

LEGISLATIVE BILL 1118

Approved by the Governor April 19, 1994

Introduced by Cudaback, 36; Engel, 17; Jones, 43; Schmitt, 41; Wehrbein, 2

AN ACT relating to the deposit and investment of public funds; to amend sections 23-3547 and 77-2329, Reissue Revised Statutes of Nebraska, 1943, and section 77-2363, Revised Statutes Supplement, 1993; to allow local hospital districts to deposit excess funds as prescribed; to provide and change powers and duties for the boards of directors and secretary-treasurers of local hospital districts as prescribed; to require depositories to give bonds or other securities as prescribed; to provide penalties; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. The secretary-treasurer of each local hospital district in the State of Nebraska shall deposit, and at all times keep on deposit for safekeeping in the state or national banks or capital stock financial institutions doing business in the district of approved and responsible standing, the amount of money in his or her hands collected and held by him or her as secretary-treasurer. Any check, draft, order, or other negotiable instrument deposited by the secretary-treasurer, except when drawn upon the bank or capital stock financial institution in which the deposit is made, shall be received by the bank or capital stock financial institution for collection only and shall be subject to final payment thereof to the bank or capital stock financial institution. Collection of such items shall be in the usual course of business and except for its own negligence, the bank or capital stock financial institution shall not be liable thereon until and unless payment is actually received. The provisions of section 77-2366 shall apply to deposits in capital stock financial institutions.

Sec. 2. Any bank or capital stock financial institution located in the district may apply for the privilege of keeping money upon the following conditions: All deposits shall be subject to payment when demanded by the secretary-treasurer on his or her check or order and subject also to such regulations as are imposed by law and the rules adopted by the secretary-treasurer for holding and receiving such deposits. It shall be the duty of the board of directors to act on the application or applications of any and all banks or capital stock financial institutions, state or national, as may ask for the privilege of becoming the depository of such money, as well as to approve the bonds of those selected incident to such relation, and the secretary-treasurer shall not deposit such money or any part thereof in any bank or capital stock financial institution other than such as may have been so selected by the board of directors for such purposes, if any such bank or capital stock financial institution has been so selected by the board of directors.

Sec. 3. When more than one bank or capital stock financial institution may have been selected by the board of directors as depositories, the secretary-treasurer shall not give a preference to any one or more of them in the money he or she may so deposit, but shall keep deposited with each of such financial institutions such a part of the money as the paid-up capital of such financial institution as of December 31 of the preceding year is a part of the amount of all the paid-up capital of all the financial institutions so selected as of December 31 of the preceding year, so that such money may at all times be deposited with such financial institutions pro rata as to their paid-up capital, except that the secretary-treasurer may select one or more financial institutions to be used for active accounts in which he or she may keep deposited in excess of these requirements only such funds as may be necessary for the transaction of ordinary day-to-day requirements. For purposes of this section, capital shall mean capital stock, surplus, undivided profits, capital notes or debentures, and other unimpaired reserves. The provisions of section 77-2366 shall apply to deposits in capital stock financial institutions.

Sec. 4. A secretary-treasurer may by and with the consent of the board of directors invest in United States Government bonds, bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, United States Treasury notes, bills, or certificates of indebtedness maturing within two years from the date of purchase, or in certificates of deposit. Every

secretary-treasurer having invested in such securities shall deliver the same to his or her successor who shall receive and accept the same as funds of the office. The interest received on any investments authorized by this section and section 17 of this act shall be credited to the general fund of the local hospital district, or to a fund to be used exclusively for the purposes contemplated by the provisions of section 23-3548, in the discretion of the board of directors. If such interest is received on a fund which shall not have been commingled with any other fund for investment purposes, then any interest received shall be credited to the fund from which the investment shall have been made. It shall be in the discretion of the board of directors whether any fund shall be commingled or invested from an identifiable account.

Sec. 5. For the security of the funds deposited under the provisions of sections 1 to 17 of this act, the secretary-treasurer shall require all such depositories to give bonds for the safekeeping and payment of such deposits and the accretions thereof, except as otherwise provided in section 17 of this act for time deposits. The bond shall run to the people of the local hospital district, be approved by the board of directors, and be conditioned that the depository shall, at the end of each and every month, render to the secretary-treasurer and the board of directors a statement in duplicate showing the several daily balances and the amounts of money of the local hospital district held by it during the month and how credited. For the payment of the deposits, the depository shall render such deposits when demanded by the secretary-treasurer on his or her check at any time, perform whatever else is required by sections 1 to 17 of this act, and faithfully discharge the trust reposed in such depository.

Sec. 6. The bond in substance shall be similar to the bond required and set forth in section 77-2304. No person in any way connected with any depository financial institution as an officer or stockholder shall be accepted as a surety on any bond given by the bank or capital stock financial institution of which he or she is an officer or stockholder.

Sec. 7. The secretary-treasurer shall not have on deposit in any bank or capital stock financial institution at any time more money than the amount insured by the Federal Deposit Insurance Corporation, plus the maximum amount of the bond given by such financial institution in cases when the financial institution gives a guaranty bond, except as provided in section 8 of this act. The amount on deposit at any time with any financial institution shall not exceed fifty percent of the paid-up capital stock and surplus of such financial institution, except as provided in section 8 of this act. When the amount of money which the secretary-treasurer desires to deposit in the banks and capital stock financial institutions within the district exceeds fifty percent of the paid-up capital and surplus of all of the banks and capital stock financial institutions in such local hospital district, the secretary-treasurer may, with the consent of the board of directors, deposit an amount in excess thereof, but not exceeding the capital stock and surplus in any one bank or capital stock financial institution, unless the depository gives security as provided in section 8 of this act. Bond shall be required of all banks and capital stock financial institutions for such excess deposit, unless security is given in accordance with section 8 of this act. The bonds shall be deposited with the secretary-treasurer and approved by the board of directors. The provisions of section 77-2366 shall apply to deposits in capital stock financial institutions.

Sec. 8. The secretary-treasurer may deposit in any bank or capital stock financial institution of the local hospital district in which he or she is secretary-treasurer amounts in excess of amounts authorized in section 7 of this act when (1) the depository secures the deposits by a pledge of or grant of a security interest in the assets of the bank or capital stock financial institution in the manner and within the limitations provided for county judges, clerks of the county court, and clerks of the district court in sections 77-2326.04 to 77-2326.09 and (2) the same is approved by a formal resolution of the board of directors. The provisions of section 77-2366 shall apply to deposits in capital stock financial institutions.

Sec. 9. When banks or capital stock financial institutions located in the local hospital district refuse or neglect to bid on money of the local hospital district, when there are no banks or capital stock financial institutions in the local hospital district, or when the banks or capital stock financial institutions located in the local hospital district do not have sufficient capital stock and surplus to receive such money under sections 1 to 17 of this act, then any surplus over the amount specified that banks or capital stock financial institutions in the local hospital district may receive shall be deposited in banks or capital stock financial institutions outside of the local hospital district having sufficient capital stock and surplus under the same conditions and terms as if in the local hospital

district. The provisions of section 77-2366 shall apply to deposits in capital stock financial institutions.

Sec. 10. In lieu of a bond as provided in sections 5 to 9 of this act, any bank or capital stock financial institution making application to become a depository under sections 1 to 17 of this act may: (1) Deposit with the secretary-treasurer (a) United States Government bonds, (b) United States Government guaranteed bonds or notes, (c) bonds or notes of United States governmental agencies, including bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, (d) bonds of any state or municipal subdivision which are fully defeased as to principal and interest by any combination of bonds or notes provided in subdivisions (a) through (c) of this subdivision, (e) bonds of the State of Nebraska or of any state whose bonds are purchased by the state investment officer of this state for investment of the permanent school fund, (f) warrants of the State of Nebraska, (g) county bonds, municipal bonds, or school district bonds of any county, city, village, or school district in the State of Nebraska issued under the direction of and with the approval of the Auditor of Public Accounts, (h) securities issued under the authority of the Federal Farm Loan Act, (i) loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture, or (j) warrants of the local hospital district or any county, city, village, or school district in the local hospital district; or (2) pledge or grant a security interest in assets of the bank or capital stock financial institution as provided in section 8 of this act. The provisions of section 77-2366 shall apply to deposits in capital stock financial institutions.

Sec. 11. The depository furnishing securities as set forth in section 10 of this act shall have the right at any time and without prior approval to substitute other securities of equal value in lieu of securities already deposited, except that such securities substituted shall be those provided for in such section. At all times the total value of the securities on deposit shall be in an amount equal to or greater than the amount of the public funds deposited in the bank or capital stock financial institution less the amount insured by the Federal Deposit Insurance Corporation, except that in the case of the deposit of municipal bonds alone, the total value shall equal ten percent more than the amount of the public funds deposited in the bank or capital stock financial institution less the amount insured by the Federal Deposit Insurance Corporation. Following any substitution of securities pursuant to this section, the secretary-treasurer shall report such substitution at the next meeting of the board of directors.

Sec. 12. Any bank or capital stock financial institution which has deposited securities under sections 1 to 17 of this act may withdraw the same by paying over to the secretary-treasurer all funds for which such securities are deposited as surety, and the certificate of the secretary-treasurer shall be sufficient evidence of such fact. When such certificate is filed with the secretary-treasurer, he or she shall be empowered to assign such securities to the owner thereof. All interest coupons attached to securities named in such sections shall be detached by the holder or trustee thirty days before maturity and returned to the depository pledging the security. The provisions of section 77-2366 shall apply to deposits in capital stock financial institutions.

Sec. 13. Any treasurer or any officer of a bank or capital stock financial institution who shall directly or indirectly violate or knowingly permit to be violated the provisions of sections 5 to 13 of this act, so far as such sections relate to the deposit of public money in a bank or capital stock financial institution, shall be guilty of a Class IV felony. The provisions of section 77-2366 shall apply to deposits in capital stock financial institutions.

Sec. 14. It shall be the duty of the secretary-treasurer to use all reasonable and proper means to secure to the local hospital district the best terms for the depositing of the money belonging to the local hospital district consistent with the safekeeping and prompt payment of the funds of the local hospital district when demanded.

Sec. 15. The making of profit, directly or indirectly, by the secretary-treasurer out of any money in the local hospital district treasury belonging to the local hospital district, the custody of which the secretary-treasurer is charged with, by loaning or depositing or otherwise using or depositing the same in any manner, or the removal by the secretary-treasurer or by his or her consent of such money or a part thereof out of the vault of the secretary-treasurer's department or any legal depository of such money, except for the payment of warrants legally drawn or

for the purpose of depositing the same in the banks or capital stock financial institutions selected as depositories under the provisions of sections 1 to 17 of this act, shall be deemed a Class IV felony, and the secretary-treasurer shall also be liable under and upon his or her official bond for all profits realized from such unlawful using of such funds.

Sec. 16. If the secretary-treasurer shall willfully fail or refuse at any time to do or perform any act required of him or her by sections 1 to 17 of this act, he or she shall be guilty of a Class I misdemeanor. It shall be the duty of the appropriate county attorney or the Attorney General to enter and prosecute to final determination all suits for the recovery of any penalty arising under the conditions of any bond required to be given by the provisions of such sections.

Sec. 17. The secretary-treasurers of the various local hospital districts of the state may, upon resolution of their respective boards of directors authorizing such action, make time deposits in banks or capital stock financial institutions selected as depositories of the local hospital district funds under the provisions of sections 1 to 4 of this act. The time deposits shall bear interest and shall be secured as set forth in section 77-2304 or section 10 of this act, except that the amount insured by the Federal Deposit Insurance Corporation shall be exempt from the requirement of being secured as provided by section 10 of this act or by bonds similar to the bond required and set forth in section 77-2304. The provisions of section 77-2366 shall apply to deposits in capital stock financial institutions.

Sec. 18. That section 23-3547, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-3547. Each local hospital district shall have and exercise the following powers:

(1) To have and use a corporate seal and alter it at pleasure;

(2) To sue and be sued in all courts and places and in all actions and proceedings whatever;

(3) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in same for the benefit of the district;

(4) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district, which power shall be exercised in the manner provided in sections 76-704 to 76-724;

(5) To administer any trust declared or created for hospitals of the district and receive by gift, devise, or bequest and hold in trust or otherwise property situated in this state or elsewhere and, when not otherwise provided, dispose of the same for the benefit of such hospitals;

(6) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district and to perform such functions in respect to the legal affairs of the district as the board may direct;

(7) To employ such officers and employees, including architects and consultants, as the board of directors deems necessary to carry on properly the business of the district;

(8) To prescribe the duties and powers of the manager, secretary, and other officers and employees of any such hospitals, to determine the number of and appoint all such officers and employees, and to fix their compensation. Such officers and employees shall hold their offices or positions at the pleasure of such boards;

(9) To do any and all things which an individual might do which are necessary for and to the advantage of a hospital;

(10) To establish, maintain, lease, or operate one or more hospitals, situated within the territorial limits of the district. Hospital, as used in the Nebraska Local Hospital District Act, shall have the meaning as provided in subdivision (10) of section 23-3594;

(11) To do any and all other acts and things necessary to carry out the Nebraska Local Hospital District Act; and

(12) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

Sec. 19. That section 77-2329, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2329. No treasurer or secretary-treasurer shall be liable on his or her bond for money on deposit in a bank or capital stock financial institution under and by direction of the proper legal authority if the bank or capital stock financial institution has given bond in accordance with section 15-846, 16-714, 17-720, or 77-2318, or section 7 of this act or pledged securities as provided in section 15-847, 16-715, 17-720, 77-2318.01,

er 77-2328, or section 8 of this act.

Sec. 20. That section 77-2363, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2363. In all cases in which public money or funds belonging to the United States, an agency of the United States, the State of Nebraska, or any county, school district, county hospital district, local hospital district, educational service unit, community college, city, village, or transit authority in this state have been deposited or loaned to any person or persons, corporation, bank, capital stock financial institution, partnership, limited liability company, or other firm or association of persons, it shall be lawful for the officer or officers making such deposit or loan or his, her, or their successors in office to maintain an action or actions for the recovery of such money so deposited or loaned. All contracts made for the security or payment of any such money or public funds shall be held to be good and lawful contracts binding on all parties thereto.

Sec. 21. That original sections 23-3547 and 77-2329, Reissue Revised Statutes of Nebraska, 1943, and section 77-2363, Revised Statutes Supplement, 1993, are repealed.