

## BILL ANALYSIS

Senate Research Center

H.B. 77  
By: Flynn et al. (Nichols)  
Finance  
5/1/2009  
Engrossed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas law does not currently provide for a pooled collateral program. The current financing program requires public entities depositing funds with financial institutions in excess of Federal Deposit Insurance Corporation insurance limits to receive a pledge of securities having a market value greater than the deposits. This system requires each entity to have its deposits collateralized individually, even if a financial institution holds deposits from several different entities. A pooled collateral program would provide an alternative option to the current system by allowing the funds to be "pooled" by the comptroller of public accounts (comptroller).

H.B. 77 amends current law relating to the collateralization of certain public funds and to custodians with which certain pledged securities may be deposited, and provides administrative penalties.

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 (Section 404.031, Government Code) and SECTION 3 (Sections 2257.102, 2257.104, 2257.105, 2257.106, and 2257.110, Government Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 404.031(e), Government Code, as follows:

(e) Authorizes a depository, instead of depositing pledged securities with the comptroller of public accounts (comptroller), to deposit them with a custodian. Authorizes the custodian to be (i) the Texas Treasury Safekeeping Trust Company, (ii) 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, a branch office, or a trust office in this state, and has been designated as a custodian by the comptroller. Defines "financial institution." Authorizes the comptroller to designate those custodial applicants that are acceptable and to reject those whose management or condition, in the opinion of the comptroller, does not warrant the placing of securities pledged by state depositories. Authorizes the comptroller to 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.

SECTION 2. Amends Section 2257.041(d), Government Code, to require a custodian to be approved by the public entity and be a certain institution, including a financial institution authorized to exercise fiduciary powers that is designated by the comptroller as a custodian pursuant to Section 404.031(e).

SECTION 3. Amends Chapter 2257, Government Code, by adding Subchapter F, as follows:

#### SUBCHAPTER F. POOLED COLLATERAL TO SECURE DEPOSITS OF CERTAIN PUBLIC FUNDS

Sec. 2257.101. DEFINITION. Defines "participating institution" (institution).

Sec. 2257.102. POOLED COLLATERAL PROGRAM. (a) Requires the comptroller of public accounts by rule as an alternative to collateralization under Subchapter B, to establish a program for centralized pooled collateralization of deposits of public funds and for monitoring collateral maintained by institutions. Requires the rules to provide that deposits of public funds of a county are not eligible for collateralization under the program. Requires the comptroller to provide for a separate collateral pool for any single institution's deposits of public funds.

(b) Prohibits, the collateral of an institution pledged for a public deposit, under the program, from being combined with, cross-collateralized with, aggregated with, or pledged to another institution's collateral pools for pledging purposes.

(c) Authorizes an institution to pledge its pooled securities to more than one participating depositor under contract with that institution.

(d) Requires that the pooled collateral program (program) provide for participation in the program by an institution and each affected public entity to be voluntary; for uniform procedures for processing all collateral transactions that are subject to an approved security agreement described by Section 2257.103; and for the pledging of an institution's collateral securities using a single custodial account instead of an account for each depositor of public funds.

Sec. 2257.103. PARTICIPATION IN POOLED COLLATERAL PROGRAM. Authorizes a financial institution to participate in the program only if the financial institution has entered into a binding collateral security agreement with a public agency for a deposit of public funds and the agreement permits the financial institution's participation in the program; the comptroller has approved the financial institution's participation in the program; and the comptroller has approved or provided the collateral security agreement form used.

Sec. 2257.104. COLLATERAL REQUIRED; CUSTODIAN TRUSTEE. (a) Requires each institution to secure its deposits of public funds with eligible securities the total value of which equals at least 102 percent of the amount of the deposits of public funds covered by a security agreement described by Section 2257.103 and deposited with the institution, reduced to the extent that the United States or an instrumentality of the United States insures the deposits. Provides that for purposes of determining whether the collateral is sufficient to secure a deposit of public funds, Section 2257.022(b) (regarding the total value of eligible security) does not apply to a deposit of public funds held by the institution and collateralized under this subchapter.

(b) Requires an institution to provide for the collateral securities to be held by a custodian trustee, on behalf of the institution, in trust for the benefit of the program. Requires that a custodian trustee qualify as a custodian under Section 2257.041 (Deposit of Securities with Custodian).

(c) Requires the comptroller by rule to regulate a custodian trustee under the program in the manner provided by Subchapter C (Custodian; Permitted Institution) to the extent practicable. Requires that the rules ensure that a custodian trustee depository does not own, is not owned by, and is independent of the financial institution or institutions for which it holds the securities in trust, except that the rules are required to allow a federal reserve bank, a banker's bank, as defined by Section 34.105 (Other Direct Equity Investments), Finance Code, and a federal home loan bank to be a custodian trustee.

Sec. 2257.105. MONITORING COLLATERAL. (a) Requires each institution to file certain reports with the comptroller electronically and as prescribed by rules of the comptroller.

(b) Requires the comptroller to provide the institution an acknowledgement of each report received.

(c) Requires the comptroller to provide a daily report of the market value of the securities held in each pool.

(d) Requires the comptroller to post each report on the comptroller's Internet website.

Sec. 2257.106. ANNUAL ASSESSMENT. (a) Requires the comptroller, once each state fiscal year, to impose against each institution an assessment in an amount sufficient to pay the costs of administering this subchapter. Requires that the amount of an assessment be based on factors that include the number of public entity accounts an institution maintains, the number of transactions an institution conducts, and the aggregate average weekly deposit amounts during that state fiscal year of each institution's deposits of public funds collateralized under this subchapter. Requires the comptroller by rule to establish the formula for determining the amount of the assessments imposed under this subsection.

(b) Requires the comptroller to provide to each institution a notice of the amount of the assessment against the institution.

(c) Requires an institution to remit to the comptroller the amount assessed against it under this section not later than the 45th day after the date the institution receives the notice under Subsection (b).

(d) Authorizes money remitted to the comptroller under this section to be appropriated only for the purposes of administering this subchapter.

Sec. 2257.107. PENALTY FOR REPORTING VIOLATION. Authorizes the comptroller to impose an administrative penalty against an institution that does not timely file a report required by Section 2257.105.

Sec. 2257.108. NOTICE OF COLLATERAL VIOLATION; ADMINISTRATIVE PENALTY. (a) Authorizes the comptroller to issue a notice to an institution that the institution appears to be in violation of collateral requirements under Section 2257.104 and rules of the comptroller.

(b) Authorizes the comptroller to impose an administrative penalty against an institution that does not maintain collateral in an amount and in the manner required by Section 2257.104 and rules of the comptroller if the institution has not remedied the violation before the third business day after the date a notice is issued under Subsection (a).

Sec. 2257.109. PENALTY FOR FAILURE TO PAY ASSESSMENT. Authorizes the comptroller to impose an administrative penalty against an institution that does not pay an assessment against it in the time provided by Section 2257.106(c).

Sec. 2257.110. PENALTY AMOUNT; PENALTIES NOT EXCLUSIVE. (a) Requires the comptroller by rule to adopt a formula for determining the amount of a penalty under this subchapter. Provides that for each violation and for each day of a continuing violation, a penalty is required to be at least \$100 per day and not more than \$1,000 per day. Requires that the penalty be based on certain factors.

(b) Provides that the penalties provided by Sections 2257.107-2257.109 are in addition to those provided by Subchapter D (Audits and Examinations; Penalties) or other law.

Sec. 2257.111. PENALTY PROCEEDING CONTESTED CASE. Provides that a proceeding to impose a penalty under Sections 2257.107- 2257.109 is a contested case under Chapter 2001 (Administrative Procedure).

Sec. 2257.112. SUIT TO COLLECT PENALTY. Authorizes the attorney general to sue to collect a penalty imposed under Sections 2257.107-2257.109.

Sec. 2257.113. ENFORCEMENT STAYED PENDING REVIEW. Authorizes enforcement of a penalty imposed under Sections 2257.107-2257.109 to be stayed during the time the order is under judicial review if the institution pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. Authorizes an institution that cannot afford to pay the penalty or file the bond to stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the comptroller to contest the affidavit as provided by those rules.

Sec. 2257.114. USE OF COLLECTED PENALTIES. Authorizes money collected as penalties under this subchapter to be appropriated only for the purposes of administering this subchapter.

SECTION 4. Requires the comptroller to adopt rules as necessary to implement Subchapter F, Chapter 2257, Government Code, as added by this Act, so that the program established under that subchapter is authorized to begin operating not later than the first business day of April 2010.

SECTION 5. Effective date: September 1, 2009.