

Enrolled
House Bill 2395

Sponsored by Representative MACPHERSON

CHAPTER

AN ACT

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

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

SECTION 1. ORS 294.033 is amended to read:

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

SECTION 2. ORS 294.035 is amended to read:

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

- (1) Lawfully issued general obligations of the United States, the agencies and instrumentalities of the United States or enterprises sponsored by the United States Government.
- (2) Lawfully issued debt obligations of the agencies and instrumentalities of the State of Oregon and its political subdivisions that have a long-term rating of A or an equivalent rating or better or are rated on the settlement date in the highest category for short-term municipal debt by a nationally recognized statistical rating organization.
- (3) Lawfully issued debt obligations of the States of California, Idaho and Washington and political subdivisions of those states if the obligations have a long-term rating of AA or an equivalent rating or better or are rated on the settlement date in the highest category for short-term municipal debt by a nationally recognized statistical rating organization.
- (4) Time deposit open accounts, certificates of deposit and savings accounts in insured institutions as defined in ORS 706.008, in credit unions as defined in ORS 723.006 or in federal credit unions, if the institution or credit union maintains a head office or a branch in this state.

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

(6) Fixed or variable life insurance or annuity contracts as defined by ORS 731.170 and guaranteed investment contracts issued by life insurance companies authorized to do business in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Issued by a holding company owning not less than a majority interest in a qualified financial institution, as defined in subsection (8) of this section, located and licensed to do banking business

in Oregon or by a holding company owning not less than a majority interest in a business enterprise described in subparagraph (A) of this paragraph.

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

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

(11) Repurchase agreements whereby the custodial officer purchases securities from a financial institution or securities dealer subject to an agreement by the seller to repurchase the securities. The repurchase agreement must be in writing and executed in advance of the initial purchase of the securities that are the subject of the repurchase agreement. Only securities described in subsection (1) of this section shall be used in conjunction with a repurchase agreement and such securities shall have a maturity of not longer than three years. The price paid by the custodial officer for such securities 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.

(12) Shares of stock of any company, association or corporation, including but not limited to shares of a mutual fund, but only if the moneys being invested are funds set aside pursuant to a local government deferred compensation plan and are held in trust for the exclusive benefit of participants and their beneficiaries.

Passed by House March 14, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate May 6, 2005

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President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State