
SENATE BILL 5928

State of Washington 61st Legislature 2009 Regular Session

By Senator Brown; by request of State Treasurer

Read first time 02/09/09. Referred to Committee on Ways & Means.

1 AN ACT Relating to the modernization and clarification of the
2 powers of the public deposit protection commission in regard to banks,
3 savings banks, and savings associations as public depositaries;
4 amending RCW 39.58.010, 39.58.040, 39.58.050, 39.58.060, 39.58.100,
5 39.58.103, 39.58.105, 39.58.108, 39.58.130, 39.58.135, 39.58.140, and
6 39.58.750; adding new sections to chapter 39.58 RCW; creating a new
7 section; repealing RCW 39.58.065; and declaring an emergency.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 **Sec. 1.** RCW 39.58.010 and 1996 c 256 s 1 are each amended to read
10 as follows:

11 In this chapter, unless the context otherwise requires:

12 (1) "Public funds" means moneys under the control of a treasurer,
13 the state treasurer, or custodian belonging to, or held for the benefit
14 of, the state or any of its political subdivisions, public
15 corporations, municipal corporations, agencies, courts, boards,
16 commissions, or committees, including moneys held as trustee, agent, or
17 bailee belonging to, or held for the benefit of, the state or any of
18 its political subdivisions, public corporations, municipal
19 corporations, agencies, courts, boards, commissions, or committees;

1 (2) "Public depository" means a financial institution which does
2 not claim exemption from the payment of any sales or compensating use
3 or ad valorem taxes under the laws of this state, which has been
4 approved by the commission to hold public deposits, and which has
5 segregated for the benefit of the commission eligible collateral having
6 a value of not less than its maximum liability(~~(. Addition of the word~~
7 ~~"bank" denotes a bank, trust company, or national banking association~~
8 ~~and the word "thrift" denotes a savings association or savings bank))~~);

9 (3) "Loss" means the issuance of an order by a regulatory or
10 supervisory authority or a court of competent jurisdiction (a)
11 restraining a public depository from making payments of deposit
12 liabilities or (b) appointing a receiver for a public depository;

13 (4) "Commission" means the Washington public deposit protection
14 commission created under RCW 39.58.030;

15 (5) "Eligible collateral" means securities which are enumerated in
16 RCW 39.58.050 (5) and (6) as eligible collateral for public deposits;

17 (6) ~~((The))~~ "Maximum liability_L" ~~((of))~~ with reference to a public
18 depository_L on any given date means:

19 (a) A sum equal to ten percent of ((+a+)) all public deposits held
20 by ((the qualified)) a public depository on the then most recent
21 commission report date((, or));

22 (b) Ten percent of the average of the balances of said public
23 deposits on the last four immediately preceding reports required
24 pursuant to RCW 39.58.100, whichever amount is greater((, less any
25 assessments paid to the commission pursuant to this chapter since the
26 then most recent commission report date));

27 (c) A sum or measure as the commission may from time to time set by
28 resolution according to criteria established by rule, consistent with
29 the commission's broad administrative discretion under RCW 39.58.040;
30 or

31 (d) A sum or other measure fixed by the state treasurer according
32 to authority delegated to him or her under section 16 of this act and
33 based upon exigent circumstances, which sum or measure shall be subject
34 to review and ratification by resolution of the commission within
35 ninety days of its implementation;

36 (7) "Public funds available for investment" means such public funds
37 as are in excess of the anticipated cash needs throughout the duration
38 of the contemplated investment period;

1 (8) "Investment deposits" means time deposits, money market deposit
2 accounts, and savings deposits of public funds available for
3 investment;

4 (9) "Treasurer" (~~((shall))~~) means ((the state treasurer,)) a county
5 treasurer, a city treasurer, a treasurer of any other municipal
6 corporation, and any other custodian of public funds, except the state
7 treasurer;

8 (10) "Financial institution" means any national or state chartered
9 commercial bank or trust company, savings bank, or savings association,
10 or branch or branches thereof, located in this state and lawfully
11 engaged in business;

12 (11) "Commission report" means a formal accounting rendered by all
13 public depositaries to the commission in response to a demand for
14 specific information made by the commission detailing pertinent affairs
15 of each public depository as of the close of business on a specified
16 date, which is the "commission report date." "Commission report due
17 date" is the last day for the timely filing of a commission report;

18 (12) "Director of the department of financial institutions" means
19 the Washington state director of the department of financial
20 institutions;

21 (13) "Net worth" of a public depository means (a) the equity
22 capital as reported to its primary regulatory authority on the
23 quarterly report of condition or statement of condition, or other
24 required report required by its primary regulatory authority or federal
25 deposit insurer, and may include capital notes and debentures which are
26 subordinate to the interests of depositors, or (b) equity capital
27 adjusted by rule or resolution of the commission after consultation
28 with the director of the department of financial institutions;

29 (14) "Depository pledge agreement" means a tripartite agreement
30 executed by the commission with a financial institution and its
31 designated trustee. Such agreement shall be approved by the directors
32 or the loan committee of the financial institution and shall
33 continuously be a record of the financial institution. New securities
34 may be pledged under this agreement in substitution of or in addition
35 to securities originally pledged without executing a new agreement;

36 (15) "Trustee" means a third-party safekeeping agent which has
37 completed a depository pledge agreement with a public depository and
38 the commission. Such third-party safekeeping agent may be the federal

1 reserve bank of San Francisco, the federal home loan bank of Seattle,
2 (~~the trust department of the public depository,~~) or such other third-
3 party safekeeping agent approved by the commission;

4 (16) "Capitalization" means the measure or measures of
5 capitalization, other than net worth, of a depository applying for
6 designation as or operating as a public depository pursuant to this
7 chapter, based upon regulatory standards of financial institution
8 capitalization adopted by rule or resolution of the commission after
9 consultation with the director of the department of financial
10 institutions;

11 (17) "Collateral" means the particular assets pledged as security
12 to insure payment or performance of the obligations under this chapter
13 as enumerated in RCW 39.58.050;

14 (18) "Liquidity" means the measure or measures of liquidity of a
15 depository applying for designation as or operating as a public
16 depository pursuant to this chapter, based upon regulatory standards of
17 financial institution liquidity adopted by rule or resolution of the
18 commission after consultation with the director of the department of
19 financial institutions;

20 (19) "Public deposit" means public funds on deposit with a public
21 depository;

22 (20) "State public depository" means a public depository that is a
23 bank, savings bank, or savings association chartered and regulated
24 pursuant to Title 30, 32, or 33 RCW;

25 (21) "State treasurer" means the treasurer of the state of
26 Washington.

27 **Sec. 2.** RCW 39.58.040 and 1996 c 256 s 3 are each amended to read
28 as follows:

29 The commission shall have the power and broad administrative
30 discretion:

31 (1) To make and enforce regulations necessary and proper to the
32 full and complete performance of its functions under this chapter;

33 (2) To require any public depository to furnish such information
34 dealing with public deposits and the exact status of its
35 capitalization, collateral, liquidity, and net worth as the commission
36 shall request(~~. Any public depository which refuses or neglects to~~
37 give promptly and accurately or to allow verification of any

1 ~~information so requested shall no longer be a public depository and~~
2 ~~shall be excluded from the right to receive or hold public deposits~~
3 ~~until such time as the commission shall acknowledge that such~~
4 ~~depository has furnished the information requested));~~

5 (3) To take such action as it deems best for the protection,
6 collection, compromise or settlement of any claim arising in case of
7 loss;

8 (4) ~~To ((prescribe regulations, subject to this chapter, fixing))~~
9 fix by rule or resolution, consistent with this chapter, the
10 requirements for qualification of financial institutions as public
11 depositories, and fixing other terms and conditions consistent with
12 this chapter, under which public deposits may be received and held;

13 (5) To make and enforce regulations setting forth criteria
14 ~~((establishing minimum))~~ for the establishment by policy of standards
15 for the financial condition of ((bank and thrift)) public depositories
16 ~~((and, if the minimum standards are not met, providing for additional~~
17 ~~collateral requirements or restrictions regarding)),~~ including
18 capitalization, collateral, liquidity, and net worth;

19 (6) To require additional or different types and amounts of
20 collateral, or to restrict a public depository's right to receive or
21 hold public deposits if the standards for the financial condition of
22 public depositories are not met;

23 ~~((+6))~~ (7) To fix the official date on which any loss shall be
24 deemed to have occurred taking into consideration the orders, rules,
25 and regulations of the supervisory authority of a public depository's
26 primary regulatory authority and federal deposit insurer as they affect
27 the failure or inability of a public depository to repay public
28 deposits in full; ((and (7)))

29 (8) In case loss occurs in more than one public depository, to
30 determine the allocation and time of payment of any sums due to public
31 depositors under this chapter; and

32 (9) To make and enforce sanctions against a public depository for
33 noncompliance with the provisions of this chapter and rules or policies
34 of the commission.

35 NEW SECTION. Sec. 3. A new section is added to chapter 39.58 RCW
36 to read as follows:

37 The commission shall maintain a single public depository pool. All

1 public depositaries, as defined in RCW 39.58.010, shall be treated
2 uniformly by the commission without regard to distinctions in the
3 nature of its financial institution charter.

4 **Sec. 4.** RCW 39.58.050 and 1996 c 256 s 4 are each amended to read
5 as follows:

6 (1) Every public depositary shall complete a depositary pledge
7 agreement with the commission and a trustee, and shall at all times
8 maintain, segregated from its other assets, eligible collateral in the
9 form of securities enumerated in this section having a value at least
10 equal to its maximum liability and as otherwise prescribed in this
11 chapter. Such collateral shall be segregated by deposit with the
12 depositary's trustee and shall be clearly designated as security for
13 the benefit of public depositors under this chapter.

14 (2) Securities eligible as collateral shall be valued at market
15 value, and the total market value of securities pledged in accordance
16 with this chapter shall not be reduced by withdrawal or substitution of
17 securities except by prior authorization, in writing, by the
18 commission.

19 (3) The public depositary shall have the right to make
20 substitutions of an equal or greater amount of such collateral at any
21 time.

22 (4) The income from the securities which have been segregated as
23 collateral shall belong to the public depositary without restriction.

24 (5) Each of the following enumerated classes of securities,
25 providing there has been no default in the payment of principal or
26 interest thereon, shall be eligible to qualify as collateral:

27 (a) Certificates, notes or bonds of the United States, or other
28 obligations of the United States or its agencies, or of any corporation
29 wholly owned by the government of the United States;

30 (b) State, county, municipal, or school district bonds or warrants
31 of taxing districts of the state of Washington or any other state of
32 the United States, provided that such bonds and warrants shall be only
33 those found to be within the limit of indebtedness prescribed by law
34 for the taxing district issuing them and to be general obligations;

35 (c) The obligations of any United States government-sponsored
36 corporation whose obligations are or may become eligible as collateral

1 for advances to member banks as determined by the board of governors of
2 the federal reserve system;

3 (d) Bonds, notes, letters of credit, or other securities or
4 evidence of indebtedness constituting the direct and general obligation
5 of a federal home loan bank or federal reserve bank;

6 (e) Revenue bonds of this state or any authority, board,
7 commission, committee, or similar agency thereof, and any municipality
8 or taxing district of this state;

9 (f) Direct and general obligation bonds and warrants of any city,
10 town, county, school district, port district, or other political
11 subdivision of any state, having the power to levy general taxes, which
12 are payable from general ad valorem taxes;

13 (g) Bonds issued by public utility districts as authorized under
14 the provisions of Title 54 RCW, as now or hereafter amended;

15 (h) Bonds of any city of the state of Washington for the payment of
16 which the entire revenues of the city's water system, power and light
17 system, or both, less maintenance and operating costs, are irrevocably
18 pledged, even though such bonds are not general obligations of such
19 city;

20 (6) In addition to the securities enumerated in this section, every
21 public depository may also segregate such bonds, securities, and other
22 obligations as are designated to be authorized security for public
23 deposits under the laws of this state.

24 (7) The commission may (~~at any time or times declare any~~
25 ~~particular security as ineligible to qualify~~) determine by rule or
26 resolution whether any security, whether or not enumerated in this
27 section, is or shall remain eligible as collateral when in the
28 commission's judgment it is (~~deemed~~) desirable or necessary to do so.

29 **Sec. 5.** RCW 39.58.060 and 1996 c 256 s 5 are each amended to read
30 as follows:

31 When the commission determines that a loss has occurred in a
32 (~~bank~~) public depository, it shall as soon as possible make payment
33 to the proper public officers of all funds subject to such loss,
34 pursuant to the following procedures:

35 (1) For the purposes of determining the sums to be paid, the
36 director of the department of financial institutions or the receiver
37 shall, within twenty days after issuance of a restraining order or

1 taking possession of any ((bank)) public depository, ascertain the
2 amount of public funds on deposit therein as disclosed by its records
3 and the amount thereof covered by deposit insurance and ((certify))
4 provide written verification of the amounts thereof to the commission
5 and each such public depositor;

6 (2) Within ten days after receipt of such ((certification)) written
7 verification, each such public depository shall furnish to the
8 commission verified statements of its deposits in such ((bank)) public
9 depository, including any uninsured and uncollateralized status of such
10 public deposits, as disclosed by its records;

11 (3) Upon receipt of such ((certificate)) written verification and
12 statements, the commission shall ascertain and fix the amount of such
13 public deposits, net after deduction of any amount received from
14 deposit insurance and held collateral, and, after determining and
15 declaring the apparent net loss, assess the same against all then
16 ((bank)) public depositories, as follows: First, against the public
17 depository in which the loss occurred, to the extent of the full value
18 of collateral segregated pursuant to this chapter; second, against all
19 other ((bank)) public depositories pro rata in proportion to the
20 maximum liability of each such depository as it existed on the date of
21 loss or most recent report date;

22 (4) Assessments made by the commission shall be payable on the
23 second business day following demand, and in case of the failure of any
24 public depository so to pay, the commission shall forthwith take
25 possession of the securities segregated as collateral by such
26 depository pursuant to this chapter and liquidate the same for the
27 purpose of paying such assessment;

28 (5) Upon receipt of such assessment payments, the commission shall
29 reimburse the public depositors of the public depository in which the
30 loss occurred to the extent of the depository's net deposit liability
31 to them;

32 (6) Any financial institution receiving assessment proceeds shall
33 provide a receivership certificate to the commission.

34 NEW SECTION. **Sec. 6.** RCW 39.58.065 (Loss in a thrift public
35 depository--Procedure for payment) and 1996 c 256 s 6 & 1983 c 66 s 10
36 are each repealed.

1 **Sec. 7.** RCW 39.58.100 and 1996 c 256 s 11 are each amended to read
2 as follows:

3 (1) On or before each commission report due date, each public
4 depository shall render to the commission a written report, certified
5 under oath, indicating the total amount of public funds on deposit held
6 by it, the net worth of the depository, and the amount and nature of
7 eligible collateral then segregated for the benefit of the commission.

8 (2) The commission may instruct the director of the department of
9 financial institutions to examine and thereafter certify as to the
10 accuracy of any statement to the commission by any state public
11 depository, or to provide such other examination report information or
12 data as may be required by the commission. The type, content, and
13 frequency of the reports may be determined by the director of the
14 department of financial institutions, consistent with the requirements
15 of the commission as defined by rule.

16 **Sec. 8.** RCW 39.58.103 and 1983 c 66 s 13 are each amended to read
17 as follows:

18 Each public depository shall notify the commission in writing
19 within (~~five working days~~) forty-eight hours, or by close of business
20 of the next business day thereafter, of the happening of an event which
21 causes its net worth to be reduced by an amount greater than ten
22 percent of the amount shown as its net worth on the most recent report
23 submitted pursuant to RCW 39.58.100.

24 **Sec. 9.** RCW 39.58.105 and 1996 c 256 s 12 are each amended to read
25 as follows:

26 (1) The commission may require the state auditor or the director of
27 the department of financial institutions, to the extent of their
28 respective authority under applicable federal and Washington state law,
29 to thoroughly investigate and report to it concerning the condition of
30 any financial institution which makes application to become a public
31 depository, and may also as often as it deems necessary require the
32 state auditor or the director of the department of financial
33 institutions, to the extent of their respective authority under
34 applicable federal and Washington state law, to make such investigation
35 and report concerning the condition of any financial institution which

1 has been designated as a public depository. The expense of all such
2 investigations or reports shall be borne by the financial institution
3 examined.

4 (2) In lieu of any such investigation or report, the commission may
5 rely upon information made available to it or the director of ~~the~~
6 department of financial institutions by the office of the comptroller
7 of the currency, the office of thrift supervision, the federal deposit
8 insurance corporation, the federal reserve board, ~~((or))~~ any state bank
9 or thrift regulatory agency, or any successor state or federal bank or
10 thrift regulatory agency, and any such information or data received by
11 the commission shall be kept and maintained in the same manner and have
12 the same protections as examination reports received by the commission
13 from the director of the department of financial institutions pursuant
14 to RCW 30.04.075(2)(h) and 32.04.220(2)(h).

15 (3) The director of ~~the department of~~ financial institutions shall
16 in addition advise the commission of any action he or she has directed
17 any ~~state~~ public depository to take which will result in a reduction of
18 greater than ten percent of the net worth of such depository as shown
19 on the most recent report it submitted pursuant to RCW 39.58.100.

20 **Sec. 10.** RCW 39.58.108 and 1996 c 256 s 13 are each amended to
21 read as follows:

22 Any financial institution may become ~~((a))~~, and thereafter operate
23 as, a public depository upon approval by the commission and segregation
24 of collateral in the manner as set forth in this chapter, and ~~((upon))~~
25 subject to compliance with all rules ~~((as promulgated))~~ and policies
26 adopted by the commission. ~~((For the first twelve month period~~
27 following qualification as a public depository, the)) A public
28 depository shall at all times pledge and segregate eligible securities
29 in an amount ~~((equal to not less than ten percent of all public funds~~
30 on deposit in the depository)) established by the commission by rule or
31 noticed resolution.

32 **Sec. 11.** RCW 39.58.130 and 1996 c 256 s 14 are each amended to
33 read as follows:

34 A treasurer ~~((is))~~ and the state treasurer are authorized to
35 deposit in a public depository any public funds available for
36 investment and secured by collateral in accordance with the provisions

1 of this chapter, and receive interest thereon. The authority provided
2 by this section is additional to any authority now or hereafter
3 provided by law for the investment or deposit of public funds by any
4 such treasurer: PROVIDED, That in no case shall the aggregate of
5 demand and investment deposits of public funds by any such treasurer in
6 any one public depository exceed at any time the net worth of that
7 depository. If a public depository's net worth is reduced, a treasurer
8 and the state treasurer may allow public funds on deposit in excess of
9 the reduced net worth to remain until maturity upon pledging by the
10 depository of eligible securities valued at market value in an amount
11 at least equal to the amount of the excess deposits. The collateral
12 shall be segregated as provided in RCW 39.58.050. If the additional
13 securities required by this section are not pledged by the depository,
14 the depository shall permit withdrawal prior to maturity by the
15 treasurer of deposits, including accrued interest, in accordance with
16 applicable statutes and governmental regulations.

17 **Sec. 12.** RCW 39.58.135 and 1996 c 256 s 15 are each amended to
18 read as follows:

19 Notwithstanding RCW 39.58.130, (1) aggregate deposits received by
20 a public depository from all (~~public~~) treasurers and the state
21 treasurer shall not exceed at any time one hundred fifty percent of the
22 value of the depository's net worth, nor (2) shall the aggregate
23 deposits received by any public depository exceed thirty percent of the
24 total aggregate deposits of all public treasurers in all depositories
25 as determined by the public deposit protection commission. However, a
26 public depository may receive deposits in excess of the limits provided
27 in this section if eligible securities, as prescribed in RCW 39.58.050,
28 are pledged as collateral in an amount equal to one hundred percent of
29 the value of deposits received in excess of the limitations prescribed
30 in this section.

31 **Sec. 13.** RCW 39.58.140 and 1996 c 256 s 16 are each amended to
32 read as follows:

33 When deposits are made in accordance with this chapter, a treasurer
34 and the state treasurer shall not be liable for any loss thereof
35 resulting from the failure or default of any public depository without

1 fault or neglect on his or her part or on the part of his or her
2 assistants or clerks.

3 **Sec. 14.** RCW 39.58.750 and 1996 c 256 s 17 are each amended to
4 read as follows:

5 Notwithstanding any provision of law to the contrary, the state
6 treasurer or any (~~county, city, or other municipal~~) treasurer or
7 other custodian of public funds may receive, disburse, or transfer
8 public funds under his or her jurisdiction by means of wire or other
9 electronic communication in accordance with accounting standards
10 established by the state auditor under RCW 43.09.200 with regard to
11 (~~municipal~~) treasurers of municipalities or other custodians or by
12 the office of financial management under RCW 43.88.160 in the case of
13 the state treasurer and other state custodians to safeguard and insure
14 accountability for the funds involved.

15 NEW SECTION. **Sec. 15.** A new section is added to chapter 39.58 RCW
16 to read as follows:

17 If a depository neglects or refuses to promptly and accurately
18 furnish, or to allow verification of, any required information
19 requested by the commission or by the director of the department of
20 financial institutions when acting on behalf of the commission pursuant
21 to this chapter, or if a public depository otherwise fails to comply
22 with this chapter or any rules or policies of the commission, the
23 commission may at its option deny or revoke the authority of such
24 depository to act as a public depository pursuant to this chapter, or
25 otherwise suspend such depository from receiving or holding public
26 deposits until such time as the depository receives the information or
27 complies with the commission's rules and policies. The commission
28 shall have the authority to assess by rule costs for a depository's
29 noncompliance with this chapter and rules and resolutions adopted
30 pursuant to this chapter.

31 NEW SECTION. **Sec. 16.** A new section is added to chapter 39.58 RCW
32 to read as follows:

33 The commission may by resolution delegate all of its authority to
34 the state treasurer except rule making.

1 NEW SECTION. **Sec. 17.** A new section is added to chapter 39.58 RCW
2 to read as follows:

3 The liability of a public depository under this chapter shall not
4 be altered by any merger, takeover, or acquisition, except to the
5 extent that such liability is assumed by agreement or operation of law
6 by the successor entity or resulting financial institution.

7 NEW SECTION. **Sec. 18.** The code reviser shall alphabetize and
8 renumber the definitions in RCW 39.58.010.

9 NEW SECTION. **Sec. 19.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and takes effect
12 immediately.

--- END ---