

House Bill 4091

Sponsored by Representative EVANS; Representatives ESQUIVEL, GOMBERG, MALSTROM, MEEK, NOSSE, WITT, Senators FREDERICK, MANNING JR (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 Oregon Cash Depository Corporation as independent public corporation and prescribes corporation's purposes and powers. Directs corporation to lease or acquire real property and construct or renovate offices, facilities and business locations throughout state at which corporation receives, handles, stores and dispenses cash and other valuable property.

Establishes Oregon Cash Depository Corporation Fund in State Treasury and requires corporation to deposit all moneys corporation receives into fund. Permits corporation to invest moneys in fund and fraction of corporation's deposits in accordance with provisions of Act.

Subjects corporation to annual audit by Secretary of State and requires corporation to respond to recommendations in audit report. Requires study of corporation's operations every four years and report to Legislative Assembly.

Requires Attorney General to defend corporation and directors, officers and employees of corporation against claim or charge brought for actions in performing duties of corporation.

Becomes operative January 1, 2019.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to a public corporation for establishing secure cash storage facilities in this state; and de-
3 claring an emergency.

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

5 **SECTION 1. (1) As used in this section, "public corporation" means an entity that the**
6 **State of Oregon creates to carry out a public purpose by participating in activities in which**
7 **a private enterprise may also participate in the course of the private enterprise's business.**

8 **(2) The Oregon Cash Depository Corporation is created as an independent public corpo-**
9 **ration with the purposes and powers set forth in section 2 of this 2018 Act. The corporation**
10 **may register an assumed business name under ORS chapter 648 and use the assumed busi-**
11 **ness name in the corporation's operations, advertisements and communications.**

12 **(3) The Governor shall appoint, subject to Senate confirmation under Article III, section**
13 **4, of the Oregon Constitution, a board of five directors for the Oregon Cash Depository**
14 **Corporation as follows:**

15 **(a) One director who has extensive experience with secure facilities that handle or**
16 **transact business in large amounts of cash or other valuable property;**

17 **(b) One director who represents Oregon businesses that conduct transactions primarily**
18 **in cash;**

19 **(c) One director who has extensive experience in cash management and cash accounting;**

20 **(d) One director who has extensive experience in tax accounting; and**

21 **(e) One director who has extensive experience in logistics.**

22 **(4)(a) Except as provided in paragraph (b) of this subsection, a director of the Oregon**
23 **Cash Depository Corporation may not have any pecuniary interest, other than an incidental**
24 **interest that the director discloses and makes a matter of public record at the time the**

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 Governor appoints the director, in any business entity other than the corporation that,
 2 during the director's term of office, will likely benefit, financially or otherwise, from the
 3 corporation's operations.

4 (b) A director appointed under subsection (3)(b) or (c) of this section may have a
 5 pecuniary interest in a business entity that might benefit in particular circumstances from
 6 the operations of the corporation if the director discloses the interest to the corporation's
 7 board of directors and offers to refrain from participating in a decision of the board of di-
 8 rectors that might benefit the business entity in which the director has an interest. Unless
 9 the corporation's bylaws provide otherwise, the board of directors shall exclude the director
 10 who disclosed the interest from participating in the decision.

11 (5) A director's term of office is four years, but the director serves at the pleasure of the
 12 Governor. The Governor shall appoint a successor before a director's term expires or a re-
 13 placement for the remainder of a director's term of office if the director's position is vacant
 14 for any reason. The Governor's appointment of a successor or replacement is immediately
 15 effective but is subject to Senate confirmation under Article III, section 4, of the Oregon
 16 Constitution. A director is eligible for reappointment.

17 (6) A director is entitled to compensation and expenses as provided in ORS 292.495.

18 (7) The board of directors shall select one director as chairperson and another director
 19 as vice chairperson for terms and with duties and powers the board of directors considers
 20 necessary to perform the functions of chairperson and vice chairperson. A majority of the
 21 members of the board of directors constitutes a quorum for transacting business.

22 (8) The board of directors shall meet at least once every three months at a time and
 23 place the board of directors designates or at other times and places that the chairperson or
 24 a majority of the board of directors specifies.

25 (9) The board of directors shall establish bylaws and policies for operating and managing
 26 the Oregon Cash Depository Corporation that:

27 (a) Promote the purposes of the corporation; and

28 (b) Are consistent with applicable provisions of the laws of this state.

29 (10) Not later than April 15 of each year, the board of directors shall file with the Gov-
 30 ernor and the Legislative Assembly a report that describes the operations and activities of
 31 the Oregon Cash Depository Corporation during the preceding year.

32 (11) The board of directors shall appoint a president and officers whom the board deems
 33 necessary to administer and manage the Oregon Cash Depository Corporation. The president
 34 and officers shall administer and manage the corporation's affairs subject to the board's
 35 oversight and supervision.

36 **SECTION 2.** (1)(a) The Oregon Cash Depository Corporation is a governmental entity that
 37 performs governmental functions and exercises governmental powers, but does not have
 38 territorial boundaries within this state and is not a unit of local or municipal government
 39 or a state agency for the purposes of state statutes or constitutional provisions. The corpo-
 40 ration shall carry out the purposes set forth in subsection (2) of this section and has the
 41 powers, rights and privileges that sections 1 to 16 of this 2018 Act expressly confer on the
 42 corporation or that are otherwise implied by the laws of this state or are incident to ex-
 43 pressly conferred powers, rights and privileges.

44 (b) The corporation shall incorporate as a nonprofit corporation. Except to the extent set
 45 forth in sections 1 to 16 of this 2018 Act, the corporation is subject to ORS chapter 65 with

1 respect to the corporation's formation, governance, operation and dissolution and as to all
 2 other matters to which a nonprofit corporation would otherwise be subject. To the extent
 3 that a provision of sections 1 to 16 of this 2018 Act conflicts with a provision of ORS chapter
 4 65, the provision of sections 1 to 16 of this 2018 Act controls the governance and operations
 5 of the corporation and supersedes the provision of ORS chapter 65.

6 (2) The purposes of the Oregon Cash Depository Corporation are:

7 (a) To provide secure depositories for cash deposits, cash management services and se-
 8 cure handling and storage of other valuable property at locations throughout this state
 9 where cash depository and cash management services are necessary, convenient and practi-
 10 cable to provide and maintain;

11 (b) To provide sound, transparent and reliable accounting procedures and practices that
 12 build trust and demonstrate a fiduciary concern for the corporation's depositors and other
 13 customers;

14 (c) To develop and maintain a practice and reputation of trustworthiness and reliability
 15 that can command the confidence of the corporation's depositors, other customers and other
 16 concerned members of the community;

17 (d) To provide needed cash management consultation services and other assistance to
 18 individuals and businesses in this state that conduct transactions and fund operations pri-
 19 marily in cash;

20 (e) To provide or assist in providing secure transportation facilities and services for
 21 transporting cash deposits and other valuable property to and from the corporation's secure
 22 depositories and to other destinations as needed;

23 (f) To cooperate with local governments and law enforcement agencies, community or-
 24 ganizations and other institutions and entities in preventing and deterring theft and criminal
 25 activity related to transporting, depositing and storing cash and other valuable property and
 26 in acting promptly and effectively to respond to and remedy the consequences and effects
 27 of theft and criminal activity that occurs;

28 (g) To enter into partnerships, joint ventures, cooperative arrangements, contracts and
 29 other agreements with public and private entities in order to attract investment and exper-
 30 tise necessary to build secure facilities for cash deposits, giving priority to providing deposi-
 31 tories in a wide array of geographic locations within this state and to providing depositories
 32 in communities or regions of this state that are underserved or in need of cash depository
 33 services;

34 (h) To explore, develop and use various financing options to carry out the purposes of
 35 this subsection while minimizing financial, legal and operational risks to the state, to local
 36 governments, to state and local government agencies and to public institutions;

37 (i) To hold title in the name of the state to facilities, structures, vehicles and
 38 infrastructure related to the corporation's activities and to transfer the title to an appro-
 39 priate state agency at the Governor's direction;

40 (j) To manage and invest the corporation's funds and other assets, or funds and assets
 41 committed to the corporation's care, prudently and with consideration for the long-term so-
 42 cial and economic consequences of the corporation's management and investment activities;

43 (k) To maintain public accountability and responsible stewardship of public and private
 44 funds; and

45 (L) To operate in such a way as to ensure the corporation's continued viability.

1 **(3) To carry out the purposes set forth in subsection (2) of this section, the Oregon Cash**
 2 **Depository Corporation has the power to:**

3 **(a) Acquire, purchase, receive, hold, own, control, lease, rent, manage, operate, use, im-**
 4 **prove, develop, construct, equip, furnish, lend, sell, convey, exchange or otherwise dispose**
 5 **of real and personal property of any description or nature;**

6 **(b) Exercise the right of eminent domain in the state's name and in accordance with ORS**
 7 **chapter 35 under circumstances that the corporation justifies in writing to all affected per-**
 8 **sons with specific reference to an aspect of the corporation's purposes as set forth in this**
 9 **section;**

10 **(c) Enter into partnerships, joint ventures or other business arrangements with any**
 11 **public or private entity;**

12 **(d) Form or acquire subsidiary entities that, in the judgment of the board of directors,**
 13 **enable the corporation to effectively carry out the purposes set forth in this section;**

14 **(e) Enter into contracts and other agreements with entities or individuals with appro-**
 15 **priate experience, expertise, capacity and knowledge related to secure transportation facili-**
 16 **ties and other facilities the corporation uses to transport and store cash or engage in cash**
 17 **transactions, to cash accounting and cash management procedures and to any other aspect**
 18 **of the corporation's functions;**

19 **(f) Employ, fix compensation for, discipline, dismiss and set employment conditions and**
 20 **privileges in accordance with applicable law for any individual whom the corporation deems**
 21 **necessary to enable the corporation to carry out effectively the purposes set forth in this**
 22 **section;**

23 **(g) Serve as a consultant to any individual or business that uses cash for operations or**
 24 **that conducts transactions primarily in cash;**

25 **(h) Investigate the source or provenance of cash or other valuable property deposited or**
 26 **stored at the corporation's offices, facilities or business locations to the extent necessary to**
 27 **determine that the cash or other valuable property is not stolen or obtained by means that**
 28 **are contrary to the laws of this state;**

29 **(i) Establish, assess, charge, collect and deposit fees, commissions, compensation for**
 30 **costs and expenses and any other charge or consideration for transporting, depositing, se-**
 31 **curing, storing, holding, dispensing and otherwise handling cash, providing consultation ser-**
 32 **vices and providing any other service to depositors and other customers that is consistent**
 33 **with the corporation's purposes under this section, provided that the fee, commission, com-**
 34 **penensation, charge or consideration is:**

35 **(A) Reasonable and calculated to ensure that the corporation's depositors and other**
 36 **customers can afford and continue to use the corporation's services;**

37 **(B) Amenable to financing, structuring, negotiation or adjustment to meet depositors'**
 38 **or other customers' specific circumstances or hardships when necessary; and**

39 **(C) Adequate to ensure the corporation's financial and operational solvency, viability and**
 40 **continued existence;**

41 **(j) Sue any public or private individual or entity in the corporation's own name or be sued**
 42 **by any public or private individual or entity in the corporation's own name in any local, state**
 43 **or federal forum;**

44 **(k) Solicit and receive gifts and donations of money or property of any description or**
 45 **nature from any source for the corporation's benefit and, subject to the terms of the gift**

1 or donation, retain, invest and use the gift or donation;

2 (L) Acquire, receive, hold, keep, pledge, control, manage, use, lend, expend and invest all
 3 funds, appropriations, gifts, bequests, securities and revenue that the corporation obtains
 4 from any source;

5 (m) Borrow money in amounts, for times and on terms that the corporation's board of
 6 directors deems appropriate;

7 (n) Issue bonds or other debt instruments in the name of the State of Oregon with the
 8 cooperation and under the supervision of the State Treasurer and in accordance with ORS
 9 chapter 289 and other applicable law;

10 (o) Seek and implement to the extent practicable methods by which the corporation may
 11 interconnect with financial institutions and banking services to enable funds transfers and
 12 other financial services, to the extent that the services are in accordance with law and do
 13 not put the moneys and property of the corporation or depositors or other customers of the
 14 corporation at substantial risk of loss or seizure;

15 (p) Submit to the Oregon Department of Administrative Services by September 1 of each
 16 even-numbered year a budget request prepared according to generally accepted accounting
 17 principles for the department to submit as part of the Governor's budget request;

18 (q) Purchase insurance, operate a self-insurance program or otherwise arrange for
 19 equivalent insurance of any nature that is adequate for the risks that the corporation as-
 20 sumes in the corporation's governance and operations;

21 (r) Indemnify and defend, in cooperation with the Department of Justice, the
 22 corporation's directors, officers, agents or employees;

23 (s) Adopt, amend and repeal bylaws, administrative rules in accordance with ORS chapter
 24 183, orders and policies and otherwise administer and manage the corporation's affairs;

25 (t) Perform any other act that in the judgment of the corporation's board of directors is
 26 necessary or appropriate to carry out the corporation's purposes; and

27 (u) Exercise the powers set forth in this subsection, notwithstanding that by exercising
 28 the powers, the corporation engages in activities that state or federal antitrust laws may
 29 deem anticompetitive.

30 (4)(a) The Oregon Cash Depository Corporation shall acquire or lease real property and
 31 construct or renovate offices, facilities, business locations and other improvements that are
 32 capable of providing for secure handling and storage of cash deposits or other valuable
 33 property. The offices, facilities or business locations that the corporation constructs or
 34 renovates must, to the extent practicable given the corporation's purposes and the likely
 35 market for the corporation's services, meet the most stringent industry standards for se-
 36 curing cash and other valuable property. The corporation shall make the facilities available
 37 to depositors and other customers at regular hours and in locations that the corporation
 38 determines have a need for the corporation's services. The corporation shall also ensure to
 39 the maximum extent practicable that the facilities enable depositors and other customers
 40 of the corporation to enter onto and exit from the premises of an office, facility or business
 41 location of the corporation without becoming subject to criminal activity and a consequent
 42 loss of the depositor's or other customer's property.

43 (b) In determining suitable sites for the corporation's offices, facilities and business lo-
 44 cations, the corporation, consistent with the corporation's determination of need under par-
 45 agraph (a) of this subsection and after taking into account the corporation's fiscal and

1 operational capacity, shall endeavor to provide adequate local access to the corporation's
2 offices, facilities and business locations in all counties of this state.

3 **SECTION 3.** (1) Except as otherwise provided by law, ORS 279.835 to 279.855 and ORS
4 chapters 240, 276, 279A, 279B, 279C, 282, 283, 291, 292 and 293 do not apply to the Oregon Cash
5 Depository Corporation. Notwithstanding that ORS chapters 279A, 279B and 279C do not ap-
6 ply to the corporation, the corporation shall subscribe to the policy set forth in ORS 279A.015
7 with respect to the corporation's contracting activities and shall commit to openness, im-
8 partiality and competition in awarding contracts. The corporation, by rule and policy, shall
9 develop practices that are appropriate for the corporation and that encourage affirmative
10 action, recycling, purchasing goods and services from qualified nonprofit agencies for indi-
11 viduals with disabilities, paying prevailing wages that the Bureau of Labor and Industries
12 specifies, providing or requiring workers' compensation insurance for workers on contracts
13 and ensuring that disadvantaged business enterprises, minority-owned businesses, woman-
14 owned businesses, businesses that service-disabled veterans own and emerging small busi-
15 nesses participate in contracts with the corporation or the corporation's subsidiaries or
16 contractors.

17 (2) The Oregon Cash Depository Corporation may contract or agree with any state
18 agency to perform duties and functions and to exercise powers imposed by law or otherwise
19 committed to or conferred upon the corporation.

20 (3) Notwithstanding subsection (1) of this section, ORS 293.240, 293.260, 293.262 and 293.505
21 (2) apply to the directors, officers, employees and accounts of the Oregon Cash Depository
22 Corporation and any subsidiary corporation that the Oregon Cash Depository Corporation
23 forms or acquires to the same extent that the statutes apply to a state agency.

24 (4) Notwithstanding subsection (1) of this section, ORS 200.005 to 200.075, 200.090,
25 279A.100, 279A.105, 279A.107, 279A.110 and 279A.112 apply to the Oregon Cash Depository
26 Corporation and the directors, officers and employees of the corporation as if the corporation
27 were a contracting agency as defined in ORS 279A.010.

28 (5) ORS 30.260 to 30.460, 236.605 to 236.640, 243.650 to 243.782, 297.040, 307.090 and 307.112
29 and ORS chapters 35, 190, 192, 244 and 295 apply to the Oregon Cash Depository Corporation
30 under the same terms as the statutes apply to public bodies, as defined in ORS 174.109, other
31 than the State of Oregon.

32 **SECTION 4.** (1) Legal title to real and personal property and any facilities that the State
33 of Oregon acquired before the effective date of this 2018 Act that the Oregon Cash Depository
34 Corporation uses or manages in accordance with sections 1 to 16 of this 2018 Act remains
35 with the State of Oregon. The corporation has the exclusive care, custody and control of the
36 real and personal property and facilities under the terms of an exclusive leasehold interest
37 in the real and personal property and facilities for a term of 99 years, subject to an earlier
38 termination if the corporation is dissolved or is otherwise unable to care for or maintain
39 custody or control of the real or personal property. The term of the leasehold begins on the
40 operative date of this section and, subject to the Governor's approval, may be renewed for
41 consecutive 99-year terms.

42 (2) Notwithstanding any other provisions of the laws of this state concerning the au-
43 thority of state agencies to lease real property and facilities, the Oregon Department of Ad-
44 ministrative Services, acting on behalf of the State of Oregon, shall execute a lease for all
45 real and personal property and facilities to which the State of Oregon has title and that the

1 Oregon Cash Depository Corporation uses in accordance with sections 1 to 16 of this 2018
2 Act. The department may not terminate the lease unless:

3 (a) The corporation ceases operations or ceases to exist, or the Legislative Assembly or
4 another operation of law dissolves the corporation or alters the purposes of the corporation
5 in such a manner as to make the lease no longer tenable;

6 (b) The State of Oregon conveys or transfers title to the real or personal property and
7 facilities to a nongovernmental entity in accordance with applicable law; and

8 (c) The State of Oregon does not place any other conditions upon the corporation in
9 connection with the termination.

10 (3) The Oregon Cash Depository Corporation shall pay the State of Oregon the sum of
11 \$99 as consideration for each lease at the time the corporation executes the lease.

12 (4) The Oregon Cash Depository Corporation shall manage and maintain all real and
13 personal property and facilities that are subject to a lease described in this section. The
14 corporation may not sell or convey legal title to, but may encumber, the real and personal
15 property and facilities. The State of Oregon may encumber the real and personal property
16 and facilities only in a manner that would not impair the financial condition of the corpo-
17 ration or the rights of any person that holds an obligation of the corporation.

18 **SECTION 5.** (1) The Oregon Cash Depository Corporation shall promptly and in writing
19 notify the Legislative Assembly or the Emergency Board, if the Legislative Assembly is not
20 in session, after discovering any shortfall in moneys available to pay when due an amount
21 necessary to satisfy a bond or other debt obligation or an agreement to repay moneys the
22 corporation borrowed. In the notification, the corporation shall specify the amount of the
23 shortfall.

24 (2) In enacting this section, the Legislative Assembly acknowledges an intention to pro-
25 vide, from funds other than funds previously appropriated to the Oregon Cash Depository
26 Corporation, moneys necessary to pay the debt or obligation. This subsection does not,
27 however, legally obligate the Legislative Assembly or the Emergency Board to provide funds
28 for the purposes set forth in this section except to the extent that the Oregon Constitution
29 may require the provision of funds.

30 (3)(a) A director, officer or employee of the Oregon Cash Depository Corporation who has
31 reason to believe that a defalcation has occurred at any office, facility or business location
32 that the corporation operates or maintains has an affirmative duty to report the defalcation
33 and any information that forms the basis of the belief to the appropriate law enforcement
34 officer or agency with jurisdiction of the matter.

35 (b) The corporation and a law enforcement agency described in paragraph (a) of this
36 subsection shall notify the Secretary of State and the Attorney General within five days after
37 discovering a defalcation at any of the corporation's offices, facilities or business locations.

38 (c) The Secretary of State may conduct an immediate audit of the corporation's finances
39 and operations at the office, facility or business location where the defalcation occurred.

40 (d) An audit under paragraph (c) of this subsection does not constrain or prevent the
41 corporation from conducting an internal audit of the operations of any of the offices, facili-
42 ties or business locations at which a defalcation occurs.

43 **SECTION 6.** (1) The Oregon Cash Depository Corporation shall conduct transactions with
44 depositors and other customers in a secure manner, with due regard for:

45 (a) The laws of this state;

1 (b) The privacy and security of the corporation's depositors and other customers; and

2 (c) The effect of the corporation's business on the persons and locations in which the
3 corporation operates.

4 (2) The corporation shall devise and use a system by which the corporation can identify
5 the corporation's depositors and other customers reliably, securely and privately and by
6 means of which depositors and other customers can conduct transactions with the corpo-
7 ration and obtain account balances and statements of account and all other information
8 necessary to transact business with the corporation. In devising the system, the corporation
9 may not use a Social Security number or other identifying number that places a depositor's
10 or other customer's identity or assets at risk of theft, unlawful or unauthorized use, seizure
11 or other risk.

12 (3)(a) Except as provided in paragraph (b) of this subsection, the corporation may declare
13 and treat as abandoned and may appropriate for the corporation's own use moneys or other
14 valuable property that a depositor or other customer leaves in the care of the corporation
15 for a period of more than one year during which the depositor or other customer does not:

16 (A) Transact any business with the corporation, including making any withdrawals from
17 or deposits to the depositor's or other customer's account;

18 (B) Respond to any statements of account, communications or notices from the corpo-
19 ration;

20 (C) Keep a current address or other contact information on file with the corporation in
21 a manner that causes statements of account, communications or notices from the corpo-
22 ration to be returned as undeliverable; and

23 (D) Otherwise remain available for identification, location and communication by com-
24 mercially reasonable means.

25 (b) The corporation shall offer a depositor or other customer the opportunity to design-
26 ate a beneficiary or assignee of the moneys or other valuable property in the depositor's
27 or other customer's account if certain specified events occur. The corporation shall act in
28 a fiduciary capacity and make all commercially reasonable efforts to locate the beneficiary
29 or assignee and to transfer the moneys or property to the beneficiary or assignee in ac-
30 cordance with the terms of the designation described in this paragraph before declaring in
31 accordance with paragraph (a) of this subsection that the moneys or property are abandoned.

32 (c) The corporation shall measure the beginning of the period described in paragraph (a)
33 of this subsection from the date of the corporation's last transaction or communication with
34 the depositor or other customer.

35 **SECTION 7.** (1) The Oregon Cash Depository Corporation Fund is established in the State
36 Treasury, separate and distinct from the General Fund. Interest, dividends or other income
37 earned on the moneys in the Oregon Cash Depository Corporation Fund must be credited to
38 the fund.

39 (2) Except for moneys otherwise designated by statute, the Oregon Cash Depository
40 Corporation shall pay all fees, commissions, compensation for costs and expenses, assess-
41 ments, charges, proceeds, gifts, donations and any other charge, consideration or moneys the
42 corporation receives to the State Treasury and to the credit of the Oregon Cash Depository
43 Corporation Fund. All moneys in the fund are continuously appropriated to the corporation
44 for the purposes set forth in sections 1 to 16 of this 2018 Act.

45 (3) Subject to the terms, conditions or limits specified for a particular gift or donation,

1 the Oregon Cash Depository Corporation may invest the moneys in the Oregon Cash Depos-
2 itory Corporation Fund in accordance with standards set forth in section 9 of this 2018 Act.

3 (4) The Oregon Cash Depository Corporation may establish accounts and subaccounts
4 within the Oregon Cash Depository Corporation Fund if the corporation's board of directors
5 determines that accounts or subaccounts are necessary. The board of directors may credit
6 any account or subaccount within the fund with interest, dividends or other income. The
7 board of directors shall keep a record of the moneys deposited into the fund and shall indi-
8 cate by separate cumulative accounts and subaccounts the sources from which the moneys
9 are derived and the activity, program or other expenditure against which each withdrawal
10 is charged.

11 **SECTION 8.** (1) The Oregon Cash Depository Corporation, with an affirmative vote of the
12 corporation's board of directors after due consideration of the provisions of this section, the
13 operational needs of the corporation and the interests of the corporation's depositors and
14 other customers, may specify 60 percent or more of the average daily amount of moneys on
15 deposit with the corporation as a reserve amount that the corporation must retain securely
16 at the corporation's offices, facilities or business locations at all times to satisfy the needs
17 of the corporation's depositors and other customers for liquidity and access to deposited
18 moneys.

19 (2) The Oregon Cash Depository Corporation may invest in accordance with section 9 of
20 this 2018 Act the amount of the moneys that are not in the reserve described in subsection
21 (1) of this section. In making investments under this section, the corporation shall:

22 (a) Identify investment targets and expected returns on investment with specific refer-
23 ence to the corporation's financial and operational needs; and

24 (b) Favor short-term investments that the corporation can liquify easily and immediately
25 to the extent necessary to meet the needs of the corporation's depositors and other cus-
26 tomers.

27 (3) Before investing the moneys described in subsection (2) of this section, the Oregon
28 Cash Depository Corporation shall obtain legal, financial and other advice necessary to ap-
29 prise the corporation of the legalities and risks of using the moneys and making any planned
30 investments. The corporation, for the duration of each investment of the moneys described
31 in subsection (2) of this section, shall obtain and keep in place insurance, reserve funds and
32 other protections against loss or seizure of the moneys.

33 (4) After returning when necessary the principal amounts the Oregon Cash Depository
34 Corporation invested under this section to the corporation's offices, facilities or business
35 locations, the corporation shall deposit into the Oregon Cash Depository Corporation Fund
36 any proceeds in excess of the principal amounts that the corporation realizes from investing
37 moneys under this section.

38 (5) The Oregon Cash Depository Corporation shall replace any losses from investments
39 the corporation makes under this section from, as appropriate, insurance or other risk
40 management measures or from reserve amounts the corporation holds for this purpose in
41 the Oregon Cash Depository Corporation Fund.

42 (6) To the extent permitted under applicable law and with consideration of the needs and
43 interests of the Oregon Cash Depository Corporation's depositors and other customers, the
44 corporation may conduct investment transactions under this section in cash and in curren-
45 cies, including digital currencies, of the corporation's own choosing or that the corporation

1 specifies in agreements with entities in which the corporation invests and in agreements
2 with the corporation's depositors and other customers.

3 **SECTION 9.** (1) The board of directors of the Oregon Cash Depository Corporation may
4 invest moneys in the Oregon Cash Depository Corporation Fund and shall manage the in-
5 vestments that the board of directors makes as a prudent investor would do under the cir-
6 cumstances then prevailing and in light of the purposes, terms, distribution requirements
7 and laws that govern the fund. The board of directors may contract with or delegate au-
8 thority to another person to invest the moneys or manage the investments if the board of
9 directors requires the other person to invest the moneys or manage the investments in ac-
10 cordance with this section.

11 (2) For purposes of this section, investing the moneys of the Oregon Cash Depository
12 Corporation or managing investments as a prudent investor would do means that the
13 corporation's board of directors, or a person with which the board of directors contracts or
14 to which the board of directors delegates authority, shall:

15 (a) Exercise reasonable care, skill, prudence and caution in the context of each invest-
16 ment;

17 (b) Manage each investment as part of an overall investment strategy that incorporates
18 risk and return objectives that are reasonably suited to the goals of the board of directors;

19 (c) Favor investments within this state and in entities or institutions that are subject to
20 the laws of this state;

21 (d) Refrain from investing if an investment or the source of the moneys for an invest-
22 ment would put moneys in or from the Oregon Cash Depository Corporation Fund at sub-
23 stantial risk of loss, diversion or seizure; and

24 (e) Otherwise invest the moneys in accordance with the requirements of law.

25 (3) The board of directors of the Oregon Cash Depository Corporation, and any person
26 with which the board of directors contracts or to which the board of directors delegates
27 authority to invest the moneys in the Oregon Cash Depository Corporation Fund or manage
28 the investments that the board of directors makes, has a duty to diversify the investments
29 unless diversification is not prudent under the circumstances. In addition to the duty to di-
30 versify investments, the board of directors or the person:

31 (a) Has the fiduciary duties of loyalty and impartiality with respect to the interests of
32 the corporation;

33 (b) Shall act with prudence in deciding whether and how to delegate authority and in
34 selecting and supervising agents; and

35 (c) Shall incur only costs that are reasonable in amount and appropriate to the invest-
36 ment responsibilities imposed by law.

37 (4)(a) Except as provided in paragraph (b) of this subsection, a member of the board of
38 directors of the Oregon Cash Depository Corporation, or a person with which the board of
39 directors has contracted or to which the board of directors has delegated authority to invest
40 moneys and manage investments, within three business days after becoming aware that an
41 investment decision or other matter that is pending before the board of directors might lead
42 to a private pecuniary benefit or detriment to the member, the person, a relative of the
43 member or person or to a business with which the member, the person or the relative is
44 associated, shall notify the board of directors in writing that the member's or the person's
45 action, decision or recommendation might constitute an actual or potential conflict of in-

1 **terest.**

2 **(b) The requirement under paragraph (a) of this subsection for a member of the board**
 3 **of directors to notify the board of directors of an actual or potential conflict of interest does**
 4 **not apply if the member’s pecuniary benefit or detriment arises out of:**

5 **(A) An interest or membership in a particular business, industry, occupation or class**
 6 **that the member must have in order to be a member of the board of directors;**

7 **(B) An action the member would take in the member’s official capacity as a member of**
 8 **the board of directors that would affect to the same degree a class that consists of all resi-**
 9 **dents of this state or a smaller class that consists of an industry, occupation or other group**
 10 **with which the member is associated or with which a relative of the member is associated;**
 11 **or**

12 **(C) Membership in, or membership on the board of directors of, a nonprofit corporation**
 13 **that is tax exempt under section 501(c) of the Internal Revenue Code.**

14 **(5) A member of the board of directors of the Oregon Cash Depository Corporation shall**
 15 **resolve an actual or potential conflict of interest described in this section in accordance with**
 16 **the procedure set forth in ORS 244.120.**

17 **SECTION 10. (1) The Oregon Cash Depository Corporation Fund is a trust fund that is**
 18 **exclusively for the uses and purposes declared in sections 1 to 16 of this 2018 Act, except that**
 19 **this provision does not amend or impair the force or effect of any law of this state that**
 20 **specifically authorizes the Oregon Cash Depository Corporation to invest moneys from the**
 21 **fund.**

22 **(2)(a) Subject to the right of the State of Oregon to direct legislatively the disposition**
 23 **of any surplus that exceeds reserves or that exceeds any amount that is necessary to ensure**
 24 **the Oregon Cash Depository Corporation’s fiscal soundness for current operations and future**
 25 **capital needs, the State of Oregon declares that the state does not have a proprietary in-**
 26 **terest in the Oregon Cash Depository Corporation Fund.**

27 **(b) To the extent that surplus moneys exist in the Oregon Cash Depository Corporation**
 28 **Fund that are subject to disposition in accordance with paragraph (a) of this subsection, the**
 29 **Legislative Assembly shall direct the disposition to fund economic development in this state.**

30 **SECTION 11. (1) The Oregon Cash Depository Corporation shall set aside a portion of the**
 31 **interest and other income the corporation receives from investing moneys from the Oregon**
 32 **Cash Depository Corporation Fund in an amount the corporation considers necessary to**
 33 **maintain one or more reserve accounts. The corporation shall maintain and use the reserve**
 34 **accounts to offset gains and losses of invested capital.**

35 **(2) The Oregon Cash Depository Corporation may amortize gains and losses of capital**
 36 **that the corporation invests whenever the corporation determines that amortization is**
 37 **preferable to offsetting the gain or loss with moneys from a reserve account described in**
 38 **subsection (1) of this section.**

39 **SECTION 12. (1)(a) The Secretary of State shall conduct an annual audit of the Oregon**
 40 **Cash Depository Corporation and the Oregon Cash Depository Corporation Fund in accord-**
 41 **ance with ORS 297.210. As part of the audit, the Secretary of State shall contract with a firm**
 42 **that is qualified to audit accounts of the type that the corporation maintains.**

43 **(b) The firm that conducts the audit required under paragraph (a) of this subsection**
 44 **must be familiar with the accounting standards that apply to the reserves under review and**
 45 **shall maintain errors and omissions insurance with limits that the Secretary of State pre-**

1 scribes.

2 (c) The Secretary of State shall determine the scope of the audit required under para-
3 graph (a) of this subsection, which must include, but not be limited to:

- 4 (A) Reviewing the sources and uses of the moneys in the fund;
- 5 (B) Reconciling changes in reserve values from the prior year;
- 6 (C) Examining the development of reserve inadequacies or redundancies over time;
- 7 (D) Assessing the future financial viability of the fund; and
- 8 (E) Evaluating losses and loss adjustment expense reserves in accordance with standards
9 developed for reasonably comparable operating and investment funds.

10 (d) The corporation shall cooperate with the auditing firm in all respects and shall permit
11 the firm full access to all information the firm deems necessary for a true and complete
12 audit.

13 (e) The auditing firm shall conduct the audit required under paragraph (a) of this sub-
14 section using generally accepted accounting principles.

15 (f) The corporation shall pay the cost of the audit required under paragraph (a) of this
16 subsection.

17 (2) The Secretary of State shall provide the Governor, the President of the Senate and
18 the Speaker of the House of Representatives with an annual report on the results of the
19 audit. The Secretary of State shall make the report available for public inspection in ac-
20 cordance with the Secretary of State's established rules and procedures for public disclosure
21 of audit documents.

22 (3) This section does not preclude the Oregon Cash Depository Corporation from con-
23 ducting an internal audit or independent audit of the corporation's operations or of the
24 Oregon Cash Depository Corporation Fund whenever the corporation's board of directors
25 deems an audit necessary or prudent.

26 SECTION 13. The board of directors of the Oregon Cash Depository Corporation shall
27 report to the Secretary of State by March 15 of each year:

- 28 (1) The total amount of assets in the Oregon Cash Depository Corporation Fund as of
29 December 31 of the previous year;
- 30 (2) The reserves and surplus moneys the board of directors established for the fund;
- 31 (3) Any funds in addition to the funds described in subsection (2) of this section; and
- 32 (4) The total amount of investment gain or loss the fund generated during the previous
33 year that ended on December 31.

34 SECTION 14. Not later than the 90th day after the Secretary of State completes and de-
35 livers to the appropriate authority an audit under section 12 of this 2018 Act, the Oregon
36 Cash Depository Corporation or any subsidiary corporation that the Oregon Cash Depository
37 Corporation formed or acquired shall notify the Secretary of State in writing of the measures
38 that the corporation or the subsidiary has taken or proposes to take, if any, to respond to
39 the recommendations in the audit. The Secretary of State may extend the 90-day period for
40 good cause.

41 SECTION 15. The Oregon Cash Depository Corporation, every four years after the oper-
42 ative date of this section, shall:

- 43 (1) Engage at the Oregon Cash Depository Corporation's expense an independent public
44 or private agency, including but not limited to a university, an auditing firm or another re-
45 sponsible authority with appropriate capability, to conduct a comprehensive study of the

1 corporation's operations and financial condition and the operations and financial condition
 2 of any of the corporation's subsidiaries. The study, at a minimum, must:

3 (a) Apply the methods and categories of evaluation that the Secretary of State applies in
 4 an audit under section 12 of this 2018 Act;

5 (b) Evaluate the management and operations of the corporation and the corporation's
 6 subsidiaries in accordance with standards that would apply to businesses with similar or re-
 7 lated purposes, similar size and scope of operations and other appropriate criteria;

8 (c) Make recommendations for improvements or remedial measures necessary to ensure
 9 that the corporation fulfills the purposes set forth under section 2 of this 2018 Act; and

10 (d) Evaluate, at a minimum, the current utility and need for the corporation and the
 11 corporation's subsidiaries, the prospects for the continued financial and operational viability
 12 of the corporation and the corporation's subsidiaries and the soundness of the financial and
 13 operational management of the corporation and the corporation's subsidiaries.

14 (2) Ensure by contract or agreement that the entity that prepares the study described
 15 in subsection (1) of this section:

16 (a) Explains in the study the methodology and assumptions the individual or entity used
 17 in preparing the study;

18 (b) Includes all information necessary to support the conclusions in the study; and

19 (c) Provides an executive summary of the study and the conclusions in the study.

20 (3) Provide, not later than December 31 of the year in which the Oregon Cash Depository
 21 Corporation commissions the study described in this section, copies of the study to the
 22 President of the Senate, the Speaker of the House of Representatives, each committee of the
 23 Legislative Assembly that is concerned with financial institutions and the Legislative Fiscal
 24 Officer.

25 **SECTION 16.** (1) The Attorney General shall:

26 (a) Defend a director, officer or employee of the Oregon Cash Depository Corporation
 27 against any civil claim or criminal charge brought or alleged against the director, officer or
 28 employee as a consequence of the director's, officer's or employee's performance of a duty
 29 or function that is in accordance with the purposes set forth for the corporation in sections
 30 1 to 16 of this 2018 Act and that otherwise complies with the laws of this state; and

31 (b) Defend against an in rem proceeding brought to claim any moneys or property of the
 32 corporation or deposited in the Oregon Cash Depository Corporation Fund.

33 (2) The Attorney General shall provide the defense described in subsection (1) of this
 34 section at no charge to the Oregon Cash Depository Corporation or to a director, officer or
 35 employee of the corporation and otherwise to the same extent that the Attorney General
 36 defends an agency or instrumentality of the state that functions or performs duties in ac-
 37 cordance with the laws of this state. The Attorney General shall pay for the costs of com-
 38 plying with the provisions of this section with moneys appropriated to the Attorney General
 39 for the purposes set forth in this section.

40 (3) This section does not apply to an action or charge brought against the Oregon Cash
 41 Depository Corporation or a director, officer or employee of the corporation for a violation
 42 of a law of this state, a failure to carry out a duty that a law of this state or a bylaw, policy
 43 or directive of the corporation imposes on the director, officer or employee or a violation of
 44 a bylaw, policy or directive of the corporation.

45 **SECTION 17.** (1) Sections 1 to 16 of this 2018 Act become operative January 1, 2019.

1 (2) Notwithstanding the operative date specified in subsection (1) of this section, on or
2 after the effective date of this 2018 Act, in order to prepare the Oregon Cash Depository
3 Corporation to begin operations as soon as practicable after the operative date specified in
4 subsection (1) of this section and to enable the corporation's board of directors to exercise,
5 on and after the operative date specified in subsection (1) of this section, all of the duties,
6 powers and functions conferred on the board of directors by sections 1 to 16 of this 2018 Act:

7 (a) The Governor may appoint directors to the corporation's board of directors on an
8 interim or temporary basis, pending confirmation by the Senate; and

9 (b) The board of directors may adopt rules, bylaws or policies that are necessary to or-
10 ganize the corporation.

11 (3) The Director of the Oregon Department of Administrative Services may adopt rules
12 and take other actions before the operative date specified in subsection (1) of this section
13 that are necessary to support the formation and organization of the Oregon Cash Depository
14 Corporation, to secure the corporation's management over any state property to which the
15 Oregon Department of Administrative Services retains title but which the department allows
16 the corporation to lease, rent or use and to enable the director, on and after the operative
17 date specified in subsection (1) of this section, to exercise the duties, powers and functions
18 conferred on the director by sections 1 to 16 of this 2018 Act.

19 SECTION 18. This 2018 Act being necessary for the immediate preservation of the public
20 peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect
21 on its passage.

22 _____