

Amend SB 638 (Senate committee printing) by adding a new SECTION 3 and SECTION 4 as follows and renumbering the remaining section accordingly:

SECTION 3. Section 404.031(e), Government Code, is amended to read as follows:

(e) Instead of depositing pledged securities with the comptroller, a depository may deposit them with a custodian. The custodian may be the (i) Texas Treasury Safekeeping Trust Company, (ii) [or] a state or national bank that has a capital stock and permanent surplus of not less than \$5 million, is a state depository, and has been designated as a custodian by the comptroller, or (iii) a financial institution authorized to exercise fiduciary powers that has a capital stock and permanent surplus of not less than \$5 million, has its main office, branch office or a trust office in this state, and has been designated as a custodian by the comptroller. For purposes of this subsection (e), "financial institution" has the meaning assigned by Section 201.101(1), Finance Code. The comptroller may designate those custodial applicants that are acceptable and may reject those whose management or condition, in the opinion of the comptroller, do not warrant the placing of securities pledged by state depositories. The comptroller may adopt and enforce rules governing the designation and conduct of custodians with respect to the acceptance and holding of securities pledged by state depositories that the public interest requires and that are not inconsistent with the law governing custodians as set forth in this chapter. The state depository and the custodian of securities pledged by that state depository may not be the same bank or be owned by the same bank holding company. The securities shall be held in trust by the custodian to secure funds deposited by the comptroller in the state depository pledging the securities. On receipt of the securities, the custodian shall immediately, by book entry or otherwise, identify on its books and records the pledge of the securities and shall promptly issue and deliver to the comptroller controlled trust receipts for the securities pledged. The security evidenced by the trust receipts is subject to inspection by the comptroller at any time. The depository pledging the securities shall pay the

charges, if any, of the custodian bank for accepting and holding the securities. The custodian, acting alone or through a permitted institution, is for all purposes under state law and notwithstanding Chapters 8 and 9, Business & Commerce Code, the bailee or agent of the comptroller. The security interest arising out of a pledge of securities to secure deposits of the state is created, attaches, and is perfected for all purposes under state law from the time the custodian identifies the pledge of the securities on its books and records and issues the trust receipts. The security interest remains perfected as of that time in the hands of all subsequent custodians and permitted institutions.

SECTION 4. Section 2257.041(d), Government Code, is amended to read as follows:

(d) A custodian must be approved by the public entity and be:

(1) a state or national bank that:

(A) is designated by the comptroller as a state depository;

(B) has its main office or a branch office in this state; and

(C) has a capital stock and permanent surplus of \$5 million or more;

(2) the Texas Treasury Safekeeping Trust Company;

(3) a Federal Reserve Bank or a branch of a Federal Reserve Bank; ~~or~~

(4) a federal home loan bank; or .]

(5) a financial institution authorized to exercise fiduciary powers that is designated by the comptroller as a custodian pursuant to Section 404.031(e).