

No. 423, S.]

[Published July 26, 1933.

CHAPTER 434.

AN ACT to create section 101.35 of the statutes, relating to the power of state boards and agencies to deed, mortgage, lease or otherwise encumber state lands to the federal government for the purpose of taking advantage of federal legislation.

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

SECTION 1. A new section is added to the statutes to read: 101.35 POWER TO CONVEY OR ENCUMBER STATE-OWNED LANDS. Any state board or agency having charge of any state-owned land is authorized, subject to the approval of the emergency board, to deed, mortgage, lease or otherwise encumber such lands to the federal government or to any of its agencies for the purpose of taking advantage of the provisions of the National Recovery Act (Public Act 67, 73d Congress) or any other act of the first session of the seventy-third congress. It is the intent of this section to make available to this state the benefits offered by the provisions of such federal acts relating, among others, to the erection of buildings and structures by the federal government, and to this end said state boards and agencies, subject to the approval of the emergency board, are authorized to take or cause to be taken all necessary acts, including (without limitation because of enumeration) the preparation, adoption and execution of plans, methods and agreements and the designation of state, municipal or other agencies to perform specific duties.

SECTION 2. This act shall take effect upon passage and publication.

Approved July 25, 1933.

No. 757, A.]

[Published July 26, 1933.

CHAPTER 435.

AN ACT to repeal subsections (1) and (2) of section 34.03, and subsection (6) of section 59.74; to amend sections 20.055, 34.01, 34.02, 34.025, section 34.05, subsections (1) to (4) of section 34.06, 34.07, subsections (2) and (5) of section 40.10, section 40.23, subsection (1) of section 59.74, subsection (25) of section 60.29, section 61.26, paragraph (a) of subsection (7) of section 62.12, subsection (7) of section 66.04, and subsection

(3) of section 222.12; to create section 34.015 subsections (1) and (2) of section 34.03, section 34.075, subsection (12) of section 60.49, and paragraph (e) of subsection (9) of section 62.09 and section 343.375 of the statutes, relating to public deposits and providing a penalty.

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

SECTION 1. Subsections (1) and (2) of section 34.03 and subsection (6) of section 59.74 of the statutes are repealed.

SECTION 2. Sections 20.055, 34.01 (chapter 1, laws of special session 1931-1932), 34.02 (chapter 11, laws of special session 1931-1932), 34.025 (chapter 1, laws of special session 1931-1932), section 34.05 (chapter 11, laws of special session 1931-1932), subsections (1) (chapter 5, laws of 1933) to (4) of section 34.06 (chapter 1, laws of special session 1931-1932), section 34.07 (chapter 1, laws of special session 1931-1932), subsections (2) and (5) (chapter 1, laws of special session 1931-1932) of section 40.10, section 40.23, subsection (1) of section 59.74, subsection (25) of section 60.29 (chapter 1, laws of special session 1931-1932), section 61.26, paragraph (a) of subsection (7) of section 62.12, subsection (7) of section 66.04, and subsection (3) of section 222.12 of the statutes are amended to read: 20.055 (1) All moneys paid into the state deposit fund under the provisions of section 34.06 are appropriated to the state * * * *board of deposits*, to carry out the purposes of the creation of said fund and to be used as provided in said section 34.06.

(2) *There is appropriated from each state fund, from time to time, such sums as may be necessary for payment into the state deposit fund of amounts required to be paid upon the deposits of each of said funds, and the secretary of state shall draw his warrant and the state treasurer shall pay such amounts into the state deposit fund not later than the fifteenth day of January, April, July, and October of each year. There is also appropriated from each state fund, on the effective date of this subsection, such sums as may be necessary for payment into the state deposit fund of amounts required to be paid upon the deposits of each of said funds for the period beginning October 1, 1932, until June 30, 1933, and the secretary of state shall forthwith draw his warrant and the state treasurer shall pay such amounts into the state deposit fund.*

34.01 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, 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 private 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 which deposits any moneys in a public depository.

(4) "Governing board" shall mean 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, 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, by virtue of his office without regard to the ownership thereof.

(6) "Loss" shall mean 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 upon demand or because the commissioner of banking or the comptroller of the currency has taken possession of such public depository or because such public depository has, with the consent and approval of the commissioner of banking and the state board of deposits, 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 and regulations 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 officer of any governmental subdivision of the state whose official duties require that he receive and account for public moneys.

(8) (a) "Inactive deposits" shall mean deposits from which transfers are made only when necessary to replenish the active deposits, provided that transfers from inactive deposits shall be computed as being a part of the active deposits for the calendar month in which the transfer is made.

(b) "Active deposits" shall mean deposits on which checks are drawn to conduct the daily business of the state or any governing board, provided that only such banks as have been named by the board of deposits as working banks shall carry active state deposits.

34.02 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 state depository or public depository, in compliance with the requirements of section 34.05 or as designated and limited by the state board of deposits or the governing board, as the case may be, if such board has designated a depository, and 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 subsection (6) of section 34.01. * * *

34.025 Sections * * * 34.01 to 34.07 shall not apply to deposits of public funds which are secured by bonds or other security furnished under statutes heretofore in effect so long as such bonds or other security shall remain in force; provided bonds now in force which have no definite expiration date shall

*stand cancelled as of July 1, 1933, and that * * * no such bonds or other security shall be renewed, except as provided in section 34.03 and the rules and regulations of the state board of deposits.*

34.05 Whenever any governing board shall fail or refuse to designate a public depository or whenever the public depositories designated by any governing board are unable under the provisions of subsection (1) of section 34.03 to receive and hold all moneys of any public depositor which should be deposited, the treasurer thereof, * * * after notice in writing to each member of the governing board and subject to the further action of the governing board, may designate public depositories to act as such for not exceeding * * * *ninety* days in the same manner as if designated by such governing board, and shall immediately certify such designations to the state board of deposits.

(34.06) (1) * * * (a) *Payments made as required by the provisions of this chapter shall be set apart from other funds of the state and shall constitute the state deposit fund. Such fund shall be used solely for the * * * payment to public depositors of losses as defined by subsection (6) of section 34.01 and the repayment of any sums borrowed by the board of deposits for the purpose of paying losses required to be paid out of such fund. Such fund shall be * * * deposited or invested as are other funds of the state. On satisfactory proof of loss, the state board of deposits shall direct the secretary of state to draw his 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. * * * The board of deposits, shall have power to contract for * * * reinsurance of the state deposit fund against excess losses. * * **

(b) *The board of deposits shall appoint an assistant secretary and employ such additional clerks as shall be necessary to administer and carry out the purposes of the provisions of this chapter. All expenses of administration and of reinsurance shall be paid out 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 rate of one per cent per year on the average daily balance of such deposits so deposited with it for the preceding three months' period, such

sum to be collected by the depository from the depositors, and any public depository which shall refuse or neglect to make such report and remittance within fifteen days after its due date shall pay into the state deposit fund the sum of twenty-five dollars for each and every day of tardiness in excess of fifteen days. In the event the amount required to be paid into the state deposit fund other than penalties shall be greater than the interest earned on such public deposits, then the public depository is hereby authorized to deduct the difference from the principal of such public deposit. In the event 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 shall be greater than the net interest received then the public depository is hereby authorized to 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. The rate herein fixed may be changed by the board of deposits on the recommendation of the commissioner of insurance and the commissioner of banking when experience indicates that such rate is either too low or too high, based on the standard that the state deposit fund should have sufficient reserves to enable it to promptly pay all the losses likely to occur, but that the charge to the public depositors should be no higher than is necessary for this purpose.

(3) If at any time the state deposit fund shall not be large enough to meet all losses * * * as defined by subsection (6) of section 34.01, the secretary of state shall, notwithstanding this fact, to the extent directed by the state board of deposits draw his warrant payable from the general fund in such amount as may be necessary to meet such losses, and the state treasurer shall promptly pay such warrant out of any moneys in his hands. The board of deposits shall thereafter from time to time order such reimbursement of the general fund from the state deposit fund as it shall deem proper, on which order the secretary of state shall issue his warrant for such transfer.

(4) * * * Losses as defined by subsection (6) of section 34.01 * * * 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 five per cent except in case of final

*payment. Any funds received by the state board of deposits as a loan shall be paid pro-rata to all public depositors whose interest in claims against public depositories are pledged to secure such loans. Claims of five hundred dollars 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 subsection (6) of section 34.01 each public depositor suffering such a loss shall within sixty 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. The board of deposits is authorized to take such action as in its discretion shall seem best for the protection, collection, compromise, or settlement of any claim against or in favor of the state deposit fund.*

34.07 Every state bank, savings and trust company and mutual savings bank * * * and * * * every national bank located in this state which * * * shall file with the state * * * board of deposits 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 subsection (2) of section 34.06 and will comply in all respects as to public deposits with the provisions of chapter 34 and which meets the qualifications required by the rules and regulations of the state board of deposits, may be designated as a public depository and may receive and hold public deposits, subject to the provisions of this chapter, in an amount not in excess of the amount specified by the state board of deposits. The state * * * board of deposits 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 board of deposits 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.

(40.10) (2) (a) He shall apply for, and receive, and if necessary sue for all money appropriated to or collected for the district, and disburse the same on the order of the clerk, countersigned by the director and not otherwise.

(b) He may receive all money raised from any source for extra curricular activities.

* * *

(5) *He shall deposit immediately upon receipt thereof the funds of the district in the name of the district in the public depository designated by the board. Failure to comply with the provisions hereof shall be prima facie grounds for removal from office. When the money is so deposited, the treasurer and his bondsmen shall not be liable for such losses as are defined by subsection (6) of section 34.01. The interest arising therefrom shall be paid into the school district treasury.*

40.23 * * * *Every district board or board of education * * * shall designate the bank or banks where the money belonging to the school district shall be deposited. When the money is so deposited in such depository in the name of the school district, the treasurer and his bondsmen shall not be liable for * * * such losses as are defined by subsection (6) of section 34.01. The interest arising therefrom shall be paid into the school district treasury.*

(59.74) (1) *The county board of each county containing two hundred thousand or more population shall * * * designate two or more, and in other counties the county board, or when the occasion arises and the county board is not in session, then a committee of the board which has been authorized to do so shall designate one or more banks, banking institutions or trust companies organized and doing business under the Wisconsin or United States laws, located in Wisconsin, as county depositories, one or more of which shall be designated as working banks, all deposits in which shall be active deposits.*

(60.29) (25) *To designate the bank or banks where the money belonging to the town shall be deposited. When the money is * * * deposited in such depository in the name of the town, the treasurer and his bondsmen shall not be liable for * * * such losses as are defined by subsection (6) of section 34.01. The interest arising therefrom shall be paid into the town treasury.*

61.26 *The village treasurer shall execute and file an official bond which may be furnished by a surety company as provided by section 204.01. It shall be his duty to receive all moneys belonging or accruing to the village from any source whatever or directed by law to be paid to him; to deposit upon receipt thereof the funds of the village in the name of the village in the public depository designated by the board, and failure to comply with the provisions hereof shall be prima facie grounds for removal from office, and when the money is so deposited, the treasurer*

and bondsmen shall not be liable for such losses as are defined by subsection (6) of section 34.01, and the interest arising therefrom shall be paid into the village treasury; to pay the same only on the written order of the president, countersigned by the clerk and specifying the number thereof, the payee and the amount and the object for which drawn; to keep just and accurate detailed accounts of all such transactions, showing when, to whom and for what purpose all payments are made, in books provided by the village board, and preserve all vouchers filed in his office; to render an account and settlement of all his official transactions to the board at its last meeting prior to the annual election, and at all other times when required by them; to deliver to his successor when qualified all books of account, papers and property of his office and all money in his hands as treasurer, and to perform such other duties as are required by law or the village board. There shall be kept but one fund in the treasury, except as otherwise provided. The treasurer shall also execute the bond required by section 70.67 of the statutes and take receipt therefor, which he shall file in the office of village clerk. On receipt of the tax roll he shall, and while acting as collector of taxes, exercise the same powers and perform the same duties as are by law conferred upon and required of town treasurers while acting in that capacity, and be subject to the same penalties and liabilities.

(62.12) (7) (a) The council * * * *shall* designate a bank or banks within this state with which city funds shall be deposited, and when the money is * * * deposited *in such depository in the name of the city*, the treasurer and his bondsmen shall not be liable for * * * *such losses as are defined by subsection (6) of section 34.01. The interest arising therefrom shall be paid into the city treasury.*

(66.04) (7) * * * INVESTMENTS. Any county, city, village, town, * * * school district, *or other governing board as defined by subsection (4) of section 34.01* may * * * invest any of its funds not immediately needed, in bonds or securities of the United States or of any county, city, village, town or school district of this state, or in the case of a city or village in any bonds *or securities* issued under the authority of such municipality, whether the same create a general municipality liability or a liability of the property owners of such municipality for special improvements made therein, and may sell or hypothecate the same.

(222.12) (3) The sums deposited with any mutual savings bank, together with any dividends credited thereto, shall be repaid to the depositors thereof respectively, or to their legal representatives, after demand, in such manner and at such times, and under such regulations, as the board of trustees shall prescribe, subject to the provisions of this section. Such regulations shall be posted in a conspicuous place in the room where the business of such mutual savings bank shall be transacted, and shall be printed in the pass books or other evidences of deposit furnished by it, and shall be evidence between such mutual savings bank and the depositors holding the same, of the terms upon which the deposits therein acknowledged are made. The mutual savings bank may at any time by a resolution of its board of trustees require a notice of ninety days before repaying deposits, in which event no deposit shall be due or payable until ninety days after notice of intention to withdraw the same shall have been personally given by the depositor, and such deposits if not withdrawn within fifteen days after the expiration of the ninety days' notice, shall not then be due or payable under such notice or by reason thereof. Nothing herein contained, however, shall, before, January 1, 1922, be construed as impairing contracts heretofore made between mutual savings banks and their depositors as to notice of withdrawal or as prohibiting any mutual savings bank from making payments of deposits before the expiration of said ninety days' notice. But no mutual savings bank shall hereafter agree with its depositors in advance to waive said ninety days' notice nor shall it in the case of deposits hereafter made require a longer notice than the ninety days aforesaid. But a mutual savings bank may make contracts with the depositors to repay deposits of fixed sums made at regular intervals at a given time with all accumulations of dividends thereon, or to repay said deposits when together with dividends credited thereon they shall equal a specific sum and may issue as evidence of such contract a certificate setting forth the given sum to which such deposits shall accumulate or the given time during which the deposits and the dividends thereon shall be accumulated. Upon the maturity of such contract the bank may, at its option, pay the amount due from it pursuant to such contract, by check. Such contract shall not provide for any forfeiture of the sums deposited in the event of the discontinuance of the regular payments therein provided, but may require the depositor, in that event, to forfeit dividends credited or accrued

prior to such discontinuance; *provided that, notwithstanding the provisions herein, public deposits shall be subject to the provisions of chapter 34.*

SECTION 3. Two new sections are added to the statutes, two new subsections are added to section 34.03, one new subsection to section 60.49, and a new paragraph to subsection (9) of section 62.09 to be numbered and to read: 34.015 DESIGNATION OF PUBLIC DEPOSITORIES. The governing board of each public depositor shall, by resolution, certified copy of which shall be filed with the state board of deposits, 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 state board of deposits 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.

(34.03) (1) (a) The state board of deposits shall prescribe rules and regulations for determination of the liquidity rating of banks desiring to qualify as public depositories and for determination of the maximum allowable public deposit of the various public depositories of the state and conditions under which public deposits may be held but in no event shall such maximum allowable public deposit exceed ten per cent of the average daily balance of all deposits of such public depository for the preceding three months.

(b) Public depositories which on January 1, 1933, had aggregate public deposits in excess of ten per cent of the average daily balance of all deposits of such public depository for the preceding three months shall reduce their aggregate public deposits to an amount not in excess of ten per cent of the average daily balance of all deposits of such public depository for the preceding three months, in accordance with the rules and regulations prescribed by the state board of deposits and shall secure the same by deposit with the state board of deposits of such assets and in such an amount as shall be required by the state board of deposits.

(2) (a) Any public depository may receive and hold public deposits in excess of the amount permitted under rules and regulations of the board of deposits or in excess of ten per cent of the

average daily balance of all deposits of such public depository for the preceding three months provided that all such excess public deposits shall be earmarked and deposited as a special deposit in an approved reserve bank located in this state or in a federal reserve bank on which special deposits the bank shall pay to the public depositor only the interest received from such approved reserve bank. Such approved reserve bank shall report such special deposits as public deposits, and shall make the required payment into the state deposit fund and the sum so paid shall be a charge against such special deposit. The bank originally receiving such special deposit shall report the same but shall make no payments thereon into the state deposit fund, except in the case of public funds on deposit in a federal reserve bank. All deposits made under the provisions of this section shall be deemed special deposits for the benefit of the public depositors entitled thereto, and in no event shall such reserve bank be entitled to offset such special deposits against any moneys then due or to become due it from such depository bank.

(c) Any public depository which shall accept or receive and hold public deposits in excess of the total maximum allowable public deposit as fixed by this chapter or the rules and regulations of the state board of deposits and shall fail to comply with the provisions of paragraph (a) shall forfeit the sum of one per cent per day of such excess public deposit or ten dollars per day, whichever shall be the greater, for each and every day said public deposits are held in violation of the statutes and rules and regulations of the state board of deposits.

34.075 REORGANIZATION AND STABILIZATION OF PUBLIC DEPOSITORIES. 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 to 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 state board of deposits, 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 state board of deposits, such reorganization plan or stabilization and readjustment agreement or proposed sale of assets is in the best interests 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 state board of deposits shall not operate as a waiver of any rights arising under this chapter or under any bond or other security which was given for the repayment of any of such public funds on deposit in such bank.

(60.49) (12) To deposit immediately upon receipt thereof the funds of the town in the name of the town in the public depository designated by the board. Failure to comply with the provisions hereof shall be prima facie grounds for removal from office. When the money is so deposited, the treasurer and his bondsmen shall not be liable for such losses as are defined by subsection (6) of section 34.01. The interest arising therefrom shall be paid into the town treasury.

(62.09) (9) (e) He shall deposit immediately upon receipt thereof the funds of the city in the name of the city in the public depository designated by the board. Failure to comply with the provisions hereof shall be prima facie grounds for removal from office. When the money is so deposited, the treasurer and his bondsmen shall not be liable for such losses as are defined by subsection (6) of section 34.01. The interest arising therefrom shall be paid into the city treasury.

343.375 ACCEPTANCE OF EXCESS PUBLIC DEPOSITS. Any officer or employe of any public depository who accepts or holds public deposits in violation of the provisions of section 34.03 shall upon conviction be punished by imprisonment in the state prison for not less than one nor more than three years.

SECTION 4. This act shall take effect upon passage and publication.

Approved July 25, 1933.