

D R A F T

SUMMARY

Establishes community lender loan loss account program, authorizing Oregon Business Development Department to enter into contracts with lenders pursuant to which department shall reimburse lenders from moneys in lenders' loan loss accounts for principal financial losses incurred due to default on qualified loans to small Oregon businesses. Appropriates moneys to department for purposes of program.

Allocates lottery funds to Oregon Department of Administrative Services for distribution to Oregon Entrepreneurs Network to support economic needs of Oregon small business ecosystem. Requires matching funds from private, nonprofit or philanthropic sources before distributions may be made.

Allocates lottery funds to Oregon Growth Fund to support early stage, small and first-time capital sources to help fill capital gaps encountered by Oregon businesses, especially underserved communities, rural areas and undersupported industry sectors.

Declares emergency, effective on passage.

A BILL FOR AN ACT

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Relating to assisting businesses to gain access to capital; and declaring an emergency.

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

SECTION 1. Purpose. It is the purpose of sections 1 to 7 of this 2020 Act to establish a loan loss account program under which the State of Oregon will provide public fiscal resources to assist Oregon lenders to overcome obstacles and constraints in meeting the full range of economically sound financing needs of Oregon businesses.

SECTION 2. Definitions. As used in sections 1 to 7 of this 2020 Act, unless the context requires otherwise:

(1) “Community lender loan loss account program” or “program”

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 means the program established under sections 1 to 7 of this 2020 Act.

2 (2) "Loan loss account" or "account" means an account in the State
3 Treasury or any financial institution, as defined by ORS 706.008, that
4 is established and maintained by the Oregon Business Development
5 Department for the benefit of a lender participating in the program.

6 (3) "Qualified business" or "borrower" means any person that, at
7 the time of filing an application pursuant to section 5 of this 2020 Act:

8 (a) Is authorized to conduct business in the State of Oregon;

9 (b) Is conducting business in Oregon for profit; and

10 (c) Has not more than 20 employees.

11 (4)(a) "Qualified loan" means a loan or portion of a loan made by
12 a lender to a qualified business for any business activity that has its
13 primary economic effect in Oregon.

14 (b) "Qualified loan" does not mean a loan:

15 (A) For the purchase of owner-occupied residential housing or for
16 the construction, improvement or purchase of residential housing
17 owned or to be owned by the borrower.

18 (B) For purchase of real property that is not used for the business
19 operations of the borrower.

20 (C) That includes, in whole or in part, the refinancing of an existing
21 loan made by the lender to the borrower.

22 (D) That includes, in whole or in part, the refinancing of an existing
23 personal loan not used for business purposes or that provides cash out
24 to the borrower.

25 (E) For working capital for a term exceeding five years.

26 (F) For fixed assets that exceeds the useful life of the assets as de-
27 termined by the department.

28 (G) With a variable interest rate.

29 (H) With an annual interest rate that exceeds the prime rate plus
30 five percent.

31 (I) That fails to meet criteria established by the department by rule.

1 **SECTION 3. Contracts with lenders to participate in program; re-**
2 **quired contents; disclosure of information.** (1)(a) The Oregon Business
3 Development Department may enter into a contract with a lender for
4 the purpose of allowing the lender to participate in the community
5 lender loan loss account program, if the lender:

6 (A) Is a government agency or a nonprofit corporation as defined
7 in ORS 307.130;

8 (B) Is mission-driven;

9 (C) Has at least five years of physical presence and operations in
10 Oregon; and

11 (D) Provides financial and technical assistance to small businesses,
12 microenterprises and start-up businesses.

13 (b) The department shall adopt a definition of “mission-driven” for
14 purposes of this subsection.

15 (2) A contract between the department and a lender entered into
16 pursuant to this section must:

17 (a) Provide for the creation of a loan loss account by the depart-
18 ment for the benefit of the lender;

19 (b) Require the qualified business and the department to deposit
20 moneys to the credit of the lender’s loan loss account when the lender
21 makes a qualified loan to a qualified business;

22 (c) Require the department, in accordance with section 6 of this 2020
23 Act, to reimburse the lender, from moneys in the lender’s loan loss
24 account, in an amount not greater than the total amount credited to
25 the account, for any principal financial loss incurred by the lender as
26 a result of a qualified loan made in accordance with section 5 of this
27 2020 Act;

28 (d) Provide that the liability of the State of Oregon and the de-
29 partment under the contract is limited to the amount of money cred-
30 ited to the lender’s loan loss account;

31 (e) Require the lender to provide such information as the depart-

1 **ment may require, including financial information that is identifiable**
2 **with, or identifiable from, the financial records of a particular bor-**
3 **rower in a qualified loan transaction;**

4 **(f) Require the lender to provide annual reports to the department,**
5 **in a form prescribed by the department, setting forth:**

6 **(A) Data relating to the lender's loan activity in Oregon;**

7 **(B) Voluntarily reported demographic data for all approved, de-**
8 **clined and withdrawn loans;**

9 **(C) The lender's financial statements and tax filings; and**

10 **(D) Other information that the department may require;**

11 **(g) Authorize the department, at its sole discretion, to terminate**
12 **and bar any lender from future participation in the program if the**
13 **department finds that the lender has made material misrepresen-**
14 **tations regarding the lender's enrolled loans, claims or reports; and**

15 **(h) Include such other terms as the department may require.**

16 **SECTION 4. Loan loss accounts; policies; rules; moneys as property**
17 **of state. (1) The Oregon Business Development Department shall es-**
18 **tablish a loan loss account for each lender with which the department**
19 **enters into a contract pursuant to section 3 of this 2020 Act.**

20 **(2) A lender's loan loss account shall consist of moneys paid as fees**
21 **by borrowers under the community lender loan loss account program**
22 **and moneys transferred to the account from the Community Lender**
23 **Loan Loss Account Fund established under section 7 of this 2020 Act.**

24 **(3) Notwithstanding ORS chapter 293 or 295, the department may**
25 **establish and maintain loan loss accounts with any financial institu-**
26 **tion, as defined under ORS 706.008, according to such policies as the**
27 **department may adopt.**

28 **(4) All moneys in a loan loss account established under sections 1**
29 **to 7 of this 2020 Act are the property of the State of Oregon.**

30 **(5) The cumulative balance of the loan loss account for any lender,**
31 **or an affiliate of the lender, may not exceed the lesser of \$1 million**

1 **or:**

2 (a) If the account has more than \$100,000, 50 percent of the current
3 net receivables of the lender's loans enrolled in the program.

4 (b) If the account has less than \$100,000, 100 percent of the current
5 net receivables of the lender's loans enrolled in the program, unless
6 the lender has a plan, approved by the department, to improve pro-
7 gram utilization.

8 (6) Any balance due to the department as a result of subsection (5)
9 of this section shall be paid in full and shall accompany the annual
10 report required under section 3 (2)(f) of this 2020 Act.

11 (7) Loan loss accounts that remain dormant for more than 12
12 months shall be terminated unless termination is waived in writing
13 by the department.

14 (8)(a) Loan loss accounts may not be sold, transferred or assigned.

15 (b) If a lender or the lender's loan loss reserve portfolio is sold,
16 transferred or assigned, in whole or part, the contract entered into
17 under section 3 of this 2020 Act shall be terminated and all moneys
18 remaining in the lender's loan loss account shall be repaid in full to
19 the Community Lender Loan Loss Account Fund.

20 **SECTION 5. Enrollment of qualified loan in program; notice to de-**
21 **partment; fees; transfers to loan loss accounts; rules and limits for**
22 **loans.** (1)(a) A lender intending to enroll a qualified loan in the com-
23 munity lender loan loss account program must apply to the Oregon
24 Business Development Department no less than seven business days
25 before making the qualified loan. The department, in its sole dis-
26 cretion, may waive the seven-day period.

27 (b) The application required under this section shall be in writing
28 on a form prescribed and approved by the department.

29 (2)(a) A qualified loan may not be enrolled in the program unless
30 the lender has collected from the borrower to which the loan is made
31 a fee in an amount equal to three percent of the principal amount of

1 **the loan. The borrower may pay the fee out of the loan proceeds.**

2 **(b) Upon receipt of the fee, the lender shall deposit the fee in the**
3 **lender's loan loss account.**

4 **(c) The lender shall deliver receipt of fees collected and deposited**
5 **in the lender's loan loss account to the department.**

6 **(3)(a) The Oregon Business Development Department may adopt**
7 **rules providing for a double match for qualified loans to qualified**
8 **businesses that are:**

9 **(A) Located in distressed areas;**

10 **(B) Located in rural areas; or**

11 **(C) Owned 51 percent or more by one or more individuals who are:**

12 **(i) Socially and economically disadvantaged, as defined under 49**
13 **C.F.R. 26.5;**

14 **(ii) Veterans of the Armed Forces of the United States, or the Na-**
15 **tional Guard or other reserve component, who have been discharged**
16 **other than dishonorably; or**

17 **(iii) Individuals with disabilities, as certified by the Commission for**
18 **the Blind or the Department of Human Services.**

19 **(b) The Oregon Business Development Department shall adopt de-**
20 **finitions of "distressed areas" and "rural areas" for purposes of this**
21 **subsection.**

22 **(4)(a) As soon as practicable after delivery of the receipt and deposit**
23 **of fees required under subsection (2) of this section, the Oregon Busi-**
24 **ness Development Department shall transfer a matching amount not**
25 **less than the total fees paid by the borrower from the Community**
26 **Lender Loan Loss Account Fund established under section 7 of this**
27 **2020 Act to the lender's loan loss account.**

28 **(b) The Oregon Business Development Department may not transfer**
29 **a matching amount under this subsection that is greater than \$7,500**
30 **per enrolled loan or \$15,000 if the qualified loan is eligible for a double**
31 **match under subsection (3) of this section.**

1 (c) The maximum matching amount paid with respect to any single
2 loan made to a qualified business, and an associated concurrent loan
3 made to a related business interest, may not exceed \$15,000.

4 SECTION 6. Claims for reimbursement of losses; reimbursable
5 costs; repayment to loan loss account. (1) The Oregon Business De-
6 velopment Department shall establish procedures pursuant to which
7 lenders participating in the community lender loan loss account pro-
8 gram may submit claims for reimbursement for losses incurred as a
9 result of qualified loan defaults.

10 (2) A lender may submit a claim under this section for reimburse-
11 ment of qualified loan losses if the lender demonstrates to the satis-
12 faction of the department that:

13 (a) The lender has made all reasonable efforts to collect the out-
14 standing amounts; and

15 (b) The outstanding amounts and any interest and penalties on the
16 amounts are uncollectible.

17 (3) A lender may not be reimbursed from the lender's loan loss ac-
18 count in an amount that exceeds the qualified loan principal out-
19 standing at the time of a borrower's default on a qualified loan.

20 (4) If a lender that has been reimbursed under this section recovers
21 any moneys from the borrower that defaulted on a qualified loan, or
22 from the liquidation of other assets of the borrower, the lender shall
23 repay the lender's loan loss account for any moneys the lender re-
24 ceived as reimbursement with respect to the qualified loan.

25 SECTION 7. Community Lender Loan Loss Account Fund; invest-
26 ment; retrieval of interest; administrative expenses. (1) There is es-
27 tablished in the State Treasury, separate and distinct from the General
28 Fund, the Community Lender Loan Loss Account Fund. All moneys
29 in the fund are continuously appropriated to the Oregon Business De-
30 velopment Department for the purpose of making payments to loan
31 loss accounts in accordance with sections 1 to 7 of this 2020 Act.

1 **(2) With the approval of the State Treasurer, moneys in the fund**
2 **may be invested as provided by ORS 293.701 to 293.857 and the earnings**
3 **from such investment shall be credited to the fund.**

4 **(3) The Community Lender Loan Loss Account Fund shall consist**
5 **of:**

6 **(a) Moneys appropriated to the fund by the Legislative Assembly.**

7 **(b) Interest earned on moneys in the fund.**

8 **(c) Moneys returned to the fund from loan loss accounts or other**
9 **sources.**

10 **(d) Moneys from any grant or award made to the fund by any fed-**
11 **eral agency.**

12 **(4) If the department deems the transfer of interest earned on loan**
13 **loss accounts appropriate, the department may deposit the interest in**
14 **the fund.**

15 **(5) The department may charge administrative costs to the fund to**
16 **pay for necessary administrative expenses actually incurred by the**
17 **department in administering the fund and establishing and maintain-**
18 **ing loan loss accounts.**

19 **SECTION 8.** (1) Sections 1 to 7 of this 2020 Act become operative
20 on January 1, 2021.

21 **(2) The Oregon Business Development Department may take any**
22 **action before the operative date specified in subsection (1) of this sec-**
23 **tion that is necessary for the department to exercise, on and after the**
24 **operative date specified in subsection (1) of this section, all of the du-**
25 **ties, functions and powers conferred on the department by sections 1**
26 **to 7 of this 2020 Act.**

27 **SECTION 9.** There is appropriated to the Oregon Business Devel-
28 opment Department, for the biennium ending June 30, 2021, out of the
29 General Fund, the amount of \$5 million, for deposit in the Community
30 Lender Loan Loss Account Fund established under section 7 of this
31 2020 Act, to be used for any purpose for which moneys in the fund may

1 be used.

2 **SECTION 10.** The section captions used in sections 1 to 7 of this 2020
3 Act are provided only for the convenience of the reader and do not
4 become part of the statutory law of this state or express any legisla-
5 tive intent in the enactment of this 2020 Act.

6 **SECTION 11.** (1) There is allocated for the biennium ending June
7 30, 2021, from the Administrative Services Economic Development
8 Fund, to the Oregon Department of Administrative Services, the
9 amount of \$250,000 for distribution to the Oregon Entrepreneurs Net-
10 work in accordance with this section.

11 (2) Distributions made pursuant to this section may be used by the
12 Oregon Entrepreneurs Network solely for the following purposes:

13 (a) Qualitative one-on-one interviews with 75 entrepreneur
14 ecosystem participants, including regulated and nonregulated lenders,
15 located in all regions of this state, to better understand the ecosystem
16 and funding needs and gaps.

17 (b) Two group meetings of diverse Oregon entrepreneurial
18 stakeholders, convened during the twelve-month period beginning July
19 1, 2020, to study stakeholder needs. Moneys in the fund may also be
20 used to make travel and time reimbursements to underrepresented
21 entrepreneurs.

22 (c) To bring together a research team that will synthesize existing
23 analyses, and conduct a new analysis, of the economic needs of Oregon
24 small businesses and the impact of small businesses on the Oregon
25 economy.

26 (d) Collaboration and information sharing with the Oregon Capital
27 Scan.

28 (e) To fund technological infrastructure and the position of a
29 project manager charged with creating a statewide, connected and
30 engaged entrepreneurial ecosystem community.

31 (f) To make recommendations for legislation to the interim com-

1 **mittees of the Legislative Assembly related to economic development**
2 **no later than November 30, 2020.**

3 **(3) The department may not make a distribution to the Oregon**
4 **Entrepreneurs Network under this section until the amount of lottery**
5 **funds allocated to the department under subsection (1) of this section**
6 **has been matched by at least \$150,000 received from private, nonprofit**
7 **or philanthropic sources to be used solely for the purposes set forth**
8 **in subsection (2) of this section.**

9 **SECTION 12. (1) There is allocated for the biennium ending June**
10 **30, 2021, from the Administrative Services Economic Development**
11 **Fund, to the Oregon Business Development Department, the amount**
12 **of \$3 million for deposit in the Oregon Growth Fund established under**
13 **ORS 284.890.**

14 **(2) Notwithstanding ORS 284.890 (3), moneys deposited in the**
15 **Oregon Growth Fund under this section are continuously appropriated**
16 **to the department for the use of the Oregon Growth Board for the**
17 **following purposes:**

18 **(a) To target entrepreneurs and emerging capital innovators;**

19 **(b) To support economic growth through investments in loan funds,**
20 **venture capital funds, angel conferences and associated technical as-**
21 **sistance;**

22 **(c) To leverage private and other institutional dollars for invest-**
23 **ment in Oregon companies;**

24 **(d) To make investments in early stage, small and first-time capital**
25 **sources to support economic development; and**

26 **(e) To help funds fill the capital gaps encountered by Oregon busi-**
27 **nesses, especially in underserved communities, rural areas and**
28 **undersupported industry sectors.**

29 **(3) Moneys deposited in the Oregon Growth Fund under this section**
30 **may not be used for any other purpose for which moneys in the fund**
31 **may be used under ORS 284.890, other than administrative costs de-**

1 scribed in ORS 284.890 (5) that are directly related to this section.

2 **SECTION 13.** This 2020 Act being necessary for the immediate
3 preservation of the public peace, health and safety, an emergency is
4 declared to exist, and this 2020 Act takes effect on its passage.

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