

**HOUSE AMENDMENTS TO
A-ENGROSSED SENATE BILL 23
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

By COMMITTEE ON REVENUE

June 13

1 On page 1 of the printed A-engrossed bill, line 5, delete “; and” and insert “and section 4,
2 chapter 112, Oregon Laws 2005 (Enrolled House Bill 2033);” and before the period insert “and sec-
3 tion 1, chapter 112, Oregon Laws 2005 (Enrolled House Bill 2033), and section 2, chapter 91, Oregon
4 Laws 2005 (Enrolled House Bill 2395); and declaring an emergency”.

5 On page 17, after line 18, insert:

6 **“SECTION 13a. If House Bill 2395 becomes law, section 2, chapter 91, Oregon Laws 2005**
7 **(Enrolled House Bill 2395) (amending ORS 294.035), is repealed and ORS 294.035, as amended**
8 **by section 13 of this 2005 Act, is amended to read:**

9 “294.035. (1) Subject to ORS 294.040 and 294.135 to 294.155, the custodial officer may invest any
10 sinking fund, bond fund or surplus funds in the custody of the custodial officer in the bank accounts,
11 classes of securities at current market prices, insurance contracts and other investments listed in
12 this section, but only after obtaining from the governing body of the county, municipality, political
13 subdivision or school district a written order that has been entered in the minutes or journal of the
14 governing body.

15 “(2) This section does not:

16 “(a) Limit the authority of the custodial officer to invest surplus funds in other investments
17 when the investment is specifically authorized by another statute.

18 “(b) Apply to a sinking fund or a bond fund established in connection with conduit revenue
19 bonds issued by a county, municipality, political subdivision or school district for private business
20 entities or nonprofit corporations.

21 “(3) Investments authorized by this section are:

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

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

28 “(c) Lawfully issued debt obligations of the States of California, Idaho and Washington and
29 political subdivisions of those states if the obligations have a long-term rating of AA or an equiv-
30 alent rating or better or are rated on the settlement date in the highest category for short-term
31 municipal debt by a nationally recognized statistical rating organization.

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

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

3 “(f) Fixed or variable life insurance or annuity contracts as defined by ORS 731.170 and guar-
4 anteed investment contracts issued by life insurance companies authorized to do business in this
5 state.

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

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

8 “(B) The trust is a public instrumentality of such public employers and described in section (2)(b)
9 of the Investment Company Act of 1940, 15 U.S.C. 80a-2(b), as amended, in effect on September 20,
10 1985, or the trust is a common trust fund described in ORS 709.170;

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

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

20 “(h)(A) Banker’s acceptances, if the banker’s acceptances are:

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

22 “(ii) Eligible for discount by the Federal Reserve System; and

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

25 “(B) For the purposes of this paragraph, ‘qualified financial institution’ means:

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

28 “(ii) A financial institution that is wholly owned by a financial holding company or a bank
29 holding company that owns a financial institution that is located and licensed to do banking busi-
30 ness in the State of Oregon.

31 “(C) A custodial officer shall not permit more than 25 percent of the moneys of a local govern-
32 ment that are available for investment, as determined on the settlement date, to be invested in
33 banker’s acceptances of any qualified financial institution.

34 “(i)(A) Corporate indebtedness subject to a valid registration statement on file with the Securi-
35 ties and Exchange Commission or issued under the authority of section 3(a)(2) or 3(a)(3) of the Se-
36 curities Act of 1933, as amended. Corporate indebtedness described in this paragraph does not
37 include banker’s acceptances. The corporate indebtedness must be issued by a commercial, industrial
38 or utility business enterprise, or by or on behalf of a financial institution, including a holding com-
39 pany owning a majority interest in a qualified financial institution.

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

43 “(C) Notwithstanding subparagraph (B) of this paragraph, the corporate indebtedness must be
44 rated on the settlement date P-2 or A or better by Moody’s Investors Service or A-2 or A or better
45 by Standard & Poor’s Corporation or equivalent rating by any nationally recognized statistical rat-

1 ing organization when the corporate indebtedness is:

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

5 “(ii) Issued by a holding company owning not less than a majority interest in a qualified finan-
6 cial institution, as defined in paragraph (h) of this subsection, located and licensed to do banking
7 business in Oregon or by a holding company owning not less than a majority interest in a business
8 enterprise described in sub-subparagraph (i) of this subparagraph.

9 “(D) A custodial officer may not permit more than 35 percent of the moneys of a local govern-
10 ment that are available for investment, as determined on the settlement date, to be invested in
11 corporate indebtedness, and may not permit more than five percent of the moneys of a local gov-
12 ernment that are available for investment to be invested in corporate indebtedness of any single
13 corporate entity and its affiliates or subsidiaries.

14 “(j) Securities of any open-end or closed-end management investment company or investment
15 trust, if the securities are of the types specified in paragraphs (a) to (c), (h) and (i) of this subsection
16 and if the investment does not cause the county, municipality, political subdivision or school district
17 to become a stockholder in a joint company, corporation or association. A trust company or trust
18 department of a national bank while acting as indenture trustee may invest funds held by it as
19 indenture trustee in any open-end or closed-end management investment company or investment
20 trust for which the trust company or trust department of a national bank or an affiliate of the trust
21 company or trust department of a national bank acts as investment adviser or custodian or provides
22 other services. However, the securities of the investment company or investment trust in which the
23 funds are invested must be of the types specified in paragraphs (a) to (c), (h) and (i) of this sub-
24 section and the investment must not cause the county, municipality, political subdivision or school
25 district whose funds are invested to become a stockholder in a joint company, corporation or asso-
26 ciation. For purposes of this paragraph, companies are affiliated if they are members of the same
27 affiliated group under section 1504 of the Internal Revenue Code of 1986 (26 U.S.C. 1504).

28 “(k) Repurchase agreements whereby the custodial officer purchases securities from a financial
29 institution or securities dealer subject to an agreement by the seller to repurchase the securities.
30 The repurchase agreement must be in writing and executed in advance of the initial purchase of the
31 securities that are the subject of the repurchase agreement. Only securities described in paragraph
32 (a) of this subsection may be used in conjunction with a repurchase agreement and such securities
33 shall have a maturity of not longer than three years. The price paid by the custodial officer for such
34 securities may not exceed amounts or percentages prescribed by written policy of the Oregon In-
35 vestment Council or the Oregon Short Term Fund Board created by ORS 294.885.

36 “(L) **Shares of stock of any company, association or corporation, including but not limited**
37 **to shares of a mutual fund, but only if the moneys being invested are funds set aside pur-**
38 **suant to a local government deferred compensation plan and are held in trust for the exclu-**
39 **sive benefit of participants and their beneficiaries.**

40 “**SECTION 13b. The amendments to ORS 294.035 by section 13a of this 2005 Act become**
41 **operative on January 1, 2006.”.**

42 On page 29, after line 45, insert:

43 “**SECTION 32a. If House Bill 2033 becomes law, section 1, chapter 112, Oregon Laws 2005**
44 **(Enrolled House Bill 2033) (amending ORS 295.005), is repealed and ORS 295.005, as amended**
45 **by section 32 of this 2005 Act, is amended to read:**

1 “295.005. As used in ORS 295.005 to 295.165, unless the context requires otherwise:

2 “(1) ‘Certificate of participation’ or ‘certificate’ means a nonnegotiable document issued by a
3 pool manager to a public official.

4 “(2) ‘Custodian bank’ or ‘custodian’ means the following institutions designated by the depository
5 bank for its own account:

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

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

8 “(c) Any insured institution or trust company, as those terms are defined in ORS 706.008, that
9 is authorized to accept deposits or transact trust business in this state **and that complies with**
10 **section 3, chapter 112, Oregon Laws 2005 (Enrolled House Bill 2033); and** [*provided, however,*
11 *that no insured institution or trust company may be a custodian bank unless it certifies in writing to*
12 *the State Treasurer that it will furnish the reports required under ORS 714.075 to the Director of the*
13 *Department of Consumer and Business Services. With the approval of the State Treasurer, a depository*
14 *bank may be a custodian bank with respect to its own securities; and*]

15 “(d) The fiscal agency of the State of Oregon, duly appointed and acting as such agency pursu-
16 ant to ORS 288.010 to 288.110.

17 “(3) ‘Custodian’s receipt’ or ‘receipt’ means a document issued by a custodian bank to a pool
18 manager describing the securities deposited with it by a depository bank to secure public fund de-
19 posits.

20 “(4) ‘Depository bank’ or ‘depository’ means [*any*] **an** insured institution or trust company, as
21 those terms are defined in ORS 706.008, a credit union, as defined in ORS 723.006, the shares and
22 deposits of which are insured by the National Credit Union Share Insurance Fund, or a federal
23 credit union, if the institution, trust company or credit union:

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

26 “(b) **In the case of an insured institution or trust company, complies with section 3,**
27 **chapter 112, Oregon Laws 2005 (Enrolled House Bill 2033).** [*However, an insured institution, trust*
28 *company, credit union or federal credit union is not a depository bank unless it has:*]

29 “[*a*] *Certified in writing to the State Treasurer that it will furnish the reports required under ORS*
30 *714.075 to the Director of the Department of Consumer and Business Services; and*]

31 “[*b*] *Entered into a written agreement with the State Treasurer and a custodian that pledges the*
32 *securities deposited by the insured institution, trust company, credit union or federal credit union with*
33 *the custodian as collateral for deposits of public funds held by the insured institution, trust company,*
34 *credit union or federal credit union. The agreement shall be approved by the board of directors or loan*
35 *committee of the insured institution, trust company, credit union or federal credit union and shall be*
36 *continuously maintained as a written record of the institution, company, credit union or federal credit*
37 *union.*]

38 “(5) ‘Pool manager’ means:

39 “(a) The State Treasurer;

40 “(b) Any insured institution or trust company, as those terms are defined in ORS 706.008, a
41 credit union, as defined in ORS 723.006, the shares and deposits of which are insured by the Na-
42 tional Credit Union Share Insurance Fund, or a federal credit union, if the institution, trust company
43 or credit union:

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

45 “(B) **In the case of an insured institution or trust company, complies with section 3,**

1 **chapter 112, Oregon Laws 2005 (Enrolled House Bill 2033)**]; *A depository bank may not be a pool*
2 *manager with respect to securities that it deposits with its custodians as collateral for the security of*
3 *public fund deposits and an insured institution, trust company, credit union or federal credit union*
4 *may not be a pool manager unless it certifies in writing to the State Treasurer that it will furnish the*
5 *reports required under ORS 714.075 to the Director of the Department of Consumer and Business*
6 *Services;*]

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

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

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

12 “*[(a) Deposited for the purpose of paying principal, interest or premium, if any, on bonds, like*
13 *borrowings and related costs or securing a borrowing related to an agreement for exchange of interest*
14 *rates entered into under ORS 287.025; or]*

15 “*[(b) Invested in authorized investments. Funds invested under ORS 293.701 to 293.820 are in-*
16 *vested in authorized investments for purposes of this paragraph when the funds are transferred by the*
17 *State Treasurer to a third party under the terms of a contract for investment of funds that requires*
18 *such a transfer.]*

19 “(7) ‘Security’ or ‘securities’ means:

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

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

22 “(c) Bonds of any state of the United States:

23 “(A) That are rated in one of the four highest grades by a recognized investment service or-
24 ganization that has been engaged regularly and continuously for a period of not less than 10 years
25 in rating state and municipal bonds; or[,]

26 “(B) Having once been so rated are ruled to be eligible securities for the purposes of ORS
27 295.005 to 295.165, notwithstanding the loss of such rating;

28 “(d) Bonds of any county, city, school district, port district or other public body in the United
29 States payable from ad valorem taxes levied generally on substantially all property within the issu-
30 ing body and that meet the rating requirement or are ruled to be eligible securities as provided in
31 paragraph (c) of this subsection;

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

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

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

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

44 “(i) Debt obligations of domestic corporations that are rated in one of the three highest grades
45 by a recognized investment service organization that has been engaged regularly and continuously

1 for a period of not less than 10 years in rating corporate debt obligations;

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

6 “(k) One-family to four-family housing mortgages that have been secured by means of a guaran-
7 tee as to full repayment of principal and interest by an agency of the United States Government,
8 including the Government National Mortgage Association, the Federal National Mortgage Associ-
9 ation and the Federal Home Loan Mortgage Corporation.

10 “(8) ‘Public official’ means each officer or employee of this state or any agency, political subdivi-
11 sion or public or municipal corporation thereof who by law is made the custodian of or has control
12 of any public funds.

13 “(9) ‘Value’ means the current market value of securities.

14 “**SECTION 32b. The amendments to ORS 295.005 by section 32a of this 2005 Act become**
15 **operative on January 1, 2006.**

16 “**SECTION 32c.** If House Bill 2033 becomes law, section 4, chapter 112, Oregon Laws 2005
17 (Enrolled House Bill 2033), is amended to read:

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

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

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

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

31 “(2) Notwithstanding subsection (1) of this section, funds deposited by a custodial officer under
32 ORS 294.035 [(4)] **(3)(d)** are subject to the provisions of ORS 295.005 to 295.165.”.

33 On page 30, after line 5, insert:

34 “**SECTION 35. This 2005 Act being necessary for the immediate preservation of the public**
35 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
36 **on its passage.**”.

37