



Chairman Jordan, Vice Chair Hillyer, Ranking Member Crossman, and members of the House Financial Institutions Committee, my name is Kevin Futryk and I serve as the Executive Director of the County Treasurers Association of Ohio (CTAO). I appreciate the opportunity to offer proponent testimony this morning on SB 277.

As you heard last week during his sponsor testimony, Senator Schuring outlined the history of how the Ohio Pooled Collateral System (OPCS) was established, its function, and purpose. However, as he also noted, there were a couple of concerns that county treasurers would like to see addressed regarding OPCS and a county treasurer liability for potential loss of investments resulting from financial institutions under collateralizing county deposits.

Under current Ohio law, county treasurers - like school treasurers and other elected treasurers - are personally liable for any loss of investment caused by their own actions, *or the actions of others*, which is why county treasurers adhere to a strict code of conduct relative to their office's operations. ORC 9.39 states in part: "All public officials are liable for all public money received or collected by them or by their subordinates under color of office." For this reason, all county treasurers negotiate Depository Contracts with their financial institutions that identify the minimum collateral rate that must be sustained for all public deposits made with those financial institutions. That rate is usually 102% of the deposit. What has caused concern in recent years is how ambiguity in OPCS statute impacts this liability issue, particularly the provision in law that allows the Treasurer of State to approve a collateral floor below 102% for investments within the system. It is the opinion of the CTAO that there could exist a potential conflict between the agreed upon collateralization rate in their Depository Contracts, and the allowed lower rate authorized by the TOS under OPCS.

The State Treasurer, under division (J) of ORC 135.182 is exempt from liability for any losses occurring through OPCS between the public depositor (county treasurer) and the public depository (financial institution). However, a county treasurer *can* be held liable for investment losses, even if these losses occurred when a financial institution temporarily caused their collateral to drop below the contracted rate. Since the creation of OPCS, there have been some instances where an under-collateralization has occurred for a variety of reasons. In these cases though, if a loss to that deposit had occurred, the county treasurer could have been held *personally* liable for the actions of another, which were unknown to them.

To help resolve this issue, the CTAO worked with State Treasurer Robert Sprague's office on improvements to the OPCS system and process. Together, they have developed a set of "Best Practices" that should be utilized when an under-collateralization event occurs. Among these Best Practices are 1) improved notifications within the OPCS System alerting the public depositor and the public depository of changes, e.g., an e-mail will be sent to both immediately upon the system identifying there is insufficient collateral for a deposit made the previous day; and 2) better communication between the public depositor and the public depository on timing of large deposits to give the public depository time to secure sufficient collateral. However, to further help the public depository, SB 277 provides financial institutions a codified safe harbor period of two (2) business days to remedy any under collateralization and secure additional pledged collateral (lines 56-65).

The second change SB 277 makes is clarify that the public depositor is not liable for any loss of funds if the public depository fails to comply with the terms set forth in the Depository Agreement the public depositor has with the financial institution relative to appropriate level of collateral (lines 166-172). This provision will ensure that the public depository must at all times adhere to the Depository Contract they have with the public depositor, even within the Ohio Pooled Collateral System. In short, if the public depository knowingly violates the agreement and public funds are lost, the public depository is liable for those lost funds and not the public depositor.

In truth, these are two relatively minor changes to the existing Ohio Pooled Collateral System, but they serve to clear up ambiguity that has caused significant concern in recent years. These changes in SB 277 are supported by the County Treasurers Association of Ohio, the Ohio Bankers League, the Treasurer of State's office, and the Auditor of State's office. We will have further testimony in coming weeks from these interested parties.

Mr. Chairman and members of the committee, I'll be happy to answer any questions you may have.