



Banking Law For Local Political Subdivisions

[R.S. 39:1211, *Et Seq.*](#)

Overview:

This document is a summary of general principles and guidelines concerning **Banking** by local political subdivisions. Presented in a “frequently asked questions” (FAQ) format, it is fairly detailed. Remember, however, that every situation is unique and that each deserves careful individual review.

To facilitate use of this document, links will direct your attention to text within the document and to related documents posted on the Louisiana Legislative Auditor’s website and on external websites. For example, clicking the question number in the Index will link directly to any text in the FAQ. Within the FAQ, links will direct you to other areas of the FAQ and to relevant external documents. Clicking on the individual question number in the text will link to the Index to allow you selection of another question.

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BANKING: Local Depositing Authorities and Fiscal Agents

I. General

Q.1. Which statutes apply to a local public entity's deposits of public funds?

- A.1.** The statutes between R.S. 39:1211 and 1245 are collectively known as the “**Local Depository Law**”. Some of these statutes are general in nature and apply to all three of the defined categories of entities, while some are specific to one category.

The categories are:

1. Entities located in parishes or municipalities with populations under 100k
2. Entities located in parishes or municipalities with populations over 100k
3. Cities with populations over 150k

R.S. 39:1217.1 is specific to depositing authorities located in parishes or municipalities with a population under 100,000 (100k). It provides that these entities are generally exempt from the requirements of R.S. 39:1214 through 39:1242 **except for** the security requirements (collateralization of deposits) of those sections.

The statutes between R.S. 39:1241 through 1245 are specific to cities with populations over 150,000, as is R.S. 33:2928 through R.S. 33:2932.

Q.2. What is a “local depositing authority”? [R.S. 39:1211](#)

- A.2.** The Local Depositories Law uses the term, “**local depositing authorities**” to mean:

- Parishes
 - Municipalities
 - Boards
 - Commissions
 - Sheriffs and tax collectors
 - Judges and clerks of court and
 - Any other public bodies or officers of any parish, municipality or township
- The definition does not include the state and its elected officials, and state commissions, boards, and other state agencies.
- District Attorneys are not local depositing authorities within the meaning of this section because they are considered elected officials of the state.

AG Op. No. 88-0149

- The definition includes the LaSalle Economic Development District, created pursuant to [R.S. 33:130.201 et seq.](#) [AG Op. No. 23-0100](#).

Q.3. What is a “fiscal agent”? What is a “local depository”? [R.S. 39:1213](#)

- A.3.** The Local Depositories Law defines “fiscal agent” as the bank or other such entity allowed to hold deposits of public entities. It must be a stock-owned federally insured depository institution organized under the laws of this state or of any other state of the United States, or under the laws of the United States.

The law uses the terms “fiscal agent” and “local depository” interchangeably.

Q.4. Where should the bank selected as fiscal agent be located? [R.S. 39:1220](#)

- A.4.** Local depositing authorities are generally required to select fiscal agents domiciled in, or having branch offices located in, the parish or municipality or congressional district of the depositing authority, subject to certain conditions in R.S. 39:1220.

- A depositing authority located in a parish or municipality with a population of less than 100k is exempt from this requirement. R.S. 39:1217.1 exempts this category from the provisions of R.S. 39:1214 through 1242 except for the security requirements (collateralization of deposits).
- Despite this exemption, it is good practice and clearly the intent of the Legislature that fiscal agents be in or near the same domicile as the depositing authority.

Any depositing authority located in a parish or municipality with a population over 100k may, if unable to arrive at a satisfactory fiscal agency contract with a bank located in the state, enter a private contract for deposits or loans or both, either within or without this state, subject to the conditions in R.S. 39:1215 and 1216.

Per the provisions of R.S. 39:1241, cities with a population exceeding 150,000 may choose fiscal agent banks in the manner provided by resolution or ordinance of the commission council or the governing body of the cities and under the terms and conditions deemed appropriate or advisable by the governing body.

Q.5. What limit exists on the amount that may be deposited in a single bank? [R.S. 39:1220](#)

- A.5.** Unless secured by collateral within three days of deposit, no deposit may be placed in any one bank if the amount of the deposit exceeds two hundred percent of the capital stock, declared surplus, and undivided profits of that bank.

Q.6. Must funds be deposited daily? **R.S. 39:1212**

A.6. The public funds of local depositing authorities must be deposited daily whenever practicable.

Q.7. What are the responsibilities of depositing officials? **R.S. 39:1232**

A.7. The treasurer, or any other public official having custody of public funds is not responsible for any money deposited in the selected bank. Depositing authorities are, however, responsible for safekeeping and returning the collateral deposited with them by fiscal agent banks and depositories as security for deposits made with fiscal agent banks and depositories.

Q.8. What happens if the depository bank fails?

A.8. [R.S. 39:1227](#), [R.S. 39:1228](#) and [R.S. 39:1229](#) outline the procedures a local depositing authority must follow when a depository bank fails, including right to set-off, participation in dividends, and sale of security.

II. Fiscal Agents

Q.9. What are pertinent qualifications for a fiscal agent? **R.S. 39:1213**

A.9. The fiscal agent (bank) where public funds are deposited must be a stock-owned federally insured depository institution organized under the laws of this state or of any other state, or under the laws of the United States.

R.S. 39:1220

In order to be eligible to receive deposits of public funds, a bank must include in its application to be a fiscal agent a sworn statement of its financial condition at the close of business in the first day of the month prior to the month in which the application was made.

Additionally, [R.S. 6:949](#) provides that capital stock savings and loan associations and capital stock savings banks may act as fiscal agents for local depositing authorities.

◆ However, a city may not act as a fiscal agent. See, [AG Op. No. 08-0003](#), in which the AG opines that *the City of Hammond may not serve as fiscal agent to the Hammond Area Economic and Industrial Development District because the Local Depository Law, La. R.S. 39:1211, et seq., requires a fiscal agent to be “[A] stock-owned federally insured depository... .”*

Q.10. Can a credit union serve as a fiscal agent?

A.10. No. Credit unions are not stock-owned. Therefore, they do not qualify as fiscal agents under the requirements set forth in [R.S. 39:1213](#).

Note: [R.S. 6:652.2](#) authorizes the State of Louisiana, its agencies and any other political subdivision of the State to invest funds in share accounts or share certificate accounts of credit unions. Please see the [LLA's FAQ on Investments](#) for more information.

III. Choosing a Fiscal Agent in a Parish or Municipality with a Population of Fewer than 100k

Q.11. How are fiscal agent banks chosen for entities located in whole or in part in any parish or municipality with a population of fewer than 100k?

[R.S. 39:1217.1](#)

A.11. [R.S. 39:1217.1](#) states that local depositing authorities located in a parish or municipality with a population of fewer than 100k are generally exempt from the provisions of R.S. 39:1214 through 1242, **except for security requirements** (FDIC and collateralization) and any other applicable state or federal laws.

- ◆ According to the AG, this means that entities located in parishes or municipalities with populations under 100k are not required to issue bid requests prior to contracting with a bank for its services. Nor are they required to allocate funds among qualifying banks as required by R.S. 39:1220. **AG Op. No. 96-0457** and [AG Op. No. 92-0397](#).
- ◆ There is, however, little further interpretation from the AG regarding the phrase, “generally exempt.”

Q.12. What if this entity is unable to find a bank or banks to meet its needs?

[R.S. 39:1217](#)

A.12. If this entity advertises for banks to qualify as fiscal agents and no bank qualifies, or sufficient banks do not qualify, this entity may make private arrangements and enter into written contracts, with respect to amounts to be loaned, interest on loans, and otherwise, not in conflict with any other provision. The contracts must be made with banks in the parish, municipality or congressional district, or as near thereto as practical. **Out of state banks may not be used.**

Q.13. Must the entity place its deposits in interest bearing accounts?

R.S. 39:1217.1

- A.13.** Yes. All funds (except demand deposits under the control of entities located in a parish or municipality with a population under 100k) must be placed in interest-bearing accounts at an interest rate of not less than twenty-five percent below the discount treasury bill rate with regard to treasury bills of comparable maturity.*

**Treasury bill--A short-term obligation of the U.S. Treasury having a maturity period of one year or less and sold at a discount from face value. The discount rate is an annualized rate of return based on the par value of the bills and is calculated on a 360-day basis.*

IV. Choosing a Fiscal Agent in a Parish or Municipality with a Population of more than 100k

Q.14. How are fiscal agent banks chosen for entities located in whole or in part in any parish or municipality with a population of over 100k? **R.S. 39:1214**

- A.14.** These must follow the specific rules set out in R.S. 39:1214 which require the entity to invite bids for contracts with banks for their services. There is no specific time limit for how long these contracts may last, but they are usually of short duration, one to three years, so as to allow the entity to choose another bank at the end of the contract if they are not satisfied with their services, or if better terms might be available.

1. Thirty days before the prior contract expires, this entity must give written notice to each of the banks located in any parish which embraces all or a portion of the political subdivision where the entity is domiciled, setting forth its intention to select a bank as its fiscal agent.
2. The notice must specify the time for which the contract shall be made and the conditions and terms of the contract proposed.
3. The notice shall invite bids under the terms and conditions of the proposal.
4. A copy of the notice must be published in the official journal of the local entity at least three times.
5. The first notice must be published at least fifteen (15) days before the date selected for the selection of the bank.

Q.15. What happens if an entity is unable to arrive at a satisfactory fiscal agency contract with a bank located in this state?

R.S. 39:1215

A.15. If this entity is unable to arrive at a satisfactory fiscal agency contract with a bank located in this state, it may consummate a private contract for deposits or loans or both, either within or without this state, subject to the conditions located in R.S. 39:1215. Good practice suggests that the entity keep evidence of its failed attempts to contract with a bank located in this state.

◆ *Levee district must select banks domiciled or having a branch office in the parish unless district cannot arrive at satisfactory fiscal agency agreement.* **AG Op. No. 92-0141**

Q.16. May the entity have more than one fiscal agency contract? **R.S. 39:1216**

A.16. If the entity finds existing contracts, or any subsequent contracts, inadequate to meet its needs and requirements, it may enter into supplemental contracts with any bank within or without the state as is deemed necessary --provided that it complies with all requirements, including provisions with respect to security for deposits.

V. Choosing a Fiscal Agent in Cities With a Population of More Than 150k

Q.17. What is the definition of “depositing authority” and “fiscal agent bank” for cities with a population over 150k? **R.S. 39:1245**

A.17. “Deposit authority” as used in **R.S. 33:2928** through **R.S. 33:2931** means the commissioner of public finance or the finance officer, or any department, board, commission, or institution, of cities having a population exceeding 150k.

“Fiscal agent bank” or “depository” means any bank selected and designated by the governing body of cities having a population exceeding 150k, for deposit of funds belonging to or held in custody for these cities or any department, board, commission, or institution thereof.

Q.18. How are fiscal agent banks chosen for cities with a population over 150k? **R.S. 33:2928**

A.18. Fiscal agent banks for the deposit of funds belonging to cities of more than 150k people, including any department, board, commission, or institution located in such

city, must be selected and designated in the manner provided by resolution or ordinance of the governing body of such cities, and under the terms and conditions that the governing body deemed appropriate or advisable.

Q.19. What limit is placed on the amount that may be deposited by cities with a population over 150k? [R.S. 39:1242](#)

A.19. Cities of more than 150k people may not deposit funds in excess of the capital stock and declared surplus of any one bank. They may, however, grant the bank up to ten (10) days from the date of any deposit to post the security required.

Q.20. What security is required for deposits by cities with a population of more than 150k? [R.S. 39:1242](#)

A.20. These cities require the instruments listed in R.S. 39:1242 as security for deposits. The most common of these instruments are:

1. Bonds or other interest-bearing securities of the United States, or any agency thereof, including, but not limited to, the Federal National Mortgage Association.
2. Bonds of the State of Louisiana or of any agency, board, commission, department or division thereof or of any agency, public corporation or authority created by or recognized by the State of Louisiana.
3. Bonds of the municipality in which the fiscal agent bank is located, or bonds of the levee board or school board in which the fiscal agent bank is located.

◆ Bonds or other securities in default, either in principal or interest, may not be accepted or held by any depositing authorities in cities with a population over 150k.

Q.21. How much security is required on deposits for cities with a population over 150k? [R.S. 39:1242](#)

A.21. Cities with a population over 150k must collateralize deposits up to 100% of the deposit, except for the portion of the deposits insured or guaranteed by any government agency insuring bank deposits (FDIC) that is organized under the laws of the United States.

VI. Funds and Security (Collateralization of Deposits)

Q.22. What is collateral?

R.S. 39:1221 R.S. 39:1242

A.22. In the case of public banking laws, collateral is the security that fiscal agents must provide to secure the deposits of public entities. If anything happens to those deposits, the security will be tendered to the public entity so that no public funds are lost. Deposits over \$250,000, the maximum FDIC insurance per account, must be collateralized. Under that amount, deposits need not be secured by collateral.

Q.23. What are properly collateralized deposits pursuant to R.S. 39:1224, and what is their relationship to GASB 3 as amended by GASB 40?

R.S. 39:1224

A.23. The deposits and investments of state and local governments are exposed to risks that may potentially result in losses. As a result, these credit risks are required to be assessed and disclosed by the Governmental Accounting Standards Board (GASB). GASB 3 originally established three categories of credit risk.

They were:

Category 1 - deposits covered by federal depository insurance or by collateral held by the District or its agent, in the District's name.

Category 2 - deposits covered by collateral held by the pledging financial institution's trust department, or its agent in the District's name.

Category 3 - deposits covered by collateral held by the pledging financial institution, or its trust department or agent but not in the District's name, and deposits that are uninsured or uncollateralized.

GASB 3 was amended by GASB 40 which eliminated Categories I and II, leaving Category 3 intact. Deposits are now considered to be exposed to custodial credit risk if they are not covered by depository insurance and the deposits are:

- a. Uncollateralized,
- b. Collateralized with securities held by the pledging financial institution, or
- c. Collateralized with securities held by the pledging financial institution's trust department or agent but not in the depositor-government's name.

If a government has deposits at the end of the period that are exposed to custodial credit risk, it should disclose the amount of those bank balances, the fact that the balances are uninsured, and whether the balances are exposed on the basis of either a, b, or c above.

GASB 3 as amended by GASB 40, requires disclosure of these credit risks, not compliance with a standard of collateralization. This disclosure is a separate issue from compliance with Louisiana law.

Louisiana law requires deposits over \$250,000, the FDIC insured limit, to be secured by collateral ([R.S. 39:1218](#)). The fiscal agent bank is required to deposit and maintain with an unaffiliated bank that security designated by [R.S. 39:1221](#) ([R.S. 39:1219](#)).

The depositories for the security are defined by [R.S. 39:1224](#). This statute requires the bonds, or other instruments furnished as security, to be deposited with the depositing authority or with an unaffiliated bank or trust company or Federal Reserve Bank or any Federal Home Loan Bank or its successor. This security is deemed to be under the control and in the possession of the depositing authority (the public entity) and deemed to be held in its name.

To be properly collateralized, therefore, deposits over \$250,000 must be collateralized with the designated security and deposited with an unaffiliated bank. The deposited security is deemed by law to be under the control and possession and in the name of the public entity, regardless of how it is designated by the bank in which it is deposited. For instance, in a Federal Reserve pledge account the pledge account is in the name of the pledgor financial institution, but the pledgor does not have the ability to access the securities while they remain in the pledge account. Any release or substitution of pledged collateral may be done only with the permission of the pledgee government. Under Louisiana law this account is deemed to be in the name of the public entity. The Federal Reserve example is in compliance with Louisiana law.

Louisiana law does not, however, allow the security deposit to be in the hands of the pledgor bank. It must be held in an unaffiliated entity. Banks or trust companies that are subsidiaries of a bank holding company shall not be considered affiliated entities ([R.S. 39:1224](#)).

Q.24. Must a bank chosen as the fiscal agent of a local entity provide security for deposits? [R.S. 39:1218](#)

- A.24.** Any bank selected as the fiscal agent of any depositing authority, or any bank with whom a private contract is entered into, whether located within or without the state, must give security for the safekeeping and payment of the deposits.

Q.25. What type of security is required for deposits by entities with populations fewer than 100k and by entities with populations over 100k? [R.S. 39:1221](#)

A.25. R.S. 39:1221 contains a list of instruments acceptable as security for the deposits of entities located in parishes or municipalities, regardless of population. While many instruments are listed, the ones most commonly used are bonds or other interest-bearing obligations guaranteed by the United States. The common feature is that all must be backed by the full faith and credit of the U.S. or the state. This list is exclusive.

Q.26. What amount of security is required for those entities located in a parish or municipality with a population under 100k and for those over 100k? [R.S. 39:1225](#)

A.26. The amount of the security must at all times be 100% of the funds on deposit except that portion insured by the Federal Deposit Insurance Corporation (FDIC). The FDIC insurance currently insures up to \$250,000 in deposits for a single entity. Therefore, only funds greater than \$250,000 must be collateralized by entities located in parishes or municipalities with populations both under and over 100k. (See [AG Op. No. 09-0073A](#))

Note also that special FDIC rules exist for government entities. The FDIC website provides the following requirement regarding governmental entities:

Government Accounts - \$250,000 per official custodian (more coverage available subject to specific conditions)

Here is a link to the FDIC guidance on deposit insurance: [FDIC](#)

Q.27. Who approves these securities as being eligible and sufficient? [R.S. 39:1222](#)

A.27. The political subdivision itself is responsible for approving that the securities provided as collateral for deposits are eligible and sufficient according to law.

Q.28. Where are the securities for deposit to be deposited? [R.S. 39:1224](#)

A.28. Any instrument furnished as security must be deposited with the depositing authority or with an unaffiliated bank or trust company or Federal Reserve Bank or any Federal Home Loan Bank or its successor.

Q.29. What happens if the security is not provided by the fiscal agency or depository bank?

R.S. 39:1226

A.29. If the fiscal agent does not furnish the security required by [R.S. 39:1221](#), [R.S. 39:1223](#), [R.S. 39:1224](#), or [R.S. 39:1225](#), the depositing authority may require additional security to bring the total to the required amount. If any bank fails to comply within five (5) business days from receipt of demand, a meeting of the depositing authority may convene and declare the contract cancelled. If cancelled, the depositing authority must immediately proceed in the same manner as in the case of the original letting, and re-let the deposits of the bank for the unexpired term, under the terms and conditions provided in law.

Q.30. What type of security is required for deposits by entities located in parishes or municipalities with a population over 100k?

A.30. The security requirements are identical to those of entities located in parishes or municipalities with a population under 100k (discussed in [Q.22](#) above).

Q.31. For savings and loan associations and savings banks, what additional collateral instruments are allowed for collateralizing public funds deposits?

R.S. 6:748.1

A.31. In addition to other collateral for public funds deposits authorized by law, savings and loan associations and savings banks are authorized to use as collateral mortgage pass-through certificates issued by the Federal Home Loan Mortgage Corporation and letters of credit issued by the Federal Home Loan Bank.

■ Savings and loan associations and savings banks are specifically designated as depositories for the purpose of holding collateral of other financial institutions when this collateral is security for public funds deposits in excess of the insured limit of the FDIC.

◆ *Pass-through certificates issued by the Federal Home Loan Mortgage Corporation and letters of credit issued by the Federal Home Loan Bank are acceptable collateral for the deposit of state and local governmental body funds if the money is placed in a savings and loan or savings bank; but if the funds of the state or local governmental unit are placed in a state bank or national bank, the aforesaid pass-through certificates and letters of credit are not acceptable collateral. AG Op. No. 87-0433(B)*

- ◆ See also [R.S. 6:318](#). In addition to other collateral for public funds deposits authorized by law, banks may also use letters of credit issued by the Federal Home Loan Bank to collateralize the deposit of public funds.

[AG Op. No. 00-0499](#)

- ◆ [R.S. 6:319](#) authorizes banks, savings banks and savings and loan associations, domiciled or having a branch in Louisiana that receive public funds deposits, to utilize any recognized system or program to provide FDIC insurance coverage. Such funds shall be deemed fully collateralized, provided that the recognized system or program satisfies the FDIC's requirements for agency pass-through deposit insurance coverage. The total dollar amount of State funds received pursuant to the provisions of this Section by a bank, savings bank, or savings and loan association, domiciled or having a branch in Louisiana, must be maintained by that financial institution.

[AG Op. No. 09-0073](#) & [AG Op. No. 09-0073A](#)