

## LEGISLATIVE BILL 66

Approved by the Governor March 31, 2021

Introduced by Williams, 36.

A BILL FOR AN ACT relating to the Public Funds Deposit Security Act; to amend sections 77-2391, 77-2393, 77-23,105, and 77-23,106, Reissue Revised Statutes of Nebraska, and sections 77-2394, 77-2395, 77-2397, 77-2399, 77-23,100, 77-23,101, and 77-23,102, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to deposits, bonds, custodial officials, and pooled collateral; to harmonize provisions; to repeal the original sections; and to declare an emergency.  
Be it enacted by the people of the State of Nebraska,

Section 1. Section 77-2391, Reissue Revised Statutes of Nebraska, is amended to read:

77-2391 (1) Securities pledged or securities in which a security interest has been granted pursuant to section 77-2389 shall be delivered to and held by a federal reserve bank or by a branch of a federal reserve bank, a federal home loan bank, or another responsible bank, capital stock financial institution, or qualifying mutual financial institution, including a bank, capital stock financial institution, or qualifying mutual financial institution chartered by a foreign state agency as defined in subdivision (13) of section 8-101.03, or trust company, other than the pledgor or the bank, capital stock financial institution, or qualifying mutual financial institution granting the security interest, as designated by the governing authority, with appropriate joint custody and the pledge agreement or security interest as described in subsection (2) of this section, in a form approved by the governing authority.

(2) The delivery by the bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository to the custodial official of a written receipt or acknowledgment from a federal reserve bank or branch of a federal reserve bank, a federal home loan bank, or another bank, capital stock financial institution, or qualifying mutual financial institution, including a bank, capital stock financial institution, or qualifying mutual financial institution chartered by a foreign state agency as defined in subdivision (13) of section 8-101.03, or trust company, other than the bank, capital stock financial institution, or qualifying mutual financial institution granting the security interest, that includes the title of such custodial official, describes the securities identified on the books or records of the depository, and provides that the securities or the proceeds of the securities will be delivered only upon the surrender of the written receipt or the acknowledgment duly executed by the custodial official designated on the written receipt or the acknowledgment and by the authorized representative of the depository shall, together with the custodial official's actual and continued possession of the written receipt or acknowledgment, constitute a valid and perfected security interest in favor of the custodial official in and to the identified securities.

(3) Articles 8 and 9, Uniform Commercial Code, shall not apply to any security interest arising under this section.

Sec. 2. Section 77-2393, Reissue Revised Statutes of Nebraska, is amended to read:

77-2393 A bank, capital stock financial institution, or qualifying mutual financial institution which has furnished securities pursuant to the Public Funds Deposit Security Act may withdraw all or any part of such securities upon repayment to the custodial official, director, or administrator, as applicable, of the amount of the securities thus withdrawn, and thereupon the custodial official, director, or administrator, as applicable, shall be empowered to assign such securities to the owner thereof. All interest coupons attached to securities furnished under the act shall be detached by the holder or qualified trustee thirty days before maturity and returned to such bank, capital stock financial institution, or qualifying mutual financial institution.

Sec. 3. Section 77-2394, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-2394 A bank, capital stock financial institution, or qualifying mutual financial institution provides a deposit guaranty bond pursuant to the Public Funds Deposit Security Act if it issues a deposit guaranty bond which runs to the director or custodial official, as applicable, and which is conditioned that the bank, capital stock financial institution, or qualifying mutual financial institution shall, upon written request by the director or custodial official, as applicable, at the end of each and every month, render to the director or custodial official, as applicable, a statement, in duplicate, showing the daily balances and the amounts of public money or public funds of the governing authority held by it during the month and how credited. The public money or public funds shall be paid promptly on the order of the custodial official depositing the public money or public funds.

Sec. 4. Section 77-2395, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-2395 (1) If a bank, capital stock financial institution, or qualifying

mutual financial institution designated as a depository provides a deposit guaranty bond or furnishes securities or any combination thereof, pursuant to section 77-2389, the custodial official shall not have on deposit in such depository any public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation, unless and until the depository has provided a deposit guaranty bond or furnished securities, or any combination thereof, to the custodial official, and the total value of such deposit guaranty bond and the market value of such securities are in an amount not less than one hundred two percent of the amount on deposit which is in excess of the amount so insured or guaranteed.

(2) If a bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository provides a deposit guaranty bond or furnishes securities or any combination thereof, pursuant to subsection (1) of section 77-2398, the governmental unit custodial official shall not have on deposit in such depository any public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation, unless and until the depository has provided a deposit guaranty bond or furnished securities, or any combination thereof, pursuant to the Public Funds Deposit Security Act, and the total value of such deposit guaranty bond and the aggregate market value of the pool of such securities so provided are in an amount not less than one hundred two percent of the amount on deposit which is in excess of the amount so insured or guaranteed.

Sec. 5. Section 77-2397, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-2397 All depositories of public money or public funds belonging to the State of Nebraska or the political subdivisions in this state shall have full authority to deposit, pledge, or grant a security interest in their assets or to provide a deposit guaranty bond, or any combination thereof, for the security and payment for all such deposits and accretions. The State of Nebraska and any political subdivision in this state and the director, administrator, or custodial official, as applicable, are given the right and authority to accept such deposit, pledge, or grant of a security interest in assets or the provision of a deposit guaranty bond, or any combination thereof.

Sec. 6. Section 77-2399, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-2399 (1) Each governmental unit depositing public money or public funds in a bank, capital stock financial institution, or qualifying mutual financial institution shall have an undivided beneficial interest under the deposit guaranty bond provided and an undivided security interest in the pool of securities deposited, pledged, or in which a security interest is granted by such bank, capital stock financial institution, or qualifying mutual financial institution pursuant to subsection (1) of section 77-2398 in the proportion that the total amount of the governmental unit's public money or public funds held deposited in such bank, capital stock financial institution, or qualifying mutual financial institution secured by the deposit guaranty bond or by the pool of securities, or any combination thereof, bears to the total amount of public money or public funds so secured.

(2) The delivery by the bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository to the director or administrator of a written receipt or acknowledgment from a federal reserve bank or branch of a federal reserve bank, a federal home loan bank, or another responsible bank which is authorized to exercise trust powers, capital stock financial institution which is authorized to exercise trust powers, or qualifying mutual financial institution which is authorized to exercise trust powers, including a bank which is authorized to exercise trust powers, capital stock financial institution which is authorized to exercise trust powers, or qualifying mutual financial institution which is authorized to exercise trust powers chartered by a foreign state agency as defined in subdivision (13) of section 8-101.03, or trust company other than the bank, capital stock financial institution, or qualifying mutual financial institution granting the security interest, that includes the name of the director or administrator, describes the securities identified on the books or records of the depository, and provides that the securities or the proceeds of the securities will be delivered only upon the surrender of the written receipt or acknowledgment duly executed by the director or administrator designated on the written receipt or acknowledgment and by the authorized representative of the depository shall, together with the director's or administrator's actual and continued possession of the written receipt or acknowledgment, constitute a valid and perfected security interest in favor of the director or administrator in and to the identified securities.

(3) Articles 8 and 9, Uniform Commercial Code, shall not apply to any security interest arising under this section.

Sec. 7. Section 77-23,100, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-23,100 (1) Any bank, capital stock financial institution, or qualifying mutual financial institution in which public money or public funds have been deposited which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation, in whole or in part, by the deposit, pledge, or granting of a security interest in a single pool of securities shall designate a qualified trustee and place with the trustee for holding the securities so deposited, pledged, or in which a security interest has been granted pursuant to subsection (1) of section 77-2398, subject to the order of the director or

the administrator. The bank, capital stock financial institution, or qualifying mutual financial institution shall give written notice of the designation of the qualified trustee to any governmental unit ~~eustodial official~~ depositing public money or public funds for which such securities are deposited, pledged, or in which a security interest has been granted, and if an affiliate of the bank, capital stock financial institution, or qualifying mutual financial institution is to serve as the qualified trustee, the notice shall disclose the affiliate relationship and shall be given prior to designation of the qualified trustee. The ~~director or administrator~~ eustodial official shall accept the written receipt of the qualified trustee describing the pool of securities so deposited, pledged, or in which a security interest has been granted by the bank, capital stock financial institution, or qualifying mutual financial institution, a copy of which shall also be delivered to the bank, capital stock financial institution, or qualifying mutual financial institution.

(2) Any bank, capital stock financial institution, or qualifying mutual financial institution which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation under the Public Funds Deposit Security Act, in whole or in part, by providing a deposit guaranty bond pursuant to the provisions of subsection (1) of section 77-2398, shall designate the director and cause to be issued a deposit guaranty bond which runs to the director acting for the benefit of the governmental units having public money or public funds on deposit with such bank, capital stock financial institution, or qualifying mutual financial institution and which is conditioned that the bank, capital stock financial institution, or qualifying mutual financial institution shall render to the administrator the statement required under subsection (3) of this section.

(3) Each bank, capital stock financial institution, or qualifying mutual financial institution which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation by providing a deposit guaranty bond or by depositing, pledging, or granting a security interest in a single pool of securities, or any combination thereof, shall, on or before the tenth day of each month, render to the administrator a statement showing as of the last business day of the previous month (a) the amount of public money or public funds deposited in such bank, capital stock financial institution, or qualifying mutual financial institution that is not insured or guaranteed by the Federal Deposit Insurance Corporation (i) by each governmental unit separately and (ii) by all governmental units in the aggregate and (b) the total value of the deposit guaranty bond and the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted pursuant to subsection (1) of section 77-2398. The director shall be authorized, acting for the benefit of the governmental units having public money or public funds on deposit with such bank, capital stock financial institution, or qualifying mutual financial institution, to take any and all actions necessary to take title to or to effect a first perfected security interest in the securities deposited, pledged, or in which a security interest is granted.

(4) Within twenty days after the deadline for receiving the statement required under subsection (3) of this section from a bank, capital stock financial institution, or qualifying mutual financial institution, the administrator shall provide a report to each governmental unit listed in such statement reflecting (a) the amount of public money or public funds deposited in such bank, capital stock financial institution, or qualifying mutual financial institution by each governmental unit as of the last business day of the previous month that is not insured or guaranteed by the Federal Deposit Insurance Corporation and that is secured pursuant to subsection (1) of section 77-2398 and (b) the total value of the deposit guaranty bond and the aggregate market value of the pool of securities deposited, pledged, or in which a security interest is granted pursuant to subsection (1) of section 77-2398 as of the last business day of the previous month. The report shall clearly notify the governmental unit if the value of the deposit guaranty bond provided or the securities deposited, pledged, or in which a security interest has been granted, or any combination thereof, do not meet the statutory requirement. The report required by this subsection shall be deemed to have been provided to a governmental unit upon posting of the report by the administrator on its web site for access by governmental units participating under the single bank pooled method if the governmental unit has agreed in advance to receive such report by accessing the administrator's web site.

Sec. 8. Section 77-23,101, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-23,101 Any Federal Reserve Bank, branch of a Federal Reserve Bank, a federal home loan bank, or another responsible bank which is authorized to exercise trust powers, capital stock financial institution which is authorized to exercise trust powers, or qualifying mutual financial institution which is authorized to exercise trust powers, including a bank which is authorized to exercise trust powers, capital stock financial institution which is authorized to exercise trust powers, or qualifying mutual financial institution which is authorized to exercise trust powers chartered by a foreign state agency as defined in subdivision (13) of section 8-101.03, or trust company, other than the pledgor or the bank, capital stock financial institution, or qualifying mutual financial institution providing the deposit guaranty bond or granting the security interest, is qualified to act as a qualified trustee for the

receipt of a deposit guaranty bond or the holding of securities under section 77-23,100. The bank, capital stock financial institution, or qualifying mutual financial institution in which public money or public funds are deposited may at any time substitute, exchange, or release securities deposited with a qualified trustee if such substitution, exchange, or release does not reduce the aggregate market value of the pool of securities to an amount that is less than one hundred two percent of the total amount of public money or public funds less the portion of such public money or public funds insured or guaranteed by the Federal Deposit Insurance Corporation. The bank, capital stock financial institution, or qualifying mutual financial institution in which public money or public funds are deposited may at any time reduce the amount of the deposit guaranty bond if the reduction does not reduce the total combined value of the deposit guaranty bond and the aggregate market value of the pool of securities to an amount less than one hundred two percent of the total amount of public money or public funds less the portion of such public money or public funds insured or guaranteed by the Federal Deposit Insurance Corporation.

Sec. 9. Section 77-23,102, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-23,102 (1) When the director determines that a bank, capital stock financial institution, or qualifying mutual financial institution which secures the deposit of public money or public funds using the single bank pooled method has experienced an event of default the director shall proceed in the following manner: (a) The director shall ascertain the aggregate amounts of public money or public funds secured pursuant to subsection (1) of section 77-2398 and deposited in the bank, capital stock financial institution, or qualifying mutual financial institution which has defaulted, as disclosed by the records of such bank, capital stock financial institution, or qualifying mutual financial institution. The director shall determine for each governmental unit custodial official for whom public money or public funds are deposited in the defaulting bank, capital stock financial institution, or qualifying mutual financial institution the accounts and amount of federal deposit insurance or guarantee that is available for each account. The director shall then determine for each such governmental unit custodial official the amount of public money or public funds not insured or guaranteed by the Federal Deposit Insurance Corporation and the amount of the deposit guaranty bond or pool of securities pledged, deposited, or in which a security interest has been granted, or any combination thereof, to secure such public money or public funds. Upon completion of this analysis, the director shall provide each such governmental unit custodial official with a statement that reports the amount of public money or public funds deposited by the governmental unit custodial official in the defaulting bank, capital stock financial institution, or qualifying mutual financial institution, the amount of public money or public funds that may be insured or guaranteed by the Federal Deposit Insurance Corporation, and the amount of public money or public funds secured by a deposit guaranty bond or secured by a pool of securities, or any combination thereof, pursuant to subsection (1) of section 77-2398. Each such governmental unit custodial official shall verify this information from his or her records within ten business days after receiving the report and information from the director; and (b) upon receipt of a verified report from such governmental unit custodial official and if the defaulting bank, capital stock financial institution, or qualifying mutual financial institution is to be liquidated or if for any other reason the director determines that public money or public funds are not likely to be promptly paid upon demand, the director shall proceed to enforce the deposit guaranty bond and liquidate the pool of securities held to secure the deposit of public money or public funds and shall repay each governmental unit custodial official for the public money or public funds not insured or guaranteed by the Federal Deposit Insurance Corporation deposited in the bank, capital stock financial institution, or qualifying mutual financial institution by the governmental unit custodial official. In the event that the amount of the deposit guaranty bond or the proceeds of the securities held by the director after liquidation is insufficient to cover all public money or public funds not insured or guaranteed by the Federal Deposit Insurance Corporation for all governmental units custodial officials for whom the director serves, the director shall pay out to each governmental unit custodial official available amounts pro rata in accordance with the respective public money or public funds not insured or guaranteed by the Federal Deposit Insurance Corporation for each such governmental unit custodial official.

(2) In the event that a federal deposit insurance agency is appointed and acts as a liquidator or receiver of any bank, capital stock financial institution, or qualifying mutual financial institution under state or federal law, those duties under this section that are specified to be performed by the director in the event of default may be delegated to and performed by such federal deposit insurance agency.

Sec. 10. Section 77-23,105, Reissue Revised Statutes of Nebraska, is amended to read:

77-23,105 Upon request of a governmental unit custodial official, a bank, capital stock financial institution, or qualifying mutual financial institution shall report as of the date of such request the amount of public money or public funds deposited in such bank, capital stock financial institution, or qualifying mutual financial institution that is not insured or guaranteed by the Federal Deposit Insurance Corporation (1) by the governmental unit custodial official making the request and (2) by all other governmental units

~~custodial officials~~ and secured pursuant to subsection (1) of section 77-2398, and the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted to secure public money or public funds held by the bank, capital stock financial institution, or qualifying mutual financial institution, including those deposited by the governmental unit custodial official. Upon request of a governmental unit custodial official, a qualified trustee shall report as of the date of such request the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted by the bank, capital stock financial institution, or qualifying mutual financial institution and shall provide an itemized list of the securities in the pool. Such reports shall be made on or before the date the governmental unit custodial official specifies.

Sec. 11. Section 77-23,106, Reissue Revised Statutes of Nebraska, is amended to read:

77-23,106 The public money or public funds in the bank, capital stock financial institution, or qualifying mutual financial institution shall be paid promptly on the order of the custodial official or governmental unit depositing the public money or public funds in such bank, capital stock financial institution, or qualifying mutual financial institution.

Sec. 12. Original sections 77-2391, 77-2393, 77-23,105, and 77-23,106, Reissue Revised Statutes of Nebraska, and sections 77-2394, 77-2395, 77-2397, 77-2399, 77-23,100, 77-23,101, and 77-23,102, Revised Statutes Cumulative Supplement, 2020, are repealed.

Sec. 13. Since an emergency exists, this act takes effect when passed and approved according to law.