

The Senate Committee on Banking and Financial Institutions offered the following substitute to SB 283:

A BILL TO BE ENTITLED  
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

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

"45-8-1.

As used in this chapter, the term:

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

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

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

(4)(A) 'Covered depository' means:

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

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

(B) A covered depository in operation as of January 1, 2016, may continue to secure public body deposits using the dedicated method, the single bank method, or both methods until policies and procedures have been approved by the State Depository Board regarding the multibank pooled method, which shall occur no later than July 1, 2017.

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

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

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

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

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

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

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

~~(5)~~(7) 'Default' includes, without limitation, the failure or refusal of a ~~public~~ depository holding funds of a public body to pay any check or warrant drawn upon sufficient and collected funds by any public body depositor or to return any deposit on demand or at maturity together with interest as agreed; the issuance of an order by any supervisory

authority restraining such depository from making payments of deposit liabilities; or the appointment of a receiver for such depository.

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

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

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

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

~~(7) Reserved.~~

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

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

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

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

## SECTION 2.

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

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

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

### SECTION 3.

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

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

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

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

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

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

~~(2) Secure deposits made with it partly by surety bond, partly by deposit of any one or more of the obligations referred to in subsection (a) of Code Section 45-8-12, partly by the guarantee or insurance of accounts by the Federal Deposit Insurance Corporation, any obligation authorized pursuant to the policies and procedures of the State Depository Board, or by any combination of these methods. The aggregate of the face value of such surety bond and the market value of securities pledged shall be a percent of the public~~

funds being secured after the deduction of the amount of deposit insurance as established  
quarterly pursuant to a formula proposed by the commissioner and adopted by the State  
Depository Board based on the ratings of the covered depository from one or more  
nationally recognized rating services. The commissioner is authorized to propose to the  
State Depository Board multiple tiers of collateralization requiring different percentages  
of securities to be pledged to secure deposited public funds; and  
(3) Under the multibank pooled method, each covered depository shall guarantee the  
deposits of a public body against loss caused by the default of other depositories within  
the multibank pool."

#### SECTION 4.

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

"45-8-13.1.

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

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

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

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

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

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

(B) In the case of withdrawal of collateral:

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

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

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

(e) The state treasurer, upon a default by a depository using ~~the~~ a pooled method, shall request immediate delivery of such part of the pooled, pledged collateral as may be needed to hold the state treasurer or any public body depositor harmless from losses incurred by the default. The state treasurer shall have full discretion as to the amounts and securities to be delivered. The state treasurer shall sell as much of the collateral as is needed to provide cash to cover the amount of the default and expenses resulting therefrom. From the proceeds of the sale of such collateral, the state treasurer shall pay any amounts owing to public body depositors who participated in the pooled fund of the defaulting depository. Public body depositors whose deposits are secured by a single bank ~~pledging~~ pool of a

defaulting depository shall look solely to the assets of such ~~pledging~~ pool and to the assets of the defaulting depository and shall have no claim, ex contractu or otherwise, against the state, other depositories, or the assets of ~~pledging~~ pools created by other depositories. Public body depositors whose deposits are secured in a multibank pool of a defaulting covered depository shall look to the assets of the defaulting covered depository. If such assets are insufficient to cover amounts owing to public body depositors, the state treasurer shall assess all covered depositories, except the defaulting covered depository, on a pro rata basis based upon a covered depository's percentage remaining share of the deposit of the public body; and a public body depositor shall have no claim, ex contractu or otherwise, against the state, depositories outside the multibank pool, or the assets of pools in a defaulting depository created outside the multibank pool. The failure of a covered depository to satisfy an assessment from the state treasurer in a timely manner shall be an event of default.

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

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

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

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

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

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

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

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

(h) Pursuant to Code Section 50-17-53 and the other powers of the State Depository Board, the State Depository Board may establish policies and procedures related to the operation of a multibank pool, including, but not limited to, defining eligible collateral, establishing collateral limits, adopting the schedule of fees charged to covered depositories,

245 **SECTION 5.**

246 This Act shall become effective upon its approval by the Governor or upon its becoming law

247 without such approval for purposes of promulgating rules and regulations.

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