

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Anthony Brown at 3:30 p.m., February 9, 2009, in Room 784 of the Docking State Office Building.

All members were present.

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Joyce Bishop, Committee Assistant

Conferees appearing before the committee:

Dennis McKinney, State Treasurer
Thomas Thull, State Bank Commissioner
Doug Wareham, Kansas Banker's Association
Lance Caldwell, Promontory Interfinancial Network
Matt Goddard, Heartland Community Banker's Association
Charles Letcher, Johnson County Treasurer
Liz Miller, Pooled Money Investment Board

Others attending:

See attached list.

Nile Dillmore made the motion the Committee recommend **HB 2091 - Exempting modular homes from Kansas manufactured housing act**, favorably for passage. Robert Olson seconded the motion. The motion passed unanimously.

Mario Goico made the motion the Committee recommend **HB 2092 - Prohibiting transfer fee covenants**, favorably for passage, with his proposed balloon amendment (Attachment 1) added to the bill. Robert Olson seconded the motion.

Clark Schultz made a motion to add his balloon amendment (Attachment 2) to **HB 2092**, and to substitute his balloon in the bill rather than the balloon that had been proposed by Mario Goico (Attachment 1). Mario Goico seconded the motion. The motion failed.

Luke Bell, Lobbyist for Kansas Association of Realtors, explained more about the balloon amendment proposed by Clark Schultz. The intent was to make it very clear, by inserting the word "original" in seven places in the bill. It would clarify that it applies to the original title, between buyer and seller and would not transfer. Luke said the word "original" was added at the request of the Land Title Association and it would not be a problem if the committee chose not to adopt that portion of the balloon.

Nile Dillmore felt that would make the legislation unclear. He said grantor and grantee are all inclusive. If an individual qualifies with "original" you are in effect specifying there would be a subsequent, which might not qualify which would not be clear.

Clark Schultz felt the word original would strengthen the bill.

Clark Schultz made a motion to add only the box paragraph on the second page of his balloon (Attachment 2), and pass **HB 2092** as amended, favorably from committee. Nile Dillmore seconded the motion. The motion passed unanimously.

Mario Goico made a motion to amend the amended **HB 2092** with his balloon (Attachment 1). Robert Olson seconded the motion. The motion passed unanimously.

Nile Dillmore made the motion the Committee recommend **HB 2092** favorably for passage with the two amendments. Cindy Neighbor seconded the motion. The motion passed unanimously.

CONTINUATION SHEET

Minutes of the House Financial Institutions Committee at 3:30 p.m. on February 9, 2009, in Room 784 of the Docking State Office Building.

Hearing on:

HB 2185 - Public moneys, reciprocal deposit program.

Dennis McKinney, State Treasurer, presented testimony in support of **HB 2185** (Attachment 3).

Thomas Thull, State Bank Commissioner, presented testimony in support of **HB 2185** (Attachment 4).

Lance Caldwell, Promontory Interfinancial Network, presented testimony in support of **HB 2185** (Attachment 5).

Matt Goddard, Heartland Community Banker's Association, presented testimony in support of **HB 2185** (Attachment 6).

Charles Letcher, Johnson County Treasurer, presented testimony in support of **HB 2185** (Attachment 7).

Doug Wareham, Kansas Banker's Association, presented testimony in support of **HB 2185** (Attachment 8). Doug then presented a balloon amendment for **HB 2185** (Attachment 9).

Liz Miller, Pooled Money Investment Board, presented neutral testimony regarding **HB 2185** (Attachment 10).

Chairperson Brown closed the hearing on **HB 2185**.

Robert Grant proposed adoption of the balloon (Attachment 9) on **HB 2185**. The motion was seconded by Richard Proehl. The motion passed unanimously.

Robert Grant made the motion the Committee recommend **HB 2185** favorably for passage with the balloon amendment. Robert Olson seconded the motion. The motion passed unanimously.

Nile Dillmore made the motion to approve the minutes from the February 2nd meeting. Robert Olson seconded the motion. The motion passed unanimously.

Chairperson Brown announced there would be a House Financial Institutions Committee dinner this evening at Tellers in Lawrence, hosted by Ron Gaches of Gaches Braden & Associates.

The next meeting is scheduled for February 16th to hear testimony and work **HB 2292 - Requests for security freeze on consumer reports.**

The meeting was adjourned at 4:25 p.m.

HOUSE FINANCIAL INSTITUTIONS COMMITTEE

3:30pm,

Room 784, Docking State Office Building

GUEST LIST

DATE: February 9, 2009

NAME	REPRESENTING
Sonyia Allen	Office of State Bank Commission
Judi Stork	✓
Tom Thull	" " " "
Michelle DeWitt	KMHA
PATRICK VOGETSBERG	KEARNEY AND ASSOC.
Eric Jorgensen	Kansas Bankers Association
Lance Caldwell	Promontory / CDARS
Doug Warchan	KBA
Kathy Olsen	KBA
Don Murray	Federico Consulting
Melissa Wangemann	KAC
Matthew Goddard	Heartland Community Bankers
Stuart Little	Community Bankers Assoc
Scott Gates	STATE TREASURER'S OFFICE
LIZ MILLER	Pooled Money Inv. Bd.
Scott Miller	Pooled Money Inv. Board
Bill Brady	Capitol Strategies

Sec. 2 (a) On and after the effective date of this act, any transfer fee covenant, as defined in section 1, and amendments thereto, is hereby declared to be against public policy and such covenant shall be void and unenforceable.

(b) The provisions of this section shall apply to any transfer fee covenant in existence on the effective date of this act.

HOUSE FINANCIAL INSTITUTIONS
DATE: 2-9-2009
ATTACHMENT: 1

Session of 2009

HOUSE BILL No. 2092

By Committee on Financial Institutions

1-27

9 AN ACT relating to real property; prohibiting certain transfer fee
10 covenants.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) As used in this section:

14 (1) "Transfer" means the sale, gift, conveyance, assignment inheri-
15 tance or other transfer of an ownership interest in real property located
16 in this state;

17 (2) "transfer fee" means a fee or charge payable upon the transfer of
18 an interest in real property or payable for the right to make or accept
19 such transfer, regardless of whether the fee or charge is a fixed amount
20 or is determined as a percentage of the value of the property; the purchase
21 price or other consideration given for the transfer. The following shall
22 not be considered a "transfer fee" for the purposes of this section:

23 (A) Any consideration payable by the grantee to the grantor for the
24 interest in real property being transferred, including any subsequent addi-
25 tional consideration for the property payable by the grantee based upon
26 any subsequent appreciation, development or sale of the property;

27 (B) any commission payable to an individual licensed by the state as
28 a real estate salesperson or broker for the transfer of real property pur-
29 suant to an agreement between the grantor or grantee and the real estate
30 salesperson or broker, including any subsequent additional commission
31 payable by the grantor or the grantee based upon any subsequent appre-
32 ciation, development or sale of the property;

33 (C) any interest, charges, fees or other amounts payable by a bor-
34 rower to a lender pursuant to a loan secured by a mortgage against real
35 property, including, but not limited to, any fee payable to the lender for
36 consenting to an assumption of the loan or a transfer of the real property
37 subject to the mortgage, any fees or charges payable to the lender for
38 estoppel letters or certificates and any other consideration allowed by law
39 and payable to the lender in connection with the loan;

40 (D) any rent, reimbursement, charge, fee or other amount payable
41 by a lessee to a lessor under a lease, including, but not limited to, any fee
42 payable to the lessor for consenting to an assignment, subletting, encum-
43 brance or transfer of the lease;

original

original

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original

original

original

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2-2

HB 2092

2

1 (E) any consideration payable to the holder of an option to purchase
2 an interest in real property or the holder of a right of first refusal or first
3 offer to purchase an interest in real property for waiving, releasing or not
4 exercising the option or right upon the transfer of the property to another
5 person;

6 (F) any tax, fee, charge, assessment, fine or other amount payable to
7 or imposed by a governmental authority; ~~or~~

8 (G) any tax, fee, charge, assessment, fine or other amount payable to
9 a homeowners', condominium, cooperative, mobile home or property
10 owners' association pursuant to a declaration or covenant or law appli-
11 cable to such association;

12 (3) "transfer fee covenant" means a declaration or covenant purport-
13 ing to affect real property that requires or purports to require the pay-
14 ment of a transfer fee to the declarant or other person specified in the
15 declaration or covenant or to their successors or assigns, upon a subse-
16 quent transfer of an interest in the real property.

17 (b) Any transfer fee covenant recorded in this state on or after July
18 1, 2009, shall not run with the title to real property and is not binding or
19 enforceable at law or in equity against any subsequent owner, purchaser
20 or mortgagee of any interest in real property as an equitable servitude or
21 otherwise.

22 Sec. 2. This act shall take effect and be in force from and after its
23 publication in the statute book.

or

(H) any fee charged that is a typical real estate closing cost, including escrow fees, settlement fees or title insurance premiums charged by a real estate title company licensed by the state;



STATE OF KANSAS

Dennis McKinney
TREASURER

900 SW JACKSON ST, STE 201
TOPEKA, KANSAS 66612-1235

PHONE: 785-296-3171
FAX: 785-296-7950

February 4, 2009

Testimony to the House Committee on Financial Institutions

Hearing on Public Funds Deposits and Reciprocal Loan Agreements, HB 2185

Thank you Mr. Chairman for the opportunity to provide comments on the issue of reciprocal deposit agreements for the deposit of state funds.

There are three goals in the management of our idle funds that I identify:

1. Protect the safety of the public funds, especially idle funds. A large part of idle funds are not open to long term investment as they will be needed for expenditure within 30 days and even more within 90 days. Therefore, it is imperative that the monies be safe and available when needed.
2. Utilize a system that engages competition for idle monies to secure the best possible interest earnings for the benefit of taxpayer.
3. In a manner consistent with goals one and two, invest idle funds in a way that allows the funds to remain within the Kansas economy, preferably in ways that allow the funds to provide liquidity for loans within the Kansas economy. One study conducted at Wichita State University indicates a significant benefit to the Kansas economy when public funds facilitate loans and business investment within our economy.

My concern is growing that more and more public funds in Kansas are moving into non-bank investments such as federal agency securities which have more risk than a bank deposit, a slightly higher return on the investment, and take the public funds completely out of the Kansas economy. We should begin to give more attention to this issue over the next year.

Reciprocal deposit agreements give us an avenue to have the benefit of the best insurance known today, FDIC Insurance. In addition, the reciprocal agreements also help us to find

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competitive rates from Kansas banks which will, in turn, use these deposits to make loans in the Kansas economy. This remains an effective way to strengthen the Kansas economy.

I have two concerns which I share with the Director of Investments of the Pooled Money Investment Board.

First, several days may elapse between the placement of the deposit with the originating bank and distribution of the monies to the reciprocal banks. Wyoming covers its risk during this period by requiring that securities be pledged as collateral by the originating bank (as under current law) to secure the state's funds during this distribution period. I recommend a similar requirement under our law. Perhaps it is best to clarify that the PMIB may, by policy, insure that all deposits under this program are insured or collateralized at every step of the process.

Second, certificates of deposit are currently held by the state in the Treasurer's vault. I would recommend that practice continue rather than have the certificates held in the originating bank's vault. Or, some type of third party should verify all of the appropriate documents are in place to secure the state's deposits. Under the program described to the committee on Monday, Feb. 2, this would be achieved by certificates or book entry records being maintained in a third party custodial bank which would also provide real time updates on the status of the deposits. We want to be clear that PMIB will, by board policy, insure this level of safety.

Again, idle funds are short term investments which may be needed in the near future. Therefore, safety of the principal is paramount. I believe that the reciprocal deposit program authorized in 2185 will allow us to achieve this level of safety for our short term investments, provide competition for our investments to protect the taxpayers' interests, and facilitate greater lending and investment in the Kansas economy by Kansas banks.

Thank you Mr. Chairman for allowing me time to present the views of the Treasurer's office.



KATHLEEN SEBELIUS, Governor

OFFICE OF THE STATE BANK COMMISSIONER

J. THOMAS THULL, Bank Commissioner

HOUSE FINANCIAL INSTITUTIONS COMMITTEE

February 4, 2009

Chairman Brown, Vice-Chair Proehl, and Ranking Member Grant, I am Tom Thull, Bank Commissioner, and I am appearing in support of HB 2185.

The bill would clarify how reciprocal deposit programs are to be treated under the statutes concerning public funds. Our office requested an Attorney General's opinion concerning one particular reciprocal deposit program, called CDARs, offered by Promontory Interfinancial Network. We are still awaiting issuance of the opinion.

In addition to Promontory Interfinancial Network, there is at least one other such reciprocal deposit program available now, and others may follow. Therefore, it appears that legislation to clarify these issues is the most efficient and comprehensive way to address them. This legislation would in effect clarify that these reciprocal deposits are to be treated as any traditional FDIC insured deposit in a financial institution.

At a time when there is intense competition for deposits, HB 2185 will allow Kansas banks to compete for local public deposits. The ability to access reciprocal deposit programs is important for two reasons. First, the rate the bank is able to pay the depositor may be higher. Second, these deposits are made available to the bank's loan customers.

With respect to the impact that pledging has on the rates paid on public deposits, Earl McVicker, Chairman of the Board and President, Central Bank and Trust Company, Hutchinson, KS says pledging may reduce the rate paid on the deposit by as much as 1%, or depending on the cost of the securities pledged, the bank may lose up to 1% on the amount of the deposit. Earl also noted that if the bank has to purchase securities for pledging, the amount of money used to purchase securities is no longer available for the bank to make loans in the community.

Very truly yours,

J. Thomas Thull
Bank Commissioner

Written Testimony for the Record of

Lance Caldwell
Regional Director
Promontory Interfinancial Network, LLC

Regarding House Bill No. 2185

Before the House Financial Institutions Committee
February 4, 2009

Thank you Mr. Chairman and Committee members for this opportunity to provide a written statement regarding the Certificate of Deposit Account Registry Service (CDARS).

My name is Lance Caldwell and I serve as Regional Director for Promontory Interfinancial Network, LLC (Promontory) which is based in Arlington, VA. I, along with my team members, support approximately 83 financial institutions across Kansas in utilizing our services. Promontory was founded in 2002 by former regulators Gene Ludwig, Alan Binder and Mark Jacobsen. A copy of our founders and board members is attached.

The CDARS program is a deposit placement service that provides up to \$50 million (or more) in Federal Deposit Insurance Corporation (FDIC) coverage per depositor through a single financial institution. With almost 3,000 network members nationwide, billions of dollars are placed through the programs each week.

CDARS has received approval for Public Unit Deposits across the United States. Currently, CDARS is enabled in 43 states and there are 2 states with legislation pending. I have attached a map of the country which depicts the availability of this program to Public Unit Depositors.

CDARS allows participating financial institutions to offer a competitive rate to Public Unit Depositor regardless of what other banks are paying within the network. In some cases, the rates offered to the Public Entity can be higher since the financial institution does not have to pledge collateral and the deposits are available for local lending purposes. I have attached a diagram which depicts how the CDARS service neutralizes rate differences across participating members.

Thank you for this opportunity to comment today and Promontory supports House Bill No. 2185. I am available to answer any additional questions you may have regarding Promontory or CDARS.

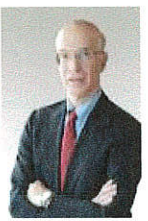
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DATE: 2-9-2009
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The People Behind Promontory

Founders



Eugene A. Ludwig
Chairman & CEO
Former Comptroller of the Currency



Alan S. Blinder
Vice Chairman
Former Vice Chairman of the Board of Governors of the Federal Reserve System



Mark P. Jacobsen
President & COO
Former Chief of Staff of the FDIC and Office of the Comptroller of the Currency

Board Members

Eugene A. Ludwig
Chairman & CEO, Promontory Interfinancial Network
Former Comptroller of the Currency

Alan S. Blinder
Vice Chairman, Promontory Interfinancial Network
Former Vice Chairman, Federal Reserve Board

James M. Culberson
Chairman Emeritus, First National Bank & Trust
Former President, American Bankers Association

Art Certosimo
Vice Chairman, Promontory Interfinancial Network
EVP and Head of Broker Dealer Services, Bank of New York Mellon

Kenneth M. Duberstein
Chairman & CEO, The Duberstein Group
Former White House Chief of Staff

Mark P. Jacobsen
President & COO, Promontory Interfinancial Network
Former Chief of Staff, Comptroller of the Currency and FDIC

Edward W. Kelley, Jr.
Former Governor, Federal Reserve Board

Frank N. Newman
Chairman & CEO, Shenzhen Development Bank, China; Chairman Emeritus, Bankers Trust Company

Donald G. Ogilvie
Chairman, American Bankers Association International; Former President and CEO, ABA

Warren Rudman
Co-Chairman, Stonebridge International
Former U.S. Senator

Jeffrey B. Schreier
Managing Director, Bank of New York Mellon

L. William Seidman
Chief Commentator of CNBC-TV
Former Chairman, FDIC

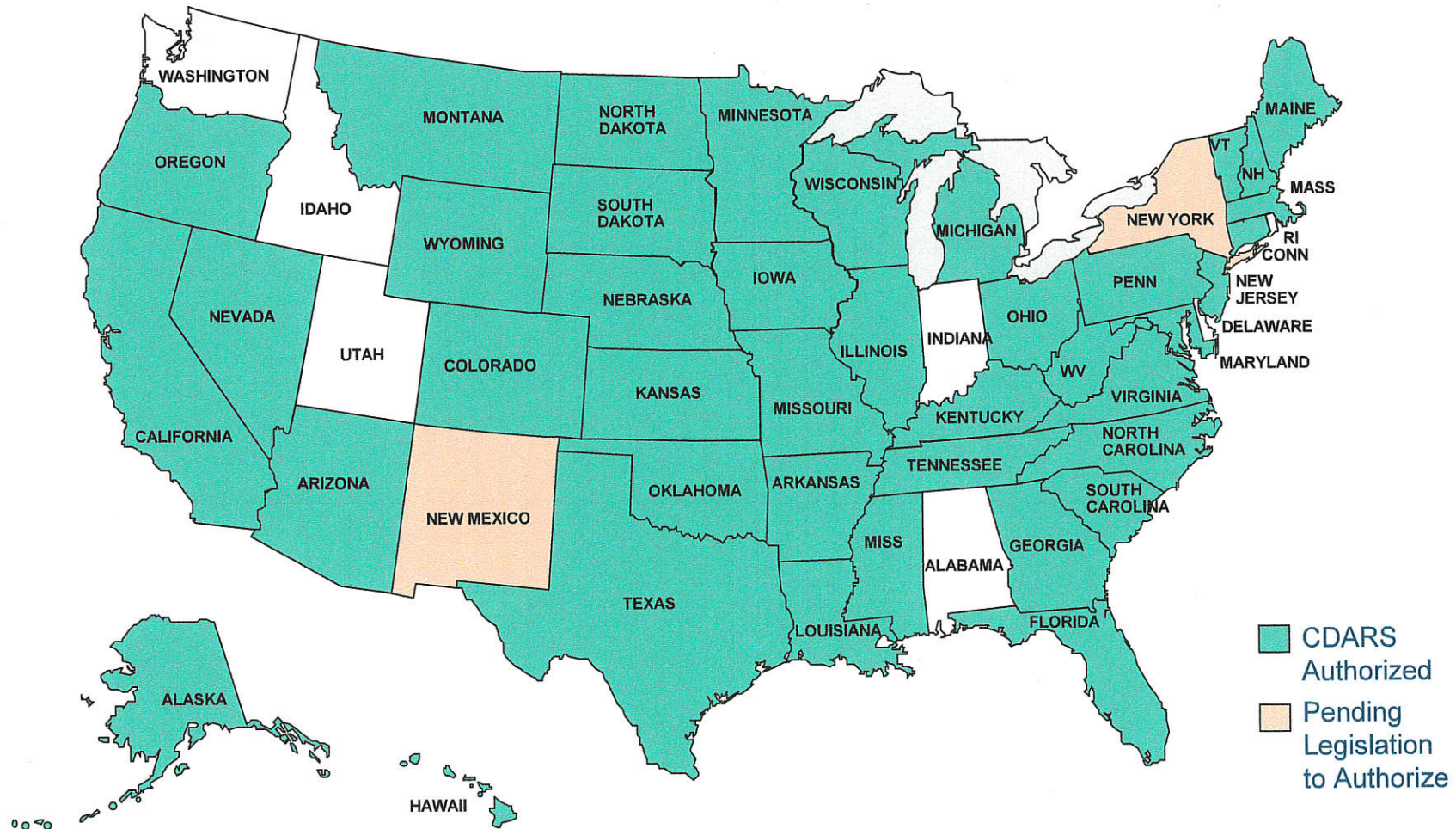
J. Michael Shepherd
President & COO, Bank of the West

O. Jay Tomson
Chairman, First Citizens National Bank, Mason City, IA; Former President, Independent Community Bankers of America

Frank G. Zarb
Chairman, Frank Zarb Associates
Former Chairman & CEO, NASD

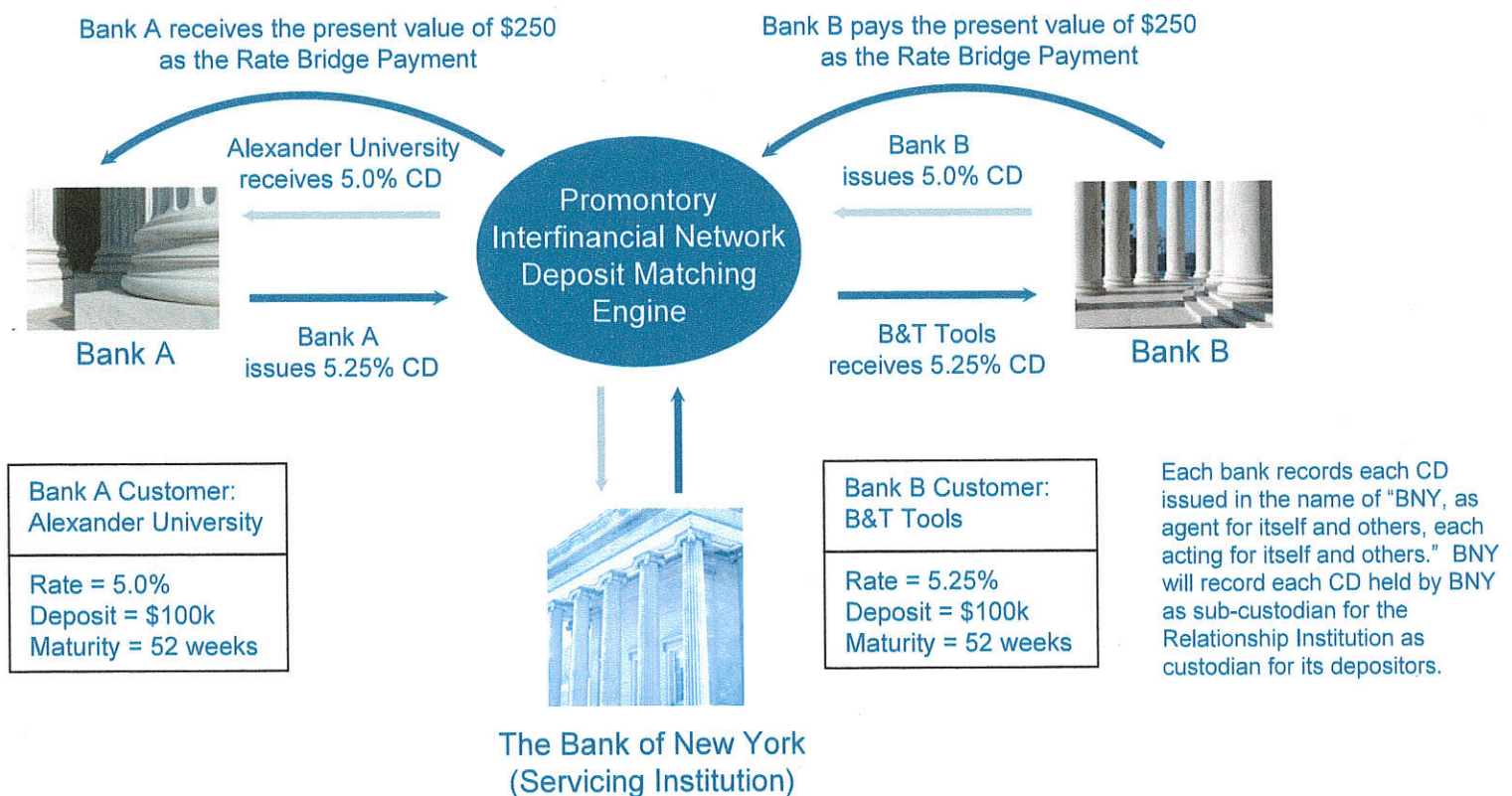
Availability of CDARS for Local Governments

As of January 2009



CDARS Reciprocal Transactions

Your Bank Controls the Interest Rate



Bank A Customer:
Alexander University

Rate = 5.0%
Deposit = \$100k
Maturity = 52 weeks

Bank B Customer:
B&T Tools

Rate = 5.25%
Deposit = \$100k
Maturity = 52 weeks

The Rate Bridge Payment = $PV \{(5.25\% - 5.0\%) \times \$100,000\} = PV \text{ of } \250



What if CD Rates are Different Between Banks?

Here is a one-to-one example:

Bank A agree to pay its customer 5.00%.

Bank B agrees to pay its customer 5.25%.

Bank A issues and insures CD for Bank B customer at Bank B's rate, 5.25%.

Bank B issues and insures CD for Bank A customer at Bank A's rate, 5.00%.

Bank B sends **Rate Bridge Payment** equal to the present value of $0.25\% \times \text{Principal Amount}$ to Bank A.





Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
Office (785) 232-8215 • Fax (785) 232-9320
mgoddard@hcbankers.com

To: House Financial Institutions Committee
From: Matthew Goddard
Heartland Community Bankers Association
Date: February 4, 2009
Re: House Bill 2185

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Financial Institutions to express our support for House Bill 2185.

House Bill 2185 codifies two opinions from the Kansas Attorney General that allow public funds to be invested in certificates of deposit in a reciprocal deposit program. The first opinion, Opinion No. 2004-9, dealt with local units of government while the second opinion, Opinion No. 2006-10, concerned state monies.

In a reciprocal deposit program, a bank or savings loan accepts a deposit from a customer that is in excess of the Federal Deposit Insurance Corporation limit, currently set at \$250,000. With the facilitation of the reciprocal deposit program administrator, the financial institution then deposits the uninsured funds with members of the reciprocal network so that each deposit does not exceed the \$250,000 FDIC limit. By opening accounts and depositing the uninsured funds at multiple institutions, the entire deposit is now insured by the federal government.

The key to the reciprocal network is that at the same time one institution is sending uninsured funds to other depositories, the reciprocal deposit program administrator is sending an equal amount of funds back to the original bank or savings and loan. Not only are the dollar amounts the same, but so are the terms of the CD. So, if a customer makes a \$1 million deposit into ABC Savings Bank for a one year term and 1.5 percent interest rate, ABC can send \$750,000 into the reciprocal network and get back \$750,000 for one year at 1.5 percent.

HCBA believes it is important when considering HB 2185 to remember that it merely codifies the status quo. The bill does not change any current practices. Any costs associated with the reciprocal network would continue to be born by the participating financial institution.

The Heartland Community Bankers Association respectfully requests the House Financial Institutions Committee recommends House Bill 2185 favorable for passage.

Thank you.

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DATE: 2-9-2009
ATTACHMENT: 6



TESTIMONY

House Committee on Financial Institutions

House Bill No. 2185

February 4, 2009

Representative Anthony R. Brown, Chairman and members of the House Committee on Financial Institutions, I am Charles M. Letcher, Treasurer of Johnson County and I thank you for the opportunity to testify on House Bill No. 2185.

I am here today to support this proposal in principle but recommend the language in part (2) be revised in all statutes for which it is being proposed: K.S.A. 9-1407 (b), K.S.A.12-1675 (f), and K.S.A. 75-4237 (d). The current proposed revision for part (2) states, "**2) for which no one deposit amount exceeds the maximum deposit insurance amount for one depositor at one financial institution as determined by the federal deposit insurance corporation. Such deposits need not be secured as provided in this or any other act**". Some counties, such as Johnson County, have multiple county departments and agencies depositing into the same account throughout the course of a business day. It is common that the cumulative amount of these deposits would not exceed the maximum deposit insurance amount.

Therefore, I recommend the language "**no one deposit amount exceeds**" be revised to "**the total cumulative amount of deposits does not exceed**". The newly revised language would then read, "**2) for which the total cumulative amount of deposits does not exceed the maximum deposit insurance amount for one depositor at one financial institution as determined by the federal deposit insurance corporation. Such deposits need not be secured as provided in this or any other act**".

In conclusion, I respectfully request that the proposed revisions be considered and included into this proposal.

HOUSE FINANCIAL INSTITUTIONS
DATE: 2-9-2009
ATTACHMENT: 7



Date: February 4, 2009
To: House Financial Institutions Committee
From: Doug Wareham, Senior Vice President-Government Relations
Re: Support for H.B. 2185 – (Public Funds – Reciprocal Deposit Programs)

Chairman Brown and members of the House Financial Institutions Committee, I am Doug Wareham appearing on behalf of the Kansas Bankers Association (KBA). KBA's membership includes 347 Kansas banks, which operate more than 1,300 banking facilities in 440 towns and cities across the state. Thank you for the opportunity to appear in support of H.B. 2185 regarding the vitally important role Reciprocal Deposit Programs play in protecting local and state government deposits invested in qualified Kansas financial institutions.

H.B. 2185 will codify two Kansas Attorney General's opinions regarding the utilization of Reciprocal Deposit Programs for local and state public fund deposits in Kansas. On April 15, 2004, Kansas Attorney General Phill Kline issued an opinion letter in response to a request from State Representative Tom Thull that first enabled local government agencies to place public funds in certificates of deposit through FDIC-insured banks, savings and loan associations and savings banks that participated in the Certificate of Deposit Account Registry Service (CDARS), a reciprocal deposit program administered by Promontory Interfinancial Network, LLC. A copy of the 2004 Attorney General's opinion letter is attached to my testimony, along with a Regulatory Mailing (RM2004-01) from then Kansas State Bank Commissioner Clarence Norris that was sent to all state-chartered banks in May, 2004 apprising them that the CDARS reciprocal deposit program was acceptable for public funds deposits.

Since the issuance of the 2004 opinion more than \$1 billion in public funds have benefitted from access to the CDARS reciprocal deposit program network. Kansas public entities utilizing the CDARS reciprocal deposit program include, but are not limited to counties, cities, school districts, water districts and community colleges. A subsequent Attorney General's opinion on April 27, 2006, further clarified that banks, savings & loans and savings banks could also utilize the CDARS program for state idle fund deposits provided that the Pooled Money Investment Board determined that the program is consistent with its investment goals.

Today, there are 83 Kansas banks that are utilizing the CDARS reciprocal deposit program and 23 of those banks have utilized the program for public fund deposits. Use of the CDARS program has increased dramatically in recent months largely because of the loss of excess deposit insurance as a viable option for banks seeking to insure/protect private and public depositors with deposit amounts that exceed the \$250,000 FDIC insurance limit. The ability for Kansas banks to have access to reciprocal deposit programs to maintain the local investment of idle public funds is more important now than ever.

Once again, thank you for the opportunity to provide information in support of H.B. 2185 and I would be happy to stand for questions now or at the appropriate time.



Office of the State Bank Commissioner

Regulatory Mailing

RM2004-01

To : All State Chartered Banks
From: Clarence W. Norris, Bank Commissioner
Date: May 12, 2004
Re: Certificate of Deposit Account Registry Service

As you know, examiners for the Office of the State Bank Commissioner routinely review public deposits and pledging requirements as part of the regular safety and soundness examination of banks. A recent opinion issued by the Kansas Attorney General's Office, Opinion No. 2004-9, permits governmental entities to invest idle funds which are not immediately needed in local banks which participate in a Certificate of Deposit Account Registry Service ("CDARS"). This deposit of funds is deemed to be in compliance with the requirements of K.S.A. 12-1675(b)(2).

Based on our review of the Attorney General's Opinion, as well as information on the CDARS website, www.cdars.com, CDARS is a deposit placement service offered by Promontory Interfinancial Network in which a group of FDIC insured financial institutions reciprocate with one another to provide their large depositors with FDIC insurance on the entire deposit. This allows depositors to place large deposits with their local bank, and that bank in turn places those funds that exceed the FDIC limit with other banks in the CDARS network. In exchange for those deposits, the local bank receives Certificates of Deposit for the same amount from other network member banks. The depositor will continue to manage all funds with the original depository bank, so there is no need to be in contact with multiple banks regarding the funds on deposit. Monthly, the local depository bank will send a statement to the depositor listing each CD, the bank issuing the CD, maturity dates, interest earned, and other details.

The result of this arrangement is that the depositor receives FDIC coverage on its entire deposit, since each bank participating in the CDARS network will only have \$100,000 of the entity's funds on deposit; and the local bank will continue to have the entire amount of the deposit available for use in the local community because of the reciprocal deposits from other financial institutions.

The Attorney General's office opined that the CDARS program would be consistent with K.S.A. 12-1675(b)(2), if the following conditions were met:

1. The Kansas institution receiving the original deposit has a main or branch office located in the required area;
2. The Kansas institution receives reciprocal deposits in an amount equal to the funds placed by the governmental entity;
3. Other participating financial institutions are located within the U.S.; and
4. Each CD is in an amount eligible for full FDIC coverage.

A copy of the Attorney General's Opinion is attached. This mailing should not be construed as an endorsement by the Office of the State Bank Commissioner of the CDARS program or of Promontory Interfinancial Network. This mailing is provided for information purposes only.

April 15, 2004

ATTORNEY GENERAL OPINION NO. 2004-9

The Honorable John T. "Tom" Thull

State Representative, 72nd District

State Capitol, Room 302-S

Topeka, Kansas 67117

Re: Cities and Municipalities--Miscellaneous Provisions--Investment of Public Moneys by Governmental Subdivisions, Units and Entities; Conditions and Limitations; Investments in Certificates of Deposit through the Certificate of Deposit Account Registry Service (CDARS)

Synopsis: K.S.A. 12-1675(b)(2) allows specified governmental entities to invest idle public funds in certificates of deposit through FDIC-insured banks, savings and loan associations and savings banks that participate in the Certificate of Deposit Account Registry Service (CDARS). Specifically, the placement of public funds by a statutorily covered governmental entity through a participating institution would be consistent with K.S.A. 12-1675(b)(2) under the following conditions: (1) the Kansas participating institution has a main or branch office located in the investing governmental subdivision or, if applicable, in a county or counties in which all or part of the governmental entity is located; (2) the Kansas institution receives reciprocal deposits in an amount equal to the amount of funds placed by the governmental entity; (3) other participating institutions issuing certificates of deposit to the governmental entity are located throughout the United States; and (4) each certificate of deposit issued by such participating institutions is in an amount that is eligible for full FDIC insurance coverage. Cited herein: K.S.A. 12-1675; 12-1675a.

* * *

Dear Representative Thull:

As State Representative for the 72nd District, you ask our opinion concerning the application of K.S.A. 12-1675(b)(2) to the investment of idle public funds by governmental entities in certificates of deposit through FDIC-insured banks, savings and loan associations and savings banks that participate in the Certificate of Deposit Account Registry Service (CDARS).

K.S.A. 12-1675 requires that idle funds of various government entities that are not immediately needed for the purposes for which they were collected or received be invested only in specified types of investments, including certificates of deposit with maturities of not more than two years in banks, savings and loan associations and savings banks.⁽¹⁾ Such financial institutions are, however, required to have a main or branch office located in the investing governmental unit. If such an

institution is not available, the public funds may be invested in those kinds of financial institutions that have a main or branch office in the county or counties in which all or part of the investing government unit is located.⁽²⁾

You inform us that CDARS is a bank service program by which a participating institution may arrange for the allocation of a customer's deposit in excess of the FDIC insurance limit (*i.e.*, \$100,000) among other participating institutions in amounts that are *then* eligible for insurance coverage by FDIC. The initial participating institution receives reciprocal deposits from other participating institutions (and their respective depositors) in a total amount equal to the customer's deposit. You further inform us that such reciprocal funds placed by other depositors through the participating institution are immediately available to the participating institution to meet the credit needs of its community. As you point out, the amount of a governmental entity's deposit thus effectively remains in the local financial institution through which the funds were placed.

Specifically, you ask whether the placement of public funds by a statutorily covered governmental entity⁽³⁾ through a participating institution would be consistent with K.S.A. 12-1675(b)(2) under the following conditions: (1) the Kansas participating institution has a main or branch office located in the investing governmental subdivision or, if applicable, in a county or counties in which all or part of the governmental entity is located; (2) the Kansas institution receives reciprocal deposits in an amount equal to the amount of funds placed by the governmental entity; (3) other participating institutions issuing certificates of deposit to the governmental entity are located throughout the United States; and (4) each certificate of deposit issued by such participating institutions is in an amount that is eligible for full FDIC insurance coverage.

In a review of the legislative history of K.S.A. 12-1675,⁽⁴⁾ former Attorney General Carla Stovall identified a number of complimentary purposes that the statute seeks to serve: Liquidity and a reasonable rate of return; the safeguarding of public funds; and promotion of Kansas financial institutions that would presumably invest in the local community and the State.

Regarding liquidity and a reasonable rate of return, participation in CDARS would maintain liquidity, or immediate availability, to meet community credit needs the same as if the full investment were deposited in a Kansas financial institution. Additionally, as the rate of return is statutorily established,⁽⁵⁾ any negotiated interest rate would need to conform with those statutory parameters.

Regarding the safeguarding of public funds, initially we note that although the term "invested" as required by K.S.A. 12-1675 is not statutorily defined, the ordinary meaning⁽⁶⁾ is "to commit money for a long period in order to earn a financial return; to place money with a view to minimizing risk rather than speculating for large gains at greater hazard."⁽⁷⁾ Certainly, participation in CDARS would increase the safety and minimize the risk of invested funds as all funds would enjoy the benefit of FDIC insured protection, not just the first \$100,000. Thus participation in CDARS would maximize the safeguarding of public funds for amounts over the first \$100,000 of a public entity's investment.

Finally, participation in CDARS would continue to further the promotion of Kansas financial institutions that would presumably invest in the local community and the State as the full amount of a public entity's deposit would be available to the local financial institution to meet community credit needs.

In conclusion, it is our opinion that K.S.A. 12-1675(b)(2) allows the specified governmental entities to invest idle public funds by governmental entities in certificates of deposit through FDIC-insured banks, savings and loan associations and savings banks that participate in the Certificate of Deposit Account Registry Service (CDARS). Specifically, the placement of public funds by a statutorily covered governmental entity through a participating institution would be consistent with K.S.A. 12-1675(b)(2) under the following conditions: (1) the Kansas participating institution has a main or branch office located in the investing governmental subdivision, or if applicable, in a county or counties in which all or part of the governmental entity is located; (2) the Kansas institution receives reciprocal deposits in an amount equal to the amount of funds placed by the governmental entity; (3) other participating institutions issuing certificates of deposit to the governmental entity are located throughout the United States; and (4) each certificate of deposit issued by such participating institutions is in an amount that is eligible for full FDIC insurance coverage.

Sincerely,

Phill Kline

Attorney General of Kansas

Camille Nohe

Assistant Attorney General

PK:JLM:CN:jm

1. K.S.A. 12-1675(b)(2).

2. *Id.*

3. County, city, township, school district, area vocational-technical school, community college, firemen's relief association, community mental health center, community facility for the mentally retarded or any other governmental entity, unit or subdivision of the state of Kansas having authority to receive, hold and expend public moneys or funds.

4. Attorney General Opinion No. 2001-35.

5. The statutorily required "investment rate" is a rate which is the equivalent yield for United States government securities having a maturity date as published in the Wall Street Journal, nearest the maturity date for equivalent maturities. K.S.A. 12-1675a(g).

6. See *e.g.*, *State v. Cameron*, 30 Kan.App.2d 1156, 1158 (2002) (words in a statute are given their ordinary and plain meaning).

7. Webster's 3rd New International Dictionary, p. 1189 (1968).

HOUSE BILL No. 2185

By Committee on Financial Institutions

2-2

9 AN ACT relating to public moneys; concerning reciprocal deposit
10 programs; amending K.S.A. 9-1407 and K.S.A. 2008 Supp. 12-1675 and
11 75-4237 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 9-1407 is hereby amended to read as follows: 9-
15 1407. (a) That portion of any deposit of public moneys or funds which is
16 insured by the federal deposit insurance corporation, or its successor,
17 need not be secured as provided in this act.

18 (b) *Public moneys or funds deposited by a municipal corporation or*
19 *quasi-municipal corporation through a selected bank, savings and loan*
20 *association or savings bank which are part of a reciprocal deposit program*
21 *in which the bank, savings and loan association or savings bank:*

22 (1) *Receives reciprocal deposits from other participating institutions*
23 *located in the United States in an amount equal to the amount of funds*
24 *deposited by the municipal corporation or quasi-municipal corporation;*
25 *and*

26 (2) *for which ~~no one deposit amount exceeds~~ the maximum deposit*
27 *insurance amount for one depositor at one financial institution as deter-*
28 *mined by the federal deposit insurance corporation.*

29 *Such deposits need not be secured as provided in this act.*

30 Sec. 2. K.S.A. 2008 Supp. 12-1675 is hereby amended to read as
31 follows: 12-1675. (a) The governing body of any county, city, township,
32 school district, area vocational-technical school, community college, fire-
33 men's relief association, community mental health center, community fa-
34 cility for the mentally retarded or any other governmental entity, unit or
35 subdivision in the state of Kansas having authority to receive, hold and
36 expend public moneys or funds may invest any moneys which are not
37 immediately required for the purposes for which the moneys were col-
38 lected or received, and the investment of which is not subject to or reg-
39 ulated by any other statute.

40 (b) Such moneys shall be invested only:

41 (1) In temporary notes or no-fund warrants issued by such investing
42 governmental unit;

43 (2) in time deposit, open accounts, certificates of deposit or time cer-

*the total cumulative amount of each deposit
does not exceed*

shall not be treated as securities and

HOUSE FINANCIAL INSTITUTIONS
DATE: 2/19/2009
ATTACHMENT: 9-1

1 tificates of deposit with maturities of not more than two years: (A) In
2 banks, savings and loan associations and savings banks, which have main
3 or branch offices located in such investing governmental unit; or (B) if
4 no main or branch office of a bank, savings and loan association or savings
5 bank is located in such investing governmental unit, then in banks, savings
6 and loan associations and savings banks, which have main or branch of-
7 fices in the county or counties in which all or part of such investing gov-
8 ernmental unit is located;

9 (3) in repurchase agreements with: (A) Banks, savings and loan as-
10 sociations and savings banks, which have main or branch offices located
11 in such investing governmental unit, for direct obligations of, or obliga-
12 tions that are insured as to principal and interest by, the United States
13 government or any agency thereof; or (B)(i) if no main or branch office
14 of a bank, savings and loan association or savings bank, is located in such
15 investing governmental unit; or (ii) if no such bank, savings and loan
16 association or savings bank having a main or branch office located in such
17 investing governmental unit is willing to enter into such an agreement
18 with the investing governmental unit at an interest rate equal to or greater
19 than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a,
20 and amendments thereto, then such repurchase agreements may be en-
21 tered into with banks, savings and loan associations or savings banks which
22 have main or branch offices in the county or counties in which all or part
23 of such investing governmental unit is located; or (C) if no bank, savings
24 and loan association or savings bank, having a main or branch office in
25 such county or counties is willing to enter into such an agreement with
26 the investing governmental unit at an interest rate equal to or greater
27 than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a,
28 and amendments thereto, then such repurchase agreements may be en-
29 tered into with banks, savings and loan associations or savings banks lo-
30 cated within this state;

31 (4) in United States treasury bills or notes with maturities as the gov-
32 erning body shall determine, but not exceeding two years. Such invest-
33 ment transactions shall only be conducted with banks, savings and loan
34 associations and savings banks; the federal reserve bank of Kansas City,
35 Missouri; or with primary government securities dealers which report to
36 the market report division of the federal reserve bank of New York, or
37 any broker-dealer engaged in the business of selling government securi-
38 ties which is registered in compliance with the requirements of section
39 15 or 15C of the securities exchange act of 1934 and registered pursuant
40 to K.S.A. 17-12a401, and amendments thereto;

41 (5) in the municipal investment pool fund established in K.S.A. 12-
42 1677a, and amendments thereto;

43 (6) in the investments authorized and in accordance with the condi-

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9-2

1 tions prescribed in K.S.A. 12-1677b, and amendments thereto; or
2 (7) in multiple municipal client investment pools managed by the
3 trust departments of banks which have main or branch offices located in
4 the county or counties where such investing governmental unit is located
5 or with trust companies incorporated under the laws of this state which
6 have contracted to provide trust services under the provisions of K.S.A.
7 9-2107, and amendments thereto, with banks which have main or branch
8 offices located in the county or counties in which such investing govern-
9 mental unit is located. Public moneys invested under this paragraph shall
10 be secured in the same manner as provided for under K.S.A. 9-1402, and
11 amendments thereto. Pooled investments of public moneys made by trust
12 departments under this paragraph shall be subject to the same terms,
13 conditions and limitations as are applicable to the municipal investment
14 pool established by K.S.A. 12-1677a, and amendments thereto.

15 (c) The investments authorized in paragraphs (4), (5), (6) or (7) of
16 subsection (b) shall be utilized only if the banks, savings and loan asso-
17 ciations and savings banks eligible for investments authorized in para-
18 graph (2) of subsection (b), cannot or will not make the investments au-
19 thorized in paragraph (2) of subsection (b) available to the investing
20 governmental unit at interest rates equal to or greater than the investment
21 rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments
22 thereto.

23 (d) In selecting a depository pursuant to paragraph (2) of subsection
24 (b), if a bank, savings and loan association or savings bank eligible for an
25 investment deposit thereunder has an office located in the investing gov-
26 ernmental unit and such financial institution will make such deposits avail-
27 able to the investing governmental unit at interest rates equal to or greater
28 than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a,
29 and amendments thereto, and such financial institution otherwise quali-
30 fies for such deposit, the investing governmental unit shall select one or
31 more of such eligible financial institutions for deposit of funds pursuant
32 to this section. If no such financial institution qualifies for such deposits,
33 the investing governmental unit shall select for such deposits one or more
34 eligible banks, savings and loan associations or savings banks which have
35 offices in the county or counties in which all or a part of such investing
36 governmental unit is located which will make such deposits available to
37 the investing governmental unit at interest rates equal to or greater than
38 the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and
39 amendments thereto, and which otherwise qualify for such deposits.

40 (e) (1) All security purchases and repurchase agreements shall occur
41 on a delivery versus payment basis.

42 (2) All securities, including those acquired by repurchase agreements,
43 shall be perfected in the name of the investing governmental unit and

1 shall be delivered to the purchaser or a third-party custodian which may
2 be the state treasurer.

3 (f) *Public moneys deposited pursuant to subsection (b)(2) of K.S.A.*
4 *12-1675, and amendments thereto, by the governing body of any govern-*
5 *mental unit listed in subsection (a) of K.S.A. 12-1675, and amendments*
6 *thereto, through a selected bank, savings and loan association or savings*
7 *bank which is part of a reciprocal deposit program in which the bank,*
8 *savings and loan association or savings bank;*

9 (1) *Receives reciprocal deposits from other participating institutions*
10 *located in the United States in an amount equal to the amount of funds*
11 *deposited by the municipal corporation or quasi-municipal corporation;*
12 *and*

13 (2) *for which ~~no one deposit amount exceeds~~ the maximum deposit*
14 *insurance amount for one depositor at one financial institution as deter-*
15 *mined by the federal deposit insurance corporation.*

**the total cumulative amount of each deposit
does not exceed**

16 *Such deposits need not be secured as provided in this or any other act.*

17 Sec. 3. K.S.A. 2008 Supp. 75-4237 is hereby amended to read as
18 follows: 75-4237. (a) The director of investments shall accept requests
19 from banks interested in obtaining investment accounts of state moneys.
20 Such requests may be submitted any business day and shall specify the
21 dollar amount and maturity. The director of investments is authorized to
22 award the investment account to the requesting bank at the market rate
23 established by subsection (b). Awards of investment accounts pursuant to
24 this section shall be subject to investment policies of the pooled money
25 investment board. When multiple requests are received and are in excess
26 of the amount available for investment that day for any maturity, awards
27 shall be made available in ascending order from smallest to largest dollar
28 amount requested, subject to investment policies of the board.

shall not be treated as securities and

29 (b) The market rate shall be determined each business day by the
30 director of investments, in accordance with any procedures established
31 by the pooled money investment board. Subject to any policies of the
32 board, the market rate shall reflect the highest rate at which state moneys
33 can be invested on the open market in investments authorized by sub-
34 section (a) of K.S.A. 75-4209, and amendments thereto, for equivalent
35 maturities.

36 (c) (1) Notwithstanding the provisions of this section, linked deposits
37 made pursuant to the provisions of K.S.A. 2-3703 through 2-3707, and
38 amendments thereto, shall be at an interest rate which is 2% less than
39 the market rate determined under this section and which shall be recal-
40 culated on the first business day of each calendar year using the market
41 rate then in effect.

42 (2) Notwithstanding the provisions of this section, agricultural pro-
43 duction loan deposits made pursuant to the provisions of K.S.A. 2008

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1 Supp. 75-4268 through 75-4274, and amendments thereto, shall be at 2%
2 less than the market rate provided by this section and which shall be
3 recalculated on the first business day of each calendar year using the
4 market rate then in effect.

5 (d) The director of investments may place deposits through a selected
6 bank, savings and loan association or savings bank which is part of a
7 reciprocal deposit program in which the bank, savings and loan associa-
8 tion or savings bank:

9 (1) Receives reciprocal deposits from other participating institutions
10 located in the United States in an amount equal to the amount of funds
11 deposited by the municipal corporation or quasi-municipal corporation;
12 and

13 (2) for which ~~no one deposit amount exceeds~~ the maximum deposit
14 insurance amount for one depositor at one financial institution as deter-
15 mined by the federal deposit insurance corporation.

16 ~~Such deposits need not be secured as provided in this or any other act.~~

17 Sec. 4. K.S.A. 9-1407 and K.S.A. 2008 Supp. 12-1675 and 75-4237
18 are hereby repealed.

19 Sec. 5. This act shall take effect and be in force from and after its
20 publication in the statute book.

**the total cumulative amount of each deposit
does not exceed**

**Such deposits shall not be treated as securities and
need not be secured as provided in this or any other
act, except that such deposits shall be secured as
provided in K.S.A. 75-4218, and amendments thereto,
when they are held by the selected financial institution
prior to placement with reciprocal institutions or upon maturity.**

**(e) The Pooled Money Investment Board shall establish procedures
for administering reciprocal deposit programs in its investment
policies, as authorized by K.S.A. 75-4232, and amendments thereto.**

Testimony on HB 2185

Liz Miller, Director of Investments
Pooled Money Investment Board
February 4, 2009

The Honorable Anthony Brown, Chair
House Committee on Financial Institutions

Representative Brown and Members of the Committee:

My name is Liz Miller. I am the Director of Investments for the Pooled Money Investment Board (PMIB). I am testifying as a neutral third party. In general, the PMIB is supportive of legislation that will help Kansas banks. However, the foremost concern of the PMIB is the safety and security of the investments used for state monies. (The Board's Investment Policy statement requires that the portfolio be invested in a manner which will provide a reasonable rate of return with the maximum security while meeting the daily cash flow demands of the state and conforming to all statutes governing the investment of state moneys.) With safety and security in mind, the PMIB initially had two concerns about the proposed amendment to K.S.A. 75-4237. The first concern was with regard to the collateralization of state moneys at the beginning and end of the CDARS transactions. We have been working with KBA representatives Doug Wareham and Kathy Olsen, and are comfortable that the new language in the balloon amendment regarding securitization of the state's deposits will resolve our initial concern about collateralization. The second concern related to the fact that, in the CDARS arrangement, the selected financial institution acts as primary custodian for the state with respect to the certificates of deposit issued for the state's account. PMIB is concerned about placing investments in financial institutions in a situation where we would not have physical control of the certificate of deposit or a book entry investment on the books of a third party custodian with whom we had a contractual relationship. Again, working with the KBA, we have agreed to new language in the

balloon amendment which will authorize the PMIB to establish procedures in our Investment Policy which will govern the administration of reciprocal deposit programs. We are comfortable that this language will allow the PMIB the flexibility to institute procedures which will resolve this concern, as well as other, future concerns which may arise with investments in reciprocal deposit programs. Thank you for your consideration of my testimony.