

LEGISLATIVE BILL 175

Approved by the Governor April 16, 2003

Introduced by Jensen, 20

AN ACT relating to public funds; to amend sections 72-1261, 72-1265, 72-1268.01, 72-1268.02, and 72-1268.04, Reissue Revised Statutes of Nebraska, and sections 17-607, 72-1262, 72-1263, 72-1264, 72-1266, 72-1268, 72-1268.03, 77-2365.01, 77-2387, and 77-2389, Revised Statutes Supplement, 2002; to change provisions relating to deposit of funds by cities of the second class and villages and the Nebraska Capital Expansion Act; to define and redefine terms; to authorize the investment and deposit of state funds as prescribed; to change provisions relating to securities; to authorize political subdivisions to sell bonds using an Internet auction system; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 17-607, Revised Statutes Supplement, 2002, is amended to read:

17-607. (1) The treasurer of a city of the second class or village shall deposit, and at all times keep on deposit, for safekeeping, in banks, capital stock financial institutions, or qualifying mutual financial institutions of approved and responsible standing, all money collected, received, or held by him or her as city or village treasurer. Such deposits shall be subject to all regulations imposed by law or adopted by the city council or board of trustees for the receiving and holding thereof. The fact that a stockholder, director, or other officer of such bank, capital stock financial institution, or qualifying mutual financial institution is also serving as mayor, as a member of the city council, as a member of the board of trustees, as a member of a board of public works, or as any other officer of such municipality shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such municipal funds. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions. The city council or board of trustees, as the case may be, at its first meeting in each fiscal year, shall designate some one or more banks, capital stock financial institutions, or qualifying mutual financial institutions of approved and responsible standing in which the city treasurer or village treasurer shall keep at all times, subject to payment on his or her demand, all money held by him or her as such city treasurer or village treasurer. If there is one or more banks, capital stock financial institutions, or qualifying mutual financial institutions located in the city or village which apply for the privilege of keeping such money and give bond or give security for the repayment of deposits as provided in this section, such banks, capital stock financial institutions, or qualifying mutual financial institutions shall be selected as such depositories. The city treasurer or village treasurer shall not give a preference to any one or more of them in the money he or she may so deposit.

(2) The council or board of trustees shall require from all banks, capital stock financial institutions, or qualifying mutual financial institutions (a) a bond, referred to in subsection (1) of this section, in such penal sum as may be the maximum amount on deposit at any time less the amount insured by the Federal Deposit Insurance Corporation or, in lieu thereof, (b) security given as provided in the Public Funds Deposit Security Act, referred to in subsection (1) of this section, to secure the payment of all such deposits and accretions. The council or board shall approve such bond or giving of security. The city treasurer or village treasurer shall not be liable for any loss of any money sustained by reason of the failure of any such depository so designated and approved. The fact that a stockholder, director, or other officer of such bank, capital stock financial institution, or qualifying mutual financial institution is also serving as mayor, as a member of the city council or board of trustees, as a member of a board of public works, or as any other officer of such municipality shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such municipal funds.

Sec. 2. Section 72-1261, Reissue Revised Statutes of Nebraska, is amended to read:

72-1261. It is hereby declared that the lending of money is an activity which affects the economic conditions of the State of Nebraska, and that Nebraska is a state short of sufficient capital to properly serve the needs of the state, especially the agricultural credit requirements and housing credit requirements, and that if additional funds are deposited into the commercial banking channels and building and loan association capital stock financial institution or qualifying mutual financial institution channels the available capital will increase many times the amount of the initial deposit.

Sec. 3. Section 72-1262, Revised Statutes Supplement, 2002, is amended to read:

72-1262. For purposes of the Nebraska Capital Expansion Act, unless the context otherwise requires:

(1) Bank shall mean any national bank with its principal office or a branch in this state or any bank which is chartered to conduct a bank in this state as provided by sections 8-115 and 8-116 or any branch thereof means a state-chartered or federally chartered bank which has a main chartered office or branch in this state;

(2) Building and loan association shall mean any building and loan association organized under Chapter 8, article 3, or any federal savings and loan association with its principal office in this state Capital stock financial institution means a capital stock state building and loan association, a capital stock federal savings and loan association, a capital stock federal savings bank, or a capital stock state savings bank, which has a main chartered office in this state;

(3) Time deposit open account shall mean means a bank account or a deposit with a building and loan association capital stock financial institution or a qualifying mutual financial institution with respect to which there is in force a written contract which provides that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which date shall be not less than thirty days after the date of the deposit, or prior to the expiration of the period of notice which shall be given by the state investment officer in writing not less than thirty days in advance of withdrawal. The time deposit open account contract shall be uniform and shall be furnished by the state investment officer to each bank, capital stock financial institution, or qualifying mutual financial institution and building and loan association for execution; and

(4) Funds available for investment shall mean means all funds over which the state investment officer has investment jurisdiction less those funds necessary for operations and except those funds which are eligible for long-term investment; and

(5) Qualifying mutual financial institution has the same meaning as in section 77-2365.01.

Sec. 4. Section 72-1263, Revised Statutes Supplement, 2002, is amended to read:

72-1263. The state investment officer shall, out of funds available for investment, cause to be offered to all banks, capital stock financial institutions, and qualifying mutual financial institutions and building and loan associations in this state a time deposit open account in the amount of one million dollars, except that the minimum amount that any bank, capital stock financial institution, or qualifying mutual financial institution or building and loan association may accept is the amount of one hundred thousand dollars. Such deposit shall be available at any investment date to such banks, capital stock financial institutions, or qualifying mutual financial institutions or building and loan associations as are willing to meet the rate and other requirements set forth in the Nebraska Capital Expansion Act and make application therefor. No deposit shall be made when doing so would violate a fiduciary obligation of the state or section 72-1268.07. All funds not investable under this section shall be invested as provided by section 72-1246. No one bank, capital stock financial institution, or qualifying mutual financial institution or building and loan association may receive for deposit a sum of more than one million dollars.

Sec. 5. Section 72-1264, Revised Statutes Supplement, 2002, is amended to read:

72-1264. Funds shall be offered for deposit as they become available. The time of such deposit shall be known as an investment date. The state investment officer may make prudent interim investments. If the funds available for investment are less than the amount required for banks, capital stock financial institutions, or qualifying mutual financial institutions or building and loan associations under section 72-1263, the state investment officer shall prorate the available funds among the desiring banks, capital stock financial institutions, or qualifying mutual financial

institutions. ~~or building and loan associations.~~

Sec. 6. Section 72-1265, Reissue Revised Statutes of Nebraska, is amended to read:

72-1265. The state investment officer shall fix the rate of interest to be paid on deposits and the term of deposits to be offered on the first day of each month. The rate per annum for each period shall be equal to the interest rate paid for other qualified investments of equal term available for investment by the state investment officer. It is the Legislature's intent that the state receive a competitive rate from Nebraska banks, capital stock financial institutions, and qualifying mutual financial institutions, ~~and building and loan associations,~~ but that rates received should not exceed the rates that would be paid for other qualified investments.

Sec. 7. Section 72-1266, Revised Statutes Supplement, 2002, is amended to read:

72-1266. The Nebraska Investment Council shall adopt and promulgate rules and regulations to establish procedures for the distribution of funds to banks, capital stock financial institutions, and qualifying mutual financial institutions. ~~and building and loan associations.~~

Sec. 8. Section 72-1268, Revised Statutes Supplement, 2002, is amended to read:

72-1268. (1) Notwithstanding any other provision of law, every bank, capital stock financial institution, and qualifying mutual financial institution and building and loan association shall be eligible for the maximum investment offered to all banks provided for in section 72-1263. The bank, capital stock financial institution, or qualifying mutual financial institution ~~or building and loan association~~ shall give a bond or, in lieu of a bond, may give security for any investment under the Nebraska Capital Expansion Act as provided in sections 72-1268.01 to 72-1268.04. Any bank, capital stock financial institution, or qualifying mutual financial institution ~~or building and loan association~~ may apply for the privilege of keeping on deposit such funds.

(2)(a) Every bank, capital stock financial institution, and qualifying mutual financial institution and building and loan association shall, as a condition of accepting state funds, agree to cash free of charge state warrants which are presented by payees of the state without regard to whether or not such payee has an account with such bank, capital stock financial institution, or qualifying mutual financial institution, ~~or building and loan association,~~ and such bank, capital stock financial institution, or qualifying mutual financial institution ~~or building and loan association~~ shall not require such payee to place his or her fingerprint or thumbprint on the state warrant as a condition to cashing such warrant.

(b) The condition of accepting state funds in subdivision (2)(a) of this section shall not preclude any bank, capital stock financial institution, or qualifying mutual financial institution ~~or building and loan association~~ from refusing to cash a state warrant presented to the bank, capital stock financial institution, or qualifying mutual financial institution ~~or building and loan association~~ if (i) a stop-payment order has been placed on the state warrant, (ii) the state warrant has been reported as unregistered, voided, lost, stolen, or destroyed, or ~~that~~ a duplicate state warrant has been issued in its place, (iii) the state warrant is incomplete or is forged or altered in any manner, (iv) the state warrant lacks any necessary indorsement or an indorsement is illegible, unauthorized, or forged, (v) the state warrant is stale-dated, or (vi) the bank, capital stock financial institution, or qualifying mutual financial institution ~~or building and loan association~~ has a reasonable belief that the individual presenting the state warrant is not the payee named on the state warrant.

Sec. 9. Section 72-1268.01, Reissue Revised Statutes of Nebraska, is amended to read:

72-1268.01. For the security of funds deposited under the Nebraska Capital Expansion Act, the state investment officer shall require all such depositories to give bond for the safekeeping of payments of such deposits. The officers of the bank, capital stock financial institution, or qualifying mutual financial institution ~~or building and loan association~~ seeking to qualify as a depository shall be ineligible to sign the bond provided for under this section. The bond shall run to the people of the State of Nebraska and shall be approved by the Governor, Secretary of State, and Attorney General. No bond shall be valid unless approved by all three of ~~the above-named~~ such officers. The bond shall be conditioned (1) that the depository ~~shall~~ at the end of each and every month render to the state investment officer a statement in duplicate showing the daily balance and the amount of money of the state held by it during the month, (2) for the payment of the deposit when demanded by the state investment officer on his or her

check at any time, and (3) generally to do and perform whatever may be required by the Nebraska Capital Expansion Act and a faithful discharge of the trust reposed in such depository.

Sec. 10. Section 72-1268.02, Reissue Revised Statutes of Nebraska, is amended to read:

72-1268.02. The bond referred to in section 72-1268.01 shall be in substance as follows:

Know all Persons by these Presents, That we as principals, and as sureties, are held and firmly bound unto the State of Nebraska, in the just and full sum of Dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Dated the day of A.D.

Whereas, such bank, capital stock financial institution, or qualifying mutual financial institution, ~~or building and loan association~~, in consideration of the deposit of certain of the money of the State of Nebraska for safekeeping with and in the bank, capital stock financial institution, or qualifying mutual financial institution ~~or building and loan association~~ of the amount whereof shall be subject to withdrawal or diminution by the state investment officer as the requirements of the state shall demand, and which amount may be increased or decreased as the state investment officer may determine.

Now, Therefor, if such bank, capital stock financial institution, or qualifying mutual financial institution ~~or building and loan association~~ of shall at the end of every month render to the state investment officer a statement in duplicate showing the daily balance of the state money held by it during the month next preceding, and how the same has been credited, and shall well and truly keep all such sums of money so deposited or to be deposited as aforesaid subject to the check and order of the state investment officer as aforesaid, and shall pay over the same, and each and every part thereof, upon the written demand of the state investment officer, and to his or her successor in office as shall be by him or her demanded, and shall in all respects save and keep the people of the State of Nebraska and the state investment officer harmless and indemnified for and by reason of the making of such deposit or deposits, then this obligation shall be void and of no effect, otherwise to be and remain in full force and virtue.

Sec. 11. Section 72-1268.03, Revised Statutes Supplement, 2002, is amended to read:

72-1268.03. The state investment officer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution ~~or building and loan association~~ giving a guaranty bond more than the amount insured by the Federal Deposit Insurance Corporation plus the maximum amount of the bond given by such bank, capital stock financial institution, or qualifying mutual financial institution ~~or building and loan association~~ or in any bank, capital stock financial institution, or qualifying mutual financial institution ~~or building and loan association~~ giving a personal bond more than the amount insured by the Federal Deposit Insurance Corporation plus one-half of the amount of the bond ~~of~~ given by such bank, capital stock financial institution, or qualifying mutual financial institution. ~~or building and loan association.~~ All bonds of such depositories shall be deposited with and held by the state investment officer.

Sec. 12. Section 72-1268.04, Reissue Revised Statutes of Nebraska, is amended to read:

72-1268.04. In lieu of the bond required by section 72-1268.01, any bank, capital stock financial institution, or ~~building and loan association~~ qualifying mutual financial institution making application to become a depository under the Nebraska Capital Expansion Act may give security as provided in the Public Funds Deposit Security Act to the state investment officer. ~~The provisions of section 77-2366 shall apply to deposits in capital stock financial institutions.~~

Sec. 13. Section 77-2365.01, Revised Statutes Supplement, 2002, is amended to read:

77-2365.01. (1)(a) Notwithstanding any other provision of law, any local ordinance, regulation, or resolution, or any rule or regulation to the contrary, the funds of this state or any political subdivision of ~~this~~ the state may be deposited, by the appropriate custodians of such funds, with qualifying mutual financial institutions to the same extent and subject to the same terms, conditions, and limitations, including collateralization required, if any, as may be otherwise provided for the deposit of such funds in banks and capital stock financial institutions. In making such a deposit of public funds, it shall not be necessary for the state or any political subdivision to

become an owner of any interest in the qualifying mutual financial institution or to acquire voting rights therein, and a qualifying mutual financial institution is authorized and empowered to receive public funds under these conditions. Qualifying mutual financial institution means a state or federal mutual building and loan association which has a main chartered office in this state, a state or federal mutual savings and loan association which has a main chartered office in this state, a state or federal mutual savings bank which has a main chartered office in this state, or a state or federal mutual organized bank which has a main chartered office in this state which, by its charter and bylaws, restricts the rights of the state or a political subdivision as an account holder as follows:

(i) Interest in the qualifying mutual financial institution is limited to the withdrawal value of the state's or the political subdivision's account;

(ii) The state or the political subdivision has no voting rights in the qualifying mutual financial institution; and

(iii) The state or the political subdivision has no entitlement to any distribution of assets upon voluntary or involuntary liquidation, dissolution, or winding up of the affairs of the qualifying mutual financial institution.

(b) To the extent any deposit in any bank is:

(i) Required to be subject to check or draft, then such deposit may be subject to order; and

(ii) Required to be made, maintained, or otherwise dealt with by reference to the capital of any bank, then it may be so made, maintained, or dealt with by reference to the capital or net worth of such qualifying mutual financial institution, and if by reference to the undivided profits, capital notes, debentures, or other capital items of any bank, then to any unimpaired reserves, capital notes, and debentures or comparable capital items of such qualifying mutual financial institution.

(2) To the extent the state or a political subdivision is or may ever be required by law to deposit funds in a bank, the state or political subdivision shall, to the same extent and subject to the same terms, conditions, and limitations, including collateralization required, be required to make deposits in a qualifying mutual financial institution on the same basis.

(3) The restriction in subdivision (1)(a)(iii) of this section shall not apply to the interest of the state or political subdivision in any security required by law to be furnished by the qualifying mutual financial institution.

(4) A qualifying mutual financial institution that amends its charter or bylaws in such a manner that it no longer meets the restrictions set forth in subdivisions (1)(a)(i) through (iii) of this section shall immediately give notice that it is no longer a qualifying mutual financial institution to the custodial official, as that term is defined in section 77-2387, of every state and political subdivision depositor, and that the state or political subdivision must immediately withdraw its deposits.

(5) This section shall be applied in a manner consistent with the intention of the Legislature which is to provide for the deposit of funds of the state or any political subdivision in qualifying mutual financial institutions.

Sec. 14. Section 77-2387, Revised Statutes Supplement, 2002, is amended to read:

77-2387. For purposes of the Public Funds Deposit Security Act, unless the context otherwise requires:

(1) Affiliate means any entity that controls, is controlled by, or is under common control with another entity;

(2) Bank means any state-chartered or federally chartered bank which has a main chartered office or branch in this state;

(3) Capital stock financial institution means a capital stock state building and loan association, a capital stock federal savings and loan association, a capital stock federal savings bank, a capital stock industrial loan and investment company, and a capital stock state savings bank which has a main chartered office in this state;

(4) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of any bank, capital stock financial institution, or holding company or to control in any manner the election of the majority of directors of any bank, capital stock financial institution, or holding company;

(5) Custodial official means an officer or an employee of the State of Nebraska or any political subdivision who, by law, is made custodian of or has control over public money or public funds subject to the act or the

security for the deposit of public money or public funds subject to the act;

(6) Deposit guaranty bond means a bond underwritten by an insurance company authorized to do business in this state which provides coverage for deposits of a governing authority which are in excess of the amounts insured by the Federal Deposit Insurance Corporation;

(7) Event of default means the issuance of an order by a supervisory authority or a receiver which restrains a bank, capital stock financial institution, or qualifying mutual financial institution from paying its deposit liabilities;

(8) Governing authority means the official, or the governing board, council, or other body or group of officials, authorized to designate a bank, capital stock financial institution, or qualifying mutual financial institution as a depository of public money or public funds subject to the act;

(9) Governmental unit means the State of Nebraska or any political subdivision thereof;

(10) Qualifying mutual financial institution shall have the same meaning as in section 77-2365.01;

(11) Repurchase agreement means an agreement to purchase securities by the governing authority by which the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will repurchase the securities on or before a specified date and for a specified amount and the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will deliver the underlying securities to the governing authority by book entry, physical delivery, or third-party custodial agreement. The transfer of underlying securities to the counterparty bank's, capital stock financial institution's, or qualifying mutual financial institution's customer book entry account may be used for book entry delivery if the governing authority so chooses; and

(12) Securities means:

(a) Bonds or obligations fully and unconditionally guaranteed both as to principal and interest by the United States Government;

(b) United States Government notes, certificates of indebtedness, or treasury bills of any issue;

(c) United States Government bonds;

(d) United States Government guaranteed bonds or notes;

(e) Bonds or notes of United States Government agencies;

(f) Bonds of any state or political subdivision which are fully defeased as to principal and interest by any combination of bonds or notes authorized in subdivision (c), (d), or (e) of this subdivision;

(g) Bonds or obligations, including mortgage-backed obligations, issued by the Federal Home Loan Mortgage Corporation, the federal farm credit system, a Federal Home Loan Bank, or the Federal National Mortgage Association;

(h) Repurchase agreements the subject securities of which are any of the securities described in subdivisions (a) through (g) of this subdivision;

(i) Securities issued under the authority of the Federal Farm Loan Act;

(j) Loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture;

(k) Guaranty agreements of the Small Business Administration of the United States Government;

(l) Bonds or obligations of any county, city, village, metropolitan utilities district, public power and irrigation district, sewer district, fire protection district, rural water district, or school district in this state which have been issued as required by law;

(m) Bonds of the State of Nebraska or of any other state which are purchased by the Board of Educational Lands and Funds of this state for investment in the permanent school fund or which are purchased by the state investment officer of this state for investment in the permanent school fund;

(n) Bonds or obligations of another state, or a political subdivision of another state, which are rated within the two highest classifications of prime by at least one of the standard rating services;

(o) Warrants of the State of Nebraska;

(p) Warrants of any county, city, village, local hospital district, or school district in this state; ~~and~~

(q) Irrevocable, nontransferable, unconditional standby letters of credit issued by the Federal Home Loan Bank of Topeka; and

(r) Certificates of deposit fully insured by the Federal Deposit Insurance Corporation that are issued to a bank, capital stock financial institution, or qualifying mutual financial institution furnishing securities

pursuant to the Public Funds Deposit Security Act.

Sec. 15. Section 77-2389, Revised Statutes Supplement, 2002, is amended to read:

77-2389. A bank, capital stock financial institution, or qualifying mutual financial institution furnishes securities pursuant to the Public Funds Deposit Security Act if it (1) deposits securities held by the bank, capital stock financial institution, or qualifying mutual financial institution, ~~or~~ (2) pledges or grants a security interest in securities held by the bank, capital stock financial institution, or qualifying mutual financial institution as provided in the act, or (3) effects the assignment to the custodial official of a certificate of deposit fully insured by the Federal Deposit Insurance Corporation that is issued to the bank, capital stock financial institution, or qualifying mutual financial institution.

Sec. 16. Any political subdivision may, at the discretion of the governing body of the subdivision, sell bonds which the political subdivision is authorized to issue under any provision of law using an Internet auction system. The governing body shall comply with all other statutory requirements for the issuance of the bonds.

Sec. 17. Original sections 72-1261, 72-1265, 72-1268.01, 72-1268.02, and 72-1268.04, Reissue Revised Statutes of Nebraska, and sections 17-607, 72-1262, 72-1263, 72-1264, 72-1266, 72-1268, 72-1268.03, 77-2365.01, 77-2387, and 77-2389, Revised Statutes Supplement, 2002, are repealed.