

BILL ANALYSIS

Senate Research Center
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S.B. 1748
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Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas law does not currently provide for a pooled collateral program. The current financing program requires public entities depositing funds with financial institutions in excess of Federal Deposit Insurance Corporations insurance limits to receive a pledge of securities having a market value greater than the deposits. This system requires each entity to have their deposits collateralized individually, even if a financial institution holds deposits from several different entities. A pooled collateral program would provide an alternative option to the current system by allowing the funds to be "pooled" by the comptroller of public accounts (comptroller).

As proposed, S.B. 1748 establishes a permissive pooled collateral program, provides for the centralization of the collateral function in a pool to tracked and verified to meet state requirements, and requires the comptroller to be responsible for the implementation of this program.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 (Sections 2257.102, 2257.104, and 2257.105, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 2257, Government Code, by adding Subchapter F, as follows:

SUBCHAPTER F. POOLED COLLATERAL TO SECURE DEPOSITS OF PUBLIC FUNDS

Sec. 2257.101. DEFINITION. Defines "participating institution."

Sec. 2257.102. POOLED COLLATERAL PROGRAM. (a) Requires the comptroller of public accounts (comptroller), by rule and as an alternative to collateralization established under Subchapter B (Depository; Security for Deposit of Public Funds), Chapter 2257, Government Code, to establish a program for centralized pooled collateral maintained by participating institutions (program). Authorizes the comptroller to provide for a separate collateral pool (pool) for any single participating institution's deposit of public funds (deposit) and to also provide for one or more pools for centralized collateralization of two or more identifiable participating institutions' deposits.

(b) Requires the program to provide for a participating institution's voluntary participation in the program, uniform procedures for processing all collateral transactions that are subject to an approved security agreement described by Section 2257.103, Government Code, and the pledging of a participating institution's collateral securities using a single custodial account rather than an account for each depositor.

Sec. 2257.103. PARTICIPATION IN COLLATERAL POOL PROGRAM. Authorizes a financial institution to participate in the program if the institution has entered into a binding collateral security agreement with a public agency for a deposit (agreement) and the agreement permits the institution's participation in the program, and if the comptroller has approved said participation and the form of the agreement.

Sec. 2257.104. COLLATERAL REQUIRED; CUSTODIAN TRUSTEE. (a) Requires each participating institution to secure its deposits with eligible securities, the total value of which equals at least 102 percent of the amount of the deposits covered by an agreement and deposited with the participating institution, reduced to the extent that the United States or an instrumentality of the United States insures the deposits. Provides that Section 2257.022(b) (regarding required value of security to secure a deposit), Government Code, does not apply to a deposit held by the participating institution and collateralized under this subchapter, for purposes of determining whether collateral is sufficient to secure a deposit.

(b) Requires a participating institution to provide for the collateral securities to be held by a custodian trustee on behalf of the participating institution in trust for the benefit of the program. Requires a custodian trustee to qualify as a custodian under Section 2257.041 (Deposit of Securities with Custodian), Government Code.

(c) Requires the comptroller by rule to regulate a custodian trustee under the program in the manner provided by Subchapter C (Custodian; Permitted Institution), Chapter 2257, Government Code, to the extent practicable. Requires the rules to 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 are required to allow a banker's bank, as defined by Section 34.105 (Other Direct Equity Investments), Finance Code, to be a custodian trustee.

Sec. 2257.105. MONITORING COLLATERAL. Requires each participating institution to file certain reports with the comptroller, as prescribed by rules of the comptroller.

Sec. 2257.106. ANNUAL ASSESSMENT. (a) Requires the comptroller to impose against each participating institution an assessment in an amount sufficient to pay the costs of administering this subchapter once each state fiscal year. Requires the assessment to be imposed pro rata according to the aggregate average weekly collateralized deposit amounts of the participating institution during that state fiscal year.

(b) Requires the comptroller to provide a notice of the amount of the assessment to each participating institution (notice).

(c) Requires a participating institution to remit the amount assessed to the comptroller within 45 days of the notice.

(d) Authorizes the comptroller to appropriate money remitted under this section only for the purposes of administering this subchapter.

Sec. 2257.107. PENALTY FOR REPORTING VIOLATION. (a) Authorizes the comptroller to impose an administrative penalty against a participating institution that does not file a report required by Section 2257.105, Government Code.

(b) Requires a penalty of \$100 against the participating institution for each day that elapses after the date the report is due until the date the report is filed.

Sec. 2257.108. PENALTY FOR COLLATERAL VIOLATION. (a) Authorizes 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.

(b) Requires the penalty to be \$100 for each day the participating institution fails to maintain the collateral as required.

Sec. 2257.109. PENALTY FOR FAILURE TO PAY ASSESSMENT. (a) Authorizes the comptroller to impose an administrative penalty against a participating institution that does not pay an assessment in the time provided by Section 2257.106(c).

(b) Requires a penalty of \$100 against the participating institution for each day that elapses after the date the assessment is due until the date the assessment is paid.

Sec. 2257.110. PENALTIES NOT EXCLUSIVE. Provides that the penalties provided in Sections 2257.107-2257.109 are in addition to those provided by Subchapter D (Audits and Examinations; Penalties), Chapter 2257, Government Code, or other law.

Sec. 2257.111. PENALTY PROCEEDING CONTESTED CASE. Provides that a proceeding to impose a penalty under Sections 2257.107-2257.109 is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

Sec. 2257.112. SUIT TO COLLECT PENALTY. Authorizes the attorney general to sue to collect a penalty imposed under Sections 2257.107-2257.109.

Sec. 2257.113. ENFORCEMENT STAYED PENDING REVIEW. Authorizes the stay of enforcement of a penalty imposed under Sections 2257.107-2257.109 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. Authorizes a participating institution that cannot afford to pay the penalty or file the bond to 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.

Sec. 2257.114. USE OF COLLECTED PENALTIES. Authorizes the appropriation of money collected as penalties under this subchapter only for the purposes of administering this subchapter.

SECTION 2. Requires the comptroller to adopt rules as necessary to implement Subchapter F, Chapter 2257, Government Code, as added by this Act, so that the program established under that subchapter may begin operating not later than the first business day of April 2008.

SECTION 3. Effective date: September 1, 2007.