

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HOUSE BILL 2619

AN ACT

AMENDING SECTIONS 35-312 AND 35-323, ARIZONA REVISED STATUTES; AMENDING TITLE 35, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 10; RELATING TO POOLED COLLATERAL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 35-312, Arizona Revised Statutes, is amended to
3 read:

4 35-312. Eligible depositories; collateral

5 A. Any eligible depository that receives an investment or any deposit
6 of treasury monies in excess of the amount insured by an instrumentality of
7 the United States shall collateralize those deposits with any of the
8 following:

9 1. Securities listed in section 35-313, subsection A, paragraphs 1
10 and 3.

11 2. State treasurer's warrant notes.

12 3. The safekeeping receipt of a federal reserve bank or any bank
13 located in a reserve city, or any bank authorized to do business in this
14 state, whose combined capital, surplus and outstanding capital notes and
15 debentures on the date of the safekeeping receipt are one hundred million
16 dollars or more, evidencing the deposit therein of any securities or
17 instruments described in this section. A safekeeping receipt shall not
18 qualify as security, if issued by a bank to secure its own public deposits,
19 unless issued directly through its trust department. The safekeeping receipt
20 shall show upon its face that it is issued for the account of the state
21 treasurer and shall be delivered to the state treasurer.

22 4. LETTERS OF CREDIT ISSUED BY A FEDERAL HOME LOAN BANK IF:

23 (a) THE LETTER OF CREDIT HAS BEEN DELIVERED PURSUANT TO THIS SECTION
24 OR CHAPTER 10, ARTICLE 1 OF THIS TITLE TO THE STATEWIDE COLLATERAL POOL
25 ADMINISTRATOR.

26 (b) THE LETTER OF CREDIT MEETS THE REQUIRED CONDITIONS OF:

27 (i) BEING IRREVOCABLE.

28 (ii) BEING ISSUED, PRESENTABLE AND PAYABLE AT A FEDERAL HOME LOAN BANK
29 IN UNITED STATES DOLLARS. PRESENTATION MAY BE MADE BY THE BENEFICIARY
30 SUBMITTING THE ORIGINAL LETTER OF CREDIT, INCLUDING ANY AMENDMENTS, AND THE
31 DEMAND IN WRITING, BY OVERNIGHT DELIVERY.

32 (iii) IF THE LETTER OF CREDIT IS FOR PURPOSES OF CHAPTER 10, ARTICLE 1
33 OF THIS TITLE, CONTAINING A STATEMENT THAT IDENTIFIES THE STATEWIDE
34 COLLATERAL POOL ADMINISTRATOR AS THE BENEFICIARY.

35 (iv) CONTAINING AN ISSUE DATE AND A DATE OF EXPIRATION.

36 (c) FOR THE PURPOSES OF CHAPTER 10, ARTICLE 1 OF THIS TITLE, THE
37 ELIGIBLE DEPOSITORY, IF NOTIFIED BY THE STATEWIDE COLLATERAL POOL
38 ADMINISTRATOR, IS NOT ALLOWED TO USE NEW LETTERS OF CREDIT ISSUED BY A
39 FEDERAL HOME LOAN BANK IF THAT FEDERAL HOME LOAN BANK FAILS TO PAY A DRAW
40 REQUEST AS PROVIDED FOR IN THE LETTERS OF CREDIT OR FAILS TO PROPERLY
41 COMPLETE A CONFIRMATION OF THE LETTERS OF CREDIT.

42 B. The securities, warrants or safekeeping receipt for those items
43 shall be accepted at market value equal to one hundred two per cent of the
44 deposit liability to the state treasurer, and, if at any time their market
45 value becomes less than one hundred two per cent of the deposit liability to

1 the state treasurer, additional items required to guarantee deposits shall be
2 deposited immediately with the state treasurer by the eligible depository.
3 When items pledged as collateral mature or are called for redemption, the
4 cash received for the item shall be held in place of the items until the
5 eligible depository has obtained a written release or provided substitute
6 securities, instruments or warrants.

7 C. The deposit of securities, warrants or a safekeeping receipt must
8 be such that the eligible depository will promptly pay to the state treasurer
9 monies in its custody, upon lawful demand, and will, when required by law,
10 pay the monies to the state treasurer.

11 D. The securities, warrants or safekeeping receipt of an eligible
12 depository shall be deposited with the state treasurer, and the state
13 treasurer is the custodian of those items. The state treasurer may then
14 deposit with the eligible depository monies then in his possession in
15 accordance with this article.

16 E. Eligible depositories shall report to the state treasurer monthly
17 and upon demand the par and market value of any pledged collateral and the
18 total deposits of the state treasurer.

19 Sec. 2. Section 35-323, Arizona Revised Statutes, is amended to read:
20 35-323. Investing public monies; bidding; security and other
21 requirements

22 A. The treasurer shall invest and reinvest public monies in securities
23 and deposits with a maximum maturity of five years. All public monies shall
24 be invested in eligible investments. Eligible investments are:

25 1. Certificates of deposit in eligible depositories.

26 2. Deposits in one or more federally insured banks or savings and loan
27 associations placed in accordance with the procedures prescribed in section
28 35-323.01.

29 3. Interest bearing savings accounts in banks and savings and loan
30 institutions doing business in this state whose accounts are insured by
31 federal deposit insurance for their industry, but only if deposits in excess
32 of the insured amount are secured by the eligible depository to the same
33 extent and in the same manner as required under this article.

34 4. Repurchase agreements with a maximum maturity of one hundred eighty
35 days.

36 5. The pooled investment funds established by the state treasurer
37 pursuant to section 35-326.

38 6. Obligations issued or guaranteed by the United States or any of the
39 senior debt of its agencies, sponsored agencies, corporations, sponsored
40 corporations or instrumentalities.

41 7. Bonds, notes or other evidences of indebtedness of this state or
42 any of its counties, incorporated cities or towns or school districts.

43 8. Bonds, notes or evidences of indebtedness of any county, municipal
44 district, municipal utility or special taxing district of any state that are
45 payable from revenues, earnings or a special tax specifically pledged for the

1 payment of the principal and interest on the obligations, and for the payment
2 of which a lawful sinking fund or reserve fund has been established and is
3 being maintained, but only if no default in payment on principal or interest
4 on the obligations to be purchased has occurred within five years of the date
5 of investment, or, if such obligations were issued less than five years
6 before the date of investment, no default in payment of principal or interest
7 has occurred on the obligations to be purchased nor any other obligations of
8 the issuer within five years of the investment.

9 9. Bonds, notes or evidences of indebtedness issued by any county
10 improvement district or municipal improvement district of any state to
11 finance local improvements authorized by law, if the principal and interest
12 of the obligations are payable from assessments on real property within the
13 improvement district. An investment shall not be made if:

14 (a) The face value of all such obligations, and similar obligations
15 outstanding, exceeds fifty per cent of the market value of the real property,
16 and if improvements on which the bonds or the assessments for the payment of
17 principal and interest on the bonds are liens inferior only to the liens for
18 general ad valorem taxes.

19 (b) A default in payment of principal or interest on the obligations
20 to be purchased has occurred within five years of the date of investment, or,
21 if the obligations were issued less than five years before the date of
22 investment, a default in the payment of principal or interest has occurred on
23 the obligations to be purchased or on any other obligation of the issuer
24 within five years of the investment.

25 10. Commercial paper of prime quality that is rated within the top two
26 ratings by a nationally recognized rating agency. All commercial paper must
27 be issued by corporations organized and doing business in the United States.

28 11. Bonds, debentures and notes that are issued by corporations
29 organized and doing business in the United States and that are rated within
30 the top three ratings by a nationally recognized rating agency.

31 12. Negotiable or brokered certificates of deposit issued by a
32 nationally or state chartered bank or savings and loan association.

33 13. Securities of or any other interests in any open-end or closed-end
34 management type investment company or investment trust, including exchange
35 traded funds whose underlying investments are invested in securities allowed
36 by state law, registered under the investment company act of 1940 (54 Stat.
37 789; 15 United States Code sections 80a-1 through 80a-64), as amended.

38 B. Certificates of deposit shall be purchased from the eligible
39 depository bidding the highest permissible rate of interest. No monies over
40 one hundred thousand dollars may be awarded at any interest rate less than
41 one hundred three per cent of the equivalent bond yield of the offer side of
42 United States treasury bills having a similar term. If the eligible
43 depository offering to pay the highest rate of interest has bid only for a
44 portion of the monies to be awarded, the remainder of the monies shall be
45 awarded to eligible depositories bidding the next highest rates of interest.

1 C. An eligible depository is not eligible to receive total aggregate
2 deposits from this state and all its subdivisions in an amount exceeding
3 twice its capital structure as outlined in the last call of condition of the
4 superintendent of financial institutions.

5 D. If two or more eligible depositories submit bids of an identical
6 rate of interest for all or any portion of the monies to be deposited, the
7 award of the deposit of the monies shall be made to the eligible depository
8 among those submitting identical bids having, at the time of the bid opening,
9 the lowest ratio of total public deposits in relation to its capital
10 structure.

11 E. Each bid submitted, and not withdrawn prior to the time specified,
12 constitutes an irrevocable offer to pay interest as specified in the bid on
13 the deposit, or portion bid for, and the award of a deposit in accordance
14 with this section obligates the depository to accept the deposit and pay
15 interest as specified in the bid pursuant to which the deposit is awarded.

16 F. The treasurer shall maintain a record of all bids received and
17 shall make available to the board of deposit at its next regularly scheduled
18 meeting a correct list showing the bidders, the bids received and the amount
19 awarded. These records shall be available to the public and shall be kept in
20 the possession of the treasurer for not less than two years from the date of
21 the report.

22 G. Any eligible depository, before receiving a deposit in excess of
23 the insured amount under this article, shall deliver collateral for the
24 purposes of this subsection equal to at least one hundred one per cent of the
25 deposit. The collateral shall be any of the following:

26 1. A bond executed by a surety company that is approved by the
27 treasury department of the United States and authorized to do business in
28 this state. The bond shall be approved as to form by the legal advisor of
29 the treasurer.

30 2. Securities or instruments of the following character:

31 (a) United States government or agency obligations.

32 (b) State, county, school district and other district municipal bonds.

33 (c) Registered warrants of this state, a county or other political
34 subdivisions of this state, when offered as security for monies of the state,
35 county or political subdivision by which they are issued.

36 (d) First mortgages and trust deeds on improved, unencumbered real
37 estate located in this state. No single first mortgages or trust deeds may
38 represent more than ten per cent of the total collateral. The treasurer may
39 require that the first mortgages or trust deeds comprising the total
40 collateral security be twice the amount the eligible depository receives on
41 deposit. First mortgages or trust deeds qualify as collateral subject to the
42 following limitations:

43 (i) The promissory note or other evidences of indebtedness secured by
44 such first mortgage or trust deed shall have been in existence for at least
45 three years and shall not have been in default during this period.

1 (ii) An eligible depository shall at its own expense execute, deposit
2 with the treasurer and record with the appropriate county recorder a complete
3 sale and assignment with recourse in a form approved by the attorney general,
4 together with an unconditional assumption of obligation to promptly pay to
5 the entitled parties public monies in its custody upon lawful demand and
6 tender of resale and assignment.

7 Eligible depositories may deposit the security described in this subdivision
8 with the state treasurer, and county, city or town treasurers may accept the
9 security described in this subdivision at their option.

10 3. The safekeeping receipt of a federal reserve bank or any bank
11 located in a reserve city, or any bank authorized to do business in this
12 state, whose combined capital, surplus and outstanding capital notes and
13 debentures on the date of the safekeeping receipt are ten million dollars or
14 more, evidencing the deposit therein of any securities or instruments
15 described in this section. A safekeeping receipt shall not qualify as
16 security, if issued by a bank to secure its own public deposits, unless
17 issued directly through its trust department. The safekeeping receipt shall
18 show upon its face that it is issued for the account of the treasurer and
19 shall be delivered to the treasurer. The safekeeping receipt may provide for
20 the substitution of securities or instruments which qualify under this
21 section with the affirmative act of the treasurer.

22 4. LETTERS OF CREDIT ISSUED BY A FEDERAL HOME LOAN BANK IF:

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29 IN UNITED STATES DOLLARS. PRESENTATION MAY BE MADE BY THE BENEFICIARY
30 SUBMITTING THE ORIGINAL LETTER OF CREDIT, INCLUDING ANY AMENDMENTS, AND THE
31 DEMAND IN WRITING, BY OVERNIGHT DELIVERY.

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39 FEDERAL HOME LOAN BANK IF THAT FEDERAL HOME LOAN BANK FAILS TO PAY A DRAW
40 REQUEST AS PROVIDED FOR IN THE LETTERS OF CREDIT OR FAILS TO PROPERLY
41 COMPLETE A CONFIRMATION OF SUCH LETTERS OF CREDIT.

42 H. The securities, instruments or safekeeping receipt for the
43 securities, instruments or warrants shall be accepted at market value if not
44 above par, and, if at any time their market value becomes less than the
45 deposit liability to that treasurer, additional securities or instruments

1 required to guarantee deposits shall be deposited immediately with the
2 treasurer who made the deposit and deposited by the eligible depository in
3 which the deposit was made.

4 I. The condition of the surety bond, or the deposit of securities,
5 instruments or a safekeeping receipt, must be such that the eligible
6 depository will promptly pay to the parties entitled public monies in its
7 custody, upon lawful demand, and will, when required by law, pay the monies
8 to the treasurer making the deposit.

9 J. Notwithstanding the requirements of this section, any institution
10 qualifying as an eligible depository may accept deposits of public monies to
11 the total then authorized insurance of accounts, insured by federal deposit
12 insurance, without depositing a surety bond or securities in lieu of the
13 surety bond.

14 K. An eligible depository shall report monthly to the treasurer the
15 total deposits of that treasurer and the par value and the market value of
16 any pledged collateral securing those deposits.

17 L. When a security or instrument pledged as collateral matures or is
18 called for redemption, the cash received for the security or instrument shall
19 be held in place of the security until the depository has obtained a written
20 release or provided substitute securities or instruments.

21 M. The surety bond, securities, instruments or safekeeping receipt of
22 an eligible depository shall be deposited with the treasurer making the
23 deposit, and the treasurer shall be the custodian of the bond, securities,
24 instruments or safekeeping receipt. The treasurer may then deposit with the
25 depository public monies then in the treasurer's possession in accordance
26 with this article, but not in an amount in excess of the surety bond,
27 securities, instruments or safekeeping receipt deposited, except for federal
28 deposit insurance.

29 N. The following restrictions on investments are applicable:

30 1. An investment of public operating fund monies shall not be invested
31 for a maturity of longer than five years.

32 2. The board of deposit may order the treasurer to sell any of the
33 securities, and any order shall specifically describe the securities and fix
34 the date upon which they are to be sold. Securities so ordered to be sold
35 shall be sold for cash by the treasurer on the date fixed in the order, at
36 the then current market price. The treasurer and the members of the board
37 are not accountable for any loss occasioned by sales of securities at prices
38 lower than their cost. Any loss or expense shall be charged against earnings
39 received from investment of public funds.

40 O. If the total amount of subdivision monies available for deposit at
41 any time is less than one hundred thousand dollars, the subdivision board of
42 deposit shall award the deposit of the funds to an eligible depository in
43 accordance with an ordinance or resolution of the governing body of the
44 subdivision.

1 Sec. 3. Title 35, Arizona Revised Statutes, is amended by adding
2 chapter 10, to read:

3 CHAPTER 10
4 PUBLIC DEPOSITS
5 ARTICLE 1. GENERAL PROVISIONS

6 35-1201. Definitions

7 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

8 1. "ADMINISTRATOR" MEANS THE STATEWIDE COLLATERAL POOL ADMINISTRATOR.

9 2. "DEFAULT OR INSOLVENCY" INCLUDES THE FAILURE OR REFUSAL OF ANY
10 ELIGIBLE DEPOSITORY TO RETURN ANY PUBLIC DEPOSIT ON DEMAND OR AT MATURITY AND
11 THE ISSUANCE OF AN ORDER OF SUPERVISORY AUTHORITY RESTRAINING THAT DEPOSITORY
12 FROM MAKING PAYMENTS OF DEPOSIT LIABILITIES OR THE APPOINTMENT OF A RECEIVER
13 FOR THAT DEPOSITORY.

14 3. "DEFAULTING DEPOSITORY" MEANS ANY ELIGIBLE DEPOSITORY DETERMINED TO
15 BE IN DEFAULT OR INSOLVENT.

16 4. "ELIGIBLE COLLATERAL" MEANS ANY COLLATERAL THAT IS AUTHORIZED
17 PURSUANT TO SECTION 35-323.

18 5. "ELIGIBLE DEPOSITORY" HAS THE SAME MEANING PRESCRIBED IN SECTION
19 35-321.

20 6. "LOCATED IN THIS STATE" MEANS HAVING A MAIN OFFICE OR BRANCH OFFICE
21 IN THIS STATE WHERE DEPOSITS ARE ACCEPTED, CHECKS ARE PAID AND MONEY IS LENT.

22 7. "PUBLIC DEPOSIT" MEANS PUBLIC MONIES DEPOSITED IN AN ELIGIBLE
23 DEPOSITORY PURSUANT TO THIS CHAPTER.

24 8. "PUBLIC DEPOSITOR" MEANS THIS STATE OR ANY COUNTY, CITY, TOWN OR
25 OTHER POLITICAL SUBDIVISION OF THIS STATE, INCLUDING ANY COMMISSION,
26 INSTITUTION, COMMITTEE, BOARD OR OFFICER AND ANY STATE COURT.

27 9. "QUALIFIED ESCROW AGENT" MEANS ANY BANK OR TRUST COMPANY THAT IS
28 QUALIFIED TO HOLD COLLATERAL PLEDGED TO SECURE PUBLIC DEPOSITS.

29 10. "REQUIRED COLLATERAL" MEANS THE AMOUNT OF ELIGIBLE COLLATERAL
30 REQUIRED FOR AN ELIGIBLE DEPOSITORY TO SECURE PUBLIC DEPOSITS SET BY THE
31 POLICIES AND PROCEDURES OF THE ADMINISTRATOR.

32 35-1202. Powers of the statewide collateral pool administrator

33 THE STATEWIDE COLLATERAL POOL ADMINISTRATOR IS ESTABLISHED IN THE
34 OFFICE OF THE STATE TREASURER. ON OR BEFORE JULY 1, 2014, THE ADMINISTRATOR
35 SHALL HAVE THE NECESSARY POLICIES AND PROCEDURES IN PLACE TO IMPLEMENT THIS
36 CHAPTER. THE ADMINISTRATOR MAY:

37 1. ADOPT AND ENFORCE THE POLICIES AND PROCEDURES NECESSARY TO CARRY
38 OUT THIS CHAPTER. ANY POLICIES SET FORTH BY THE ADMINISTRATOR SHALL BE
39 DEVELOPED, INCLUDING A COMMENT PERIOD, IN CONSULTATION WITH FINANCIAL
40 INSTITUTIONS THAT SERVE AS ELIGIBLE DEPOSITORIES AND PUBLIC DEPOSITORS.

41 2. PRESCRIBE AND ENFORCE POLICIES FIXING THE TERMS AND CONDITIONS
42 UNDER WHICH UNINSURED PUBLIC DEPOSITS MUST BE SECURED BY COLLATERAL UNDER
43 THIS CHAPTER.

44 3. REQUIRE ANY ELIGIBLE DEPOSITORY TO PROVIDE INFORMATION CONCERNING
45 ITS PUBLIC DEPOSITS AS REQUESTED BY THE ADMINISTRATOR.

1 4. DETERMINE WHEN A DEFAULT OR INSOLVENCY HAS OCCURRED AND TAKE SUCH
2 ACTION AS THE ADMINISTRATOR MAY DEEM ADVISABLE FOR THE PROTECTION,
3 COLLECTION, COMPROMISE OR SETTLEMENT OF ANY CLAIM ARISING IN CASE OF DEFAULT
4 OR INSOLVENCY.

5 35-1203. Subrogation of administrator to depositor's rights:
6 distribution of assets: payment

7 ON PAYMENT IN FULL TO ANY PUBLIC DEPOSITOR ON ANY CLAIM PRESENTED
8 PURSUANT TO THIS CHAPTER, THE ADMINISTRATOR SHALL BE SUBROGATED TO ALL OF THE
9 DEPOSITOR'S RIGHTS, TITLE AND INTEREST AGAINST THE DEPOSITORY THAT IS IN
10 DEFAULT OR INSOLVENT AND SHALL SHARE IN ANY DISTRIBUTION OF THE DEFAULTING OR
11 INSOLVENT DEPOSITORY'S ASSETS RATABLY WITH OTHER DEPOSITORS. THE SUMS
12 RECEIVED FROM ANY DISTRIBUTION SHALL BE PAID TO THE OTHER ELIGIBLE
13 DEPOSITORIES AGAINST WHICH ASSESSMENTS WERE MADE, IN PROPORTION TO THOSE
14 ASSESSMENTS, AFTER ANY PROPER PAYMENT OR EXPENSE OF THE ADMINISTRATOR IN
15 ENFORCING THE CLAIM IS PAID.

16 35-1204. Mandatory deposit of public funds in eligible
17 depositories

18 UNINSURED PUBLIC DEPOSITS REQUIRED TO BE SECURED BY COLLATERAL PURSUANT
19 TO THIS CHAPTER SHALL BE DEPOSITED IN AN ELIGIBLE DEPOSITORY.

20 35-1205. Authority to make public deposits

21 A. ALL PUBLIC DEPOSITORS MAY MAKE PUBLIC DEPOSITS UNDER THE
22 DEPOSITOR'S CONTROL IN ELIGIBLE DEPOSITORIES, SECURING ANY UNINSURED PUBLIC
23 DEPOSITS PURSUANT TO THIS CHAPTER OR IN ACCORDANCE WITH THE PROCEDURES
24 PRESCRIBED IN SECTION 35-323.01.

25 B. LOCAL OFFICIALS HANDLING PUBLIC DEPOSITS IN THIS STATE MAY NOT
26 REQUIRE FROM AN ELIGIBLE DEPOSITORY ANY PLEDGE OF COLLATERAL FOR THE DEPOSITS
27 IN EXCESS OF THE REQUIREMENTS OF THIS CHAPTER.

28 35-1206. Public depositors: immunity

29 WHEN DEPOSITS ARE MADE IN ACCORDANCE WITH THIS CHAPTER, AN OFFICIAL OF
30 A PUBLIC DEPOSITOR IS NOT PERSONALLY LIABLE FOR ANY LOSS RESULTING FROM THE
31 DEFAULT OR INSOLVENCY OF ANY ELIGIBLE DEPOSITORY IN THE ABSENCE OF
32 NEGLIGENCE, MALFEASANCE, MISFEASANCE OR NONFEASANCE ON THE PART OF PUBLIC
33 DEPOSITOR OR THE DEPOSITOR'S AGENTS.

34 35-1207. Collateral for public deposits

35 A. AN ELIGIBLE DEPOSITORY SHALL NOT ACCEPT OR RETAIN ANY PUBLIC
36 DEPOSIT THAT IS REQUIRED TO BE SECURED UNLESS THE ELIGIBLE DEPOSITORY HAS
37 DEPOSITED THE REQUIRED COLLATERAL WITH A QUALIFIED ESCROW AGENT OR THE
38 ADMINISTRATOR, IF REQUIRED. EVERY ELIGIBLE DEPOSITORY SHALL DEPOSIT WITH A
39 QUALIFIED ESCROW AGENT ELIGIBLE COLLATERAL EQUAL TO OR IN EXCESS OF THE
40 REQUIRED COLLATERAL. REQUIRED COLLATERAL SHALL BE ONE HUNDRED TWO PER CENT OF
41 PUBLIC DEPOSITS LESS ANY APPLICABLE DEPOSIT INSURANCE. ELIGIBLE COLLATERAL
42 SHALL BE VALUED AT CURRENT MARKET VALUE. SUBSTITUTIONS AND WITHDRAWALS OF
43 ELIGIBLE COLLATERAL MAY BE MADE WITHOUT PRIOR NOTIFICATION OR CONSENT BY THE
44 PUBLIC DEPOSITOR.

1 B. NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, AN ELIGIBLE DEPOSITORY
2 SHALL NOT BE REQUIRED TO GIVE BOND OR PLEDGE SECURITIES OR INSTRUMENTS IN THE
3 MANNER PROVIDED IN THIS SECTION FOR THE PURPOSE OF SECURING DEPOSITS THAT ARE
4 RECEIVED OR HELD IN THE TRUST DEPARTMENT OF THE DEPOSITORY AND THAT ARE
5 SECURED PURSUANT TO 12 UNITED STATES CODE SECTION 92(a).

6 35-1208. Qualified escrow agent; substitutions

7 A. ELIGIBLE COLLATERAL SHALL BE HELD AS PROVIDED IN THIS ARTICLE OR BY
8 POLICY OF THE ADMINISTRATOR. ELIGIBLE COLLATERAL SHALL BE HELD IN THE CUSTODY
9 OF ANY BANK, INCLUDING A FEDERAL RESERVE BANK, OR ANY DEPOSITORY TRUST
10 COMPANY.

11 B. EACH ELIGIBLE DEPOSITORY SHALL PROVIDE IN A WRITTEN DEPOSIT OR
12 PLEDGE AGREEMENT BETWEEN THE ELIGIBLE DEPOSITORY AND THE CUSTODIAN OF THE
13 COLLATERAL, OR IN SUCH OTHER MANNER AS PRESCRIBED BY THE ADMINISTRATOR BY
14 POLICY, THAT:

15 1. IN THE EVENT OF DEFAULT OR INSOLVENCY OF THE ELIGIBLE DEPOSITORY
16 FOR WHICH THE COLLATERAL IS HELD, THE CUSTODIAN SHALL SURRENDER THE
17 COLLATERAL TO THE ADMINISTRATOR.

18 2. THE CUSTODIAN SHALL REASONABLY MAKE AVAILABLE TO THE ADMINISTRATOR
19 ANY BOOKS, RECORDS AND PAPERS PERTAINING THERETO FOR ANY EXAMINATION OR OTHER
20 REASON NECESSARY FOR THE ADMINISTRATION OF THIS ARTICLE.

21 C. AN ELIGIBLE DEPOSITORY AT ANY TIME MAY MAKE SUBSTITUTIONS OF
22 ELIGIBLE COLLATERAL MAINTAINED OR PLEDGED FOR THE PURPOSES OF THIS ARTICLE
23 AND SHALL AT ALL TIMES BE ENTITLED TO COLLECT AND RETAIN ALL INCOME DERIVED
24 FROM THE COLLATERAL WITHOUT RESTRICTION. THE AUTHORIZATION TO MAKE
25 SUBSTITUTIONS OF ELIGIBLE COLLATERAL PURSUANT TO THIS SUBSECTION MAY BE
26 SUSPENDED OR REVOKED BY THE ADMINISTRATOR IF THE ELIGIBLE DEPOSITORY HAS
27 BECOME THE SUBJECT OF INCREASED REGULATORY OVERSIGHT AS A RESULT OF THE
28 ELIGIBLE DEPOSITORY'S FAILURE TO MAINTAIN CAPITAL STANDARDS REQUIRED BY THE
29 DEPOSITORY'S PRIMARY REGULATOR.

30 35-1209. Reports of eligible depositories

31 AT THE REQUEST OF THE ADMINISTRATOR, EACH ELIGIBLE DEPOSITORY SHALL
32 SUBMIT TO THE ADMINISTRATOR A REPORT, AS PRESCRIBED BY THE ADMINISTRATOR,
33 SHOWING THAT THE CURRENT MARKET VALUE OF THE DEPOSITORY'S PLEDGED COLLATERAL
34 IS EQUAL TO OR GREATER THAN THE AMOUNT OF REQUIRED COLLATERAL FOR THE
35 PREVIOUS MONTH. THE REPORT SHALL BE CERTIFIED AS TO ITS ACCURACY BY AN
36 AUTHORIZED OFFICIAL OF THE ELIGIBLE DEPOSITORY.

37 35-1210. Procedure for payment of losses

38 WHEN THE ADMINISTRATOR DETERMINES THAT AN ELIGIBLE DEPOSITORY SECURING
39 PUBLIC DEPOSITS IN ACCORDANCE WITH THIS SECTION IS A DEFAULTING DEPOSITORY,
40 THE ADMINISTRATOR SHALL TAKE STEPS AS PROMPTLY AS PRACTICABLE TO REIMBURSE
41 PUBLIC DEPOSITORS OF ALL UNINSURED PUBLIC DEPOSITS HELD BY THE DEFAULTING
42 DEPOSITORY USING THE FOLLOWING PROCEDURES:

43 1. THE ADMINISTRATOR SHALL DETERMINE THE AMOUNT OF UNINSURED PUBLIC
44 DEPOSITS NET OF ANY DEPOSIT INSURANCE HELD BY THE DEFAULTING DEPOSITORY
45 EITHER WITH THE COOPERATION OF THE DEPARTMENT OF FINANCIAL INSTITUTIONS OR

1 THE RECEIVER APPOINTED FOR THE DEFAULTING DEPOSITORY OR BY ANY OTHER MEANS
2 AVAILABLE.

3 2. THE ADMINISTRATOR SHALL ASSESS THE AMOUNT OF THE UNINSURED PUBLIC
4 DEPOSITS DETERMINED UNDER PARAGRAPH 1 OF THIS SECTION AGAINST THE DEFAULTING
5 DEPOSITORY. THE ADMINISTRATOR SHALL PROMPTLY TAKE POSSESSION OF THE ELIGIBLE
6 COLLATERAL DEPOSITED BY THE DEFAULTING DEPOSITORY WITH THE DEPOSITORY'S
7 QUALIFIED ESCROW AGENT, TO THE EXTENT NECESSARY TO SATISFY THE
8 ADMINISTRATOR'S ASSESSMENT, AND SHALL LIQUIDATE THE SAME.

9 3. ON RECEIPT OF THE LIQUIDATED ELIGIBLE COLLATERAL, THE ADMINISTRATOR
10 SHALL REIMBURSE THE PUBLIC DEPOSITORS FROM THE PROCEEDS OF THE COLLATERAL TO
11 THE EXTENT OF THE DEFAULTING DEPOSITORY'S DEPOSIT LIABILITY TO THE DEPOSITOR,
12 NET OF ANY APPLICABLE DEPOSIT INSURANCE.

13 35-1211. Civil penalties; noncompliance

14 A. THE ADMINISTRATOR MAY ASSESS AGAINST AND COLLECT FROM AN ELIGIBLE
15 DEPOSITORY THE FOLLOWING FOR NONCOMPLIANCE WITH THE REQUIREMENTS OF THIS
16 CHAPTER:

17 1. A CIVIL PENALTY OF NOT MORE THAN TWO HUNDRED FIFTY DOLLARS FOR EACH
18 DAY THE ELIGIBLE DEPOSITORY FAILS TO MAINTAIN WITH ITS QUALIFIED ESCROW AGENT
19 ELIGIBLE COLLATERAL AS REQUIRED BY THIS ARTICLE.

20 2. A CIVIL PENALTY OF NOT MORE THAN ONE HUNDRED DOLLARS FOR EACH DAY
21 BEYOND THE TIME PERIOD SPECIFIED IN THIS ARTICLE OR BY THE POLICY OF THE
22 ADMINISTRATOR THAT THE DEPOSITORY NEGLIGENTLY OR WILFULLY FAILS TO FILE IN
23 THE OFFICE OF THE ADMINISTRATOR A WRITTEN REPORT REQUIRED BY THIS ARTICLE.

24 B. THE ELIGIBLE DEPOSITORY DEEMED IN NONCOMPLIANCE MAY REQUEST A
25 HEARING BEFORE A CIVIL PENALTY IS IMPOSED PURSUANT TO THIS SECTION. ANY
26 CIVIL PENALTY ASSESSED UNDER THIS SECTION SHALL BE PAID WITHIN THIRTY DAYS
27 AFTER RECEIPT OF THE ASSESSMENT, OR THE ADMINISTRATOR MAY ASSESS AND COLLECT
28 AN ADDITIONAL PENALTY OF FIVE PER CENT OF THE AMOUNT OF THE CIVIL PENALTY FOR
29 EACH MONTH OR PART OF A MONTH THAT THE PAYMENT IS DELINQUENT. THE
30 ADMINISTRATOR MAY MAKE AVAILABLE TO THE PUBLIC RELEVANT INFORMATION REGARDING
31 CIVIL PENALTIES ASSESSED AGAINST AN ELIGIBLE DEPOSITORY.

32 C. ANY PENALTIES COLLECTED PURSUANT TO THIS SECTION SHALL BE
33 DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE STATE GENERAL FUND.

34 D. IF AN ELIGIBLE DEPOSITORY FAILS TO PAY THE PENALTIES ASSESSED BY
35 THE ADMINISTRATOR PURSUANT TO THIS SECTION, THE ADMINISTRATOR MAY NOTIFY
36 LOCAL AGENCY TREASURERS WITH DEPOSITS IN THE ELIGIBLE DEPOSITORY OF THE
37 NONCOMPLIANCE.

38 35-1212. Fees; public deposit administration fund

39 A. THE ADMINISTRATOR SHALL ANNUALLY ASSESS EVERY ELIGIBLE DEPOSITORY A
40 FEE IN AN AMOUNT ESTABLISHED BY THE ADMINISTRATOR FOR THE ENFORCEMENT AND
41 ADMINISTRATION OF THIS CHAPTER. THE FEES SHALL FAIRLY AND EQUITABLY APPLY TO
42 ALL ELIGIBLE DEPOSITORIES CALCULATED ACCORDING TO THE PROPORTION OF AGGREGATE
43 PUBLIC MONIES THAT EACH DEPOSITORY HOLDS IN RELATION TO THE TOTAL OF ALL
44 AGGREGATE PUBLIC DEPOSITS HELD BY ALL ELIGIBLE DEPOSITORIES FOR EACH ANNUAL
45 PERIOD. FOR THE PURPOSES OF THIS SUBSECTION, MONIES INITIALLY INVESTED

1 PURSUANT TO SECTION 35-323.01, SUBSECTION A, PARAGRAPH 1 AND DEPOSITED
2 PURSUANT TO SECTION 35-323.01, SUBSECTION A, PARAGRAPH 2 SHALL NOT BE
3 INCLUDED IN DETERMINING THE AGGREGATE PUBLIC MONIES HELD BY AN ELIGIBLE
4 DEPOSITORY. THE ADMINISTRATOR SHALL DEPOSIT THE FEES IN THE PUBLIC DEPOSIT
5 ADMINISTRATION FUND.
6 B. THE PUBLIC DEPOSIT ADMINISTRATION FUND IS ESTABLISHED IN THE STATE
7 TREASURY. THE FUND SHALL CONSIST OF FEES DEPOSITED PURSUANT TO SUBSECTION A
8 OF THIS SECTION AND ALL INTEREST EARNED ON THE INVESTMENT OF THE MONIES IN
9 THE FUND. ANY INTEREST SHALL BE CREDITED AT LEAST ANNUALLY TO THE FUND.
10 EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION A OF THIS SECTION, MONIES IN THE
11 FUND ARE CONTINUOUSLY APPROPRIATED TO THE ADMINISTRATOR FOR THE
12 ADMINISTRATION AND ENFORCEMENT OF THIS CHAPTER. MONIES IN THE FUND ARE
13 EXEMPT FROM THE PROVISIONS OF SECTION 35-190, RELATING TO LAPSING OF
14 APPROPRIATIONS. MONIES SHALL NOT BE APPROPRIATED FROM THE STATE GENERAL FUND
15 FOR PAYMENT OF ANY EXPENSES INCURRED UNDER THIS CHAPTER, AND THE EXPENSES
16 SHALL NOT BE CHARGED AGAINST THE STATE. ANY MONIES REMAINING IN THE FUND AT
17 THE END OF EACH FISCAL YEAR THAT EXCEED THE COST OF ADMINISTERING THIS
18 CHAPTER FOR THAT FISCAL YEAR SHALL BE APPLIED AS A CREDIT FOR FEES ASSESSED
19 PURSUANT TO THIS SECTION OR REFUNDED THE FOLLOWING CALENDAR YEAR TO THE
20 PARTICIPATING ELIGIBLE DEPOSITORIES.