

BILL ANALYSIS

C.S.H.B. 345
By: Flynn
Financial Institutions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, public entities depositing funds with financial institutions in excess of FDIC insurance limits must receive a pledge of securities having a market value greater than their deposits. Each entity is required to have their deposits collateralized individually, even if a financial institution holds several different entities' deposits. Texas does not offer a pooled collateral program. The implementation of such a program will provide for the centralization of the collateral function in a pool tracked and verified to meet all state requirements.

C.S.H.B 345 establishes an optional pooled collateral program that benefits participating public entities and participating financial institutions by allowing an alternative method of securing public funds that is efficient, cost effective, and safe.

RULEMAKING AUTHORITY

It is the opinion of the committee that rulemaking authority is expressly granted to the Texas Comptroller of Public Accounts in SECTION 1 and SECTION 3.

ANALYSIS

C.S.H.B. 345 amends Chapter 2257, Government Code, by adding Subchapter F, to establish a pooled collateral program administered by the Texas Comptroller of Public Accounts. C.S.H.B. 345 adds a definition for "participating institution." C.S.H.B. 345 requires the Comptroller by rule to establish a program for centralized pooled collateralization of deposits of public funds and for monitoring collateral maintained by participating institutions. The Comptroller may provide for a separate collateral pool for any single participating institution's deposits of public funds and also provide for one or more collateral pools for centralized collateralization of two or more identifiable participating institutions' deposits of public funds. C.S.H.B. 345 provides that the program be voluntary, contain uniform procedures for processing all collateral transactions that are subject to an approved security agreement described by Section 2257.103, and use a single custodial account for pledging securities rather than an account for each depositor.

C.S.H.B. 345 authorizes participation by a financial institution only if it has entered in a binding collateral security agreement with a public agency for a deposit of public funds and the agreement permits the institution's participation, and the Comptroller has approved both the institution's participation and the form of the agreement.

C.S.H.B. 345 requires each participating financial institution to secure its deposits of public funds with eligible securities at a level of at least 102%, minus federal insurance. C.S.H.B. 345 requires a third -party depository (custodian) hold the collateral securities in trust on behalf of the participating institution for which it holds the securities. C.S.H.B. 345 requires the Comptroller by rule to regulate a custodian trustee and ensure that a custodian depository is entirely independent of the financial institutions for which it holds the securities. The Comptroller's rules must ensure that a custodian trustee depository does not own, is not owned by, and is independent of the financial institution or institutions for which it holds the securities in trust, except that the rules must allow a banker's bank, as defined by Section 34.105, Finance Code, and a federal home loan bank to be a custodian trustee.

C.S.H.B. 345 requires a participating financial institution to file daily, weekly, monthly, and annual reports to the Comptroller as follows: daily report of the aggregate amount of public deposits held by the institutions; weekly report of the total value of securities held by a custodian on behalf of the institution; monthly report listing the collateral securities held by either the

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institution or the custodian; annual report including the institution's financial statements. C.S.H.B. 345 requires that each participating institution file, as applicable, the institution's call report or annual report that includes the participating institution's financial statements.

C.S.H.B. 345 requires the Comptroller impose against each participating institution an assessment in an amount sufficient to pay the costs of administering this subchapter. The assessment must be imposed pro rata according to the aggregate average weekly deposit amounts during that state fiscal year of each institution's deposits of public funds collateralized under this subchapter. C.S.H.B. 345 requires the Comptroller to provide to each participating institution a notice of the amount of the assessment against the institution. A participating institution shall remit to the Comptroller the amount assessed against it under this section not later than the 45th day after the date the institution receives the notice under Section 2257.106 (b). Monies remitted to the Comptroller may be appropriated only for the purposes of administering this subchapter. C.S.H.B. 345 allows the Comptroller to impose an administrative penalty against a participating institution that does not file a report required by Section 2257.105. The penalty must be in an amount equal to \$100 for each day that elapses after the date the report is due until the date the report is filed. C.S.H.B. 345 allows the Comptroller to impose an administrative penalty against a participating institution that does not maintain collateral in an amount and in the manner required by Section 2257.104 and rules of the Comptroller. The penalty must be in an amount equal to \$100 for each day the participating institution fails to maintain the collateral as required. C.S.H.B. 345 allows the Comptroller to impose an administrative penalty against a participating institution that does not pay an assessment against it in the time provided by Section 2257.106(c). The penalty must be in an amount equal to \$100 for each day that elapses after the date the assessment is due until the date the assessment is paid. The penalties provided by Sections 2257.107-2257.109 are in addition to those provided by Subchapter D or other law. A proceeding to impose a penalty under Sections 2257.107-2257.109 is a contested case under Chapter 2001.

C.S.H.B. 345 allows the Attorney General to sue to collect a penalty imposed under Sections 2257.107-2257.109. Enforcement of a penalty imposed under Sections 2257.107-2257.109 may be stayed during the time the order is under judicial review if the participating institution pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A participating institution that cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the Comptroller to contest the affidavit as provided by those rules. C.S.H.B. 345 permits money collected as penalties may be appropriated only for the purposes of administering this subchapter.

C.S.H.B. 345 amends Section 2257.002(4), Government Code, to add language to include a letter of credit issued by a federal home loan bank. C.S.H.B. 345 provides that the Comptroller of public accounts adopt rules as necessary to implement Subchapter F, Chapter 2257, Government Code, as added by C.S.H.B. 345, so that the pooled collateral program is authorized to begin before or on the first business day of April 2008.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 345 modifies the original by adding to the caption language to provide administrative penalties. C.S.H.B. 345 modifies the original by changing the approval process of the Comptroller. C.S.H.B. 345 authorizes a financial institution to participate in the pooled collateral only if the Comptroller has approved the institution's participation and the form of the collateral security agreement; modifying the original bill's provision that the Comptroller approve the institution's participation and the collateral security agreement.

C.S.H.B. 345 corrects a drafting error by adding (b) to the citation for Section 2257.022, to properly reference current statute, which is found in Section 2257.104, page 3, line 2. C.S.H.B.

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345 inserts a federal home loan bank to be a custodian trustee, which is found in Section 2257.104 page 3, line 21.

C.S.H.B. 345 modifies the original H.B. 345 by providing that a participating institution must provide for the collateral securities to be held in trust by a custodial trustee for the benefit of the pooled collateral bill program. The original H.B. 345 authorized the collateral securities to be held by be a custodian; C.S.H.B. 345 requires the securities be held by a custodian trustee.

C.S.H.B. 345 replaces the original bill's language providing that a participating institution provide for the collateral securities to be held by a custodian with custodian trustee. Additionally, C.S.H.B. 345 provides that the Comptroller, by rule, must allow a banker's bank, as defined by Section 34.105, Finance Code, to be a custodian trustee.

C.S.H.B. 345 does not contain Section 2257.105(a) of the original H.B. 345. The Committee Substitute amends Section 2257.105(1) by providing that each participating institution must file a daily report of the aggregate amount of deposits of public agencies participating in the pooled collateral program that are held by the institution, as prescribed by the rules of the Comptroller. This modifies the original H.B. 345, which authorized each participating institution to file a daily report of the aggregate amount of all public funds held by the institution.

C.S.H.B. 345 replaces the original bill's language providing that each participating institution provide a weekly summary report of the total value of securities held by a third party depository with the phrase custodian trustee.

C.S.H.B. 345 removes the provision that each participating institution file a monthly report listing the collateral securities held by the institution or by a third party depository on behalf of the institution with the Comptroller and replaces it with the provision that each participating institution provide a monthly report listing the collateral securities held by a custodian trustee on behalf of the participating institution.

C.S.H.B. 345 amends the provision that each participating institution file an annual report by replacing the provision with language that each participating institution file, as applicable, the institution's call report or annual report that includes the participating institution's financial statements.

C.S.H.B. 345 amends Section 2257.107 by replacing the word "shall" with "may, " authorizing (rather than requiring) the Comptroller to impose an administrative penalty against a participating institution that does not file a report required by Section 2257.105. Additionally, the citation in the original H.B. 345, Section 2257.107 is replaced by Section 2257.107 (b) in C.S.H.B. 345, to correct the citation to current statute.

C.S.H.B. 345 amends Section 2257.108 by replacing the word "shall" with "may" and the penalty amount of \$250 with the amount of \$100 for each day the participating institution does not maintain collateral in an amount and in the manner required by Section 2257.104 and rules of the Comptroller.

C.S.H.B. 345 amends Section 2257.109 by replacing the word "shall" with "may" and the penalty amount of \$500 with the amount of \$100 for each day that elapses after the date the assessment is due until the assessment is paid.

C.S.H.B. 345 amends Section 2257.002(4), Government Code, to add language to include a letter of credit issued by a federal home loan bank. C.S.H.B. 345 rennumbers Section 2 to Section 3 and Section 3 to Section 4.

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