

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 66

Introduced by Williams, 36.

Read first time January 07, 2021

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to the Public Funds Deposit Security Act; to
- 2 amend sections 77-2391, 77-2393, 77-23,105, and 77-23,106, Reissue
- 3 Revised Statutes of Nebraska, and sections 77-2394, 77-2395,
- 4 77-2397, 77-2399, 77-23,100, 77-23,101, and 77-23,102, Revised
- 5 Statutes Cumulative Supplement, 2020; to change provisions relating
- 6 to deposits, bonds, custodial officials, and pooled collateral; to
- 7 harmonize provisions; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

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

3 77-2391 (1) Securities pledged or securities in which a security
4 interest has been granted pursuant to section 77-2389 shall be delivered
5 to and held by a federal reserve bank or by a branch of a federal reserve
6 bank, a federal home loan bank, or another responsible bank, capital
7 stock financial institution, or qualifying mutual financial institution,
8 including a bank, capital stock financial institution, or qualifying
9 mutual financial institution chartered by a foreign state agency as
10 defined in subdivision (13) of section 8-101.03, or trust company, other
11 than the pledgor or the bank, capital stock financial institution, or
12 qualifying mutual financial institution granting the security interest,
13 as designated by the governing authority, with appropriate joint custody
14 and the pledge agreement or security interest as described in subsection
15 (2) of this section, in a form approved by the governing authority.

16 (2) The delivery by the bank, capital stock financial institution,
17 or qualifying mutual financial institution designated as a depository to
18 the custodial official of a written receipt or acknowledgment from a
19 federal reserve bank or branch of a federal reserve bank, a federal home
20 loan bank, or another bank, capital stock financial institution, or
21 qualifying mutual financial institution, including a bank, capital stock
22 financial institution, or qualifying mutual financial institution
23 chartered by a foreign state agency as defined in subdivision (13) of
24 section 8-101.03, or trust company, other than the bank, capital stock
25 financial institution, or qualifying mutual financial institution
26 granting the security interest, that includes the title of such custodial
27 official, describes the securities identified on the books or records of
28 the depository, and provides that the securities or the proceeds of the
29 securities will be delivered only upon the surrender of the written
30 receipt or the acknowledgment duly executed by the custodial official
31 designated on the written receipt or the acknowledgment and by the

1 authorized representative of the depository shall, together with the
2 custodial official's actual and continued possession of the written
3 receipt or acknowledgment, constitute a valid and perfected security
4 interest in favor of the custodial official in and to the identified
5 securities.

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

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

10 77-2393 A bank, capital stock financial institution, or qualifying
11 mutual financial institution which has furnished securities pursuant to
12 the Public Funds Deposit Security Act may withdraw all or any part of
13 such securities upon repayment to the custodial official, director, or
14 administrator, as applicable, of the amount of the securities thus
15 withdrawn, and thereupon the custodial official, director, or
16 administrator, as applicable, shall be empowered to assign such
17 securities to the owner thereof. All interest coupons attached to
18 securities furnished under the act shall be detached by the holder or
19 qualified trustee thirty days before maturity and returned to such bank,
20 capital stock financial institution, or qualifying mutual financial
21 institution.

22 Sec. 3. Section 77-2394, Revised Statutes Cumulative Supplement,
23 2020, is amended to read:

24 77-2394 A bank, capital stock financial institution, or qualifying
25 mutual financial institution provides a deposit guaranty bond pursuant to
26 the Public Funds Deposit Security Act if it issues a deposit guaranty
27 bond which runs to the director or custodial official, as applicable, and
28 which is conditioned that the bank, capital stock financial institution,
29 or qualifying mutual financial institution shall, upon written request by
30 the director or custodial official, as applicable, at the end of each and
31 every month, render to the director or custodial official, as applicable,

1 a statement,~~in duplicate~~, showing the daily balances and the amounts of
2 public money or public funds of the governing authority held by it during
3 the month and how credited. The public money or public funds shall be
4 paid promptly on the order of the custodial official depositing the
5 public money or public funds.

6 Sec. 4. Section 77-2395, Revised Statutes Cumulative Supplement,
7 2020, is amended to read:

8 77-2395 (1) If a bank, capital stock financial institution, or
9 qualifying mutual financial institution designated as a depository
10 provides a deposit guaranty bond or furnishes securities or any
11 combination thereof, pursuant to section 77-2389, the custodial official
12 shall not have on deposit in such depository any public money or public
13 funds in excess of the amount insured or guaranteed by the Federal
14 Deposit Insurance Corporation, unless and until the depository has
15 provided a deposit guaranty bond or furnished securities, or any
16 combination thereof, to the custodial official, and the total value of
17 such deposit guaranty bond and the market value of such securities are in
18 an amount not less than one hundred two percent of the amount on deposit
19 which is in excess of the amount so insured or guaranteed.

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

1 deposit which is in excess of the amount so insured or guaranteed.

2 Sec. 5. Section 77-2397, Revised Statutes Cumulative Supplement,
3 2020, is amended to read:

4 77-2397 All depositories of public money or public funds belonging
5 to the State of Nebraska or the political subdivisions in this state
6 shall have full authority to deposit, pledge, or grant a security
7 interest in their assets or to provide a deposit guaranty bond, or any
8 combination thereof, for the security and payment for all such deposits
9 and accretions. The State of Nebraska and any political subdivision in
10 this state and the director, administrator, or custodial official, as
11 applicable, are given the right and authority to accept such deposit,
12 pledge, or grant of a security interest in assets or the provision of a
13 deposit guaranty bond, or any combination thereof.

14 Sec. 6. Section 77-2399, Revised Statutes Cumulative Supplement,
15 2020, is amended to read:

16 77-2399 (1) Each governmental unit depositing public money or
17 public funds in a bank, capital stock financial institution, or
18 qualifying mutual financial institution shall have an undivided
19 beneficial interest under the deposit guaranty bond provided and an
20 undivided security interest in the pool of securities deposited, pledged,
21 or in which a security interest is granted by such bank, capital stock
22 financial institution, or qualifying mutual financial institution
23 pursuant to subsection (1) of section 77-2398 in the proportion that the
24 total amount of the governmental unit's public money or public funds held
25 deposited in such bank, capital stock financial institution, or
26 qualifying mutual financial institution secured by the deposit guaranty
27 bond or by the pool of securities, or any combination thereof, bears to
28 the total amount of public money or public funds so secured.

29 (2) The delivery by the bank, capital stock financial institution,
30 or qualifying mutual financial institution designated as a depository to
31 the director or administrator of a written receipt or acknowledgment from

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

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

25 Sec. 7. Section 77-23,100, Revised Statutes Cumulative Supplement,
26 2020, is amended to read:

27 77-23,100 (1) Any bank, capital stock financial institution, or
28 qualifying mutual financial institution in which public money or public
29 funds have been deposited which satisfies its requirement to secure the
30 deposit of public money or public funds in excess of the amount insured
31 or guaranteed by the Federal Deposit Insurance Corporation, in whole or

1 in part, by the deposit, pledge, or granting of a security interest in a
2 single pool of securities shall designate a qualified trustee and place
3 with the trustee for holding the securities so deposited, pledged, or in
4 which a security interest has been granted pursuant to subsection (1) of
5 section 77-2398, subject to the order of the director or the
6 administrator. The bank, capital stock financial institution, or
7 qualifying mutual financial institution shall give written notice of the
8 designation of the qualified trustee to any governmental unit ~~custodial~~
9 ~~official~~ depositing public money or public funds for which such
10 securities are deposited, pledged, or in which a security interest has
11 been granted, and if an affiliate of the bank, capital stock financial
12 institution, or qualifying mutual financial institution is to serve as
13 the qualified trustee, the notice shall disclose the affiliate
14 relationship and shall be given prior to designation of the qualified
15 trustee. The director or administrator ~~custodial official~~ shall accept
16 the written receipt of the qualified trustee describing the pool of
17 securities so deposited, pledged, or in which a security interest has
18 been granted by the bank, capital stock financial institution, or
19 qualifying mutual financial institution, a copy of which shall also be
20 delivered to the bank, capital stock financial institution, or qualifying
21 mutual financial institution.

22 (2) Any bank, capital stock financial institution, or qualifying
23 mutual financial institution which satisfies its requirement to secure
24 the deposit of public money or public funds in excess of the amount
25 insured or guaranteed by the Federal Deposit Insurance Corporation under
26 the Public Funds Deposit Security Act, in whole or in part, by providing
27 a deposit guaranty bond pursuant to the provisions of subsection (1) of
28 section 77-2398, shall designate the director and cause to be issued a
29 deposit guaranty bond which runs to the director acting for the benefit
30 of the governmental units having public money or public funds on deposit
31 with such bank, capital stock financial institution, or qualifying mutual

1 financial institution and which is conditioned that the bank, capital
2 stock financial institution, or qualifying mutual financial institution
3 shall render to the administrator the statement required under subsection
4 (3) of this section.

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

27 (4) Within twenty days after the deadline for receiving the
28 statement required under subsection (3) of this section from a bank,
29 capital stock financial institution, or qualifying mutual financial
30 institution, the administrator shall provide a report to each
31 governmental unit listed in such statement reflecting (a) the amount of

1 public money or public funds deposited in such bank, capital stock
2 financial institution, or qualifying mutual financial institution by each
3 governmental unit as of the last business day of the previous month that
4 is not insured or guaranteed by the Federal Deposit Insurance Corporation
5 and that is secured pursuant to subsection (1) of section 77-2398 and (b)
6 the total value of the deposit guaranty bond and the aggregate market
7 value of the pool of securities deposited, pledged, or in which a
8 security interest is granted pursuant to subsection (1) of section
9 77-2398 as of the last business day of the previous month. The report
10 shall clearly notify the governmental unit if the value of the deposit
11 guaranty bond provided or the securities deposited, pledged, or in which
12 a security interest has been granted, or any combination thereof, do not
13 meet the statutory requirement. The report required by this subsection
14 shall be deemed to have been provided to a governmental unit upon posting
15 of the report by the administrator on its web site for access by
16 governmental units participating under the single bank pooled method if
17 the governmental unit has agreed in advance to receive such report by
18 accessing the administrator's web site.

19 Sec. 8. Section 77-23,101, Revised Statutes Cumulative Supplement,
20 2020, is amended to read:

21 77-23,101 Any Federal Reserve Bank, branch of a Federal Reserve
22 Bank, a federal home loan bank, or another responsible bank which is
23 authorized to exercise trust powers, capital stock financial institution
24 which is authorized to exercise trust powers, or qualifying mutual
25 financial institution which is authorized to exercise trust powers,
26 including a bank which is authorized to exercise trust powers, capital
27 stock financial institution which is authorized to exercise trust powers,
28 or qualifying mutual financial institution which is authorized to
29 exercise trust powers chartered by a foreign state agency as defined in
30 subdivision (13) of section 8-101.03, or trust company, other than the
31 pledgor or the bank, capital stock financial institution, or qualifying

1 mutual financial institution providing the deposit guaranty bond or
2 granting the security interest, is qualified to act as a qualified
3 trustee for the receipt of a deposit guaranty bond or the holding of
4 securities under section 77-23,100. The bank, capital stock financial
5 institution, or qualifying mutual financial institution in which public
6 money or public funds are deposited may at any time substitute, exchange,
7 or release securities deposited with a qualified trustee if such
8 substitution, exchange, or release does not reduce the aggregate market
9 value of the pool of securities to an amount that is less than one
10 hundred two percent of the total amount of public money or public funds
11 less the portion of such public money or public funds insured or
12 guaranteed by the Federal Deposit Insurance Corporation. The bank,
13 capital stock financial institution, or qualifying mutual financial
14 institution in which public money or public funds are deposited may at
15 any time reduce the amount of the deposit guaranty bond if the reduction
16 does not reduce the total combined value of the deposit guaranty bond and
17 the aggregate market value of the pool of securities to an amount less
18 than one hundred two percent of the total amount of public money or
19 public funds less the portion of such public money or public funds
20 insured or guaranteed by the Federal Deposit Insurance Corporation.

21 Sec. 9. Section 77-23,102, Revised Statutes Cumulative Supplement,
22 2020, is amended to read:

23 77-23,102 (1) When the director determines that a bank, capital
24 stock financial institution, or qualifying mutual financial institution
25 which secures the deposit of public money or public funds using the
26 single bank pooled method has experienced an event of default the
27 director shall proceed in the following manner: (a) The director shall
28 ascertain the aggregate amounts of public money or public funds secured
29 pursuant to subsection (1) of section 77-2398 and deposited in the bank,
30 capital stock financial institution, or qualifying mutual financial
31 institution which has defaulted, as disclosed by the records of such

1 bank, capital stock financial institution, or qualifying mutual financial
2 institution. The director shall determine for each governmental unit
3 ~~custodial official~~ for whom public money or public funds are deposited in
4 the defaulting bank, capital stock financial institution, or qualifying
5 mutual financial institution the accounts and amount of federal deposit
6 insurance or guarantee that is available for each account. The director
7 shall then determine for each such governmental unit ~~custodial official~~
8 the amount of public money or public funds not insured or guaranteed by
9 the Federal Deposit Insurance Corporation and the amount of the deposit
10 guaranty bond or pool of securities pledged, deposited, or in which a
11 security interest has been granted, or any combination thereof, to secure
12 such public money or public funds. Upon completion of this analysis, the
13 director shall provide each such governmental unit ~~custodial official~~
14 with a statement that reports the amount of public money or public funds
15 deposited by the governmental unit ~~custodial official~~ in the defaulting
16 bank, capital stock financial institution, or qualifying mutual financial
17 institution, the amount of public money or public funds that may be
18 insured or guaranteed by the Federal Deposit Insurance Corporation, and
19 the amount of public money or public funds secured by a deposit guaranty
20 bond or secured by a pool of securities, or any combination thereof,
21 pursuant to subsection (1) of section 77-2398. Each such governmental
22 unit ~~custodial official~~ shall verify this information from his or her
23 records within ten business days after receiving the report and
24 information from the director; and (b) upon receipt of a verified report
25 from such governmental unit ~~custodial official~~ and if the defaulting
26 bank, capital stock financial institution, or qualifying mutual financial
27 institution is to be liquidated or if for any other reason the director
28 determines that public money or public funds are not likely to be
29 promptly paid upon demand, the director shall proceed to enforce the
30 deposit guaranty bond and liquidate the pool of securities held to secure
31 the deposit of public money or public funds and shall repay each

1 ~~governmental unit custodial official~~ for the public money or public funds
2 not insured or guaranteed by the Federal Deposit Insurance Corporation
3 deposited in the bank, capital stock financial institution, or qualifying
4 mutual financial institution by the ~~governmental unit custodial official~~.
5 In the event that the amount of the deposit guaranty bond or the proceeds
6 of the securities held by the director after liquidation is insufficient
7 to cover all public money or public funds not insured or guaranteed by
8 the Federal Deposit Insurance Corporation for all governmental units
9 ~~custodial officials~~ for whom the director serves, the director shall pay
10 out to each ~~governmental unit custodial official~~ available amounts pro
11 rata in accordance with the respective public money or public funds not
12 insured or guaranteed by the Federal Deposit Insurance Corporation for
13 each such ~~governmental unit custodial official~~.

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

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

22 77-23,105 Upon request of a ~~governmental unit custodial official~~, a
23 bank, capital stock financial institution, or qualifying mutual financial
24 institution shall report as of the date of such request the amount of
25 public money or public funds deposited in such bank, capital stock
26 financial institution, or qualifying mutual financial institution that is
27 not insured or guaranteed by the Federal Deposit Insurance Corporation
28 (1) by the ~~governmental unit custodial official~~ making the request and
29 (2) by all other ~~governmental units custodial officials~~ and secured
30 pursuant to subsection (1) of section 77-2398, and the total value of the
31 deposit guaranty bond or the aggregate market value of the pool of

1 securities deposited, pledged, or in which a security interest has been
2 granted to secure public money or public funds held by the bank, capital
3 stock financial institution, or qualifying mutual financial institution,
4 including those deposited by the governmental unit custodial official.
5 Upon request of a governmental unit custodial official, a qualified
6 trustee shall report as of the date of such request the total value of
7 the deposit guaranty bond or the aggregate market value of the pool of
8 securities deposited, pledged, or in which a security interest has been
9 granted by the bank, capital stock financial institution, or qualifying
10 mutual financial institution and shall provide an itemized list of the
11 securities in the pool. Such reports shall be made on or before the date
12 the governmental unit custodial official specifies.

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

15 77-23,106 The public money or public funds in the bank, capital
16 stock financial institution, or qualifying mutual financial institution
17 shall be paid promptly on the order of the custodial official or
18 governmental unit depositing the public money or public funds in such
19 bank, capital stock financial institution, or qualifying mutual financial
20 institution.

21 Sec. 12. Original sections 77-2391, 77-2393, 77-23,105, and
22 77-23,106, Reissue Revised Statutes of Nebraska, and sections 77-2394,
23 77-2395, 77-2397, 77-2399, 77-23,100, 77-23,101, and 77-23,102, Revised
24 Statutes Cumulative Supplement, 2020, are repealed.