

House Bill 2563

Sponsored by Representative MEEK; Representative SMITH WARNER, Senator DEMBROW (Presession 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 **as introduced**.

Creates program through which certain lenders may receive award moneys to fund accounts out of which lenders may reimburse themselves for losses on certain loans to business owners and entrepreneurs who currently lack access to capital. Authorizes Oregon Business Development Department to offer award moneys to lenders after competitive RFP process. Requires lenders accepting awards to enter into written agreements with department and specifies certain terms of agreements. Requires annual reports from lenders and department setting forth certain information about loan loss reserve account program experience. Sets forth circumstances in which lender may use for any purpose, or be required to repay, balance of award moneys. Requires interim committees of Legislative Assembly related to economic development to evaluate effectiveness of lender loan loss reserve account program not later than September 15, 2023. Appropriates moneys to department for purposes of lender loan loss reserve account 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

1
2 Relating to assisting businesses to gain access to capital; and declaring an emergency.

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

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

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

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

13 (2) **"Qualified business" or "qualified borrower" means a person that:**

14 (a)(A) **Operates a business in Oregon; or**

15 (B) **Attests to a qualified lender that the person will use proceeds from a qualified loan**
16 **to establish a business in Oregon; and**

17 (b) **Enters into a qualified loan agreement with a lender awarded moneys under section**
18 **3 of this 2021 Act.**

19 (3) **"Qualified lender" means a lender that:**

20 (a)(A) **Is certified as a community development financial institution by the Community**
21 **Development Financial Institutions Fund at the United States Department of the Treasury;**

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 (B) Is a nonprofit corporation as defined in ORS 307.130; or

2 (C) Is affiliated with:

3 (i) An economic development district in Oregon designated by the Economic Development
4 Administration of the United States Department of Commerce; or

5 (ii) A local government as defined in ORS 174.116; and

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

7 (4)(a) "Qualified loan" means a loan made by a lender to a qualified business the losses
8 from which are reimbursable from moneys in the lender's loan loss reserve account.

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

10 (A) With a variable interest rate.

11 (B) With an annual interest rate that exceeds the prime rate plus eight percent with an
12 origination fee that exceeds three percent.

13 (C) For working capital, including lines of credit, for a term exceeding seven years.

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

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

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

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

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

23 (5) "RFP" means a request for proposal.

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

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

27 (b) The awards shall be made, through a competitive RFP process administered by the
28 department, not later than 180 days following the effective date of this 2021 Act.

29 (c) Of the moneys awarded as a result of any RFP process, not more than 10 percent of
30 available funds, or \$500,000, whichever is greater, may be awarded to any single lender.

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

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

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

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

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

41 (e) The extent to which the lender:

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

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

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

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

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

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

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

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

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

16 (a) Provide for the creation of a loan loss reserve account by the lender for the deposit
17 of moneys awarded under section 3 of this 2021 Act out of which the lender may reimburse
18 itself for losses incurred due to defaults on qualified loans;

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

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

24 (d) Provide that, upon default on a qualified loan, the lender shall require the qualified
25 borrower to liquidate the borrower's assets for the benefit of the lender before the lender
26 may reimburse itself from the lender's loan loss reserve account;

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

30 (f) Require the lender to file an annual report in accordance with section 5 of this 2021
31 Act.

32 (3) Qualified lenders that accept awards under section 3 of this 2021 Act shall, within 48
33 months following the date on which the written agreement entered into pursuant to sub-
34 section (1) of this section becomes binding, originate qualified loans with a total principal
35 amount equal to at least four times the amount of the moneys awarded.

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

42 (2) With respect to qualified loans made by the lender, the report shall set forth:

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

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

45 (A) The interest rate;

- 1 **(B) The term of the qualified loan; and**
2 **(C) If made to finance a capital asset, the term of amortization of the capital asset fi-**
3 **nanced;**
4 **(c) The principal amount loaned to qualified borrowers;**
5 **(d) The ratio of the total principal amount of qualified loans made by the lender to the**
6 **moneys awarded to the lender under section 3 of this 2021 Act;**
7 **(e) The number of qualified loans that have been delinquent for at least 60 days as of the**
8 **end of the reporting period;**
9 **(f) The amount of moneys withdrawn from the lender's loan loss reserve account to re-**
10 **imburse the lender for losses incurred on qualified loans; and**
11 **(g) The amount of award moneys available in the lender's loan loss reserve account.**
12 **(3) With respect to qualified borrowers, the report shall set forth:**
13 **(a) The businesses that qualified borrowers conduct in this state;**
14 **(b) The cities and counties in which qualified borrowers use the qualified loan proceeds;**
15 **(c) The number of individuals employed by the qualified businesses;**
16 **(d) Demographic data voluntarily reported by qualified borrowers, including, but not**
17 **limited to, whether a qualified business is owned by a woman, a minority individual, a vet-**
18 **eran of any branch of the Armed Forces of the United States, the National Guard or other**
19 **reserve component, a low income person or a person operating the business in a rural area**
20 **of this state; and**
21 **(e) Outreach conducted by the lender to rural and underserved communities.**
22 **(4) The department may require any lender to include in the report financial information**
23 **that is identifiable with, or from, the financial records of a borrower.**
24 **SECTION 6. Release; repayment. (1)(a) A lender shall be released from any obligation**
25 **under a written agreement entered into under section 4 of this 2021 Act, and may use for**
26 **any purpose whatever any balance in the lender's loan loss reserve account, if the lender has:**
27 **(A) Performed under the written agreement entered into with the Oregon Business De-**
28 **velopment Department for at least four years;**
29 **(B) Attained during the four-year period, as required under section 4 (3) of this 2021 Act,**
30 **a ratio of four to one of total principal amount of qualified loans made by the lender to the**
31 **amount of moneys awarded to the lender under section 3 of this 2021 Act; and**
32 **(C) Complied with the annual reporting requirements under section 5 of this 2021 Act.**
33 **(b) A release under this section does not absolve a lender of any contractual obligations**
34 **owed to a qualified borrower under a qualified loan agreement.**
35 **(2) A lender shall repay to the department for deposit in the General Fund the balance**
36 **of moneys awarded to the lender under section 3 of this 2021 Act in the lender's loan loss**
37 **reserve account if the department determines that:**
38 **(a) The lender has not made a qualified loan for 24 consecutive months;**
39 **(b) The lender has become insolvent or has ceased lending operations in Oregon;**
40 **(c) The lender has failed to perform in any material way under the written agreement**
41 **with the department;**
42 **(d) The lender made material misrepresentations in the proposal submitted under section**
43 **3 of this 2021 Act or in an annual report required under section 5 of this 2021 Act;**
44 **(e) The lender has sold, transferred or assigned the loan loss reserve account; or**
45 **(f) The lender or the lender's loan loss reserve account portfolio has been sold, trans-**

ferred or assigned, in whole or part.

SECTION 7. Annual report by the Oregon Business Development Department. On or before September 15 of each year, the Oregon Business Development Department shall submit, in the manner required under ORS 192.245, to the interim committees of the Legislative Assembly related to economic development, a report that sets forth the following information:

(1) The number and total dollar amount of proposals for awards received under section 3 of this 2021 Act;

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

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

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

(5) The aggregate performance of qualified loans;

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

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

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

SECTION 8. Appropriation. There is appropriated to the Oregon Business Development Department, for the biennium beginning July 1, 2021, out of the General Fund, the amount of \$5,000,000, for the purpose of implementing sections 1 to 7 of this 2021 Act.

SECTION 9. Program evaluation; recommendations. (1) Not later than September 15, 2023, the interim committees of the Legislative Assembly related to economic development shall evaluate the effectiveness of the lender loan loss reserve account program established under sections 1 to 7 of this 2021 Act and develop recommendations for legislation, including appropriations.

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

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

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

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

SECTION 11. (1) There is allocated for the biennium beginning July 1, 2021, from the Administrative Services Economic Development Fund, to the Oregon Department of Administrative Services, the amount of \$250,000 for distribution to the Oregon Entrepreneurs Network in accordance with this section.

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

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

1 (b) Two group meetings of diverse Oregon entrepreneurial stakeholders to study
2 stakeholder needs. Moneys in the fund may also be used to make travel and time re-
3 imbursements to underrepresented entrepreneurs.

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

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

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

10 (f) To make recommendations for legislation to the interim committees of the Legislative
11 Assembly related to economic development.

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

17 SECTION 12. (1) There is allocated for the biennium beginning July 1, 2021, from the
18 Administrative Services Economic Development Fund, to the Oregon Business Development
19 Department, the amount of \$3 million for deposit in the Oregon Growth Fund established
20 under ORS 284.890.

21 (2) Notwithstanding ORS 284.890 (3), moneys deposited in the Oregon Growth Fund under
22 this section are continuously appropriated to the department for the use of the Oregon
23 Growth Board for the following purposes:

24 (a) To target entrepreneurs and emerging capital innovators;

25 (b) To support economic growth through investments in loan funds, venture capital
26 funds, angel conferences and associated technical assistance;

27 (c) To leverage private and other institutional dollars for investment in Oregon compa-
28 nies;

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

31 (e) To help funds fill the capital gaps encountered by Oregon businesses, especially in
32 underserved communities, rural areas and undersupported industry sectors.

33 (3) Moneys deposited in the Oregon Growth Fund under this section may not be used for
34 any other purpose for which moneys in the fund may be used under ORS 284.890, other than
35 administrative costs described in ORS 284.890 (5) that are directly related to this section.

36 SECTION 13. This 2021 Act being necessary for the immediate preservation of the public
37 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
38 on its passage.