

B-Engrossed
House Bill 2266

Ordered by the House June 20
Including House Amendments dated April 19 and June 20

Sponsored by Representative LIVELY; Representatives GOMBERG, MEEK (Pre-session filed.)

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.

Creates program through which certain lenders may, after competitive RFP process, receive award moneys to fund accounts out of which lenders may be reimbursed for principal losses incurred due to defaults on qualified loans to qualified businesses. Requires lender accepting award to enter into written agreement with Oregon Business Development Department and specifies certain terms of agreements. Sets forth circumstances in which lender may use for any purpose, or be required to repay, balance of award moneys.

Requires department to develop and implement program to make loans to certain for-profit disadvantaged and emerging small businesses certified by Certification Office for Business Inclusion and Diversity. Sets forth loan requirements regarding maximum principal amount and term, loan documentation, collateral and use of proceeds. Requires business owner interested in applying for loan to seek assistance from technical assistance provider regarding application form and documentation and authorizes technical assistance provider to decide whether to refer application to department for approval or rejection. Establishes Disadvantaged and Emerging Small Business Loan Fund for making loans under program.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to business assistance; and declaring an emergency.

3 Whereas Oregonians are committed to dismantling historic systemic barriers and investing in
4 our economy and our people and future generations as it relates to accessible capital for all com-
5 munities of color and underserved businesses; and

6 Whereas it is the intention of this legislation to begin to bridge the gap of the economic ineq-
7 uities in historically underserved and marginalized communities; and

8 Whereas Oregon's small businesses are the backbone of our economy, which includes many
9 Black, Indigenous, Latino, Latina, Latinx, Asian, Pacific Islander, Native American and tribal com-
10 munities throughout the state; and

11 Whereas the Racial Justice Council's priority is to promote economic development and
12 empowerment through grounding racial justice and providing access to capital specifically for
13 minority-owned businesses and underserved entrepreneurs that will result in building equitable ac-
14 cess to capital and reduce barriers of collateral requirements in efforts to enable mobility and op-
15 portunity towards a safe, secure and resilient quality of life in Oregon; now, therefore,

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

17 **SECTION 1. Purpose. It is the purpose of sections 1 to 7 of this 2021 Act that the State**
18 **of Oregon shall make awards to qualified lending institutions to fund lenders' loan loss re-**
19 **serve accounts for the purpose of increasing lending to business owners and entrepreneurs**
20 **who currently lack access to capital to start or grow their businesses.**

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 **SECTION 2. Definitions.** As used in sections 1 to 7 of this 2021 Act, unless the context
2 requires otherwise:

3 (1) “Loan loss reserve account” or “account” means an account created by a lender for
4 the deposit of moneys awarded to the lender under section 3 of this 2021 Act out of which
5 the lender may reimburse itself for losses incurred due to defaults on qualified loans.

6 (2) “Prime rate” means the primary credit rate of the discount window program of the
7 United States Federal Reserve System.

8 (3) “Qualified business” or “qualified borrower” means a person that:

9 (a) Operates a business in Oregon; or

10 (b) Attests to a qualified lender that the person will use proceeds from a qualified loan
11 to establish a business in Oregon.

12 (4) “Qualified lender” means a lender that:

13 (a) Is certified as a community development financial institution by the Community De-
14 velopment Financial Institutions Fund at the United States Department of the Treasury;

15 (b) Is a nonprofit corporation as defined in ORS 307.130;

16 (c) Is an economic development district in Oregon designated by the Economic Develop-
17 ment Administration of the United States Department of Commerce;

18 (d) Is affiliated with a local government as defined in ORS 174.116; and

19 (e) Has a physical presence in Oregon and at least five years of lending experience.

20 (5)(a) “Qualified loan” means a loan made, or an operating line of credit extended, by a
21 lender to a qualified business for which the principal losses are reimbursable from moneys
22 in the lender’s loan loss reserve account.

23 (b) “Qualified loan” does not mean a loan:

24 (A) With a variable interest rate.

25 (B) With an origination fee that exceeds 1.5 percent, and with an annual interest rate
26 that exceeds the lesser of 18 percent or the prime rate plus 7 percent.

27 (C) For working capital for a term exceeding seven years.

28 (D) For capital assets for a term exceeding the useful life of the assets.

29 (E) That includes, in whole or in part, the refinancing of an existing loan made by the
30 lender to the borrower.

31 (F) That includes, in whole or in part, the refinancing of an existing personal loan not
32 used for business purposes.

33 (G) For the purchase of real property that is not used for the business operations of the
34 borrower.

35 (H) For the purchase of owner-occupied residential housing or for the construction, im-
36 provement or purchase of residential housing owned or to be owned by the borrower.

37 (6) “RFP” means a request for proposal.

38 **SECTION 3. RFP process for awards to lenders; lender requirements; approval criteria.**

39 (1)(a) The Oregon Business Development Department shall, in accordance with this section,
40 make awards to lenders to fund the lenders’ loan loss reserve accounts.

41 (b) The awards shall be made, through a competitive RFP process administered by the
42 department.

43 (c) Of the moneys awarded as a result of any RFP process, not more than 10 percent of
44 available funds may be awarded to any single lender.

45 (2) The department shall evaluate proposals according to the following criteria:

1 (a) The number and value of loans closed by the lender during the five-year period im-
2 mediately preceding the date of submission of the lender's proposal;

3 (b) The projected loan production over the performance period of the award, including
4 the projected number of loans, the proposed principal amount of qualified loans that the
5 lender would not make but for the moneys awarded, and the jobs to be created and retained
6 by qualified borrowers;

7 (c) How the award would increase the lender's capacity to make loans to rural or
8 underserved entrepreneurs;

9 (d) The past performance of loans made by the lender;

10 (e) The extent to which the lender:

11 (A) Provides technical assistance and financial literacy services to underserved borrow-
12 ers; or

13 (B) Partners with providers of technical assistance and financial literacy services to
14 underserved borrowers;

15 (f) How the lender's proposed outreach, application process, underwriting criteria and
16 loan terms are designed to reduce historic barriers to borrowers' access to loan capital;

17 (g) How the lender plans to ensure that the loans originated by the lender under the
18 program are made to borrowers in regionally diverse and rural areas of this state; and

19 (h) Any other criteria the department considers necessary or useful for evaluating a
20 proposal.

21 (3)(a) After reviewing proposals submitted in response to an RFP, the department shall
22 reject or accept proposals and determine the amount awarded for each accepted proposal.

23 (b) As soon as practicable after the awards are finalized, the department shall notify the
24 lenders that submitted proposals of the results and offer the awards to the lenders whose
25 proposals are accepted.

26 SECTION 4. Agreements with lenders; terms. (1) The Oregon Business Development De-
27 partment shall enter into a written agreement with each lender that accepts an award of-
28 fered under section 3 of this 2021 Act.

29 (2) A written agreement entered into pursuant to this section must:

30 (a) Provide for the creation of a loan loss reserve account by the lender for the deposit
31 of moneys awarded under section 3 of this 2021 Act out of which the lender may be reim-
32 bursed for principal losses incurred due to defaults on qualified loans;

33 (b) Provide that, notwithstanding ORS chapter 293 or 295, the lender shall establish and
34 maintain the loan loss reserve account with a financial institution, as defined in ORS 706.008,
35 in accordance with such policies as the department may adopt;

36 (c) Require the lender to designate, when a loan is made, whether the loan is a qualified
37 loan;

38 (d) Provide that, upon default on a qualified loan, the lender shall, subject to subsection
39 (3) of this section, liquidate the borrower's assets and exhaust all lawful remedies for the
40 benefit of the lender before the lender may recover the outstanding principal balance of the
41 loan from the lender's loan loss reserve account;

42 (e) Provide that the liability of the State of Oregon and the department under the written
43 agreement is limited to the amount of moneys awarded and credited to the lender's loan loss
44 reserve account; and

45 (f) Require the lender to file an annual report in accordance with section 5 of this 2021

1 **Act.**

2 (3)(a) Notwithstanding the requirement under subsection (2)(d) of this section to liquidate
3 a borrower's assets and exhaust all lawful remedies, the department, upon request of a
4 lender, may waive the lender's obligations under subsection (2)(d) of this section if:

5 (A) The original principal amount of the loan was not greater than \$25,000; and

6 (B) The borrower had a personal net worth not greater than \$75,000 at both the time of
7 application and the time of default.

8 (b) A lender that does not comply with subsection (2)(d) of this section or paragraph (a)
9 of this subsection shall be considered to have breached the written agreement the lender
10 entered into pursuant to subsection (1) of this section. The department, at its sole discretion,
11 may take assignment of the loan and pursue collection efforts under subsection (2)(d) of this
12 section.

13 (4) Qualified lenders that accept awards under section 3 of this 2021 Act shall, within 10
14 years following the date on which the written agreement entered into pursuant to subsection
15 (1) of this section becomes binding, originate qualified loans with a total principal amount
16 equal to at least four times the amount of the moneys awarded.

17 **SECTION 5. Annual reporting by lenders.** (1) Not later than July 31 of each year, each
18 lender awarded moneys under section 3 of this 2021 Act shall, during the term of the written
19 agreement entered into under section 4 of this 2021 Act, provide a report to the Oregon
20 Business Development Department, on a form prescribed by the department, for the period
21 beginning on July 1 of the immediately preceding year and ending on June 30 of the current
22 year.

23 (2) With respect to qualified loans made by the lender, the report shall include, but not
24 be limited to, the following information:

25 (a) The number and total principal amount of all qualified loans made by the lender;

26 (b) For each qualified loan, the following information:

27 (A) The term and amortization of the loan; and

28 (B) The purpose of the loan;

29 (c) The number of loans that were declined and the primary reasons for declining them;
30 **and**

31 (d) Any other information required under rules adopted by the department.

32 (3) With respect to qualified borrowers, the report shall set forth:

33 (a) The businesses that qualified borrowers conduct in this state;

34 (b) The cities and counties in which qualified borrowers use the qualified loan proceeds;

35 (c) The number of individuals employed by the qualified businesses;

36 (d) Demographic data voluntarily reported by qualified borrowers, including, but not
37 limited to, whether a qualified business is owned by a woman, a minority individual, a vet-
38 eran of any branch of the Armed Forces of the United States, the National Guard or other
39 reserve component, a low income person or a person operating the business in a rural area
40 of this state; and

41 (e) Outreach conducted by the lender to rural and underserved communities.

42 (4) The department may require any lender to include in the report financial information
43 that is identifiable with, or from, the financial records of a borrower.

44 **SECTION 6. Release; repayment.** (1)(a) A lender shall be released from any obligation
45 under a written agreement entered into under section 4 of this 2021 Act, and may use for

1 any purpose whatever any balance in the lender's loan loss reserve account, if the lender has:

2 (A) Performed under the written agreement entered into with the Oregon Business De-
3 velopment Department for at least 10 years;

4 (B) Attained during the 10-year period, as required under section 4 (3) of this 2021 Act,
5 a ratio of four-to-one of total principal amount of qualified loans made by the lender to the
6 amount of moneys awarded to the lender under section 3 of this 2021 Act; and

7 (C) Complied with the annual reporting requirements under section 5 of this 2021 Act.

8 (b) A release under this section does not absolve a lender of any contractual obligations
9 owed to a qualified borrower under a qualified loan agreement.

10 (2) A lender shall repay to the department for deposit in the General Fund the balance
11 of moneys awarded to the lender under section 3 of this 2021 Act in the lender's loan loss
12 reserve account if the department determines that:

13 (a) The lender has not made a qualified loan for 24 consecutive months;

14 (b) The lender has become insolvent or has ceased lending operations in Oregon;

15 (c) The lender has failed to perform in any material way under the written agreement
16 entered into with the department pursuant to section 4 of this 2021 Act;

17 (d) The lender made material misrepresentations in the RFP submitted under section 3
18 of this 2021 Act or in an annual report required under section 5 of this 2021 Act; or

19 (e) The lender or the lender's loan loss reserve account portfolio has been sold, trans-
20 ferred or assigned, in whole or part.

21 **SECTION 7. Biennial report by the Oregon Business Development Department.** On or
22 before September 15 of each even-numbered year, the Oregon Business Development De-
23 partment shall submit, in the manner required under ORS 192.245, to the interim committees
24 of the Legislative Assembly related to economic development, a report that sets forth the
25 following information:

26 (1) The number and total dollar amount of RFPs received under section 3 of this 2021
27 Act;

28 (2) The number of awards and the amount of moneys awarded under section 3 of this 2021
29 Act;

30 (3) Information described in section 3 (2)(b) of this 2021 Act from the approved proposals;

31 (4) Aggregated lender and qualified borrower data, including demographic data reported
32 by lenders under section 5 (3)(d) of this 2021 Act;

33 (5) The aggregate performance of qualified loans;

34 (6) The average interest rate, term and amount of qualified loans;

35 (7) The cities and counties in which qualified borrowers use the qualified loan proceeds;
36 and

37 (8) Any other information the department considers necessary or useful to include in the
38 report.

39 **SECTION 8. Appropriation.** There is appropriated to the Oregon Business Development
40 Department, for the biennium beginning July 1, 2021, out of the General Fund, the amount
41 of \$10,000,000, for the purpose of implementing sections 1 to 7 of this 2021 Act.

42 **SECTION 9. Program evaluation; recommendations.** (1) Not later than September 15,
43 2029, the interim committees of the Legislative Assembly related to economic development
44 shall evaluate the effectiveness of the lenders' loan loss reserve account program established
45 under sections 1 to 7 of this 2021 Act and develop recommendations for legislation, including

1 appropriations.

2 (2) In making the evaluation under subsection (1) of this section, the interim committees
3 shall:

4 (a) Consult with the Oregon Business Development Department and with lenders that
5 have entered into written agreements with the department under section 4 of this 2021 Act
6 and made qualified loans and with any other persons the interim committees consider nec-
7 essary or useful; and

8 (b) Consider the biennial reports submitted by the department under section 7 of this
9 2021 Act and any other information the interim committees consider necessary or useful.

10 **SECTION 10. Section captions.** The section captions used in this 2021 Act are provided
11 only for the convenience of the reader and do not become part of the statutory law of this
12 state or express any legislative intent in the enactment of this 2021 Act.

13 **SECTION 11. As used in sections 11 to 15 of this 2021 Act:**

14 (1) "Eligible business" means one of the following businesses as defined in ORS 200.005
15 that is operated for profit and has been certified by the Certification Office for Business
16 Inclusion and Diversity under ORS 200.055 at the time an application is referred on behalf
17 of the business to the Oregon Business Development Department under section 13 of this
18 2021 Act:

- 19 (a) A disadvantaged business enterprise;
- 20 (b) A minority-owned business;
- 21 (c) A woman-owned business;
- 22 (d) A business that a service-disabled veteran owns; or
- 23 (e) An emerging small business.

24 (2) "Prime rate" means the primary credit rate of the discount window program of the
25 United States Federal Reserve System.

26 (3) "Technical assistance provider" means a small business development center estab-
27 lished under ORS 285B.165 to 285B.171 or a culturally specific business association or cham-
28 ber that provides one-on-one business counseling services.

29 **SECTION 12.** (1) The Oregon Business Development Department shall develop and im-
30 plement a program to make loans to eligible businesses.

31 (2) Loans made under the program may be for the following amounts:

- 32 (a) For eligible businesses that have operated for less than two years, up to \$100,000.
- 33 (b) For eligible businesses that have operated for two years or more, up to \$250,000.

34 (3)(a) The term of a loan may not exceed 10 years.

35 (b)(A) Interest on a loan shall be charged at the prime rate plus two percent.

36 (B) Notwithstanding subparagraph (A) of this paragraph, the rate of interest may be in-
37 creased for risk based on the loan-to-value ratio.

38 (c) Loans shall be subject to business underwriting standards used in secondary markets.

39 (d) To the extent possible, loans must be secured by business and personal assets.

40 (e) Loans shall require standard commercial loan documentation, including reasonable
41 provisions related to default that the department may adopt by rule.

42 (4) An eligible business may use the proceeds of a loan made pursuant to this section for
43 equipment, inventory, fixtures and working capital or other business-related expenses other
44 than capital costs.

45 **SECTION 13.** (1) The Oregon Business Development Department shall prescribe the form

1 and manner in which the owner of an eligible business may apply for a loan under the loan
2 program developed and implemented under section 12 of this 2021 Act.

3 (2) The application must, at a minimum, require the inclusion of:

4 (a) Documentation showing that the business for which application is made is an eligible
5 business;

6 (b) A nonrefundable application fee of \$200; and

7 (c) Any other information or documentation the department requires.

8 (3)(a) The owner of an eligible business interested in applying for a loan under the loan
9 program must seek assistance from a technical assistance provider.

10 (b) The technical assistance must include a review of the application form and associated
11 documents and other materials for completeness and accuracy.

12 (4)(a) If a technical assistance provider determines in its sole discretion that the appli-
13 cation of an eligible business is complete and accurate and deserves consideration by the
14 department, the provider shall refer the application to the department.

15 (b) If a technical assistance provider refers an application under this section that is ap-
16 proved by the department, the department shall request periodic reports from the provider
17 on the status of the eligible business after receipt of the loan proceeds.

18 (c) If a technical assistance provider determines that an application is not complete or
19 accurate or does not deserve to be referred to the department for consideration in its pres-
20 ent form, the technical assistance provider may, in its sole discretion, work with the owner
21 of the eligible business to amend the application and application materials.

22 (d) The refusal of a technical assistance provider to refer an application to the depart-
23 ment under this section does not give rise to a cause of action of any kind.

24 (5)(a) After receiving an application referred under this section, the department shall
25 either approve or reject the application and notify the applicant and the technical assistance
26 provider that worked with the applicant of the decision.

27 (b)(A) Rejection of the application by the department may be appealed through a process
28 adopted by the department by rule.

29 (B) The owner of an eligible business whose application has been finally rejected with no
30 further right of appeal may contact a technical assistance provider to begin a new application
31 process at any time.

32 (c) If the department approves the application, the department shall offer a loan agree-
33 ment to the eligible business on terms that do not conflict with sections 11 to 15 of this 2021
34 Act.

35 (6) Upon execution of a loan agreement offered pursuant to subsection (5)(c) of this sec-
36 tion:

37 (a) All third-party expenses that are necessary to close the loan shall be paid:

38 (A) By the eligible business; or

39 (B) At the sole discretion of the department, out of the loan proceeds.

40 (b) Upon payment of third-party expenses under paragraph (a) of this subsection, the
41 department shall pay the balance of the loan proceeds to the eligible business out of funds
42 in the Disadvantaged and Emerging Small Business Loan Fund established under section 14
43 of this 2021 Act.

44 **SECTION 14.** (1) There is established in the State Treasury, separate and distinct from
45 the General Fund, the Disadvantaged and Emerging Small Business Loan Fund. All moneys

1 in the fund are continuously appropriated to the Oregon Business Development Department
2 for the purposes of:

3 (a) Paying the actual costs of the department in administering the loan program devel-
4 oped and implemented under sections 11 to 15 of this 2021 Act; and

5 (b) Making loans under the loan program developed and implemented under sections 11
6 to 15 of this 2021 Act.

7 (2) The Disadvantaged and Emerging Small Business Loan Fund shall consist of:

8 (a) Moneys appropriated or otherwise allocated or transferred to the fund by the Legis-
9 lative Assembly;

10 (b) Interest earned on moneys in the fund;

11 (c) Moneys received as repayment of principal and interest on loans made from the fund
12 under sections 11 to 15 of this 2021 Act; and

13 (d) Moneys or property of any kind received by the department for deposit in the fund
14 from any source.

15 **SECTION 15.** (1) On or before September 15 of each year, the Oregon Business Develop-
16 ment Department shall submit, in the manner provided in ORS 192.245, to the interim legis-
17 lative committees related to economic development, a report containing the following
18 information about the loan program developed and implemented under sections 11 to 15 of
19 this 2021 Act:

20 (a) The number of loans made;

21 (b) The amounts of the loans made;

22 (c) Demographic information about the eligible businesses that received loans that is
23 voluntarily given to the department;

24 (d) The number of referrals from technical assistance providers under section 13 of this
25 2021 Act;

26 (e) The number of loan applications that were rejected and the reasons for the rejections;

27 (f) Demographic information about the eligible businesses whose applications were re-
28 jected that is voluntarily given to the department; and

29 (g) Any other information the department considers significant in evaluating the loan
30 program.

31 (2) The report may include information from periodic reports provided to the department
32 by technical assistance providers under section 13 (4)(b) of this 2021 Act.

33 **SECTION 16.** There is appropriated to the Oregon Business Development Department, for
34 the biennium beginning July 1, 2021, out of the General Fund, the amount of \$10 million for
35 deposit in the Disadvantaged and Emerging Small Business Loan Fund established in section
36 14 of this 2021 Act, for the purpose of carrying out the provisions of sections 11 to 15 of this
37 2021 Act.

38 **SECTION 17.** This 2021 Act being necessary for the immediate preservation of the public
39 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
40 on its passage.