

## DEPOSIT OF PUBLIC FUNDS

### Footnotes

This chapter not enacted as a part of this title; transferred from chapter 453 in Code 1993

#### **12C.1 Deposits in general definitions.**

1. All funds held by the following officers or institutions shall be deposited in one or more depositories first approved by the appropriate governing body as indicated: for the treasurer of state, by the executive council; for judicial officers and court employees, by the supreme court; for the county treasurer, recorder, auditor, and sheriff, by the board of supervisors; for the city treasurer or other designated financial officer of a city, by the city council; for the county public hospital or merged area hospital, by the board of hospital trustees; for a memorial hospital, by the memorial hospital commission; for a school corporation, by the board of school directors; for a city utility or combined utility system established under chapter 388, by the utility board; for a library service area established under chapter 256, by the library service area board of trustees; and for an electric power agency as defined in section 28F.2 or 476A.20, by the governing body of the electric power agency. However, the treasurer of state and the treasurer of each political subdivision or the designated financial officer of a city shall invest all funds not needed for current operating expenses in time certificates of deposit in approved depositories pursuant to this chapter or in investments permitted by section 12B.10. The list of public depositories and the amounts severally deposited in the depositories are matters of public record. This subsection does not limit the definition of "public funds" contained in subsection 2. Notwithstanding provisions of this section to the contrary, public funds of a state government deferred compensation plan established by the executive council may also be invested in the investment products authorized under section 509A.12.

2. As used in this chapter unless the context otherwise requires:

*a. "Bank"* means a corporation engaged in the business of banking authorized by law to receive deposits and whose deposits are insured by the bank insurance fund or the savings association insurance fund of the federal deposit insurance corporation and includes any office of a bank. *"Bank"* also means a savings and loan or savings association.

*b. "Credit union"* means a cooperative, nonprofit association incorporated under chapter 533 or the federal Credit Union Act, 12 U.S.C. § 1751, et seq., and that is insured by the national credit union administration and includes an office of a credit union.

*c. "Depository"* means a bank, a savings and loan, or a credit union in which public funds are deposited under this chapter.

*d. "Financial institution"* means a bank or a credit union.

*e. "Public funds"* and *"public deposits"* mean any of the following:

(1) The moneys of the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision. Moneys of the state include moneys which are transmitted to a depository for purposes of completing an electronic financial transaction pursuant to section 159.35.

(2) The moneys of any court or public body noted in subsection 1.

(3) The moneys of a legal or administrative entity created pursuant to chapter 28E.

(4) The moneys of an electric power agency as defined in section 28F.2 or 476A.20.

(5) Federal and state grant moneys of a quasi-public state entity that are placed in a depository pursuant to this chapter.

(6) Moneys placed in a depository for the purpose of completing an electronic financial transaction pursuant to section 8A.222 or 331.427.

*f. "Public officer"* means the person authorized by and acting for a public body to deposit public funds of the public body.

*g. "Savings and loan"* means a corporation authorized to operate under chapter 534 or the federal Home Owner's Loan Act of 1933, 12 U.S.C. § 1461, et seq., and includes a savings and loan association, a savings bank, or any branch of a savings and loan association or savings bank.

*h. "Uninsured public funds"* means any amount of public funds of a public funds depositor on deposit in an account at a financial institution that exceeds the amount of public funds in that account that are insured by the federal deposit insurance corporation or the national credit union administration.

3. A deposit of public funds in a depository pursuant to this chapter shall be secured as follows:

*a.* If a depository is a credit union, then public deposits in the credit union shall be secured pursuant to sections 12C.16 through 12C.19 and sections 12C.23 and 12C.24.

*b.* If a depository is a bank, public deposits in the bank shall be secured pursuant to sections 12C.23A and 12C.24.

4. Ambiguities in the application of this section shall be resolved in favor of preventing the loss of public funds on deposit in a depository.

[C24, 27, § 139, 4319, 5548, 5651, 7404; C31, 35, § 7420-d1; C39, § **7420.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, § 453.1; 81 Acts, ch 148, § 1; 82 Acts, ch 1202, § 1]

83 Acts, ch 97, § 1, 3; 83 Acts, ch 186, § 1014, 10201; 84 Acts, ch 1230, § 5; 85 Acts, ch 194, §2; 89 Acts, ch 39, §12; 92 Acts, ch 1156, § 2022

C93, § 12C.1

93 Acts, ch 48, § 3; 97 Acts, ch 185, §5; 99 Acts, ch 117, §14, 15; 99 Acts, ch 208, § 42, 74; 2001 Acts, ch 158, §4; 2001 Acts, 1st Ex, ch 4, §1, 2, 36; 2002 Acts, ch 1096, §1, 2, 17; 2003 Acts, ch 18, §1; 2003 Acts, ch 48, §1; 2003 Acts, ch 179, §58, 84

### **12C.2 Approval requirements.**

The approval of a financial institution as a depository of public funds for a public body shall be by written resolution or order that shall be entered of record in the minutes of the approving board, and that shall distinctly name each depository approved, and specify the maximum amount that may be kept on deposit in each depository.

[C24, 27, § 139; C31, 35, § 7420-d2; C39, § **7420.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 453.2]

84 Acts, ch 1230, § 6

C93, § 12C.2

2002 Acts, ch 1096, §3, 17

**12C.3** Reserved.

#### **12C.4 Location of depositories.**

Deposits by the treasurer of state shall be in depositories located in this state; by a county officer or county public hospital officer or merged area hospital officer, in depositories located in the county or in an adjoining county within this state; by a memorial hospital treasurer, in a depository located within this state which shall be selected by the memorial hospital treasurer and approved by the memorial hospital commission; by a city treasurer or other city financial officer, in depositories located in the county in which the city is located or in an adjoining county, but if there is no depository in the county in which the city is located or in an adjoining county then in any other depository located in this state which shall be selected as a depository by the city council; by a school treasurer or by a school secretary in a depository within this state which shall be selected by the board of directors or the trustees of the school district; by a township clerk in a depository located within this state which shall be selected by the township clerk and approved by the trustees of the township. However, deposits may be made in depositories outside of Iowa for the purpose of paying principal and interest on bonded indebtedness of any municipality when the deposit is made not more than ten days before the date the principal or interest becomes due. Further, the treasurer of state may maintain an account or accounts outside the state of Iowa for the purpose of providing custodial services for the state and state retirement fund accounts. Deposits made for the purpose of completing an electronic financial transaction pursuant to section 8A.222 or 331.427 may be made in any depository located in this state.

[C24, 27, § 139, 4319, 5548, 5651, 7404; C31, 35, § 7420-d4; C39, § **7420.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 453.4; 82 Acts, ch 1202, § 2]

84 Acts, ch 1230, § 8; 86 Acts, ch 1243, § 31

C93, § 12C.4

2003 Acts, ch 18, §2; 2003 Acts, 1st Ex, ch 2, §35, 209

#### **12C.5 Refusal of deposits procedure.**

If the approved depositories will not accept the deposits under the conditions prescribed or authorized in this chapter, the funds may be deposited, on the same or better terms as were offered to the depositories, in one or more approved depositories conveniently located within the state.

The treasurer of state may invest in any of the investments authorized for the Iowa public employees' retirement system in section 97B.7A except that investment in common stocks shall not be permitted.

[C24, 27, § 5653; C31, 35, § 7420-d5; C39, § **7420.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, § 453.5; 81 Acts, ch 149, § 1]

84 Acts, ch 1230, § 9

C93, § 12C.5

2001 Acts, ch 68, §3, 24

## **12C.6 Interest rate committee notice.**

Public deposits shall be deposited with reasonable promptness in a depository legally designated as depository for the funds. A committee composed of the superintendent of banking, the superintendent of credit unions, the auditor of state or a designee, and the treasurer of state shall meet on or about the first of each month or at other times as the committee may prescribe and by majority action shall establish a minimum rate to be earned on state funds placed in time deposits. State funds invested in depository time certificates of deposit shall draw interest at not less than the rate established, effective on the date of investment. An interest rate established by the committee under this section shall be in effect commencing on the eighth calendar day following the day the rate is established and until a different rate is established and takes effect. The committee shall give advisory notice of an interest rate established under this section. This notice may be given by publication in one or more newspapers, by publication in the Iowa administrative bulletin, by ordinary mail to persons directly affected, by any other method determined by the committee, or by a combination of these. In all cases, the notice shall be published in the Iowa administrative bulletin. The notice shall contain the following words:

"The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens."

The notice shall also provide the name and address of a state official to whom inquiries can be sent. Actions of the committee under this section and section 12C.6A are exempt from chapter 17A.

Public funds invested in depositories' time certificates of deposit by a public body or officer other than the treasurer of state shall draw interest at rates to be determined by the public body or officer and the depository, which rates shall not be less than the minimum rate set under this section for state funds.

[C24, 27, § 140, 4319, 5548, 5651, 7404; C31, 35, § 7420-d6; C39, § **7420.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, § 453.6; 81 Acts, ch 39, § 2, ch 149, § 2]

84 Acts, ch 1230, § 10

C93, § 12C.6

96 Acts, ch 1021, § 1

### **Footnotes**

See § 74A.6 for interest rates on public obligations

## **12C.6A Eligibility for state public funds procedures.**

1. Public funds of the state shall not be deposited in a financial institution which does not demonstrate a commitment to serve the needs of the local community in which it is chartered to do business, including the needs of neighborhoods, rural areas, and small businesses in communities served by the financial institution. These needs include credit services as well as deposit services.

2. In addition to establishing a minimum interest rate for public funds pursuant to section 12C.6, the

committee composed of the superintendent of banking, the superintendent of credit unions, the auditor of state or a designee, and the treasurer of state shall develop a list of financial institutions eligible to accept state public funds. The committee shall require that a financial institution seeking to qualify for the list shall annually provide the committee a written statement that the financial institution has complied with the requirements of this chapter and has a commitment to community reinvestment consistent with the safe and sound operation of a financial institution, unless the financial institution has received a rating of satisfactory or higher pursuant to the federal Community Reinvestment Act, 12 U.S.C. § 2901 et seq., and such rating is certified to the committee by the superintendent of banking. To qualify for the list, a financial institution must demonstrate a continuing commitment to meet the credit needs of the local community in which it is chartered.

3. The committee may require a financial institution to provide public notice inviting the public to submit comments to the financial institution regarding its community lending activities. Each financial institution shall maintain a file open to public inspection which contains public comments received on its community investment activities, and the financial institution's response to those comments. The committee shall adopt procedures for both of the following:

*a.* To receive information relating to a financial institution's commitment to community reinvestment.

*b.* To receive challenges from any person to a financial institution's continued eligibility to receive public funds.

4. At least once a year the committee shall review any challenges that have been filed pursuant to subsection 3. The committee may hold a public hearing to consider the challenge. In considering a challenge, the committee shall review documents filed with federal regulatory authorities pursuant to the Community Reinvestment Act, 12 U.S.C. § 2901 et seq., and regulations adopted pursuant to the Act, as amended to January 1, 1990. In addition, consistent with the confidentiality of financial institution records the committee shall consider other factors including, but not limited to, the following:

*a.* Activities conducted to determine the credit needs of the community.

*b.* Marketing and special credit-related programs to make citizens in the community aware of the credit services offered.

*c.* A description of how services actually provided satisfied the needs described under paragraph "a".

*d.* Practices intended to discourage application for home mortgages, small business loans, small farm loans, community development loans, and, if consumer lending constitutes a substantial majority of a financial institution's business, consumer loans.

*e.* Geographic distribution of credit extensions, credit applications and credit denials.

*f.* Evidence of prohibited discriminatory or other illegal credit practices.

*g.* Participation in local community and rural development and redevelopment projects, and in state and federal business and economic development programs, including investment in an Iowa agricultural industry finance corporation formed under the Iowa agricultural industry finance Act pursuant to chapter 15E.

*h.* Origination or purchase of residential mortgage loans, housing rehabilitation loans, home improvement loans and business or farm loans within the community.

*i.* Ability to meet various community credit needs based on financial condition, size, legal impediments, and local economic conditions.

5. *a.* A person who believes a bank has failed to meet its community reinvestment responsibility may file a complaint with the committee detailing the basis for that belief.

*b.* If any committee member, in the member's discretion, finds that the complaint has merit, the member may order the bank alleged to have failed to meet its community reinvestment responsibility to attend and participate in a meeting with the complainant. The committee member may specify who, at minimum, shall represent the bank at the meeting. At the meeting, or at any other time, the bank may, but is not required to, enter into an agreement with a complainant to correct alleged failings.

*c.* A majority of the committee may order a bank against which a complaint has been filed pursuant to this subsection, to disclose such additional information relating to community reinvestment as required by the order of the majority of the committee.

*d.* This subsection does not preempt any other remedies available under statutory or common law available to the committee, the superintendent of banking, or aggrieved persons to cure violations of this section or chapter 524, or rules adopted pursuant to this section or chapter 524. The committee may conduct a public hearing as provided in subsection 4 based upon the same complaint. An order finding merit in a complaint and ordering a meeting is not an election of remedies.

84 Acts, ch 1230, § 11

C85, § 453.6A

90 Acts, ch 1002, § 1

C93, §12C.6A

96 Acts, ch 1021, §2, 3; 99 Acts, ch 53, §1; 99 Acts, ch 117, §5, 15; 2000 Acts, ch 1154, §1; 2002 Acts, ch 1096, §4, 5, 17

### **12C.7 Interest where credited.**

1. A depository shall not directly or indirectly pay interest to a public officer on a demand deposit of public funds, and a public officer shall not take or receive interest on demand deposits of public funds. This provision does not apply to interest on time certificates of deposit or savings accounts for public funds.

2. Interest or earnings on investments and time deposits made in accordance with the provisions of sections 12.8, 12B.10, 12C.1, and 12C.6 shall be credited to the general fund of the governmental body making the investment or deposit, with the exception of specific funds for which investments are otherwise provided by law, constitutional funds, or when legally diverted to the state sinking fund for public deposits. Funds so excepted shall receive credit for interest or earnings derived from such investments or time deposits made from such funds.

[C31, 35, § 7420-d7; C39, § **7420.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 453.7]

84 Acts, ch 1230, § 12

C93, § 12C.7

95 Acts, ch 25, § 1

### **12C.8 Liability of public officers.**

An officer who is referred to in section 12C.1 is not liable for loss of funds by reason of the insolvency of the depository institution when the funds have been deposited or invested as provided in this chapter.

[C27, § 1090-a20; C31, 35, § 7420-d8; C39, § **7420.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 453.8]

84 Acts, ch 1230, § 13

C93, § 12C.8

### **12C.9 Investment of sinking funds bond proceeds.**

1. The treasurer of state and all other state agencies authorized to invest funds and the treasurer or other designated financial officer of each political subdivision including each school corporation shall invest the proceeds of notes, bonds, refunding bonds, and other evidences of indebtedness, and funds being accumulated for the payment of principal and interest or reserves in investments set out in section 12B.10, subsection 4, paragraphs "a" through "g", section 12B.10, subsection 5, paragraphs "a" through "g", an investment contract, or tax-exempt bonds. The investment shall be as defined and permitted by section 148 of the Internal Revenue Code and applicable regulations under that section. An investment contract or tax-exempt bonds shall be rated within the two highest classifications as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A.

2. Earnings and interest from investments pursuant to subsection 1 shall be used to pay the principal or interest as the principal or interest comes due on the indebtedness or to fund the construction of the project for which the indebtedness was issued, or shall be credited to the capital project fund for which the indebtedness was issued.

[C27, 31, 35, § 12775-b1; C39, § **7420.43**; C46, 50, 54, § 454.35; C58, 62, 66, 71, 73, 75, 77, 79, 81, § 453.9]

84 Acts, ch 1230, § 14; 91 Acts, ch 249, §2; 92 Acts, ch 1156, § 23

C93, § 12C.9

95 Acts, ch 25, § 2

### **12C.10 Investment of funds created by election.**

The governing council or board, who by law have control of any fund created by direct vote of the people, may invest any portion of the fund not currently needed, in investments authorized in section 12B.10. The treasurer of state may invest in any of the investments authorized for the Iowa public employees' retirement system in section 97B.7A except that investment in common stocks shall not be permitted. Interest or earnings on such funds shall be credited as provided in section 12C.7, subsection 2.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, § 453.10]

84 Acts, ch 1230, § 15

C93, § 12C.10

2001 Acts, ch 68, §4, 24

### **12C.11 Investment officer.**

A county, city, county public hospital, merged area hospital, memorial hospital or school corporation governing body may delegate its investment authority, under the provisions of this chapter, to the treasurer or other financial officer of the governmental unit, who shall thereafter be responsible for handling investment transactions until such delegation of authority is revoked.

[C66, 71, 73, 75, 77, 79, 81, § 453.11]

C93, § 12C.11

**12C.12 Service charge by depository.**

A depository may make reasonable service charges with respect to the handling of public funds, but the service charges shall not be greater than the depository customarily requires from other depositors for similar services.

[C66, 71, 73, 75, 77, 79, 81, § 453.12]

84 Acts, ch 1230, § 16

C93, § 12C.12

**12C.13 Deposit not membership.**

Notwithstanding chapter 534, the deposit of public funds in an association defined in section 533.1 or 534.102 does not constitute being a shareholder, stockholder, or owner of a corporation in violation of Article VIII of the Constitution of the State of Iowa or any other provision of law.

84 Acts, ch 1230, § 17

C85, § 453.13

C93, § 12C.13

**12C.14 School bonds and earnings.** Repealed by 95 Acts, ch 25, § 3. See § 12C.9.

**12C.15 Restriction on requiring collateral.**

A local government shall not require a pledge of collateral for that portion of the local government's deposits in a credit union that is covered by insurance of a federal agency or instrumentality.

84 Acts, ch 1230, § 19

C85, § 453.15

92 Acts, ch 1156, § 24

C93, § 12C.15

99 Acts, ch 117, § 6, 15

**12C.16 Security for deposit of public funds.**

1. Before a deposit of public funds is made by a public officer with a credit union in excess of the amount

federally insured, the public officer shall obtain security for the deposit by one or more of the following:

*a.* The credit union may give to the public officer a corporate surety bond of a surety corporation approved by the treasury department of the United States and authorized to do business in this state, which bond shall be in an amount equal to the public funds on deposit at any time. The bond shall be conditioned that the deposit shall be paid promptly on the order of the public officer making the deposit and shall be approved by the officer making the deposit.

*b.* The credit union may deposit, maintain, pledge and assign for the benefit of the public officer in the manner provided in this chapter, securities approved by the public officer, the market value of which is not less than one hundred ten percent of the total deposits of public funds placed by that public officer in the credit union. The securities shall consist of any of the following:

(1) Direct obligations of, or obligations that are insured or fully guaranteed as to principal and interest by, the United States of America or an agency or instrumentality of the United States of America.

(2) Public bonds or obligations of this state or a political subdivision of this state.

(3) Public bonds or obligations of another state or a political subdivision of another state whose bonds are rated within the two highest classifications of prime as established by at least one of the standard rating services approved by the superintendent of banking pursuant to chapter 17A.

(4) To the extent of the guarantee, loans, obligations, or nontransferable letters of credit upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality of the United States of America or the U.S. central credit union, and the rating of the U.S. central credit union remains within the two highest classifications of prime established by at least one of the standard rating services approved by the superintendent of banking by rule pursuant to chapter 17A. The treasurer of state shall adopt rules pursuant to chapter 17A to implement this section.

(5) First lien mortgages which are valued according to practices acceptable to the treasurer of state.

(6) Investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), which is operated in accordance with 17 C.F.R. § 270.2a-7.

Direct obligations of, or obligations that are insured or fully guaranteed as to principal and interest by, the United States of America, which may be used to secure the deposit of public funds under subparagraph (1), include investments in an investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, the portfolio of which is limited to the United States government obligations described in subparagraph (1) and to repurchase agreements fully collateralized by the United States government obligations described in subparagraph (1), if the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

2. If public funds are secured by both the assets of a credit union and a bond of a surety company, the assets and bond shall be held as security for a rateable proportion of the deposit on the basis of the market value of the assets and of the total amount of the surety bonds.

84 Acts, ch 1230, § 20

C85, § 453.16

85 Acts, ch 194, §3; 88 Acts, ch 1090, § 1; 92 Acts, ch 1156, § 2530

C93, § 12C.16

99 Acts, ch 117, §7, 15

### **12C.17 Deposit of securities.**

1. A credit union which receives public funds shall pledge securities owned by it as required by this chapter in one of the following methods:

*a.* The securities shall be deposited with the county, city, or other public officers at the option of the officers.

*b.* The securities shall be deposited pursuant to a bailment agreement with a financial institution having facilities for the safekeeping of securities and doing business in the state. A financial institution which receives securities for safekeeping is liable to the public officer to whom the securities are pledged for any loss suffered by the public officer if the financial institution relinquishes custody of the securities contrary to the provisions of this chapter or the instrument governing the pledge of the securities.

*c.* The securities shall be deposited with the federal reserve bank, the federal home loan bank of Des Moines, Iowa, or the U.S. central credit union pursuant to a bailment agreement or a pledge custody agreement.

*d.* The securities may be deposited by any combination of methods specified in paragraphs "*a*", "*b*", and "*c*".

2. A deposit of securities shall not be made in a facility owned or controlled directly or indirectly by the financial institution which deposits the securities.

3. All deposits of securities, other than deposits of securities with the appropriate public officer, shall have a joint custody receipt taken for the securities with one copy delivered to the public officer and one copy delivered to the credit union. A credit union pledging securities with a public officer may cause the securities to be examined in the officer's office to show the securities are placed with the officer as collateral security and are not transferable except upon the conditions provided in this chapter.

4. Upon written request from the appropriate public officer but not less than monthly, the federal home loan bank of Des Moines, Iowa, or the U.S. central credit union, shall report a description, the par value and the market value of any pledged collateral by a credit union.

84 Acts, ch 1230, § 21

C85, § 453.17

85 Acts, ch 194, §4; 92 Acts, ch 1156, § 3133

C93, § 12C.17

99 Acts, ch 117, §8, 15

### **12C.18 Condition of security.**

The condition of the surety bond or the deposit of securities, instruments, or a joint custody receipt, must be that the credit union will promptly pay to the parties entitled public funds, including any interest on the funds, in its custody upon lawful demand and, when required by law, pay the funds to the public officer who made the deposit.

84 Acts, ch 1230, § 22

C85, § 453.18

92 Acts, ch 1156, § 34

C93, § 12C.18

99 Acts, ch 117, §9, 15

**12C.19 Withdrawals, exchanges of security.**

1. Securities pledged pursuant to this chapter may be withdrawn on application of the pledging depository institution, and as to securities pledged by a credit union upon approval of the public officer to whom the securities are pledged, if the deposit of securities is no longer necessary to comply with this chapter, or withdrawal is required for collection by virtue of maturity or exchange. The depository institution shall replace securities so withdrawn for collection or exchange.

2. In an exchange of deposited securities for new securities, the amount of security on deposit at any time shall not be decreased below that otherwise required by this chapter.

3. In the event of substitution, addition, or exchange of securities, the holder or custodian of the securities shall, on the same day, forward by regular mail to the public officer and the credit union, a receipt specifically describing and identifying both the substituted or additional securities.

4. The public officer which deposits public funds with a credit union shall require, if the market value of the securities deposited with or for the benefit of the officer falls below one hundred ten percent of the deposit liability to the public officer, the deposit of additional security to bring the total market value of the security to one hundred ten percent of the amount of public funds held by the credit union.

84 Acts, ch 1230, § 23

C85, § 453.19

92 Acts, ch 1156, § 35

C93, § 12C.19

99 Acts, ch 117, §10, 15; 2002 Acts, ch 1096, §6, 17; 2003 Acts, ch 44, §6

**12C.20 Public funds reports.**

1. On or before the tenth day of February, May, August, and November of each year, each savings and loan and each out-of-state bank that has one or more branches in the state shall calculate and certify to the superintendent of banking in the form prescribed by the superintendent the amount of public funds on deposit at the savings and loan and at each such branch of the out-of-state bank as of the end of the previous calendar quarter.

2. A bank shall, upon request of the superintendent, certify to the superintendent the amount of public funds on deposit at the bank and at each branch of an out-of-state bank on any day specified by the superintendent in such request.

3. The superintendent may at any time make such investigation as the superintendent deems necessary and appropriate to verify the information provided to the superintendent pursuant to subsections 1 and 2.

4. On or before the twentieth day of February, May, August, and November of each year, the superintendent shall notify the treasurer of state of the amount of collateral required to be pledged as of the end of the previous calendar quarter based upon the certification provided to the superintendent under subsection 1 or 2 and a review by the superintendent of the quarterly call report filed by each bank that is not a savings and loan or an out-of-state bank.

2002 Acts, ch 1096, §7, 17

**12C.21 Required collateral banks.** Repealed by 99 Acts, ch 117, §14, 15.

**12C.22 Required collateral banks.**

1. A bank shall pledge to the treasurer of state the amount of collateral required under subsection 2 by depositing the collateral in restricted accounts at a financial institution that has been designated by the treasurer of state and that is not owned or controlled directly or indirectly by the bank pledging the collateral or any affiliate of the bank as defined in section 524.1101. Each bank shall execute as debtor and deliver to the treasurer of state a security agreement and such other documents, instruments, and agreements in form approved by the treasurer of state as are required to grant to the treasurer of state, as secured party in its capacity as agent for the depositors of all public funds from time to time deposited in the bank, a perfected security interest in the collateral described in the security agreement. The security agreement shall among other provisions contain all of the following provisions:

*a.* A security interest in the collateral is granted as collateral for the obligation of the bank to repay all uninsured public funds deposited in the bank.

*b.* In the event an assessment is paid by a bank to the treasurer of state pursuant to section 12C.23A, the bank is subrogated to the claim of a public funds depositor to the extent the claim is paid from funds paid by the bank.

*c.* The treasurer of state is appointed as agent of the bank to assert the claim on behalf of the bank as subrogee. Any amount recovered by the treasurer by reason of the claim shall be deposited in the state sinking fund for public deposits in banks.

2. The amount of the collateral required to be pledged by a bank shall at all times equal or exceed the total of the amount by which the public funds deposits in the bank exceeds the total capital of the bank. For purposes of this chapter, unless the context otherwise requires, "*total capital of the bank*" means its tier one capital plus both of the following components of tier two capital:

*a.* Qualifying subordinated debt and redeemable preferred stock.

*b.* Cumulative perpetual preferred stock.

3. The amount of collateral pledged by an out-of-state bank that operates a branch in Iowa shall be calculated in accordance with the following formula:

*a.* Total deposits of the bank.

*b.* Total deposits in Iowa branches of the bank.

*c.* The total of paragraph "*b*" divided by the total of paragraph "*a*", in order to establish the deposits of Iowa branches as a percentage of total deposits.

*d.* Total capital of the bank as defined in subsection 2.

*e.* The total of paragraph "*d*" multiplied by the total of paragraph "*c*", in order to establish Iowa branch capital.

*f.* Total public funds deposits in the bank.

*g.* The excess of the total of paragraph "*f*" over the total of paragraph "*e*", if any.

4. The value of the collateral shall be its market value.

5. The treasurer of state shall adopt rules pursuant to chapter 17A to administer this section, including rules to do the following:

*a.* Designate not less than four financial institutions that may be custodians of collateral pledged under this chapter and establish regulations for qualification and compliance by the custodians and remedies and sanctions for noncompliance by the custodians.

*b.* Establish requirements for reporting to the treasurer of state by a financial institution of the amount and value of collateral held by the financial institution as custodian of collateral for the uninsured public funds on deposit in a bank.

*c.* Establish procedures for the valuation of collateral that does not have a readily ascertainable market value.

*d.* Establish procedures for adding collateral, releasing collateral, and substituting different collateral for collateral pledged under this section.

*e.* Establish procedures to determine the amount of the uninsured public funds of each bank or branch of an out-of-state bank as of the date of closing of a closed bank and the amount of the assessment to be made upon each bank.

*f.* Establish additional procedures necessary to administer this chapter and other rules as may be necessary to accomplish the purposes of this chapter.

*g.* Provide forms and procedures for compliance with this chapter, including electronic compliance.

*h.* Establish amounts and procedures for payment of fees to cover the costs of administration of this chapter.

6. The collateral used to secure public deposits shall be in one or more of the following forms acceptable to the treasurer of state:

*a.* Investment securities and shares in which a bank is permitted to invest under section 524.901, subsections 1, 2, and 3.

*b.* Investment securities, as defined in section 524.901, subsection 1, paragraph "*a*", representing general obligations of a state or a political subdivision of a state that is geographically contiguous with the state, provided that such investment securities are rated within the four highest grades according to a reputable rating service or represent unrated issues of equivalent value.

*c.* Investment securities, as defined in section 524.901, subsection 1, paragraph "*a*", representing general obligations of a state or a political subdivision of a state that is not contiguous with the state, provided that such investment securities are rated within the two highest grades according to a reputable rating service.

*d.* Nontransferable letters of credit upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality, including government-sponsored

enterprises of the United States of America.

*e.* Private insurance policies or bonds written by companies approved by the superintendent.

7. A bank may borrow collateral to be pledged under subsection 2 if the collateral is free of any liens, security interests, claims, or encumbrances.

2002 Acts, ch 1096, §8, 17; 2004 Acts, ch 1080, §13, 7

### **12C.23 Payment of losses in a credit union.**

1. The pledging of securities by a credit union pursuant to this chapter constitutes consent by the credit union to the disposition of the securities in accordance with this section.

The acceptance of public funds by a credit union pursuant to this chapter constitutes consent by the credit union to assessments by the treasurer of state in accordance with this chapter.

2. The credit union and the security given for the public funds in its hands are liable for payment if the credit union fails to pay a check, draft, or warrant drawn by the public officer or to account for a check, draft, warrant, order, or certificates of deposit, or any public funds entrusted to it if, in failing to pay, the credit union acts contrary to the terms of an agreement between the credit union and the public body treasurer. The credit union and the security given for the public funds in its hands are also liable for payment if the credit union fails to pay an assessment by the treasurer of state when the assessment is due.

3. If a credit union is closed by its primary regulatory officials, the public body with deposits in the credit union may sell the collateral to pay for any loss of principal and accrued interest.

*a.* In cooperation with the responsible regulatory officials for the credit union, the public body shall validate the amount of public funds on deposit at the defaulting credit union and the amount of deposit insurance applicable to the deposits.

*b.* The loss to public depositors shall be satisfied, first through any applicable deposit insurance and then through the sale of securities pledged by the defaulting credit union, and then the assets of the defaulting credit union. The priority of claims are those established pursuant to section 533.22, subsection 1, paragraph "b". To the extent permitted by federal law, in the distribution of an insolvent federally chartered credit union's assets, the order of payment of liabilities if its assets are insufficient to pay in full all its liabilities for which claims are made shall be in the same order as for the equivalent type of state chartered credit union as provided in section 533.22, subsection 1, paragraph "b".

*c.* The claim of a public depositor for purposes of this section shall be the amount of the depositor's deposits plus interest to the date the funds are distributed to the public depositor at the rate the credit union agreed to pay on the funds reduced by the portion of the funds which is insured by federal deposit insurance.

*d.* If the loss to public funds is not covered by insurance and the proceeds of the failed credit union's assets which are liquidated within thirty days of the closing of the credit union and pledged collateral, the treasurer shall provide coverage of the remaining loss from the state sinking fund for public deposits in credit unions. If the funds are inadequate to cover the entire loss, then the treasurer shall make an assessment against other credit unions who hold public funds. The assessment shall be determined by multiplying the total amount of the remaining loss to public depositors by a percentage that represents the average of public funds deposits held by all credit unions during the preceding twelve-month period ending on the last day of the month immediately preceding the month the credit union was closed. Each credit union shall pay its assessment to the treasurer within three business days after it receives notice of assessment. If a credit union fails to pay its assessment when due, the treasurer of state shall initiate a lawsuit to collect the assessment. If a credit union

is found to have failed to pay the assessment as required by this paragraph, the court shall order it to pay the assessment, court costs, reasonable attorney's fees based upon the amount of time the attorney general's office spent preparing and bringing the action, and reasonable expenses incurred by the treasurer of state's office. Idle balances in the fund are to be invested by the treasurer with earnings credited to the fund. Fees paid by credit unions for administration of this chapter will be credited to the fund and the treasurer may deduct actual costs of administration from the fund.

*e.* Any amount realized from the sale of collateral pursuant to paragraph "*d*", in excess of the amount of a credit union's assessment, shall continue to be held by the treasurer, in the same interest bearing investments available for public funds, as collateral until that credit union provides substitute collateral or is otherwise entitled to its release.

85 Acts, ch 194, §6

CS85, § 453.23

92 Acts, ch 1156, § 3740

C93, § 12C.23

94 Acts, ch 1023, §3; 99 Acts, ch 117, §11, 15; 99 Acts, ch 208, §43, 74

### **12C.23A Payment of losses in a bank.**

1. The acceptance of public funds by a bank pursuant to this chapter constitutes all of the following:

*a.* Agreement by the bank to pledge collateral as required by section 12C.22.

*b.* Consent by the bank to the disposition of the collateral in accordance with this section.

*c.* Consent by the bank to assessments by the treasurer of state in accordance with this chapter.

*d.* Agreement by the bank to provide accurate information and to otherwise comply with the requirements of this chapter.

2. A bank is liable for payment if the bank fails to pay a check, draft, or warrant drawn by a public funds depositor or to account for a check, draft, warrant, order, or certificate of deposit, or any public funds entrusted to the bank if, in failing to pay, the bank acts contrary to the terms of an agreement between the bank and the public funds depositor. The bank is also liable to the treasurer of state for payment if the bank fails to pay an assessment by the treasurer of state under subsection 3 when the assessment is due.

3. If a bank is closed by its primary state or federal regulator, each public funds depositor with deposits in the bank shall notify the treasurer of state of the amount of any claim within thirty days of the closing. The treasurer of state shall implement the following procedures:

*a.* In cooperation with the responsible regulatory officials for the closed bank, the treasurer shall validate the amount of public funds on deposit at the closed bank and the amount of deposit insurance applicable to the deposits.

*b.* Any loss to a public funds depositor shall be satisfied first by any federal deposit insurance, then by the sale or other disposition of collateral pledged by the closed bank, then from the assets of the closed bank. To the extent permitted by federal law, the priority of claims are those established pursuant to section 524.1312, subsection 2. To the extent permitted by federal law, in the distribution of an insolvent federally chartered

bank's assets, the order of payment of liabilities, if its assets are insufficient to pay in full all its liabilities for which claims are made, shall be in the same order as for a state bank as provided in section 524.1312, subsection 2.

*c.* The claim of a public funds depositor for purposes of this section shall be the amount of the depositor's public funds deposits plus interest to the date the funds are distributed to the public funds depositor at the rate the bank agreed to pay on the public funds reduced by the portion of the public funds that is insured by federal deposit insurance.

*d.* If the loss of public funds is not covered by federal deposit insurance and the proceeds of the closed bank's assets that are liquidated within thirty days of the closing of the bank are not sufficient to cover the loss, then any further payments to cover the loss will come from the state sinking fund for public deposits in banks. If the balance in that sinking fund is inadequate to pay the entire loss, then the treasurer shall obtain the additional amount needed by making an assessment against other banks whose public funds deposits exceed federal deposit insurance coverage. A bank's assessment shall be determined by multiplying the total amount of the remaining loss to all public depositors in the closed bank by a percentage that represents the assessed bank's proportional share of the total of uninsured public funds deposits held by all banks and all branches of out-of-state banks, based upon the average of the uninsured public funds of the assessed bank or branch of an out-of-state bank as of the end of the four calendar quarters prior to the date of closing of the closed bank and the average of the uninsured public funds in all banks and branches of out-of-state banks as of the end of the four calendar quarters prior to the date of closing of the closed bank, excluding the amount of uninsured public funds held by the closed bank at the end of the four calendar quarters. Each bank shall pay its assessment to the treasurer of state within three business days after it receives notice of assessment.

*e.* If a bank fails to pay its assessment when due, the treasurer of state shall make additional assessments as may be necessary against other banks that hold uninsured public funds to satisfy any unpaid assessment. Any additional assessments shall be determined, collected, and satisfied in the same manner as the first assessment except that in calculating the amount of each such additional assessment, the amount of uninsured public funds held by the bank that fails to pay the assessment shall not be counted.

*f.* If a bank fails to pay its assessment when due, the treasurer of state shall notify the superintendent or the comptroller of the currency, as applicable, of the failure to pay the assessment. If the bank that has failed to pay the assessment is a nationally chartered financial institution, the superintendent shall immediately notify the bank's primary federal regulator. If the assessment is not paid within thirty days after the bank received the notice of assessment, the treasurer of state shall initiate a lawsuit to collect the amount of the assessment. If a bank is found to have failed to pay the assessment as required by this subsection and is ordered to pay the assessment, the court shall also order that the bank pay court costs and reasonable attorney fees based on the amount of time the attorney general's office spent preparing and bringing the action, and reasonable expenses incurred by the treasurer of state.

*g.* Following collection of the assessments, the treasurer of state shall distribute funds to the public depositors of the closed bank according to their validated claims unless a public depositor requests in writing that the claims of other public depositors be paid prior to payment to the public depositor making the request. By receiving payment under this section, a public depositor shall be deemed to have assigned to the treasurer of state any claim the public depositor may have against the closed bank by reason of the deposit of its public funds and all rights the public depositor may have in funds that subsequently become available to depositors of the closed bank.

99 Acts, ch 117, §12, 15; 99 Acts, ch 208, §44, 45, 74; 2002 Acts, ch 1096, §9, 17; 2003 Acts, ch 44, §7; 2004 Acts, ch 1080, §47

## **12C.24 Liability.**

When public deposits are made in accordance with this chapter in a financial institution that is eligible to accept public funds deposits at the time a deposit of public funds is made, a public body depositing public funds, and any person that is an agent, employee, officer, or board member of the public funds depositor, is exempt from liability for any loss resulting from the loss of public funds in the absence of negligence, malfeasance, misfeasance, or nonfeasance on the part of the public body or such person.

85 Acts, ch 194, §7

CS85, § 453.24

C93, § 12C.24

2002 Acts, ch 1096, §10, 17

### **12C.25 State sinking funds created.**

1. There are created in the treasurer of state's office the following funds:

- a. A state sinking fund for public deposits in banks.
- b. A state sinking fund for public deposits in credit unions.

2. Idle balances in the state sinking fund for public deposits in banks shall be invested by the treasurer of state with earnings credited to that fund. Fees paid by banks for administration of this chapter shall be credited to the state sinking fund for public deposits in banks and the treasurer of state may deduct actual costs of administration from that fund.

3. The funds shall be used to receive and disburse moneys pursuant to section 12C.23, subsection 3, paragraph "d" and section 12C.23A, subsection 3, paragraph "d".

85 Acts, ch 194, §8

CS85, § 453.25

86 Acts, ch 1237, § 28

C93, § 12C.25

99 Acts, ch 117, §13, 15; 2000 Acts, ch 1154, §2; 2002 Acts, ch 1096, §11, 17

### **12C.26 Refund from sinking funds.**

1. If at the end of any calendar year the amount in the sinking fund exceeds three million one hundred thousand dollars, then to the extent the amount in the sinking fund exceeds three million dollars, the treasurer shall, on or before January 31 of the following year, refund to each bank that paid an assessment after the year 1999 to the sinking fund resulting from the closing of a bank, its pro rata share of the unreimbursed portion of the total assessment paid by all banks. If assessments remain unreimbursed by reason of the closing of more than one bank, the reimbursements shall be made to the banks that paid assessments by reason of the bank which closed first until those banks are reimbursed in full, and then to the banks that paid assessments by reason of the bank which closed next. Such a refund shall not be made to a bank if the refund would exceed the amount of previous assessments paid by the bank.

2. Upon recovery of a loss of public funds due to a closed credit union, the treasurer of state may refund all or

a portion of the recovered amount to the credit unions that paid an assessment under this chapter as a result of the closing of that credit union.

2000 Acts, ch 1232, §22, 40; 2002 Acts, ch 1096, §12, 17

**12C.27 Failure to maintain required collateral.**

If the treasurer of state determines that a bank fails to comply with section 12C.22, subsections 2 and 3, the treasurer of state may restrict that bank from accepting uninsured public funds and shall notify the office of thrift supervision, the office of the comptroller of the currency, or the superintendent as applicable, who may take such action against the bank, its board of directors and officers as permitted by law.

2002 Acts, ch 1096, §13, 17; 2003 Acts, ch 179, §93

**12C.28 Electronic reporting.**

Any notice, information, report, or other communication required by this chapter shall be deemed effective and in compliance with this chapter if sent or given electronically as provided in rules adopted pursuant to chapter 17A by the superintendent or the treasurer of state.

2002 Acts, ch 1096, §14, 17