



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 441

129th General Assembly  
(As Introduced)

**Reps.** Blair and Heard, Anielski, Boyd, Cera, Driehaus, Fedor, Foley, Gerberry, Goodwin, Kozlowski, Letson, Lundy, O'Brien, R. Hagan, Reece, Terhar, Weddington, Williams, Yuko

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## BILL SUMMARY

- Permits credit unions and farm credit system institutions to serve as public depositories of state and political subdivision funds, subject to the following conditions:
  - (1) Except as provided in (2), below, the state or a political subdivision may deposit funds in a credit union or institution only if the funds are being deposited for purposes of a linked deposit program established under the Uniform Depository Law.
  - (2) A political subdivision may deposit funds in a credit union or institution *other than* for purposes of a linked deposit program, if the total amount the political subdivision will have on deposit with the credit union or institution does not exceed the amount insured (currently, \$250,000).
- Authorizes the State Board of Deposit and the governing board of any political subdivision (other than a county) to designate minority credit unions as public depositories of their public moneys designated as federal funds.
- Expands the investment authority of political subdivisions by allowing them to make their investments through credit unions and farm credit system institutions.
- Permits the state and political subdivisions to invest public moneys in share certificates of credit unions and farm credit system institutions.

- Permits credit unions and farm credit system institutions to participate in the Department of Development's Capital Access Loan Program and its various small business loan guarantee programs.
- Exempts certain credit unions and farm credit system institutions from the Ohio law that requires, in connection with the issuance of specified state-issued licenses or the awarding of contracts to conduct business with or receive funding from the state or a political subdivision, certification that the person or entity does not provide material assistance to an organization on the U.S. State Department's terrorist exclusion list.
- Establishes a nonrefundable credit against the corporation franchise tax for community banks that hold a certain amount of public deposits.

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## CONTENT AND OPERATION

### Application of the Uniform Depository Law to credit unions and farm credit system institutions

#### Deposit of public funds

##### Overview

The bill makes credit unions and farm credit system institutions eligible to become public depositories of state and political subdivision funds (see **COMMENT**). Currently, under the Uniform Depository Law (R.C. Chapter 135.), only the following financial institutions are eligible:

--National banks and federal savings associations located in Ohio;

--Banks, savings and loan associations, and savings banks chartered under Ohio law or the law of any other state and located in Ohio.<sup>1</sup>

"Political subdivision" includes counties, municipal corporations, school districts, townships, and other local authorities that elect or appoint a treasurer.<sup>2</sup>

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<sup>1</sup> R.C. 135.03 and 135.32.

<sup>2</sup> See the definition of "subdivision" in R.C. 135.01(L). Note that R.C. 135.31 to 135.40 specifically apply to counties.

### **Credit unions and farm credit system institutions as public depositories**

The bill provides that each of the following, subject to certain conditions, is eligible to become a public depository:

- (1) A federal credit union located in Ohio;
- (2) A credit union that is chartered under the laws of another state, is located in Ohio, and is licensed by the Superintendent of Financial Institutions as a foreign credit union;
- (3) An Ohio chartered credit union located in Ohio;
- (4) A farm credit system institution organized under the federal Farm Credit Act of 1971 that has a significant presence in Ohio.<sup>3</sup>

A credit union that is otherwise eligible to become a public depository is not eligible if the credit union or any of its directors, committee members, officers, or employees is currently a party to an active final or summary cease-and-desist order issued by the Superintendent. A farm credit system institution is not eligible if the institution or any of its directors, officers, employees, agents, or other persons participating in the institution's affairs is currently a party to an active final or temporary cease-and-desist order issued by the federal Farm Credit Administration.<sup>4</sup>

### **Minority credit unions as public depositories of federal funds**

Under the bill, the State Board of Deposit and the governing board of any political subdivision (other than a county) may designate one or more minority credit unions as public depositories of their public moneys designated as federal funds. Currently, only minority banks may be utilized for this purpose.

The bill's definition of minority credit union is modeled after the definition provided under current law for minority bank: a "minority credit union" is a credit union operating in Ohio that is owned or controlled by one or more socially or economically disadvantaged persons.<sup>5</sup>

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<sup>3</sup> R.C. 135.011(B), 135.03(C) and (D), and 135.32(C) and (D).

<sup>4</sup> R.C. 135.032 and 135.321.

<sup>5</sup> R.C. 135.04(F).

### **Limitations on public deposits**

Generally, the bill prohibits an officer, employee, or agent of the state or of a political subdivision from depositing public moneys in a credit union or farm credit system institution, *unless* (1) the funds are being deposited for purposes of a linked deposit program established under the Uniform Depository Law, (2) the credit union or institution obtains insurance for the protection of the deposit from the National Credit Union Administration (NCUA), a share guaranty corporation, or the Farm Credit System Insurance Corporation, as applicable (currently, the amount insured is \$250,000 per depositor), *and* (3) the credit union or institution pledges securities for the repayment of any deposit in excess of the amount insured, as required under current law for public depositories.<sup>6</sup>

There is an exception, however, for deposits made by officers, employees, or agents of political subdivisions. Deposits of the public moneys of a political subdivision may be made *other than for purposes of a linked deposit program*, if the total amount the political subdivision will have on deposit with the credit union or institution does not exceed the amount insured (currently, \$250,000) and the credit union or institution obtains insurance for the protection of the deposit from the NCUA, a share guaranty corporation, or the Farm Credit System Insurance Corporation, as applicable.<sup>7</sup>

### **Restriction on total assets**

As a public depository, a credit union or farm credit system institution cannot receive or have on deposit at any one time public moneys that, in the aggregate, are more than 30% of its total assets. For credit unions, the total assets referred to are those shown in the credit union's latest report to the Superintendent or the NCUA. For institutions, the total assets are those shown in the institution's latest report to the federal Farm Credit Administration.<sup>8</sup>

### **Conforming changes**

The bill makes conforming changes to the Credit Union Law to support credit union eligibility to hold deposits of public money.<sup>9</sup> In addition, the bill makes the following provisions of the Uniform Depository Law apply to credit unions: (1) application procedures for designation as a public depository, (2) pledge of security by

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<sup>6</sup> R.C. 135.031(A) and 135.322(A).

<sup>7</sup> R.C. 135.031(B) and 135.322(B).

<sup>8</sup> R.C. 135.03 and 135.32.

<sup>9</sup> R.C. 1733.04, 1733.041, 1733.24, 1733.30, and 1733.31.

a public depository for the repayment of all deposited public money above the amount insured, (3) holding of county funds needed to pay the principal and interest on bonds, and (4) default of public depositories.<sup>10</sup>

### **Investment of public funds**

The Uniform Depository Law governs the investment of public funds, as well as the deposit of those funds. A political subdivision (other than a county) may invest interim money,<sup>11</sup> and a county may invest inactive money<sup>12</sup> or county public library funds, in certain classifications of obligations. And, in general, those investments may be made only through specified institutions, such as banks, savings banks, and savings and loan institutions regulated under state or federal law. Under the bill, those investments also may be made through state chartered credit unions, federal credit unions, and farm credit system institutions.<sup>13</sup>

The bill also permits the state and political subdivisions (other than counties) with respect to interim moneys, and counties with respect to inactive moneys, to invest in share certificates of a credit union or farm credit system institution. The investment must be made in accordance with the procedures set forth in existing law for the investment of such moneys in certificates of deposit of federally insured banks, savings banks, and savings and loan associations.<sup>14</sup>

### **Participation of credit unions and farm credit system institutions in state loan programs**

#### **Capital Access Loan Program**

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 assets financing. The bill amends the definition of "financial institution" for purposes of the Program to include (1) any credit union that is chartered by and has a significant presence in Ohio and (2)

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<sup>10</sup> R.C. 135.06, 135.08, 135.10, 135.18, 135.33, 135.37, 135.51, 135.52, and 135.53.

<sup>11</sup> "Interim money" is defined in R.C. 135.01.

<sup>12</sup> "Inactive money" is defined in R.C. 135.31.

<sup>13</sup> R.C. 135.14 and 135.35.

<sup>14</sup> R.C. 135.011(A), 135.144, and 135.353.

any federal credit union or farm credit system institution that has a significant presence in Ohio.<sup>15</sup>

### **Small business loan guarantee programs**

Under these programs, the Department may guarantee loans made to small businesses by financial institutions for purposes of industrial, distribution, commercial, and research facility development in Ohio. The bill expands the definition of "financial institution" to include credit unions and farm credit system institutions.<sup>16</sup>

### **Declaration of assistance to terrorist organizations**

Under current law a person applying for a state-issued license identified by the Director of Public Safety by rule 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. The law prohibits the issuance or renewal of any such license for a person who has provided material 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 this declaration requirement. Officers and employees of such an institution, or its affiliate or subsidiary, also are exempt when the license is related to the person's duties as an officer or employee. The bill expands the exemptions to include (1) a credit union insured by the NCUA or by a credit union share guaranty corporation, and a farm credit system institution insured by the Farm Credit System Insurance Corporation, that are subject to anti-money laundering and antiterrorism requirements under federal law and (2) any officer or employee of such a credit union or institution when the license is related to the person's duties as an officer or employee.<sup>17</sup>

Similarly, under current law, 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, must certify that the person or entity does not provide material assistance to an organization on the terrorist exclusion list. This requirement does not apply to certain transactions, including financial services provided by or 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 additionally exempts financial services provided by or

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<sup>15</sup> R.C. 122.60 and 135.031.

<sup>16</sup> R.C. 122.71. (See also R.C. 122.77, not in the bill.)

<sup>17</sup> R.C. 2909.32.

through a credit union insured by the NCUA or by a credit union share guaranty corporation, or a farm credit system institution insured by the Farm Credit System Insurance Corporation, that is subject to anti-money laundering and antiterrorism requirements under federal law.<sup>18</sup>

### **Tax relief for community banks**

The bill creates a nonrefundable credit against the corporation franchise tax for a community bank that is a public depository and receives or holds during the bank's taxable year at least \$250,000 of public money. For this purpose, "**community bank**" is defined as a financial institution that (1) is a depository financial institution, (2) has its principal location in this state, *and* (3) has a net worth of not more than \$1 billion.<sup>19</sup>

The amount of the credit is \$10,000. It may be claimed for tax years 2012 and thereafter, and must be claimed in the order prescribed in the bill.<sup>20</sup>

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### **COMMENT**

Farm credit system institutions are not eligible to take deposits. Federal law permits them to provide credit and related services to farmers, ranchers, farm-related businesses, and rural homeowners.<sup>21</sup>

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### **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	02-08-12

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<sup>18</sup> R.C. 2909.33.

<sup>19</sup> R.C. 5733.51.

<sup>20</sup> R.C. 5733.98, with a conforming change in R.C. 5733.01.

<sup>21</sup> 12 U.S.C. 2001 and 2017.

