

## CHAPTER 34

## PUBLIC DEPOSITS

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**34.01 Definitions.** In this chapter:

(1) "Public deposit" means 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, or by the housing finance 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, savings and loan association or national bank in this state or in the local government pooled-investment fund, including private moneys held in trust by a public officer.

(2) "Public depository" means a 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.

(3) "Public depositor" means 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, or the housing finance authority if the authority elects to be bound by all or part of this chapter under s. 234.32 (2), which deposits any moneys in a public depository.

(4) "Governing board" means the investment board in the case of the state, the housing finance authority if the authority elects to be bound by all or part of this chapter under s. 234.32 (2), 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 the case of a village, the town board in the case of a town, the school board in the case of

a school district, the board of control in the case of a cooperative educational service agency, the clerk of court in the case of any court in this state, and any other commission, committee, board or officer of any governmental subdivision of the state not mentioned in this subsection.

(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, 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 finance authority if the authority elects to be bound by all or part of this chapter under s. 234.32 (2), by virtue of his or her 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, comptroller of currency, federal home loan bank board or commissioner of savings and loan has taken possession of such public depository or because such public depository has, with the consent and approval of the 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 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 such depository is prevented from paying out old deposits because of rules of the commissioner of banking, comptroller of the currency, federal home loan bank board or commissioner of savings and loan.

(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, whose duties require that he or she receive and account for public moneys.

**History:** 1975 c. 164, 180, 422; 1977 c. 225, 320, 449; 1979 c. 221, 301, 318, 355; 1981 c. 390 s. 252.

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

**History:** 1979 c. 34.

**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 depositor 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 and savings and loan associations as public depositories and fixing the maximum allowable total public deposits of banks and savings and loan associations 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.

**History:** 1975 c. 180.

**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 year.

**History:** 1979 c. 110 s. 60 (13).

**34.045 Depository selection board. (1)** The depository selection board shall:

(a) Establish procedures for the selection of public depositories by state agencies and departments and procedures for contracting for the reasonable and necessary banking services by

state agencies and departments and may direct the combination or division of services so as to provide convenient and cost efficient services.

(b) Establish procedures by which state agencies and departments pay for services through compensating balances or fees, or a combination of both methods. In the case of the state treasurer's accounts, direct the state treasurer to maintain compensating balances, or direct the investment board to pay charges directly from the income account of the state investment fund, or by a combination of such methods.

(c) Require utilization of competitive bidding under s. 16.75 in the designation of all state public depositories and in contracting for banking services.

(f) Establish by rule minimum banking operational requirements that any institution must meet prior to being considered as eligible to submit any proposal to serve as a public depository or to provide services.

(g) Upon request of any state agency or department, provide assistance in the selection of a depository.

(2) In the exercise of its authority, the depository selection board shall require any state department or agency to submit to it for prior review, elimination, consolidation, renegotiation or confirmation any existing service contract or service proposed by the department or agency.

(3) The board may, for cause, disapprove any contract submitted to it under sub. (2) if it finds the proposed contract to be in violation of the guidelines established under sub. (1), or to have been improperly negotiated or to be otherwise illegal. If the board fails to disapprove a proposed contract within 60 days after it is submitted by the department or agency, the contract shall be deemed approved. The board shall provide written justification for disapproving a contract proposed by a state agency or department. A disapproval is subject to judicial review under ch. 227.

(4) State agencies and departments shall provide the board with a written justification for any proposed contract award for service.

History: 1977 c. 418; 1979 c. 136.

#### 34.05 Designation of public depositories.

(1) The governing board of each public depository 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 Wisconsin or U.S. laws and located in Wisconsin, 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 savings deposits. The public depository designated shall have been approved as qualified to become a public depository by 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. 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 depositories for which each such treasurer shall act. No public depository, 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 such 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, 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.

History: 1975 c. 180; 1979 c. 318.

**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 commis-

sion, 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 public depository 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 percent 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 public 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 the public 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 depository 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 proportionally 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 proportionally 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 depository 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.

**History:** 1975 c. 180; 1979 c. 110 s. 60 (12).

**34.09 Financial institutions eligible as public depositories.** Every state bank, 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 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 banking or commissioner of savings and loan, upon request, shall advise any interested persons what banks and savings and loan associations have qualified to become public depositories and any such 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 and in savings and loan associations as the powers and duties exercised and performed by the commissioner with regard to public deposits in state banks.

**History:** 1975 c. 180, 421; 1981 c. 20; 1981 c. 390 s. 252.

#### **34.095 Certain foreign financial institutions ineligible as public depositories.**

Whenever the ownership, control or power to vote a majority interest in the stock of any state or national bank or savings and loan association 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 or savings and loan association 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.

**History:** 1975 c. 180.

**34.10 Reorganization and stabilization of banks and state savings and loan associations.** Whenever the commissioner of banking, comptroller of the currency, federal home loan bank board or commissioner of savings and loan has taken charge of a bank or savings and loan association with a view of restoring its solvency, pursuant to law, or with a view of stabilizing and readjusting the banking structure of any national or state banking institution or savings and loan association located in this state, and has approved a reorganization plan or a stabilization

and readjustment agreement entered into between such bank or savings and loan association and depositors and unsecured creditors, or when a bank or savings and loan association, with the approval of the commissioner of banking, comptroller of currency, federal home loan bank board or commissioner of savings and loan proposes to sell its assets to another bank or savings and loan association which agrees to assume a part or all of the deposit liability of such selling bank or savings and loan association and to pay the same on a deferred payment basis, the governing board of such public depository 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.

**History:** 1975 c. 180.

#### **34.105 Withdrawal of public funds. (1)**

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

**History:** 1979 c. 301.

**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.