

## **CHAPTER 21-04 DEPOSITORIES OF PUBLIC FUNDS**

### **21-04-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the governing board of any public corporation, including the board of county commissioners, the city council, the board of city commissioners, the school board, the board of township supervisors, and the park board.
2. "Clerk" means the person who performs for any public corporation the duties ordinarily performed by a clerk, including the county auditor, the city auditor, the township clerk, and the business manager of the school district.
3. "Financial institutions" includes state and national banks insured by the federal deposit insurance corporation, state-chartered or federally chartered savings and loans insured by the federal savings and loan insurance corporation, and state-chartered or federally chartered credit unions insured by the national credit union administration.
4. "Public corporation" includes a county, city, township, school district, and any body corporate except a private corporation.
5. "Public funds" includes all funds derived from taxation, fees, penalties, sale of bonds, or from any other source, which belong to and are the property of a public corporation or of the state, and all sinking funds of such public corporation or of the state, and all funds from whatever source derived and for whatever purpose to be expended of which a public corporation or the state have legal custody. The term includes funds of which any board, bureau, commission, or individual, created or authorized by law, is authorized to have control as the legal custodian for any purpose whatsoever whether such funds were derived from general or special taxation or the assessment of persons or corporations for a specific purpose. The term does not include funds of students or student organizations deposited in a student financial institution approved by and under the control of the school board.
6. "State" includes the state of North Dakota and any institution, industry, enterprise, or agency of the state.

### **21-04-02. State funds to be deposited in Bank of North Dakota.**

Public funds belonging to or in the custody of the state must be deposited in the Bank of North Dakota.

### **21-04-03. Funds of public corporations to be deposited in designated depository.**

Public funds belonging to or in the custody of any public corporation must be deposited in the Bank of North Dakota or in financial institutions which have been duly designated as depositories in the manner prescribed in this chapter.

### **21-04-04. Money deposited promptly - Withdrawal - Penalty.**

The treasurer of a public corporation and every other person legally charged with the custody of public funds, which, according to the provisions of this chapter, must be deposited in the Bank of North Dakota or in a depository duly designated as provided in this chapter, promptly upon receipt of such funds, shall deposit the same in such depository. All such public funds must be deposited in the name of the state, state institution, or public corporation to which the same belong. Checks or drafts on funds deposited as herein provided must be drawn by the legal custodian thereof in the legal custodian's official capacity only, and no checks or drafts on such deposits may be paid or honored by such depository unless so drawn.

### **21-04-05. Financial institution - Designation as depository.**

Any financial institution duly incorporated in this state under and pursuant to the laws governing the incorporation of financial institutions, and any financial institution situated and doing business within this state, and the Bank of North Dakota, may be designated a depository of public funds by the proper board as herein defined. The board may select two or more

financial institutions in the same county as depositories, but if more than one financial institution is designated, the board shall deal with the financial institutions selected and designated impartially, both as to the deposit of funds and the withdrawal of funds and the requirement as to bonds. The board shall take into consideration, in selecting and designating the depository or depositories, the condition of each financial institution and the capital, surplus, and general credit thereof.

**21-04-06. Designating public depositories where there is only one financial institution or no financial institution.**

In a county where only one financial institution is located or functioning, the board may designate such financial institution as a depository, or it may designate another financial institution or financial institutions, within the state, or the Bank of North Dakota, as depository in the manner and upon the conditions provided in this chapter. In a county where no financial institution is in existence or functioning, the board may designate the Bank of North Dakota, or any financial institution, outside of such county and within the state, as depository in the manner and upon the conditions provided in this chapter for the selection of depositories of public funds. In case there is no financial institution within any city, township, or school district, the governing board thereof, if it deems it more advantageous and for the best public interest and convenience, may select as a depository a conveniently located financial institution in an adjoining county, which thereupon shall qualify as a depository by giving such bond as is required from a financial institution within said county. Said bond must be approved by such governing board as to sufficiency and by the state's attorney of the county in which such city, township, or school district is located as to form and must be deposited in the office of the county auditor of such county.

**21-04-07. Limitation on county deposit in financial institution.**

In no case may the amount of county funds deposited by the board of county commissioners in any one financial institution exceed the combined capital and surplus of such financial institution. In a county where the deposits to be made by the board of county commissioners of county funds exceed the combined capital and surplus of all the financial institutions in the county, qualified as depositories, the board of county commissioners nevertheless may deposit such county funds within the county upon the condition that such financial institutions furnish sufficient bonds as required in this chapter.

**21-04-08. Bond of depository - Approval or disapproval - Term.**

Except as is otherwise provided in sections 21-04-16 and 21-04-17, and before any deposit is made in any depository other than the Bank of North Dakota, by or in behalf of any public corporation, such depository shall furnish a bond payable to the public corporation making such deposit in an amount that at least equals the largest deposit that at any time may be in such depository. Such bond must be approved as to form by the state's attorney and as to amount and sufficiency by the board. If the board fails or refuses to approve any such bond, the same may be presented to the judge of the district court, upon three days' notice to the clerk of the public corporation to which such bond was submitted, and the judge shall proceed forthwith to hear and determine the sufficiency of such bond and may approve or disapprove the same as the facts warrant. If the judge approves such bond, the said financial institution must be declared a depository of the funds of such public corporation. The sureties on all bonds required by public corporations according to the provisions of this chapter shall justify as required by chapter 32-02. In lieu of such personal bond, the governing board of the public corporation involved may require the financial institution designated as a depository to file a surety bond for a sum equal to the amount of funds such financial institution may receive according to the provisions of this chapter. Such bond, when approved, must be deposited with the county auditor. Such bond must be a continuing bond and must be binding until the proper board of the public corporation shall require a new or different bond, but in no case involving the deposit of funds of public corporations may such bond be continued without a renewal thereof for a longer period than four years.

#### **21-04-09. Pledge of security in place of depository bond.**

The treasurer of a public corporation and every other individual legally charged with the custody of public funds may accept from any financial institution, as security for repayment of deposits, a pledge of securities in lieu of a personal or surety bond. When securities are pledged to the board of any public corporation, the treasurer or other individual legally charged with the custody of public funds shall require security in the amount of one hundred ten dollars for every one hundred dollars of public deposits. Securities that are eligible for the pledge are bills, notes, or bonds issued by the United States government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, irrevocable standby letters of credit issued by federal home loan banks of a rating of AA or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation, federal land bank bonds, bonds, notes, warrants, certificates of indebtedness, insured certificates of deposit, shares of investment companies registered under the Investment Companies Act of 1940, letters of credit issued by the Bank of North Dakota, and all other forms of securities issued by the state of North Dakota, its boards, agencies, or instrumentalities, or by any county, city, township, school district, park district, or other political subdivision of the state of North Dakota, whether payable from special revenues or supported by the full faith and credit of the issuing body, and bonds issued by any other state of the United States or other securities approved by the banking board. The securities and securities sold under agreements to repurchase as described in section 21-06-07 must be delivered to and held for safekeeping by any financial institution, other than the depository, which the depository and the public corporation may agree upon. Whenever any securities are deposited for safekeeping with a custodian, the custodian shall issue a joint receipt to the depository and the public corporation.

Any financial institution pledging securities, at any time it deems it advisable or desirable, and without the consent of the board of the public corporation, may substitute other eligible securities for all or any part of the securities pledged. The securities substituted must, at the time of the substitution, have a market value at least equal to the market value of the securities released and delivered to the depository.

In the event of the substitution the holder or custodian of the pledged securities shall, on the same day, forward by mail or electronic transmission to the public corporation and the depository financial institution a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository financial institution.

A depository financial institution may fulfill the pledge of securities requirements of this section by maintaining a security pledge schedule that establishes the following:

1. The names of all public bodies maintaining deposits with the financial institution.
2. The amount of each deposit maintained by each public body.
3. The amount of federal deposit insurance corporation insurance applied to each account.
4. The net deposits exceeding federal deposit insurance corporation coverage for each account.
5. The amount of net deposit exceeding federal deposit insurance corporation deposit insurance multiplied by one hundred ten percent for each account.
6. The amount of securities needed to be pledged to fulfill the requirements of this section.
7. The total number of qualified securities pledged by the financial institution under the requirements of this section.

A financial institution is in compliance with this section as long as the security pledge schedule discloses the total qualified securities pledged in excess of the total pledges needed for a total amount of deposits maintained by all the public bodies with the financial institution as verified by the custodian of the securities every three months and copies are provided to the custodian of the securities and to each of the public corporations maintaining deposits with the financial institution.

No pledge of security or bond may be required for any funds deposited with a financial institution directly or by a financial institution's participation as a member of a deposit placement service to the extent that the deposits are insured or guaranteed by the federal deposit insurance corporation or the national credit union administration as determined by the

commissioner of financial institutions or an insurance company that is qualified to offer excess deposit insurance in this state and which has a rating of A- or better by A.M. Best Company Inc., or the equivalent rating by another recognized rating organization as determined by the insurance commissioner.

**21-04-09.1. Letters of credit for public deposits - Security interest - Priority - Written agreement.**

Letters of credit issued by the Bank of North Dakota in connection with section 21-04-09 must be secured by collateral. A security interest is created and attaches when the Bank issues a letter of credit in connection with section 21-04-09. Filing is not required for perfection of the security interest created and it is entitled to priority as to all creditors. The board of directors of a financial institution seeking a letter of credit from the Bank shall execute a written agreement with the Bank, reflect approval of the agreement in the board of director's minutes and, as of the date of execution of the agreement, keep a copy of the agreement as an official record.

**21-04-10. Interest payable to financial institution - Sale of pledged securities on default.**

All interest which becomes due and is paid on securities pledged to secure public deposits must be paid over to the depository financial institution until such time as it defaults in the repayment of the funds of the public corporation deposited as provided herein. After thirty days from such default, upon demand in writing made by the public corporation involved, the custodian shall deliver the securities to the public corporation with which pledged, and such securities may be sold as in the case of other pledges, and the proceeds thereof, or so much thereof as may be necessary, must be applied to the repayment of the public deposit.

**21-04-11. Record of securities - Reapproval semiannually.**

Repealed by S.L. 2017, ch. 182, § 2.

**21-04-12. Termination of depository relationship.**

Whenever any depository financial institution desires to terminate the liability for any deposits of any public corporation for which such depository has given a bond or pledged assets for the repayment, it shall notify the board of the public corporation affected of such desire. Thereupon such public corporation immediately shall withdraw such funds from such depository and upon withdrawal, immediately shall release and surrender to such depository financial institution, the bonds or securities which are pledged for the repayment of such deposit.

**21-04-13. Board meetings - Designating depositories.**

The governing board of any public corporation, except the board of supervisors of any township and the school board of any common school district, at its regular meeting in January of each even-numbered year, shall assemble and examine all outstanding bonds and require new bonds whenever necessary in order to comply with the provisions of this chapter. If no regular meeting of the board in January is required by any other law, the board shall assemble for said purpose not later than the third Tuesday in January. At such meeting, the board shall designate depositories of public funds in accordance with the provisions of this chapter.

**21-04-14. Proposals for deposit.**

A proposal for deposit must be sealed and delivered to the clerk and must have attached to it a statement showing the financial condition of the financial institution at that time and as disclosed in the several statements of financial condition made during the last preceding twelve months. The clerk shall lay the proposals before the board at the January meeting. Such proposals must be opened by the clerk in the presence of the board and the board, thereupon, shall proceed to designate a depository of public funds under its control.

**21-04-15. Townships and public school districts - Selection of depositories at any time.**

The board of supervisors of any township and the school board of any public school district may designate depositories at any meeting of such board and no notice to financial institutions need be given and no formal proposals need be received.

**21-04-16. When no bonds are required.**

Whenever it appears that a bank designated by a public corporation as depository of its funds has complied with the provisions of the act of Congress relating to the guaranty of deposits in state and national banks, no bond may be required of said bank to secure the deposits of any part of said public funds up to the amount the deposit is secured in said bank under said federal act.

**21-04-17. When bonds are required.**

If at any time it appears that the benefit of the federal act guarantying deposits in financial institutions has been withdrawn or is about to be withdrawn from the financial institution in which any public funds are deposited, the board having control of or supervision over such public funds immediately shall withdraw the full amount thereof from said financial institution, or forthwith shall require the usual bond required to secure the deposits of such public funds, and it is unlawful to continue any financial institution as a depository of public funds unless and until said bonds have been furnished.

**21-04-18. Interest or dividend rates.**

Depositories of public funds in this state shall pay substantially the same rate of interest or dividend thereon as such financial institutions pay upon individual deposits.

**21-04-19. Itemized statements.**

Each depository shall:

1. Furnish on the first day of each month to the public corporation, the state, or state institution, to the credit of which the deposit is held, an itemized statement of the amount in such deposit subject to check. Such statement must be verified whenever required by the state treasurer as to funds of the state institutions or by the treasurer of any public corporation as to funds of such corporation. All sums of interest accruing on funds so deposited must be credited to said deposit on the first day of each month for the preceding month.
2. On July first of each year, furnish to the business manager of each school district, and to the county superintendent of schools of the county in which the school district is located, a statement showing the amount of deposits to the credit of each school district at the close of business on June thirtieth.

**21-04-20. Report of the treasurer.**

Repealed by S.L. 1967, ch. 193, § 1.

**21-04-21. Public corporations with less than five hundred dollars.**

This chapter does not apply to a public corporation unless the amount in the treasury of such corporation equals or exceeds the sum of five hundred dollars. The board of a public corporation having on hand less than five hundred dollars, and therefore not within the provisions of this chapter, shall deposit all the funds of such public corporation nevertheless in some financial institution selected by the board thereof under such conditions and restrictions as seem adequate to such board to protect the public interest.

**21-04-22. Funds deposited - Custodian exonerated.**

To the extent that public funds are deposited as provided in this chapter, the legal custodian thereof, and the sureties on the legal custodian's bond, are exempt from all liability by reason of loss of any such funds from failure or other act of any such depository.

**21-04-23. Penalty.**

Any person violating any of the provisions of this chapter is guilty of a class A misdemeanor.

**21-04-24. All public funds are governed by provisions of chapter.**

Any board, commission, bureau, or individual having the legal custody of any public funds that do not expressly or by name come within the provisions of the preceding sections of this chapter, nevertheless must be governed by the provisions of this chapter. They shall deposit such funds only in legal depositories and shall comply with the other provisions hereof as nearly as may be. They are subject to the penalties herein provided.