

## LOCAL GOVERNMENT CODE

## TITLE 4. FINANCES

## SUBTITLE A. MUNICIPAL FINANCES

## CHAPTER 105. DEPOSITORIES FOR MUNICIPAL FUNDS

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 105.001. DEFINITIONS. In this chapter:

- (1) "Bank" means a state bank or a national bank that has its main office or a branch office in this state.
- (2) "Credit union" means a state credit union or federal credit union domiciled in this state.
- (3) "Demand deposit" means a deposit of funds that may be withdrawn on the demand of the depositor.
- (4) "Depository" means the bank, credit union, or savings association selected by the municipality to provide depository services.
- (5) "Time deposit" means a deposit of funds subject to a contract between the depositor and the depository under which the depositor may not withdraw any of the funds by check or by another manner until the expiration of a certain period following written notice of the depositor's intent to withdraw the funds.
- (6) "Depository services" means the receipt and disbursement of funds by a depository in accordance with the terms of a depository services contract.
- (7) "Depository services contract" means a contract executed by a municipality and a depository containing terms and conditions relating to the depository services to be provided by the depository.
- (8) "Designated officer" means the treasurer of a municipality or other officer of the municipality so designated by the governing body of a municipality.
- (9) "Federal credit union" means a credit union organized under the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.).
- (10) "Federal savings association" means a savings and loan association or a savings bank organized under federal law.
- (11) "National bank" means a banking corporation organized under the provisions of 12 U.S.C. Section 21.
- (12) "Savings association" means a savings association or 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.

Text of subsec. (13) as amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.79

(13) "State bank" has the meaning assigned by Section 31.002(a), Finance Code.

Text of subsec. (13) as amended by Acts 1999, 76th Leg., ch. 344, Sec.  
5.008

(13) "State bank" means a bank organized under the laws of this state or another state.

(14) "State credit union" means a credit union organized under Subtitle D, Title 3, Finance Code.

(15) "State savings association" means any savings and loan association or savings bank organized under the laws of this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 914, Sec. 9, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 7.79, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 344, Sec. 5.008, eff. Sept. 1, 1999.

Sec. 105.002. FUNDS AFFECTED. This chapter applies to the funds, including school funds, of any municipality or any department or agency of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

#### SUBCHAPTER B. ESTABLISHMENT OF DEPOSITORY

Sec. 105.011. DEPOSITORY AUTHORIZED. (a) Before awarding a depository services contract to a depository, the governing body of a municipality shall receive applications for the performance of depository services from one or more banks, credit unions, or savings associations.

(b) The governing body may consider the application of a bank, credit union, or savings association that is not doing business within the municipality if:

(1) the bank, credit union, or savings association maintains a place of business within the state and offers within the state the services required by the depository services contract; and

(2) the governing body, prior to giving the notice required by Section 105.012, has adopted a written policy expressly permitting the consideration of applications received by the municipality from a bank, credit union, or savings association that is not doing business within the municipality, after taking into consideration what is in the best interest of the municipality in establishing a depository.

(c) The designated officer shall request, receive, and review applications for the performance of depository services. The designated officer shall present the specifications of each application to the governing body who will then select a depository.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 14(a), eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.012. NOTICE. (a) The designated officer shall give notice to banks, credit unions, and savings associations requesting the submission of applications for the performance of depository services.

(b) The notice must contain:

(1) the name and address of the designated officer receiving the applications;

(2) the date and time the applications are to be received by the designated officer; and

(3) the date, time, and place the governing body of the municipality will consider the selection of one or more depositories.

(c) Notice of the request shall be published at least once no later than 21 days prior to the deadline for receipt of applications for depository services contracts (i) in a newspaper of general circulation in the municipality and (ii) in a financial publication of general circulation published within this state; provided, that the notice required by clause (ii) shall not be required if the governing body has not adopted the written policy described in Section 105.011.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.013. APPLICATION. The designated officer may not consider an application if it is received after the date specified in the notice for

receiving applications by the designated officer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.014. REVIEW OF APPLICATIONS. In reviewing the applications, the designated officer shall consider the terms and conditions for the performance of depository services, including the type and cost of services to be provided to the municipality, consistent with any policy guidelines adopted by the governing body regarding the selection of one or more depositories.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.015. SELECTION OF DEPOSITORY. (a) The governing body of a municipality may authorize the designated officer to execute on the municipality's behalf one or more depository services contracts.

(b) The governing body may reject any of the applications and readvertise if all applications are rejected.

(c) The conflict of interests provisions of Section [131.903](#) apply to the selection of the depositories.

Added by Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 105.014 and amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1993, 73rd Leg., ch. 268, Sec. 25, eff. Sept. 1, 1993.

Sec. 105.016. DESIGNATION OF DEPOSITORY. (a) The governing body shall designate, by an order recorded in its minutes, the bank, credit union, or savings association to serve as a depository for the municipality's funds.

(b) If a bank, credit union, or savings association selected as a municipal depository does not provide security by the deadline prescribed by Section [105.031](#), the selection of the bank, credit union, or savings association as a depository is void, and the governing body may consider the application it deems to be the next most advantageous depository services application.

Added by Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 105.015 and amended by Acts 1993, 73rd Leg., ch. 234,

Sec. 1, eff. Sept. 1, 1993.

Sec. 105.017. TERM OF DEPOSITORY CONTRACT. A municipality may approve, execute, and deliver any depository services contract whose term does not exceed five years. The depository services contract may only contain terms and conditions approved by the governing body of the municipality.

Added by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.018. ADDITIONAL SERVICES. In addition to depository services, a municipality may contract with financial institutions, including banks, credit unions, and savings associations, for additional financial services under a separate contract if the governing body of the municipality determines that additional financial services are necessary in the administration, collection, investment, and transfer of municipal funds.

Added by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

#### SUBCHAPTER C. SECURITY FOR FUNDS HELD BY DEPOSITORY

Sec. 105.031. QUALIFICATION AS DEPOSITORY. (a) The bank or savings association, to qualify as a municipal depository, must, not later than five days before the commencement of the term of the depository services contract, provide security for the municipal funds to be deposited in accordance with the terms of the depository services contract.

(b) Chapter [2257](#), Government Code governs the type, level, substitution, possession, release, and method of valuation of the security necessary to secure the deposit of municipal funds.

(c) Repealed by Acts 2001, 77th Leg., ch. 402, Sec. 20(a), eff. Sept. 1, 2001.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(12), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 402, Sec. 20(a), eff. Sept. 1, 2001.

Sec. 105.033. SURETY BOND. (a) One or more bonds issued and executed by one or more solvent surety companies authorized to do business in this state, payable to the municipality and filed with the secretary and

the designated officer of the municipality, qualify as security under this subchapter if the bonds are approved by the governing body.

(b) After the governing body approves a surety bond, it shall be filed with the secretary and the designated officer of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.034. CONDITIONS TO ACTING AS DEPOSITORY. (a) The depository shall:

- (1) keep the municipal funds covered by the depository services contract;
- (2) perform all duties and obligations imposed on the depository by law and under the depository services contract;
- (3) pay on presentation all checks drawn and properly payable on a demand deposit account with the depository;
- (4) pay all transfers properly payable as directed by a designated officer;
- (5) provide and maintain security at the level required by the provisions of Chapter 2257, Government Code; and
- (6) account for the municipal funds as required by law.

(b) Any suit brought in connection with a depository services contract must be tried in the county in which the city hall of the municipality is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(12), eff. Sept. 1, 1995.

#### SUBCHAPTER D. MAINTENANCE AND MODIFICATION OF SECURITY

Sec. 105.051. MAINTENANCE OF SECURITY. (a) A depository services contract shall contain terms and conditions relating to the possession, substitution, or release of security, including:

- (1) requiring the depository to execute a new bond or pledge additional securities for the deposit of municipal funds;
- (2) substituting one security for another;
- (3) releasing securities pledged by a depository in excess of the amount required by this chapter;
- (4) the time period in which such addition, substitution, or release of security by a depository may occur; and

(5) other matters relating to the possession, substitution, or release of security the municipality considers necessary for its protection.

(b) If a depository fails for any reason to comply with the requirements governing the possession, substitution, or release of security, the governing body may select a new depository in the manner provided in this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.053. SOLVENCY OF SURETY COMPANY AND ADEQUACY OF SECURITIES. At any time the governing body of the municipality considers it necessary for the protection of the municipality, the governing body may direct the designated officer to investigate the solvency of a surety company that issues a bond on behalf of a municipal depository or investigate the value of securities pledged by a depository to secure municipal funds.

Added by Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 105.056 and amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.054. SURRENDER OF INTEREST ON SECURITIES. Except as provided for in the collateral policies of the municipality adopted in accordance with Chapter 2257, Government Code, on request of a municipal depository, the municipality shall surrender, when due, interest coupons or other evidence of interest on securities deposited by the depository with the governing body if the securities remaining pledged by the depository are adequate to meet the requirements of this chapter and of the governing body.

Added by Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 105.057 and amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(12), eff. Sept. 1, 1995.

#### SUBCHAPTER E. DEPOSITORY ACCOUNTS

Sec. 105.071. CHARACTER AND AMOUNT OF DEPOSITS. (a) The governing body of the municipality may determine and designate in the depository services contract the character and amount of municipal funds that will be

demand deposits. However, the municipality has the right to maintain other investments of municipal funds in accordance with the investment policy adopted by the municipality.

(b) The designated officer may contract with a depository for interest on time deposits, including, without limitation, certificates of deposit, at any legal rate under federal or state law, rule, or regulation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.072. INVESTMENTS. The provisions of Chapter 810, Acts of the 66th Legislature, Regular Session, 1979 (Article 4413(34c), Vernon's Texas Civil Statutes), and Subchapter A, Chapter 2256, Government Code shall govern the investment of municipal funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(11), eff. Sept. 1, 1995.

Sec. 105.073. DEPOSIT OF FUNDS. Not later than 60 days from the date the governing body of the municipality designates a depository in accordance with the provisions of Section 105.016, the designated officer of the municipality shall transfer to the depository all the municipal funds covered by the depository services contract under the control of the designated officer. The designated officer of the municipality shall as soon as practicable also deposit in the depository to the credit of the municipality any money covered by the depository services contract received after the depository is designated.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.074. PAYMENT OF FUNDS. (a) The funds of the municipality may be paid out of a depository only at the direction of a designated officer.

(b) Except as provided in Subsection (g), a designated officer may draw a check on a depository only on a warrant signed by the mayor and attested by the secretary of the municipality.

(c) If there is sufficient money in a fund in a depository against which the proper authority has drawn a warrant, the designated officer on presentation of the warrant shall draw a check on the depository in favor

of the legal holder of the warrant, retain the warrant, and charge the warrant against the fund on which it is drawn. The designated officer may not draw a warrant on a fund in a depository unless the fund has sufficient money to pay the warrant.

(d) A designated officer may not draw a check on any funds designated in the depository services contract as time deposits until notice has been given and the notice period has expired under the terms of the contract with the depository.

(e) The mayor and secretary of the municipality may not draw a warrant on a special fund in a depository or under the control of the designated officer that was created to pay the bonded indebtedness of the municipality other than to pay the principal of or interest on the indebtedness or to invest the fund as provided by law.

(f) The designated officer may not pay or draw a check to pay money out of a special fund that was created to pay the bonded indebtedness of the municipality other than to pay the principal of or interest on the indebtedness or to invest the fund as provided by law.

(g) Notwithstanding the provisions of Subsections (b) through (f), the governing body of a municipality may adopt procedures:

(1) governing the method by which the designated officer is authorized to direct payments from the funds of the municipality on deposit with a depository;

(2) governing the method of payment of obligations of the municipality, including payment by check, draft, wire transfer, or other method of payment mutually acceptable to the municipality and the depository; and

(3) the governing body determines are necessary to ensure the safety and integrity of the payment process.

(h) If a municipality adopts procedures in accordance with Subsection (g), a copy of the adopted procedures shall be filed with the depository. The designated officer and the depository shall agree upon record-keeping safeguards and other measures necessary to ensure the safety and integrity of the payment process. The safeguards must be approved by the governing body of the municipality if the governing body finds that the safeguards are consistent with and do not contravene the procedures adopted under Subsection (g).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.075. CHECKS PAYABLE AT DEPOSITORY. Checks drawn by the treasurer of the municipality against municipal funds on deposit are payable by the depository at its place of business in the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.076. DEBTS PAYABLE OTHER THAN AT MUNICIPAL TREASURY. The governing body of the municipality may direct the designated officer to withdraw from a depository and deposit money sufficient to pay a bond, coupon, or other indebtedness of the municipality at a place other than at the municipal treasury if by its terms the indebtedness is payable on maturity or upon redemption prior to maturity at the other location.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

#### SUBCHAPTER F. LIABILITY AND REPORT OF DESIGNATED OFFICER

Sec. 105.091. LIABILITY OF DESIGNATED OFFICER. (a) The designated officer is not responsible for any loss of municipal funds through the negligence, failure, or wrongful act of a depository. This subsection does not release the designated officer from responsibility for a loss resulting from the official misconduct of the designated officer, including a misappropriation of the funds, or from responsibility for the funds until a depository is selected and the funds are deposited.

(b) A designated officer who diverts money from an interest and sinking fund or who applies money in that fund for a purpose other than as permitted by Section [105.074\(f\)](#) is:

- (1) subject to a penalty of not less than \$500 or more than \$1,000; and
- (2) liable for the amount of money that is diverted.

(c) The state is entitled to recover a penalty imposed under Subsection (b)(1). The amount of diverted money that is recovered under Subsection (b)(2) shall be paid into the municipal treasury to the credit of the fund from which it was diverted.

(d) The attorney general or the district attorney of the district in which the designated officer resides, or the county attorney in a county that is not served by a district attorney, may institute suit against the designated officer and the sureties on the designated officer's official bond to recover the amounts described by Subsection (b).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 227, Sec. 6, eff. Sept. 1, 1999.

Sec. 105.092. REPORT BY DESIGNATED OFFICER. In conjunction with the publication of the annual financial statement of the municipality, the designated officer shall prepare a report which shall describe in summary form:

- (1) the amount of receipts and expenditures of the municipal treasury;
- (2) the amount of money on hand in each fund;
- (3) the amount of bonds becoming due for redemption that require action;
- (4) the amount of interest to be paid during the next fiscal year; and
- (5) any other information required by law to be reported by the designated officer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.