

ATTACHMENT II
Text of Proposed Amendment to 19 TAC

Chapter 109. Budgeting, Accounting, and Auditing

Subchapter D. Uniform Bank Bid or Request for Proposal and Depository Contract

§109.52. Uniform Depository Bank Contract and Surety Bond Forms.

- (a) Each school district must use the uniform depository contract form as provided in subsection (b) of this section. The district must complete the form and file it electronically with the Texas Education Agency (TEA) as specified in the Texas Education Code (TEC), §45.208, and in accordance with filing instructions provided on the TEA website.
- (b) This subsection provides the uniform depository contract form, entitled "Depository Contract for Funds of Independent School Districts under the Texas Education Code, Chapter 45, Subchapter G, School District Depositories."

Figure: 19 TAC §109.52(b) [~~Figure: 19 TAC §109.52(b)~~]

- (c) If a district's depository elects a surety bond to secure the district's deposit amounts less any applicable Federal Deposit Insurance Corporation insurance, the depository must complete the surety bond form provided in subsection (d) of this section, attach it to the contract, and file it with the district. The district must file a copy of the contract and the surety bond form with the TEA as specified in the TEC, §45.208, and in accordance with filing instructions provided on the TEA website.
- (d) This subsection provides the uniform surety bond form, entitled "Texas School Depository Surety Bond Form."

Figure: 19 TAC §109.52(d)
- (e) If the TEA receives a contract form and determines that it is incomplete, the TEA will notify the district.
- (f) A district that has no current depository contract in force and filed with the TEA will receive its warrants from the TEA by US mail.
- (g) For depository contract filing requirements for charter schools, refer to §100.1043 of this title (relating to Status and Use of State Funds; Depository Contract).

**Depository Contract for Funds
of Independent School Districts
under the Texas Education Code, Chapter 45, Subchapter G,
School District Depositories**

State of Texas

County-District Number

County of _____

Article I. The _____, referred to in this contract
Name of District

as the "District," is located in _____ County, Texas. The board of trustees of the District has selected
Name of County

_____, referred to in this contract as the "Depository," to serve as the Depository of the
Name of Depository Bank

school funds of the District (or if there are tie bids or proposals as defined in the Texas Education Code [TEC], as one of the Depositories). This selection was made in accordance with the TEC, Chapter 45, Subchapter G. The Depository will serve under this contract for a two-year term starting with the fiscal year beginning _____ and ending _____, and until its successor is selected and has qualified unless
Date *Date*

this contract is terminated sooner by the Depository's failure to adhere to all requirements of the TEC and of this contract. The school funds of the District include all school funds except those permitted by law to be deposited or invested otherwise at the sole discretion of the District's board of trustees.

The Depository is located at _____ County, State of Texas, and is a
Bank Mailing Address, City, Zip Code *Name of County*

bank as defined in the TEC, §45.201.

Article II. The District selected the Depository based on the Depository's written bid or proposal submitted as provided by State Board of Education rule. The District determined that the Depository's written bid or proposal was the best, or equal to the best, among _____ bids or
Number Submitted

proposals submitted to the District and opened on _____. The bid or proposal is incorporated in this contract by reference.
Date

This contract is subject to the TEC and any amendments to it and to any acts of the Texas Legislature that affect public moneys held by the District during the term of this contract.

Article III. The Depository has elected a method to adequately protect the funds of the District deposited with the Depository in accordance with the TEC, §45.208, and a copy of the election is attached to this contract and incorporated by reference.

Article IV.

- A. The TEC, §45.205, requires that this contract and any extension of this contract coincide with the District's fiscal year. If the District changes its fiscal year in accordance with the TEC, §44.0011, the parties may agree to shorten or extend the two-year term of the contract by no more than one year to coincide with the end of the new fiscal year, provided that this contract remains in effect until the Depository's successor is selected and has qualified. If the parties cannot agree, the District has the option to change the term of this contract to coincide with the end of a new fiscal year closest to its original expiration date.
- B. The District and the Depository may agree to extend this contract for three additional two-year terms in accordance with the TEC, §45.205(b). The contract may be modified for each two-year extension if both parties mutually agree to the terms. An extension under this subsection is not subject to the requirements of the TEC, §45.206.
- C. The District must electronically file this contract and any additional two-year extension of this contract with the Texas Education Agency.
- D. The Depository must allow the District to purchase time deposits that mature after the ending date of this contract; however, the Depository may apply new interest rates to the time deposits after the ending date of this contract. The District is entitled to withdraw these time deposits without penalty when this contract expires. But in that event, the Depository will be obligated only to pay interest rates comparable to rates offered in the contract for the term the time deposits were actually held. The Depository may impose an early withdrawal penalty on a time deposit withdrawn within six days of creation of the deposit, to the extent required to comply with federal regulations defining time deposits.
- E. If a contractual dispute results in litigation between the Depository and the District, the trial will be held in the county in which the District has its central office, but only if this venue designation is not considered to be a waiver of any immunity that either party to this contract may be entitled to claim.

Article V. The District and the Depository execute this contract and each retain a copy, both of which are considered to be originals, and file the contract with the TEA electronically as specified in Article IV, item C, above.

**To Be Completed by the District and Verified by the Depository
(For all funds received from the Texas Education Agency)**

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Routing Transit Number
(Must be 9 digits)

Type of Account:

Account Number
(Up to 13 digits)

Check One:
Checking
Savings

___ Check here if the TEA currently sends funds to an investment pool and no change is required in routing of funds.

Please note that the account information above must match the current direct deposit information on file with the Texas Education Agency, Accounting Division. If the District is changing the current direct deposit information, the District must submit a Vendor Direct Deposit Authorization form along with the depository contract.

Agreed and accepted on behalf of the District this _____ day of _____, _____

Signature of President of School Board

Agreed and accepted on behalf of the Depository this _____ day of _____, _____

Typed Name of Depository

Signature of Authorized Officer

Title of Authorized Officer

Acknowledgment

Acknowledged before me in _____ County, Texas, on _____, 20____, by _____, bank officer of the Depository named in the preceding document, for the Depository.

Signature of Notary

(SEAL)

Notary Public in and for _____
County, Texas

**Election of Collateral Method for Funds
of Independent School Districts
under the Texas Education Code, Chapter 45, Subchapter G,
School District Depositories**

In accordance with Article III of the Depository Contract for Funds, the Depository has elected to use the following method(s) to protect the funds of the District:

- Surety bond (TEC, §45.208[b])
- Deposit or pledge securities (TEC, §45.208[f])

- A. If the Depository elected to file with the District a corporate surety bond, then the corporate surety bond is in an initial amount of \$ _____, which is equal to the estimated highest daily balance of the District funds determined by the board of trustees of the District to be on deposit with the Depository during the term of this contract. The corporate surety bond is executed in the form and with the content prescribed by State Board of Education rule. A fully executed copy of the corporate surety bond is attached to and made a part of this contract by reference, provided further that:
- (1) the initial amount of the corporate surety bond may rise or fall from day to day so long as all deposits of the District are fully protected;
 - (2) the bond is made payable to the District and is signed by the Depository and the surety company authorized to do business in this state;
 - (3) the bond and the surety on the bond are approved by the board of trustees of the District;
 - (4) the bond exists under the condition that the Depository must:
 - (a) faithfully perform all duties and obligations required by law and this contract;
 - (b) pay on presentation all checks or drafts ordered according to law by the District's board of trustees;
 - (c) pay on demand any demand deposit in the Depository;
 - (d) pay any time deposit after the required notice period expires;
 - (e) faithfully keep school district funds and account for the funds according to law; and
 - (f) faithfully pay over to the successor depository all balances remaining in the account; and
 - (5) the District may not pay a premium on the depository bond out of school district funds.
- B. If the Depository did not elect to make the corporate surety bond in the amount and as referred to in A, above, then the Depository must either deposit or pledge with the District, or with a trustee designated by the District, approved securities as defined in the TEC, §45.201. The pledged or deposited securities must meet the following conditions:
- (1) The pledged securities must be approved securities and authorized by law and must be in a total market value sufficient to protect the funds of the District on deposit as directed at any time by the District in accordance with standards acceptable to the Texas Education Agency.
 - (2) The pledge of approved securities must be waived only to the extent of the exact dollar amount of Federal Deposit Insurance Corporation insurance protection for the District's funds on deposit with the Depository from day to day, and if the insurance protection ends, this contract must immediately become void except as provided in (4) below.
 - (3) The conditions of the pledge of approved securities required by this contract are that the Depository must:
 - (a) credit the account(s) of the District with the full amount of all State of Texas warrants presented to the Depository for the District's account no later than the next banking day after the day the Depository receives the warrants credit the account(s) of the District with the full amount of electronically transferred funds on the effective settlement date;
 - (b) faithfully perform all duties and obligations required by law and this contract;
 - (c) pay upon presentation all checks or drafts ordered according to law by the District's board of trustees;
 - (d) pay upon demand any demand deposit of the District in the Depository;
 - (e) pay any time deposit or certificate of deposit upon maturity or after the required notice period expires;
 - (f) faithfully keep school district funds and account for the funds according to law; and
 - (g) faithfully pay over to the successor depository all balances of funds remaining in the account.
 - (4) The pledge of approved securities required by this contract must continue until either this contract ends or the Depository fulfills all its duties and obligations arising out of this contract, whichever is later. And a continuing security interest in the District's favor must immediately apply to any pledge to all proceeds of sale and to all substitutions, replacements, and exchanges of the securities, and in no event may this continuing security interest be voided by any act of the Depository; however, the Depository will have the right, with the District's consent, to purchase and sell, and substitute or replace with other approved securities, any of the approved securities pledged under this contract, provided that the Depository adheres to all the other conditions of this contract, and the pledge is in addition to all other remedies available in law to the District.
 - (5) The Depository must immediately furnish or cause to be furnished to the District original and valid safekeeping or trust receipts issued by the custodian holding the approved securities pledged under this contract, marked on their face by the custodian to show the pledge and market value as required above, and the Depository must upon the District's request provide a description of securities being pledged and evidence that the securities are legally acceptable in accordance with (1) above.
 - (6) The District may examine and verify at any reasonable time a pledged investment security or a record that a custodian maintains in accordance with the Texas Government Code, §2257.061. The District or its agent may inspect at any time an investment security evidenced by trust receipt.
 - (7) Upon any closing or failure of the Depository, or any event considered by a state or federal regulatory agency to constitute a closing or failure of the Depository, title to all securities pledged under this depository contract must be considered to be vested in, and to be held by

the District. The District is empowered to take immediate possession of and to sell any such pledged securities, whether in safekeeping at another bank or in possession of the District or the Depository, and the District is specifically so empowered by execution of this contract.

- (8) The collateral pledge agreement must conform to Title 12 United States Code Annotated, §1823(e), so to defeat the claim of the Federal Deposit Insurance Corporation, its successor, or any other receiver to the securities, and be:
 - (a) in writing;
 - (b) executed by the Depository at the same time the asset is acquired;
 - (c) approved by the Depository's board of directors or loan committee, with the approval reflected in the board's or committee's minutes; and
 - (d) maintained continuously from the date of its execution as an official record of the Depository.

The Depository must furnish the minutes of the Depository's board of directors or loan committee to the District.

- C. If the Depository elects to give both a corporate surety bond and to pledge approved securities, the corporate surety bond and pledged approved securities must be in an aggregate amount that, together with applicable Federal Deposit Insurance Corporation insurance, will adequately protect the total amount of District funds on deposit with the Depository from day to day. The provisions of A, above, permitting the amount of the corporate surety bond to rise or fall from day to day, and all the provisions of B, above, relating to the amount and conditions of pledge of approved securities, including but not limited to substitution and conditions of pledge, apply to the election permitted by this paragraph C.
- D. The Depository agrees to cover by corporate surety bond, pledge of approved securities, or both an amount that is equal to funds anticipated to be on deposit from day to day, which is estimated not to exceed \$_____. The amount of collateral will be calculated in accordance with the Texas Government Code, Chapter 2257, Collateral for Public Funds Act.
- E. After the beginning date of this contract if the amount of deposit exceeds that which is initially covered by corporate surety bond, pledged approved securities, and FDIC insurance, the amount covered will be increased, and original and valid safekeeping or trust receipts of the additional securities, increased corporate surety bond, or both will be provided in accordance with the TEC and Texas Education Agency rules.