The 2018 Florida Statutes

CHAPTER 280
SECURITY FOR PUBLIC DEPOSITS

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) “Affiliate” means an entity that is related through a parent corporation’s controlling interest. The term also includes a financial institution holding company or a 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 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 be determined by totaling, by account, the daily balances held by the depositor and 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 by the depository during any 12 calendar months. The average monthly balance of the previous 12 calendar months shall be determined by adding the average daily balance for the reported month and the average daily balances 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.

(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), less intangible assets, as submitted to the regulatory banking authority.

(7) “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 be in the Chief Financial Officer’s name in order to perfect the security interest.

(8) “Collateral-pledging level” means the percentage of collateral required to be pledged by a qualified public depository as provided under s. 280.04.

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

(10) “Custodian” means the Chief Financial Officer or a 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.

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

(12) “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.

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

(14) “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.

(15) “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.

(16) “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.

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

(18) “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.

(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.

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

(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.

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

(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 are placed on deposit in a bank, savings bank, or savings association. 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 public deposits and are not subject to this chapter.

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

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

(26) “Qualified public depository” means a 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 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.

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

(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 s. 280.04.

(29) “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.

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; s. 4, ch. 96-216; s. 1, ch. 97-30; s. 11, ch. 98-409; s. 1, ch. 2000-352; s. 1, ch. 2001-230; s. 286, ch. 2003-261; s. 33, ch. 2007-217; s. 1, ch. 2014-145.

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

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

(b) Public deposits shall be made in a qualified public depository unless exempted by law.

(2) Public funds shall not be deposited directly or indirectly in negotiable certificates of deposit.

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

(a) Public deposits deposited in a bank or savings association by a trust department or trust company which are fully secured under trust business laws.

(b) Moneys of the System Trust Fund, as defined in s. 121.021(36).

(c) Public deposits held outside the country.

(d) Wire transfers and transfers of funds solely for the purpose of paying registrars and paying agents.

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

(f) Public deposits made in accordance with s. 17.57(7) or s. 218.415(23).

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; s. 5, ch. 96-216; s. 17, ch. 97-30; s. 12, ch. 98-409; s. 3, ch. 2005-126; s. 2, ch. 2014-145.

280.04 Collateral for public deposits; general provisions.—

(1) The Chief Financial Officer shall determine the collateral requirements and collateral-pledging level for each qualified public depository following procedures established by rule. These procedures must include numerical parameters for 25-percent, 50-percent, 110-percent, and 150-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 required to be secured unless it deposits 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 or 20 percent of the pool figure multiplied by the depository's collateral-pledging level, plus the greater of:

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

2. One hundred ten 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 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; or

3. Has an overall financial condition that is materially deteriorating.

(d) One hundred fifty percent of an established maximum amount of public deposits which 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.

(3) Each qualified public depository shall report its required collateral on the monthly report required in s. 280.16 and simultaneously pledge, deposit, or issue eligible collateral needed.

(4) Additional collateral is required within 2 business days if public deposits are accepted that would increase the qualified public depository's average daily balance for the current month by 25 percent over the average daily balance of the previously reported month.

(5) Additional collateral of 20 percent of required collateral is necessary if a valuation date other than the close of business as described below has been approved for the qualified public depository and the required collateral is found to be insufficient based on the Chief Financial Officer's valuation.

(6) Each qualified public depository shall value its collateral in the following manner; it must:

(a) Use a nationally recognized source.

(b) Use market price, quality ratings, and pay-down factors as of the close of business on the last banking day in the reported month, or as of a date approved by the Chief Financial Officer.

(c) Report any material decline in value that occurs before the date of mailing the monthly report, required in s. 280.16, to the Chief Financial Officer.

(d) Use 100 percent of the maximum amount available under Federal Home Loan Bank letters of credit as market value.

(7) A qualified public depository shall pledge, deposit, or issue additional eligible collateral between filing periods of the monthly report required in s. 280.16 when notified by the Chief Financial Officer that current market value of collateral does not meet required collateral. The pledge, deposit, or issuance of such additional collateral shall be made within 2 business days after the Chief Financial Officer's notification.

(8) A qualified public depository may be required to return public deposits to governmental units and be suspended or disqualified or subjected to administrative penalty as provided in s. 280.051 or s. 280.054 for failure to meet required collateral.

(9) The Chief Financial Officer shall adopt rules for the establishment of collateral requirements, collateral pledging levels, required collateral calculations, and market value and clarifying terms.

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; s. 6, ch. 96-216; s. 13, ch. 98-409; s. 2, ch. 2000-352; s. 2, ch. 2001-230; s. 287, ch. 2003-261; s. 3, ch. 2014-145.

280.041 Collateral arrangements; agreements, provisions, and triggering events.—

(1) Eligible collateral listed in s. 280.13 may be pledged, deposited, or issued using the following collateral arrangements as approved by the Chief Financial Officer for a qualified public depository or operating subsidiary, if one is used, to meet required collateral:

(a) Regular custody arrangement for collateral pledged to the Chief Financial Officer pursuant to subsection (2).

(b) Federal Reserve Bank custody arrangement for collateral pledged to the Chief Financial Officer pursuant to subsection (3).

(c) Chief Financial Officer's custody arrangement for collateral deposited in the Chief Financial Officer's name pursuant to subsection (4).

(d) Federal Home Loan Bank letter of credit arrangement for collateral issued with the Chief Financial Officer as beneficiary pursuant to subsection (5).

(e) Cash arrangement for collateral held by the Chief Financial Officer or a custodian.

(2) With the approval of the Chief Financial Officer, a qualified public depository or operating subsidiary, as pledgor, may deposit eligible collateral with a custodian. A qualified public depository shall not act as its own custodian. Except in the case of using a Federal Reserve Bank as custodian, the following are necessary for the Chief Financial Officer's approval:

(a) A completed collateral agreement in a form prescribed by the Chief Financial Officer in which the pledgor agrees to the following provisions:

1. The pledgor shall own the pledged collateral and acknowledge that the Chief Financial Officer has a perfected security interest. The pledged collateral shall be eligible collateral and shall be at least equal to the amount of required collateral.

2. The pledgor shall grant to the Chief Financial Officer an interest in pledged collateral for the purposes of this section. The pledgor shall not enter into or execute any other agreement related to the pledged collateral that would create an interest in or lien on that collateral in any manner in favor of any third party without the written consent of the Chief Financial Officer.

3. The pledgor shall not grant the custodian any lien that attaches to the collateral in favor of the custodian that is superior or equal to the security interest of the Chief Financial Officer.

4. The pledgor shall agree that the Chief Financial Officer may, without notice to or consent by the pledgor, require the custodian to comply with and perform any and all requests and orders directly from the Chief Financial Officer. These include, but are not limited to, liquidating all collateral and submitting the proceeds directly to the Chief Financial Officer in the name of the Chief Financial Officer only or transferring all collateral into an account designated solely by the Chief Financial Officer.

5. The pledgor shall acknowledge that the Chief Financial Officer may, without notice to or consent by the pledgor, require the custodian to hold principal payments and income for the benefit of the Chief Financial Officer.

6. The pledgor shall initiate collateral transactions on forms prescribed by the Chief Financial Officer in the following manner:

a. A deposit transaction of eligible collateral may be made without prior approval from the Chief Financial Officer provided: security types that have restrictions have been approved in advance of the transaction by the Chief Financial Officer and simultaneous notification is given to the Chief Financial Officer; and the custodian has not received notice from the Chief Financial Officer prohibiting deposits without prior approval.

b. A substitution transaction of eligible collateral may be made without prior approval from the Chief Financial Officer provided: security types that have restrictions have been approved in advance of the transaction by the Chief Financial Officer; the market value of the securities to be substituted is at least equal to the amount withdrawn; simultaneous notification is given to the Chief Financial Officer; and the custodian has not received notice from the Chief Financial Officer prohibiting substitution.

c. A transfer of collateral between accounts at a custodian requires the Chief Financial Officer’s prior approval. The collateral shall be released subject to redeposit in the new account with a pledge to the Chief Financial Officer intact.

d. A transfer of collateral from a custodian to another custodian requires the Chief Financial Officer’s prior approval and a valid collateral agreement with the new custodian. The collateral shall be released subject to redeposit at the new custodian with a pledge to the Chief Financial Officer intact.

e. A withdrawal transaction requires the Chief Financial Officer’s prior approval. The market value of eligible collateral remaining after the withdrawal shall be at least equal to the amount of required collateral. A withdrawal transaction shall be executed for any release of collateral including maturity or call proceeds.

f. Written notice shall be sent to the Chief Financial Officer to remove from the inventory of pledged collateral a pay-down security that has paid out with zero principal remaining.

7. If pledged collateral includes definitive (physical) securities in registered form which are in the name of the pledgor or a nominee, the pledgor shall deliver the following documents when requested by the Chief Financial Officer:

a. A separate certified power of attorney in a form prescribed by the Chief Financial Officer for each issue of securities.

b. Separate bond assignment forms as required by the bond agent or trustee.

c. Certified copies of resolutions adopted by the pledgor's governing body authorizing execution of these documents.

8. The pledgor shall be responsible for all costs necessary to the functioning of the collateral agreement or associated with confirmation of pledged collateral to the Chief Financial Officer and acknowledges that these costs shall not be a charge against the Chief Financial Officer or his or her interests in the pledged collateral.

9. The pledgor, if notified by the Chief Financial Officer, shall not be allowed to use a custodian if that custodian fails to complete the collateral agreement, releases pledged collateral without the Chief Financial Officer's approval, fails to properly complete confirmations of pledged collateral, fails to honor a request for examination of definitive pledged collateral and records of book-entry securities, or fails to provide requested documents on definitive securities. The period for disallowing the use of a custodian shall be 1 year.

10. The pledgor shall be subject to the jurisdiction of the courts of the State of Florida, or of courts of the United States located within the State of Florida, for the purpose of any litigation arising out of the act.

11. The pledgor is responsible and liable to the Chief Financial Officer for any action of agents the pledgor uses to execute collateral transactions or submit reports to the Chief Financial Officer.

12. The pledgor shall agree that any information, forms, or reports electronically transmitted to the Chief Financial Officer shall have the same enforceability as a signed writing.

13. The pledgor shall submit proof that authorized individuals executed the collateral agreement on behalf of the pledgor.

14. The pledgor shall agree by resolution of the board of directors that collateral agreements entered into for purposes of this section have been formally accepted and constitute official records of the pledgor.

15. The pledgor shall be bound by any other provisions found necessary for a perfected security interest in collateral under the Uniform Commercial Code.

(b) A completed collateral agreement in a form prescribed by the Chief Financial Officer in which the custodian agrees to the following provisions:

1. The custodian shall have no responsibility to ascertain whether the pledged securities are at least equal to the amount of required collateral nor whether the pledged securities are eligible collateral.

2. The custodian shall hold pledged collateral in a custody account for the Chief Financial Officer for purposes of this section. The custodian shall not enter into or execute any other agreement related to the collateral that would create an interest in or lien on that collateral in any manner in favor of any third party without the written consent of the Chief Financial Officer.

3. The custodian shall agree that any lien that attaches to the collateral in favor of the custodian shall not be superior or equal to the security interest of the Chief Financial Officer.

4. The custodian shall, without notice to or consent by the pledgor, comply with and perform any and all requests and orders directly from the Chief Financial Officer. These include, but are not limited to, liquidating all collateral and submitting the proceeds directly to the Chief Financial Officer in the name of the Chief Financial Officer only or transferring all collateral into an account designated solely by the Chief Financial Officer.

5. The custodian shall consider principal payments on pay-down securities and income paid on pledged collateral as the property of the pledgor and shall pay thereto provided the custodian has not received written notice from the Chief Financial Officer to hold such principal payments and income for the benefit of the Chief Financial Officer.

6. The custodian shall process collateral transactions on forms prescribed by the Chief Financial Officer in the following manner:

a. A deposit transaction of eligible collateral may be made without prior approval from the Chief Financial Officer unless the custodian has received notice from the Chief Financial Officer requiring the Chief Financial Officer's prior approval.

b. A substitution transaction of eligible collateral may be made without prior approval from the Chief Financial Officer provided the pledgor certifies the market value of the securities to be substituted is at least equal to the market value amount of the securities to be withdrawn and the custodian has not received notice from the Chief Financial Officer prohibiting substitution.

c. A transfer of collateral between accounts at a custodian requires the Chief Financial Officer's prior approval. The collateral shall be released subject to redeposit in the new account with a pledge to the Chief Financial Officer intact. Confirmation from the custodian to the Chief Financial Officer must be received within 5 business days of the redeposit.

d. A transfer of collateral from a custodian to another custodian requires the Chief Financial Officer's prior approval. The collateral shall be released subject to redeposit at the new custodian with a pledge to the Chief Financial Officer intact. Confirmation from the new custodian to the Chief Financial Officer must be received within 5 business days of the redeposit.

e. A withdrawal transaction requires the Chief Financial Officer's prior approval. A withdrawal transaction shall be executed for the release of any pledged collateral including maturity or call proceeds.

7. If pledged collateral includes definitive (physical) securities in registered form, which are in the name of the custodian or a nominee, the custodian shall deliver the following documents when requested by the Chief Financial Officer:

a. A separate certified power of attorney in a form prescribed by the Chief Financial Officer for each issue of securities.

b. Separate bond assignment forms as required by the bond agent or trustee.

c. Certified copies of resolutions adopted by the custodian's governing body authorizing execution of these documents.

8. The custodian shall acknowledge that the pledgor is responsible for all costs necessary to the functioning of the collateral agreement or associated with confirmation of securities pledged to the Chief Financial Officer and that these costs shall not be a charge against the Chief Financial Officer or his or her interests in the pledged collateral.

9. The custodian shall agree to provide confirmation of pledged collateral upon request from the Chief Financial Officer. This confirmation shall be provided within 15 working days after the request, in a format prescribed by the Chief Financial Officer, and shall require no identification other than the pledgor name and location, unless the special identification is provided in the collateral agreement.

10. The custodian shall be subject to the jurisdiction of the courts of the State of Florida, or of courts of the United States located within the State of Florida, for the purpose of any litigation arising out of the act.

11. The custodian shall be responsible and liable to the Chief Financial Officer for any action of agents the custodian uses to hold and service collateral pledged to the Chief Financial Officer.

12. The custodian shall agree that any information, forms, or reports electronically transmitted to the Chief Financial Officer shall have the same enforceability as a signed writing.

13. The Chief Financial Officer shall have the right to examine definitive pledged collateral and records of book-entry securities during the regular business hours of the custodian without cost to the Chief Financial Officer.

14. The responsibilities of the custodian for the safekeeping of the pledged collateral shall be limited to the diligence and care usually exercised by a banking or trust institution toward its own property.

15. If there is any change in the Uniform Commercial Code, as adopted by law in this state, which affects the requirements for a perfected security interest in collateral, the Chief Financial Officer shall notify the custodian

of such change. The custodian shall have a period of 180 calendar days after such notice to withdraw as custodian if the custodian cannot provide the required custodial services.

(3) With the approval of the Chief Financial Officer, a pledgor may deposit eligible collateral pursuant to an agreement with a Federal Reserve Bank. The Federal Reserve Bank agreement may require terms not consistent with subsection (2) but may not subject the Chief Financial Officer to any costs or indemnification requirements.

(4) The Chief Financial Officer may require deposit or transfer of collateral into a custodial account established in the Chief Financial Officer's name at a designated custodian. This requirement for Chief Financial Officer's custody shall have the following characteristics:

(a) One or more triggering events must have occurred.

(b) The custodian used must be a Chief Financial Officer's approved custodian that must:

1. Meet the definition of custodian.

2. Not be an affiliate of the qualified public depository.

3. Be bound under a distinct Chief Financial Officer's custodial contract.

(c) All deposit transactions require the approval of the Chief Financial Officer.

(d) All collateral must be in book-entry form.

(e) The qualified public depository shall be responsible for all costs necessary to the functioning of the contract or associated with the confirmation of securities in the name of the Chief Financial Officer and acknowledges that these costs shall not be a charge against the Chief Financial Officer and may be deducted from the collateral or income earned if unpaid.

(5) With the approval of the Chief Financial Officer, a qualified public depository may use Federal Home Loan Bank letters of credit to meet collateral requirements. A completed agreement that includes the following provisions is necessary for the Chief Financial Officer's approval:

(a) The letter of credit shall meet the definition of eligible collateral.

(b) The qualified public depository shall agree that the Chief Financial Officer, as beneficiary, may, without notice to or consent by the qualified public depository, demand payment under the letter of credit if any of the triggering events listed in this section occur.

(c) The qualified public depository shall agree that funds received by the Chief Financial Officer due to the occurrence of one or more triggering events may be deposited in the Treasury Cash Deposit Trust Fund for purposes of eligible collateral.

(d) The qualified public depository shall arrange for the issue of letters of credit which meet the requirements of s. 280.13 and delivery to the Chief Financial Officer. All transactions involving letters of credit require the Chief Financial Officer's approval.

(e) The qualified public depository shall be responsible for all costs necessary in the use or confirmation of letters of credit issued on behalf of the Chief Financial Officer and acknowledges that these costs shall not be a charge against the Chief Financial Officer.

(f) The qualified public depository shall 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 the act.

(g) The qualified public depository shall agree that any information, form, or report electronically transmitted to the Chief Financial Officer shall have the same enforceability as a signed writing.

(h) The qualified public depository shall submit proof that authorized individuals executed the letters of credit agreement on its behalf.

(i) The qualified public depository shall agree by resolution of the board of directors that the letters of credit agreements entered into for purposes of this section have been formally accepted and constitute official records of the qualified public depository.

(6) The Chief Financial Officer may demand payment under a letter of credit or direct a custodian to deposit or transfer collateral and proceeds of securities not previously credited upon the occurrence of one or more triggering events provided that, to the extent not incompatible with the protection of public deposits, as determined in the Chief Financial Officer's sole and absolute discretion, the Chief Financial Officer shall provide a custodian and the qualified public depository with 48 hours' advance notice before directing such deposit or transfer. These events include:

(a) The Chief Financial Officer determines that an immediate danger to the public health, safety, or welfare exists.

(b) The qualified public depository fails to have adequate procedures and practices for the accurate identification, classification, reporting, and collateralization of public deposits.

(c) The custodian fails to provide or allow inspection and verification of documents, reports, records, or other information dealing with the pledged collateral or financial information.

(d) The qualified public depository or its operating subsidiary fails to provide or allow inspection and verification of documents, reports, records, or other information dealing with Florida public deposits, pledged collateral, or financial information.

(e) The custodian fails to hold income and principal payments made on securities held as collateral or fails to deposit or transfer such payments pursuant to the Chief Financial Officer's instructions.

(f) The qualified public depository defaults or becomes insolvent.

(g) The qualified public depository fails to pay an assessment.

(h) The qualified public depository fails to pay an administrative penalty.

(i) The qualified public depository fails to meet financial condition standards.

(j) The qualified public depository charges a withdrawal penalty to public depositors when the qualified public depository is suspended, disqualified, or withdrawn from the public deposits program.

(k) The qualified public depository does not provide, as required, the public depositor with annual confirmation information on all open Florida public deposit accounts.

(l) The qualified public depository pledges, deposits, or has issued insufficient or unacceptable collateral to meet required collateral within the required time.

(m) Collateral, other than a proper substitution, is released without the prior approval of the Chief Financial Officer.

(n) The qualified public depository, custodian, operating subsidiary, or agent violates any provision of the act and the Chief Financial Officer determines that such violation may be remedied by a move of collateral.

(o) The qualified public depository, custodian, operating subsidiary, or agent fails to timely cooperate in resolving problems by the date established in written communication from the Chief Financial Officer.

(p) The custodian fails to provide sufficient confirmation information.

(q) The Federal Home Loan Bank or the qualified public depository gives notification that a letter of credit will not be extended or renewed and other eligible collateral equal to required collateral has not been deposited within 30 days after the notice or 30 days before expiration of the letter of credit.

(r) The qualified public depository, if involved in a merger, acquisition, consolidation, or other organizational change, fails to notify the Chief Financial Officer or ensure that required collateral is properly maintained by the depository holding the Florida public deposits.

(s) Events that would bring about an administrative or legal action by the Chief Financial Officer.

(7) The Chief Financial Officer shall adopt rules to identify forms and establish procedures for collateral agreements and transactions, furnish confirmation requirements, establish procedures for using an operating subsidiary and agents, and clarify terms.

History.—s. 3, ch. 2000-352; s. 3, ch. 2001-230; s. 288, ch. 2003-261.

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) Perform financial analysis of any qualified public depositories.

(2) Require collateral, or increase the collateral-pledging level, of any qualified public depository.

(3) Decline to accept, or reduce the reported value of, collateral in order to ensure the pledging or depositing of sufficient marketable collateral and acceptable letters of credit.

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

(5) Monitor and confirm collateral with custodians and letter of credit issuers.

(6) Move collateral into an account established in the Chief Financial Officer's name upon the occurrence of one or more triggering events.

(7) Issue notice to a qualified public depository that use of a custodian will be disallowed when the custodian has failed to follow collateral agreement terms.

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

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

(10) Demand payment under letters of credit for any of the triggering events listed in s. 280.041 and deposit the funds in:

(a) The Public Deposits Trust Fund for purposes of paying losses to public depositors.

(b) The Treasury Administrative and Investment Trust Fund for receiving payment of administrative penalties.

(c) The Treasury Cash Deposit Trust Fund for purposes of eligible collateral.

(11) Sell securities for the purpose of paying losses to public depositors not covered by deposit insurance.

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

(13) 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 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 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.

(14) 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.

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

(16) Require 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.

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

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

(b) In lieu of suspension or disqualification, impose an administrative penalty upon the qualified public depository as provided in s. 280.054.

(c) If the Chief Financial Officer 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 Chief Financial Officer 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 Chief Financial Officer may suspend or disqualify any qualified public depository for violation of any order issued pursuant to this paragraph.

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; s. 7, ch. 96-216; s. 14, ch. 98-409; s. 4, ch. 2001-230; s. 289, ch. 2003-261; s. 4, ch. 2014-145.

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:

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

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

(3) Failed to maintain required collateral.

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

(5) Failed to pay any administrative penalty.

(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, or other financial information that the Chief Financial Officer determines necessary to verify compliance with this chapter or any rule adopted pursuant to this chapter.

(7) Failed to furnish the Chief Financial Officer, when the Chief Financial Officer 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) Failed to furnish any agreement, report, form, or other information required to be filed pursuant to s. 280.16, or when requested by the Chief Financial Officer.

(9) Submitted reports signed by an unauthorized individual.

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

(11) Released a security without notice or approval.

(12) Failed to execute or have the custodian execute a collateral control agreement before using a custodian.

(13) 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; s. 8, ch. 96-216; s. 5, ch. 2001-230; s. 290, ch. 2003-261; s. 5, ch. 2014-145.

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 Chief Financial Officer and must be mailed to the qualified public depository by registered or certified mail.

(2) The Chief Financial Officer 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 Chief Financial Officer adopted pursuant to this section.

(4) Whenever the Chief Financial Officer determines that an immediate danger to the public health, safety, or welfare exists, the Chief Financial Officer 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; s. 9, ch. 96-216; s. 291, ch. 2003-261.

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

(1)(a) The Chief Financial Officer 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 Chief Financial Officer, 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 Chief Financial Officer 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 Chief Financial Officer 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; s. 292, ch. 2003-261.

280.054 Administrative penalty in lieu of suspension or disqualification.—

(1) If the Chief Financial Officer finds that one or more grounds exist for the suspension or disqualification of a qualified public depository, the Chief Financial Officer 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 Chief Financial Officer 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 Chief Financial Officer 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 Chief Financial Officer 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 Chief Financial Officer 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 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, if the depository fails to provide required collateral using eligible collateral and prescribed collateral agreements or withdraws collateral without the Chief Financial Officer’s approval.

History.—s. 9, ch. 87-409; s. 6, ch. 2001-230; s. 293, ch. 2003-261.

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

(1) The Chief Financial Officer 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 Chief Financial Officer;

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

(c) A qualified public depository pledges, deposits, or arranges for the issuance of unacceptable collateral;

(d) A custodian has released pledged collateral without approval of the Chief Financial Officer;

(e) A qualified public depository or a custodian has not furnished to the Chief Financial Officer, when the Chief Financial Officer 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 Chief Financial Officer 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 Chief Financial Officer 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; s. 7, ch. 2001-230; s. 294, ch. 2003-261.

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 Chief Financial Officer, 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 Chief Financial Officer 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; s. 295, ch. 2003-261.

280.07 Mutual responsibility and contingent liability.—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. Each qualified public depository shall execute a form prescribed by the Chief Financial Officer for such guarantee which shall be approved by the board of directors and shall become an official record of the institution.

History.—s. 3, ch. 81-285; s. 12, ch. 87-409; s. 15, ch. 98-409; s. 8, ch. 2001-230; s. 296, ch. 2003-261.

280.08 Procedure for payment of losses.—When the Chief Financial Officer 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 Division of Treasury, in cooperation with the Office of Financial Regulation of the Financial Services Commission 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. The Chief Financial Officer shall validate claims on public deposit accounts which meet the requirements of s. 280.17 and are confirmed as provided in subsection (1).

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

(b) The Chief Financial Officer shall provide coverage of any remaining loss by assessment against the other qualified public depositories. The Chief Financial Officer shall determine such assessment for each qualified public depository by multiplying the total amount of any remaining loss to all public depositors by a percentage which represents the average monthly balance of public deposits held by each qualified public depository during the previous 12 months divided by the total average monthly balances of public deposits held by all qualified public depositories, excluding the defaulting depository, during the same period. The assessment calculation shall be computed to six decimal places.

(4) Each qualified public depository shall pay its assessment to the Chief Financial Officer within 7 business days after it receives notice of the assessment. If a depository fails to pay its assessment when due, the Chief Financial Officer shall satisfy the assessment by demanding payment under letters of credit or selling collateral pledged or deposited by that depository.

(5) The Chief Financial Officer shall distribute the funds to the public depositors of the qualified public depository in default according to their validated claims. The Chief Financial Officer, at his or her discretion, may make partial payments to public depositors that have experienced a loss of public funds which payments

are critical to the immediate operations of the public entity. The public depositor requesting partial payment of a claim shall provide the Chief Financial Officer with written documentation justifying the need for partial payment.

(6) Public depositors receiving payment under the provisions of this section shall assign to the Chief Financial Officer 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 Chief Financial Officer, the Chief Financial Officer 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.

(7) Expenses incurred by the Chief Financial Officer in connection with a default or insolvency which are not normally incurred by the Chief Financial Officer in the administration of this act must be paid out of the amount paid under letters of credit or proceeds from the sale of collateral.

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; s. 10, ch. 96-216; s. 16, ch. 98-409; s. 18, ch. 99-155; s. 10, ch. 2001-230; s. 298, ch. 2003-261.

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 depositors that have complied with s. 280.17 of such default or insolvency. The notice must 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 Chief Financial Officer within 30 days after the date of the notice.

(2) A claim against the Public Deposits Trust Fund is binding on the fund only if 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.

History.—s. 14, ch. 87-409; s. 17, ch. 91-244; s. 299, ch. 2003-261; s. 7, ch. 2014-145.

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 or draw on letters of credit held 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 Treasury Administrative and Investment Trust Fund.

(2) The Chief Financial Officer 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 Chief Financial Officer pursuant to s. 280.05 or because of withdrawal from the public deposits program pursuant to s. 280.11. In that event, the Chief Financial Officer 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. 17.61.

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; s. 11, ch. 96-216; s. 39, ch. 99-13; s. 11, ch. 2001-230; s. 300, ch. 2003-261.

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

(1) When a qualified public depository is merged into, acquired by, or consolidated with a bank, savings bank, or savings association that is not a qualified public depository:

(a) The resulting institution shall automatically become a qualified public depository subject to the requirements of the public deposits program.

(b) The contingent liability of the former institution shall be a liability of the resulting institution.

(c) The public deposits and associated collateral of the former institution shall be public deposits and collateral of the resulting institution.

(d) The resulting institution shall, within 90 calendar days after the effective date of the merger, acquisition, or consolidation, deliver to the Chief Financial Officer:

1. Documentation in its name as required for participation in the public deposits program; or

2. Written notice of intent to withdraw from the program as provided in s. 280.11 and a proposed effective date of withdrawal which shall be within 180 days after the effective date of the acquisition, merger, or consolidation of the former institution.

(e) If the resulting institution does not meet qualifications to become a qualified public depository or does not submit required documentation within 90 calendar days after the effective date of the merger, acquisition, or consolidation, the Chief Financial Officer shall initiate mandatory withdrawal actions as provided in s. 280.11 and shall set an effective date of withdrawal that is within 180 days after the effective date of the acquisition, merger, or consolidation of the former institution.

(2) When a qualified public depository disposes of any of its Florida public deposits or collateral securing such deposits in a manner not covered by subsection (1), the qualified public depository originally holding the public deposits shall be responsible for:

(a) Ensuring the institution receiving such public deposits becomes a qualified public depository and meets collateral requirements with the Chief Financial Officer as part of the transaction.

(b) Notifying the Chief Financial Officer within 30 calendar days after the final approval by the appropriate regulator.

A qualified public depository that fails to meet such responsibilities shall continue to collateralize and report such public deposits until the receiving institution becomes a qualified public depository and collateralizes the deposits or the deposits are returned to the governmental unit.

(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).

(4) The qualified public depository shall notify the Chief Financial Officer of any acquisition or merger within 30 calendar days after the final approval of the acquisition or merger by its appropriate regulator.

(5) Collateral subject to a collateral agreement may not be released by the Chief Financial Officer or the custodian until the assumed liability is evidenced by the deposit of collateral pursuant to the collateral agreement of the successor entity. The reporting requirement and pledge of collateral will remain in force until the Chief Financial Officer 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.

(6) Each qualified public depository shall report any change of name and address to the Chief Financial Officer on a form provided by the Chief Financial Officer regardless of whether the name change is a result of an acquisition, merger, or consolidation. Notification of such change must be made within 30 calendar days after the effective date of the change.

(7) The Chief Financial Officer shall adopt rules establishing procedures for mergers, acquisitions, consolidations, and changes in name and address, providing forms, and clarifying terms.

History.—s. 12, ch. 83-122; s. 16, ch. 87-409; s. 9, ch. 90-357; s. 19, ch. 91-244; s. 12, ch. 96-216; s. 12, ch. 2001-230; s. 301, ch. 2003-261; s. 8, ch. 2014-145.

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 Chief Financial Officer. 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, except that the filing of reports may no longer be required when the average monthly balance of public deposits is equal to zero. Notice of withdrawal shall be mailed or delivered in sufficient time to be received by the Chief Financial Officer at least 30 days before the effective date of withdrawal. The Chief Financial Officer shall timely publish the withdrawal notice in the Florida Administrative Register 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. The Chief Financial Officer 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) 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. The Chief Financial Officer 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(17) 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.

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; s. 13, ch. 96-216; s. 40, ch. 99-13; s. 13, ch. 2001-230; s. 302, ch. 2003-261; s. 22, ch. 2013-14; s. 9, ch. 2014-145.

280.13 Eligible collateral.—

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

(a) Direct obligations of the United States Government.

(b) Obligations of any federal agency that are fully guaranteed as to payment of principal and interest by the United States Government.

(c) Obligations of the following federal agencies:

1. Farm credit banks.

2. Federal land banks.

3. The Federal Home Loan Bank and its district banks.

4. Federal intermediate credit banks.

5. The Federal Home Loan Mortgage Corporation.

6. The Federal National Mortgage Association.

7. Obligations guaranteed by the Government National Mortgage Association.

(d) General obligations of a state of the United States, or of Puerto Rico, or of a political subdivision or municipality thereof.

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

(f) Tax anticipation certificates or warrants of counties or municipalities having maturities not exceeding 1 year.

(g) Public housing authority obligations.

(h) Revenue bonds or certificates of a state of the United States or of a political subdivision or municipality thereof.

(i) 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 Chief Financial Officer may, in his or her discretion, allow the pledge of the following types of securities. The Chief Financial Officer 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 investment company 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 is limited to direct obligations of the United States Government and to repurchase agreements fully collateralized by such direct obligations of the United States Government and provided such investment company takes delivery of such collateral either directly or through an authorized custodian.

(b) Collateralized Mortgage Obligations.

(c) Real Estate Mortgage Investment Conduits.

(3) Except as to obligations issued by or with respect to which payment of interest and principal is guaranteed by the United States Government or obligations of federal agencies listed in subsection (1), the debt obligations 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 debt obligations shall be interest bearing or accruing.

(5) Letters of credit issued by a Federal Home Loan Bank are eligible as collateral under this section provided that:

(a) The letter of credit has been delivered to the Chief Financial Officer in the standard format approved by the Chief Financial Officer.

(b) The letter of credit meets required conditions of:

1. Being irrevocable.

2. Being clean and unconditional and containing a statement that it is not subject to any agreement, condition, or qualification outside of the letter of credit and providing that a beneficiary need only present the original letter of credit with any amendments and the demand form to promptly obtain funds, and that no other document need be presented.

3. Being issued, presentable, and payable at a Federal Home Loan Bank in United States dollars. Presentation may be made by the beneficiary submitting the original letter of credit, including any amendments, and the demand in writing, by overnight delivery.

4. Containing a statement that identifies and defines the Chief Financial Officer as beneficiary.

5. Containing an issue date and a date of expiration.

6. Containing a term of at least 1 year and an evergreen clause that provides at least 60 days' written notice to the beneficiary prior to expiration date for nonrenewal.

7. Containing a statement that it is subject to and governed by the laws of the State of Florida and that, in the event of any conflict with other laws, the laws of the State of Florida will control.

8. Containing a statement that the letter of credit is an obligation of the Federal Home Loan Bank and is in no way contingent upon reimbursement.

9. Any other provision found necessary under the Uniform Commercial Code—Letters of Credit.

(c) Obligations issued by the Federal Home Loan Bank remain triple-A rated by a nationally recognized source or, if no longer triple-A rated, rated by a nationally recognized source at not lower than its rating of the long-term sovereign credit of the United States.

(d) The Federal Home Loan Bank issuing the letter of credit agrees to provide confirmation upon request from the Chief Financial Officer. Such confirmation shall be provided within 15 working days after the request, in a format prescribed by the Chief Financial Officer, and shall require no identification other than the qualified public depository's name and location.

(e) The qualified public depository completes an agreement covering the use of the letters of credit as eligible collateral, as described in s. 280.041(5).

(f) The qualified public depository, if notified by the Chief Financial Officer, shall not be allowed to use letters of credit if the Federal Home Loan Bank fails to pay a draw request as provided for in the letters of credit or fails to properly complete a confirmation of such letters of credit.

(6) Cash held by the Chief Financial Officer in the Treasury Cash Deposit Trust Fund or by a custodian is eligible as collateral under this section. Interest earned on cash deposits that is in excess of required collateral shall be paid to the qualified public depository upon request.

(7) The Chief Financial Officer may disapprove any security or letter of credit that does not meet the requirements of this section or any rule adopted pursuant to this section or any security for which no current market price can be obtained from a nationally recognized source deemed acceptable to the Chief Financial Officer or cannot be converted to cash.

(8) The Chief Financial Officer shall adopt rules defining restrictions and special requirements for eligible collateral and clarifying terms.

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; s. 14, ch. 96-216; s. 4, ch. 2000-352; s. 14, ch. 2001-230; s. 303, ch. 2003-261; s. 1, ch. 2013-129.

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 the Chief Financial Officer deems necessary to administer this chapter.

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

(d) Submit to the Chief Financial Officer annually by 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 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) Participate in the Financial Literacy Program for Individuals with Developmental Disabilities as required under s. 17.68.

(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, if made confidential by any law of the United States or of this state, confidential and exempt from s. 119.07(1) and not subject to dissemination to anyone other than the Chief Financial Officer under this chapter. However, each qualified public depository and each financial institution from which information is required shall 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.

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; s. 15, ch. 96-216; s. 129, ch. 96-406; s. 17, ch. 98-409; s. 15, ch. 2001-230; s. 304, ch. 2003-261; s. 22, ch. 2005-2; s. 10, ch. 2014-145; s. 5, ch. 2016-3.

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 and are not exempt under the laws of this state, is responsible for any research or defense required to support such assertion.

(2) 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. 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 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 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. Any discrepancy found in the confirmation process must be resolved before November 30.

(6) Each public depositor shall submit by November 30 an annual report to the Chief Financial Officer which includes:

(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 existing on September 30 which had no public deposits but filed an annual report stating “no public deposits.”

(c) A governmental unit 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.

History.—s. 21, ch. 87-409; s. 12, ch. 88-185; s. 24, ch. 91-244; s. 16, ch. 96-216; s. 18, ch. 98-409; s. 305, ch. 2003-261; s. 11, ch. 2014-145.

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

(1) When public deposits are made in accordance with this chapter, there shall be protection from loss to public depositors, as defined in s. 280.02, in the absence of negligence, malfeasance, misfeasance, or nonfeasance on the part of the public depositor or on the part of his or her agents or employees.

(2) The liability of the state, the Chief Financial Officer, or any state agency, or any employee or agent of the state, the Chief Financial Officer, or a state agency, for any action taken in the performance of their powers and duties under this chapter shall be limited to that as a public depositor.

History.—s. 3, ch. 81-285; s. 22, ch. 87-409; s. 194, ch. 95-148; s. 19, ch. 98-409; s. 306, ch. 2003-261.

280.19 Rules.—The Chief Financial Officer shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer the provisions of this chapter.

History.—s. 3, ch. 81-285; s. 55, ch. 98-200; s. 307, ch. 2003-261.