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[Second Reprint]

ASSEMBLY, No. 3998

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED JUNE 4, 2009

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Co-Sponsored by:

Assemblyman Schaer, Senators Lesniak and Cardinale

SYNOPSIS

Concerns governmental unit public funds deposited in public depositories.

CURRENT VERSION OF TEXT

As amended by the General Assembly on December 7, 2009.



(Sponsorship Updated As Of: 1/8/2010)

1 AN ACT concerning ²[the collateral of] governmental unit public
2 funds deposited in² public depositories ²[and],² amending ²and
3 supplementing² P.L.1970, c.236 ², and amending P.L.2005, c.199².

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 1 of P.L.1970, c.236 (C.17:9-41) is amended to read
9 as follows:

10 1. In this act, unless the context otherwise requires:

11 ²“Adequately capitalized” means, with respect to a public
12 depository, “adequately capitalized” as the term is defined in
13 subsection (b) of section 38 of the “Federal Deposit Insurance Act,”
14 Pub.L.81-797 (12 U.S.C. s.1831o(b)), and its implementing
15 regulations;²

16 "Association" means any State or federally chartered savings and
17 loan association;

18 "Capital funds" means (a) in the case of a State bank or national
19 bank or capital stock savings bank, the aggregate of the capital
20 stock, surplus and undivided profits of the bank or savings bank; (b)
21 in the case of a mutual savings bank, the aggregate of the capital
22 deposits, if any, and the surplus of the savings bank; and (c) in the
23 case of an association, the aggregate of all reserves required by any
24 law or regulation, and the undivided profits, if any, of the
25 association;

26 "Commissioner" means the Commissioner of Banking and
27 Insurance;

28 ²“Critically undercapitalized” means, with respect to a public
29 depository, “critically undercapitalized” as the term is defined in
30 subsection (b) of section 38 of the “Federal Deposit Insurance Act,”
31 Pub.L.81-797 (12 U.S.C. s.1831o(b)), and its implementing
32 regulations;²

33 "Defaulting depository" means a public depository as to which
34 an event of default has occurred;

35 "Eligible collateral" means:

36 (a) Obligations of any of the following:

37 (1) The United States;

38 (2) Any agency or instrumentality of the United States,
39 including, but not limited to, the Student Loan Marketing
40 Association, the Government National Mortgage Association, the
41 Federal Home Loan Mortgage Corporation, the Federal National
42 Mortgage Association, the Federal Housing Administration and the
43 Small Business Administration;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AFI committee amendments adopted June 11, 2009.

²Assembly floor amendments adopted December 7, 2009.

1 (3) The State of New Jersey or any of its political subdivisions;

2 (4) Any other governmental unit; or

3 (b) Obligations guaranteed or insured by any of the following,
4 to the extent of that insurance or guaranty:

5 (1) The United States;

6 (2) Any agency or instrumentality of the United States,
7 including, but not limited to, the Student Loan Marketing
8 Association, the Government National Mortgage Association, the
9 Federal Home Loan Mortgage Corporation, the Federal National
10 Mortgage Association, the Federal Housing Administration and the
11 Small Business Administration;

12 (3) The State of New Jersey or any of its political subdivisions;
13 or

14 (c) Obligations now or hereafter authorized by law as security
15 for public deposits;

16 (d) Obligations in which the State, political subdivisions of the
17 State, their officers, boards, commissions, departments and agencies
18 may invest pursuant to an express authorization under any law
19 authorizing the issuance of those obligations;

20 (e) Obligations, letters of credit, or other securities or evidence
21 of indebtedness constituting the direct and general obligation of a
22 federal home loan bank or federal reserve bank; ¹[or] ¹ ²or²

23 (f) Any other obligations as may be approved by the
24 commissioner by regulation or by specific approval; ²[¹or

25 (g) Any other obligations as may be approved by the State
26 Treasurer by regulation or by specific approval; ¹ ²

27 "Event of default" means issuance of an order of a supervisory
28 authority or of a receiver restraining a public depository from
29 making payments of deposit liabilities;

30 "Governmental unit" means any county, municipality, school
31 district or any public body corporate and politic created or
32 established under any law of this State by or on behalf of any one or
33 more counties or municipalities, or any board, commission,
34 department or agency of any of the foregoing having custody of
35 funds;

36 "Maximum liability" of a public depository means, with respect
37 to any event of default, a sum equal to ²[5%] ^{4%} of the [average
38 daily balance of collected public funds held on deposit by the
39 depository during the six-month period ending on the last day of the
40 month next preceding the occurrence of such event of default]
41 ²[amount, if any, by which the] average daily balance of collected²
42 public funds ²held² on deposit ²[, as of the date] by the depository
43 during the three-month period ending on the last day of the month
44 immediately preceding the occurrence of the event² of default ²[.]
45 that² exceed the amount of such public fund deposits that are ²[:
46 (1).]² insured by the Federal Deposit Insurance Corporation or by
47 any other agency of the United States which insures deposits made

1 in public depositories; ¹[or] ²[and¹ (2) collateralized pursuant to
2 section 4 of P.L.1970, c.236 (C.17:9-44);]² ¹[or both:]¹

3 "Net deposit liability" means the deposit liability of a defaulting
4 depository to a governmental unit after deduction of any deposit
5 insurance with respect thereto;

6 "Obligations" means any bonds, notes, capital notes, bond
7 anticipation notes, tax anticipation notes, temporary notes, loan
8 bonds, mortgage related securities, or mortgages;

9 "Public depository" means a State or federally chartered bank,
10 savings bank or an association located in this State or a state or
11 federally chartered bank, savings bank or an association located in
12 another state with a branch office in this State, the deposits of
13 which are insured by the Federal Deposit Insurance Corporation and
14 which receives or holds public funds on deposit;

15 "Public funds" means the funds of any governmental unit, but
16 does not include deposits held by the State of New Jersey Cash
17 Management Fund;

18 ²"Significantly undercapitalized" means, with respect to a public
19 depository, "significantly undercapitalized" as the term is defined in
20 subsection (b) of section 38 of the "Federal Deposit Insurance Act,"
21 Pub.L.81-797 (12 U.S.C. s.1831o(b)), and its implementing
22 regulations;

23 "Undercapitalized" means, with respect to a public depository,
24 "undercapitalized" as the term is defined in subsection (b) of
25 section 38 of the "Federal Deposit Insurance Act," Pub.L.81-797
26 (12 U.S.C. s.1831o(b)), and its implementing regulations;²

27 "Valuation date" means ²March 31, June 30, September 30, and²
28 December 31 ²[and June 30] ;

29 "Well capitalized" means, with respect to a public depository,
30 "well capitalized" as the term is defined in subsection (b) of section
31 38 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12
32 U.S.C. s.1831o(b)), and its implementing regulations².

33 (cf: P.L.2003, c.178, s.1)

34

35 ²2. Section 2 of P.L.1970, c.236 (C.17:9-42) is amended to read
36 as follows:

37 2. **[No]** The receipt and holding of public funds on deposit by
38 a public depository is a voluntary activity undertaken by that
39 depository. However, no governmental unit shall deposit public
40 funds in a public depository unless such funds are secured by the
41 depository, and the depository is otherwise in compliance, or acting
42 in accordance with, this act.²

43 (cf: P.L.1970, c. 236, s. 2)

44

45 ²3. (New section) a. (1) Except as set forth in subsection b. of
46 this section concerning extraordinary amounts of public funds on
47 deposit, every public depository having public funds on deposit

1 therein that are not insured by the Federal Deposit Insurance
2 Corporation or by any other agency of the United States which
3 insures deposits made in public depositories, shall maintain, as
4 security for such deposits, eligible collateral having a market value:

5 (a) At least equal to 5% of the uninsured public funds on
6 deposit, if the public depository is well capitalized;

7 (b) At least equal to 30% of the uninsured public funds on
8 deposit, if the public depository is adequately capitalized;

9 (c) At least equal to 60% of the uninsured public funds on
10 deposit, if the public depository is undercapitalized;

11 (d) At least equal to 90% of the uninsured public funds on
12 deposit, if the public depository is significantly undercapitalized, or,
13 in the alternative and at the election of the depository, a reduction in
14 the amount of public funds held on deposit, so that the only
15 remaining public funds on deposit after this reduction are insured
16 by the Federal Deposit Insurance Corporation or by any other
17 agency of the United States which insures deposits made in public
18 depositories; or

19 (e) At least equal to 120% of the uninsured public funds on
20 deposit, if the public depository is critically undercapitalized, or, in
21 the alternative and at the election of the depository, a reduction in
22 the amount of public funds held on deposit, so that the only
23 remaining public funds on deposit after this reduction are insured
24 by the Federal Deposit Insurance Corporation or by any other
25 agency of the United States which insures deposits made in public
26 depositories.

27 (2) The amount of eligible collateral in relation to the amount of
28 public funds on deposit necessary for a public depository to meet
29 the collateral requirements of paragraph (1) of this subsection shall
30 be measured as: (a) the percentage, set forth under paragraph (1) of
31 this subsection, of the average daily balance of collected, uninsured
32 public funds on deposit during the three-month period ending on the
33 immediately preceding valuation date; or (b), at the election of the
34 depository, the percentage, set forth under paragraph (1) of this
35 subsection, of the average balance of collected, uninsured public
36 funds on deposit on the first, eighth, fifteenth and twenty-second
37 days of each month in the three-month period ending on the
38 immediately preceding valuation date.

39 b. (1) Every public depository having public funds on deposit
40 therein in excess of \$200,000,000 that are not insured by the
41 Federal Deposit Insurance Corporation or by any other agency of
42 the United States which insures deposits made in public
43 depositories shall maintain, as security for such excess, uninsured
44 deposits, eligible collateral having a market value at least equal to
45 100% of the average daily balance of those collected, uninsured
46 public funds on deposit during the three-month period ending on the
47 immediately preceding valuation date, or, at the election of the
48 depository, at least equal to 100% of the average balance of those

1 collected, uninsured public funds on deposit on the first, eighth,
 2 fifteenth and twenty-second days of each month in the three-month
 3 period ending on the immediately preceding valuation date.

4 (2) A public depository shall not at any time receive and hold on
 5 deposit for any period in excess of 15 days public funds of a
 6 governmental unit or governmental units which, in the aggregate,
 7 exceed 75% of the capital funds of the depository, unless such
 8 depository shall, in addition to the security required to be
 9 maintained under this section, secure such excess by eligible
 10 collateral with a market value at least equal to 100% of such
 11 excess.²

12

13 ²[2.]⁴ Section 4 of P.L.1970, c.236 (C.17:9-44) is amended
 14 to read as follows:

15 4. a. ²[Every public depository having public funds on deposit
 16 therein shall, as security for such deposits, maintain eligible
 17 collateral having a market value at least equal to either (1) 5% of
 18 the average daily balance of collected public funds on deposit
 19 during the 6-month period ending on the next preceding valuation
 20 date, or (2), at the election of the depository, at least equal to 5% of
 21 the average balance of collected public funds on deposit on the first,
 22 eighth, fifteenth and twenty-second days of each month in the 6-
 23 month period ending on the next preceding valuation date, but no]
 24 (1) No² public depository ², notwithstanding the collateral
 25 requirements set forth under section 3 of P.L. , c. (C.)
 26 (pending before the Legislature as this bill),² shall be required to
 27 maintain any eligible collateral pursuant to this act as security for
 28 any deposit or deposits of any governmental unit to the extent that
 29 such deposit or deposits are insured by the Federal Deposit
 30 Insurance Corporation [or the Federal Savings and Loan Insurance
 31 Corporation] or by any other agency of the United States which
 32 insures deposits made in public depositories.

33 ²(2)² In the case of any public depository which has not held
 34 public funds on deposit for all of ²[such 6-month] a three-month²
 35 period ²as measured pursuant to the provisions of section 3 of
 36 P.L. , c. (C.) (pending before the Legislature as this bill),² the
 37 commissioner shall ², notwithstanding the provisions of that
 38 section,² prescribe the amount of eligible collateral required to be
 39 maintained.

40 ²(3)² Depositories shall have the right to make substitutions of
 41 eligible collateral at any time. The income from eligible collateral
 42 shall belong to the public depository without restriction.

43 b. ²[No public depository shall at any time receive and hold on
 44 deposit for any period in excess of 15 days public funds of a
 45 governmental unit or governmental units which, in the aggregate,
 46 exceed ¹[75%] 50%¹ of the capital funds of the depository, unless

1 such depository shall, in addition to the security required to be
2 maintained under paragraph a. of this section, secure ¹any such
3 excess ¹: (1) of more than 50%, but not exceeding 75%, by eligible
4 collateral with a market value at least equal to 50% of that excess;
5 and (2) of more than 75%,¹ by eligible collateral with a market
6 value at least equal to 100% of ¹[such] that¹ excess.] (Deleted by
7 amendment, P.L. , c.) (pending before the Legislature as this
8 bill)²

9 c. All collateral required to be maintained shall be deposited
10 with ²[the] any² Federal Reserve Bank ²[of New York, the Federal
11 Reserve Bank of Philadelphia, the] or² Federal Home Loan Bank
12 ²[of New York, as the case may be]², or ²[with]² any other
13 banking institution located in this State or a contiguous state
14 ²[which is a member of the Federal Reserve System] as authorized
15 by regulation of the commissioner,² and ²which² has capital funds
16 of not less than \$25,000,000.00. Notwithstanding the foregoing, the
17 commissioner may authorize public depositories to hold and
18 maintain the required collateral in such a manner as he deems
19 consistent with the purposes of this act.

20 d. The market value of eligible collateral maintained pursuant
21 to this section on any valuation date shall be presumed to be the
22 market value of such collateral ²continuing² until the next
23 succeeding valuation date.

24 ²[e. Notwithstanding the provisions of ¹[subsections]
25 subsection¹ a. ¹[and b.]¹ of this section, a public depository may
26 comply with the requirements of this section by maintaining
27 eligible collateral with a market value ¹[at least] equal to any
28 percentage amount of the public funds it holds on deposit, in excess
29 of the amounts established by subsection a., as determined by the
30 public depository, up to an amount¹ equal to 100% of the public
31 funds it holds on deposit, in excess of the amount of those deposits
32 insured by the Federal Deposit Insurance Corporation or by any
33 other agency of the United States which insures deposits made in
34 public depositories ¹[; except that, for]. For¹ the purposes of this
35 subsection, the valuation date shall be the last day of each calendar
36 month and the depository shall be deemed to be in compliance with
37 this subsection as to any valuation date if it has pledged at least the
38 applicable amount of eligible collateral by no later than the 15th day
39 of the next calendar month following the valuation date, or such
40 later date in that month as the commissioner may prescribe by
41 regulation.]²

42 (cf: P.L.1973, c.98, s.2)

43

44 ²[3. Section 5 of P.L.1970, c.236 (C.17:9-45) is amended to read
45 as follows:

- 1 5. When the commissioner determines that an event of default
2 has occurred, he shall proceed in the following manner:
- 3 a. Within 20 days after the occurrence of the event of default,
4 he shall ascertain the amount of public funds on deposit in the
5 defaulting depository as disclosed by its records and the amount
6 thereof covered by federal deposit insurance and certify the
7 amounts thereof to each affected governmental unit;
- 8 b. Within 10 days after receipt of such certification, each such
9 governmental unit shall furnish to the commissioner verified
10 statements of its public deposits in such defaulting depository as
11 disclosed by its records;
- 12 c. Upon receipt of such certificate and statements, he shall
13 ascertain and fix the amount of such public funds on deposit in such
14 defaulting depository, net after deduction of any deposit insurance;
- 15 d. He shall ascertain the amount derived or to be derived from
16 the liquidation of the collateral maintained by the defaulting
17 depository pursuant to section 4 of this act, and shall distribute such
18 proceeds pro rata among the governmental units affected to the
19 extent necessary to satisfy the net deposit liabilities to such
20 governmental units;
- 21 e. If the proceeds of the sale of the collateral of a defaulting
22 depository which is a State bank, a national bank or a savings bank
23 are insufficient to pay in full the net deposit liability of such
24 depository to all affected governmental units, he shall assess the
25 deficiency against all other such public depositories having public
26 funds on deposit as of the occurrence of the event of default, subject
27 to the provisions of ¹ [subsections] subsection ¹ j. ¹ [and k.] ¹ of this
28 section, in the proportion that the maximum liability of each such
29 other public depository bears to the aggregate of the maximum
30 liabilities of all such other depositories, but no such assessment
31 shall exceed the maximum liability of any such other depository;
- 32 f. If the proceeds of the sale of the collateral of a defaulting
33 depository which is an association are insufficient to pay in full the
34 net deposit liability of such depository to all affected governmental
35 units, he shall assess the deficiency against all such other public
36 depositories having public funds on deposit as of the occurrence of
37 the event of default, subject to the provisions of ¹ [subsections]
38 subsection ¹ j. ¹ [and k.] ¹ of this section, in the proportion that the
39 maximum liability of each such other public depository bears to the
40 aggregate of the maximum liabilities of all such other depositories,
41 but no such assessment shall exceed the maximum liability of any
42 such other depository;
- 43 g. Assessments so made by the commissioner shall be payable
44 on the fifth day following the demand therefor by the
45 commissioner. On default of such payment by any such other
46 public depository, the commissioner shall take possession of and
47 liquidate so much of the eligible collateral maintained by such
48 depository as shall be necessary to satisfy the assessment so made.

1 If the proceeds of the liquidation of the eligible security are
2 insufficient to pay such assessment in full, the commissioner may
3 sue to recover the amount of the deficiency within the limits of the
4 depository's maximum liability.

5 h. All sums so collected by the commissioner shall be paid by
6 him to the governmental units having deposits in the defaulting
7 depository in the proportion that the net deposit liability to each
8 such governmental unit bears to the aggregate of the net deposit
9 liabilities to all such governmental units;

10 i. No State bank, national bank or savings bank shall be liable
11 with respect to the occurrence of an event of default of an
12 association, and no association shall be liable with respect to the
13 occurrence of an event of default of a State bank, a national bank or
14 a savings bank;

15 j. In the event of a default, any public depository that has
16 elected to maintain collateral pursuant to subsection e. of section 4
17 of P.L.1970, c.236 (C.17:9-44), shall ¹ [not be subject to any
18 assessment pursuant to this section so long as] , to the extent that¹
19 it is in compliance with subsection e. of section 4 of P.L.1970,
20 c.236 (C.17:9-44) on the date of default ¹;

21 k. In the event of a default, any public depository that has
22 elected to maintain collateral pursuant to subsection e. of section 4
23 of P.L.1970, c.236 (C.17:9-44), but which is not in compliance on
24 the date of default shall] and has maintained its eligible collateral
25 as calculated pursuant to that subsection,¹ be subject to assessment,
26 but its maximum liability for purposes of that assessment shall be
27 calculated pursuant to ¹ [subsection j. of this section] the definition
28 of "maximum liability" provided in section 1 of P.L.1970, c.236
29 (C.17:9-41) based on the amount by which its eligible collateral is
30 less than 100% of the public funds it holds on deposit¹.
31 (cf: P.L.1970, c.236, s.5)]²

32

33 ¹ ² [4.] 5.² Section 3 of P.L.1970, c.236 (C.17:9-43) is amended
34 to read as follows:

35 3. The commissioner shall have power:

36 a. To require any public depository to furnish ² financial
37 information on a quarterly basis, due on the same day as the due
38 date for filing a call report on a depository's overall condition under
39 federal or state law with the appropriate federal banking agency or
40 state bank supervisor, as defined by subsections (q) and (r) of
41 section 3 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12
42 U.S.C. s.1813(q) and (r)); however, the commissioner shall
43 prescribe filing dates on a quarterly basis, if the applicable federal
44 or state law reporting requirements no longer require the filing of a
45 call report on a quarterly basis. This information shall be furnished
46 on a form and in a format as the commissioner shall prescribe by
47 regulation. The information shall include, but not be limited to,

1 public funds on deposit, eligible collateral pledged as security for
2 public funds on deposit, measurements of capital adequacy or
3 ratios, and liquidity, as well as² such ²other² information ²[and
4 furnish such reports dealing with public funds on deposit therein]²
5 as the commissioner shall request. ²[The public depository shall
6 pay to the commissioner for the use of the State a fee, to be
7 prescribed by the commissioner by regulation, of not less than
8 \$25.00 and not more than \$50.00, for the furnishing of information
9 or reports requested by the commissioner pursuant to this
10 subsection.]² Any public depository which refuses or neglects to
11 give any information so requested may be excluded by the
12 commissioner from the right to receive public funds for deposit
13 until such time as the commissioner shall acknowledge that such
14 depository has furnished the information requested;

15 b. To take such action as the commissioner deems best for the
16 protection, collection, compromise, or settlement of any claim
17 arising in case of an event of default;

18 c. To fix the date on which an event of default shall be deemed
19 to have occurred, taking into consideration the orders, rules and
20 regulations of any supervisory authority as they affect the failure or
21 inability of a public depository to repay public funds held on
22 deposit;

23 d. Upon the happening of an event of default, to take
24 possession of and liquidate the collateral of the defaulting
25 depository maintained pursuant to section 4 [of this act]
26 ²[P.L.1970, c.236 (C.17:9-43)] of this act² ;

27 e. To do all acts required to carry out the purposes [of this act]
28 ²[P.L.1970, c.236 (C.17:9-41 et seq.)] of this act² and, to that end,
29 to make, amend and repeal regulations consistent with [this act]
30 ²[P.L.1970, c.236 (C.17:9-41 et seq.)] this act;²

31 f. ²[At the discretion of the commissioner, to conduct a review
32 of the condition of a depository, which review shall include, but
33 shall not be limited to: regulatory capital ratios; liquidity and funds
34 management; and the quality of the depository's asset portfolio. If
35 the public depository fails to meet its minimum regulatory capital
36 requirements as established by the appropriate supervising federal
37 agency or the criteria established pursuant to P.L.1970, c.236
38 (C.17:9-41 et seq.), the commissioner may:

39 (1) require that the public depository pledge readily available
40 marketable investment grade securities only, and pledge such
41 securities to the extent of 120 percent of the amount of public funds
42 on deposit not insured by the appropriate federal insurance fund; or

43 (2) issue a limited certificate which prohibits the public
44 depository from accepting public deposits not insured by the
45 appropriate federal insurance fund] To engage the services of one
46 or more consultants, advisors, or other experts deemed necessary by
47 the commissioner to assist in carrying out the administration and

1 enforcement of the “Governmental Unit Deposit Protection Act,”
2 P.L.1970, c.236 (C.17:9-41 et seq.);

3 g. To require any public depository with public funds on
4 deposit: (1) to authorize the release of its most recent examination
5 report, prepared by the depository’s appropriate federal banking
6 agency or state bank supervisor, as defined by subsections (q) and
7 (r) of section 3 of the “Federal Deposit Insurance Act,” Pub.L.81-
8 797 (12 U.S.C. s.1813(q) and (r)), to the commissioner, or
9 otherwise furnish a certified copy thereof; or

10 (2) if the report or copy thereof described in paragraph (1) of
11 this subsection is not available, to submit (a) an annual certification
12 from the depository’s outside auditor, stating that the depository is
13 in compliance with the requirements of the “Governmental Unit
14 Deposit Protection Act,” P.L.1970, c.236 (C.17:9-41 et seq.),
15 including all collateral requirements, or (b) any other annual
16 statement already required by federal or state law, deemed
17 acceptable by the commissioner, stating the depository’s
18 compliance as required by this paragraph;

19 h. To designate any information obtained by, or disclosed to,
20 the commissioner under the “Governmental Unit Deposit Protection
21 Act,” P.L.1970, c.236 (C.17:9-41 et seq.), as confidential and not a
22 public record subject to public inspection, examination, or copying
23 under the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.);

24 i. To require any public depository, other than a public
25 depository paying assessments pursuant to section 3 of P.L.2005,
26 c.199 (C.17:1C-35), to pay to the commissioner, through electronic
27 means, an annual fee to be dedicated to the operations of the
28 department in connection with the administration and enforcement
29 of the “Governmental Unit Deposit Protection Act,” P.L.1970,
30 c.236 (C.17:9-41 et seq.). This fee shall be prescribed by the
31 commissioner by regulation and based on the amount of public
32 funds on deposit in the public depository, but shall not exceed \$500
33 for any public depository with only public funds on deposit that are
34 insured by the Federal Deposit Insurance Corporation or by any
35 other agency of the United States which insures deposits made in
36 public depositories, or \$6,000 for any public depository with
37 \$1,000,000,000 or more in public funds on deposit² .¹
38 (cf: P.L.1988, c.73, s.4)

39

40 ²6. Section 7 of P.L.1970, c.236 (C.17:9-47) is amended to read
41 as follows:

42 7. The provisions of this act shall become operative on
43 December 1, 1970, but the commissioner may issue appropriate
44 regulations in advance thereof. The provisions of
45 P.L. , c. (C.) (pending before the Legislature as this bill),
46 amending and supplementing the “Governmental Unit Deposit
47 Protection Act,” P.L.1970, c.236 (C.17:9-41 et seq.), shall become

1 operative on July 1, 2010, but the commissioner may issue
2 appropriate regulations in advance thereof.²

3 (cf: P.L.1970, c. 236, s. 7)

4

5 ²⁷. Section 13 of P.L.2005, c.1999 (C.17:1C-45) is amended to
6 read as follows:

7 13. a. Notwithstanding any law or regulation to the contrary, a
8 regulated entity paying the amounts assessed to it in statements of
9 the assessment made pursuant to section 3 of this act shall be
10 exempt from all fees or charges imposed by the division pursuant to
11 any other provision of law or regulation, except for:

12 (1) charter fees;

13 (2) application fees for licenses;

14 (3) (Deleted by amendment, P.L.2009, c.53)

15 (4) fees for entry by a foreign depository institution whether
16 from another state of the United States or from another country into
17 New Jersey for branch, trust or other activities;

18 (5) ~~fees charged under the "Governmental Unit Deposit~~
19 ~~Protection Act," P.L.1970, c.236 (C.17:9-41 et seq.);~~ (Deleted by
20 amendment, P.L. , c.) (pending before the Legislature as this
21 bill)

22 (6) fees charged any entity not chartered, licensed or registered
23 by this State, including but not limited to activities conducted by
24 foreign banks pursuant to section 316 of P.L.1948, c.67 (C.17:9A-
25 316) or foreign associations pursuant to section 214 of P.L.1963,
26 c.144 (C.17:12B-214); and

27 (7) fees charged qualified corporations authorized pursuant to
28 section 213 of P.L.1948, c.67 (C.17:9A-213) to perform either
29 registrar and transfer agent activities or activities permitted for
30 qualified educational institutions.

31 b. Nothing in this section shall exempt a regulated entity from
32 paying any fine or penalty imposed by the commissioner for a
33 violation of a statute or regulation.

34 c. Except as provided in paragraph (1) of subsection d. of
35 section 7 of the "New Jersey Home Ownership Security Act of
36 2002," P.L.2003, c.64 (C.46:10B-28), and subsection i. of section 3
37 of the "Governmental Unit Deposit Protection Act," P.L.1970,
38 c.236 (C.17:9-43), all fees, charges, fines and penalties as described
39 in subsections a. and b. of this subsection shall be remitted to the
40 State Treasurer for deposit into the General Fund, and those fees,
41 charges, fines and penalties shall not be part of the assessment
42 funding mechanism or considered in the calculation pursuant to
43 section 15 of this act.²

44 (cf: P.L.2009, c.53, s.64)

45

46 ¹[4.] ²[5.] ¹8.² This act shall take effect immediately.

ASSEMBLY, No. 3998

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JUNE 4, 2009

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex)

SYNOPSIS

Concerns collateral of public depositories under "Governmental Unit Deposit Protection Act."

CURRENT VERSION OF TEXT

As introduced.



A3998 MCKEON

2

1 AN ACT concerning the collateral of public depositories and
2 amending P.L.1970, c.236.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.1970, c.236 (C.17:9-41) is amended to read
8 as follows:

9 1. In this act, unless the context otherwise requires:

10 "Association" means any State or federally chartered savings and
11 loan association;

12 "Capital funds" means (a) in the case of a State bank or national
13 bank or capital stock savings bank, the aggregate of the capital
14 stock, surplus and undivided profits of the bank or savings bank; (b)
15 in the case of a mutual savings bank, the aggregate of the capital
16 deposits, if any, and the surplus of the savings bank; and (c) in the
17 case of an association, the aggregate of all reserves required by any
18 law or regulation, and the undivided profits, if any, of the
19 association;

20 "Commissioner" means the Commissioner of Banking and
21 Insurance;

22 "Defaulting depository" means a public depository as to which
23 an event of default has occurred;

24 "Eligible collateral" means:

25 (a) Obligations of any of the following:

26 (1) The United States;

27 (2) Any agency or instrumentality of the United States,
28 including, but not limited to, the Student Loan Marketing
29 Association, the Government National Mortgage Association, the
30 Federal Home Loan Mortgage Corporation, the Federal National
31 Mortgage Association, the Federal Housing Administration and the
32 Small Business Administration;

33 (3) The State of New Jersey or any of its political subdivisions;

34 (4) Any other governmental unit; or

35 (b) Obligations guaranteed or insured by any of the following,
36 to the extent of that insurance or guaranty:

37 (1) The United States;

38 (2) Any agency or instrumentality of the United States,
39 including, but not limited to, the Student Loan Marketing
40 Association, the Government National Mortgage Association, the
41 Federal Home Loan Mortgage Corporation, the Federal National
42 Mortgage Association, the Federal Housing Administration and the
43 Small Business Administration;

44 (3) The State of New Jersey or any of its political subdivisions;

45 or

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (c) Obligations now or hereafter authorized by law as security
2 for public deposits;

3 (d) Obligations in which the State, political subdivisions of the
4 State, their officers, boards, commissions, departments and agencies
5 may invest pursuant to an express authorization under any law
6 authorizing the issuance of those obligations;

7 (e) Obligations, letters of credit, or other securities or evidence
8 of indebtedness constituting the direct and general obligation of a
9 federal home loan bank or federal reserve bank; or

10 (f) Any other obligations as may be approved by the
11 commissioner by regulation or by specific approval;

12 "Event of default" means issuance of an order of a supervisory
13 authority or of a receiver restraining a public depository from
14 making payments of deposit liabilities;

15 "Governmental unit" means any county, municipality, school
16 district or any public body corporate and politic created or
17 established under any law of this State by or on behalf of any one or
18 more counties or municipalities, or any board, commission,
19 department or agency of any of the foregoing having custody of
20 funds;

21 "Maximum liability" of a public depository means, with respect
22 to any event of default, a sum equal to 5% of the [average daily
23 balance of collected public funds held on deposit by the depository
24 during the six-month period ending on the last day of the month
25 next preceding the occurrence of such event of default] amount, if
26 any, by which the public funds on deposit, as of the date of default,
27 exceed the amount of such public fund deposits that are: (1) insured
28 by the Federal Deposit Insurance Corporation or by any other
29 agency of the United States which insures deposits made in public
30 depositories; or (2) collateralized pursuant to section 4 of P.L.1970,
31 c.236 (C.17:9-44); or both;

32 "Net deposit liability" means the deposit liability of a defaulting
33 depository to a governmental unit after deduction of any deposit
34 insurance with respect thereto;

35 "Obligations" means any bonds, notes, capital notes, bond
36 anticipation notes, tax anticipation notes, temporary notes, loan
37 bonds, mortgage related securities, or mortgages;

38 "Public depository" means a State or federally chartered bank,
39 savings bank or an association located in this State or a state or
40 federally chartered bank, savings bank or an association located in
41 another state with a branch office in this State, the deposits of
42 which are insured by the Federal Deposit Insurance Corporation and
43 which receives or holds public funds on deposit;

44 "Public funds" means the funds of any governmental unit, but
45 does not include deposits held by the State of New Jersey Cash
46 Management Fund;

47 "Valuation date" means December 31 and June 30.

48 (cf: P.L.2003, c.178, s.1)

1 2. Section 4 of P.L.1970, c.236 (C.17:9-44) is amended to read
2 as follows:

3 4. a. Every public depository having public funds on deposit
4 therein shall, as security for such deposits, maintain eligible
5 collateral having a market value at least equal to either (1) 5% of
6 the average daily balance of collected public funds on deposit
7 during the 6-month period ending on the next preceding valuation
8 date, or (2), at the election of the depository, at least equal to 5% of
9 the average balance of collected public funds on deposit on the first,
10 eighth, fifteenth and twenty-second days of each month in the 6-
11 month period ending on the next preceding valuation date, but no
12 public depository shall be required to maintain any eligible
13 collateral pursuant to this act as security for any deposit or deposits
14 of any governmental unit to the extent that such deposit or deposits
15 are insured by the Federal Deposit Insurance Corporation [or the
16 Federal Savings and Loan Insurance Corporation] or by any other
17 agency of the United States which insures deposits made in public
18 depositories. In the case of any public depository which has not
19 held public funds on deposit for all of such 6-month period, the
20 commissioner shall prescribe the amount of eligible collateral
21 required to be maintained. Depositories shall have the right to make
22 substitutions of eligible collateral at any time. The income from
23 eligible collateral shall belong to the public depository without
24 restriction.

25 b. No public depository shall at any time receive and hold on
26 deposit for any period in excess of 15 days public funds of a
27 governmental unit or governmental units which, in the aggregate,
28 exceed 75% of the capital funds of the depository, unless such
29 depository shall, in addition to the security required to be
30 maintained under paragraph a. of this section, secure such excess by
31 eligible collateral with a market value at least equal to 100% of
32 such excess.

33 c. All collateral required to be maintained shall be deposited
34 with the Federal Reserve Bank of New York, the Federal Reserve
35 Bank of Philadelphia, the Federal Home Loan Bank of New York,
36 as the case may be, or with any other banking institution located in
37 this State or a contiguous state which is a member of the Federal
38 Reserve System and has capital funds of not less than
39 \$25,000,000.00. Notwithstanding the foregoing, the commissioner
40 may authorize public depositories to hold and maintain the required
41 collateral in such a manner as he deems consistent with the
42 purposes of this act.

43 d. The market value of eligible collateral maintained pursuant
44 to this section on any valuation date shall be presumed to be the
45 market value of such collateral until the next succeeding valuation
46 date.

47 e. Notwithstanding the provisions of subsections a. and b. of
48 this section, a public depository may comply with the requirements

1 of this section by maintaining eligible collateral with a market
2 value at least equal to 100% of the public funds it holds on deposit,
3 in excess of the amount of those deposits insured by the Federal
4 Deposit Insurance Corporation or by any other agency of the
5 United States which insures deposits made in public depositories;
6 except that, for the purposes of this subsection, the valuation date
7 shall be the last day of each calendar month and the depository shall
8 be deemed to be in compliance with this subsection as to any
9 valuation date if it has pledged at least the applicable amount of
10 eligible collateral by no later than the 15th day of the next calendar
11 month following the valuation date, or such later date in that month
12 as the commissioner may prescribe by regulation.

13 (cf: P.L.1973, c.98, s.2)

14

15 3. Section 5 of P.L.1970, c.236 (C.17:9-45) is amended to read
16 as follows:

17 5. When the commissioner determines that an event of default
18 has occurred, he shall proceed in the following manner:

19 a. Within 20 days after the occurrence of the event of default,
20 he shall ascertain the amount of public funds on deposit in the
21 defaulting depository as disclosed by its records and the amount
22 thereof covered by federal deposit insurance and certify the
23 amounts thereof to each affected governmental unit;

24 b. Within 10 days after receipt of such certification, each such
25 governmental unit shall furnish to the commissioner verified
26 statements of its public deposits in such defaulting depository as
27 disclosed by its records;

28 c. Upon receipt of such certificate and statements, he shall
29 ascertain and fix the amount of such public funds on deposit in such
30 defaulting depository, net after deduction of any deposit insurance;

31 d. He shall ascertain the amount derived or to be derived from
32 the liquidation of the collateral maintained by the defaulting
33 depository pursuant to section 4 of this act, and shall distribute such
34 proceeds pro rata among the governmental units affected to the
35 extent necessary to satisfy the net deposit liabilities to such
36 governmental units;

37 e. If the proceeds of the sale of the collateral of a defaulting
38 depository which is a State bank, a national bank or a savings bank
39 are insufficient to pay in full the net deposit liability of such
40 depository to all affected governmental units, he shall assess the
41 deficiency against all other such public depositories having public
42 funds on deposit as of the occurrence of the event of default, subject
43 to the provisions of subsections j. and k. of this section, in the
44 proportion that the maximum liability of each such other public
45 depository bears to the aggregate of the maximum liabilities of all
46 such other depositories, but no such assessment shall exceed the
47 maximum liability of any such other depository;

1 f. If the proceeds of the sale of the collateral of a defaulting
2 depository which is an association are insufficient to pay in full the
3 net deposit liability of such depository to all affected governmental
4 units, he shall assess the deficiency against all such other public
5 depositories having public funds on deposit as of the occurrence of
6 the event of default, subject to the provisions of subsections j. and
7 k. of this section, in the proportion that the maximum liability of
8 each such other public depository bears to the aggregate of the
9 maximum liabilities of all such other depositories, but no such
10 assessment shall exceed the maximum liability of any such other
11 depository;

12 g. Assessments so made by the commissioner shall be payable
13 on the fifth day following the demand therefor by the
14 commissioner. On default of such payment by any such other
15 public depository, the commissioner shall take possession of and
16 liquidate so much of the eligible collateral maintained by such
17 depository as shall be necessary to satisfy the assessment so made.
18 If the proceeds of the liquidation of the eligible security are
19 insufficient to pay such assessment in full, the commissioner may
20 sue to recover the amount of the deficiency within the limits of the
21 depository's maximum liability.

22 h. All sums so collected by the commissioner shall be paid by
23 him to the governmental units having deposits in the defaulting
24 depository in the proportion that the net deposit liability to each
25 such governmental unit bears to the aggregate of the net deposit
26 liabilities to all such governmental units;

27 i. No State bank, national bank or savings bank shall be liable
28 with respect to the occurrence of an event of default of an
29 association, and no association shall be liable with respect to the
30 occurrence of an event of default of a State bank, a national bank or
31 a savings bank;

32 j. In the event of a default, any public depository that has
33 elected to maintain collateral pursuant to subsection e. of section 4
34 of P.L.1970, c.236 (C.17:9-44), shall not be subject to any
35 assessment pursuant to this section so long as it is in compliance
36 with subsection e. of section 4 of P.L.1970, c.236 (C.17:9-44) on
37 the date of default;

38 k. In the event of a default, any public depository that has
39 elected to maintain collateral pursuant to subsection e. of section 4
40 of P.L.1970, c.236 (C.17:9-44), but which is not in compliance on
41 the date of default shall be subject to assessment, but its maximum
42 liability for purposes of that assessment shall be calculated pursuant
43 to subsection j. of this section.

44 (cf: P.L.1970, c.236, s.5)

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46 4. This act shall take effect immediately.

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STATEMENT

This bill revises and updates the collateral requirements for certain public depositories – the financial institutions which may accept the deposits of public funds – under the “Governmental Unit Deposit Protection Act” or “GUDPA,” P.L.1970, c.236 (C.17:9-41 et seq.).

It allows a public depository which receives or holds public funds and which meets its collateral requirements under GUDPA by pledging collateral equal to at least 100% of its public deposits, net of any federally insured deposits, to avoid any contingent liability for public deposit losses by another public depository bank.

It also limits the maximum liability of a public depository in the event of a default, to a sum equal to 5% of the amount, if any, by which the public funds on deposit, as of the date of default, exceed the amount of the public fund deposits that are: (1) insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories; or (2) collateralized pursuant to GUDPA; or both.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3998

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 11, 2009

The Assembly Financial Institutions and Insurance Committee reports favorably, and with committee amendments, Assembly Bill No. 3998.

This bill, as amended, revises and updates the collateral requirements for certain public depositories – the financial institutions which may accept the deposits of local government public funds – under the “Governmental Unit Deposit Protection Act” or “GUDPA,” P.L.1970, c.236 (C.17:9-41 et seq.).

The bill revises the definition of “eligible collateral” to include obligations approved by the State Treasurer by regulation or specific approval.

With respect to collateral obligations of a public depository related to its capital funds, the bill revises the percentage of eligible collateral that a public depository must maintain in order to hold public funds, in situations in which the public funds that are held exceed 50% of the capital funds of the depository, so that the depository must secure the excess:

(1) of more than 50%, but not exceeding 75%, by eligible collateral with a market value at least equal to 50% of that excess; and

(2) of more than 75%, by eligible collateral with a market value at least equal to 100% of that excess.

With respect to collateral obligations of a public depository related to public funds, the bill allows the depository to meet these obligations by maintaining eligible collateral with a market value equal to any percentage of the public funds it holds on deposit, up to an amount equal to 100% of the public funds it holds on deposit, net of any federally insured deposits. In the event of default of a public depository, any public depository that has maintained eligible collateral pursuant to this obligation, shall be subject to assessment, but its maximum liability for that assessment shall be based on the amount by which its eligible collateral is less than 100% of the public funds it holds on deposit.

The bill also expands the regulatory powers of the Commissioner of Banking and Insurance as to the condition of depository institutions that hold public funds.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) revise the definition of “eligible collateral” to include obligations approved by the State Treasurer by regulation or specific approval;

(2) with respect to collateral obligations of a public depository related to its capital funds, revise the percentage of eligible collateral that a public depository must maintain in order to hold public funds, in situations in which the public funds held exceed 50% of the capital funds of the depository, so that the depository must secure the excess:

(a) of more than 50%, but not exceeding 75%, by eligible collateral with a market value at least equal to 50% of that excess; and

(b) of more than 75%, by eligible collateral with a market value at least equal to 100% of that excess;

(3) with respect to collateral obligations of a depository related to public funds, to allow the depository to meet its obligations by maintaining eligible collateral with a market value equal to any percentage of the public funds it holds on deposit, up to an amount equal to 100% of the public funds it holds on deposit, net of any federally insured deposits. In the event of default of a public depository, any public depository that has maintained collateral pursuant to this obligation, shall be subject to assessment, but its maximum liability for that assessment shall be based on the amount by which its eligible collateral is less than 100% of the public funds it holds on deposit; and

(4) expand the regulatory powers of the Commissioner of Banking and Insurance as to the condition of depository institutions that hold public funds.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3998

with Assembly Floor Amendments
(Proposed by Assemblyman McKEON)

ADOPTED: DECEMBER 7, 2009

These floor amendments address reforms concerning financial institutions serving as public depositories for receiving and holding the public funds of governmental units, and the State's administration and oversight of these depositories and public funds under the law known as the "Governmental Unit Deposit Protection Act" (GUDPA), P.L.1970, c.236 (C.17:9-41 et seq.).

The amendments establish new collateral requirements for public depositories, which shall be pledged as security for any public funds on deposit with such depositories. These collateral requirements shall only be applicable to those public funds on deposit that are not insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories. The collateral requirements shall range between a market value of at least 5% and 120% of the uninsured public funds on deposit measured over a three-month period, with the exact percentage determined by the overall financial condition of the public depository.

In lieu of these collateral requirements, a public depository that is considered significantly or critically undercapitalized, as measured by the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1811 et seq.), may opt to reduce the amount of public funds on deposit so that the only remaining funds after this reduction are those insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories.

The floor amendments also establish a collateral requirement for any uninsured public funds on deposit in excess of \$200,000,000, regardless of the financial condition of the public depository. For any such excess amount, the public depository shall maintain collateral having a market value of at least 100% of the excess amount, measured over a three-month period.

Any collateral required to be maintained by a public depository shall be deposited with any Federal Reserve Bank or Federal Home Loan Bank, or any other banking institution located in this State or a contiguous state as authorized by the commissioner by regulation, and with capital funds of not less than \$25,000,000.

In relation to the increased collateral requirements put forth by these floor amendments, the amendments reduce the maximum liability of a public depository to help governmental units recover lost public funds in the event of a default by another public depository.

This maximum liability, spread among all public depositories as required under the existing law, is reduced from 5% to 4% of the average daily balance of collected, uninsured public funds held on deposit by each public depository during the three-month period ending on the last day of the month immediately preceding the event of default.

The floor amendments, with respect to administration and oversight, provide the Commissioner of Banking and Insurance with several new powers:

- to require any public depository to furnish financial information on a quarterly basis, on a form and format as prescribed by regulation, and include such information as public funds on deposit, eligible collateral pledged as security for these public funds, measurements of capital adequacy or ratios, and liquidity;

- to engage the services of one or more consultants, advisors, or other experts deemed necessary by the commissioner to assist in carrying out the administration and enforcement of GUDPA;

- to require any public depository to either: (1) authorize the release of its most recent examination report, or a copy thereof, prepared by the depository's appropriate federal or state banking authority; or (2) if this report (or copy) is not available, an annual certification of GUDPA compliance by the depository's outside auditor, or any other annual statement of compliance already required by federal or state law and acceptable to the commissioner; and

- to designate any information obtained by, or disclosed to, the commissioner as confidential and not a public record under the State's open public records act, P.L.1963, c.73 (C.47:1A-1 et seq.), for the protection of any sensitive financial information required to be presented to, or otherwise obtained by, the commissioner.

Additionally, the commissioner shall require each public depository to pay an annual fee to cover expenses involving the administration and oversight of GUDPA, unless that depository already pays an assessment to the department to cover the regulatory activities of the department's Division of Banking pursuant to section 3 of P.L.2005, c.199 (C.17:1C-35). This fee shall be prescribed by the commissioner by regulation and based on the amount of public funds on deposit in the public depository, but shall not exceed \$500 for any public depository with only public funds on deposit that are insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories, or \$6,000 for any public depository with \$1,000,000,000 or more in public funds on deposit.

Finally, as provided by the floor amendments, the bill shall become operative on July 1, 2010, but the commissioner may issue appropriate regulations in advance thereof.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 3998

STATE OF NEW JERSEY 213th LEGISLATURE

DATED: JANUARY 12, 2010

SUMMARY

- Synopsis:** Concerns governmental unit public funds deposited in public depositories.
- Type of Impact:** Shift in funding source and department, no overall impact on revenues collected or cost.
- Agencies Affected:** Department of Banking and Insurance and Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	\$0	\$0	\$0
State Revenue	\$0	\$0	\$0

- The Office of Legislative Services (OLS) notes that the changes proposed in A 3998 (2R) to the fees assessed to public depositories for the “Governmental Unit Deposit Protection Act”(GUDPA) will not have an overall impact on State revenue. The total amount of revenue collected will not change, but the source of the revenue will be shifted slightly to distribute more evenly distribute the cost of the administration of GUDPA to all of the participating financial institutions.
- A small amount of revenue (approximately \$4,000), currently collected as fees from the federally chartered institutions serving as public depositories, which is currently dedicated “for the use of the State” and deposited in the General Fund will no longer be collected. Instead, a new fee (ranging from \$500 - \$6,000) will be imposed on these participating federally chartered financial institutions that will be “dedicated to the operations of the Department of Banking and Insurance in connection with the administration and enforcement of the “Governmental Unit Deposit Protection Act,” P.L.1970, c.236 (C.17:9-41 et seq.).”

- The remaining costs for administering GUDPA will be assessed, as they are currently, to State chartered financial institutions through the Division of Banking assessment pursuant to section 3 of P.L.2005, c.199 (C.17:1C-35).
- Through the increased GUDPA fees, the federally chartered institutions are likely to experience an increase in fees paid to the State. The increased fees will pay for a larger share of the costs associated with administering GUDPA. The remainder of the administrative costs will be assessed to other financial institutions through the Division of Banking assessment, which will most likely decrease slightly as a result of the increased GUDPA revenue. However, the total revenue collected from all participating institutions will equal the total revenue collected currently.

BILL DESCRIPTION

Assembly Bill No. 3998 (2R) of 2009 reforms the law concerning financial institutions serving as public depositories for receiving and holding the public funds of governmental units, and the State's administration and oversight of these depositories and public funds under this law, known as the "Governmental Unit Deposit Protection Act" (GUDPA), P.L.1970, c.236 (C.17:9-41 et seq.).

The bill establishes new collateral requirements for public depositories, which shall be pledged as security for any public funds on deposit with such depositories. These collateral requirements shall only be applicable to those public funds on deposit that are not insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories.

The bill also provides the Commissioner of Banking and Insurance with several new regulatory powers. Additionally, the commissioner shall require each public depository to pay an annual fee to cover expenses involving the administration and oversight of GUDPA, unless that depository already pays an assessment to the department to cover the regulatory activities of the department's Division of Banking pursuant to section 3 of P.L.2005, c.199 (C.17:1C-35). This fee will be prescribed by the commissioner by regulation and based on the amount of public funds on deposit in the public depository, but may not exceed \$500 for any public depository with only public funds on deposit that are insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories, or \$6,000 for any public depository with \$1,000,000,000 or more in public funds on deposit.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS notes that the changes proposed in A 3998 (2R) to the fees assessed to public depositories for the "Governmental Unit Deposit Protection Act"(GUDPA) will not have an overall impact on State revenue. The total amount of revenue collected will not change, but the source of the revenue will be shifted slightly to distribute more evenly the cost of the administration of GUDPA to all of the participating financial institutions.

Additionally, a small amount of revenue (approximately \$4,000), which is currently dedicated “for the use of the State” and deposited in the General Fund will no longer be collected. Instead a new fee has been created that is “dedicated to the operations of the department (of Banking and Insurance) in connection with the administration and enforcement of the “Governmental Unit Deposit Protection Act,” P.L.1970, c.236 (C.17:9-41 et seq.)”

Currently, according to the department, approximately 80 federally chartered financial institutions pay a semi-annual fee of \$25 for administrative costs related to GUDPA, generating approximately \$4,000 annually. This revenue is dedicated “for the use of the State” and is deposited in the General Fund. The remaining costs to administer GUDPA are assessed to State chartered financial institutions through the Division of Banking assessment, pursuant to section 3 of P.L.2005, c.199 (C.17:1C-35). The federally chartered financial institutions are not assessed a fee other than the \$25 semi-annual fee.

Pursuant to A 3998 (2R), the participating federally chartered financial institutions will pay a new fee, “dedicated to the operations of the department in connection with the administration and enforcement of the “Governmental Unit Deposit Protection Act,” P.L.1970, c.236 (C.17:9-41 et seq.)” The exact amount will be prescribed by the Commissioner of Banking and Insurance in regulation and will be based on the amount of public funds on deposit in the financial institution but shall not exceed \$500, or \$6,000, based upon the amount of funds on deposit. The remaining costs for administering GUDPA will be assessed, as they are currently, to participating State financial institutions through the Division of Banking assessment.

Currently there is minimal staff and related expenses dedicated to the administration of GUDPA. The department does not anticipate that this bill will affect the total cost of administering GUDPA.

Section: Commerce, Labor and Industry

*Analyst: Robin C. Ford
Associate Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 2859

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MAY 21, 2009

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Co-Sponsored by:

Senator Cardinale

SYNOPSIS

Concerns collateral of public depositories under "Governmental Unit Deposit Protection Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/15/2009)

1 AN ACT concerning the collateral of public depositories and
2 amending P.L.1970, c.236.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.1970, c.236 (C.17:9-41) is amended to read
8 as follows:

9 1. In this act, unless the context otherwise requires:

10 "Association" means any State or federally chartered savings and
11 loan association;

12 "Capital funds" means (a) in the case of a State bank or national
13 bank or capital stock savings bank, the aggregate of the capital
14 stock, surplus and undivided profits of the bank or savings bank; (b)
15 in the case of a mutual savings bank, the aggregate of the capital
16 deposits, if any, and the surplus of the savings bank; and (c) in the
17 case of an association, the aggregate of all reserves required by any
18 law or regulation, and the undivided profits, if any, of the
19 association;

20 "Commissioner" means the Commissioner of Banking and
21 Insurance;

22 "Defaulting depository" means a public depository as to which
23 an event of default has occurred;

24 "Eligible collateral" means:

25 (a) Obligations of any of the following:

26 (1) The United States;

27 (2) Any agency or instrumentality of the United States,
28 including, but not limited to, the Student Loan Marketing
29 Association, the Government National Mortgage Association, the
30 Federal Home Loan Mortgage Corporation, the Federal National
31 Mortgage Association, the Federal Housing Administration and the
32 Small Business Administration;

33 (3) The State of New Jersey or any of its political subdivisions;

34 (4) Any other governmental unit; or

35 (b) Obligations guaranteed or insured by any of the following,
36 to the extent of that insurance or guaranty:

37 (1) The United States;

38 (2) Any agency or instrumentality of the United States,
39 including, but not limited to, the Student Loan Marketing
40 Association, the Government National Mortgage Association, the
41 Federal Home Loan Mortgage Corporation, the Federal National
42 Mortgage Association, the Federal Housing Administration and the
43 Small Business Administration;

44 (3) The State of New Jersey or any of its political subdivisions;

45 or

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (c) Obligations now or hereafter authorized by law as security
2 for public deposits;

3 (d) Obligations in which the State, political subdivisions of the
4 State, their officers, boards, commissions, departments and agencies
5 may invest pursuant to an express authorization under any law
6 authorizing the issuance of those obligations;

7 (e) Obligations, letters of credit, or other securities or evidence
8 of indebtedness constituting the direct and general obligation of a
9 federal home loan bank or federal reserve bank; or

10 (f) Any other obligations as may be approved by the
11 commissioner by regulation or by specific approval;

12 "Event of default" means issuance of an order of a supervisory
13 authority or of a receiver restraining a public depository from
14 making payments of deposit liabilities;

15 "Governmental unit" means any county, municipality, school
16 district or any public body corporate and politic created or
17 established under any law of this State by or on behalf of any one or
18 more counties or municipalities, or any board, commission,
19 department or agency of any of the foregoing having custody of
20 funds;

21 "Maximum liability" of a public depository means, with respect
22 to any event of default, a sum equal to 5% of the [average daily
23 balance of collected public funds held on deposit by the depository
24 during the six-month period ending on the last day of the month
25 next preceding the occurrence of such event of default] amount, if
26 any, by which the public funds on deposit, as of the date of default,
27 exceed the amount of such public fund deposits that are: (1) insured
28 by the Federal Deposit Insurance Corporation or by any other
29 agency of the United States which insures deposits made in public
30 depositories; or (2) collateralized pursuant to section 4 of P.L.1970,
31 c.236 (C.17:9-44); or both;

32 "Net deposit liability" means the deposit liability of a defaulting
33 depository to a governmental unit after deduction of any deposit
34 insurance with respect thereto;

35 "Obligations" means any bonds, notes, capital notes, bond
36 anticipation notes, tax anticipation notes, temporary notes, loan
37 bonds, mortgage related securities, or mortgages;

38 "Public depository" means a State or federally chartered bank,
39 savings bank or an association located in this State or a state or
40 federally chartered bank, savings bank or an association located in
41 another state with a branch office in this State, the deposits of
42 which are insured by the Federal Deposit Insurance Corporation and
43 which receives or holds public funds on deposit;

44 "Public funds" means the funds of any governmental unit, but
45 does not include deposits held by the State of New Jersey Cash
46 Management Fund;

47 "Valuation date" means December 31 and June 30.

48 (cf: P.L.2003, c.178, s.1)

1 2. Section 4 of P.L.1970, c.236 (C.17:9-44) is amended to read
2 as follows:

3 4. a. Every public depository having public funds on deposit
4 therein shall, as security for such deposits, maintain eligible
5 collateral having a market value at least equal to either (1) 5% of
6 the average daily balance of collected public funds on deposit
7 during the 6-month period ending on the next preceding valuation
8 date, or (2), at the election of the depository, at least equal to 5% of
9 the average balance of collected public funds on deposit on the first,
10 eighth, fifteenth and twenty-second days of each month in the 6-
11 month period ending on the next preceding valuation date, but no
12 public depository shall be required to maintain any eligible
13 collateral pursuant to this act as security for any deposit or deposits
14 of any governmental unit to the extent that such deposit or deposits
15 are insured by the Federal Deposit Insurance Corporation [or the
16 Federal Savings and Loan Insurance Corporation] or by any other
17 agency of the United States which insures deposits made in public
18 depositories. In the case of any public depository which has not
19 held public funds on deposit for all of such 6-month period, the
20 commissioner shall prescribe the amount of eligible collateral
21 required to be maintained. Depositories shall have the right to make
22 substitutions of eligible collateral at any time. The income from
23 eligible collateral shall belong to the public depository without
24 restriction.

25 b. No public depository shall at any time receive and hold on
26 deposit for any period in excess of 15 days public funds of a
27 governmental unit or governmental units which, in the aggregate,
28 exceed 75% of the capital funds of the depository, unless such
29 depository shall, in addition to the security required to be
30 maintained under paragraph a. of this section, secure such excess by
31 eligible collateral with a market value at least equal to 100% of
32 such excess.

33 c. All collateral required to be maintained shall be deposited
34 with the Federal Reserve Bank of New York, the Federal Reserve
35 Bank of Philadelphia, the Federal Home Loan Bank of New York,
36 as the case may be, or with any other banking institution located in
37 this State or a contiguous state which is a member of the Federal
38 Reserve System and has capital funds of not less than
39 \$25,000,000.00. Notwithstanding the foregoing, the commissioner
40 may authorize public depositories to hold and maintain the required
41 collateral in such a manner as he deems consistent with the
42 purposes of this act.

43 d. The market value of eligible collateral maintained pursuant
44 to this section on any valuation date shall be presumed to be the
45 market value of such collateral until the next succeeding valuation
46 date.

47 e. Notwithstanding the provisions of subsections a. and b. of
48 this section, a public depository may comply with the requirements

1 of this section by maintaining eligible collateral with a market
2 value at least equal to 100% of the public funds it holds on deposit,
3 in excess of the amount of those deposits insured by the Federal
4 Deposit Insurance Corporation or by any other agency of the
5 United States which insures deposits made in public depositories;
6 except that, for the purposes of this subsection, the valuation date
7 shall be the last day of each calendar month and the depository shall
8 be deemed to be in compliance with this subsection as to any
9 valuation date if it has pledged at least the applicable amount of
10 eligible collateral by no later than the 15th day of the next calendar
11 month following the valuation date, or such later date in that month
12 as the commissioner may prescribe by regulation.

13 (cf: P.L.1973, c.98, s.2)

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15 3. Section 5 of P.L.1970, c.236 (C.17:9-45) is amended to read
16 as follows:

17 5. When the commissioner determines that an event of default
18 has occurred, he shall proceed in the following manner:

19 a. Within 20 days after the occurrence of the event of default,
20 he shall ascertain the amount of public funds on deposit in the
21 defaulting depository as disclosed by its records and the amount
22 thereof covered by federal deposit insurance and certify the
23 amounts thereof to each affected governmental unit;

24 b. Within 10 days after receipt of such certification, each such
25 governmental unit shall furnish to the commissioner verified
26 statements of its public deposits in such defaulting depository as
27 disclosed by its records;

28 c. Upon receipt of such certificate and statements, he shall
29 ascertain and fix the amount of such public funds on deposit in such
30 defaulting depository, net after deduction of any deposit insurance;

31 d. He shall ascertain the amount derived or to be derived from
32 the liquidation of the collateral maintained by the defaulting
33 depository pursuant to section 4 of this act, and shall distribute such
34 proceeds pro rata among the governmental units affected to the
35 extent necessary to satisfy the net deposit liabilities to such
36 governmental units;

37 e. If the proceeds of the sale of the collateral of a defaulting
38 depository which is a State bank, a national bank or a savings bank
39 are insufficient to pay in full the net deposit liability of such
40 depository to all affected governmental units, he shall assess the
41 deficiency against all other such public depositories having public
42 funds on deposit as of the occurrence of the event of default, subject
43 to the provisions of subsections j. and k. of this section, in the
44 proportion that the maximum liability of each such other public
45 depository bears to the aggregate of the maximum liabilities of all
46 such other depositories, but no such assessment shall exceed the
47 maximum liability of any such other depository;

1 f. If the proceeds of the sale of the collateral of a defaulting
2 depository which is an association are insufficient to pay in full the
3 net deposit liability of such depository to all affected governmental
4 units, he shall assess the deficiency against all such other public
5 depositories having public funds on deposit as of the occurrence of
6 the event of default, subject to the provisions of subsections j. and
7 k. of this section, in the proportion that the maximum liability of
8 each such other public depository bears to the aggregate of the
9 maximum liabilities of all such other depositories, but no such
10 assessment shall exceed the maximum liability of any such other
11 depository;

12 g. Assessments so made by the commissioner shall be payable
13 on the fifth day following the demand therefor by the
14 commissioner. On default of such payment by any such other
15 public depository, the commissioner shall take possession of and
16 liquidate so much of the eligible collateral maintained by such
17 depository as shall be necessary to satisfy the assessment so made.
18 If the proceeds of the liquidation of the eligible security are
19 insufficient to pay such assessment in full, the commissioner may
20 sue to recover the amount of the deficiency within the limits of the
21 depository's maximum liability.

22 h. All sums so collected by the commissioner shall be paid by
23 him to the governmental units having deposits in the defaulting
24 depository in the proportion that the net deposit liability to each
25 such governmental unit bears to the aggregate of the net deposit
26 liabilities to all such governmental units;

27 i. No State bank, national bank or savings bank shall be liable
28 with respect to the occurrence of an event of default of an
29 association, and no association shall be liable with respect to the
30 occurrence of an event of default of a State bank, a national bank or
31 a savings bank;

32 j. In the event of a default, any public depository that has
33 elected to maintain collateral pursuant to subsection e. of section 4
34 of P.L.1970, c.236 (C.17:9-44), shall not be subject to any
35 assessment pursuant to this section so long as it is in compliance
36 with subsection e. of section 4 of P.L.1970, c.236 (C.17:9-44) on
37 the date of default;

38 k. In the event of a default, any public depository that has
39 elected to maintain collateral pursuant to subsection e. of section 4
40 of P.L.1970, c.236 (C.17:9-44), but which is not in compliance on
41 the date of default shall be subject to assessment, but its maximum
42 liability for purposes of that assessment shall be calculated pursuant
43 to subsection j. of this section.

44 (cf: P.L.1970, c.236, s.5)

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46 4. This act shall take effect immediately.

STATEMENT

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This bill revises and updates the collateral requirements for certain public depositories – the financial institutions which may accept the deposits of public funds – under the “Governmental Unit Deposit Protection Act” or “GUDPA,” P.L.1970, c.236 (C.17:9-41 et seq.).

It allows a public depository which receives or holds public funds and which meets its collateral requirements under GUDPA by pledging collateral equal to at least 100% of its public deposits, net of any federally insured deposits, to avoid any contingent liability for public deposit losses by another public depository bank.

It also limits the maximum liability of a public depository in the event of a default, to a sum equal to 5% of the amount, if any, by which the public funds on deposit, as of the date of default, exceed the amount of the public fund deposits that are: (1) insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories; or (2) collateralized pursuant to GUDPA; or both.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2859

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 14, 2009

The Senate Commerce Committee reports favorably, and with committee amendments, Senate Bill No. 2859.

This bill, as amended, reforms the law concerning financial institutions serving as public depositories for receiving and holding the public funds of governmental units, and the State's administration and oversight of these depositories and public funds under this law, known as the "Governmental Unit Deposit Protection Act" (GUDPA), P.L.1970, c.236 (C.17:9-41 et seq.).

The bill establishes new collateral requirements for public depositories, which shall be pledged as security for any public funds on deposit with such depositories. These collateral requirements shall only be applicable to those public funds on deposit that are not insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories. The collateral requirements shall range between a market value of at least 5% and 120% of the uninsured public funds on deposit measured over a three-month period, with the exact percentage determined by the overall financial condition of the public depository.

In lieu of these collateral requirements, a public depository that is considered significantly or critically undercapitalized, as measured by the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1811 et seq.), may opt to reduce the amount of public funds on deposit so that the only remaining funds after this reduction are those insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories.

The bill also establishes a collateral requirement for any uninsured public funds on deposit in excess of \$200,000,000, regardless of the financial condition of the public depository. For any such excess amount, the public depository shall maintain collateral having a market value of at least 100% of the excess amount, measured over a three-month period.

Any collateral required to be maintained by a public depository shall be deposited with any Federal Reserve Bank or Federal Home Loan Bank, or any other banking institution located in this State or a

contiguous state as authorized by the commissioner by regulation, and with capital funds of not less than \$25,000,000.

In relation to the increased collateral requirements put forth by the bill, the bill reduces the maximum liability of a public depository to help governmental units recover lost public funds in the event of a default by another public depository. This maximum liability, spread among all public depositories as required under the existing law, is reduced from 5% to 4% of the average daily balance of collected, uninsured public funds held on deposit by each public depository during the three-month period ending on the last day of the month immediately preceding the event of default.

The bill, with respect to administration and oversight, provides the Commissioner of Banking and Insurance with several new powers:

- to require any public depository to furnish financial information on a quarterly basis, on a form and format as prescribed by regulation, and include such information as public funds on deposit, eligible collateral pledged as security for these public funds, measurements of capital adequacy or ratios, and liquidity;

- to engage the services of one or more consultants, advisors, or other experts deemed necessary by the commissioner to assist in carrying out the administration and enforcement of GUDPA;

- to require any public depository to either: (1) authorize the release of its most recent examination report, or a copy thereof, prepared by the depository's appropriate federal or state banking authority; or (2) if this report (or copy) is not available, an annual certification of GUDPA compliance by the depository's outside auditor, or any other annual statement of compliance already required by federal or state law and acceptable to the commissioner; and

- to designate any information obtained by, or disclosed to, the commissioner as confidential and not a public record under the State's open public records act, P.L.1963, c.73 (C.47:1A-1 et seq.), for the protection of any sensitive financial information required to be presented to, or otherwise obtained by, the commissioner.

Additionally, the commissioner shall require each public depository to pay an annual fee to cover expenses involving the administration and oversight of GUDPA, unless that depository already pays an assessment to the department to cover the regulatory activities of the department's Division of Banking pursuant to section 3 of P.L.2005, c.199 (C.17:1C-35). This fee shall be prescribed by the commissioner by regulation and based on the amount of public funds on deposit in the public depository, but shall not exceed \$500 for any public depository with only public funds on deposit that are insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories, or \$6,000 for any public depository with \$1,000,000,000 or more in public funds on deposit.

Finally, the bill shall become operative on July 1, 2010, but the commissioner may issue appropriate regulations in advance thereof.

The committee amendments to the bill:

- eliminate the collateral requirements set forth in the underlying bill, and replace these with the requirements as specified in the statement above;

- establish definitions related to the financial condition of a public depository that are based upon definitions utilized under the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1811 et seq.), and relate the new collateral requirements to the depository's overall financial condition;

- clarify that the collateral requirements are only applicable to those public funds on deposit that are not insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories;

- provide that a public depository shall deposit any required collateral in a Federal Reserve Bank or Federal Home Loan Bank, or any other banking institution located in this State or a contiguous state as authorized by the commissioner by regulation, and with capital funds of not less than \$25,000,000;

- decrease the maximum liability of a public depository to help governmental units recover lost public funds associated with a default by another depository, from 5% to 4%;

- provide for increased reporting and the updating of information with the Commissioner of Banking and Insurance, often on a quarterly basis, regarding a public depository's financial condition and compliance with the provisions of GUDPA;

- increase the powers of the commissioner with respect to the administration and oversight of GUDPA, as specified in the statement above; and

- establish an operative date for the bill of July 1, 2010, while permitting the commissioner to issue appropriate regulations in advance of this date.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2859

STATE OF NEW JERSEY 213th LEGISLATURE

DATED: JANUARY 12, 2010

SUMMARY

- Synopsis:** Concerns governmental unit public funds deposited in public depositories.
- Type of Impact:** Shift in funding source and department, no overall impact on revenues collected or cost.
- Agencies Affected:** Department of Banking and Insurance and Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	\$0	\$0	\$0
State Revenue	\$0	\$0	\$0

- The Office of Legislative Services (OLS) notes that the changes proposed in S 2859 (1R) to the fees assessed to public depositories for the “Governmental Unit Deposit Protection Act”(GUDPA) will not have an overall impact on State revenue. The total amount of revenue collected will not change, but the source of the revenue will be shifted slightly to distribute more evenly distribute the cost of the administration of GUDPA to all of the participating financial institutions.
- A small amount of revenue (approximately \$4,000), currently collected as fees from the federally chartered institutions serving as public depositories, which is currently dedicated “for the use of the State” and deposited in the General Fund will no longer be collected. Instead, a new fee (ranging from \$500 - \$6,000) will be imposed on these participating federally chartered financial institutions that will be “dedicated to the operations of the Department of Banking and Insurance in connection with the administration and enforcement of the “Governmental Unit Deposit Protection Act,” P.L.1970, c.236 (C.17:9-41 et seq.)”
- The remaining costs for administering GUDPA will be assessed, as they are currently, to State chartered financial institutions through the Division of Banking assessment pursuant to section 3 of P.L.2005, c.199 (C.17:1C-35).

- Through the increased GUDPA fees, the federally chartered institutions are likely to experience an increase in fees paid to the State. The increased fees will pay for a larger share of the costs associated with administering GUDPA. The remainder of the administrative costs will be assessed to other financial institutions through the Division of Banking assessment, which will most likely decrease slightly as a result of the increased GUDPA revenue. However, the total revenue collected from all participating institutions will equal the total revenue collected currently.

BILL DESCRIPTION

Senate Bill No. 2859 (1R) of 2009 reforms the law concerning financial institutions serving as public depositories for receiving and holding the public funds of governmental units, and the State's administration and oversight of these depositories and public funds under this law, known as the "Governmental Unit Deposit Protection Act" (GUDPA), P.L.1970, c.236 (C.17:9-41 et seq.).

The bill establishes new collateral requirements for public depositories, which shall be pledged as security for any public funds on deposit with such depositories. These collateral requirements shall only be applicable to those public funds on deposit that are not insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories.

The bill also provides the Commissioner of Banking and Insurance with several new regulatory powers. Additionally, the commissioner must require each public depository to pay an annual fee to cover expenses involving the administration and oversight of GUDPA, unless that depository already pays an assessment to the department to cover the regulatory activities of the department's Division of Banking pursuant to section 3 of P.L.2005, c.199 (C.17:1C-35). This fee will be prescribed by the commissioner by regulation and based on the amount of public funds on deposit in the public depository, but may not exceed \$500 for any public depository with only public funds on deposit that are insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories, or \$6,000 for any public depository with \$1,000,000,000 or more in public funds on deposit.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS notes that the changes proposed in S 2859 (1R) to the fees assessed to public depositories for the "Governmental Unit Deposit Protection Act"(GUDPA) will not have an overall impact on State revenue. The total amount of revenue collected will not change, but the source of the revenue will be shifted slightly to distribute more evenly the cost of the administration of GUDPA to all of the participating financial institutions.

Additionally, a small amount of revenue (approximately \$4,000), which is currently dedicated "for the use of the State" and deposited in the General Fund will no longer be collected. Instead a new fee has been created that is "dedicated to the operations of the

department (of Banking and Insurance) in connection with the administration and enforcement of the “Governmental Unit Deposit Protection Act,” P.L.1970, c.236 (C.17:9-41 et seq.).”

Currently, according to the department, approximately 80 federally chartered financial institutions pay a semi-annual fee of \$25 for administrative costs related to GUDPA, generating approximately \$4,000 annually. This revenue is dedicated “for the use of the State” and is deposited in the General Fund. The remaining costs to administer GUDPA are assessed to State chartered financial institutions through the Division of Banking assessment, pursuant to section 3 of P.L.2005, c.199 (C.17:1C-35). The federally chartered financial institutions are not assessed a fee other than the \$25 semi-annual fee.

Pursuant to S 2859 (1R), the participating federally chartered financial institutions will pay a new fee, “dedicated to the operations of the department in connection with the administration and enforcement of the “Governmental Unit Deposit Protection Act,” P.L.1970, c.236 (C.17:9-41 et seq.).” The exact amount will be prescribed by the Commissioner of Banking and Insurance in regulation and will be based on the amount of public funds on deposit in the financial institution but shall not exceed \$500, or \$6,000, based upon the amount of funds on deposit. The remaining costs for administering GUDPA will be assessed, as they are currently, to participating State financial institutions through the Division of Banking assessment.

Currently there is minimal staff and related expenses dedicated to the administration of GUDPA. The department does not anticipate that this bill will affect the total cost of administering GUDPA.

Section: Commerce, Labor and Industry
Analyst: Robin C. Ford
Associate Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-6 et seq.).