

CHAPTER 34

PUBLIC DEPOSITS

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34.01 Definitions. In this chapter:

(1) “Governing board” means the investment board in the case of the state, 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), 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.

(2) “Loss” means any of the following:

(a) Any loss of public moneys, which have been deposited in a designated public depository in accordance with this chapter, resulting from the failure of any public depository to repay to any public depositor the full amount of its deposit because the office of credit unions, administrator of federal credit unions, U.S. comptroller of the currency, federal home loan bank board, U.S. office of thrift supervision, federal deposit insurance corporation, resolution trust corporation, or division of banking has taken possession of the public depository or because the public depository has, with the consent and approval of the office of credit unions, administrator of federal credit unions, U.S. office of thrift supervision, federal deposit insurance corporation, resolution trust corporation, or division of banking, adopted a stabilization and readjustment plan or has sold a part or all of its assets to another credit union, bank, savings 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 office of credit unions, administrator of federal credit unions, U.S. comptroller of the currency, federal home loan bank board, U.S. office of thrift supervision, federal deposit insurance corporation, resolution trust corporation, or division of banking.

(b) With respect to public moneys deposited in the local government pooled–investment fund, in addition to a loss as described in par. (a), the public depositor’s proportionate share of any loss of principal invested or reinvested by the investment board under s. 25.50 (6).

(3) “Public deposit” means public moneys deposited by a public depositor in a public depository, including private moneys held in trust by a public officer.

(4) “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, a corporation organized under s. 39.33 or 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), which deposits any moneys in a public depository.

(5) “Public depository” means a federal or state credit union, federal or state savings and loan association, state bank, savings and trust company, federal or state 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” means all moneys coming into the hands of the treasurer of a public depositor by virtue of his or her office without regard to the ownership of the moneys.

(7) “Treasurer” means any duly elected, appointed or acting official or employee of a public depositor 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; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 189, 368, 538; 1985 a. 25; 1987 a. 399; 1991 a. 221; 1995 a. 27; 1999 a. 9; 2003 a. 33.

Legislative Council Note, 1985: Sub. (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.

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

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

Sub. (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).

Sub. (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). [85 Act 25]

34.02 Exemption. This chapter shall not apply to trustees and fiscal agents appointed under s. 18.10 (8) or 67.10 (2).

History: 1979 c. 34; 1987 a. 197.

34.03 Powers of the division of banking. The division 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 division of banking unless disclosed as provided in s. 220.06.

(3) Take such action as the division deems necessary or appropriate for the protection, collection, compromise or settlement of any claim against or in favor of the appropriation under s. 20.144 (1) (a).

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

History: 1985 a. 25; 1995 a. 27.

Legislative Council Note, 1985: This section 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:

Contracting for reinsurance of the fund to protect it against excessive loss.

Fixing the rate of payment into the fund.

Levying and collecting penalties.

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.

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 employees of the office of the commissioner and members and employees 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. [85 Act 25]

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 depository 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.

(bm) Direct the secretary of administration to maintain compensating balances, or direct the investment board to pay bank service costs as allocated by the secretary of administration under s. 25.19 (3) directly from the income account of the state investment fund, or by a combination of such methods.

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

(f) Establish by rule minimum depository 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.

(1m) Subsection (1) (a) and (e) does not apply to the funds appropriated under s. 20.143 (1) (fm) that are deposited as provided in s. 34.05 (4).

(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; 1983 a. 368; 1989 a. 31; 1993 a. 16; 2003 a. 33, 320.

34.05 Designation of public depositories. (1) Except as provided in sub. (4), the governing board of each public depositor shall, by resolution, 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. 66.0603 (1m), demand deposits, or savings deposits 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 depositories for which each treasurer shall act.

(2) Whenever any governing board fails or refuses to designate a public depository, the treasurer 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 for no longer than 90 days in the same manner as if designated by the governing board.

(3) Every treasurer shall deposit public moneys immediately upon receipt in the name of the public depositor in the public depository or public depositories designated by the governing board.

(4) Money from the appropriation under s. 20.143 (1) (fm) shall be deposited in a public depository located in this state that is at least 51% owned by a minority group member or minority group members, as defined in s. 560.036 (1) (f).

History: 1975 c. 180; 1979 c. 318; 1983 a. 368; 1985 a. 25; 1989 a. 31; 1999 a. 150 s. 672; 2001 a. 30.

Legislative Council Note, 1985: Sub. (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.

Sub. (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.

Sub. (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.

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

Sub. (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. [85 Act 25]

34.06 Liability of treasurers. Notwithstanding any other provision of law, a treasurer who deposits public moneys in any public depository, in compliance with s. 34.05, is thereby relieved of liability for any loss of public moneys which results from the failure of any public depository to repay to the public depositor the full amount of its deposits thus causing a loss as defined in s. 34.01 (2).

History: 1983 a. 189 s. 329 (21); 1985 a. 25.

Legislative Council Note, 1985: This section is amended to retain the immunity to liability for treasurers of public depositories 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:

A cooperative educational service agency.

Any court of Wisconsin.

A corporation organized under s. 39.33, by the Wisconsin higher educational aids board, to provide for a guaranteed student loan program.

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. [85 Act 25]

34.07 Security. A surety bond or other security may be required of or given by any public depository for any public deposits that exceed the amount of deposit insurance provided by an agency of the United States and the coverage provided under s. 34.08 (2).

History: 1985 a. 25; 2005 a. 134.

Legislative Council Note, 1985: This section 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. [85 Act 25]

34.08 Payment of losses. (1) Except as provided in sub. (2), the appropriation in s. 20.144 (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 division 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 at the public depository that experienced the loss. Upon a satisfactory proof of loss, the division of banking shall direct the department of administration to draw its warrant payable from the appropriation under s. 20.144 (1) (a) and the secretary of administration shall pay the warrant under s. 16.401 (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 division 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 division of banking under the assignment shall be repaid to the appropriation under s. 20.144 (1) (a).

History: 1985 a. 25; 1995 a. 27; 2003 a. 33; 2005 a. 134.

Legislative Council Note, 1985: This section 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.

Subs. (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.

Sub. (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). [85 Act 25]

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 federal or state savings bank and every national bank may be designated as a public depository and may receive and hold public deposits, subject to this chapter, if the financial institution has a branch or main office located in this state, complies with this chapter with respect to public deposits and accepts payments made by the state under s. 16.412. The division of banking has the same powers and duties with regard to making and continuing public deposits in national banks, federal and state credit unions, federal and state savings banks and federal and state savings and loan associations as the powers and duties exercised and performed by the division of banking with regard to public deposits in state banks.

History: 1975 c. 180, 421; 1981 c. 20; 1981 c. 390 s. 252; 1983 a. 368; 1985 a. 25; 1991 a. 221; 1995 a. 27, 336.

Legislative Council Note, 1985: This section 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. [85 Act 25]

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, savings 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. 180.1501 and 180.1503 to 180.1507, such bank, savings 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 ss. 180.1501 and 180.1503 to 180.1507 are complied with by the foreign corporation, association or trust.

History: 1975 c. 180; 1989 a. 303; 1991 a. 221.

34.10 Reorganization and stabilization of financial institutions. Whenever the office of credit unions, administrator of federal credit unions, U.S. comptroller of the currency, federal home loan bank board, U.S. office of thrift supervision, federal deposit insurance corporation, resolution trust corporation, or division of banking has taken charge of a credit union, bank, savings 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 structure of any national or state credit union, bank, savings bank, or savings and loan association located in this state, and has approved a reorganization plan or a stabilization and readjustment agreement entered into between the credit union, bank, savings bank, or savings and loan association and depositors and unsecured creditors, or when a credit union, bank, savings bank, or savings and loan association, with the approval of the office of credit unions, administrator of federal credit unions, U.S. comptroller of the currency, federal home loan bank board, U.S. office of thrift supervision, federal deposit insurance corporation, resolution trust corporation, or division of banking proposes to sell its assets to another credit union, bank, savings bank, or savings and loan association which agrees to assume a part or all of the deposit liability of such selling credit union, bank, savings bank, or savings and loan association and to pay the same on a deferred payment basis, the governing board of the public depositor may, on the approval of the division 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 division of banking, the 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 reorganization plan, or any stabilization and readjustment agreement, or any proposed sale of assets which meets the approval of the division of banking does not waive any rights under this chapter.

History: 1975 c. 180; 1983 a. 368; 1991 a. 221; 1995 a. 27; 1999 a. 9; 2003 a. 33.

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. 66.0607 (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. 66.0607 (6).

History: 1979 c. 301; 1999 a. 150 s. 672.

34.11 Penalties. Any person who willfully violates ss. 34.01 to 34.10, or any orders or rules promulgated by the division 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.

History: 1995 a. 27.