ENGROSSED SENATE BILL 6349

State of Washington 64th Legislature 2016 Regular Session

By Senators Benton and Mullet; by request of State Treasurer

Read first time 01/18/16. Referred to Committee on Financial Institutions & Insurance.

AN ACT Relating to public funds and deposits; amending RCW 39.58.010, 39.58.050, 39.58.105, 39.58.108, 39.58.135, and 39.58.155; and repealing RCW 39.58.120 and 39.58.045.

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

Sec. 1. RCW 39.58.010 and 2009 c 9 s 1 are each amended to read as follows:

In this chapter, unless the context otherwise requires:

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

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

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

(4) "Commission report" means a formal accounting rendered by all public depositaries to the commission in response to a demand for

specific information made by the commission detailing pertinent affairs of each public depositary as of the close of business on a specified date, which is the "commission report date." "Commission report due date" is the last day for the timely filing of a commission report;

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

(6) "Director of the department of financial institutions" means the Washington state director of the department of financial institutions;

(7) "Eligible collateral" means the securities ((~~which are~~)) or letters of credit enumerated in RCW 39.58.050 (5) ((~~and~~)), (6) ((~~as eligible collateral for public deposits~~)), and (7);

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

(9) "Investment deposits" means time deposits, money market deposit accounts, and savings deposits of public funds available for investment. "Investment deposits" do not include time deposits represented by a transferable or a negotiable certificate, instrument, passbook, or statement, or by book entry or otherwise;

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

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

(12) "Maximum liability," with reference to a public depositary's liability under this chapter for loss per occurrence by another public depositary, on any given date means:

(a) A sum equal to ten percent of:

(i) All uninsured public deposits held by a public depositary that has not incurred a loss by the then most recent commission report date; or

(ii) The average of the balances of said uninsured public deposits on the last four immediately preceding reports required pursuant to RCW 39.58.100, whichever amount is greater; or

(b) Such other sum or measure as the commission may from time to time set by resolution according to criteria established by rule, consistent with the commission's broad administrative discretion to achieve the objective of RCW 39.58.020.

As long as the uninsured public deposits of a public depositary are one hundred percent collateralized by eligible collateral as provided for in RCW 39.58.050, the "maximum liability" of a public depositary that has not incurred a loss may not exceed the amount set forth in (a) of this subsection.

This definition of "maximum liability" does not limit the authority of the commission to adjust the collateral requirements of public depositaries pursuant to RCW 39.58.040;

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

(14) "Public deposit" means public funds on deposit with a public depositary;

(15) "Public depositary" means 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~~)) that 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, and, unless otherwise provided for in this chapter, does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state;

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

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

(18) "State public depositary" means a Washington state-chartered financial institution that is authorized as a public depositary under this chapter;

(19) "State treasurer" means the treasurer of the state of Washington;

(20) "Treasurer" means a county treasurer, a city treasurer, a treasurer of any other municipal corporation, and any other custodian of public funds, except the state treasurer;

(21) "Trustee" means a third-party safekeeping agent which has completed a depositary pledge agreement with a public depositary and the commission. Such third-party safekeeping agent may be ((~~the federal reserve bank of San Francisco, the~~)) a federal home loan bank ((~~of Seattle~~)), or such other third-party safekeeping agent approved by the commission.

Sec. 2. RCW 39.58.050 and 2009 c 9 s 4 are each amended to read as follows:

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

(2) Securities eligible as collateral shall be valued at market value, and the total market value of securities pledged in accordance with this chapter shall not be reduced by withdrawal or substitution

of securities except by prior authorization, in writing, by the commission.

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

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

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

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

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

(c) The obligations of any United States government-sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system;

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

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

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

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

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

(6) In addition to the securities enumerated in this section, ((~~every~~)) the commission may also accept as collateral a letter of credit from a federal home loan bank or a federal reserve bank on behalf of a public depositary, naming the commission as beneficiary. Such letters are not subject to a completed depositary pledge agreement. As such, the commission must act as the safekeeping agent for letters of credit.

(7) A public depositary may also segregate such bonds, securities, and other obligations as are designated to be authorized security for public deposits under the laws of this state.

((~~(7)~~)) (8) The commission may determine by rule or resolution whether any security, whether or not enumerated in this section, is or shall remain eligible as collateral when in the commission's judgment it is desirable or necessary to do so.

Sec. 3. RCW 39.58.105 and 2009 c 9 s 9 are each amended to read as follows:

(1) The commission may require the state auditor or the director of the department of financial institutions, to the extent of their respective authority under applicable federal and Washington state law, to thoroughly investigate and report to it concerning the condition of any financial institution which makes application to become a public depositary, and may also as often as it deems necessary require the state auditor or the director of the department of financial institutions, to the extent of their respective authority under applicable federal and Washington state law, to make such investigation and report concerning the condition of any financial institution which has been designated as a public depositary. The expense of all such investigations or reports shall be borne by the financial institution examined.

(2) In lieu of any such investigation or report, the commission may rely upon information made available to it or the director of the department of financial institutions by the office of the comptroller of the currency, ((~~the office of thrift supervision,~~)) the federal deposit insurance corporation, the federal reserve board, any state financial institutions regulatory agency, or any successor state or federal financial institutions regulatory agency, and any such information or data received by the commission shall be kept and maintained in the same manner and have the same protections as examination reports received by the commission from the director of

the department of financial institutions pursuant to RCW ((~~30.04.075~~)) 30A.04.075(2)(h) and 32.04.220(2)(h).

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

Sec. 4. RCW 39.58.108 and 2009 c 9 s 10 are each amended to read as follows:

Any financial institution may become, and thereafter operate as, a public depositary upon approval by the commission and segregation of collateral in the manner as set forth in this chapter, and subject to compliance with all rules and policies adopted by the commission. A public depositary shall at all times pledge and segregate eligible ((~~securities~~)) collateral in an amount established by the commission by rule or noticed resolution.

Sec. 5. RCW 39.58.135 and 2009 c 9 s 12 are each amended to read as follows:

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

Sec. 6. RCW 39.58.155 and 1999 c 293 s 3 are each amended to read as follows:

A statewide custodian under RCW 43.08.280 may be exempted from the requirements of this chapter, based on rules adopted by the ((~~public deposit protection~~)) commission.

NEW SECTION. **Sec. 7.** The following acts or parts of acts are each repealed:

(1) RCW 39.58.120 (Interest rates) and 1974 ex.s. c 50 s 1 & 1969 ex.s. c 193 s 12; and

(2) RCW 39.58.045 (Financial institutions claiming exemption from sales, use or ad valorem taxes——Notification of commission) and 1983 c 66 s 4.

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