

A-Engrossed
House Bill 4033

Ordered by the House February 24
Including House Amendments dated February 24

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Economic Development for Representative John Lively)

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.

[Establishes community lender loan loss account program, authorizing Oregon Business Development Department to enter into contracts with lenders pursuant to which department shall reimburse lenders from moneys in lenders' loan loss accounts for principal financial losses incurred due to default on qualified loans to small Oregon businesses.]

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 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 account program not later than September 15, 2022. Appropriates moneys to department for purposes of lender loan loss 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

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

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

SECTION 1. Purpose. It is the purpose of sections 1 to 7 of this 2020 Act that the State of Oregon shall make awards to qualified lending institutions to fund lenders' loan loss accounts for the purpose of increasing lending to business owners and entrepreneurs who currently lack access to capital to start or grow their businesses, including businesses owned by women, minorities, veterans of the Armed Forces of the United States, low income persons and persons operating businesses in rural areas of this state.

SECTION 2. Definitions. As used in sections 1 to 7 of this 2020 Act, unless the context requires otherwise:

(1) "Loan loss account" or "account" means an account created by a lender for the deposit of moneys awarded to the lender under section 3 of this 2020 Act out of which the lender may reimburse itself for losses incurred due to defaults on reimbursable loans.

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 (2) “Qualified business” or “qualified borrower” means a person that enters into a
2 reimbursable loan agreement with a lender awarded moneys under section 3 of this 2020 Act.

3 (3)(a) “Reimbursable loan” means a loan or portion of a loan made by a lender to a
4 qualified business the losses from which are reimbursable from moneys in the lender’s loan
5 loss account.

6 (b) “Reimbursable loan” does not mean a loan:

7 (A) With a variable interest rate.

8 (B) With an annual interest rate that exceeds the prime rate plus six percent.

9 (C) For working capital for a term exceeding five years.

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

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

13 (F) That includes, in whole or in part, the refinancing of an existing personal loan not
14 used for business purposes or that includes cash out to the borrower.

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

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

19 (4) “RFP” means a request for proposal.

20 SECTION 3. RFP process for awards to lenders; lender requirements; review committee;
21 approval criteria. (1)(a) The Oregon Business Development Department shall, in accordance
22 with this section, make awards to lenders to fund the lenders’ loan loss accounts.

23 (b) The awards shall be made through a competitive RFP process administered by the
24 department.

25 (c) Of the moneys awarded as a result of any RFP process:

26 (A) Not more than 10 percent may be awarded to any single lender.

27 (B) Not more than 40 percent may be awarded for use by qualified businesses within the
28 combined external boundaries of Multnomah, Washington and Clackamas Counties.

29 (2) A lender may submit a proposal for an award under this section only if the lender:

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

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

33 (C) Is affiliated with:

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

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

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

38 (c) Is not a financial institution as defined in ORS 706.008.

39 (3)(a) The department shall establish a committee to review proposals submitted pursu-
40 ant to this section.

41 (b) The committee may include the following members:

42 (A) Representatives of the financial services industry who are familiar with community
43 development financial institutions.

44 (B) Economic development professionals who have lending experience servicing rural or
45 underserved entrepreneurs.

1 (C) Representatives of federally recognized Indian tribes with lending experience.

2 (D) Any other persons who have knowledge or experience related to the purposes for
3 which awards are made under sections 1 to 7 of this 2020 Act.

4 (4) The committee established under subsection (3) of this section shall evaluate pro-
5 posals according to the following criteria:

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

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

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

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

15 (e) The extent to which the lender provides technical assistance and financial literacy
16 services to borrowers; and

17 (f) Any other criteria the department or committee considers necessary or useful for
18 evaluating a proposal.

19 (5)(a) After reviewing proposals submitted in response to an RFP, the committee shall
20 make recommendations to the department as to which lenders should receive an award and
21 in what amount.

22 (b) Upon receipt of the recommendations, the department may approve the recommen-
23 dations or consult with the committee for reconsideration.

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

27 **SECTION 4. Agreements with lenders; terms.** (1) The Oregon Business Development De-
28 partment shall enter into a written agreement with each lender that accepts an award of-
29 fered under section 3 of this 2020 Act.

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

31 (a) Provide for the creation of a loan loss account by the lender for the deposit of moneys
32 awarded under section 3 of this 2020 Act out of which the lender may reimburse itself for
33 losses incurred due to defaults on reimbursable loans;

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

37 (c) Require the lender to designate, when a loan is made, whether the loan or a portion
38 of the loan is a reimbursable loan;

39 (d) Require the lender to deposit to the credit of the lender's loan loss account any fees
40 directly related to the designation of the loan as a reimbursable loan that the lender receives
41 from a qualified borrower when the lender makes the reimbursable loan to the qualified
42 borrower;

43 (e) Provide that, upon default on a reimbursable loan, the lender shall require the quali-
44 fied borrower to liquidate the borrower's assets for the benefit of the lender before the
45 lender may reimburse itself from the lender's loan loss account;

1 (f) Provide that the liability of the State of Oregon and the department under the written
2 agreement is limited to the amount of moneys awarded and credited to the lender's loan loss
3 account; and

4 (g) Require the lender to file an annual report in accordance with section 5 of this 2020
5 Act.

6 **SECTION 5. Annual reporting by lenders.** (1) Not later than July 31 of each year, each
7 lender awarded moneys under section 3 of this 2020 Act shall, during the term of the written
8 agreement entered into under section 4 of this 2020 Act, provide a report to the Oregon
9 Business Development Department, on a form prescribed by the department, for the period
10 beginning on July 1 of the immediately preceding year and ending on June 30 of the current
11 year.

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

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

14 (b) For each reimbursable loan, the following information:

15 (A) The interest rate and whether the rate is fixed or variable;

16 (B) The term of the reimbursable loan; and

17 (C) If made to finance a capital asset, the term of amortization of the capital asset fi-
18 nanced;

19 (c) The principal amount loaned to qualified borrowers that the lender would not have
20 loaned but for the moneys awarded to the lender under section 3 of this 2020 Act;

21 (d) The ratio of the total principal amount of reimbursable loans made by the lender to
22 the moneys awarded to the lender under section 3 of this 2020 Act;

23 (e) The amount of moneys withdrawn from the lender's loan loss account to reimburse
24 the lender for losses incurred on reimbursable loans; and

25 (f) The amount of award moneys available in the lender's loan loss account.

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

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

28 (b) The cities and counties in which qualified borrowers use the reimbursable loan pro-
29 ceeds;

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

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

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

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

39 **SECTION 6. Release; repayment.** (1)(a) A lender shall be released from any obligation
40 under a written agreement entered into under section 4 of this 2020 Act, and may use for
41 any purpose whatever any balance in the lender's loan loss account, if the lender has:

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

44 (B) Attained during the 10-year period a ratio of total principal amount of reimbursable
45 loans made by the lender to moneys awarded to the lender under section 3 of this 2020 Act

1 of seven to one; and

2 (C) Complied with the annual reporting requirements under section 5 of this 2020 Act.

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

5 (2) A lender shall repay to the department for deposit in the General Fund the balance
6 of moneys awarded to the lender under section 3 of this 2020 Act in the lender's loan loss
7 account, exclusive of fees described in section 4 (2)(d) of this 2020 Act, if the department
8 determines that:

9 (a) The lender has not made a reimbursable loan for 24 consecutive months;

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

11 (c) The lender has failed to perform in any material way under the written agreement
12 with the department;

13 (d) The lender made material misrepresentations in the proposal submitted under section
14 3 of this 2020 Act or in an annual report required under section 5 of this 2020 Act;

15 (e) The lender has sold, transferred or assigned the loan loss account; or

16 (f) The lender or the lender's loan loss account portfolio has been sold, transferred or
17 assigned, in whole or part.

18 **SECTION 7. Annual report by the Oregon Business Development Department.** On or be-
19 fore September 15 of each year, the Oregon Business Development Department shall submit,
20 in the manner required under ORS 192.245, to the interim committees of the Legislative As-
21 sembly related to economic development, a report that sets forth the following information:

22 (1) The number and total dollar amount of proposals for awards received under section
23 3 of this 2020 Act;

24 (2) The number of awards and the amount of moneys awarded under section 3 of this 2020
25 Act;

26 (3) Information described in section 3 (4)(b) of this 2020 Act from the approved proposals;

27 (4) Aggregated lender and qualified borrower data, including demographic data reported
28 by lenders under section 5 (3)(d) of this 2020 Act;

29 (5) The aggregate performance of reimbursable loans;

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

31 (7) The cities and counties in which qualified borrowers use the reimbursable loan pro-
32 ceeds; and

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

35 **SECTION 8. Appropriation.** There is appropriated to the Oregon Business Development
36 Department, for the biennium ending June 30, 2021, out of the General Fund, the amount of
37 \$5,000,000, for the purpose of implementing sections 1 to 7 of this 2020 Act.

38 **SECTION 9. Program evaluation; recommendations.** (1) Not later than September 15,
39 2022, the interim committees of the Legislative Assembly related to economic development
40 shall evaluate the effectiveness of the lender loan loss account program established under
41 sections 1 to 7 of this 2020 Act and develop recommendations for legislation, including ap-
42 propriations.

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

45 (a) Consult with lenders that have entered into written agreements with the Oregon

1 **Business Development Department under section 4 of this 2020 Act and made reimbursable**
2 **loans and with any other persons the interim committees consider necessary or useful; and**

3 **(b) Consider the annual reports submitted by the department under section 7 of this 2020**
4 **Act and any other information the interim committees consider necessary or useful.**

5 **SECTION 10. Section captions. The section captions used in this 2020 Act are provided**
6 **only for the convenience of the reader and do not become part of the statutory law of this**
7 **state or express any legislative intent in the enactment of this 2020 Act.**

8 **SECTION 11. (1) There is allocated for the biennium ending June 30, 2021, from the Ad-**
9 **ministrative Services Economic Development Fund, to the Oregon Department of Adminis-**
10 **trative Services, the amount of \$250,000 for distribution to the Oregon Entrepreneurs**
11 **Network in accordance with this section.**

12 **(2) Distributions made pursuant to this section may be used by the Oregon Entrepre-**
13 **neurs Network solely for the following purposes:**

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

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

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

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

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

26 **(f) To make recommendations for legislation to the interim committees of the Legislative**
27 **Assembly related to economic development no later than November 30, 2020.**

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

33 **SECTION 12. (1) There is allocated for the biennium ending June 30, 2021, from the Ad-**
34 **ministrative Services Economic Development Fund, to the Oregon Business Development**
35 **Department, the amount of \$3 million for deposit in the Oregon Growth Fund established**
36 **under ORS 284.890.**

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

40 **(a) To target entrepreneurs and emerging capital innovators;**

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

43 **(c) To leverage private and other institutional dollars for investment in Oregon compa-**
44 **nies;**

45 **(d) To make investments in early stage, small and first-time capital sources to support**

1 **economic development; and**

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

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

7 **SECTION 13. This 2020 Act being necessary for the immediate preservation of the public**
8 **peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect**
9 **on its passage.**

10