Senate Bill 751
Sponsored by Senator KNOPP, Representative ZIKA; Representatives BYNUM, LEIF, SPRENGER, WILDE, WILSON

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.

Allows certain planned communities to deposit their funds into local government investment pool managed by State Treasurer.

Becomes operative on effective date of rules adopted by State Treasurer or January 1, 2026, whichever is earlier.

A BILL FOR AN ACT

Relating to investments of qualified planned communities; creating new provisions; and amending ORS 94.670, 293.353, 293.857, 294.810, 294.815, 294.831, 294.840, 294.860, 294.870, 294.880 and 294.882.

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

SECTION 1. ORS 94.670 is amended to read:

94.670. (1) A homeowners association shall retain within this state the documents, information and records delivered to the association under ORS 94.616 and all other records of the association for not less than the period specified for the record in ORS 65.771 or any other applicable law except that:

(a) The documents specified in ORS 94.616 (3)(o), if received, must be retained as permanent records of the association.

(b) Proxies and ballots must be retained for one year from the date of determination of the vote, except that proxies and ballots relating to an amendment to the declaration, bylaws or other governing document must be retained for one year from the date the amendment is effective.

(2)(a) All assessments, including declarant subsidies and all other association funds, shall be deposited and maintained in the name of the association in one or more separate federally insured accounts, including certificates of deposit, at a financial institution, as defined in ORS 706.008, other than an extranational institution. Except as provided in paragraph (b) of this subsection, funds must be maintained in an association account until disbursed.

(b) Subject to any limitations imposed by the declaration or bylaws, funds of the association maintained in accounts established under this subsection may be:

(A) Used to purchase obligations of the United States government; or

(B) Deposited and maintained in the Oregon Short Term Fund or any other commingled investment pool established by the State Treasurer for investment of the funds of state agencies or local governments, subject to the rules of the State Treasurer under ORS 294.810, provided:

(i) The planned community is a Class I planned community;

(ii) The association manages or governs police and fire department services for the planned community; and

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.

LC 1644
(iii) The initial deposit into the Oregon Short Term Fund or other commingled investment pool under this subparagraph is no less than $5 million.

(c) All expenses of the association shall be paid from the association account.

(3) The association shall keep financial records sufficiently detailed for proper accounting purposes.

(4) Within 90 days after the end of the fiscal year, the board of directors shall:

(a) Prepare or cause to be prepared an annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year; and

(b) Distribute to each owner and, upon written request, any mortgagee of a lot, a copy of the annual financial statement.

(5) Subject to ORS 94.671, the association of a planned community that has annual assessments exceeding $75,000 shall cause the financial statement required under subsection (4) of this section to be reviewed within 300 days after the end of the fiscal year by an independent certified public accountant licensed in the State of Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

(6) The association of a planned community created on or after January 1, 2004, or the association of a planned community described in ORS 94.572 that has annual assessments of $75,000 or less shall cause the most recent financial statement required by subsection (4) of this section to be reviewed in the manner described in subsection (5) of this section within 300 days after the association receives a petition requesting review signed by at least a majority of the owners.

(7) An association subject to the requirements of subsection (5) of this section may elect, on an annual basis, not to comply with the requirements of subsection (5) of this section by an affirmative vote of at least 60 percent of the owners, not including the votes of the declarant with respect to lots owned by the declarant.

(8)(a) The association shall provide, within 10 business days of receipt of a written request from an owner, a written statement that provides:

(A) The amount of assessments due from the owner and unpaid at the time the request was received, including:

(i) Regular and special assessments;

(ii) Fines and other charges;

(iii) Accrued interest; and

(iv) Late payment charges.

(B) The percentage rate at which interest accrues on assessments that are not paid when due.

(C) The percentage rate used to calculate the charges for late payment or the amount of a fixed charge for late payment.

(b) The association is not required to comply with paragraph (a) of this subsection if the association has commenced litigation by filing a complaint against the owner and the litigation is pending when the statement would otherwise be due.

(9)(a) Except as provided in paragraph (b) of this subsection, the association shall make the documents, information and records described in subsections (1) and (4) of this section and all other records of the association reasonably available for examination and, upon written request, available for duplication by an owner and any mortgagee of a lot that makes the request in good faith for a proper purpose.

(b) Records kept by or on behalf of the association may be withheld from examination and duplication to the extent the records concern:
(A) Personnel matters relating to a specific identified person or a person’s medical records.
(B) Contracts, leases and other business transactions that are currently under negotiation to
purchase or provide goods or services.
(C) Communications with legal counsel that relate to matters specified in subparagraphs (A) and
(B) of this paragraph and the rights and duties of the association regarding existing or potential
litigation or criminal matters.
(D) Disclosure of information in violation of law.
(E) Documents, correspondence or management or board reports compiled for or on behalf of the
association or the board of directors by its agents or committees for consideration by the board of
directors in executive session held in accordance with ORS 94.640 (8).
(F) Documents, correspondence or other matters considered by the board of directors in execu-
tive session held in accordance with ORS 94.640 (8).
(G) Files of individual owners, other than those of a requesting owner or requesting mortgagee
of an individual owner, including any individual owner’s file kept by or on behalf of the association.
(10) The association shall maintain a copy, suitable for the purpose of duplication, of the fol-
lowing:
   (a) The declaration and bylaws, including amendments or supplements in effect, the recorded
   plat, if feasible, and the association rules and regulations currently in effect.
   (b) The most recent financial statement prepared pursuant to subsection (4) of this section.
   (c) The current operating budget of the association.
   (d) The reserve study, if any, described in ORS 94.595.
   (e) Architectural standards and guidelines, if any.
   (11) The association, within 10 business days after receipt of a written request by an owner,
shall furnish the requested information required to be maintained under subsection (10) of this sec-
tion.
   (12) The board of directors, by resolution, may adopt reasonable rules governing the frequency,
time, location, notice and manner of examination and duplication of association records and the
imposition of a reasonable fee for furnishing copies of any documents, information or records de-
scribed in this section. The fee may include reasonable personnel costs for furnishing the docu-
ments, information or records.

SECTION 2. 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 and planned community treasurers 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 subdi-
vision 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) “Planned community treasurer” means the officer or employee of a qualifying planned community association who has control of the planned association’s funds.

(9) “Public body” means:

(a) A public body as defined in ORS 287A.001; or

(b) An Oregon Indian tribe.

(10) “Qualified planned community” means a planned community meeting the qualifications in ORS 94.670 (2)(b)(B).

(11) “Tribal government” means the governing body of an Oregon Indian tribe.

(12) “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 3. ORS 294.810 is amended to read:

294.810. (1)(a) Subject to paragraph (b) of this subsection, with the consent of the governing body, a local government official or tribal government official, with the consent of the governing body, or a planned community treasurer, with the consent of the board of directors, may place in the aggregate up to $30 million of the funds of the local government, or tribal government or qualified planned community in the investment pool, or, if the assets of the investment pool have been transferred pursuant to ORS 294.882, for investment and reinvestment by the investment officer as provided under ORS 293.701 to 293.857 or 294.805 to 294.895, as the case may be.

(b) The investment officer may require the governing body of the local government or tribal government or board of directors of a qualified planned community to enter into an investment agreement as a condition of placing funds with the investment officer pursuant to this subsection. The investment officer may require a qualified planned community to maintain a minimum balance of an amount set by the investment officer that is not more than $5 million.

(2) The $30 million limitation 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 and qualified planned communities must remove such excess funds within 20 business days.

(3) The investment officer shall annually adjust the $30 million limitation in this section 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 August 31 of the current calendar year exceeds the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31, 1995.

SECTION 4. ORS 294.815 is amended to read:

294.815. Subject to the right of the unit of local government, [or the] tribal government or qualified planned community 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 5. ORS 294.831 is amended to read:
294.831. (1) The 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 govern-
ment 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 in-
vestment officer by local governments, [and] tribal governments and qualified planned communi-
ties 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 in-
vestment 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 294.840 is amended to read:

294.840. Subject to the objective set forth in ORS 294.831 and the standards set forth in ORS
294.835, the Oregon Investment Council shall formulate policies for the investment and reinvestment
of moneys in the investment pool and the acquisition, retention, management and disposition of in-
estments of the investment pool. The council, from time to time, shall review those policies and
make changes therein as it considers necessary or desirable. The council may formulate separate
policies for any funds from any single public body or qualified planned community included in the
investment pool.

SECTION 7. 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 invest-
ment, 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 or planned
community treasurer 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, by planned community treas-
urers 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 ad-
ministered 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 qualified planned communities participating in
the pool at any time during the month in proportion to their average daily balances of funds in-
vested 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 in-
vestment 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 in-
vested.
(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 in-
vested.

SECTION 8. ORS 294.870 is amended to read:

294.870. (1) The investment officer shall keep, for each public body or qualified planned com-
munity 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 gov-
ernment official and planned community treasurer of a public body or qualified planned com-
munity 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 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 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, public bodies and qualified
planned communities 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 and qualified planned communi-
ties 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 investment pool no longer warrants its operation as a separate fund. If the investment pool decreases to a level below $125 million, the State Treasurer may transfer the assets of the pool to the Oregon Short Term Fund established under ORS 293.728. In that event, the investment pool participant accounts will be treated as are other state funds and accounts in receiving a proportionate share of the earnings of 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 investment pool to the Oregon Short Term Fund, the distributions of income to local governments, [and] tribal governments[, and qualified planned communities], 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 293.857.

(2) The State Treasurer, at the discretion of the treasurer, may reestablish the 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 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 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 investment pool to the Oregon Short Term Fund established under ORS 293.728 as authorized by ORS 294.882, “state agency,” as used in this section, includes local government, [and] tribal government and qualified planned community participants in the state investment fund.

SECTION 12. ORS 293.857 is amended to read:

293.857. (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 or a qualified planned community, the investment officer shall keep a separate account for each such governmental unit or qualified planned community the funds of which are being invested.

(2) The investment officer shall report monthly to each such governmental unit and qualified
planned community the changes made during the preceding month in the investments for the account of that governmental unit or qualified planned community. The monthly reports shall be provided to the governmental units and qualified planned communities 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 and qualified planned communities investing funds pursuant to ORS 294.805 to 294.895.

SECTION 13. (1) No later than January 1, 2026, the State Treasurer shall adopt rules to implement the amendments to ORS 94.670, 293.353, 293.857, 294.805, 294.810, 294.815, 294.831, 294.840, 294.860, 294.870, 294.880 and 294.882 by sections 1 to 12 of this 2019 Act.

(2) The amendments to ORS 94.670, 293.353, 293.857, 294.805, 294.810, 294.815, 294.831, 294.840, 294.860, 294.870, 294.880 and 294.882 by sections 1 to 12 of this 2019 Act become operative on the earlier of:

(a) The effective date of the rules adopted by the State Treasurer under subsection (1) of this section; or

(b) January 1, 2026.