

Summary of Laws and Procedures Pertaining to Depository Contracts for Independent School Districts

Note: Legislative acts passed during a current legislative session may alter the requirements summarized in this document.

Related Statutes and Rules

The state laws pertaining to school district depositories are found in the Texas Education Code (TEC), Chapter 45, Subchapter G (§§45.201–45.209). The TEC, §45.202, provides that the school depository or depositories of every independent school district may be selected only as provided by that subchapter. In accordance with the TEC, §45.206, in selecting a depository, your school district must use a uniform bid or proposal blank in the form prescribed by the State Board of Education (SBOE) rule, which is 19 Texas Administrative Code (TAC) [§109.51](#).

As of September 1, 2017, Senate bill 754 amended the Texas Education Code (TEC) §45.205(b) by allowing the school district depository contract to be extended a total of three (3) two-year terms. In addition, the changes to the law allows the depository contract to be modified for each two-year extension if both the school district and the district's depository bank mutually agree to the terms.

Two-Year Term of the Contract

Your school district must renew its depository contract(s) every two years. The two-year contract term begins and ends in odd-numbered years and is from either July 1 of one year through June 30 two years later or September 1 of one year through August 31 two years later (for example, the period from either July 1, 2019, through June 30, 2021, or September 1, 2019, through August 31, 2021). The contract term and any extension must coincide with your district's fiscal year. (Reference: TEC, §45.205). **As noted above, a district may extend the original contract for three (3), two-year terms; therefore, the original contract may be in effect for a total of eight (8) years.**

A. Institutions Authorized to Serve as Depositories; Term of Depository Contract

Under the TEC, §45.203, only a bank is authorized to serve as a school district depository. The TEC, §45.201(2), defines the term "bank" as "a bank, a savings and loan association, or a savings bank organized under the laws of this state, another state, or federal law that has its main office or a branch office in this state. The term does not include any bank the deposits of which are not insured by the Federal Deposit Insurance Corporation [FDIC]." This section authorizes a bank organized in Texas, as well as a bank organized in another state whose main or branch office is located in Texas, to serve as a depository provided that FDIC requirements are met.

A depository contract remains in force for a term of two years and until a successor is selected and has qualified. Your school district and depository bank may agree to extend a depository contract for three additional two-year terms. The extension does not require your district to solicit bids or proposals. (Reference: TEC, §45.205, and §45.206)

Your district may extend a depository contract for an additional two-year term only if:

- the district did not file an extension in the three previous bienniums (for example, an extension filed in 2013 through 2015, in 2015 through 2017, and in 2017 through 2019).

Your district must submit a completed and signed Board Resolution Extending Depository Contract for Funds of Independent School Districts form to the Texas Education Agency (TEA) Division of Financial Compliance. The extension form is available on the TEA Depository Contracts for School Districts web page.

If the contract extension has changes added to the original contract, such as a change in interest rates, attach a signed copy of the changes and submit to the TEA with the contract extension.

B. Selection of Depository

This section summarizes statutory provisions related to selecting a depository or depositories. (Reference: TEC, §§45.206–45.209)

At least 60 days before your district's current depository contract expires, the district must choose whether to select a depository through competitive bidding or through requests for proposals.

If your district chooses to use competitive bidding, it must, at least 30 days before the termination of the current depository contract, mail to each bank located in the district, and, if desired, to other banks, a notice stating the time and place in which bid applications will be received for selecting a depository or depositories (Reference: TEC, §45.206[a-1]). **At least two banks must receive bid notices in every case. A bank is considered to be within a district if it conducts business at or through a branch in the district.**

If your district chooses to use requests for proposals, it must, at least 30 days before the termination of the current depository contract, mail to each bank located in the district, and, if desired, to other banks, a notice stating the time and place in which proposals will be received for selecting a depository or depositories (Reference: TEC, §45.206[a-2]). **At least two banks must receive request for proposal notices in every case. A bank is considered to be within a district if it conducts business at or through a branch in the district.**

The notice must include a uniform bid or proposal blank in the form prescribed by SBOE rule (19 TAC§109.51). The SBOE-mandated bid and proposal blanks (forms) are available on the TEA Depository Contracts for School Districts web page. Your district may add other terms to the uniform bid or proposal form if the added terms do not unfairly restrict competition between banks in or near the district. Any added terms must be stated in a uniform manner that will permit and facilitate comparison of all bids or proposals. (Reference: TEC, §45.206)

Under the TEC, §45.204(b), if a member of the school district's board of trustees is a stockholder, officer, director, or employee of a bank that has bid or submitted a proposal to become a depository for the district, the member may not vote on awarding a depository contract to the bank.

If your district's board of trustees receives tie bids or proposals for a depository contract and determines that the tie bids or proposals are otherwise equal and that two or more of the tie bidders or proposal submitters have the facilities and ability to provide the necessary school depository services for the district, the board may award the contract by either of the following methods:

1. determining by lot which of the banks submitting the tying bids or proposals will receive the contract or
2. awarding a contract to each of the banks submitting the tying bids or proposals. (Reference: TEC, §45.207)

In determining the highest and best bid or the highest-ranked proposal, or in the event of tie bids or proposals, the highest and best tying bids or proposals, the board of trustees must consider:

- the interest rate bid or proposed on time deposits;
- the charges for keeping district accounts, records, and reports and furnishing checks; and
- the bank's ability to provide the necessary services and perform the duties as school district depository.

The board should consider any other matters that in the judgment of the board would be in the best interest of the district. The board has the right to reject any and all bids or proposals.

Your district may select one or, in the event of tie bids or proposals, more than one depository. Each bank selected must make and enter into a depository contract setting forth the duties and responsibilities of the depository.

The TEC, §45.207(b) requires all funds received by a district from or through the TEA to be deposited, at the district's option, in **one** depository bank or invested in a public funds investment pool created under the Texas Government Code, Chapter 791, to be designated by the district.

Because of this requirement, if your district selects more than one depository, it may deposit funds received from or through the TEA in only one of them.

C. TEA-Required Documents and Procedures

Your district must file with the TEA the depository contract and, if applicable, the surety bond (Reference: TEC, §45.208).

All financial reports made by or for school districts or by their officers, agents, or employees, to the commissioner or to the TEA must be made on TEA-prescribed forms (Reference: TEC, §44.009[a]).

The TEA provides school districts with the forms required for requesting bids or proposals, pledging surety bonds, and executing depository contracts on the Depository Contracts for School Districts web page.

Following is a list of the documents that your district must complete and submit:

- **one completed and signed (signatures from school board president, bank officer, and notary) Depository Contract for Funds form**
- **one vendor Direct Deposit Authorization form, if applicable**
- **one completed and signed Texas School Depository Surety Bond Form, if applicable**

The Depository Contract Data Sheet is no longer required; however, your district may use this form for documentation purposes. Do not submit it to the TEA.

The copy of the accepted Bid Form for Depository Services or Proposal Form for Depository Services is no longer required to be submitted to TEA, but must be kept on file at the district and submitted to the TEA upon request.

Your district must submit completed and signed forms electronically as PDFs through the Audit application in TEA Login (TEAL), TEA's security gateway.

Please note that the TEA will **not** accept an incomplete depository contract form and will return it to the district. Ensure that all blanks are filled in and that the form includes the proper signature of:

- the school board president or authorized designee,
- the authorized bank officer, and
- the notary (please note that the notary is witnessing the authorized bank officer's signature).

In the absence of school board officers, the district should check its board policy to see if someone else has been authorized to sign in their absence. If not, then the school district must obtain the appropriate signatures before submitting the contract to the TEA.

The TEA must receive these documents by June 15 of the fiscal year in which a district renews its depository contract. If the TEA does not receive these documents by the deadline, the agency will notify the district by either July 1 or September 1 of that year (depending on the district's fiscal year end) that funds are subject to being sent to the district by warrant through the US mail pending receipt of the contract. The agency is not authorized to send funds to a depository that has not been selected and approved in compliance with the law.

Your district may complete and submit one Board Resolution Extending Depository Contract for Funds form, if the district and its depository bank agree to extend the current contract for an additional two-year term and the district qualifies for an extension.

Your district should allow enough time to accommodate any unexpected delays (for example, delays in submitting and receiving depository documentation, delays in acquiring signatures, delays caused by rebidding or going out for proposals again if the district rejects all initial bids or proposals). To ensure sufficient time for TEA review before the beginning of the district's biennium, your district's depository contract form(s) and related forms or its Board Resolution Extending Depository Contract for Funds form must be received by the

Division of Financial Compliance no later than **June 15 of the fiscal year in which your district renews its contract.** Beginning either July 1 or September 1 of that year, (depending on the district's fiscal year end), any district that has not submitted the required depository contract renewal or extension forms will receive its payments by warrant sent through the US mail pending the TEA's receipt of the required forms.

D. Amount of Cashier's Check Specified in Bid or Request for Proposal Notice

The Bid or Request for Proposal Notice for Depository Services form includes a blank for the amount of the cashier's check. The cashier's check amount should not be excessive but should be enough to cover the costs incurred by the district during the bidding or proposal process and any costs the district will incur in seeking new bids or proposals should the depository submitting the initial winning bid or proposal fail to enter into a contract with the district.

E. Instructions for Depository Contract for Funds Form

Before submitting the Depository Contract for Funds of Independent School Districts form, district staff members should ensure that the form includes all necessary items by completing the following steps:

- Fill in the name of the county and the county-district number.
- Article I: Fill in the district name, the name of the county the district is located in, the name of the depository bank, the beginning and ending dates of the depository contract (for example, July 1, 2019, through June 30, 2021, or September 1, 2019, through August 31, 2021), the mailing address of the bank, the name of the county the bank is located in, the number of bids or proposals submitted, and the date the bids or proposals were opened.
- Article V: Fill in the routing transit number, indicate whether the account is a checking or savings account, and fill in the account number. If the district currently receives its funds in a public fund investment pool created under the Texas Government Code, Chapter 791, and there will be no change, check the box indicating that.

Fill in the date the depository contract was agreed to and accepted on behalf of the school district, the date the bank agreed to and accepted the depository contract, and the name of the depository. Ensure that the form includes the school board president's signature and the authorized bank officer's signature and title.

- "Acknowledgment" section (must be completed by a notary): Ensure that this section includes the name of the county, the date (this date must be the same as the date the bank agreed to and accepted the depository contract), the printed name of the authorized bank officer signing the contract, the signature of the notary, the county of the notary, and the notary seal.
- "Election of Collateral Method for Funds of Independent School Districts" section: Check the box that applies to the district's selected method to protect the funds of the district. Fill in the amount of the surety bond in paragraph A (this amount must match the amount shown on the Texas School Depository Surety Bond Form). **If the district has not elected to use a surety bond, fill in "N/A" (not applicable) or "0" as the amount in paragraph A.** Fill in the estimated highest daily cash balance

in paragraph D.

F. Distribution of Funds through the Agency to the District

A district must complete, sign, and submit the vendor Direct Deposit Authorization form to inform the TEA of any bank changes. The agency keeps a record of the name and address of each depository; its transit routing number, to which all funds distributed through the agency to the district are sent; and each district's bank account number and type. Current bank information is necessary for the transfer of all funds electronically through the Automated Clearing House (ACH) system. A depository is required to give the district credit on the effective settlement date for funds transferred electronically (25th day of the month or the following banking day if the 25th day falls on a weekend or holiday for Foundation School Program and per capita funds).

G. Securities

A school district is responsible for reviewing the securities pledged by a depository or the amount of the surety bond to determine if the pledged securities or bond is acceptable for securing the funds of the district as specified by statute and attorney general opinions. The district is also responsible for keeping copies of receipts for pledged securities on file.

The aggregate amount of a surety bond or the amount of the approved securities deposited or pledged by a depository bank must be adequate to protect the funds of the district as directed at any time by the board of trustees in accordance with standards acceptable to the TEA. All funds, less applicable FDIC insurance and any surety bond coverage, must be secured with the depository from day to day during the term of the depository contract.

The TEC, §45.208, authorizes the following types and forms of securities:

- **Surety Bond**: The TEC, §45.208(a), requires a school district and a bank that it selects as a depository to enter into a depository contract, bond, or other necessary instruments setting forth the duties and agreements pertaining to the depository, in a form and with the content prescribed by SBOE rule (19 TAC §109.52). Under §45.208(b), the initial amount of the bond must be "equal to the estimated highest daily balance, determined by the board of trustees of the district, of all deposits that the school district will have in the depository during the term of the contract, less any applicable Federal Deposit Insurance Corporation insurance." The bond must be payable to the district and signed by the depository bank and by a surety company authorized to do business in Texas. The depository bank is required to attach the bond to the contract and file it with the school district.
- **Pledged Securities**: Instead of accepting a surety bond, a school district board of trustees may accept a deposit or pledge of approved securities, as defined by the TEC, §45.201(4), as provided for by the TEC, §45.208(f), and the Texas Government Code, Chapter 2257. Under the Texas Government Code, §2257.022(b), if a district agrees to the use of reducing principal securities, the total value of the securities must be in an amount not less than 110 percent of the amount of the deposit, as determined under §2257.022(a).

Under the Texas Government Code, §2257.023, a district is responsible for determining, in accordance with a written policy approved by its board of trustees, whether an investment security is eligible to secure deposits of public funds.

The depository is required to file with the district safekeeping or trust receipts for each security pledged against the district's funds. The receipts **must**:

- show the school district as pledgee;
- clearly indicate the third-party holder of the security, the name of the depository, and the receipt number; and
- include a description, the maturity date, and the par value or market value of the security if it reduces in principal.

Although neither statute nor rule specifically authorizes the amount of the securities a depository is required to pledge to be reduced by the amount of a short-term loan made by the depository to the depositing district, such short-term obligations of the depositing district are acceptable for pledge purposes. However, they must be considered "approved securities" and placed in another bank for safekeeping. That bank must issue safekeeping receipts showing that the obligations are pledged to the school district on a declining balance according to the repayment schedule.

H. Collateral Pledge Agreement

The collateral pledge agreement (also referred to as the third-party holder agreement) must conform to Title 12 United States Code Annotated (USCA), §1823(e), as follows:

(e) Agreements against interests of Corporation

(1) In general

No agreement which tends to diminish or defeat the interest of the Corporation in any asset acquired by it under this section or section 1821 of this title, either as security for a loan or by purchase or as receiver of any insured depository institution, shall be valid against the Corporation unless such agreement—

- (A) is in writing,
- (B) was executed by the depository institution and any person claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the depository institution,
- (C) was approved by the board of directors of the depository institution or its loan committee, which approval shall be reflected in the minutes of said board or committee, and
- (D) has been, continuously, from the time of its execution, an official record of the depository institution.

(2) Exemptions from contemporaneous execution requirement

An agreement to provide for the lawful collateralization of –

- (A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 1821(a)(2) of this title, including an agreement to provide collateral in lieu of a surety bond;
- (B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11;

(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

(D) one or more qualified financial contracts, as defined in section 1821 (e)(8)(D) of this title,

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.

I. Investments

Under the Texas Government Code, §2256.005, a school district board of trustees is required to adopt a written investment policy regarding the investment of the district's funds and funds under its control. The board must adopt a separate written investment strategy for each of the funds or groups of funds under the district's control. Section 2256.005(d) requires that each investment strategy "describe the investment objectives for the particular fund using the following priorities in order of importance:

- "(1) understanding of the suitability of the investment to the financial requirements of the entity;
- "(2) preservation and safety of principal;
- "(3) liquidity;
- "(4) marketability of the investment if the need arises to liquidate the investment before maturity;
- "(5) diversification of the investment portfolio; and
- "(6) yield."

See the Texas Government Code, §2256.005(b), for additional requirements related to district investment policies.

The Texas Government Code, §2256.009(a), authorizes the following investments:

1. obligations, including letters of credit, of the United States or its agencies and instrumentalities;
2. direct obligations of this state or its agencies and instrumentalities;
3. collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;
4. other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, this state or the United States or their respective agencies and instrumentalities, including obligations that are fully guaranteed or insured by the FDIC or by the explicit full faith and credit of the United States;
5. obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent; and

6. bonds issued, assumed, or guaranteed by the State of Israel.

See §2256.009(b) for a list of investments that are not authorized.

Refer to the following sections of the Texas Government Code, Chapter 2256, for more information regarding specific authorized investments:

§2256.010, Authorized Investments: Certificates of Deposit and Share Certificates

§2256.011, Authorized Investments: Repurchase Agreements

§2256.0115, Authorized Investments: Securities Lending Program

§2256.012, Authorized Investments: Banker's Acceptances

§2256.013, Authorized Investments: Commercial Paper

§2256.014, Authorized Investments: Mutual Funds

§2256.015, Authorized Investments: Guaranteed Investment Contracts

§2256.016, Authorized Investments: Investment Pools

If a district invests in certificates of deposit with other banks, the investment must be made in the name of the district, and the investment amount exceeding the FDIC coverage must be secured by a contract and the pledging of securities.

J. FDIC Insurance Coverage and Amount of Securities

Total school deposits require approved security pledge or surety bond coverage, or both, to the extent not covered by the FDIC insurance.

The basic FDIC deposit insurance coverage limit for government accounts is currently \$250,000 per official custodian. A school district can use the FDIC's Electronic Deposit Insurance Estimator (EDIE) to calculate the insurance coverage on school district deposits. EDIE is available on the following website: <https://www.fdic.gov/edie/index.html>.

K. Bank Closing

A school district board of trustees may select by contract a new depository if the district's original depository bank suspends business (closes) or is taken charge of by a state or federal bank regulatory agency. (Reference: Texas Local Government Code, §131.001)

When a bank fails, and is reopened, the FDIC usually negotiates a contract with the new bank. The contract will specify if or under what conditions the new bank will honor preexisting depository contracts. As soon as feasible, all safekeeping receipts should be reissued, showing the name of the new bank and the securities pledged to the district.

When a failed bank is reopened, the transit routing number, the bank address, the type of account, or the account number may change. The district must notify the TEA immediately of any changes that could affect the receipt of school funds and complete a new vendor Direct Deposit Authorization form.

L. Contact Information

If you have any questions about depository contracts, please contact the Division of Financial Compliance DepositoryContract@tea.texas.gov