

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

AS PASSED

**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 an
5 effective date; to provide for related matters; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **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)(A) 'Covered depository' means:

23 (i) 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 (ii) 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 (B) A covered depository in operation as of January 1, 2016, may continue to secure
 33 public body deposits using the dedicated method, the single bank method, or both
 34 methods until policies and procedures have been approved by the State Depository
 35 Board regarding the multibank pooled method, which shall occur no later than July 1,
 36 2017.

37 ~~(3)~~(5) 'Custodian' means the state treasurer, any Federal Reserve Bank, or any Federal
 38 Home Loan Bank approved by the state treasurer, or any bank, savings association, or
 39 trust company that:

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

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

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

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

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

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

59 ~~(5)~~(7) 'Default' includes, without limitation, the failure or refusal of a ~~public~~
 60 holding funds of a public body to pay any check or warrant drawn upon sufficient and
 61 collected funds by any public body depositor or to return any deposit on demand or at
 62 maturity together with interest as agreed; the issuance of an order by any supervisory

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

65 ~~(6)~~(8) 'Depository' means any bank designated, named, or appointed from time to time:

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

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

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

72 ~~(7) Reserved.~~

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

80 ~~(9)~~(10) 'Proper authority' means the officer, board, commission, or other tribunal or body
81 having the jurisdiction to act in the particular matter.

82 ~~(10)~~(11) 'Public body' means not only the state, municipalities, counties, school districts,
83 drainage districts, and other districts created for special purposes, but also every other
84 political subdivision of the state and every board, bureau, commission, and department
85 of the state or any subdivision thereof, as the context may require.

86 ~~(11)~~(12) 'State authority' means the officer or officers or board, bureau, commission, or
87 other person or persons who, in their official capacity, shall have, according to the laws
88 of this state, the duty or jurisdiction to act on behalf of the state in the particular matter."

89 **SECTION 2.**

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

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

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

106 **SECTION 3.**

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

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

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

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

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

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

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

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

143 SECTION 4.

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

147 "45-8-13.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

243 establishing a formula to calculate different collateralization tiers, and reporting
244 requirements."

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.

248 **SECTION 6.**

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