

A-Engrossed
House Bill 2395

Ordered by the House March 9
Including House Amendments dated March 9

Sponsored by Representative MACPHERSON

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.

Authorizes local governments to invest deferred compensation moneys in shares of corporate stock, including shares of mutual funds.

A BILL FOR AN ACT

1
2 Relating to local government deferred compensation plans; amending ORS 294.033 and 294.035.

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

4 **SECTION 1.** ORS 294.033 is amended to read:

5 294.033. Funds set aside by any local government pursuant to a deferred compensation plan may
6 be invested in any investment enumerated in ORS 294.035 and [*shall not be*] **are not** subject to the
7 collateral requirements of ORS chapter 295.

8 **SECTION 2.** ORS 294.035 is amended to read:

9 294.035. Subject to ORS 294.040 and 294.135 to 294.155, the custodial officer may, after having
10 obtained a written order from the governing body of the county, municipality, political subdivision
11 or school district[, *which order shall be spread upon the minutes or journal of the governing body*],
12 invest any sinking fund, bond fund or surplus funds in the custody of the custodial officer in the
13 bank accounts, classes of securities at current market prices, insurance contracts and other invest-
14 ments listed in this section. **The order authorizing the investment shall be set forth in the**
15 **minutes or journal of the governing body.** However, the custodial officer of any county [*shall*
16 *make no such*] **may not make an** investment of funds belonging to any municipality, political sub-
17 division or school district, unless and until the custodial officer has received a written order from
18 the governing body of the municipality, political subdivision or school district [*to which the funds*
19 *belong, which order*] **that** authorizes the custodial officer to invest the funds[, *and which order has*
20 *been spread upon the minutes or journal of the governing body*]. This section, however, [*shall*] **does**
21 not limit the authority of the custodial officer to invest surplus funds in other investments when the
22 investment is specifically authorized by another statute. Investments authorized by this section are:

23 (1) Lawfully issued general obligations of the United States, the agencies and instrumentalities
24 of the United States or enterprises sponsored by the United States Government.

25 (2) Lawfully issued debt obligations of the agencies and instrumentalities of the State of Oregon
26 and its political subdivisions that have a long-term rating of A or an equivalent rating or better or
27 are rated on the settlement date in the highest category for short-term municipal debt by a na-
28 tionally recognized statistical rating organization.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (3) Lawfully issued debt obligations of the States of California, Idaho and Washington and poli-
2 tical subdivisions of those states if the obligations have a long-term rating of AA or an equivalent
3 rating or better or are rated on the settlement date in the highest category for short-term municipal
4 debt by a nationally recognized statistical rating organization.

5 (4) Time deposit open accounts, certificates of deposit and savings accounts in insured insti-
6 tutions as defined in ORS 706.008, in credit unions as defined in ORS 723.006 or in federal credit
7 unions, if the institution or credit union maintains a head office or a branch in this state.

8 (5) Share accounts and savings accounts in credit unions in the name of, or for the benefit of,
9 a member of the credit union pursuant to a plan of deferred compensation.

10 (6) Fixed or variable life insurance or annuity contracts as defined by ORS 731.170 and guar-
11 anteed investment contracts issued by life insurance companies authorized to do business in this
12 state.

13 (7) Trusts in which deferred compensation funds from other public employers are pooled, if:

14 (a) The purpose is to establish a deferred compensation plan;

15 (b) The trust is a public instrumentality of such public employers and described in section (2)(b)
16 of the Investment Company Act of 1940, 15 U.S.C. 80a-2(b), as amended, in effect on September 20,
17 1985, or the trust is a common trust fund described in ORS 709.170;

18 (c) Under the terms of the plan the net income from or gain or loss due to fluctuation in value
19 of the underlying assets of the trust, or other change in such assets, is reflected in an equal increase
20 or decrease in the amount distributable to the employee or the beneficiary thereof and, therefore,
21 does not ultimately result in a net increase or decrease in the worth of the public employer or the
22 state; and

23 (d) The fidelity of the trustees and others with access to such assets, other than a trust com-
24 pany, as defined in ORS 706.008, is insured by a surety bond that is satisfactory to the public em-
25 ployer, issued by a company authorized to do a surety business in this state and in an amount that
26 is not less than 10 percent of the value of such assets.

27 (8)(a) Banker's acceptances, if the banker's acceptances are:

28 (A) Guaranteed by, and carried on the books of, a qualified financial institution;

29 (B) Eligible for discount by the Federal Reserve System; and

30 (C) Issued by a qualified financial institution whose short-term letter of credit rating is rated in
31 the highest category by one or more nationally recognized statistical rating organizations.

32 (b) For the purposes of this subsection, "qualified financial institution" means:

33 (A) A financial institution that is located and licensed to do banking business in the State of
34 Oregon; or

35 (B) A financial institution that is wholly owned by a financial holding company or a bank
36 holding company that owns a financial institution that is located and licensed to do banking busi-
37 ness in the State of Oregon.

38 (c) A custodial officer shall not permit more than 25 percent of the moneys of a local govern-
39 ment that are available for investment, as determined on the settlement date, to be invested in
40 banker's acceptances of any qualified financial institution.

41 (9)(a) Corporate indebtedness subject to a valid registration statement on file with the Securities
42 and Exchange Commission or issued under the authority of section 3(a)(2) or 3(a)(3) of the Securities
43 Act of 1933, as amended. Corporate indebtedness described in this subsection does not include
44 banker's acceptances. The corporate indebtedness must be issued by a commercial, industrial or
45 utility business enterprise, or by or on behalf of a financial institution, including a holding company

1 owning a majority interest in a qualified financial institution.

2 (b) Corporate indebtedness must be rated on the settlement date P-1 or Aa or better by Moody's
3 Investors Service or A-1 or AA or better by Standard & Poor's Corporation or equivalent rating by
4 any nationally recognized statistical rating organization.

5 (c) Notwithstanding paragraph (b) of this subsection, the corporate indebtedness must be rated
6 on the settlement date P-2 or A or better by Moody's Investors Service or A-2 or A or better by
7 Standard & Poor's Corporation or equivalent rating by any nationally recognized statistical rating
8 organization when the corporate indebtedness is:

9 (A) Issued by a business enterprise that has its headquarters in Oregon, employs more than 50
10 percent of its permanent workforce in Oregon or has more than 50 percent of its tangible assets in
11 Oregon; or

12 (B) Issued by a holding company owning not less than a majority interest in a qualified financial
13 institution, as defined in subsection (8) of this section, located and licensed to do banking business
14 in Oregon or by a holding company owning not less than a majority interest in a business enterprise
15 described in subparagraph (A) of this paragraph.

16 (d) A custodial officer shall not permit more than 35 percent of the moneys of a local govern-
17 ment that are available for investment, as determined on the settlement date, to be invested in
18 corporate indebtedness, and shall not permit more than five percent of the moneys of a local gov-
19 ernment that are available for investment to be invested in corporate indebtedness of any single
20 corporate entity and its affiliates or subsidiaries.

21 (10) Securities of any open-end or closed-end management investment company or investment
22 trust, if the securities are of the types specified in subsections (1) to (3), (8) and (9) of this section
23 and if the investment does not cause the county, municipality, political subdivision or school district
24 to become a stockholder in a joint company, corporation or association. A trust company or trust
25 department of a national bank while acting as indenture trustee may invest funds held by it as
26 indenture trustee in any open-end or closed-end management investment company or investment
27 trust for which the trust company or trust department of a national bank or an affiliate of the trust
28 company or trust department of a national bank acts as investment adviser or custodian or provides
29 other services. However, the securities of the investment company or investment trust in which such
30 funds are invested must be of the types specified in subsections (1) to (3), (8) and (9) of this section
31 and the investment must not cause the county, municipality, political subdivision or school district
32 whose funds are invested to become a stockholder in a joint company, corporation or association.
33 For purposes of this subsection, companies are affiliated if they are members of the same affiliated
34 group under section 1504 of the Internal Revenue Code of 1986 (26 U.S.C. 1504).

35 (11) Repurchase agreements whereby the custodial officer purchases securities from a financial
36 institution or securities dealer subject to an agreement by the seller to repurchase the securities.
37 The repurchase agreement must be in writing and executed in advance of the initial purchase of the
38 securities that are the subject of the repurchase agreement. Only securities described in subsection
39 (1) of this section shall be used in conjunction with a repurchase agreement and such securities shall
40 have a maturity of not longer than three years. The price paid by the custodial officer for such se-
41 curities may not exceed amounts or percentages prescribed by written policy of the Oregon Invest-
42 ment Council or the Oregon Short Term Fund Board created by ORS 294.885.

43 **(12) Shares of stock of any company, association or corporation, including but not limited**
44 **to shares of a mutual fund, but only if the moneys being invested are funds set aside pur-**
45 **suant to a local government deferred compensation plan and are held in trust for the exclu-**

1 **sive benefit of participants and their beneficiaries.**

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