

House Bill 4033

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 **as introduced**.

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. Appropriates moneys to department for purposes of 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 2020 Act to establish a**
5 **loan loss account program under which the State of Oregon will provide public fiscal re-**
6 **sources to assist Oregon lenders to overcome obstacles and constraints in meeting the full**
7 **range of economically sound financing needs of Oregon businesses.**

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

10 (1) **“Community lender loan loss account program” or “program” means the program**
11 **established under sections 1 to 7 of this 2020 Act.**

12 (2) **“Loan loss account” or “account” means an account in the State Treasury or any fi-**
13 **ancial institution, as defined by ORS 706.008, that is established and maintained by the**
14 **Oregon Business Development Department for the benefit of a lender participating in the**
15 **program.**

16 (3) **“Qualified business” or “borrower” means any person that, at the time of filing an**
17 **application pursuant to section 5 of this 2020 Act:**

18 (a) **Is authorized to conduct business in the State of Oregon;**

19 (b) **Is conducting business in Oregon for profit; and**

20 (c) **Has not more than 20 employees.**

21 (4)(a) **“Qualified loan” means a loan or portion of a loan made by a lender to a qualified**
22 **business for any business activity that has its primary economic effect in Oregon.**

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

24 (A) **For the purchase of owner-occupied residential housing or for the construction, im-**

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 **provement or purchase of residential housing owned or to be owned by the borrower.**

2 **(B) For purchase of real property that is not used for the business operations of the**
3 **borrower.**

4 **(C) That includes, in whole or in part, the refinancing of an existing loan made by the**
5 **lender to the borrower.**

6 **(D) That includes, in whole or in part, the refinancing of an existing personal loan not**
7 **used for business purposes or that provides cash out to the borrower.**

8 **(E) For working capital for a term exceeding five years.**

9 **(F) For fixed assets that exceeds the useful life of the assets as determined by the de-**
10 **partment.**

11 **(G) With a variable interest rate.**

12 **(H) With an annual interest rate that exceeds the prime rate plus five percent.**

13 **(I) That fails to meet criteria established by the department by rule.**

14 **SECTION 3. Contracts with lenders to participate in program; required contents; disclo-**
15 **sure of information.** (1)(a) **The Oregon Business Development Department may enter into a**
16 **contract with a lender for the purpose of allowing the lender to participate in the community**
17 **lender loan loss account program, if the lender:**

18 **(A) Is a government agency or a nonprofit corporation as defined in ORS 307.130;**

19 **(B) Is mission-driven;**

20 **(C) Has at least five years of physical presence and operations in Oregon; and**

21 **(D) Provides financial and technical assistance to small businesses, microenterprises and**
22 **start-up businesses.**

23 **(b) The department shall adopt a definition of “mission-driven” for purposes of this sub-**
24 **section.**

25 **(2) A contract between the department and a lender entered into pursuant to this section**
26 **must:**

27 **(a) Provide for the creation of a loan loss account by the department for the benefit of**
28 **the lender;**

29 **(b) Require the qualified business and the department to deposit moneys to the credit of**
30 **the lender’s loan loss account when the lender makes a qualified loan to a qualified business;**

31 **(c) Require the department, in accordance with section 6 of this 2020 Act, to reimburse**
32 **the lender, from moneys in the lender’s loan loss account, in an amount not greater than**
33 **the total amount credited to the account, for any principal financial loss incurred by the**
34 **lender as a result of a qualified loan made in accordance with section 5 of this 2020 Act;**

35 **(d) Provide that the liability of the State of Oregon and the department under the con-**
36 **tract is limited to the amount of money credited to the lender’s loan loss account;**

37 **(e) Require the lender to provide such information as the department may require, in-**
38 **cluding financial information that is identifiable with, or identifiable from, the financial re-**
39 **records of a particular borrower in a qualified loan transaction;**

40 **(f) Require the lender to provide annual reports to the department, in a form prescribed**
41 **by the department, setting forth:**

42 **(A) Data relating to the lender’s loan activity in Oregon;**

43 **(B) Voluntarily reported demographic data for all approved, declined and withdrawn**
44 **loans;**

45 **(C) The lender’s financial statements and tax filings; and**

1 (D) Other information that the department may require;

2 (g) Authorize the department, at its sole discretion, to terminate and bar any lender from
3 future participation in the program if the department finds that the lender has made mate-
4 rial misrepresentations regarding the lender's enrolled loans, claims or reports; and

5 (h) Include such other terms as the department may require.

6 **SECTION 4. Loan loss accounts; policies; rules; moneys as property of state.** (1) The
7 Oregon Business Development Department shall establish a loan loss account for each lender
8 with which the department enters into a contract pursuant to section 3 of this 2020 Act.

9 (2) A lender's loan loss account shall consist of moneys paid as fees by borrowers under
10 the community lender loan loss account program and moneys transferred to the account
11 from the Community Lender Loan Loss Account Fund established under section 7 of this
12 2020 Act.

13 (3) Notwithstanding ORS chapter 293 or 295, the department may establish and maintain
14 loan loss accounts with any financial institution, as defined under ORS 706.008, according to
15 such policies as the department may adopt.

16 (4) All moneys in a loan loss account established under sections 1 to 7 of this 2020 Act
17 are the property of the State of Oregon.

18 (5) The cumulative balance of the loan loss account for any lender, or an affiliate of the
19 lender, may not exceed the lesser of \$1 million or:

20 (a) If the account has more than \$100,000, 50 percent of the current net receivables of
21 the lender's loans enrolled in the program.

22 (b) If the account has less than \$100,000, 100 percent of the current net receivables of the
23 lender's loans enrolled in the program, unless the lender has a plan, approved by the de-
24 partment, to improve program utilization.

25 (6) Any balance due to the department as a result of subsection (5) of this section shall
26 be paid in full and shall accompany the annual report required under section 3 (2)(f) of this
27 2020 Act.

28 (7) Loan loss accounts that remain dormant for more than 12 months shall be terminated
29 unless termination is waived in writing by the department.

30 (8)(a) Loan loss accounts may not be sold, transferred or assigned.

31 (b) If a lender or the lender's loan loss reserve portfolio is sold, transferred or assigned,
32 in whole or part, the contract entered into under section 3 of this 2020 Act shall be termi-
33 nated and all moneys remaining in the lender's loan loss account shall be repaid in full to
34 the Community Lender Loan Loss Account Fund.

35 **SECTION 5. Enrollment of qualified loan in program; notice to department; fees; trans-**
36 **fers to loan loss accounts; rules and limits for loans.** (1)(a) A lender intending to enroll a
37 qualified loan in the community lender loan loss account program must apply to the Oregon
38 Business Development Department no less than seven business days before making the
39 qualified loan. The department, in its sole discretion, may waive the seven-day period.

40 (b) The application required under this section shall be in writing on a form prescribed
41 and approved by the department.

42 (2)(a) A qualified loan may not be enrolled in the program unless the lender has collected
43 from the borrower to which the loan is made a fee in an amount equal to three percent of
44 the principal amount of the loan. The borrower may pay the fee out of the loan proceeds.

45 (b) Upon receipt of the fee, the lender shall deposit the fee in the lender's loan loss ac-

1 count.

2 (c) The lender shall deliver receipt of fees collected and deposited in the lender's loan loss
3 account to the department.

4 (3)(a) The Oregon Business Development Department may adopt rules providing for a
5 double match for qualified loans to qualified businesses that are:

6 (A) Located in distressed areas;

7 (B) Located in rural areas; or

8 (C) Owned 51 percent or more by one or more individuals who are:

9 (i) Socially and economically disadvantaged, as defined under 49 C.F.R. 26.5;

10 (ii) Veterans of the Armed Forces of the United States, or the National Guard or other
11 reserve component, who have been discharged other than dishonorably; or

12 (iii) Individuals with disabilities, as certified by the Commission for the Blind or the De-
13 partment of Human Services.

14 (b) The Oregon Business Development Department shall adopt definitions of "distressed
15 areas" and "rural areas" for purposes of this subsection.

16 (4)(a) As soon as practicable after delivery of the receipt and deposit of fees required
17 under subsection (2) of this section, the Oregon Business Development Department shall
18 transfer a matching amount not less than the total fees paid by the borrower from the
19 Community Lender Loan Loss Account Fund established under section 7 of this 2020 Act to
20 the lender's loan loss account.

21 (b) The Oregon Business Development Department may not transfer a matching amount
22 under this subsection that is greater than \$7,500 per enrolled loan or \$15,000 if the qualified
23 loan is eligible for a double match under subsection (3) of this section.

24 (c) The maximum matching amount paid with respect to any single loan made to a
25 qualified business, and an associated concurrent loan made to a related business interest,
26 may not exceed \$15,000.

27 SECTION 6. Claims for reimbursement of losses; reimbursable costs; repayment to loan
28 loss account. (1) The Oregon Business Development Department shall establish procedures
29 pursuant to which lenders participating in the community lender loan loss account program
30 may submit claims for reimbursement for losses incurred as a result of qualified loan de-
31 faults.

32 (2) A lender may submit a claim under this section for reimbursement of qualified loan
33 losses if the lender demonstrates to the satisfaction of the department that:

34 (a) The lender has made all reasonable efforts to collect the outstanding amounts; and

35 (b) The outstanding amounts and any interest and penalties on the amounts are un-
36 collectible.

37 (3) A lender may not be reimbursed from the lender's loan loss account in an amount
38 that exceeds the qualified loan principal outstanding at the time of a borrower's default on
39 a qualified loan.

40 (4) If a lender that has been reimbursed under this section recovers any moneys from
41 the borrower that defaulted on a qualified loan, or from the liquidation of other assets of the
42 borrower, the lender shall repay the lender's loan loss account for any moneys the lender
43 received as reimbursement with respect to the qualified loan.

44 SECTION 7. Community Lender Loan Loss Account Fund; investment; retrieval of in-
45 terest; administrative expenses. (1) There is established in the State Treasury, separate and

1 distinct from the General Fund, the Community Lender Loan Loss Account Fund. All moneys
2 in the fund are continuously appropriated to the Oregon Business Development Department
3 for the purpose of making payments to loan loss accounts in accordance with sections 1 to
4 7 of this 2020 Act.

5 (2) With the approval of the State Treasurer, moneys in the fund may be invested as
6 provided by ORS 293.701 to 293.857 and the earnings from such investment shall be credited
7 to the fund.

8 (3) The Community Lender Loan Loss Account Fund shall consist of:

9 (a) Moneys appropriated to the fund by the Legislative Assembly.

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

11 (c) Moneys returned to the fund from loan loss accounts or other sources.

12 (d) Moneys from any grant or award made to the fund by any federal agency.

13 (4) If the department deems the transfer of interest earned on loan loss accounts ap-
14 propriate, the department may deposit the interest in the fund.

15 (5) The department may charge administrative costs to the fund to pay for necessary
16 administrative expenses actually incurred by the department in administering the fund and
17 establishing and maintaining loan loss accounts.

18 **SECTION 8.** (1) Sections 1 to 7 of this 2020 Act become operative on January 1, 2021.

19 (2) The Oregon Business Development Department may take any action before the oper-
20 ative date specified in subsection (1) of this section that is necessary for the department to
21 exercise, on and after the operative date specified in subsection (1) of this section, all of the
22 duties, functions and powers conferred on the department by sections 1 to 7 of this 2020 Act.

23 **SECTION 9.** There is appropriated to the Oregon Business Development Department, for
24 the biennium ending June 30, 2021, out of the General Fund, the amount of \$5 million, for
25 deposit in the Community Lender Loan Loss Account Fund established under section 7 of
26 this 2020 Act, to be used for any purpose for which moneys in the fund may be used.

27 **SECTION 10.** The section captions used in sections 1 to 7 of this 2020 Act are provided
28 only for the convenience of the reader and do not become part of the statutory law of this
29 state or express any legislative intent in the enactment of this 2020 Act.

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

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

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

39 (b) Two group meetings of diverse Oregon entrepreneurial stakeholders, convened during
40 the twelve-month period beginning July 1, 2020, to study stakeholder needs. Moneys in the
41 fund may also be used to make travel and time reimbursements to underrepresented entre-
42 preneurs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 _____