

Senate Bill 283

By: Senators Kennedy of the 18th, Jones of the 25th, Miller of the 49th, Stone of the 23rd, Rhett of the 33rd and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 45 of the Official Code of Georgia Annotated, relating to
2 accounting for public funds, so as to provide for multibank pooling of depositories for the
3 acceptance of deposits of public funds from public bodies; to provide for definitions,
4 procedures, conditions, and limitations on the establishment of such pools; to provide for
5 multiple effective dates; to provide for related matters; to repeal conflicting laws; and for
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 style="text-align:center">**SECTION 1.**

9 Chapter 8 of Title 45 of the Official Code of Georgia Annotated, relating to accounting for
10 public funds, is amended by revising Code Section 45-8-1, relating to definitions, as follows:

11 "45-8-1.

12 As used in this chapter, the term:

13 (1) 'Collecting officer' means any person who is either generally or specifically elected,
14 appointed, or employed, in whole or in part, to collect any tax, revenue, or other moneys
15 on behalf of the state or any of its political subdivisions or on behalf of any board,
16 commission, bureau, or department thereof. The term shall not mean any state,
17 municipality, or county tax collector or revenue agent pursuant to Title 48.

18 (2) 'Commissioner' means the commissioner of banking and finance.

19 (3) 'County authority' means the judge of the probate court or the board of county
20 commissioners or other tribunal, body, or officer having jurisdiction over the fiscal affairs
21 of the county.

22 (4) 'Covered depository' means:

23 (A) Any depository whose total assets exceed \$50 billion as of the latest Consolidated
24 Report of Condition and Income filed by the depository with the Federal Deposit
25 Insurance Corporation and has qualified to serve as a depository for state funds
26 pursuant to Code Section 50-17-50; or

27 (B) A depository whose total assets are less than \$50 billion as of the latest
 28 Consolidated Report of Condition and Income filed by the depository with the Federal
 29 Deposit Insurance Corporation, has qualified to serve as a depository for state funds
 30 pursuant to Code Section 50-17-50, and has elected to participate in the multibank
 31 pooled method.

32 ~~(3)~~(5) 'Custodian' means the state treasurer, any Federal Reserve Bank, or any Federal
 33 Home Loan Bank approved by the state treasurer, or any bank, savings association, or
 34 trust company that:

35 (A) Is organized and existing under the laws of this state, any other state, or the United
 36 States;

37 (B) Has executed all forms required under this chapter or any rule adopted under this
 38 chapter;

39 (C) Agrees to be subject to the jurisdiction of the courts of this state or of courts of the
 40 United States which are located within this state for the purpose of any litigation arising
 41 out of this chapter; and

42 (D) Has been approved by the state treasurer to act as a custodian;

43 and which holds a pool of collateral for public deposits established by a depository
 44 pursuant to Code Section 45-8-13.

45 ~~(4)~~(6) 'Daily pool balance' means the daily balance of deposits of public funds held by
 46 a depository which balance is secured by the single bank pooled method as specified in
 47 paragraph (2) of subsection (b) of Code Section 45-8-13, or the multibank pooled method
 48 as specified in paragraph (2) of subsection (c) of Code Section 45-8-13. Insured deposits
 49 and deposits of public funds for which no collateral is required under subsection (b) or
 50 (d) of Code Section 45-8-12 or special deposits and operating funds for which collateral
 51 has been duly waived pursuant to subsection (b) of Code Section 45-8-11 or paragraph
 52 (3) of Code Section 50-17-53 shall be excluded from the balance of deposits of public
 53 funds for purposes of determining the daily pool balance.

54 ~~(5)~~(7) 'Default' includes, without limitation, the failure or refusal of a public depository
 55 holding funds of a public body to pay any check or warrant drawn upon sufficient and
 56 collected funds by any public body depositor or to return any deposit on demand or at
 57 maturity together with interest as agreed; the issuance of an order by any supervisory
 58 authority restraining such depository from making payments of deposit liabilities; or the
 59 appointment of a receiver for such depository.

60 ~~(6)~~(8) 'Depository' means any bank designated, named, or appointed from time to time:

61 (A) By the State Depository Board as qualified to serve as a depository of state funds
 62 pursuant to Code Section 50-17-50;

63 (B) By county authorities or others as depositories for county and other public funds
 64 pursuant to Code Section 45-8-14; or

65 (C) By collecting officers and officers holding public funds as a depository for public
 66 funds pursuant to Code Section 45-8-11.

67 ~~(7) Reserved.~~

68 ~~(8)~~(9) 'Officer to hold public funds' means not only the state treasurer, municipality or
 69 county treasurers, the State School Superintendent, municipality or county school
 70 superintendents, and treasurers of school districts, but also every other person, by
 71 whatever name or title called, who shall be either generally or specially elected,
 72 appointed, or employed with the duty, in whole or in part, to receive, hold, or disburse
 73 any public money or revenue on behalf of the state or any of its political subdivisions or
 74 on behalf of any board, commission, bureau, or department.

75 ~~(9)~~(10) 'Proper authority' means the officer, board, commission, or other tribunal or body
 76 having the jurisdiction to act in the particular matter.

77 ~~(10)~~(11) 'Public body' means not only the state, municipalities, counties, school districts,
 78 drainage districts, and other districts created for special purposes, but also every other
 79 political subdivision of the state and every board, bureau, commission, and department
 80 of the state or any subdivision thereof, as the context may require.

81 ~~(11)~~(12) 'State authority' means the officer or officers or board, bureau, commission, or
 82 other person or persons who, in their official capacity, shall have, according to the laws
 83 of this state, the duty or jurisdiction to act on behalf of the state in the particular matter."

84 **SECTION 2.**

85 Said chapter is further amended in Code Section 45-8-12, relating to bonds and pledges of
 86 securities for depositories, by revising subsections (b) and (c) as follows:

87 "(b) The collecting officer or officer holding public funds shall accept the guarantee or
 88 insurance of accounts ~~of~~ by the Federal Deposit Insurance Corporation ~~and the guarantee~~
 89 ~~or insurance of accounts of the Federal Savings and Loan Insurance Corporation~~ to secure
 90 public funds on deposit in depositories to the extent authorized by federal law governing
 91 the Federal Deposit Insurance Corporation ~~and the Federal Savings and Loan Insurance~~
 92 ~~Corporation.~~

93 (c) A depository may secure deposits made with it partly by surety bond, partly by deposit
 94 of any one or more of the obligations referred to in subsection (a) of this Code section,
 95 partly by the guarantee or insurance ~~referred to in subsection (b) of this Code section~~ of
 96 accounts by the Federal Deposit Insurance Corporation, or by any combination of these
 97 methods. ~~The~~ Except for covered depositories, the aggregate of the face value of such
 98 surety bond and the market value of securities pledged shall be equal to not less than 110

99 percent of the public funds being secured after the deduction of the amount of deposit
100 insurance."

101 **SECTION 3.**

102 Said chapter is further amended in Code Section 45-8-13, relating to deposit of securities by
103 banks or depositories and interest or compensation, by revising subsections (b) and (c) as
104 follows:

105 "(b) Depositories that are not covered depositories may secure deposits of public funds
106 using the dedicated method ~~or the pooled method, the single bank pooled method, or both~~
107 methods, as enumerated in this subsection:

108 (1) Under the dedicated method, a depository shall secure the deposits of each of its
109 public body depositors separately. It is intended that the dedicated method is the method
110 permitted under Code Section 45-8-12 and that this method will not be affected by this
111 subsection; or

112 (2) Under the single bank pooled method, a depository shall secure deposits of public
113 funds of public bodies which have deposits with it through a pool of collateral established
114 by the depository with a custodian for the benefit of public bodies having deposits with
115 such depository as set forth in Code Section 45-8-13.1. If a depository elects the single
116 bank pooled method, it may use the single bank pooled method with some public body
117 depositors and the dedicated method with other public body depositors.

118 ~~(c) No depository shall be required to use the pooled method. However, any depository~~
119 ~~that offers the pooled method shall also offer the dedicated method. Covered depositories~~
120 ~~shall secure public funds from public bodies as provided in this subsection:~~

121 ~~(1) Establish a pool of collateral with a custodian for the benefit of public bodies having~~
122 ~~deposits with such covered depository as set forth in Code Section 45-8-13.1;~~

123 ~~(2) Secure deposits made with it partly by surety bond, partly by deposit of any one or~~
124 ~~more of the obligations referred to in subsection (a) of Code Section 45-8-12, partly by~~
125 ~~the guarantee or insurance of accounts by the Federal Deposit Insurance Corporation, any~~
126 ~~obligation authorized pursuant to the policies and procedures of the State Depository~~
127 ~~Board, or by any combination of these methods. The aggregate of the face value of such~~
128 ~~surety bond and the market value of securities pledged shall be a percent of the public~~
129 ~~funds being secured after the deduction of the amount of deposit insurance as established~~
130 ~~quarterly pursuant to a formula proposed by the commissioner and adopted by the State~~
131 ~~Depository Board based on the ratings of the covered depository from one or more~~
132 ~~nationally recognized rating services. The commissioner is authorized to propose to the~~
133 ~~State Depository Board multiple tiers of collateralization requiring different percentages~~
134 ~~of securities to be pledged to secure deposited public funds; and~~

135 (3) Under the multibank pooled method, each covered depository shall guarantee the
 136 deposits of a public body against loss caused by the default of other depositories within
 137 the multibank pool."

138 **SECTION 4.**

139 Said chapter is further amended by revising Code Section 45-8-13.1, relating to depositories
 140 using pooled method of securing deposits of public funds and rights and responsibilities of
 141 the state treasurer, as follows:

142 "45-8-13.1.

143 (a) Only depositories which have met the qualifications imposed by this Code section may
 144 use ~~the~~ a pooled method. If a depository elects ~~the~~ a pooled method, it shall notify the state
 145 treasurer in writing of its desire to utilize ~~the~~ a pooled method and the proposed effective
 146 date thereof and provide to the state treasurer executed copies of the custodial agreement,
 147 resolution, and other agreements and data as may be required by the state treasurer. Upon
 148 meeting the qualifications of this Code section, the state treasurer shall issue a certificate
 149 of qualification, and such bank or trust company shall become a depository permitted to
 150 use ~~the~~ a pooled method.

151 (b) The aggregate of the market value of the securities pledged to secure a pool of public
 152 funds under the single bank pooled method shall be not less than 110 percent of the daily
 153 pool balance. The aggregate of the market value of the securities pledged to secure a pool
 154 of public funds under the multibank pooled method shall be not less than the percent
 155 established by the State Depository Board for the multibank pooled method provided for
 156 in paragraph (2) of subsection (c) of Code Section 45-8-13, which shall be neither less than
 157 25 percent nor greater than 125 percent. Notwithstanding these parameters for the
 158 multibank pool, the aggregate market value of securities pledged shall be not less than 100
 159 percent for amounts greater than 20 percent of the total daily pool balance held by any one
 160 covered depository. The State Depository Board, upon the recommendation of the state
 161 treasurer, in consultation with the commissioner, shall have the authority to increase the
 162 percent collateralization of any covered depository to a maximum of 125 percent at any
 163 time as economic conditions warrant.

164 (c)(1) A depository may not retain any deposit of public funds which is required to be
 165 secured unless, within ten days thereafter or such shorter period as has been agreed upon
 166 by the depository and the ~~public depositories secured by the pool~~ state treasurer, it has
 167 deposited for the benefit of the pool eligible collateral equal to its required collateral
 168 pursuant to this Code section.

169 (2) For reporting purposes, each depository using ~~the~~ a pooled method shall determine
 170 the market value of its collateral. Each depository shall provide such monthly reports to
 171 the state treasurer as the state treasurer shall require.

172 (3) A depository may not substitute or withdraw collateral previously pledged as part of
 173 a pool without the prior approval of the state treasurer. The state treasurer shall grant
 174 such approval if:

175 (A) In the case of substitution of collateral, the market value of the substituted
 176 collateral is equal to or greater than the market value of the collateral withdrawn; and

177 (B) In the case of withdrawal of collateral:

178 (i) The depository certifies in writing that such withdrawal will not reduce its
 179 collateral below its required collateral; and

180 (ii) This certification is substantiated by a statement of the depository's current daily
 181 pool balance that indicates that after withdrawal such deposits will continue to be
 182 secured to the full extent required by law.

183 (d) The state treasurer shall be authorized to delegate to any bank, savings association,
 184 trust company, or other qualified firm, corporation, or association which is authorized to
 185 transact business in the State of Georgia such of its rights and responsibilities with respect
 186 to ~~the~~ a pooled method as the state treasurer deems appropriate including, without
 187 limitation, the right to approve or disapprove any substitutions or withdrawals permitted
 188 under this Code section. Fees and expenses of the bank, savings association, trust
 189 company, or other qualified firm, corporation, or association to which the state treasurer
 190 delegates his or her rights and responsibilities under this subsection shall be paid by the
 191 depositories using ~~the~~ a pooled method.

192 (e) The state treasurer, upon a default by a depository using ~~the~~ a pooled method, shall
 193 request immediate delivery of such part of the pooled, pledged collateral as may be needed
 194 to hold the state treasurer or any public body depositor harmless from losses incurred by
 195 the default. The state treasurer shall have full discretion as to the amounts and securities
 196 to be delivered. The state treasurer shall sell as much of the collateral as is needed to
 197 provide cash to cover the amount of the default and expenses resulting therefrom. From
 198 the proceeds of the sale of such collateral, the state treasurer shall pay any amounts owing
 199 to public body depositors who participated in the pooled fund of the defaulting depository.
 200 Public body depositors whose deposits are secured by a single bank pledging pool of a
 201 defaulting depository shall look solely to the assets of such pledging pool and to the assets
 202 of the defaulting depository and shall have no claim, ex contractu or otherwise, against the
 203 state, other depositories, or the assets of pledging pools created by other depositories.
 204 Public body depositors whose deposits are secured in a multibank pool of a defaulting
 205 covered depository shall look to the assets of the defaulting covered depository. If such

206 assets are insufficient to cover amounts owing to public body depositors, the state treasurer
 207 shall assess all covered depositories, except the defaulting covered depository, on a pro rata
 208 basis based upon a covered depository's percentage remaining share of the deposit of the
 209 public body; and a public body depositor shall have no claim, ex contractu or otherwise,
 210 against the state, depositories outside the multibank pool, or the assets of pools in a
 211 defaulting depository created outside the multibank pool. The failure of a covered
 212 depository to satisfy an assessment from the state treasurer in a timely manner shall be an
 213 event of default.

214 (f) In addition to all of the rights provided to the state treasurer in this chapter, the state
 215 treasurer shall have the following powers:

216 (1) To adopt such rules and prescribe such forms as may be necessary to accomplish the
 217 purposes of this chapter;

218 (2) To decline, accept, or reduce the reported value of collateral, as circumstances may
 219 require, in order to ensure the pledging of sufficient marketable collateral to meet the
 220 purposes of this chapter;

221 (3) To suspend or disqualify any custodian or depository that has violated any provision
 222 of this chapter or any rule adopted pursuant to this chapter;

223 (4) To require depositories to furnish detailed monthly reports of ~~public deposits from~~
 224 public bodies held by depositors' the depository, including depositor names; and
 225 addresses, deposit amounts, and any additional information requested by the state
 226 treasurer;

227 (5) To confirm deposits of ~~public funds by a public body~~ to the extent possible under
 228 current law; and

229 (6) To monitor and confirm, as often as deemed necessary by the state treasurer, the
 230 pledged collateral held by third-party custodians.

231 (g) Neither the provisions of this chapter nor the exercise of any right or duty by the state
 232 treasurer or the commissioner authorized or permitted by Code Section 45-8-13 or this
 233 Code section shall be construed as a waiver of sovereign immunity.

234 (h) Pursuant to Code Section 50-17-53 and the other powers of the State Depository
 235 Board, the State Depository Board may establish policies and procedures related to the
 236 operation of a multibank pool, including, but not limited to, defining eligible collateral,
 237 establishing collateral limits, adopting the schedule of fees charged to covered depositories,
 238 establishing a formula to calculate different collateralization tiers, and reporting
 239 requirements."

240

SECTION 5.

241 This Act shall become effective upon its approval by the Governor or upon its becoming law
242 without such approval for purposes of promulgating rules and regulations and shall become
243 effective on August 1, 2016, for all other purposes.

244

SECTION 6.

245 All laws and parts of laws in conflict with this Act are repealed.