

By: Flynn

H.B. No. 345

A BILL TO BE ENTITLED

AN ACT

relating to the collateralization of certain public funds.

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.

(b) The pooled collateral program must provide for:

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

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

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

7 Sec. 2257.103. PARTICIPATION IN COLLATERAL POOL PROGRAM. A
8 financial institution may participate in the pooled collateral
9 program only if:

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

14 (2) the comptroller has approved the collateral
15 security agreement and the institution's participation in the
16 program.

17 Sec. 2257.104. COLLATERAL REQUIRED; CUSTODIAN. (a) Each
18 participating institution shall secure its deposits of public funds
19 with eligible securities the total value of which equals at least
20 102 percent of the amount of the deposits of public funds covered by
21 a security agreement described by Section 2257.103 and deposited
22 with the participating institution, reduced to the extent that the
23 United States or an instrumentality of the United States insures
24 the deposits. For purposes of determining whether collateral is
25 sufficient to secure a deposit of public funds, Section 2257.022
26 does not apply to a deposit of public funds held by the
27 participating institution and collateralized under this

1 subchapter.

2 (b) The collateral securities may be held by a custodian
3 that holds the securities in trust, for the benefit of the pooled
4 collateral program, on the behalf of the financial institution or
5 institutions for which it holds the securities. A custodian must
6 qualify as a custodian under Section 2257.041.

7 (c) The comptroller by rule shall regulate a custodian under
8 the pooled collateral program in the manner provided by Subchapter
9 C to the extent practicable. The rules must ensure that a custodian
10 depository does not own, is not owned by, and is independent of, the
11 financial institution or institutions for which it holds the
12 securities in trust.

13 Sec. 2257.105. MONITORING COLLATERAL. (a) A financial
14 institution participating in the pooled collateral program may not
15 hold public money in an amount greater than the total equity of the
16 institution, as reflected by the institution's financial
17 statements.

18 (b) Each participating financial institution shall file the
19 following reports with the comptroller, as prescribed by rules of
20 the comptroller:

21 (1) a daily report of the aggregate amount of deposits
22 of public funds held by the institution;

23 (2) a weekly summary report of the total value of
24 securities held by a third party depository on behalf of the
25 institution;

26 (3) a monthly report listing the collateral securities
27 held by the institution or by a third party depository on its behalf

1 together with the value of the securities; and

2 (4) an annual report that includes the institution's
3 financial statements.

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

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

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

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

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

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

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

6 (b) The penalty must be in an amount equal to \$250 for each
7 day the participating institution fails to maintain the collateral
8 as required.

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

13 (b) The penalty must be in an amount equal to \$500 for each
14 day that elapses after the date the assessment is due until the date
15 the assessment is paid.

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

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

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

25 Sec. 2257.113. ENFORCEMENT STAYED PENDING REVIEW.
26 Enforcement of a penalty imposed under Sections 2257.107-2257.109
27 may be stayed during the time the order is under judicial review if

1 the person pays the penalty to the clerk of the court or files a
2 supersedeas bond with the court in the amount of the penalty. A
3 person who cannot afford to pay the penalty or file the bond may
4 stay the enforcement by filing an affidavit in the manner required
5 by the Texas Rules of Civil Procedure for a party who cannot afford
6 to file security for costs, subject to the right of the comptroller
7 to contest the affidavit as provided by those rules.

8 Sec. 2257.114. USE OF COLLECTED PENALTIES. Money collected
9 as penalties under this subchapter may be appropriated only for the
10 purposes of administering this subchapter.

11 SECTION 2. (a) This Act takes effect September 1, 2007.

12 (b) The comptroller of public accounts shall adopt rules as
13 necessary to implement Subchapter F, Chapter 2257, Government Code,
14 as added by this Act, so that the pooled collateral program
15 established under that subchapter may begin operating not later
16 than the first business day of April 2008.