

HOUSE BILL REPORT

HB 2061

As Reported by House Committee On: Financial Institutions & Insurance

Title: An act relating to the modernization and clarification of the powers of the public deposit protection commission in regard to banks, savings banks, and savings associations as public depositaries.

Brief Description: Concerning the powers of the public deposit protection commission in regard to banks, savings banks, and savings associations as public depositaries.

Sponsors: Representative Kirby; by request of State Treasurer.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/12/09, 2/17/09 [DPS].

Brief Summary of Substitute Bill

- Makes numerous modifications to the powers of the Public Deposit Protection Commission and to the requirements of public depositaries.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Hurst, McCoy, Nelson, Roach, Santos and Simpson.

Staff: Alison Hellberg (786-7152)

Background:

Public funds may only be deposited in banks and thrift institutions that have been approved as public depositaries by the Public Deposit Protection Commission (Commission). The Commission was established in 1969 and is comprised of the Governor, the Lieutenant Governor, and the State Treasurer. The State Treasurer chairs the Commission and provides

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

administrative support. The Commission is responsible for protecting all public funds deposited in public depositories.

"Public funds" are those moneys belonging to or held for the state, its political subdivisions, municipal corporations, agencies, courts, boards, commissions, or committees, and includes moneys held in trust.

A "public depository" is defined as a financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has been approved by the Commission to hold public deposits, and which has segregated for the benefit of the Commission eligible collateral having a value of not less than its maximum liability. There are separate collateral pools maintained for banks and thrifts.

The Commission's powers include:

- making and enforcing regulations to complete its functions;
- requiring any public depository to furnish information dealing with public deposits and the exact status of its net worth;
- taking action for the protection, collection, compromise or settlement of any claim arising in case of loss;
- fixing the requirements for qualification of financial institutions as public depositories, and fixing other terms and conditions under which public deposits may be received and held;
- setting criteria establishing minimum standards for the financial condition of bank and thrift depositories and, if the minimum standards are not met, providing for additional collateral requirements or restrictions regarding a public depository's right to receive or hold public deposits;
- fixing the official date on which any loss shall be deemed to have occurred; and
- in case loss occurs in more than one public depository, determining the allocation and time of payment of any sums due to public depositors.

To be approved as a public depository, a financial institution must meet minimum requirements of the Commission and must pledge securities as collateral to protect public funds on deposit in all public depositories (not just for that particular institution). For the first 12 months as a public depository, a depository must pledge and segregate eligible securities of at least 10 percent of all public funds on deposit in the depository. If deposit insurance and collateral pledged by a failed institution are insufficient to reimburse all public depositors, the other public depositories are each assessed a proportionate share of the shortfall.

The Commission may require the State Auditor or the Department of Financial Institutions (DFI) to investigate and report on the condition of any financial institution applying to become a public depository. The Commission may also require an investigation and report on the condition of any public depository. The DFI must also advise the Commission of any action the agency has directed a public depository to take which will result in a reduction of greater than 10 percent of the net worth of the depository. A public depository must notify the Commission within five working days of any event that causes a reduction of greater than 10 percent in the net worth of the depository.

Summary of Substitute Bill:

Powers of the Commission.

The Commission is given "broad administrative discretion" in performing its general powers. The Commission may delegate all of its authority to the State Treasurer, except rulemaking. The enforcement authority of the Commission is clarified. The Commission may assess costs or deny, suspend, or revoke authority to hold public funds, if a public depository fails to: provide, or allow verification of, required information; or comply with relevant laws and rules or policies of the Commission. Further, the Commission may make and enforce sanctions against a public depository for non-compliance with relevant laws, rules, or policies.

The Commission is authorized to set by resolution, based on criteria established in rule, a sum or measure as the maximum liability of public depositories. The State Treasurer may also do so in exigent circumstances, but the sum or measure must be reviewed and ratified by the Commission within 90 days.

In addition to the existing requirement that the DFI certify reports from public depositories, the DFI must provide information or data as may be required by the Commission. Any information or data provided to the Commission by a financial institution or a federal or state regulatory agency, must be maintained in the same confidential manner and have the same protections as examination reports received by the Commission from the DFI.

The Commission is required to maintain a single depository pool and treat public depositories uniformly without regard to differences in their charters.

Public Depository Requirements.

The Commission may establish the required amount of eligible securities that a public depository must pledge and segregate.

Public depositories must provide the exact status of its capitalization, collateral, and liquidity, in addition to the existing requirement of providing information about its net worth. Public depositories are required to provide the Commission with the uninsured amount of public funds on deposit in each report. They also must notify the Commission of an event which causes its net worth to be reduced in an amount greater than 10 percent, from within five working days to within 48 hours, or by the close of business of the following business day.

A public depository's liability is not altered by a merger, takeover, or acquisition, except if liability is assumed by agreement or law by the successor entity or resulting financial institution.

Maximum Liability.

The "maximum liability" of a public depository means, with reference to a public depository's liability for loss per occurrence by another public depository, on any given date a sum equal to 10 percent of:

- all uninsured public deposits held by a public depository that has not incurred a loss by the most recent Commission report date; or
- the average of the balances of uninsured public deposits in the last four reports.

An additional way of defining "maximum liability" is also included to mean a sum or measure that the Commission may from time to time set by resolution according to criteria established by rule, consistent with the Commission's broad administrative discretion. If a public depository is 100 percent collateralized by eligible collateral, the "maximum liability" of a public depository that has not incurred a loss may not exceed the 10 percent sum mentioned above. The definition of "maximum liability" does not limit the authority of the Commission to adjust the collateral requirements of public depositories.

Reporting.

The State Treasurer is required to report to the Legislature on actions taken by the Commission and the State Treasurer regarding public deposit protection by December 1 of each year.

Substitute Bill Compared to Original Bill:

Public depositories are required to provide the Commission with the uninsured amount of public funds on deposit in each report. When determining the maximum liability of each public depository being assessed for the amount of loss not covered by insurance or the collateral of the public depository where the loss occurred, the Commission must use the "date of loss" rather than the "most recent report date."

The definition of "maximum liability" is modified to mean, with reference to a public depository's liability for loss per occurrence by another public depository, on any given date a sum equal to 10 percent of:

- all uninsured public deposits held by a public depository that has not incurred a loss by the most recent Commission report date; or
- the average of the balances of uninsured public deposits in the last four reports.

An additional way of defining "maximum liability" is also included to mean a sum or measure that the Commission may from time to time set by resolution according to criteria established by rule, consistent with the Commission's broad administrative discretion. If a public depository is 100 percent collateralized by eligible collateral, the "maximum liability" of a public depository that has not incurred a loss may not exceed the 10 percent sum mentioned above. The definition of "maximum liability" does not limit the authority of the Commission to adjust the collateral requirements of public depositories.

The Commission's powers are modified to make and enforce rules to authorize the Commission to fix requirements, standards, and conditions related to the public depository collateral requirements. The Commission is further authorized to require additional collateral or other conditional or unconditional requirements or restrictions, if a public depository fails to meet the Commission's standards.

The State Treasurer is required to report to the Legislature on actions taken by the Commission and the State Treasurer regarding public deposit protection by December 1 of each year.

Various language changes and clarifications are made.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support of substitute bill) The proposed substitute bill updates the Public Deposit Protection Act (Act) for modern times. Several recent events have made it essential that the Act be amended. When Washington Mutual failed there was not enough in the thrift collateral pool to cover the public deposits. The proposed substitute bill would merge the pools to create one collateral pool for all public depositaries. Another bank recently failed and the successor bank did not cover the public deposits. All of the other public depositaries had to be assessed. The Commission needs to collect more and better information to be better able to react to these situations. The proposed substitute will foster critical and confidential cooperation between the State Treasurer and the DFI.

In the current economic situation, time has become very important. The Commission has functioned as it was supposed to in the past, but the laws need to reflect the present. These laws were not created for this time. It gives the Commission and the State Treasurer some nimbleness to confront the issues that will face the Commission. This is an important opportunity to improve the way the Commission works before things get worse. This will bring some much needed stability. The Act is insurance and financial institutions have seen that there is risk in the system. Financial institutions would like to work towards 100 percent collateralization like other states.

More discretion is vested in the State Treasurer so there is a reporting requirement so the Legislature stays informed.

(Opposed) None.

Persons Testifying: Jim McIntyre, Washington State Treasurer; Scott Jarvis, Department of Financial Institutions; Denny Eliason, Washington Bankers Association; Brad Tower, Community Bankers of Washington; and Greg Pierce, Washington Financial League.

Persons Signed In To Testify But Not Testifying: None.