Insurance & Banking Subcommittee

Wednesday, January 8, 2014
12:30 PM
Sumner Hall (404 HOB)

MEETING PACKET

Will Weatherford
Speaker

Bryan Nelson
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Insurance & Banking Subcommittee

Start Date and Time:	Wednesday, January 08, 2014 12:30 pm
End Date and Time:	Wednesday, January 08, 2014 02:30 pm
Location:	Sumner Hall (404 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 271 Workers' Compensation by Cummings
HB 291 Warranty Associations by Santiago
HB 4005 Fireworks by Gaetz

Consideration of the following proposed committee bill(s):

PCB IBS 14-01 -- Security for Public Deposits

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Tuesday, January 7, 2014.

By request of the Chair, all Insurance & Banking Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, January 7, 2014.

NOTICE FINALIZED on 12/20/2013 15:15 by McCloskey.Michele

The Florida House of Representatives

Regulatory Affairs Committee

Insurance & Banking Subcommittee

Will Weatherford
Speaker

Bryan Nelson
Chair

AGENDA

Wednesday, January 8, 2014
404 HOB
12:30 pm – 2:30 pm

I. Call to Order

II. Roll Call

III. Consideration of the following bill(s):
   a. HB 271 Workers' Compensation by Cummings
   b. HB 291 Warranty Associations by Santiago
   c. HB 4005 Fireworks by Gaetz

IV. Consideration of the following proposed committee bill(s):
   a. PCB IBS 14-01 Security for Public Deposits

V. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 271 Workers' Compensation
SPONSOR(S): Cummings
TIED BILLS: **IDEN./SIM. BILLS:** SB 444

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Reilly	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Chapter 440, F.S., is Florida's Workers' Compensation Law. If an employer fails to comply with coverage requirements, the Department of Financial Services (DFS) is required to issue a stop-work order (SWO) within 72 hours of determining non-compliance. SWOs require the employer to cease all business operations. Additionally, employers are assessed a penalty equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding 3-year period or $1,000, whichever is greater. SWOs remain in effect until the employer secures appropriate coverage and the DFS issues (1) an order releasing the SWO (for employers that have paid the assessed penalty) or (2) an order of conditional release (for employers that have agreed to pay the penalty in installments pursuant to a payment agreement schedule with the DFS). As a condition of release from an SWO, an employer may be required to file periodic reports to show its continued compliance with coverage requirements.

The bill amends provisions related to SWOs and associated penalties as follows:

- Increases from 5 to 10 business days after receipt of a written request from the DFS the time within which an employer must produce requested business records or be subject to an SWO.
- Authorizes the DFS to issue an order of conditional release from an SWO to an employer that has secured appropriate coverage if the employer pays $1,000 as a down payment on the assessed penalty *and* agrees to pay the remainder of the penalty in periodic installments pursuant to a payment agreement schedule with the DFS or to pay the remaining penalty in full. Provides for immediate reinstatement of the SWO if the employer does not pay the penalty in full or enter into a payment agreement within 28 days after service of the SWO upon the employer.
- Repeals employer reporting requirements for a probationary period.
- Credits the initial payment of premium made by the employer to secure coverage against the assessed penalty for employers that have not previously been issued an SWO. Specifies documentation the employer must submit to the DFS. Provides for assessment of the $1,000 penalty even when the calculated penalty after the credit is applied is less than $1,000.
- Reduces the look-back period for failure to comply with coverage requirements from 3 to 2 years and increases the penalty multiplier from 1.5 to 2 times the amount of unpaid premiums.

In most cases, workers' compensation indemnity benefits are payable at 66 2/3 percent of the employee's average weekly wage up to the maximum weekly benefit for the year of injury. To address a court decision concerning the proper calculation of the compensation rate, the bill allows such benefits to be paid at either 66 2/3 percent or 66.67 percent of the employee's average weekly wage.

The bill has an indeterminate fiscal impact. The changes in the penalty calculation formula will likely result in increased fines in some cases and decreased fines in other cases. Allowing certain benefits to be paid at either 66 2/3 or 66.67 percent of the employee's average weekly wage will have a minimal impact on the benefits paid.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Whether an employer is required to have workers' compensation insurance depends upon the employer's industry (construction, non-construction, or agricultural) and the number of employees. Construction industry employers with 1 or more employees are required to have workers' compensation insurance.[1] Non-construction industry employers with 4 or more employees are required to have workers' compensation insurance. Agricultural employers with more than 5 regular employees and 12 or more employees at one time for seasonal agricultural labor who work more than 30 days are required to have workers' compensation insurance.[2]

Failure to Comply with Coverage Requirements[3]

If an employer fails to comply with workers' compensation coverage requirements, the Department of Financial Services (DFS) must issue a stop-work order (SWO) within 72 hours of determining non-compliance. SWOs, which require the employer to cease all business operations, remain in effect until the employer secures appropriate coverage and the DFS issues (1) an order releasing the SWO (for employers that have paid the assessed penalty) or (2) an order of conditional release (for employers that have agreed to pay the penalty in installments pursuant to a payment agreement schedule with the DFS). Additionally, employers are assessed a penalty equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding 3-year period or $1,000, whichever is greater. Thus, for penalty calculation purposes, the employer must provide 3 years of payroll records. The DFS informs that employers are often unable to quickly provide all records required to calculate the penalty. Until the DFS has calculated the penalty, the SWO remains in effect and the employer cannot conduct business.

SWOs are issued for the following violations: failure to obtain workers' compensation insurance that meets the requirements of Chapter 440, F.S.; materially understating or concealing payroll; materially misrepresenting or concealing employee duties to avoid paying the proper premium; materially misrepresenting or concealing information pertinent to the calculation of an experience modification factor; and failure to produce business records within 5 business days after receiving a written request for such records from the DFS. For fiscal year 2011-2012, 2,140 SWOs were issued.[4] As a condition of release from an SWO, the DFS may require an employer to file periodic reports for up to 2 years to show the employer's continued compliance with coverage requirements.

The bill amends provisions relating to SWOs and calculation of the assessed penalty as follows:

- Increases from 5 to 10 business days after receipt of a written request from the DFS the time within which an employer must produce requested business records or be subject to an SWO.
- Reduces the look-back period for failure to comply with coverage requirements from 3 to 2 years and increases the penalty multiplier from 1.5 to 2 times the amount of unpaid premiums.
- Authorizes the DFS to issue an order of conditional release from an SWO to an employer that has secured appropriate coverage if the employer pays $1,000 as a down payment on the assessed penalty *and* agrees to pay the remainder of the penalty in periodic installments pursuant to a payment agreement schedule with the DFS or to pay the remaining penalty in full. Provides for immediate reinstatement of the SWO if the employer does not pay the penalty in full or enter into a payment agreement with the DFS within 28 days after service of the SWO upon the employer.

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[1] Section 440.02(17)(b)2, F.S.
[2] Section 440.02(17)(c)2, F.S.
[3] *See* s. 440.107, F.S.
[4] "2012 Florida Division of Workers' Compensation Results and Accomplishments." Available at: http://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/Default.htm (Last accessed : January 3, 2014).

- Credits the initial payment of the estimated annual workers' compensation policy premium, as determined by the carrier, against the penalty for employers that have not previously been issued an SWO. Requires employers to provide the DFS with documentation that the employer has secured the payment of compensation and proof of payment to the carrier. See the section below entitled "Employee Leasing Companies" for documentation required for the credit to be applied when the employer has secured the payment of compensation by entering into an employee leasing contract with a licensed employee leasing company. Provides for assessment of the $1,000 penalty against the employer even when the calculated penalty after the credit is applied is less than this amount.
- Repeals reporting requirements for a probationary period to demonstrate an employer's continued compliance with coverage requirements.

Employee Leasing Companies

In a traditional employee leasing arrangement, an employee leasing company will enter into an arrangement with an employer (the client company) under which all or most of its client workforce is employed by the leasing company and then leased to the client company. The Board of Employee Leasing Companies within the Department of Business and Professional Regulation licenses and regulates employee leasing companies under part XI, ch. 468, F.S. The term "employee leasing" is defined as "...an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client."[5] The law excludes temporary help arrangements from the definition of employee leasing.

As mentioned earlier, the bill credits the initial payment of premium paid to secure coverage against the penalty amount when the employer has not previously been issued an SWO. For the credit to be applied when the employer has secured the payment of compensation by entering into an employee leasing contract with a licensed employee leasing company, the bill requires the employer to provide the DFS with a written attestation by a representative from the employee leasing company that the employer has entered into an employee leasing contract, the dollar amount attributable to the initial payment of estimated workers' compensation premium for the employer, and proof of payment to the employee leasing company.

Workers' Compensation Indemnity Benefits

Workers' compensation indemnity (monetary) benefits are payable to employees who miss at least 8 days of work due to a covered (compensable) injury. However, the benefits are payable retroactively from the first day of disability (to include compensation for the first 7 days missed) to employees who miss more than 21 days of work due to a compensable injury.[6] In most cases, indemnity benefits are payable at 66 2/3 percent of the employee's average weekly wage (AWW) up to the maximum weekly benefit for the year of injury. For example, s. 440.15(1)(a), F.S., provides for permanent total disability benefits to be paid at 66 2/3 percent of the employee's AWW up to the maximum weekly benefit established by the workers' compensation law.[7]

In *Escambia County School District v. Vickery-Orso*,[8] the employer calculated the compensation rate for an employee with a permanent total disability by multiplying the AWW by .66667. This resulted in the employer paying more than 66 2/3 percent of the AWW (a weekly benefit of $529.48 rather than $529.47, when rounded to cents). The Judge of Compensation Claims (JCC), however, determined that the appropriate multiplier was .6667 (AWW x .6667), which resulted in a weekly benefit of $529.50. The JCC ordered the employer to pay this benefit amount and awarded associated penalties, interest,

[5] Section 468.520(4), F.S.

[6] Section 440.12(1), F.S.

[7] The maximum weekly compensation rate for work-related injuries and illnesses occurring on or after January 1, 2014 is $827.00. See Informational Bulletin DFS-03-2013 (December 19, 2013). Available at: http://www.myfloridacfo.com/division/wc/pdf/DFS-03-2013.pdf (Last accessed: January 3, 2014).

[8] 109 So.3d 1242 (2013).

costs, and fees to the employee. On Appeal, the First District Court of Appeal held that the JCC erred in requiring the employer to pay a greater benefit because the employer had not paid less than the compensation rate (66 2/3 percent of the AWW) required by statute.

The bill addresses the *Escambia* decision by authorizing employers to pay compensation at either 66 2/3 percent or 66.67 percent of the AWW. The latter calculation produces a slightly higher compensation rate for injured employees and removes the need for employers/carriers that have been paying benefits at 66.67 percent of the AWW to incur reprogramming costs.

The bill is effective July 1, 2014.

B. SECTION DIRECTORY:

Section 1. Amends s. 440.107, F.S., relating to the authority of the DFS to enforce employer compliance with workers' compensation coverage requirements.
Section 2. Amends s. 440.15, F.S., relating to compensation for disability.
Section 3. Amends s. 440.16, F.S., relating to compensation for death.
Section 4. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The DFS informs that amending the non-compliance penalty will have a negligible impact on the Workers' Compensation Administration Trust Fund.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Requiring employers to whom SWOs have been issued to supply 2 years of payroll records (rather than 3 years) for penalty calculation purposes decreases the regulatory burden on such employers. Employers that can more readily provide the required records will have their penalty calculated more quickly by the DFS and can take the steps necessary to be released from the SWO and return to work.

With the decreased look-back period, the amount of some fines assessed may decrease even though the multiplier has been increased. In other cases, the increased penalty multiplier will increase the penalty, even though the look-back period has been shortened.

For employers that have not previously been issued an SWO, crediting the initial payment of premium made to secure coverage against the assessed penalty will decrease the amount of the penalty to be paid by the employer.

D. FISCAL COMMENTS:

The DFS informs that amending the penalty assessed against employers that do not comply with workers' compensation coverage requirements will have a negligible impact on the Workers' Compensation Administration Trust Fund, and that providing for a 66.67 percent compensation rate reflects current carrier claims payment procedures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to workers' compensation; amending s. 440.107, F.S.; revising powers of the Department of Financial Services relating to compliance with and enforcement of workers' compensation coverage requirements; revising requirements for the release of stop-work orders; revising penalties; amending ss. 440.15 and 440.16, F.S.; revising rate formulas related to the determination of compensation for disability and death; providing an effective date.

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

Section 1. Paragraphs (a), (d), and (e) of subsection (7) of section 440.107, Florida Statutes, are amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)(a) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter or to produce the required business records under subsection (5) within 10 ~~5~~ business days after receipt of the written request of the department, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work

order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within 72 hours. The order shall take effect when served upon the employer or, for a particular employer worksite, when served at that worksite. In addition to serving a stop-work order at a particular worksite which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer worksites in the state for which the employer is not in compliance. A stop-work order may be served with regard to an employer's worksite by posting a copy of the stop-work order in a conspicuous location at the worksite. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. The department may issue an order of conditional release from a stop-work order to an employer upon a finding that the employer has complied with the coverage requirements of this chapter, paid a penalty of $1,000 as a down payment, and ~~has~~ agreed to remit periodic payments of the remaining penalty amount pursuant to a payment agreement schedule with the department or pay the remaining penalty amount in full. If an order of conditional release is issued, failure by the employer to pay the penalty in full or enter into a payment agreement with the department within 28 days after

service of the stop-work order upon the employer, or to meet any term or condition of such penalty payment agreement, shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the penalty shall become immediately due. ~~The department may require an employer who is found to have failed to comply with the coverage requirements of s. 440.38 to file with the department, as a condition of release from a stop-work order, periodic reports for a probationary period that shall not exceed 2 years that demonstrate the employer's continued compliance with this chapter. The department shall by rule specify the reports required and the time for filing under this subsection.~~

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 ~~1.5~~ times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 2-year ~~3-year~~ period or $1,000, whichever is greater. For employers who have not been previously issued a stop-work order, the department must allow the employer to receive a credit for the initial payment of the estimated annual workers' compensation policy premium, as determined by the carrier, to be applied to the penalty. Before applying the credit to the penalty, the employer

must provide the department with documentation reflecting that the employer has secured the payment of compensation pursuant to s. 440.38 and proof of payment to the carrier. In order for the department to apply a credit for an employer that has secured the payment of compensation by entering into an employee leasing contract with a licensed employee leasing company, the employer must provide the department with a written attestation by a representative from the employee leasing company that the employer has entered into an employee leasing contract, the dollar amount attributable to the initial payment of the estimated workers' compensation premium for the employer, and proof of payment to the employee leasing company. The $1,000 penalty shall be assessed against the employer even if the calculated penalty after the credit has been applied is less than $1,000.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

(e) When an employer fails to provide business records sufficient to enable the department to determine the employer's payroll for the period requested for the calculation of the penalty provided in paragraph (d), for penalty calculation purposes, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the statewide average weekly wage as defined in s. 440.12(2)

multiplied by 2 ~~1.5~~.

Section 2. Paragraph (a) of subsection (1), paragraph (a) of subsection (2), and paragraph (a) of subsection (4) of section 440.15, Florida Statutes, is amended to read:

440.15 Compensation for disability.—Compensation for disability shall be paid to the employee, subject to the limits provided in s. 440.12(2), as follows:

(1) PERMANENT TOTAL DISABILITY.—

(a) In case of total disability adjudged to be permanent, 66 2/3 or 66.67 percent of the average weekly wages shall be paid to the employee during the continuance of such total disability. No compensation shall be payable under this section if the employee is engaged in, or is physically capable of engaging in, at least sedentary employment.

(2) TEMPORARY TOTAL DISABILITY.—

(a) Subject to subsection (7), in case of disability total in character but temporary in quality, 66 2/3 or 66.67 percent of the average weekly wages shall be paid to the employee during the continuance thereof, not to exceed 104 weeks except as provided in this subsection, s. 440.12(1), and s. 440.14(3). Once the employee reaches the maximum number of weeks allowed, or the employee reaches the date of maximum medical improvement, whichever occurs earlier, temporary disability benefits shall cease and the injured worker's permanent impairment shall be determined.

(4) TEMPORARY PARTIAL DISABILITY.—

(a) Subject to subsection (7), in case of temporary partial disability, compensation shall be equal to 80 percent of the difference between 80 percent of the employee's average weekly wage and the salary, wages, and other remuneration the employee is able to earn postinjury, as compared weekly; however, weekly temporary partial disability benefits may not exceed an amount equal to 66 2/3 or 66.67 percent of the employee's average weekly wage at the time of accident. In order to simplify the comparison of the preinjury average weekly wage with the salary, wages, and other remuneration the employee is able to earn postinjury, the department may by rule provide for payment of the initial installment of temporary partial disability benefits to be paid as a partial week so that payment for remaining weeks of temporary partial disability can coincide as closely as possible with the postinjury employer's work week. The amount determined to be the salary, wages, and other remuneration the employee is able to earn shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. Benefits shall be payable under this subsection only if overall maximum medical improvement has not been reached and the medical conditions resulting from the accident create restrictions on the injured employee's ability to return to work.

Section 3. Paragraph (b) of subsection (1) and subsection (3) of section 440.16, Florida Statutes, are amended to read:

440.16 Compensation for death.—

(1) If death results from the accident within 1 year thereafter or follows continuous disability and results from the accident within 5 years thereafter, the employer shall pay:

(b) Compensation, in addition to the above, in the following percentages of the average weekly wages to the following persons entitled thereto on account of dependency upon the deceased, and in the following order of preference, subject to the limitation provided in subparagraph 2., but such compensation shall be subject to the limits provided in s. 440.12(2), shall not exceed $150,000, and may be less than, but shall not exceed, for all dependents or persons entitled to compensation, 66 2/3 or 66.67 percent of the average wage:

1. To the spouse, if there is no child, 50 percent of the average weekly wage, such compensation to cease upon the spouse's death.

2. To the spouse, if there is a child or children, the compensation payable under subparagraph 1. and, in addition, 16 2/3 percent on account of the child or children. However, when the deceased is survived by a spouse and also a child or children, whether such child or children are the product of the union existing at the time of death or of a former marriage or marriages, the judge of compensation claims may provide for the payment of compensation in such manner as may appear to the judge of compensation claims just and proper and for the best interests of the respective parties and, in so doing, may provide for the entire compensation to be paid exclusively to

the child or children; and, in the case of death of such spouse, 33 1/3 percent for each child. However, upon the surviving spouse's remarriage, the spouse shall be entitled to a lump-sum payment equal to 26 weeks of compensation at the rate of 50 percent of the average weekly wage as provided in s. 440.12(2), unless the $150,000 limit provided in this paragraph is exceeded, in which case the surviving spouse shall receive a lump-sum payment equal to the remaining available benefits in lieu of any further indemnity benefits. In no case shall a surviving spouse's acceptance of a lump-sum payment affect payment of death benefits to other dependents.

3. To the child or children, if there is no spouse, 33 1/3 percent for each child.

4. To the parents, 25 percent to each, such compensation to be paid during the continuance of dependency.

5. To the brothers, sisters, and grandchildren, 15 percent for each brother, sister, or grandchild.

(3) Where, because of the limitation in paragraph (1)(b), a person or class of persons cannot receive the percentage of compensation specified as payable to or on account of such person or class, there shall be available to such person or class that proportion of such percentage as, when added to the total percentage payable to all persons having priority of preference, will not exceed a total of said 66 2/3 or 66.67 percent, which proportion shall be paid:

(a) To such person; or

(b) To such class, share and share alike, unless the judge of compensation claims determines otherwise in accordance with the provisions of subsection (4).

Section 4. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 291 Warranty Associations
SPONSOR(S): Santiago
TIED BILLS: **IDEN./SIM. BILLS:** SB 496

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Cooper	Cooper
2) Civil Justice Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve rates for warranties.

Current law requires every motor vehicle service agreement and home warranty to be mailed or delivered to the purchaser within 45 days after the purchase of the agreement. The bill allows both these contracts to be transmitted electronically, subject to the warranty holder requesting mail delivery instead. The bill also adds the same delivery requirement for service warranties that is contained in current law for motor vehicle service agreements and home warranties and allows electronic delivery of service agreements to the warranty holder under the same parameters required for electronic delivery of motor vehicle service agreements and home warranties.

The bill also makes changes to the financial requirements service warranty associations must have in order to keep their licenses. Current law allows a service warranty association to demonstrate financial responsibility by securing contractual liability insurance from an authorized insurer which covers the association's obligations under service warranties sold in Florida. In addition, service warranty associations are required to maintain a specified writing ratio of gross written premiums to net assets. Currently, an association can avoid this minimum writing ratio by securing an insurance policy providing first dollar coverage from an insurer. The bill expands the exception to the minimum writing ratio for service warranty associations and for insurers providing first dollar coverage to those associations and it repeals one of the three requirements for those insurers so associations purchasing insurance can be exempt from the required writing ratio.

The bill has no fiscal impact on state or local government. Regarding the electronic transmission provisions of the bill, the fiscal impact on the warranty associations and consumers is indeterminate because it is unknown how many associations will opt to email or how many policyholders will agree to participate.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the OIR. The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve rates for warranties.

Electronic Delivery of Service Agreements and Warranties

Section 634.121(6), F.S., requires every motor vehicle service agreement to be mailed or delivered to the purchaser within 45 days after the purchase of the agreement. Section 634.312(2), F.S., requires every home warranty to be mailed or delivered to the purchaser within 45 days after the purchase of the warranty. The delivery required by current law is typically hand delivery and not electronic delivery.

The bill allows motor vehicle service agreement companies to deliver motor vehicle service agreements by electronic transmission. Similarly, the bill allows electronic transmission of home warranties by insurers or home warranty associations. The bill further specifies electronic transmission of a motor vehicle service agreement constitutes deliver of the agreement to the purchaser and specifies the same for electronic transmission of home warranties. If a motor vehicle service agreement is transmitted to the purchaser electronically, then the transmission must include a notice to the purchaser indicating the purchaser has a right to receive the agreement by mail instead of electronic transmission. If the purchaser notifies the company that he or she does not agree to electronic transmission of the motor vehicle service agreement, a paper copy of the agreement must be provided to the purchaser. The bill contains the same provisions relating to notice and provision of a paper copy of the warranty for home warranties.

The bill adds a delivery requirement for service warranties. Unlike motor vehicle service agreements and home warranties, current law does not require service warranties to be delivered to the purchaser. The bill adds the same delivery requirement for service warranties that is contained in current law for motor vehicle service agreements and home warranties and allows electronic delivery of service agreements to the warranty holder under the same parameters required for electronic delivery of motor vehicle service agreements and home warranties. Thus, under the bill, the parameters for electronic delivery of motor vehicle service agreements, home warranties, and service warranties are consistent and the same.

Applicability of Federal and State Law Relating to Electronic Transactions

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.[1] E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

E-SIGN allows state law to preempt the E-SIGN law in certain circumstances. State law addressing electronic transmission can preempt E-SIGN if the state law is an enactment of the Uniform Electronic Transactions Act (UETA) as adopted by the National Conference of Commissioners on Uniform State Laws. Alternatively, a state law that is not an enactment of UETA but is not inconsistent with E-SIGN and does not give greater legal status or effect to a specific form of technology or signature can preempt E-SIGN.[2] Florida adopted the substantive provisions of UETA in 2000 and has not substantively changed the provisions since they were adopted.[3] Thus, the Florida adoption of UETA should preempt E-SIGN. Section 668.50, F.S., Florida's Uniform Electronic Transaction Act (FUETA), is Florida's adoption of UETA. FUETA applies to electronic records and electronic signatures relating to a transaction and has limited exceptions.[4]

Although UETA and E-SIGN overlap in some areas, they differ on some consumer protection issues. E-SIGN focuses on regulating the manner of consent to deal electronically, while UETA focuses on how the parties are to comply with state consumer protections laws.[5] By adopting the official version of UETA, states can modify, limit, or supersede some E-SIGN provisions, including its consumer protection issues, which includes E-SIGN's requirement of consumer disclosure and affirmative consent for electronic records.[6]

FUETA should apply to the electronic transmission of motor vehicle service agreements, home warranties, and service warranties allowed under the bill. One provision of FUETA provides if parties have agreed to conduct a transaction by electronic means and a provision of law requires a person to deliver information in writing to another person, that delivery requirement is satisfied if the information is delivered in an electronic record capable of retention by the recipient.[7] Furthermore, whether parties have agreed to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.[8]

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[1] Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.

[2] 15 USC 7002.

[3] http://www.uniformlaws.org/Act.aspx?title=Electronic Transactions Act (last viewed March 15, 2013), http://www.ncsl.org/issues-research/telecom/uniform-electronic-transactions-acts.aspx (last viewed March 17, 2013), and Final Staff Analysis for CS/CS/SB 1334 prepared by the House of Representatives Committee on Utilities & Communications, available at http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334 (last viewed March 17, 2013) indicating on page 10 that "the bill is identical to the act recommended by the National Commissioners for Uniform State Laws except for provisions that were added to conform to Florida law and provisions added to subsection (11) requiring a first time notary to complete certain training requirements." Although Florida's adoption of the UETA has been amended five times since adoption in 2000, none of the amendments were substantive.

[4] s. 668.50(3), F.S.

[5] Fry, Patricia Bumfield, *A Preliminary Analysis of Federal and State Electronic Commerce Laws*, available at http://uniformlaws.org/Narrative.aspx?title=UETA%20and%20Preemption%20Article (last viewed January 3, 2014).

[6] http://www.ncsl.org/issues-research/telecom/uniform-electronic-transactions-acts.aspx (last viewed January 3, 2014).

[7] s. 668.50(8)(a), F.S.

[8] s. 668.50(5)(b), F.S.

Emailing a service agreement or warranty to the agreement or warranty holder could fall under this provision of FUETA, in part, because in order to email the agreement or warranty, the agreement or warranty holder must provide an email address to the insurer or warranty association which could be construed to mean the parties have agreed to conduct a transaction by electronic means. If this is the case, then current law requiring delivery of a motor vehicle service agreement or home warranty by mail or other delivery may be satisfied by emailing the agreement or warranty. The consent of the agreement or warranty holder to receive the agreement or warranty by email would not be required in this case because under FUETA, consent is not required when the parties agree to conduct a transaction electronically. Additionally, the bill requires the insurer or warranty association to notify the agreement or warranty holder when the agreement or warranty is emailed that the holder can elect to receive the agreement or warranty by mail in lieu of email. Once this notice is given, an agreement or warranty holder's action to not elect to receive the agreement or warranty by mail may be construed to mean the parties have agreed to conduct a transaction by electronic means and thus, under FUETA, consent is not required for electronic delivery of the agreement or warranty to the holder.

Although service warranties do not have a delivery requirement in current law, one is provided in the bill. Thus, providing service warranties electronically without consent of the warranty holder could be possible under FUETA using the same analysis that applies to motor vehicle service agreements and home warranties.

In addition, another provision of FUETA provides if a Florida law other than FUETA requires a record to be sent or transmitted by a certain method, the record must be sent or transmitted by the method provided in the other law.[9] This provision may allow a motor vehicle service agreement or home warranty to be emailed to the agreement or warranty holder if the current law requiring delivery of the agreement or warranty to the holder is amended to allow electronic delivery, as the bill proposes, because the amended law allowing electronic delivery of the agreement or warranty may control over FUETA. This same analysis could apply to service warranties under the bill because the bill requires delivery of these warranties and allows for electronic delivery of them.

Financial Requirements for Service Warranty Assocaitons

The bill changes one of the financial requirements service warranty associations must have in order to keep its license. Current Florida law allows a service warranty association to demonstrate financial responsibility by securing contractual liability insurance from an authorized insurer which covers the service warranty association's obligations under service warranties sold in Florida. There are two kinds of insurance policies that are permitted: (1) an insurance policy that pays only when the service warranty association fails to pay its obligations under the service warranties; and (2) a policy that pays claims under the association's service warranties from the first dollar. In addition, Florida law requires service warranty associations to maintain a writing ratio of gross written premiums to net assets of seven-to-one, meaning for every one dollar of net assets held by the association, the association can write seven dollars of premium. Under current Florida law a service warranty association can avoid this minimum writing ratio by securing an insurance policy providing first dollar coverage from an insurer that maintains a minimum capital surplus of $100 million, maintains an "A" or higher rating, and is not affiliated with the service warranty association it insures.[10]

The bill expands the exception to the minimum writing ratio for service warranty associations. Under the bill, associations utilizing an insurance policy that pays only when the service warranty association fails to pay its obligations can avoid the writing ratio as long as the insurer issuing the policy to the association maintains a minimum capital surplus of $200 million and an "A" or higher rating. The surplus requirement for insurers issuing both kinds of insurance policies for service warranty associations helps ensure there should be more than adequate capital in the insurance companies to honor all obligations of the insured association under service warranties sold in Florida.

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[9] s. 668.50(8)(b), F.S.

[10] The rating is from A.M. Best Company. However, an equivalent rating by another national rating service acceptable to the OIR is also allowed by statute.

For insurers providing first dollar coverage to service warranty associations, the bill repeals one of the three requirements for these insurers so the service warranty association purchasing insurance from the insurer can be exempt from the writing ratio required by law. The requirement that the insurer providing the first dollar coverage not be affiliated with the service warranty association it insures is repealed. These insurers must still maintain a minimum surplus of $100 million and maintain an "A" or higher rating.

B. SECTION DIRECTORY:

Section 1. Amends s. 634.121, F.S., relating to forms, required procedures, and provisions for motor vehicle service agreement companies.

Section 2. Amends s. 634.312, F.S., relating to forms, required provisions, and procedures for home warranty associations.

Section 3. Amends s.634.406, F.S., relating to financial requirements for service warranty associations.

Section 4. Amends s. 634.414, F.S., relating to forms and required provisions for service warranty associations.

Section 5. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Warranty associations emailing service warranties will save costs associated with printing and mailing the warranties to warranty holders. The exact amount of savings cannot be calculated as it is unknown how many warranty associations will opt to deliver their warranties by email and how many warranty purchasers will choose to obtain their warranty by email rather than by mail. However, any savings realized by warranty associations should be passed through to the warranty purchasers.

If warranty associations incur computer reprogramming costs connected with emailing warranties or service agreements, any increased costs may be passed through to the warranty purchasers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to warranty associations; amending ss. 634.121 and 634.312, F.S.; authorizing electronic transmission of service agreements and home warranties; providing requirements for electronic transmission; providing notice requirements; amending s. 634.406, F.S.; revising criteria authorizing premiums of certain service warranty associations to exceed their specified net assets limitations; revising requirements relating to contractual liability policies that insure warranty associations; amending s. 634.414, F.S.; providing requirements for the delivery of service warranty contracts; providing notice requirements; providing an effective date.

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

Section 1. Subsection (6) of section 634.121, Florida Statutes, is amended to read:

634.121 Forms, required procedures, provisions.—

(6) Each service agreement, which includes a copy of the application form, must be mailed, ~~or~~ delivered, or electronically transmitted to the agreement holder within 45 days after the date of purchase. Electronic transmission of a service agreement constitutes delivery to the agreement holder. The electronic transmission must notify the agreement holder of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

his or her right to receive the service agreement via United States mail rather than electronic transmission. If the agreement holder communicates to the service agreement company electronically or in writing that he or she does not agree to receipt by electronic transmission, a paper copy of the service agreement shall be provided to the agreement holder.

Section 2. Subsection (2) of section 634.312, Florida Statutes, is amended to read:

634.312 Forms; required provisions and procedures.—

(2) Subject to the insurer's or home warranty association's requirement as to payment of premium, every home warranty must ~~shall~~ be mailed, ~~or~~ delivered, or electronically transmitted to the warranty holder within ~~not later than~~ 45 days after the effectuation of coverage, and the application is part of the warranty contract document. Electronic transmission of a home warranty constitutes delivery to the warranty holder. The electronic transmission must notify the warranty holder of his or her right to receive the home warranty via United States mail rather than electronic transmission. If the warranty holder communicates to the home warranty association electronically or in writing that he or she does not agree to receipt by electronic transmission, a paper copy of the home warranty shall be provided to the warranty holder.

Section 3. Subsections (6) and (7) of section 634.406, Florida Statutes, are amended to read:

634.406 Financial requirements.—

(6) An association that ~~which~~ holds a license under this part ~~and which does not hold any other license under this chapter~~ may allow its premiums for service warranties written under this part to exceed the ratio to net assets limitations of this section if the association meets all of the following:

(a) Maintains net assets of at least $750,000.

(b) Uses ~~Utilizes~~ a contractual liability insurance policy approved by the office that:

1. ~~which~~ Reimburses the service warranty association for 100 percent of its claims liability and is issued by an insurer that maintains a policyholder surplus of at least $100 million; or

2. Complies with subsection (3) and is issued by an insurer that maintains a policyholder surplus of at least $200 million.

(c) The insurer issuing the contractual liability insurance policy:

~~1. Maintains a policyholder surplus of at least $100 million.~~

1.~~2.~~ Is rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the office.

~~3. Is in no way affiliated with the warranty association.~~

2.~~4.~~ In conjunction with the warranty association's filing of the quarterly and annual reports, provides, on a form prescribed by the commission, a statement certifying the gross

written premiums in force reported by the warranty association and a statement that all of the warranty association's gross written premium in force is covered under the contractual liability policy, regardless of whether ~~or not~~ it has been reported.

~~(7) A contractual liability policy must insure 100 percent of an association's claims exposure under all of the association's service warranty contracts, wherever written, unless all of the following are satisfied:~~

~~(a) The contractual liability policy contains a clause that specifically names the service warranty contract holders as sole beneficiaries of the contractual liability policy and claims are paid directly to the person making a claim under the contract;~~

~~(b) The contractual liability policy meets all other requirements of this part, including subsection (3) of this section, which are not inconsistent with this subsection;~~

~~(c) The association has been in existence for at least 5 years or the association is a wholly owned subsidiary of a corporation that has been in existence and has been licensed as a service warranty association in the state for at least 5 years, and:~~

~~1. Is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is required to file either of Form~~

~~10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and publicly traded or is the wholly owned subsidiary of a corporation that is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is required to file Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and is publicly traded;~~

~~2. Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service;~~

~~3. Has and maintains at all times a minimum net worth of not less than $10 million as evidenced by audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles and submitted to the office annually; and~~

~~4. Is authorized to do business in this state; and~~

~~(d) The insurer issuing the contractual liability policy:~~

~~1. Maintains and has maintained for the preceding 5 years, policyholder surplus of at least $100 million and is rated "A" or higher by A.M. Best Company or has an equivalent rating by another rating company acceptable to the office;~~

~~2. Holds a certificate of authority to do business in this~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~state and is approved to write this type of coverage; and~~

~~3. Acknowledges to the office quarterly that it insures all of the association's claims exposure under contracts delivered in this state.~~

~~If all the preceding conditions are satisfied, then the scope of coverage under a contractual liability policy shall not be required to exceed an association's claims exposure under service warranty contracts delivered in this state.~~

Section 4. Subsection (4) is added to section 634.414, Florida Statutes, to read:

634.414 Forms; required provisions.—

(4) Each service warranty contract must be mailed, delivered, or electronically transmitted to the warranty holder within 45 days after the date of purchase. Electronic transmission of a service warranty contract constitutes delivery to the warranty holder. The electronic transmission must notify the warranty holder of his or her right to receive the contract via United States mail rather than electronic transmission. If the warranty holder communicates to the service warranty company electronically or in writing that he or she does not agree to receipt by electronic transmission, a paper copy of the contract shall be provided to the warranty holder.

Section 5. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4005 Fireworks
SPONSOR(S): Gaetz and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 314

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Emmanuel CE	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

In Florida, the sale and use of fireworks is governed by the provisions of Chapter 791, F.S. Current law restricts the sale of fireworks to those that the State Fire Marshal has approved as "sparklers" or those considered "novelties and trick noisemakers". Generally, anything that explodes or launches into the air is illegal. An exception exists for agricultural uses. Florida residents only need to sign a waiver for the exception to have it apply. According to the State Fire Marshal, there is no mechanism in place to check if the consumer is truthfully filling out the waiver. Commercial use of fireworks is also allowed under certain circumstances.

House Bill 4005 eliminates certain sections of Chapter 791, F.S., to allow the sale of all fireworks not otherwise prohibited by federal law. Federal law prohibits the sale of the "most dangerous" fireworks, creating a national firework baseline that states governments may raise but may not lower.

Specifically, the bill:

- Eliminates provisions limiting or restricting the sale of fireworks in Florida,
- Eliminates the statutory authority provided to the State Fire Marshal to register sparkler manufactures, retailers, distributers, and wholesalers,
- Eliminates the state requirement for public firework displays to have bonds,
- Eliminates the state law which prohibits the tampering of fireworks, and
- Eliminates the role of the State Fire Marshal in testing and approving of fireworks.

This bill will likely increase the sales of fireworks in Florida, resulting in an indeterminable increase in tax revenue. The bill also eliminates the registering requirements for retailers, which will result in a loss of registration fee revenue. In the last fiscal year, registration fees of $233,370 were deposited into the Insurance Regulatory Trust Fund.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Sparklers and Fireworks

Florida regulates the sale and use of fireworks pursuant to Chapter 791, F.S. Currently, Florida allows residents to purchase three categories of fireworks without a license: "novelties and trick noisemakers", sparklers, and fireworks for agricultural use. All other fireworks are prohibited without a professional license.

"Novelties and trick noisemakers" are specifically defined and legal in Florida.[1] These include New Year's poppers, trick snakes, and other smaller products that do not contain true explosives.

Sparklers are allowed in the state of Florida. As specifically defined in the statute, sparklers do not contain explosive compounds, do not detonate or explode, must be handheld or ground based, cannot self-propel through the air, and contain no more than 100 grams of the chemical compound which produces sparks.[2]

Current law requires that any person interested in selling sparklers must submit samples of their product to the State Fire Marshal for approval.[3] To accomplish this, the statute gives the State Fire Marshal three duties.[4] First, the State Fire Marshal is required to adopt rules describing the testing, approval, and listing procedures. Second, the law requires that the Florida Administrative Register publish the names of the approved sparklers, and only those approved by the Division of the State Fire Marshal of the Department of Financial Services may be sold in the state. Lastly, any remaining samples must be disposed of after testing.

According to the State Fire Marshal, most companies are familiar with the current statutory scheme and only submit sparklers that are perceived to have a high chance of being approved.[5] The State Fire Marshal conducts these tests at the Fire and Arson Laboratory. Over the past three years, 164 sparklers were submitted, 30 of which were denied. The pass rate is just over 80%. The Division conducted testing of 80 new sparkler products this past year.[6] Once a product is approved, the sparkler may be sold in Florida.

The current law also makes the altering and selling of a sparkler, as well as the fraudulent representation of a product as a sparkler, a first-degree misdemeanor.[7]

Agricultural Exemption

Currently, any resident may purchase otherwise illegal fireworks if they are to be used for agricultural purposes. This exception, supported by both farmers and the Department of Agriculture and Consumer

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[1] Section 791.01(4)(c), F.S.
[2] Section 791.01(9), F.S.
[3] Section 791.013(1), F.S.
[4] Section 791.013(2), F.S.
[5] Information obtained from the State Fire Marshal and Department of Financial Services, 10/20/2013. On file with the Insurance & Banking Subcommittee staff.
[6] Email exchange with the State Fire Marshal, 10/18/2013. On file with the Insurance & Banking Subcommittee staff.
[7] Section 791.013(1), F.S.

Services, allows farms and hatcheries to disperse birds and other predators from their crops. A portion of the justification for this exception is to prevent the use of firearms to protect crops.[8]

Florida residents only need to sign a waiver for the exception to apply. According to the State Fire Marshal, there is no mechanism in place to check if the consumer is truthfully filling out the waiver. The Department of Agriculture does not have a role in the purchasing or selling of fireworks for that purported use.[9]

Without any significant enforcement mechanism, individuals are able to purchase otherwise illegal fireworks by claiming the exemption. A case out of the Third District Court of Appeals has held that it is not the responsibility of the retailer to check the veracity of this waiver.[10] In practice, this means that many retailers have on file a pre-printed waiver that costumers can sign before purchasing these products.

Retailer Registration Requirements

Current law requires that individuals or corporations seeking to sell fireworks in Florida must register with the State Fire Marshal.[11] According to the State Fire Marshal, the Division registered 3,963 seasonal retailers, 493 retail locations, 24 wholesalers, and 3 distributors of sparkler products in 2013. The registration includes contact information, phone numbers, and corporate officer information. Currently, companies must also pay an annual registration fee not to exceed $1000, or a seasonal fee not to exceed $200.[12] The fees are set by the State Fire Marshal and must be deposited into the Insurance Regulatory Trust Fund. In the last fiscal year, registration fees through this program totaled $233,370.[13]

Public Firework Displays

Section 791.02, F.S., provides the default regimen for public firework displays. The current law makes it "unlawful for any person, firm, copartnership, or corporation to offer for sale, expose for sale, sell at retail, or use or explode any firework" unless as part of a permitted display. This is one of several provisions that give local governments the ability to regulate fireworks through ordinances.

Currently, state law demands that firework displays must be operated by a "competent operator to be approved by the chiefs of police and the fire departments of the municipality".[14] Applications for this approval must be received 15 days before the event.

Florida law also sets the minimum bonded amount of $500 for firework displays.[15] Depending on the show length, it is not unusual for local governments to have bonds significantly higher than $500. The bond is intended to cover all potential personal or property damages caused by the permitted public display of fireworks.

Effect of the Bill

Sparklers and Fireworks

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[8] Information obtained from the Department of Agriculture and Consumer Services (DACS), 12/20/2013. On file with the Insurance & Banking Subcommittee staff.
[9] Information obtained from DACS, 12/20/2013. On file with the Insurance & Banking Subcommittee staff.
[10] *See State v. Miketa*, 824 So. 2d 970 (Fla. 3d DCA 2002), which rejected adding any due diligence requirement on firework retailers to determine the applicability of the agricultural exception.
[11] Section 791.015, F.S.
[12] Section 791.015(3)(a), F.S.
[13] Bill Analysis of the Department of Financial Services, Re: House Bill 4005. On file with the Insurance & Banking Subcommittee staff.
[14] Section 791.02(1), F.S.
[15] Section 791.03, F.S.

As proposed, HB 4005 eliminates the definition of "sparklers" and "fireworks" from the law, making all fireworks legal in Florida unless otherwise prohibited by federal law. The bill also deregulates the sale of fireworks by removing any licensing or authorizing requirements for retailers of fireworks.

Federal law has created several classifications for fireworks and set a baseline for national fireworks law. Under the bill, any product that would be legal under federal law would become legal in the state of Florida. This would include projectiles, roman candles, mortars, and smaller firecrackers.

As written, the bill does not have any guidance on firework purchases in Florida. Thus, there would be no mechanism to approve or deny the selling or use of any fireworks other than the federal baseline.

The bill also eliminates the need for fireworks manufacturers to seek the State Fire Marshal's approval. Since the sparklers tests would be no longer required, some savings should accrue at the Laboratory. Additionally, the bill eliminates the penalty for selling untested sparkler products. While this deleted portion only refers to sparkler tampering, there would be no law that speaks to the broader issue of tampering with the newly legal fireworks. Additionally, there would be no mechanism for prosecuting the altering of fireworks before sale.

Retailer Registration Requirements

The bill eliminates the current requirement that firework retailers or distributors must be licensed or registered in the state. Consequently, the only mechanism to determine who is selling fireworks in the state is removed.

The bill also repeals the statutory definitions of "distributer", "manufacturer", "retailer", "seasonal retailer", and "wholesaler".[16] For conformance, HB 4005 also removes the requirement that retailers have to keep a copy of their registration on site. With no registration, this provision would be unnecessary.

Public Fireworks Displays

HB 4005 also repeals the current bonding requirement for firework displays.[17] With the bonding requirement removed, there would be no mechanism to require bonds for public displays on state property. Municipalities and local governments would still be able to set any specific requirements not in conflict with state law.

The State Fire Marshal believes that the repeal of this section "would delete the requirement and authority that public displays of fireworks must have the inspection and approval by the board of county commissioners, the chiefs of police, and fire departments to assure that the displays are not a hazard to property or the public."[18] However, s. 791.012, F.S., remains untouched. This statute still allows local governments to set up any ordinances, laws, or rules for the display of fireworks within their boundaries. Specifically, it provides that local governments "may provide for more stringent regulations" for firework displays.

The bill also removes the statutory minimums for public displays of fireworks. Since the requirement for bonded displays is eliminated by the removal of s. 791.02, F.S., a statutory minimum is unnecessary.

Remaining Enforcement Provisions

[16] Section 791.05, F.S.
[17] Section 791.02(1), F.S.
[18] State Fire Marshal Bill Analysis, Re: House Bill 4005,12/18/2013. On file with the Insurance & Banking Subcommittee staff.

Section 791.05, F.S., allows sheriffs to seize any stocks of fireworks held in violation of this fireworks act, including private citizens that have purchased fireworks across the state line. With no such fireworks in violation of this act, it would appear that this provision would no longer be applicable since there would be no fireworks in violation of this act. It is unclear whether this provision would still be needed given the deregulation.

B. SECTION DIRECTORY:

Section 1: Repeals s. 791.013, 791.015, 791.02, and 791.03, F.S. Respectively, these sections require the approval of sparklers by the State Fire Marshal, require retailers to register through the State Fire Marshal to sell fireworks, prohibit the sale of any non-sparkler firework, and require bonds for public displays of fireworks.

Section 2: Deletes s. 791.01(1), 791.01(5), 791.01(6), 791.01(7), and 791.01(9), F.S., which are the statutory definitions for "distributer", "manufacturer", "retailer", "seasonal retailer", and "wholesaler".

Section 3: Amends s. 791.012, F.S., relating to minimum fireworks safety for conformance.

Section 4: Deletes portions of s 791.04, F.S., relating to sale of fireworks, for conformance.

Section 5: Provides an effective date on becoming a law

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Sales Revenues: With new products being offered to the consumers, the state should expect an increase in sales tax revenue. The fireworks industry group American Pyrotechnics Association estimates that Americans spent $649 million on fireworks in 2011.[19] While there are no official estimates of the impact on the state's tax base, the existence of fireworks businesses catering to Floridians at the border show that at least some potential tax revenue is being lost. The ultimate tax impact is indeterminable at this time.

Loss of Registration Fees: The removal of registration fees will cost the state some revenue. Last year, the total revenue through these licensing fees was $233,370. This money is deposited in Insurance Regulatory Trust Fund.

2. Expenditures:

This bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have any impact on local revenue.

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[19] U.S. Fireworks Industry Revenue Figures Breakdown by Industry Segment 1998 – 2012 American Pyrotechnics Association, (12/29/2013) http://www.americanpyro.com/assets/docs/FactsandFigures/fireworks%20revenue%20by%20industry%20segment%201998-12.pdf.

2. Expenditures:

Local Action Required for Requiring Bonds for Firework Displays: With the statutory minimums removed, any bonds for firework displays would have to be made at the local level through a local rule, ordinance, or law. There may be a cost associated with passing new regulations to maintain the old community standards for public safety in firework displays.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Consumers: For some Floridians, the current law may seem restrictive when compared to neighboring Alabama, which has some of the broadest firework laws in the nation. In the Panhandle, it is not uncommon to hear reports of fireworks retailers on the Alabama-Florida border catering to out of state shoppers. Consumers will now be able to legally use any firework not otherwise prohibited by federal law.

2. Age Restrictions: Sparklers may be purchased at any age under existing state law. Without any changes to the bill, it is the opinion of the State Fire Marshal that minors would be able to purchase fireworks in Florida.

3. Health and Safety Concerns: Firework-related injuries should be expected to rise under the proposed regime. To the extent that the deregulation of fireworks as contained in this bill increases greater use of products previously prohibited, firework related injuries may increase.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As mentioned in this analysis, Alabama allows the sale of substantially more fireworks than most states. Alabama State Code has two features that are not found in HB 4005: a minimum age requirement for the purchase of fireworks and a specific determination of approved fireworks.

Alabama Code has set the minimum age to buy sparklers and trick toys at 12 and the minimum age to

buy all other fireworks at 16. A child may purchase any fireworks if accompanied by an adult.[20]

Alabama relies on the federal definitions of legal fireworks. The U.S. Department of Transportation has three broad classes of fireworks: A, B, and C.[21] Under federal law, only licensed professionals may use Class A or Class B fireworks. Alabama State Code expressly allows the sale of all Class C fireworks, as determined by the U.S. Department of Transportation.[22]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[20] Section 8-17-222, Alabama Code.

[21] Generally speaking, Class A fireworks are high explosives such as dynamite, black powder, and blasting caps. Class B fireworks are display level fireworks, which are used at most public displays. Class C fireworks are the lesser fireworks, which would include bottle rockets, roman candles, flares, and smaller reloadable aerial shells. Recently, the federal government has created more specific federal classifications that are used by industry professionals.

[22] Section 8-17-218, Alabama Code.

A bill to be entitled

An act relating to fireworks; repealing ss. 791.013 and 791.015, F.S., relating to the testing and approval of sparklers and the registration of manufacturers, distributors, wholesalers, and retailers of sparklers; repealing s. 791.02, F.S., relating to the sale and use of fireworks; repealing s. 791.03, F.S., relating to the bond of licensees; amending ss. 791.01, 791.012, and 791.04, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Sections 791.013, 791.015, 791.02, and 791.03, Florida Statutes, are repealed.

Section 2. Section 791.01, Florida Statutes, is amended to read:

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

~~(1) "Distributor" means any person engaged in the business of selling sparklers to a wholesaler.~~

(1)~~(2)~~ "Division" means the Division of the State Fire Marshal of the Department of Financial Services.

(2)~~(3)~~ "Explosive compound" means any chemical compound, mixture, or device the primary or common purpose of which is to function by the substantially instantaneous release of gas and heat.

(3)~~(4)~~(a) "Fireworks" means and includes any combustible

or explosive composition or substance or combination of substances or, except as hereinafter provided, any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation. The term includes blank cartridges and toy cannons in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, skyrockets, roman candles, dago bombs, and any fireworks containing any explosives or flammable compound or any tablets or other device containing any explosive substance.

(b) "Fireworks" does not include sparklers ~~approved by the division pursuant to s. 791.013~~; toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for the explosion; and toy pistol paper caps which contain less than twenty hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times.

(c) "Fireworks" also does not include the following novelties and trick noisemakers:

1. A snake or glow worm, which is a pressed pellet of not more than 10 grams of pyrotechnic composition that produces a large, snakelike ash which expands in length as the pellet burns and that does not contain mercuric thiocyanate.

2. A smoke device, which is a tube or sphere containing not more than 10 grams of pyrotechnic composition that, upon burning, produces white or colored smoke as the primary effect.

3. A trick noisemaker, which is a device that produces a small report intended to surprise the user and which includes:

a. A party popper, which is a small plastic or paper device containing not more than 16 milligrams of explosive composition that is friction sensitive, which is ignited by pulling a string protruding from the device, and which expels a paper streamer and produces a small report.

b. A booby trap, which is a small tube with a string protruding from both ends containing not more than 16 milligrams of explosive compound, which is ignited by pulling the ends of the string, and which produces a small report.

c. A snapper, which is a small, paper-wrapped device containing not more than four milligrams of explosive composition coated on small bits of sand, and which, when dropped, explodes, producing a small report. A snapper may not contain more than 250 milligrams of total sand and explosive composition.

d. A trick match, which is a kitchen or book match which is coated with not more than 16 milligrams of explosive or pyrotechnic composition and which, upon ignition, produces a small report or shower of sparks.

e. A cigarette load, which is a small wooden peg that has been coated with not more than 16 milligrams of explosive composition and which produces, upon ignition of a cigarette containing one of the pegs, a small report.

f. An auto burglar alarm, which is a tube which contains not more than 10 grams of pyrotechnic composition that produces a loud whistle or smoke when ignited and which is ignited by use

of a squib. A small quantity of explosive, not exceeding 50 milligrams, may also be used to produce a small report.

The sale and use of items listed in this paragraph are permitted at all times.

~~(5) "Manufacturer" means any person engaged in the manufacture or construction of sparklers in this state.~~

~~(6) "Retailer" means any person who, at a fixed place of business, is engaged in selling sparklers to consumers at retail.~~

~~(7) "Seasonal retailer" means any person engaged in the business of selling sparklers at retail in this state from June 20 through July 5 and from December 10 through January 2 of each year.~~

(4)~~(8)~~ "Sparkler" means a device which emits showers of sparks upon burning, does not contain any explosive compounds, does not detonate or explode, is handheld or ground based, cannot propel itself through the air, and contains not more than 100 grams of the chemical compound which produces sparks upon burning. Any sparkler that is not approved by the division is classified as fireworks.

~~(9) "Wholesaler" means any person engaged in the business of selling sparklers to a retailer.~~

Section 3. Section 791.012, Florida Statutes, is amended to read:

791.012 Minimum fireworks safety standards.—The outdoor display of fireworks in this state shall be governed by the National Fire Protection Association (NFPA) 1123, Code for

Fireworks Display, 1995 Edition, approved by the American National Standards Institute. Any state, county, or municipal law, rule, or ordinance may provide for more stringent regulations for the outdoor display of fireworks, but in no event may any such law, rule, or ordinance provide for less stringent regulations for the outdoor display of fireworks. The division shall promulgate rules to carry out the provisions of this section. The Code for Fireworks Display shall not govern the display of any fireworks on private, residential property and shall not govern the display of those items included under s. 791.01(3)(b) and (c) ~~791.01(4)(b) and (c)~~ and authorized for sale thereunder.

Section 4. Section 791.04, Florida Statutes, is amended to read:

791.04 Exemptions ~~Sale at wholesale, etc., exempted.—~~ ~~Nothing in~~ This chapter does not: ~~shall be construed to prohibit any manufacturer, distributor, or wholesaler who has registered with the division pursuant to s. 791.015 to sell at wholesale such fireworks as are not herein prohibited; to prohibit the sale of any kind of fireworks at wholesale between manufacturers, distributors, and wholesalers who have registered with the division pursuant to s. 791.015; to prohibit the sale of any kind of fireworks provided the same are to be shipped directly out of state by such manufacturer, distributor, or wholesaler; to prohibit the sale of fireworks to be used by a person holding a permit from any board of county commissioners at the display covered by such permit; or to~~

(1) Prohibit the use of fireworks by railroads or other

transportation agencies for signal purposes or illumination or when used in quarrying or for blasting or other industrial use.~~,~~

(2) Prohibit ~~or~~ the sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations, or organizations composed of the Armed Forces of the United States.~~; provided, nothing in this chapter shall be construed as barring~~

(3) Bar the operations of manufacturers, duly licensed, from manufacturing, experimenting, exploding, and storing such fireworks in their compounds or proving grounds.

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB IBS 14-01 Security for Public Deposits
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 564

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Bauer	Cooper

SUMMARY ANALYSIS

Chapter 280, Florida Statutes, is the Florida Security for Public Deposits Act (Act), which authorizes state and local governments to deposit public deposits with qualified public depositories (QPDs). Public deposits are funds in excess of amounts required to meet disbursement needs or expenses, and QPDs are banks, savings banks, or savings associations that meet specific criteria under the act. QPDs must secure public deposits in accordance with the act and the collateral requirements and pledging levels as set for by rule of the Chief Financial Officer (CFO). Qualified public depositories may meet this collateral requirement by pledging, depositing, or issuing eligible collateral to the CFO, based on their financial condition and public deposit volume. The Department of Financial Services, as headed by the CFO, administers a collateral management program which ensures compliance with the Act.

The proposed committee bill (bill) makes the following changes to the Act:

- Provides several clarifying changes to reflect the current banking industry and regulatory environment,
- Minimizes regulatory burden on QPDs and streamlines compliance requirements,
- Clarifies regulatory requirements for failed QPDs and their acquiring institutions,
- Adjusts the two highest collateral pledge levels to ease regulatory burden for small and moderate-sized QPDs,
- Repeals the Qualified Public Depository Oversight Board, which has been largely inactive since its creation in 2001,
- Eases an existing ministerial notice requirement for public depositors, so that they are still protected from loss arising from a QPD's failure, and
- Makes a number of technical, conforming changes throughout the Act.

The bill may have a positive impact on the private sector, and it is not likely that the bill will have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Security for Public Deposits Act

Chapter 280, Florida Statutes, is the Florida Security for Public Deposits Act (the Act). Public deposits are moneys of enumerated state and local governments, and include time deposit accounts, demand deposit accounts, and nonnegotiable certificates of deposits, but do not include moneys in deposit notes, securities, mutual funds, and similar investments.[1] Unless exempted, all public deposits must be made in a qualified public depository (QPD).[2] A qualified public depository is any bank, savings bank, or savings association[3] that:

- Is organized and exists under the laws of the United States, the laws of this state or any other state or territory of the United State (i.e., state or federally chartered);
- 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.
- Has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss. 1811 et seq.
- Has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits;
- Meets all the requirements of the Act, including a deposit of eligible collateral with the CFO; and
- Has been designated by the Chief Financial Officer (CFO) as a qualified public depository.[4]

Currently, there are 167 active QPDs in this state.[5] The Department of Financial Services (DFS), through its Division of Treasury and Bureau of Collateral Management, administers the Act's reporting and collateral pledging requirements through its uniform, statewide Public Deposits Program and Collateral Administration Section.[6] QPDs must comply with several reporting requirements under the Act:

- Monthly reports, which include a QPD's average balance of public deposit accounts for purposes of determining its collateral amounts as well as information relating to its capital adequacy,
- Quarterly reports (reports of condition and income or call reports), and
- Annual reports verifying a QPD's name, address, tax identification number, account balances, and so forth, and request confirmation from their QPD(s).[7]

In addition, the Act gives the CFO authority to take action against noncompliant QPDs, as well as financial institutions that accept public deposits without a certificate of qualification from the CFO.

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[1] Section 280.02(23), F.S. "Public depositors" are the official custodians for a governmental unit who is responsible for handling public deposits, and the enumerated state and local entities listed in the definition in "public deposit" parallel the definition of "governmental unit" (with the exception of state universities, which is addressed in this bill).

[2] Section 280.03(1)(b) and (3), F.S.

[3] Although the Act does not define either "savings association" or "savings bank", state and federal banking law define "savings association" to include savings banks. Section 665.0211, F.S.; 12 U.S.C. § 1813(3).

[4] Section 280.02(26), F.S.; Rule 69C-2.005, Fla. Admin. Code.

[5] DFS Collateral Management, Active Qualified Public Depository List: https://apps8.fldfs.com/CAP_Web/PublicDeposits/ActiveQPDDisplayList.aspx (last accessed December 17, 2013).

[6] *Id.*

[7] Section 280.16(1), F.S.

Collateral Requirements & Pledging Levels

Before a QPD accepts or retains a public deposit, it must deposit eligible collateral with an approved custodian in an amount determined according to statutory guidelines and DFS rules.[8] The Act's collateral requirements protect public deposits (both principal and accrued interest) against loss in the event of certain triggering events, most notably, a QPD's insolvency or default.[9] Losses are satisfied first through the standard maximum federal deposit insurance of $250,000,[10] and then through the CFO's demand for payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD. Any remaining shortfall would then be covered by the CFO's authority to impose assessments against the other solvent QPDs, who must agree to share mutual responsibility and contingent liability as a condition of acting as a QPD.[11] The DFS has administered the program for over thirty years with no losses ever realized by participating governmental units.[12]

Each QPD is required to secure public deposits by pledging collateral at a level commensurate with the volume of its public deposits (which are reported monthly, quarterly, and annually to the CFO) and its financial condition. A QPD's financial condition is determined by considering factors such as nationally recognized financial rating services information and established financial performance guidelines.[13] DFS rules set forth collateral requirements and numerical parameters (a quarterly average financial ranking scale of 0 to 100) for the entry, withdrawal, collateral pledging levels.[14] The rule provides:

> Institutions with a ranking of:
> 1. 20 or more may join the Public Deposits program.
> 2. 0 - 15 must withdraw from the Program. However, an institution may choose to meet the following conditions as an alternative to withdrawing:
> a. Establish a maximum amount of public deposits the institution may hold, which is mutually agreed upon by and between the Chief Financial Officer and the institution.
> b. Deposit into an account in the Chief Financial Officer's name eligible collateral equal to 200% of the amount of public deposits agreed to in (a) above.
> c. Submit each month, or whenever requested by the Chief Financial Officer, a certified report listing all public deposits held for the credit of all public depositors.
> 3. 0 - 20 must deposit collateral into a custodial account established in the Chief Financial Officer's name.
> 4. 0 - 29 must pledge collateral at a 125% level, unless paragraph 2 applies.
> 5. 30 - 69 may pledge collateral at a 50% level.
> 6. 70 and above (four-quarter average) may pledge collateral at a 25% level.
> 7. Institutions less than three years old must pledge collateral at a 125% level unless paragraph 2 applies.

The most financially stable QPDs are only required to pledge 25% of the average monthly balance of their public deposits.[15] Meanwhile, collateral pledging levels increase to 50%, 125%, and 200% of a QPD's public deposits as its financial condition ranking decreases. The CFO has authority to require a 125% collateral pledging level for any QPD with a decreased capital account, a violation of the Act, or evidence of factors such as unsound management practices or unstable market conditions that may affect the QPD's solvency.[16]

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[8] Section 280.04(2), F.S.; Chapter 69C-2, Florida Administrative Code (Procedures for Administering the Florida Security for Public Deposits Act).
[9] Section 280.041(6), F.S.
[10] With the enactment of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act on July 21, 2010, the standard maximum deposit insurance amount was permanently raised to $250,000. *See* 12 U.S.C. § 1821(a)(1)E). Depository institutions engaged in the business of receiving deposits other than trust funds may apply for FDIC insurance. 12 U.S.C. § 1815(a)(1).
[11] Section 280.07, F.S.
[12] DFS bill analysis (dated December 23, 2013), on file with the Insurance & Banking Subcommittee staff.
[13] Currently, the DFS uses FIS and IDC rating services: https://apps8.fldfs.com/CAP_Web/PublicDeposits/intro_major.aspx
[14] Section 280.04(1), F.S.; see also Rules 69C-2.006 and 69C-2.024, Fla. Admin. Code.
[15] Section 280.04(2)(b), F.S.
[16] Rule 69C-2.010(6), Fla. Admin. Code.

The least financially stable QPDs must either withdraw from the public deposits program and return public deposits in an orderly fashion, or enter into an alternative deposit agreement and deposit collateral amounts equal to 200% of public deposits held into an account designated by the CFO and restrict its public deposits.[17]

The DFS has indicated that the two highest collateral pledge levels (125% and 200%) have raised regulatory and industry concerns for several small to moderately-sized QPDs.[18] In some instances, the 200% pledge level can exacerbate a struggling institution's condition by forcing it to either adversely affect its liquidity and cash reserves by having to seek additional collateral assets such as securities or letters of credit, or be forced to withdraw from the program and return public deposits. The latter option can trigger a loss of confidence within the QPD's community and possibly a "run" on the QPD's deposits, and thus further impact the QPD's safety and soundness.

QPD Oversight Board

The 2001 amendments to the Act created a six-member Qualified Public Depository Oversight Board (Board) for the purpose of safeguarding the integrity of the Public Deposits Program and preventing the need for loss assessments that could be imposed on all QPDs upon the default or insolvency of any one QPD.[19] The Act gives the CFO authority to identify representative QPDs for potential board member selection and to provide data to the board in order for it to fulfill its duties.[20] Board members are authorized to establish standards in matters regarding financial condition, collateral pledge levels, and so forth; make recommendations to the CFO for exceptions to such standards; issuing decisions on alternative participation agreements referred by the CFO, make recommendations for penalties and corrective actions for program violations; study program areas referred by the CFO; and making assessments on QPDs for the costs of implementing standards when the costs exceed the program's resources.[21] Official actions of the Board are subject to the CFO's approval and existing resources.[22]

However, since the Board's inception, the Board has convened only once. According to the Auditor General's 2011 operational audit:

> While a Board was appointed and an initial meeting was held in December 2001, Bureau staff stated that the Board members had questioned the liability of the represented QPDs in carrying out decisions affecting competitor QPDs and voiced their reluctance to participate in making recommendations as part of their responsibility. Subsequent to this initial meeting, no further Board meetings have taken place.

The Auditor General recommended that the DFS pursue legislative changes in order to effectuate the reestablishment of an active Board.[23] In its follow-up audit, the Auditor General recommended that the DFS pursue its stated legislative goal to establish an advisory committee in lieu of an oversight board.[24]

Effect of the Proposed Committee Bill (Bill)

Section 1. Definitions in the Act

The bill updates several definitions in s. 280.12, F.S.:

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[17] Sections 280.02(2) and 280.11, F.S. and Rule 69C-2.024(3)(b), Fla. Admin. Code.
[18] According to the DFS, only 2.1% of all program collateral is pledged at the two highest levels. Email from DFS, December 16, 2013, on file with Insurance & Banking Subcommittee staff.
[19] Chapter 2001-230, Laws of Florida; Section 280.071, F.S.
[20] Section 280.05(1-2), F.S.
[21] Section 280.071(10), F.S.
[22] Section 280.071(11), F.S.
[23] Auditor General Report No. 2010-049 (November 2009).
[24] Auditor General Report No. 2012-008 (September 2011).

The bill removes the word "immediately" from the definition of "alternative participation agreement" in s. 280.12(2), F.S. Currently, a QPD with a financial condition ranking of 15 or less must either "immediately" withdraw from the public deposits program or enter into a restricted alternative participation agreement. In practice, however, a QPD can take several months or longer to withdraw from the program depending on the time needed for certificates of deposits to mature or other contractually required banking services for a public depositor. The Division of Treasury also publishes notice in the Florida Administrative Register the names of any QPD that elects to withdraw from the program as a safeguard to allow any unidentified public depositors of such QPD to withdraw their public deposits.[25]

The bill amends the definition of "average *monthly* balance" in s. 280.02(4), F.S., to remove the qualifier "before deducting deposit insurance" from the calculation of a QPD's average monthly balance of public deposits held during any 12 calendar months. Currently, a QPD's collateral requirement involves several factors, but is typically a function of its average daily balance, or *uninsured* public deposits multiplied by its collateral pledging level.[26] However, the most financially stable QPDs, while only required to pledge 25% of its "average *monthly* balance" of public deposits, must include deposit insurance in their collateral calculation. Accordingly, this requirement can negatively impact QPDs with public deposits that are substantially or completely covered by FDIC deposit insurance.[27] For example, a QPD that has averaged $4 million in gross public deposits (with all such deposits covered by FDIC insurance), has a collateral requirement of $1 million (i.e., $4 million average monthly balance times 25%), instead of the Act's minimum collateral requirement of $100,000.[28]

The bill amends the current defined term "capital account" in s. 280.04(6), F.S., to add "tangible equity capital" as an alternative term to reflect the current bank regulatory environment more accurately.[29] Tangible equity reflects the total equity capital of a QPD, minus intangible assets such as goodwill, and is calculated from an institution's quarterly call report (also known as reports of condition and income). The bill also amends "capital account" to remove reference to the Thrift Financial Report, which was previously filed by savings banks and savings and loan associations. With the enactment of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Office of Thrift Supervision (formerly the primary federal regulator for savings banks and savings and loans associations), was merged into other federal banking agencies on July 21, 2011.[30] Since then, the Office of the Comptroller of the Currency has assumed primary federal regulatory responsibility over savings banks and savings and loans associations, in addition to nationally-chartered banks. In addition, effective with the first quarterly report of 2012, the Thrift Financial Report is no longer used by savings banks or savings and loans associations.[31] These institutions now file the same Consolidated Reports of Condition and Income (call report) referenced in s. 280.16(6), F.S., and filed by all insured commercial banks.

The bill adds "state university" to the list of state and local entities that define "governmental unit" in s. 280.02(14), F.S., which comprises the list of entities whose public moneys are entitled to the Act's protection. This will create consistency with the definition of "public deposit," which are the public moneys of the state, 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.[32]

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[25] E-mail from the DFS (received December 4, 2013), on file with Insurance & Banking Subcommittee staff.

[26] See the Act's definition of "average *daily* balance" in s. 280.04(3), F.S., which excludes deposit insurance in determining collateral amounts at the 125% pledging level for newer or less financially stable QPDs.

[27] *Id.*

[28] Section 280.04(2)(e), F.S.

[29] Email from the DFS (received December 16, 2013), on file with the Insurance & Banking Subcommittee staff. For example, the Florida Financial Institutions Codes (chs. 655-667, F.S.)., defines "capital accounts" as "the aggregate value of unimpaired capital stock based on the par value of the shares, plus any unimpaired surplus and undivided profits or retained earnings of a financial institution. For the purposes of determining insolvency or imminent insolvency, the term does not include allowances for loan or lease loss reserves, intangible assets, subordinated debt, deferred tax assets, or similar assets." Section 655.005(1)(d), F.S.

[30] 12 U.S.C. 5412-5413.

[31] Agency Information Collection Activities; Submission for OMB Review; Joint Comment Request, 76 FR 39,981 (July 7, 2011).

[32] Section 280.02(23), F.S.

The bill eliminates the definition of "oversight board," due to the bill's repeal of the QPD Oversight Board provision in the Act (s. 280.071, F.S.).

The bill eliminates a clause within the definition of "public deposit" regarding a requirement of banks, savings banks, and savings association to maintain reserves. Reserve requirements are the amount of funds that a depository institution must hold in reserve against specified deposit liabilities, and are determined in accordance with the Federal Reserve's Regulation D.[33] This reserve requirement is no longer needed within the definition of "public deposit," as the Federal Reserve no longer requires depository institutions to maintain reserves against certain types of bank accounts, whether such accounts involve public deposits or not. Since December 27, 1990, the reserve requirement for "nonpersonal time deposits" has been 0%. Nonpersonal time deposits are defined, in part, as "[a] time deposit, including an MMDA or any other savings deposit, representing funds in which any beneficial interest is held by a depositor which is not a natural person."[34] Governmental units are not considered to be natural persons by the Federal Reserve[35], so a QPD has a 0% reserve requirement for a governmental unit's certificates of deposit ("CD"), savings accounts, or money market deposit accounts ("MMDA"). According to the DFS, eliminating the reserve requirement will provide consistency with the Act's current definition of "public deposit" which includes nonnegotiable CDs, as well as clarity that it includes public moneys held in savings accounts and MMDAs.[36]

Section 2. – Public deposits to be secured; clarification of exemption

Current law exempts a number of moneys and public deposits from the requirements and protections of the Act. One exemption involves public deposits "which are fully secured under federal regulations."[37] This exemption was added in 1998 to address public deposit accounts of a Florida governmental unit that was required to be collateralized under both state law and federal regulation. However, public housing authorities are required by the U.S. Department of Housing and Urban Development (HUD) to have their public deposits collateralized with only HUD-approved investments, which generally only allow certain eligible collateral such as U.S. Treasury and agency securities.[38] This has resulted in some QPDs having to collateralize local housing authorities' public deposits under both Florida and federal programs. The "fully secured under federal regulations" language was added in 1998 to provide relief to these QPDs and in anticipation of other federal regulatory agencies adding collateralization requirements. However, this 1998 language has created ambiguity among the industry about whether depositing public funds with any depository institution, whether a QPD or not, with FDIC deposit insurance (a matter of federal regulation) was sufficient to qualify for this exemption. Accordingly, the DFS has expressed that adding the phrase "pursuant to a collateral requirement" would provide clarification as to the actual intent of the exemption.

Section 3. - Reduction of pledge levels

The bill reduces the numerical parameters for the current 125% and 200% pledge levels to 110% and 150%, respectively, in s. 280.04, F.S. The DFS has indicated that if these adjustments were adopted, Florida would still have the highest pledge level (150%) among the states with centrally administered public deposit programs,[39] thus ensuring the safety of public deposits.

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[33] Board of Governors of the Federal Reserve Requirements, "Reserve Requirements," http://www.federalreserve.gov/monetarypolicy/reservereq.htm (last accessed December 18, 2013). Regulation D is codified at C.F.R. Title 12, Chapter II, Subchapter A, Part 204.

[34] *Id.* See also 12 C.F.R. 204.2(f).

[35] Regulation D defines "natural person" as either an individual or a sole proprietorship, and does not include a corporation owned by an individual, a partnership or other association. 12 CFR 204.2(g).

[36] E-mail with DFS (received December 4, 2013), on file with Insurance & Banking Subcommittee staff.

[37] Section 280.03(3)(e), F.S.

[38] See HUD Public and Indian Housing Notice 02-13; *see also* Notice PIH 96-33.

[39] E-mail with DFS, dated November 20, 2013, on file with Insurance & Banking Subcommittee staff.

Section 4. – Powers and duties of the CFO

Because the bill repeals the QPD Oversight Board (see section 6, below), the bill repeals provisions of s. 280.05, F.S., that give the CFO authority over the Board.

Section 5. Grounds for suspension or disqualification of a QPD.

The bill amends s. 280.051, F.S., to make conforming changes to the current definition of capital accounts (which the bill renames as "tangible equity capital"), and clarifies that failure to execute a "collateral control agreement" prior to the use of a custodian is a ground for suspension or disqualification. Currently, this section and DFS rule use the term "public depository pledge agreement,"[40] but the DFS renamed this form to "Collateral Control Agreement" in 2001.[41]

Section 6. Repeal of the QPD Oversight Board

The bill repeals s. 280.071, F.S., regarding the QPD Oversight Board.

Sections 7 and 8. Defaulted or insolvent QPDs.

Current law requires the CFO to notify all public depositors (who have complied with s. 280.17, F.S.) in the event of a QPD's default or insolvency. The bill provides an exception to this notice requirement in s. 280.085, F.S., when a defaulting or insolvent QPD's public deposits are acquired by another bank, savings bank, or savings association. The DFS has proposed this language since the vast majority of bank failures result in another insured depository institution acquiring all deposited funds (insured and uninsured), and therefore eliminating any risk of loss to depositors.[42]

Current law provides that in the event that a QPD is merged into, acquired by, or consolidated with a non-QPD bank, savings bank, or savings association, the resulting institution automatically becomes a QPD and assumes the former institution's contingent liability and public deposits, and must provide notice to the CFO regarding its decision to remain or withdraw in the program within specified time limits.[43] The bill provides that any bank, savings bank, or savings association that acquires some or all of a defaulted or insolvent QPD is also subject to this requirement. This language was proposed by the DFS to provide certainty that any non-QPD bank that acquires a failed QPD would automatically be subject to the Act.

Section 9. Withdrawal from the public deposits program

The bill corrects a cross-reference in s. 280.11(3), F.S. (regarding a QPD's mandated withdrawal from the public deposits program), which currently references a non-existent s. 280.05(1)(b), F.S. The bill provides that a QPD which is required to withdraw from the public deposits program pursuant to s. 280.05(17), F.S., which will refer to the CFO's authority to suspend or disqualify any QPD in violation of the Act.[44]

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[40] Rule 69C-2.009(1)(b), Fla. Admin. Code; Public Depository Pledge Agreement - Form DI4-1001 (revised March 1997).
[41] Form DFS-J1-1001, Revised June 2001. DFS Collateral Management, at https://apps8.fldfs.com/CAP_Web/PublicDeposits/intro_definitions.aspx (last accessed Dec. 9, 2013).
[42] Email from the DFS (received December 16, 2013), on file with the Insurance & Banking Subcommittee staff. According to information provided by the DFS (received November 30, 2013), 32 QPDs have failed since February 2009. However, all of them have been acquired by other institutions. Once any failed bank is formally closed by its primary bank regulator and resolved by the Federal Deposit Insurance Corporation (acting as a receiver or a conservator), the FDIC conducts an inventory and evaluation of the failed bank to determine appropriate resolution options to offer to potential bidders. For more information on bank failures and resolution structures, see "Anatomy of a Bank Failure," by Ragalevsky and Ricardi, *The Banking Law Journal* (Dec. 2009).
[43] Section 280.10, F.S.
[44] Currently, this provision is s. 280.05(20), F.S., but is renumbered to subsection (17) by the bill.

Section 10. Reporting requirements of QPDs.

The bill also removes the requirement in s. 280.16(1)(e), F.S., that QPDs submit their call reports to the CFO. However, depository institutions are already required under federal law to submit their call reports to the Federal Financial Institutions Examination Council (FFIEC)[45], and all call reports are already publicly available through the FFIEC's website.[46] Accordingly, the DFS has recommended that this reporting requirement be eliminated from the Act.[47]

Section 11. Requirements for public depositors; notice to public depositors and governmental units; loss of protection.

The bill streamlines certain reporting requirements for public depositors' annual report to the CFO:

Public depositors are required to confirm certain public deposit information (account numbers, federal employer identification number, etc.) with the CFO. The bill eliminates the requirement in s. 280.17(5), F.S., for public depositors to obtain confirmation directly from their QPDs for purposes of preparing annual reports to the CFO.

Additionally, public depositors are required to submit annually to the CFO a public deposit identification and deposit form,[48] which s. 280.17(8), F.S., currently requires as a condition for protection from loss to public depositors.[49] However, the DFS has noted that in the event of a QPD's default or insolvency, it is already required by the Act to coordinate with the Office of Financial Regulation or the receiver of the QPD (generally, the FDIC) to "ascertain the amount of funds of each public depositor on deposit at such depository and the amount of deposit insurance applicable to such deposits."[50] Additionally, the Act provides that the CFO must validate claims on public deposits accounts. Therefore, the DFS is already required to validate claims of loss by coordinating with OFR and/or the FDIC independent of the existence or utilization by a public depositor of the ID and Acknowledgment form. However, the current requirement for the form may lead to situations where a governmental unit is deprived of the program's protection simply due to an inadvertent oversight to file this form (or may have otherwise reported the information to the DFS outside of the form). Accordingly, the DFS has recommended that this ministerial reporting requirement for public depositors, while still required, should not prove fatal to a public depositor if the QPD has otherwise classified, reported, and collateralized the public deposit account.

B. SECTION DIRECTORY:

Section 1: Amends s. 280.02, F.S., relating to definitions.

Section 2: Amends s. 280.03. F.S., relating to public deposits to be secured; prohibitions; exemptions.

Section 3: Amends s. 280.04, F.S., relating to collateral for public deposits; general provisions.

Section 4: Amends s. 280.05, F.S., relating to powers and duties of the Chief Financial Officer.

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[45] 12 U.S.C. § 324 (State member banks); 12 U.S.C. §1817 (State nonmember banks); 12 U.S.C. §161 (National banks); and 12 U.S.C. §1464 (Savings associations). The FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB), along with advisory state agency representatives. "About the FFIEC," at http://www.ffiec.gov/about.htm (last accessed December 18, 2013).

[46] The FFIEC Central Data Repository's Public Data Distribution website, at https://cdr.ffiec.gov/public/ (last accessed Dec. 9, 2013).

[47] Email from the DFS (received December 16, 2013), on file with the Insurance & Banking Subcommittee staff.

[48] Section 280.17(6), F.S. This form has been adopted by DFS rule. Form DFS-J1-1295(June 1998).

[49] Section 280.17(8), F.S.

[50] Section 280.08(2), F.S.

Section 5: Amends s. 280.051, F.S., relating to grounds for suspension or disqualification of a qualified public depository.

Section 6: Repeals s. 280.071, F.S., relating to qualified public depository oversight board; purpose; identifying representative qualified public depositories; member selection; responsibilities.

Section 7: Amends s. 280.085, F.S., relating to notice to claimants.

Section 8: Amends s. 280.10, F.S., relating to effect of merger, acquisition, or consolidation; change of name or address.

Section 9: Amends s. 280.11, F.S., relating to withdrawal from public deposits program; return of pledged collateral.

Section 10: Amends s. 280.16, F.S., relating to requirements of qualified public depositories; confidentiality.

Section 11: Amends s. 280.17, F.S., relating to requirements for public depositors; notice to public depositors and governmental units; loss of protection.

Section 12: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's reduction of the two highest collateral pledge level may have a positive impact on small to moderate sized QPDs. Additionally, the bill's clarifications of reporting and other compliance requirements may have an indeterminate positive effect on the private sector.

D. FISCAL COMMENTS:

The DFS reports that the bill will not have any fiscal impact, and programming changes to their Collateral Administration Program computer system should be absorbed with existing information technology resources.[51]

[51] Email from the DFS (received December 16, 2013), on file with the Insurance & Banking Subcommittee staff.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

Enactment of this legislation will necessitate amendment of existing rules for the purpose of conforming language. Chapter 69C-2, F.A.C., which provides procedures for administering the Act, would have to be amended to conform definitions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

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

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

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

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

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

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

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

(4) "Average monthly balance" means the average monthly balance of public deposits held~~, before deducting deposit insurance,~~ by the depository during any 12 calendar months. The average monthly balance of the previous 12 calendar months shall

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

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

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

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

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

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

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

(b) Has executed all forms required under this chapter or

any rule adopted hereunder;

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

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

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

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

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

(13) "Financial institution" means, including, but not limited to, an association, bank, brokerage firm, credit union, industrial savings bank, savings and loan association, trust company, or other type of financial institution organized under

the laws of this state or any other state of the United States and doing business in this state or any other state, in the general nature of the business conducted by banks and savings associations.

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

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

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

(17) "Operating subsidiary" means the qualified public depository's 100-percent owned corporation that has ownership of pledged collateral. The operating subsidiary may not have ~~no~~ powers beyond those that its parent qualified public depository may itself exercise. The use of an operating subsidiary is at the discretion of the qualified public depository and must meet the Chief Financial Officer's requirements.

~~(18) "Oversight board" means the qualified public depository oversight board created in s. 280.071 for the purpose of safeguarding the integrity of the public deposits program and preventing the realization of loss assessments through~~

~~standards, policies, and recommendations for actions to the Chief Financial Officer.~~

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

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

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

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

(22)~~(23)~~ "Public deposit" means the moneys of the state or of any state university, county, school district, community college district, special district, metropolitan government, or municipality, including agencies, boards, bureaus, commissions, and institutions of any of the foregoing, or of any court, and includes the moneys of all county officers, including constitutional officers, which ~~that~~ are placed on deposit in a bank, savings bank, or savings association ~~and for which the bank, savings bank, or savings association is required to maintain reserves~~. This includes, but is not limited to, time deposit accounts, demand deposit accounts, and nonnegotiable

certificates of deposit. Moneys in deposit notes and in other nondeposit accounts such as repurchase or reverse repurchase operations are not public deposits. Securities, mutual funds, and similar types of investments are not ~~considered~~ public deposits and are ~~shall~~ not ~~be~~ subject to ~~the provisions of~~ this chapter.

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

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

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

(a) Is organized and exists under the laws of the United States or~~,~~ the laws of this state or any other state or territory of the United States.

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

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

(d) Has procedures and practices for accurate identification, classification, reporting, and collateralization

of public deposits.

(e) Meets all the requirements of this chapter.

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

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

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

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

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

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

(b) Demand payment under letters of credit.

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

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

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

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

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

280.04 Collateral for public deposits; general provisions.—

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

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

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

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

equity capital ~~accounts~~; or

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

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

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

1. Has been established for less than 3 years;

2. Has experienced material decreases in its tangible equity capital ~~accounts~~; or

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

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

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

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

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

(17), respectively, to read:

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

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

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

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

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

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

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

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

(a) Qualified public depository monthly reports and schedules. The Chief Financial Officer shall review the reports of each qualified public depository for material changes in tangible equity capital ~~accounts~~ or changes in name, address, or

type of institution; record the average daily balances of public deposits held; and monitor the collateral-pledging levels and required collateral.

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

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

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

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

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

(2) Submitted reports containing inaccurate or incomplete

information regarding public deposits or collateral for such deposits, tangible equity capital ~~accounts~~, or the calculation of required collateral.

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

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

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

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

280.085 Notice to claimants.—

(1) Upon determining the default or insolvency of a qualified public depository, the Chief Financial Officer shall notify, by first-class mail, all public depositors that have complied with s. 280.17 of such default or insolvency. The notice must ~~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 Chief Financial Officer within 30 days after the date of the notice.

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

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

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

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

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

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

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

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

deposits is subject to subsection (1).

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

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

(3) A qualified public depository which is required to withdraw from the public deposits program pursuant to s. 280.05(17) ~~280.05(1)(b)~~ shall not receive or retain public deposits after the effective date of withdrawal. The contingent liability, required collateral, and reporting requirements of the withdrawing depository shall continue until the effective date of withdrawal. Notice of withdrawal (order of discontinuance) from the Chief Financial Officer shall be mailed to the qualified public depository by registered or certified mail. Penalties incurred because of withdrawal from the public deposits program shall be the responsibility of the withdrawing depository.

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

280.16 Requirements of qualified public depositories; confidentiality.—

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

(a) Take the following actions for each public deposit account:

1. Identify the account as a "Florida public deposit" on

the deposit account record with the name of the public depositor or provide a unique code for the account for such designation.

2. When the form prescribed by the Chief Financial Officer for acknowledgment of receipt of each public deposit account is presented to the qualified public depository by the public depositor opening an account, the qualified public depository shall execute and return the completed form to the public depositor.

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

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

(b) Within 15 days after the end of each calendar month, or when requested by the Chief Financial Officer, submit to the Chief Financial Officer a written report, under oath, indicating the average daily balance of all public deposits held by it during the reported month, required collateral, a detailed

schedule of all securities pledged as collateral, selected financial information, and any other information ~~that~~ the Chief Financial Officer deems ~~determines~~ necessary to administer this chapter.

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

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

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

~~1. A copy of the quarterly Consolidated Reports of~~

~~Condition and Income, and any amended reports, required by the Federal Deposit Insurance Act, 12 U.S.C. ss. 1811 et seq., if such depository is a bank; or~~

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

(2) The following forms must be made under oath:

(a) The agreement of contingent liability.

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

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

Section 11. Section 280.17, Florida Statutes, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(a) Notify the Chief Financial Officer immediately by telecommunication after receiving notice of the default or insolvency from the receiver of the depository with subsequent

written confirmation and a copy of the notice.

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

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

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

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

(5) Each public depositor shall confirm annually that public deposit information as of the close of business on September 30 has been provided by each qualified public depository and is in agreement with public depositor records. Such confirmation must ~~shall~~ include the federal employer identification number of the qualified public depository, the name on the deposit account record, the federal employer identification number on the deposit account record, and the account number, account type, and actual account balance on deposit. ~~Public depositors shall request such confirmation information from qualified public depositories on or before the fifth calendar day of October and shall allow until October 31 to receive such information.~~ Any discrepancy found in the confirmation process must ~~shall~~ be resolved ~~reconciled~~ before November 30.

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

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

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

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

(d) Confirmation that a current public deposit identification and acknowledgment form, as described in subsection (2), has been completed for each public deposit account and is in the possession of the public depositor.

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

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

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

(c) A governmental unit ~~units~~ established during the year that filed an annual report as a new governmental unit or

otherwise furnished in writing to the Chief Financial Officer its official name, address, and federal employer identification number.

(8) If a public depositor does not comply with this section on each public deposit account, the protection from loss provided in s. 280.18 is not effective as to that public deposit account. However, the protection from loss provided in s. 280.18 remains effective if a public depositor fails to present the form prescribed by the Chief Financial Officer for identification of public deposit accounts and the Chief Financial Officer determines that the defaulting or insolvent depository had classified, reported, and collateralized the account as a public deposit account.

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