

Enrolled Senate Bill 494

Sponsored by Senator BONAMICI, Representative DOHERTY; Senators BATES, BOQUIST, DEVLIN, DINGFELDER, EDWARDS, HASS, JOHNSON, MONNES ANDERSON, MONROE, MORSE, PROZANSKI, ROSENBAUM, STARR, VERGER, WINTERS, Representatives BARNHART, GREENLICK, HARKER, HUNT, NATHANSON (Presession filed.)

CHAPTER

AN ACT

Relating to loans for economic development; creating new provisions; amending ORS 285B.050, 285B.059, 285B.080, 285B.746 and 285B.749; repealing section 9, chapter 106, Oregon Laws 2010; and declaring an emergency.

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

SECTION 1. ORS 285B.050 is amended to read:

285B.050. As used in ORS 285B.050 to 285B.098, unless the context requires otherwise:

(1) "Applicant" means any county, municipality, person or any combination of counties, municipalities or persons applying for a loan from the Oregon Business Development Fund under ORS 285B.050 to 285B.098.

(2) "Business development project" means the acquisition, engineering, improvement, rehabilitation, construction, operation or maintenance of any property, real or personal, that is used or is suitable for use by an economic enterprise and that will result in, or will aid, promote or facilitate, development of one or more of the following activities:

- (a) Manufacturing or other industrial production;
- (b) Agricultural development or food processing;
- (c) Aquacultural development or seafood processing;
- (d) Development or improved utilization of natural resources;
- (e) Convention facilities and trade centers;
- (f) Transportation or freight facilities; and
- (g) Other activities that represent new technology or type of economic enterprise the Oregon Business Development Commission determines is needed to diversify the economic base of an area but not including:

- (A) Construction of office buildings, including corporate headquarters; and
- (B) Retail businesses, shopping centers or food service facilities.

(3) "Collateral" has the meaning given that term in ORS 79.0102 for property subject to a security interest.

(4) "County" means any county or federally recognized Oregon Indian tribe.

[(5) "Emerging small business" has the meaning given that term by ORS 200.005.]

[(6)] (5) "Local development group" means any public or private corporation that has as one of its primary purposes, as stated in its articles of incorporation, charter or bylaws, the promotion of economic development in any part of the State of Oregon.

[7] (6) "Municipality" means any city, municipal corporation or quasi-municipal corporation.

[8] (7) "Person" means any individual, association of individuals, joint venture, partnership, limited liability company or corporation.

SECTION 2. ORS 285B.059, as amended by sections 1 and 5, chapter 106, Oregon Laws 2010, 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 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,** [*Except when the applicant is a county or municipality or when there are payments other than the scheduled principal and interest payments,*] 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, [*not less than*] 15 percent of all moneys available for lending from the fund is reserved for loans to [*certified*] emerging small business enterprises **as defined by the Oregon Business Development Department by rule,** which are located in or draw their workforces from within distressed areas as determined by the Oregon Business Development Department in cooperation with the Employment Department of this state. [*Any amounts reserved for loans to such businesses that are not loaned in one fiscal year shall be added to the amount reserved for loans to such businesses in the subsequent fiscal year. If the Oregon*] **If the Oregon Business Development Department [is] 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)(g)(B), 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 and distressed areas during the previous fiscal year, to service and retail businesses operated by [emerging] small business enterprises that are located in or draw their workforces from within**

distressed areas as determined by the Oregon Business Development Department in cooperation with the Employment Department of this state. As used in this subsection, “rural area” and “distressed area” have the meaning given those terms in ORS 285A.010.

SECTION 3. ORS 285B.080, as amended by sections 2 and 6, chapter 106, Oregon Laws 2010, is amended to read:

285B.080. (1) The Oregon Business Development Commission may appoint the Director of the Oregon Business Development Department as the commission’s representative and agent in all matters pertaining to ORS 285B.050 to 285B.098.

(2) The director shall ensure that all provisions of ORS 285B.050 to 285B.098 are complied with and that appropriately trained personnel are employed to properly administer the fiscal and other portions of ORS 285B.050 to 285B.098.

(3) The director shall have the authority in the director’s sole discretion to approve loans for business development projects in the amount of **\$250,000** [*\$100,000*] or less and to disburse funds for such projects.

SECTION 4. ORS 285B.746, as amended by sections 3 and 7, chapter 106, Oregon Laws 2010, is amended to read:

285B.746. (1) The Oregon Business Development Department may approve a loan requested in an application filed under ORS 285B.743 if, after investigation, it finds that:

(a) The applicant is enrolled in a small business management program with a small business development center or certified entity;

(b) The applicant has prepared a business plan for the business, which has been reviewed by a small business development center or other entity certified by the department to review business plans; and

(c) The applicant is not effectively owned or controlled by another business entity or other person that, either by itself or when combined with the applicant, is not eligible for a loan under ORS 285B.740 to 285B.758.

(2) In addition to the requirements for loan approval described in subsection (1) of this section, in order to obtain a loan under ORS 285B.740 to 285B.758, an applicant must also satisfy **one** [*two*] of the following conditions:

[(a) The business or proposed business, at the time of application, must not have been operating for more than 36 months.]

[(b)] (a) The business must have annual revenues of **\$500,000 or less** [*less than \$175,000*] in the 12-month period immediately preceding the date of application.

[(c)] (b) The business or proposed business must be owned, in whole or in part, by a person certified as having a severe disability by the Department of Human Services or the Commission for the Blind.

SECTION 5. ORS 285B.749, as amended by sections 4 and 8, chapter 106, Oregon Laws 2010, is amended to read:

285B.749. (1) The Oregon Business Development Department may approve an entrepreneurial development loan under ORS 285B.740 to 285B.758 if, after investigation, it finds that:

(a) The loan has a reasonable prospect of repayment from cash flow and collateral and **is secured by good and sufficient collateral** [*that the loan is fully secured by collateral value*]; and

(b) The applicant provides equity funds for the project in the form of cash or property in an amount equal to or greater than 20 percent of the amount of the loan.

(2) The department shall determine the amount of the initial loan and any subsequent loan to the borrower. The maximum of all loans to a borrower from the Oregon Entrepreneurial Development Loan Fund may not exceed \$70,000.

(3) Entrepreneurial development loans shall be made for a period not exceeding five years at a rate of interest that does not exceed 18 percent per annum.

SECTION 6. Section 9, chapter 106, Oregon Laws 2010, is repealed.

SECTION 7. If this 2011 Act does not become effective until after July 1, 2011, the amendments to ORS 285B.059 (2) and (3), 285B.080, 285B.746 and 285B.749 by sections 2 to 5

of this 2011 Act are operative retroactively to that date and the operation and effect of ORS 285B.059 (2) and (3), 285B.080, 285B.746 and 285B.749 continue unaffected from July 1, 2011, to the effective date of this 2011 Act and thereafter. Any otherwise lawful action taken or otherwise lawful obligation incurred under the authority of the amendments to ORS 285B.059 (2) and (3), 285B.080, 285B.746 and 285B.749 by sections 2 to 5 of this 2011 Act after July 1, 2011, and before the effective date of this 2011 Act is ratified and approved.

SECTION 8. The amendments to ORS 285B.050 and 285B.059 (5) by sections 1 and 2 of this 2011 Act apply to loans to small business enterprises made on or after the effective date of this 2011 Act.

SECTION 9. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate June 8, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 16, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

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Kate Brown, Secretary of State