

Chapter 285B

2011 EDITION

Economic Development II

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BUSINESS DEVELOPMENT PROJECTS

285B.050 Definitions for ORS 285B.050 to 285B.098. 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) “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.

(6) “Municipality” means any city, municipal corporation or quasi-municipal corporation.

(7) “Person” means any individual, association of individuals, joint venture, partnership, limited liability company or corporation. [Formerly 285.403; 2001 c.445 §171; 2003 c.167 §1; 2007 c.804 §40; 2009 c.830 §49; 2011 c.558 §1]

285B.053 Borrowing money from Oregon Business Development Fund; application; report. (1) Any county, municipality, person or any combination of counties, municipalities and persons may file with the Oregon Business Development Department an application to borrow money from the Oregon Business Development Fund for a business development project as provided in ORS 285B.050 to 285B.098. The application shall be filed in such a manner and contain or be accompanied by such information as the department may prescribe.

(2) Any applicant receiving a loan from the fund shall report to the department the estimated number of jobs affected by the business development project financed under ORS 285B.050 to 285B.098. [Formerly 285.405; 2007 c.804 §41; 2009 c.830 §50]

285B.056 Fees; rules. The Oregon Business Development Department shall charge fees and establish rules to underwrite loans from the Oregon Business Development Fund. [Formerly 285.410; 2007 c.804 §42; 2009 c.830 §51]

285B.059 Conditions for commission approval of project; limits. (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, 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, 15 percent of all moneys available for lending from the fund is reserved for loans to 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. If the Oregon Business Development Department 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 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 mean-

ing given those terms in ORS 285A.010. [Formerly 285.413; 1999 c.509 §27; 2003 c.167 §2; 2007 c.804 §43; 2009 c.830 §52; 2010 c.106 §§1,5; 2011 c.558 §2]

285B.062 Loan contract; required provisions; repayment plan; state liability. If the Oregon Business Development Commission approves the business development project, the commission, on behalf of the state, and the applicant may enter into a loan contract of not more than \$1 million, secured by good and sufficient collateral, which shall set forth, among other matters:

(1) A plan for repayment by the applicant to the Oregon Business Development Fund of moneys borrowed from the fund used for the business development project with interest charged on those moneys at the rate of not less than one percentage point more than the prevailing interest rate on United States Treasury bills, notes or bonds of a comparable term, as determined by the commission. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the applicant of moneys used for the business development project and interest thereon no later than one year after the date of the loan contract or at such other time as the commission may provide.

(b) May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances if approved by the commission.

(c) Shall provide for such evidence of debt assurance of, and security for, repayment by the applicant as is considered necessary by the commission.

(d) Shall set forth a schedule of payments and the period of loan which shall not exceed the usable life of the contracted project or 25 years from the date of the contract, whichever is less, and shall also set forth the manner of determining when loan payments are delinquent. The payment schedule shall include repayment of interest which accrues during any period of delay in repayment authorized by paragraph (a) of this subsection, and the payment schedule may require payments of varying amounts for collection of accrued interest.

(e) Shall set forth a procedure for formal declaration of default of payment by the commission, including formal notification of all relevant federal, state and local agencies; and further, a procedure for notification of all relevant federal, state and local agencies that declaration of default has been rescinded when appropriate.

(f) Shall allow for other forms of payment than principal and interest payments on loans, to be outlined in administrative rules.

(2) Provisions satisfactory to the commission for field engineering and inspection,

the commission to be the final judge of completion of the contract.

(3) That the liability of the state under the contract is contingent upon the availability of moneys in the fund for use in the business development project.

(4) Such further provisions as the commission considers necessary to insure expenditure of the funds for the purposes set forth in the approved application. [Formerly 285.415; 2003 c.167 §3; 2007 c.804 §44; 2009 c.830 §53]

285B.065 Loans in distressed areas exempt from security and collateral requirements. The Oregon Business Development Department may make loans in distressed areas, as defined by the department, without regard to the requirements for security and collateral under ORS 285B.059 and 285B.062 that are otherwise applicable. [Formerly 285.416; 2009 c.830 §54]

285B.068 Payment of moneys for project; applicant to pay percentage of loan principal to Oregon Business Development Fund. (1) If the Oregon Business Development Commission approves a loan for a business development project and the applicant has received all necessary permits required by federal, state and local agencies, the commission shall pay moneys for the project from the Oregon Business Development Fund, in accordance with the terms of the loan contract as prescribed by the commission.

(2) Immediately upon receiving the loan proceeds, the applicant shall pay to the commission one and one-half percent of the principal amount of the loan, to be paid back to the Oregon Business Development Fund. A maximum of three percent of the principal amount of the loan may be paid from the fund to local development groups for the purposes set forth in ORS 285B.092 (1)(a). [Formerly 285.417; 2009 c.830 §55]

(Temporary provisions relating to BOOST Account)

Note: Sections 2, 3 and 9, chapter 93, Oregon Laws 2010, provide:

Sec. 2. Definitions; loans and grants for industry development purposes; requirements; limitations. (1) As used in this section and section 3, chapter 93, Oregon Laws 2010:

(a) "BOOST Account" means the Building Opportunities for Oregon Small Business Today Account established under section 3, chapter 93, Oregon Laws 2010.

(b) "Comparable wages" means wages that are reasonably equivalent to wages paid to other employees of a small business employer regardless of position.

(c) "Full-time" means a minimum of 35 hours per week or 25 hours per week with health benefit plan coverage.

(d) "Health benefit plan" has the meaning given that term in ORS 743.730.

(e) "Small business employer" means a business having 100 or fewer employees in a traded sector industry.

(f) "Veteran" has the meaning given that term in ORS 408.225.

(g) "Wages" means all compensation for performance of personal services by an employee for a small business employer, including salaries, commissions, benefits, the cash value of all compensation paid in any medium other than cash and any other form of remuneration paid to employees for personal services.

(2) Any small business employer may file with the Oregon Business Development Department an application to borrow money, or an application for a grant of financial assistance, from the BOOST Account for industry development purposes as defined by rule of the department. The application shall be filed in the manner and be accompanied by such information as the department may prescribe by rule.

(3) The department may approve an application for a loan or grant under this section if, after investigation, the department finds that:

(a) The applicant demonstrates a reasonable capacity to increase employment opportunities in this state or, in the case of a loan, demonstrates a reasonable capacity to retain existing jobs in this state.

(b) The applicant has established goals of creating new full-time jobs in Oregon or, in the case of a loan, has established goals of retaining existing jobs in Oregon, with a reasonable prospect of achieving such goals.

(c) The applicant has a demonstrated history of providing comparable wages to its employees.

(d) In the case of a loan, the applicant can provide good and sufficient collateral for the loan.

(e) Moneys are or will be available in the BOOST Account.

(4)(a) Following the department's approval of an application under subsection (3) of this section, the department may:

(A) Enter into a loan contract with the applicant of not more than \$150,000, secured by good and sufficient collateral, with a plan for repayment not to exceed four years. The contract entered into under this subparagraph shall contain a repayment plan that includes the amount of interest to be charged and information about appropriate legal remedies the department may pursue to secure repayment upon the applicant's default or failure to comply with the contract, including withholding of any amounts otherwise due. The department shall develop rules governing repayment of loans under this subparagraph and the collection of moneys owed to the BOOST Account. The department may take any action permitted by statute or rule that the department deems necessary to secure the repayment of the loan.

(B) Make grants not to exceed \$2,500 per new full-time job established by the applicant after the date of approval of its application. A grant may not be made under this subparagraph unless the new full-time employee has been unemployed for at least 60 days preceding the date of hire or unless the new full-time employee is a veteran, and the new full-time job is held by the employee for a minimum period of six consecutive months. The total sum of moneys paid under this subparagraph may not exceed \$50,000 per applicant in any calendar year. Grants made under this subparagraph shall be paid in the quarter following receipt by the department of a report from the applicant that provides information about new full-time jobs established by the applicant and upon verification of employment in a manner to be established by the department by rule.

(b) In entering into loan contracts under paragraph (a)(A) of this subsection, the department shall give

preference to an applicant that proposes to create new full-time jobs. [2010 c.93 §2; 2011 c.121 §1]

Sec. 3. Building Opportunities for Oregon Small Business Today Account (BOOST Account); costs. (1) The Oregon Business Development Department shall establish the Building Opportunities for Oregon Small Business Today Account, or BOOST Account, as an account within the Oregon Business Development Fund.

(2) The purpose of the account is to promote access to working capital that results in immediate job growth and job retention through the making of loans and awarding of grants to small businesses in Oregon.

(3) The department may charge administrative costs to the account to pay for actual and necessary administrative expenses incurred by the department in administering the account and implementing section 2 of this 2010 Act. [2010 c.93 §3]

Sec. 9. Sections 2 to 4, chapter 93, Oregon Laws 2010, are repealed on June 30, 2013. [2010 c.93 §9; 2011 c.630 §89]

285B.071 [Formerly 285.420; repealed by 2007 c.804 §86]

285B.074 [Formerly 285.425; repealed by 2007 c.804 §86]

285B.077 [Formerly 285.430; repealed by 2007 c.804 §86]

285B.080 Director as agent; duties; power to approve loans. (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 or less and to disburse funds for such projects. [Formerly 285.433; 2009 c.830 §56; 2010 c.106 §§2,6; 2011 c.558 §3]

285B.081 Repayment and collection; rules. The Oregon Business Development Department shall develop rules governing repayment of loans to the Oregon Business Development Fund and collection of moneys owed the fund. The department may take any action permitted by statute or rule that the department deems necessary for repayment of the loan. [2007 c.804 §49; 2009 c.830 §57]

Note: 285B.081 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 285B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

285B.083 Use of refinancing and other financial assistance for repayment. Except as provided in ORS 285B.086, if any business development project is refinanced or financial assistance is obtained from other sources after the execution of the loan from

the state, those may first be used to repay the state, unless provided otherwise by the committee, if the refinancing or financial assistance applies only to the business development project authorized and does not include any subsequent addition, expansion, improvement or further development. [Formerly 285.435; 2007 c.804 §45]

285B.086 Authorization to lend funds for joint governmental projects or match money; form of loan application; loan limit. (1) The Oregon Business Development Commission may authorize funds from the Oregon Business Development Fund to be used in appropriate joint governmental participation projects or as match money with any municipally, county, state or federally funded business development project authorized within a county or city, subject to the stipulations of ORS 285B.050 to 285B.098.

(2) Any application for a loan under this section shall be in such form as the commission prescribes and shall furnish such proof of federal, state or local approval as appropriate for funding of the business development project.

(3) The total amount of moneys loaned from the fund for federal, state or local joint business development project purposes shall not exceed \$1 million per project. [Formerly 285.437; 2003 c.167 §4; 2009 c.830 §58]

285B.089 Loan contract; required provisions; repayment schedule. If the Oregon Business Development Commission approves an application for the loan of moneys authorized by ORS 285B.086, the commission shall enter into a loan contract, secured by good and sufficient collateral as determined by the commission, with the applicant that provides, among other matters:

(1) That the loan bear interest at the same rate of interest as provided in ORS 285B.062 (1).

(2) That the contract shall set forth a schedule of payments including interest and principal for the period of the loan, which shall not exceed the usable life of the contracted project or 25 years from the date of the contract, whichever is less, and shall set forth the manner of determining when loan payments are delinquent. The same schedule shall include repayment of interest which accrues during any period of delay in repayment authorized by ORS 285B.050 to 285B.098, and the repayment schedule may require payments of varying amounts for collection of that accrued interest. However, the commission may make provisions for extensions of time in making repayment if the delinquencies are caused by acts of God or other conditions beyond the control of the applicant and the security will not be impaired thereby.

(3) Such provisions as the commission considers necessary to insure expenditure of the moneys loaned for the purposes provided in ORS 285B.086, including all provisions of ORS 285B.059. [Formerly 285.440; 2007 c.804 §46; 2009 c.830 §59]

285B.092 Oregon Business Development Fund; uses; transfer of unobligated funds. (1) There is created within the State Treasury a revolving fund known as the Oregon Business Development Fund, separate and distinct from the General Fund. Interest earned by the fund shall be credited to the fund. Moneys in this fund are continuously appropriated to the Oregon Business Development Commission for the following purposes:

(a) Administrative expenses of the commission in marketing public business finance, processing applications, investigating proposed business development projects and servicing outstanding loans. In any one year, administrative expenses charged under this paragraph may not be greater than the total revenues received in that year from fees provided for in subsection (2)(a) of this section, plus four percent of the total asset value of the fund.

(b) Payment of loans to applicants under ORS 285B.050 to 285B.098.

(c) Actions the commission deems necessary to obtain repayment of outstanding loans.

(d) Purchase or buyout of superior or prior liens or mortgages on or a security interest in any business development project financed in part by a loan from the fund, when the commission determines:

(A) A loan from the fund is in default and is in liquidation or at risk of being forced into liquidation by another creditor to the project; and

(B) The action is necessary to maintain or enhance the value of the commission's collateral in the project.

(2) The fund created by subsection (1) of this section shall consist of:

(a) Fees as determined by the commission.

(b) Repayment of moneys loaned to counties, municipalities or persons from the fund, including interest on those moneys or including other receipts.

(c) Payment of such moneys as may be appropriated to the fund by the Legislative Assembly.

(d) Moneys obtained from any interest accrued from funds.

(e) Moneys from any grant made to the fund by any federal agency.

(3) All repayments, interest and other receipts from outstanding indebtedness or any other source shall be retained and accumulated in the fund and shall be used for the purposes of the fund.

(4) Notwithstanding any other law, if at any time there are insufficient funds in established business finance programs, the commission may direct the transfer of unobligated funds from the fund. [Formerly 285.443; 1999 c.247 §3; 1999 c.509 §28; 2003 c.167 §5; 2007 c.804 §47; 2009 c.830 §60]

285B.093 Oregon Targeted Development Account; purpose; exemption from minimum interest rate. (1) The Oregon Business Development Commission may establish the Oregon Targeted Development Account as an account within the Oregon Business Development Fund.

(2) The purpose of the Oregon Targeted Development Account is to promote cooperation and foster partnership among the commission, the Oregon Business Development Department and financial institutions in Oregon to encourage investment in distressed areas, as defined by the department.

(3) The department may make loans from the Oregon Targeted Development Account in distressed areas without regard to the minimum rate of interest that is otherwise applicable under ORS 285B.062. The department may make loans in distressed areas at an interest rate that is determined by the commission. [1999 c.247 §1; 2003 c.167 §6; 2007 c.804 §48; 2009 c.830 §61]

285B.095 [Formerly 285.445; repealed by 2007 c.804 §86]

285B.098 Status of loan to county or municipality; project as security; repayment. A loan made to a county or municipality under ORS 285B.050 to 285B.098 shall not be a general obligation of that county or municipality, nor a charge upon the tax revenues of that county or municipality, nor a charge upon any other revenues or property of that county or municipality not specifically pledged thereto. A loan made to a county or municipality under ORS 285B.050 to 285B.098 may be secured by the business development project for which the loan is made, as well as by any revenues derived from that project, and any nontax-derived revenues or property of the county or municipality not otherwise pledged or committed for other purposes. A county or municipality may repay any portion of a loan incurred under ORS 285B.050 to 285B.098 from any funds available to it. [Formerly 285.447]

285B.103 [2001 c.944 §2; 2003 c.374 §1; renumbered 285C.500 in 2003]

285B.105 [2001 c.944 §3; 2003 c.374 §2; renumbered 285C.503 in 2003]

285B.108 [2001 c.944 §4; 2003 c.374 §3; renumbered 285C.506 in 2003]

CAPITAL ACCESS PROGRAM

285B.109 Definitions for ORS 285B.109 to 285B.119. As used in ORS 285B.109 to 285B.119, unless the context requires otherwise:

(1) “Brownfield” or “brownfields” has the meaning given that term in ORS 285A.185.

(2) “Capital access program” means the program established by ORS 285B.109 to 285B.119.

(3) “Environmental action” has the meaning given that term in ORS 285A.188.

(4) “Financial institution” means a financial institution, as defined in ORS 706.008.

(5) “Loss reserve account” means an account in the State Treasury or any financial institution that is established and maintained by the Oregon Business Development Department for the benefit of a financial institution participating in the capital access program.

(6) “Qualified business” means any person, conducting business for profit or not for profit, that is authorized to conduct business in the State of Oregon.

(7) “Qualified loan” means a loan or portion of a loan made by a financial institution to a qualified business for any business activity that has its primary economic effect in Oregon. The term does not include:

(a) A loan for the purchase of owner-occupied residential housing or for the construction, improvement or purchase of residential housing owned or to be owned by the borrower.

(b) A loan for purchase of real property that is not used for the business operations of the borrower.

(c) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased. [Formerly 285B.126]

285B.111 Purpose of ORS 285B.109 to 285B.119. It is the purpose of ORS 285B.109 to 285B.119 to establish a capital access program under which the State of Oregon will provide public fiscal resources to assist Oregon financial institutions to overcome obstacles and constraints in meeting the full range of economically sound financing needs of Oregon businesses. [Formerly 285B.129]

285B.113 Contracts with financial institutions to participate in program; required contents; disclosure of information. (1) The Oregon Business Development Department may contract with

any financial institution for the purpose of allowing the financial institution to participate in the capital access program established by ORS 285B.109 to 285B.119.

(2) A contract between the department and a financial institution under this section shall provide:

(a) For the creation of a loss reserve account by the department for the benefit of the financial institution.

(b) That the financial institution, qualified business and the department will deposit moneys to the credit of the institution’s loss reserve account when the financial institution makes a qualified loan to a qualified business.

(c) That the department will pay moneys in the loss reserve account, not exceeding an amount equal to the total amount credited to the loss reserve account, to the financial institution to reimburse the institution for any financial loss incurred as a result of any qualified loan made under the capital access program established by ORS 285B.109 to 285B.119.

(d) That the liability of the State of Oregon and the department to the financial institution under the contract is limited to the amount of money credited to the loss reserve account of the institution.

(e) That the financial institution shall provide such information as the department may require, including financial information that is identifiable with, or identifiable from, the financial records of a particular customer who is the recipient of a qualified loan.

(f) For such other terms as the department may require.

(3) A financial institution is not subject to ORS 192.586 (1) when the financial institution provides information to the department as required by subsection (2)(e) of this section. [Formerly 285B.132]

285B.115 Loss reserve accounts; policies; rules; moneys as property of state.

(1) The Oregon Business Development Department shall establish a loss reserve account for each financial institution with which the department makes a contract under ORS 285B.113.

(2) The loss reserve account for a financial institution shall consist of moneys paid as fees by borrowers and the financial institution under ORS 285B.117 and moneys transferred to the account from the Capital Access Fund under ORS 285B.117.

(3) Notwithstanding ORS chapter 293 or 295, the department may establish and maintain loss reserve accounts with any financial institution under such policies as the department may adopt. The department may estab-

lish rules to encourage financial institutions to participate in the capital access program.

(4) All moneys in a loss reserve account established under ORS 285B.109 to 285B.119 are the property of the State of Oregon. [Formerly 285B.135]

285B.117 Enrollment of qualified loan in program; notice to department; fees; transfers to loss reserve accounts; rules and limits for loans. (1) When a financial institution participates in the capital access program, if the financial institution decides to enroll a qualified loan under the capital access program in order to obtain the protection against loss provided by its loss reserve account, the financial institution shall notify the Oregon Business Development Department of the loan within 30 days after the loan is made. The notification shall be in writing on a form prescribed by the department.

(2) When making a qualified loan that will be enrolled under the capital access program, the financial institution shall require the qualified business to which the loan is made to pay a fee of not less than one and one-half percent of the principal amount of the loan but not more than three and one-half percent of such principal amount. The financial institution shall also pay a fee in an amount equal to the fee paid by the borrower. The financial institution shall deliver the fees collected under this subsection to the department for deposit in the loss reserve account for the institution.

(3) When depositing fees collected under subsection (2) of this section to the credit of the loss reserve account for a financial institution, the department shall transfer an amount that is not less than the total amount of the fees paid by the borrower and the financial institution from the Capital Access Fund to the loss reserve account for the institution.

(4) Notwithstanding subsections (1) to (3) of this section, the department may adopt rules providing that, for qualified loans to businesses in distressed areas or for use in an environmental action on brownfields, the department may transfer an amount that is not less than 150 percent of the total amount of the fees paid by the borrower and the financial institution from the Capital Access Fund to the loss reserve account of the institution. The total amount transferred under this section may not exceed 40 percent of the moneys appropriated to the fund. For purposes of this subsection, "distressed areas" shall have the meaning given that term by the department by rule. [Formerly 285B.138]

285B.118 Claims for reimbursement of losses; reimbursable costs; repayment to loss reserve account. (1) The Oregon Business Development Department shall establish procedures under which financial institutions participating in the capital access program established by ORS 285B.109 to 285B.119 may submit claims for reimbursement for losses incurred as a result of qualified loan defaults.

(2) Costs for which a financial institution may be reimbursed from its loss reserve account include loan principal, accrued interest on the principal, actual and necessary costs of seeking recovery of the principal amount and interest thereon and any other related costs.

(3) A financial institution may seek reimbursement of loan losses prior to the liquidation of collateral from defaulted loans. The financial institution shall repay its loss reserve account for any moneys received as reimbursement under this section if the financial institution recovers moneys from the borrower or from the liquidation of collateral for the defaulted loan. [Formerly 285B.141]

285B.119 Capital Access Fund; investment; retrieval of interest; administrative expenses. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Capital Access Fund. All moneys in the fund are continuously appropriated to the Oregon Business Development Department for the purpose of making payments to loss reserve accounts established under ORS 285B.109 to 285B.119.

(2) Moneys in the Capital Access Fund, with the approval of the State Treasurer, may be invested as provided by ORS 293.701 to 293.820, and the earnings from such investment shall be credited to the Capital Access Fund.

(3) The Capital Access Fund shall consist of:

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

(b) Interest earned on moneys in the fund.

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

(4) If the department deems retrieval of interest earned on loss reserve accounts appropriate, the department may transfer into the fund up to 50 percent of the interest earned on moneys in loss reserve accounts.

(5) The department may charge administrative costs to the fund to pay for actual and necessary administrative expenses incurred by the department in administering the fund and establishing and maintaining

loss reserve accounts under ORS 285B.109 to 285B.119. [Formerly 285B.147]

SMALL BUSINESS DEVELOPMENT (Generally)

285B.120 Oregon Small Business Development Act. ORS 271.510, 271.520, 285B.092, 285B.123, 285B.165 to 285B.171, 285B.320 to 285B.326, 285B.335, 285B.341, 285B.344, 285B.350, 285B.365, 285B.371, 657.471, 659A.015 and 777.250 shall be known as the Oregon Small Business Development Act of 1983. [Formerly 285.500]

285B.123 Purpose. (1) The purpose of the Oregon Small Business Development Act of 1983 is to encourage and assist the development and continued growth of small business in this state.

(2) As used in the Oregon Small Business Development Act of 1983, "small business" means a business having 100 or fewer employees. [Formerly 285.503; 2007 c.804 §16]

285B.126 [Formerly 285.507; 2007 c.804 §50; 2009 c.830 §62; renumbered 285B.109 in 2009]

285B.129 [Formerly 285.510; 2007 c.804 §51; renumbered 285B.111 in 2009]

285B.132 [Formerly 285.513; 2007 c.804 §52; 2009 c.830 §63; renumbered 285B.113 in 2009]

285B.135 [Formerly 285.515; 2003 c.167 §7; 2007 c.804 §53; 2009 c.830 §64; renumbered 285B.115 in 2009]

285B.138 [Formerly 285.517; 2007 c.804 §54; 2009 c.830 §65; renumbered 285B.117 in 2009]

285B.139 [1991 c.688 §15; 1993 c.765 §80; 1995 c.71 §1; 1997 c.738 §4; 1999 c.247 §5; 2001 c.96 §3; repealed by 2007 c.804 §86]

285B.141 [Formerly 285.520; 2009 c.830 §66; renumbered 285B.118 in 2009]

285B.144 [Formerly 285.525; 2007 c.354 §14; repealed by 2007 c.804 §86]

285B.147 [Formerly 285.527; 2007 c.804 §55; 2009 c.830 §67; renumbered 285B.119 in 2009]

285B.150 [Formerly 285.528; repealed by 2007 c.804 §86]

285B.153 [Formerly 285.530; repealed by 2003 c.167 §16]

285B.156 [Formerly 285.533; repealed by 1999 c.509 §61]

285B.159 [Formerly 285.535; 2001 c.104 §98; repealed by 2007 c.804 §86]

285B.162 [Formerly 285.537; repealed by 2007 c.804 §86]

(Small Business Development Centers)

285B.165 Purpose of ORS 285B.165 to 285B.171. The purpose of ORS 285B.165 to 285B.171 is to establish and sustain a statewide network of small business development centers. [Formerly 285.540; 2001 c.148 §3; 2007 c.804 §17]

285B.166 [2001 c.148 §2; repealed by 2007 c.804 §86]

285B.168 Grants; application; required provisions; authorized uses; eligibility; subcontracts; report. (1) The Oregon Business Development Department may make grants available to a community college district, a community college service district or, with the concurrence of the Commissioner for Community College Services and the Chancellor of the Oregon University System, a public university listed in ORS 352.002 to assist in the formation, improvement and operation of small business development centers. If a community college district, a community college service district or a public university is unable to adequately provide services in a specific geographic area, the department may make grants available to other service providers as determined by the department. The grant application shall include:

(a) Plans for providing small business owners and managers individual counseling, to the greatest extent practicable, in subject areas critical to small business success;

(b) A budget for the year for which a grant is requested, including cost apportionment among the department, small business clients, the community college, the public university or other service providers and other sources;

(c) A plan for evaluating the effect of the program on small business clients served; and

(d) A plan for providing collaboration with other state agencies, state-supported organizations and private sector entities that provide services to small businesses.

(2) The grants made under subsection (1) of this section are to be used by the grant recipient to provide:

(a) Small business development center staff and support staff;

(b) Expert resource persons from the business community;

(c) Other training and business resources as approved by the department in skill areas for which, or areas of the state where, the grant recipient can demonstrate it does not otherwise have the capacity or expertise to provide the resources; and

(d) Other costs related to providing training, counseling and business resources to small business clients.

(3) To be eligible for a grant under subsection (1) of this section, the recipient shall be required to provide funds, in-kind contributions or some combination of funds and contributions, in accordance with rules adopted by the department.

(4) Subject to the approval of the department, a grant recipient may subcontract

funds received under this section to any other entity that is eligible to receive funding under this section.

(5) The grant recipient shall submit a final report to the department after the distribution of grant funds and the delivery of services to the proposed business clients. The report shall state whether the plan and related budget have met the applicable criteria as described in the recipient's application for the grant period. [Formerly 285.543; 2001 c.148 §4; 2003 c.773 §15; 2007 c.804 §18; 2009 c.830 §68; 2011 c.637 §93]

285B.171 Short title. ORS 285B.165 to 285B.171 shall be known and may be cited as the "Small Business Training Assistance Act." [Formerly 285.547]

(Miscellaneous)

285B.174 Programs to assist businesses in procuring government contracts and grants. In cooperation with other state agencies and private organizations, public universities listed in ORS 352.002 and community colleges may develop programs to assist Oregon businesses with the procurement of government contracts and grants. Small business development centers established under ORS 285B.165 to 285B.171 may assist with these programs. [Formerly 285.550; 2001 c.148 §5; 2007 c.804 §19; 2011 c.637 §94]

285B.177 [Formerly 285.553; repealed by 1999 c.509 §61]

MICROENTERPRISE DEVELOPMENT

285B.178 Definitions for Microenterprise Development Act. As used in this section and ORS 285B.179:

(1) "Local microenterprise support organization" means a community development corporation, a nonprofit development organization, a nonprofit social services organization or another locally operated nonprofit entity that provides services to disadvantaged entrepreneurs.

(2) "Low income" means income adjusted for family size that does not exceed:

(a) For metropolitan areas, 80 percent of median income; or

(b) For nonmetropolitan areas, the greater of 80 percent of the area median income or 80 percent of the statewide nonmetropolitan area median income.

(3) "Microenterprise" has the meaning given that term under 15 U.S.C. 6901, as amended and in effect on June 30, 2007. If 15 U.S.C. 6901 is amended or altered on or after July 1, 2007, the Oregon Business Development Department may adopt by rule a definition of "microenterprise" to give the term

the meaning given in 15 U.S.C. 6901 as amended or altered.

(4) "Microentrepreneur" means an individual conducting a microenterprise.

(5) "Microlending" means the practice of lending moneys to microenterprises or microentrepreneurs.

(6) "Statewide microenterprise support organization" means a community development corporation, a nonprofit development organization, a nonprofit social services organization or another nonprofit entity that serves as an intermediary between the department and local microenterprise support organizations.

(7) "Training and technical assistance" means services and support offered to microenterprises and microentrepreneurs. "Training and technical assistance" includes, but is not limited to, services to enhance business development, asset building, business planning, marketing, management skills and access to financial services.

(8) "Very low income" means income adjusted for family size that does not exceed 150 percent of the poverty level determined under 42 U.S.C. 9902, as amended and in effect on June 30, 2007. If 42 U.S.C. 9902 is amended or altered on or after July 1, 2007, the department may adopt by rule the standard for determining the federal poverty level under 42 U.S.C. 9902 as amended or altered. [2001 c.419 §2; 2007 c.804 §20; 2009 c.830 §69]

Note: 285B.178, 285B.179 and 285B.186 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 285B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

285B.179 Purposes of Microenterprise Development Act. The purposes of ORS 285B.178 and this section are to:

(1) Ensure that microenterprises in Oregon are able to realize their full potential to create jobs, enhance entrepreneurial skills, expand entrepreneurial activity and increase the capacity of low income and very low income households to become self-sufficient;

(2) Enhance the development of a statewide infrastructure for microenterprise support; and

(3) Enable the Oregon Business Development Department to engage in contractual relationships with statewide microenterprise support organizations that have the capacity to administer grants to local microenterprise support organizations, subject to ORS 285B.178 and this section, and to leverage additional funds from sources other than moneys appropriated from the General Fund. [2001 c.419 §3; 2007 c.804 §21; 2009 c.830 §70]

Note: See note under 285B.178.

285B.180 [Formerly 285.555; repealed by 1999 c.509 §61]

285B.183 [2001 c.419 §5; repealed by 2007 c.804 §86]

285B.186 Short title. ORS 285B.178 and 285B.179 shall be known and may be cited as the Microenterprise Development Act. [2001 c.419 §1]

Note: See note under 285B.178.

CREDIT ENHANCEMENT FUND

285B.200 Definitions for ORS 285B.200 to 285B.218. As used in ORS 285B.200 to 285B.218:

(1) "Brownfield" or "brownfields" has the meaning given that term in ORS 285A.185.

(2) "Eligible project costs" includes productive equipment and machinery, working capital for operations and export transactions and such other costs as the Oregon Business Development Department by rule may provide.

(3) "Environmental action" has the meaning given that term in ORS 285A.188.

(4) "Financial institution" includes institutions listed in ORS 706.008 and such other institutions defined by rule of the department as financial institutions for purposes of ORS 285B.200 to 285B.218.

(5) "Qualified business" means any existing or proposed business that, except when located within a distressed area, as defined by the department, sells goods or services in markets for which national or international competition exists or that owns, occupies, operates or has entered into an agreement to own, occupy or operate real property containing a brownfield, as defined in ORS 285A.185. The term includes professional services companies providing services to traded sector industries and other entities within and outside of this state.

(6) "Value-added agricultural products" means agricultural products that have been processed, transformed or refined to the point where they may be distributed to a final consumer without further processing, transformation or refining. The term also includes agricultural products that are processed, transformed or refined for distribution to other than final consumers when such processing, transformation or refining represents a substantial increment in value as determined by the Oregon Business Development Department in consultation with the State Department of Agriculture. [Formerly 285.466; 1999 c.247 §4; 2007 c.804 §56; 2009 c.830 §71]

Note: 285B.200 to 285B.218 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 285B by legislative action. See Preface to Oregon Revised Statutes for further explanation.

285B.203 Purpose of Credit Enhancement Fund. The Legislative Assembly declares that it is the purpose of the Credit Enhancement Fund to:

(1) Create incentives and assistance to increase the flow of private capital to the value-added agriculture industries.

(2) Promote industrial modernization and technology adoption.

(3) Encourage the retention and creation of family wage jobs.

(4) Encourage the export of goods and services by Oregon businesses in international markets.

(5) Encourage and promote the redevelopment of brownfields by providing assistance to perform environmental action on brownfield sites. [Formerly 285.468; 2001 c.96 §4; 2007 c.804 §57]

Note: See note under 285B.200.

285B.206 Duties of department; rules; application procedure; agreement contents. (1) The Oregon Business Development Department shall develop a program under which the department, under contracts with financial institutions, shall provide loan guarantees, insurance, coinsurance in conjunction with other providers of loan guarantee programs or other forms of credit guarantees for qualified businesses for eligible project costs.

(2) In administering the program created by ORS 285B.200 to 285B.218, the department shall consult and cooperate with financial institutions in this state. The program shall be administered so that administrative procedures and application procedures are as responsive to the needs of qualified businesses and financial institutions as practicable, consistent with prudent investment and lending practices and criteria.

(3) The department shall prescribe by rule the loan or credit guarantee application procedure for a financial institution on behalf of a qualified business.

(4) When the department approves a loan or credit guarantee, the department shall enter into a loan or credit guarantee agreement with the financial institution. The agreement shall specify:

(a) The fee to be charged to the financial institution;

(b) The evidence of debt assurance of, and security for, the loan or credit guarantee;

(c) A loan guarantee or credit guarantee which does not exceed 15 years; and

(d) Such other terms and conditions considered necessary or desirable by the department. [Formerly 285.474; 2007 c.804 §58; 2009 c.830 §72]

Note: See note under 285B.200.

285B.209 Fees and terms for loan and credit guarantees. (1) When making loan or credit guarantees under the program established under ORS 285B.200 to 285B.218, the Oregon Business Development Department shall establish fees and other terms for loan or credit guarantees that are calculated to reasonably assure that businesses with access to other forms of private capital will find it economical not to participate in the program.

(2) The department, with due regard for the possibility of losses and administrative costs, shall set fees and other terms at levels sufficient to reasonably assure that the program is self-financing. [Formerly 285.476; 2007 c.804 §59; 2009 c.830 §73]

Note: See note under 285B.200.

285B.212 [Formerly 285.478; repealed by 2007 c.804 §86]

285B.215 Credit Enhancement Fund; uses; sources. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Credit Enhancement Fund. All moneys in the fund are continuously appropriated to the Oregon Business Development Department for the following purposes:

(a) Payment of claims pursuant to contracts for loan or credit guarantees under ORS 285B.200 to 285B.218.

(b) Payment of administrative costs of the department for actual and necessary administrative expenses incurred by the department in administering the fund and establishing and maintaining the program established under ORS 285B.200 to 285B.218.

(c) Repayment of transfers of funds required or authorized by law.

(d) Purchase or buyout of superior or prior liens, mortgages or security interests.

(2) Moneys in the Credit Enhancement Fund shall consist of:

(a) Moneys appropriated to the fund by the Legislative Assembly, including moneys derived from the Administrative Services Economic Development Fund.

(b) Proceeds from collateral assigned to the department.

(c) Interest earned on moneys in the fund.

(d) Transfers of moneys to the fund.

(e) Fees assessed for guarantees, as determined by the department.

(f) Moneys from gifts.

(g) Moneys from any grant made to the fund by any federal agency.

(h) Proceeds of insurance provided by the Export-Import Bank of the United States or

by any other provider of insurance for export transactions. [Formerly 285.471; 2007 c.804 §60; 2009 c.830 §74]

Note: See note under 285B.200.

285B.218 Pledge to assure repayment; transfer of funds to pay claims. (1) The Oregon Business Development Department is authorized to pledge up to \$75 million to assure the repayment of loan guarantees or other extensions of credit made to or on behalf of qualified businesses for eligible projects costs.

(2) If the balances in the Credit Enhancement Fund are insufficient to cover any claims by financial institutions that arise from loan and credit guarantees made under ORS 285B.200 to 285B.218, the Oregon Department of Administrative Services is directed to transfer in the fiscal year as often as appropriate any funds from the Administrative Services Economic Development Fund to cover such principal, interest and claims, subject to the condition that no such transfer shall be made prior to the satisfaction of any constitutionally dedicated distribution, the allocation under ORS 391.130 to the Regional Light Rail Extension Construction Fund or any allocations related to the lottery bond program authorized by ORS 286A.560 (6)(a) or (b). [Formerly 285.481; 2007 c.804 §61; 2009 c.830 §75]

Note: See note under 285B.200.

LOCAL ECONOMIC DEVELOPMENT

285B.230 Local economic development strategy. As used in ORS 285B.230 to 285B.266, unless the context requires otherwise, "local economic development strategy" is a long-term economic development strategy, updated as required by the Oregon Business Development Department, that focuses on the economic development priorities of each community or geographic region in the state. [Formerly 285.630; 1999 c.509 §47; 2003 c.773 §16; 2007 c.804 §62; 2009 c.830 §76]

285B.233 Legislative findings; purpose.

(1) The Legislative Assembly finds that local economic development activities and initiatives are essential to the state's long-term prosperity and that to be effective, local economic development strategies must have the coordinated support of available resources.

(2) The Legislative Assembly declares that the purpose of ORS 285B.230 to 285B.266 is:

(a) To encourage the development of local economic development strategies that address the economic development priorities of communities in or geographic regions of the state;

(b) To identify and coordinate economic development priorities;

(c) To ensure that economic development plans reinforce the long-term prosperity and livability of Oregon;

(d) To effectively utilize available resources through a strategic program tied to the state's economic development strategy;

(e) To leverage and attract capital investment in Oregon communities; and

(f) To coordinate private and public resources to support economic development. [Formerly 285.633; 1999 c.509 §48; 2003 c.773 §17; 2009 c.830 §77]

285B.236 Guidelines for local economic development strategies; required provisions; rules. (1) The Oregon Business Development Department by rule shall adopt guidelines for submission of local economic development strategies and distribution of funds.

(2) The guidelines shall provide that the local economic development strategies are approved in accordance with criteria reflecting the economic benefits to the state. Each local economic development strategy must at a minimum set forth in measurable terms the extent to which the strategy will accomplish the economic development priorities of the community or geographic region, and the department's performance standards. [Formerly 285.635; 1999 c.509 §49; 2003 c.773 §18; 2007 c.804 §63; 2009 c.830 §78]

285B.239 [Formerly 285.637; 1999 c.509 §50; 2001 c.552 §2; 2003 c.773 §19; 2007 c.804 §64; repealed by 2009 c.830 §171]

285B.242 [Formerly 285.640; 1999 c.509 §51; 2003 c.773 §20; 2007 c.804 §65; repealed by 2009 c.830 §171]

285B.245 [Formerly 285.643; 1999 c.509 §52; 2003 c.773 §21; 2007 c.804 §66; repealed by 2009 c.830 §171]

285B.248 [Formerly 285.645; 1999 c.509 §53; 2003 c.773 §22; repealed by 2009 c.830 §171]

285B.251 [Formerly 285.647; repealed by 1999 c.509 §61]

285B.254 [Formerly 285.648; 1999 c.509 §54; 2003 c.773 §23; repealed by 2007 c.804 §86]

285B.257 [Formerly 285.649; 1999 c.509 §55; 2003 c.773 §24; repealed by 2007 c.804 §86]

285B.260 Local Economic Opportunity Fund; authorized and prohibited uses; rules. (1) There is created a Local Economic Opportunity Fund, separate and distinct from the General Fund, to consist of all moneys credited thereto, including moneys from the Administrative Services Economic Development Fund, and all interest earned on the Local Economic Opportunity Fund. The fund is continuously appropriated to the Oregon Business Development Department to be used for grants to implement ORS 280.518 and 285B.230 to 285B.266.

(2) The department may use moneys in the Local Economic Opportunity Fund to pay for the administrative expenses of operating

the local investment program under ORS 285B.230 to 285B.266.

(3) The fund shall not be used to retire any debt, to reimburse any person or municipality for expenditures made or expenses incurred prior to the adoption of a local economic development strategy or to substitute for local government expenditures for existing and continuing public services. The department shall adopt rules to carry out the provisions of this subsection.

(4) After consulting with representatives of communities or geographic areas, the department, by rule, shall adopt standards, objectives and criteria for the use and distribution of moneys in the Local Economic Opportunity Fund.

(5) The Local Economic Opportunity Fund is created to provide a flexible funding source for financing those locally determined programs and projects that may not be eligible for financing through other state and federal funding sources. [Formerly 285.650; 1999 c.509 §56; 2003 c.773 §25; 2007 c.354 §15; 2007 c.804 §67; 2009 c.830 §79]

285B.263 [Formerly 285.651; 1999 c.509 §57; 2001 c.552 §3; 2003 c.773 §26; 2007 c.804 §68; repealed by 2009 c.830 §171]

285B.264 [2003 c.773 §26a; 2007 c.804 §69; repealed by 2009 c.830 §171]

285B.266 Strategic Reserve Fund; uses. (1) There is created a Strategic Reserve Fund, separate and distinct from the General Fund, to consist of all moneys credited thereto, including moneys from the Administrative Services Economic Development Fund, and all interest earned on the Strategic Reserve Fund. The fund is continuously appropriated to the Oregon Business Development Department to be used to implement statewide strategies for economic development.

(2) The fund shall not be used to retire any debt or, except upon approval of the Joint Ways and Means Committee or, if the Legislative Assembly is not in session, the Emergency Board, to pay administrative expenses of the department. Expenses that are project related shall not be considered to be administrative expenses of the department.

(3) The department is directed to place particular emphasis on investments that assist communities, businesses or industries in cost-effective projects that assist the creation, expansion and preservation of the principal traded sector industries of Oregon and encourage diversification and preservation of regional economies. The fund shall be used to assist economic and community development projects of public entities, industry groups or businesses with significant long-term, regional or statewide economic impacts, to provide interim financing mech-

anisms to augment existing public or private sector programs or to analyze statewide, long-term economic issues and opportunities. [Formerly 285.653; 1999 c.509 §19; 2009 c.830 §80]

285B.269 [Formerly 285.655; repealed by 2009 c.830 §171]

INDUSTRY DEVELOPMENT PROJECTS

285B.280 Definition of “traded sector.” As used in ORS 285B.280 to 285B.286, unless the context requires otherwise, “traded sector” means industries in which member firms sell their goods or services into markets for which national or international competition exists. [Formerly 285.765; 2005 c.835 §1]

285B.283 Policy. The Legislative Assembly declares that it is the policy of the State of Oregon:

(1) Working with private firms, industry associations and others, to encourage cooperative sector-based strategies to promote industrial competitiveness.

(2) That programs to develop particular industry sectors of this state’s economy, to the maximum extent feasible, include firms of all sizes. To promote that policy, the Oregon Business Development Department shall undertake efforts as are necessary to encourage representative participation by small firms under ORS 285B.280 to 285B.286.

(3) To emphasize industry development in those sectors of the economy in which Oregon firms face national and international competition.

(4) To provide an adequate supply of industrial and traded sector sites that are available for immediate development. [Formerly 285.767; 2003 c.800 §22; 2009 c.830 §81]

285B.286 Industry development activities. For traded sector industries, the Oregon Business Development Department shall undertake industry development activities that may include, but are not limited to, all of the following:

(1) Focus groups and other meetings and related studies to identify traded sector industry members and issues of common concern within an industry.

(2) State technical and financial support for formation of industry associations, publication of association directories and related efforts to create or expand the activities of industry associations.

(3) Helping establish research consortia as well as partnering with universities and other research institutions to assist in the retention and recruitment of targeted industries.

(4) Joint training and education programs and curricula related to the specific needs of traded sector industries.

(5) Cooperative market development activities.

(6) Analysis of the need, feasibility and cost for establishing product certification and testing facilities and services.

(7) State technical and financial support to facilitate certification of sites as ready for development for traded sector industry. The support may include performing site assessments to determine the costs associated with development of individual sites.

(8) Assistance to traded sector and cluster affiliated Oregon businesses and consortia in making investments that advance industry-related development activities or other identified competitiveness objectives of existing Oregon cluster businesses. [Formerly 285.770; 1999 c.509 §20; 2003 c.800 §23; 2009 c.830 §82]

285B.289 [Formerly 285.773; repealed by 1999 c.509 §61]

285B.290 Industry Competitiveness Fund; uses. The Industry Competitiveness Fund is established in the State Treasury, separate and distinct from the General Fund. The Industry Competitiveness Fund shall consist of all moneys credited to the fund, including moneys from the Administrative Services Economic Development Fund. Interest earned by the Industry Competitiveness Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Business Development Department to provide funds for activities outlined in ORS 285B.286. [2007 c.804 §71; 2009 c.830 §83]

Note: 285B.290 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 285B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

285B.292 [Formerly 285.775; repealed by 1999 c.509 §61]

285B.295 [Formerly 285.777; repealed by 1999 c.509 §61]

285B.298 [Formerly 285.780; repealed by 1999 c.509 §61]

STATE REVENUE BONDS FOR INDUSTRIAL, COMMERCIAL, SOLID WASTE DISPOSAL, RESEARCH AND DEVELOPMENT USES

285B.320 Purpose of ORS 285B.320 to 285B.371. It is the purpose of ORS 285B.320 to 285B.371 to authorize the exercise of powers granted by ORS 285B.320 to 285B.371 by this state in addition to and not in lieu of any other powers it may possess. [Formerly 285.310; 1999 c.509 §29; 2001 c.680 §2; 2007 c.804 §72]

285B.323 Definitions for ORS 285B.320 to 285B.371. As used in ORS 285B.320 to 285B.371, unless the context requires otherwise:

(1) “Bond” or “revenue bond” means a revenue bond, as defined in ORS 286A.001.

(2) “Economic development project” includes any properties, real or personal, used or useful in connection with a revenue producing enterprise, an exempt facility or a nonprofit entity, and vehicles, rolling stock or equipment related to an enterprise, facility or entity.

(3) “Eligible project” means an economic development project found by the Oregon Business Development Commission to meet standards of the commission.

(4) “Exempt facility” means any facility described in section 142(a) of the Internal Revenue Code of 1986, as amended and in effect as of June 30, 2007. If section 142(a) of the Internal Revenue Code of 1986 is amended or altered on or after July 1, 2007, the Oregon Business Development Department may adopt by rule a definition of “exempt facility” that is consistent with section 142(a) of the Internal Revenue Code of 1986 as amended or altered.

(5) “Nonprofit entity” means an institution, organization or other entity exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, as amended and in effect as of June 30, 2007. If section 501(c)(3) of the Internal Revenue Code of 1986 is amended or altered on or after July 1, 2007, the department may adopt a definition of “nonprofit entity” that is consistent with section 501(c)(3) of the Internal Revenue Code of 1986 as amended or altered. [Formerly 285.315; 1999 c.509 §30; 2001 c.680 §3; 2007 c.804 §§73,90; 2009 c.830 §84; 2011 c.27 §1]

285B.326 Request for issuance of bonds; fees; rules; reimbursement for expenses. (1) Upon determining that an economic development project is an eligible project, the Oregon Business Development Commission shall request that the State Treasurer issue the bonds.

(2) For bonding purposes, the commission may treat any number of economic development projects determined to be eligible projects as a single eligible project.

(3) The commission shall collect fees set forth in rules established by the Oregon Business Development Department. Moneys collected under this subsection shall be deposited in the Oregon Business, Innovation and Trade Fund created under ORS 285A.227 and are continuously appropriated to the commission for the purpose of administration or funding of the Oregon Industrial Develop-

ment Revenue Bond and Express Bond Program.

(4)(a) In addition to the fees described in subsection (3) of this section, the commission may charge and receive reimbursement for expenses incurred in:

(A) The initial review of an application for economic development projects sought to be declared eligible for financing; and

(B) Matters arising after the issuance of a bond.

(b) Reimbursement for expenses under this subsection shall be charged and received in accordance with rules established by the department. [Formerly 285.320; 1999 c.509 §31; 2003 c.167 §8; 2007 c.804 §§74,91; 2009 c.830 §85; 2011 c.27 §2]

285B.329 Review of project by commission; exception. (1) The state, acting through the State Treasurer, shall not undertake to finance any economic development project pursuant to ORS 285B.320 to 285B.371 before the Oregon Business Development Commission has reviewed the project.

(2) The commission is not required to make the determination and findings described in ORS 285A.055 (1) and (2) if the economic development project involves an exempt facility and related vehicles, rolling stock or equipment when the project does not require any private activity volume cap under ORS 286A.605 to 286A.625. [Formerly 285.325; 1999 c.509 §32; 2001 c.680 §4; 2007 c.804 §75; 2009 c.830 §86]

285B.332 [Formerly 285.330; 1999 c.509 §33; repealed by 2007 c.804 §86]

285B.335 Powers of department; lease requirements. (1) In addition to any other powers granted by law or by charter, the Oregon Business Development Department may:

(a) Enter into agreements to finance the costs of an eligible project by loaning or otherwise making available the proceeds of bonds authorized by ORS 285B.344 to a person, an agency of the federal government or state government, as defined in ORS 174.111, under terms and with security approved by the department.

(b) Lease and sublease eligible projects to a person, an agency of the federal government or state government, as defined in ORS 174.111, subject to subsection (2) of this section.

(c) Pledge or assign all or part of the revenues of one or more eligible projects owned or to be acquired by the state to the holders of bonds issued under this section or to a trustee for the holders, and segregate the revenues or provide for payment of the revenues to the trustee.

(d) Mortgage or otherwise encumber eligible projects in favor of the holders of bonds issued under this section, a trustee for the holders of the bonds, or an escrow agent, vendor, lender, other financing party or trustee for the bonds without obligating the state except with respect to the project.

(e) Make contracts, execute instruments and do what is necessary or desirable to exercise the powers granted by this section, to perform the covenants or duties of this state or to secure the payment of bonds issued under this section. Contracts that may be made by the state include, but are not limited to, contracts entered into prior to construction, acquisition or installation of an eligible project that authorize, subject to terms and conditions the state finds necessary or desirable, a lessee to provide for construction, acquisition or installation of buildings, improvements or equipment to be included in the project.

(f) Enter into and perform contracts and agreements with participating institutions for the planning, construction, installation, acquisition, leasing or financing of facilities of an eligible project, including a contract or agreement that establishes a body for the supervision and general management of the facilities.

(g) Accept loans or grants for the planning, construction, installation, acquisition, leasing or other provision of an eligible project from an authorized agency of the federal government, and enter into agreements with the agency respecting the loans or grants.

(h) Acquire, own, sell, assign or otherwise hold legal or equitable title to or an interest in eligible projects or hold federal tax ownership of eligible projects.

(2) A lease or sublease entered into under subsection (1)(b) of this section must provide that:

(a) Rents charged for the use of the project are established and revised as necessary to produce sufficient revenue to allow for payment of the principal of and interest on bonds issued under this chapter when due; and

(b) The lessee or sublessee is required to pay:

(A) The expenses of the operation and maintenance of the project including, but not limited to, adequate insurance on the project and insurance against liability for injury to persons or property arising from the operation of the project; and

(B) The taxes and special assessments levied upon the leased or subleased premises and payable during the term of the lease or sublease.

(3) During the term of a lease or sublease entered into under subsection (1)(b) of this section, ad valorem taxes must be imposed on the real and personal property of the eligible project in the same manner as the taxes would be imposed if the lessee or sublessee were the owner of the eligible project. [Formerly 285.335; 1999 c.509 §34; 2001 c.680 §5; 2003 c.167 §11; 2007 c.783 §98; 2009 c.830 §87]

285B.338 Powers of commission. In carrying out its duties under ORS 285B.320 to 285B.371, the Oregon Business Development Commission acting for and in behalf of the state as its duly authorized agency, may:

(1) Acquire, construct and hold in whole or in part any lands, buildings, easements, water and air rights, improvements to lands and buildings and capital equipment to be located permanently or used exclusively on such lands or in such buildings, which are deemed necessary in connection with an eligible project to be situated within the state, and construct, reconstruct, improve, better and extend such projects, and enter into contracts therefor; and

(2) Sell and convey all properties acquired in connection with eligible projects, including without limitation the sale and conveyance thereof subject to any mortgage and the sale and conveyance thereof under an option granted to the lessee of the eligible project, for such price, and at such time as the state may determine. However, no sale or conveyance of such properties shall ever be made in such manner as to impair the rights of interests of the holder, or holders, or any bonds issued under the authority of ORS 285B.320 to 285B.371. [Formerly 285.340; 1999 c.509 §35; 2009 c.830 §88]

285B.341 Limitation on state power. Except as provided in ORS 285B.335 and 285B.338, the state does not have the power to operate any eligible project as a business or in any manner whatsoever, and except as provided in ORS 285B.335 and 285B.338, nothing in ORS 285B.320 to 285B.371 authorizes the state to expend any funds on any eligible project, other than the revenues of such projects, or the proceeds of revenue bonds issued hereunder, or other funds granted to the state for the purposes of an eligible project. For the purpose of exercising the powers and authority granted under ORS 285B.335 or 285B.338, the state and the Oregon Business Development Commission are not subject to the requirements of ORS 279.835 to 279.855 or ORS chapter 279A, 279B or 279C. [Formerly 285.345; 2001 c.680 §6; 2003 c.167 §12; 2003 c.794 §239; 2009 c.830 §89]

285B.344 Issuance of bonds. (1) At the request of the Oregon Business Development Department, the State Treasurer may issue under ORS 285B.320 to 285B.371 and ORS

chapter 286A bonds secured by revenues from eligible economic development projects or from other financing sources to finance or refinance in whole or part the cost of acquisition, construction, reconstruction, improvement or extension of projects. The bonds shall be identified by project. Refunding bonds may be issued to refinance such bonds.

(2) The department or the State Treasurer may appoint bond counsel as prescribed under ORS 286A.130.

(3) Any escrow agent, bond registrar, paying agent or trustee, if any, designated to carry out all or part of the powers specified in ORS 285B.335 must agree to furnish financial statements and audit reports for each bond issue. [Formerly 285.350; 1999 c.509 §36; 2001 c.536 §1; 2003 c.167 §13; 2003 c.794 §240; 2007 c.783 §99; 2009 c.830 §90]

285B.347 [Formerly 285.355; 1999 c.509 §37; repealed by 2007 c.783 §234]

285B.350 Method of issuing bonds.

Bonds authorized under ORS 285B.320 to 285B.371 shall be issued in accordance with the provisions of ORS chapter 286A. [Formerly 285.360; 2007 c.783 §100]

285B.353 Administrative expenses. The administrative expenses of the State Treasurer shall be charged against bond proceeds or project revenues. [Formerly 285.365]

285B.356 Refunding bonds. The State Treasurer shall have the power, whenever the treasurer deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured. The refunding bonds may be exchanged for bonds to be refunded and the proceeds applied to the purchase, redemption or payment of such bonds. [Formerly 285.370]

285B.359 Validity of bonds. The validity of bonds issued under ORS 285B.320 to 285B.371 shall not be dependent on nor be affected by the validity or regularity of any proceeding relating to the acquisition, purchase, construction, installation, reconstruction, improvement, betterment or extension of the eligible project for which the bonds are issued. The official action authorizing such bonds may provide that the bonds shall contain a recital that they are issued pursuant to ORS 285B.320 to 285B.371 and such recital shall be conclusive evidence of their validity and of the regularity of their issuance. [Formerly 285.375]

285B.362 Covenants in bonds. The official action authorizing the issuance of bonds under ORS 285B.320 to 285B.371 to finance or refinance in whole or in part, the acquisition, construction, installation, reconstruction, improvement, betterment or extension of any eligible project may contain cove-

nants, notwithstanding that such covenants may limit the exercises of powers conferred by ORS 285B.320 to 285B.371 in the following respects and in such other respects as the Oregon Business Development Department may decide:

(1) The rents to be charged for the use of properties acquired, constructed, installed, reconstructed, improved, bettered or extended under the authority of ORS 285B.320 to 285B.371;

(2) The use and disposition of the revenues of such projects;

(3) The creation and maintenance of sinking funds and the regulation, use and disposition thereof;

(4) The creation and maintenance of funds to provide for maintaining the eligible project and replacement of properties depreciated, damaged, destroyed or condemned;

(5) The purpose or purposes to which the proceeds of sale of bonds may be applied and the use and disposition of such proceeds;

(6) The nature of mortgages or other encumbrances on the eligible project made in favor of the holder or holders of such bonds or in favor of any escrow agent, vendor, lender, other financing party or trustee therefor;

(7) The events of default and the rights and liabilities arising thereon and the terms and conditions upon which the holders of any bonds may bring any suit or action on such bonds or on any coupons appurtenant thereto;

(8) The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of the eligible project;

(9) The insurance to be carried upon the eligible project and the use and disposition of insurance moneys;

(10) The keeping of books of account and the inspection and audit thereof;

(11) The terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and the terms and conditions upon which such declaration and its consequences may be waived;

(12) The rights, liabilities, powers and duties arising upon the breach by the municipality or redevelopment agency of any covenants, conditions or obligations;

(13) The appointing of and vesting in a trustee or trustees of the right to enforce any covenants made to secure or to pay the bonds; the powers and duties of such trustee or trustees, and the limitation of their liabilities;

(14) The terms and conditions upon which the holder or holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made under ORS 285B.320 to 285B.371;

(15) A procedure by which the terms of any official action authorizing bonds or of any other contract with bondholders, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds the holders of which may consent thereto, and the manner in which such consent may be given; and

(16) The subordination of the security of any bonds issued under ORS 285B.320 to 285B.371 and the payment of principal and interest thereof, to the extent deemed feasible and desirable by the state, to other bonds or obligations of the state issued to finance the eligible project or that may be outstanding when the bonds thus subordinated are issued and delivered. [Formerly 285.380; 1999 c.509 §38; 2007 c.783 §101; 2009 c.830 §91]

285B.365 Limitations of bonds; recitals. (1) Revenue bonds issued under ORS 285B.320 to 285B.371:

(a) Shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the state be subject to any liability thereon. No holder or holders of such bonds shall ever have the right to compel any exercise of the taxing power of the state to pay any such bonds or the interest thereon, nor to enforce payment thereof against any property of the state except those projects or portions thereof, mortgaged or otherwise encumbered under the provisions and for the purposes of ORS 285B.320 to 285B.371.

(b) Shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the state, except those eligible projects, or portions thereof, mortgaged or otherwise encumbered, under the provisions and for the purposes of ORS 285B.320 to 285B.371.

(2) Each bond issued under ORS 285B.320 to 285B.371 shall recite in substance that the bond, including interest thereon, is payable solely from the revenue pledged to the payment thereof. No such bond shall constitute a debt of the state or a lending of the credit of the state within the meaning of any constitutional or statutory limitation. However, nothing in ORS 285B.320 to 285B.371 is intended to impair the rights of holders of bonds to enforce covenants made for the security thereof as provided in ORS 285B.368. [Formerly 285.385; 2003 c.167 §14]

285B.368 Powers and rights of bondholders. Subject to any contractual limitation binding upon the holders of any issue of bonds, or any escrow agent, vendor, lender, other financing party or trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of bonds, or any trustee therefor, for the equal benefit and protection of all bondholders similarly situated, may:

(1) By action or proceeding for legal or equitable remedies, enforce their rights against the state and any of its officers, agents and employees, and may require and compel the state or any such officers, agents or employees to perform and carry out its and their duties and obligations under ORS 285B.320 to 285B.371 and its and their covenants and agreements with bondholders;

(2) By action require the state to account as if it was the trustee of an express trust;

(3) By action enjoin any acts or things which may be unlawful or in violation of the right of the bondholders;

(4) Bring action upon the bonds;

(5) Foreclose any mortgage or lien given under the authority of ORS 285B.320 to 285B.371 and cause the property standing as security to be sold under any proceedings permitted by law or equity; and

(6) Exercise any right or remedy conferred by ORS 285B.320 to 285B.371 without exhausting and without regard to any other right or remedy conferred by ORS 285B.320 to 285B.371 or any other law of this state, none of which rights and remedies is intended to be exclusive of any other, and each is cumulative and in addition to every other right and remedy. [Formerly 285.390; 1999 c.509 §39]

285B.371 Loans to eligible projects when state holds no interest. The state, acting through the Oregon Business Development Commission, may loan the proceeds of the bonds authorized by ORS 285B.320 to 285B.371 for eligible projects without the necessity of the state having any ownership or leasehold interest in the eligible projects. Loans made pursuant to this section shall be secured, if at all, to the extent deemed necessary or desirable by the commission. [Formerly 285.393; 1999 c.509 §40; 2007 c.783 §102; 2009 c.830 §92]

285B.374 [Formerly 285.395; 1999 c.509 §41; repealed by 2003 c.167 §16]

285B.377 [Formerly 285.397; 1999 c.509 §42; repealed by 2003 c.167 §16]

285B.380 [Formerly 285.398; 2003 c.662 §7; renumbered 285C.600 in 2003]

285B.383 [Formerly 285.399; 1999 c.509 §26; 2003 c.662 §8; renumbered 285C.606 in 2003]

285B.386 [Formerly 285.400; 2003 c.662 §9; renumbered 285C.609 in 2003]

285B.389 [Formerly 285.401; 1999 c.509 §21; 2003 c.167 §9; 2003 c.662 §10a; renumbered 285C.612 in 2003]

285B.392 [Formerly 285.402; 2003 c.662 §11; renumbered 285C.620 in 2003]

INFRASTRUCTURE PROJECTS

(Generally)

285B.410 Definitions for ORS 285B.410 to 285B.482. As used in ORS 285B.410 to 285B.482, unless the context requires otherwise:

(1) “Airport” means:

(a) A runway, taxiway, aircraft parking apron, ramp, auto parking area, access road, safety area or runway protection zone;

(b) An airport-related facility, including a hangar, terminal, air traffic control tower or other building;

(c) A signal, navigational aid or traffic control system; or

(d) A fuel tank or other physical airport improvement.

(2)(a) “Community development project” means a project that involves strategic planning, training or other technical assistance as defined by the Oregon Business Development Department by rule, and that is aimed at strengthening the economic development, community development or infrastructure priority setting of a municipality or region.

(b) “Community development project” includes the following activities:

(A) Developing and managing short-term and long-term projects;

(B) Developing priorities for infrastructure projects;

(C) Strategic planning related to furthering economic or community development; or

(D) Training related to economic or community development, including training to improve leadership skills, technical skills or analytical skills, particularly in rural and distressed areas.

(c) “Community development project” includes projects that may encompass a municipality or any part of a municipality and may be undertaken in cooperation with another municipality.

(3) “Development project” means a project for the acquisition, improvement, construction, demolition, or redevelopment of municipally owned utilities, buildings, land, transportation facilities or other facilities that assist the economic and community development of the municipality, including planning project activities that are necessary or useful as determined by the Oregon Infrastructure Finance Authority.

(4) “Direct project management costs” means expenses directly related to a project

that are incurred by a municipality solely to support or manage a project eligible for assistance under ORS 285B.410 to 285B.482. “Direct project management costs” does not include routine or ongoing expenses of the municipality.

(5) “Emergency project” means a development project resulting from an emergency as defined in ORS 401.025, to which federal disaster relief has been committed.

(6) “Energy system” means a facility necessary for the distribution, transmission or generation of energy, including but not limited to facilities powered by wind, solar energy or biofuel and facilities for the collection, storage, transmission or distribution of a fuel, including natural gas, methane or hydrogen.

(7) “Marine facility” means:

(a) A wharf, dock, freight handling or passenger facility;

(b) A navigation channel or structure, including a project funded under ORS 777.267; or

(c) Any other physical marine facility improvement.

(8) “Municipality” means an Oregon city or county, the Port of Portland created by ORS 778.010, a county service district organized under ORS chapter 451, a district as defined in ORS 198.010, a tribal council of a federally recognized Indian tribe in this state or an airport district organized under ORS chapter 838.

(9) “Planning project” means:

(a) A project related to a potential development project for preliminary, final or construction engineering;

(b) A survey, site investigation or environmental action;

(c) A financial, technical or other feasibility report, study or plan; or

(d) An activity that the authority determines to be necessary or useful in planning for a potential development project.

(10) “Project” means a development, community development, planning or emergency project.

(11) “Railroad” means:

(a) A main line, siding, yard, connecting or auxiliary track, right of way or easement;

(b) An industrial spur or related facility, including a depot, shop, maintenance building or other building;

(c) A signal or traffic control system;

(d) A bridge or tunnel;

(e) A dock, pit, conveyor, bin, crane, piping system, tank or pavement for unloading,

loading or transfer of freight, trailers or containers; or

(f) Any other physical railroad improvement.

(12) "Road" means a street, highway or thruway or a road-related structure that provides for continuity of a right of way, including a bridge, tunnel, culvert or similar structure or other physical road-related improvement.

(13) "Rural area" has the meaning given that term in ORS 285A.010.

(14) "Solid waste disposal site" has the meaning given the term "disposal site" in ORS 459.005.

(15) "Telecommunications system" means equipment or a facility for the electronic transmission of voice, data, text, image or video.

(16) "Transportation" means a system for movement of freight or passengers.

(17) "Utilities" means a solid waste disposal site or a water, sewage, storm water drainage, energy or telecommunications system. [Formerly 285.700; 1999 c.509 §43; 2001 c.96 §5; 2001 c.633 §1; 2001 c.883 §27; 2003 c.773 §27; 2005 c.835 §2; 2007 c.804 §32; 2009 c.830 §93]

285B.413 Legislative findings; purpose; use of moneys; rules. (1) The Legislative Assembly finds that:

(a) The improvement, expansion and new construction of the state's infrastructure systems provide the basic framework for continuing and expanding economic activity in this state, thereby improving the quality of life and economic opportunity for the people of Oregon.

(b) It is essential to maintain usable and developable industrial and commercial lands in Oregon.

(2) Because municipalities in this state often suffer from a lack of available financing and technical capacity for these projects, it is the purpose of ORS 285B.410 to 285B.482 to provide financial or other assistance to enable municipalities to construct, improve and repair those facilities that are essential for supporting continuing and expanded economic activity. It is the intent of the Legislative Assembly, by providing that assistance, to stimulate industrial growth and commercial enterprise and to promote employment opportunities in Oregon.

(3) Moneys in the Special Public Works Fund shall be used primarily to provide loans to municipalities for development and planning projects. Grants shall be given only when loans are not feasible due to the financial need of the municipality or under circumstances that the Oregon Business Development Department specifies by adminis-

trative rule. The Oregon Infrastructure Finance Authority is authorized to determine the level of grant or loan funding, if any, on a case-by-case basis. [Formerly 285.703; 2001 c.883 §27a; 2003 c.773 §28; 2005 c.835 §3; 2009 c.830 §94]

285B.416 [Formerly 285.705; 2001 c.883 §28; 2003 c.773 §29; repealed by 2005 c.835 §37]

285B.419 Administration of Special Public Works Fund; rules and policies. (1) The Oregon Business Development Department shall adopt rules and policies for the administration of the Special Public Works Fund. All forms of assistance are subject to the rules and policies of the department.

(2) The Oregon Infrastructure Finance Authority shall manage the Special Public Works Fund and any expenditures from its accounts and transfers between its accounts so that the fund provides a continuing source of financing for development or planning projects consistent with ORS 285B.413.

(3) The authority may commit moneys in the Special Public Works Fund or reserve future income to the fund for disbursement in future years under ORS 285B.440. The authority shall commit or reserve moneys under this subsection only after:

(a) Allowing for contingencies;

(b) Finding that there will be sufficient unobligated net income to the fund to make the future payments, consistent with the financial requirements of subsections (2) and (3) of this section; and

(c) Providing in any contract for the commitment that the liability of the state to make the annual payments shall be contingent on the availability of moneys in the Special Public Works Fund.

(4) In assisting municipalities with projects, the authority shall cooperate to the maximum extent possible with other state and federal agencies. [Formerly 285.707; 1999 c.509 §22; 2001 c.633 §2; 2001 c.883 §29; 2003 c.773 §30; 2005 c.835 §5; 2009 c.830 §95]

(Municipal Development Projects)

285B.422 Funding to municipalities for development projects; criteria for project funding; prohibited uses. (1) The Oregon Infrastructure Finance Authority may provide financial or other assistance to a municipality for a development project.

(2) The project must be municipally owned and operated either by the municipality or under a management contract or an operating agreement with the municipality. If the project consists:

(a) Solely of the purchase or acquisition of land by the municipality, the land must be identified in the applicable land use or capital plan as necessary for a potential develop-

ment project or be zoned solely for commercial or industrial use.

(b) Of a privately owned railroad, the railroad must be designated by the owner and operator as subject to abandonment within three years, pursuant to federal law governing abandonment of common carrier railroad lines.

(c) Of a telecommunications system, the governing body of the municipality shall adopt a resolution, after a public hearing, finding that the proposed telecommunications system project is necessary and would not otherwise be provided by a for-profit entity within a reasonable time and for a reasonable cost.

(3) If the project is an energy system, the municipality and the serving utility must execute an ownership and operating agreement for the proposed energy system. This subsection does not apply when the energy system will be located within the recognized service territory of the municipality.

(4) The authority may not use funds to provide assistance for:

(a) Projects that primarily focus on relocating business or economic activity from one part of the state to another, except in cases where the business or economic activity would otherwise locate outside of Oregon; or

(b) Ongoing operations or maintenance expenses. [1997 c.800 §12; 1999 c.509 §44; 2001 c.883 §30; 2003 c.773 §31; 2005 c.835 §6; 2009 c.11 §33; 2009 c.830 §96]

Note: 285B.422 was added to and made a part of 285B.410 to 285B.482 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

285B.425 [1997 c.800 §13; 2001 c.883 §30a; repealed by 2005 c.835 §37]

(Assistance from Special Public Works Fund)

285B.428 Application for funds; rules.

Any municipality may apply for financial or other assistance from the Special Public Works Fund by submitting a completed application and related information as required by the Oregon Business Development Department by rule. The application shall be filed, reviewed and approved or rejected in accordance with rules adopted by the department. [Formerly 285.710; 2001 c.883 §30b; 2003 c.773 §33; 2005 c.835 §11; 2009 c.830 §98]

285B.431 [Formerly 285.713; 2003 c.773 §34; repealed by 2005 c.835 §37]

285B.434 [Formerly 285.715; 2001 c.883 §30c; repealed by 2005 c.835 §37]

285B.437 Contract with municipality; required provisions; repayment. (1) If the Oregon Infrastructure Finance Authority approves assistance from the Special Public

Works Fund for a project, the authority, on behalf of the state, and the municipality may enter into a contract to implement the assistance. The contract shall include:

(a) A provision that the liability of the state under the contract is contingent upon the availability of moneys in the Special Public Works Fund for use in the project;

(b) If any portion of the assistance is in the form of a loan or the purchase of a bond of a municipality, a provision granting the authority a lien on or a security interest in the collateral as determined by the authority to be necessary to secure repayment of the loan or bond; and

(c) Other provisions as the authority considers necessary or appropriate to implement the assistance.

(2) When the authority approves financial assistance under ORS 285B.410 to 285B.482 for a project, the authority shall pay moneys for the project from the Special Public Works Fund in accordance with the terms of the contract.

(3) Notwithstanding any other provision of law or any restriction on indebtedness contained in a charter, a municipality may borrow from the Special Public Works Fund by entering into a contract with the authority. The contract may be repaid from:

(a) The revenues of the project, including special assessment revenues;

(b) Amounts withheld under ORS 285B.449 (1);

(c) The general fund of the municipality; or

(d) Any other source.

(4) A loan contract authorized under subsection (3) of this section shall be authorized by an ordinance, order or resolution adopted by the governing body of the municipality. [Formerly 285.717; 2001 c.883 §30d; 2003 c.773 §35; 2005 c.835 §12; 2009 c.830 §99]

285B.438 [2001 c.633 §4; 2003 c.773 §36; repealed by 2005 c.835 §37]

285B.440 Primary use of moneys in fund; standards for awarding grants; limitations; rules. (1)(a) The moneys in the Special Public Works Fund shall be used primarily to provide loans to municipalities for projects as defined in ORS 285B.410 to 295B.482. The Oregon Infrastructure Finance Authority may determine the level of grant or loan funding, if any, on a case-by-case basis.

(b) If the authority approves funding, the authority shall determine a maximum amount of the loan based upon a reasonable and prudent expectation of the ability of the municipality to repay the loan.

(c) The initial loan term may not exceed the usable life of the project or 30 years from the year of project completion, whichever is less. The term of a renegotiated loan may not exceed the remaining usable life of the project or 30 years, whichever is less.

(d) Assistance from the fund for a marine facility project otherwise funded under ORS 777.267 shall be limited to a loan. The loan may not exceed the amount of the required local matching funds.

(2) The Oregon Business Development Department shall by rule adopt standards for awarding grants from the Special Public Works Fund. The standards may include the award of grants as a financial incentive to accomplish the goals of the Special Public Works Fund, to address special circumstances of a project or to address the financial need of the applicant.

(3) The authority may make grants to a municipality not to exceed \$1 million per project or 85 percent of the allowable project costs, whichever is less. For purposes of this subsection, allowable project costs do not include capitalized interest, if any.

(4) The authority may not expend more than one percent of the value of the Special Public Works Fund in any biennium for grants or direct assistance, if any, for planning projects and community development projects to municipalities.

(5) The authority may not expend more than \$2.5 million in any biennium for emergency project grants. For purposes of this subsection, emergency project grants include grants for essential community facilities, as defined by the department by rule after consultation with the League of Oregon Cities, the Association of Oregon Counties, the Oregon Ports Representation Group and the Special Districts Association of Oregon.

(6) Except as otherwise limited by this section, not more than 100 percent of the total cost of a project, including capitalized interest, shall be financed from the Special Public Works Fund. [Formerly 285.720; 2001 c.883 §31a; 2003 c.773 §37; 2005 c.835 §13; 2007 c.804 §33; 2009 c.830 §100; 2011 c.47 §1]

285B.443 [Formerly 285.723; 2001 c.883 §31; 2003 c.773 §38; repealed by 2005 c.835 §37]

285B.446 [Formerly 285.725; 2003 c.773 §39; repealed by 2005 c.835 §37]

285B.449 Effect of failure to comply or default. (1) If a municipality fails to comply with a contract entered into under ORS 285B.410 to 285B.482, the Oregon Business Development Department may seek appropriate legal remedies to secure any repayment due the Special Public Works Fund. If any municipality defaults on payments due to the Special Public Works Fund under ORS 285B.410 to 285B.482, the State

of Oregon may withhold any amounts otherwise due to the municipality to apply to the indebtedness. The department may waive this right to withhold.

(2) Moneys withheld under subsection (1) of this section shall be deposited in the Special Public Works Fund and shall be used to repay any account in the fund from which funds were expended to pay obligations upon which the municipality defaulted. [Formerly 285.727; 2009 c.830 §101]

285B.452 [Formerly 285.730; 2001 c.883 §31b; 2003 c.773 §40; repealed by 2005 c.835 §37]

285B.455 Special Public Works Fund; uses; administration of fund. (1) There is created the Special Public Works Fund, separate and distinct from the General Fund. Interest earned by the Special Public Works Fund shall be credited to the fund. All moneys credited to the Special Public Works Fund are appropriated continuously to the Oregon Business Development Department for the Oregon Infrastructure Finance Authority for the purposes set forth in this section.

(2) The fund shall consist of all moneys credited to the fund, including:

(a) Moneys appropriated to the fund by the Legislative Assembly or transferred to the fund by the authority;

(b) Earnings on the fund;

(c) Repayment of financial assistance, including interest;

(d) Moneys received from the federal government, other state agencies or local governments;

(e) Bond proceeds as authorized under ORS 285B.410 to 285B.482 or other law; and

(f) Moneys from any other source, including but not limited to grants and gifts.

(3) Moneys in the Special Public Works Fund may be invested as provided by ORS 293.701 to 293.820 and the earnings from the investments shall be credited to the account in the Special Public Works Fund designated by the authority.

(4) The authority shall administer the Special Public Works Fund.

(5) The authority may establish other accounts within the Special Public Works Fund for the payment of project costs, reserves, debt service payments, credit enhancement, administrative costs and operation expenses or any other purpose necessary to carry out ORS 285B.410 to 285B.482.

(6) The authority may directly or indirectly grant, expend or loan moneys in the fund or extend credit to:

(a) Provide to municipalities any form of financial or other assistance that the au-

thority considers appropriate to assist communities with a project, including the refinancing of temporary project financing.

(b) Purchase goods or services related to a project on behalf of the municipality.

(c) Provide state funds as a match for federal funds available for the administration of the Community Development Block Grant program.

(d) Finance administrative costs of the authority pursuant to ORS 285B.410 to 285B.482.

(e) Provide annual grants on behalf of a municipality in the form of partial repayment to bondholders of amounts owed.

(f) Cover contracts that are issued to guaranty any portion of the obligation of a municipality to finance a development project and that are not sold to the State of Oregon. Guaranty contracts under this paragraph shall be payable solely from moneys in the Special Public Works Fund, and shall not constitute a debt or obligation of the State of Oregon. The authority may, on behalf of the state, establish a special account in the fund and commit to deposit into the account specified portions of existing and future allocations to the fund. The commitments shall be made by rule of the department and shall constitute covenants of the state for the benefit of the owners of obligations guaranteed by the state pursuant to this section.

(7) As used in this section, “administrative costs” includes the authority’s direct and indirect costs for investigating and processing an application, developing a contract, monitoring the use of funds by a municipality, investigating and resolving budget discrepancies, closing a project and providing financial or other assistance to a municipality. [Formerly 285.733; 2001 c.633 §5; 2001 c.883 §32; 2003 c.773 §41; 2003 c.800 §24; 2005 c.835 §4; 2007 c.783 §102a; 2007 c.804 §34; 2009 c.830 §102]

285B.458 Grants for assistance to distressed or rural areas; minimum. Not less than 60 percent of the grants awarded from the Special Public Works Fund in any biennium shall be used to provide assistance to distressed or rural areas. [Formerly 285.735; 2001 c.883 §32a; 2003 c.773 §42; 2005 c.835 §14]

285B.460 Funding and assistance for planning projects. (1) The Oregon Infrastructure Finance Authority may provide financial or other assistance to a municipality for a planning project.

(2) The planning project may be a stand-alone project.

(3) The planning project may include an environmental action on a brownfield. For purposes of this subsection:

(a) “Brownfield” has the meaning given that term in ORS 285A.185.

(b) “Environmental action” has the meaning given that term in ORS 285A.188. [2005 c.835 §8; 2009 c.11 §34; 2009 c.830 §103]

285B.461 [Formerly 285.737; 2001 c.883 §33; 2003 c.773 §43; repealed by 2005 c.835 §37]

285B.462 Funding and assistance for emergency projects. (1) The Oregon Infrastructure Finance Authority may provide financial or other assistance to a municipality for an emergency project.

(2) The authority may award grant funding to an emergency project only if federal disaster relief assistance has been committed for the emergency project.

(3) Assistance from the Special Public Works Fund for an emergency project may not exceed the total local matching funds requirement for the federal disaster relief assistance committed to the project. [2005 c.835 §9; 2009 c.11 §35; 2009 c.830 §104]

285B.464 [Formerly 285.753; 2003 c.773 §44; repealed by 2005 c.835 §37]

285B.465 Allowable costs of projects. For purposes of ORS 285B.410 to 285B.482, the allowable costs of a project include:

(1) Financing costs, including capitalized interest;

(2) Direct project management costs;

(3) Costs of consultant services and expenses;

(4) Construction costs and expenses;

(5) Costs of property acquisition, including any easement or right of way directly related to and necessary for the project;

(6) Costs of acquiring off-site property for purposes directly related to the project, such as wetland mitigation; and

(7) Other costs that the Oregon Infrastructure Finance Authority determines to be necessary or useful. [2005 c.835 §10; 2009 c.830 §105]

(Revenue Bond Financing)

285B.467 Eligibility for revenue bond financing; rules; request for issuance; allowable costs. (1) The Oregon Infrastructure Finance Authority shall determine eligibility for revenue bond financing under ORS 285B.467 to 285B.479 of development projects that have qualified under ORS 285B.419 to 285B.437 and 285B.449 pursuant to rules adopted by the Oregon Business Development Department.

(2) After a determination is made that a development project is eligible for revenue bond financing under ORS 285B.467 to 285B.479, the department shall forward a request for the issuance of revenue bonds to

the State Treasurer, who shall determine whether to issue revenue bonds.

(3) When a project is determined to be eligible for revenue bond financing under ORS 285B.467 to 285B.479, allowable costs as described in ORS 285B.465 may be paid from bond proceeds.

(4) Administrative expenses of the authority in processing applications and investigating proposed projects and bond sales may not be derived from bond proceeds.

(5) The authority may pledge all or any portion of the existing or future assets and receipts of the Special Public Works Fund to pay debt service on bonds issued pursuant to ORS 285B.410 to 285B.482. The pledge shall take effect immediately, without delivery of the pledged funds to third parties, and the lien of the pledge shall be superior to all other liens of any nature.

(6) The authority is authorized to establish separate accounts within the fund for separate bond issues. [Formerly 285.740; 2001 c.883 §34; 2003 c.773 §45; 2005 c.835 §15; 2009 c.830 §106]

285B.470 Powers of authority. The Oregon Infrastructure Finance Authority may:

(1) Make all contracts, execute all instruments and do all things necessary or convenient in the exercise of the powers granted by this section, or in the performance of its covenants or duties, or in order to secure the payment of its bonds;

(2) Enter into and perform contracts and agreements with municipalities as the authority may consider proper and feasible for or concerning the planning, construction, installation, lease or other acquisition, and the financing of projects; and

(3) Enter into covenants for the benefit of bond owners regarding the use and expenditure of moneys in the Special Public Works Fund. [Formerly 285.743; 2003 c.773 §46; 2005 c.835 §16; 2007 c.783 §103; 2009 c.830 §107]

285B.473 Issuance of revenue bonds.

(1) At the request of the Oregon Business Development Department, the State Treasurer may issue under ORS 285B.467 to 285B.479 and ORS chapter 286A revenue bonds secured by moneys paid to the Special Public Works Fund pledged therefor to finance or refinance in whole or part the cost of acquisition, construction, reconstruction, improvement or extension of development projects. Refunding bonds may be issued to refinance the revenue bonds.

(2) The department or the State Treasurer may appoint bond counsel as prescribed in ORS 286A.130. [Formerly 285.745; 2001 c.536 §2; 2003 c.773 §47; 2003 c.794 §241; 2005 c.835 §17; 2007 c.783 §104; 2009 c.830 §108]

285B.476 Application of law to revenue bonds; proceeds; maximum duration of loans. (1) ORS 285B.350 to 285B.362 and 285B.368 apply to revenue bonds issued under ORS 285B.467 to 285B.479.

(2) The proceeds of revenue bonds issued and sold under ORS 285B.467 to 285B.479 shall be deposited in the Special Public Works Fund and used for the payment of a loan to a municipality for a development project and costs of issuing the revenue bonds.

(3) A loan made with money derived from the sale of revenue bonds under this section shall be made as other loans under ORS 285B.419 to 285B.437 and 285B.449 are made, except that the loan contract shall set forth a schedule of payments that may not exceed the usable life of the contracted project. [Formerly 285.747; 2003 c.773 §48; 2005 c.835 §18]

285B.479 Nature of revenue bonds. (1) Revenue bonds issued under ORS 285B.467 to 285B.479:

(a) May not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, except as provided in this section, nor shall the state be subject to any liability thereon. No holder or holders of such bonds shall ever have the right to compel any exercise of the taxing power of the state to pay any such bonds or the interest thereon, nor to enforce payment thereof against any property of the state except those moneys pledged therefor in the Special Public Works Fund, under the provisions of ORS 285B.467 to 285B.479.

(b) May not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the state, except those moneys paid to the Special Public Works Fund.

(2) A revenue bond issued under ORS 285B.467 to 285B.479 does not constitute a debt of the State of Oregon or a lending of the credit of this state within the meaning of any constitutional or statutory limitation. [Formerly 285.750; 2001 c.883 §35; 2007 c.783 §105]

285B.482 Revenue bonds as parity bonds; consolidation of bond proceeds; loans and consolidated funds as security for water or development projects. (1) Notwithstanding any other law relating to revenue bonds issued and sold under ORS 285B.467 to 285B.479 or ORS 285B.572, 285B.575 and 285B.578, revenue bonds may be issued and sold as parity bonds.

(2) Proceeds of revenue bonds issued and sold under ORS 285B.467 to 285B.479 or ORS 285B.572, 285B.575 and 285B.578, together with the investment earnings thereon, may be consolidated into one or more funds or accounts and may be pledged to the holders of revenue bonds issued to finance water

projects, as defined in ORS 285B.560, or development projects.

(3) Any loan to a municipality made pursuant to ORS 285B.467 to 285B.479, 285B.560 to 285B.569 or 285B.572 to 285B.599, including loans funded in whole or in part with the proceeds of revenue bonds and loans funded with moneys in the Water Fund or the Special Public Works Fund, may be pledged to the holders of revenue bonds issued to finance water projects or development projects.

(4) Funds or accounts established by the Oregon Business Development Department or the State Treasurer in connection with the issuance of revenue bonds under ORS 285B.467 to 285B.479 or ORS 285B.572, 285B.575 and 285B.578 and moneys held in the funds and accounts, together with the investment earnings thereon, may be consolidated into one or more funds or accounts and may be pledged to the holders of revenue bonds issued to finance water projects or development projects. [1997 c.800 §14; 2003 c.773 §49; 2005 c.835 §19; 2007 c.804 §35; 2009 c.830 §109]

285B.486 [2001 c.957 §10; renumbered 285C.530 in 2003]

285B.488 [2001 c.957 §11; renumbered 285C.533 in 2003]

INFRASTRUCTURE PROJECTS FOR SOUTHERN OREGON

285B.500 Purpose of ORS 285B.500 to 285B.512; legislative findings. (1) The Legislative Assembly finds that:

(a) It is a matter of statewide importance to increase the infrastructure capacity of Coos, Jackson and Josephine Counties and the rest of southern Oregon.

(b) The absence of such infrastructure capacity, the lack of inexpensive industrial fuel and inadequate transportation facilities restrict national and international trade and otherwise hinder the economic development of the region.

(c) State financial assistance to specified local projects in southern Oregon will sustain and increase jobs, foster national and international trade, allow industrial and commercial expansion and eliminate other negative effects caused by infrastructure that is inadequate to support a vibrant and expanding economy.

(d) It is desirable to make a present commitment of lottery revenues that are expected to be received in the 1999-2001 and 2001-2003 biennia. A clear and prompt financial commitment from the State of Oregon will allow the project sponsors, in reliance on that commitment, to make prompt commitments to pay their share. Prompt commitment by the project sponsors will enhance

the likelihood that other private or federal funds will be received for the projects.

(2) The Legislative Assembly declares that the purpose of ORS 285B.500 to 285B.512 and section 9, chapter 644, Oregon Laws 1997, is to obligate the State of Oregon to pay the amounts specified in ORS 285B.500 to 285B.512 and section 9, chapter 644, Oregon Laws 1997, from future lottery revenues. The obligation of the state to pay the amounts specified in section 9, chapter 644, Oregon Laws, 1997, and in grant agreements authorized by ORS 285B.506 is limited to, and conditioned solely on, the availability of unobligated net lottery proceeds and any other moneys lawfully credited to the Oregon Unified International Trade Fund. Neither the faith and credit nor any of the taxing power of the State of Oregon are pledged or otherwise committed by ORS 285B.500 to 285B.515 and 777.277 to 777.287 and section 9, chapter 644, Oregon Laws 1997, and the commitments of the State of Oregon under ORS 285B.500 to 285B.515 and 777.277 to 777.287 and section 9, chapter 644, Oregon Laws 1997, and any grant agreement shall not constitute a debt or liability of the state within the meaning of section 7, Article XI of the Oregon Constitution. [1997 c.644 §7]

Note: 285B.500 to 285B.515 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 285B by legislative action. See Preface to Oregon Revised Statutes for further explanation.

285B.503 Oregon Unified International Trade Fund; uses. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Oregon Unified International Trade Fund. Interest earned by the Oregon Unified International Trade Fund shall be credited to the fund. The moneys in the fund are continuously appropriated to the Oregon Business Development Department for the Oregon Infrastructure Finance Authority for:

(a) Paying all or a portion of the costs of:

(A) A project for the extension and improvement of Jackson County Airport runway.

(B) A project for the extension of a natural gas pipeline to the Coos Bay and North Bend area from a location near Roseburg.

(C) A project for improvements to the Klamath Falls International Airport maintained by the City of Klamath Falls.

(b) Transfer to the Oregon Port Revolving Fund created by ORS 285A.708.

(2) A separate account within the Oregon Unified International Trade Fund shall be established for each project listed in subsection (1) of this section.

(3) The Oregon Unified International Trade Fund shall consist of moneys allocated to the fund under section 9, chapter 644, Oregon Laws 1997, and such other moneys as may be appropriated to the fund by the Legislative Assembly, including interest on such moneys. [1997 c.644 §8; 2009 c.830 §110]

Note: See note under 285B.500.

285B.506 Grant agreements; maximum grant amount; required provisions; assignment of right to receive grant moneys; agreement not to constitute state debt or liability. (1) The administrator of the Oregon Infrastructure Finance Authority shall enter into a grant agreement with the primary sponsor of a project listed in ORS 285B.503 that commits the State of Oregon to make the deposits specified in section 9, chapter 644, Oregon Laws 1997, and commits the Oregon Infrastructure Finance Authority to pay those deposits, plus earnings, to the primary sponsor as soon as funds are available in the appropriate account of the Oregon Unified International Trade Fund and are required by the primary sponsor for payment of project costs. Notwithstanding any other law, the commitment of the State of Oregon and the authority under this section shall be conditioned solely on receipt by this state of unobligated net lottery proceeds sufficient to make the deposits specified in section 9, chapter 644, Oregon Laws 1997.

(2) The total amount paid to the primary sponsor under the grant agreement shall not exceed the amount deposited in the appropriate account for the sponsor's project in the Oregon Unified International Trade Fund, plus any interest earnings on the amounts in the account. The grant agreement shall:

(a) Pledge the unobligated net lottery proceeds to pay the amounts due to the primary sponsor under the grant agreement;

(b) Specify the administrative procedures for making payments to the primary sponsor;

(c) Provide for notification to the administrator if the primary sponsor determines that it is unable to undertake the project;

(d) Allow assignment of the right to receive amounts payable under the grant agreement to third parties;

(e) Obligate the primary sponsor to remit any unexpended grant funds and any earnings thereon to the State of Oregon after the sponsor's project is complete and all its costs have been paid; and

(f) Contain other terms and conditions that are necessary or appropriate, as determined by the administrator, to implement ORS 285B.500 to 285B.512 and section 9, chapter 644, Oregon Laws 1997, to protect the interests and investments of the State of

Oregon in the projects specified in ORS 285B.503.

(3) The grant agreement, when executed by the administrator and accepted by the primary sponsor, shall be a valid, binding and irrevocable contractual obligation of the State of Oregon in accordance with its terms. However, amounts due under the grant agreement shall be payable solely from the unobligated net lottery proceeds required by section 9, chapter 644, Oregon Laws 1997, to be deposited in the appropriate account in the Oregon Unified International Trade Fund.

(4) The primary sponsor may pledge or assign its right to receive amounts due under the grant agreement as security for any contractual obligation the primary sponsor undertakes to pay or finance costs of the project. Any pledge or assignment authorized by ORS 285B.500 to 285B.515 and 777.277 to 777.287 and section 9, chapter 644, Oregon Laws 1997, shall be valid and binding upon the primary sponsor, the authority, the State of Oregon and all other persons from the date it is made. The unobligated net lottery proceeds so pledged shall be immediately subject to the lien of the pledge without physical delivery, filing or other act, and the lien of the pledge shall be superior to all other claims and liens of any kind whatsoever. Upon notice from the primary sponsor that it has pledged the unobligated net lottery proceeds or assigned the right to receive amounts due under the grant agreement, the authority shall fully cooperate with the primary sponsor and the pledgee or assignee to give effect to the pledge or assignment, including but not limited to acknowledging in writing to the primary sponsor and the pledgee or assignee the existence and validity of the pledge or assignment and agreeing that amounts due under the grant agreement shall be paid to the pledgee or assignee or into the custodial accounts established for the benefit of the pledgee or assignee.

(5) The grant agreement shall not contain provisions or be construed or enforced in any manner that may cause the grant agreement to constitute a debt or liability of the state that violates section 7, Article XI of the Oregon Constitution. [1997 c.644 §10; 2009 c.830 §111]

Note: See note under 285B.500.

285B.509 Agreements between primary sponsor and United States. The primary sponsors of projects listed in ORS 285B.503 are authorized to enter into agreements with agencies of the United States for the project and, notwithstanding any other provision of law, may each agree to be bound by any requirement imposed by an Act of the United States Congress as a condition of federal participation in the project. [1997 c.644 §11]

Note: See note under 285B.500.

285B.512 End of lottery allocations upon certification by administrator of authority. (1) The deposit of unobligated net lottery proceeds to an account in the Oregon Unified International Trade Fund shall cease if and when the administrator of the Oregon Infrastructure Finance Authority certifies in writing that deposits are no longer required because:

(a) Sufficient funds are on hand in the account to pay all amounts required to be paid under the grant agreement;

(b) All amounts required to be paid under the grant agreement have been paid; or

(c) The primary sponsor has notified the administrator pursuant to the grant agreement that the primary sponsor is unable to undertake the project.

(2) Upon receipt of the administrator's written certification pursuant to subsection (1) of this section, the State Treasurer shall thereafter credit any amounts remaining in the account that are not required to pay amounts due under the grant agreement, and any lottery revenues that otherwise would have been deposited in the account under section 9, chapter 644, Oregon Laws 1997, to the Administrative Services Economic Development Fund. In addition, any unexpended grant funds and earnings which are remitted to the State of Oregon pursuant to the grant agreement shall be credited to the Administrative Services Economic Development Fund. [1997 c.644 §12; 2009 c.830 §112]

Note: See note under 285B.500.

285B.515 "Primary sponsor" and "project sponsor" defined. As used in ORS 285B.500 to 285B.512 and section 9, chapter 644, Oregon Laws 1997, "primary sponsor" or "project sponsor" means a city, county, agency or person who acts as a financial contributor to a project listed in ORS 285B.503, as determined by the Oregon Infrastructure Finance Authority in a grant agreement under ORS 285B.506. [1997 c.644 §13; 2009 c.830 §113]

Note: See note under 285B.500.

LOTTERY BONDS FOR INFRASTRUCTURE PROJECTS

285B.530 Definitions for ORS 285B.530 to 285B.548. As used in ORS 285B.530 to 285B.548, unless the context requires otherwise:

(1) "Infrastructure lottery bonds" means the bonds authorized to be issued under ORS 285B.533 for the purpose of financing infrastructure projects.

(2) "Infrastructure projects" includes:

(a) A water project defined in ORS 285B.560; and

(b) Payment of any state financial obligations to the federal government under the Safe Drinking Water Act. [1997 c.800 §16; 1999 c.44 §24]

Note: 285B.530 to 285B.548 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 285B by legislative action. See Preface to Oregon Revised Statutes for further explanation.

285B.533 Issuance of infrastructure lottery bonds; amount; use of bond proceeds. (1) Infrastructure lottery bonds shall be issued under ORS 286A.560 to 286A.585 only at the request of the Director of the Oregon Business Development Department. Infrastructure lottery bonds may be issued in an amount sufficient to provide no more than \$6 million of net proceeds to pay costs of infrastructure projects, plus the amounts required to pay bond-related costs.

(2) The net proceeds from the sale of the infrastructure lottery bonds shall be allocated to the Oregon Business Development Department for the Oregon Infrastructure Finance Authority for the State of Oregon's match of federal moneys under the Safe Drinking Water Act.

(3) The net proceeds from the sale of the infrastructure lottery bonds that are available to pay costs of infrastructure projects shall be credited to the Water Fund created by ORS 285B.563. All such net proceeds are appropriated continuously to the Oregon Business Development Department for the authority only for payment of costs of infrastructure projects described in subsection (2) of this section and for payment of bond-related costs that are allocable to infrastructure lottery bonds.

(4) The authority and any municipality receiving proceeds of infrastructure lottery bonds shall, if so directed by the Oregon Department of Administrative Services, take any action specified by the Oregon Department of Administrative Services that is necessary to maintain the excludability of lottery bond interest from gross income under the United States Internal Revenue Code. [1997 c.800 §17; 1999 c.44 §25; 2007 c.783 §105a; 2009 c.830 §114]

Note: See note under 285B.530.

285B.536 [1997 c.800 §18; repealed by 1999 c.44 §29]

285B.539 [1997 c.800 §19; repealed by 1999 c.44 §29]

285B.542 [1997 c.800 §20; repealed by 1999 c.44 §29]

285B.545 [1997 c.800 §21; repealed by 1999 c.44 §29]

285B.548 Amount of infrastructure lottery bonds. Infrastructure lottery bonds may not be issued in excess of the amounts permitted by ORS 286A.035. [1997 c.800 §22; 2007 c.783 §106]

Note: See note under 285B.530.

285B.551 Issuance of additional lottery bonds; uses; maximum amounts; Economic Infrastructure Project Fund. (1) Pursuant to ORS 286A.560 to 286A.585, at the request of the Oregon Department of Administrative Services, after the department consults with the Oregon Business Development Department, the State Treasurer is authorized to issue lottery bonds:

(a) To provide financial and other assistance, including but not limited to loans and grants, to municipalities, ports and other persons and entities in accordance with the laws governing use of moneys in the Special Public Works Fund created by ORS 285B.455, the Water Fund created by ORS 285B.563, the Safe Drinking Water Revolving Loan Fund created by ORS 285A.213, the Oregon Port Revolving Fund created by ORS 285A.708, the Brownfields Redevelopment Fund created by ORS 285A.188, the Oregon Business Development Fund created by ORS 285B.092 and the Marine Navigation Improvement Fund created by ORS 777.267.

(b) To fund Oregon's share of the costs of the Columbia River channel deepening project.

(c) To fund Oregon's share of the costs of studies and ecosystem restoration projects in the lower Columbia River estuary designed to improve habitat for listed endangered or threatened species of Columbia River anadromous salmonids.

(2) The use of lottery bond proceeds is authorized based on the following findings:

(a) The financial and other assistance to municipalities, ports and other persons and entities will assist in the establishment and expansion of businesses in Oregon and in the construction, improvement and expansion of infrastructure, community and port facilities and other facilities that comprise the physical foundation for industrial and commercial activity and provide the basic framework for continued and expanded economic opportunities and quality communities throughout Oregon.

(b) The Columbia River channel deepening project is necessary to allow newer, larger steamships access to Oregon and Washington deep draft ports. A deeper shipping channel will allow the Columbia River to continue as a world leader in agricultural exports and as a key trade corridor for farms and businesses throughout Oregon and the region.

(c) Such financial and other assistance to municipalities, ports and other persons and entities and the deepening of the Columbia River channel will therefore promote economic development within this state, and thus the use of net proceeds derived from the

operation of the Oregon State Lottery to pay debt service on lottery bonds issued under this section to provide such financial and other assistance to municipalities, ports and other persons and entities and to pay a portion of the costs of deepening the Columbia River channel is an authorized use of state lottery funds under section 4, Article XV of the Oregon Constitution, and ORS 461.510.

(d) The current lower Columbia River estuary habitat for listed endangered or threatened species of Columbia River anadromous salmonids could be improved through ecosystem restoration projects. The use of the Oregon State Lottery to pay debt service on lottery bonds issued under this section to pay for studying how the estuary could be improved and to pay for ecosystem restoration projects are authorized uses of state lottery funds.

(3)(a) The aggregate principal amount of lottery bonds issued pursuant to subsection (1)(a) of this section for financial and other assistance to municipalities, ports and other persons and entities may not exceed the sum of \$276,226,252 and an additional amount estimated by the State Treasurer to be necessary to pay bond-related costs. The aggregate principal amount of lottery bonds issued pursuant to subsection (1)(b) of this section for the Columbia River channel deepening project may not exceed the sum of \$17.7 million and an additional amount estimated by the State Treasurer to be necessary to pay bond-related costs.

(b) The Oregon Department of Administrative Services may not request the issuance of lottery bonds under subsection (1)(b) of this section until the Director of the Oregon Business Development Department determines that a final environmental impact statement has been issued and a record of decisions has been submitted to Congress by the United States Army Corps of Engineers, Congress has authorized the Columbia River channel deepening project, and the Washington sponsors' shares of the costs of the Columbia River channel deepening project have been committed.

(4) The net proceeds of lottery bonds issued pursuant to subsection (1)(a) and (b) of this section shall be deposited in the Economic Infrastructure Project Fund, which is hereby established in the State Treasury separate and distinct from the General Fund. Interest earned by the Economic Infrastructure Project Fund shall be credited to the fund. All moneys in the Economic Infrastructure Project Fund are continuously appropriated to the Oregon Business Development Department for any purpose for which moneys in the Special Public Works Fund created by ORS 285B.455 may be used,

any purpose for which moneys in the Water Fund created by ORS 285B.563 may be used, any purpose for which moneys in the Safe Drinking Water Revolving Loan Fund created by ORS 285A.213 may be used, any purpose for which moneys in the Oregon Port Revolving Fund created by ORS 285A.708 may be used, any purpose for which moneys in the Brownfields Redevelopment Fund created by ORS 285A.188 may be used, any purpose for which moneys in the Oregon Business Development Fund created by ORS 285B.092 may be used and any purpose for which moneys in the Marine Navigation Improvement Fund created by ORS 777.267 may be used. The Director of the Oregon Business Development Department shall allocate the moneys deposited in the Economic Infrastructure Project Fund for the purposes described in this subsection in accordance with the priorities developed by the Oregon Business Development Commission in accordance with ORS 285A.020. However, the director shall transfer from the Economic Infrastructure Project Fund and deposit into the Channel Deepening Account of the Marine Navigation Improvement Fund the proceeds of any lottery bonds sold to finance a portion of the costs of the Columbia River channel deepening project. Upon determining the relative allocation of moneys deposited in the Economic Infrastructure Project Fund among the purposes described in this subsection, the director shall transfer from the Economic Infrastructure Project Fund, and deposit into each of the other funds described in this subsection, the amounts so allocated. Notwithstanding any other provision of law governing the funds described in this subsection, the funds described in this subsection may be credited with moneys transferred from the Economic Infrastructure Project Fund by the director in accordance with this subsection.

(5) The aggregate principal amount of lottery bonds issued pursuant to subsection (1)(c) of this section for the costs of studies and ecosystem restoration projects in the lower Columbia River estuary may not exceed the sum of \$750,000 and an additional amount estimated by the State Treasurer to be necessary to pay bond-related costs. The net proceeds of lottery bonds issued pursuant to subsection (1)(c) of this section shall be deposited in the Oregon Business, Innovation and Trade Fund created by ORS 285A.227 and may be used only for the Oregon non-federal share of United States Army Corps of Engineers Columbia River estuary projects authorized by Congress prior to August 9, 2001. The director may not request the issuance of lottery bonds under subsection (1)(c) of this section until Congress and Washington have authorized their respective shares

of the costs of the studies and ecosystem restoration projects in the lower Columbia River estuary.

(6) The proceeds of lottery bonds issued pursuant to this section may be used only for the purposes set forth in this section and for bond-related costs. [1999 c.702 §1; 2001 c.96 §6; 2001 c.942 §1; 2003 c.741 §4; 2005 c.788 §1; 2007 c.746 §1; 2007 c.804 §78; 2009 c.830 §115; 2009 c.906 §1a; 2011 c.624 §1]

Note: 285B.551 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 285B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

SAFE DRINKING WATER PROJECTS

(Generally)

285B.560 Definitions for ORS 285B.560 to 285B.599. As used in ORS 285B.560 to 285B.599:

(1) “Direct project management costs” means new expenses incurred by a municipality solely to support, plan for and manage an infrastructure project, funded in whole or in part through financial assistance under ORS 285B.560 to 285B.599, during the planning and construction phases of the project.

(2) “Fund” means the Water Fund.

(3) “Municipality” has the meaning given that term in ORS 285B.410.

(4) “Safe drinking water project” means a project for constructing or improving a drinking water system or a water development project, as defined in ORS 541.700 (6)(a), (b) and (d) to (f), that is owned and operated by a municipality.

(5) “Waste water system improvement project” means a project for constructing or improving a system for waste water collection or treatment, including storm drainage systems.

(6) “Water project” means a safe drinking water project or a waste water system improvement project. [Formerly 285.755; 2001 c.883 §36; 2009 c.830 §121]

285B.563 Water Fund; uses; conditions for making loan; grant awards; investment of fund moneys; rules and policies.

(1) There is established in the State Treasury, separate and distinct from the General Fund, the Water Fund. Interest earned by the Water Fund shall be credited to the fund. All moneys in the Water Fund are continuously appropriated to the Oregon Business Development Department for the Oregon Infrastructure Finance Authority for the purposes described in ORS 285B.560 to 285B.599, including the direct project management costs.

(2)(a) Moneys in the Water Fund may be obligated to water projects.

(b) Moneys shall be used primarily to make loans to municipalities. The authority may make a loan only if:

(A) The municipality applying for the loan certifies to the department that adequate funds will be available to repay the loan; and

(B) The authority determines that the amount of the loan applied for is based on a reasonable and prudent expectation of the municipality's ability to repay the loan.

(c) The authority may award a grant if a loan is not feasible due to:

(A) Financial hardship to the municipality, as determined by the authority, based on consideration of anticipated water service charges or anticipated waste water service charges, the per capita income of the municipality and any other factors as the department by rule may establish; and

(B) Special circumstances of the water project.

(d) The authority may also award grants from the fund to:

(A) Identify and implement sustainable technologies and practices;

(B) Build asset management capacity for municipalities;

(C) Plan for strategic initiatives that focus on the regionalization of water systems; or

(D) Provide third party technical assistance to communities in the development of water systems that include asset management components.

(e) The authority may determine the amount of grant or loan funding on a case-by-case basis.

(3) The moneys in the fund may also be used to assist the authority in selling revenue bonds on behalf of municipalities in order to carry out the purposes of ORS 285B.560 to 285B.599.

(4) Moneys in the Water Fund may be invested as provided by ORS 293.701 to 293.820. The earnings from the investments and other program income shall be credited to the Water Fund.

(5) The Water Fund shall consist of:

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

(b) Moneys transferred to the fund by the authority from the Special Public Works Fund created by ORS 285B.455.

(c) Moneys transferred to the Water Fund by the Water Resources Commission from the Water Development Fund created by Article XI-I(1) of the Oregon Constitution.

(d) Moneys from any federal, state or other grants.

(e) Proceeds of revenue bonds issued under ORS 285B.575.

(f) Earnings on the Water Fund.

(6) The authority shall administer the fund.

(7) The department shall adopt rules and policies for the administration of the fund. The department shall coordinate its rule-making regarding safe drinking water projects with the Water Resources Department and the Oregon Health Authority. The rules adopted under this subsection for safe drinking water projects shall:

(a) Require the installation of meters on all new active service connections from any distribution lines funded with moneys from the fund or from the proceeds of revenue bonds issued under ORS 285B.572 to 285B.578.

(b) Require a plan, to be adopted by a municipality receiving financial assistance from the fund, for installation of meters on all service connections throughout the drinking water system not later than two years after the completion of a safe drinking water project.

(8)(a) The Oregon Infrastructure Finance Authority shall manage the Water Fund and any expenditures from accounts in the fund and transfers between accounts so that the fund provides a continuing source of financing consistent with ORS 285B.413.

(b) If necessary to ensure repayment of bonds issued under ORS 285B.560 to 285B.599, the authority may reduce the value of the fund when the authority:

(A) Finds that without a reduction in fund value, bonds secured by the fund are likely to be in default; and

(B) Imposes a moratorium on grants until the requirements of paragraph (a) of this subsection are satisfied.

(9)(a) The authority may charge administrative costs to the fund, but not to moneys segregated in the account created by subsection (11) of this section, to pay for administrative costs incurred by the authority.

(b) To the extent permitted by federal law, administrative costs of the authority may be paid from bond proceeds.

(10) The authority may establish other accounts within the Water Fund for the payment of water projects costs, reserves, debt service payments, credit enhancements, costs of issuing revenue bonds, administrative costs and operating expenses or any other purpose necessary to carry out ORS 285B.560 to 285B.599.

(11) There is created within the Water Fund a separate and distinct account for the proceeds from the sale of water development general obligation bonds issued for safe drinking water projects and credited to the special account under this section. Any investment earnings thereon shall be segregated in and continuously appropriated to a special, separately accounted for subaccount of this account. Moneys credited to this account shall be maintained separate and distinct from moneys credited to subaccounts created under subsection (10) of this section. Notwithstanding ORS 285B.566 or subsection (4) of this section, all repayments of moneys loaned from the account created by this subsection, including interest on the moneys, shall be credited to the Water Development Administration and Bond Sinking Fund created by ORS 541.830.

(12) As used in this section, “administrative costs” include the authority’s direct and indirect costs for investigating and processing an application, developing a contract, monitoring the use of funds by a municipality, investigating and resolving a budget discrepancy, closing a project and providing financial and other assistance to a municipality. [Formerly 285.757; 1999 c.509 §45; 2001 c.883 §37; 2003 c.773 §50; 2005 c.835 §23; 2007 c.783 §107; 2007 c.804 §36; 2009 c.595 §200; 2009 c.830 §122a]

285B.566 Use of receipts. All payments, receipts and interest from financial awards made for water projects shall be retained and accumulated in the Water Fund and used to finance water projects including payments to holders of revenue bonds issued under ORS 285B.575. [Formerly 285.760]

285B.569 When constitutional restrictions apply to use of certain funds. If moneys are transferred to the Water Fund from the sources described in ORS 285B.563 (5)(b) to (e), all constitutional restrictions, statutes and rules regulating the use of the moneys transferred from these funds shall apply to the use of those moneys in the Water Fund. [Formerly 285.763]

(Revenue Bond Financing of Safe Drinking Water Projects)

285B.572 Eligibility of project for revenue bond financing; rules; decision to issue bonds. (1) The Oregon Infrastructure Finance Authority shall determine eligibility of a water project for revenue bond financing under ORS 285B.560 to 285B.599 pursuant to rules adopted by the Oregon Business Development Department.

(2) Upon determining that a water project is eligible for revenue bond financing, the authority shall forward a description of the project to the State Treasurer. The State

Treasurer shall determine whether to issue revenue bonds. [Formerly 285.950; 2009 c.830 §123]

285B.575 Issuance of revenue bonds.

(1) At the request of the Oregon Business Development Department, the State Treasurer may issue in the name of the State of Oregon revenue bonds secured by moneys paid to the Water Fund and pledged to finance or refinance in whole or in part the cost of a water project. The revenue bonds issued under this section shall be issued in the manner prescribed by ORS chapter 286A, and refunding bonds may be issued to refinance the revenue bonds.

(2) The department or the State Treasurer may appoint bond counsel as prescribed under ORS 286A.130. [Formerly 285.952; 2001 c.536 §3; 2003 c.794 §242; 2007 c.783 §108; 2009 c.830 §124]

285B.578 Nature of revenue bonds. (1) Revenue bonds issued under ORS 285B.575:

(a) Shall not be payable from nor charged upon any fund other than the revenue pledged to the payment of the revenue bonds, except as provided in this section, nor shall the state be subject to any liability on the bonds. No holder of revenue bonds shall ever have the right to compel any exercise of the taxing power of the state to pay any such bonds or the interest on the bonds, nor to enforce payment of the bonds against any property of the state except those moneys pledged in the Water Fund, under the provisions of ORS 285B.560 to 285B.599.

(b) Shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the state, except those moneys paid to the Water Fund.

(2) A revenue bond issued under ORS 285B.575 shall not constitute a debt of the state or a lending of the credit of the state within the meaning of any constitutional or statutory limitation. [Formerly 285.954; 2001 c.883 §38]

285B.581 Repayment plans; required provisions; loan contract; sources for repayment. (1) Any loan of moneys to a municipality by the state shall include a plan for repayment by the municipality of moneys borrowed from the Water Fund for a water project and interest on those moneys at a rate expressly specified. The repayment plan:

(a) Shall provide for evidence of debt assurance of, and security for, repayment by the municipality as is considered necessary by the Oregon Infrastructure Finance Authority.

(b) May set forth the allocation of special assessments or contractual responsibilities among the owners of benefited properties for repayment to the municipality of the amount of the loan.

(c) May not exceed the usable life of the contracted project or 25 years from the year of project completion, whichever is less.

(2) Notwithstanding any other provision of law or any restriction on indebtedness contained in a charter, a municipality may borrow from the fund by entering into a loan contract with the authority. The contract may be repaid from:

(a) The revenues of any water project, including special assessment revenues;

(b) Amounts withheld under ORS 285B.599;

(c) The general fund of the municipality; or

(d) Any other source.

(3) A loan contract authorized under subsection (2) of this section may provide that a portion of the proceeds of the loan be applied to fund a reserve fund to secure the repayment of the loan or secure the repayment of revenue bonds issued to fund the loan.

(4) A loan contract authorized under subsection (2) of this section shall be authorized by an ordinance, order or resolution adopted by the governing body of the municipality. [Formerly 285.956; 2001 c.883 §39; 2005 c.835 §22; 2009 c.830 §125]

285B.584 Powers of authority. The Oregon Infrastructure Finance Authority may:

(1) Make all contracts, execute all instruments and do all things necessary or convenient for the exercise of the powers granted by this section, or for the performance of its covenants or duties, or in order to secure the payment of its bonds;

(2) Enter into and perform such contracts and agreements with municipalities as the authority may consider proper and feasible for or concerning the planning, construction, installation, lease or other acquisition, and the financing of water projects; and

(3) Enter into covenants for the benefit of bond owners regarding the use and expenditure of moneys in the Water Fund. [Formerly 285.958; 2007 c.783 §109; 2009 c.830 §126]

285B.587 Deposit and use of bond proceeds. (1) Proceeds of revenue bonds issued and sold under ORS 285B.572 to 285B.578 that are to be used to fund loans to municipalities for water projects shall be deposited in the Water Fund.

(2) Proceeds of revenue bonds issued and sold under ORS 285B.572 to 285B.578 that are to be used to pay the costs of issuing the revenue bonds or that are to be applied to fund a reserve fund for the revenue bonds shall be deposited either in the Water Fund or in a trust account or fund held by any trustee for the revenue bonds. Moneys on

deposit in the Water Fund may be transferred to any trustee for the revenue bonds to be applied to the payment of the costs of issuing the revenue bonds or to be applied to fund a reserve fund for the revenue bonds. [Formerly 285.960]

285B.590 Other forms of financial assistance. In addition to making loans to municipalities for water projects, the Oregon Infrastructure Finance Authority may provide any other form of financial or other assistance that the authority may consider appropriate to assist municipalities with water projects, including direct purchase by the authority of goods and services related to a water project. [Formerly 285.962; 2001 c.883 §39a; 2009 c.830 §127]

285B.593 Technical assistance grants and loans; uses; rules. Out of the moneys in the Water Fund, the Oregon Infrastructure Finance Authority may make technical assistance grants and loans to municipalities as specified by the Oregon Business Development Department by rule. Technical assistance grants and loans shall be for the purpose of completing preliminary planning, legal, fiscal and economic investigations, reports and studies to determine the economic and engineering feasibility of water projects. [Formerly 285.964; 2003 c.773 §51; 2009 c.830 §128]

285B.596 Funding of distressed area or nonurban water projects. Not less than 60 percent of the grants awarded from the Water Fund shall be used to provide assistance to distressed area or nonurban water projects. [Formerly 285.966; 2001 c.883 §39b; 2003 c.773 §52]

285B.599 Effect of failure to repay to Water Fund; default. (1) If a municipality fails to comply with a contract entered into under ORS 285B.581, the Oregon Business Development Department may seek appropriate legal remedies to secure any repayment due the Water Fund. If any municipality defaults on payments due the fund, the State of Oregon may withhold any amounts otherwise due the municipality to apply to the indebtedness. The department may waive the right to withhold moneys under this subsection.

(2) Moneys withheld under subsection (1) of this section shall be deposited in the fund and shall be used to repay any account in the fund from which funds were expended to pay obligations upon which the municipality defaulted. [Formerly 285.968; 2009 c.830 §129]

(Oregon Business Retention and Expansion Program)

Note: Sections 1 to 8, 10 and 11, chapter 549, Oregon Laws 2011, provide:

Sec. 1. Definitions. As used in sections 1 to 9 of this 2011 Act:

(1) "Certified employer" means an eligible employer certified under section 3 of this 2011 Act.

(2) "Compensation" has the meaning given that term in ORS 314.610.

(3) "Eligible employee" means a new full-time employee whose compensation averages at least 150 percent of the county or state average in annual per employee compensation, whichever is less, who is hired by a certified employer after the employer is certified under section 3 of this 2011 Act.

(4) "Eligible employer" means an employer that, in the month in which the employer submits an application under section 4 of this 2011 Act:

(a) Has at least 150 employees;

(b) Plans to hire at least 50 new full-time employees in this state whose compensation will average at least 150 percent of the county or state average in annual per employee compensation, whichever is less;

(c) Operates in an industry in the traded sector, as that term is defined in ORS 285A.010; and

(d) Is not a retailer, as that term is defined in ORS 72.8010.

(5) "Estimated incremental Oregon Business Retention and Expansion Program tax revenues" means the Oregon personal income tax revenues that are estimated pursuant to section 7 of this 2011 Act to be substantially equivalent to the amount of tax that eligible employees of an eligible employer will be required to pay under ORS chapter 316 as a result of compensation paid to the eligible employees by the eligible employer in the two consecutive tax years beginning with the tax year following the tax year in which the employer receives certification under section 3 of this 2011 Act. [2011 c.549 §1]

Sec. 2. Rules. The Oregon Business Development Department may adopt rules that the department determines are necessary to:

(1) Further define the terms defined in section 1 of this 2011 Act in a manner consistent with section 1 of this 2011 Act;

(2) Implement the duties of the department under sections 1 to 9 of this 2011 Act; and

(3) Carry out the purposes of sections 1 to 9 of this 2011 Act. [2011 c.549 §2]

Sec. 3. Certification of eligible employers; time period to approve application. (1) Subject to standards and procedures that the Oregon Business Development Department shall establish by rule, the department shall certify eligible employers to participate in the Oregon Business Retention and Expansion Program established in section 6 of this 2011 Act. The department may establish certification standards regarding:

(a) Employers maintaining certain levels of payroll or per-employee compensation including benefits;

(b) Employers consulting with vendors in this state before entering into contracts;

(c) Eligible employers not laying off current employees in order to achieve hiring goals;

(d) Specifying the types and amounts of employer expenses that are the reasonable costs of financing, developing, furnishing and operating a facility to be used by the certified employer in the course of business under section 6 of this 2011 Act; and

(e) Verifying that an employer is an eligible employer.

(2) The department must approve or deny an application submitted under section 4 of this 2011 Act within 120 days after the date a complete application is filed. [2011 c.549 §3]

Sec. 4. Application for certification; requirements. (1) An employer may apply to the Oregon Business Development Department for certification under section 3 of this 2011 Act.

(2) The application shall be made in writing in a form prescribed by the department.

(3) The application must include a verified statement by the employer that the employer would not plan on hiring 50 or more new full-time employees in this state but for the availability of the loans provided by the Oregon Business Retention and Expansion Program established under section 6 of this 2011 Act. [2011 c.549 §4]

Sec. 5. Revocation of certificate. (1) The Oregon Business Development Department may revoke a certificate issued under section 3 of this 2011 Act if the department finds that:

(a) The certificate was obtained by fraud or misrepresentation; or

(b) The certified employer fails to meet the requirements of section 3 of this 2011 Act.

(2) If the certificate is revoked pursuant to subsection (1) of this section, the department shall proceed to recoup any loan moneys disbursed to the employer pursuant to section 6 of this 2011 Act. [2011 c.549 §5]

Sec. 6. Oregon Business Retention and Expansion Program; purpose; agreements; contents; loans. (1) In consultation with the Department of Revenue, the Oregon Business Development Department shall establish and administer the Oregon Business Retention and Expansion Program. The purpose of the program is to provide forgivable loans to certified employers to allow for expanded operations and increased hiring.

(2) The Oregon Business Development Department shall enter into agreements with certified employers. Agreements must contain:

(a) Detailed performance measures, established by the department by rule, with which certified employers must comply; and

(b) The requirement that the certified employer pay to the Oregon Business Development Department the amount of any loan made under this section where the certified employer did not meet established performance measures.

(3) The total loan amount distributed to a certified employer under this section may not exceed the total amount of the estimated incremental Oregon Business Retention and Expansion Program tax revenues for the certified employer.

(4) Moneys loaned under this section must be distributed to the certified employer no later than 120 days following certification under section 3 of this 2011 Act. [2011 c.549 §6]

Sec. 7. Department estimate of program tax revenues; methodology. The Director of the Oregon Business Development Department, in consultation with the Director of the Department of Revenue, shall:

(1) Specify the methodology for estimating incremental Oregon Business Retention and Expansion Program tax revenues; and

(2) Estimate incremental Oregon Business Retention and Expansion Program tax revenues. [2011 c.549 §7]

Sec. 8. Oregon Business Retention and Expansion Program Fund. The Oregon Business Retention and Expansion Program Fund is established in the State Treasury, separate and distinct from the General Fund. The Oregon Business Retention and Expansion Program Fund consists of amounts deposited in the fund as required by section 9 of this 2011 Act and other moneys transferred to the fund. Amounts in the fund are continuously appropriated to the Oregon Business Development Department for the purposes of making the

loans provided by the agreements entered into under section 6 of this 2011 Act and paying the costs and expenses of the Oregon Business Development Department in connection with the implementation and administration of sections 1 to 9 of this 2011 Act. [2011 c.549 §8]

Sec. 10. Report to legislature. The Oregon Business Development Department shall report to the committees of the Legislative Assembly with authority over the subject area of economic development during the 2013 regular session of the Legislative Assembly as specified in ORS 171.010. [2011 c.549 §10]

Sec. 11. Application. Sections 1 to 9 of this 2011 Act apply to tax years beginning on or after January 1, 2012, and before January 1, 2022. [2011 c.549 §11]

285B.650 [Formerly 285.560; 1999 c.460 §1; 2001 c.684 §20; 2001 c.957 §1; 2003 c.662 §14; renumbered 285C.050 in 2003]

285B.653 [Formerly 285.562; 1999 c.460 §2; 2003 c.662 §18; renumbered 285C.080 in 2003]

285B.656 [Formerly 285.563; 2003 c.662 §16; renumbered 285C.065 in 2003]

285B.659 [Formerly 285.564; renumbered 285C.075 in 2003]

285B.662 [Formerly 285.565; 2003 c.662 §20; renumbered 285C.090 in 2003]

285B.665 [Formerly 285.573; 1999 c.460 §6; renumbered 285C.055 in 2003]

285B.668 [Formerly 285.575; 2003 c.662 §15; renumbered 285C.060 in 2003]

285B.671 [Formerly 285.577; 2003 c.662 §21; renumbered 285C.105 in 2003]

285B.672 [2001 c.957 §2; 2003 c.662 §23; renumbered 285C.095 in 2003]

285B.673 [2001 c.957 §2b; 2003 c.662 §24; renumbered 285C.100 in 2003]

285B.674 [Formerly 285.580; 2003 c.662 §22; renumbered 285C.110 in 2003]

285B.675 [2001 c.957 §5; repealed by 2003 c.662 §55]

285B.677 [Formerly 285.583; 1999 c.460 §7; 2003 c.662 §19; renumbered 285C.085 in 2003]

285B.680 [Formerly 285.585; 2003 c.662 §25; renumbered 285C.115 in 2003]

285B.683 [1997 c.835 §2; 2003 c.662 §26; renumbered 285C.120 in 2003]

285B.686 [Formerly 285.587; 2003 c.662 §47; renumbered 285C.245 in 2003]

285B.689 [Formerly 285.588; 2003 c.662 §48; renumbered 285C.250 in 2003]

285B.692 [Formerly 285.593; 2003 c.662 §27; renumbered 285C.125 in 2003]

285B.695 [Formerly 285.595; 2003 c.662 §28; renumbered 285C.130 in 2003]

285B.698 [Formerly 285.597; 2003 c.662 §35; renumbered 285C.175 in 2003]

285B.701 [Formerly 285.598; 1999 c.1104 §3; 2003 c.662 §31; renumbered 285C.145 in 2003]

285B.704 [Formerly 285.600; 1999 c.1104 §3a; 2003 c.662 §39; renumbered 285C.200 in 2003]

285B.705 [1999 c.1104 §4b; repealed by 2003 c.662 §55]

285B.707 [Formerly 285.603; 1999 c.1104 §5; 2001 c.957 §3; 2003 c.662 §29; renumbered 285C.135 in 2003]

285B.710 [Formerly 285.605; 2003 c.662 §41; renumbered 285C.215 in 2003]

285B.713 [Formerly 285.607; 2001 c.957 §4; 2003 c.662 §36; renumbered 285C.180 in 2003]

285B.714 [2001 c.883 §39d; 2003 c.662 §38; renumbered 285C.190 in 2003]

285B.716 [Formerly 285.610; repealed by 2003 c.662 §55]

285B.719 [Formerly 285.613; 2003 c.662 §30; renumbered 285C.140 in 2003]

285B.722 [Formerly 285.615; 2003 c.662 §42; renumbered 285C.220 in 2003]

285B.723 [1999 c.1104 §2; repealed by 2003 c.662 §55]

285B.725 [Formerly 285.616; 1999 c.1104 §7; repealed by 2003 c.662 §55]

285B.726 [1997 c.835 §44; 1999 c.1104 §19; repealed by 2003 c.662 §55]

285B.728 [Formerly 285.617; 1999 c.1104 §8; 2003 c.662 §46; renumbered 285C.240 in 2003]

285B.731 [Formerly 285.620; 2003 c.662 §50; renumbered 285C.260 in 2003]

ENTREPRENEURIAL DEVELOPMENT

285B.740 Legislative intent; delegation of loan program responsibilities; powers of department; loan fees. It is the intent of the Legislative Assembly that in the administration of ORS 285B.740 to 285B.758, the Oregon Business Development Department work closely with regional economic development organizations, community development corporations, small business development centers and organizations that promote and assist small businesses owned and operated by women and minorities. The department, to the maximum extent feasible and consistent with prudent financial controls, may delegate the administration and operation of the loan program created by ORS 285B.740 to 285B.758 to local and community-based entities. To carry out the policy described in this section:

(1) The department may contract with any nonprofit corporation or agency with experience and expertise in business finance to administer all or any part of the loan program created by ORS 285B.740 to 285B.758.

(2) When entering into an agreement for the administration of the loan program by any nonprofit corporation or agency, the department may agree to waive any claims it may have against such corporation or agency for losses arising out of the normal course of business, so long as the corporation or agency does not act negligently or fraudulently in providing loans under ORS 285B.740 to 285B.758.

(3) When entering into an agreement to have a nonprofit corporation or agency administer the loan program created by ORS 285B.740 to 285B.758, the department may pay loan origination and loan servicing fees to the corporation or agency. The amount of such fees may be determined in the agreement between the department and the administering corporation or agency. [1991 c.688 §12; 2007 c.804 §79; 2009 c.830 §130]

285B.743 Application for entrepreneurial development loan; eligibility; rules.

(1) Any individual or business firm may file with the Oregon Business Development Department an application to borrow money from the Oregon Entrepreneurial Development Loan Fund as provided in ORS 285B.740 to 285B.758. The application shall be filed in such a manner and contain or be accompanied by such information as the department may require.

(2) Upon receipt of an application under this section, the department shall determine whether the applicant is eligible to receive a loan under ORS 285B.740 to 285B.758. The department may adopt rules for processing applications from applicants that are not eligible to receive a loan under this section. [1991 c.688 §7; 2001 c.684 §21; 2007 c.804 §37; 2009 c.830 §131]

285B.746 Conditions required for loan approval.

(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 of the following conditions:

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

(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. [1991 c.688 §8; 1997 c.147 §5; 2007 c.70 §72; 2007 c.804 §38; 2009 c.830 §132; 2010 c.106 §§3,7; 2011 c.558 §4]

285B.749 Additional conditions for loan approval; maximum term and amount of loan.

(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; 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. [1991 c.688 §9; 1997 c.147 §6; 2007 c.804 §39; 2009 c.830 §133; 2010 c.106 §§4,8; 2011 c.558 §5]

285B.752 [1991 c.688 §10; 1997 c.147 §7; 2001 c.684 §22; repealed by 2007 c.804 §86]

285B.755 [1991 c.688 §11; 2007 c.70 §73; repealed by 2007 c.804 §86]

285B.758 Oregon Entrepreneurial Development Loan Fund; uses.

(1) There is established in the State Treasury, separate and distinct from the General Fund, the Oregon Entrepreneurial Development Loan Fund. All moneys in the fund are continuously appropriated to the Oregon Business Development Department for the following purposes:

(a) Administrative costs of the department incurred in processing loan applications, investigating the eligibility of loan applicants and servicing outstanding loans;

(b) Paying for loan origination and loan servicing by contractors under ORS 285B.740 to 285B.758; and

(c) Payment of loans to applicants under ORS 285B.740 to 285B.758.

(2) The Oregon Entrepreneurial Development Loan Fund shall consist of:

(a) Moneys appropriated to the fund by the Legislative Assembly;

(b) Interest earned on moneys in the fund; and

(c) Moneys received as repayment of principal and interest on loans made from the fund under ORS 285B.740 to 285B.758. [1991 c.688 §13; 2009 c.830 §134]

285B.765 [1991 c.688 §6; 1997 c.61 §12; repealed by 2001 c.684 §38]

285B.766 [2001 c.932 §5; renumbered 285C.300 in 2003]

285B.767 [2001 c.932 §6; renumbered 285C.303 in 2003]

285B.770 [2001 c.932 §7; renumbered 285C.306 in 2003]

285B.773 [2001 c.932 §8; renumbered 285C.309 in 2003]

285B.776 [2001 c.932 §9; renumbered 285C.320 in 2003]

285B.781 [1997 c.835 §36; 1999 c.1104 §10; 2001 c.292 §1; 2003 c.239 §1; renumbered 285C.400 in 2003]

285B.783 [1997 c.835 §37; 1999 c.1104 §11; 2001 c.292 §2; renumbered 285C.403 in 2003]

285B.786 [1997 c.835 §38; 1999 c.1104 §12; 2001 c.292 §5; 2003 c.662 §56a; renumbered 285C.409 in 2003]

285B.789 [2001 c.292 §3; 2003 c.558 §1; 2003 c.662 §57; renumbered 285C.412 in 2003]

285B.790 [2001 c.292 §4; renumbered 285C.415 in 2003]

285B.793 [1997 c.835 §39; 1999 c.1104 §13; 2001 c.292 §6; renumbered 285C.420 in 2003]

285B.796 [2001 c.292 §7; 2003 c.662 §59; renumbered 285C.406 in 2003]

285B.825 [2001 c.888 §2; renumbered 285C.450 in 2003]

285B.827 [2001 c.888 §3; renumbered 285C.453 in 2003]

285B.830 [2001 c.888 §4; renumbered 285C.456 in 2003]

285B.833 [2001 c.888 §5; renumbered 285C.459 in 2003]

285B.836 [2001 c.888 §6; renumbered 285C.480 in 2003]

285B.839 [2001 c.888 §7; 2003 c.773 §53; renumbered 285C.465 in 2003]

285B.842 [2001 c.888 §8; renumbered 285C.468 in 2003]

285B.845 [2001 c.888 §9; renumbered 285C.471 in 2003]

285B.848 [2001 c.888 §10; renumbered 285C.462 in 2003]

