

By: Nichols

S.B. No. 638

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the collateralization of certain public funds;
3 providing administrative penalties.

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

5 SECTION 1. Chapter 2257, Government Code, is amended by
6 adding Subchapter F to read as follows:

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

9 Sec. 2257.101. DEFINITION. In this subchapter,
10 "participating institution" means a financial institution that
11 holds one or more deposits of public funds and that participates in
12 the pooled collateral program under this subchapter.

13 Sec. 2257.102. POOLED COLLATERAL PROGRAM. (a) As an
14 alternative to collateralization under Subchapter B, the
15 comptroller by rule shall establish a program for centralized
16 pooled collateralization of deposits of public funds and for
17 monitoring collateral maintained by participating institutions.
18 The rules must provide that deposits of public funds of a county are
19 not eligible for collateralization under the program. The
20 comptroller shall provide for a separate collateral pool for any
21 single participating institution's deposits of public funds.

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

1 pledged to another participating institution's collateral pools
2 for pledging 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.

27 (a) Each participating institution shall secure its deposits of

1 public funds with eligible securities the total value of which
2 equals at least 102 percent of the amount of the deposits of public
3 funds covered by a security agreement described by Section 2257.103
4 and deposited with the participating institution, reduced to the
5 extent that the United States or an instrumentality of the United
6 States 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. Subsection (e), Section 404.031, Government
20 Code, is amended to read as follows:

21 (e) Instead of depositing pledged securities with the
22 comptroller, a depository may deposit them with a custodian. The
23 custodian may be the (i) Texas Treasury Safekeeping Trust Company,
24 (ii) [or] a state or national bank that has a capital stock and
25 permanent surplus of not less than \$5 million, is a state
26 depository, and has been designated as a custodian by the
27 comptroller, or (iii) a financial institution authorized to

1 exercise fiduciary powers that has a capital stock and permanent
2 surplus of not less than \$5 million, has its main office, branch
3 office, or a trust office in this state, and has been designated as
4 a custodian by the comptroller. For purposes of this subsection,
5 "financial institution" has the meaning assigned by Section
6 201.101(1), Finance Code. The comptroller may designate those
7 custodial applicants that are acceptable and may reject those whose
8 management or condition, in the opinion of the comptroller, do not
9 warrant the placing of securities pledged by state depositories.
10 The comptroller may adopt and enforce rules governing the
11 designation and conduct of custodians with respect to the
12 acceptance and holding of securities pledged by state depositories
13 that the public interest requires and that are not inconsistent
14 with the law governing custodians as set forth in this chapter. The
15 state depository and the custodian of securities pledged by that
16 state depository may not be the same bank or be owned by the same
17 bank holding company. The securities shall be held in trust by the
18 custodian to secure funds deposited by the comptroller in the state
19 depository pledging the securities. On receipt of the securities,
20 the custodian shall immediately, by book entry or otherwise,
21 identify on its books and records the pledge of the securities and
22 shall promptly issue and deliver to the comptroller controlled
23 trust receipts for the securities pledged. The security evidenced
24 by the trust receipts is subject to inspection by the comptroller at
25 any time. The depository pledging the securities shall pay the
26 charges, if any, of the custodian bank for accepting and holding the
27 securities. The custodian, acting alone or through a permitted

1 institution, is for all purposes under state law and
2 notwithstanding Chapters 8 and 9, Business & Commerce Code, the
3 bailee or agent of the comptroller. The security interest arising
4 out of a pledge of securities to secure deposits of the state is
5 created, attaches, and is perfected for all purposes under state
6 law from the time the custodian identifies the pledge of the
7 securities on its books and records and issues the trust receipts.
8 The security interest remains perfected as of that time in the hands
9 of all subsequent custodians and permitted institutions.

10 SECTION 3. Subsection (d), Section 2257.041, Government
11 Code, is amended to read as follows:

- 12 (d) A custodian must be approved by the public entity and be:
- 13 (1) a state or national bank that:
 - 14 (A) is designated by the comptroller as a state
 - 15 depository;
 - 16 (B) has its main office or a branch office in this
 - 17 state; and
 - 18 (C) has a capital stock and permanent surplus of
 - 19 \$5 million or more;
 - 20 (2) the Texas Treasury Safekeeping Trust Company;
 - 21 (3) a Federal Reserve Bank or a branch of a Federal
 - 22 Reserve Bank; ~~or~~
 - 23 (4) a federal home loan bank; or
 - 24 (5) a financial institution authorized to exercise
 - 25 fiduciary powers that is designated by the comptroller as a
 - 26 custodian pursuant to Section 404.031(e).

27 SECTION 4. The comptroller of public accounts shall adopt

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

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