

1 HB85  
2 215946-1  
3 By Representative Garrett  
4 RFD: State Government  
5 First Read: 11-JAN-22

SYNOPSIS: Existing law setting forth the Security for Alabama Funds Enhancement (SAFE) Program board of directors makes no provisions for the participation of board members in board meetings by virtual means.

This bill would authorize members of the SAFE board to use virtual means to participate in any meeting of the board or a committee created by the board, and would require those means to allow public participation.

This bill would also require meetings of the SAFE board to otherwise comply with the Alabama Open Meetings Act.

A BILL  
TO BE ENTITLED  
AN ACT

Relating to public deposits; to amend Section 41-14A-6, Code of Alabama 1975, relating to the composition

1 and operation of the Security for Alabama Funds Enhancement  
2 (SAFE) Program board of directors, to provide for the use of  
3 virtual technology to participate in meetings, and to require  
4 compliance with the Alabama Open Meetings Act.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Section 41-14A-6, Code of Alabama 1975,  
7 is amended to read as follows:

8 "§41-14A-6.

9 "(a) There is hereby established a Board of  
10 Directors of the SAFE Program charged with responsibility and  
11 authority to assess and manage the sufficiency of the  
12 collateral pool and the SAFE Program to provide adequate  
13 protection from losses to public depositors. In exercising its  
14 powers and performing its responsibilities, the board of  
15 directors shall constitute a body politic under the laws of  
16 the state performing the public function of assuring the  
17 safety of public deposits.

18 "(b) (1) The State Treasurer shall be a permanent,  
19 standing, voting member of the board of directors and shall  
20 serve as its chair. The Superintendent of Banks shall be a  
21 permanent, standing, non-voting member of the board of  
22 directors. The remaining six members shall each possess  
23 knowledge, skill, and experience in one or more of the  
24 following areas:

25 "~~(1)~~a. Financial analysis.

26 "~~(2)~~b. Trend analysis.

27 "~~(3)~~c. Accounting.

1           "~~(4)~~d. Banking.

2           "~~(5)~~e. Risk management.

3           "~~(6)~~f. Investment management.

4           "(2) The remaining six members shall be comprised of  
5 four members each of whom shall be a representative of an  
6 active qualified public depository, which is not in the  
7 process of withdrawing from the SAFE Program and which is in  
8 compliance with all applicable rules, regulations, and  
9 reporting requirements of this chapter, one of whom will be  
10 selected and approved by the State Treasurer and three of whom  
11 shall be selected and approved by the State Treasurer from  
12 three or more nominations submitted by the Alabama Bankers  
13 Association (or any successor association or entity, or, if no  
14 such association or successor association or entity shall then  
15 exist, submitted by the Superintendent of Banks); one member  
16 who shall be a representative of a municipality within the  
17 state and who will be selected and approved by the State  
18 Treasurer from one or more nominations submitted to the State  
19 Treasurer by the League of Municipalities of Alabama; and one  
20 member who shall be a representative of a county within the  
21 state and who will be selected and approved by the State  
22 Treasurer from one or more nominations submitted to the State  
23 Treasurer by the Association of County Commissions of Alabama.

24           "(3) The terms of the members of the board of  
25 directors other than the State Treasurer and the  
26 Superintendent of Banks shall be four years, except that, with  
27 respect to the initial appointments, as determined by the

1 State Treasurer, one member will serve one year, one member  
2 will serve two years, two members will serve three years, and  
3 two members will serve four years. Any person appointed to  
4 fill a vacancy on the board may serve only for the remainder  
5 of the unexpired term. Any member is eligible for  
6 reappointment and shall serve until a successor is selected.

7 "(4) The chair shall annually designate a member of  
8 the board of directors to serve as vice chair, and a secretary  
9 who need not be a member of the board of directors. The  
10 secretary shall keep a record of the proceedings of the board  
11 of directors and shall be the custodian of all printed  
12 materials filed with or by the board.

13 "(5) Notwithstanding the existence of vacancies on  
14 the board of directors, two thirds of the voting members then  
15 serving shall constitute a quorum. The board of directors may  
16 not take official action in the absence of a quorum.

17 "(6) The board of directors shall meet quarterly and  
18 at other times deemed necessary to assess and manage the  
19 operations of the SAFE Program.

20 "(7) Meetings Except as otherwise specifically  
21 provided in subdivision (8) only as it relates to virtual  
22 participation of members of the board and the public, all  
23 meetings and notice of meetings of the board of directors,  
24 including meetings at which administrative fines and penalties  
25 are established, shall be subject to the provisions of ~~Section~~  
26 ~~13A-14-2, as amended, the Sunshine Law, except~~ the Alabama  
27 Open Meetings Act, Section 36-25A-1 et seq.; provided, that

1 sessions at which any information that is confidential under  
2 the provisions of subsection (f) below shall not be subject to  
3 Section 13A-14-2, and shall not be open to the public.

4 "(8) Members of the board of directors or any  
5 committee established by the board may participate in a  
6 meeting of the board or committee by means of telephone  
7 conference, video conference, or similar communications  
8 equipment by means of which all persons participating in the  
9 meeting may hear each other at the same time. Participation by  
10 means authorized in this subdivision shall constitute presence  
11 in person at a meeting for all purposes, including the  
12 establishment of a quorum, to deliberate and to take action.  
13 The telephone or video conference or similar communications  
14 equipment shall also allow members of the public the  
15 opportunity to simultaneously listen to or observe meetings  
16 held pursuant to this subdivision.

17 "(c) In adopting, amending or repealing any rule,  
18 regulation, standard, or statement of general applicability,  
19 the board of directors shall be subject to the applicable  
20 requirements of the Alabama Administrative Procedure Act,  
21 Chapter 22 of this title.

22 "(d) In connection with the assessment and  
23 management of the sufficiency of the collateral pool and the  
24 SAFE Program to provide adequate protection from losses to  
25 public depositors, the board of directors shall be authorized  
26 to exercise the following powers:

1           "(1) Designate financial institutions as qualified  
2 public depositories and require such collateral, or increase  
3 the collateral-pledging level, of any qualified public  
4 depository as may be necessary to administer the provisions of  
5 this chapter and to ensure the sufficiency of the collateral  
6 pool and the SAFE Program to provide adequate protection from  
7 losses to public depositors.

8           "(2) Establish guidelines for accepting, or for  
9 reducing the reported value of, collateral as circumstances  
10 may require in order to ensure the pledging of sufficient  
11 marketable collateral to meet the purposes of this chapter.

12           "(3) Authorize the State Treasurer to issue  
13 suspensions, disqualifications, administrative penalties, and  
14 cease and desist orders in accordance with Section 41-14A-7  
15 against any qualified public depository that has violated any  
16 of the provisions of this chapter or any rules, regulations,  
17 or orders of the board of directors or the State Treasurer  
18 adopted under this chapter.

19           "(4) Take such actions as the board of directors  
20 shall consider to be necessary, appropriate, or desirable in  
21 order to assess and manage the sufficiency of the collateral  
22 pool and the SAFE Program to provide adequate protection from  
23 losses to public depositors, including, without limitation:

24           "a. Establish procedures for the verification of the  
25 reports of any qualified public depository relating to public  
26 deposits it holds when necessary to ensure the availability of

1 adequate funds to pay any potential losses to public  
2 depositors.

3 "b. Establish criteria, based on the overall  
4 financial condition of the participants and applicants, as may  
5 be necessary, to ensure the sufficiency of the collateral pool  
6 and the SAFE Program to provide adequate protection from  
7 losses to public depositors.

8 "c. Establish collateral-pledging levels based on  
9 qualitative and quantitative standards.

10 "d. Establish rules and procedures for the State  
11 Treasurer to monitor and confirm, as often as deemed necessary  
12 by the State Treasurer, the pledged collateral held by  
13 custodians.

14 "e. Set requirements for the filing by qualified  
15 public depositories, custodians, the State Treasurer, the  
16 board's agents and contractors, and other persons of such  
17 documents, reports, records, or other information deemed  
18 necessary by the board of directors to monitor the sufficiency  
19 of the collateral pool and the SAFE Program to provide  
20 adequate protection from losses to public depositors,  
21 including, without limitation:

22 "1. Require reports of each qualified public  
23 depository to reflect the net average monthly balance of the  
24 public deposits held by the qualified public depository and to  
25 reflect the collateral pledged by qualified public  
26 depositories under this chapter, which reports shall not be  
27 required more frequently than monthly except in the case of

1 any qualified public depository that is then subject to  
2 default or insolvency or is the subject of an order of  
3 suspension or disqualification or a cease and desist order  
4 issued by the State Treasurer.

5 "2. Require the submission of copies of quarterly or  
6 annual financial and regulatory reports of qualified public  
7 depositories.

8 "f. Direct the State Treasurer to maintain perpetual  
9 inventory of pledged collateral.

10 "g. Perform, or direct the State Treasurer to  
11 perform, financial analysis of any qualified public depository  
12 as needed.

13 "h. Establish a minimum amount of required  
14 collateral as the board of directors deems necessary to  
15 provide for the contingent liability pool.

16 "(5) Empower the State Treasurer to sell pledged  
17 securities, or move pledged securities to an account  
18 established in the Loss Payment Fund's name, for the purpose  
19 of paying losses to public depositors not covered by deposit  
20 insurance or to perfect the Loss Payment Fund's interest in  
21 the pledged securities.

22 "(6) Empower the State Treasurer to transfer funds  
23 directly from any custodian to public depositors or the  
24 receiver in order to facilitate prompt payment of claims.

25 "(7) Adopt and implement, and monitor compliance  
26 with, such standards, rules, regulations, guidelines, and  
27 orders as the board of directors shall consider to be

1 appropriate or desirable for the purposes of maintaining the  
2 sufficiency of the collateral pool to provide adequate  
3 protection from losses to public depositors.

4 "(8) Delegate to the State Treasurer all of the  
5 responsibility for the day-to-day administration of the SAFE  
6 Program and of the standards, rules, regulations, guidelines,  
7 and orders adopted by the board of directors, as deemed  
8 appropriate or desirable by the board of directors.

9 "(9) Establish the conditions under which entities  
10 resulting from mergers, consolidations, sales of assets and  
11 similar transactions involving qualified public depositories  
12 will succeed qualified public depositories and assume the  
13 former institution's contingent liability agreement under  
14 Section 41-14A-8, and to prescribe requirements for  
15 notification by qualified public depositories to the board of  
16 mergers, consolidations, sales of assets, changes of address,  
17 changes of name, and similar matters.

18 "(10) Establish the conditions under which qualified  
19 public depositories will be required to involuntarily withdraw  
20 from participation in the program and for the conditions under  
21 which collateral pledged by withdrawing qualified public  
22 depositories will be released.

23 "(11) Authorize the filing of any information or  
24 forms required under this chapter to be by electronic data  
25 transmission. Such filings of information or forms shall have  
26 the same force and effect as a signed writing.

1           "(e) The board of directors shall adopt rules or  
2 regulations empowering the State Treasurer to impose  
3 requirements on qualified public depositories to ensure that  
4 applicable accounts maintained by covered public entities and  
5 covered public officials are adequately identified as public  
6 deposits covered by this chapter and that each qualified  
7 public depository can identify on its records the name,  
8 address, and federal employer identification number of the  
9 covered public entities and covered public officials  
10 maintaining public deposits in such qualified public  
11 depository. The State Treasurer may require that each  
12 qualified public depository shall provide an annual statement  
13 to each public depositor then maintaining public deposits with  
14 the qualified public depository summarizing the balances of  
15 public deposits held by the qualified public depository for  
16 the public depositor. The balances reflected in any such  
17 annual statement provided by a qualified public depository  
18 shall be deemed correct unless the public depositor notifies  
19 the qualified public depository to the contrary within 60 days  
20 of receipt of the statement.

21           "(f) Any information contained in a report of a  
22 financial institution provided to the board of directors or  
23 the State Treasurer under this chapter shall, if made  
24 confidential by any law of the United States or of this state  
25 and if the board is notified by the financial institution of  
26 such confidentiality, be considered confidential and exempt  
27 from the provisions of Section 36-12-40, and not subject to

1 dissemination to anyone other than the board of directors and  
2 the State Treasurer under the provisions of this chapter.

3 "(g) Members of the board of directors shall serve  
4 without compensation, but shall be reimbursed for each day's  
5 official duties of the board of directors at the same per diem  
6 and travel rate as is paid employees of the state.

7 "(h) Neither the board of directors nor the State  
8 Treasurer shall have the authority to assess, charge, or  
9 collect any of the costs associated with the implementation,  
10 administration, or enforcement of the SAFE Program against any  
11 covered public entities, covered public officials, or  
12 qualified public depositories, provided, however, that this  
13 subsection shall not limit or restrict the authority of the  
14 board or the State Treasurer, as applicable, to impose  
15 administrative penalties or order restitution pursuant to  
16 Section 41-14A-7 or to make assessments against qualified  
17 public depositories for losses in accordance with Section  
18 41-14A-9."

19 Section 2. This act shall become effective  
20 immediately following its passage and approval by the  
21 Governor, or its otherwise becoming law.