Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

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

CHAPTER 157

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)

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

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

35-312. Eligible depositories; collateral

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

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

2. State treasurer's warrant notes.

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

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

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

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

(i) BEING IRREVOCABLE.

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

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

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

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

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

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

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

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

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

Sec. 2. Section 35-323, Arizona Revised Statutes, is amended to read:

35-323. <u>Investing public monies; bidding; security and other requirements</u>

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

1. Certificates of deposit in eligible depositories.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Securities or instruments of the following character:

(a) United States government or agency obligations.

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

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

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

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

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

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

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

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

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

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

(i) BEING IRREVOCABLE.

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

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

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

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

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

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

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

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

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

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

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

N. The following restrictions on investments are applicable:

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

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

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

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

CHAPTER 10

PUBLIC DEPOSITS

ARTICLE 1. GENERAL PROVISIONS

35-1201. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

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

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

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

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

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

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

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

35-1202. Powers of the statewide collateral pool administrator

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

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

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

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

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

35-1203. Subrogation of administrator to depositor's rights; distribution of assets; payment

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

35-1204. Mandatory deposit of public funds in eligible depositories; notice; exemption

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

B. ON WRITTEN NOTICE TO THE ADMINISTRATOR, A CITY THAT IS GOVERNED BY A CHARTER AND THAT HAS A POPULATION OF MORE THAN ONE MILLION PERSONS IS EXEMPT FROM THE REQUIREMENTS OF THIS ARTICLE.

35-1205. Authority to make public deposits

A. ALL PUBLIC DEPOSITORS MAY MAKE PUBLIC DEPOSITS UNDER THE DEPOSITOR'S CONTROL IN ELIGIBLE DEPOSITORIES. THE ELIGIBLE DEPOSITORY SHALL SECURE ANY UNINSURED PUBLIC DEPOSITS PURSUANT TO THIS CHAPTER OR IN ACCORDANCE WITH THE PROCEDURES PRESCRIBED IN SECTION 35-323.01.

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

35-1206. Public depositors; immunity

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

35-1207. Collateral for public deposits

A. AN ELIGIBLE DEPOSITORY SHALL NOT ACCEPT OR RETAIN ANY PUBLIC DEPOSIT THAT IS REQUIRED TO BE SECURED UNLESS THE ELIGIBLE DEPOSITORY HAS DEPOSITED THE REQUIRED COLLATERAL WITH A QUALIFIED ESCROW AGENT OR THE ADMINISTRATOR, IF REQUIRED. EVERY ELIGIBLE DEPOSITORY SHALL DEPOSIT WITH A QUALIFIED ESCROW AGENT ELIGIBLE COLLATERAL EQUAL TO OR IN EXCESS OF THE REQUIRED COLLATERAL. REQUIRED COLLATERAL SHALL BE ONE HUNDRED TWO PER CENT OF PUBLIC DEPOSITS LESS ANY APPLICABLE DEPOSIT INSURANCE. ELIGIBLE COLLATERAL SHALL BE VALUED AT CURRENT MARKET VALUE. SUBSTITUTIONS AND WITHDRAWALS OF

ELIGIBLE COLLATERAL MAY BE MADE WITHOUT PRIOR NOTIFICATION OR CONSENT BY THE PUBLIC DEPOSITOR.

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

35-1208. Qualified escrow agent; substitutions

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

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

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

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

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

35-1209. Reports of eligible depositories

AT THE REQUEST OF THE ADMINISTRATOR, EACH ELIGIBLE DEPOSITORY SHALL SUBMIT TO THE ADMINISTRATOR A REPORT, AS PRESCRIBED BY THE ADMINISTRATOR, SHOWING THE CURRENT MARKET VALUE OF THE DEPOSITORY'S PLEDGED COLLATERAL. THE REPORT SHALL BE CERTIFIED AS TO ITS ACCURACY BY AN AUTHORIZED OFFICIAL OF THE ELIGIBLE DEPOSITORY.

35-1210. Procedure for payment of losses

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

1. THE ADMINISTRATOR SHALL DETERMINE THE AMOUNT OF UNINSURED PUBLIC DEPOSITS NET OF ANY DEPOSIT INSURANCE HELD BY THE DEFAULTING DEPOSITORY

EITHER WITH THE COOPERATION OF THE DEPARTMENT OF FINANCIAL INSTITUTIONS OR THE RECEIVER APPOINTED FOR THE DEFAULTING DEPOSITORY OR BY ANY OTHER MEANS AVAILABLE.

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

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

35-1211. Civil penalties; noncompliance

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

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

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

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

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

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

35-1212. Fees; public deposit administration fund

A. THE ADMINISTRATOR SHALL ANNUALLY ASSESS EVERY ELIGIBLE DEPOSITORY THAT IS SECURING ANY UNINSURED PUBLIC DEPOSITS PURSUANT TO THIS CHAPTER A FEE IN AN AMOUNT ESTABLISHED BY THE ADMINISTRATOR FOR THE ENFORCEMENT AND ADMINISTRATION OF THIS CHAPTER. THE FEES SHALL FAIRLY AND EQUITABLY APPLY TO ALL ELIGIBLE DEPOSITORIES THAT ARE SECURING ANY UNINSURED PUBLIC DEPOSITS PURSUANT TO THIS CHAPTER CALCULATED ACCORDING TO THE PROPORTION OF AGGREGATE

PUBLIC MONIES THAT EACH DEPOSITORY HOLDS IN RELATION TO THE TOTAL OF ALL AGGREGATE PUBLIC DEPOSITS HELD BY THOSE ELIGIBLE DEPOSITORIES FOR EACH ANNUAL PERIOD. FOR THE PURPOSES OF THIS SUBSECTION, MONIES INITIALLY INVESTED PURSUANT TO SECTION 35-323.01, SUBSECTION A, PARAGRAPH 1 AND DEPOSITED PURSUANT TO SECTION 35-323.01, SUBSECTION A, PARAGRAPH 2 SHALL NOT BE INCLUDED IN DETERMINING THE AGGREGATE PUBLIC MONIES HELD BY AN ELIGIBLE DEPOSITORY THAT IS SECURING ANY UNINSURED PUBLIC DEPOSITS PURSUANT TO THIS CHAPTER. THE ADMINISTRATOR SHALL DEPOSIT THE FEES IN THE PUBLIC DEPOSIT ADMINISTRATION FUND.

B. THE PUBLIC DEPOSIT ADMINISTRATION FUND IS ESTABLISHED IN THE STATE TREASURY. THE FUND SHALL CONSIST OF FEES DEPOSITED PURSUANT TO SUBSECTION A OF THIS SECTION AND ALL INTEREST EARNED ON THE INVESTMENT OF THE MONIES IN THE FUND. ANY INTEREST SHALL BE CREDITED AT LEAST ANNUALLY TO THE FUND. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION A OF THIS SECTION, MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED TO THE ADMINISTRATOR FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS CHAPTER. MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190, RELATING TO LAPSING OF APPROPRIATIONS. MONIES SHALL NOT BE APPROPRIATED FROM THE STATE GENERAL FUND FOR PAYMENT OF ANY EXPENSES INCURRED UNDER THIS CHAPTER, AND THE EXPENSES SHALL NOT BE CHARGED AGAINST THE STATE. ANY MONIES REMAINING IN THE FUND AT THE END OF EACH FISCAL YEAR THAT EXCEED THE COST OF ADMINISTERING THIS CHAPTER FOR THAT FISCAL YEAR SHALL BE APPLIED AS A CREDIT FOR FEES ASSESSED PURSUANT TO THIS SECTION OR REFUNDED THE FOLLOWING CALENDAR YEAR TO THE PARTICIPATING ELIGIBLE DEPOSITORIES.

APPROVED BY THE GOVERNOR APRIL 29, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2013.

Passed the House February 28, 2013

by the following vote: 55 Ayes,

0 Nays, 5 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate April 22, 2013

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2619

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

April 24, 2013,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

Speaker of the House

Cheryl Laub

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

25 day of April, 2013,

at 3:30 o'clock P M.

Mikhaila Howard

Secretary to the Governor

Approved this 29th day of

April, 2013,

at 4:44 o'clock P. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 30th day of April, 2013,

at 9:35 o'clock a M.

Ken Bennett

Secretary of State

H.B. 2619