

FINAL BILL REPORT

SHB 2061

C 9 L 09

Synopsis as Enacted

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

Sponsors: House Committee on Financial Institutions & Insurance (originally sponsored by Representative Kirby; by request of State Treasurer).

House Committee on Financial Institutions & Insurance

Background:

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

"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 a financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes, which has been approved by the Commission to hold public deposits, and which has segregated 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:

- 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 of public funds;
- establishing requirements for qualification of financial institutions as public depositaries, and other terms and conditions under which public deposits may be received and held;

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- setting criteria establishing minimum standards for the financial condition of bank and thrift depositaries and, if the minimum standards are not met, providing for additional collateral requirements or restrictions regarding a public depositary'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 depositary, determining the allocation and time of payment of any sums due to public depositors.

To be approved as a public depositary, 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 depositaries (not just for that particular institution). For the first 12 months as a public depositary, a depositary must pledge and segregate eligible securities of at least 10 percent of all public funds on deposit in the depositary. If deposit insurance and collateral pledged by a failed institution are insufficient to reimburse all public depositors, the other public depositaries 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 depositary. The Commission may also require an investigation and report on the condition of any public depositary. The DFI must also advise the Commission of any action the agency has directed a public depositary to take which will result in a reduction of greater than 10 percent of the net worth of the depositary. A public depositary 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 depositary.

Summary:

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 Commission may assess costs or deny, suspend, or revoke authority to hold public funds, if a public depositary fails to: provide, or allow verification of, required information; or comply with relevant laws and rules or policies of the Commission.

In addition to the existing requirement that the DFI certify reports from public depositaries, 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 depositary pool and treat public depositaries uniformly without regard to differences in their charters.

Public Depositary Requirements .

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

Public depositaries 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 depositaries 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 depositary'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 depositary means, with reference to a public depositary's liability for loss per occurrence by another public depositary, on any given date a sum equal to 10 percent of:

- all uninsured public deposits held by a public depositary 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 set by resolution according to criteria established by rule. 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. If a public depositary is 100 percent collateralized by eligible collateral, the "maximum liability" of a public depositary 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 depositaries.

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.

Votes on Final Passage:

House	97	0
Senate	49	0

Effective: March 6, 2009