

CHAPTER 117

DEPOSIT OF PUBLIC FUNDS — DEPOSITORY STANDARDS

H.F. 571

AN ACT relating to the deposit of public funds and the conditions which must be met by a savings and loan association or savings bank to be eligible to receive such deposits, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 12C.1, subsection 2, paragraph c, Code 1999, is amended to read as follows:

c. “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 of the federal deposit insurance corporation and includes any office of a bank. “Bank” also means a savings and loan or savings association.

Sec. 2. Section 12C.1, subsection 2, paragraph f, Code 1999, is amended to read as follows:

f. “Financial institution” means a bank, ~~savings and loan~~, or a credit union.

Sec. 3. Section 12C.1, subsection 3, paragraph a, Code 1999, is amended to read as follows:

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

Sec. 4. Section 12C.1, subsection 3, paragraph b, Code 1999, is amended to read as follows:

b. If a depository is a bank, ~~then~~ public deposits in the bank shall be secured pursuant to sections ~~12C.21~~, 12C.23, and 12C.24.*

Sec. 5. Section 12C.6A, subsection 5, paragraphs a, b, and c, Code 1999, are amended to read as follows:

a. A person who believes a bank, ~~savings and loan association, or savings 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, ~~savings and loan association, or savings 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 financial institution at the meeting. At the meeting, or at any other time, the ~~financial institution 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, ~~savings and loan association, or savings 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.

Sec. 6. Section 12C.15, Code 1999, is amended to read as follows:

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 ~~savings and loan or~~ credit union that is covered by insurance of a federal agency or instrumentality.

* See chapter 208, §42 herein

Sec. 7. Section 12C.16, Code 1999, is amended to read as follows:

12C.16 SECURITY FOR DEPOSIT OF PUBLIC FUNDS.

1. Before a deposit of public funds is made by a public officer with a ~~savings and loan or 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 ~~savings and loan or 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 ~~savings and loan or 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 ~~savings and loan or 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 ~~savings and loan or 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.

Sec. 8. Section 12C.17, Code 1999, is amended to read as follows:

12C.17 DEPOSIT OF SECURITIES.

1. A ~~savings and loan or 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 of ~~Chicago, Illinois~~, 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 ~~savings and loan or~~ credit union. A ~~savings and loan or~~ 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 ~~quarterly, a savings and loan or credit union~~ 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 ~~and the total deposits of public funds of that officer in the savings and loan or by a~~ credit union.

Sec. 9. Section 12C.18, Code 1999, is amended to read as follows:

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 ~~savings and loan or~~ 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.

Sec. 10. Section 12C.19, subsections 3 and 4, Code 1999, are amended to read as follows:

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 ~~certified mail, return receipt requested, regular mail~~ to the public officer and the ~~savings and loan or~~ credit union, a receipt specifically describing and identifying both the substituted or additional securities ~~and those released and returned to the savings and loan or credit union~~.

4. The public officer which deposits public funds with a ~~savings and loan or~~ 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 ~~savings and loan or~~ credit union.

Sec. 11. Section 12C.23, Code 1999, is amended to read as follows:

12C.23 PAYMENT OF LOSSES IN A CREDIT UNION.

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

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

2. The depository credit union and the security given for the public funds in its hands are liable for payment if the depository 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 depository credit union acts contrary to the terms of an agreement between the depository credit union and the public body treasurer. The depository credit union and the security given for the public funds in its hands are also liable for payment if the depository credit union fails to pay an assessment by the treasurer of state when the assessment is due.

3. If a depository credit union is closed by its primary regulatory officials, the public body with deposits in the depository shall notify the treasurer of state of the amount of any claim within thirty days of the closing credit union may sell the collateral to pay for any loss of principal and accrued interest. The treasurer of state shall implement the following procedures:

a. In cooperation with the responsible regulatory officials for the depository credit union, the treasurer public body shall validate the amount of public funds on deposit at the defaulting depository 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 depository credit union, and then the assets of the defaulting depository credit union. The priority of claims are those established pursuant to ~~section 524.1312, subsection 2, section 533.22, subsection 1, paragraph "b", or section 534.517~~. To the extent permitted by federal law, in the distribution of an insolvent federally chartered depository's 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 depository credit union as provided in ~~section 524.1312, subsection 2, section 533.22, subsection 1, paragraph "b", or section 534.517~~.

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 ~~depository institution~~ 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 depository's credit union's assets which are liquidated within thirty days of the closing of the depository credit union and pledged collateral, the treasurer shall provide coverage of the remaining loss as follows:

(1) ~~If the loss was incurred in a bank, 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 deposit insurance coverage. A bank's assessment shall be determined by multiplying the total amount of the remaining loss to all public depositors by a percentage that represents that bank's proportional share of the average of uninsured public funds deposits held by all banks as of the reporting date under section 12C.21 immediately preceding the date the depository was closed. Each bank shall pay its assessment to the treasurer within three business days after it receives notice of assessment. If a bank fails to pay its assessment when due, the treasurer shall satisfy the assessment by selling securities pledged by that bank. If the securities pledged by that bank are inadequate to pay the assessment, the treasurer of state shall make additional assessments as may be necessary against other banks which 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. If a bank fails to pay its assessment when due, the treasurer of state shall initiate a lawsuit to collect the assessment. If a bank is found to have failed to pay the assessment as required by this subparagraph, the court shall order it to pay the assessment, court costs, reasonable attorney's 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. Idle balances in the fund shall be invested by the treasurer with earnings credited to the fund. Fees paid by banks for administration of this chapter shall be credited to the fund and the treasurer may deduct actual costs of administration from the fund.

~~(2) If the loss was incurred in a credit union, then any further payments to cover the loss will come 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 depository 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 subparagraph,* 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.~~

~~(3) If the loss was incurred in a savings and loan or a savings bank, then any further payments to cover the loss will come from the state sinking fund for public deposits in savings and loan associations and savings banks. If the funds are inadequate to cover the entire loss, then the treasurer shall make an assessment against other savings and loans and savings banks 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 savings and loans and savings banks during the preceding twelve month period ending on the last day of the month immediately preceding the month the depository was closed. Each savings and loan and savings bank shall pay its assessment to the treasurer within three business days after it receives notice of assessment. If a savings and loan or savings bank fails to pay its assessment when due, the treasurer shall initiate a lawsuit to collect the assessment. If a savings and loan association or a savings bank is found to have failed to pay the assessment as required by this subparagraph, the court shall order it to pay the assessment, court costs of the action, 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.~~

e. Any amount realized from the sale of collateral pursuant to paragraph "d", subparagraphs (1) and (2) in excess of the amount of a depository's 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 depository credit union provides substitute collateral or is otherwise entitled to its release.

~~f. Following collection of the assessments, the state treasurer shall distribute funds to the public depositors of the failed depository according to their validated claims. If the assets available are less than the total deposits, the treasurer shall prorate the claims. A public depositor receiving payment under this section shall assign to the treasurer any interest the public depositor may have in funds that subsequently become available to depositors of the defaulting depository.~~

Sec. 12. NEW SECTION. 12C.23A PAYMENT OF LOSSES IN A BANK.

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

* See chapter 208, §43 herein

2. The bank is liable for payment if the bank 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 bank acts contrary to the terms of an agreement between the bank and the public body treasurer. The bank is also liable for payment if the bank fails to pay an assessment by the treasurer of state when the assessment is due.

3. If a bank is closed by its primary regulatory officials, the public body 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 bank, the treasurer shall validate the amount of public funds on deposit at the defaulting bank and the amount of deposit insurance applicable to the deposits.

b. The recovery of any loss to public depositors shall begin with applicable deposit insurance. The priority of claims are those established pursuant to section 524.1312, subsection 2, section 533.22, subsection 1, paragraph "b", or section 534.517.* 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-chartered bank as provided in section 524.1312, subsection 2.

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 bank 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 bank's assets which 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 deposit insurance coverage. A bank's assessment shall be determined by multiplying the total amount of the remaining loss to all public depositors by a percentage that represents that bank's proportional share of the average of uninsured public funds deposits held by all banks. Each bank shall pay its assessment to the treasurer within three business days after it receives notice of assessment. If a bank fails to pay its assessment when due, the treasurer of state shall initiate a lawsuit to collect the assessment. If a bank is found to have failed to pay the assessment as required by this subparagraph, the court shall order it to pay the assessment, court costs, 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. Idle balances in the fund shall be invested by the treasurer with earnings credited to the fund. Fees paid by banks for administration of this chapter shall be credited to the fund and the treasurer may deduct actual costs of administration from the fund.**

e. Following collection of the assessments, the state treasurer shall distribute funds to the public depositors of the failed bank according to their validated claims. If the assets available are less than the total deposits, the treasurer shall prorate the claims. A public depositor receiving payment under this section shall assign to the treasurer any interest the public depositor may have in funds that subsequently become available to depositors of the defaulting bank.

Sec. 13. Section 12C.25, subsection 3, Code 1999, is amended by striking the subsection.

Sec. 14. Section 12C.21, Code 1999, is repealed.

* See chapter 208, §44 herein

** See chapter 208, §45 herein

Sec. 15. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 11, 1999

CHAPTER 118
DUST CONTROL ON SECONDARY ROADS --
PRIMARY ROAD FUND EXPENDITURE

H.F. 634

AN ACT relating to expenditure of moneys from the primary road fund for dust control on certain roads.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 313.4, subsection 1, Code 1999, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The department may expend moneys from the fund for dust control on a secondary road when there is a notable increase in traffic on the secondary road due to closure of a road by the department for purposes of establishing, constructing, or maintaining a primary road.

Approved May 11, 1999

CHAPTER 119
LOESS HILLS DEVELOPMENT AND CONSERVATION

H.F. 218

AN ACT creating a loess hills preservation and development alliance, providing for its responsibilities, and providing for other properly related matters, and providing an applicability date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 161D.1, subsection 4, Code 1999, is amended to read as follows:

4. This ~~section~~ chapter is not intended to affect the authority of the department of natural resources in its acquisition, development, and management of public lands within the counties represented by the authority.

Sec. 2. Section 161D.2, Code 1999, is amended to read as follows:

161D.2 LOESS HILLS DEVELOPMENT AND CONSERVATION FUND.

A loess hills development and conservation fund is created in the state treasury, ~~to~~. The fund shall include a hungry canyons account and a loess hills alliance account which shall