WEST VIRGINIA CODE CHAPTER 12 ARTICLE 1B

WV Legislature

§12-1B-1. Short title.

This article shall be known, and may be cited as, the West Virginia Security for Public Deposits Act.

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§12-1B-2. Legislative intent; findings.

(a) The purpose of the West Virginia Security for Public Deposits Act is to allow designated state depositories to pledge collateral for all public deposits made by the state or by any county, municipality, spending unit, or political subdivision of the state through a pooled method, as defined in §12-1B-4 of this code.

(b) It is the intent of the Legislature that designated state depositories participating in the Public Deposits Program be authorized to secure public deposits through the pooled method, as an alternative to the methods of securing public deposits authorized under other sections of this code, including §7-6-2, §8-13-22a, §12-1-4, §12-1-5, and §18-9-6 of this code.

(c) The Legislature anticipates that authorizing designated state depositories to secure public deposits using the pooled method will lower the overall cost of public deposits and make public banking contracts in West Virginia more desirable to financial institutions.

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§12-1B-3. Applicability.

This article applies to public deposits. This article does not apply to investments made by the State Treasurer, the Board of Treasury Investments, the Investment Management Board, or any other investments of the state.

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§12-1B-4. Definitions.

For the purposes of this article, the following terms have the following meanings:

"Dedicated method" or "non-contingent liability pool" means the securing of public deposits without accepting the contingent liability for the losses of public deposits of other designated state depositories as provided in §12-1-5 of this code.

"Default" or "insolvent" includes, but may not be limited to, the failure or refusal of any designated state depository to return any public deposit upon demand or at maturity and the issuance of an order of supervisory authority restraining such depository from making payments of deposit liabilities or the appointment of a receiver for such depository.

"Defaulting depository" means any designated state depository determined to be in default or insolvent.

"Designated state depository" means any state or national bank or any state or federal savings and loan association in this state meeting the requirements of this chapter.

"Political subdivision" means any county, municipality, board of education, corporation or instrumentality of one or more counties or municipalities, or any other government organization.

"Pooled method" means securing public deposits by accepting the contingent liability for the losses of public deposits of other designated state depositories that choose this method, as required by this article and any rule pursuant to this article.

"Public deposit" means funds of a public depositor held by a designated state depository that is authorized to receive or administer such moneys from a public depositor for deposit in any of the following types of accounts: Time deposits; demand deposits; savings deposits; or any other transaction accounts.

"Public depositor" means the state or any county, municipality, spending unit, or other political subdivision of the state.

"Qualified escrow agent" means the State Treasurer or any bank or trust company approved by the State Treasurer to hold collateral pledged to secure public deposits.

"Required collateral" of a designated state depository means the amount of collateral required to secure public deposits, according to this article or rules promulgated or proposed pursuant to this article.

"Spending unit" means a department, agency, board, commission, or institution of state government for which an appropriation is requested or to which an appropriation is made by the Legislature.

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"State Treasurer" or "Treasurer" means the State Treasurer of West Virginia or his or her designee.

"West Virginia Security for Public Deposits Program" or "Public Deposits Program" means the system and procedures developed by the State Treasurer to enable designated state depositories to secure public deposits pursuant to this article.

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§12-1B-5. West Virginia Security for Public Deposits Program authorized.

The West Virginia Security for Public Deposits Program is hereby authorized. The State Treasurer shall announce the commencement of the West Virginia Security for Public Deposits Program, at which time the requirements of this article become effective, by publishing a notice in the State Register at least 30 days prior to commencement of the program. The Treasurer shall implement and administer the West Virginia Security for Public Deposits Program under the terms and conditions required by this article.

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§12-1B-6. The Treasurer’s Collateral Administration Fund.

There is hereby established in the State Treasury a special revenue account designated the Treasurer’s Collateral Administration Fund to be administered by the Treasurer pursuant to the provisions of this article. This fund shall be an interest-bearing fund and shall receive moneys authorized in the article. Moneys in the account shall be used by the Treasurer to pay any fees and costs associated with this article and for such other purposes as authorized by the Legislature.

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§12-1B-7. Powers and duties of the State Treasurer; rules; charges; contracts.

In order to implement and administer the Public Deposits Program, the State Treasurer may:

(1) Propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code as are necessary to effectuate the provisions of this article, including, but not limited to, the following:

(A) The terms and conditions under which public deposits must be secured;

(B) The method for determining the pooled collateral requirements based on the balance of public funds held in the designated state depository in excess of funds insured by an agency of the federal government and the evaluation of the overall financial condition of the designated state depository;

(C) The collateral requirements and collateral pledging level for each designated state depository as determined to be prudent under the circumstances and based on nationally recognized financial rating services information and established financial performance guidelines;

(D) The securities or instruments that constitute eligible collateral under this article and the percentage of face value or market value of such securities or instruments that can be used to secure public deposits;

(E) Reporting requirements for designated state depositories;

(F) The process for a designated state depository to withdraw from the pooled method of securing public deposits and instead be governed by the procedures for securing such deposits by the dedicated method or other approved method permitted in this code, consistent with the primary purpose of protecting public deposits;

(G) The process for determining when a default or insolvency has occurred, or is likely to occur, and the actions necessary for the protection, collection, compromise, or settlement of any claim arising in case of default or insolvency;

(H) Requirements for the payment of losses by pooled or dedicated methods; and

(I) Any and all guidelines necessary and proper for the full and complete administration of this article;

(2) Charge and collect any necessary administrative fees, fines, penalties, and service charges in connection with the Public Deposits Program or any agreement, contract, or transaction pursuant to this article;

(3) Execute contracts, agreements, or other instruments for goods and services necessary to

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effectuate this article, including agreements with designated state depositories or any other entity. Selection of these services is not subject to §5A-3-1 *et seq*. of this code; and

(4) Perform all other lawful actions necessary to effectuate the provisions of this article, subject to applicable state and federal law.

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§12-1B-8. Authority to secure public deposits; acceptance of liabilities and duties of designated state depositories.

(a) All designated state depositories are hereby authorized to secure public deposits in accordance with this article and shall be considered to have accepted the liabilities and duties imposed upon it pursuant to this article.

(b) Notwithstanding any provision of this code to the contrary, including, but not limited to, §7-6-2, §8-13-22a, §12-1-4, §12-1-5, and §18-9-6 of this code, a designated state depository securing public deposits in accordance with this article is not required to secure said deposits by another method provided in this code.

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§12-1B-9. Collateral for public deposits.

(a) Designated state depositories shall secure public deposits under this article by the pooled method, the dedicated method or by any other method permitted in this code. Every designated state depository securing public deposits under this article shall deposit with a qualified escrow agent eligible collateral equal to or in excess of the required collateral. Eligible collateral shall be valued as determined by the State Treasurer. Substitutions and withdrawals of eligible collateral may be made as determined by the State Treasurer.

(b) A designated state depository shall meet all collateral requirements under this article if it accepts or retains any public deposit under this article: Provided, That a designated state depository may accept or retain public deposits that occur outside of its set hours of operation and in excess of its required collateral, so long as any such necessary deposit of eligible collateral is made prior to the close of business on the second business day following receipt of the deposit.

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§12-1B-10. Subrogation of the State Treasurer to depositor's rights; payment of sums received from distribution of assets.

Upon payment in full to any designated state depository on any claim presented pursuant to this article, the State Treasurer shall be subrogated to all of such depositor's rights, title, and interest against the depository in default or insolvent and shall share in any distribution of such defaulting or insolvent depository's assets in the same amount as would have been received by the public depositor ratably with other depositors. Any sums received from any such distribution shall be paid to the other designated state depositories against which assessments were made, in proportion to such assessments, net of any proper payment or expense of the State Treasurer in enforcing any such claim.

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§12-1B-11. Deposit of public funds in designated state depositories; authority to make public deposits.

(a) Public deposits made pursuant to this article shall be deposited in a designated state depository.

(b) All public depositors shall make public deposits under their control in designated state depositories, securing such public deposits pursuant to this article: *Provided*, That a public depositor shall provide a designated state depository with at least two business days of advance notice prior to making any large increase in its public deposits that could otherwise result in the depository having an insufficient amount of eligible collateral necessary to secure the public deposits in accordance with the provisions of this article. If the advanced notice is not provided, the designated state depository shall notify the State Treasurer accordingly.

(c) A county, municipality, spending unit, or other political subdivision of the state may not require any pledge of collateral from a designated state depository for their deposits in excess of the requirements of this article.

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§12-1B-12. Liability of public depositors.

When deposits are made in accordance with this article, no official of a public depositor may be personally liable for any loss resulting from the default or insolvency of any designated state depository in the absence of negligence, malfeasance, misfeasance, or nonfeasance.

WV Legislature

§12-1B-13. Reports of designated state depositories.

No later than the 10th day after the end of each reporting period, or when otherwise requested by the State Treasurer, each designated state depository accepting any public deposit under this article shall submit to the State Treasurer an electronic report of such data as required by the Treasurer for the administration of this article.

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§12-1B-14. Inconsistent provisions.

If provisions of this article are inconsistent with the provisions of any other state or local law relating to the pledge of collateral by the state or any county, municipality, or other political subdivision for purposes of securing public deposits in financial institutions, the provisions of this article shall control.

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