

Enrolled House Bill 3700

Sponsored by COMMITTEE ON RULES

CHAPTER

AN ACT

Relating to public funds; creating new provisions; amending ORS 295.001, 295.002, 295.004, 295.006, 295.008, 295.013, 295.015, 295.018, 295.031, 295.034, 295.041, 295.046, 295.048, 295.053, 295.061, 295.071, 295.073, 295.081, 295.084, 295.091, 295.106, 295.108, 295.205, 576.375 and 711.410; appropriating money; and declaring an emergency.

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

SECTION 1. ORS 295.001 is amended to read:

295.001. As used in ORS 295.001 to 295.108, unless the context requires otherwise:

(1) "Adequately capitalized" means a [*bank*] depository that is classified as adequately capitalized by [*its*] **the depository's** 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*] a day other than a federal or State of Oregon legal holiday or a day **other than a day** on which offices of the State of Oregon are otherwise authorized by law to remain closed.

(4) "Closed depository" means a [*bank*] depository that is subject to a loss.

(5) "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[.]; **and**

(c) The credit union or federal credit union complies with ORS 295.008.

(6) [*"Custodian bank" or*] "Custodian" means one of the following institutions [*designated by the bank depository for its*] **that a depository designates for the depository's** own account:

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

(b) [*Any*] **An** insured institution, [*or*] trust company **or credit union** that:

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

(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.

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

(8) “Depository” means a bank depository or a credit union depository.

(9) “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.

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

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

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

(b) [*Appointing*] **Appoints** a receiver for a depository.

(12) “Maximum liability” means a sum equal to 10 percent of the greater of:

[*(a) All uninsured public funds deposits held by the bank depository as shown on the date of its most recent treasurer report; or*]

(a) All uninsured public funds deposits held by a depository, as shown on the date of the depository’s most recent treasurer report; or

(b) The average of the balances of uninsured public funds deposits on the last two immediately preceding treasurer reports.

(13) “Minimum collateral requirement” for a [*bank*] depository on any given date means a sum equal to:

(a) For a well capitalized [*bank*] depository that **the State Treasurer** has not [*been*] required to increase [*its*] **the depository’s** collateral pursuant to ORS 295.018, 10 percent of the greater of:

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

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

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

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

(C) An amount otherwise prescribed in ORS 295.001 to 295.108.

(b) For a well capitalized [*bank*] depository that **the State Treasurer** [*has been*] required to increase [*its*] **the depository’s** collateral pursuant to ORS 295.018, the percentage [*required by*] the State Treasurer **required** pursuant to ORS 295.018 multiplied by the greater of:

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

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

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

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

(C) An amount otherwise prescribed in ORS 295.001 to 295.108.

(c) For an adequately capitalized [*bank*] depository or an undercapitalized [*bank*] depository, 110 percent of the greater of:

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

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

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

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

(14) “Net worth” *[of a bank depository means the]* **means a depository’s** total risk-based 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.

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

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

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

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

(19) “Security” or “securities” means:

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

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

(c) Bonds of *[any]* **a** state of the United States **that**:

(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 **in accordance with subparagraph (A) of this paragraph**, are ruled to be eligible securities for the purposes of ORS 295.001 to 295.108, notwithstanding the loss of *[such]* **the** rating;

(d) Bonds of *[any]* **a** county, city, school district, port district or other public body in the United States **that are** payable from or secured by ad valorem taxes 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]* **a** county, city, school district, port district or other public body **that are** issued pursuant to the Constitution or statutes of the State of Oregon or the charter or ordinances of *[any]* **a** county or city within the State of Oregon, if the bonds *[have a long-term rating of AA or better;]* **meet the rating requirement or are ruled to be eligible securities as provided in paragraph (c) of this subsection;**

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

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

(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.

(20) "Treasurer report" means a written report *[signed or authenticated by]* **that** an officer of a *[bank]* depository that *[has in its possession]* **holds** uninsured public funds deposits *[setting]* **has signed or authenticated and that sets** forth as of the close of business on a specified date:

- (a) The total amount of uninsured public funds on deposit with the *[bank]* depository;
- (b) The total amount of public funds on deposit with the *[bank]* depository;
- (c) The net worth of the *[bank]* depository;
- (d) The amount and nature of eligible collateral then on deposit with *[its]* **the depository's** custodian to collateralize the *[bank]* depository's public funds deposits; and
- (e) The identity of *[its]* **the depository's** custodian.

(21) "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.

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

(23) "Undercapitalized" means a *[bank]* depository that *[is classified]* **the depository's primary federal regulatory authority has classified** as undercapitalized, significantly undercapitalized or critically undercapitalized *[by its primary federal regulatory authority]*.

(24)(a) "Uninsured public funds" or "uninsured public funds deposits" means public funds deposited in a *[bank]* depository that exceed the amounts insured or guaranteed as described in ORS 295.002 (1)(a) and (b). *[and]*

(b) "**Uninsured public funds**" or "**uninsured public funds deposits**" does not include public funds deposited in a certificate of deposit or time deposit under ORS 295.004.

(25) "Value" means the current market value of securities.

(26) "Well capitalized" means a *[bank]* depository that *[is classified]* **the depository's primary federal regulatory authority has classified** as well capitalized *[by its primary federal regulatory authority]*.

SECTION 2. ORS 295.002 is amended to read:

295.002. (1) *[Any]* **A** 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]* **the** cash working fund, *[each]* **a** public official shall deposit public funds in the **public official's** custody or control *[of the public official]* in one or more depositories currently qualified pursuant to ORS 295.001 to 295.108. *[The public official may not have on deposit in any one credit union depository an aggregate sum in excess of the deposit insurance limits established by the National Credit Union Administration. With respect to 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 *[shall]* **may** not have on deposit in any one *[bank]* depository and *[its]* branches **of the depository** a sum in excess of:

(a) The amount insured by the Federal Deposit Insurance Corporation **or the National Credit Union Share Insurance Fund**; or

(b) For any amount over the amount insured by the Federal Deposit Insurance Corporation **or the National Credit Union Share Insurance Fund**, 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) Compliance with ORS 295.001 to 295.108 relieves the public official of personal liability *[on account of]* **for** the loss of the public funds in the **public official's** custody or control *[of the public official]*.

SECTION 3. ORS 295.004 is amended to read:

295.004. (1) A public official may deposit public funds in a *[bank]* depository in an amount in excess of the amount allowed in ORS 295.002 without requiring the *[bank]* depository to show that *[it has]* **the depository** entered into a pledge agreement or deposited securities pursuant to ORS

295.015 (1) if the *[funds are initially deposited into a bank]* **public official deposits the funds into a depository in Oregon and the Oregon [bank] depository participates in a program through which:**

(a) The Oregon *[bank]* depository arranges *[for deposit of]* **to deposit** 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 **or the National Credit Union Share Insurance Fund;**

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

(d) Other financial institutions *[participating]* **that participate** in the program place funds into the Oregon depository in an amount at least equal to the amount **the public official** 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 uninsured public funds *[held by]* **that** the Oregon *[bank]* depository **holds** pending *[such]* placement must be collateralized as provided in ORS 295.001 to 295.108 for other uninsured public funds deposits.

(3) The provisions of ORS 295.006, 295.013, 295.015, 295.018 and 295.037 **and section 12 of this 2010 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]* **Oregon depositories that arrange to deposit public funds in accordance with the program described in this section.** The provisions of ORS 294.035 and 295.001 *[requiring deposit of]* **that require** public funds **to be deposited** into depositories that have offices or branches in Oregon do not apply to **public funds that an Oregon depository arranges to deposit into** certificates of deposit or time deposits *[that an Oregon bank depository arranges for]* under the provisions of the program described in this section.

SECTION 4. ORS 295.006 is amended to read:

295.006. (1) *[Each bank]* **A** depository shall keep on file with the State Treasurer the name and address of *[its]* **the depository's** custodian *[bank]*.

(2) *[Each]* **A** 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]* **name and address of each depository in which the public official deposits public funds, together with any other information the State Treasurer may require by rule.**

(3) If a public official changes a *[bank]* depository in which the public official deposits public funds, the public official shall report the information **regarding the change that is required by rule or** required under subsection (2) of this section *[or by rule regarding the change]* to the State Treasurer within three business days after the effective date of the change.

SECTION 5. ORS 295.008 is amended to read:

295.008. (1)(a) An insured institution, *[or]* trust company **or credit union** may not be a custodian *[bank]* under ORS 295.001 to 295.108[,] unless *[it]* **the insured institution, trust company or credit union** certifies in writing to the State Treasurer that *[it]* **the insured institution, trust company or credit union** will furnish the reports required under ORS 714.075 to the Director of the Department of Consumer and Business Services.

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

(2) An insured institution, *[or]* trust company **or credit union** may not be a *[bank]* depository under ORS 295.001 to 295.108[,] unless *[it]* **the insured institution, trust company or credit union:**

(a) Certifies in writing to the State Treasurer that *[it will furnish, by the time specified by the Director of the Department of Consumer and Business Services]* **the insured institution, trust company or credit union will furnish to the Director of the Department of Consumer and Business Services by the time the director specifies:**

(A) The reports required under ORS 714.075 *[to the director]*; and
(B) Any other information the director considers necessary to determine whether to advise the State Treasurer to order a *[bank]* depository to increase *[its]* **the depository's** collateral under ORS 295.018;[.]

(b) Except as provided in subsection (4) of this section, enters into a pledge agreement; and

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

(3) *[Any]* **An** insured institution, *[or]* trust company **or credit union** that *[wishes]* **intends** to become a *[bank]* depository shall file with the State Treasurer an initial written report *[signed or authenticated by]* **that** an officer of the insured institution, *[or]* trust company *[setting]* **or credit union has signed or authenticated and that sets** forth, as of the date the insured institution, *[or]* trust company **or credit union** 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 **or credit union**;

(b) The estimated net worth of the insured institution, *[or]* trust company **or credit union**;

(c) The amount and nature of the collateral that *[will be deposited with its]* **the insured institution, trust company or credit union will deposit with a** custodian to collateralize the public funds deposits; and

(d) The identity of *[its]* **the** custodian.

(4) An insured institution, *[or]* trust company **or credit union** may be a *[bank]* depository under ORS 295.001 to 295.108 without entering into a pledge agreement or complying with subsection (3) of this section if the insured institution, *[or]* trust company **or credit union** does not hold any uninsured public funds deposits. The provisions of ORS 295.006, 295.013, 295.015, 295.018, 295.037 and 295.061 **and section 12 of this 2010 Act** do not apply to an insured institution, *[or]* trust company **or credit union** that is a *[bank]* depository under this subsection.

(5) An insured institution, *[or]* trust company **or credit union** that merges with, acquires all the assets of, acquires ownership of or otherwise becomes a successor entity to a *[bank]* depository that has entered into a pledge agreement must execute a new pledge agreement or provide evidence satisfactory to the State Treasurer *[of the assumption by]* **that** the successor insured institution, *[or]* trust company *[of all of the]* **or credit union has assumed all of the depository's** duties and obligations *[of the bank depository]* under the existing pledge agreement. An insured institution, *[or]* trust company **or credit union** that fails to enter into a pledge agreement or provide evidence *[of its assumption of]* **that the insured institution, trust company or credit union has assumed** the existing pledge agreement within the time specified by the State Treasurer shall be treated as a *[bank]* depository *[holding]* **that holds** uninsured public funds **and** that has failed to pledge adequate collateral under ORS 295.031.

SECTION 6. ORS 295.013 is amended to read:

295.013. (1) *[Upon receipt of securities from the bank depository,]* **When a custodian receives securities from a depository,** the custodian *[bank]* shall issue to the State Treasurer, with a copy to the *[bank]* depository, a custodian's receipt *[describing]* **that describes** the securities.

(2) *[Each]* **A** custodian shall:

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

(b) Appraise the value of the securities added to and withdrawn from the *[inventory of the bank depository,]* **depository's inventory** and appraise the value of the **depository's** 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]* **that lists** the securities *[pledged by each bank depository and setting]* **each depository has pledged and that sets** forth the value of each security and of the entire inventory of securities **the depository has pledged** *[by the bank depository]*.

(d) Notify a [bank] depository in writing within one business day after the custodian determines that the value of the securities [held by] the custodian **holds** for the [bank] depository is less than the minimum collateral requirement for the [bank] depository.

(e) Notify the State Treasurer in writing within one business day after the custodian learns that a [bank] depository failed to increase the value of [its] **the depository's** securities within the time required under ORS 295.015 (3)(b).

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

(g) Notify the State Treasurer within one business day after the custodian determines that a bond in the inventory of a [bank] depository no longer meets the rating requirements described in ORS 295.001 (19)(c) or (d).

SECTION 7. ORS 295.015 is amended to read:

295.015. Except as provided in ORS 295.018:

(1)(a) [Each bank] **A** depository throughout the period [of its possession of any] **during which the depository possesses** uninsured public funds deposits shall maintain on deposit with [its custodian, at its own expense, securities having a value at least equal to its] **the depository's custodian, at the depository's own expense, securities that have a value at least equal to the depository's** minimum collateral requirement and as otherwise prescribed in ORS 295.001 to 295.108. [Such collateral shall be deposited with the bank depository's custodian and shall be clearly designated by the bank depository and the custodian as security for the benefit of depositors of public funds under] **The depository shall deposit the collateral with the depository's custodian and the depository and the custodian shall clearly mark the collateral as security for public funds deposited in accordance with** ORS 295.001 to 295.108.

(b) For purposes of this section, when pledged as collateral for public funds deposits, loans described in ORS 295.001 (19)(f) [shall] **must** 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] **that** the State Treasurer **determines** from time to time.

(c) [When] A bond anticipation note **that** is pledged as collateral for public funds deposits[, if] **and for which** there is no readily determinable market value [for the note, it shall] **must** 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] **that** the State Treasurer **determines** from time to time.

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

(3) If a [bank] depository's minimum collateral requirement increases because [it] **the depository** ceases to be a well capitalized [bank] depository as reflected in the [bank] depository's last treasurer report, call report or other public filing, or if the [bank] depository receives notice from the [bank] depository's custodian under ORS 295.013 (2)(d) or **from** the State Treasurer:

(a) Within three business days after the date on which the [bank] depository's minimum collateral requirement increases, the [bank] depository shall notify [its] **the depository's** custodian, the Director of the Department of Consumer and Business Services and the State Treasurer in writing that the [bank] depository's minimum collateral requirement has increased, setting forth the [bank] depository's new minimum collateral requirement and the [bank] depository's plan for increasing [its] **the depository's** pledged collateral to the minimum collateral requirement; and

(b) Within five business days after the date on which the [bank] depository's minimum collateral requirement increases, or within a longer period approved by the State Treasurer and the director, the [bank] depository shall, in accordance with the plan approved by the State Treasurer and the director, tender to [its] **the depository's** custodian additional securities [having] **that have a value**

sufficient [value] to increase the total value of [its] **the depository's** securities pledged as collateral for public funds deposits to the **depository's** new minimum collateral requirement [of the bank depository].

(4) If a [bank] depository's minimum collateral requirement decreases because [it moves from being an undercapitalized bank depository or an adequately capitalized bank depository to being] **the depository becomes** a well capitalized [bank] depository, or because the State Treasurer no longer requires the [bank] depository to pledge additional collateral under ORS 295.018, the [bank] depository may:

(a) Notify [its] **the depository's** custodian and the State Treasurer in writing that the [bank] depository's minimum collateral requirement has decreased, setting forth the [bank] depository's new minimum collateral requirement; and

(b) With the written approval of the State Treasurer, withdraw from [its] **the depository's** custodian [any] securities that exceed the [bank] depository's new minimum collateral requirement.

(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] **receiving** each request.

SECTION 8. ORS 295.018 is amended to read:

295.018. (1)(a) The State Treasurer may require [any bank] **a** depository, during any period when [it has in its possession any] **the depository possesses** uninsured public funds deposits, to maintain on deposit with [its] **the depository's** custodians securities [having] **that have** a value not less than 110 percent of the greater of:

(A) All uninsured public funds [held by the bank] **the depository holds**; or

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

(b) In consultation with the Director of the Department of Consumer and Business Services, the State Treasurer may permit a [bank] depository to increase [its] **the depository's** collateral as required under paragraph (a) of this subsection over a period of time [specified by] the State Treasurer **specifies** or may require a [bank] depository to increase [its] **the depository's** collateral to an amount that is less than the amount specified in paragraph (a) of this subsection.

(2) **The State Treasurer shall order** an increase in collateral under subsection (1) of this section [shall be ordered upon the advice of] **if** the director **so advises**. If the [bank] depository is a national bank, [or] a federally chartered savings bank, [or] **a** savings and loan association **or a federal credit union**, in giving advice to the State Treasurer the director may rely exclusively on information [provided to the director by] **that the** federal regulatory agencies and [by] the bank, savings bank, [or] association **or federal credit union provide to the director** on forms [prescribed by] the director **prescribes**. As a condition of being analyzed and reviewed by the director, a national bank, [or] a federally chartered savings bank, [or] **a** savings and loan association **or a federal credit union** shall agree and consent to provide the director with accurate, pertinent and timely information.

(3) If the State Treasurer orders a [bank] depository to increase [its] **the depository's** collateral under subsection (1) of this section, the State Treasurer shall give notice of the order to the director and the custodian of the [bank] depository within one business day after issuing the order.

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

(5) [Any bank depository notified by] **A depository that** the State Treasurer **notifies** of the increased collateral requirement shall:

(a) Within three business days after receiving the notice, submit to the State Treasurer and the director the [bank] depository's plan [for increasing its] **to increase the depository's** collateral to the level [required by] the State Treasurer **requires** under subsection (1) of this section; and

(b) Within five business days after receiving approval of *[its]* **the plan the depository** submitted under paragraph (a) of this subsection, or within a longer period approved by the State Treasurer and the director, increase *[its]* **the depository's** collateral to the level *[required by]* the State Treasurer **requires** under subsection (1) of this section and notify the State Treasurer and the director *[of its compliance]* **that the depository has complied** by supplying copies of the custodian's receipts for, or statement of activity showing, the increased collateral.

(6)(a) If the State Treasurer does not receive the notice required in subsection (5)(b) of this section within the applicable period under subsection (5)(b) of this section, the State Treasurer shall immediately send, *[notice]* to each public official who has notified the State Treasurer that the public official has public funds on deposit in that *[bank]* depository *[of the bank depository's failure]*, **notice that the depository has failed** 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]* **has complied** with the increased collateral requirements, the State Treasurer shall notify each public official *[who was]* **that the State Treasurer** notified under paragraph (a) of this subsection that the *[bank]* depository *[is once again in compliance]* **has complied**.

(7) A *[bank]* depository that does not comply with subsection (5) of this section may not accept additional uninsured public funds deposits.

(8) **Records the State Treasurer receives or compiles that contain** the collateralization requirement for a *[bank]* depository and the amount of collateral *[held by a custodian contained in records received or compiled by the State Treasurer is]* **a custodian holds are** exempt from public disclosure unless the public interest requires disclosure in the particular instance.

(9) The State Treasurer may require a *[bank]* depository that *[is required to increase its]* **must increase the depository's** collateral under subsection (5) of this section to file the reports required under ORS 295.061 (3).

SECTION 9. ORS 295.031 is amended to read:

295.031. (1) Within three business days after the State Treasurer receives notice from a custodian pursuant to ORS 295.013 (2)(e), receives information from the Director of the Department of Consumer and Business Services or other sources under ORS 295.071 or 295.073, or otherwise receives information *[indicating]* **that indicates** that a *[bank]* depository has failed to pledge adequate collateral with *[its]* **the depository's** custodian, the State Treasurer shall send written notice of the failure to each public official who has uninsured public funds on deposit in the *[bank]* depository *[with respect to which the notice was given or the information was received]* **that is the subject of the notice from the custodian or of the information the State Treasurer received**.

(2) Within five business days after the State Treasurer receives notice from a custodian pursuant to ORS 295.013 (2)(f) *[indicating]* **that indicates** that a *[bank]* depository has *[once again]* pledged adequate collateral with *[its]* **the depository's** custodian, the State 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 10. ORS 295.034 is amended to read:

295.034. (1) Within 15 business days after a public official receives a notice from the State Treasurer pursuant to ORS 295.018 (6)(a), 295.031 (1) or 295.061 (4)(a), the public official shall withdraw from the *[bank]* depository to which the notice applies all uninsured public funds deposits.

(2) If a public official receives a notice from the State Treasurer pursuant to ORS 295.018 (6)(a), 295.031 (1) or 295.061 (4)(a), beginning 15 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 that, as a result of *[such a]* **the deposit**, would be uninsured public funds deposits. The prohibition on deposits continues until the public official receives notice under ORS 295.018 (6)(b), 295.031 (2) or 295.061 (4)(b) indicating that the *[bank]* depository is in compliance with ORS 295.013, 295.018 or 295.061, as applicable.

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

SECTION 11. Sections 12, 13, 13a and 13b of this 2010 Act are added to and made a part of ORS 295.001 to 295.108.

SECTION 12. (1) A credit union depository's deposit of securities with a custodian under ORS 295.001 to 295.108 constitutes the credit union depository's consent to the disposition of the securities in accordance with this section.

(2) If a loss occurs in a credit union depository, the credit union depository shall, as soon as possible, pay to the proper public officials all funds subject to the loss in accordance with the following procedures:

(a) Immediately after the loss occurs, the State Treasurer shall take possession of securities that the closed depository's custodian has segregated as collateral for uninsured public funds deposits of the closed depository. The State Treasurer shall immediately liquidate as much of the collateral as the State Treasurer estimates is necessary, based on the most recent information available to the State Treasurer concerning the amount of uninsured public funds the credit union depository holds, and distribute the proceeds among public officials entitled to the proceeds as provided in this section.

(b) The Director of the Department of Consumer and Business Services or a receiver shall, within 20 days after issuing a restraining order or taking possession of the credit union depository, ascertain from the credit union depository's records the amount of public funds on deposit in the credit union depository and the amount of public funds that are covered by deposit insurance or deposit guaranty bonds. The director or the receiver shall certify the amounts to the State Treasurer and to each public official who has public funds on deposit in the credit union depository.

(c) Within 10 days after receiving the certification from the director or the receiver, a public official who has public funds on deposit in the credit union depository shall furnish to the State Treasurer verified statements of the public funds that the public official has on deposit in the credit union depository.

(3) When the State Treasurer receives the certification from the director or the receiver and the verified statements from the public officials who have public funds on deposit in the credit union depository, the State Treasurer shall ascertain and fix the amount of public funds on deposit in the credit union depository, plus interest to the date the funds are distributed to the public official at the rate the credit union depository agreed to pay on the funds, minus any amount that deposit insurance or deposit guaranty bonds cover.

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

(a) First, against the credit union depository that suffered the loss, to the extent of the full value of the proceeds from the State Treasurer's liquidation of the credit union depository's collateral under subsection (2) of this section, plus the State Treasurer's estimate of the amount of proceeds the State Treasurer expects to receive from collateral the State Treasurer has not yet liquidated; and

(b) Second, against all other credit union depositories on a proportionate basis determined as provided in subsection (5) of this section. The amount the State Treasurer assesses against another credit union depository may not exceed the credit union depository's maximum liability.

(5) For purposes of subsection (4) of this section, the State Treasurer shall determine the proportionate share of each of the other credit union depositories by:

(a) Averaging, for each credit union depository, the total amounts of all uninsured public funds deposits the credit union depository reported on the credit union depository's last two treasurer reports;

(b) Averaging the aggregate total amounts of all uninsured public funds deposits all credit union depositories reported on the credit union depositories' last two treasurer reports; and

(c) Dividing the result of the calculation performed under paragraph (a) of this subsection by the results 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 amount of a public official's uninsured public funds deposits only against the closed depository and not against other credit union depositories, if the public official:

(a) Received appropriate notice about the closed depository from the State Treasurer under ORS 295.018 (6)(a) or 295.031 (1) and did not comply with ORS 295.034; or

(b) Failed to timely comply with the requirements of ORS 295.006 and, as a result of failing to timely comply, did not receive appropriate notice about the closed depository from the State Treasurer under ORS 295.018 (6)(a), 295.031 (1) or 295.061 (4)(a).

(7) Assessments the State Treasurer makes against the closed depository are payable immediately from the proceeds of the collateral delivered to the State Treasurer. Assessments the State Treasurer makes against other credit union depositories are payable on the fifth business day following demand. If a credit union depository fails to pay an assessment, the State Treasurer shall take possession of and liquidate the securities the credit union depository segregated as collateral for uninsured public funds deposits that the credit union depository holds, or shall liquidate as much of the securities as is necessary to pay the credit union depository's assessment.

(8) The State Treasurer shall distribute the amounts the State Treasurer receives from the assessments among the public officials entitled to the proceeds in proportion to the public officials' respective claims, to the extent that the proceeds do not exceed the total amount of uninsured public funds deposits that the public officials claim.

(9) If, after all other available sources are applied, the amounts the State Treasurer receives from the assessments are inadequate to meet the total claims of the public officials to uninsured public funds deposits, the public officials may make claims against the closed depository as general creditors, but not against a credit union depository other than the closed depository.

(10)(a) If the final amount of proceeds the State Treasurer receives from the liquidation of collateral from a closed depository exceeds the amount of the assessment against the closed depository under subsection (4)(a) of this section, the State Treasurer shall pay the amount of the excess to the closed depository.

(b) If the final amount of proceeds the State Treasurer receives from the liquidation of collateral from other credit union depositories exceeds the amount of the assessment against the other credit union depositories under subsection (4)(b) of this section, the State Treasurer shall pay the excess to the other credit union depositories in proportion to the amounts the other credit union depositories paid in assessments to the State Treasurer.

(c) If the final amount of proceeds the State Treasurer receives from the liquidation of collateral from a credit union depository other than the closed depository under subsection (7) of this section exceeds the amount of the assessment against the credit union depository, the State Treasurer shall pay the excess to the credit union depository.

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

SECTION 13. (1) Until June 30, 2013, the State Treasurer may accept moneys from any public or private source, including a credit union or an association of credit unions, for the purpose of paying initial expenses related to administering the provisions of section 12 of this 2010 Act.

(2) The State Treasurer shall deposit moneys the State Treasurer receives under this section into the Miscellaneous Receipts Account established for the State Treasurer in the

General Fund. Notwithstanding the provisions of ORS 295.106, moneys the State Treasurer receives under this section are continuously appropriated to the State Treasurer for the purpose of paying the State Treasurer's initial expenses related to administering section 12 of this 2010 Act. The State Treasurer shall expend the moneys in accordance with the terms and conditions upon which the moneys were made available.

SECTION 13a. (1) The State Treasurer may decline to accept from a credit union the certification and pledge agreement necessary to qualify the credit union as a credit union depository under ORS 295.008 unless:

(a) At the time the credit union submits the certification and pledge agreement, at least four other credit unions have each submitted:

(A) A certification and pledge agreement necessary to qualify as a credit union depository under ORS 295.008; and

(B) A signed statement from a public official that indicates that the public official intends to deposit more than \$250,000 of public funds with the credit union if the credit union qualifies as a credit union depository; and

(b) The State Treasurer receives moneys under the provisions of section 13 of this 2010 Act or ORS 295.106 that are sufficient to pay for one year the State Treasurer's initial or continuing expenses related to administering section 12 of this 2010 Act.

(2)(a) The State Treasurer may withdraw from a pledge agreement that the State Treasurer previously accepted from a credit union under ORS 295.008 if fewer than five credit unions are qualified as credit union depositories under ORS 295.001 to 295.108 during any period of 180 days or longer.

(b) Except as provided in ORS 295.008 (4), a credit union that is a party to a pledge agreement from which the State Treasurer withdraws in accordance with paragraph (a) of this subsection does not qualify as a credit union depository under ORS 295.001 to 295.108. Within 10 business days after the State Treasurer notifies the credit union that the State Treasurer has withdrawn from the pledge agreement, the credit union shall return all uninsured public funds deposits that the credit union holds to the public official that deposited the public funds.

SECTION 13b. For any period of time during which fewer than 10 credit unions are subject to pledge agreements with the State Treasurer and a custodian under ORS 295.008, the State Treasurer, notwithstanding ORS 295.001 (12), by rule may set the maximum liability for a credit union depository at 20 percent of the greater of:

(1) All uninsured public funds deposits the credit union depository holds, as shown on the date of the credit union depository's most recent treasurer's report; or

(2) The average of the balances of all uninsured public funds deposits the credit union depository holds, as shown on the credit union depository's last two immediately preceding treasurer reports.

SECTION 14. ORS 295.041 is amended to read:

295.041. *[Upon the distribution of]* **When the State Treasurer distributes** the proceeds of assessments and liquidated collateral *[pursuant to ORS 295.037 by the State Treasurer to any public official]* **to a public official under ORS 295.037 or section 12 of this 2010 Act,** the State Treasurer *[shall be]* **is** subrogated to all of the **public official's** right, title and interest *[of the public official]* against the closed depository, and *[shall share]* **shares** in any distribution of *[its]* **the depository's** assets ratably with other depositors. *[Any]* Sums received from *[any]* a distribution *[shall]* **must** be paid to the public *[officials]* **official** to the extent of any unpaid net deposit liability *[and the balance remaining shall be paid to the bank]*. **The State Treasurer shall pay the remaining balance to the** depositories against which the assessments were made, pro rata in proportion to the assessments *[actually paid by]* each *[bank]* depository **paid**. However, the closed depository may not share in *[any]* a distribution of the balance remaining. *[If]* The State Treasurer **may charge expenses that the State Treasurer** incurs *[expenses]* in enforcing the **State Treasurer's** rights under this section, *[the expenses may be charged]* as provided in ORS 295.106. The State Treasurer shall submit

a claim for expenses to the [bank] depository, and if the charges are thereafter paid to the **State** Treasurer, they shall be treated as a liquidation expense of the closed depository.

SECTION 15. ORS 295.046 is amended to read:

295.046. (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] **that** any one public official **makes** in the [bank] depository to exceed at any time the **depository's** 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] **the depository's** 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] **a depository holds** in a certificate of deposit or time deposit under ORS 295.004.

SECTION 16. ORS 295.048 is amended to read:

295.048. (1) Notwithstanding ORS 295.046, 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 **the lesser of:**

(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) **For a bank depository**, 30 percent of the total aggregate [uninsured] public funds deposits of all public officials in all bank depositories as reported in the most recent notice **the bank depository** received [by the bank depository] from the State Treasurer[.]; **or**

(e) **For a credit union depository**, 30 percent of the total aggregate public funds deposits of all public officials in all credit union depositories as reported in the most recent notice **the credit union depository** received from the State Treasurer.

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

(3) If a [bank] depository's aggregate of [uninsured] public funds deposits exceeds the amount set forth in subsection (1) of this section, the [bank] depository shall, within three business days after [receipt of] **receiving** notice from the State Treasurer, cease accepting deposits of [uninsured] public funds.

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

(a) A [bank] depository may accept and hold [uninsured] public funds deposits in excess of the limits [provided] **specified** in subsection (1) of this section if the State Treasurer, upon good cause shown, approves the **depository's** request [of the bank depository] to hold [uninsured] public funds in excess of the limits [provided] **specified** in subsection (1) of this section for a period not exceeding 90 days and eligible securities are deposited with the [bank] depository's custodian as collateral in an amount at least equal to the amount of the uninsured public funds deposits [in excess of] **that exceeds** the limits [provided] **specified** in subsection (1) of this section.

(b) The limits [of] **specified in** subsection (1) of this section do not apply to public funds deposits [held by a bank] **a depository holds** in a certificate of deposit or time deposit under ORS 295.004.

(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]* **that exceed the limit specified** in subsection (1)(d) **or (e)** 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 **uninsured** public funds deposits *[in excess of the limit prescribed]* **that exceed the limit specified** in subsection (1)(d) **or (e)** of this section.

SECTION 17. ORS 295.053 is amended to read:

295.053. (1) If a [bank] depository ceases holding uninsured public funds deposits, the [bank] depository's custodian shall continue to hold the **depository's** pledged securities *[of the bank depository]* as collateral pursuant to ORS 295.001 to 295.108. Unless the State Treasurer directs that the **custodian hold the** [bank] depository's **pledged** securities *[be held]* for a longer period, the custodian shall hold the [bank] depository's pledged securities for a period of 30 days.

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

(3) *[At the end of the period described in subsection (1) of this section, If the bank depository has not, during that period, held any uninsured public funds deposits, the custodian shall tender the bank depository's securities to the bank depository]* **If a depository has not held uninsured public funds deposits during the period described in subsection (1) of this section, at the end of the period the depository's custodian shall tender the depository's pledged securities to the depository.**

SECTION 18. ORS 295.061 is amended to read:

295.061. (1) On or before **the date on which** each treasurer report is due *[date]*, each [bank] depository *[that has in its possession uninsured public funds deposits of one or more public officials]* shall file *[its]* **the depository's** treasurer report with *[its]* **the depository's** 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 three 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]* **the depository's** net worth on the most recent report **the depository** 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 adequately capitalized [bank] depository or an undercapitalized [bank] depository shall report **to the depository's custodian and to the State Treasurer at least once each week** the actual amount of uninsured public funds deposits **the depository holds**. *[held by it at least weekly to its custodian bank and to the State Treasurer.]*

(4)(a) If a [bank] depository fails to file *[any of]* the reports or provide *[any of]* the notices required under this section or fails to file *[any of]* the notices or reports required under ORS 295.018, the State Treasurer shall send a notice to each public official who has uninsured public funds on deposit in the [bank] depository *[of the bank depository's failure]* **that the depository failed to comply**.

(b) If, after giving notice under paragraph (a) of this subsection, the State Treasurer receives notice that the [bank] depository has filed the required reports or provided the required notices, the State Treasurer may notify each public official who was notified under paragraph (a) of this subsection that the [bank] depository *[is once again in compliance]* **has complied**.

(5) If a [bank] depository fails to comply with this section, the [bank] depository shall, within three business days after *[receipt of]* **receiving** notice from the State Treasurer, cease accepting deposits of uninsured public funds.

SECTION 19. ORS 295.071 is amended to read:

295.071. (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] a 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] **that** the Office of the Comptroller of the Currency, the Office of Thrift Supervision, **the National Credit Union Administration**, the Federal Deposit Insurance Corporation, **the National Credit Union Share Insurance Fund**, the Board of Governors of the Federal Reserve System or [any] a state bank, [or] thrift **or credit union** regulatory agency **makes available to the State Treasurer or to the Director of the Department of Consumer and Business Services.**

SECTION 20. ORS 295.073 is amended to read:

295.073. The Director of the Department of Consumer and Business Services shall advise the State Treasurer in writing of any action the director takes or directs [any bank] a depository to take that will [result in a reduction of greater] **reduce the depository's net worth by more** than 10 percent [of the net worth of the bank depository] as shown on the most recent treasurer report submitted pursuant to ORS 295.061.

SECTION 21. ORS 295.081 is amended to read:

295.081. (1) Subject to ORS 295.002, 295.015 and 295.018, [any] a depository may offer in writing to accept from the State Treasurer time deposits [without limitation] in **an unlimited** amount or in an aggregate amount [therein] stated **in the offer** 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] **continue until the depository delivers or mails, by registered or certified mail, notice to the State Treasurer that modifies or withdraws the offer.** While the offer continues in effect, the depository [is bound to accept upon the terms therein specified] **must accept in accordance with the terms of the offer** time deposits tendered by the State Treasurer.

(2) [Any funds deposited by] **Funds** the State Treasurer **deposits** on a time basis [shall] **must** 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] **that a person** of prudence, discretion and intelligence [exercise] **exercises** in the management of [their] **the person's** own affairs, considering the probable income and the probable safety of the moneys deposited, [including] **and considering** the distribution of the deposits among depositories so as to minimize the possibility of loss of moneys.

SECTION 22. ORS 295.084 is amended to read:

295.084. [(1)] The State Treasurer may designate such banks [as are necessary] **and credit unions** within this state as **are necessary as** depositories for [the collection of] **collecting** drafts, checks, certificates of deposit and coupons [received by] the State Treasurer **receives** on account of any claim due the state.

[(2)] *The State Treasurer, on receipt of any draft, check or certificate of deposit, on account of a claim due the state, may place it in a depository for collection. The depository shall collect it without delay and shall notify the State Treasurer when collected. The compensation to be paid by the depository shall be fixed by the State Treasurer upon the best terms obtainable for the state.*

SECTION 23. ORS 295.091 is amended to read:

295.091. (1) [In selecting banks or trust companies to act as depositories, public officials are not limited to the appointment of banks or trust companies in any particular locality. However, if banks or trust companies are engaged in business at an office or offices within the corporate limits of the political subdivision or public corporation and qualify to receive the funds, such depositories shall be given preference. If there is more than one such local qualifying depository, the depositing public offi-

cial shall apportion the funds in the hands of the public official to such depositories in a manner that is equitable and in the best interests of the political subdivision or public corporation.] **A public official need not deposit public funds in a depository in a particular locality, but the public official shall give preference to a depository that is qualified to receive the public funds and that is engaged in business at an office within the corporate limits of the public official's political subdivision or public corporation. If more than one local qualifying depository exists, the public official shall apportion the public funds among the local qualifying depositories in a manner that is equitable and in the best interests of the political subdivision or public corporation.**

(2) The depositories shall *[be required to]* pay **interest** to the political subdivision or public corporation *[upon]* **for** deposits evidenced by certificates of deposit or deposits that by agreement may not be withdrawn on less than 30 days' notice, *[interest at such]* **at the rate or rates** *[as shall be agreed upon between]* **upon which** the governing body of the political subdivision or public corporation and the depository **agree**.

(3) *[All]* Interest received on deposits of moneys under this section *[shall accrue to and become]* **accrues to and becomes** a part of the fund the moneys of which were deposited.

(4) This section does not apply to the State Treasurer.

SECTION 24. ORS 295.106 is amended to read:

295.106. The State Treasurer may charge *[bank]* depositories for the **State Treasurer's** reasonable expenses *[of the State Treasurer]* in connection with the **State Treasurer's** services, duties and activities *[of the State Treasurer related to]* **under** ORS 295.001 to 295.108. 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]* **to pay the State Treasurer's** reasonable expenses *[of the State Treasurer]* in connection with the **State Treasurer's** services, duties and activities *[of the State Treasurer related to]* **under** ORS 295.001 to 295.108. 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. **The State Treasurer may withdraw from a pledge agreement with a depository if the depository does not pay the fees and other amounts charged.**

SECTION 25. ORS 295.108 is amended to read:

295.108. (1) The State Treasurer shall adopt rules *[implementing]* **to implement** the provisions of ORS 295.001 to 295.108.

(2) The State Treasurer shall design the treasurer report required by ORS 295.061*[. The report shall be designed]* to minimize the regulatory burden of completing and submitting the report and, to the greatest extent practicable, **to make** 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 26. 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]* **that the financial institutions serve.**

(b) Moneys *[paid to or collected by]* **that** a financial institution or other entity **receives or collects** 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]* **the financial institution must collect and hold for loan servicing under the agreement before remitting the moneys** to the state agency, political subdivision or public corporation or a third party.

(c) Moneys *[held by]* a trustee or escrow agent **holds** 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 295.001, 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 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 ensure that reasonable and prudent measures are taken to protect the moneys in the accounts from loss.

[(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)] (4) As used in this section, the terms “financial institution outside this state” and “public official” have the meanings given those terms in ORS 295.001.

SECTION 27. ORS 576.375 is amended to read:

576.375. (1) *[All]* Moneys *[collected or received by any person]* **a person collects or receives** from the assessment levied under the authority of ORS 576.325 and *[all]* other moneys *[received by]* a commodity commission **receives** must be paid to the authorized agent of the commission and promptly deposited into an account established by the commission in a depository, as defined in ORS 295.001, that is insured by the Federal Deposit Insurance Corporation **or the National Credit Union Share Insurance Fund**. In a manner consistent with the requirements of ORS 295.001 to 295.108, 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 **or the National Credit Union Share Insurance Fund’s** coverage. All moneys in the account are continuously appropriated to the commission *[making]* **that makes** the deposit for the purpose of carrying out the **commission’s** 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 **collects or receives**. Investments *[made by]* a commission **makes** 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 **invests** under subsection (3) of this section is available to the commission in a manner consistent with the commission’s annual budget.

SECTION 28. 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 295.001 to 295.108, all]* **of public funds or securities that a depository,**

as defined in ORS 295.001, or the State Treasurer must make under ORS 295.001 to 295.108, 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 29. (1) Sections 12, 13, 13a and 13b of this 2010 Act and the amendments to ORS 295.001, 295.002, 295.004, 295.006, 295.008, 295.013, 295.015, 295.018, 295.031, 295.034, 295.041, 295.046, 295.048, 295.053, 295.061, 295.071, 295.073, 295.081, 295.084, 295.091, 295.108, 295.205, 576.375 and 711.410 by sections 1 to 10, 14 to 23 and 25 to 28 of this 2010 Act become operative January 1, 2013.

(2) The State Treasurer and the Director of the Department of Consumer and Business Services may take any action before January 1, 2013, that is necessary to enable the State Treasurer and the director to exercise, on and after January 1, 2013, all the duties, functions and powers conferred on the State Treasurer and the director by sections 12, 13, 13a and 13b of this 2010 Act and the amendments to ORS 295.001, 295.002, 295.004, 295.006, 295.008, 295.013, 295.015, 295.018, 295.031, 295.034, 295.041, 295.046, 295.048, 295.053, 295.061, 295.071, 295.073, 295.081, 295.084, 295.091, 295.108, 295.205, 576.375 and 711.410 by sections 1 to 10, 14 to 23 and 25 to 28 of this 2010 Act.

SECTION 30. Sections 12, 13, 13a and 13b of this 2010 Act and the amendments to ORS 295.001, 295.002, 295.004, 295.006, 295.008, 295.013, 295.015, 295.018, 295.031, 295.034, 295.041, 295.046, 295.048, 295.053, 295.061, 295.071, 295.073, 295.081, 295.084, 295.091, 295.108, 295.205, 576.375 and 711.410 by sections 1 to 10, 14 to 23 and 25 to 28 of this 2010 Act apply to public funds on deposit on or after January 1, 2013.

SECTION 31. This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

Passed by House February 15, 2010

Received by Governor:

Repassed by House February 23, 2010

.....M.,....., 2010

Approved:

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Chief Clerk of House

.....M.,....., 2010

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Speaker of House

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Governor

Passed by Senate February 23, 2010

Filed in Office of Secretary of State:

.....M.,....., 2010

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President of Senate

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Secretary of State