

1 SB133
2 215946-4
3 By Senator Chesteen
4 RFD: Governmental Affairs
5 First Read: 01-FEB-22

1 SB133

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4 ENROLLED, An Act,

5 Relating to public deposits; to amend Section
6 41-14A-6, Code of Alabama 1975, relating to the composition
7 and operation of the Security for Alabama Funds Enhancement
8 (SAFE) Program board of directors, to provide for the use of
9 virtual technology to participate in meetings, and to require
10 compliance with the Alabama Open Meetings Act.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Section 41-14A-6, Code of Alabama 1975,
13 is amended to read as follows:

14 "§41-14A-6.

15 "(a) There is hereby established a Board of
16 Directors of the SAFE Program charged with responsibility and
17 authority to assess and manage the sufficiency of the
18 collateral pool and the SAFE Program to provide adequate
19 protection from losses to public depositors. In exercising its
20 powers and performing its responsibilities, the board of
21 directors shall constitute a body politic under the laws of
22 the state performing the public function of assuring the
23 safety of public deposits.

24 "(b) (1) The State Treasurer shall be a permanent,
25 standing, voting member of the board of directors and shall

1 serve as its chair. The Superintendent of Banks shall be a
2 permanent, standing, non-voting member of the board of
3 directors. The remaining six members shall each possess
4 knowledge, skill, and experience in one or more of the
5 following areas:

6 "~~(1)~~a. Financial analysis.

7 "~~(2)~~b. Trend analysis.

8 "~~(3)~~c. Accounting.

9 "~~(4)~~d. Banking.

10 "~~(5)~~e. Risk management.

11 "~~(6)~~f. Investment management.

12 "(2) The remaining six members shall be comprised of
13 four members each of whom shall be a representative of an
14 active qualified public depository, which is not in the
15 process of withdrawing from the SAFE Program and which is in
16 compliance with all applicable rules, regulations, and
17 reporting requirements of this chapter, one of whom will be
18 selected and approved by the State Treasurer and three of whom
19 shall be selected and approved by the State Treasurer from
20 three or more nominations submitted by the Alabama Bankers
21 Association (or any successor association or entity, or, if no
22 such association or successor association or entity shall then
23 exist, submitted by the Superintendent of Banks); one member
24 who shall be a representative of a municipality within the
25 state and who will be selected and approved by the State

1 Treasurer from one or more nominations submitted to the State
2 Treasurer by the League of Municipalities of Alabama; and one
3 member who shall be a representative of a county within the
4 state and who will be selected and approved by the State
5 Treasurer from one or more nominations submitted to the State
6 Treasurer by the Association of County Commissions of Alabama.

7 "(3) The terms of the members of the board of
8 directors other than the State Treasurer and the
9 Superintendent of Banks shall be four years, except that, with
10 respect to the initial appointments, as determined by the
11 State Treasurer, one member will serve one year, one member
12 will serve two years, two members will serve three years, and
13 two members will serve four years. Any person appointed to
14 fill a vacancy on the board may serve only for the remainder
15 of the unexpired term. Any member is eligible for
16 reappointment and shall serve until a successor is selected.

17 "(4) The chair shall annually designate a member of
18 the board of directors to serve as vice chair, and a secretary
19 who need not be a member of the board of directors. The
20 secretary shall keep a record of the proceedings of the board
21 of directors and shall be the custodian of all printed
22 materials filed with or by the board.

23 "(5) Notwithstanding the existence of vacancies on
24 the board of directors, two thirds of the voting members then

1 serving shall constitute a quorum. The board of directors may
2 not take official action in the absence of a quorum.

3 "(6) The board of directors shall meet quarterly and
4 at other times deemed necessary to assess and manage the
5 operations of the SAFE Program.

6 "(7) Meetings Except as otherwise specifically
7 provided in subdivision (8) only as it relates to virtual
8 participation of members of the board and the public, all
9 meetings and notice of meetings of the board of directors,
10 including meetings at which administrative fines and penalties
11 are established, shall be subject to the provisions of Section
12 ~~13A-14-2, as amended, the Sunshine Law, except~~ the Alabama
13 Open Meetings Act, Section 36-25A-1 et seq.; provided, that
14 sessions at which any information that is confidential under
15 the provisions of subsection (f) below shall not be subject to
16 Section 13A-14-2, and shall not be open to the public.

17 "(8) Members of the board of directors or any
18 committee established by the board may participate in a
19 meeting of the board or committee by means of telephone
20 conference, video conference, or similar communications
21 equipment by means of which all persons participating in the
22 meeting may hear each other at the same time. Participation by
23 means authorized in this subdivision shall constitute presence
24 in person at a meeting for all purposes, including the
25 establishment of a quorum, to deliberate and to take action.

1 The telephone or video conference or similar communications
2 equipment shall also allow members of the public the
3 opportunity to simultaneously listen to or observe meetings
4 held pursuant to this subdivision.

5 "(c) In adopting, amending or repealing any rule,
6 regulation, standard, or statement of general applicability,
7 the board of directors shall be subject to the applicable
8 requirements of the Alabama Administrative Procedure Act,
9 Chapter 22 of this title.

10 "(d) In connection with the assessment and
11 management of the sufficiency of the collateral pool and the
12 SAFE Program to provide adequate protection from losses to
13 public depositors, the board of directors shall be authorized
14 to exercise the following powers:

15 "(1) Designate financial institutions as qualified
16 public depositories and require such collateral, or increase
17 the collateral-pledging level, of any qualified public
18 depository as may be necessary to administer the provisions of
19 this chapter and to ensure the sufficiency of the collateral
20 pool and the SAFE Program to provide adequate protection from
21 losses to public depositors.

22 "(2) Establish guidelines for accepting, or for
23 reducing the reported value of, collateral as circumstances
24 may require in order to ensure the pledging of sufficient
25 marketable collateral to meet the purposes of this chapter.

1 "(3) Authorize the State Treasurer to issue
2 suspensions, disqualifications, administrative penalties, and
3 cease and desist orders in accordance with Section 41-14A-7
4 against any qualified public depository that has violated any
5 of the provisions of this chapter or any rules, regulations,
6 or orders of the board of directors or the State Treasurer
7 adopted under this chapter.

8 "(4) Take such actions as the board of directors
9 shall consider to be necessary, appropriate, or desirable in
10 order to assess and manage the sufficiency of the collateral
11 pool and the SAFE Program to provide adequate protection from
12 losses to public depositors, including, without limitation:

13 "a. Establish procedures for the verification of the
14 reports of any qualified public depository relating to public
15 deposits it holds when necessary to ensure the availability of
16 adequate funds to pay any potential losses to public
17 depositors.

18 "b. Establish criteria, based on the overall
19 financial condition of the participants and applicants, as may
20 be necessary, to ensure the sufficiency of the collateral pool
21 and the SAFE Program to provide adequate protection from
22 losses to public depositors.

23 "c. Establish collateral-pledging levels based on
24 qualitative and quantitative standards.

1 "d. Establish rules and procedures for the State
2 Treasurer to monitor and confirm, as often as deemed necessary
3 by the State Treasurer, the pledged collateral held by
4 custodians.

5 "e. Set requirements for the filing by qualified
6 public depositories, custodians, the State Treasurer, the
7 board's agents and contractors, and other persons of such
8 documents, reports, records, or other information deemed
9 necessary by the board of directors to monitor the sufficiency
10 of the collateral pool and the SAFE Program to provide
11 adequate protection from losses to public depositors,
12 including, without limitation:

13 "1. Require reports of each qualified public
14 depository to reflect the net average monthly balance of the
15 public deposits held by the qualified public depository and to
16 reflect the collateral pledged by qualified public
17 depositories under this chapter, which reports shall not be
18 required more frequently than monthly except in the case of
19 any qualified public depository that is then subject to
20 default or insolvency or is the subject of an order of
21 suspension or disqualification or a cease and desist order
22 issued by the State Treasurer.

23 "2. Require the submission of copies of quarterly or
24 annual financial and regulatory reports of qualified public
25 depositories.

1 "f. Direct the State Treasurer to maintain perpetual
2 inventory of pledged collateral.

3 "g. Perform, or direct the State Treasurer to
4 perform, financial analysis of any qualified public depository
5 as needed.

6 "h. Establish a minimum amount of required
7 collateral as the board of directors deems necessary to
8 provide for the contingent liability pool.

9 "(5) Empower the State Treasurer to sell pledged
10 securities, or move pledged securities to an account
11 established in the Loss Payment Fund's name, for the purpose
12 of paying losses to public depositors not covered by deposit
13 insurance or to perfect the Loss Payment Fund's interest in
14 the pledged securities.

15 "(6) Empower the State Treasurer to transfer funds
16 directly from any custodian to public depositors or the
17 receiver in order to facilitate prompt payment of claims.

18 "(7) Adopt and implement, and monitor compliance
19 with, such standards, rules, regulations, guidelines, and
20 orders as the board of directors shall consider to be
21 appropriate or desirable for the purposes of maintaining the
22 sufficiency of the collateral pool to provide adequate
23 protection from losses to public depositors.

24 "(8) Delegate to the State Treasurer all of the
25 responsibility for the day-to-day administration of the SAFE

1 Program and of the standards, rules, regulations, guidelines,
2 and orders adopted by the board of directors, as deemed
3 appropriate or desirable by the board of directors.

4 "(9) Establish the conditions under which entities
5 resulting from mergers, consolidations, sales of assets and
6 similar transactions involving qualified public depositories
7 will succeed qualified public depositories and assume the
8 former institution's contingent liability agreement under
9 Section 41-14A-8, and to prescribe requirements for
10 notification by qualified public depositories to the board of
11 mergers, consolidations, sales of assets, changes of address,
12 changes of name, and similar matters.

13 "(10) Establish the conditions under which qualified
14 public depositories will be required to involuntarily withdraw
15 from participation in the program and for the conditions under
16 which collateral pledged by withdrawing qualified public
17 depositories will be released.

18 "(11) Authorize the filing of any information or
19 forms required under this chapter to be by electronic data
20 transmission. Such filings of information or forms shall have
21 the same force and effect as a signed writing.

22 "(e) The board of directors shall adopt rules or
23 regulations empowering the State Treasurer to impose
24 requirements on qualified public depositories to ensure that
25 applicable accounts maintained by covered public entities and

1 covered public officials are adequately identified as public
2 deposits covered by this chapter and that each qualified
3 public depository can identify on its records the name,
4 address, and federal employer identification number of the
5 covered public entities and covered public officials
6 maintaining public deposits in such qualified public
7 depository. The State Treasurer may require that each
8 qualified public depository shall provide an annual statement
9 to each public depositor then maintaining public deposits with
10 the qualified public depository summarizing the balances of
11 public deposits held by the qualified public depository for
12 the public depositor. The balances reflected in any such
13 annual statement provided by a qualified public depository
14 shall be deemed correct unless the public depositor notifies
15 the qualified public depository to the contrary within 60 days
16 of receipt of the statement.

17 "(f) Any information contained in a report of a
18 financial institution provided to the board of directors or
19 the State Treasurer under this chapter shall, if made
20 confidential by any law of the United States or of this state
21 and if the board is notified by the financial institution of
22 such confidentiality, be considered confidential and exempt
23 from the provisions of Section 36-12-40, and not subject to
24 dissemination to anyone other than the board of directors and
25 the State Treasurer under the provisions of this chapter.

1 "(g) Members of the board of directors shall serve
2 without compensation, but shall be reimbursed for each day's
3 official duties of the board of directors at the same per diem
4 and travel rate as is paid employees of the state.

5 "(h) Neither the board of directors nor the State
6 Treasurer shall have the authority to assess, charge, or
7 collect any of the costs associated with the implementation,
8 administration, or enforcement of the SAFE Program against any
9 covered public entities, covered public officials, or
10 qualified public depositories, provided, however, that this
11 subsection shall not limit or restrict the authority of the
12 board or the State Treasurer, as applicable, to impose
13 administrative penalties or order restitution pursuant to
14 Section 41-14A-7 or to make assessments against qualified
15 public depositories for losses in accordance with Section
16 41-14A-9."

17 Section 2. This act shall become effective
18 immediately following its passage and approval by the
19 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB133

Senate 09-FEB-22

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 07-APR-22

By: Senator Chesteen