

**A-Engrossed  
House Bill 2519**

Ordered by the House May 31  
Including House Amendments dated May 31

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

**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.

*[Requires Secretary of State to conduct performance audit of Department of Revenue revenue collection and enforcement functions every four years.]*

**Modifies conditions under which credit union depositories may act as depositories of public funds.**

**Modifies conditions under which credit union depositories may hold uninsured public funds.**

**Exempts certain collateralized funds from general provisions related to deposit of public funds.**

**Establishes Oregon Economic Development Finance Authority for purposes related to economic development.**

**Declares emergency, effective on passage.**

**A BILL FOR AN ACT**

1  
2 Relating to state financial administration; creating new provisions; amending ORS 295.048 and  
3 295.101 and sections 13 and 29, chapter 101, Oregon Laws 2010; and declaring an emergency.

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

5 **SECTION 1.** Section 13, chapter 101, Oregon Laws 2010, is amended to read:

6 **Sec. 13.** (1) *[Until June 30, 2013,]* The State Treasurer may accept moneys from any public or  
7 private source, including a credit union or an association of credit unions, for the purpose of paying  
8 initial **or continuing** expenses related to administering the provisions of section 12, **chapter 101,**  
9 **Oregon Laws 2010** *[of this 2010 Act]*.

10 (2) The State Treasurer shall deposit moneys the State Treasurer receives under this section  
11 into the Miscellaneous Receipts Account established for the State Treasurer in the General Fund.  
12 Notwithstanding the provisions of ORS 295.106, moneys the State Treasurer receives under this  
13 section are continuously appropriated to the State Treasurer for the purpose of paying the State  
14 Treasurer's initial **or continuing** expenses related to administering section 12, **chapter 101, Oregon**  
15 **Laws 2010** *[of this 2010 Act]*. The State Treasurer shall expend the moneys in accordance with the  
16 terms and conditions upon which the moneys were made available.

17 **SECTION 2.** Section 29, chapter 101, Oregon Laws 2010, is amended to read:

18 **Sec. 29.** (1) **Subject to subsection (2) of this section,** sections 12, 13, 13a and 13b, **chapter**  
19 **101, Oregon Laws 2010,** *[of this 2010 Act]* and the amendments to ORS 295.001, 295.002, 295.004,  
20 295.006, 295.008, 295.013, 295.015, 295.018, 295.031, 295.034, 295.041, 295.046, 295.048, 295.053, 295.061,  
21 295.071, 295.073, 295.081, 295.084, 295.091, 295.108, 295.205, 576.375 and 711.410 by sections 1 to 10,  
22 14 to 23 and 25 to 28, **chapter 101, Oregon Laws 2010,** *[of this 2010 Act]* become operative January

**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 1, 2013.

2 (2) If the State Treasurer determines that the conditions described in section 13a (1),  
3 chapter 101, Oregon Laws 2010, have been satisfied, the State Treasurer shall implement  
4 sections 12 and 13b, chapter 101, Oregon Laws 2010, and the amendments to ORS 295.001,  
5 295.002, 295.004, 295.006, 295.008, 295.013, 295.015, 295.018, 295.031, 295.034, 295.041, 295.046,  
6 295.048, 295.053, 295.061, 295.071, 295.073, 295.081, 295.084, 295.091, 295.108, 295.205, 576.375 and  
7 711.410 by sections 1 to 10, 14 to 23 and 25 to 28, chapter 101, Oregon Laws 2010, not later  
8 than 180 days after the date the State Treasurer determines that the conditions described  
9 in section 13a (1), chapter 101, Oregon Laws 2010, have been satisfied.

10 [(2)] (3) The State Treasurer and the Director of the Department of Consumer and Business  
11 Services may take any action before January 1, 2013, that is necessary to enable the State Treasurer  
12 and the director to exercise, on and after January 1, 2013, all the duties, functions and powers  
13 conferred on the State Treasurer and the director by sections 12, 13, 13a and 13b, **chapter 101,**  
14 **Oregon Laws 2010,** [of this 2010 Act] and the amendments to ORS 295.001, 295.002, 295.004, 295.006,  
15 295.008, 295.013, 295.015, 295.018, 295.031, 295.034, 295.041, 295.046, 295.048, 295.053, 295.061, 295.071,  
16 295.073, 295.081, 295.084, 295.091, 295.108, 295.205, 576.375 and 711.410 by sections 1 to 10, 14 to 23  
17 and 25 to 28, **chapter 101, Oregon Laws 2010** [of this 2010 Act].

18 **SECTION 3.** ORS 295.048 is amended to read:

19 295.048. (1) Notwithstanding ORS 295.046, a bank depository may not permit the aggregate of  
20 public funds deposits on deposit with the bank depository from all public officials to exceed at any  
21 time:

22 (a) 100 percent of the value of the bank depository's net worth, if the bank depository is an  
23 undercapitalized bank depository;

24 (b) 150 percent of the value of the bank depository's net worth, if the bank depository is an  
25 adequately capitalized bank depository;

26 (c) 200 percent of the value of the bank depository's net worth, if the bank depository is a well  
27 capitalized bank depository; or

28 (d) 30 percent of the total aggregate uninsured public funds deposits of all public officials in all  
29 bank depositories as reported in the most recent notice received by the bank depository from the  
30 State Treasurer.

31 (2) The State Treasurer shall notify each bank depository and its custodian of the total aggregate  
32 uninsured public funds deposits of all public officials in all bank depositories, based on the most  
33 recently submitted treasurer reports. The treasurer shall give the notification required by this sub-  
34 section by the last day of the month in which bank depositories are required to submit a treasurer  
35 report.

36 (3) If a bank depository's aggregate of uninsured public funds deposits exceeds the amount set  
37 forth in subsection (1) of this section, the bank depository shall, within three business days after  
38 receipt of notice from the State Treasurer, cease accepting deposits of uninsured public funds.

39 (4) Notwithstanding subsections (1) and (3) of this section:

40 (a) A bank depository may accept and hold uninsured public funds deposits in excess of the  
41 limits provided in subsection (1) of this section if the State Treasurer, upon good cause shown, ap-  
42 proves the request of the bank depository to hold uninsured public funds in excess of the limits  
43 provided in subsection (1) of this section for a period not exceeding 90 days and eligible securities  
44 are deposited with the bank depository's custodian as collateral in an amount at least equal to the  
45 amount of the uninsured public funds deposits in excess of the limits provided in subsection (1) of

1 this section. **Upon the expiration of the 90-day period, if the bank depository does not comply**  
2 **with the limits specified in subsection (1) of this section, the bank depository shall, within**  
3 **three business days after receiving notice from the State Treasurer, cease accepting deposits**  
4 **of uninsured public funds.**

5 (b) The limits of subsection (1) of this section do not apply to public funds deposits held by a  
6 bank depository in a certificate of deposit or time deposit under ORS 295.004.

7 (c) A well capitalized bank depository or an adequately capitalized bank depository may accept  
8 and hold public funds deposits in excess of the limit provided in subsection (1)(d) of this section if  
9 eligible securities are deposited with the bank depository's custodian as collateral in an amount at  
10 least equal to the amount of the public funds deposits in excess of the limit prescribed in subsection  
11 (1)(d) of this section.

12 **(5) If the State Treasurer notifies a bank depository that it must cease accepting deposits**  
13 **of uninsured public funds under subsection (3) or (4) of this section, the State Treasurer may**  
14 **also notify public officials who have deposited uninsured public funds in the bank depository**  
15 **that within 15 business days after the public official receives the notice from the State**  
16 **Treasurer, the public official must withdraw from the bank depository to which the notice**  
17 **applies all uninsured public funds deposits that exceed the limit specified in subsection (1)(d)**  
18 **of this section. A public official who is notified by the State Treasurer under this subsection**  
19 **must begin to withdraw funds as specified in the notice. Except as required by any applicable**  
20 **law or regulation, a bank depository may not impose an early withdrawal penalty or a**  
21 **forfeiture of interest with respect to a withdrawal made pursuant to this subsection.**

22 **SECTION 4.** ORS 295.048, as amended by section 16, chapter 101, Oregon Laws 2010, is  
23 amended to read:

24 295.048. (1) Notwithstanding ORS 295.046, a depository may not permit the aggregate of public  
25 funds deposits on deposit with the depository from all public officials to exceed at any time the  
26 lesser of:

27 (a) 100 percent of the value of the depository's net worth, if the depository is an undercapital-  
28 ized depository;

29 (b) 150 percent of the value of the depository's net worth, if the depository is an adequately  
30 capitalized depository;

31 (c) 200 percent of the value of the depository's net worth, if the depository is a well capitalized  
32 depository;

33 (d) For a bank depository, 30 percent of the total aggregate public funds deposits of all public  
34 officials in all bank depositories as reported in the most recent notice the bank depository received  
35 from the State Treasurer; or

36 (e) For a credit union depository, 30 percent of the total aggregate public funds deposits of all  
37 public officials in all credit union depositories as reported in the most recent notice the credit union  
38 depository received from the State Treasurer.

39 (2) The State Treasurer shall notify each bank depository or credit union depository and the  
40 depository's custodian of the total aggregate public funds deposits of all public officials in all bank  
41 depositories or credit union depositories, as appropriate, based on the most recently submitted  
42 treasurer reports. The State Treasurer shall give the notification required by this subsection by the  
43 last day of the month in which the depositories are required to submit a treasurer report.

44 (3) If a depository's aggregate of public funds deposits exceeds the amount set forth in sub-  
45 section (1) of this section, the depository shall, within three business days after receiving notice

1 from the State Treasurer, cease accepting deposits of public funds.

2 (4) Notwithstanding subsections (1) and (3) of this section:

3 (a) A depository may accept and hold public funds deposits in excess of the limits specified in  
4 subsection (1) of this section if the State Treasurer, upon good cause shown, approves the  
5 depository's request to hold public funds in excess of the limits specified in subsection (1) of this  
6 section for a period not exceeding 90 days and eligible securities are deposited with the depository's  
7 custodian as collateral in an amount at least equal to the amount of the uninsured public funds de-  
8 posits that exceeds the limits specified in subsection (1) of this section. **Upon the expiration of the**  
9 **90-day period, if the depository does not comply with the limits specified in subsection (1) of**  
10 **this section, the depository shall, within three business days after receiving notice from the**  
11 **State Treasurer, cease accepting deposits of public funds.**

12 (b) The limits specified in subsection (1) of this section do not apply to public funds deposits a  
13 depository holds in a certificate of deposit or time deposit under ORS 295.004.

14 (c) A well capitalized depository or an adequately capitalized depository may accept and hold  
15 public funds deposits that exceed the limit specified in subsection (1)(d) or (e) of this section if eli-  
16 gible securities are deposited with the depository's custodian as collateral in an amount at least  
17 equal to the amount of the uninsured public funds deposits that exceed the limit specified in sub-  
18 section (1)(d) or (e) of this section.

19 **(5) If the State Treasurer notifies a depository that it must cease accepting deposits of**  
20 **public funds under subsection (3) or (4) of this section, the State Treasurer may also notify**  
21 **public officials who have deposited public funds in the depository that within 15 business days**  
22 **after the public official receives the notice from the State Treasurer, the public official must**  
23 **withdraw from the depository to which the notice applies all public funds deposits that ex-**  
24 **ceed the limit specified in subsection (1)(d) or (e) of this section. A public official who is no-**  
25 **tified by the State Treasurer under this subsection must begin to withdraw funds as specified**  
26 **in the notice. Except as required by any applicable law or regulation, a depository may not**  
27 **impose an early withdrawal penalty or a forfeiture of interest with respect to a withdrawal**  
28 **made pursuant to this subsection.**

29 **SECTION 5.** ORS 295.101 is amended to read:

30 295.101. (1) The following public funds are not subject to the provisions of ORS 295.001 to  
31 295.108:

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

35 (b) Funds that are invested in authorized investments under provisions of law other than ORS  
36 295.001 to 295.108. Funds invested under ORS 293.701 to 293.820 are invested in authorized invest-  
37 ments for purposes of this subsection from the time the funds are transferred by the State Treasurer  
38 to a third party under the terms of a contract for investment or administration of the funds that  
39 requires such a transfer until the time the funds are returned to the treasurer or paid to another  
40 party under the terms of the contract.

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

43 **(d) Funds that are held by a public official and are required by federal law or contractual**  
44 **provisions to be collateralized at 100 percent, if the funds are deposited in an account that**  
45 **is separate from other accounts of the public official in a depository, and the public official**

1 and the depository have entered into a written agreement that provides a perfected security  
2 interest to the public official in collateral valued at an amount at least equal to the amount  
3 of funds in the account in a manner substantially similar to a pledge agreement described  
4 in ORS 295.001 (15).

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

7 **SECTION 6. The Legislative Assembly finds that:**

8 (1) The availability of capital for Oregon small businesses that are engaged in economic  
9 development is critical to continued job growth and development of the economy of Oregon.

10 (2) Currently existing state-managed funds constitute a major financial resource of the  
11 State of Oregon. Prudent investment, management and coordination of these funds may,  
12 together with access to capital provided in partnership with financial institutions, enhance  
13 the availability of capital for Oregon small businesses and farms and contribute to  
14 sustainable job growth.

15 **SECTION 7. As used in this section and section 8 of this 2011 Act, unless the context**  
16 **requires otherwise:**

17 (1) "Business" means a corporation, partnership, proprietorship, firm, enterprise, joint  
18 venture, franchise, association, organization, self-employed individual or other business en-  
19 tity operating or doing business in Oregon.

20 (2) "Economic development" means development that relates to and supports the eco-  
21 nomic development policy and strategy for this state outlined in ORS 285A.020, that pro-  
22 motes, expands or prevents the decline of a business located or to be located in Oregon, that  
23 creates jobs or prevents the loss of jobs and that is necessary to and consistent with the  
24 policies of the Oregon Economic Development Finance Authority.

25 (3) "Financial institution" means a banking institution, a federal bank, a federal savings  
26 bank and an insured institution, as those terms are defined in ORS 706.008, and a credit un-  
27 ion as defined in ORS 723.008.

28 (4) "State agency" means an officer, board, commission, department, division, institution,  
29 branch or agency in the executive or administrative branch of state government or a public  
30 institution of higher education.

31 (5) "State fund" means a fund established under the supervision and control of a state  
32 agency that has entered into a contract with the Oregon Economic Development Finance  
33 Authority for investment and management of the fund.

34 **SECTION 8. (1) The Oregon Economic Development Finance Authority is established to**  
35 **formulate and implement policies and procedures, and to make recommendations, for the**  
36 **investment, reinvestment, management and coordination of state funds to support the eco-**  
37 **nomical development of this state and to increase access to capital for small businesses, in**  
38 **partnership with local financial institutions, for the purpose of furthering economic devel-**  
39 **opment in this state. The authority shall coordinate the economic development resources**  
40 **available to the State of Oregon and facilitate the use of resources that create jobs and**  
41 **provide economic opportunity through existing agency programs.**

42 (2) Further purposes of the authority are to:

43 (a) Support the economic development of this state by increasing access to capital for  
44 small businesses and farms in this state in partnership with local financial institutions  
45 through existing state agency programs and infrastructure.

1       **(b) Support Oregon employment by encouraging and coordinating investments that can**  
2 **result in job creation and retention in a sustainable and efficient manner.**

3       **(c) Assist in providing stability to the local financial sector but not to compete in any**  
4 **way with banks, credit unions or other financial institutions.**

5       **(3)(a) The authority shall consist of three members as follows:**

6       **(A) The Governor, or the designee of the Governor, who shall be the chairperson of the**  
7 **authority;**

8       **(B) The State Treasurer, or the designee of the State Treasurer; and**

9       **(C) A member selected by the two members described in subparagraphs (A) and (B) of**  
10 **this paragraph, provided that no more than two members of the authority may belong to the**  
11 **same political party.**

12       **(b) In selecting the member under paragraph (a)(C) of this subsection, an attempt must**  
13 **be made to make the selection so as to reflect the composition of the Legislative Assembly**  
14 **by party affiliation.**

15       **(c) The member selected under paragraph (a)(C) of this subsection shall serve for a term**  
16 **of two years that begins on March 1 of an odd-numbered year.**

17       **(d) Party affiliation under this subsection shall be determined by the appropriate entry**  
18 **on official election registration cards.**

19       **(4) The authority may enter into a contract with a state agency for the investment and**  
20 **management of state funds over which the agency has supervision and control and may enter**  
21 **into any other contract the authority deems necessary or appropriate to carry out the**  
22 **authority's duties, functions and powers under this section.**

23       **(5) The authority may perform all acts and do all things necessary to carry out the**  
24 **powers expressly granted in this section through its chairperson, officers, agents and repre-**  
25 **sentatives or by contracts with any person, state agency or financial institution.**

26       **(6) The authority may enter into contracts with one or more management companies for**  
27 **the provision of investment advice, to manage and invest moneys in state funds and for other**  
28 **services that the authority deems reasonable and necessary to fulfill the duties of the au-**  
29 **thority under this section. A management company selected under this subsection shall**  
30 **manage moneys in state funds subject to the investment policies and practices established**  
31 **by the authority with the care, skill and diligence that a prudent investor acting in a similar**  
32 **capacity and familiar with such investments would use in managing and investing a similar**  
33 **account. Contracts entered into under this subsection are not subject to the State Personnel**  
34 **Relations Law, ORS 279.835 to 279.855 or ORS chapter 279A or 279B.**

35       **(7) The authority shall keep a separate fund or account for each state fund it has con-**  
36 **tracted with a state agency to invest and manage for the purpose of recording individual**  
37 **amounts and totals of all investments of moneys in the state fund.**

38       **(8) The authority may assess and charge fees for services provided in the management**  
39 **and investment of state funds that may be deducted from moneys earned from investment**  
40 **and reinvestment of the state funds.**

41       **(9) The Oregon Business Development Department shall provide staff to the authority**  
42 **as necessary to allow the authority to carry out its responsibilities under this section.**

43       **(10) The authority may appoint an executive director of the authority. The person ap-**  
44 **pointed as executive director must have extensive experience in banking. The authority may**  
45 **appoint and employ subordinate officers, employees and agents as the authority considers**

1 necessary and shall define the duties of, designate the titles of and fix the compensation for  
2 the persons the authority appoints and employs. The authority may designate the executive  
3 director or another officer or employee as an agent of the authority for the purpose of im-  
4 plementing the authority's functions, subject to the authority's supervision, limitation and  
5 control.

6 (11) The authority shall adopt rules that specify:

7 (a) The authority's powers, permissible investments and activities and services that the  
8 authority may provide.

9 (b) Other requirements that the authority considers necessary for the exercise of the  
10 authority's powers and functions under this section.

11 (12) A member of the authority may receive reimbursement of expenses under ORS  
12 292.495 (2) but may not receive compensation under ORS 292.495 (1) or otherwise for partic-  
13 ipation as a member of the authority.

14 **SECTION 9.** (1) The Oregon Economic Development Finance Authority shall appoint an  
15 advisory council that consists of seven members.

16 (2) Members of the advisory council must include representatives of this state's financial  
17 sectors, small businesses, building trades and small farms. At least two members must be  
18 officers of banks and at least two members must be officers of credit unions.

19 (3) The authority shall appoint a chairperson, vice chairperson and secretary of the ad-  
20 visory council.

21 (4) The advisory council shall:

22 (a) Meet regularly with the authority or the executive director of the authority to review  
23 the authority's operations and finances and to determine whether the advisory council  
24 should make recommendations to the authority to improve the authority's management,  
25 interagency relations and internal methods, procedures and operating policies;

26 (b) Meet regularly with the authority to discuss the advisory council's recommendations  
27 and to provide other advice, expertise or information at the request of the authority; and

28 (c) If necessary, recommend additional objectives for the authority's operations.

29 **SECTION 10.** The Oregon Economic Development Finance Authority shall submit a re-  
30 port to the Legislative Assembly on or before the date of the convening of the 2013 regular  
31 session of the Legislative Assembly as specified in ORS 171.010. The report required by this  
32 section shall include:

33 (1) The policies and practices for investment and management of state funds formulated  
34 by the authority;

35 (2) Recommendations for legislation that are related to the duties and policies of the  
36 authority, including a recommendation as to whether the authority should continue to exist  
37 beyond 2015; and

38 (3) A summary of the moneys invested and managed by the authority, if any.

39 **SECTION 11.** This 2011 Act being necessary for the immediate preservation of the public  
40 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect  
41 on its passage.