
SUBSTITUTE HOUSE BILL 2061

State of Washington 61st Legislature 2009 Regular Session

By House Financial Institutions & Insurance (originally sponsored by Representative Kirby; by request of State Treasurer)

READ FIRST TIME 02/19/09.

1 AN ACT Relating to the modernization and clarification of the
2 powers of the public deposit protection commission in regard to banks,
3 savings banks, and savings associations as public depositaries;
4 amending RCW 39.58.010, 39.58.040, 39.58.050, 39.58.060, 39.58.100,
5 39.58.103, 39.58.105, 39.58.108, 39.58.130, 39.58.135, 39.58.140, and
6 39.58.750; adding new sections to chapter 39.58 RCW; adding a new
7 section to chapter 43.08 RCW; creating a new section; repealing RCW
8 39.58.065; and declaring an emergency.

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

10 **Sec. 1.** RCW 39.58.010 and 1996 c 256 s 1 are each amended to read
11 as follows:

12 In this chapter, unless the context otherwise requires:

13 (1) "Public funds" means moneys under the control of a treasurer,
14 the state treasurer, or custodian belonging to, or held for the benefit
15 of, the state or any of its political subdivisions, public
16 corporations, municipal corporations, agencies, courts, boards,
17 commissions, or committees, including moneys held as trustee, agent, or
18 bailee belonging to, or held for the benefit of, the state or any of

1 its political subdivisions, public corporations, municipal
2 corporations, agencies, courts, boards, commissions, or committees;

3 (2) "Public depository" means a financial institution which does
4 not claim exemption from the payment of any sales or compensating use
5 or ad valorem taxes under the laws of this state, which has been
6 approved by the commission to hold public deposits, and which has
7 segregated for the benefit of the commission eligible collateral having
8 a value of not less than its maximum liability(~~((. Addition of the word~~
9 ~~"bank" denotes a bank, trust company, or national banking association~~
10 ~~and the word "thrift" denotes a savings association or savings bank))~~);

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

15 (4) "Commission" means the Washington public deposit protection
16 commission created under RCW 39.58.030;

17 (5) "Eligible collateral" means securities which are enumerated in
18 RCW 39.58.050 (5) and (6) as eligible collateral for public deposits;

19 (6) ~~((The))~~ "Maximum liability," ~~((of a))~~ with reference to a
20 public depository's liability under this chapter for loss per
21 occurrence by another public depository, on any given date means:

22 (a) A sum equal to ten percent of ((+a)):

23 (i) All uninsured public deposits held by ((the qualified)) a
24 public depository ((en)) that has not incurred a loss by the then most
25 recent commission report date((, or

26 (b)); or

27 (ii) The average of the balances of said uninsured public deposits
28 on the last four immediately preceding reports required pursuant to RCW
29 39.58.100, whichever amount is greater((, less any assessments paid to
30 the commission pursuant to this chapter since the then most recent
31 commission report date)); or

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

36 As long as the uninsured public deposits of a public depository are
37 one hundred percent collateralized by eligible collateral as provided

1 for in RCW 39.58.050, the "maximum liability" of a public depository
2 that has not incurred a loss may not exceed the amount set forth in (a)
3 of this subsection.

4 This definition of "maximum liability" does not limit the authority
5 of the commission to adjust the collateral requirements of public
6 depositories pursuant to RCW 39.58.040;

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

10 (8) "Investment deposits" means time deposits, money market deposit
11 accounts, and savings deposits of public funds available for
12 investment;

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

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

21 (11) "Commission report" means a formal accounting rendered by all
22 public depositories to the commission in response to a demand for
23 specific information made by the commission detailing pertinent affairs
24 of each public depository as of the close of business on a specified
25 date, which is the "commission report date." "Commission report due
26 date" is the last day for the timely filing of a commission report;

27 (12) "Director of the department of financial institutions" means
28 the Washington state director of the department of financial
29 institutions;

30 (13) "Net worth" of a public depository means (a) the equity
31 capital as reported to its primary regulatory authority on the
32 quarterly report of condition or statement of condition, or other
33 required report required by its primary regulatory authority or federal
34 deposit insurer, and may include capital notes and debentures which are
35 subordinate to the interests of depositors, or (b) equity capital
36 adjusted by rule or resolution of the commission after consultation
37 with the director of the department of financial institutions;

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

8 (15) "Trustee" means a third-party safekeeping agent which has
9 completed a depository pledge agreement with a public depository and
10 the commission. Such third-party safekeeping agent may be the federal
11 reserve bank of San Francisco, the federal home loan bank of Seattle,
12 (~~the trust department of the public depository,~~) or such other third-
13 party safekeeping agent approved by the commission;

14 (16) "Capitalization" means the measure or measures of
15 capitalization, other than net worth, of a depository applying for
16 designation as or operating as a public depository pursuant to this
17 chapter, based upon regulatory standards of financial institution
18 capitalization adopted by rule or resolution of the commission after
19 consultation with the director of the department of financial
20 institutions;

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

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

30 (19) "Public deposit" means public funds on deposit with a public
31 depository;

32 (20) "State public depository" means a Washington state-chartered
33 financial institution that is authorized as a public depository under
34 this chapter;

35 (21) "State treasurer" means the treasurer of the state of
36 Washington.

1 **Sec. 2.** RCW 39.58.040 and 1996 c 256 s 3 are each amended to read
2 as follows:

3 The commission shall have the power and broad administrative
4 discretion:

5 (1) To make and enforce regulations necessary and proper to the
6 full and complete performance of its functions under this chapter;

7 (2) To require any public depository to furnish such information
8 dealing with public deposits and the exact status of its
9 capitalization, collateral, liquidity, and net worth as the commission
10 shall request~~((. Any public depository which refuses or neglects to~~
11 ~~give promptly and accurately or to allow verification of any~~
12 ~~information so requested shall no longer be a public depository and~~
13 ~~shall be excluded from the right to receive or hold public deposits~~
14 ~~until such time as the commission shall acknowledge that such~~
15 ~~depository has furnished the information requested))~~;

16 (3) To take such action as it deems best for the protection,
17 collection, compromise or settlement of any claim arising in case of
18 loss;

19 (4) ~~To ((prescribe regulations, subject to this chapter, fixing))~~
20 fix by rule or resolution, consistent with this chapter, the
21 requirements for initial and continued qualification of financial
22 institutions as public depositories on the basis of a depository's
23 financial condition, including its capitalization, collateral,
24 liquidity, and net worth, and fixing other terms and conditions
25 consistent with this chapter, under which public deposits may be
26 received and held;

27 (5) To make and enforce ((regulations)) rules setting forth
28 criteria~~((establishing minimum standards for the financial condition~~
29 ~~of bank and thrift depositories and, if the minimum))~~ for the
30 establishment by policy of standards governing matters that are subject
31 to the commission's powers to fix requirements, terms, and conditions
32 under subsection (4) of this section for a public depository, and, if
33 these standards are not met, providing for additional collateral or
34 other conditional or unconditional requirements or restrictions
35 ~~((regarding))~~ applicable to the public depository's right to receive or
36 hold public deposits;

37 (6) To require additional or different types and amounts of

1 collateral, or to restrict a public depositary's right to receive or
2 hold public deposits if the standards for the financial condition of
3 public depositaries are not met;

4 ~~((+6))~~ (7) To fix the official date on which any loss shall be
5 deemed to have occurred taking into consideration the orders, rules,
6 and regulations of the supervisory authority of a public depositary's
7 primary regulatory authority and federal deposit insurer as they affect
8 the failure or inability of a public depositary to repay public
9 deposits in full; ~~((and (7))~~

10 (8) In case loss occurs in more than one public depositary, to
11 determine the allocation and time of payment of any sums due to public
12 depositors under this chapter; and

13 (9) To make and enforce sanctions against a public depositary for
14 noncompliance with the provisions of this chapter and rules or policies
15 of the commission.

16 NEW SECTION. Sec. 3. A new section is added to chapter 39.58 RCW
17 to read as follows:

18 For the purposes of this chapter, the commission shall include all
19 public depositaries in a single public depositary pool. All public
20 depositaries, as defined in RCW 39.58.010, shall be treated uniformly
21 by the commission without regard to distinctions in the nature of its
22 financial institution charter.

23 **Sec. 4.** RCW 39.58.050 and 1996 c 256 s 4 are each amended to read
24 as follows:

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

1 securities except by prior authorization, in writing, by the
2 commission.

3 (3) The public depository shall have the right to make
4 substitutions of an equal or greater amount of such collateral at any
5 time.

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

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

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

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

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

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

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

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

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

35 (h) Bonds of any city of the state of Washington for the payment of
36 which the entire revenues of the city's water system, power and light
37 system, or both, less maintenance and operating costs, are irrevocably

1 pledged, even though such bonds are not general obligations of such
2 city;

3 (6) In addition to the securities enumerated in this section, every
4 public depository may also segregate such bonds, securities, and other
5 obligations as are designated to be authorized security for public
6 deposits under the laws of this state.

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

12 **Sec. 5.** RCW 39.58.060 and 1996 c 256 s 5 are each amended to read
13 as follows:

14 When the commission determines that a loss has occurred in a
15 (~~bank~~) public depository, it shall as soon as possible make payment
16 to the proper public officers of all funds subject to such loss,
17 pursuant to the following procedures:

18 (1) For the purposes of determining the sums to be paid, the
19 director of the department of financial institutions or the receiver
20 shall, within twenty days after issuance of a restraining order or
21 taking possession of any (~~bank~~) public depository, ascertain the
22 amount of public funds on deposit therein as disclosed by its records
23 and the amount thereof covered by deposit insurance and (~~certify~~)
24 provide written verification of the amounts thereof to the commission
25 and each (~~such~~) public depositor;

26 (2) Within ten days after receipt of (~~such certification~~) written
27 verification, each (~~such~~) public depositor shall furnish to the
28 commission verified statements of its deposits in (~~such bank~~) the
29 public depository, including the uninsured and uncollateralized status
30 of the public deposits, as disclosed by its records;

31 (3) Upon receipt of (~~such certificate~~) written verification and
32 statements, the commission shall ascertain and fix the amount of
33 (~~such~~) the public deposits, net after deduction of any amount
34 received from deposit insurance and held collateral, and, after
35 determining and declaring the apparent net loss, assess the same
36 against all (~~then bank~~) public depositories, as follows: First,
37 against the public depository in which the loss occurred, to the extent

1 of the full value of collateral segregated pursuant to this chapter;
2 second, against all other ((bank)) public depositaries pro rata in
3 proportion to the maximum liability of each ((such)) depositary as it
4 existed on the date of loss;

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

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

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

17 NEW SECTION. Sec. 6. RCW 39.58.065 (Loss in a thrift public
18 depositary--Procedure for payment) and 1996 c 256 s 6 & 1983 c 66 s 10
19 are each repealed.

20 **Sec. 7.** RCW 39.58.100 and 1996 c 256 s 11 are each amended to read
21 as follows:

22 (1) On or before each commission report due date, each public
23 depositary shall render to the commission a written report, certified
24 under oath, indicating the total amount of public funds on deposit held
25 by it, the uninsured amount of those funds, the net worth of the
26 depositary, and the amount and nature of eligible collateral then
27 segregated for the benefit of the commission.

28 (2) The commission may instruct the director of the department of
29 financial institutions to examine and thereafter certify as to the
30 accuracy of any statement to the commission by any state public
31 depositary, or to provide such other examination report information or
32 data as may be required by the commission. The type, content, and
33 frequency of the reports may be determined by the director of the
34 department of financial institutions, consistent with the requirements
35 of the commission as defined by rule.

1 **Sec. 8.** RCW 39.58.103 and 1983 c 66 s 13 are each amended to read
2 as follows:

3 Each public depository shall notify the commission in writing
4 within (~~five working days~~) forty-eight hours, or by close of business
5 of the next business day thereafter, of the happening of an event which
6 causes its net worth to be reduced by an amount greater than ten
7 percent of the amount shown as its net worth on the most recent report
8 submitted pursuant to RCW 39.58.100.

9 **Sec. 9.** RCW 39.58.105 and 1996 c 256 s 12 are each amended to read
10 as follows:

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

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

36 (3) The director of the department of financial institutions shall
37 in addition advise the commission of any action he or she has directed

1 any state public depository to take which will result in a reduction of
2 greater than ten percent of the net worth of such depository as shown
3 on the most recent report it submitted pursuant to RCW 39.58.100.

4 **Sec. 10.** RCW 39.58.108 and 1996 c 256 s 13 are each amended to
5 read as follows:

6 Any financial institution may become ~~((a)), and thereafter operate~~
7 as, a public depository upon approval by the commission and segregation
8 of collateral in the manner as set forth in this chapter, and ~~((upon))~~
9 subject to compliance with all rules ~~((as promulgated))~~ and policies
10 adopted by the commission. ~~((For the first twelve month period~~
11 ~~following qualification as a public depository, the))~~ A public
12 depository shall at all times pledge and segregate eligible securities
13 in an amount ~~((equal to not less than ten percent of all public funds~~
14 ~~on deposit in the depository))~~ established by the commission by rule or
15 noticed resolution.

16 **Sec. 11.** RCW 39.58.130 and 1996 c 256 s 14 are each amended to
17 read as follows:

18 A treasurer ~~((is))~~ and the state treasurer are authorized to
19 deposit in a public depository any public funds available for
20 investment and secured by collateral in accordance with the provisions
21 of this chapter, and receive interest thereon. The authority provided
22 by this section is additional to any authority now or hereafter
23 provided by law for the investment or deposit of public funds by any
24 such treasurer: PROVIDED, That in no case shall the aggregate of
25 demand and investment deposits of public funds by any such treasurer in
26 any one public depository exceed at any time the net worth of that
27 depository. If a public depository's net worth is reduced, a treasurer
28 and the state treasurer may allow public funds on deposit in excess of
29 the reduced net worth to remain until maturity upon pledging by the
30 depository of eligible securities valued at market value in an amount
31 at least equal to the amount of the excess deposits. The collateral
32 shall be segregated as provided in RCW 39.58.050. If the additional
33 securities required by this section are not pledged by the depository,
34 the depository shall permit withdrawal prior to maturity by the
35 treasurer of deposits, including accrued interest, in accordance with
36 applicable statutes and governmental regulations.

1 **Sec. 12.** RCW 39.58.135 and 1996 c 256 s 15 are each amended to
2 read as follows:

3 Notwithstanding RCW 39.58.130, (1) aggregate deposits received by
4 a public depository from all (~~public~~) treasurers and the state
5 treasurer shall not exceed at any time one hundred fifty percent of the
6 value of the depository's net worth, nor (2) shall the aggregate
7 deposits received by any public depository exceed thirty percent of the
8 total aggregate deposits of all public treasurers in all depositories
9 as determined by the public deposit protection commission. However, a
10 public depository may receive deposits in excess of the limits provided
11 in this section if eligible securities, as prescribed in RCW 39.58.050,
12 are pledged as collateral in an amount equal to one hundred percent of
13 the value of deposits received in excess of the limitations prescribed
14 in this section.

15 **Sec. 13.** RCW 39.58.140 and 1996 c 256 s 16 are each amended to
16 read as follows:

17 When deposits are made in accordance with this chapter, a treasurer
18 and the state treasurer shall not be liable for any loss thereof
19 resulting from the failure or default of any public depository without
20 fault or neglect on his or her part or on the part of his or her
21 assistants or clerks.

22 **Sec. 14.** RCW 39.58.750 and 1996 c 256 s 17 are each amended to
23 read as follows:

24 Notwithstanding any provision of law to the contrary, the state
25 treasurer or any (~~county, city, or other municipal~~) treasurer or
26 other custodian of public funds may receive, disburse, or transfer
27 public funds under his or her jurisdiction by means of wire or other
28 electronic communication in accordance with accounting standards
29 established by the state auditor under RCW 43.09.200 with regard to
30 (~~municipal~~) treasurers of municipalities or other custodians or by
31 the office of financial management under RCW 43.88.160 in the case of
32 the state treasurer and other state custodians to safeguard and insure
33 accountability for the funds involved.

34 NEW SECTION. **Sec. 15.** A new section is added to chapter 39.58 RCW
35 to read as follows:

1 If a depository neglects or refuses to promptly and accurately
2 furnish, or to allow verification of, any required information
3 requested by the commission or by the director of the department of
4 financial institutions when acting on behalf of the commission pursuant
5 to this chapter, or if a public depository otherwise fails to comply
6 with this chapter or any rules or policies of the commission, the
7 commission may at its option deny or revoke the authority of such
8 depository to act as a public depository pursuant to this chapter, or
9 otherwise suspend such depository from receiving or holding public
10 deposits until such time as the depository receives the information or
11 complies with the commission's rules and policies. The commission
12 shall have the authority to assess by rule costs for a depository's
13 noncompliance with this chapter and rules and resolutions adopted
14 pursuant to this chapter.

15 NEW SECTION. **Sec. 16.** A new section is added to chapter 39.58 RCW
16 to read as follows:

17 The commission may by resolution delegate all of its authority to
18 the state treasurer except rule making.

19 NEW SECTION. **Sec. 17.** A new section is added to chapter 39.58 RCW
20 to read as follows:

21 The liability of a public depository under this chapter shall not
22 be altered by any merger, takeover, or acquisition, except to the
23 extent that such liability is assumed by agreement or operation of law
24 by the successor entity or resulting financial institution.

25 NEW SECTION. **Sec. 18.** A new section is added to chapter 43.08 RCW
26 to read as follows:

27 By December 1, 2009, and each December 1st thereafter, the office
28 of the state treasurer shall report to the legislature actions taken by
29 the public deposit protection commission and the state treasurer
30 regarding public deposit protection.

31 NEW SECTION. **Sec. 19.** The code reviser shall alphabetize and
32 renumber the definitions in RCW 39.58.010.

1 NEW SECTION. **Sec. 20.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

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