

House Bill 2779

Sponsored by Representative SMITH WARNER (at the request of State Treasurer Tobias Read)

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**.

Sets conditions under which person or agent collecting moneys for state agency may take more than one business day to transmit moneys to State Treasurer.

Modifies reporting requirements for custodians and depositories of public funds relating to pledges and releases of securities, minimum collateral and security requirements and uninsured public funds.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to administration of public funds; amending ORS 293.265, 295.013, 295.015, 295.018, 295.031,
3 295.048 and 295.061; and declaring an emergency.

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

5 **SECTION 1.** ORS 293.265 is amended to read:

6 293.265. (1)(a) Except as provided in paragraph (b) of this subsection, it is the duty of the officer
7 or other person or agent collecting, receiving, in possession of, or having the control of any state
8 moneys or other funds, contributions or donations collected or received by, and to be expended by
9 or on behalf of the state under the approval or supervision of any state agency, recognized by the
10 laws of this state and having the power to collect and disburse state funds, to turn over all the
11 moneys described in this section collected or received by or on account of the state agency, to the
12 State Treasurer not later than one business day after collection or receipt of the moneys.

13 (b) The state agency, **or other person or agent collecting state moneys or other funds on**
14 **account of the state agency**, may comply with paragraph (a) of this subsection by using a rea-
15 sonable, longer period for the transmittal of particularly identified funds or categories of funds if
16 *[it]* **the agency** documents and maintains in its official files information that:

17 (A) A valid business reason exists for using a longer transmittal period *[and that]*;

18 (B) The period is no longer than necessary to satisfy that business reason; **and**

19 (C) **Any person or agent collecting state moneys or other funds on account of the state**
20 **agency has complied with any applicable procedures, principles, standards or requirements**
21 **for cash management prescribed by the State Treasurer under ORS 293.875.**

22 (c) Upon request of the Division of Audits of the Secretary of State, the state agency shall
23 submit a copy of the documentation **required under this subsection** to the division.

24 (2) The deposit by or on behalf of the state under the approval or supervision of any state
25 agency of a check marked "paid in full," "payment in full," "full payment of a claim" or words of
26 similar meaning does not establish an accord and satisfaction that binds the state or prevents the
27 collection of the remaining amount owed upon the obligation unless an officer or employee with
28 actual authority to settle claims has agreed in writing to accept the check as full payment of a
29 disputed obligation.

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 (3) Notwithstanding the provisions of subsection (1) of this section, subject to limits on amount
 2 adopted pursuant to subsection (4) of this section, a state agency may return any bank check or
 3 money order received by the state agency, whenever such bank check or money order is incomplete
 4 or the report or record applied for is not available or releasable or the payment is not owed. The
 5 state agency shall keep a record of the check or money order returned, in the form prescribed by
 6 the Oregon Department of Administrative Services.

7 (4) After consultation with the State Treasurer, the department shall by rule limit the return,
 8 by a state agency, of a bank check or money order under subsection (3) of this section to checks
 9 or money orders of less than the amount specified in the rule.

10 (5) As used in this section, "state agency" means any state officer, board, commission, corpo-
 11 ration, institution, department or other state organization whose costs are paid wholly or in part
 12 from funds held in the State Treasury.

13 **SECTION 2.** ORS 295.013 is amended to read:

14 295.013. (1) When a custodian receives **a pledge or release of** securities from a depository, **and**
 15 **after receiving the approval of the State Treasurer,** the custodian shall issue to the State
 16 Treasurer[, *with a copy to the depository,*] a custodian's receipt that describes the securities. **The**
 17 **custodian also shall issue a copy of the receipt to the depository.**

18 (2) A custodian shall:

19 (a) Maintain an accurate inventory of the securities of each depository described in the
 20 custodian's receipts that the custodian issues to the State Treasurer and adjust the inventory to
 21 reflect [*withdrawals and substitutions*] **pledges or releases** of securities that the custodian previ-
 22 ously inventoried.

23 (b) Appraise the value of the securities added to and [*withdrawn*] **released** from the depository's
 24 inventory and appraise the value of the depository's entire inventory on the last day of each month
 25 and at such other times as the State Treasurer directs.

26 [*Provide a monthly report to the State Treasurer that lists the securities each depository has*
 27 *pledged and that sets forth the value of each security and of the entire inventory of securities the de-*
 28 *pository has pledged.*]

29 [*Notify a depository in writing within one business day after the custodian determines that the*
 30 *value of the securities the custodian holds for the depository is less than the minimum collateral re-*
 31 *quirement for the depository.*]

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

35 [*Notify the State Treasurer in writing if a depository increases the value of the depository's se-*
 36 *curities to an adequate amount after the depository receives notice under paragraph (d) of this sub-*
 37 *section.*]

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

41 **(c) Provide reports to the State Treasurer that describe the type and value of each se-**
 42 **curity pledged by each depository and any additional information required by the State**
 43 **Treasurer.**

44 **(3) The State Treasurer, by rule or through individual pledge agreements, may specify:**

45 **(a) Additional information that must be reported related to the securities pledged;**

1 **(b) The frequency with which reports required under this section must be provided; and**

2 **(c) Requirements for distribution of reports to depositories or other persons.**

3 **SECTION 3.** ORS 295.015 is amended to read:

4 295.015. Except as provided in ORS 295.018:

5 (1)(a) A depository throughout the period during which the depository possesses uninsured public funds deposits shall maintain on deposit with 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. 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.

6 (b) For purposes of this section, when pledged as collateral for public funds deposits, loans described in ORS 295.001 (19)(f) must be discounted to 75 percent of the unpaid principal balance owing on the loan from time to time, or to a lower value that the State Treasurer determines from time to time.

7 (c) A bond anticipation note that is pledged as collateral for public funds deposits and for which there is no readily determinable market value must be discounted to 75 percent of the unpaid principal balance owing on the note from time to time, or to a lower value that the State Treasurer determines from time to time.

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

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

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

11 (b) Within five business days after the date on which the depository's minimum collateral requirement increases, or within a longer period approved by the State Treasurer [*and the director*] **in coordination with the Department of Consumer and Business Services**, the depository shall, in accordance with the plan approved by the State Treasurer [*and the director*], tender to the depository's custodian additional securities that have a value sufficient to increase the total value of the depository's securities pledged as collateral for public funds deposits to the depository's new minimum collateral requirement.

12 (4) If a depository's minimum collateral requirement decreases because the depository becomes a well capitalized depository, or because the State Treasurer no longer requires the depository to pledge additional collateral under ORS 295.018, the depository may:

13 (a) Notify the depository's custodian and the State Treasurer in writing that the depository's

1 minimum collateral requirement has decreased, setting forth the depository's new minimum collat-
 2 eral requirement; and

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

5 (5) The State Treasurer shall act upon requests for releases [*and withdrawals*] of securities un-
 6 der subsections (2) and (4)(b) of this section within three business days after receiving each request.

7 **SECTION 4.** ORS 295.018 is amended to read:

8 295.018. (1)(a) The State Treasurer may require a depository, during any period when the de-
 9 pository possesses uninsured public funds deposits, to maintain on deposit with the depository's
 10 custodians securities that have a value not less than 110 percent of the greater of:

11 (A) All uninsured public funds the depository holds; or

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

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

19 (2) The State Treasurer shall order an increase in collateral under subsection (1) of this section
 20 if the director so advises. If the depository is a national bank, a federally chartered savings bank,
 21 a savings and loan association or a federal credit union, in giving advice to the State Treasurer the
 22 director may rely exclusively on information that the federal regulatory agencies and the bank,
 23 savings bank, association or federal credit union provide to the director on forms the director pre-
 24 scribes. As a condition of being analyzed and reviewed by the director, a national bank, a federally
 25 chartered savings bank, a savings and loan association or a federal credit union shall agree and
 26 consent to provide the director with accurate, pertinent and timely information.

27 (3) If the State Treasurer orders a depository to increase the depository's collateral under sub-
 28 section (1) of this section, the State Treasurer shall give notice of the order to the director and the
 29 custodian of the depository within one business day after issuing the order.

30 (4) The director's failure to inform the State Treasurer of the condition of any depository does
 31 not give a public depositor any right or impose liability on the director. The State Treasurer is not
 32 liable to a public depositor or to a depository for increasing or not increasing the collateral re-
 33 quirement as authorized in subsection (1) of this section.

34 (5) A depository that the State Treasurer notifies of the increased collateral requirement shall:

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

38 (b) Within five business days after receiving approval of the plan the depository submitted under
 39 paragraph (a) of this subsection, or within a longer period approved by the State Treasurer [*and the*
 40 *director*] **in coordination with the Department of Consumer and Business Services**, increase the
 41 depository's collateral to the level the State Treasurer requires under subsection (1) of this section
 42 [*and notify the State Treasurer and the director that the depository has complied by supplying copies*
 43 *of the custodian's receipts for, or statement of activity showing, the increased collateral*].

44 (6)(a) If the [*State Treasurer does not receive the notice required in subsection (5)(b) of this*
 45 *section*] **depository does not increase the depository's collateral to the level the State Treas-**

1 **urer requires under subsection (1) of this section** within the applicable period under subsection
 2 (5)(b) of this section, the State Treasurer shall immediately send, to each public official who has
 3 notified the State Treasurer that the public official has public funds on deposit in that depository,
 4 notice that the depository has failed to comply.

5 (b) If, after giving notice as required by paragraph (a) of this subsection, the State Treasurer
 6 receives notice that the depository has complied with the increased collateral requirements, the
 7 State Treasurer shall notify each public official that the State Treasurer notified under paragraph
 8 (a) of this subsection that the depository has complied.

9 (7) A depository that does not comply with subsection (5) of this section may not accept addi-
 10 tional uninsured public funds deposits.

11 (8) Records the State Treasurer receives or compiles that contain the collateralization require-
 12 ment for a depository and the amount of collateral a custodian holds are exempt from public dis-
 13 closure unless the public interest requires disclosure in the particular instance.

14 (9) The State Treasurer may require a depository that must increase the depository's collateral
 15 under subsection (5) of this section to file the reports required under ORS 295.061 (3).

16 **SECTION 5.** ORS 295.031 is amended to read:

17 295.031. (1) Within three business days after the State Treasurer [*receives notice from a custodian*
 18 *pursuant to ORS 295.013 (2)(e),*] **determines that a depository has failed to increase the value**
 19 **of the depository's securities within the time required under ORS 295.015 (3)(b) or** receives
 20 information from the Director of the Department of Consumer and Business Services or other
 21 sources under ORS 295.071 or 295.073, or otherwise receives information that indicates that a de-
 22 pository has failed to pledge adequate collateral with the depository's custodian, the State Treasurer
 23 shall send written notice of the failure to each public official who has uninsured public funds on
 24 deposit in the depository [*that is the subject of the notice from the custodian or of the information the*
 25 *State Treasurer received*].

26 (2) Within five business days after the State Treasurer receives [*notice*] **a receipt** from a custo-
 27 dian pursuant to ORS 295.013 [(2)(f)] **(1)** that indicates that a depository has pledged adequate
 28 collateral with the depository's custodian, the State Treasurer shall send written notice to each
 29 public official who was notified under subsection (1) of this section stating that the depository has
 30 adequate collateral.

31 **SECTION 6.** ORS 295.048 is amended to read:

32 295.048. (1) Notwithstanding ORS 295.046, a depository may not permit the aggregate of
 33 uninsured public funds deposits on deposit with the depository from all public officials to exceed at
 34 any time the lesser of:

35 (a) 100 percent of the value of the depository's net worth, if the depository is an undercapital-
 36 ized depository;

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

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

41 (d) For a bank depository, 30 percent of the total aggregate uninsured public funds deposits of
 42 all public officials in all bank depositories as reported in the most recent notice the bank depository
 43 received from the State Treasurer; or

44 (e) For a credit union depository, 30 percent of the total aggregate uninsured public funds de-
 45 posits of all public officials in all credit union depositories as reported in the most recent notice the

1 credit union depository received from the State Treasurer.

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

8 (3) If a depository's aggregate of uninsured public funds deposits exceeds the amount set forth
 9 in subsection (1) of this section, the depository shall, within three business days after receiving no-
 10 tice from the State Treasurer, cease accepting deposits of uninsured public funds.

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

12 (a) A depository may accept and hold uninsured public funds deposits in excess of the limits
 13 specified in subsection (1) of this section if the State Treasurer, upon good cause shown, approves
 14 the depository's request to hold uninsured public funds in excess of the limits specified in subsection
 15 (1) of this section for a period not exceeding 90 days and eligible securities are deposited with the
 16 depository's custodian as collateral in an amount at least equal to the amount of the uninsured
 17 public funds deposits that exceeds the limits specified in subsection (1) of this section. Upon the
 18 expiration of the 90-day period, if the depository does not comply with the limits specified in sub-
 19 section (1) of this section, the depository shall, within three business days after receiving notice
 20 from the State Treasurer, cease accepting deposits of public funds.

21 (b) The limits specified in subsection (1) of this section do not apply to public funds deposits a
 22 depository holds in a certificate of deposit or time deposit under ORS 295.004 (1) or public funds that
 23 an Oregon depository arranges to deposit into an insured deposit account under ORS 295.004 (2).

24 (c) A well capitalized depository or an adequately capitalized depository may accept and hold
 25 uninsured public funds deposits that exceed the limit specified in subsection (1)(d) or (e) of this
 26 section if eligible securities are deposited with the depository's custodian as collateral in an amount
 27 at least equal to the amount of the uninsured public funds deposits that exceed the limit specified
 28 in subsection (1)(d) or (e) of this section.

29 (5) If the State Treasurer notifies a depository that it must cease accepting deposits of public
 30 funds under subsection (3) or (4) of this section, the State Treasurer may also notify public officials
 31 who have deposited public funds in the depository that within 15 business days after the public of-
 32 ficial receives the notice from the State Treasurer, the public official must withdraw from the de-
 33 pository to which the notice applies all public funds deposits that exceed the limit specified in
 34 subsection (1)(d) or (e) of this section. A public official who is notified by the State Treasurer under
 35 this subsection must begin to withdraw funds as specified in the notice. Except as required by any
 36 applicable law or regulation, a depository may not impose an early withdrawal penalty or a forfei-
 37 ture of interest with respect to a withdrawal made pursuant to this subsection.

38 **SECTION 7.** ORS 295.061 is amended to read:

39 295.061. (1) On or before the date on which each treasurer report is due, each depository shall
 40 file the depository's treasurer report with the [*depository's custodian and with the*] State Treasurer
 41 **using systems and processes prescribed by the State Treasurer in individual pledge agree-**
 42 **ments or by rule.**

43 (2) Each depository that files reports with the State Treasurer under subsection (1) of this sec-
 44 tion shall notify the State Treasurer in writing or by electronic means within three business days
 45 of:

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

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

6 (3) An adequately capitalized depository or an undercapitalized depository shall report to the
7 [*depository's custodian and to the*] State Treasurer at least once each week the actual amount of
8 uninsured public funds deposits the depository holds. **The depository shall report using systems
9 and processes prescribed by the State Treasurer in individual pledge agreements or by rule.**

10 (4)(a) If a depository fails to file the reports or provide the notices required under this section
11 or fails to file the notices or reports required under ORS 295.018, the State Treasurer shall send a
12 notice to each public official who has uninsured public funds on deposit in the depository that the
13 depository failed to comply.

14 (b) If, after giving notice under paragraph (a) of this subsection, the State Treasurer receives
15 notice that the depository has filed the required reports or provided the required notices, the State
16 Treasurer may notify each public official who was notified under paragraph (a) of this subsection
17 that the depository has complied.

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

21 **SECTION 8. This 2017 Act being necessary for the immediate preservation of the public**
22 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
23 **on its passage.**