 year.
- (m) Obligations of a public housing authority.
- (n) Any single issue of revenue bonds or certificates of a state of the United States or of a political subdivision or municipality thereof.
- (o) Corporate bonds of any corporation that is not an affiliate or subsidiary of the qualified public depository.

(2) In addition to the securities listed in subsection (1), the Treasurer may, in his or her discretion allow the pledge of the following types of securities. The Treasurer shall, by rule, define any restrictions, specific criteria, or circumstances for which these instruments will be acceptable.

(a) Securities of, or other interests in, any open-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 United States Government obligations 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) Collateralized Mortgage Obligations.
- (c) Real Estate Mortgage Investment Conduits.
- (d) Certificates of deposit.

(3) Except as to bonds, notes, and bills of the United States or, bonds and notes with respect to which the payment of principal and interest is guaranteed by the United States, or federal certificates of indebtedness, the bonds and notes or certificates mentioned in this section shall be rated in one of the four highest classifications by an established, nationally recognized investment rating service.

(4) To be eligible as collateral under this section, all bonds or certificates of indebtedness shall be interest bearing or accruing.

(5) The Treasurer may disapprove any security that does not meet the requirements of this section or any rule adopted pursuant to this section.

History.—s. 3, ch. 81-285; s. 14, ch. 83-122; s. 133, ch. 83-217; s. 18, ch. 87-409; s. 7, ch. 88-171; s. 11, ch. 90-357; s. 21, ch. 91-244; s. 192, ch. 95-148.

280.14 Collateral eligible for pledge by savings associations.—

(1) Securities eligible to be pledged as collateral by savings associations shall be limited to:

- (a) Obligations of the United States.
- (b) Obligations of any federal agency that are fully guaranteed as to payment of principal and interest by the United States.
- (c) Obligations of federal farm credit banks.
- (d) Obligations of federal land banks.
- (e) Obligations of the Federal Home Loan Bank and its district banks.
- (f) Obligations of federal intermediate credit banks.
- (g) Obligations of the Federal Home Loan Mortgage Corporation, including participation certificates.
- (h) Obligations of the Federal National Mortgage Association, including participation certificates.
- (i) Obligations guaranteed by the Government National Mortgage Association.
- (j) Federal Home Loan Bank time deposits.
- (k) General obligations of a state of the United States, or of Puerto Rico, or of a political subdivision or municipality thereof.

(l) Obligations issued by the Florida State Board of Education under authority of the State Constitution or applicable statutes.

(m) County or municipal tax anticipation certificates or warrants having maturities not exceeding 1 year.

(n) Obligations of a public housing authority.

(o) Any single issue of revenue bonds or certificates of a state of the United States or of a political subdivision or municipality thereof.

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

(2) In addition to the securities listed in subsection (1), the Treasurer may, in his or her discretion allow the pledge of the following types of securities. The Treasurer shall, by rule, define any restrictions, specific criteria, or circumstances for which these instruments will be acceptable.

(a) Securities of, or other interests in, any open-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 United States Government obligations 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) Collateralized Mortgage Obligations.
- (c) Real Estate Mortgage Investment Conduits.
- (d) Certificates of deposit.

(3) Except as to bonds, notes, and bills of the United States or bonds and notes with respect to which the payment of principal and interest is guaranteed by the United States, or federal certificates of indebtedness, the bonds and notes or certificates mentioned in this section shall be rated in one of the four highest classifications by an established, nationally recognized investment rating service.

(4) To be eligible as collateral under this section, all bonds or certificates of indebtedness shall be interest bearing or accruing.

(5) The Treasurer may disapprove any security that does not meet the requirements of this section or any rule adopted pursuant to this section.

History.—s. 3, ch. 81-285; s. 15, ch. 83-122; s. 134, ch. 83-217; s. 19, ch. 87-409; s. 8, ch. 88-171; s. 12, ch. 90-357; s. 22, ch. 91-244; s. 193, ch. 95-148.

280.16 Reports of public depositories.—

(1) 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.

(2) Annually, not later than November 15, each qualified public depository shall cause to be delivered to the Treasurer, from a person qualified to conduct audits, a statement of all public deposits held for the credit of all public depositories at the close of business on September 30 each year.

(3) In addition to the reports required in subsections (1) and (2), each qualified public depository shall submit to the Treasurer within 10 days after the date it is required to be filed with the federal agency:

(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

(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.

(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.

(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. This exemption is subject to the Open Government Sunset Review Act in accordance with 1s. 119.14.

History.—s. 3, ch. 81-285; s. 16, ch. 83-122; s. 7, ch. 85-259; s. 6, ch. 86-84; s. 20, ch. 87-409; s. 11, ch. 88-185; s. 1, ch. 89-265; s. 23, ch. 91-244.

Note.—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."

280.17 Requirements for public depositories.—In addition to any other requirement specified in this chapter, public depositories must comply with the following requirements:

(1) Each public depository must ensure that the name of the public depository is on the account or certificate or other form provided to the public depository by the qualified public depository in a manner sufficient to disclose the identity of the public depository.

(2) Each public depository who has assets on deposit in a qualified public depository that is in default or is insolvent must notify the Treasurer of that fact immediately after receiving notice of the default or insolvency from the receiver of the depository.

(3) Annually, not later than November 15, each public depository shall notify the Treasurer of its official name, address, federal employer identification number, and account balances at the close of business on September 30. This notification shall include the name of the person or persons responsible for establishing depository accounts; 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.

(4) A public entity established during the year shall furnish its official name, address, federal employer identification number, and name of the person or persons responsible for establishing accounts to the Treasurer prior to making any public deposit.

(5) If a public depository does not comply with this section, the waiver of immunity provided in s. 280.18 is not effective as to that public depository.

History.—s. 21, ch. 87-409; s. 12, ch. 88-185; s. 24, ch. 91-244.

280.18 Liability of public depositories and the state.

(1) When public deposits are made in accordance with this chapter, no public depository shall be liable for any loss thereof resulting from the default or insolvency of any qualified public depository in the absence of neg-

ligence, malfeasance, misfeasance, or nonfeasance on the public depositor's part or on the part of his or her agents or employees.

(2) 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.

History.—s. 3, ch. 81-285; s. 22, ch. 87-409; s. 194, ch. 95-148.

280.19 Rules.—The Treasurer shall adopt such rules and prescribe such forms as may be necessary to accomplish the purposes of this chapter.

History.—s. 3, ch. 81-285.

280.20 Security for Public Deposits Task Force.—

(1) There is created the "Security for Public Deposits Task Force" composed of 13 voluntary members, who shall be selected by the Treasurer and shall have the following representation:

(a) Two members must be officers or directors of a bank;

(b) Two members must be officers or directors of a

savings association;

(c) Two members must be duly appointed or elected county officers;

(d) Two members must be duly appointed or elected officers of a municipality;

(e) One member must be a registered securities broker or dealer;

(f) Two members must be officers of the Treasurer;

(g) Two members must be officers of any of the following: a school district, a community college district, a special district, a metropolitan government, or an agency, board, bureau, commission, or institution of any of the foregoing or of any court.

(2) The Security for Public Deposits Task Force shall meet at least once every 2 years and review this chapter. The meeting shall take place in time to make recommendations for changes in legislation to the Treasurer or the Legislature as may be appropriate.

History.—s. 23, ch. 87-409; s. 2, ch. 88-303; s. 5, ch. 91-429.