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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 123
OREGON BUSINESS DEVELOPMENT DEPARTMENT

FILED
07/11/2019 8:21 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: These rules relate to the Oregon Royalty Fund.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/27/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S):

These rules are needed to comply with statute.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 285B.092 and OL Ch 71 2018

FISCAL AND ECONOMIC IMPACT:

There is no fiscal impact to the public as a result of these rules.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

There is no cost of compliance as a result of these rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

These rules were sent to various entities, several that represent small business owners and who are small business owners themselves for review.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

An advisory committee was not consulted. These rules have no fiscal impact.

RULES PROPOSED:

123-092-0020, 123-092-0030, 123-092-0040, 123-092-0060, 123-092-0070, 123-092-0090

AMEND: 123-092-0020

RULE SUMMARY: This rule expands the definition of Business development project and adds the definition of Oregon Growth Business.

CHANGES TO RULE:

123-092-0020

Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001-0050. For purposes of this division of administrative rules, unless the context demands otherwise:¶¶

(1) "Applicant" means any person or any combination of persons applying for a loan from the Oregon Royalty Fund.¶¶

(2)(a) "Business development project" means: the acquisition, engineering, improvement, rehabilitation, construction, operation or maintenance of any property, real or personal; or providing for working capital, that is used or ~~is suitable for~~ will be used by an economic enterprise and is located in Oregon. ~~Funds may not be used for personal u~~ Oregon Growth Business to support its growth.¶¶

(b) Specifically excluded from the definition of business development project is any use of funds for:¶¶

(i) relending; or¶¶

(ii) expenditure for personal purposes, including the refinancing of personal debt or debt not otherwise incurred for business purposes.-¶¶

(3) "Finance Committee" means the Finance Committee whose members are appointed by the Chair of the Oregon Business Development Commission as outlined in OAR 123-001-0520. Regarding the approval, setup, documentation, or issuance of a new loan from the ORF in a principal amount of \$250,000 or less, "Finance Committee" means the Director of the Oregon Business Development Department or the Director's designee.¶¶

~~(4) "Oregon Royalty Fund" or "Fund" or "ORF" means the Small Business Expansion Loan Fund as defined and set forth in Oregon Law Chapter 71 2018.¶¶~~

~~(5) "Local Development Group" means any contracted group based in Oregon that is a:¶¶~~

~~(a) 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.¶¶~~

~~(b) Angel or venture fund or group, or¶¶~~

~~(c) local or regional business incubator or accelerator that, in the sole discretion of the Department, targets early stage, high-growth oriented, traded sector companies.¶¶~~

~~(65) "Oregon Growth Business" means an Oregon business with 50 or fewer full-time-equivalent employees that is in the traded sector or that primarily supports traded sector industries.¶¶~~

~~(6) "Oregon Royalty Fund" or "Fund" or "ORF" means the Small Business Expansion Loan Fund established in Section 2 of Oregon Law Chapter 71 2018.¶¶~~

~~(7) "Person" means any individual, association of individuals, joint venture, partnership, limited liability company or corporation.-¶¶~~

~~(78) "Traded sector" has the meaning given that term in ORS 285A.010.¶¶~~

~~(89) "Traded sector activities" means activities that produce goods or services for the traded sector.~~

Statutory/Other Authority: ORS 285B.092, OL Ch 71 2018

Statutes/Other Implemented: ORS 285B.092, OL Ch 71 2018

AMEND: 123-092-0030

RULE SUMMARY: This rule has been updated to include Oregon Growth Businesses.

CHANGES TO RULE:

123-092-0030

Eligibility

(1) Eligible projects are business development projects as defined in OAR 123-092-0020(2).¶

(2) To be eligible, ~~an~~ applicants must ~~be in the traded sector or primarily support traded sector activities, and must operate a business with 50 or fewer full-time equivalent employees.~~¶

~~(3) Relending of funds shall not be an eligible activity.~~ operate an Oregon Growth Business.¶

(4) ~~3~~ The primary focus of ORF is ~~to~~ providing net, new funding. ~~However, requests to refinance~~ money financing for Oregon Growth Businesses. However, applications to refinance an Oregon Growth Business's existing debt or equity financing ~~shall~~ may be considered on a limited basis at the sole discretion of the Department.

Statutory/Other Authority: ORS 285B.092, OL Ch 71 2018

Statutes/Other Implemented: ORS 285B.092, OL Ch 71 2018

AMEND: 123-092-0040

RULE SUMMARY: Minor housekeeping changes.

CHANGES TO RULE:

123-092-0040

Reserved Loans

The Department may reserve up to 20 percent of all moneys available for lending in the ORF on July 1 of each fiscal year for loans during the fiscal year that begins on that day to applicants who are individuals or for which a majority of whose owners are individuals considered to have low to moderate household income and low to moderate personal net worth, as defined by the Department, and who operate businesses:¶

(1) ~~W~~Controlled and with at least 51 percent ownership interest by minorities (as defined by the Department), women, or honorably discharged veterans; or¶

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

Statutory/Other Authority: ORS 285B.092, OL Ch 71 2018

Statutes/Other Implemented: ORS 285B.092, OL Ch 71 2018

AMEND: 123-092-0060

RULE SUMMARY: Number (4) has been rewritten to read better.

CHANGES TO RULE:

123-092-0060

Loan Conditions

The Finance Committee may approve a loan request if it finds that:¶¶

- (1) The proposed business development project is feasible and a reasonable risk from practical and economic standpoints, the applicant demonstrates readiness for market, and the loan has reasonable prospect of repayment.¶¶
 - (2) The applicant can provide good and sufficient collateral for the loan, or personal and/or corporate guarantees, or a combination of the preceding items, that are adequate relative to the risks and potential returns, and the applicant's financial resources are adequate to ensure success of the project, all as determined by the Finance Committee at its sole discretion. Collateral value will be determined at the sole discretion of the Department.¶¶
 - (3) The applicant demonstrates to the satisfaction of the Department a reasonable potential for strong gross profit margin and rapid sales growth that may support economic diversification in the state or the region in which the business is conducted, increase employment opportunities or retain existing jobs in the state or region, or increase the competitiveness of the applicant business in the traded sector; ¶¶
 - (4) ~~While ORF may fund up to 100% of the business development project, preference may be given to business development projects which that include funding sources other than ORF, but ORF may fund up to 100% of the business development project.~~¶¶
 - (5) Monies in the Fund are or will be available for the proposed business development project.¶¶
 - (6) The applicant agrees to abide by all federal, state and local laws and regulations applicable to the applicant's project.¶¶
 - (7) The applicant, borrower, guarantors and principal owners are current on all obligations to the State of Oregon.
- Statutory/Other Authority: ORS 285B.092, ORS 285A.060, ORS 285A.070, OL Ch 71 2018
Statutes/Other Implemented: ORS 285B.092, ORS 285A.060, ORS 285A.070, OL Ch 71 2018

ADOPT: 123-092-0070

RULE SUMMARY: This new rule is being adopted to explain a loan agreement/contract that the department may enter into with a borrower from the Oregon Royalty Fund.

CHANGES TO RULE:

123-092-0070

Loan Agreement

(1) If the Finance Committee approves a loan, the Department and the borrower may enter into a loan contract that, among other matters:

(a) shall set forth a plan for repayment by the borrower to the Oregon Royalty Fund moneys borrowed from the Fund, along with royalties calculated as a percentage of the borrower's sales or revenue, interest charged on moneys loaned, principal and interest payments, and/or other forms of payment as a means of effecting an adequate rate of return on the monies loaned, as determined at the sole discretion of the Finance Committee, and:

(A) based on loan pricing and total repayment costs, ORF financing for the project does not directly compete with traditional commercial lending sources.

(B) is commensurate with the level of risk taken when making the loan, and

(C) are anticipated to cover operational expenses and losses incurred by the ORF.

(b) Shall set forth a schedule of or conditions triggering payments and the period of the loan, which shall not exceed 61 months from the date of the loan contract.

(c) Shall provide that the liability of the state under the contract is contingent upon the availability of moneys in the Oregon Royalty Fund for use in the business development project.

(d) Shall require that the borrower is responsible for payment of, separate and above any other amounts owed on the loan:

(A) Insurance premiums as needed to maintain in full force life insurance and other types of insurance in an amount and coverage that is acceptable to the Finance Committee.

(B) Out-of-pocket costs associated with the loan closing which may include but are not limited to filing fees, recording fees, title insurance, appraisals, and attorney fees.

(e) That the borrower will provide to the Department on a periodic basis, such financial statements as the Department may require.

(f) Shall provide that the applicant, borrower, guarantors, and principal owners are in compliance with and agrees to abide by all federal, state, and local laws and regulations.

(g) Shall specify any additional payment from the borrower as the Finance Committee may require for other circumstances, such as if the borrower elects to repay the loan before the originally approved term, if the borrower is acquired or experiences a significant change in ownership, or to achieve a specified repayment amount or rate of return.

(2) The Department, at its sole discretion, may require the execution of a Commitment Letter and receipt of a non-refundable Commitment Fee to secure resources necessary to fund the loan. The Commitment Fee will be applied at closing to the Loan Fee. If the loan does not close, the Commitment Fee will not be refunded.

Statutory/Other Authority: ORS 285B.092, OL Ch 71 2018

Statutes/Other Implemented: ORS 285B.092, OL Ch 71 2018

AMEND: 123-092-0090

RULE SUMMARY: This rule is being amended to include the word loan.

CHANGES TO RULE:

123-092-0090

Fees and Charges

(1) The Department shall charge and collect an Application Fee of \$200 at the time the application is submitted. If the loan is declined or does not close, the Application Fee will not be refunded.¶

(2) The Department may charge and collect a Commitment Fee in an amount up to one percent (1%) of the approved principal amount of the loan. The Commitment Fee will be applied at closing of the loan to the Loan Fee specified in section (3) of this rule. If the loan does not close, the Commitment Fee will not be refunded.¶

(3) The applicant, immediately upon the loan closing, shall pay to the Department a Loan Fee of one and one-half percent (1.5%) of the approved amount of the loan. The amount collected by the Department will be reduced by the amount of the Commitment Fee collected as provided for in section (2) of this rule. If the full amount of the loan is not disbursed, the Loan Fee will not be refunded.¶

(4) The Department may charge and collect a Modification Fee of up to \$200 at the time ~~of the~~that it receives a loan modification request. A loan modification may include, but, is not limited to, modification to terms of repayment, subordination requests, or changes to the collateral or the guarantees. In addition the borrower will be responsible for payment of, separate and above any other amounts owed on the loan, closing costs associated with the modification including, but not limited to, document preparation, review of documentation for legal sufficiency, title, and escrow, recording or filing fees.¶

(5) Monies referred to in (1), (2), (3) and (4) of this rule, not including closing costs, shall be paid into the Fund.¶

(6) The Department may, in its sole discretion, use some or all of the money collected under section (3) of this rule, as payment to a contracted Local Development Group for referring projects for financing, packaging the loans, processing applications, investigating proposed business development projects and servicing outstanding loans. In no case shall the Department make any payment of more than one percent (1%) of the loan principal amount for any one project. In no case shall the Department make any payment under this section until the loan has been closed and the Department has collected in full the fee specified in section (3) of this rule.

Statutory/Other Authority: ORS 285B.092, ORS 285A.075, OL Ch 71 2018

Statutes/Other Implemented: ORS 285A.075, OL Ch 71 2018