

By: Flynn

H.B. No. 345

Substitute the following for H.B. No. 345:

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C.S.H.B. No. 345

A BILL TO BE ENTITLED

1

AN ACT

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

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

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

7 SUBCHAPTER F. POOLED COLLATERAL TO SECURE

8 DEPOSITS OF PUBLIC FUNDS

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

13 Sec. 2257.102. POOLED COLLATERAL PROGRAM. (a) As an
14 alternative to collateralization under Subchapter B, the
15 comptroller by rule shall establish a program for centralized
16 pooled collateralization of deposits of public funds and for
17 monitoring collateral maintained by participating institutions.
18 The comptroller may provide for a separate collateral pool for any
19 single participating institution's deposits of public funds and
20 also provide for one or more collateral pools for centralized
21 collateralization of two or more identifiable participating
22 institutions' deposits of public funds.

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

24 (1) voluntary participation in the program by a

1 participating institution;

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

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

8 Sec. 2257.103. PARTICIPATION IN POOLED COLLATERAL PROGRAM.

9 A financial institution may participate in the pooled collateral
10 program only if:

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

15 (2) the comptroller has approved:

16 (A) the institution's participation in the
17 program; and

18 (B) the form of the collateral security
19 agreement.

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

21 Each participating institution shall secure its deposits of public
22 funds with eligible securities the total value of which equals at
23 least 102 percent of the amount of the deposits of public funds
24 covered by a security agreement described by Section 2257.103 and
25 deposited with the participating institution, reduced to the extent
26 that the United States or an instrumentality of the United States
27 insures the deposits. For purposes of determining whether

1 collateral is sufficient to secure a deposit of public funds,
2 Section 2257.022(b) does not apply to a deposit of public funds held
3 by the participating institution and collateralized under this
4 subchapter.

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

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

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

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

24 (2) a weekly summary report of the total value of
25 securities held by a custodian trustee on behalf of the
26 participating institution;

27 (3) a monthly report listing the collateral securities

1 held by a custodian trustee on behalf of the participating
2 institution together with the value of the securities; and

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

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

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

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

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

23 Sec. 2257.107. PENALTY FOR REPORTING VIOLATION. (a) The
24 comptroller may impose an administrative penalty against a
25 participating institution that does not file a report required by
26 Section 2257.105.

27 (b) The penalty must be in an amount equal to \$100 for each

1 day that elapses after the date the report is due until the date the
2 report is filed.

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

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

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

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

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

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

24 Sec. 2257.112. SUIT TO COLLECT PENALTY. The attorney
25 general may sue to collect a penalty imposed under Sections
26 2257.107-2257.109.

27 Sec. 2257.113. ENFORCEMENT STAYED PENDING REVIEW.

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

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

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

16 (4) "Eligible security" means:

17 (A) a surety bond;

18 (B) an investment security;

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

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

25 (E) a floating-rate collateralized mortgage
26 obligation that does not constitute a high-risk mortgage security;

27 or

1 (F) a letter of credit issued by a federal home
2 loan bank.

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

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