S-0340.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5396**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Angel, Liias, Wellman, O'Ban, Cleveland, Hasegawa, and Hunt

AN ACT Relating to municipal access to local financial services; amending RCW 39.58.010, 39.58.060, and 39.58.108; and repealing RCW 39.58.240.

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

**Sec.**  RCW 39.58.010 and 2016 c 152 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 or letters of credit enumerated in RCW 39.58.050 (5), (6), and (7);

(8) "Financial institution" means any national or state chartered commercial bank or trust company, savings bank, ((~~or~~)) savings association, or federal or state chartered credit union, 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 that has been approved by the commission to hold public deposits, 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 a federal home loan bank, or such other third-party safekeeping agent approved by the commission.

**Sec.**  RCW 39.58.060 and 2009 c 9 s 5 are each amended to read as follows:

When the commission determines that a loss has occurred in a public depositary, it shall as soon as possible make payment to the proper public officers of all funds subject to such loss, pursuant to the following procedures:

(1) For the purposes of determining the sums to be paid, the director of the department of financial institutions or the receiver shall, within twenty days after issuance of a restraining order or taking possession of any public depositary, ascertain the amount of public funds on deposit therein as disclosed by its records and the amount thereof covered by deposit insurance and provide written verification of the amounts thereof to the commission and each public depositor;

(2) Within ten days after receipt of written verification, each public depositor shall furnish to the commission verified statements of its deposits in the public depositary, including the uninsured and uncollateralized status of the public deposits, as disclosed by its records;

(3) Upon receipt of written verification and statements, the commission shall ascertain and fix the amount of the public deposits, net after deduction of any amount received from deposit insurance and held collateral, and, after determining and declaring the apparent net loss, assess the same against all public depositaries, as follows:

(a) If the public depositary in which the loss has occurred is a bank, trust company, savings bank, or savings association, first, against the public depositary in which the loss occurred, to the extent of the full value of collateral segregated pursuant to this chapter; and second, against all other bank, trust company, and savings bank public depositaries pro rata in proportion to the maximum liability of each such depositary as it existed on the date of loss;

(b) If the public depositary in which the loss has occurred is a credit union, first, against the public depositary in which the loss occurred, to the extent of the full value of collateral segregated pursuant to this chapter; and second, against all other credit union public depositaries pro rata in proportion to the maximum liability of each such depositary as it existed on the date of loss;

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

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

(6) Any owner of public deposits receiving assessment proceeds shall provide a receivership certificate to the commission.

**Sec.**  RCW 39.58.108 and 2016 c 152 s 4 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, 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 collateral in an amount established by the commission by rule or noticed resolution.

(2) Solely for the purpose of receiving public deposits that may total no more than the maximum deposit insured by the national credit union share insurance fund, a state-chartered credit union chartered under chapter 31.12 RCW or a credit union chartered under federal law is a public depositary subject to RCW 39.58.040 and 39.58.100. The maximum deposit applies to all funds attributable to any one depositor of public funds in any one credit union.

(3) A state or federal credit union that has satisfied the requirements of subsection (1) of this section is not authorized to receive public deposits that total more than the maximum deposit insured by the national credit union share insurance fund unless at least four other state or federal credit unions have satisfied the requirements of subsection (1) of this section.

(4) At any time at which there are less than ten state or federal credit unions authorized under subsection (1) of this section to receive public deposits in excess of the maximum deposit insured by the national credit union share insurance fund, the maximum liability for each such credit union means:

(a) A sum equal to twenty 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.

NEW SECTION. **Sec.**  RCW 39.58.240 (Credit union as public depositary—Conditions) and 2012 c 26 s 1 & 2010 c 36 s 1 are each repealed.

**--- END ---**