

HB 2266-3
(LC 2423)
4/2/21 (ASD/ps)

Requested by Representative LIVELY (at the request of Governor Kate Brown for Office of the Governor)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2266**

1 On page 1 of the printed bill, line 2, before the period insert “; and de-
2 claring an emergency”.

3 After line 2, insert:

4 “Whereas Oregonians are committed to dismantling historic systemic
5 barriers and investing in our economy and our people and future generations
6 as it relates to accessible capital for all communities of color and under-
7 served businesses; and

8 “Whereas it is the intention of this legislation to begin to bridge the gap
9 of the economic inequities in historically underserved and marginalized
10 communities; and

11 “Whereas Oregon’s small businesses are the backbone of our economy,
12 which includes many Black, Indigenous, Latino, Latina, Latinx, Asian,
13 Pacific Islander, Native American and tribal communities throughout the
14 state; and

15 “Whereas the Racial Justice Council’s priority is to promote economic
16 development and empowerment through grounding racial justice and provid-
17 ing access to capital specifically for minority-owned businesses and under-
18 served entrepreneurs that will result in building equitable access to capital
19 and reduce barriers of collateral requirements in efforts to enable mobility
20 and opportunity towards a safe, secure and resilient quality of life in Oregon;
21 now, therefore,”.

1 Delete lines 4 through 9 and insert:

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

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

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

13 **“(2) ‘Prime rate’ means the primary credit rate of the discount**
14 **window program of the United States Federal Reserve System.**

15 **“(3) ‘Qualified business’ or ‘qualified borrower’ means a person**
16 **that:**

17 **“(a) Operates a business in Oregon; or**

18 **“(b) Attests to a qualified lender that the person will use proceeds**
19 **from a qualified loan to establish a business in Oregon.**

20 **“(4) ‘Qualified lender’ means a lender that:**

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

24 **“(b) Is a nonprofit corporation as defined in ORS 307.130;**

25 **“(c) Is an economic development district in Oregon designated by**
26 **the Economic Development Administration of the United States De-**
27 **partment of Commerce;**

28 **“(d) Is affiliated with a local government as defined in ORS 174.116;**
29 **and**

30 **“(e) Has a physical presence in Oregon and at least five years of**

1 **lending experience.**

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

6 **“(b) ‘Qualified loan’ does not mean a loan:**

7 **“(A) With a variable interest rate.**

8 **“(B) With an origination fee that exceeds 1.5 percent, and with an**
9 **annual interest rate that exceeds the lesser of 18 percent or the prime**
10 **rate plus 7 percent.**

11 **“(C) For working capital for a term exceeding seven years.**

12 **“(D) For capital assets for a term exceeding the useful life of the**
13 **assets.**

14 **“(E) That includes, in whole or in part, the refinancing of an ex-**
15 **isting loan made by the lender to the borrower.**

16 **“(F) That includes, in whole or in part, the refinancing of an ex-**
17 **isting personal loan not used for business purposes.**

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

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

23 **“(6) ‘RFP’ means a request for proposal.**

24 **“SECTION 3. RFP process for awards to lenders; lender require-**
25 **ments; approval criteria. (1)(a) The Oregon Business Development**
26 **Department shall, in accordance with this section, make awards to**
27 **lenders to fund the lenders’ loan loss reserve accounts.**

28 **“(b) The awards shall be made, through a competitive RFP process**
29 **administered by the department.**

30 **“(c) Of the moneys awarded as a result of any RFP process, not**

1 more than 10 percent of available funds may be awarded to any single
2 lender.

3 “(2) The department shall evaluate proposals according to the fol-
4 lowing criteria:

5 “(a) The number and value of loans closed by the lender during the
6 five-year period immediately preceding the date of submission of the
7 lender’s proposal;

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

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

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

16 “(e) The extent to which the lender:

17 “(A) Provides technical assistance and financial literacy services to
18 underserved borrowers; or

19 “(B) Partners with providers of technical assistance and financial
20 literacy services to underserved borrowers;

21 “(f) How the lender’s proposed outreach, application process,
22 underwriting criteria and loan terms are designed to reduce historic
23 barriers to borrowers’ access to loan capital;

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

27 “(h) Any other criteria the department considers necessary or use-
28 ful for evaluating a proposal.

29 “(3)(a) After reviewing proposals submitted in response to an RFP,
30 the department shall reject or accept proposals and determine the

1 amount awarded for each accepted proposal.

2 “(b) As soon as practicable after the awards are finalized, the de-
3 partment shall notify the lenders that submitted proposals of the re-
4 sults and offer the awards to the lenders whose proposals are accepted.

5 “SECTION 4. Agreements with lenders; terms. (1) The Oregon
6 Business Development Department shall enter into a written agree-
7 ment with each lender that accepts an award offered under section 3
8 of this 2021 Act.

9 “(2) A written agreement entered into pursuant to this section
10 must:

11 “(a) Provide for the creation of a loan loss reserve account by the
12 lender for the deposit of moneys awarded under section 3 of this 2021
13 Act out of which the lender may be reimbursed for principal losses
14 incurred due to defaults on qualified loans;

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

19 “(c) Require the lender to designate, when a loan is made, whether
20 the loan is a qualified loan;

21 “(d) Provide that, upon default on a qualified loan, the lender shall,
22 subject to subsection (3) of this section, liquidate the borrower’s assets
23 and exhaust all lawful remedies for the benefit of the lender before the
24 lender may recover the outstanding principal balance of the loan from
25 the lender’s loan loss reserve account;

26 “(e) Provide that the liability of the State of Oregon and the de-
27 partment under the written agreement is limited to the amount of
28 moneys awarded and credited to the lender’s loan loss reserve account;
29 and

30 “(f) Require the lender to file an annual report in accordance with

1 section 5 of this 2021 Act.

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

5 “(A) Waive the lender’s obligations under subsection (2)(d) of this
6 section, if:

7 “(i) The original principal amount of the loan was not greater than
8 \$25,000; and

9 “(ii) The borrower had a personal net worth not greater than \$75,000
10 at both the time of application and the time of default; or

11 “(B) Approve assignment of the collection efforts under subsection
12 (2)(d) of this section to the Department of Revenue.

13 “(b) A lender that does not comply with subsection (2)(d) of this
14 section or paragraph (a) of this subsection shall be considered to have
15 breached the written agreement the lender entered into pursuant to
16 subsection (1) of this section. The department, at its sole discretion,
17 may take assignment of the loan and pursue collection efforts under
18 subsection (2)(d) of this section on behalf of the lender.

19 “(4) Qualified lenders that accept awards under section 3 of this 2021
20 Act shall, within 10 years following the date on which the written
21 agreement entered into pursuant to subsection (1) of this section be-
22 comes binding, originate qualified loans with a total principal amount
23 equal to at least four times the amount of the moneys awarded.

24 “SECTION 5. Annual reporting by lenders. (1) Not later than July
25 31 of each year, each lender awarded moneys under section 3 of this
26 2021 Act shall, during the term of the written agreement entered into
27 under section 4 of this 2021 Act, provide a report to the Oregon Busi-
28 ness Development Department, on a form prescribed by the depart-
29 ment, for the period beginning on July 1 of the immediately preceding
30 year and ending on June 30 of the current year.

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

3 **“(a) The number and total principal amount of all qualified loans**
4 **made by the lender;**

5 **“(b) For each qualified loan, the following information:**

6 **“(A) The term and amortization of the loan; and**

7 **“(B) The purpose of the loan;**

8 **“(c) The number of loans that were declined and the primary rea-**
9 **sons for declining them; and**

10 **“(d) Any other information required under rules adopted by the**
11 **department.**

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**
15 **qualified loan proceeds;**

16 **“(c) The number of individuals employed by the qualified busi-**
17 **nesses;**

18 **“(d) Demographic data voluntarily reported by qualified borrowers,**
19 **including, but not limited to, whether a qualified business is owned**
20 **by a woman, a minority individual, a veteran of any branch of the**
21 **Armed Forces of the United States, the National Guard or other re-**
22 **serve component, a low income person or a person operating the**
23 **business in a rural area of this state; and**

24 **“(e) Outreach conducted by the lender to rural and underserved**
25 **communities.**

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

29 **“SECTION 6. Release; repayment. (1)(a) A lender shall be released**
30 **from any obligation under a written agreement entered into under**

1 section 4 of this 2021 Act, and may use for any purpose whatever any
2 balance in the lender's loan loss reserve account, if the lender has:

3 "(A) Performed under the written agreement entered into with the
4 Oregon Business Development Department for at least 10 years;

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

9 "(C) Complied with the annual reporting requirements under sec-
10 tion 5 of this 2021 Act.

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

14 "(2) A lender shall repay to the department for deposit in the Gen-
15 eral Fund the balance of moneys awarded to the lender under section
16 3 of this 2021 Act in the lender's loan loss reserve account if the de-
17 partment determines that:

18 "(a) The lender has not made a qualified loan for 24 consecutive
19 months;

20 "(b) The lender has become insolvent or has ceased lending oper-
21 ations in Oregon;

22 "(c) The lender has failed to perform in any material way under the
23 written agreement entered into with the department pursuant to sec-
24 tion 4 of this 2021 Act;

25 "(d) The lender made material misrepresentations in the RFP sub-
26 mitted under section 3 of this 2021 Act or in an annual report required
27 under section 5 of this 2021 Act; or

28 "(e) The lender or the lender's loan loss reserve account portfolio
29 has been sold, transferred or assigned, in whole or part.

30 "SECTION 7. Biennial report by the Oregon Business Development

1 **Department. On or before September 15 of each even-numbered year,**
2 **the Oregon Business Development Department shall submit, in the**
3 **manner required under ORS 192.245, to the interim committees of the**
4 **Legislative Assembly related to economic development, a report that**
5 **sets forth the following information:**

6 **“(1) The number and total dollar amount of RFPs received under**
7 **section 3 of this 2021 Act;**

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

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

12 **“(4) Aggregated lender and qualified borrower data, including de-**
13 **mographic data reported by lenders under section 5 (3)(d) of this 2021**
14 **Act;**

15 **“(5) The aggregate performance of qualified loans;**

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

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

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

21 **“SECTION 8. Appropriation. There is appropriated to the Oregon**
22 **Business Development Department, for the biennium beginning July**
23 **1, 2021, out of the General Fund, the amount of \$10,000,000, for the**
24 **purpose of implementing sections 1 to 7 of this 2021 Act.**

25 **“SECTION 9. Program evaluation; recommendations. (1) Not later**
26 **than September 15, 2029, the interim committees of the Legislative**
27 **Assembly related to economic development shall evaluate the effec-**
28 **tiveness of the lenders’ loan loss reserve account program established**
29 **under sections 1 to 7 of this 2021 Act and develop recommendations for**
30 **legislation, including appropriations.**

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

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

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

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

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

16 **“(1) ‘Eligible business’ means one of the following businesses as**
17 **defined in ORS 200.005 that is operated for profit and has been certified**
18 **by the Certification Office for Business Inclusion and Diversity under**
19 **ORS 200.055 at the time an application is referred on behalf of the**
20 **business to the Oregon Business Development Department under sec-**
21 **tion 13 of this 2021 Act:**

22 **“(a) A disadvantaged business enterprise;**

23 **“(b) A minority-owned business;**

24 **“(c) A woman-owned business;**

25 **“(d) A business that a service-disabled veteran owns; or**

26 **“(e) An emerging small business.**

27 **“(2) ‘Prime rate’ means the primary credit rate of the discount**
28 **window program of the United States Federal Reserve System.**

29 **“(3) ‘Technical assistance provider’ means a small business devel-**
30 **opment center established under ORS 285B.165 to 285B.171 or a cul-**

1 turally specific business association or chamber that provides
2 one-on-one business counseling services.

3 **“SECTION 12. (1) The Oregon Business Development Department**
4 **shall develop and implement a program to make loans to eligible**
5 **businesses.**

6 **“(2) Loans made under the program may be for the following**
7 **amounts:**

8 **“(a) For eligible businesses that have operated for less than two**
9 **years, up to \$100,000.**

10 **“(b) For eligible businesses that have operated for two years or**
11 **more, up to \$250,000.**

12 **“(3)(a) The term of a loan may not exceed 10 years.**

13 **“(b)(A) Interest on a loan shall be charged at the prime rate plus**
14 **two percent.**

15 **“(B) Notwithstanding subparagraph (A) of this paragraph, the rate**
16 **of interest may be increased for risk based on the loan-to-value ratio.**

17 **“(c) Loans shall be subject to business underwriting standards used**
18 **in secondary markets.**

19 **“(d) To the extent possible, loans must be secured by business and**
20 **personal assets.**

21 **“(e) Loans shall require standard commercial loan documentation,**
22 **including reasonable provisions related to default that the department**
23 **may adopt by rule.**

24 **“(4) An eligible business may use the proceeds of a loan made pur-**
25 **suant to this section for equipment, inventory, fixtures and working**
26 **capital or other business-related expenses other than capital costs.**

27 **“SECTION 13. (1) The Oregon Business Development Department**
28 **shall prescribe the form and manner in which the owner of an eligible**
29 **business may apply for a loan under the loan program developed and**
30 **implemented under section 12 of this 2021 Act.**

1 **“(2) The application must, at a minimum, require the inclusion of:**

2 **“(a) Documentation showing that the business for which application**
3 **is made is an eligible business;**

4 **“(b) A nonrefundable application fee of \$200; and**

5 **“(c) Any other information or documentation the department re-**
6 **quires.**

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

10 **“(b) The technical assistance must include a review of the applica-**
11 **tion form and associated documents and other materials for com-**
12 **pleteness and accuracy.**

13 **“(4)(a) If a technical assistance provider determines in its sole dis-**
14 **cretion that the application of an eligible business is complete and**
15 **accurate and deserves consideration by the department, the provider**
16 **shall refer the application to the department.**

17 **“(b) If a technical assistance provider refers an application under**
18 **this section that is approved by the department, the department shall**
19 **request periodic reports from the provider on the status of the eligible**
20 **business after receipt of the loan proceeds.**

21 **“(c) If a technical assistance provider determines that an applica-**
22 **tion is not complete or accurate or does not deserve to be referred to**
23 **the department for consideration in its present form, the technical**
24 **assistance provider may, in its sole discretion, work with the owner**
25 **of the eligible business to amend the application and application ma-**
26 **terials.**

27 **“(d) The refusal of a technical assistance provider to refer an ap-**
28 **plication to the department under this section does not give rise to a**
29 **cause of action of any kind.**

30 **“(5)(a) After receiving an application referred under this section,**

1 the department shall either approve or reject the application and no-
2 tify the applicant and the technical assistance provider that worked
3 with the applicant of the decision.

4 “(b)(A) Rejection of the application by the department may be ap-
5 pealed through a process adopted by the department by rule.

6 “(B) Notwithstanding subparagraph (A) of this paragraph, the
7 owner of an eligible business whose application has been finally re-
8 jected with no further right of appeal may contact a technical assist-
9 ance provider to begin a new application process at any time.

10 “(c) If the department approves the application, the department
11 shall offer a loan agreement to the eligible business on terms that do
12 not conflict with sections 11 to 15 of this 2021 Act.

13 “(6) Upon execution of a loan agreement offered pursuant to sub-
14 section (5)(c) of this section:

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

17 “(A) By the eligible business; or

18 “(B) At the sole discretion of the department, out of the loan pro-
19 ceeds.

20 “(b) Upon payment of third-party expenses under paragraph (a) of
21 this subsection, the department shall pay the balance of the loan pro-
22 ceeds to the eligible business out of funds in the Disadvantaged and
23 Emerging Small Business Loan Fund established under section 14 of
24 this 2021 Act.

25 “SECTION 14. (1) There is established in the State Treasury, sepa-
26 rate and distinct from the General Fund, the Disadvantaged and
27 Emerging Small Business Loan Fund. All moneys in the fund are
28 continuously appropriated to the Oregon Business Development De-
29 partment for the purposes of:

30 “(a) Paying the actual costs of the department in administering the

1 loan program developed and implemented under sections 11 to 15 of
2 this 2021 Act; and

3 “(b) Making loans under the loan program developed and imple-
4 mented under sections 11 to 15 of this 2021 Act.

5 “(2) The Disadvantaged and Emerging Small Business Loan Fund
6 shall consist of:

7 “(a) Moneys appropriated or otherwise allocated or transferred to
8 the fund by the Legislative Assembly;

9 “(b) Interest earned on moneys in the fund;

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

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

14 “SECTION 15. (1) On or before September 15 of each year, the
15 Oregon Business Development Department shall submit, in the man-
16 ner provided in ORS 192.245, to the interim legislative committees re-
17 lated to economic development, a report containing the following
18 information about the loan program developed and implemented under
19 sections 11 to 15 of 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
23 received loans that is voluntarily given to the department;

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

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

28 “(f) Demographic information about the eligible businesses whose
29 applications were rejected that is voluntarily given to the department;

30 and

1 “(g) Any other information the department considers significant in
2 evaluating the loan program.

3 “(2) The report may include information from periodic reports pro-
4 vided to the department by technical assistance providers under sec-
5 tion 13 (4)(b) of this 2021 Act.

6 “SECTION 16. There is appropriated to the Oregon Business Devel-
7 opment Department, for the biennium beginning July 1, 2021, out of
8 the General Fund, the amount of \$10 million for deposit in the Disad-
9 vantaged and Emerging Small Business Loan Fund established in sec-
10 tion 14 of this 2021 Act, for the purpose of carrying out the provisions
11 of sections 11 to 15 of this 2021 Act.

12 “SECTION 17. This 2021 Act being necessary for the immediate
13 preservation of the public peace, health and safety, an emergency is
14 declared to exist, and this 2021 Act takes effect on its passage.”.

15
