

House Bill 2972

Sponsored by Representative JENSON (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes Bank of the State of Oregon. Specifies purposes of bank. Establishes Bank of the State of Oregon Board to operate and manage bank. Creates advisory board of directors to advise bank board and management on operation of bank.

Requires bank to accept deposits of public funds and permits bank to accept deposits of other funds. Permits bank to make, purchase, guarantee or hold certain loans and to serve as custodian bank. Specifies other powers. Directs State Treasurer to deposit moneys in bank in amount treasurer determines is necessary to allow bank to fulfill duties.

Requires Bank of the State of Oregon Board to determine and reserve amount of revenue necessary to continue bank operations in safe and sound manner and to credit remaining revenue to use for general governmental operations.

Directs board to adopt rules to ensure safety and soundness of bank, describe permissible investments, bank services, loan limits and reserve requirements. Requires Secretary of State audit.

Specifies that deposits of bank are guaranteed by state and that income bank earns on public funds is not subject to taxation.

Specifies that certain bank records are confidential and not subject to disclosure.

Becomes operative January 1, 2012.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to state financial matters; creating new provisions; amending ORS 293.875 and 295.002; and
3 declaring an emergency.

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

5 **SECTION 1. (1) The Bank of the State of Oregon is established.**

6 **(2) The purposes of the Bank of the State of Oregon are:**

7 **(a) To support the economic development of this state by increasing access to capital for**
8 **businesses and farms within this state in partnership with local financial institutions.**

9 **(b) To provide stability to the local financial sector, and not in any way to compete with**
10 **community banks, credit unions or other financial institutions.**

11 **(c) To reduce the costs this state pays for basic banking services.**

12 **(d) To fund governmental operations with a portion of the bank's earnings.**

13 **SECTION 2. (1) The Bank of the State of Oregon Board is established. The board shall**
14 **operate, manage and control the Bank of the State of Oregon. The board shall specify lo-**
15 **cations for and maintain places of business in which the bank will operate and shall adopt**
16 **and enforce orders, rules and bylaws for the transaction of the bank's business.**

17 **(2) The board consists of the Governor, the State Treasurer and the Commissioner of the**
18 **Bureau of Labor and Industries. The board shall exercise the board's powers and direct and**
19 **oversee the functions of the bank by means of rules the board adopts under ORS chapter 183**
20 **and policies the board adopts in consultation with the advisory board of directors described**
21 **in section 3 of this 2011 Act.**

22 **(3) The Governor is the chairperson of the board. The board shall hold regular meetings,**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 and by rule shall devise a method for giving notice of the meetings.

2 (4) Two members of the board constitute a quorum to transact business and exercise the
3 board's rights, duties and powers.

4 (5) The Governor or a majority of the members of the board may call a special meeting
5 of the board, provided the Governor or the majority gives notice of the special meeting.

6 (6) The board shall appoint a president of the bank. The person appointed as president
7 must have extensive experience in banking. The board may appoint and employ subordinate
8 officers, employees and agents as the board considers necessary, and shall define the duties,
9 designate the titles and fix the compensation for the persons the board appoints and employs.
10 The board may designate the president or another officer or employee as an agent of the
11 board for the purpose of implementing the bank's functions, subject to the board's super-
12 vision, limitation and control.

13 (7) The board may remove and discharge a person the board appoints or employs or to
14 whom the board otherwise delegates a duty or power granted under sections 1 to 11 of this
15 2011 Act.

16 **SECTION 3.** (1) The Bank of the State of Oregon Board shall appoint an advisory board
17 of directors that consists of seven members.

18 (2) The members of the advisory board must include representatives of this state's fi-
19 nancial, business, agricultural and labor sectors. At least two members must be officers of
20 banks, the majority of the stock of which is owned by residents of this state.

21 (3) The Bank of the State of Oregon Board shall appoint a chairman, vice chairman and
22 secretary from the advisory board. The Bank of the State of Oregon Board shall set the term
23 of office of the directors of the advisory board, but the term of office for a director may not
24 exceed four years.

25 (4) The advisory board shall:

26 (a) Meet regularly with the management of the Bank of the State of Oregon to review
27 the bank's operations and finances and to determine whether the advisory board should re-
28 commend measures to the Bank of the State of Oregon Board to improve the bank's man-
29 agement performance, customer service and internal methods, procedures and operating
30 policies;

31 (b) Meet regularly with the Bank of the State of Oregon Board to discuss the advisory
32 board's recommendations and to provide other advice, expertise or information at the re-
33 quest of the Bank of the State of Oregon Board;

34 (c) Recommend additional objectives for the bank's operations to the Bank of the State
35 of Oregon Board at the advisory board's initiative;

36 (d) Advise and consult with the Bank of the State of Oregon Board concerning the ap-
37 pointment of officers of the bank; and

38 (e) Participate on the bank's loan committees.

39 **SECTION 4.** (1) The Bank of the State of Oregon shall accept deposits of public funds as
40 defined in ORS 295.001 and may accept deposits of funds from any other source. Income that
41 the bank earns on deposited funds must be credited to and become a part of the revenues
42 and income of the bank.

43 (2) A public official who has control of public funds and the sureties on the public
44 official's bond are exempt from liability that arises for a loss of public funds deposited in the
45 bank.

1 (3) The bank shall pay interest on public deposits at a rate comparable to rates that
 2 private depositories in this state or elsewhere pay on public funds and may offer other fi-
 3 nancial products to the State Treasurer on a competitive basis.

4 (4) The State Treasurer shall deposit moneys the State Treasurer receives under ORS
 5 293.265 with the bank in an amount the Bank of the State of Oregon Board determines is
 6 necessary to allow the bank to fulfill the bank's duties and functions under sections 1 to 11
 7 of this 2011 Act. To the extent necessary to ensure the security of public funds, the Bank
 8 of the State of Oregon Board shall authorize deposits of public funds in accordance with ORS
 9 chapter 295, but the board shall give preference to depositing public funds with the bank.

10 **SECTION 5.** The Bank of the State of Oregon may:

11 (1) Make, purchase, guarantee or hold loans:

12 (a) To state-chartered or federally chartered lending agencies or institutions or other fi-
 13 nancial institutions.

14 (b) That the United States or any agency or instrumentality of the United States insures
 15 or guarantees in whole or in part.

16 (c) That the bank obtains as security pledged for or originated by means of restructuring
 17 another loan that the bank properly originated or in which the bank participated.

18 (d) To instrumentalities of this state.

19 (2) Purchase participation interests in loans made or held by banks, bank holding com-
 20 panies, state-chartered or federally chartered lending agencies or institutions, other financial
 21 institutions or other entities that provide financial services and that meet underwriting
 22 standards that are generally accepted by state or federal financial regulatory agencies.

23 (3) Invest the bank's funds in accordance with policies that the Bank of the State of
 24 Oregon Board and the State Treasurer adopt, and in accordance with the investment stand-
 25 ard set forth in ORS 293.726 (1).

26 (4) Buy and sell federal funds.

27 (5) Lease, assign, sell, exchange, transfer, convey, grant, pledge or mortgage real and
 28 personal property, title to which the bank has acquired in any manner.

29 (6) Authorize the bank's president or an officer, agent or employee or contract with an-
 30 other person to perform an act or take an action that is necessary, convenient, advisable or
 31 desirable in order to carry out the powers expressly granted or necessarily implied under
 32 sections 1 to 11 of this 2011 Act.

33 (7) Purchase, guarantee or hold loans originated by financial institutions that do business
 34 in this state.

35 (8) Participate in a loan to a qualified person that resides in or does business in this state
 36 that a private financial institution originates.

37 (9) Act as a custodian bank for financial institutions organized under the laws of this
 38 state and accept deposits from the financial institutions in connection with this function.

39 (10) Issue bank stock loans to financial institutions organized under the laws of this
 40 state.

41 (11) Perform the functions and render the services of a clearinghouse for financial insti-
 42 tutions that make the bank a reserve depository, including providing facilities for domestic
 43 and foreign exchange and rediscounting paper on terms the Bank of the State of Oregon
 44 Board prescribes.

45 **SECTION 6.** (1) Except as provided in ORS 293.148, as soon as possible after the end of

1 each calendar quarter, the Bank of the State of Oregon Board shall determine the amount
 2 of revenue that the Bank of the State of Oregon earned in the calendar quarter and the
 3 amount that is necessary to administer the activities of the bank and to ensure the bank's
 4 safe and sound operation in accordance with rules the board adopts under section 7 of this
 5 2011 Act.

6 (2) The Bank of the State of Oregon Board, in consultation with the advisory board, after
 7 making the determination described in subsection (1) of this section, shall reserve an amount
 8 from the bank's revenues that is necessary to continue the bank's operations. The Bank of
 9 the State of Oregon Board may also reserve from the bank's earnings an additional amount
 10 that is necessary to fund operations, projects or other goals that the Bank of the State of
 11 Oregon Board identifies as necessary or expedient for the bank to undertake.

12 (3) The Bank of the State of Oregon shall maintain an account and any subaccounts that
 13 the State Treasurer determines are necessary to hold state funds for use by state govern-
 14 ment. The bank shall transfer to and apportion among the various accounts established un-
 15 der this subsection in accordance with the instructions of the State Treasurer all unreserved
 16 earnings of the bank. The State Treasurer shall manage and have the use of the unreserved
 17 earnings and other public funds deposited with the bank as provided under ORS chapter 293.

18 **SECTION 7.** (1) The Bank of the State of Oregon Board shall adopt rules to:

19 (a) Ensure the safety and soundness of the Bank of the State of Oregon that, to the ex-
 20 tent possible, reflect applicable standards for safety and soundness set forth in 12 C.F.R. part
 21 364.

22 (b) Specify the bank's powers and permissible investments and activities.

23 (c) Authorize specific services that the bank may provide.

24 (d) Specify limits for loans and other obligations the bank makes or undertakes.

25 (e) Specify reserve requirements.

26 (f) Set other requirements that the board considers necessary to administer the bank
 27 under sections 1 to 11 of this 2011 Act.

28 (2) The Department of Consumer and Business Services shall examine the bank at least
 29 once each calendar quarter to verify and ensure that the bank is complying with the rules
 30 the board adopted under subsection (1) of this section. The department shall report the re-
 31 sults of the examination to the board and to the Secretary of State. The department's report
 32 is a public record subject to disclosure.

33 (3) The Secretary of State shall audit the accounts and financial affairs of the bank at
 34 least once every two years.

35 **SECTION 8.** (1) Deposits in the Bank of the State of Oregon are guaranteed by the State
 36 of Oregon.

37 (2) Deposits of public funds and income that the Bank of the State of Oregon earns on
 38 the deposits of public funds are not subject to state, county, city or district taxes of any
 39 kind.

40 **SECTION 9.** (1) A person may bring a civil action against the State of Oregon for a claim
 41 that arises out of a transaction that is connected with the operation of the Bank of the State
 42 of Oregon.

43 (2) In an action brought under this section, the defendant must be designated as "The
 44 State of Oregon, doing business as The Bank of the State of Oregon."

45 (3) A person shall bring an action under this section in the same manner as, and subject

1 to the same provisions of law that are applicable to, other civil actions. The person must
 2 bring the action in the circuit court of Marion County.

3 **SECTION 10.** (1) The Bank of the State of Oregon shall conduct business solely under the
 4 name of “The Bank of the State of Oregon” and must obtain and convey title to property
 5 pertaining to the operation of the bank in the name of “The State of Oregon, doing business
 6 as The Bank of the State of Oregon.”

7 (2) The bank shall execute instruments in the name of the State of Oregon. Within the
 8 scope of authority that the Bank of the State of Oregon Board grants, the president of the
 9 bank may execute instruments on behalf of the bank, including any instrument that grants,
 10 conveys or otherwise affects an interest in or lien upon real or personal property.

11 (3) An officer or employee of, and legal counsel to, the bank may execute instruments
 12 on the bank’s behalf if the board authorizes the officer, employee or legal counsel to do so.

13 **SECTION 11.** (1) The following records of the Bank of the State of Oregon are confiden-
 14 tial and may not be disclosed:

15 (a) Commercial or financial information of a customer of the bank, whether obtained di-
 16 rectly or indirectly, other than routine credit inquiries concerning information that is re-
 17 quired to be disclosed in accordance with due legal process.

18 (b) Internal or interagency memoranda or letters that are not by law available to a party
 19 other than a party that is in litigation with the bank.

20 (c) Except as provided in section 7 of this 2011 Act, information that is contained in or
 21 related to a report of an examination or operating or condition reports prepared by, on behalf
 22 of or for the use of a state or federal agency responsible for regulating or supervising ac-
 23 tivities of the bank.

24 (2) As used in this section, “customer” means a person that has transacted or is trans-
 25 acting business with, or has used or is using the services of, the bank, or for which the bank
 26 has acted or is acting as a fiduciary with respect to trust property.

27 **SECTION 12.** ORS 293.875 is amended to read:

28 293.875. (1) Except as provided in sections 1 to 11 of this 2011 Act, the State Treasurer is
 29 designated the sole banking and cash management officer for the state and may review, establish
 30 and modify procedures for the efficient handling of moneys under the control of the State Treasury,
 31 the Secretary of State, the Judicial Department, the Legislative Assembly, the Public Defense Ser-
 32 vices Commission and state agencies as defined in ORS 291.002. The State Treasurer shall perform
 33 all activities necessary or desirable to fulfill the duties of the treasurer as the banking and cash
 34 management officer. The activities may include, but are not limited to, entering into contracts for
 35 the provision of services related to the management, deposit and transfer of, or payment from,
 36 moneys deposited with the State Treasurer through banks and other financial institutions. The de-
 37 posit, transfer or payment may be through physical presentation or drafting of an instrument or
 38 document by electronic or other means.

39 (2) The State Treasurer shall continuously review the effectiveness of the cash management of
 40 state agencies, the Secretary of State, the Judicial Department and the Legislative Assembly, and
 41 when the State Treasurer considers it appropriate shall report in writing to the subject agency the
 42 findings of this review, along with any recommendations. A copy of the report shall be provided to
 43 the Legislative Fiscal Officer and to the Secretary of State.

44 (3) This section controls over any other law that gives another state agency general responsi-
 45 bility for, or control over, the accounting, fiscal or electronic commerce affairs of the State Treas-

1 ury, the Secretary of State, the Judicial Department, the Legislative Assembly, the Public Defense
 2 Services Commission and state agencies as defined in ORS 291.002. State agencies shall employ the
 3 principles, standards and related requirements for cash management prescribed by the State Treas-
 4 urer, including:

- 5 (a) Practices related to the use of credit, debit or similar cards or devices;
- 6 (b) The use of secure disbursing and receiving instruments, documents and systems; and
- 7 (c) The use of secure information resources, information technology and networks that meet the
 8 requirements of the State Treasurer for the electronic management, deposit or transfer of, or pay-
 9 ment from, moneys deposited with the State Treasurer.

10 (4) As used in this section, “information resources” and “information technology” have the
 11 meanings given those terms in ORS 291.038.

12 **SECTION 13.** ORS 295.002 is amended to read:

13 295.002. (1) *[Any]* **A** public official may retain undeposited such reasonable cash working fund
 14 as is fixed by the governing body of the political subdivision or public corporation for which the
 15 public official acts. Except to the extent of *[such]* **the** cash working fund, *[each]* **a** public official
 16 shall deposit public funds in the **public official’s** custody or control *[of the public official]* **in the**
 17 **Bank of the State of Oregon and, to the extent that the Bank of the State of Oregon Board**
 18 **specifies by rule**, in one or more depositories currently qualified pursuant to ORS 295.001 to
 19 295.108. The public official may not have on deposit in any one credit union depository an aggregate
 20 sum in excess of the deposit insurance limits established by the National Credit Union Adminis-
 21 tration. With respect to bank depositories, unless a bank depository has entered into the agreement
 22 described in ORS 295.008 (2)(b) and has deposited securities pursuant to ORS 295.015 (1), the public
 23 official *[shall]* **may** not have on deposit in any one bank depository and *[its]* branches **of the de-**
 24 **pository** a sum in excess of:

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

29 (2) Compliance with ORS 295.001 to 295.108 relieves the public official of personal liability *[on*
 30 *account of]* **for** the loss of the public funds in the **public official’s** custody or control *[of the public*
 31 *official]*.

32 **SECTION 14.** ORS 295.002, as amended by section 2, chapter 101, Oregon Laws 2010, is
 33 amended to read:

34 295.002. (1) **A** public official may retain undeposited such reasonable cash working fund as is
 35 fixed by the governing body of the political subdivision or public corporation for which the public
 36 official acts. Except to the extent of the cash working fund, a public official shall deposit public
 37 funds in the public official’s custody or control **in the Bank of the State of Oregon and, to the**
 38 **extent that the Bank of the State of Oregon Board specifies by rule**, in one or more deposito-
 39 ries currently qualified pursuant to ORS 295.001 to 295.108. Unless a depository has entered into the
 40 agreement described in ORS 295.008 (2)(b) and has deposited securities pursuant to ORS 295.015 (1),
 41 the public official may not have on deposit in any one depository and branches of the depository a
 42 sum in excess of:

- 43 (a) The amount insured by the Federal Deposit Insurance Corporation or the National Credit
 44 Union Share Insurance Fund; or
- 45 (b) For any amount over the amount insured by the Federal Deposit Insurance Corporation or

1 the National Credit Union Share Insurance Fund, the amount insured or guaranteed by private de-
2 posit insurance or a deposit guaranty bond issued by an insurance company rated A- or better by
3 a recognized insurance rating service.

4 (2) Compliance with ORS 295.001 to 295.108 relieves the public official of personal liability for
5 the loss of the public funds in the public official's custody or control.

6 **SECTION 15. (1) Sections 1 to 11 of this 2011 Act and the amendments to ORS 293.875**
7 **and 295.002 by sections 12 to 14 of this 2011 Act become operative January 1, 2012.**

8 (2) A public official may take any action prior to January 1, 2012, that is necessary to
9 allow the public official to exercise, on and after January 1, 2012, all the duties, functions and
10 powers conferred on the public official by sections 1 to 11 of this 2011 Act and the amend-
11 ments to ORS 293.875 and 295.002 by sections 12 to 14 of this 2011 Act.

12 **SECTION 16. This 2011 Act being necessary for the immediate preservation of the public**
13 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
14 **on its passage.**

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