

Enrolled
Senate Bill 351

Sponsored by Senator ROBLAN; Senator FERRIOLI (Presession filed.)

CHAPTER

AN ACT

Relating to tribal government investments; amending ORS 293.353, 293.820, 294.468, 294.805, 294.810, 294.815, 294.820, 294.831, 294.860, 294.870, 294.875, 294.880, 294.882 and 294.885; and declaring an emergency.

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

SECTION 1. ORS 294.805 is amended to read:

294.805. As used in ORS 294.805 to 294.895:

- (1) "Board" means the Oregon Short Term Fund Board.
- (2) "Council" means the Oregon Investment Council created under ORS 293.706.
- (3) "Funds" means funds under the control or in the custody of any local government official **or tribal government official** by virtue of office that are not required to meet current demands.
- (4) "Investment officer" means the State Treasurer in capacity as investment officer for the council and the investment pool.
- (5) "Investment pool" means the aggregate of all funds from local government officials **and tribal government officials** that are placed in the custody of the investment officer for investment and reinvestment as provided under ORS 294.805 to 294.895.
- (6) "Local government official" means each officer or employee of any agency, political subdivision or public corporation of this state, including the Oregon State Bar, who by law is made the custodian of or has control of any funds.
- (7) "**Oregon Indian tribe**" means each of the Burns Paiute Tribe, the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Coquille Indian Tribe, the Cow Creek Band of Umpqua Tribe of Indians and the Klamath Tribes, as long as each remains a federally recognized Indian tribe.
- (8) "**Public body**" means:
 - (a) A public body as defined in ORS 287A.001; or
 - (b) An Oregon Indian tribe.
- (9) "**Tribal government**" means the governing body of an Oregon Indian tribe.
- (10) "**Tribal government official**" means each officer or employee of a tribal government who by law is made the custodian of or has control of any funds.

SECTION 2. ORS 294.810 is amended to read:

294.810. (1) With the consent of the governing body, a local government official **or tribal government official** may place in the aggregate up to \$30 million of its funds in the investment pool, or, if the assets of the investment pool have been transferred pursuant to ORS 294.882, for invest-

ment and reinvestment by the investment officer as provided under ORS 293.701 to 293.820 or 294.805 to 294.895, as the case may be. The \$30 million limitation stated in this section does not apply either to funds of a governing body that are placed in the investment pool on a pass-through basis or to funds invested on behalf of another government unit. Local governments must remove pass-through funds that result in an account balance in the pool in excess of \$30 million within 10 business days. County governments **and tribal governments** must remove such excess funds within 20 business days.

(2) **The investment officer shall annually adjust** the \$30 million limitation contained in subsection (1) of this section [*shall increase in proportion to the increase occurring after September 9, 1995, in the Consumer Price Index for All Urban Consumers of the Portland, Oregon, Metropolitan Statistical Area, as compiled by the United States Department of Labor, Bureau of Labor Statistics*] **by multiplying \$30 million by the percentage, if any, by which the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending September 9 of the current calendar year exceeds the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending September 9, 1995.**

SECTION 3. ORS 294.815 is amended to read:

294.815. Subject to the right of the unit of local government **or the tribal government** to specify the period in which its funds may be held in the investment pool for investment and reinvestment, the investment officer by rule shall prescribe the time periods for investments in the investment pool and the procedure for withdrawal of funds.

SECTION 4. ORS 294.820 is amended to read:

294.820. If the State Treasurer and the Oregon Investment Council terminate the operation of all investment pools created under ORS 293.824, public bodies[, *as defined in ORS 287A.001,*] may establish by written agreement under ORS chapter 190 one or more pools for the investment of proceeds for the purposes identified in ORS 293.822. In establishing one or more such pools, the participating public bodies may exercise those powers conferred on the State Treasurer and the Oregon Investment Council by ORS 293.824.

SECTION 5. ORS 294.831 is amended to read:

294.831. (1) The [*local government investment pool*] **investment officer** shall seek to obtain a competitive return on investments **of the investment pool** subject to the standards set forth in ORS 294.835 and consistent with the liquidity requirements demanded by the short term nature of local government **and tribal government** deposits in the pool.

(2) The investment officer shall at all times hold investments which mature in three years or less, in an amount not less than an amount equal to the aggregate of all funds placed with the investment officer by local governments **and tribal governments** under ORS 294.805 to 294.895, which investments shall be from the funds defined in ORS 293.701 (2)(o).

(3) Notwithstanding subsection (2) of this section, the investment officer may purchase legally issued general obligations of the United States and of the agencies and instrumentalities of the United States if the seller of the obligations agrees to repurchase the obligations within 90 days following the date on which the investment officer makes the investment. The price paid by the investment officer for such obligations may not exceed amounts or percentages prescribed by written policy of the Oregon Investment Council or the Oregon Short Term Fund Board created by ORS 294.885.

(4) Investments and commitments of the investment pool which do not conform to the quality or maturity requirements set forth in ORS 294.805 to 294.895 shall be liquidated by the investment officer once the market value of such investments and commitments reaches book value, or as soon as is practicable thereafter.

SECTION 6. ORS 294.860 is amended to read:

294.860. (1) Except as provided in ORS 294.850 and this subsection, all instruments of title of all investments of the investment pool shall remain in the custody of the investment officer. The investment officer may deposit with one or more custodial agents or banks those instruments of title that the State Treasurer considers advisable, to be held in safekeeping by the agents or banks for

collection of the principal and interest or other income, or of the proceeds of sale or maturity. For purposes of this section, instruments of title of investments of the investment pool may include such evidence of title as the investment officer shall consider secure and consistent with modern investment, banking and commercial practices, and may include book entry and automated recordation of such title.

(2) Except as provided in ORS 294.850 and 294.855 (3) and subsections (1) and (3) of this section, the investment officer shall collect the principal and interest or other income of investments of the investment pool, title of which is in the investment officer's custody, when due and payable, and shall pay to the appropriate local government official **or tribal government official** the principal and interest or other income, within 30 days after the last day of the calendar quarter in which the principal and interest or other income accrues. Not less often than quarterly and without regard to whether the short-term investments were made with moneys placed by local government officials, **by tribal government officials** or by other sources, the investment officer shall compute the amount by which the current fair market value exceeds or is less than the net purchase price of all short-term investments administered by the investment officer that mature more than 270 days from the date computation is made. The investment officer shall compute the fair market value of such investments based upon the mean value of the bid and ask price of such investments as of the date of computation, based upon quotations from reputable dealers or financial institutions dealing in such investments. If the amount so computed by the investment officer totals more than one percent of the balance of the pool, either in terms of a gain or loss, the investment officer shall allocate the amount to all pool participants. Any addition to or deduction from amounts to be distributed shall be allocated among the municipalities **and tribal governments** participating in the pool at any time during the month in proportion to their average daily balances of funds invested through the pool. Investments maturing 270 days or less from the date of computation shall not be subject to the foregoing computation, but for other purposes shall be valued at book value or original purchase price.

(3) In the event of default in the payment of principal or interest or other income of any investment of the investment pool, the investment officer, with the approval of the council, may:

(a) Institute the proper proceedings to collect the matured principal or interest or other income.

(b) Accept for exchange purposes refunding bonds or other evidences of indebtedness at interest rates to be agreed upon by the investment officer and obligor.

(c) Make compromises, adjustments or disposition of the matured principal or interest or other income as the investment officer considers advisable for the purpose of protecting the moneys invested.

(d) Make compromises or adjustments as to future payments of principal or interest or other income as the investment officer considers advisable for the purposes of protecting the moneys invested.

SECTION 7. ORS 294.870 is amended to read:

294.870. (1) The investment officer shall keep, for each public body with funds in the investment pool, a separate account, which shall record the individual amounts and the totals of all investments of its moneys in the investment pool.

(2) The investment officer shall report monthly to the local government official **or tribal government official** of a public body with funds in the investment pool the changes in its account made during the preceding month for the investment pool. The investment officer shall also furnish a financial report monthly to each participating governmental unit investor in the [*local government*] investment pool. The financial report shall include, but not be limited to, such comparative data for the preceding six months operation of the investment pool as will provide a basis for analyzing trends and comparing operating results and financial position. A monthly statement shall be distributed within 30 days after the end of that month.

SECTION 8. ORS 294.875 is amended to read:

294.875. Not later than 15 days after the last day of each month, the investment officer shall submit to the Oregon Investment Council and the Oregon Short Term Fund Board a report of the

investments made during the preceding month. The report shall include a detailed summary of investment, reinvestment, purchase, sale and exchange transactions, setting forth, among other matters, the investments bought, sold and exchanged, the dates thereof, the prices paid and obtained, the names of the dealers involved and a statement of the accounts referred to in ORS 294.870 (1). The reports shall include a description of every investment in the portfolio of assets in the investment pool showing issuer, coupon, purchase date, maturity date, yield to maturity, book value, market value as of the end of the month for which the report is rendered and the method used to value pool investments; a computation of the average life of the portfolio of assets in the investment pool weighted according to the market value of each investment that matures more than 270 days from the report date as of the end of the month for which the report is rendered; and a computation of the annualized rate of return of the investment pool portfolio, net of expense. A copy of the reports shall be made available to each county, municipality, school district and other political subdivision **and tribal government** the funds of which are then being invested by the investment officer. The investment officer may send copies of the report to investment bankers and brokers recommended by the council.

SECTION 9. ORS 294.880 is amended to read:

294.880. An examination and audit of the investment pool shall be made separately from the audit of the treasurer for submission to the Oregon Investment Council, [local] public bodies that are investors in the pool, the Legislative Assembly and the **Oregon Short Term Fund** Board at least once a year and at other times as the council may require. An audit report shall be submitted to the individuals and public bodies specified within 60 days after the end of the fiscal year or as soon as practical. The report shall include a statement prepared by the State Treasurer of the investment rules governing investments authorized by the council.

SECTION 10. ORS 294.882 is amended to read:

294.882. (1) It is recognized that a time may come when the interest of local governments **and tribal governments** diminishes to the extent that participation in the [local government] investment pool no longer warrants its operation as a separate fund. If the [local government] investment pool decreases to a level below \$125 million, the State Treasurer may transfer the assets of the pool to the [state investment fund] **Oregon Short Term Fund** established under [ORS 293.701 (2)(n)] **ORS 293.728**. In that event, the [local government] investment pool participant accounts will be treated as are other state funds and accounts in receiving a proportionate share of the earnings of [that investment fund] **the Oregon Short Term Fund**. Notwithstanding ORS 294.805 to 294.895, but subject to ORS 294.810, when the State Treasurer transfers the assets of the [local government] investment pool to the [state investment fund] **Oregon Short Term Fund**, the distributions of income to local governments **and tribal governments**, payment of related expenses and the reporting, program examination and audit functions with respect to the investment pool participant accounts shall be administered in accordance with ORS 293.353 and 293.701 to 293.820.

(2) The State Treasurer, at the discretion of the treasurer, may reestablish the [local government] investment pool as a separate fund[,] if the participant accounts increase to over \$125 million and, in the State Treasurer's judgment, sufficient interest by local government **and tribal government** exists to [insure the local government] **ensure the** investment pool will remain over \$125 million. Prior to reestablishing the pool as a separate fund, the State Treasurer shall first present a plan for operation, including the reasons for such action, to the Oregon Investment Council at a regularly scheduled meeting for its review and comment. The State Treasurer shall publish notice in the Secretary of State's administrative rules bulletin of the treasurer's intent to reestablish the pool as a separate fund at least 30 days prior to the meeting at which the Oregon Investment Council shall review the proposal, and notice of the meeting time and location of the Oregon Investment Council at which the proposal will be discussed.

SECTION 11. ORS 294.885 is amended to read:

294.885. (1) There is created the Oregon Short Term Fund Board consisting of seven members.

(2) One member shall be the State Treasurer or the treasurer's designated representative. Three members, who are qualified by training and experience in the field of investment or finance and who

do not hold any other public office or employment, shall be appointed by the State Treasurer. Three members, who are treasurers, finance or fiscal officers or business managers of any county, city or school district, shall be appointed by the Governor. In making the appointment, the Governor may consider persons recommended by:

(a) The Association of Oregon Counties.

(b) The League of Oregon Cities.

(c) The Oregon School Boards Association.

(d) One or more tribal governments with tribal government officials.

(3) The term of office of each appointed member of the board is four years, but each appointed member serves at the pleasure of the appointing authority. A vacancy in the appointed membership occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

SECTION 12. ORS 293.353 is amended to read:

293.353. (1) As payment for expenses of processing banking-related transactions, the State Treasurer may charge each state agency having such transactions involving the State Treasury. The amount so charged shall be determined by the number of transactions processed by the State Treasurer and shall be paid in the manner determined by the State Treasurer to be most efficient and cost effective. The proceeds from such charges shall be deposited in the Miscellaneous Receipts Account established in the General Fund for the State Treasurer, and such proceeds are continuously appropriated for payment of expenses of the office of the State Treasurer in processing banking-related transactions.

(2) When the State Treasurer transfers the assets of the [*local government*] investment pool to the [*state investment fund*] **Oregon Short Term Fund** established under ORS [293.701 (2)(n)] **293.728** as authorized by ORS 294.882, "state agency," as used in this section, includes local government **and tribal government** participants in the state investment fund.

SECTION 13. ORS 293.820 is amended to read:

293.820. (1) When the investment officer invests the funds of any county, municipality, school district or other political subdivision of this state **or of a tribal government**, the investment officer shall keep a separate account for each such governmental unit the funds of which are being invested.

(2) The investment officer shall report monthly to each such governmental unit the changes made during the preceding month in the investments for the account of that governmental unit. The monthly reports shall be provided to the governmental units within 30 days after the end of the month to which they pertain.

(3) All funds invested by the investment officer shall be invested in accordance with rules adopted or readopted at least annually by the Oregon Short Term Fund Board and approved by the Oregon Investment Council. Such rules shall be published, shall be made available to all interested parties and shall be distributed at least annually to all local governments **and tribal governments** investing funds pursuant to ORS 294.805 to 294.895.

SECTION 14. ORS 294.468 is amended to read:

294.468. (1) It shall be lawful to loan money from any fund to any other fund of the municipal corporation whenever the loan is authorized by official resolution or ordinance of the governing body. The loans shall be made in compliance with the applicable requirements and limitations of this section. Loans made under this section shall not be made from:

(a) Debt service reserve funds created to provide additional security for outstanding bonds or other borrowing obligations that the municipal corporation has covenanted with the holders of such bonds or other borrowing obligations to maintain at certain specified levels. However, nothing in this paragraph is intended or shall be construed to prohibit loans from any such debt service reserve fund to the extent that the aggregate outstanding amount of the loans does not exceed the amount by which the amount in such debt service reserve fund exceeds the amount the municipal corporation has covenanted to maintain in the reserve fund with the holders of the related bonds or other borrowing obligations;

(b) Debt service funds created to account for moneys needed to make annual debt service payments on outstanding bonds or other borrowing obligations; or

(c) Moneys credited to any fund when, under applicable constitutional provisions, the moneys are restricted to specific uses unless the purpose for which the loan is to be made is a use allowed under such constitutional provisions.

(2) The resolution or ordinance authorizing any interfund loan permitted under this section shall:

(a) State the fund from which the loan is to be made, the fund to which the loan is to be made, the purpose for which the loan is to be made and the principal amount of the loan.

(b) If the interfund loan is a capital loan, set forth a schedule under which the principal amount of the loan, together with interest thereon at the rate provided for in paragraph (c)(B) of this subsection, is to be budgeted and repaid to the lending fund. The schedule shall provide for the repayment in full of the loan over a term not to exceed 10 years from the date the loan is made.

(c) If the interfund loan is a capital loan, provide that the loan shall bear interest at an annual rate equal to:

(A) The rate of return on moneys invested in the [*local government*] investment pool under ORS 294.805 to 294.895, as reported under ORS 294.875, immediately prior to the adoption of the ordinance or resolution authorizing the loan; or

(B) Such other rate as the governing body may determine.

(d) If the interfund loan is an operating loan, provide that the money loaned shall be budgeted and repaid to the fund from which the money was borrowed by the end of the ensuing year or ensuing budget period.

(3) The payment of any operating loans not repaid in the year or budget period in which the operating loan was made shall be budgeted as a requirement in the ensuing year or ensuing budget period.

(4) It shall be lawful to commingle cash balances of funds so long as all such fund moneys are segregated in the budget and accounting records.

(5) As used in this section:

(a) "Capital loan" means any interfund loan, or portion thereof, made for the purpose of financing the design, acquisition, construction, installation or improvement of real or personal property and not for the purpose of paying operating expenses.

(b) "Operating loan" means any interfund loan, or portion thereof, that is not a capital loan, including any interfund loan, or portion thereof, made for the purpose of paying operating expenses.

SECTION 15. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate March 7, 2013

.....
Robert Taylor, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House May 29, 2013

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

.....
Kate Brown, Secretary of State