

House Bill 2033

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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**.

Clarifies provisions regarding public funds, pool managers, depository banks and custodian banks.

A BILL FOR AN ACT

1
2 Relating to public funds; creating new provisions; and amending ORS 295.005.

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

4 **SECTION 1.** ORS 295.005 is amended to read:

5 295.005. As used in ORS 295.005 to 295.165, unless the context requires otherwise:

6 (1) "Certificate of participation" or "certificate" means a nonnegotiable document issued by a
7 pool manager to a public official.

8 (2) "Custodian bank" or "custodian" means the following institutions designated by the deposi-
9 tory bank for its own account:

10 (a) The Federal Reserve Bank designated to serve this state, or any branch of that bank;

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

12 (c) Any insured institution or trust company, as those terms are defined in ORS 706.008, that is
13 authorized to accept deposits or transact trust business in this state **and that complies with sec-**
14 **tion 3 of this 2005 Act; and** [*provided, however, that no insured institution or trust company may*
15 *be a custodian bank unless it certifies in writing to the State Treasurer that it will furnish the reports*
16 *required under ORS 714.075 to the Director of the Department of Consumer and Business Services.*
17 *With the approval of the State Treasurer, a depository bank may be a custodian bank with respect to*
18 *its own securities; and*]

19 (d) The fiscal agency of the State of Oregon, duly appointed and acting as such agency pursuant
20 to ORS 288.010 to 288.110.

21 (3) "Custodian's receipt" or "receipt" means a document issued by a custodian bank to a pool
22 manager describing the securities deposited with it by a depository bank to secure public fund de-
23 posits.

24 (4) "Depository bank" or "depository" means [*any*] **an** insured institution or trust company, as
25 those terms are defined in ORS 706.008, a credit union, as defined in ORS 723.006, the shares and
26 deposits of which are insured by the National Credit Union Share Insurance Fund, or a federal
27 credit union, if the institution, trust company or credit union:

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

30 (b) **Complies with section 3 of this 2005 Act.** [*However, an insured institution, trust company,*
31 *credit union or federal credit union is not a depository bank unless it has:*]

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 *[(a) Certified in writing to the State Treasurer that it will furnish the reports required under ORS*
 2 *714.075 to the Director of the Department of Consumer and Business Services; and]*

3 *[(b) Entered into a written agreement with the State Treasurer and a custodian that pledges the*
 4 *securities deposited by the insured institution, trust company, credit union or federal credit union with*
 5 *the custodian as collateral for deposits of public funds held by the insured institution, trust company,*
 6 *credit union or federal credit union. The agreement shall be approved by the board of directors or loan*
 7 *committee of the insured institution, trust company, credit union or federal credit union and shall be*
 8 *continuously maintained as a written record of the institution, company, credit union or federal credit*
 9 *union.]*

10 (5) “Pool manager” means:

11 (a) The State Treasurer;

12 (b) Any insured institution or trust company, as those terms are defined in ORS 706.008, a credit
 13 union, as defined in ORS 723.006, the shares and deposits of which are insured by the National
 14 Credit Union Share Insurance Fund, or a federal credit union, if the institution, trust company or
 15 credit union:

16 **(A)** Is authorized to accept deposits or transact trust business in this state; **and**

17 **(B) Complies with section 3 of this 2005 Act;***[. A depository bank may not be a pool manager*
 18 *with respect to securities that it deposits with its custodians as collateral for the security of public fund*
 19 *deposits and an insured institution, trust company, credit union or federal credit union may not be a*
 20 *pool manager unless it certifies in writing to the State Treasurer that it will furnish the reports re-*
 21 *quired under ORS 714.075 to the Director of the Department of Consumer and Business Services;]*

22 (c) The Federal Reserve Bank designated to serve this state, or any branch of that bank; or

23 (d) The Federal Home Loan Bank designated to serve this state, or any branch of that bank.

24 (6) “Public funds” or “funds” means *[the]* funds under the control or in the custody of a public
 25 official by virtue of office.*[, other than those that, under law other than ORS 295.005 to 295.165,*
 26 *are:]*

27 *[(a) Deposited for the purpose of paying principal, interest or premium, if any, on bonds, like ob-*
 28 *ligations and related costs or securing an obligation related to an agreement for exchange of interest*
 29 *rates entered into under ORS 287.025; or]*

30 *[(b) Invested in authorized investments. Funds invested under ORS 293.701 to 293.820 are invested*
 31 *in authorized investments for purposes of this paragraph when the funds are transferred by the State*
 32 *Treasurer to a third party under the terms of a contract for investment of funds that requires such a*
 33 *transfer.]*

34 (7) “Security” or “securities” means:

35 (a) Obligations of the United States, including those of its agencies and instrumentalities;

36 (b) Obligations of the International Bank for Reconstruction and Development;

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

38 **(A)** That are rated in one of the four highest grades by a recognized investment service organ-
 39 ization that has been engaged regularly and continuously for a period of not less than 10 years in
 40 rating state and municipal bonds; or $[,]$

41 **(B)** Having once been so rated are ruled to be eligible securities for the purposes of ORS 295.005
 42 to 295.165, notwithstanding the loss of such rating;

43 (d) Bonds of any county, city, school district, port district or other public body in the United
 44 States payable from ad valorem taxes levied generally on substantially all property within the issu-
 45 ing body and that meet the rating requirement or are ruled to be eligible securities as provided in

1 paragraph (c) of this subsection;

2 (e) Bonds of any county, city, school district, port district or other public body issued pursuant
 3 to the Constitution or statutes of the State of Oregon or the charter or ordinances of any county
 4 or city within the State of Oregon, if the issuing body has not been in default with respect to the
 5 payment of principal or interest on any of its bonds within the preceding 10 years or during the
 6 period of its existence if that is less than 10 years;

7 (f) Bond anticipation notes issued, sold or assumed by an authority under ORS 441.560;

8 (g) One-family to four-family housing mortgage loan notes related to property situated in the
 9 State of Oregon, which are owned by a depository bank, no payment on which is more than 90 days
 10 past due, and which are eligible collateral for loans from the Federal Reserve Bank of San Francisco
 11 under section 10(b) of the Federal Reserve Act and regulations thereunder;

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

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

17 (j) Collateralized mortgage obligations and real estate mortgage investment conduits that are
 18 rated in one of the two highest grades by a recognized investment service organization that has been
 19 engaged regularly and continuously for a period of not less than 10 years in rating corporate debt
 20 obligations; and

21 (k) One-family to four-family housing mortgages that have been secured by means of a guarantee
 22 as to full repayment of principal and interest by an agency of the United States Government, in-
 23 cluding the Government National Mortgage Association, the Federal National Mortgage Association
 24 and the Federal Home Loan Mortgage Corporation.

25 (8) "Public official" means each officer or employee of this state or any agency, political subdi-
 26 vision or public or municipal corporation thereof who by law is made the custodian of or has control
 27 of any public funds.

28 (9) "Value" means the current market value of securities.

29 **SECTION 2. Sections 3 and 4 of this 2005 Act are added to and made a part of ORS 295.005**
 30 **to 295.165.**

31 **SECTION 3. (1)(a) An insured institution or trust company described in ORS 295.005 (2)(c)**
 32 **may not be a custodian bank under ORS 295.005 to 295.165, unless it certifies in writing to**
 33 **the State Treasurer that it will furnish the reports required under ORS 714.075 to the Di-**
 34 **rector of the Department of Consumer and Business Services.**

35 **(b) With the approval of the State Treasurer, a depository bank may be a custodian bank**
 36 **with respect to its own securities.**

37 **(2) An insured institution, trust company, credit union or federal credit union described**
 38 **in ORS 295.005 (4) may not be a depository bank under ORS 295.005 to 295.165, unless it:**

39 **(a) Certifies in writing to the State Treasurer that it will furnish the reports required**
 40 **under ORS 714.075 to the Director of the Department of Consumer and Business Services;**
 41 **and**

42 **(b) Except as provided in subsection (3) of this section, enters into a written agreement**
 43 **with the State Treasurer and a custodian that pledges the securities deposited by the insured**
 44 **institution, trust company, credit union or federal credit union with the custodian as collat-**
 45 **eral for deposits of public funds held by the insured institution, trust company, credit union**

1 or federal credit union. The agreement must be approved by the board of directors or loan
 2 committee of the insured institution, trust company, credit union or federal credit union and
 3 shall be continuously maintained as a written record of the insured institution, trust com-
 4 pany, credit union or federal credit union.

5 (3) An insured institution, trust company, credit union or federal credit union described
 6 in ORS 295.005 (4) may be a depository bank under ORS 295.005 to 295.165 without entering
 7 into the agreement described in subsection (2) of this section if the insured institution, trust
 8 company, credit union or federal credit union does not hold any funds on deposit for a public
 9 official that exceed the limits specified in ORS 295.025 for that type of depository. The pro-
 10 visions of ORS 295.015, 295.018, 295.035, 295.045, 295.055, 295.065, 295.105 and 295.185 do not
 11 apply to an insured institution, trust company, credit union or federal credit union that is
 12 a depository bank under this subsection.

13 (4) A depository bank may not be a pool manager with respect to securities that it de-
 14 posits with its custodians as collateral for the security of public fund deposits, and an in-
 15 sured institution, trust company, credit union or federal credit union may not be a pool
 16 manager unless it certifies in writing to the State Treasurer that it will furnish the reports
 17 required under ORS 714.075 to the Director of the Department of Consumer and Business
 18 Services.

19 **SECTION 4.** (1) The following public funds are not subject to the provisions of ORS
 20 295.005 to 295.165:

21 (a) Funds that are deposited for the purpose of paying principal, interest or premium, if
 22 any, on bonds, like obligations and related costs or securing an obligation related to an
 23 agreement for exchange of interest rates entered into under ORS 287.025.

24 (b) Funds that are invested in authorized investments under provisions of law other than
 25 ORS 295.005 to 295.165. Funds invested under ORS 293.701 to 293.820 are invested in author-
 26 ized investments for purposes of this subsection from the time the funds are transferred by
 27 the State Treasurer to a third party under the terms of a contract for investment or ad-
 28 ministration of the funds that requires such a transfer until the time the funds are returned
 29 to the treasurer or paid to another party under the terms of the contract.

30 (c) Negotiable certificates of deposit purchased by the State Treasurer under ORS 293.736
 31 or by an investment manager under ORS 293.741.

32 (2) Notwithstanding subsection (1) of this section, funds deposited by a custodial officer
 33 under ORS 294.035 (4) are subject to the provisions of ORS 295.005 to 295.165.

34