

**1985 Assembly Bill 146**

Date of enactment: **June 28, 1985**  
Date of publication: **July 1, 1985**

## **1985 Wisconsin Act 25**

**AN ACT** to repeal 25.17 (1) (e), 34.026, 34.04 and 34.05 (4); to amend 20.124 (1) (a), 34.01 (2), (3), (5), (6) and (7), 34.05 (1), (2) and (3), 34.06, 34.07, 34.09, 186.35 (2) (a) and 186.35 (5) (d); and to repeal and recreate 34.03 and 34.08 of the statutes, relating to public deposits.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

PREFATORY NOTE: This bill was developed by the legislative council's special committee on state deposit guarantee fund.

The state deposit guarantee fund was created by ch. 1, special session, laws of 1931. The purpose of the fund was to protect deposits of public moneys made by governmental units in public depositories (i.e., banks and, currently, other financial institutions). The fund was comprised of the proceeds resulting from periodic assessments levied against public deposits by the commissioner of banking.

In 1955, the legislature discontinued the state deposit guarantee fund and transferred the balance to the state's general fund [ch. 332, laws of 1955]. However, this enactment also pledged general purpose revenues to the payment of any subsequent losses of public deposits, up to the aggregate of the fund's balance on June 30, 1955, plus interest at 2 1/2% per year. The enactment also continued the authority of the commissioner to levy periodic assessments against public deposits for the fund.

According to testimony received by the special committee, in 1955, the fund contained approximately \$6.2 million and insured approximately \$84 million of public deposits. In August 1984, the fund's "paper balance" had grown to approximately \$12.7 million, and insured approximately \$1.25 billion. In 1955, the fund had an actuarial rate (amount in fund versus deposits covered) of 7.4%; by 1984, the actuarial rate had declined to approximately 1.0% (or less, during those periods of the year when total public deposits are higher).

The special committee concluded that the fund, in its present form, presents a false sense of security to public depositors and that there are serious problems with the various alternatives that would continue the approach of using a state fund. The special committee recommends the approach taken in this bill, which would amend ch. 34, and certain other related statutes, to accomplish the following:

1. Prospectively abolish the state deposit guarantee fund and assessments against public deposits for the fund.
2. Provide that the current pledge of general purpose revenues under s. 20.124 (1) (a), for the payment of losses of public deposits will be continued, and will be used, within certain limitations, until the balance in that appropriation is exhausted.
3. Permit collateralization of public deposits.
4. Remove certain qualification requirements for public depositories.
5. Revise the basis for computing future interest on the balance in the s. 20.124 (1) (a) appropriation from the 2 1/2% annual rate to the rate obtained on other state investments.

The bill makes technical changes in those statutory sections which have been affected by the substantive changes described above.

The bill also changes the present unlimited coverage provided for public deposits in credit unions to the same level as is provided for all other depositors in credit unions and for public deposits in banks and savings and loan associations.

SECTION 1. 20.124 (1) (a) of the statutes is amended to read:

20.124 (1) (a) *Losses on public deposits.* A sum sufficient for the payment to public depositors under s. 34.08 of losses as defined by s. 34.01 (2) and the expenses of administration and any reinsurance costs. The aggregate of said payments shall may not exceed the total of all of the following:

1. The balance in the state deposit fund as of the close of business on June 30, 1955, ~~plus interest.~~

2. Interest on the balance under subd. 1 at the rate of 2 1/2% per year computed to the day before the effective date of this act ... [revisor inserts date].

3. Beginning on the effective date of this act ... [revisor inserts date], interest on the balance under subd. 1 at a rate of 5% per year computed to the date of any such payment of a loss.

NOTE: Section 20.124 (1) (a) is amended to provide that, after the effective date of this act, the unexhausted portion of the pledge of general purpose revenues for the payment of losses of public deposits will grow at a rate equal to the rate of 5% per year.

SECTION 2. 25.17 (1) (e) of the statutes is repealed.

NOTE: Under s. 25.17 (1) (e), the state investment board has control of the moneys in the state deposit guarantee fund. Since this bill prospectively abolishes the fund, s. 25.17 (1) (e) is repealed.

SECTION 3. 34.01 (2), (3), (5), (6) and (7) of the statutes are amended to read:

34.01 (2) "Loss" means any loss of public moneys, which have been deposited in a designated public depository in accordance with this chapter ~~and upon which the required payment has been made into the state deposit fund,~~ resulting from the failure of any public depository to repay to any public depositor the full amount of its deposit because the commissioner of credit unions, administrator of federal credit unions, commissioner of banking, comptroller of currency, federal home loan bank board or commissioner of savings and loan has taken possession of the public depository or because the public depository has, with the consent and approval of the commissioner of credit unions, administrator of federal credit unions, commissioner of banking or commissioner of savings and loan, adopted a stabilization and readjustment plan or has sold a part or all of its assets to another credit union, bank or savings and loan association which has agreed to pay a part or all of the deposit liability on a deferred payment basis or because the depository is prevented from paying out old deposits because of rules of the commissioner of credit unions, administrator of federal credit unions, commissioner of banking, comptroller of the currency, federal home loan bank board or commissioner of savings and loan.

(3) "Public deposit" means public moneys deposited by the state or any county, city, village, town, drainage district, power district, school district, cooperative educational service agency, sewer district or any commission, committee, board or officer of any governmental subdivision of the state or any court of this state, a corporation organized under s. 39.33 or by the housing and economic development authority, if the authority elects to be bound by all or part of this chapter under s. 234.32 (2), in any state bank, savings and trust company, mutual savings bank, national bank or federal or state credit union or savings and loan association in this state or in the local government pooled investment fund a public depositor in a

public depository, including private moneys held in trust by a public officer.

(5) "Public depository" means a federal or state credit union, federal or state savings and loan association, state bank, savings and trust company, mutual savings bank, or national bank in this state which receives or holds any public deposits or the local government pooled-investment fund.

(6) "Public moneys" ~~shall include~~ means all moneys coming into the hands of the state treasurer or the treasurer of any county, city, village, town, drainage district, power district, school district, cooperative educational service agency, sewer district, or of any commission, committee, board or officer of any governmental subdivision of the state, or of the clerk of any court in this state, or of the housing and economic development authority if the authority elects to be bound by all or part of this chapter under s. 234.32 (2), treasurer of a public depositor by virtue of his or her office without regard to the ownership thereof of the moneys.

(7) "Treasurer" means any duly elected, appointed or acting official ~~of the state or of any county, city, village, town, drainage district, power district, school district, cooperative educational service agency, sewer district, or of any commission, committee, board or authority, or any officer or employe of any governmental subdivision of the state, or the clerk of any court in this state, or employe of a public depositor~~ whose duties require that he or she receive and account for public moneys.

NOTE: Section 34.01 (2) is amended to remove the reference to a required payment made into the state deposit guarantee fund, since the fund is prospectively abolished in this bill.

Subsection (3) is amended in order to shorten the definition by making use of other defined terms in the section.

Subsection (5) is amended to specifically include "federal or state" credit unions and "federal or state" savings and loan associations as public depositories.

Subsection (6) is amended to shorten the definition by making use of other defined terms in the section. In making use of the term "public depositor", this subsection specifically includes the treasurer of a corporation organized under s. 39.33. This corporation, created by the higher educational aids board to provide for a guaranteed student loan program, is included in the definition of "public depositor" in sub. (4), but is not listed in current sub. (6).

Subsection (7) is amended to shorten the definition by making use of other defined terms in the section. In making use of the term "public depositor", this subsection specifically includes the treasurer of a corporation organized under s. 39.33. This corporation, created by the higher educational aids board to provide for a guaranteed student loan program, is included in the definition of "public depositor" in sub. (4), but is not listed in current sub. (7).

**SECTION 4.** 34.026 of the statutes is repealed.

NOTE: Section 34.026 is repealed. It refers to all charges collected from a privately owned trust fund by any public depository and paid to the commissioner of banking under ch. 34. Since the state deposit guarantee fund is prospectively abolished in this bill, s. 34.026 is no longer necessary.

**SECTION 5.** 34.03 of the statutes is repealed and recreated to read:

**34.03 Powers of the commissioner of banking.** The commissioner of banking may do any of the following:

(1) Make and enforce rules necessary for the implementation of this chapter.

(2) Require any public depository or the trustees of segregated trusts created by banks for the benefit of public depositors to furnish information upon request. Any public depository which refuses or neglects to give any information so requested shall be excluded from the right to receive public deposits. Information obtained under this subsection may not be disclosed by the commissioner of banking unless disclosed as provided in s. 220.06.

(3) Take such action as he or she deems necessary or appropriate for the protection, collection, compromise or settlement of any claim against or in favor of the appropriation under s. 20.124 (1) (a).

(4) Exercise all powers reasonably necessary and proper to the full and complete performance of his or her functions under this chapter, including but not limited to ordinary powers granted corporations.

NOTE: Section 34.03 is repealed and recreated in order to remove the following powers of the commissioner of banking related to the operation of the state deposit guarantee fund:

1. Contracting for reinsurance of the fund to protect it against excessive loss.
2. Fixing the rate of payment into the fund.
3. Levying and collecting penalties.
4. Prescribing rules for the qualification of credit unions, banks and savings and loan associations as public depositories and fixing terms and conditions under which public deposits may be held.

5. Fixing the official date on which losses shall be deemed to have been incurred. With respect to this power, see proposed s. 34.08 and the NOTE following that treatment.

The section also provides that information obtained from public depositories by the commissioner of banking may not be disclosed by the commissioner unless the information is disclosed as provided in s. 220.06. That section of the statutes provides, in part, that the commissioner of banking, officers and employes of the office of the commissioner and members and employes of the banking review board are bound by oath to keep secret all facts and information obtained in the course of examinations except in specified circumstances.

**SECTION 6.** 34.04 of the statutes is repealed.

NOTE: Section 34.04 is repealed because it relates to the rate of payment made to the state deposit guarantee fund. This section is no longer necessary since the fund is prospectively abolished in this bill.

**SECTION 7.** 34.05 (1), (2) and (3) of the statutes are amended to read:

34.05 (1) The governing board of each public depositor shall, by resolution, ~~a certified copy of which shall be filed with the commissioner of banking,~~ designate one or more public depositories, organized and doing business under the laws of this state or federal law and located in this state, in which the treasurer of the governing board shall deposit all public moneys received by him or her and specify whether the moneys shall be maintained in time deposits subject to the limitations of s. 66.04 (2), demand deposits or sav-

~~ings deposits. The public depository designated shall have been approved as qualified to become a public depository by the commissioner of credit unions if the depository is a credit union chartered under ch. 186, the administrator of federal credit unions if the depository is a federally chartered credit union, the commissioner of banking if the depository is a bank, savings and trust company or mutual savings bank, or by the commissioner of savings and loan if the depository is a savings and loan association and whether a surety bond or other security shall be required to be furnished under s. 34.07 by the public depository to secure the repayment of such deposits. A designation of a public depository by the governing board shall be a designation of the public depository for all treasurers of the governing board and for all public depositors for which each treasurer shall act. No public depositor, through its governing board, treasurer or otherwise, may contract with a public depository for, or condition its designation of a public depository or its deposit of public moneys upon, the agreement of the public depository to invest deposits of public moneys in any particular form of investment or in any particular geographic location.~~

(2) Whenever any governing board fails or refuses to designate a public depository, the treasurer thereof of the public depositor, after notice in writing to each member of the governing board and subject to further action of the governing board, may designate public depositories to act as such for not exceeding for no longer than 90 days in the same manner as if designated by such the governing board, and shall immediately certify such designations to the commissioner of banking.

(3) Every treasurer shall deposit public moneys immediately upon receipt thereof the funds received by him by virtue of his office in the name of the municipality public depositor in the public depository or public depositories designated by the governing board.

NOTE: Section 34.05 (1) is amended to remove the requirements that (a) the governing board of each public depositor file a certified copy of its resolution that designates a public depository with the commissioner of banking and (b) a public depository be approved as a qualified public depository by a state or federal regulator. The subsection is further amended by removing the prohibition that a public depositor may not condition its public depository decisions upon an agreement by the public depository to invest deposits in any particular form of investment or in any particular geographic location.

Subsection (1) is also amended to clarify that it is the governing body's responsibility to determine whether collateral, a surety bond or other security, shall be furnished by the public depository as a means of securing public deposits.

Subsection (2) is amended to remove the requirement that a treasurer, acting when a governing board fails to act, must certify a designation of a public depository to the commissioner of banking.

Subsection (3) contains no substantive changes. However, defined terms are substituted for existing language.

SECTION 8. 34.05 (4) of the statutes is repealed.

NOTE: Section 34.05 (4) is repealed. This subsection relates to payments made to the state deposit guarantee fund and penalties based on those payments by any municipality attempting to evade the requirements of ch. 34. This subsection is no longer necessary since the fund is prospectively abolished in this bill.

SECTION 9. 34.06 of the statutes is amended to read:

**34.06 Liability of treasurers.** Notwithstanding any other provision of law, the state treasurer and the treasurer of any county, city, village, town, drainage district, power district, school district, sewer district, or any commission, committee, board or officer of any governmental subdivision of the state, upon depositing a treasurer who deposits public moneys in any public depository, in compliance with s. 34.05 without regard to the giving, renewal or approval of a bond or other security by such depository, is thereby relieved of liability for any loss of public moneys which results from the failure of any such public depository to repay to such the public depositor the full amount of its deposits thus causing a loss as defined in s. 34.01 (2).

NOTE: Section 34.06 is amended to retain the immunity to liability for treasurers of public depositors who comply with s. 34.05. This section is amended to remove references to bonds or security since this bill amends s. 34.07 to permit a public depositor to require a bond or other security for public deposits. Further, this section is amended to shorten the listing of treasurers by making use of the defined term in s. 34.01 (7). In making use of the term "treasurer", this subsection specifically includes the treasurer (or clerk, in the case of a court) of:

1. A cooperative educational service agency.
2. Any court of Wisconsin.
3. A corporation organized under s. 39.33, by the Wisconsin higher educational aids board, to provide for a guaranteed student loan program.
4. The housing and economic development authority.

The bodies listed above are included in the definition of "public depositor" in s. 34.01 (4), but are not listed in current s. 34.06.

SECTION 10. 34.07 of the statutes is amended to read:

**34.07 (title) Security.** ~~No A surety bond or other security shall may be required of or given by any public depository for any public deposits, and compliance with this chapter shall be in lieu of any requirement of a bond or other security from any public depository that exceed the amount of deposit insurance provided by an agency of the United States or by the Wisconsin credit union savings insurance corporation and the coverage provided under s. 34.08 (2).~~

NOTE: Section 34.07 is amended to provide that a surety bond or other security may be required of or given by a public depository for any public deposits for the amount of deposits that exceeds the deposit insurance for each account and the \$400,000 amount for all accounts available under s. 34.08 (2). The amendment removes the prohibition on the use of a bond or other security by a public depository which is seeking public deposits.

SECTION 11. 34.08 of the statutes is repealed and recreated to read:

**34.08 Payment of losses.** (1) Except as provided in sub. (2), the appropriation in s. 20.124 (1) (a) shall be

used to repay public depositors for losses until the appropriation is exhausted.

(2) Payments under sub. (1) shall be made in the order in which satisfactory proofs of loss are received by the commissioner of banking. The payment made to any public depositor for all losses of the public depositor in any individual public depository may not exceed \$400,000 above the amount of deposit insurance provided by an agency of the United States or by the Wisconsin credit union savings insurance corporation at the public depository which experienced the loss. Upon a satisfactory proof of loss, the commissioner of banking shall direct the department of administration to draw its warrant payable from the appropriation under s. 20.124 (1) (a) and the state treasurer shall pay the warrant under s. 14.58 (4) in favor of the public depositor that has submitted the proof of loss.

(3) Losses become fixed as of the date of loss. A public depositor experiencing a loss shall, within 60 days of the loss, assign its interest in the deposit, to the extent of the amount paid under this section, to the commissioner of banking. Upon failure to make the assignment, the public depositor shall forfeit its right to payment under this section. Any recovery made by the commissioner of banking under the assignment shall be repaid to the appropriation under s. 20.124 (1) (a).

NOTE: Section 34.08 is repealed and recreated to prospectively abolish the state deposit guarantee fund. See also the amendment of s. 34.06 and the NOTE following that treatment.

Subsections (1) and (2) provide that the pledge of state general purpose revenues to the existing state deposit guarantee fund in s. 20.124 (1) (a), will be used to repay public depositors for losses until the appropriation is exhausted. Payments are to be made in the order in which satisfactory proofs of loss are received by the commissioner of banking and are limited to no more than \$400,000 above the amount of applicable federal deposit insurance or insurance provided by the Wisconsin credit union savings insurance corporation.

Subsection (3) continues the substance of present s. 34.08 (3) by providing that a public depositor must, within 60 days of a loss, assign its interest in the deposit, to the extent of payments made under this section, to the commissioner of banking. Upon the failure to make this assignment, the public depositor loses its right to payment. The subsection also specifically provides that a recovery made by the commissioner of banking under an assignment must be repaid to the treasury for future use under s. 20.124 (1) (a).

SECTION 12. 34.09 of the statutes is amended to read:

**34.09 Financial institutions eligible as public depositories.** Every federal or state credit union, state bank, federal or state savings and loan association, savings and trust company and mutual savings bank and every national bank located in this state which files with the commissioner of banking an agreement that it will pay over to the state deposit fund the amounts required to be paid on average daily balances of public deposits under s. 34.08 (2) and complies in all respects as to public deposits with this chapter, which accepts

and will accept payments made by the state under s. 16.412 and which meets the qualifications required by the rules of the commissioner of banking, may be designated as a public depository and may receive and hold public deposits, subject to this chapter, ~~in an amount not in excess of the amount specified by the commissioner of banking. The commissioner of credit unions, the commissioner of banking or commissioner of savings and loan, upon request, shall advise any interested persons what credit unions, banks and savings and loan associations have qualified to become public depositories and any qualified credit union, bank or savings and loan association may thereafter be designated by any governing board as a public depository.~~ The commissioner of banking shall have the same powers and duties with regard to making and continuing public deposits in national banks, federal and state credit unions and in federal and state savings and loan associations as the powers and duties exercised and performed by the commissioner of banking with regard to public deposits in state banks.

NOTE: Section 34.09 is amended to provide that a public depository is not required to file with the commissioner of banking an agreement that it will pay specified sums to the state deposit guarantee fund. This provision is no longer necessary since the state deposit guarantee fund is prospectively abolished in this bill. Section 34.09 also is amended to remove references to the authority of the commissioner of banking to specify qualifications for, and conditions on, public depositories. The bill removes this authority in the repeal and recreation of s. 34.03.

Also, in s. 34.09 instead of providing that every financial institution in Wisconsin which "complies in all respects as to public deposits with this chapter and which accepts payments made by the state under s. 16.412", the phrase "complies in all respects as to public deposits with this chapter and will accept payments made by the state under s. 16.412" has been substituted. The significance of the change is that financial institutions need not actually accept payments by the state under s. 16.412, in order to be eligible as public depositories. Instead, financial institutions must accept these payments only if made, in order to be eligible as public depositories.

SECTION 12m. 186.35 (2) (a) of the statutes is amended to read:

186.35 (2) (a) Aid and assist any member credit union which develops financial difficulties such as insolvency, nonliquidity or liquidation, in order that the savings and deposits of each member of a member credit union and each public depositor shall be protected or guaranteed. The corporation shall protect or guarantee each account in a member credit union to the extent the funds in the account do not exceed the greater of \$100,000 or the amount of deposit protection or guaranty provided for the benefit of a depositor in any other financial institution authorized to do business in this state.

SECTION 13. 186.35 (5) (d) of the statutes is amended to read:

186.35 (5) (d) A regular annual assessment, not to exceed 0.1% of the member savings capital, including public funds deposited in the credit union, shall be levied by the trustees against each member. In the event of potential impairment of the corporation's

capital funds, special assessments may be levied by the trustees with the approval of the commissioner. The member's savings capital as of December 31 shall be the basis for calculating the assessment due the ensuing year. The trustees shall determine the date the annual assessment is due and payable. Each annual assessment, and any special assessment, when paid by the member, shall be a charge to its regular reserve.

The guaranty on these credit union savings in a central credit union shall extend to the full amount of the savings balances and is not limited by the maximum protection afforded a member under sub. (2) (a). ~~The guaranty on public funds is not limited by sub. (2) (a).~~ Nothing in this paragraph authorizes levying of assessments against national corporate central credit unions.

**SECTION 14. Program responsibility changes.** In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

A	B	C
Statute Sections	References Deleted	References Inserted
15.551 (intro.)	34.04, 34.05 (1) and (4)	none

NOTE: The references to ss. 34.04 and 34.05 (1) and (4) are deleted from the list of the responsibilities of the office of the commissioner of banking because of the repeal or amendment of these provisions in this bill.

**SECTION 15. Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
60.34 (2)(b)	34.01 (6)	34.01 (2)
60.46	34.01 (6)	34.01 (2)
186.02 (2)(em)	34.01 (3)	34.01 (4)

**SECTION 16. Effective date.** This act takes effect on August 1, 1985.

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