

Enrolled
House Bill 4209

Sponsored by Representative KOTEK; Representative WILDE (at the request of Joint Committee on the First Special Session of 2020)

CHAPTER

AN ACT

Relating to awarding moneys through programs in the eastern Oregon border region; creating new provisions; amending ORS 284.771, 284.776, 284.781, 284.786, 284.791, 284.796 and 284.801; and declaring an emergency.

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

SECTION 1. ORS 284.771 is amended to read:

284.771. As used in ORS 284.771 to 284.801, unless the context [*clearly*] requires otherwise:

(1) "Eastern Oregon Border Economic Development Region" or "region[.]" [*as defined in rules adopted by the Eastern Oregon Border Economic Development Board in consultation with the Oregon Business Development Department,*] means that part of the state that:

(a) Is within 20 miles of the Oregon border with the State of Idaho, and that includes, but is not limited to, the cities of Ontario, Vale and Nyssa;

(b) Includes Willow Creek and Brogan;

(c) Is an area in Oregon that is across the Oregon border from Weiser, Idaho; and

(d) Is an area southwest of Vale for a distance of 10 miles.

(2) "Economic development" means development that:

(a) Relates to and supports:

(A) The economic health or recovery of the region;

(B) Business enterprise and activities in the region; or

(C) Development or certification of regionally significant industrial sites in the region;

(b) Creates jobs or prevents the loss of jobs in the region; or

(c) Promotes or expands businesses or prevents the decline of businesses located or to be located in the region.

(3) "Law" means statutes, administrative rules and any other form of regulation imposed by this state or a political subdivision of this state.

(4) "Local governing body" means either the county court or board of county commissioners of the county.

(5) "Local government" has the meaning given that term in ORS 174.116.

(6) "Regionally significant industrial site" has the meaning given that term in ORS 285B.626.

(7) "**Third-party administrator**" means the entity with which the Eastern Oregon Border Economic Development Board enters into an agreement pursuant to ORS 284.781 (4).

[(7)] (8) "Traded sector" has the meaning given that term in ORS 285A.010.

[(8)(a)] **(9)(a)** “Workforce development” means activities or services that assist individuals to attain employment, progress along career pathways or establish and maintain businesses and that promote economic development by making skilled employees more readily available.

(b) “Workforce development” includes:

(A) Education, training and apprenticeships;

(B) Labor market analysis;

(C) Employment and reemployment assistance;

(D) Employee recruitment and retention;

(E) Workforce programs that have a primary mission of helping individuals become employed, retain employment, increase wages, progress along career pathways or establish and maintain businesses;

(F) Convening, coordinating, oversight and evaluation activities and services for business and state workforce agencies; and

(G) Development of residential housing necessary to attract and keep employees in the region.

SECTION 2. ORS 284.776 is amended to read:

284.776. (1) The Eastern Oregon Border Economic Development Board is established to formulate and implement strategies and practices for strategic investment in workforce development and economic development in the Eastern Oregon Border Economic Development Region and to *[make grants or loans to eligible applicants]* **arrange for the awarding of grants and making of loans** for the purpose of encouraging workforce development and economic development in the region.

(2) The board shall consist of seven voting members and one nonvoting member as follows:

(a) The Governor shall appoint seven voting members from a list of eligible appointees with expertise in traded sector business, education, workforce development or economic development provided by the local governing bodies within the *[Eastern Oregon Border Economic Development]* region. The Governor shall request an updated list of eligible appointees from the local governing bodies within the region for the purpose of making appointments when vacancies occur.

(b) The Director of the Oregon Business Development Department, or the director’s designee, is an ex officio nonvoting member of the board.

(3) The term of office of each voting member of the board is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a voting member, the Governor shall appoint a successor whose term begins on January 1 next following. A member is eligible for reappointment for a total of two consecutive terms. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) The Governor shall appoint one voting member of the board as the chairperson.

(5) A voting member of the board is entitled to compensation and expenses as provided in ORS 292.495.

(6) A majority of the voting members of the board constitutes a quorum for the transaction of business.

(7)(a) The board shall meet at least once every three months at a time and place determined by the chairperson. **In addition**, the board *[also]* may meet at other times and places specified by the call of the chairperson or of a majority of the members of the board.

(b) Meetings of the board are subject to ORS 192.610 to 192.690 governing public meetings and ORS 192.311 to 192.478 governing public records.

(8) The board may establish any advisory or technical committees the board considers necessary to aid and advise the board in the performance of its functions. The committees may be continuing or temporary committees. The board shall determine the representation, membership, terms and organization of the committees and shall appoint the members of the committees.

(9)(a) Until the board has entered into an agreement with a third-party administrator pursuant to ORS 284.781 (4), the Oregon Business Development Department shall provide staff to the board as necessary to allow the board to carry out the board’s responsibilities under ORS 284.771 to 284.801. *[The department may contract with a third party to provide staff to the board under*

this subsection, provided that the third party remains subject to the direction and control of the department.]

(b) Upon entering into the agreement, the third-party administrator shall provide staff to the board as necessary.

SECTION 3. ORS 284.781 is amended to read:

284.781. The Eastern Oregon Border Economic Development Board[, *in collaboration with and with the assistance of the Oregon Business Development Department,*] has the following duties, functions and powers:

(1) To identify policies and strategies that will:

(a) Promote workforce development, including development of residential housing necessary to attract and keep employees in the **Eastern Oregon Border Economic Development** Region, and economic development;

(b) Facilitate **the** development [*or*] **and** prevent **the** decline of regionally significant industrial sites;

(c) Create [*or*] **and** maintain jobs in the region; and

(d) Improve access to career and technical education, workforce training programs and higher education to enhance the availability of a qualified workforce for employers in the region.

(2) To make recommendations to the Legislative Assembly for policies and strategies intended to improve the availability of career and technical education, workforce training programs and higher education for the purpose of improving the availability of a qualified workforce for employers in the [*Eastern Oregon Border Economic Development*] region.

(3) To identify specific laws that place specific workforce development [*or*] **and** economic development efforts in the [*Eastern Oregon Border Economic Development*] region, including development of residential housing necessary to attract and keep employees in the region, at a competitive disadvantage **with respect** to the same type of efforts **made** in the areas across the Oregon border [*as described in ORS 284.786*] **from the region and to take action in accordance with ORS 284.786 upon identifying such laws.**

[(4) *Subject to the availability of funds in the Eastern Oregon Border Economic Development Board Fund, to make grants or loans to qualified applicants pursuant to ORS 284.791, not to exceed a total of 10 active grants at any one time.*]

[(5) *To establish a means to evaluate grants or loans made by the board and the department, including, but not limited to, determining the number of businesses or regionally significant industrial sites assisted, the types and amount of resources leveraged, return on investment criteria, performance and outcome measures and methods to evaluate the impact on jobs and wages in any area of the Eastern Oregon Border Economic Development Region to which grant or loan moneys were applied or in which they were utilized.*]

(4) To enter into an agreement with a third-party administrator, subject to approval by the Oregon Business Development Department under section 6 of this 2020 special session Act, pursuant to which the third-party administrator shall operate one or more programs to award grants and make loans in accordance with ORS 284.791.

[(6)] **(5)** To facilitate collaboration among employers, local governments, state agencies and stakeholders for the purpose of enhancing and expanding workforce development and economic development in the region.

[(7)] **(6)** To consult with affected school districts, community colleges and universities and the Employment Department in identifying policies and strategies that will enhance and promote workforce development to improve the availability of a qualified workforce for employers in the [*Eastern Oregon Border Economic Development*] region.

(7) To adopt rules that define the region more specifically and to consult with the Oregon Business Development Department in the rulemaking process.

[(8) *To report annually on or before December 31 of each year to standing and interim committees of the Legislative Assembly related to economic development regarding implementation and administration of the Eastern Oregon Border Economic Development Board and grants or loans made by the*

board and the Oregon Business Development Department pursuant to ORS 284.791. The report may include recommendations regarding proposed legislation and strategies to improve workforce development and economic development in the region.]

(8) To prescribe the form of the application required under ORS 284.791 (3).

SECTION 4. ORS 284.786 is amended to read:

284.786. [(1) *The Eastern Oregon Border Economic Development Board may identify specific laws that repeatedly place specific workforce development or economic development efforts in the Eastern Oregon Border Economic Development Region, including development of residential housing necessary to attract and keep employees in the region, at a competitive disadvantage to the same type of efforts in the areas across the Oregon border.*]

[(2)] **(1) Upon identifying a specific law in accordance with ORS 284.781 (3), the Eastern Oregon Border Economic Development Board:**

(a) May recommend to the agency, board or commission that imposes or administers [*such a*] **the** law that the agency, board or commission consider an exception or waiver to the law[, *where permitted by law,*] **in order** to assist in workforce development and economic development efforts in the **Eastern Oregon Border Economic Development** Region. Within 60 days of receiving a recommendation from the Eastern Oregon Border Economic Development Board under this paragraph, the agency, board or commission shall review the recommendation and hold a public hearing in the region, or otherwise consider information from the public and stakeholder entities, to determine whether:

(A) The law has **repeatedly** posed a [*repeated*] disadvantage to workforce development [*and*] **or** economic development in the region in the last five years compared to comparable laws, rules or other forms of regulation imposed by the State of Idaho or a political subdivision of the State of Idaho; and

(B) An exception or waiver to the specific law may be made for the purpose of furthering workforce development or economic development in the [*Eastern Oregon Border Economic Development*] region.

(b) If the agency, board or commission determines that an exception or waiver may not be made under paragraph (a) of this subsection, may recommend to the agency, board or commission or to the Legislative Assembly that a specific exception or waiver be [*allowed*] **made** for the purpose of workforce development or economic development in the region.

[(3)] **(2) The Eastern Oregon Border Economic Development Board may not recommend an exception or waiver to a specific law if:**

(a) The exception or waiver to the law is not permitted by law; or

(b) [*That is related*] The law relates to employment or state taxation.

SECTION 5. Section 6 of this 2020 special session Act is added to and made a part of ORS 284.771 to 284.801.

SECTION 6. (1) Upon finalizing a proposed agreement with a third-party administrator pursuant to ORS 284.781 (4), the Eastern Oregon Border Economic Development Board shall submit the proposed agreement to the Oregon Business Development Department.

(2) The department shall review the proposed agreement and if the department determines that the agreement is sufficient for the purposes of ORS 284.771 to 284.801, department shall:

(a) Notify the board and the third-party administrator of its determination; and

(b) Distribute to the third-party administrator all moneys in the Eastern Oregon Border Economic Development Board Fund established under ORS 284.801 that are available for the purpose of awarding grants and making loans in accordance with ORS 284.791.

(3)(a) If the department determines that the proposed agreement is not sufficient, the department shall return the agreement to the board with recommendations for revising or rejecting the agreement.

(b) The board may consult with the department regarding the department's recommendations and, with the department's approval, resubmit the agreement with appropriate changes as necessary.

(4)(a) The board or the third-party administrator may terminate the agreement at any time.

(b) Upon termination of the agreement by either party, the third-party administrator shall transfer all unspent and unobligated moneys remaining from the moneys distributed under subsection (2) of this section to the department for deposit in the Eastern Oregon Border Economic Development Board Fund.

SECTION 7. ORS 284.791 is amended to read:

284.791. (1)(a) Subject to **available funds**, *[the availability of funds in the Eastern Oregon Border Economic Development Board Fund, the Eastern Oregon Border Economic Development Board may]* **the third-party administrator shall operate one or more programs to award grants [or] and make loans to eligible applicants to enhance and expand workforce development or economic development in the Eastern Oregon Border Economic Development Region. [Repayment of loans made under this section is subject to subsection (8) of this section. The board shall make the decision to approve and award grants or loans under this section, but the Oregon Business Development Department shall be responsible for the actual payment of the grants or loans from the Eastern Oregon Border Economic Development Board Fund.]**

(b) **No more than 10 programs may be active at any time. A program is active as long as any loan made through the program remains outstanding or any work or project funded or financed by a grant awarded through the program has not been completed in accordance with the grant agreement.**

(2) Eligible applicants **for grants and loans** include, but are not limited to:

- (a) Local governments;
- (b) Institutions of higher education as defined in ORS 348.582;
- (c) Private or nonprofit businesses whose principal place of business, or the majority of whose workforce, is located in the *[Eastern Oregon Border Economic Development]* region;
- (d) Small business development centers established under ORS 285B.165 to 285B.171;
- (e) Economic development organizations;
- (f) School districts; and
- (g) Other **types of entities** *[as defined by the board]* **specified by the Eastern Oregon Border Economic Development Board** by rule.

(3)(a) An eligible applicant may apply **to the third-party administrator** for a grant or loan *[by submitting an application and paying the required application fee, if any, in accordance with rules adopted by the board in consultation with the department. The rules must, at a minimum:].* **The third-party administrator may not consider an application unless the application is timely and accompanied by any required application fee. The third-party administrator shall prescribe deadlines for the application process.**

[(a)] (b) *[Establish criteria for the award of grants or loans under this section that provide that the]* **An applicant must demonstrate that the grant or loan moneys will be used for:**

(A) Economic development that will lead to private investment, job creation or retention and the establishment or expansion of viable businesses in the region;

(B) Expansion of *[a]* transportation infrastructure *[sufficient]* to facilitate moving traded sector goods or services in the region to market;

(C) Enhancement and expansion of workforce development in the region, including development of residential housing necessary to attract and keep employees in the region, that is responsive to the needs of the region's businesses and industries;

(D) Certification of regionally significant industrial sites within the region;

(E) Extension of private utilities, including, but not limited to, gas and electrical connections, to regionally significant industrial sites within the region;

(F) A due diligence assessment pursuant to the Oregon Industrial Site Readiness Assessment Program under ORS 285B.635 to 285B.640 or other assessments or evaluations that prepare a site for development; or

(G) Provision of support services and technical assistance to entrepreneurs and business owners in the region, including, but not limited to, small business development centers established under ORS 285B.165 to 285B.171.]; and]

[(b) Establish criteria for repayment of loans, collection of moneys owed and repayment of grant proceeds in the event of default.]

[(4) Applications for loans must contain:]

[(a) A plan for repayment by the applicant to the Eastern Oregon Border Economic Development Board Fund of moneys borrowed from the fund plus interest; and]

[(b) If required by the department and the board, evidence of debt assurance of, or security for, repayment by the applicant.]

(c) Applications for loans must contain a proposed plan for repayment with interest of moneys borrowed from the third-party administrator under this section.

(d) The board shall adopt rules that, at a minimum, establish criteria for awarding grants and making loans under this section, in addition to the criteria set forth in paragraph (b) of this subsection.

*[(5)] (4) Loans **may not be** made under this section[:]*

*[(a) May not be] for a [loan] term that exceeds the [usable] **useful** life of the work or project for which the loan funds will be used or a specified number of years from completion **of the work or project**, whichever is less.]; and]*

[(b) Are subject to subsection (8) of this section regarding repayment of loans made by the department.]

*[(6)(a)] (5) [Grants or loans made under this section are payable solely from the Eastern Oregon Border Economic Development Board Fund established under ORS 284.801.] Amounts paid as grants [or] **and** loans shall not constitute a debt of the state or a lending of the credit of the state within the meaning of any [constitutional or] statutory limitation **and are not intended to constitute a debt of the state or a lending of the credit of the state within the meaning of any constitutional limitation.***

[(b) Notwithstanding paragraph (a) of this subsection, nothing in this section is intended to impair the exercise of rights granted against the security for a loan, if any.]

*[(7)] (6) The [department shall assist the board in evaluating] **third-party administrator shall consider** applications for grants [or] **and** loans under this section by:*

(a) Evaluating timelines for completion of work and projects for which grant or loan moneys requested in the application will be used;

(b) Investigating whether necessary permits for development, if needed, have been or can be secured in a timely manner;

[(c) Recommending how to maximize use of grant or loan moneys to ensure successful completion of the work or project for which the grant or loan moneys will be used;]

*[(d)] (c) Assessing the ability of the applicant to repay the grant or loan; **and***

(d) Applying any other methods or criteria the third-party administrator considers necessary or convenient for the purpose.

[(e) Documenting the strengths, weaknesses and risks of the applicant and project; and]

[(f) Making recommendations regarding terms and conditions for approval of a grant or loan.]

[(8) The department shall adopt rules governing repayment of loans made under this section and collection of moneys owed to the Eastern Oregon Border Economic Development Board Fund. The department may seek appropriate legal remedies to secure repayment of any loans made under this section that are due to the fund.]

*[(9)] (7) The [department may assess and charge] **agreement between the board and the third-party administrator shall include limits on administrative** fees, including, but not limited*

to, application fees, [for loans or grants made] under this section **that the third-party administrator may collect or retain from grant and loan proceeds.**

(8) The third-party administrator may enter into an agreement with a lending partner for the purpose of administering loans made under this section.

(9) The following moneys shall be retained and accumulated by the third-party administrator to be used for the purposes set forth in ORS 284.771 to 284.801:

(a) Moneys received as repayment of loans;

(b) Moneys received as repayment of grant proceeds in the event of default by the grantee under the grant agreement;

(c) Interest and other receipts from outstanding indebtedness; and

(d) Moneys from any other sources received pursuant to an agreement entered into pursuant to ORS 284.781 (4).

(10) The agreement shall specify the amount of moneys distributed under section 6 of this 2020 special session Act that the third-party administrator may retain for expenses incurred in operating grant and loan programs under this section.

SECTION 8. ORS 284.796 is amended to read:

284.796. The Eastern Oregon Border Economic Development Board[, *in consultation with the Oregon Business Development Department,*] shall adopt rules to implement and administer the provisions of ORS 284.771 to 284.801 **and may consult with the Oregon Business Development Department in the rulemaking process.**

SECTION 9. ORS 284.801 is amended to read:

284.801. (1) The Eastern Oregon Border Economic Development Board Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Eastern Oregon Border Economic Development Board Fund shall be credited to the fund.

(2) Moneys in the fund are continuously appropriated to the Oregon Business Development Department[.] **for distribution to the third-party administrator under section 6 of this 2020 special session Act.**

[(a) For distribution to the Eastern Oregon Border Economic Development Board for the purposes set forth in ORS 284.771 to 284.801; and]

[(b) To reimburse the department for the administrative costs of the department incurred in processing grant or loan applications, investigating the eligibility of applicants and servicing outstanding grants and loans. Reimbursements made under this paragraph may not exceed an annual amount equal to the total revenues received in that year from applicant fees assessed and charged by the department under ORS 284.791, plus four percent of the total asset value of the fund.]

(3) Moneys in the Eastern Oregon Border Economic Development Board Fund consist of:

[(a) Applicant fees for grants or loans assessed, charged and paid pursuant to ORS 284.791;]

[(b) (a) Moneys [received as repayment of principal and interest on loans made from the fund under ORS 284.771 to 284.801] returned to the fund upon termination of an agreement pursuant to section 6 (4)(b) of this 2020 special session Act;

[(c) (b) Amounts appropriated or otherwise transferred to the fund by the Legislative Assembly;

[(d) (c) Amounts donated to the fund;

[(e) (d) Moneys transferred to the fund from the federal government, state agencies or local governments;

[(f) (e) Lottery bond proceeds [approved] allocated by the Legislative Assembly for deposit in the fund;

[(g) (f) Earnings received on moneys in the fund; and

[(h) (g) Other amounts deposited in the fund from any source.

[(4) All repayments of grants or loans, interest and other receipts from outstanding indebtedness or any other sources shall be retained and accumulated in the fund and shall be used for the purposes set forth in ORS 284.771 to 284.801.]

[5] *The Oregon Business Development Department may enter into intergovernmental agreements under ORS chapter 190 as necessary for the administration of the Eastern Oregon Border Economic Development Board Fund.*

SECTION 10. Section 11 of this 2020 special session Act is added to and made a part of ORS 284.771 to 284.801.

SECTION 11. (1) On or before June 30 of each year, the third-party administrator shall submit the following information from the previous 12 months to the Eastern Oregon Border Economic Development Board:

(a) The number of businesses or regionally significant industrial sites that were assisted with grants awarded and loans made through programs under ORS 284.791;

(b) The types and amount of resources leveraged by the grant and loan moneys;

(c) The return on investment, performance and outcome with respect to jobs and wages in any area of the Eastern Oregon Border Economic Development Region in which grant and loan moneys were utilized; and

(d) Any other information the third-party administrator considers useful in evaluating the experience of the grant and loan programs.

(2)(a) On or before September 15 of each year, the Eastern Oregon Border Economic Development Board shall submit a report, in the manner required under ORS 192.245, to the Joint Committee on Ways and Means or the Emergency Board, that sets forth the information received from the third-party administrator under subsection (1) of this section and any other information from any source that the Eastern Oregon Border Economic Development Board thinks convenient or necessary for evaluating the administration and experience of the grant and loan program established under ORS 284.771 to 284.801.

(b) The Eastern Oregon Border Economic Development Board's report may include recommendations for legislation and strategies to improve workforce development and economic development in the region.

SECTION 12. This 2020 special session Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2020 special session Act takes effect on its passage.

Passed by House June 25, 2020

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 26, 2020

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2020

Approved:

.....M.,....., 2020

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2020

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Bev Clarno, Secretary of State