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HOUSE BILL 2640

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State of Washington

64th Legislature

2016 Regular Session

By Representatives Kirby, Vick, and Stanford; by request of State Treasurer

Read first time 01/18/16. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to public funds and deposits; amending RCW  
2 39.58.010, 39.58.050, 39.58.105, 39.58.108, 39.58.135, and 39.58.155;  
3 and repealing RCW 39.58.120 and 39.58.045.

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

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

7 In this chapter, unless the context otherwise requires:

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

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

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

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

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

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

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

16 (7) "Eligible collateral" means the securities ((which are)) or  
17 letters of credit enumerated in RCW 39.58.050 (5) ((and)), (6) ((as

18 ~~eligible collateral for public deposits)), and (7);~~

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

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

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

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

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

1 (a) A sum equal to ten percent of:

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

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

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

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

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

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

29 (14) "Public deposit" means public funds on deposit with a public  
30 depository;

31 (15) "Public depository" means a financial institution (~~which~~  
32 ~~does not claim exemption from the payment of any sales or~~  
33 ~~compensating use or ad valorem taxes under the laws of this state,))  
34 which has been approved by the commission to hold public deposits,  
35 and which has segregated for the benefit of the commission eligible  
36 collateral having a value of not less than its maximum liability;~~

37 (16) "Public funds" means moneys under the control of a  
38 treasurer, the state treasurer, or custodian belonging to, or held  
39 for the benefit of, the state or any of its political subdivisions,  
40 public corporations, municipal corporations, agencies, courts,

1 boards, commissions, or committees, including moneys held as trustee,  
2 agent, or bailee belonging to, or held for the benefit of, the state  
3 or any of its political subdivisions, public corporations, municipal  
4 corporations, agencies, courts, boards, commissions, or committees;

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

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

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

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

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

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

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

33 (2) Securities eligible as collateral shall be valued at market  
34 value, and the total market value of securities pledged in accordance  
35 with this chapter shall not be reduced by withdrawal or substitution  
36 of securities except by prior authorization, in writing, by the  
37 commission.

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

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

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

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

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

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

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

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

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

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

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

39 (6) In addition to the securities enumerated in this section,  
40 (~~every~~) the commission may also accept as collateral a letter of

1 credit from a federal home loan bank or a federal reserve bank on  
2 behalf of a public depository, naming the commission as beneficiary.  
3 Such letters are not subject to a completed depository pledge  
4 agreement. As such, the commission must act as the safekeeping agent  
5 for letters of credit.

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

9 ((7)) (8) The commission may determine by rule or resolution  
10 whether any security, whether or not enumerated in this section, is  
11 or shall remain eligible as collateral when in the commission's  
12 judgment it is desirable or necessary to do so.

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

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

28 (2) In lieu of any such investigation or report, the commission  
29 may rely upon information made available to it or the director of the  
30 department of financial institutions by the office of the comptroller  
31 of the currency, ((the office of thrift supervision,)) the federal  
32 deposit insurance corporation, the federal reserve board, any state  
33 financial institutions regulatory agency, or any successor state or  
34 federal financial institutions regulatory agency, and any such  
35 information or data received by the commission shall be kept and  
36 maintained in the same manner and have the same protections as  
37 examination reports received by the commission from the director of  
38 the department of financial institutions pursuant to RCW  
39 ((30.04.075)) 30A.04.075(2)(h) and 32.04.220(2)(h).

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

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

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

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

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

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

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

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

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

3           (2) RCW 39.58.045 (Financial institutions claiming exemption from  
4 sales, use or ad valorem taxes—Notification of commission) and 1983 c  
5 66 s 4.

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