

D R A F T

SUMMARY

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

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

Directs excess income of bank to Oregon Rainy Day Fund.

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

Specifies that deposits of bank are guaranteed by state and that income earned by bank is not subject to taxation.

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

Becomes operative January 1, 2012.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Bank of the State of Oregon; creating new provisions;
3 amending ORS 293.148, 293.875, 295.001 and 706.008; and declaring an
4 emergency.

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

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

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

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

1 (b) To provide stability to the local financial sector, and not in any
2 way to compete with community banks, credit unions or other finan-
3 cial institutions.

4 (c) To reduce the costs paid by this state for basic banking services.

5 (d) To return profits, beyond those necessary to accomplish the
6 mission and continued sound operation of the bank, to the Oregon
7 Rainy Day Fund established in ORS 293.144.

8 **SECTION 2.** (1) The Bank of the State of Oregon Board is estab-
9 lished. The board shall operate, manage and control the Bank of the
10 State of Oregon. The board shall locate and maintain places of busi-
11 ness of the bank and adopt and enforce orders, rules and bylaws for
12 the transaction of the bank's business.

13 (2) The board consists of the Governor, the State Treasurer and the
14 Commissioner of the Bureau of Labor and Industries. The powers of
15 the board and the functions of the bank must be implemented through
16 actions taken and policies and rules adopted by the board.

17 (3) The Governor shall act as chairperson of the board. The board
18 shall establish rules requiring the holding of regular meetings and
19 specifying the means for providing notice of the meetings.

20 (4) Two members of the board constitute a quorum to transact
21 business and exercise all rights, duties and powers of the board.

22 (5) A special meeting may be called at any time upon notice by the
23 Governor, or by a majority of the members of the board.

24 (6) The board shall appoint a president of the bank. The person
25 appointed as president must have extensive experience in banking. The
26 board may appoint and employ any subordinate officers, employees
27 and agents as the board considers necessary, and shall define the du-
28 ties, designate the titles and fix the compensation of all those persons.
29 The board may designate the president or other officers or employees
30 as its agent in respect to the functions of the bank, subject to the
31 supervision, limitation and control of the board.

1 (7) The board may remove and discharge any and all persons ap-
2 pointed in the exercise of the powers granted by sections 1 to 12 of this
3 2011 Act.

4 **SECTION 3.** (1) To enlist the help of private enterprise and to en-
5 courage more active use of the purposes for which the Bank of the
6 State of Oregon was established, the Bank of the State of Oregon
7 Board shall appoint an advisory board of directors that consists of
8 seven members.

9 (2) The members of the advisory board must include representatives
10 of this state's financial, business, agricultural and labor sectors. At
11 least two members must be officers of banks, the majority of the stock
12 of which is owned by residents of this state.

13 (3) The Bank of the State of Oregon Board shall appoint a chair-
14 man, vice chairman and secretary from the advisory board. The term
15 of office of directors shall be set by the Bank of the State of Oregon
16 Board, but may not exceed four years.

17 (4) The advisory board shall:

18 (a) Meet regularly with the management of the bank to review the
19 bank's operations and finances to determine whether recommen-
20 dations should be made by the advisory board to the Bank of the State
21 of Oregon Board relating to improved management performance, bet-
22 ter customer service and overall improvement in internal methods,
23 procedures and operating policies of the bank;

24 (b) Make recommendations to the Bank of the State of Oregon
25 Board relating to the establishment of additional objectives for the
26 operation of the bank;

27 (c) Make recommendations to the Bank of the State of Oregon
28 Board concerning the appointment of officers of the bank;

29 (d) Meet regularly with the Bank of the State of Oregon Board to
30 present any recommendations concerning the bank; and

31 (e) Participate on loan committees.

1 **SECTION 4.** (1) The Bank of the State of Oregon may accept de-
2 posits of public funds as defined in ORS 295.001. Except as provided in
3 section 5 of this 2011 Act, the bank may not accept deposits of private
4 funds. All income earned by the bank for its own account on public
5 funds must be credited to and become a part of the revenues and in-
6 come of the bank.

7 (2) Whenever any public funds are deposited in the bank, the offi-
8 cial having control of the public funds and the sureties on the bond
9 of the official are exempt from all liability by reason of loss of any of
10 the funds while deposited in the bank.

11 (3) The bank shall pay interest on public deposits at a rate compa-
12 rable to rates paid by private depositories of public funds and may of-
13 fer other financial products to the State Treasurer on a competitive
14 basis.

15 (4) The State Treasurer shall deposit with the bank from moneys
16 received by the State Treasurer under ORS 293.265 an amount the
17 State Treasurer determines is necessary to allow the bank to fulfill its
18 duties under sections 1 to 12 of this 2011 Act.

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

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

21 (a) To state-chartered or federally chartered lending agencies or
22 institutions or any other financial institutions.

23 (b) That are insured or guaranteed in whole or in part by the United
24 States, its agencies or instrumentalities.

25 (c) Obtained as security pledged for, or originated in the restruc-
26 turing of, any other loan properly originated or participated in by the
27 bank.

28 (d) To instrumentalities of this state.

29 (2) Purchase participation interests in loans made or held by banks,
30 bank holding companies, state-chartered or federally chartered lending
31 agencies or institutions, any other financial institutions or any other

1 **entity that provides financial services and that meets underwriting**
2 **standards that are generally accepted by state or federal financial**
3 **regulatory agencies.**

4 **(3) Invest its funds in conformity with policies of the Bank of the**
5 **State of Oregon Board and the State Treasurer, and the investment**
6 **standard stated in ORS 293.726 (1).**

7 **(4) Buy and sell federal funds.**

8 **(5) Lease, assign, sell, exchange, transfer, convey, grant, pledge or**
9 **mortgage all real and personal property, title to which has been ac-**
10 **quired in any manner.**

11 **(6) Perform all acts and do all things necessary, convenient, advis-**
12 **able or desirable to carry out the powers expressly granted or neces-**
13 **sarily implied in sections 1 to 12 of this 2011 Act through or by means**
14 **of its president, officers, agents or employees or by contracts with any**
15 **person, firm or corporation.**

16 **(7) Purchase, guarantee or hold loans originated by financial insti-**
17 **tutions doing business in this state.**

18 **(8) Make loans in the form of participation loans to qualified per-**
19 **sons residing in or doing business in this state where the originator**
20 **of the loan is a private financial institution.**

21 **(9) Act as a custodian bank for financial institutions organized un-**
22 **der the laws of this state and accept deposits from the financial insti-**
23 **tutions in connection with this function.**

24 **(10) Issue bank stock loans to financial institutions organized under**
25 **the laws of this state.**

26 **(11) For financial institutions that make the bank a reserve depos-**
27 **itory, perform the functions and render the services of a clearing-**
28 **house, including all facilities for providing domestic and foreign**
29 **exchange and may rediscount paper, on terms prescribed by the Bank**
30 **of the State of Oregon Board.**

31 **SECTION 6. Except as provided in ORS 293.148, as soon as possible**

1 after the end of each calendar year, the Bank of the State of Oregon
2 Board shall determine the amount of income, if any, earned by the
3 Bank of the State of Oregon in that calendar year that is in excess of
4 amounts necessary to pay for expenses of administering the activities
5 of the bank. The amount of the excess shall be transferred to the
6 Oregon Rainy Day Fund established by ORS 293.144.

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

9 (a) Ensure the safety and soundness of the Bank of the State of
10 Oregon that, to the extent possible, reflect applicable standards for
11 safety and soundness set forth in 12 C.F.R. part 364.

12 (b) Specify the bank's powers and permissible investments and ac-
13 tivities.

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

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

17 (e) Specify reserve requirements.

18 (f) Set other requirements that the board considers necessary to
19 administer the bank under sections 1 to 12 of this 2011 Act.

20 (2) The Department of Consumer and Business Services shall ex-
21 amine the bank at least once each calendar quarter to verify and en-
22 sure that the bank is complying with the rules the board adopted
23 under subsection (1) of this section. The department shall report the
24 results of the examination to the board and to the Secretary of State.
25 The department's report is a public record subject to disclosure.

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

28 **SECTION 8.** (1) All deposits in the Bank of the State of Oregon are
29 guaranteed by the State of Oregon.

30 (2) The deposits and any income earned by the Bank of the State
31 of Oregon are not subject to state, county, city or district taxes of any

1 **kind.**

2 **SECTION 9. (1) Civil actions may be brought as provided in this**
3 **section against the State of Oregon on account of claims for relief**
4 **claimed to have arisen out of transactions connected with the opera-**
5 **tion of the Bank of the State of Oregon.**

6 **(2) In an action brought under this section, the state must be des-**
7 **ignated as “The State of Oregon, doing business as The Bank of the**
8 **State of Oregon.”**

9 **(3) An action brought under this section may be brought in the**
10 **same manner and is subject to the same provisions of law as other**
11 **civil actions. The action must be brought in Marion County.**

12 **SECTION 10. Whenever any public funds are deposited in the Bank**
13 **of the State of Oregon, the public official who deposited the funds and**
14 **the sureties on any bond of the public official are exempt from liability**
15 **by reason of loss of any of the funds while the funds are deposited in**
16 **the Bank of the State of Oregon.**

17 **SECTION 11. (1) All business of the Bank of the State of Oregon**
18 **must be conducted under the name of “The Bank of the State of**
19 **Oregon.” Title to property pertaining to the operation of the bank**
20 **must be obtained and conveyed in the name of “The Bank of the State**
21 **of Oregon, doing business as The Bank of the State of Oregon.”**

22 **(2) Instruments must be executed in the name of the State of**
23 **Oregon. Within the scope of authority granted by the Bank of the**
24 **State of Oregon Board, the president of the bank may execute instru-**
25 **ments on behalf of the bank, including any instrument granting, con-**
26 **veying or otherwise affecting any interest in or lien upon real or**
27 **personal property.**

28 **(3) Other officers or employees of, and legal counsel to, the bank**
29 **may execute instruments on behalf of the bank when authorized by**
30 **the board.**

31 **SECTION 12. (1) The following records of the Bank of the State of**

1 **Oregon are confidential and may not be disclosed:**

2 (a) **Commercial or financial information of a customer of the bank,**
3 **whether obtained directly or indirectly, other than routine credit in-**
4 **quiries concerning information that is required to be disclosed in ac-**
5 **cordance with due legal process.**

6 (b) **Internal or interagency memoranda or letters that would not**
7 **be available by law to a party other than in litigation with the bank.**

8 (c) **Except as provided in section 7 of this 2011 Act, information that**
9 **is contained in or related to a report of an examination or operating**
10 **or condition reports prepared by, on behalf of or for the use of a state**
11 **or federal agency responsible for the regulation or supervision of any**
12 **bank activity.**

13 (2) **As used in this section, “customer” means any person that has**
14 **transacted or is transacting business with, or has used or is using the**
15 **services of, the Bank of the State of Oregon, or for which the bank**
16 **has acted or is acting as a fiduciary with respect to trust property.**

17 **SECTION 13.** ORS 293.148 is amended to read:

18 293.148. (1) If the moneys in the Oregon Rainy Day Fund established by
19 ORS 293.144 just prior to the time of a transfer scheduled under ORS 293.144
20 (3) or 293.146 **or section 6 of this 2011 Act** equal at least 7-1/2 percent of
21 the amount of General Fund revenues collected during the prior biennium,
22 moneys that would otherwise be transferred to the Oregon Rainy Day Fund
23 shall be deposited in the General Fund.

24 (2) If the moneys in the Oregon Rainy Day Fund just prior to the time
25 of a transfer scheduled under ORS 293.144 (3) or 293.146 **or section 6 of this**
26 **2011 Act** do not equal at least 7-1/2 percent of the amount of General Fund
27 revenues collected during the prior biennium, the transfer to the Oregon
28 Rainy Day Fund shall be made regardless of whether that transfer increases
29 the amount in the Oregon Rainy Day Fund to at least 7-1/2 percent of the
30 amount of General Fund revenues collected during the prior biennium.

31 **SECTION 14.** ORS 293.875 is amended to read:

1 293.875. (1) **Except as provided in sections 1 to 12 of this 2011 Act**, the
2 State Treasurer is designated the sole banking and cash management officer
3 for the state and may review, establish and modify procedures for the effi-
4 cient handling of moneys under the control of the State Treasury, the Sec-
5 retary of State, the Judicial Department, the Legislative Assembly, the
6 Public Defense Services Commission and state agencies as defined in ORS
7 291.002. The State Treasurer shall perform all activities necessary or desir-
8 able to fulfill the duties of the treasurer as the banking and cash manage-
9 ment officer. The activities may include, but are not limited to, entering into
10 contracts for the provision of services related to the management, deposit
11 and transfer of, or payment from, moneys deposited with the State Treasurer
12 through banks and other financial institutions. The deposit, transfer or pay-
13 ment may be through physical presentation or drafting of an instrument or
14 document by electronic or other means.

15 (2) The State Treasurer shall continuously review the effectiveness of the
16 cash management of state agencies, the Secretary of State, the Judicial De-
17 partment and the Legislative Assembly, and when the State Treasurer con-
18 siders it appropriate shall report in writing to the subject agency the
19 findings of this review, along with any recommendations. A copy of the re-
20 port shall be provided to the Legislative Fiscal Officer and to the Secretary
21 of State.

22 (3) This section controls over any other law that gives another state
23 agency general responsibility for, or control over, the accounting, fiscal or
24 electronic commerce affairs of the State Treasury, the Secretary of State, the
25 Judicial Department, the Legislative Assembly, the Public Defense Services
26 Commission and state agencies as defined in ORS 291.002. State agencies
27 shall employ the principles, standards and related requirements for cash
28 management prescribed by the State Treasurer, including:

- 29 (a) Practices related to the use of credit, debit or similar cards or devices;
30 (b) The use of secure disbursing and receiving instruments, documents and
31 systems; and

1 (c) The use of secure information resources, information technology and
2 networks that meet the requirements of the State Treasurer for the elec-
3 tronic management, deposit or transfer of, or payment from, moneys depos-
4 ited with the State Treasurer.

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

7 **SECTION 15.** ORS 706.008 is amended to read:

8 706.008. As used in the Bank Act **and sections 1 to 12 of this 2011**
9 **Act**, unless the context requires otherwise:

10 (1) “Bank” means a company, other than an extranational institution,
11 that accepts deposits insured to any extent by the Bank Insurance Fund
12 under the provisions of the Federal Deposit Insurance Act, as amended, 12
13 U.S.C. 1811, et seq.

14 (2) “Bank holding company” means any company that is a bank holding
15 company under the federal Bank Holding Company Act of 1956, as amended,
16 12 U.S.C. 1841, et seq.

17 (3) “Bank service corporation” means a corporation, all of the capital
18 stock of which is owned by one or more banking institutions or national
19 banks, that is organized to perform services authorized by ORS 708A.145.

20 (4) “Banking institution” means an Oregon commercial bank, an Oregon
21 trust company or an Oregon savings bank.

22 (5) “Company” means an entity that is a company under the federal Bank
23 Holding Company Act of 1956, as amended, 12 U.S.C. 1841, et seq.

24 (6) “Extranational institution” means a corporation, unincorporated com-
25 pany, partnership or association of two or more persons organized under the
26 laws of a nation other than the United States, any territory of the United
27 States, Puerto Rico, Guam, American Samoa or the Virgin Islands, that en-
28 engages directly in a banking business.

29 (7) “Federal bank” means a national bank or any other bank organized
30 under the laws of the United States.

31 (8) “Federal savings bank” means a corporation chartered as a federal

1 savings bank under the provisions of 12 U.S.C. 1464.

2 (9) "Financial holding company" means a company as referred to in sec-
3 tion 103 of the federal Gramm-Leach-Bliley Act (P.L. 106-102).

4 (10) "Financial institution" means insured institutions, extranational in-
5 stitutions, credit unions as defined in ORS 723.006, out-of-state credit unions
6 under ORS 723.042 and federal credit unions.

7 (11) "In-state federal stock bank" means a federal bank that issues capital
8 stock, the home state of which is Oregon.

9 (12) "Institution" means an Oregon commercial bank or an Oregon trust
10 company.

11 (13) "Insured institution" means a company, the deposits of which are
12 insured under the provisions of the Federal Deposit Insurance Act, as
13 amended, 12 U.S.C. 1811, et seq.

14 (14) "Insured nonstock institution" means an insured institution that does
15 not issue capital stock.

16 (15) "Insured stock institution" means an insured institution that issues
17 capital stock.

18 (16) "National bank" means a bank that was organized under the pro-
19 visions of the National Bank Act, as amended, 12 U.S.C. 21, et seq.

20 (17) "Non-Oregon institution" means:

21 (a) An out-of-state state bank engaging in banking business in Oregon;

22 (b) An out-of-state trust company transacting trust business in Oregon;

23 and

24 (c) An extranational institution engaging in banking business in Oregon.

25 (18) "Nonstock bank" means a bank that does not issue capital stock.

26 (19) "Oregon bank" means an Oregon stock bank or Oregon nonstock
27 bank.

28 (20) "Oregon commercial bank" means an Oregon stock bank that was
29 chartered under ORS chapter 707 as a bank other than a stock savings bank.

30 (21) "Oregon nonstock bank" means a state nonstock bank, the home state
31 of which is Oregon.

1 (22) “Oregon operating institution” means:

2 (a) A bank that is engaging in banking business in this state;

3 (b) An extranational institution that is engaging in banking business in
4 this state; or

5 (c) A trust company that is transacting trust business in this state.

6 (23) “Oregon savings bank” or “savings bank” means an Oregon stock
7 savings bank or an Oregon nonstock bank.

8 (24) “Oregon stock bank” means a state stock bank, the home state of
9 which is Oregon.

10 (25) “Oregon stock savings bank” means an Oregon stock bank that was
11 initially chartered as or was converted to a stock savings bank under the
12 Bank Act.

13 (26) “Oregon trust company” means a trust company that was organized
14 under the provisions of ORS chapter 707.

15 (27) “Out-of-state bank” means an out-of-state state bank or an out-of-state
16 federal bank.

17 (28) “Out-of-state bank holding company” means a bank holding company
18 whose home state is not Oregon, and that is not the bank holding company
19 of an Oregon stock bank or an in-state federal stock bank.

20 (29) “Out-of-state federal bank” means a federal bank, the home state of
21 which is a state other than Oregon.

22 (30) “Out-of-state financial holding company” means a financial holding
23 company whose home state is not Oregon, and that is not the financial
24 holding company of an Oregon stock bank or an in-state federal stock bank.

25 (31) “Out-of-state state bank” means a state bank, the home state of which
26 is a state other than Oregon.

27 (32) “Out-of-state trust company” means a trust company that was organ-
28 ized under the laws of another state.

29 (33) “State bank” means a bank that was organized under the laws of a
30 state.

31 (34) “State nonstock bank” means a nonstock bank that was organized

1 under the laws of a state.

2 (35) “State stock bank” means a stock bank that was organized under the
3 laws of a state.

4 (36) “Stock bank” means a bank that issues capital stock.

5 (37) “Trust company” means any company that is authorized under the
6 provisions of ORS chapter 709 to transact trust business, and includes the
7 trust department of a bank, but does not include a corporation appointed by
8 a United States Bankruptcy Court to serve as a bankruptcy trustee under
9 Title 11, United States Code, when the corporation is acting in its capacity
10 as a bankruptcy trustee.

11 **SECTION 16.** ORS 295.001 is amended to read:

12 295.001. As used in ORS 295.001 to 295.108 **and sections 1 to 12 of this**
13 **2011 Act**, unless the context requires otherwise:

14 (1) “Adequately capitalized” means a bank depository that is classified
15 as adequately capitalized by its primary federal regulatory authority.

16 (2) “Bank depository” means **the Bank of the State of Oregon** or an
17 insured institution or trust company that:

18 (a) Maintains a head office or branch in this state in the capacity of an
19 insured institution or trust company; and

20 (b) Complies with ORS 295.008.

21 (3) “Business day” means any day other than a federal or State of Oregon
22 legal holiday or a day on which offices of the State of Oregon are otherwise
23 authorized by law to remain closed.

24 (4) “Closed depository” means a bank depository that is subject to a loss.

25 (5) “Credit union depository” means a credit union as defined in ORS
26 723.006 or a federal credit union if:

27 (a) The shares and deposits of the credit union or federal credit union are
28 insured by the National Credit Union Share Insurance Fund; and

29 (b) The credit union or federal credit union maintains a head office or
30 branch in this state in the capacity of a credit union or federal credit union.

31 (6) “Custodian bank” or “custodian” means one of the following insti-

1 tutions designated by the bank depository for its own account:

2 (a) The Federal Home Loan Bank designated to serve this state, or any
3 branch of that bank;

4 **(b) The Bank of the State of Oregon;** or

5 [(b)] **(c)** Any insured institution or trust company that:

6 (A) Is authorized to accept deposits or transact trust business in this
7 state;

8 (B) Complies with ORS 295.008; and

9 (C) Has been approved by the State Treasurer to serve as a custodian
10 bank, if the State Treasurer has approved custodians under ORS 295.008.

11 (7) "Custodian's receipt" or "receipt" means a document issued by a
12 custodian bank describing the securities deposited with it by a bank deposi-
13 tory to secure public fund deposits.

14 (8) "Depository" means **the Bank of the State of Oregon**, a bank de-
15 pository or a credit union depository.

16 (9) "Financial institution outside this state" means a financial institution,
17 as defined in ORS 706.008, that is not an extranational institution, as defined
18 in ORS 706.008, and is not a bank depository or credit union depository, as
19 defined in this section.

20 (10) "Insured institution" means an insured institution as defined in ORS
21 706.008.

22 (11) "Loss" means the issuance of an order by a regulatory or supervisory
23 authority or a court of competent jurisdiction:

24 (a) Restraining a bank depository from making payments of deposit li-
25 abilities; or

26 (b) Appointing a receiver for a depository.

27 (12) "Maximum liability" means a sum equal to 10 percent of the greater
28 of:

29 (a) All uninsured public funds deposits held by the bank depository as
30 shown on the date of its most recent treasurer report; or

31 (b) The average of the balances of uninsured public funds deposits on the

1 last two immediately preceding treasurer reports.

2 (13) "Minimum collateral requirement" for a bank depository on any
3 given date means a sum equal to:

4 (a) For a well capitalized bank depository that has not been required to
5 increase its collateral pursuant to ORS 295.018, 10 percent of the greater of:

6 (A) All uninsured public funds held by the bank depository, as shown on
7 the most recent treasurer report;

8 (B) The average of the balances of uninsured public funds held by the
9 bank depository, as shown on the last two immediately preceding treasurer
10 reports; or

11 (C) An amount otherwise prescribed in ORS 295.001 to 295.108.

12 (b) For a well capitalized bank depository that has been required to in-
13 crease its collateral pursuant to ORS 295.018, the percentage required by the
14 State Treasurer pursuant to ORS 295.018 multiplied by the greater of:

15 (A) All uninsured public funds held by the bank depository, as shown on
16 the most recent treasurer report;

17 (B) The average of the balances of uninsured public funds held by the
18 bank depository, as shown on the last two immediately preceding treasurer
19 reports; or

20 (C) An amount otherwise prescribed in ORS 295.001 to 295.108.

21 (c) For an adequately capitalized bank depository or an undercapitalized
22 bank depository, 110 percent of the greater of:

23 (A) All uninsured public funds held by the bank depository; or

24 (B) The average of the balances of uninsured public funds held by the
25 bank depository, as shown on the last two immediately preceding treasurer
26 reports.

27 (14) "Net worth" of a bank depository means the total risk-based capital
28 of the bank depository, as shown on the immediately preceding report of
29 condition and income, and may include capital notes and debentures that are
30 subordinate to the interests of depositors.

31 (15) "Pledge agreement" means a written agreement among an insured

1 institution or trust company, the State Treasurer and a custodian that
2 pledges the securities deposited by the insured institution or trust company
3 with the custodian as collateral for deposits of uninsured public funds held
4 by the insured institution or trust company. The agreement must be approved
5 by the board of directors or loan committee of the insured institution or
6 trust company and must be continuously maintained as a written record of
7 the insured institution or trust company.

8 (16) "Public funds" or "funds" means funds under the control or in the
9 custody of a public official by virtue of office.

10 (17) "Public official" means each officer or employee of this state or any
11 agency, political subdivision or public or municipal corporation thereof, or
12 any housing authority, who by law is made the custodian of or has control
13 of any public funds.

14 (18) "Report of condition and income" means the quarterly report sub-
15 mitted to a bank depository's primary federal regulatory authority.

16 (19) "Security" or "securities" means:

17 (a) Obligations of the United States, including those of its agencies and
18 instrumentalities and of government sponsored enterprises;

19 (b) Obligations of the International Bank for Reconstruction and Devel-
20 opment;

21 (c) Bonds of any state of the United States:

22 (A) That are rated in one of the four highest grades by a recognized in-
23 vestment service organization that has been engaged regularly and contin-
24 uously for a period of not less than 10 years in rating state and municipal
25 bonds; or

26 (B) Having once been so rated are ruled to be eligible securities for the
27 purposes of ORS 295.001 to 295.108, notwithstanding the loss of such rating;

28 (d) Bonds of any county, city, school district, port district or other public
29 body in the United States payable from or secured by ad valorem taxes and
30 that meet the rating requirement or are ruled to be eligible securities as
31 provided in paragraph (c) of this subsection;

1 (e) Bonds of any county, city, school district, port district or other public
2 body issued pursuant to the Constitution or statutes of the State of Oregon
3 or the charter or ordinances of any county or city within the State of
4 Oregon, if the bonds have a long-term rating of AA or better;

5 (f) With the permission of the State Treasurer and in accordance with
6 rules adopted by the State Treasurer, loans made to any county, city, school
7 district, port district or other public body in the State of Oregon, if the
8 borrower has not been in default with respect to the payment of principal
9 or interest on any of its loans within the preceding 10 years or during the
10 period of its existence if that is less than 10 years;

11 (g) With the permission of the State Treasurer and in accordance with
12 rules adopted by the State Treasurer, bond anticipation notes issued, sold
13 or assumed by an authority under ORS 441.560;

14 (h) Bonds, notes, letters of credit or other securities or evidence of
15 indebtedness constituting the direct and general obligation of a federal home
16 loan bank or Federal Reserve bank;

17 (i) Debt obligations of domestic corporations that are rated in one of the
18 three highest grades by a recognized investment service organization that
19 has been engaged regularly and continuously for a period of not less than
20 10 years in rating corporate debt obligations; and

21 (j) Collateralized mortgage obligations and real estate mortgage invest-
22 ment conduits that are rated in one of the two highest grades by a recognized
23 investment service organization that has been engaged regularly and con-
24 tinuously for a period of not less than 10 years in rating corporate debt ob-
25 ligations.

26 (20) "Treasurer report" means a written report signed or authenticated
27 by an officer of a bank depository that has in its possession uninsured public
28 funds deposits setting forth as of the close of business on a specified date:

29 (a) The total amount of uninsured public funds on deposit with the bank
30 depository;

31 (b) The total amount of public funds on deposit with the bank depository;

1 (c) The net worth of the bank depository;

2 (d) The amount and nature of eligible collateral then on deposit with its
3 custodian to collateralize the bank depository's public funds deposits; and

4 (e) The identity of its custodian.

5 (21) "Treasurer report due date" means a date not less than 10 business
6 days after the date a bank depository's report of condition and income is due
7 to be submitted.

8 (22) "Trust company" means a trust company as defined in ORS 706.008.

9 (23) "Undercapitalized" means a bank depository that is classified as
10 undercapitalized, significantly undercapitalized or critically undercapitalized
11 by its primary federal regulatory authority.

12 (24) "Uninsured public funds" or "uninsured public funds deposits" means
13 public funds deposited in a bank depository that exceed the amounts insured
14 or guaranteed as described in ORS 295.002 (1)(a) and (b) and does not include
15 public funds deposited in a certificate of deposit or time deposit under ORS
16 295.004.

17 (25) "Value" means the current market value of securities.

18 (26) "Well capitalized" means a bank depository that is classified as well
19 capitalized by its primary federal regulatory authority.

20 **SECTION 17.** ORS 295.001, as amended by section 1, chapter 101, Oregon
21 Laws 2010, is amended to read:

22 295.001. As used in ORS 295.001 to 295.108 **and sections 1 to 12 of this**
23 **2011 Act**, unless the context requires otherwise:

24 (1) "Adequately capitalized" means a depository that is classified as ade-
25 quately capitalized by the depository's primary federal regulatory authority.

26 (2) "Bank depository" means **the Bank of the State of Oregon** or an
27 insured institution or trust company that:

28 (a) Maintains a head office or branch in this state in the capacity of an
29 insured institution or trust company; and

30 (b) Complies with ORS 295.008.

31 (3) "Business day" means a day other than a federal or State of Oregon

1 legal holiday or a day other than a day on which offices of the State of
2 Oregon are otherwise authorized by law to remain closed.

3 (4) "Closed depository" means a depository that is subject to a loss.

4 (5) "Credit union depository" means a credit union as defined in ORS
5 723.006 or a federal credit union if:

6 (a) The shares and deposits of the credit union or federal credit union are
7 insured by the National Credit Union Share Insurance Fund;

8 (b) The credit union or federal credit union maintains a head office or
9 branch in this state in the capacity of a credit union or federal credit union;
10 and

11 (c) The credit union or federal credit union complies with ORS 295.008.

12 (6) "Custodian" means one of the following institutions that a depository
13 designates for the depository's own account:

14 (a) The Federal Home Loan Bank designated to serve this state, or a
15 branch of the Federal Home Loan Bank;

16 **(b) The Bank of the State of Oregon; or**

17 [(b)] **(c) An insured institution, trust company or credit union that:**

18 (A) Is authorized to accept deposits or transact trust business in this
19 state;

20 (B) Complies with ORS 295.008; and

21 (C) Has been approved by the State Treasurer to serve as a custodian, if
22 the State Treasurer has approved custodians under ORS 295.008.

23 (7) "Custodian's receipt" or "receipt" means a document issued by a
24 custodian that describes the securities that a depository deposited with the
25 custodian to secure public fund deposits.

26 (8) "Depository" means **the Bank of the State of Oregon**, a bank de-
27 pository or a credit union depository.

28 (9) "Financial institution outside this state" means a financial institution,
29 as defined in ORS 706.008, that is not an extranational institution, as defined
30 in ORS 706.008, and is not a bank depository or credit union depository, as
31 defined in this section.

1 (10) "Insured institution" means an insured institution as defined in ORS
2 706.008.

3 (11) "Loss" means the issuance of an order by a regulatory or supervisory
4 authority or a court of competent jurisdiction that:

5 (a) Restrains a depository from making payments of deposit liabilities; or

6 (b) Appoints a receiver for a depository.

7 (12) "Maximum liability" means a sum equal to 10 percent of the greater
8 of:

9 (a) All uninsured public funds deposits held by a depository, as shown on
10 the date of the depository's most recent treasurer report; or

11 (b) The average of the balances of uninsured public funds deposits on the
12 last two immediately preceding treasurer reports.

13 (13) "Minimum collateral requirement" for a depository on any given date
14 means a sum equal to:

15 (a) For a well capitalized depository that the State Treasurer has not re-
16 quired to increase the depository's collateral pursuant to ORS 295.018, 10
17 percent of the greater of:

18 (A) All uninsured public funds held by the depository, as shown on the
19 most recent treasurer report;

20 (B) The average of the balances of uninsured public funds held by the
21 depository, as shown on the last two immediately preceding treasurer re-
22 ports; or

23 (C) An amount otherwise prescribed in ORS 295.001 to 295.108.

24 (b) For a well capitalized depository that the State Treasurer required to
25 increase the depository's collateral pursuant to ORS 295.018, the percentage
26 the State Treasurer required pursuant to ORS 295.018 multiplied by the
27 greater of:

28 (A) All uninsured public funds held by the depository, as shown on the
29 most recent treasurer report;

30 (B) The average of the balances of uninsured public funds held by the
31 depository, as shown on the last two immediately preceding treasurer re-

1 ports; or

2 (C) An amount otherwise prescribed in ORS 295.001 to 295.108.

3 (c) For an adequately capitalized depository or an undercapitalized de-
4 pository, 110 percent of the greater of:

5 (A) All uninsured public funds held by the depository; or

6 (B) The average of the balances of uninsured public funds held by the
7 depository, as shown on the last two immediately preceding treasurer re-
8 ports.

9 (14) "Net worth" means a depository's total risk-based capital, as shown
10 on the immediately preceding report of condition and income, and may in-
11 clude capital notes and debentures that are subordinate to the interests of
12 depositors.

13 (15) "Pledge agreement" means a written agreement among an insured
14 institution, trust company or credit union, the State Treasurer and a custo-
15 dian that pledges the securities the insured institution, trust company or
16 credit union deposits with the custodian as collateral for deposits of
17 uninsured public funds that the insured institution, trust company or credit
18 union holds. The board of directors or loan committee of the insured insti-
19 tution, trust company or credit union must approve the agreement and must
20 continuously maintain the agreement as a written record of the insured in-
21 stitution, trust company or credit union.

22 (16) "Public funds" or "funds" means funds that a public official has
23 custody of or controls by virtue of office.

24 (17) "Public official" means an officer or employee of this state or an
25 agency, political subdivision or public or municipal corporation of this state,
26 or a housing authority, that by law is the custodian of or has control of
27 public funds.

28 (18) "Report of condition and income" means the quarterly report a de-
29 pository submits to the depository's primary federal regulatory authority.

30 (19) "Security" or "securities" means:

31 (a) Obligations of the United States, including those of agencies and in-

1 instrumentalities of the United States, and of government sponsored enter-
2 prises;

3 (b) Obligations of the International Bank for Reconstruction and Devel-
4 opment;

5 (c) Bonds of a state of the United States that:

6 (A) Are rated in one of the four highest grades by a recognized investment
7 service organization that has engaged regularly and continuously for a pe-
8 riod of not less than 10 years in rating state and municipal bonds; or

9 (B) Having once been rated in accordance with subparagraph (A) of this
10 paragraph, are ruled to be eligible securities for the purposes of ORS 295.001
11 to 295.108, notwithstanding the loss of the rating;

12 (d) Bonds of a county, city, school district, port district or other public
13 body in the United States that are payable from or secured by ad valorem
14 taxes and that meet the rating requirement or are ruled to be eligible secu-
15 rities as provided in paragraph (c) of this subsection;

16 (e) Bonds of a county, city, school district, port district or other public
17 body that are issued pursuant to the Constitution or statutes of the State
18 of Oregon or the charter or ordinances of a county or city within the State
19 of Oregon, if the bonds meet the rating requirement or are ruled to be eli-
20 gible securities as provided in paragraph (c) of this subsection;

21 (f) With the permission of the State Treasurer and in accordance with
22 rules the State Treasurer adopts, loans made to a county, city, school dis-
23 trict, port district or other public body in the State of Oregon, if the bor-
24 rower has not defaulted with respect to the payment of principal or interest
25 on any of the borrower's loans within the preceding 10 years or during the
26 period of the borrower's existence if the borrower has existed for less than
27 10 years;

28 (g) With the permission of the State Treasurer and in accordance with
29 rules the State Treasurer adopts, bond anticipation notes that an authority
30 issues, sells or assumes under ORS 441.560;

31 (h) Bonds, notes, letters of credit or other securities or evidence of

1 indebtedness constituting the direct and general obligation of a federal home
2 loan bank or Federal Reserve bank;

3 (i) Debt obligations of domestic corporations that are rated in one of the
4 three highest grades by a recognized investment service organization that
5 has engaged regularly and continuously for a period of not less than 10 years
6 in rating corporate debt obligations; and

7 (j) Collateralized mortgage obligations and real estate mortgage invest-
8 ment conduits that are rated in one of the two highest grades by a recognized
9 investment service organization that has engaged regularly and continuously
10 for a period of not less than 10 years in rating corporate debt obligations.

11 (20) "Treasurer report" means a written report that an officer of a de-
12 pository that holds uninsured public funds deposits has signed or
13 authenticated and that sets forth as of the close of business on a specified
14 date:

15 (a) The total amount of uninsured public funds on deposit with the de-
16 pository;

17 (b) The total amount of public funds on deposit with the depository;

18 (c) The net worth of the depository;

19 (d) The amount and nature of eligible collateral then on deposit with the
20 depository's custodian to collateralize the depository's public funds deposits;
21 and

22 (e) The identity of the depository's custodian.

23 (21) "Treasurer report due date" means a date not less than 10 business
24 days after the date a depository's report of condition and income is due to
25 be submitted.

26 (22) "Trust company" means a trust company as defined in ORS 706.008.

27 (23) "Undercapitalized" means a depository that the depository's primary
28 federal regulatory authority has classified as undercapitalized, significantly
29 undercapitalized or critically undercapitalized.

30 (24)(a) "Uninsured public funds" or "uninsured public funds deposits"
31 means public funds deposited in a depository that exceed the amounts in-

1 sured or guaranteed as described in ORS 295.002 (1)(a) and (b).

2 (b) “Uninsured public funds” or “uninsured public funds deposits” does
3 not include public funds deposited in a certificate of deposit or time deposit
4 under ORS 295.004.

5 (25) “Value” means the current market value of securities.

6 (26) “Well capitalized” means a depository that the depository’s primary
7 federal regulatory authority has classified as well capitalized.

8 **SECTION 18. (1) Sections 1 to 12 of this 2011 Act and the amend-**
9 **ments to ORS 293.148, 293.875, 295.001 and 706.008 by sections 13 to 17**
10 **of this 2011 Act become operative January 1, 2012.**

11 **(2) A public official may take any action prior to January 1, 2012,**
12 **that is necessary to allow the public official to exercise, on and after**
13 **January 1, 2012, all the duties, functions and powers conferred on the**
14 **public official by sections 1 to 12 of this 2011 Act and the amendments**
15 **to ORS 293.148, 293.875, 295.001 and 706.008 by sections 13 to 17 of this**
16 **2011 Act.**

17 **SECTION 19. This 2011 Act being necessary for the immediate**
18 **preservation of the public peace, health and safety, an emergency is**
19 **declared to exist, and this 2011 Act takes effect on its passage.**

20
