

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.

(b) The pooled collateral program must provide for:

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

(2) uniform procedures for processing all collateral

1 transactions that are subject to an approved security agreement  
2 described by Section 2257.103; and

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

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

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

13 (2) the comptroller has approved:

14 (A) the institution's participation in the  
15 program; and

16 (B) the form of the collateral security  
17 agreement.

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

1 by the participating institution and collateralized under this  
2 subchapter.

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

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

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

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

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

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

1           (4) as applicable, a participating institution's call  
2 report or annual report that includes the participating  
3 institution's 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 may impose an administrative penalty against a  
23 participating institution that does not file a report required by  
24 Section 2257.105.

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 may 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 \$100 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 may 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 \$100 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 participating institution pays the penalty to the clerk of the  
2 court or files a supersedeas bond with the court in the amount of  
3 the penalty. A participating institution that cannot afford to pay  
4 the penalty or file the bond may stay the enforcement by filing an  
5 affidavit in the manner required by the Texas Rules of Civil  
6 Procedure for a party who cannot afford to file security for costs,  
7 subject to the right of the comptroller to contest the affidavit as  
8 provided by those rules.

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

12 SECTION 2. The comptroller of public accounts shall adopt  
13 rules as necessary to implement Subchapter F, Chapter 2257,  
14 Government Code, as added by this Act, so that the pooled collateral  
15 program established under that subchapter may begin operating not  
16 later than the first business day of April 2008.

17 SECTION 3. This Act takes effect September 1, 2007.