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H.B. No. 77

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 CERTAIN 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 rules must provide that deposits of public funds of a county are  
not eligible for collateralization under the program. The  
comptroller shall provide for a separate collateral pool for any  
single participating institution's deposits of public funds.

(b) Under the program, the collateral of a participating  
institution pledged for a public deposit may not be combined with,  
cross-collateralized with, aggregated with, or pledged to another

1 participating institution's collateral pools for pledging  
2 purposes.

3 (c) A participating institution may pledge its pooled  
4 securities to more than one participating depositor under contract  
5 with that participating institution.

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

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

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

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

15 Sec. 2257.103. PARTICIPATION IN POOLED COLLATERAL PROGRAM.  
16 A financial institution may participate in the pooled collateral  
17 program only if:

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

22 (2) the comptroller has approved the institution's  
23 participation in the program; and

24 (3) the comptroller has approved or provided the  
25 collateral security agreement form used.

26 Sec. 2257.104. COLLATERAL REQUIRED; CUSTODIAN TRUSTEE. (a)  
27 Each participating institution shall secure its deposits of public

1 funds with eligible securities the total value of which equals at  
2 least 102 percent of the amount of the deposits of public funds  
3 covered by a security agreement described by Section 2257.103 and  
4 deposited with the participating institution, reduced to the extent  
5 that the United States or an instrumentality of the United States  
6 insures the deposits. For purposes of determining whether  
7 collateral is sufficient to secure a deposit of public funds,  
8 Section 2257.022(b) does not apply to a deposit of public funds held  
9 by the participating institution and collateralized under this  
10 subchapter.

11 (b) A participating institution shall provide for the  
12 collateral securities to be held by a custodian trustee, on behalf  
13 of the participating institution, in trust for the benefit of the  
14 pooled collateral program. A custodian trustee must qualify as a  
15 custodian under Section 2257.041.

16 (c) The comptroller by rule shall regulate a custodian  
17 trustee under the pooled collateral program in the manner provided  
18 by Subchapter C to the extent practicable. The rules must ensure  
19 that a custodian trustee depository does not own, is not owned by,  
20 and is independent of the financial institution or institutions for  
21 which it holds the securities in trust, except that the rules must  
22 allow the following to be a custodian trustee:

- 23 (1) a federal reserve bank;  
24 (2) a banker's bank, as defined by Section 34.105,  
25 Finance Code; and  
26 (3) a federal home loan bank.

27 Sec. 2257.105. MONITORING COLLATERAL. (a) Each

1 participating institution shall file the following reports with the  
2 comptroller electronically and as prescribed by rules of the  
3 comptroller:

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

8 (2) a weekly summary report of the total market value  
9 of securities held by a custodian trustee on behalf of the  
10 participating institution;

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

14 (4) as applicable, a participating institution's  
15 annual report that includes the participating institution's  
16 financial statements.

17 (b) The comptroller shall provide the participating  
18 institution an acknowledgment of each report received.

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

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

23 Sec. 2257.106. ANNUAL ASSESSMENT. (a) Once each state  
24 fiscal year, the comptroller shall impose against each  
25 participating institution an assessment in an amount sufficient to  
26 pay the costs of administering this subchapter. The amount of an  
27 assessment must be based on factors that include the number of

1 public entity accounts a participating institution maintains, the  
2 number of transactions a participating institution conducts, and  
3 the aggregate average weekly deposit amounts during that state  
4 fiscal year of each participating institution's deposits of public  
5 funds collateralized under this subchapter. The comptroller by  
6 rule shall establish the formula for determining the amount of the  
7 assessments imposed under this subsection.

8 (b) The comptroller shall provide to each participating  
9 institution a notice of the amount of the assessment against the  
10 institution.

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

15 (d) Money remitted to the comptroller under this section may  
16 be appropriated only for the purposes of administering this  
17 subchapter.

18 Sec. 2257.107. PENALTY FOR REPORTING VIOLATION. The  
19 comptroller may impose an administrative penalty against a  
20 participating institution that does not timely file a report  
21 required by Section 2257.105.

22 Sec. 2257.108. NOTICE OF COLLATERAL VIOLATION;  
23 ADMINISTRATIVE PENALTY. (a) The comptroller may issue a notice to  
24 a participating institution that the institution appears to be in  
25 violation of collateral requirements under Section 2257.104 and  
26 rules of the comptroller.

27 (b) The comptroller may impose an administrative penalty

1 against a participating institution that does not maintain  
2 collateral in an amount and in the manner required by Section  
3 2257.104 and rules of the comptroller if the participating  
4 institution has not remedied the violation before the third  
5 business day after the date a notice is issued under Subsection (a).

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

10 Sec. 2257.110. PENALTY AMOUNT; PENALTIES NOT EXCLUSIVE.

11 (a) The comptroller by rule shall adopt a formula for determining  
12 the amount of a penalty under this subchapter. For each violation  
13 and for each day of a continuing violation, a penalty must be at  
14 least \$100 per day and not more than \$1,000 per day. The penalty  
15 must be based on factors that include:

16 (1) the aggregate average weekly deposit amounts  
17 during the state fiscal year of the institution's deposits of  
18 public funds;

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

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

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

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

26 Sec. 2257.111. PENALTY PROCEEDING CONTESTED CASE. A  
27 proceeding to impose a penalty under Section 2257.107, 2257.108, or

1 2257.109 is a contested case under Chapter 2001.

2 Sec. 2257.112. SUIT TO COLLECT PENALTY. The attorney  
3 general may sue to collect a penalty imposed under Section  
4 2257.107, 2257.108, or 2257.109.

5 Sec. 2257.113. ENFORCEMENT STAYED PENDING REVIEW.  
6 Enforcement of a penalty imposed under Section 2257.107, 2257.108,  
7 or 2257.109 may be stayed during the time the order is under  
8 judicial review if the participating institution pays the penalty  
9 to the clerk of the court or files a supersedeas bond with the court  
10 in the amount of the penalty. A participating institution that  
11 cannot afford to pay the penalty or file the bond may stay the  
12 enforcement by filing an affidavit in the manner required by the  
13 Texas Rules of Civil Procedure for a party who cannot afford to file  
14 security for costs, subject to the right of the comptroller to  
15 contest the affidavit as provided by those rules.

16 Sec. 2257.114. USE OF COLLECTED PENALTIES. Money collected  
17 as penalties under this subchapter may be appropriated only for the  
18 purposes of administering this subchapter.

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

24 SECTION 3. This Act takes effect September 1, 2009.