

## **IC 5-13-13**

### **Chapter 13. Payments From the Public Deposit Insurance Fund**

#### **IC 5-13-13-1**

##### **Closed depository; payments to public officers of public funds deposited; determination of sums; certification**

Sec. 1. (a) Whenever any depository becomes a closed depository, the board shall, as soon as possible and upon the conditions prescribed in this section, make payment from the insurance fund to the proper public officers of all public funds that were deposited in the closed depository in the manner required by this article. These payments shall be made only to the extent the public funds are not covered by insurance of any federal deposit insurance agency.

(b) For the purpose of determining the sums to be paid on account of public funds in any closed depository, the department of financial institutions shall ascertain the amount of public funds on deposit in any closed depository as disclosed by the records, and certify the amounts to the attorney general, auditor of state, the several public officers who have public funds on deposit, and the board for depositories, which then constitutes a claim on the fund. The certification shall be made within twenty (20) days after its special representative has taken charge of the business and property of any closed depository, or the receiver of any national banking association or state chartered state banks within twenty (20) days after appointment.

(c) Within ten (10) days after the receipt of a certification under subsection (b), the several public officers who have public funds on deposit in the closed depository shall furnish to the attorney general and the auditor of state:

- (1) verified statements of the amount of the public funds on deposit in the closed depository, as disclosed by their records;
- (2) certified copies of the resolution or resolutions under which the deposits were made; and
- (3) any other information requested by the attorney general and the auditor of state.

*As added by P.L.19-1987, SEC.15. Amended by P.L.5-1988, SEC.38.*

#### **IC 5-13-13-2**

##### **Amount of public funds in closed depository; determination procedure**

Sec. 2. (a) After the receipt of the certificate and statements required by section 1 of this chapter, the attorney general and the auditor of state shall ascertain and fix the amount of public funds in the closed depository deposited in the manner required by this article. The amount of public funds deposited contrary to the requirements of this article are not insured by this article.

(b) The attorney general and the auditor of state shall, within sixty

(60) days after the receipt of the certificate and statements, send a copy of their decision by registered mail to the several public officers who have filed statements and to the department of financial institutions, or to the receiver if the closed depository is a national banking association.

(c) The department of financial institutions or the receiver shall cause notice of the decision to be published by one (1) publication in a newspaper of general circulation in the county where the closed depository is situated. This notice must be under the heading "Notice to Depositors of \_\_\_\_\_" (inserting the name of the closed depository). The costs of the publication shall be charged to the liquidation expense of the closed depository.

(d) Except as otherwise provided in this chapter, the decision of the attorney general and the auditor of state, if they agree, is final, and has the same force as a final judgment of a court. However, if any depositor of the closed depository, within ten (10) days after the publication of the notice required by this section, files objections to that decision in writing in any court competent to determine matters concerning the closed depository, the auditor of state shall withhold payment of the claim until the objections are determined by the court.

(e) If the attorney general and auditor of state do not send a copy of their decision to the department of financial institutions or to the receiver of the national banking association within the time required by this section, or if objections in writing are made as provided in this section, the department of financial institutions or any receiver or any treasurer or other person having funds on deposit in the closed depository may petition any court competent to hear and determine matters pertaining to the liquidation of the closed depository and to determine the amount of public funds deposited in the manner required by this chapter. The court shall, without delay, hear and determine the issues presented by the petition and enter judgment accordingly.

*As added by P.L.19-1987, SEC.15. Amended by P.L.5-1988, SEC.39.*

### **IC 5-13-13-3**

#### **Payment of amount determined; subrogation of board; distribution of assets of closed depository**

Sec. 3. (a) Whenever the decision of the attorney general and auditor of state has become final, or whenever a court of competent jurisdiction as provided in section 2 of this chapter has determined the amount payable from the insurance fund on account of public funds deposited in the closed depository, the board for depositories shall, subject to IC 5-13-12-8(c), cause the amount to be paid to the treasurer or public officer out of the insurance fund.

(b) After payment is made under subsection (a), the board, on behalf of the public deposit insurance fund, is then subrogated to all of the right, title, and interest of the depositor of the public funds for the amount of the depository's claim against any federal deposit insurance agency and against the closed depository. The board is so

subrogated to the extent that the insurance fund has paid the loss not reimbursed by the insurance. The board is entitled to share in the distribution of the assets of the closed depository on the basis ratably with other depositories, but the insurance fund shall be paid in full before any distribution is made on account of public funds not insured under the terms of this chapter. The board shall pay any sum or sums received from any distribution into the insurance fund.

*As added by P.L.19-1987, SEC.15.*

#### **IC 5-13-13-4**

##### **Anticipatory warrants; issuance; obligation of board; amounts, form, and rate of interest**

Sec. 4. (a) Whenever the assets in the insurance fund are not sufficient to pay the claims of any kind that have been finally determined and have become payable, the board for depositories shall issue anticipatory warrants for the purpose of raising money for the immediate payment of the claims. The warrants outstanding and unpaid must not at any time exceed the sum of three hundred million dollars (\$300,000,000). Interest may be paid upon the warrants from the date the rate was established by the board for depositories. Interest is payable at the end of each year or for a shorter period as the warrants remain unpaid.

(b) The warrants are the obligation of the board for depositories payable out of the public deposit insurance fund only and do not constitute a debt, liability, or obligation of the state or a pledge of the faith and credit of the state. Each warrant must have printed on its face the words, "This warrant is an obligation of the board for depositories payable solely out of the public deposits insurance fund, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal, the interest, or any other amount owed on the warrants."

(c) Subject to the limitations in subsections (a) through (b), the warrants shall be issued in the individual and gross amounts and in the form and at the rate of interest approved by the board for depositories.

*As added by P.L.19-1987, SEC.15. Amended by P.L.115-2010, SEC.18.*

#### **IC 5-13-13-5**

##### **Anticipatory warrants; sale; proceeds; application for allotment of definite amount; record**

Sec. 5. (a) The secretary-investment manager on behalf of the board for depositories has the powers and duties set out in this section and section 6 of this chapter and shall sell all anticipatory warrants issued under this chapter at a price not less than par plus accrued interest. The proceeds of the sale of the warrants shall be paid into the insurance fund and shall be applied exclusively to the payment of the claims on account of which the warrants were issued.

(b) Any person may file an application with the

secretary-investment manager for an allotment of a definite amount of the warrants. The secretary-investment manager shall then apportion to the several applicants an amount of warrants as the secretary-investment manager sees fit, but no allotments shall be made in an amount less than two thousand dollars (\$2,000).

(c) The secretary-investment manager shall make and retain in the secretary-investment manager's office a complete record of all warrants sold to each purchaser and of the post office address of the purchaser. Purchasers of warrants may notify the secretary-investment manager of their post office addresses, or of any change in their addresses, and of the warrants owned or held by them, and the secretary-investment manager shall change the secretary-investment manager's sale record accordingly.

*As added by P.L.19-1987, SEC.15.*

### **IC 5-13-13-6**

#### **Anticipatory warrants; payment; unpaid warrants**

Sec. 6. (a) All anticipatory warrants and all interest on the warrants shall be payable by the secretary-investment manager solely from the money paid into the insurance fund and the money is, except for the payment of expenses incident to the operation of the insurance fund, exclusively and irrevocably pledged to the payment of all warrants in the consecutive order in which they were issued. The warrants, as to interest as well as principal, shall be paid out of the money in the insurance fund before the payment of any claims that may arise and be finally determined subsequent to the issue and sale of any warrants or series of warrants.

(b) When any warrant or series of warrants is outstanding and unpaid, the secretary-investment manager shall, when the secretary-investment manager has money in the insurance fund sufficient to pay a reasonable amount of the outstanding and unpaid warrants, notify the persons who, according to the secretary-investment manager's record, hold the warrants or warrants then payable. The secretary-investment manager shall mail each notice to the post office address of the person as shown by the records of sale. The notice must state that the warrant or warrants will be paid on presentation, and that interest will cease after the expiration of ten (10) days from the mailing of the notice. At the expiration of the ten (10) day period, interest ceases on the warrant or warrants.

*As added by P.L.19-1987, SEC.15.*

### **IC 5-13-13-7**

#### **Shortage of assets in insurance fund; substitution of other security; pledge of other securities by depositories**

Sec. 7. (a) At any time when the board for depositories determines that the assets of the insurance fund are insufficient to pay its liabilities, accrued or contingent, or determines that the assessments due or to become due will not be sufficient to maintain the insurance

fund in a solvent condition and insure the safekeeping and prompt payment of public funds, the board may enter an order requiring any or all then constituted depositories to substitute other security, in the amount and type as determined by the board from time to time, to secure the safekeeping and prompt payment of public funds. The collateral to be accepted by the board for depositories under this chapter may include, but is not limited to, the following:

- (1) United States Treasury securities.
- (2) Federal agency securities.
- (3) An irrevocable letter of credit issued by a Federal Home Loan Bank if:

(A) the federal home loan bank issuing the irrevocable letter of credit maintains a rating of at least the third highest level from at least one (1) of the nationally recognized rating agencies; and

(B) the irrevocable letter of credit provides that the board for depositories may draw on the letter when necessary to satisfy losses to the public deposit insurance fund under state law.

(b) The board may require any or all then constituted depositories to deliver and pledge to the proper local board of finance or to the state board of finance, under the conditions for joint control of the collateral by the depositories as may be approved by the board for depositories, bonds or other obligations that the board determines are acceptable collateral. The market value of these securities, at the time of delivery, must be an amount determined by the board, which may not exceed the amount of public funds then on deposit with the respective depositories. The board may require depositories to pledge acceptable securities to such an extent that the market value of the pledge will at all times be substantially equal to the amount of public funds on deposit in the respective depositories.

(c) Whenever an order is in force and the amount of public funds on deposit is at least ten percent (10%) less than the market value of securities pledged to secure the payment, as required by the board, the depository may withdraw the excess amount of pledged collateral.

(d) Any order of the board for depositories becomes effective within the time fixed by the board. However, the time of effectiveness must not be earlier than thirty (30) days from the date of entry of the order by the board. The order continues in force until rescinded by the board. Upon the entry of any order by the board for depositories, all then constituted depositories affected by the order shall comply with the order. Upon compliance, and full payment of all its liabilities by the insurance fund, depositories are not required to pay any further assessments for insurance under this chapter until the order requiring collateral has been revoked or rescinded and the collateral returned to the respective depositories.

(e) A depository may elect at any time to pledge and deliver collateral to the board in an amount equal to one hundred percent (100%) of the public funds the depository has on deposit. A depository that:

- (1) elects this option;
- (2) has pledged and delivered the collateral to the board; and
- (3) has maintained a one hundred percent (100%) collateral level continuously for the twelve (12) months immediately preceding an assessment;

is exempt from paying any assessment authorized by this article while the collateral continues to be maintained with the board.

(f) If the fund balance is zero (0), each depository shall pledge and deliver collateral to the board equal to the depository's pro rata share of total deposit accounts of public funds based on an average of the depository's total deposit accounts of public funds for the previous four (4) quarters, as reported under this article, as determined by the board from time to time, with at least fifteen (15) days notice to the depository, to secure the safekeeping and prompt payment of public funds.

*As added by P.L.19-1987, SEC.15. Amended by P.L.115-2010, SEC.19.*

### **IC 5-13-13-8**

#### **Reopening or reorganization of closed depository**

Sec. 8. (a) If in any closed depository there are public funds of the state or of any political subdivision, the treasurer of state may, with the consent of the state board of finance, if the public funds belong to the state, and the public officer who has charge of the public funds of any political subdivision, may, with the consent of the local board of finance of the political subdivision to which the public funds belong, join with other depositors of the closed depository in a plan for reopening or the reorganization of the closed depository.

(b) The treasurer of state may bind the state, or any proper local officer may bind the political subdivision, as the case may be, after being authorized, as provided in this chapter, in accordance with the terms of the plan for reopening or reorganization.

*As added by P.L.19-1987, SEC.15. Amended by P.L.18-1996, SEC.27.*