

Enrolled
House Bill 2037

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Business Development Department)

CHAPTER

AN ACT

Relating to loan limits for economic development; creating new provisions; and amending ORS 285B.059 and 285B.062.

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

SECTION 1. ORS 285B.059 is amended to read:

285B.059. (1) The Oregon Business Development Commission may approve a business development project proposed in an application filed under ORS 285B.050 to 285B.098 if, after investigation, the commission finds that:

(a) The proposed business development project is feasible and a reasonable risk from practical and economic standpoints, and that the loan has reasonable prospect of repayment.

(b) The applicant can provide good and sufficient collateral for the loan.

(c) Moneys in the Oregon Business Development Fund are or will be available for the proposed business development project.

(d) There is a need for the proposed business development project.

(e) The applicant has not received or entered into a contract or contracts exceeding [~~\$1~~] **\$2** million with the commission, under authority of ORS 285B.050 to 285B.098, for the previous 365 days.

(2)(a) Except as provided in paragraph (b) of this subsection, the total amount of moneys loaned from the fund for a business development project may not exceed 50 percent of the cost of the project.

(b) The total amount of moneys loaned from the fund for a business development project may exceed 50 percent of the cost of the project if two or more lenders have denied requests from the applicant to commit to participate in the financing of the project and the applicant has no other available financing.

(3)(a) Except as provided in paragraph (b) of this subsection, moneys may not be loaned from the fund for a business development project unless there exists a commitment from a commercial or private lender, or a local development group, to participate in the financing of the project.

(b) Moneys may be loaned from the fund for a business development project without a commitment from a commercial or private lender, or a local development group, to participate in the financing of the project if:

(A) The applicant is a county or municipality;

(B) There are payments other than the scheduled principal and interest payments; or

(C) Two or more lenders have denied requests from the applicant to commit to participate in the financing of the project and the applicant has no other available financing.

(4) To encourage private sector and local development group participation in the financing of business development projects, the commission may subordinate the security position of the fund to that of other lenders.

(5) In each fiscal year of a biennium, 15 percent of all moneys available for lending from the fund is reserved for loans to emerging small business enterprises as defined by the Oregon Business Development Department by rule, which are located in or draw their workforces from within rural or distressed areas as determined by the Oregon Business Development Department in cooperation with the Employment Department of this state. If the Oregon Business Development Department was unable to obtain a sufficient number of approvable applications to meet the requirements of this subsection in the previous fiscal year, it may, in the current fiscal year and notwithstanding the limitations imposed by ORS 285B.050 (2), make loans, in an amount that does not exceed the 15 percent reserved for the prior fiscal year less the amount of loans made to emerging small business enterprises located in rural or distressed areas during the previous fiscal year, to service and retail businesses operated by small business enterprises that are located in or draw their workforces from within rural or distressed areas as determined by the Oregon Business Development Department in cooperation with the Employment Department of this state. Service and retail businesses operated by small business enterprises under this section need not be engaged in traded sector activities. As used in this subsection, "rural area" and "distressed area" have the *[meaning]* **meanings** given those terms in ORS 285A.010.

SECTION 2. ORS 285B.062 is amended to read:

285B.062. If the Oregon Business Development Commission approves *[the]* **a** business development project, the commission, on behalf of the state, and the applicant may enter into a loan contract of not more than *[\$1]* **\$2** million, secured by good and sufficient collateral, which shall set forth, among other matters:

(1) A plan for repayment by the applicant to the Oregon Business Development Fund of moneys borrowed from the fund used for the business development project, with interest charged on those moneys at the rate of not less than one percentage point more than the prevailing interest rate on United States Treasury bills, notes or bonds of a comparable term, as determined by the commission. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the applicant of **the** moneys *[used for the business development project and interest thereon]* **and interest** no later than one year after the date of the loan contract or at such other time as the commission may provide.

(b) May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances if approved by the commission.

(c) Shall provide for such evidence of debt assurance of, and security for, repayment by the applicant as is considered necessary by the commission.

(d) Shall set forth a schedule of payments and the period of **the** loan, *[which shall]* not **to** exceed the *[usable]* **useful** life of the contracted project or 25 years from the date of the contract, whichever is less, and *[shall also set forth]* the manner of determining when loan payments are delinquent. The payment schedule shall include repayment of interest *[which]* **that** accrues during any period of delay in repayment authorized by paragraph (a) of this subsection, and the payment schedule may require payments of varying amounts for collection of accrued interest.

(e) Shall set forth a procedure for formal declaration of default of payment by the commission, including formal notification of all relevant federal, state and local agencies*[:]* and *[further,]* a procedure for notification of all relevant federal, state and local agencies that declaration of default has been rescinded when appropriate.

(f) Shall allow for other forms of payment than principal and interest payments on loans, to be outlined in administrative rules.

(2) Provisions satisfactory to the commission for field engineering and inspection, the commission to be the final judge of completion of the contract.

(3) That the liability of the state under the contract is contingent upon the availability of moneys in the fund for use in the business development project.

(4) Such further provisions as the commission considers necessary to [insure] ensure expenditure of the funds for the purposes set forth in the approved application.

SECTION 3. The amendments to ORS 285B.059 and 285B.062 by sections 1 and 2 of this 2021 Act apply to applications for business development projects submitted on or after the effective date of this 2021 Act.

SECTION 4. Section 5 of this 2021 Act is added to and made a part of ORS 285B.050 to 285B.098.

SECTION 5. (1) Beginning with the 2023 calendar year, the Oregon Business Development Department shall annually adjust the maximum contract amounts specified in ORS 285B.059 (1)(e) and 285B.062 by multiplying each amount by the percentage change in the monthly averaged Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor, for the 12 consecutive months ending on the immediately preceding December 31 compared to the monthly averaged Consumer Price Index for All Urban Consumers, West Region (All Items), for the 12 consecutive months ending on December 31, 2021.

(2) Notwithstanding subsection (1) of this section, the adjusted maximum contract amounts specified in ORS 285B.059 (1)(e) and 285B.062 may not be less than \$2 million.

Passed by House March 16, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 3, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State