Public Moneys Pooled Method of Investing; Sub. for HB 2152

Sub. for HB 2152 establishes the public moneys pooled method and makes changes related to the deposit of public moneys in financial institutions and the investment of public moneys by financial institutions.

The bill:

- Requires banks, savings and loan associations, or savings banks (financial institutions) to secure governmental deposits above the amount insured or guaranteed by the Federal Deposit Insurance Corporation (FDIC) by using a public moneys pooled method;
- Establishes procedures for reporting and for financial institutions experiencing default;
- Prohibits investment advisers executing bids for the investment of public moneys from directly managing money from such bids;
- Establishes a complaint process for financial institutions to report when governmental entities are believed to be in non-compliance;
- Amends law regarding the investment of local and state public moneys, the Municipal Investment Pool Fund, and governmental units' investment policies; and
- Makes technical and conforming changes.

Provisions regarding the public moneys pooled method, financial institutions in default, and reports become effective January 1, 2026 .

Public Moneys Pooled Method

The bill establishes the public moneys pooled method, which is a method to secure the deposit of public moneys in excess of the amount insured or guaranteed by the FDIC. The bill defines "public moneys pooled method" or "pool of securities" to mean shares of investment companies registered under the federal Investment Company Act of 1940 when the investment companies' assets are limited to obligations that are eligible for investment by the financial institution and limited by their prospectuses to owning securities enumerated in law.

The bill requires a financial institution to secure the deposits of one or more governmental units by depositing, pledging, or granting a security interest in a pool of securities to secure the repayment of all public moneys deposited in the institution by the governmental unit and not otherwise secured by law, provided that, at all times, the aggregate market value on the pool of securities is equal to at least 102.0 percent of the amount on deposit that is in excess of the amount insured or guaranteed by the FDIC.

The bill requires each financial institution to carry on its accounting records a general ledger or other appropriate accounting of the total amount of all public moneys to be secured by the pool of securities as determined at the opening of each business day and the aggregate market value of the pool of securities deposited, pledged, or in which a security interest is granted to secure such public moneys.

The State Treasurer can serve as the administrator with respect to a public moneys pooled method or can designate a financial institution, trust company, or other qualified firm, corporation, or association that is authorized to transact business in Kansas to serve as administrator. The administrator is prohibited from accepting public deposits from a governmental unit while administering the public moneys pooled method, and the bill requires the administrator to submit a formal conflict of interest document in a manner prescribed by the State Treasurer. Expenses of the administrator are to be paid by the Office of the State Treasurer.

The bill tasks the administrator with assessing and managing the sufficiency of the public moneys pooled method, including, but not limited to, the compliance by a financial institution that the aggregate market value of the pool of securities of such financial institution is an amount not less than 102.0 percent of the total amount of public moneys or funds less the portion of the public moneys or funds insured or guaranteed by the FDIC.

The bill authorizes the State Treasurer to adopt rules and regulations to administer and implement the provisions of the bill, including, but not limited to, rules and regulations to assess and manage the sufficiency of the public moneys pooled method.

A financial institution in which public moneys or funds are deposited is permitted at any time to substitute, exchange, or release securities deposited if such action does not reduce the aggregate market value of the pool of securities to an amount less than 102.0 percent of the total amount of public moneys or funds less the portion of such public moneys or funds insured or guaranteed by the FDIC. The financial institution is required to notify the administrator if additional collateral is required to be pledged due to an increase in deposits placed by the governmental unit and if the financial institution desires to release collateral due to a reduction in governmental unit deposits.

The bill requires each financial institution that satisfies its requirement to secure the deposit of public moneys or funds in excess of the amount insured or guaranteed by the FDIC by depositing, pledging, or granting a security interest in a single pool of securities, or any combination thereof, to render to the administrator, on or before the tenth day of each month, a statement showing, as of the last business day of the previous month, the:

- Amount of public moneys or funds deposited in the financial institution that is not insured or guaranteed by the FDIC by:
  - Each governmental unit separately; and
  - All governmental units in the aggregate;
- Aggregate market value of the pool of securities; and

- Name, phone number, and email address of a representative of each governmental unit represented in the pool.

The administrator is required to provide a report, not later than 20 days after the deadline for receiving the statement, to each governmental unit listed in the statement, reflecting:

- The amount of public moneys and funds deposited in the financial institution by each governmental unit as of the last business day of the previous month that is not insured or guaranteed by the FDIC; and

- The aggregate market value of the pool of securities deposited as of the last business day of the previous month.

The bill requires the report to clearly notify the governmental unit if the value of the securities did not meet the statutory requirement.

If the administrator, at any time, determines the value of the securities does not meet the statutory requirement, the bill requires the administrator to send notice to the financial institution, allowing the institution up to five business days to adjust the securities to meet the statutory requirement. If the institution does not meet the statutory requirement within the required time frame, the institution is subject to a fine and potential sanctions issued by the administrator, pursuant to the rules and regulations adopted by the State Treasurer.

A financial institution is not permitted to use the public moneys pooled method unless the State Treasurer establishes a public moneys pooled method in accordance with the bill or designates an administrator.

Financial Institutions in Default

The bill requires the administrator, when the administrator determines that a financial institution has experienced a default, to:

- Ascertain the aggregate amounts of public moneys secured pursuant to the State Banking Code and other continuing law and deposited in the defaulting financial institution, as disclosed by the financial institution’s records;

- Then determine for each governmental unit the amount of public moneys not insured or guaranteed by the FDIC and the amount of public moneys secured by a pool of securities pledged;

- Then provide each governmental unit with a statement that reports the amount of public moneys deposited by the governmental unit in the defaulting financial institution, the amount of public moneys that may be insured or guaranteed by the FDIC, and the amount of public moneys secured by the pool of securities, or any combination thereof, pursuant to continuing law;

    - Each governmental unit is required to verify the information in the report with the governmental unit's records within ten business days after receiving the report and information from the administrator; and

- Repay each governmental unit for the public moneys not insured or guaranteed by the FDIC deposited into the defaulting financial institution by the governmental unit upon receipt of a verified report from the governmental unit. The administrator can liquidate the securities pledges for immediate distribution if the administrator determines that public moneys are not likely to be promptly paid upon demand.

The bill requires any liquidation to conform to the procedures established in the bill. In the event that the amount of the deposit guaranty bond or the proceeds of the securities held by the administrator after liquidation is insufficient to cover all public moneys not insured or guaranteed by the FDIC for all governmental units served by the administrator, the administrator will pay out to each governmental unit available amounts *pro rata* in accordance with the respective public moneys not insured or guaranteed by the FDIC for each governmental unit.

The bill allows the administrator's listed duties under this section to be delegated to and performed by a federal deposit insurance agency, in the event that a federal deposit insurance agency is appointed and acts as liquidator or receiver of any financial institution under state or federal law.

Reports

The bill requires a financial institution, upon the request of a governmental unit, to report, as of the date of the request, the amount of public moneys deposited in the financial institution that is not insured or guaranteed by the FDIC by:

- The governmental unit making the request; and

- The total amount for all other governmental units secured pursuant to continuing law, and the aggregate value of the pool of securities, including those public moneys deposited by the governmental unit.

The report must be made on or before the date the governmental unit specifies.

The bill also requires the administrator, upon the request of a governmental unit, to report on a date specified by the governmental unit the aggregate market value of the pool of securities and provide an itemized list of the pool of securities as of the date of the request.

Restrictions on Investment Advisers

Excluding federally registered investment advisers, the bill prohibits an investment adviser that executes bids for the investment of public moneys on behalf of the governmental unit from engaging in a principal transaction with the governmental unit that is the same or directly related to the issue of securities or financial product for which the investment adviser is providing or has provided advice.

The bill defines “investment adviser” as the term is defined in the Uniform Securities Act.

Compliance Complaints

If a financial institution has a good faith reason to believe that a governmental unit has not acted in compliance with the law, the eligible financial institution is permitted to file a complaint with the State Treasurer in writing and signed by an executive officer of the institution, submitted in the form prescribed by the State Treasurer.

Each filed complaint is confidential, not subject to the Open Records Act, and not to be disclosed except as provided in the bill. This provision expires on July 1, 2030, unless the Legislature reviews and acts to continue the provision prior to July 1, 2030.

If the State Treasurer determines that the verified complaint does allege facts, directly or upon information and belief, sufficient to constitute a violation of the law, the State Treasurer is required to promptly investigate the alleged violation.

If, after the investigation, the State Treasurer finds that probable cause does not exist to believe the allegations of the complaint, the State Treasurer dismisses the complaint. If the State Treasurer finds that probable cause exists to believe the allegations of the complaint, the complaint is no longer confidential and may be disclosed. Upon making any such finding, the State Treasurer will schedule a hearing, no more than 30 days after the finding. In either event, the State Treasurer will notify the complainant and respondent of the determination.

The State Treasurer is required to notify the Attorney General and the Pooled Money Investment Board (PMIB) of any apparent violation of law that is discovered during the course of the investigation.

Any governmental entity that knowingly violates the law:

- For the first violation, is required to complete a training approved by the State Treasurer concerning the law’s requirements; and
- For a second and each succeeding violation, is liable for the payment of a civil penalty in an action brought by the Attorney General, in a sum set by the court of not to exceed $500 for each violation.
  - Any civil penalty sued for and recovered hereunder by the Attorney General will be paid into the Attorney General’s Open Government Fund.

Requiring the Public Moneys Pooled Method

The bill amends an article regarding deposit of public moneys in the State Banking Code to require financial institutions to secure the deposit of public moneys of one or more governmental units through the public moneys pooled method. The bill also replaces the term “municipal corporation or quasi-municipal corporation” with “governmental unit,” and defines “governmental unit” as the State or any county, municipality, or other political subdivision of the State.

Investment of Public Moneys

The bill amends law regarding the investment of public moneys held by a governmental unit, entity, or subdivision (unit) to provide that, in selecting a financial institution, the governmental unit can accept any rate agreed upon by the governmental unit and the eligible financial institution.

The bill requires the investing governmental unit to select one or more eligible financial institutions that makes deposits available to the governmental unit at interest rates equal to or greater than the investment rate.

The bill also amends the law to require public moneys deposited through a selected financial institution to be secured by the public moneys pooled method.

In selecting a depository institution, an investing governmental unit is required to allow an eligible financial institution two business days to respond to the bid.

Municipal Investment Pool Fund

The bill requires deposits in the Municipal Investment Pool Fund to be accompanied with:

- A certification to prove compliance with the requirement that the financial institution made investments available at interest rates equal to or greater than the investment rate; and
- A listing of the financial institutions from which the governmental unit requested bids.

Investment Policies

The bill amends continuing law to require the investment policy of any governmental unit to include:

- A listing of the financial institutions from which the governmental unit requested bids in the preceding year;
- An annual portfolio holdings report in a form prescribed by the PMIB; and
- Any fee or cost the governmental unit is paying for investment adviser services.

The bill requires the PMIB to report annually to the Legislature a list of governmental units that have been approved under the bill, including the documents listed.

State Moneys

The bill amends law regarding state moneys to cap the dollar amount of state moneys invested in any one bank at 2.5 percent of the bank certificate of deposit program.

The bill also amends law authorizing the Director of Investments to award the investment account to the requesting bank at the investment rate, which the bill changes from the market rate.

The bill requires the investment rate to be determined each business day by the Director of Investments, in accordance with any procedures established by the PMIB, at an interest rate that is up to 2.0 percent less than the market rate provided by this section. [*Note:* Under continuing law, subject to the policies of the PMIB, the market rate must reflect the highest rate at which state moneys can be invested on the open market in investments authorized by law for equivalent maturities.]