

Enrolled House Bill 2901

Sponsored by Representative BUTLER (at the request of Oregon Bankers Association and Oregon Association of County Treasurers)

CHAPTER

AN ACT

Relating to public funds; creating new provisions; amending ORS 182.470, 284.365, 294.847, 295.005, 295.008, 295.015, 295.018, 295.025, 295.027, 295.035, 295.055, 295.115, 295.205, 377.840, 576.375, 706.720, 708A.535 and 711.410; repealing ORS 295.045, 295.065, 295.085, 295.105, 295.125, 295.175 and 295.185; appropriating money; and limiting expenditures.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 295.027 and sections 2 to 14 of this 2007 Act are added to and made a part of ORS 295.005 to 295.165.

SECTION 2. (1) Within five business days after the State Treasurer receives notice from a custodian pursuant to ORS 295.035 (2)(e) indicating that a bank depository has failed to pledge adequate collateral with its custodian, the treasurer shall send written notice of the failure to each public official who has public funds on deposit in the bank depository with respect to which the notice under ORS 295.035 (2)(e) was given.

(2) Within five business days after the State Treasurer receives notice from a custodian pursuant to ORS 295.035 (2)(f) indicating that a bank depository has once again pledged adequate collateral with its custodian, the treasurer shall send written notice to each public official who was notified under subsection (1) of this section stating that the bank depository once again has adequate collateral.

SECTION 3. (1) Within 20 business days after a public official receives a notice from the State Treasurer pursuant to ORS 295.018 (5)(a) or section 2 (1) of this 2007 Act, the public official shall withdraw from the bank depository to which the notice applies all public funds deposits except those deposits that are insured by the Federal Deposit Insurance Corporation.

(2) If a public official receives a notice from the State Treasurer pursuant to ORS 295.018 (5)(a) or section 2 (1) of this 2007 Act, beginning 20 business days after the public official receives the notice, the public official may not deposit into the bank depository to which the notice applies any public funds deposits if, as a result of such a deposit, the total public funds of the public official on deposit with the bank depository exceed the deposit insurance limit of the Federal Deposit Insurance Corporation. The prohibition on deposits continues until the public official receives notice under ORS 295.018 (5)(b) or section 2 (2) of this 2007 Act indicating that the bank depository is in compliance with ORS 295.018 or 295.035, as applicable.

(3) Except as required by any applicable law or regulation, a bank depository may not impose any early withdrawal penalty or any forfeiture of interest with respect to a withdrawal made by a public official pursuant to this section.

SECTION 4. (1) The deposit of securities by a bank depository with its custodian pursuant to ORS 295.005 to 295.165 constitutes consent by the bank depository to the disposition of the securities in accordance with this section.

(2) When a loss has occurred in a bank depository, the bank depository shall as soon as possible make payment to the proper public officials of all funds subject to the loss, pursuant to the following procedures:

(a) The Director of the Department of Consumer and Business Services or the receiver shall, within 20 days after the issuance of a restraining order or taking possession of any bank depository, ascertain the amount of public funds on deposit in the bank depository as disclosed by its records and the amount of the public funds covered by deposit insurance and certify the amounts to the State Treasurer and to each public official who has public funds on deposit in the bank depository.

(b) Each public official who has public funds on deposit in the bank depository shall, within 10 days after receipt of the certification from the Director of the Department of Consumer and Business Services or the receiver, furnish to the State Treasurer verified statements of the public funds that the public official has on deposit in the bank depository.

(3) Upon receipt of the certification from the Director of the Department of Consumer and Business Services or the receiver and the verified statements from the public officials who have public funds on deposit in the bank depository, the State Treasurer shall ascertain and fix the amount of public funds on deposit in the bank depository, plus interest to the date the funds are distributed to the public official at the rate the bank depository agreed to pay on the funds, minus any amount covered by deposit insurance.

(4) After making the calculation described in subsection (3) of this section, the State Treasurer shall assess the net amount of public funds against all bank depositories, as follows:

(a) First, against the bank depository that suffered the loss, to the extent of the full value of its collateral deposited with its custodian pursuant to ORS 295.005 to 295.165; and

(b) Second, against the collateral of all other bank depositories, on a proportionate basis determined as provided in subsection (5) of this section.

(5) For purposes of subsection (4) of this section, the proportionate share of each of the other bank depositories shall be determined by:

(a) Averaging the amounts of the total public funds deposits reported on the bank depository's last four treasurer reports;

(b) Averaging the total amounts of the total public funds deposits reported on the last four treasurer reports of all of the bank depositories; and

(c) Dividing the result of the calculation performed under paragraph (a) of this subsection by the result of the calculation performed under paragraph (b) of this subsection.

(6) Notwithstanding the assessment provisions of subsection (4) of this section, the State Treasurer shall assess the net amount of public funds deposits of a public official only against the bank depository that suffered the loss, and not against the collateral of other bank depositories, if the public official:

(a) Was given appropriate notice about the bank depository by the State Treasurer under section 2 (1) of this 2007 Act or ORS 295.018 (5)(a); and

(b) The public official did not comply with section 3 of this 2007 Act.

(7) Assessments made by the State Treasurer are payable on the fifth business day following demand. If any bank depository fails to pay its assessment, the State Treasurer shall take possession of the securities segregated as collateral by the bank depository and liquidate the securities for the purpose of paying the assessment.

(8) The State Treasurer shall distribute the net proceeds of the assessments and of any liquidated collateral, to the extent that they do not exceed the total net amount of public funds deposits and accrued interest claimed by the public officials, among the public officials entitled to the proceeds in proportion to the public officials' respective claims.

(9) If the net proceeds of the assessments and of any liquidated collateral are inadequate, after all other available sources are applied, to meet the total claims of the public officials entitled to the proceeds, the public officials may make claims against the closed bank depository as general creditors.

(10) The prohibition on transfers of assets set forth in ORS 711.410 does not apply to assessments, payments, transfers or sales of securities made pursuant to this section.

SECTION 5. The State Treasurer may charge bank depositories for the reasonable expenses of the State Treasurer in connection with the services, duties and activities of the State Treasurer related to ORS 295.005 to 295.165. The State Treasurer shall deposit all moneys received under this section in the Miscellaneous Receipts Account established in the General Fund for the State Treasurer. Moneys received under this section are continuously appropriated to the State Treasurer for the payment of the reasonable expenses of the State Treasurer in connection with the services, duties and activities of the State Treasurer related to ORS 295.005 to 295.165. A bank depository shall pay to the State Treasurer all fees and other amounts charged under this section or under rules adopted to implement this section.

SECTION 6. Upon the distribution of the proceeds of assessments and liquidated collateral pursuant to section 4 of this 2007 Act by the State Treasurer to any public official, the State Treasurer shall be subrogated to all of the right, title and interest of the public official against the closed bank depository, and shall share in any distribution of its assets ratably with other depositors. Any sums received from any distribution shall be paid to the public officials to the extent of any unpaid net deposit liability and the balance remaining shall be paid to the bank depositories against which the assessments were made, pro rata in proportion to the assessments actually paid by each bank depository. However, the closed bank depository may not share in any distribution of the balance remaining. If the State Treasurer incurs expenses in enforcing the treasurer's rights under this section, the expenses may be charged as provided in section 5 of this 2007 Act. The State Treasurer shall submit a claim for expenses to the bank depository, and if the charges are thereafter paid to the treasurer, they shall be treated as a liquidation expense of the closed bank depository.

SECTION 7. (1) On or before each treasurer report due date, each bank depository that has in its possession public funds deposits of one or more public officials that exceed the limits specified in ORS 295.025 shall file its treasurer report with its custodian bank and with the State Treasurer.

(2) Each bank depository that files reports with the State Treasurer under subsection (1) of this section shall notify the State Treasurer in writing or by electronic means within 10 business days of:

(a) The date on which the bank depository's net worth is reduced by an amount greater than 10 percent of the amount shown as its net worth on the most recent report submitted pursuant to subsection (1) of this section; or

(b) The date on which the bank depository ceases to be well capitalized and becomes adequately capitalized or undercapitalized, or ceases to be adequately capitalized and becomes undercapitalized.

(3) An undercapitalized bank depository shall report the actual amount of public funds deposits held by it at least weekly to its custodian bank and to the State Treasurer.

SECTION 8. (1) The State Treasurer may request that the Director of the Department of Consumer and Business Services or another state or federal agency with primary regulatory authority over any financial institution that is a bank depository or that applies to become a bank depository investigate and report to the State Treasurer concerning the condition of the financial institution.

(2) The financial institution examined under this section shall pay the expenses of the investigation and report.

(3) In lieu of an investigation and report, the State Treasurer may rely upon information made available to the State Treasurer or the Director of the Department of Consumer and Business Services by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System or any state bank or thrift regulatory agency.

SECTION 9. The Director of the Department of Consumer and Business Services shall advise the State Treasurer of any action the director takes or directs any bank depository to take that will result in a reduction of greater than 10 percent of the net worth of the bank depository as shown on the most recent treasurer report submitted pursuant to section 7 of this 2007 Act.

SECTION 10. (1) A bank depository may not accept a deposit of public funds if the deposit would cause the aggregate of public funds deposits made by any one public official in the bank depository to exceed at any time the net worth of the bank depository. If a bank depository's net worth is reduced, the bank depository may allow public funds on deposit in excess of the reduced net worth to remain if the bank depository deposits with its custodian eligible securities valued at market value in an amount at least equal to the amount of the excess public funds deposits. If the additional securities required by this section are not deposited with the custodian, the bank depository shall permit the public official to withdraw deposits prior to maturity, including accrued interest, in accordance with applicable statutes and governmental regulations.

(2) The limitations of subsection (1) of this section do not apply to public funds deposits held by a bank depository in a certificate of deposit or time deposit under the program described in ORS 295.027.

SECTION 11. (1) Notwithstanding section 10 of this 2007 Act, a bank depository may not permit the aggregate of public funds deposits on deposit with the bank depository from all public officials to exceed at any time:

(a) 100 percent of the value of the bank depository's net worth, if the bank depository is an undercapitalized bank depository;

(b) 150 percent of the value of the bank depository's net worth, if the bank depository is an adequately capitalized bank depository;

(c) 200 percent of the value of the bank depository's net worth, if the bank depository is a well capitalized bank depository; or

(d) 30 percent of the total aggregate public funds deposits of all public officials in all bank depositories as reported in the most recent notice received by the bank depository from the State Treasurer.

(2) The State Treasurer shall notify each bank depository and its custodian of the total aggregate public funds deposits of all public officials in all bank depositories, based on the most recently submitted treasurer reports. The treasurer shall give the notification required by this subsection by the last day of the month in which bank depositories are required to submit a treasurer report.

(3) If a bank depository's aggregate of public funds deposits exceeds the amount set forth in subsection (1) of this section, the bank depository shall, not later than 20 business days after receipt of notice from the State Treasurer, cease accepting deposits of public funds.

(4) Notwithstanding subsections (1) and (3) of this section:

(a) A bank depository may accept and hold public funds deposits in excess of the limits provided in subsection (1) of this section if the State Treasurer, upon good cause shown, approves the request of the bank depository to hold public funds in excess of the limits provided in subsection (1) of this section for a period not exceeding 90 days.

(b) The limitations of subsection (1) of this section do not apply to public funds deposits held by a bank depository in a program described in ORS 295.027.

(c) A well capitalized bank depository or an adequately capitalized bank depository may accept and hold public funds deposits in excess of the limit provided in subsection (1)(d) of

this section if eligible securities are deposited with the bank depository's custodian as collateral in an amount at least equal to the amount of the public funds deposits in excess of the limitation prescribed in subsection (1)(d) of this section.

SECTION 12. When public funds deposits are made in accordance with ORS 295.005 to 295.165, a public official may not be held liable for any loss of public funds that results from the failure or default of any depository without fault or neglect on the public official's part or on the part of the public official's officers or employees.

SECTION 13. (1) If a bank depository ceases holding public funds deposits, the bank depository's custodian shall continue to hold the pledged securities of the bank depository as collateral pursuant to ORS 295.005 to 295.165. Unless the State Treasurer directs that the bank depository's securities be held for a longer period, the custodian shall hold the bank depository's pledged securities for a period of:

(a) 30 days, in the case of a bank depository that was well capitalized as of the date the bank depository ceased holding any public funds deposits;

(b) 90 days, in the case of a bank depository that was adequately capitalized as of the date the bank depository ceased holding any public funds deposits; or

(c) One year, in the case of a bank depository that was undercapitalized as of the date the bank depository ceased holding any public funds deposits.

(2) If any of a bank depository's pledged securities mature during the periods described in subsection (1) of this section, the bank depository shall pledge substitute securities that shall be held by its custodian until the expiration of the period.

(3) At the end of the applicable holding period, if the bank depository has not, during that period, had on deposit any public funds deposits, the custodian shall tender the bank depository's securities to the bank depository.

(4) Notwithstanding the release of a bank depository's securities pursuant to subsection (3) of this section, the bank depository shall continue to be treated as a bank depository and shall be subject to assessment under section 4 of this 2007 Act until one year after the bank depository ceased holding any public funds deposits. If the bank depository no longer has pledged collateral that may be used to pay the assessment, the bank depository shall remain liable for payment of the assessment from its other assets.

SECTION 14. (1) The State Treasurer shall adopt rules implementing the provisions of ORS 295.005 to 295.165.

(2) The State Treasurer shall design the treasurer report required by section 7 of this 2007 Act. The report shall be designed to minimize the regulatory burden of completing and submitting the report and, to the greatest extent practicable, the form of the report and the content required in the report shall be consistent with the information required by the bank depository's report of condition and income.

SECTION 15. ORS 295.005 is amended to read:

295.005. As used in ORS 295.005 to 295.165, unless the context requires otherwise:

[(1) "Certificate of participation" or "certificate" means a nonnegotiable document issued by a pool manager to a public official.]

(1) "Adequately capitalized" means a bank depository that is classified as adequately capitalized by its primary federal regulatory authority.

(2) "Bank depository" means an insured institution or trust company that:

(a) Maintains a head office or branch in this state in the capacity of an insured institution or trust company; and

(b) Complies with ORS 295.008.

(3) "Business day" means any day other than a federal or State of Oregon legal holiday or a day on which offices of the State of Oregon are otherwise authorized by law to remain closed.

(4) "Credit union depository" means a credit union as defined in ORS 723.006 or a federal credit union if:

(a) The shares and deposits of the credit union or federal credit union are insured by the National Credit Union Share Insurance Fund; and

(b) The credit union or federal credit union maintains a head office or branch in this state in the capacity of a credit union or federal credit union.

[(2)] **(5)** “Custodian bank” or “custodian” means **one of** the following institutions designated by the **bank** depository [*bank*] for its own account:

[(a)] *The Federal Reserve Bank designated to serve this state, or any branch of that bank;*]

[(b)] **(a)** The Federal Home Loan Bank designated to serve this state, or any branch of that bank; **or**

[(c)] **(b)** Any insured institution or trust company[, *as those terms are defined in ORS 706.008,*] that:

(A) Is authorized to accept deposits or transact trust business in this state; [*and that*]

(B) Complies with ORS 295.008; and

(C) Has been approved by the State Treasurer to serve as a custodian bank, if the State Treasurer has approved custodians under ORS 295.008.

[(d)] *The fiscal agency of the State of Oregon, duly appointed and acting as such agency pursuant to ORS 288.010 to 288.110.*]

[(3)] **(6)** “Custodian’s receipt” or “receipt” means a document issued by a custodian bank [*to a pool manager*] describing the securities deposited with it by a **bank** depository [*bank*] to secure public fund deposits.

[(4)] **(7)** [*“Depository bank” or*] “Depository” means **a bank depository or a credit union depository.** [*an insured institution or trust company, as those terms are defined in ORS 706.008, a credit union, as defined in ORS 723.006, the shares and deposits of which are insured by the National Credit Union Share Insurance Fund, or a federal credit union, if the institution, trust company or credit union:*]

[(a)] *Maintains a head office or a branch in this state in the capacity of an insured institution, trust company, credit union or federal credit union; and*

[(b)] *In the case of an insured institution or trust company, complies with ORS 295.008.*]

[(5)] “Pool manager” means:]

[(a)] *The State Treasurer;*]

[(b)] *Any insured institution or trust company, as those terms are defined in ORS 706.008, a credit union, as defined in ORS 723.006, the shares and deposits of which are insured by the National Credit Union Share Insurance Fund, or a federal credit union, if the institution, trust company or credit union:*]

[(A)] *Is authorized to accept deposits or transact trust business in this state; and*

[(B)] *In the case of an insured institution or trust company, complies with ORS 295.008;*]

[(c)] *The Federal Reserve Bank designated to serve this state, or any branch of that bank; or*

[(d)] *The Federal Home Loan Bank designated to serve this state, or any branch of that bank.*]

(8) “Financial institution outside this state” means a financial institution, as defined in ORS 706.008, that is not an extranational institution, as defined in ORS 706.008, and is not a bank depository or credit union depository, as defined in this section.

(9) “Insured institution” means an insured institution as defined in ORS 706.008.

(10) “Loss” means the issuance of an order by a regulatory or supervisory authority or a court of competent jurisdiction:

(a) Restraining a bank depository from making payments of deposit liabilities; or

(b) Appointing a receiver for a public depository.

(11) “Maximum liability” of a bank depository on any given date means a sum equal to:

(a) For a well capitalized bank depository, 10 percent of the greater of:

(A) All public funds held by the bank depository, as shown on the most recent treasurer report;

(B) The average of the balances of public funds held by the bank depository, as shown on the last four immediately preceding treasurer reports; or

(C) An amount otherwise prescribed in ORS 295.005 to 295.165.
(b) For an adequately capitalized bank depository, 25 percent of the greater of:
(A) All public funds held by the bank depository, as shown on the most recent treasurer report;

(B) The average of the balances of public funds held by the bank depository, as shown on the last four immediately preceding treasurer reports; or

(C) An amount otherwise prescribed in ORS 295.005 to 295.165.

(c) For an undercapitalized bank depository, 110 percent of the greater of:

(A) All public funds held by the bank depository; or

(B) The average of the balances of public funds held by the bank depository, as shown on the last four immediately preceding treasurer reports.

(12) "Net worth" of a bank depository means:

(a) The equity capital of the bank depository, as shown on the immediately preceding report of condition and income, and may include capital notes and debentures that are subordinate to the interests of depositors; or

(b) An amount of equity capital designated by the State Treasurer.

(13) "Pledge agreement" means a written agreement among an insured institution or trust company, the State Treasurer and a custodian that pledges the securities deposited by the insured institution or trust company with the custodian as collateral for deposits of public funds held by the insured institution or trust company. The agreement must be approved by the board of directors or loan committee of the insured institution or trust company and must be continuously maintained as a written record of the insured institution or trust company.

[(6)] (14) "Public funds" or "funds" means funds under the control or in the custody of a public official by virtue of office.

(15) "Public official" means each officer or employee of this state or any agency, political subdivision or public or municipal corporation thereof, or any housing authority, who by law is made the custodian of or has control of any public funds.

(16) "Report of condition and income" means the quarterly report submitted to a bank depository's primary federal regulatory authority.

[(7)] (17) "Security" or "securities" means:

(a) Obligations of the United States, including those of its agencies and instrumentalities **and of government sponsored enterprises**;

(b) Obligations of the International Bank for Reconstruction and Development;

(c) Bonds of any state of the United States:

(A) That are rated in one of the four highest grades by a recognized investment service organization that has been engaged regularly and continuously for a period of not less than 10 years in rating state and municipal bonds; or

(B) Having once been so rated are ruled to be eligible securities for the purposes of ORS 295.005 to 295.165, notwithstanding the loss of such rating;

(d) Bonds of any county, city, school district, port district or other public body in the United States payable from **or secured by** ad valorem taxes [*levied generally on substantially all property within the issuing body*] and that meet the rating requirement or are ruled to be eligible securities as provided in paragraph (c) of this subsection;

(e) Bonds of any county, city, school district, port district or other public body issued pursuant to the Constitution or statutes of the State of Oregon or the charter or ordinances of any county or city within the State of Oregon, if the issuing body has not been in default with respect to the payment of principal or interest on any of its bonds within the preceding 10 years or during the period of its existence if that is less than 10 years;

(f) **With the permission of the State Treasurer and in accordance with rules adopted by the State Treasurer, loans made to any county, city, school district, port district or other public body in the State of Oregon, if the borrower has not been in default with respect to**

the payment of principal or interest on any of its loans within the preceding 10 years or during the period of its existence if that is less than 10 years;

[(f)] (g) With the permission of the State Treasurer and in accordance with rules adopted by the State Treasurer, bond anticipation notes issued, sold or assumed by an authority under ORS 441.560;

[(g) One-family to four-family housing mortgage loan notes related to property situated in the State of Oregon, which are owned by a depository bank, no payment on which is more than 90 days past due, and which are eligible collateral for loans from the Federal Reserve Bank of San Francisco under section 10(b) of the Federal Reserve Act and regulations thereunder;]

(h) Bonds, notes, letters of credit or other securities or evidence of indebtedness constituting the direct and general obligation of a federal home loan bank or Federal Reserve bank;

(i) Debt obligations of domestic corporations that are rated in one of the three highest grades by a recognized investment service organization that has been engaged regularly and continuously for a period of not less than 10 years in rating corporate debt obligations; and

(j) Collateralized mortgage obligations and real estate mortgage investment conduits that are rated in one of the two highest grades by a recognized investment service organization that has been engaged regularly and continuously for a period of not less than 10 years in rating corporate debt obligations; and].

[(k) One-family to four-family housing mortgages that have been secured by means of a guarantee as to full repayment of principal and interest by an agency of the United States Government, including the Government National Mortgage Association, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.]

[(8) "Public official" means each officer or employee of this state or any agency, political subdivision or public or municipal corporation thereof who by law is made the custodian of or has control of any public funds.]

(18) "Treasurer report" means a written report signed or authenticated by an officer of a bank depository setting forth as of the close of business on a specified date:

(a) The total amount of public funds on deposit with the bank depository;

(b) The net worth of the bank depository;

(c) The amount and nature of eligible collateral then on deposit with its custodian to collateralize the bank depository's public funds deposits; and

(d) The identity of its custodian.

(19) "Treasurer report due date" means a date not less than 10 business days after the date a bank depository's report of condition and income is due to be submitted to its federal regulatory authority.

(20) "Trust company" means a trust company as defined in ORS 706.008.

(21) "Undercapitalized" means a bank depository that is classified as undercapitalized by its primary federal regulatory authority.

[(9)] (22) "Value" means the current market value of securities.

(23) "Well capitalized" means a bank depository that is classified as well capitalized by its primary federal regulatory authority.

SECTION 15a. If House Bill 3265 becomes law, section 15 of this 2007 Act (amending ORS 295.005) is repealed and ORS 295.005, as amended by section 123, chapter __, Oregon Laws 2007 (Enrolled House Bill 3265), is amended to read:

295.005. As used in ORS 295.005 to 295.165, unless the context requires otherwise:

[(1) "Certificate of participation" or "certificate" means a nonnegotiable document issued by a pool manager to a public official.]

(1) "Adequately capitalized" means a bank depository that is classified as adequately capitalized by its primary federal regulatory authority.

(2) "Bank depository" means an insured institution or trust company that:

(a) Maintains a head office or branch in this state in the capacity of an insured institution or trust company; and

(b) **Complies with ORS 295.008.**

(3) **“Business day” means any day other than a federal or State of Oregon legal holiday or a day on which offices of the State of Oregon are otherwise authorized by law to remain closed.**

(4) **“Credit union depository” means a credit union as defined in ORS 723.006 or a federal credit union if:**

(a) **The shares and deposits of the credit union or federal credit union are insured by the National Credit Union Share Insurance Fund; and**

(b) **The credit union or federal credit union maintains a head office or branch in this state in the capacity of a credit union or federal credit union.**

[2] (5) **“Custodian bank” or “custodian” means one of the following institutions designated by the bank depository [bank] for its own account:**

[a] *The Federal Reserve Bank designated to serve this state, or any branch of that bank;*]

[b] (a) **The Federal Home Loan Bank designated to serve this state, or any branch of that bank; or**

[c] (b) **Any insured institution or trust company[*, as those terms are defined in ORS 706.008,*] that:**

(A) **Is authorized to accept deposits or transact trust business in this state; [and that]**

(B) **Complies with ORS 295.008; and**

(C) **Has been approved by the State Treasurer to serve as a custodian bank, if the State Treasurer has approved custodians under ORS 295.008.**

[d] *The fiscal agency of the State of Oregon, duly appointed and acting as such agency pursuant to section 21 of this 2007 Act.*]

[3] (6) **“Custodian’s receipt” or “receipt” means a document issued by a custodian bank [to a pool manager] describing the securities deposited with it by a bank depository [bank] to secure public fund deposits.**

[4] (7) [*“Depository bank” or*] **“Depository” means a bank depository or a credit union depository. [an insured institution or trust company, as those terms are defined in ORS 706.008, a credit union, as defined in ORS 723.006, the shares and deposits of which are insured by the National Credit Union Share Insurance Fund, or a federal credit union, if the institution, trust company or credit union:]**

[a] *Maintains a head office or a branch in this state in the capacity of an insured institution, trust company, credit union or federal credit union; and]*

[b] *In the case of an insured institution or trust company, complies with ORS 295.008.]*

[5] **“Pool manager” means:**

[a] *The State Treasurer;*]

[b] *Any insured institution or trust company, as those terms are defined in ORS 706.008, a credit union, as defined in ORS 723.006, the shares and deposits of which are insured by the National Credit Union Share Insurance Fund, or a federal credit union, if the institution, trust company or credit union:]*

[A] *Is authorized to accept deposits or transact trust business in this state; and]*

[B] *In the case of an insured institution or trust company, complies with ORS 295.008;]*

[c] *The Federal Reserve Bank designated to serve this state, or any branch of that bank; or]*

[d] *The Federal Home Loan Bank designated to serve this state, or any branch of that bank.]*

(8) **“Financial institution outside this state” means a financial institution, as defined in ORS 706.008, that is not an extranational institution, as defined in ORS 706.008, and is not a bank depository or credit union depository, as defined in this section.**

(9) **“Insured institution” means an insured institution as defined in ORS 706.008.**

(10) **“Loss” means the issuance of an order by a regulatory or supervisory authority or a court of competent jurisdiction:**

(a) **Restraining a bank depository from making payments of deposit liabilities; or**

(b) **Appointing a receiver for a public depository.**

(11) **“Maximum liability” of a bank depository on any given date means a sum equal to:**
(a) **For a well capitalized bank depository, 10 percent of the greater of:**
(A) **All public funds held by the bank depository, as shown on the most recent treasurer report;**

(B) **The average of the balances of public funds held by the bank depository, as shown on the last four immediately preceding treasurer reports; or**

(C) **An amount otherwise prescribed in ORS 295.005 to 295.165.**

(b) **For an adequately capitalized bank depository, 25 percent of the greater of:**

(A) **All public funds held by the bank depository, as shown on the most recent treasurer report;**

(B) **The average of the balances of public funds held by the bank depository, as shown on the last four immediately preceding treasurer reports; or**

(C) **An amount otherwise prescribed in ORS 295.005 to 295.165.**

(c) **For an undercapitalized bank depository, 110 percent of the greater of:**

(A) **All public funds held by the bank depository; or**

(B) **The average of the balances of public funds held by the bank depository, as shown on the last four immediately preceding treasurer reports.**

(12) **“Net worth” of a bank depository means:**

(a) **The equity capital of the bank depository, as shown on the immediately preceding report of condition and income, and may include capital notes and debentures that are subordinate to the interests of depositors; or**

(b) **An amount of equity capital designated by the State Treasurer.**

(13) **“Pledge agreement” means a written agreement among an insured institution or trust company, the State Treasurer and a custodian that pledges the securities deposited by the insured institution or trust company with the custodian as collateral for deposits of public funds held by the insured institution or trust company. The agreement must be approved by the board of directors or loan committee of the insured institution or trust company and must be continuously maintained as a written record of the insured institution or trust company.**

[(6)] (14) **“Public funds” or “funds” means funds under the control or in the custody of a public official by virtue of office.**

(15) **“Public official” means each officer or employee of this state or any agency, political subdivision or public or municipal corporation thereof, or any housing authority, who by law is made the custodian of or has control of any public funds.**

(16) **“Report of condition and income” means the quarterly report submitted to a bank depository’s primary federal regulatory authority.**

[(7)] (17) **“Security” or “securities” means:**

(a) **Obligations of the United States, including those of its agencies and instrumentalities and of government sponsored enterprises;**

(b) **Obligations of the International Bank for Reconstruction and Development;**

(c) **Bonds of any state of the United States:**

(A) **That are rated in one of the four highest grades by a recognized investment service organization that has been engaged regularly and continuously for a period of not less than 10 years in rating state and municipal bonds; or**

(B) **Having once been so rated are ruled to be eligible securities for the purposes of ORS 295.005 to 295.165, notwithstanding the loss of such rating;**

(d) **Bonds of any county, city, school district, port district or other public body in the United States payable from or secured by ad valorem taxes [levied generally on substantially all property within the issuing body] and that meet the rating requirement or are ruled to be eligible securities as provided in paragraph (c) of this subsection;**

(e) **Bonds of any county, city, school district, port district or other public body issued pursuant to the Constitution or statutes of the State of Oregon or the charter or ordinances of any county**

or city within the State of Oregon, if the issuing body has not been in default with respect to the payment of principal or interest on any of its bonds within the preceding 10 years or during the period of its existence if that is less than 10 years;

(f) With the permission of the State Treasurer and in accordance with rules adopted by the State Treasurer, loans made to any county, city, school district, port district or other public body in the State of Oregon, if the borrower has not been in default with respect to the payment of principal or interest on any of its loans within the preceding 10 years or during the period of its existence if that is less than 10 years;

[(f)] **(g) With the permission of the State Treasurer and in accordance with rules adopted by the State Treasurer,** bond anticipation notes issued, sold or assumed by an authority under ORS 441.560;

[(g) One-family to four-family housing mortgage loan notes related to property situated in the State of Oregon, which are owned by a depository bank, no payment on which is more than 90 days past due, and which are eligible collateral for loans from the Federal Reserve Bank of San Francisco under section 10(b) of the Federal Reserve Act and regulations thereunder;]

(h) Bonds, notes, letters of credit or other securities or evidence of indebtedness constituting the direct and general obligation of a federal home loan bank or Federal Reserve bank;

(i) Debt obligations of domestic corporations that are rated in one of the three highest grades by a recognized investment service organization that has been engaged regularly and continuously for a period of not less than 10 years in rating corporate debt obligations; **and**

(j) Collateralized mortgage obligations and real estate mortgage investment conduits that are rated in one of the two highest grades by a recognized investment service organization that has been engaged regularly and continuously for a period of not less than 10 years in rating corporate debt obligations; *and*].

[(k) One-family to four-family housing mortgages that have been secured by means of a guarantee as to full repayment of principal and interest by an agency of the United States Government, including the Government National Mortgage Association, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.]

[(8) "Public official" means each officer or employee of this state or any agency, political subdivision or public or municipal corporation thereof who by law is made the custodian of or has control of any public funds.]

(18) "Treasurer report" means a written report signed or authenticated by an officer of a bank depository setting forth as of the close of business on a specified date:

(a) The total amount of public funds on deposit with the bank depository;

(b) The net worth of the bank depository;

(c) The amount and nature of eligible collateral then on deposit with its custodian to collateralize the bank depository's public funds deposits; and

(d) The identity of its custodian.

(19) "Treasurer report due date" means a date not less than 10 business days after the date a bank depository's report of condition and income is due to be submitted to its federal regulatory authority.

(20) "Trust company" means a trust company as defined in ORS 706.008.

(21) "Undercapitalized" means a bank depository that is classified as undercapitalized by its primary federal regulatory authority.

[(9)] **(22) "Value" means the current market value of securities.**

(23) "Well capitalized" means a bank depository that is classified as well capitalized by its primary federal regulatory authority.

SECTION 16. ORS 295.008 is amended to read:

295.008. (1)(a) An insured institution or trust company *[described in ORS 295.005 (2)(c)]* may not be a custodian bank under ORS 295.005 to 295.165, unless it certifies in writing to the State Treasurer that it will furnish the reports required under ORS 714.075 to the Director of the Department of Consumer and Business Services.

[(b) With the approval of the State Treasurer, a depository bank may be a custodian bank with respect to its own securities.]

(b) The State Treasurer may approve one or more insured institutions or trust companies to serve as custodians for bank depositories. The State Treasurer shall promptly notify all bank depositories of the approval of an insured institution or trust company to serve as a custodian.

(2) An insured institution or trust company *[described in ORS 295.005 (4)]* may not be a **bank** depository *[bank]* under ORS 295.005 to 295.165, unless it:

(a) Certifies in writing to the State Treasurer that it will furnish the reports required under ORS 714.075 to the Director of the Department of Consumer and Business Services; *[and]*

(b) Except as provided in subsection *[(3)] (4)* of this section, enters into a *[written agreement with the State Treasurer and a custodian that pledges the securities deposited by the insured institution or trust company with the custodian as collateral for deposits of public funds held by the insured institution or trust company. The agreement must be approved by the board of directors or loan committee of the insured institution or trust company and shall be continuously maintained as a written record of the insured institution or trust company.]* **pledge agreement; and**

(c) Complies with subsection (3) of this section.

(3) After the operative date of sections 1 to 14 of this 2007 Act, any insured institution or trust company that is not acting as a bank depository on the operative date of sections 1 to 14 of this 2007 Act and that wishes to become a bank depository shall file with the State Treasurer an initial written report signed or authenticated by an officer of the insured institution or trust company setting forth, as of the date the insured institution or trust company intends to commence acting as a bank depository:

(a) The estimated total amount of public funds that will be on deposit with the insured institution or trust company;

(b) The estimated net worth of the insured institution or trust company;

(c) The amount and nature of the collateral that will be deposited with its custodian to collateralize the public funds deposits; and

(d) The identity of its custodian.

[(3)] (4) An insured institution or trust company *[described in ORS 295.005 (4)]* may be a **bank** depository *[bank]* under ORS 295.005 to 295.165 without entering into *[the]* a **pledge** agreement *[described in subsection (2) of this section]* **or complying with subsection (3) of this section** if the insured institution or trust company does not hold any funds on deposit for a public official that exceed the limits specified in ORS 295.025 for that type of depository. The provisions of ORS 295.015, 295.018, 295.035~~], 295.045,~~ **and** 295.055~~], 295.065, 295.105 and 295.185]~~ **and sections 4 and 7 of this 2007 Act** do not apply to an insured institution or trust company that is a **bank** depository *[bank]* under this subsection.

[(4) An insured institution or trust company may not be a pool manager with respect to securities that it deposits with its custodians as collateral for the security of public fund deposits, and an insured institution or trust company may not be a pool manager unless it certifies in writing to the State Treasurer that it will furnish the reports required under ORS 714.075 to the Director of the Department of Consumer and Business Services.]

SECTION 17. ORS 295.015 is amended to read:

295.015. Except as provided in ORS 295.018:

(1)(a) Each bank depository throughout the period of its possession of public fund deposits in excess of the amounts insured or guaranteed as described in ORS 295.025 (1)(a) and (b) shall maintain on deposit with its [custodians] custodian, at its own expense, securities having a value [not less than 25 percent of the certificates of participation issued by its pool manager.] at least equal to its maximum liability and as otherwise prescribed in ORS 295.005 to 295.165. Such collateral shall be deposited with the bank depository's custodian and shall be clearly designated as security for the benefit of depositors of public funds under ORS 295.005 to 295.165.

(b) For purposes of this section, when pledged as collateral for public funds deposits, loans described in ORS 295.005 (17)(f) shall be discounted to 75 percent of the unpaid principal balance owing on the loan from time to time, or to a lower value determined by the State Treasurer from time to time.

(c) When a bond anticipation note is pledged as collateral for public funds deposits, if there is no readily determinable market value for the note, it shall be discounted to 75 percent of the unpaid principal balance owing on the note from time to time, or to a lower value determined by the State Treasurer from time to time.

(2) The **bank** depository may deposit other eligible securities with its custodian and withdraw from deposit securities theretofore pledged to secure deposits of public funds, if the remaining securities have a value not less than [25 percent of outstanding certificates of participation of the pool manager] **its maximum liability**. The [pool manager] **State Treasurer** shall execute such releases and surrender such custodian's receipts as are appropriate to effect substitutions and withdrawals of **matured and** excess pledged securities.

(3) If a **bank depository's maximum liability** increases because it ceases to be a well capitalized bank depository or because it ceases to be an adequately capitalized bank depository, within five business days after the date on which the bank depository's maximum liability increases, the bank depository shall:

(a) Notify its custodian and the State Treasurer in writing that the bank depository's maximum liability has increased, setting forth the bank depository's new maximum liability; and

(b) Tender to its custodian additional securities having sufficient value to increase the total value of its securities pledged as collateral for public funds deposits to the new maximum liability of the bank depository.

(4) If a **bank depository's maximum liability** decreases because it moves from being an undercapitalized bank depository to being a well capitalized bank depository or an adequately capitalized bank depository, or because it moves from being an adequately capitalized bank depository to a well capitalized bank depository, the bank depository may:

(a) Notify its custodian and the State Treasurer in writing that the bank depository's maximum liability has decreased, setting forth the bank depository's new maximum liability; and

(b) With the written approval of the State Treasurer, withdraw from its custodian any securities that exceed the bank depository's new maximum liability.

(5) The State Treasurer shall act upon requests for releases and withdrawals of securities under subsections (2) and (4)(b) of this section within three business days after the receipt of each request.

SECTION 18. ORS 295.018 is amended to read:

295.018. (1) The State Treasurer may require any **bank** depository [*bank*] during any period when it has in its possession public fund deposits to maintain on deposit with its custodians securities having a value not less than 110 percent of **the greater of:** [*the certificates of participation issued by its pool manager.*]

(a) **All public funds held by the bank depository; or**

(b) **The average of the balances of public funds held by the bank depository, as shown on the last four immediately preceding treasurer reports.**

(2) [*The*] **An** increase in collateral **under subsection (1) of this section** shall be ordered upon the advice of the Director of the Department of Consumer and Business Services. If the **bank** depository [*bank*] is a **national bank or a federally chartered savings bank or** savings and loan association, in giving [*its*] advice to the State Treasurer the director may rely exclusively on information provided to the director by federal regulatory agencies and by the association on forms prescribed by the director[;]. As a condition of being analyzed and reviewed by the director, a federal association shall agree and consent to provide the director with accurate, pertinent and timely information.

[2] (3) Failure of the director to inform the State Treasurer of the condition of any **bank** depository does not give any public depositor any right or impose any liability on the director. The State Treasurer shall not be liable to any public depositor or to any **bank** depository [*bank*] for increasing or not increasing the collateral requirement as authorized in subsection (1) of this section.

[3] (4) Any **bank** depository [*bank*] notified by the State Treasurer of the increased collateral requirement shall comply with the order within [10] **five** business days by increasing the collateral in the same manner as required for the initial deposit of collateral in ORS 295.015[. *The bank*] **and, within the same five days,** shall notify the State Treasurer [*and the pool manager*] of its compliance by supplying copies of the custodian's receipts for, **or statement of activity showing,** the increased collateral.

[4] (5)(a) If [*any depository bank notified by the State Treasurer of an increased collateral requirement fails to notify the State Treasurer of compliance therewith within 10*] **the State Treasurer does not receive the notice required in subsection (4) of this section within the required five** business days, the State Treasurer shall immediately notify the director of the failure and shall send notice to [*the pool manager and*] all public [*depositors*] **officials** served by that **bank** depository [*bank*] of its failure to comply.

(b) **If, after giving notice as required by paragraph (a) of this subsection, the State Treasurer receives notice that the bank depository is in compliance with the increased collateral requirements, the treasurer shall notify the public officials served by the bank depository that the bank depository is once again in compliance.**

[5] (6) A **bank** depository [*bank described in*] **that does not comply with** subsection (4) of this section shall accept no further public **funds** deposits **that are not insured by the Federal Deposit Insurance Corporation.**

[6] (7) **The names of** financial institutions [*named*] **contained** in records received or compiled by the State Treasurer pursuant to the provisions of this section shall be exempt from public disclosure unless the public interest requires disclosure in the particular instance.

SECTION 19. ORS 295.025 is amended to read:

295.025. (1) Any public official may retain undeposited such reasonable cash working fund as is fixed by the governing body of the political subdivision or public corporation for which the public official acts. Except to the extent of such cash working fund, each public official shall deposit public funds in the custody or control of the public official in one or more depositories currently qualified pursuant to ORS 295.005 to 295.165. The public official may not have on deposit in any one **credit union** depository [*bank that is a credit union or federal credit union*] an aggregate sum in excess of [*\$100,000*] **the deposit insurance limits established by the National Credit Union Administration.** With respect to [*other depository banks*] **bank depositories, unless a bank depository has entered into the agreement described in ORS 295.008 (2)(b) and has deposited securities pursuant to ORS 295.015 (1),** the public official[, *without procuring certificates of participation issued by the pool manager of the depository in an amount equal to the excess deposit,*] shall not have on deposit in any one **bank** depository [*bank*] and its branches a sum in excess of:

(a) The amount insured by the Federal Deposit Insurance Corporation; or

(b) For any amount over the amount insured by the Federal Deposit Insurance Corporation, the amount insured or guaranteed by private deposit insurance or a deposit guaranty bond issued by an insurance company rated A- or better by a recognized insurance rating service.

[2] *Whenever a public official holds a certificate of participation issued by a pool manager in an amount exceeding the amount required by subsection (1) of this section, upon the written request of the depository bank the public official shall surrender it to the pool manager or direct the pool manager in writing to cancel it in whole or in a designated part.*

[3] (2) Compliance with ORS 295.005 to 295.165 relieves the public official of personal liability on account of the loss of the public funds in the custody or control of the public official.

SECTION 20. ORS 295.027 is amended to read:

295.027. (1) A public official may deposit public funds in a **bank depository in** an amount in excess of the amount allowed in ORS 295.025 without [*procuring a certificate of participation*] **re-**

quiring the bank depository to show that it has entered into the agreement described in ORS 295.008 (2)(b) or deposited securities pursuant to ORS 295.015 (1) if the funds are initially deposited into a bank depository in Oregon and the Oregon bank depository participates in a program through which:

(a) The Oregon **bank depository** arranges for deposit of the funds into one or more certificates of deposit or time deposits issued by other financial institutions in the United States;

(b) Each certificate of deposit or time deposit is fully insured by the Federal Deposit Insurance Corporation;

(c) The Oregon **bank depository** administers the funds on behalf of the public official; and

(d) Other financial institutions participating in the program place funds into the Oregon depository in an amount at least equal to the amount deposited into the Oregon **bank depository** by the public official for purposes of the program.

(2) Until the Oregon bank depository places public funds into one or more certificates of deposit or time deposits as provided in subsection (1) of this section, any public funds held by the Oregon bank depository pending such placement that are in excess of the amounts allowed in ORS 295.025 must be collateralized as provided in ORS 295.005 to 295.165 for other public funds deposits.

[2] (3) **The provisions of ORS 295.015, 295.018, 295.035 and 295.055 and section 4 of this 2007 Act do not apply to public funds deposits deposited into a bank depository in Oregon that the bank depository arranges for under the provisions of the program described in this section.** The provisions of ORS 294.035 and 295.005 requiring deposit of public funds into depositories that have offices or branches in Oregon do not apply to certificates of deposit or time deposits that an Oregon **bank depository** arranges for under the provisions of the program described in this section.

[3] *As used in this section, "public funds" and "public official" have the meanings given those terms in ORS 295.005.*

SECTION 21. ORS 295.035 is amended to read:

295.035. (1) Upon receipt of securities from the **bank depository** [*bank*], the custodian bank shall issue to [*the pool manager designated by the depository*] **the State Treasurer, with a copy to the bank depository**, a custodian's receipt describing the securities.

(2) Each custodian shall:

(a) **Maintain an accurate inventory of the securities of each bank depository described in the custodian's receipts issued by the custodian to the State Treasurer, and adjust the inventory to reflect withdrawals and substitutions of securities previously inventoried.**

(b) **Appraise the value of the securities added to and withdrawn from the inventory of the bank depository, and appraise the value of the entire inventory of the bank depository on the last day of each month and at such other times as the State Treasurer directs.**

(c) **Provide a monthly report to the State Treasurer listing the securities pledged by each bank depository and setting forth the value of each security and of the entire inventory of securities pledged by the bank depository.**

(d) **Notify a bank depository in writing whenever the value of the securities held by the custodian for the bank depository is less than:**

(A) For a bank depository that is subject to increased collateral requirements under ORS 295.018, 110 percent of the greater of:

(i) All public funds held by the bank depository; or

(ii) The average of the balances of public funds held by the bank depository, as shown on the last four immediately preceding treasurer reports; or

(B) For a bank depository that is not subject to increased collateral requirements under ORS 295.018, the maximum liability for the bank depository.

(e) **Notify the State Treasurer in writing if a bank depository fails to increase the value of its securities within five business days after receipt of notice under paragraph (d) of this subsection.**

(f) **Notify the State Treasurer in writing if a bank depository increases the value of its securities to an adequate amount after receipt of notice under paragraph (d) of this subsection.**

(g) **Notify the State Treasurer whenever a bond in the inventory of a bank depository no longer meets the rating requirements described in ORS 295.005 (17)(c) or (d).**

SECTION 22. ORS 295.055 is amended to read:

295.055. (1) Each **bank** depository [*bank*] shall keep on file with the State Treasurer the [*names and addresses of each of its custodian banks and pool managers*] **name and address of its custodian bank.**

(2) **Each public official shall keep on file with the State Treasurer the names, addresses and such other information as the State Treasurer shall prescribe by rule of each depository in which the public official deposits public funds.**

SECTION 23. ORS 295.115 is amended to read:

295.115. (1) **Subject to ORS 295.015, 295.018 and 295.025,** any depository may offer in writing to accept from the State Treasurer time deposits without limitation in amount or in an aggregate amount therein stated and to pay interest on the time deposits at rates specified in the offer. The offer shall be a continuing offer until it is modified or withdrawn by notice in writing delivered or mailed by registered or certified mail to the State Treasurer. While the offer continues in effect, the depository is bound to accept upon the terms therein specified time deposits tendered by the State Treasurer.

(2) Any funds deposited by the State Treasurer on a time basis shall be deposited at the highest rate of interest available for the amount and term of the deposit.

(3) The State Treasurer shall establish time deposits so as to make the deposited moneys as productive as possible, and shall exercise the judgment and care which persons of prudence, discretion and intelligence exercise in the management of their own affairs, considering the probable income and the probable safety of the moneys deposited, including the distribution of the deposits among depositories so as to minimize the possibility of loss of moneys.

SECTION 24. ORS 295.205 is amended to read:

295.205. (1) Notwithstanding any other law:

(a) The State Treasurer may establish demand deposit accounts in financial institutions outside this state for the purpose of accepting deposits of funds related to the state investments in the geographical areas respectively serviced by the institutions.

(b) Moneys paid to or collected by a financial institution or other entity under an agreement to provide loan servicing for a state agency, political subdivision or public corporation may be deposited in accounts in financial institutions outside this state for the purpose of:

(A) Accepting payments of loan principal and interest;

(B) Accepting and holding escrow funds;

(C) Accepting and holding funds required to be held in reserve with or on behalf of the state agency, political subdivision or public corporation; or

(D) Collecting and holding any other moneys required by the agreement for loan servicing to be collected or held by the financial institution or other entity prior to remittance to the state agency, political subdivision or public corporation or a third party.

(c) Moneys held by a trustee or escrow agent pursuant to a bond indenture, certificate of participation indenture or escrow agreement with a state agency, political subdivision or public corporation in this state that are public funds, as defined in ORS 295.005, may be deposited in accounts in financial institutions outside this state.

(2) The State Treasurer shall establish the demand deposit accounts described in subsection (1)(a) of this section in accordance with rules adopted pursuant to ORS 183.310 to 183.410 that, *to the extent practicable, provide that deposits of state investment funds are collateralized and managed in the manner otherwise required for deposits of public funds in the state under ORS 295.005 to 295.165.] ensure that reasonable and prudent measures are taken to protect the state investment funds from loss.*

(3) When accounts are established for a state agency, political subdivision or public corporation under subsection (1)(b) or (c) of this section, the state agency, political subdivision or public corporation in the agreement to provide loan servicing or the bond indenture, certificate of participation indenture or escrow agreement shall *[require that:]* **ensure that reasonable and prudent measures are taken to protect the moneys in the accounts from loss.**

[(a) All moneys deposited in the accounts, to the extent practicable, must be collateralized at the same level and managed in the same manner otherwise required for deposits of public funds in this state under ORS 295.005 to 295.165;]

[(b) Compliance with the collateralization and management requirements of this subsection be monitored and evidence of compliance that is satisfactory to the state agency, political subdivision or public corporation be periodically supplied to the state agency, political subdivision or public corporation; and]

[(c) Failure by a financial institution or other entity to maintain deposits collateralized and managed as required by this subsection shall constitute a breach of the applicable loan servicing agreement, bond indenture, certificate of participation indenture or escrow agreement.]

(4) A public official may not have on deposit in any credit union that is a financial institution outside this state an aggregate sum in excess of the deposit insurance limit established by the National Credit Union Administration.

(5) As used in this section, the terms “financial institution outside this state” and “public official” have the meanings given those terms in ORS 295.005.

SECTION 25. ORS 182.470 is amended to read:

182.470. (1) Notwithstanding ORS 670.335, except where otherwise specifically provided by statute pursuant to ORS 182.462 (5), all moneys collected or received by a board, placed to the credit of that board and remaining unexpended and unobligated on the date that the board is established as a semi-independent state agency, and all moneys collected or received by a board after the date that the board is established as a semi-independent state agency, must be deposited into an account established by that board in a depository *[bank]* insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. In a manner consistent with the requirements of *[ORS chapter 295]* **ORS 295.005 to 295.165**, the chairperson, president or administrator of a board shall ensure that sufficient collateral secures any amount of funds on deposit that exceeds the limits of the coverage of the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. All moneys in the account are continuously appropriated to the board making the deposit for the purpose of carrying out the functions of the board.

(2) Subject to the approval of the chairperson, president or administrator, a board may invest moneys collected or received by the board. Investments made by a board are:

(a) Limited to investments described in ORS 294.035;

(b) Subject to the investment maturity date limitations described in ORS 294.135; and

(c) Subject to the conduct prohibitions listed in ORS 294.145.

(3) Interest earned from any accounts invested under subsection (2) of this section shall be made available to a board in a manner consistent with the board’s annual budget.

(4) Subject to the approval of the chairperson, president or administrator, all necessary board expenses shall be paid from the moneys collected or earned by a board.

(5) As used in this section, “depository *[bank]*” has the meaning given that term in ORS 295.005.

SECTION 26. ORS 284.365 is amended to read:

284.365. (1) All moneys collected, received or appropriated to the Oregon Film and Video Office shall be deposited in an account established in a depository *[bank]* insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. In a manner consistent with the requirements of *[ORS chapter 295]* **ORS 295.005 to 295.165**, the chairperson of the Film and Video Board shall insure that sufficient collateral secures any amount of funds on deposit that exceeds the limits of the coverage of the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. Subject to approval by the chairperson, the board may invest moneys collected or received by the office. Investments made by the board are limited to the types of in-

vestments listed in ORS 294.035 (3)(a) to (i). Interest earned from any amounts invested must be made available to the office in a manner consistent with the biennial budget approved by the board.

(2) Subject to the approval of the director of the office, all necessary expenses of the office and the board must be paid from the moneys collected, appropriated or earned by the office.

(3) The office shall adopt a budget on a biennial basis using the classifications of expenditures and revenues required by ORS 291.206 (1). The budget is not subject to review and approval by the Legislative Assembly or to modification by the Emergency Board or the Legislative Assembly. However, the budget must be included in the biennial report required by ORS 284.335 (5).

(4) The board shall adopt a budget only after holding a public hearing on the proposed budget. At least 15 days prior to any public hearing on the proposed budget, the board shall give notice of the hearing to all persons known to be interested in the proceedings of the board and to any person who requests notice.

(5) All expenditures from the account established for the office under subsection (1) of this section are exempt from any state expenditure limitation. The office shall follow generally accepted accounting principles and keep such financial and statistical information that is necessary to completely and accurately disclose the financial condition and financial operations of the office as may be required by the Secretary of State.

(6) As used in this section, “depository [*bank*]” has the meaning given that term in ORS 295.005.

SECTION 27. ORS 294.847 is amended to read:

294.847. In making investments pursuant to ORS 294.805 to 294.895, the investment officer shall not:

(1) Make a commitment to invest funds or sell securities more than 14 business days prior to the anticipated date of settlement of the purchase or sale transaction;

(2) Enter into any agreement to invest funds or sell securities for future delivery for a fee other than interest;

(3) Lend securities to any person or institution, except on a fully collateralized basis;

(4) Pay for any securities purchased by the investment officer until the investment officer has received physical possession, or other sufficient evidence, as determined under ORS 293.751 (1), of title thereof. However, the investment officer may instruct any custodian bank, defined in ORS 295.005 [(2)], to accept securities on the investment officer’s behalf against payment therefor previously deposited with the institution by the investment officer; or

(5) Deliver securities to the purchaser thereof upon sale prior to receiving payment in full therefor. However, the investment officer may deliver the securities to any custodian bank, defined in ORS 295.005 [(2)], upon instructions to hold the same pending receipt by the institution of full payment therefor.

SECTION 28. ORS 377.840 is amended to read:

377.840. (1) All moneys collected or received by the Travel Information Council shall be deposited into a Travel Information Council account established in a depository [*bank*] insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. In a manner consistent with the requirements of [ORS chapter 295] **ORS 295.005 to 295.165**, the chairperson of the council shall insure that sufficient collateral secures any amount of funds on deposit that exceeds the limits of the coverage of the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. Subject to the chairperson’s approval, the council may invest moneys collected or received by the council. Investments made by the council are limited to the types of investments listed in ORS 294.035. Interest earned from any amounts invested shall be made available to the council in a manner consistent with the council’s approved biennial budget.

(2) Subject to the approval of the chairperson or director of the Travel Information Council, all necessary council expenses shall be paid from the moneys collected or earned by the council.

(3)(a) The Travel Information Council shall adopt a budget on a biennial basis using the classifications of expenditures and revenues required by ORS 291.206 (1). However, the budget shall not be subject to review and approval by the Legislative Assembly or to future modification by the Emergency Board or Legislative Assembly.

(b) The council shall adopt a budget only after a public hearing thereon. At least 15 days prior to any public hearing on the budget, the council shall give notice of the hearing to all persons known to be interested in the proceedings of the council and to any person who requests notice.

(4) All expenditures from the Travel Information Council account are exempt from any state expenditure limitation. The Travel Information Council shall follow generally accepted accounting principles and keep such other financial and statistical information as may be necessary to completely and accurately disclose the financial condition and financial operations of the council as may be required by the Secretary of State.

(5) As used in this section, "depository [*bank*]" has the meaning given in ORS 295.005.

SECTION 29. ORS 576.375 is amended to read:

576.375. (1) All moneys collected or received by any person from the assessment levied under the authority of ORS 576.325 and all other moneys received by a commodity commission must be paid to the authorized agent of the commission and promptly deposited into an account established by the commission in a depository [*bank*], as defined in ORS 295.005, that is insured by the Federal Deposit Insurance Corporation. In a manner consistent with the requirements of [*ORS chapter 295*] **ORS 295.005 to 295.165**, the chairperson and vice chairperson for a commission shall ensure that sufficient collateral secures any amount of funds on deposit that exceeds the limits of the Federal Deposit Insurance Corporation's coverage. All moneys in the account are continuously appropriated to the commission making the deposit for the purpose of carrying out the duties, functions and powers of the commission.

(2) Moneys may not be withdrawn from or paid out of the account except upon order of the commission, and upon checks or other orders upon such accounts signed by the secretary-treasurer or such other member of the commission as the commission designates and countersigned by such other member, officer or employee of the commission as the commission designates. The commission shall keep a receipt, voucher or other written record, showing clearly the nature and items covered by each check or other order.

(3) Subject to approval by the Director of Agriculture, a commission may invest moneys collected or received by the commission. Investments made by a commission are:

(a) Limited to investments described in ORS 294.035;

(b) Subject to the investments maturity date limitations described in ORS 294.135; and

(c) Subject to the conduct prohibitions listed in ORS 294.145.

(4) Interest earned from any moneys invested by a commission under subsection (3) of this section is available to the commission in a manner consistent with the commission's annual budget.

SECTION 30. ORS 706.720 is amended to read:

706.720. (1) The Director of the Department of Consumer and Business Services shall receive and file in the Department of Consumer and Business Services all reports required by the Bank Act.

(2) Except as provided in subsection (3) of this section and ORS 706.730, the records of the Department of Consumer and Business Services pertaining to the administration of the Bank Act are available for public inspection unless the director determines in the particular instance that the public interest in disclosure of the records is outweighed by the interests of an Oregon operating institution or its directors, stockholders, officers, employees and customers in keeping the records confidential, or that the records are exempt from disclosure under ORS 192.501 to 192.505. A determination by the director under this subsection is subject to review under ORS 192.410 to 192.505.

(3) Except as provided in subsections (4) and (5) of this section, the following records of the department are exempt from disclosure or production and shall be treated as confidential as provided in ORS 705.137:

(a) Examination reports and work papers, directives, orders and correspondence that relate to examination reports.

(b) Investigatory information concerning persons subject to investigation by the director under ORS 707.070, 707.080, 707.110, 707.140, 707.145, 707.155 or 707.705 and financial statements of such persons.

(c) Proprietary information.

- (d) Reviews of financial statements submitted to the director.
- (e) Reports filed under ORS 706.655.
- (f) Stockholder lists.

(4) Notwithstanding subsection (3) of this section, the director may disclose any record of the department specified in this subsection pertaining to an Oregon operating institution that has been liquidated under ORS 711.400 to 711.615 if the director determines in the particular instance that the public interest in disclosure of the record outweighs the interests of the Oregon operating institution or its directors, stockholders, officers, employees or customers in keeping the record confidential. Under no circumstances, however, shall the director disclose any such record or portion thereof that contains any proprietary information or any information relating to the individual financial activities or affairs of persons unless the director concludes that those activities or affairs were a direct and substantial contributing factor in the failure of the Oregon operating institution. This subsection applies to the following records of the department:

(a) Examination reports and work papers, directives, orders and correspondence relating to examination reports;

(b) Investigatory information concerning persons subject to investigation by the director under ORS 707.070, 707.080, 707.110, 707.140, 707.145, 707.155 or 707.705;

(c) Reviews of financial statements; and

(d) Reports filed under ORS 706.655.

(5) Notwithstanding ORS 40.270, an officer of the department may be examined concerning records that are exempt from disclosure under subsection (2) or (3) of this section and ORS 706.730 and the records are subject to production if the court before which a civil or criminal action is pending finds that such examination and production is essential for establishing a claim or defense. In making a finding under this subsection, if the court views the records, the court shall do so in camera.

(6) A civil penalty imposed by the director under the Bank Act shall become subject to public inspection after the 20th day after the director imposes the civil penalty.

(7) All records of the department pertaining to the condition of Oregon operating institutions may be furnished to:

(a) The Federal Reserve Bank and its examiners.

(b) The Comptroller of the Currency of the United States and national bank examiners.

(c) The Federal Deposit Insurance Corporation and its examiners.

(d) The Federal Home Loan Bank of which the operating institution is a member or to which the operating institution has applied for membership.

(e) The State Treasurer if the Oregon operating institution is **or has applied to become** a depository of public fund deposits.

(f) Any supervisory authority that regulates financial institutions, financial holding companies or bank holding companies.

(g) The respective Oregon operating institution, or the financial holding company or bank holding company that controls an Oregon operating institution.

(8) The director shall prescribe and furnish to interested persons the forms for all reports required by the Bank Act.

(9) If the director is requested to disclose any record subject to this section and the record contains both material that is exempt from disclosure under this section or any other provision of law and material that is not exempt from disclosure, the director shall separate the exempt and nonexempt material and shall disclose only the nonexempt material.

SECTION 31. ORS 708A.535 is amended to read:

708A.535. (1) An institution may only grant security interests in its assets:

(a) To secure its indebtedness to a Federal Reserve Bank or Federal Home Loan Bank.

(b) To secure its borrowings from others with a maturity of 90 days or less, provided the value of the assets pledged shall not be more than 50 percent greater than the amount borrowed. If the value of the assets pledged is more than 25 percent greater than the amount borrowed or if the

amount borrowed is greater than the stockholders' equity of the bank, the transaction shall first be approved in writing by the Director of the Department of Consumer and Business Services.

(c) To secure its deposits that are not insured by the Federal Deposit Insurance Corporation provided:

(A) The value of aggregate assets pledged does not exceed 20 percent of its stockholders' equity; and

(B) The prior written approval of the director is obtained.

(d) To secure public funds **pursuant to ORS 295.005 to 295.165**, trust funds awaiting investment or distribution, or trust funds deposited with it by an institution.

(2) Notwithstanding any other provision of state law, when an institution grants a security interest in assets to secure public funds, the depositor of the public funds and any bailee of pledged securities or other assets shall be entitled to the status of a lien creditor as defined in ORS 79.0102.

(3) An institution shall grant a security interest in its assets only when authorized by a general or specific prior resolution [or] of its board of directors.

(4) As used in this section, "public funds" means deposits belonging to:

(a) The State of Oregon that may be deposited to the official credit of the State Treasurer, and funds that may be deposited in an official capacity by any state officer, board or commission.

(b) Any county within this state deposited to the official credit of the county treasurer, including the funds of any irrigation or drainage district organized under the laws of this state, or any school district within this state where funds of the school district are deposited with the county treasurer, and funds that may be deposited in an official capacity by any county officer.

(c) Any port, port commission, dock or dock commission within this state that may be deposited to the credit of the port, port commission, dock or dock commission, or the treasurer thereof.

(d) Any city within this state deposited to the official credit of the city treasurer, and funds that may be deposited in an official capacity by any officer of any municipal corporation.

(e) Any school district within this state.

(f) Any district organized under the laws of this state with the power to levy taxes.

(g) Any housing authority organized and operating pursuant to ORS 456.055 to 456.235.

(h) The United States and any of its agencies and instrumentalities to be deposited in the manner and under the rules prescribed by the United States Government.

SECTION 32. ORS 711.410 is amended to read:

711.410. **Except for transfers by a bank depository or the State Treasurer of public funds or securities as required by ORS 295.005 to 295.165**, all transfers of assets made after the commission of an act of insolvency or in contemplation of insolvency, to prevent the application of the assets in the manner prescribed by the Bank Act or to the preference of one creditor to another are void.

SECTION 33. On or before July 1, 2008, each insured institution and trust company that wishes to act as a bank depository under ORS 295.005 to 295.165 from and after July 1, 2008, shall file with the State Treasurer an initial written report signed or authenticated by an officer of the insured institution or trust company, together with an executed copy of its pledge agreement. The report shall set forth:

(1) The estimated total amount of public funds that will be on deposit with the insured institution or trust company as of July 1, 2008;

(2) The estimated net worth of the insured institution or trust company on July 1, 2008;

(3) The amount and nature of the collateral that will be deposited with its custodian to collateralize the public funds deposits; and

(4) The identity of its custodian.

SECTION 34. Notwithstanding any other law limiting expenditures of the State Treasurer for the payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, for the biennium beginning July 1, 2007, the limitation on expenditures for the State Treasurer established by section 1 (1), chapter 109, Oregon Laws 2007 (Enrolled House Bill 5049), is increased by \$86,786 for the

purpose of carrying out the provisions of sections 1 to 14 of this 2007 Act and the amendments to ORS 182.470, 284.365, 294.847, 295.005, 295.008, 295.015, 295.018, 295.025, 295.027, 295.035, 295.055, 295.115, 295.205, 377.840, 576.375, 706.720, 708A.535 and 711.410 by sections 15 to 32 of this 2007 Act.

SECTION 35. ORS 295.045, 295.065, 295.085, 295.105, 295.125, 295.175 and 295.185 are repealed.

SECTION 36. Sections 1 to 14 of this 2007 Act, the amendments to ORS 182.470, 284.365, 294.847, 295.005, 295.008, 295.015, 295.018, 295.025, 295.027, 295.035, 295.055, 295.115, 295.205, 377.840, 576.375, 706.720, 708A.535 and 711.410 by sections 15 to 32 of this 2007 Act and the repeal of ORS 295.045, 295.065, 295.085, 295.105, 295.125, 295.175 and 295.185 by section 35 of this 2007 Act become operative July 1, 2008.

SECTION 37. The provisions of sections 1 to 14 of this 2007 Act and the amendments to ORS 182.470, 284.365, 294.847, 295.005, 295.008, 295.015, 295.018, 295.025, 295.027, 295.035, 295.055, 295.115, 295.205, 377.840, 576.375, 706.720, 708A.535 and 711.410 by sections 15 to 32 of this 2007 Act apply to all public funds on deposit on or after July 1, 2008.

SECTION 38. If House Bill 3265 becomes law, section 34 of this 2007 Act is amended to read:

Sec. 34. Notwithstanding any other law limiting expenditures of the State Treasurer for the payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, for the biennium beginning July 1, 2007, the limitation on expenditures for the State Treasurer established by section 1 (1), chapter 109, Oregon Laws 2007 (Enrolled House Bill 5049), is increased by \$86,786 for the purpose of carrying out the provisions of sections 1 to 14 of this 2007 Act and the amendments to ORS 182.470, 284.365, 294.847, 295.005, 295.008, 295.015, 295.018, 295.025, 295.027, 295.035, 295.055, 295.115, 295.205, 377.840, 576.375, 706.720, 708A.535 and 711.410 by sections [15] **15a** to 32 of this 2007 Act.

SECTION 39. If House Bill 3265 becomes law, section 36 of this 2007 Act is amended to read:

Sec. 36. Sections 1 to 14 of this 2007 Act, the amendments to ORS 182.470, 284.365, 294.847, 295.005, 295.008, 295.015, 295.018, 295.025, 295.027, 295.035, 295.055, 295.115, 295.205, 377.840, 576.375, 706.720, 708A.535 and 711.410 by sections [15] **15a** to 32 of this 2007 Act and the repeal of ORS 295.045, 295.065, 295.085, 295.105, 295.125, 295.175 and 295.185 by section 35 of this 2007 Act become operative July 1, 2008.

SECTION 40. If House Bill 3265 becomes law, section 37 of this 2007 Act is amended to read:

Sec. 37. The provisions of sections 1 to 14 of this 2007 Act and the amendments to ORS 182.470, 284.365, 294.847, 295.005, 295.008, 295.015, 295.018, 295.025, 295.027, 295.035, 295.055, 295.115, 295.205, 377.840, 576.375, 706.720, 708A.535 and 711.410 by sections [15] **15a** to 32 of this 2007 Act apply to all public funds on deposit on or after July 1, 2008.

Passed by House May 1, 2007

Repassed by House June 23, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 22, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State