

## CHAPTER 71

AN ACT

SB 1516

Relating to a small business expansion loan fund; creating new provisions; and amending ORS 285B.092.

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

**SECTION 1.** (1) Subject to the requirements and conditions set forth in subsection (3) of this section, any person with 50 or fewer employees may submit to the Oregon Business Development Department an application to borrow moneys from the Small Business Expansion Loan Fund established under section 2 of this 2018 Act for the purpose of obtaining early stage growth capital when adequate traditional commercial or private financing is not readily available to the applicant. The application must be submitted in the manner, and contain or be accompanied by the information, prescribed by the department by rule.

(2) The department may charge fees in connection with an application submitted under this section and, if the application is approved, with processing and monitoring a loan agreement entered into pursuant to subsection (4) of this section. Fees collected must be deposited in the Small Business Expansion Loan Fund and may be used to pay the administrative costs and expenses of the department in administering the fund and implementing the provisions of this section and section 2 of this 2018 Act.

(3) Upon receipt of an application submitted under this section, the department shall determine whether the applicant is eligible to receive a loan from the Small Business Expansion Loan Fund established under section 2 of this 2018 Act. The department may approve an application if, after investigation, the department finds that:

(a) The applicant operates a business with 50 or fewer employees that is in the traded sector, as defined in ORS 285A.010, or that primarily supports traded sector industries;

(b) The loan has a reasonable prospect of repayment;

(c) The applicant demonstrates a reasonable potential for high growth that may support economic diversification of the state or the region in which the business is conducted, or increase employment opportunities or retain existing jobs in the state or region;

(d) The applicant demonstrates readiness for market; and

(e) There is or will be a sufficient amount of moneys in the Small Business Expansion Loan Fund to make a loan to the applicant.

(4) If the department approves an application under this section, the department and the ap-

plicant shall enter into a loan agreement that provides, at a minimum, the following:

(a) That loan proceeds may be used only to support acquisition of business assets or to pay for business operating expenses. Loan proceeds may not be used to refinance personal debt or debt not used for business purposes.

(b) A plan for repayment of moneys borrowed from the Small Business Expansion Loan Fund. The department may specify the terms of repayment, singly or in any combination, by royalties, on the basis of a percentage of business revenues, by installment payments of principal, installment payments of interest or installment payments of both principal and interest, or otherwise. The plan must set forth a schedule of payments, the term of the loan and the manner of determining when loan payments are delinquent. The department, in its sole discretion, shall establish the terms of repayment, which must be structured so that the repayment plan and pricing:

(A) Based on the total repayment costs, do not directly compete with traditional commercial lending services;

(B) Are commensurate with the risk taken by the department when making a loan to the applicant; and

(C) To the greatest extent possible, are anticipated to cover operational expenses and losses that the department may incur in the administration of the loan program.

(c) That the loan must be secured by sufficient collateral and security. The department may specify by rule the types of collateral and security that are acceptable to secure repayment of the loan, including but not limited to personal guarantees, business or corporate guarantees and pledges of business and personal assets.

(d) That the liability of the state under the agreement may not exceed the availability of moneys in the Small Business Expansion Loan Fund.

(5)(a) The Director of the Oregon Business Development Department, or the director's designee, may approve loans of up to \$250,000 each. Loans greater than \$250,000 each may be approved by the Oregon Business Development Commission, or the commission's designee. No loan may be made for an amount greater than \$2 million.

(b) Immediately upon receiving loan proceeds, a successful applicant shall pay to the department an amount equal to one and one-half percent of the principal amount of the loan, for deposit in the Small Business Expansion Loan Fund.

(6) Up to 20 percent of all moneys available for lending in the Small Business Expansion Loan Fund on July 1 of each fiscal year may be reserved for loans to applicants who are individuals considered to have low to moderate

household income and low to moderate personal net worth, as defined by the department by rule, and who operate businesses:

(a) Controlled and with at least 51 percent ownership interest in the business by minorities, women or honorably discharged veterans; or

(b) That are located outside of the Portland, Oregon, Metropolitan Statistical Area.

(7)(a) The department shall adopt rules to implement the provisions of this section. Before adopting rules under this paragraph, the department shall consult with a representative from an association representing banks in this state.

(b) The department may adopt rules that establish preferences in making loans under this section to individuals or businesses owned by individuals in underserved communities and in rural communities that may have insufficient access to diverse types of capital and traditional commercial or private financing.

(c) The department may adopt rules establishing a loan amount limit of less than \$2 million for purposes of subsection (5) of this section.

**SECTION 2.** (1) The Small Business Expansion Loan Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Small Business Expansion Loan Fund shall be credited to the fund. All moneys in the fund are continuously appropriated to the Oregon Business Development Department for the following purposes:

(a) Payment of loans to applicants approved under section 1 of this 2018 Act.

(b) Payments to local development groups for the purposes of this section. A payment under this paragraph may not exceed one percent of the principal loan amount from which payment is required under section 1 (5)(b) of this 2018 Act.

(c) Administrative costs of the department incurred in marketing the loan program, processing loan applications, investigating eligibility of applicants and servicing outstanding loans.

(2) The Small Business Expansion Loan Fund consists of:

(a) Fees collected by the department under section 1 of this 2018 Act;

(b) Payments required under section 1 (5)(b) of this 2018 Act;

(c) Moneys repaid by recipients of loans from the fund, including interest on those moneys and other receipts;

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

(e) Moneys transferred to the fund by the Oregon Business Development Commission from the Oregon Business Development Fund pursuant to section 3 of this 2018 Act;

(f) Income earned on moneys in the Small Business Expansion Loan Fund;

(g) Moneys transferred to the fund from the federal government, other state agencies or local governments; and

(h) Any gifts or donations made to the State of Oregon for deposit in the fund.

(3) Notwithstanding any other provision of law, if at any time there are insufficient funds in established business finance programs, the department may direct the transfer of unobligated funds from the Small Business Expansion Loan Fund.

**SECTION 3.** The Oregon Business Development Commission may transfer moneys credited to the Oregon Business Development Fund created under ORS 285B.092 to the Small Business Expansion Loan Fund established under section 2 of this 2018 Act when the commission determines that the transfer is reasonable and financially appropriate and would not impair the making of loans under ORS 285B.050 to 285B.098. Moneys transferred under this section shall be used by the Oregon Business Development Department for the purpose of making loans under section 1 of this 2018 Act.

**SECTION 4.** ORS 285B.092 is amended to read:

285B.092. (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 **Oregon Business Development** Fund shall be credited to the fund. Moneys in *[this]* the 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) **Transfer of moneys to the Small Business Expansion Loan Fund established under section 2 of this 2018 Act in accordance with section 3 of this 2018 Act.**

*[(c)]* (d) Actions the commission deems necessary to obtain repayment of outstanding loans.

*[(d)]* (e) 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 **Oregon Business Development** 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 **provision of** 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 **Oregon Business Development** Fund.

Approved by the Governor April 3, 2018

Filed in the office of Secretary of State April 3, 2018

Effective date January 1, 2019