



Ohio Legislative Service Commission

Bill Analysis

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128th General Assembly
(As Introduced)

Reps. Heard and Ujvagi, S. Williams, B. Williams, Yuko, Hagan, Huffman, Mallory, Weddington, Gerberry, Goodwin, Harwood, Luckie, Lehner, Letson, Boyd, Yates, Stewart, Foley, Garland, Harris

BILL SUMMARY

- Establishes the eligibility of credit unions to become public depositories.
- Authorizes the state board of deposit and the governing board of any political subdivision to designate a minority credit union as public depository for public moneys designated as federal funds.
- Expands the investment authority of the treasurer or governing board of a political subdivision, and the investing authority of a county, to include certain investments through credit unions.
- Establishes the eligibility of certain credit unions to participate in the Department of Development Capital Access Loan Program.
- Qualifies certain credit union loans for the Department of Development Minority Business Development Loan Program and the loan guarantees for small business program.
- Exempts credit unions from certain requirements and prohibitions regarding certain licenses, state contracting, and state funding with respect to assistance or non-assistance to terrorist organizations.

CONTENT AND OPERATION

Participation of credit unions in the Uniform Depository Act

Background--public depositories

A public depository is a financial institution that receives or holds public funds. In Ohio, the Uniform Depository Act (R.C. Chapter 135.) governs the deposit and investment of public funds belonging to the state, specified political subdivisions, and counties.¹ Under the Act, (1) any national bank or federal savings association, (2) any bank, savings and loan association or savings bank doing business under authority granted by the Ohio Superintendent of Financial Institutions, and (3) any bank, savings and loan association, or savings bank located in Ohio that is doing business under authority granted by the regulatory authority of another state, is eligible to become a public depository. Credit unions are not currently eligible to receive public deposits under the Act.

Credit union eligibility as public depositories

(R.C. 135.03, 135.032, 135.32, and 135.321)

The bill provides that each of the following types of credit unions, subject to inspection by the Superintendent of Financial Institutions, is eligible to become a public depository for state and political subdivision funds and county funds:

- A federal credit union located in this state (see **COMMENT**).
- A credit union that is formed under the laws of another state, located in this state, and licensed by the Superintendent.
- An Ohio chartered credit union.²

¹ The Uniform Depository Act distinguishes between active, inactive, and interim deposits of public funds. Active deposits are public deposits necessary to meet current demands on the treasury. Interim deposits are public deposits that will not be needed for immediate use, but will be needed before the end of the period of designation. Inactive deposits are public deposits other than active or interim deposits. (R.C. 135.01 and 135.31.)

² An Ohio-chartered credit union is one that is organized and qualified under Ohio's credit union law and has all the powers enumerated under that law and Ohio's law governing corporations. It is a nonprofit cooperative financial institution that is organized and operates for the mutual benefit and general welfare of its members with earnings, savings, benefits, and services being distributed to its members as patron savers and borrowers and not its members as individuals. (R.C. 1733.01.)

A credit union that is otherwise eligible to become a public depository is not eligible if the credit union, or any of its regulated individuals (which are the director, committee members, officers, or employees), is currently party to an active final or temporary cease-and-desist order issued by the Superintendent.

Minority credit unions as public depositories

(R.C. 135.04)

Under current law, the state board of deposit and the governing board of any political subdivision may designate one or more minority banks as public depositories of public moneys designated as federal funds. Current law also states the General Assembly's findings and indicates the General Assembly's purpose for granting the authority to designate minority banks as public depositories. The findings indicate the importance of such banks and the barriers they face. The purpose of the authority is to recognize that Ohio has a "substantial and compelling interest in encouraging the establishment, development, and stability" of minority banks. The bill permits the governing board to also designate one or more minority credit unions as a public depository. A minority credit union is defined under the bill (using the same definition used for "minority bank" under current law) as a credit union operating in this state that is owned or controlled by one or more socially or economically disadvantaged persons.³ The bill also makes the General Assembly's findings and purpose regarding minority banks applicable to minority credit unions.

Limit on amount of public deposits

(R.C. 135.03 and 135.32)

Under the bill, credit unions that are eligible public depositories may not receive or have on deposit, at any one time, public moneys that, in aggregate, are more than 30% of the credit union's total assets as shown in its latest report to the Superintendent of Financial Institutions or the National Credit Union Administration (NCUA).

Investment of political subdivision interim money and county inactive money

(R.C. 135.14, 135.144, 135.35, and 135.353)

Current law sets forth the types of obligations in which the treasurer or governing board of a political subdivision may invest interim money and in which the

³ The disadvantage may arise from cultural, ethnic, or racial background, chronic economic circumstances, or other similar cause. Persons include, but are not limited to, Afro-Americans, Puerto Ricans, Spanish-speaking Americans, and American Indians.

investing authority⁴ of a county may invest inactive money and county public library fund money. Such investments must be made through a member of the National Association of Securities Dealers, through a bank, savings bank, or savings and loan association that is regulated by the Superintendent of Financial Institutions, or through an institution regulated by the U.S. Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System. The bill provides that such investments may also be made through a credit union regulated by the Superintendent or through an institution regulated by the NCUA.

Current law also permits the treasurer or governing board of a political subdivision, with respect to interim moneys, and the investment authority of a county with respect to inactive moneys, to invest in certificates of deposit. The moneys must be initially deposited with an eligible public depository. The public depository must then invest the moneys in certificates of deposit of one or more federally insured banks or savings and loan associations. The public depository also must receive, at the same time as the investment and issuance of the certificate of deposit, an amount of deposits from customers of other federally insured institutions that is equal to or greater than the amount deposited in the certificate of deposit. The bill provides that the public depository also may make such investments in certificates of deposit of a credit union insured by the NCUA or a share guaranty corporation. The bill also imposes the customer deposit parity requirement described above with respect to amounts deposited in a certificate of deposit issued by a credit union.

Conforming changes

(R.C. 135.06, 135.08, 135.10, 135.18, 135.33, 135.37, 135.51, 135.52, 135.53, 1733.04, 1733.041, 1733.24, 1733.30, and 1733.31)

The bill makes conforming changes to Ohio law governing credit unions to support credit union eligibility to hold deposits of public money. In addition, the bill makes the following provisions of the Uniform Depository Act apply to credit unions: (1) application procedures to hold deposits of public funds, (2) county commissioner authority to place funds in banks anywhere in Ohio for the purpose of paying the principal and interest on bonds and notes and any related fees, (3) pledge of security by a public depository for the repayment of all deposited public money, and (4) default of public depositories.

⁴ The investing authority of a county is generally the treasurer, however, the board of county commissioners may, under certain circumstances designate another individual to perform this function (R.C. 135.34, not in the bill).

Capital Access Loan Program

(R.C. 122.60)

The Department of Development's Capital Access Loan Program assists participating financial institutions in making loans to eligible businesses that face barriers in accessing working capital and obtaining fixed asset financing.⁵ A financial institution must enter into a participation agreement with the Department in order to be considered eligible to make loans under the Program (R.C. 122.602, not in the bill). Under current law, a "financial institution" means any bank, trust company, savings bank, or savings and loan association that is chartered by and has a significant presence in this state, or any national bank, federal savings and loan association, or federal savings bank that has a significant presence in this state. The bill adds state and federally chartered credit unions with significant presence in this state to the definition.

Minority Business Development Loan Program and loan guarantees for small businesses

(R.C. 122.71)

Under current law, the Director of Development, with Controlling Board approval, may make loans to minority business enterprises and to community improvement corporations, Ohio development corporations, minority contractors business assistance organizations, and minority business supplier development councils for various purposes supporting minority businesses in Ohio.⁶ Also, the Director, with

⁵ "Eligible business" means a for-profit business entity, or a nonprofit entity, that had total annual sales in its most recently completed fiscal year of less than \$10,000,000 and that has a principal place of for-profit business or nonprofit entity activity within the state, the operation of which, alone or in conjunction with other facilities, will create new jobs or preserve existing jobs and employment opportunities and will improve the economic welfare of the people of the state (R.C. 122.60(C)).

⁶ "Minority business enterprise" means an individual who is a United States citizen and owns and controls a business, or a partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, which citizen or citizens are residents of Ohio and are members of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians (R.C. 122.71(E)).

"Community improvement corporation" means an economic development corporation or a county land reutilization corporation (R.C. 122.71(F)). "Economic development corporation" means a nonprofit corporation organized under the laws of Ohio for the purpose of advancing, encouraging, and promoting the industrial, economic, commercial, and civic development of a community or area (R.C. 1724.01, not in the bill). "County land reutilization corporation" means a nonprofit corporation organized under the laws of Ohio for the purpose of (1) facilitating the reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property within the county for whose benefit the corporation is being organized, (2) efficiently holding and managing vacant, abandoned, or tax-foreclosed real property

Controlling Board approval, may make loan guarantees to small business and corporations for the purpose of guaranteeing loans made to small businesses by financial institutions for industrial, distribution, commercial, and research facility development in Ohio. The project for which a loan or loan guarantee is made must meet certain requirements, including a requirement that one or more financial institutions or other governmental entities have loaned not less than 30% of the total amount expended in the procurement or improvement of the project. (R.C. 122.76 and 122.77, not in the bill.)

Current law applicable to the loan and loan guarantee programs defines "financial institution" as any banking corporation, trust company, insurance company, savings and loan association, building and loan association, or corporation, partnership, federal lending agency, foundation, or other institution engaged in lending or investing funds for industrial or business purposes. The bill expands this definition to also include credit unions.

Public safety/declaration of assistance to terrorist organizations

(R.C. 2909.32 and 2909.33)

Under current law a person applying for a state-issued license identified under rules adopted by the Director of Public Safety must provide a written declaration regarding the person's assistance or non-assistance to an organization on the U.S. State Department's terrorist exclusion list. Current law also prohibits the renewal or issuance of any such identified license for a person who has provided assistance to a terrorist organization. Certain federally insured depository institutions, and their affiliates or subsidiaries, that are subject to anti-money laundering and antiterrorism requirements under federal law are exempt from the requirements described above. The bill

pending its reclamation, rehabilitation, and reutilization, (3) assisting governmental entities and other nonprofit or for-profit persons to assemble, clear, and clear the title of property described above in a coordinated manner, or (4) promoting economic and housing development in the county or region (R.C. 1724.01, not in the bill).

"Ohio development corporation" means a corporation formed for a variety of purposes related to the advancement of industrial and business prosperity in Ohio, the encouragement of industry, and the stimulation of business ventures (R.C. 1726.02, not in the bill).

"Minority contractors business assistance organization" means an entity engaged in the provision of management and technical business assistance to minority business enterprise entrepreneurs (R.C. 122.71(H)).

"Minority business supplier development council" means a nonprofit organization established as an affiliate of the national minority supplier development council (R.C. 122.71(I)).



additionally exempts any credit union that is insured by the NCUA or by a credit union share guaranty corporation.

Similarly, certain persons and entities, prior to entering into a contract to conduct business with or receive funding from a state agency, instrumentality, or political subdivision may precertify that the person or entity has not provided material assistance to an organization on the terrorist exclusion list and must certify that the entity is not providing such assistance. Current law also provides further restrictions regarding contracting with or providing funding to persons or entities providing assistance to an organization on the terrorist exclusion list. The requirements of the law described above do not apply to certain types of financial services provided through federally insured depository institutions, and their subsidiaries and affiliates, that are subject to anti-money laundering and antiterrorism requirements under federal law. The bill provides that financial services provided by or through any credit union that is insured by the NCUA or by a credit union share guaranty corporation are also exempt.

COMMENT

The bill provides that federal credit unions located in this state are eligible to become public depositories subject to inspection by the Superintendent of Financial Institutions. This requirement appears to subject federal credit unions to regulation by the state of Ohio in some manner. Federal credit unions, however, are subject only to federal, not state, regulation. As a result, their eligibility as public depositories under the bill may be more tenuous than the express authority provided in the bill appears to indicate.

HISTORY

ACTION	DATE
Introduced	10-16-09

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