

Summary of Laws and Procedures Pertaining to Depository Contracts for Independent School Districts

(Prepared by Texas Education Agency)

The Texas Education Code (referred to herein after as the code), Section 45.202 states, “The school depository or depositories of every independent school district may be selected only as provided by this subchapter.” Section 45.206 specifically states that school districts must use a uniform bid blank in the form prescribed by the State Board of Education; therefore, districts may not use a Request for Proposal in selecting a depository or depositories.

The applicable sections of the Code entitled School District Depositories are detailed in Subchapter G, Section 45.201 through Section 45.209. Section 45.205 of the Code requires that depository contract(s) for each Independent School District (ISD) be renewed every two years. The next two-year period is from either July 1, 2007 through June 30, 2009 or September 1, 2007 through August 31, 2009. Section 45.205(c) states “The contract term and any extension must coincide with the school district’s fiscal year.”

- A. Legislative acts define the term “bank” in Subchapter G: School District Depositories, Section 45.201(2), as “a bank, a savings and loan association, or a savings bank organized under the laws of this state, another state, or federal law that has its main office or a branch office in this state. The term does not include any bank the deposits of which are not insured by the Federal Deposit Insurance Corporation.” This section authorizes a bank organized in this state as well as a bank organized in another state whose main or branch office is located in this state to serve as a depository provided that FDIC requirements are met.

Depository contracts are to remain in force for a term of two years and until its successor is selected and has qualified, in accordance with Section 45.205(a). As stated in Section 45.205(b), “a school district and the district’s depository bank may agree to extend a depository contract for one additional two-year term. An extension under this subsection is not subject to the requirements of Section 45.206.”

Note: If a school district did not file an extension in the prior biennium (2005-2007) and the school district and the depository bank agree to extend the current depository contract, the school district must submit a completed and signed Board Resolution Extending Depository Contract for Funds of Independent School Districts to Texas Education Agency, Division of Financial Audits. **The extension form is located at the following website:**

<http://www.tea.state.tx.us/school.finance/audit/07rescontract.doc>

- B. The selection of a depository or depositories as noted in Sections 45.206 through 45.209 of the Code is summarized below:

The board of trustees of each school district shall, at least thirty (30) days before the termination of the current depository contract, mail to each bank located in the district and, if desired, to other banks, a notice stating the time and place in which bid applications will be received for selecting a school depository or depositories. **At least two banks must receive bid notices in every case. A bank is considered to be within a district wherein it conducts business at or through a branch in the district.**

The notice must include a uniform bid blank in the form prescribed by State Board of Education rule. Section 45.206(b) states, “the school district may add to the uniform bid blank other terms that do not unfairly restrict competition between banks in or near the territory of the school district.” Other terms added to the bid by the individual district must be stated in a uniform manner that will permit and facilitate comparison of all bids.

“If a member of the board of trustees of a school district is a stockholder, officer, director, or employee of a bank that has bid to become a depository for the school district, the member may not vote on awarding a depository contact to the bank”, in accordance with Section 45.204(b).

A district may select one or, in the event of tie bids, more than one depository. The bank(s) selected shall make and enter into a depository contract or contracts setting forth the duties and responsibilities of the depository (ies).

If tie bids are received for a school depository contract and if the tie bids are otherwise equal in the judgment and discretion of the board of trustees of the school district and if two or more of the tie bidders in the judgment and discretion of the school district have the facilities and ability to provide the necessary services of school depository for the school district, the board of trustees may award the depository contract by any one of the following methods (reference Section 45.207 of the Code):

1. Awarding the contract, at the discretion of the board of trustees, to any one of the tie bidders;
2. Determining by lot which of the tie bidders will receive the contract; or
3. Awarding a contract to each of the tie bidders or to as many of the tie bidders as the board of trustees selects.

In determining the highest and best bid or in the event of tie bids, the highest and best bids, the board of trustees should consider the interest rate bid on time deposits, charges for keeping district accounts, records, and reports and furnishing checks, and the ability of the bidder to provide the necessary services and perform the duties as school depository together with all other matters that in the judgment of the board of trustees would be in the best interest of the district. The board of trustees has the right to reject any and all bids.

Section 45.207(b) states, "All funds received by the district from or through the Agency shall be deposited, at the district's option, in **one** depository bank or invested in a public funds investment pool created under Chapter 791, Government Code, to be designated by the district."

C. TEA REQUIREMENTS AND PROCEDURES

Chapter 44, Subchapter A, Section 44.009(a) of the Texas Education Code states, "All financial reports made by or for school districts or by their officers, agents, or employees, to the commissioner or to the agency, shall be made on forms prescribed by the agency, subject to review and comment by the state auditor.

Texas Education Agency provides school districts with the forms required for bidding, pledging surety bonds and executing depository contracts. TEA will receive, review, accept or reject executed contract forms and, in accordance with Section 45.208(e), a copy of the depository contract, the surety bond, the Competitive Bid Data Sheet and the accepted bid will be filed with the Agency.

Please note that incomplete Depository Contract forms will **not** be accepted and will be returned to the district. Please ensure that all blanks are filled in and that the proper signatures from the school board president and secretary are included. The contract must also include the signature of the authorized bank officer and the notary (please note that the notary is witnessing the authorized bank officer's signature). In the absence of school board officers, the district should check its board policy to see if someone else has been authorized to sign in their absence. If not, then the district will have to obtain appropriate signatures before submitting the contract to TEA.

Texas Education Agency will notify a district that fails to submit an acceptable contract by either July 1, 2007 or September 1, 2007, that funds are subject to being withheld pending receipt and acceptance of the contract. The Agency is not authorized to send funds to a depository that has not been selected and approved in compliance with the law.

The following documents must be completed properly and submitted to Texas Education Agency, Division of Financial Audits:

1. Three (3) completed and signed (original signatures from School Board President and Secretary, Bank Officer and Notary) Depository Contracts for Funds. The Depository Contract for Funds is located at the following website:

http://www.tea.state.tx.us/school.finance/audit/depos_contract_2008_2009_bi.pdf

2. Depository Competitive Bid Data Sheet, completed and signed. The data sheet may be found online at:

http://www.tea.state.tx.us/school.finance/audit/bankbid/07comp_bid_data_sheet.doc

3. The accepted Bid Form for Acting as Depository for All Funds, completed and signed. The bid form is located at the following website:

<http://www.tea.state.tx.us/school.finance/audit/bankbid/>

4. The completed and signed Vendor Direct Deposit Authorization (VDDA) form, if applicable. The VDDA form may be found online at:

<http://www.tea.state.tx.us/school.finance/audit/directdeposit.html>

5. The completed and signed Texas Surety Bond form, if applicable. This form is located at the following website:

<http://www.tea.state.tx.us/school.finance/audit/07surety.doc>

The school district should allow enough time to accommodate any unexpected delays (i.e.; submitting and receiving depository documentation, acquiring signatures; re-bidding in the event the district rejects all initial bids; etc.). To ensure sufficient time for review prior to the beginning of the district's biennium, a school district's depository contract(s) and related forms or the Board Resolution Extending Depository Contract for Funds (if applicable) must be received by the Division of Financial Audits no later than **June 15, 2007**. **No payments will be made to any district subsequent to either July 1, 2007 or September 1, 2007, that has not submitted an acceptable contract(s).**

- D. The following items must be verified and completed before submission of the Depository Contract for Funds of Independent School Districts:

- Verify that "2008-2009 BIENNIUM" appears in the upper-right hand corner.
- Article I: Fill in the county; county-district number; the bank routing number (this must correspond with the bank routing number on the back of the form and the routing number on the VDDA form); the name of the depository bank; the mailing address of the bank; the name of the county the bank is located in; the district name; the name of the county the district is located in; the beginning and ending date of the depository contract (i.e.; July 1, 2007 through June 30, 2009 or September 1, 2007 through August 31, 2009); the date the bids were opened and the number of bids submitted (the number of bids submitted must correspond with the Competitive Bid Data Sheet).
- Article III.A. is the amount of the surety bond. Please ensure that the amount of the surety bond included in Article III.A. corresponds to the following: Corporate Surety Bond under Article IV of the depository contract; Article III – Limit of Liability on the Texas School Depository Surety Bond Form and paragraph J of the accepted Bid Form for Acting as Depository for All Funds. However, if the district will not have a surety bond to secure its deposits, please write "N/A" (Not Applicable) in this blank.

- Article IV: Fill in the amount of the school district's estimated highest daily balance of funds anticipated to be on deposit from day to day. Also, please be sure the Total Initial Secured Amount is equal to the estimated highest cash balance.
 - Article VI: Fill in the transit routing number; indicate checking or savings and the account number. If the district receives its funds in a public fund investment pool created under Chapter 791 of the Government Code, then please disclose the name of the pool and account information for the pool in the upper-right hand corner of the box.
 - Include the date the depository contract was agreed to and accepted on behalf of the school district; the signature of the school board president; the signature of the school board secretary; the date the bank agreed and accepted the depository contract; the typed name of the depository; the authorized bank officer's signature; the title of the authorized bank officer.
 - The "Acknowledgment" section of the Depository Contract must be completed by the Notary. It must include the printed name of the authorized bank officer signing the contract; the date (this date must be the same as the date the bank agreed and accepted the depository contract); the signature of the notary and the notary seal.
- E. The Bid Form for Acting as Depository for All Funds, paragraph Q includes the amount of the cashier's check. The cashier's check should not be excessive but should be in an amount sufficient to cover the costs incurred by the district during the bidding process and any cost the district incurs in seeking new bids should the selected depository submitting the bid fail in its performance to enter into a contract with the district.
- F. The Vendor Direct Deposit Authorization form must be completed and signed by the district to inform the Texas Education Agency of any bank changes. The agency keeps an accurate record of the name and address of each depository and its transit routing number to which all funds distributed though the Agency are sent. A record of each district's bank account number and type is maintained. Current bank information is necessary for the transfer of all funds electronically through the ACH (Automated Clearing House) system. The depository shall give the district credit on the effective settlement date for funds transferred electronically (25th day of the month or the following banking day if the 25th falls on a weekend or holiday for Foundation and Per Capita funds).

G. SECURITIES

The district is responsible for reviewing the securities pledged to determine if they are acceptable for pledge purposes as specified by the statutes, the Code, and Attorney General Opinions, and for keeping copies of said receipts on file.

The Government Code, Collateral for Public Funds, Section 2257.023 states, that "in accordance with a written policy approved by the governing body of the public entity, a public entity shall determine if an investment security is eligible to secure deposits of public funds." Security is authorized in the type and form of the following:

Surety Bond: Section 45.208(a) states, "the bank or banks selected as school depository or depositories and the school district shall enter into a depository contract or contracts, bond or bonds, or other necessary instruments setting forth the duties and agreements pertaining to the depository, in a form and with the content prescribed by the State Board of Education." Also, in accordance with Section 45.208(b), "the depository bank shall attach to the contract and file with the school district a bond in an initial amount equal to the estimated highest daily balance, determined by the board of trustees of the district, of all deposits that the school district will have in the depository during the term of the contract, less any applicable Federal Deposit Insurance Corporation insurance. The bond must be payable to the school district and must be signed by the depository bank and by some surety company authorized to do business in this state." The school district must submit a completed and signed Texas School Depository Surety Bond Form to this Agency if the district elects to use a surety bond to secure its deposits. A copy of the depository contract and bond shall be filed with the agency, in accordance with Section 45.208(e) of the Code.

Pledged Securities: The Board of Trustees may accept a deposit of approved securities. Approved securities are categorized and also restricted to those defined in Section 45.201(4) of the Texas Education Code and as provided for in the Government Code, Chapter 2257, Collateral for Public Funds. Please note that Section 2257.022(b) states that the total value of eligible security described by Section 45.201(4) (D), Education Code, must be in an amount not less than 110 percent of the amount of the deposit as determined under 2257.022(a).

The amount pledged shall be in a total market value sufficient to adequately protect the funds of the District as directed at anytime by the Board of Trustees of the District in accordance with standards acceptable to the Texas Education Agency. All funds, less applicable Federal Deposit Insurance and any surety bond coverage, must be secured by the end of the banking day on which the funds were credited.

The depository is required to file with the district safekeeping or trust receipt for each security pledged against the district's funds. Such receipts must show the school district as pledgee and must clearly indicate the third party holder of the security, the name of the depository, the receipt number, description, maturity date, par value or market value of the security if it reduces in principal.

The question is often asked whether short-term obligations of a given school district are acceptable for pledge purposes, thus having the effect of reducing the amount of securities that a given depository may be required to pledge. We find no authority for short-term loans made by the depository to the district to be deducted from the required amount pledged; however, such short-term obligations of the depositing school district are acceptable for pledge purposes but must be considered "approved securities" and placed in another bank for safekeeping. The bank shall issue safekeeping receipts showing that the obligations are pledged to the school district on a declining balance according to the repayment schedule.

H. COLLATERAL PLEDGE AGREEMENT

The collateral pledge agreement (also referred to as the third party holder agreement) shall conform to the United States Code Annotated (USCA), Title 12, §1823(e), as follows:

(e) Agreements against interests of the Corporation

(1) In general

No agreement which tends to diminish or defeat the interest of the Corporation in any asset acquired by it under this section or section 1821 of this title, either as security for a loan or by purchase or as receiver of any insured depository institution, shall be valid against the Corporation unless such agreement—

(A) is in writing,

(B) was executed by the depository institution and any person claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the depository institution,

(C) was approved by the board of directors of the depository institution or its loan committee, which approval shall be reflected in the minutes of said board or committee, and,

(D) has been, continuously from the time of its execution, an official record of the depository institution.

(2) Public deposits

An agreement to provide for the lawful collateralization of deposits of a Federal, State, or local governmental entity or of any depositor referred to in section 1821(a) (2) of this title shall not be deemed to be invalid pursuant to paragraph (1) (B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or with any changes in the collateral made in accordance with such agreement."

I. INVESTMENTS

The Government Code, Section 2256.005(a), Public Funds Investment, states that the governing body of an investing entity shall adopt by rule, order, ordinance, or resolution, as appropriate, a written investment policy regarding the investment of its funds and funds under its control.

Section 2256.005(d) of the Public Funds Investment Act (PFIA) states that, “each Investment Strategy must describe the investment objectives for the particular fund using the following priorities in order of importance”:

1. understanding of the suitability of the investment to the financial requirements of the entity;
2. preservation and safety of principal;
3. liquidity;
4. marketability of the investment if the need arises to liquidate the investment before maturity;
5. diversification of the investment portfolio; and
6. yield.

Districts may refer to PFIA, Section 2256.005(b) regarding the requirements the district must include in their investment policies.

The following are authorized investments as noted in the PFIA, Section 2256.009(a):

1. obligations, including letters of credit, of the United States or its agencies and instrumentalities;
2. direct obligations of this state or its agencies and instrumentalities;
3. collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;
4. other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, this state or the United States or their respective agencies and instrumentalities;
5. obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent; and
6. bonds issued, assumed, or guaranteed by the State of Israel.

Section 2256.009(b) of the PFIA also discloses investments which are not authorized.

Districts may refer to the following sections under the Public Funds Investment Act for more information regarding specific authorized investments:

§2256.010 Authorized Investments: Certificates of Deposit and Share Certificates

§2256.011 Authorized Investments: Repurchase Agreements

§2256.0115 Authorized Investments: Securities Lending Program

§2256.012 Authorized Investments: Banker’s Acceptances

§2256.013 Authorized Investments: Commercial Paper

§2256.014 Authorized Investments: Mutual Funds

§2256.015 Authorized Investments: Guaranteed Investment Contracts

§2256.016 Authorized Investments: Investment Pools

If the district invests in Certificates of Deposit with other banks, the investment must be made in the name of the district and the investment amount exceeding the FDIC coverage must be secured by a contract and the pledging of securities.

J. ACCOUNTS

Total school deposits shall require approved security pledge or surety bond coverage, or both, to the extent not covered by the Federal Deposit Insurance Corporation (FDIC) insurance.

1. The amount of FDIC coverage is as follows:

- a. Up to \$100,000 for all district operational funds in time/savings accounts;
- b. Up to \$100,000 for all district operational funds in demand/regular accounts which are not being paid interest; and
- c. Up to \$100,000 for the interest and sinking funds account that is being paid interest.

2. Time and Savings Accounts: In an opinion rendered by the Dallas FDIC office, the following information was given: "Demand accounts of public schools which are being paid interest (NOW accounts) are categorized as savings accounts for insurance purposes." This would mean that a district using the NOW account for the regular or demand account could not discount the FDIC \$100,000 insurance from the collateral pledged for that account. It would mean that the amount the district deposited in the Time and Savings Account plus the amount deposited in the NOW account would be aggregated and only insured up to \$100,000.

3. Interest and Sinking. Interest and sinking funds are deemed to be a deposit by a trustee of trust funds of which the bondholders are pro rata beneficiaries and the beneficial interest of each bondholder would be insured to a maximum of \$100,000 separately from other funds owned by the school district. In order to obtain such coverage, however, record keeping requirements similar to those pertaining to trust accounts must be met. The deposit account records of the bank must disclose that such a custodial relationship exists. In addition, the detail of the deposit relationship and the interest of the parties in the account must be ascertainable from the records of the bank or the records of the school district.

K. BANK CLOSING

In the event a bank is closed, the ISD may select another depository. The Texas Local Government Code, Section 131.001, allows the local government authority of the county, municipality or district to select by contract a special depository in the event that the original depository bank suspends business or is taken charge of by a state or federal bank regulatory agency.

1. When a bank fails and is reopened, FDIC usually negotiates a contract with the new bank. The contract will specify if or under what conditions the new bank will honor pre-existing depository contracts. As soon as feasible, all safekeeping receipts should be re-issued, showing the name of the new bank and the securities pledged to the district.
2. When a failed bank is reopened, the transit routing number, the bank address, the type of account, or the account number may change. The district must notify the Texas Education Agency immediately of any changes which could affect the receipt of school funds and complete a new Vendor Direct Deposit Authorization Form.

L. These guidelines have not taken into account any changes in the procedures that may be necessary as a result of legislative acts that may be passed during the present session.

M. To request additional depository contract forms be mailed to the district or for any questions/comments, please contact Dana Cisneros in the Division of Financial Audits at 512-463-9095 or by email: Dana.Cisneros@tea.state.tx.us

Completed and signed depository contract forms must be submitted to the following address:

Attention: Dana Cisneros
Division of Financial Audits
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494