House Bill 3029

Sponsored by Representative KENY-GUYER, Senators DEMBROW, GOLDEN; Representatives GORSEK, HERNANDEZ, NOSSE, PILUSO, Senators FAGAN, FREDERICK, MANNING JR, MONNES ANDERSON

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.

Provides that municipal bank is not required to obtain deposit insurance from Federal Deposit Insurance Corporation.

Provides that municipal bank may act as depository or custodian of public funds under certain conditions.

A BILL FOR AN ACT


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

SECTION 1. ORS 706.008 is amended to read:

706.008. As used in the Bank Act:

(1) “Bank” means:

(a) A company, other than an extranational institution, that accepts deposits that the Bank Insurance Fund insures to any extent under the provisions of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811, et seq.; or

(b) A municipal bank.

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

(3) “Bank service corporation” means a corporation or a limited liability company that is organized to perform services authorized by ORS 708A.145, all of the capital stock or membership interests of which one or more banking institutions or national banks own.

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

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

(6) “Extranational institution” means a corporation, unincorporated company, partnership or association of two or more persons organized under the laws of a nation other than the United States, or other than a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, that engages directly in banking business.

(7) “Federal bank” means a national bank or another bank organized under the laws of the United States.

(8) “Financial holding company” means a company that engages in activities described for a financial holding company in section 103 of the federal Gramm-Leach-Bliley Act (P.L. 106-102).

(9) “Financial institution” means an insured institution, an extranational institution, a credit union as defined in ORS 723.006, an out-of-state credit union under ORS 723.042 or a federal credit union.
union.

(10) “Institution” means an Oregon commercial bank or an Oregon trust company.

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

(12) “Municipal bank” means a company:
(a) Organized to conduct banking business in this state; and
(b) Whose organization was directed by ordinance or resolution of a local government as defined in ORS 174.116.

[(12)] (13) “National bank” means a bank that was organized under the provisions of the National Bank Act, as amended, 12 U.S.C. 21, et seq.

[(13)] (14) “Non-Oregon institution” means:
(a) An out-of-state state bank that engages in banking business in Oregon;
(b) An out-of-state trust company that transacts trust business in Oregon; or
(c) An extranational institution that engages in banking business in Oregon.

[(14)] (15) “Nonstock bank” means a bank that does not issue capital stock.

[(15)] (16) “Oregon bank” means an Oregon stock bank or Oregon nonstock bank.

[(16)] (17) “Oregon commercial bank” means an Oregon stock bank that was chartered under ORS chapter 707 as a bank other than a stock savings bank.

[(17)] (18) “Oregon nonstock bank” means a nonstock bank or savings bank, the home state of which is Oregon.

[(18)] (19) “Oregon operating institution” means:
(a) A bank that engages in banking business in this state;
(b) An extranational institution that engages in banking business in this state; or
(c) A trust company that transacts trust business in this state.

[(19)] (20) “Oregon savings bank” or “savings bank” means an Oregon stock savings bank or an Oregon nonstock savings bank.

[(20)] (21) “Oregon stock bank” means a stock bank, the home state of which is Oregon.

[(21)] (22) “Oregon stock savings bank” means an Oregon stock bank that was initially chartered as or was converted to a stock savings bank under the Bank Act.

[(22)] (23) “Oregon trust company” means a trust company that was organized under the provisions of ORS chapter 707.


[(24)] (25) “Out-of-state bank holding company” means a bank holding company, the home state of which is not Oregon, and that is not the bank holding company of an Oregon stock bank or an in-state federal stock bank.

[(25)] (26) “Out-of-state federal bank” means a federal bank, the home state of which is not Oregon.

[(26)] (27) “Out-of-state financial holding company” means a financial holding company, the home state of which is not Oregon, and that is not the financial holding company of an Oregon stock bank or an in-state federal stock bank.

[(27)] (28) “Out-of-state state bank” means a state bank, the home state of which is not Oregon.

[(28)] (29) “Out-of-state trust company” means a trust company that was organized under the laws of another state.

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

[(30)] (31) “Stock bank” means a bank that issues capital stock.
(a) “Trust company” means a company that is authorized under the provisions of ORS chapter 709 to transact trust business, including the trust department of a bank.

(b) “Trust company” does not include a corporation that a United States Bankruptcy Court appoints to serve as a bankruptcy trustee under Title 11, United States Code, during a time in which the corporation is acting as a bankruptcy trustee.

SECTION 2. ORS 707.140 is amended to read:

707.140. (1) When subscriptions totaling not less than the amount of the initial paid-in capital have been received, the incorporators shall submit for filing with the Director of the Department of Consumer and Business Services:

(a) A list of stockholders, showing name, address, number of shares and amount paid, certified by the president or cashier.

(b) A certificate of any escrow agent holding moneys in escrow as payment for subscriptions to stock of the institution or Oregon stock savings bank showing the amount held.

(c) A list of the directors and senior officers elected.

(d) A copy of its bylaws certified to by its president or cashier.

(e) Evidence of approval by the Federal Deposit Insurance Corporation of the Oregon commercial bank’s or Oregon stock savings bank’s application for deposit insurance.

(2) Upon receiving the items referred to in subsection (1) of this section, the director shall examine the condition of the institution or Oregon stock savings bank. If, upon examination, the director determines that the institution or Oregon stock savings bank has complied with the requirements of the Bank Act and that the amount of the institution’s or Oregon stock savings bank’s initial paid-in capital has been paid or is held in escrow for release upon issuance of a charter, the director shall issue to the institution or Oregon stock savings bank a charter, which, depending on the form of the application and the approval of the director, shall be to do a banking business either as an Oregon commercial bank or as an Oregon stock savings bank, or to do a trust business, or to do both a banking and trust business.

(3) Notwithstanding subsection (1)(e) of this section, incorporators of a municipal bank need not submit evidence of approval by the Federal Deposit Insurance Corporation for deposit insurance.

SECTION 3. ORS 708A.405 is amended to read:

708A.405. (1) Oregon commercial banks shall secure insurance for their deposits from the Federal Deposit Insurance Corporation or a similar organization organized under the laws of the United States.

(2) This section does not apply to municipal banks.

SECTION 4. ORS 295.001 is amended to read:

295.001. As used in ORS 295.001 to 295.108, unless the context requires otherwise:

(1) “Adequately capitalized” means a depository that is classified as adequately capitalized by the depository’s primary federal regulatory authority, or, if the depository is not federally regulated, by a state regulatory authority.

(2) “Bank depository” means:

(a) An insured institution or trust company that:

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

[(b)] (B) Complies with ORS 295.008[.]; or

(b) A municipal bank that complies with ORS 295.008.
“Business day” means a day other than a federal or State of Oregon legal holiday or a day other than a day on which offices of the State of Oregon are otherwise authorized by law to remain closed.

“Closed depository” means a depository that is subject to a loss.

“Credit union depository” means a credit union as defined in ORS 723.006 or a federal credit union if:
(a) The shares and deposits of the credit union or federal credit union are insured by the National Credit Union Share Insurance Fund;
(b) The credit union or federal credit union maintains a head office or branch in this state in the capacity of a credit union or federal credit union; and
(c) The credit union or federal credit union complies with ORS 295.008.

“Custodian” means one of the following institutions that a depository designates for the depository’s own account:
(a) The Federal Home Loan Bank designated to serve this state, or a branch of the Federal Home Loan Bank; or
(b) An insured institution, trust company, municipal bank or credit union that:
(A) Is authorized to accept deposits or transact trust business in this state;
(B) Complies with ORS 295.008; and
(C) Has been approved by the State Treasurer to serve as a custodian, if the State Treasurer has approved custodians under ORS 295.008.

“Custodian’s receipt” or “receipt” means a document issued by a custodian that describes the securities that a depository deposited with the custodian to secure public fund deposits.

“Depository” means a bank depository or a credit union depository.

“Financial institution outside this state” means a financial institution, as defined in ORS 706.008, that is not an extranational institution, as defined in ORS 706.008, and is not a bank depository or credit union depository, as defined in this section.

“Insured institution” means an insured institution as defined in ORS 706.008.

“Loss” means the issuance of an order by a regulatory or supervisory authority or a court of competent jurisdiction that:
(a) Restrains a depository from making payments of deposit liabilities; or
(b) Appoints a receiver for a depository.

“Maximum liability” means a sum equal to 10 percent of the greater of:
(a) All uninsured public funds deposits held by a depository, as shown on the date of the depository’s most recent treasurer report; or
(b) The average of the balances of uninsured public funds deposits on the last two immediately preceding treasurer reports.

“Minimum collateral requirement” for a depository on any given date means a sum equal to:
(a) For a well capitalized depository that the State Treasurer has not required to increase the depository’s collateral pursuant to ORS 295.018, 10 percent of the greatest of:
(A) All uninsured public funds held by the depository, as shown on the most recent treasurer report;
(B) The average of the balances of uninsured public funds held by the depository, as shown on the last two immediately preceding treasurer reports; or
(C) An amount otherwise prescribed in ORS 295.001 to 295.108.
(b) For a well capitalized depository that the State Treasurer required to increase the
depository's collateral pursuant to ORS 295.018, the percentage the State Treasurer required pur-
suant to ORS 295.018 multiplied by the greatest of:

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

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

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

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

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

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

(14) "Municipal bank" has the meaning given that term in ORS 706.008.

[(14)] (15) “Net worth” means a depository’s total risk-based capital, as shown on the imme-
diately preceding report of condition and income, and may include capital notes and debentures that
are subordinate to the interests of depositors.

[(15)] (16) “Pledge agreement” means a written agreement among an insured institution, trust
company, municipal bank or credit union, the State Treasurer and a custodian that pledges the
securities the insured institution, trust company, municipal bank or credit union deposits with the
custodian as collateral for deposits of uninsured public funds that the insured institution, trust
company, municipal bank or credit union holds. The board of directors or loan committee of the
insured institution, trust company, municipal bank or credit union must approve the agreement and
must continuously maintain the agreement as a written record of the insured institution, trust
company, municipal bank or credit union.

[(16)] (17) “Public funds” or “funds” means funds that a public official has custody of or controls
by virtue of office.

[(17)] (18) “Public official” means an officer or employee of this state or an agency, political
subdivision or public or municipal corporation of this state, or a housing authority, that by law is
the custodian of or has control of public funds.

[(18)] (19) “Report of condition and income” means the quarterly report a depository submits to
the depository’s primary federal regulatory authority.

[(19)] (20) “Security” or “securities” means:

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

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

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

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

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

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

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

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

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

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

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

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

[(20) (21)] “Treasurer report” means a written report that an officer of a depository that holds uninsured public funds deposits has signed or authenticated and that sets forth as of the close of business on a specified date:

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

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

(c) The net worth of the depository;

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

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

[(21) (22)] “Treasurer report due date” means a date not less than 10 business days after the date a depository's report of condition and income is due to be submitted.

[(22) (23)] “Trust company” means a trust company as defined in ORS 706.008.

[(23) (24)] “Undercapitalized” means a depository that [the depository's primary federal regulatory authority has] is classified as undercapitalized, significantly undercapitalized or critically undercapitalized by the depository's primary federal regulatory authority, or, if the depository is not federally regulated, by a state regulatory authority.

[(24) (25)(a)] “Uninsured public funds” or “uninsured public funds deposits” means public funds deposited in a depository that exceed the amounts insured or guaranteed as described in ORS 295.002 (1)(a) and (b).

[(25) (26)] “Value” means the current market value of securities.

[(26) (27)] “Well capitalized” means a depository that [the depository's primary federal regulatory authority has] is classified as well capitalized, significantly well capitalized or adequately capitalized by the depository's primary federal regulatory authority, or, if the depository is not federally regulated, by a state regulatory authority.
authority has] is classified as well capitalized by the depository's primary federal regulatory
authority, or, if the depository is not federally regulated, by a state regulatory authority.

SECTION 5. ORS 295.008 is amended to read:

295.008. (1)(a) An insured institution, trust company, municipal bank or credit union may not
be a custodian under ORS 295.001 to 295.108 unless the insured institution, trust company, municipal
bank or credit union certifies in writing to the State Treasurer that the insured institution,
trust company, municipal bank or credit union will furnish the reports required under ORS 714.075
to the Director of the Department of Consumer and Business Services.

(b) The State Treasurer may approve one or more insured institutions, trust companies, municipal banks or credit unions to serve as custodians. The State Treasurer shall promptly notify all
depositories of the approval of an insured institution, trust company, municipal bank or credit un-
ion to serve as a custodian.

(2) An insured institution, trust company, municipal bank or credit union may not be a depos-
itory under ORS 295.001 to 295.108 unless the insured institution, trust company, municipal bank
or credit union:

(a) Certifies in writing to the State Treasurer that the insured institution, trust company, municipal bank or credit union will furnish to the Director of the Department of Consumer and Business Services by the time the director specifies:

(A) The reports required under ORS 714.075; and

(B) Any other information the director considers necessary to determine whether to advise the
State Treasurer to order a depository to increase the depository's collateral under ORS 295.018;

(b) Except as provided in subsection (4) of this section, enters into a pledge agreement; and

(c) Complies with subsection (3) of this section.

(3) An insured institution, trust company, municipal bank or credit union that intends to be-
come a depository shall file with the State Treasurer an initial written report that an officer of the
insured institution, trust company, municipal bank or credit union has signed or authenticated and
that sets forth, as of the date the insured institution, trust company, municipal bank or credit un-
ion intends to commence acting as a depository:

(a) The estimated total amount of public funds that will be on deposit with the insured institu-
tion, trust company, municipal bank or credit union;

(b) The estimated net worth of the insured institution, trust company, municipal bank or credit
union;

(c) The amount and nature of the collateral that the insured institution, trust company, municipal bank or credit union will deposit with a custodian to collateralize the public funds deposits; and

(d) The identity of the custodian.

(4) An insured institution, trust company, municipal bank or credit union may be a depository
under ORS 295.001 to 295.108 without entering into a pledge agreement or complying with sub-
section (3) of this section if the insured institution, trust company, municipal bank or credit union
does not hold any uninsured public funds deposits. The provisions of ORS 295.006, 295.013, 295.015,
295.018, 295.037, 295.038 and 295.061 do not apply to an insured institution, trust company, municipal
bank or credit union that is a depository under this subsection.

(5) An insured institution, trust company, municipal bank or credit union that merges with,
acquires all the assets of, acquires ownership of or otherwise becomes a successor entity to a de-
pository that has entered into a pledge agreement must execute a new pledge agreement or provide
evidence satisfactory to the State Treasurer that the successor insured institution, trust company, municipal bank or credit union has assumed all of the depository’s duties and obligations under the existing pledge agreement. An insured institution, trust company, municipal bank or credit union that fails to enter into a pledge agreement or provide evidence that the insured institution, trust company, municipal bank or credit union has assumed the existing pledge agreement within the time specified by the State Treasurer shall be treated as a depository that holds uninsured public funds and that has failed to pledge adequate collateral under ORS 295.031.

SECTION 6. ORS 295.015 is amended to read:

295.015. Except as provided in ORS 295.018:

(1)(a) A depository throughout the period during which the depository possesses uninsured public funds deposits shall maintain on deposit with the depository’s custodian, at the depository’s own expense, securities that have a value at least equal to the depository’s minimum collateral requirement and as otherwise prescribed in ORS 295.001 to 295.108. The depository shall deposit the collateral with the depository’s custodian and the depository and the custodian shall clearly mark the collateral as security for public funds deposited in accordance with ORS 295.001 to 295.108.

(b) For purposes of this section, when pledged as collateral for public funds deposits, loans described in ORS 295.001 [(19)] (20)(f) must be discounted to 75 percent of the unpaid principal balance owing on the loan from time to time, or to a lower value that the State Treasurer determines from time to time.

(c) A bond anticipation note that is pledged as collateral for public funds deposits and for which there is no readily determinable market value must be discounted to 75 percent of the unpaid principal balance owing on the note from time to time, or to a lower value that the State Treasurer determines from time to time.

(2) A depository may deposit other eligible securities with the depository’s custodian and release from deposit securities that the depository pledged to secure deposits of public funds if the remaining securities have a value not less than the depository’s minimum collateral requirement. The State Treasurer shall execute releases and surrender custodian’s receipts that are appropriate to effect pledges and releases of matured and excess pledged securities.

(3) If a depository’s minimum collateral requirement increases because the depository ceases to be a well capitalized depository as reflected in the depository’s last treasurer report, call report or other public filing, or if the depository receives notice from the depository’s custodian or from the State Treasurer:

(a) Within three business days after the date on which the depository’s minimum collateral requirement increases, the depository shall notify the depository’s custodian and the State Treasurer in writing that the depository’s minimum collateral requirement has increased, setting forth the depository’s new minimum collateral requirement and the depository’s plan for increasing the depository’s pledged collateral to the minimum collateral requirement; and

(b) Within five business days after the date on which the depository’s minimum collateral requirement increases, or within a longer period approved by the State Treasurer in coordination with the Department of Consumer and Business Services, the depository shall, in accordance with the plan approved by the State Treasurer, tender to the depository’s custodian additional securities that have a value sufficient to increase the total value of the depository’s securities pledged as collateral for public funds deposits to the depository’s new minimum collateral requirement.

(4) If a depository’s minimum collateral requirement decreases because the depository becomes a well capitalized depository, or because the State Treasurer no longer requires the depository to
pledge additional collateral under ORS 295.018, the depository may:

(a) Notify the depository’s custodian and the State Treasurer in writing that the depository’s minimum collateral requirement has decreased, setting forth the depository’s new minimum collateral requirement; and

(b) With the written approval of the State Treasurer, release from the depository’s custodian securities that exceed the depository’s new minimum collateral requirement.

(5) The State Treasurer shall act upon requests for releases of securities under subsections (2) and (4)(b) of this section within three business days after receiving each request.

SECTION 7. ORS 295.101 is amended to read:

295.101. (1) The following public funds are not subject to the provisions of ORS 295.001 to 295.108:

(a) Funds that are deposited for the purpose of paying principal, interest or premium, if any, on bonds, as defined in ORS 286A.001 and 287A.001, and related costs or securing a borrowing related to an agreement for exchange of interest rates entered into under ORS 286A.110 or 287A.335.

(b) Funds that are invested in authorized investments under provisions of law other than ORS 295.001 to 295.108. Funds invested under ORS 293.701 to 293.857 are invested in authorized investments for purposes of this subsection from the time the funds are transferred by the State Treasurer to a third party under the terms of a contract for investment or administration of the funds that requires such a transfer until the time the funds are returned to the treasurer or paid to another party under the terms of the contract.

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

(d) Funds that are held by a public official and are required by federal law or contractual provisions to be collateralized at 100 percent, if the funds are deposited in an account that is separate from other accounts of the public official in a depository, and the public official and the depository have entered into a written agreement that provides a perfected security interest to the public official in collateral valued at an amount at least equal to the amount of funds in the account in a manner substantially similar to a pledge agreement described in ORS 295.001 [(15)].

(2) Notwithstanding subsection (1) of this section, funds deposited by a custodial officer under ORS 294.035 (3)(d) are subject to the provisions of ORS 295.001 to 295.108.