

## CHAPTER 34

## PUBLIC DEPOSITS

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**34.01 Definitions.** As used in this chapter:

(1) "Public deposit" shall mean moneys deposited by the state or 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, or any court of this state, in any state bank, savings and trust company, mutual savings bank, or national bank in this state, including private funds held in trust by a public officer for persons, corporations or associations of individuals.

(2) "Public depository" shall mean a state bank, savings and trust company, mutual savings bank, or national bank in this state which receives or holds any public deposits.

(3) "Public depositor" shall mean the state or 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 or any court of this state which deposits any moneys in a public depository.

(4) "Governing board" means the investment board in the case of the state, the county board or committee designated by the county board to designate public depositories in the case of a county, the city council in the case of a city, the village board in case of a village, the town board in case of a town, the school board in the case of a school district, the judge or board of judges in case of any court in this state, and any other commission, committee, board or officer of any governmental subdivision of the state not hereinbefore mentioned.

(5) "Public moneys" shall include 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, sewer district, or of any commission, committee, board or officer of any governmental subdivision of the state, or the clerk of any court in this state, by virtue of his office without regard to the ownership thereof.

(6) "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 banking or the comptroller of currency has taken possession of such public depository or because such public depository has, with the consent and approval of the commissioner of banking, adopted a stabilization and readjustment plan or has sold a part or all of its assets to another bank which has agreed to pay a part or all of the deposit liability on a deferred payment basis or because such depository is prevented from paying out old deposits because of rules of the commissioner of banking or the comptroller of the currency.

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

(8) (a) "Inactive deposits" shall mean public deposits which have been deposited subject to the bank's rules and regulations relative to time accounts.

(b) "Active deposits" shall mean public deposits which are subject to withdrawal on demand.

**34.02 Exemption.** This chapter shall not apply to fiscal agents appointed pursuant to s. 18.10 (8).

**34.026 Privately-owned trust funds; interest charges.** Where any part of funds deposited by any public depositor, as defined by s. 34.01 (3), shall consist of privately-owned trust funds, the state, county, town, city or village, by

appropriate action of its governing body, or the governing body of any other such public depository defined by such section, may assume and pay, as an item of general expense, all charges collected from such trust fund by any public depository and paid to the commissioner of banking under this chapter.

**34.03 Powers of the commissioner of banking.** (1) The commissioner of banking may:

(a) Make and enforce rules and regulations necessary and proper to the full and complete performance of its functions;

(b) Contract for reinsurance of the state deposit fund to protect it against excessive losses;

(d) Fix the rate of payment into the state deposit fund, based on the standard that the state deposit fund should have sufficient reserves to enable it to promptly pay all losses likely to occur, but that the charge to public depositors should be no higher than is necessary for this purpose; provided, that if the commissioner of banking obtains advances and pledges a part or all of the payments hereunder required to be made into the state deposit fund, then the rate of payment in effect at the time such loan is negotiated shall remain in full force until such loan is fully repaid;

(f) Require any public depository or the trustees of segregated trusts created by banks for the benefit of depositors to furnish such information as the commissioner of banking requests. Any public depository which refuses or neglects to give any information so requested shall be excluded from the right to receive public deposits;

(g) Employ such persons as shall be necessary to administer and carry out the purposes of this chapter. All expenses of administration and reinsurance shall be paid out of the state deposit fund subject to ss. 20.124 (1) (u) and 34.08;

(h) Levy and collect penalties provided herein by appropriate actions;

(i) Take such action as the commissioner of banking deems best for the protection, collection, compromise or settlement of any claim against or in favor of the state deposit fund;

(k) Prescribe rules and regulations fixing the requirements for qualification of banks as public depositories and fixing the maximum allowable total public deposits of banks and the terms and conditions under which public deposits may be received and held;

(l) In addition to the powers expressly conferred, the commissioner of banking shall have all powers reasonably necessary and proper to the full and complete performance of his functions under this chapter, including but not limited to ordinary powers granted corporations;

(n) Fix the official date on which losses shall be deemed to have been incurred, taking into consideration the orders, rules and regulations of the commissioner of banking and the comptroller of the currency as they affect the failure of such public depository to repay public deposits in full. Notice of such official date of loss shall be served on the treasurer of each public depository by registered mail, and the limitation provided in s. 34.08 (3) shall begin to run on the receipt of such notice by such treasurer.

**34.04 Orders of commissioner.** (1) The commissioner of banking, prior to the issuance of any general order fixing the rate of payment into the state deposit fund or any other order of general application, shall hold a public hearing.

(3) Any order of the commissioner of banking shall be subject to review as provided in ch. 220.

(4) Whenever the liability for losses payable from the general fund under s. 20.124 (1) (a) exceeds \$3,000,000 the premium rate for the ensuing quarter shall not exceed one-tenth of one per cent per annum.

**34.05 Designation of public depositories.**

(1) The governing board of each public depository shall, by resolution, certified copy of which shall be filed with the commissioner of banking, designate one or more banks, banking institutions, or trust companies, organized and doing business under the Wisconsin or United States laws, located in Wisconsin, which have been approved by the commissioner of banking as qualified to become public depositories, in which the treasurer of such governing board shall deposit all public moneys coming into his hands. A designation of a public depository by the governing board shall be a designation of such public depository for all treasurers of such governing board and for all public depositors for which each such treasurer shall act.

(2) Whenever any governing board fails or refuses to designate a public depository the treasurer thereof, 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 90 days in the same manner as if designated by such governing board, and shall immediately certify such designations to the commissioner of banking.

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

(4) If any governing board refuses or neglects to comply with sub. (1), or if on such refusal or neglect on the part of the governing board, the treasurer refuses or neglects to comply with sub. (2), or if any governing board authorizes its treasurer to retain funds of the municipality in his hands other than such amounts as are now authorized by statute or to deposit such funds in a bank located without this state except as approved by the commissioner of banking, or by any other act of omission or commission attempts to evade this chapter, then such municipality shall pay into the state deposit fund an amount equal to the amount required to be paid into the state deposit fund if such funds had been deposited according to this chapter, plus a penalty equal to 25% of such required payment.

**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 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 public depositor the full amount of its deposits thus causing a loss as defined in s. 34.01 (6).

**34.07 Security not required.** No bond or other security shall 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.

**34.08 State deposit guarantee fund.** (1) Payments as required by this chapter shall constitute the state deposit fund. Such fund shall be used for the payment to public depositors of losses as defined by s. 34.01 (6), the repayment of any sums advanced to the commissioner of banking for the purpose of paying losses required to be paid out of such fund, and for the payment of administrative expenses under s. 20.124 (1) (u). On July 1, 1955, such fund shall be discontinued and the balance therein shall be transferred to the general fund. Any payments made by public depositors after July 1, 1955, pursuant to this chapter shall reconstitute the state deposit fund and shall be used to make any payments for losses, expenses of administration or reinsurance after the sum transferred to the general fund plus interest is exhausted.

On satisfactory proof of loss, the commissioner of banking shall direct the department of administration to draw its warrant payable from the state deposit fund in payment of such loss as provided in this chapter, and the state treasurer shall promptly pay such warrant out of moneys in his hands to the credit of the state deposit fund.

(2) Every bank receiving or having any public funds on deposit shall on the last day of March, June, September and December in each year pay into the state deposit fund at the per cent rate per year on the average daily balance of such deposits so deposited with it for the preceding 3 months' period as fixed by the commissioner of banking, such sum to be collected by the depository from the depositors. As used in this section 90 days shall constitute a 3 months' or quarterly period and the average daily balance base shall be the average of such public fund deposit as of the close of business 3 days each month or a total of 9 days for each 3 months' or quarterly period as determined by the commissioner of banking on or before the last day of each quarterly period for which the report is due. The commissioner of banking shall notify all public depositories of the dates selected and said depositories shall render reports in conformity therewith on blank forms which shall be furnished by the commissioner of banking. Any public depository which refuses or neglects to make such report and remittance to the commissioner of banking within 15 days after its due date shall pay into the state deposit fund the sum of \$5 for each and every day of tardiness in excess of 15 days. If the amount required to be paid into the state deposit fund on any given public deposit is greater than the interest earned on such public deposits, then the public depository may deduct the difference from the principal of such public deposit. If the amount required to be paid into the state deposit fund on private funds held in trust by a public officer for private persons, corporations or associations of individuals is greater than the net interest received, then the public depositor may deduct the difference from the principal of such private fund. Amounts due the state deposit fund for the quarter in which a loss occurs shall be deducted before payment of such claim.

(3) (a) Losses as defined by s. 34.01 (6) shall become fixed as of the date the loss occurs and shall be paid pro rata based on the original loss out of the state deposit fund without interest, as rapidly as sufficient funds are available in the state deposit fund to permit a payment of not less than 5% except in case of final payment. Any funds received by the commissioner of banking as an advance shall be paid pro rata to all public depositors whose interest in claims

against public depositors is pledged to secure such loans. Claims having a balance of \$500 or less shall be paid in full at the time of the making of the next succeeding payment of claims from the public deposit fund. On the occurrence of a loss as defined in s. 34.01 (6) each public depositor suffering such a loss shall within 60 days thereafter assign all its interest in such deposit to the state deposit fund and on failure so to do shall forfeit all right of claim against the state deposit fund.

**34.09 Banks as public depositories.** Every state bank, 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 ch. 34 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 banking, upon request, shall advise any interested persons what banks have qualified to become public depositories and any such bank 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 as the powers and duties exercised and performed by it with regard to public deposits in state banks.

**34.095 Banks, foreign control, ineligibility as depository.** Whenever the ownership, control or power to vote a majority interest in the stock of any state or national bank doing business in Wisconsin is held or in any manner exercised by any foreign corporation, association or trust which has not filed its articles of incorporation and obtained authority to do business in this state as provided in ss. 180.801, 180.813 to 180.821 and 180.845, such bank shall not be qualified to act as a public depository for any public moneys, nor as a depository for reserve funds of state banks until said sections are complied with by such foreign corporation, association or trust.

**34.10 Reorganization and stabilization of banks.** Whenever the commissioner of banking or the comptroller of the currency with a view of restoring the solvency of any bank of which he has taken charge, pursuant to law, or with a view of stabilizing and readjusting the banking structure of any national or state banking institution located in this state, shall approve a reorganization plan or a stabilization and readjustment agreement entered into between such bank and depositors and unsecured creditors, or when a bank, with the approval of the commissioner of banking or comptroller of currency proposes to sell its assets to another bank which agrees to assume a part or all of the deposit liability of such selling bank and to pay the same on a deferred payment basis, the governing board of such public depositor may, on the approval of the commissioner of banking, join in the execution of any reorganization plan, or any stabilization and readjustment agreement, or any depositor's agreement relative to a proposed sale of assets if, in its judgment and that of the commissioner of banking, such reorganization plan or stabilization and readjustment agreement or proposed sale of assets is in the best interest of all persons concerned. The joining in any such reorganization plan, or any stabilization and readjustment agreement, or any proposed sale of assets which meets the approval of the commissioner of banking shall not operate as a waiver of any rights arising under this chapter.

**34.105 Withdrawal of public funds.** (1) Withdrawal or disbursement by a treasurer of any county, city, village, town or school district of moneys deposited in a public depository shall be made as provided by s. 66.042 (1) to (5). "Treasurer" as used herein means only the elected, appointed or acting official treasurer of a county, city, village, town or school district and does not include all of the other persons within the definition of that term in s. 34.01 (7). This section shall not affect s. 67.10 (2).

(2) Withdrawal or disbursement of moneys deposited in a public depository by treasurers as defined in s. 34.01 (7), except those mentioned in sub. (1) shall be as provided in s. 66.042 (6).

**34.11 Penalties.** Any person who wilfully violates ss. 34.01 to 34.10, or any orders or rules promulgated by the commissioner of banking under said sections, shall for each such offense be fined not more than \$500 or imprisoned not more than 6 months, or both.