

By: Flynn

H.B. No. 345

A BILL TO BE ENTITLED

AN ACT

relating to the collateralization of certain public funds;  
providing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2257, Government Code, is amended by  
adding Subchapter F to read as follows:

SUBCHAPTER F. POOLED COLLATERAL TO SECURE

DEPOSITS OF PUBLIC FUNDS

Sec. 2257.101. DEFINITION. In this subchapter,  
"participating institution" means a financial institution that  
holds one or more deposits of public funds and that participates in  
the pooled collateral program under this subchapter.

Sec. 2257.102. POOLED COLLATERAL PROGRAM. (a) As an  
alternative to collateralization under Subchapter B, the  
comptroller by rule shall 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. The rules must provide  
that deposits of public funds of a county are not eligible for  
collateralization under the program.

1        (b) The pooled collateral program must provide for:

2            (1) voluntary participation in the program by a  
3 participating institution;

4            (2) uniform procedures for processing all collateral  
5 transactions that are subject to an approved security agreement  
6 described by Section 2257.103; and

7            (3) the pledging of a participating institution's  
8 collateral securities using a single custodial account instead of  
9 an account for each depositor of public funds.

10        Sec. 2257.103. PARTICIPATION IN POOLED COLLATERAL PROGRAM.

11 A financial institution may participate in the pooled collateral  
12 program only if:

13            (1) the institution has entered into a binding  
14 collateral security agreement with a public agency for a deposit of  
15 public funds and the agreement permits the institution's  
16 participation in the program; and

17            (2) the comptroller has approved:

18                    (A) the institution's participation in the  
19 program; and

20                    (B) the form of the collateral security  
21 agreement.

22        Sec. 2257.104. COLLATERAL REQUIRED; CUSTODIAN TRUSTEE. (a)

23 Each participating institution shall secure its deposits of public  
24 funds with eligible securities the total value of which equals at  
25 least 102 percent of the amount of the deposits of public funds  
26 covered by a security agreement described by Section 2257.103 and  
27 deposited with the participating institution, reduced to the extent

1 that the United States or an instrumentality of the United States  
2 insures the deposits. For purposes of determining whether  
3 collateral is sufficient to secure a deposit of public funds,  
4 Section 2257.022(b) does not apply to a deposit of public funds held  
5 by the participating institution and collateralized under this  
6 subchapter.

7 (b) A participating institution shall provide for the  
8 collateral securities to be held by a custodian trustee, on behalf  
9 of the participating institution, in trust for the benefit of the  
10 pooled collateral program. A custodian trustee must qualify as a  
11 custodian under Section 2257.041.

12 (c) The comptroller by rule shall regulate a custodian  
13 trustee under the pooled collateral program in the manner provided  
14 by Subchapter C to the extent practicable. The rules must ensure  
15 that a custodian trustee depository does not own, is not owned by,  
16 and is independent of the financial institution or institutions for  
17 which it holds the securities in trust, except that the rules must  
18 allow a banker's bank, as defined by Section 34.105, Finance Code,  
19 and a federal home loan bank to be a custodian trustee.

20 Sec. 2257.105. MONITORING COLLATERAL. Each participating  
21 institution shall file the following reports with the comptroller,  
22 as prescribed by rules of the comptroller:

23 (1) a daily report of the aggregate amount of deposits  
24 of public agencies participating in the pooled collateral program  
25 that are held by the institution;

26 (2) a weekly summary report of the total value of  
27 securities held by a custodian trustee on behalf of the

1 participating institution;

2 (3) a monthly report listing the collateral securities  
3 held by a custodian trustee on behalf of the participating  
4 institution together with the value of the securities; and

5 (4) as applicable, a participating institution's call  
6 report or annual report that includes the participating  
7 institution's financial statements.

8 Sec. 2257.106. ANNUAL ASSESSMENT. (a) Once each state  
9 fiscal year, the comptroller shall impose against each  
10 participating institution an assessment in an amount sufficient to  
11 pay the costs of administering this subchapter. The assessment  
12 must be imposed pro rata according to the aggregate average weekly  
13 deposit amounts during that state fiscal year of each institution's  
14 deposits of public funds collateralized under this subchapter.

15 (b) The comptroller shall provide to each participating  
16 institution a notice of the amount of the assessment against the  
17 institution.

18 (c) A participating institution shall remit to the  
19 comptroller the amount assessed against it under this section not  
20 later than the 45th day after the date the institution receives the  
21 notice under Subsection (b).

22 (d) Money remitted to the comptroller under this section may  
23 be appropriated only for the purposes of administering this  
24 subchapter.

25 Sec. 2257.107. PENALTY FOR REPORTING VIOLATION. (a) The  
26 comptroller may impose an administrative penalty against a  
27 participating institution that does not file a report required by

1 Section 2257.105.

2 (b) The penalty must be in an amount equal to \$100 for each  
3 day that elapses after the date the report is due until the date the  
4 report is filed.

5 Sec. 2257.108. PENALTY FOR COLLATERAL VIOLATION. (a) The  
6 comptroller may impose an administrative penalty against a  
7 participating institution that does not maintain collateral in an  
8 amount and in the manner required by Section 2257.104 and rules of  
9 the comptroller.

10 (b) The penalty must be in an amount equal to \$100 for each  
11 day the participating institution fails to maintain the collateral  
12 as required.

13 Sec. 2257.109. PENALTY FOR FAILURE TO PAY ASSESSMENT. (a)  
14 The comptroller may impose an administrative penalty against a  
15 participating institution that does not pay an assessment against  
16 it in the time provided by Section 2257.106(c).

17 (b) The penalty must be in an amount equal to \$100 for each  
18 day that elapses after the date the assessment is due until the date  
19 the assessment is paid.

20 Sec. 2257.110. PENALTIES NOT EXCLUSIVE. The penalties  
21 provided by Sections 2257.107-2257.109 are in addition to those  
22 provided by Subchapter D or other law.

23 Sec. 2257.111. PENALTY PROCEEDING CONTESTED CASE. A  
24 proceeding to impose a penalty under Sections 2257.107-2257.109 is  
25 a contested case under Chapter 2001.

26 Sec. 2257.112. SUIT TO COLLECT PENALTY. The attorney  
27 general may sue to collect a penalty imposed under Sections

1 2257.107-2257.109.

2 Sec. 2257.113. ENFORCEMENT STAYED PENDING REVIEW.

3 Enforcement of a penalty imposed under Sections 2257.107-2257.109  
4 may be stayed during the time the order is under judicial review if  
5 the participating institution pays the penalty to the clerk of the  
6 court or files a supersedeas bond with the court in the amount of  
7 the penalty. A participating institution that cannot afford to pay  
8 the penalty or file the bond may stay the enforcement by filing an  
9 affidavit in the manner required by the Texas Rules of Civil  
10 Procedure for a party who cannot afford to file security for costs,  
11 subject to the right of the comptroller to contest the affidavit as  
12 provided by those rules.

13 Sec. 2257.114. USE OF COLLECTED PENALTIES. Money collected  
14 as penalties under this subchapter may be appropriated only for the  
15 purposes of administering this subchapter.

16 SECTION 2. Section 2257.002(4), Government Code, is amended  
17 to read as follows:

18 (4) "Eligible security" means:

19 (A) a surety bond;

20 (B) an investment security;

21 (C) an ownership or beneficial interest in an  
22 investment security, other than an option contract to purchase or  
23 sell an investment security;

24 (D) a fixed-rate collateralized mortgage  
25 obligation that has an expected weighted average life of 10 years or  
26 less and does not constitute a high-risk mortgage security; ~~[or]~~

27 (E) a floating-rate collateralized mortgage

1 obligation that does not constitute a high-risk mortgage security;  
2 or  
3 (F) a letter of credit issued by a federal home  
4 loan bank.

5 SECTION 3. The comptroller of public accounts shall adopt  
6 rules as necessary to implement Subchapter F, Chapter 2257,  
7 Government Code, as added by this Act, so that the pooled collateral  
8 program established under that subchapter may begin operating not  
9 later than the first business day of April 2008.

10 SECTION 4. This Act takes effect September 1, 2007.