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H.B. No. 77

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the collateralization of certain public funds and to
3 custodians with which certain pledged securities may be deposited;
4 providing administrative penalties.

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

6 SECTION 1. Section 404.031(e), Government Code, is amended
7 to read as follows:

8 (e) Instead of depositing pledged securities with the
9 comptroller, a depository may deposit them with a custodian. The
10 custodian may be (i) the Texas Treasury Safekeeping Trust Company,
11 (ii) [or] a state or national bank that has a capital stock and
12 permanent surplus of not less than \$5 million, is a state
13 depository, and has been designated as a custodian by the
14 comptroller, or (iii) a financial institution authorized to
15 exercise fiduciary powers that has a capital stock and permanent
16 surplus of not less than \$5 million, has its main office, a branch
17 office, or a trust office in this state, and has been designated as
18 a custodian by the comptroller. For purposes of this subsection,
19 "financial institution" has the meaning assigned by Section
20 201.101(1), Finance Code. The comptroller may designate those
21 custodial applicants that are acceptable and may reject those whose
22 management or condition, in the opinion of the comptroller, does
23 not warrant the placing of securities pledged by state
24 depositories. The comptroller may adopt and enforce rules

1 governing the designation and conduct of custodians with respect to
2 the acceptance and holding of securities pledged by state
3 depositories that the public interest requires and that are not
4 inconsistent with the law governing custodians as set forth in this
5 chapter. The state depository and the custodian of securities
6 pledged by that state depository may not be the same bank or be
7 owned by the same bank holding company. The securities shall be
8 held in trust by the custodian to secure funds deposited by the
9 comptroller in the state depository pledging the securities. On
10 receipt of the securities, the custodian shall immediately, by book
11 entry or otherwise, identify on its books and records the pledge of
12 the securities and shall promptly issue and deliver to the
13 comptroller controlled trust receipts for the securities pledged.
14 The security evidenced by the trust receipts is subject to
15 inspection by the comptroller at any time. The depository pledging
16 the securities shall pay the charges, if any, of the custodian bank
17 for accepting and holding the securities. The custodian, acting
18 alone or through a permitted institution, is for all purposes under
19 state law and notwithstanding Chapters 8 and 9, Business & Commerce
20 Code, the bailee or agent of the comptroller. The security interest
21 arising out of a pledge of securities to secure deposits of the
22 state is created, attaches, and is perfected for all purposes under
23 state law from the time the custodian identifies the pledge of the
24 securities on its books and records and issues the trust receipts.
25 The security interest remains perfected as of that time in the hands
26 of all subsequent custodians and permitted institutions.

27 SECTION 2. Section 2257.041(d), Government Code, is amended

1 to read as follows:

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

4 (1) a state or national bank that:

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

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

9 (C) has a capital stock and permanent surplus of
10 \$5 million or more;

11 (2) the Texas Treasury Safekeeping Trust Company;

12 (3) a Federal Reserve Bank or a branch of a Federal
13 Reserve Bank; [~~or~~]

14 (4) a federal home loan bank; or

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

18 SECTION 3. Chapter 2257, Government Code, is amended by
19 adding Subchapter F to read as follows:

20 SUBCHAPTER F. POOLED COLLATERAL TO SECURE

21 DEPOSITS OF CERTAIN PUBLIC FUNDS

22 Sec. 2257.101. DEFINITION. In this subchapter,
23 "participating institution" means a financial institution that
24 holds one or more deposits of public funds and that participates in
25 the pooled collateral program under this subchapter.

26 Sec. 2257.102. POOLED COLLATERAL PROGRAM. (a) As an
27 alternative to collateralization under Subchapter B, the

1 comptroller by rule shall establish a program for centralized
2 pooled collateralization of deposits of public funds and for
3 monitoring collateral maintained by participating institutions.
4 The rules must provide that deposits of public funds of a county are
5 not eligible for collateralization under the program. The
6 comptroller shall provide for a separate collateral pool for any
7 single participating institution's deposits of public funds.

8 (b) Under the program, the collateral of a participating
9 institution pledged for a public deposit may not be combined with,
10 cross-collateralized with, aggregated with, or pledged to another
11 participating institution's collateral pools for pledging
12 purposes.

13 (c) A participating institution may pledge its pooled
14 securities to more than one participating depositor under contract
15 with that participating institution.

16 (d) The pooled collateral program must provide for:

17 (1) participation in the program by a participating
18 institution and each affected public entity to be voluntary;

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

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

25 Sec. 2257.103. PARTICIPATION IN POOLED COLLATERAL PROGRAM.

26 A financial institution may participate in the pooled collateral
27 program only if:

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

5 (2) the comptroller has approved the institution's
6 participation in the program; and

7 (3) the comptroller has approved or provided the
8 collateral security agreement form used.

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

21 (b) A participating institution shall provide for the
22 collateral securities to be held by a custodian trustee, on behalf
23 of the participating institution, in trust for the benefit of the
24 pooled collateral program. A custodian trustee must qualify as a
25 custodian under Section 2257.041.

26 (c) The comptroller by rule shall regulate a custodian
27 trustee under the pooled collateral program in the manner provided

1 by Subchapter C to the extent practicable. The rules must ensure
2 that a custodian trustee depository does not own, is not owned by,
3 and is independent of the financial institution or institutions for
4 which it holds the securities in trust, except that the rules must
5 allow the following to be a custodian trustee:

6 (1) a federal reserve bank;

7 (2) a banker's bank, as defined by Section 34.105,
8 Finance Code; and

9 (3) a federal home loan bank.

10 Sec. 2257.105. MONITORING COLLATERAL. (a) Each
11 participating institution shall file the following reports with the
12 comptroller electronically and as prescribed by rules of the
13 comptroller:

14 (1) a daily report of the aggregate ledger balance of
15 deposits of public agencies participating in the pooled collateral
16 program that are held by the institution, with each public entity's
17 funds held itemized;

18 (2) a weekly summary report of the total market value
19 of securities held by a custodian trustee on behalf of the
20 participating institution;

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

24 (4) as applicable, a participating institution's
25 annual report that includes the participating institution's
26 financial statements.

27 (b) The comptroller shall provide the participating

1 institution an acknowledgment of each report received.

2 (c) The comptroller shall provide a daily report of the
3 market value of the securities held in each pool.

4 (d) The comptroller shall post each report on the
5 comptroller's Internet website.

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 amount of an
10 assessment must be based on factors that include the number of
11 public entity accounts a participating institution maintains, the
12 number of transactions a participating institution conducts, and
13 the aggregate average weekly deposit amounts during that state
14 fiscal year of each participating institution's deposits of public
15 funds collateralized under this subchapter. The comptroller by
16 rule shall establish the formula for determining the amount of the
17 assessments imposed under this subsection.

18 (b) The comptroller shall provide to each participating
19 institution a notice of the amount of the assessment against the
20 institution.

21 (c) A participating institution shall remit to the
22 comptroller the amount assessed against it under this section not
23 later than the 45th day after the date the institution receives the
24 notice under Subsection (b).

25 (d) Money remitted to the comptroller under this section may
26 be appropriated only for the purposes of administering this
27 subchapter.

1 Sec. 2257.107. PENALTY FOR REPORTING VIOLATION. The
2 comptroller may impose an administrative penalty against a
3 participating institution that does not timely file a report
4 required by Section 2257.105.

5 Sec. 2257.108. NOTICE OF COLLATERAL VIOLATION;
6 ADMINISTRATIVE PENALTY. (a) The comptroller may issue a notice to
7 a participating institution that the institution appears to be in
8 violation of collateral requirements under Section 2257.104 and
9 rules of the comptroller.

10 (b) The comptroller may impose an administrative penalty
11 against a participating institution that does not maintain
12 collateral in an amount and in the manner required by Section
13 2257.104 and rules of the comptroller if the participating
14 institution has not remedied the violation before the third
15 business day after the date a notice is issued under Subsection (a).

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

20 Sec. 2257.110. PENALTY AMOUNT; PENALTIES NOT EXCLUSIVE.
21 (a) The comptroller by rule shall adopt a formula for determining
22 the amount of a penalty under this subchapter. For each violation
23 and for each day of a continuing violation, a penalty must be at
24 least \$100 per day and not more than \$1,000 per day. The penalty
25 must be based on factors that include:

26 (1) the aggregate average weekly deposit amounts
27 during the state fiscal year of the institution's deposits of

1 public funds;

2 (2) the number of violations by the institution during
3 the state fiscal year;

4 (3) the number of days of a continuing violation; and

5 (4) the average asset base of the institution as
6 reported on the institution's year-end report of condition.

7 (b) The penalties provided by Sections 2257.107-2257.109
8 are in addition to those provided by Subchapter D or other law.

9 Sec. 2257.111. PENALTY PROCEEDING CONTESTED CASE. A
10 proceeding to impose a penalty under Section 2257.107, 2257.108, or
11 2257.109 is a contested case under Chapter 2001.

12 Sec. 2257.112. SUIT TO COLLECT PENALTY. The attorney
13 general may sue to collect a penalty imposed under Section
14 2257.107, 2257.108, or 2257.109.

15 Sec. 2257.113. ENFORCEMENT STAYED PENDING REVIEW.
16 Enforcement of a penalty imposed under Section 2257.107, 2257.108,
17 or 2257.109 may be stayed during the time the order is under
18 judicial review if the participating institution pays the penalty
19 to the clerk of the court or files a supersedeas bond with the court
20 in the amount of the penalty. A participating institution that
21 cannot afford to pay the penalty or file the bond may stay the
22 enforcement by filing an affidavit in the manner required by the
23 Texas Rules of Civil Procedure for a party who cannot afford to file
24 security for costs, subject to the right of the comptroller to
25 contest the affidavit as provided by those rules.

26 Sec. 2257.114. USE OF COLLECTED PENALTIES. Money collected
27 as penalties under this subchapter may be appropriated only for the

1 purposes of administering this subchapter.

2 SECTION 4. The comptroller of public accounts shall adopt
3 rules as necessary to implement Subchapter F, Chapter 2257,
4 Government Code, as added by this Act, so that the pooled collateral
5 program established under that subchapter may begin operating not
6 later than the first business day of April 2010.

7 SECTION 5. This Act takes effect September 1, 2009.