

3. Strike section 9H.2, subsection 4, as amended by this Act for publication in the 2005 Code. The Code editor shall internally renumber the section and correct internal references as necessary.

Sec. 11. RETROACTIVE APPLICABILITY. This Act applies retroactively to January 1, 2002.

Sec. 12. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 9, 2002

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## CHAPTER 1096

### DEPOSIT OF PUBLIC FUNDS — UNINSURED FUNDS — REQUIRED COLLATERAL

*H.F. 681*

**AN ACT** requiring the pledging of collateral in relation to the deposit of uninsured public funds, making related changes, making penalties applicable, and providing for applicability.

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

Section 1. Section 12C.1, subsection 2, paragraph c, Code Supplement 2001, 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 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.

Sec. 2. Section 12C.1, subsection 2, Code Supplement 2001, is amended by adding the following new paragraphs:

NEW PARAGRAPH. g. “Public officer” means the person authorized by and acting for a public body to deposit public funds of the public body.

NEW PARAGRAPH. 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.

Sec. 3. Section 12C.2, Code 2001, is amended to read as follows:

#### 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 which that shall be entered of record in the minutes of the approving board, and which that shall distinctly name each depository approved, and specify the maximum amount which that may be kept on deposit in each depository.

Sec. 4. Section 12C.6A, subsection 2, Code 2001, is amended to read as follows:

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.

Sec. 5. Section 12C.6A, subsection 3, paragraph b, Code 2001, is amended to read as follows:

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

Sec. 6. Section 12C.19, subsection 1, Code 2001, is amended to read as follows:

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 is required for collection by virtue of its maturity or for exchange. The depository institution shall replace securities so withdrawn for collection or exchange.

Sec. 7. NEW SECTION. 12C.20 PUBLIC FUND 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.

Sec. 8. NEW SECTION. 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. The security interest in the collateral is also granted as collateral security for the obligation of the bank to repay the uninsured public funds deposited in a closed bank by paying an assessment to the treasurer of state to the extent required under section 12C.23A, subsection 3.

c. In the event an assessment is paid by a bank to the treasurer of state pursuant to section 12C.23A, or in the event that collateral pledged by the bank is liquidated pursuant to section 12C.23A, subsection 3, paragraph "e", and the proceeds are used to pay the assessment, 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 or proceeds of collateral pledged by the bank are used to pay the assessment.

d. 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 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.

Sec. 9. Section 12C.23A, Code 2001, is amended to read as follows:

12C.23A PAYMENT OF LOSSES IN A BANK.

1. The acceptance of public funds by a bank pursuant to this chapter constitutes ~~consent~~ 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. ~~The A~~ bank is liable for payment if the bank fails to pay a check, draft, or warrant drawn by ~~the public officer~~ a public funds depositor or to account for a check, draft, warrant, order, or ~~certificates~~ certificate of deposit, or any public funds entrusted to it ~~the bank~~ if, in failing to pay, the bank acts contrary to the terms of an agreement between the bank and the public ~~body treasurer~~ 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 ~~regulatory officials~~ state or federal regulator, ~~the public body~~ 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 ~~defaulting~~ closed bank and the amount of deposit insurance applicable to the deposits.

b. ~~The recovery of any~~ Any loss to public a public funds depositors depositor shall ~~begin with applicable~~ 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.~~ The 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-chartered~~ 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 which ~~that~~ is insured by federal deposit insurance.

d. If the loss ~~to~~ of public funds is not covered by federal deposit insurance and the proceeds of the ~~failed closed~~ bank's assets which ~~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 ~~that 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 held by the closed bank. 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 ~~initiate a lawsuit to collect~~ satisfy the assessment by liquidating collateral pledged by the bank upon such notice as is required by chapter 554. If the collateral pledged by the bank is inadequate to pay the assessment, 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 the treasurer of state liquidates collateral pledged by a bank, the bank shall within three business days following receipt of notice from the treasurer of state deposit additional collateral to provide the collateral required under section 12C.22.

g. If a bank fails to pay its assessment when due and the proceeds from liquidation of the collateral pledged by the bank are not sufficient to pay the assessment against the bank, 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 paragraph, subsection and is ordered to pay the assessment, the court shall also order it to ~~that the bank~~ pay the assessment, 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. ~~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. h. Following collection of the assessments, the state treasurer of state shall distribute funds to the public depositors of the ~~failed 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. If the assets available are less

than the total deposits, the treasurer shall prorate the claims. A public depositor ~~By receiving payment under this section, a public depositor shall assign~~ be deemed to have assigned to the treasurer of state any ~~interest 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 ~~defaulting~~ closed bank.

Sec. 10. Section 12C.24, Code 2001, is amended to read as follows:

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 or its agents, employees, officers, and board members are, ~~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 a depository public funds in the absence of negligence, malfeasance, misfeasance, or nonfeasance on the part of the official public body or such person. If the treasurer of state sells a depository's collateral securities, the depository shall deposit additional collateral to meet required collateral levels.~~

~~In making an assessment against depositories holding public funds as a result of a failure, the treasurer of state is exempt from any liability for loss, damage or expense to a depository which has accepted public funds.~~

Sec. 11. Section 12C.25, Code 2001, is amended by adding the following new unnumbered paragraph after subsection 2:

NEW UNNUMBERED PARAGRAPH. 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.

Sec. 12. Section 12C.26, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

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.

Sec. 13. NEW SECTION. 12C.27 FAILURE TO MAINTAIN REQUIRED COLLATERAL.

If a bank fails to maintain the amount of collateral subject to a perfected security interest held by the treasurer of state required to comply with section 12C.22, subsections 2 and 3, the treasurer of state shall notify the bank of the amount of additional collateral required. If the bank fails to provide the additional required collateral within ten days following the date the notice is given, the treasurer 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.

Sec. 14. NEW SECTION. 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.

Sec. 15. Section 524.213, Code 2001, is amended to read as follows:

524.213 DUTIES AND POWERS OF SUPERINTENDENT.

The superintendent shall have general control, supervision and regulation of all state banks and shall be charged with the administration and execution of the laws of this state relating to banks and banking and with such other duties and responsibilities as are imposed upon the superintendent by the laws of this state. The superintendent shall have power to adopt and promulgate such rules and regulations as ~~in the superintendent's opinion will be necessary to properly and effectively carry out and enforce, properly and effectively,~~ the provisions of this chapter and chapter 12C applicable to banks.

Sec. 16. Section 524.223, Code 2001, is amended to read as follows:

524.223 POWER OF SUPERINTENDENT TO ISSUE ORDERS.

1. Whenever it shall appear to the superintendent that a state bank is engaging or has engaged, or the superintendent has reasonable cause to believe that the state bank is about to engage, in an unsafe or unsound practice in conducting the business of such state bank, or is violating or has violated, or the superintendent has reasonable cause to believe that the state bank is about to violate, any provision of this chapter or of any regulation adopted pursuant to this chapter, or any condition imposed in writing by the superintendent in connection with the approval of any matter required by this chapter, or any written agreement entered into with the superintendent, or any provision of chapter 12C or any rules adopted pursuant to chapter 12C, the superintendent may issue and serve upon the state bank a notice containing a statement of the facts constituting the alleged violation or violations, or the unsafe or unsound practice or practices, and fixing a time and place at which a hearing will be held to determine whether an order to cease and desist ~~therefrom~~ should be issued to the state bank.

2. If the state bank fails to appear at the hearing it shall be deemed to have consented to the issuance of a cease and desist order. In the event of such consent, or if upon the record made at such hearing, the superintendent shall find that any violation or unsafe or unsound practice specified in the notice has been established, the superintendent may issue and serve upon the bank an order to cease and desist from any such violation or practice. Such order may require the state bank and its directors, officers and employees to cease and desist from any such violation or practice and, further, to take affirmative action to correct the conditions resulting from any such violation or practice. In addition, if the violation or practice involves a failure to comply with chapter 12C or any rules adopted pursuant to chapter 12C, the superintendent may recommend to the committee established under section 12C.6 that the bank be removed from the list of financial institutions eligible to accept public funds under section 12C.6A and may require that during the current calendar quarter and up to the next succeeding eight calendar quarters that the bank do any one or more of the following:

- a. Not accept public funds deposits.
- b. Return to the depositors some or all uninsured public funds held in demand deposits and, when deposit instruments or agreements mature, return to the depositors some or all deposits representing proceeds of such instruments or agreements.
- c. Pledge collateral to the treasurer of state having a value at all times up to one hundred ten percent of the public funds held by the bank.
- d. Comply with such other requirements as the superintendent may impose.

3. Any order issued pursuant to this section shall become effective upon service ~~thereof of the order~~ on the state bank and shall remain effective except to such extent that it is stayed, modified, terminated, or set aside by action of the superintendent or of the district court of the county in which the state bank has its principal place of business.

4. The superintendent may apply to the district court of the county in which the state bank

has its principal place of business for the enforcement of any order pursuant to this section and such court shall have jurisdiction and power to order and require compliance therewith.

Sec. 17. EFFECTIVE DATE AND APPLICABILITY. This Act takes effect on July 1, 2002, with the following exceptions:

1. Certification to the superintendent under section 12C.20, subsection 1, shall not be required until January 31, 2003.
2. Notification by the superintendent to the treasurer of state under section 12C.20, subsection 4, shall not be required until April 30, 2003.
3. The pledging of collateral to the treasurer of state pursuant to section 12C.22 shall not be required until July 1, 2003.

Approved April 9, 2002

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## CHAPTER 1097

### ELECTRIC TRANSMISSION LINES — EXTENSIONS OF FRANCHISES

*H.F. 2341*

**AN ACT** relating to electric transmission lines.

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

Section 1. Section 478.13, Code 2001, is amended to read as follows:

478.13 EXTENSION OF FRANCHISE — PUBLIC NOTICE.

1. Any person, firm, or corporation owning a franchise granted under this chapter or previously existing law, desiring to acquire extensions of such franchise, may petition the utilities board in the manner provided for the granting of a franchise and the proceeding shall be conducted in the same manner as an original application, including the assessing of costs provided by section 478.4 for an extension of the franchise. The board shall adopt rules governing extension applications and proceedings with the intent that the extension applications and proceedings are less extensive than original applications and proceedings. Assessment of costs shall be as provided in section 478.4.

2. If the extension of franchise is sought for all lines in a given county or counties, the published notice need not contain a general description of the lands and highways traversed by the lines, but in lieu of containing such description the petitioner may offer to provide to any interested party, free of charge and within ten working days, a current, accurate map showing the location of the lines for which the franchise extension is sought. The public notice shall advise the citizens of the county or counties affected of the availability of such map. If this alternate procedure is not followed the publication of the description of the lands and highways traversed by the lines shall be done in the manner as in an original application for franchise.

3. ~~In any event an~~ An extension under this section shall be granted only for a valid, existing franchise, and the lands, roads, or streams covered by the franchise over, through, or upon which electric transmission lines have in fact been erected or constructed and are in use or operation at the time of the application for the extension of the franchise. ~~Such petition~~

4. The application for the extension of the franchise shall be accompanied by the written consent of the applicant that the provisions of all laws relating to public utilities, franchises, and transmission lines, or to the regulation, supervision, or control thereof which are then in