

Chapter 39.58 RCW

Public funds — deposits and investments — public depositories

RCW Sections

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39.58.010 **Definitions.**

In this chapter, unless the context otherwise requires:

(1) "Capitalization" means the measure or measures of capitalization, other than net worth, of a depository applying for designation as or operating as a public depository pursuant to this chapter, based upon regulatory standards of financial institution capitalization adopted by rule or resolution of the commission after consultation with the director of the department of financial institutions;

(2) "Collateral" means the particular assets pledged as security to insure payment or performance of the obligations under this chapter as enumerated in RCW 39.58.050;

(3) "Commission" means the Washington public deposit protection commission created under RCW 39.58.030;

(4) "Commission report" means a formal accounting rendered by all public depositories to the commission in response to a demand for specific information made by the commission detailing pertinent affairs of each public depository as of the close of business on a specified date, which is the "commission report date." "Commission report due date" is the last day for the timely filing of a commission report;

(5) "Depository pledge agreement" means a tripartite agreement executed by the commission with a financial institution and its designated trustee. Such agreement shall be approved by the directors or the loan committee of the financial institution and shall continuously be a record of the financial institution. New securities may be pledged under this agreement in substitution of or in addition to securities originally pledged without executing a new agreement;

(6) "Director of the department of financial institutions" means the Washington state director of the department of financial institutions;

(7) "Eligible collateral" means securities which are enumerated in RCW 39.58.050 (5) and (6) as eligible collateral for public deposits;

(8) "Financial institution" means any national or state chartered commercial bank or trust company, savings bank, or savings association, or branch or branches thereof, located in this state and lawfully engaged in business;

(9) "Investment deposits" means time deposits, money market deposit accounts, and savings deposits of public funds available for investment;

(10) "Liquidity" means the measure or measures of liquidity of a depository applying for designation as or operating as a public depository pursuant to this chapter, based upon regulatory standards of financial institution liquidity adopted by rule or resolution of the commission after consultation with the director of the department of financial institutions;

(11) "Loss" means the issuance of an order by a regulatory or supervisory authority or a court of competent jurisdiction (a) restraining a public depository from making payments of deposit liabilities or (b) appointing a receiver for a public depository;

(12) "Maximum liability," with reference to a public depository's liability under this chapter for loss per occurrence by another public depository, on any given date means:

(a) A sum equal to ten percent of:

(i) All uninsured public deposits held by a public depository that has not incurred a loss by the then most recent commission report date; or

(ii) The average of the balances of said uninsured public deposits on the last four immediately preceding reports required pursuant to RCW 39.58.100, whichever amount is greater; or

(b) Such other sum or measure as the commission may from time to time set by resolution according to criteria established by rule, consistent with the commission's broad administrative discretion to achieve the objective of RCW 39.58.020.

As long as the uninsured public deposits of a public depository are one hundred percent collateralized by eligible collateral as provided for in RCW 39.58.050, the "maximum liability" of a public depository that has not incurred a loss may not exceed the amount set forth in (a) of this subsection.

This definition of "maximum liability" does not limit the authority of the commission to adjust the collateral requirements of public depositories pursuant to RCW 39.58.040;

(13) "Net worth" of a public depository means (a) the equity capital as reported to its primary regulatory authority on the quarterly report of condition or statement of condition, or other required report required by its primary regulatory authority or federal deposit insurer, and may include capital notes and debentures which are subordinate to the interests of depositors, or (b) equity capital adjusted by rule or resolution of the commission after consultation with the director of the department of financial institutions;

(14) "Public deposit" means public funds on deposit with a public depository;

(15) "Public depository" means a financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has been approved by the commission to hold public deposits, and which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability;

(16) "Public funds" means moneys under the control of a treasurer, the state treasurer, or custodian belonging to, or held for the benefit of, the state or any of its political subdivisions, public corporations, municipal corporations, agencies, courts, boards, commissions, or committees, including moneys held as trustee, agent, or bailee belonging to, or held for the benefit of, the state or any of its political subdivisions, public corporations, municipal corporations, agencies, courts, boards, commissions, or committees;

(17) "Public funds available for investment" means such public funds as are in excess of the anticipated cash needs throughout the duration of the contemplated investment period;

(18) "State public depository" means a Washington state-chartered financial institution that is authorized as a public depository under this chapter;

(19) "State treasurer" means the treasurer of the state of Washington;

(20) "Treasurer" means a county treasurer, a city treasurer, a treasurer of any other municipal corporation, and any other custodian of public funds, except the state treasurer;

(21) "Trustee" means a third-party safekeeping agent which has completed a depository pledge agreement with a public depository and the commission. Such third-party safekeeping agent may be the federal reserve bank of San Francisco, the federal home loan bank of Seattle, or such other third-party safekeeping agent approved by the commission.

[2009 c 9 § 1; 1996 c 256 § 1; 1994 c 92 § 494; 1984 c 177 § 10; 1983 c 66 § 3; 1977 ex.s. c 95 § 1; 1975 1st ex.s. c 77 § 1; 1973 c 126 § 9; 1969 ex.s. c 193 § 1.]

39.58.020

Public funds — Protection against loss.

All public funds deposited in public depositaries, including investment deposits and accrued interest thereon, shall be protected against loss, as provided in this chapter.

[1996 c 256 § 2; 1984 c 177 § 11; 1983 c 66 § 5; 1973 c 126 § 10; 1969 ex.s. c 193 § 2.]

39.58.030

Public deposit protection commission — State finance committee constitutes — Proceedings.

The Washington public deposit protection commission shall be the state finance committee. The record of the proceedings of the public deposit protection commission shall be kept in the office of the commission and a duly certified copy thereof, or any part thereof, shall be admissible in evidence in any action or proceedings in any court of this state.

[1983 c 66 § 6; 1969 ex.s. c 193 § 3.]

39.58.040

General powers of commission.

The commission shall have the power and broad administrative discretion:

(1) To make and enforce regulations necessary and proper to the full and complete performance of its functions under this chapter;

(2) To require any public depository to furnish such information dealing with public deposits and the exact status of its capitalization, collateral, liquidity, and net worth as the commission shall request;

(3) To take such action as it deems best for the protection, collection, compromise or settlement of any claim arising in case of loss;

(4) To fix by rule or resolution, consistent with this chapter, the requirements for initial and continued qualification of financial institutions as public depositaries on the basis of a depository's financial condition, including its capitalization, collateral, liquidity, and net worth, and fixing other terms and conditions consistent with this chapter, under which public deposits may be received and held;

(5) To make and enforce rules setting forth criteria for the establishment by policy of standards governing matters that are subject to the commission's powers to fix requirements, terms, and conditions under subsection (4) of this section for a public depository, and, if these standards are not met, providing for additional collateral or other conditional or unconditional requirements or restrictions applicable to the public depository's right to receive or hold public deposits;

(6) To require additional or different types and amounts of collateral, or to restrict a public depository's right to receive or hold public deposits if the standards for the financial condition of public depositaries are not met;

(7) To fix the official date on which any loss shall be deemed to have occurred taking into consideration the orders, rules, and regulations of the supervisory authority of a public depository's primary regulatory authority and federal deposit insurer as they affect the failure or inability of a public depository to repay public deposits in full;

(8) In case loss occurs in more than one public depository, to determine the allocation and time of payment of any sums due to public depositors under this chapter; and

(9) To make and enforce sanctions against a public depository for noncompliance with the provisions of this chapter and rules or policies of the commission.

[2009 c 9 § 2; 1996 c 256 § 3; 1986 c 25 § 2; 1984 c 177 § 12; 1983 c 66 § 7; 1975 1st ex.s. c 77 § 2; 1969 ex.s. c 193 § 4.]

39.58.045

Financial institutions claiming exemption from sales, use or ad valorem taxes — Notification of commission.

The director of the department of revenue shall notify the public deposit protection commission quarterly on the first day of October, January, April, and July of the names and addresses of any financial institutions which have claimed exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state.

[1983 c 66 § 4.]

39.58.050

Collateral for deposits — Segregation — Eligible securities.

(1) Every public depository shall complete a depository pledge agreement with the commission and a trustee, and shall at all times maintain, segregated from its other assets, eligible collateral in the form of securities enumerated in this section having a value at least equal to its maximum liability and as otherwise prescribed in this chapter. Such collateral shall be segregated by deposit with the depository's trustee and shall be clearly designated as security for the benefit of public depositors under this chapter.

(2) Securities eligible as collateral shall be valued at market value, and the total market value of securities pledged in accordance with this chapter shall not be reduced by withdrawal or substitution of securities except by prior authorization, in writing, by the commission.

(3) The public depository shall have the right to make substitutions of an equal or greater amount of such collateral at any time.

(4) The income from the securities which have been segregated as collateral shall belong to the public depository without restriction.

(5) Each of the following enumerated classes of securities, providing there has been no default in the payment of principal or interest thereon, shall be eligible to qualify as collateral:

(a) Certificates, notes or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States;

(b) State, county, municipal, or school district bonds or warrants of taxing districts of the state of Washington or any other state of the United States, provided that such bonds and warrants shall be only those found to be within the limit of indebtedness prescribed by law for the taxing district issuing them and to be general obligations;

(c) The obligations of any United States government-sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system;

(d) Bonds, notes, letters of credit, or other securities or evidence of indebtedness constituting the direct and general obligation of a federal home loan bank or federal reserve bank;

(e) Revenue bonds of this state or any authority, board, commission, committee, or similar agency thereof, and any municipality or taxing district of this state;

(f) Direct and general obligation bonds and warrants of any city, town, county, school district, port district, or other political subdivision of any state, having the power to levy general taxes, which are payable from general ad valorem taxes;

(g) Bonds issued by public utility districts as authorized under the provisions of Title 54 RCW, as now or hereafter amended;

(h) Bonds of any city of the state of Washington for the payment of which the entire revenues of the city's water system, power and light system, or both, less maintenance and operating costs, are irrevocably pledged, even though such bonds are not general obligations of such city.

(6) In addition to the securities enumerated in this section, every public depository may also segregate such bonds, securities, and other obligations as are designated to be authorized security for public deposits under the laws of this state.

(7) The commission may determine by rule or resolution whether any security, whether or not enumerated in this section, is or shall remain eligible as collateral when in the commission's judgment it is desirable or necessary to do so.

[2009 c 9 § 4; 1996 c 256 § 4; 1989 c 97 § 4; 1984 c 177 § 13; 1983 c 66 § 8; 1975 1st ex.s. c 77 § 3; 1973 c 126 § 11; 1969 ex.s. c 193 § 5.]

39.58.060

Loss in a public depository — Procedure for payment.

When the commission determines that a loss has occurred in a public depository, it shall as soon as possible make payment to the proper public officers of all funds subject to such loss, pursuant to the following procedures:

(1) For the purposes of determining the sums to be paid, the director of the department of financial institutions or the receiver shall, within twenty days after issuance of a restraining order or taking possession of any public depository, ascertain the amount of public funds on deposit therein as disclosed by its records and the amount thereof covered by deposit insurance and provide written verification of the amounts thereof to the commission and each public depositor;

(2) Within ten days after receipt of written verification, each public depositor shall furnish to the commission verified statements of its deposits in the public depository, including the uninsured and uncollateralized status of the public deposits, as disclosed by its records;

(3) Upon receipt of written verification and statements, the commission shall ascertain and fix the amount of the public deposits, net after deduction of any amount received from deposit insurance and held collateral, and, after determining and declaring the apparent net loss, assess the same against all public depositories, as follows: First, against the public depository in which the loss occurred, to the extent of the full value of collateral segregated pursuant to this chapter; second, against all other public depositories pro rata in proportion to the maximum liability of each depository as it existed on the date of loss;

(4) Assessments made by the commission shall be payable on the second business day following demand, and in case of the failure of any public depository so to pay, the commission shall take possession of the securities segregated as collateral by the depository pursuant to this chapter and liquidate the same for the purpose of paying such assessment;

(5) Upon receipt of the assessment payments, the commission shall reimburse the public depositors of the public depository in which the loss occurred to the extent of the depository's net deposit liability to them;

(6) Any owner of public deposits receiving assessment proceeds shall provide a receivership certificate to the commission.

[2009 c 9 § 5; 1996 c 256 § 5; 1983 c 66 § 9; 1973 c 126 § 12; 1969 ex.s. c 193 § 6.]

39.58.070

Subrogation of commission to depositor's rights — Sums received from distribution of assets, payment.

Upon payment to any public depositor, the commission shall be subrogated to all of such depositor's right, title and interest against the public depository in which the loss occurred and shall share in any distribution of its assets ratably with other depositors. Any sums received from any distribution shall be paid to the public depositors to the extent of any unpaid net deposit liability and the balance remaining shall be paid to the public depositories against which assessments were made, pro rata in proportion to the assessments actually paid by each such depository: PROVIDED, That the public depository in which the loss occurred shall not share in any such distribution of the balance remaining. If the commission incurs expense in enforcing any such claim, the amount thereof shall be paid as a liquidation expense of the public depository in which the loss occurred.

[1996 c 256 § 7; 1973 c 126 § 13; 1969 ex.s. c 193 § 7.]

39.58.080

Deposit of public funds in public depository required — Deposits in institutions located outside the state.

(1) Except for funds deposited pursuant to a fiscal agency contract with the state fiscal agent or its correspondent bank, funds deposited pursuant to a custodial bank contract with the state's custodial bank, and funds deposited pursuant to a local government multistate joint self-insurance program as provided in RCW 48.62.081, no public funds shall be deposited in demand or investment deposits except in a public depository located in this state or as otherwise expressly permitted by statute: PROVIDED, That the commission, or the chair upon delegation by the commission, upon good cause shown, may authorize, for such time and upon such terms and conditions as the commission or chair deem appropriate, a treasurer to maintain a demand deposit account with a banking institution located outside the state of Washington solely for the purpose of transmitting money received to public depositories in the state of Washington for deposit.

(2) Notwithstanding subsection (1) of this section, the commission, or the chair upon delegation by the commission, upon good cause shown, may authorize, for that time and upon the terms and conditions as the commission or chair deems appropriate, a treasurer to maintain a demand deposit account with a banking institution located outside the state of Washington for deposit of certain higher education endowment funds, for a specified instructional program or research project being performed outside the state of Washington.

[2005 c 203 § 1; 1996 c 256 § 8; 1991 sp.s. c 30 § 27; 1986 c 160 § 1; 1984 c 177 § 14; 1983 c 66 § 11; 1969 ex.s. c 193 § 8.]

39.58.085

Demand accounts in out-of-state and alien banks — Limitations.

(1)(a) The commission, or the chair upon delegation by the commission, may authorize state and local governmental entities to establish demand accounts in out-of-state and alien banks in an aggregate amount not to exceed one million dollars. No single governmental entity shall be authorized to hold more than fifty thousand dollars in one demand account.

(b) The governmental entities establishing such demand accounts shall be solely responsible for their proper and prudent management and shall bear total responsibility for any losses incurred by such accounts. Accounts established under the provisions of this section shall not be considered insured by the commission.

(c) The state auditor shall annually monitor compliance with this section and the financial status of such demand accounts.

(2) Subsection (1)(a) of this section does not apply to RCW 39.58.080(2).

[2005 c 203 § 2; 1996 c 256 § 9; 1987 c 505 § 21; 1986 c 160 § 2.]

39.58.090

Authority to secure deposits in accordance with chapter — Bonds and securities for deposits dispensed with.

All institutions located in this state which are permitted by the statutes of this state to hold and receive public funds shall have power to secure such deposits in accordance with this chapter. Except as provided in this chapter, no bond or other security shall be required of or given by any public depository for any public funds on deposit.

[1996 c 256 § 10; 1984 c 177 § 15; 1969 ex.s. c 193 § 9.]

39.58.100

Reports of public depositories — Certification by director of financial institutions.

(1) On or before each commission report due date, each public depository shall render to the commission a written report, certified under oath, indicating the total amount of public funds on deposit held by it, the uninsured amount of those funds, the net worth of the depository, and the amount and nature of eligible collateral then segregated for the benefit of the commission.

(2) The commission may instruct the director of the department of financial institutions to examine and thereafter certify as to the accuracy of any statement to the commission by any state public depository, or to provide such other examination report information or data as may be required by the commission. The type, content, and frequency of the reports may be determined by the director of the department of financial institutions, consistent with the requirements of the commission as defined by rule.

[2009 c 9 § 7; 1996 c 256 § 11; 1984 c 177 § 16; 1983 c 66 § 12; 1969 ex.s. c 193 § 10.]

39.58.103

Notice to commission of reduced net worth.

Each public depository shall notify the commission in writing within forty-eight hours, or by close of business of the next business day thereafter, of the happening of an event which causes its net worth to be reduced by an amount greater than ten percent of the amount shown as its net worth on the most recent report submitted pursuant to RCW 39.58.100.

[2009 c 9 § 8; 1983 c 66 § 13; 1975 1st ex.s. c 77 § 4.]

39.58.105

Investigation of financial institution applying to become public depository — Report.

(1) The commission may require the state auditor or the director of the department of financial institutions, to the extent of their respective authority under applicable federal and Washington state law, to thoroughly investigate and report to it concerning the condition of any financial institution which makes application to become a public depository, and may also as often as it deems necessary require the state auditor or the director of the department of financial institutions, to the extent of their respective authority under applicable federal and Washington state law, to make such investigation and report concerning the condition of any financial institution which has been designated as a public depository. The expense of all such investigations or reports shall be borne by the financial institution examined.

(2) In lieu of any such investigation or report, the commission may rely upon information made available to it or the director of the department of financial institutions by the office of the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, the federal reserve board, any state financial institutions regulatory agency, or any successor state or federal financial institutions regulatory agency, and any such information or data received by the commission shall be kept and maintained in the same manner and have the same protections as examination reports received by the commission from the director of the department of financial institutions pursuant to RCW 30.04.075(2)(h) and 32.04.220 (2)(h).

(3) The director of the department of financial institutions shall in addition advise the commission of any action he or she has directed any state public depository to take which will result in a reduction of greater than ten percent of the net worth of such depository as shown on the most recent report it submitted pursuant to RCW 39.58.100.

[2009 c 9 § 9; 1996 c 256 § 12; 1983 c 66 § 14; 1975 1st ex.s. c 77 § 5.]

39.58.108

Requirements to become depository.

Any financial institution may become, and thereafter operate as, a public depository upon approval by the commission and segregation of collateral in the manner as set forth in this chapter, and subject to compliance with all rules and policies adopted by the commission. A public depository shall at all times pledge and segregate eligible securities in an amount established by the commission by rule or noticed resolution.

[2009 c 9 § 10; 1996 c 256 § 13; 1984 c 177 § 17; 1983 c 66 § 15; 1975 1st ex.s. c 77 § 6.]

39.58.120

Interest rates.

Time deposits issued pursuant to this chapter shall bear interest at a rate not in excess of the maximum rate permitted by any applicable governmental regulation.

[1974 ex.s. c 50 § 1; 1969 ex.s. c 193 § 12.]

39.58.130

Investment deposits — Net worth of public depository.

A treasurer and the state treasurer are authorized to deposit in a public depository any public funds available for investment and secured by collateral in accordance with the provisions of this chapter, and receive interest thereon. The authority provided by this section is additional to any authority now or hereafter provided by law for the investment or deposit of public funds by any such treasurer: PROVIDED, That in no case shall the aggregate of demand and investment deposits of public funds by any such treasurer in any one public depository exceed at any time the net worth of that depository. If a public

depository's net worth is reduced, a treasurer and the state treasurer may allow public funds on deposit in excess of the reduced net worth to remain until maturity upon pledging by the depository of eligible securities valued at market value in an amount at least equal to the amount of the excess deposits. The collateral shall be segregated as provided in RCW 39.58.050. If the additional securities required by this section are not pledged by the depository, the depository shall permit withdrawal prior to maturity by the treasurer of deposits, including accrued interest, in accordance with applicable statutes and governmental regulations.

[2009 c 9 § 11; 1996 c 256 § 14; 1984 c 177 § 18; 1983 c 66 § 16; 1969 ex.s. c 193 § 13.]

39.58.135

Limitations on deposits.

Notwithstanding RCW 39.58.130, (1) aggregate deposits received by a public depository from all treasurers and the state treasurer shall not exceed at any time one hundred fifty percent of the value of the depository's net worth, nor (2) shall the aggregate deposits received by any public depository exceed thirty percent of the total aggregate deposits of all public treasurers in all depositories as determined by the public deposit protection commission. However, a public depository may receive deposits in excess of the limits provided in this section if eligible securities, as prescribed in RCW 39.58.050, are pledged as collateral in an amount equal to one hundred percent of the value of deposits received in excess of the limitations prescribed in this section.

[2009 c 9 § 12; 1996 c 256 § 15; 1986 c 25 § 1; 1984 c 177 § 19.]

39.58.140

Liability of treasurers and state treasurer.

When deposits are made in accordance with this chapter, a treasurer and the state treasurer shall not be liable for any loss thereof resulting from the failure or default of any public depository without fault or neglect on his or her part or on the part of his or her assistants or clerks.

[2009 c 9 § 13; 1996 c 256 § 16; 1969 ex.s. c 193 § 29.]

39.58.155

Statewide custodian — Exemption from chapter.

A statewide custodian under RCW 43.08.280 may be exempted from the requirements of this chapter, based on rules adopted by the public deposit protection commission.

[1999 c 293 § 3.]

39.58.200

Public depository pool — Uniform treatment by commission.

For the purposes of this chapter, the commission shall include all public depositories in a single public depository pool. All public depositories, as defined in RCW 39.58.010, shall be treated uniformly by the commission without regard to distinctions in the nature of its financial institution charter.

[2009 c 9 § 3.]

39.58.210

Failure to furnish information — Failure to comply with chapter — Revocation of authority — Costs for noncompliance.

If a depository neglects or refuses to promptly and accurately furnish, or to allow verification of, any required information requested by the commission or by the director of the department of financial institutions when acting on behalf of the commission pursuant to this chapter, or if a public depository otherwise fails to comply with this chapter or any rules or policies of the commission, the commission may

at its option deny or revoke the authority of such depository to act as a public depository pursuant to this chapter, or otherwise suspend such depository from receiving or holding public deposits until such time as the depository receives the information or complies with the commission's rules and policies. The commission shall have the authority to assess by rule costs for a depository's noncompliance with this chapter and rules and resolutions adopted pursuant to this chapter.

[2009 c 9 § 15.]

39.58.220

Commission — Delegation of authority — Exception.

The commission may by resolution delegate all of its authority to the state treasurer except rule making.

[2009 c 9 § 16.]

39.58.230

Liability after merger, takeover, or acquisition.

The liability of a public depository under this chapter shall not be altered by any merger, takeover, or acquisition, except to the extent that such liability is assumed by agreement or operation of law by the successor entity or resulting financial institution.

[2009 c 9 § 17.]

39.58.240

Credit union as public depository — Conditions. *(Effective July 1, 2011)*

Solely for the purpose of receiving public deposits that may total no more than one hundred thousand dollars or the maximum deposit insured by the national credit union share insurance fund, whichever is the lesser amount, a credit union is a public depository and subject to reporting under RCW 39.58.100. The maximum deposit applies to all funds attributable to any one depositor of public funds in any one credit union. A credit union means a state-chartered credit union under chapter 31.12 RCW. A credit union is not a public depository for any other purpose under this chapter, including but not limited to inclusion in the single public depository pool under RCW 39.58.200.

[2010 c 36 § 1.]

39.58.750

Receipt, disbursement, or transfer of public funds by wire or other electronic communication means authorized.

Notwithstanding any provision of law to the contrary, the state treasurer or any treasurer or other custodian of public funds may receive, disburse, or transfer public funds under his or her jurisdiction by means of wire or other electronic communication in accordance with accounting standards established by the state auditor under RCW 43.09.200 with regard to treasurers of municipalities or other custodians or by the office of financial management under RCW 43.88.160 in the case of the state treasurer and other state custodians to safeguard and insure accountability for the funds involved.

[2009 c 9 § 14; 1996 c 256 § 17; 1981 c 101 § 1; 1979 c 151 § 48; 1977 ex.s. c 15 § 1. Formerly RCW 39.58.150.]