

# Chapter 284

1993 EDITION

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### CROSS REFERENCES

Economic development, Ch. 285

**PUBLIC FACILITIES; ECONOMIC DEVELOPMENT**

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## ECONOMIC DEVELOPMENT CORPORATIONS

- 284.010** [1987 c.115 §2; 1991 c.11 §6; 1991 c.705 §1; renumbered 285.630 in 1991]
- 284.015** [1987 c.115 §3; 1991 c.705 §2; renumbered 285.633 in 1991]
- 284.020** [1987 c.115 §4; 1991 c.705 §3; 1991 c.878 §4; renumbered 285.635 in 1991]
- 284.025** [1987 c.115 §5; 1991 c.705 §4; renumbered 285.637 in 1991]
- 284.030** [1987 c.115 §6; 1989 c.547 §3; 1991 c.705 §5; renumbered 285.640 in 1991]
- 284.035** [1987 c.115 §7; 1991 c.705 §6; renumbered 285.643 in 1991]
- 284.040** [1987 c.115 §8; 1991 c.705 §7; renumbered 285.645 in 1991]
- 284.045** [1987 c.115 §9; renumbered 285.647 in 1991]
- 284.050** [1987 c.506 §24; 1989 c.966 §16; 1991 c.705 §8; renumbered 285.650 in 1991]
- 284.055** [1987 c.506 §25; 1989 c.638 §§1, 2; 1989 c.966 §17; 1991 c.461 §93; 1991 c.878 §5; renumbered 285.653 in 1991]
- 284.060** [1987 c.115 §1; renumbered 285.655 in 1991]
- 284.075** [1987 c.677 §2; renumbered 285.263 in 1991]
- 284.080** [1987 c.677 §3; renumbered 285.265 in 1991]
- 284.085** [1987 c.677 §§4, 7; 1989 c.908 §59; renumbered 285.267 in 1991]
- 284.090** [1987 c.677 §5; renumbered 285.270 in 1991]
- 284.095** [1987 c.677 §8; renumbered 285.273 in 1991]
- 284.100** [1987 c.677 §1; renumbered 285.275 in 1991]
- 284.110** [1985 c.807 §3; 1987 c.769 §1; repealed by 1989 c.1015 §24]
- 284.115** [1989 c.1015 §2; renumbered 285.570 in 1991]
- 284.120** [1985 c.807 §13c; 1987 c.769 §2; repealed by 1989 c.1015 §24]
- 284.125** [1989 c.1015 §3; renumbered 285.573 in 1991]
- 284.130** [1985 c.807 §2; repealed by 1989 c.1015 §24]
- 284.135** [1989 c.1015 §4; repealed by 1991 c.11 §19]
- 284.140** [1985 c.807 §4; repealed by 1989 c.1015 §24]
- 284.145** [1989 c.1015 §5; renumbered 285.575 in 1991]
- 284.150** [1985 c.807 §5; 1987 c.769 §3; repealed by 1989 c.1015 §24]
- 284.155** [1989 c.1015 §6; renumbered 285.577 in 1991]
- 284.160** [1985 c.807 §6; 1987 c.769 §4; repealed by 1989 c.1015 §24]
- 284.165** [1989 c.1015 §7; renumbered 285.580 in 1991]
- 284.170** [1985 c.807 §7; repealed by 1989 c.1015 §24]
- 284.175** [1989 c.1015 §8; renumbered 285.583 in 1991]
- 284.180** [1985 c.807 §8; 1987 c.769 §5; 1989 c.171 §37; repealed by 1989 c.1015 §24]
- 284.185** [1989 c.1015 §9; renumbered 285.585 in 1991]
- 284.190** [1985 c.807 §15; repealed by 1989 c.1015 §24]
- 284.195** [1989 c.1015 §10; renumbered 285.587 in 1991]
- 284.200** [1985 c.807 §9; repealed by 1989 c.1015 §24]
- 284.205** [1989 c.1015 §11; 1991 c.11 §7; renumbered 285.590 in 1991]
- 284.210** [1985 c.807 §§13, 14; 1987 c.769 §§6, 16; repealed by 1989 c.1015 §24]
- 284.215** [1989 c.1015 §12; 1991 c.11 §8; renumbered 285.593 in 1991]
- 284.220** [1985 c.807 §§10, 11; 1987 c.769 §7; 1989 c.224 §48; repealed by 1989 c.1015 §24]
- 284.225** [1989 c.1015 §13; 1991 c.11 §9; renumbered 285.595 in 1991]
- 284.230** [1985 c.807 §12; 1987 c.769 §8; repealed by 1989 c.1015 §24]
- 284.235** [1989 c.1015 §14; 1991 c.459 §1; renumbered 285.597 in 1991]
- 284.240** [1985 c.807 §13a; 1987 c.769 §9; repealed by 1989 c.1015 §24]
- 284.245** [1989 c.1015 §15; 1991 c.415 §1; renumbered 285.600 in 1991]
- 284.250** [1985 c.807 §13b; 1987 c.769 §10; repealed by 1989 c.1015 §24]
- 284.254** [1989 c.1015 §16; renumbered 285.603 in 1991]
- 284.255** [1987 c.769 §§12, 13; 1989 c.908 §60; repealed by 1989 c.1015 §24]
- 284.259** [1989 c.1015 §17; renumbered 285.605 in 1991]
- 284.260** [1985 c.807 §1; repealed by 1989 c.1015 §24]
- 284.263** [1989 c.1015 §18; 1991 c.459 §2; renumbered 285.607 in 1991]
- 284.265** [1989 c.1015 §18a; 1991 c.11 §10; renumbered 285.610 in 1991]
- 284.270** [1989 c.1015 §19; 1991 c.11 §11; renumbered 285.613 in 1991]
- 284.275** [1989 c.1015 §20; 1991 c.11 §12; 1991 c.459 §3; renumbered 285.615 in 1991]
- 284.280** [1989 c.1051 §21; 1991 c.11 §13; 1991 c.415 §2; 1991 c.459 §4; renumbered 285.617 in 1991]
- 284.285** [1989 c.1015 §1; renumbered 285.620 in 1991]
- 284.310** [1985 c.776 §2; 1987 c.757 §1; 1989 c.537 §1; 1989 c.547 §4; 1989 c.833 §79; 1991 c.11 §14; 1991 c.687 §1; renumbered 285.700 in 1991]
- 284.320** [1985 c.776 §1; 1987 c.757 §2; renumbered 285.703 in 1991]
- 284.330** [1985 c.776 §2a; 1987 c.757 §3; renumbered 285.705 in 1991]
- 284.340** [1985 c.776 §4; 1987 c.757 §4; 1991 c.878 §6; renumbered 285.707 in 1991]
- 284.350** [1985 c.776 §2b; repealed by 1987 c.757 §16]
- 284.360** [1985 c.776 §5; 1987 c.168 §7; renumbered 285.710 in 1991]
- 284.370** [1985 c.776 §6; 1987 c.168 §8; renumbered 285.713 in 1991]
- 284.380** [1985 c.776 §7; 1987 c.757 §5; renumbered 285.715 in 1991]
- 284.390** [1985 c.776 §§8, 9; 1987 c.757 §6; renumbered 285.717 in 1991]
- 284.400** [1985 c.776 §14; 1987 c.757 §7; renumbered 285.720 in 1991]
- 284.410** [1985 c.776 §12; 1987 c.757 §8; renumbered 285.723 in 1991]
- 284.415** [1987 c.757 §18; renumbered 285.725 in 1991]
- 284.420** [1985 c.776 §10; 1987 c.757 §9; renumbered 285.727 in 1991]
- 284.425** [1987 c.757 §18a; renumbered 285.730 in 1991]
- 284.428** [1987 c.757 §19; repealed by 1991 c.902 §121]
- 284.430** [1985 c.776 §22; 1987 c.506 §26; renumbered 461.710 in 1987]
- 284.440** [1985 c.776 §3; 1987 c.757 §§10, 22; 1989 c.966 §18; 1991 c.687 §2; renumbered 285.733 in 1991]
- 284.445** [1987 c.757 §20; renumbered 285.735 in 1991]
- 284.450** [1985 c.776 §11; repealed by 1987 c.757 §16]
- 284.455** [1987 c.757 §23; 1991 c.944 §2; renumbered 285.737 in 1991]
- 284.460** [1985 c.776 §13; repealed by 1987 c.757 §16]
- 284.470** [1985 c.776 §15; repealed by 1987 c.757 §16]
- 284.480** [1985 c.776 §16; repealed by 1987 c.757 §16]

**284.490** [1985 c.776 §17; 1987 c.757 §11; 1991 c.687 §3; 1991 c.944 §3; renumbered 285.740 in 1991]

**284.500** [1985 c.776 §18; 1987 c.757 §12; renumbered 285.743 in 1991]

**284.510** [1985 c.776 §19; 1987 c.757 §13; renumbered 285.745 in 1991]

**284.520** [1985 c.776 §20; 1987 c.757 §14; renumbered 285.747 in 1991]

**284.530** [1985 c.776 §21; 1987 c.757 §15; renumbered 285.750 in 1991]

**284.535** [1989 c.909 §48; renumbered 285.753 in 1991]

### OREGON RESOURCE AND TECHNOLOGY DEVELOPMENT FUND

**284.610 Definitions for ORS 284.610 to 284.710.** As used in ORS 284.610 to 284.710:

(1) "Applied research" means those research activities occurring at research institutions and in private enterprises, which have potential commercial application in key traded sector areas of special importance to the Oregon economy.

(2) "Enterprise" means a firm with its principal place of business in Oregon which is engaged or proposes to be engaged in this state in natural resource based or other manufacturing, research and development, or the provision of technology based services including computer software development and information and design industries.

(3) "Fund" means the Oregon Resource and Technology Development Fund.

(4) "Innovation" means any new technology, product or process without regard to whether a patent has or could be granted.

(5) "Management company" means one or more persons or an entity which the board of directors contracts with to manage and invest the fund.

(6) "New technology" means the development through science or research of methods, processes and procedures, including but not limited to those involving the utilization of timber and timber by-products, fishery resources and agriculture including aquaculture and viticulture, for practical application in industrial and service situations.

(7) "Person" means any individual, partnership, corporation or joint venture carrying on business or proposing to carry on business within the state.

(8) "Product" means any product, device, technique or process, which is or may be exploitable commercially. However, "product" does not refer to pure or basic research but shall apply to such products, devices, techniques or processes which have advanced beyond the theoretical stage and are in a prototype or practice stage.

(9) "Qualified security" means any public or private financial arrangement, involving

any note, security, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, preorganization certificate or subscription, transferable security, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or application therefor, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, guarantee of, or option, warrant or right to subscribe to or purchase any of the foregoing to the extent allowed by the Oregon Constitution.

(10) "Research institutions" means nonprofit public and private community colleges, colleges, universities and other research institutions in this state.

(11) "Seed capital" means financing that is provided for the development, refinement and commercialization of a product, process or innovation.

(12) "Small business" means an enterprise engaged in manufacturing having 200 or fewer employees and all other business enterprises having 50 or fewer employees.

(13) "Traded sector" means those Oregon enterprises selling goods and services in markets for which national or international competition exists. [1985 c.814 §3; 1987 c.837 §3; 1991 c.488 §1; 1993 c.210 §1]

**284.620 Legislative findings.** The Legislative Assembly finds that:

(1) There exists in the state a great and growing opportunity for cooperation between enterprises and research institutions in the areas of innovation, applied research and the transfer of new technologies between research institutions and enterprises.

(2) Furthermore, there exists a lack of seed capital financing for the development of new products or processes by small innovative enterprises or new enterprises engaged in key traded-sector industries of special importance to the Oregon economy.

(3) Encouraging these activities can lead to the creation of new enterprises, anchored in Oregon, which provide employment and revenues which are important to the state.

(4) These activities can improve the pace at which existing industries innovate and grow, increasing opportunities for small and large enterprises alike and creating new traded-sector industries and services within the state, resulting in increased employment and revenues.

(5) These opportunities for innovation and growth lie particularly in those small businesses engaged in natural resource and technology based traded-sector industries,

which are increasingly recognized as the engines of new job creation within Oregon and the nation. [1985 c.814 §1; 1991 c.488 §2; 1993 c.210 §2]

**284.630 Oregon Resource and Technology Development Fund; board; appointment; qualifications; term; officers; meetings; compensation; quorum; executive committee.** (1) The Oregon Resource and Technology Development Fund is created as an independent investment fund pursuant to ORS 293.701 (2).

(2) The fund shall be governed by a board of six directors who shall be residents of this state, appointed by the Governor after consultation with the State Treasurer, and subject to Senate confirmation, as follows:

(a) Three directors shall be persons from the private sector who have demonstrated leadership, knowledge and experience in key traded sector industries of special importance to the Oregon economy especially those small businesses which include, but are not limited to:

(A) Existing resource based industries of agriculture, forestry, fisheries and metallurgy;

(B) Existing advanced technology industries of computer and instrument manufacturing, and information and design; and

(C) Emerging industries of biotechnology, biomedical sciences, aquaculture, materials sciences and optics;

(b) Two directors shall be engineers or scientists who have extensive experience in managing applied scientific and technological research at either educational institutions or in private enterprises in areas of special importance to the economy of Oregon and who are recognized by their peers for outstanding knowledge and leadership in their fields; and

(c) One director shall represent the private financial sector who has experience in either high-risk venture investments or commercial banking in an industry of special importance to the Oregon economy and who is recognized for outstanding knowledge and leadership.

(3) The Governor shall give consideration to geographical representation when making board appointments.

(4) A director shall be appointed for a term running four years from July 1 of the year of appointment. A director shall hold office for the term of the appointment and until the successor shall have been appointed and confirmed. In the event of a vacancy, the vacancy shall be filled by the Governor in the manner provided for appointments for the remainder of the unexpired portion of the term.

(5) Members of the board of directors shall, in their dealings with enterprises that may receive financing through the fund, declare any potential conflict of interest prior to taking any actions relating to that transaction in accordance with ORS 60.361.

(6) The board of directors may select a president who is not a board member, or enter into a contract with a management company, in accordance with the provisions of ORS 291.021, to manage and invest the fund. Upon executing a contract with a management company, employees of the fund shall be terminated. Any contract so entered into and functions performed thereunder are not subject to the State Personnel Relations Law or ORS 279.545 to 279.746.

(7) Notwithstanding ORS 293.726, the president or management company shall manage the fund in accordance with ORS 284.620 and 284.640 and exercise the care, skill and diligence that a prudent investor acting in a like capacity and familiar with such investments would use in managing and investing a fund of like character. In managing the fund according to this standard, individual investments shall be considered as part of an overall investment strategy as set forth in ORS 284.620 and 284.640.

(8) The board of directors shall hold all board meetings in Oregon.

(9) Members of the board of directors are entitled to compensation and expenses as provided in ORS 292.495.

(10) The board of directors shall annually select from the membership one member as chair, one member as vice-chair and one member as secretary.

(11) The board of directors shall meet at least once during each calendar quarter upon call by the president, the chair or upon written request of a majority of the directors.

(12) A majority of the board of directors shall be necessary to transact fund business, and all actions of the directors shall be by a majority vote of the full number of corporate directors.

(13) The directors shall establish an executive committee composed of the chair and one additional member chosen by the chair from the remaining directors. The executive committee, in intervals between board meetings, may transact any board business that has been delegated to the executive committee.

(14) The directors may establish such other committees as they wish and delegate to the committees such duties as the directors consider desirable. [1985 c.814 §4; 1987 c.94 §101; 1987 c.837 §10; 1987 c.879 §12; 1993 c.210 §3]

Note: Section 18, chapter 210, Oregon Laws 1993, provides:

**Sec. 18.** (1) On the effective date of this Act [July 1, 1993], there are transferred and appropriated to the Oregon Resource and Technology Development Fund created by ORS 284.630:

(a) The assets, including cash, accounts receivable and all property other than real property, together with the liabilities, including accounts payable that are determined to be owed, of the Oregon Resource and Technology Development Corporation; and

(b) All the records, books and accounts of the Oregon Resource and Technology Development Corporation that relate to the duties, functions and powers transferred under this Act. Except as provided in ORS 192.502 (15), such records, books and accounts shall retain their identity as public records under ORS 192.410 to 192.505.

(2) All rights and obligations of the Oregon Resource and Technology Development Corporation legally incurred or acquired under leases, contracts, grant agreements and similar business transactions executed or entered into with lessors, independent contractors, suppliers, grantees and other public bodies before the effective date of this Act shall continue to be effective in accordance with their terms. All public agencies as defined in ORS 279.011 shall consent to the assignment to the Oregon Resource and Technology Development Fund created by ORS 284.630 of any such leases, contracts, grant agreements or similar business transactions. [1993 c.210 §18]

**284.640 Purpose of fund.** (1) The purpose of the Oregon Resource and Technology Development Fund is to foster innovation in existing industry and the development of new industry in key traded-sector areas of special importance to the Oregon economy, especially in those small businesses including, but not limited to:

(a) Existing resource based industries of agriculture, forestry, fisheries and metallurgy;

(b) Existing advanced technology industries of electronics, computer and instrument manufacturing, computer software and information and design; and

(c) Emerging industries of biotechnology, biomedical sciences, aquaculture, materials sciences and optics.

(2) The fund shall achieve the purpose stated in subsection (1) of this section by:

(a) Engaging in seed capital financing to develop and take to market innovations or new technologies for existing resource, technology based and emerging traded-sector industries;

(b) Making applied research investments in research institutions and private enterprises to move innovation and applied research toward commercial application; and

(c) Providing managerial assistance and technical referral services to such small, new, emerging or mature traded-sector enterprises and encouraging research institutions to establish technical information data bases and technology transfer offices which are easily accessible by both private and public sector organizations.

(3) The fund shall achieve the purposes of subsections (1) and (2) of this section by investigating the potential for developing innovation and new or alternative products or processes which include, but are not limited to:

(a) Crops that diversify the agricultural production base within the state and require additional, value-added manufacturing to refine the raw agricultural products;

(b) Products that use wood or wood by-products, or require new technology in designing, engineering and manufacturing wood components and structures. Such research activities would include evaluating wood as an architectural and engineering medium, and examining the manufacturing process used to harvest, mill and give final shape to wood; and

(c) Activities bearing directly on and contributing to establishing, enhancing or maintaining Oregon marine resource based economies. Such activities shall include research basic to the problems of marine resources in their broadest aspects, and investigations to develop and improve the contribution of marine resources to the coastal communities and enterprises of this state. [1985 c.814 §2; 1987 c.837 §4; 1991 c.488 §3; 1993 c.210 §4]

**284.650 Authority of board of directors.** To carry out the purposes specified in ORS 284.640, the board of directors of the fund shall have all the powers necessary to carry out its purposes, which shall include the powers granted to the Oregon Investment Council under ORS 293.701 to 293.790, and include the power to:

(1) Make, amend and repeal bylaws, rules and regulations for the management of its affairs;

(2) Adopt an official seal;

(3) Sue and be sued;

(4) Make contracts and execute all instruments necessary or convenient for carrying out its business;

(5) Acquire, own, hold, dispose of and encumber real or personal property of any nature, both tangible and intangible, or any interest therein;

(6) Enter into agreements or other transactions with any federal, state, county or municipal agency and with any individual, corporation, enterprise, association or any other entity involving applied research and technology;

(7) Acquire real property or an interest therein, by purchase or foreclosure, where such acquisition is necessary or appropriate to protect or secure any investment or loan in which the fund has an interest;

(8) Sell, transfer and convey any such property to a buyer, and in the event such sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease such property to a tenant;

(9) Invest any funds appropriated by the state and held in reserve in funds not required for immediate disbursement, in such investments that may be lawful for fiduciaries in this state, and invest funds received from gifts, grants, donations and other operations of the fund in such investments as would be lawful for a private corporation having purposes similar to the fund;

(10) Borrow money and give guaranties, provided that the indebtedness and other obligations of the fund shall be payable solely out of its own resources, and shall not constitute a pledge of the full faith and credit of the state or any of its revenues;

(11) Appoint officers, consultants, agents and advisors, and prescribe their duties;

(12) Appear in its own behalf before boards, commissions, departments or other agencies of municipal, county or state government or Federal Government;

(13) Procure insurance against any losses in connection with its properties in such amounts from such insurers as may be necessary or desirable;

(14) Consent, subject to the provisions of any contract with note-holders, whenever it considers it necessary or desirable in the fulfillment of the purposes of ORS 284.610 to 284.710, to the modifications, with respect to the rate of interest, time payment or of any installment, of principal and interest or any terms of any contract or agreement of any kind to which the fund is a party;

(15) Accept any and all donations, grants, bequests and devises, conditional and otherwise, of money, property, services or other things of value, including any interest or earnings thereon, which may be received from the United States or any agency thereof, any governmental agency, or any institution, person, firm or corporation, public or private, to be held, used or applied for any or all of the purposes specified in ORS 284.610 to 284.710, in accordance with the terms and conditions of any such grant. Receipt of each such donation or grant shall be detailed in the fund's annual report. Such report shall include the donor or lender's identity, the nature of the transaction, and any conditions;

(16) Trade, buy or sell qualified securities;

(17) Finance, conduct or cooperate in the financing or conducting of scientific, techno-

logical, business, financial or other investigations which are related to or likely to lead to business and economic development, involving natural resources, innovation, applied research and new technology, by making and entering into contracts or other appropriate arrangements, including the provisions of grants, loans and other forms of assistance;

(18) Solicit, study and assist in the preparation of business plans and proposals of new or established resource and technologically oriented enterprises, particularly in those traded-sector areas of special importance to the Oregon economy;

(19) Prepare, publish and distribute, with or without charge as the fund may determine, such technological studies, reports, bulletins and other materials as it considers appropriate, subject only to the maintenance and responsibility for confidentiality of the client proprietary information and encourage educational institutions to develop and disseminate similar materials;

(20) Organize, conduct, sponsor or cooperate with, and assist both the private sector and research institutions in the conduct of, special institutes, conferences, demonstrations and studies relating to the stimulation and formulation of innovation, applied science and technologically oriented enterprises and studies relating to the formulation of resource and technologically oriented enterprises and industry endeavors;

(21) Provide and pay for such advisory services and technical assistance that may be necessary or desirable to carry out the purposes of ORS 284.610 to 284.710;

(22) Own, possess and take license in, patents, copyrights and proprietary processes and negotiate and enter into contracts and establish charges for the use of such patents, copyrights and proprietary processes when such patents and licenses for innovation or inventions result from research sponsored by the fund in an enterprise or when the fund finances a product developed by an enterprise;

(23) Negotiate royalty payments to the fund on patents and licenses for innovations or inventions arising in the course of research sponsored by the fund at research institutions including those within the Oregon State System of Higher Education. Such negotiated royalty arrangements should reflect an appropriate sharing of legal risk as well as financial return between the fund and research institution. Such patents and licenses shall be in keeping with the patent policies of the State Board of Higher Education;

(24) Exercise any other powers necessary for the operation and functioning of the fund

within the purposes authorized in ORS 284.610 to 284.710;

(25) Participate with any state agency or research institution in developing specific programs and goals to assist in the development of industrial innovation, applied research and new technology in those traded-sector areas of special importance to the Oregon economy and monitor performance;

(26) Provide resource based, scientific and technological data and information required by the Governor, the Legislative Assembly, or its committees, and to state agencies, educational institutions and cities, counties and school districts and to private citizens and groups, within the limitations of the resources available to the fund. This service shall be in addition to any services currently provided by any educational institution, committee or other organization; and

(27) Hold all operating funds from whatever sources, including interest or earnings thereon, in accounts separate and distinct from the General Fund. [1985 c.814 §6; 1987 c.837 §5; 1989 c.908 §61; 1993 c.210 §§5,6]

**284.660 Additional powers and duties; audits; management of other funds.** (1) The board of directors of the fund shall have such powers and duties as may be delegated to or imposed upon it from time to time by the Legislative Assembly. The board of directors of the fund shall publish an annual report which shall include an audit by an independent third party, dated June 30, and present the report to the Governor and Legislative Assembly, setting forth in detail the operations and transactions conducted by it pursuant to ORS 284.610 to 284.710 or to other legislation. The board of directors shall distribute its annual report by such means that will make it widely available to those innovative enterprises in traded sectors of special importance to Oregon's economy.

(2) The board of directors of the fund shall provide to the Division of Audits in the office of the Secretary of State the fund's annual audit performed by independent certified public accountants. The board of directors of the fund or the Secretary of State may request that the fund be subject to a fiscal audit by the Division of Audits of the office of Secretary of State.

(3) The fund shall be exempt from all franchise, corporate business and income taxes levied by the state. However, ORS 284.610 to 284.710 is not intended to exempt from any such taxes, or from any taxes levied in connection with the manufacture or sale of any products or processes which are the subject of any agreement made by the fund,

or any person entering into any agreement with the fund.

(4) Any one or more officers, employees or management company officials of the fund may organize, solicit investments in or manage any other fund or funds, whether in the form of a limited partnership, corporation or other legal entity, if the investments that the other fund or funds are permitted to make by the limited partnership agreement, articles of incorporation or other basic organization documents include investments in lawful businesses of any kind, research activities with potential commercial applications at colleges, universities or other institutions that conduct research, including without limitation seed capital and applied research investments in enterprises and research institutions. The organization, solicitation of investments in and management of any other fund or funds by any one or more officers, employees or management company officials of the fund do not constitute or create a violation of any provision of ORS 244.040 or 284.610 to 284.710.

(5) No state resources shall be used in the organization and solicitation of such other fund or funds.

(6) If a person or entity applies to another fund managed by any management company officers or employees of the fund and the investment is permissible for the fund, all confidential information regarding the investment known by the officers, employees or management company officers of the fund must be disclosed to the board of directors of the fund. The disclosure shall not be considered a use of confidential information under ORS 244.040. If the fund has available capital, it may invest in the enterprise on the same terms and conditions as the other fund managed by the officers, employees or management company officers of the fund. [1985 c.814 §6a; 1993 c.210 §8]

**284.670 Duties of president or management company.** (1) The board of directors of the fund may hire a president, who serves at the pleasure of the board and who shall be the chief executive officer of the fund or contract with a management company in accordance with ORS 284.630 (6). The president or management company shall direct and supervise administrative affairs and the general management of the fund.

(2) The president may employ and terminate such other officers and employees as designated by the board of directors.

(3) The president or management company officers shall:

(a) Attend board meetings;

(b) Keep a record of all proceedings and maintain and be custodian of all financial

and operational records, documents and papers filed with the fund and of the minute book of the fund;

(c) Insure that any applications, records, forms or other documents, including computer software, business plans and any information generally considered to be proprietary and confidential in the general course of business, made available to the fund under ORS 284.610 to 284.710 are treated as proprietary and confidential information and shall be used only for official fund business; and

(d) Before managing any other funds permitted under ORS 284.660 (4), prepare a policy and procedures manual for all investments that shall be approved by the board of directors and the Oregon Government Standards and Practices Commission. [1985 c.814 §5; 1987 c.837 §6; 1989 c.908 §62; 1993 c.210 §§ 9,10]

**284.680 Oregon Resource and Technology Development Fund; uses.** (1) There is created the Oregon Resource and Technology Development Fund, separate and distinct from the General Fund, to which shall be credited any state funds specifically so designated. The fund shall account separately for moneys available for the purposes of this section. The fund may be credited with such unrestricted appropriations, gifts, donations, grants or contract proceeds from any source, investments or funds from any source and with returns on investments made from the fund.

(2) The fund may be used as follows:

(a) To carry out the purposes of ORS 284.610 to 284.710 through investments in qualified securities and through the forms of financial assistance authorized by ORS 284.610 to 284.710, including:

(A) Loans;

(B) Leaseholds;

(C) Management or consultant service agreements;

(D) Loans with warrants attached that are beneficially owned by the fund;

(E) Loans with warrants attached that are beneficially owned by a party other than the fund; and

(F) Any other contractual arrangement in which the fund is providing scientific and technological services to any federal, state, county or municipal agency, or to any individual, corporation, enterprise, association or any other entity involving science and technology. The fund, in connection with the provision of any form of financial assistance, may enter into royalty agreements with an enterprise.

(b) Notwithstanding ORS 293.741, to pay all or a portion of the fund's operating expenses, which shall be an amount sufficient to allow the fund to undertake and efficiently manage its responsibilities.

(c) To invest in such other investments as are lawful for Oregon fiduciaries.

(3) The fund may be used to purchase qualified securities issued by enterprises as a part of a resource and technology project for the purpose of raising the initial capital for such projects subject to the conditions set forth in this section.

(4) The fund may be used to make low-interest or zero-interest loans to business incubator facilities in exchange for royalties from future gross sales generated by enterprises created in the incubator.

(5) The fund shall purchase qualified securities issued by an enterprise as a part of a resource and technology project only after:

(a) Receipt of an application from the enterprise which contains information deemed necessary and sufficient by the board of directors to evaluate the investment opportunity; and

(b) Approval of the investment by the board of directors of the fund may be made after the board of directors finds, based upon the application submitted by the enterprise and such additional investigation as the fund staff or management company officers shall make and incorporate in its minutes, that:

(A) The proceeds of the investment will be used only to cover the seed capital needs of the enterprise except as authorized by this section;

(B) The enterprise has a reasonable chance of success;

(C) The fund's participation is necessary to the success of the enterprise because funding for the enterprise is unavailable in the traditional capital markets, or because funding has been offered on terms that would substantially hinder the success of the enterprise;

(D) The enterprise has the reasonable potential to create a substantial amount of primary employment within the state;

(E) The entrepreneur and other founders of the enterprise have already made or are contractually committed to make a substantial financial and time commitment to the enterprise;

(F) The securities to be purchased are qualified securities;

(G) There is a reasonable possibility that the fund will recoup at least its initial investment; and

(H) Binding commitments have been made to the fund by the enterprise for adequate reporting of financial data to the fund, which shall include a requirement for an annual report, or if required by the board, an annual audit of the financial and operational records of the enterprise, and for such control on the part of the fund as the board of directors shall consider prudent over the management of the enterprise, so as to protect the investment of the fund, including in the discretion of the board and without limitation, right of access to financial and other records of the enterprise.

(6) In carrying out its functions under this section, the board of directors is encouraged to create an investment committee to assist in evaluating potential investments in qualified securities. The membership of this investment committee may include both directors and staff members of the fund, and other persons drawn from sources other than the fund who meet standards similar to those applying to the board of directors and who are recognized by their peers for outstanding knowledge and leadership in their fields, all of whom shall serve at the pleasure of the board. Members of the investment committee shall serve without compensation for their membership on such committee, but shall be reimbursed for any reasonable expenses incurred by them in the performance of duties assigned by the board.

(7) The fund's investment in qualified securities issued by any one enterprise shall be not more than 10 percent of the total appropriations made by this state to the fund and the corporation created by ORS 284.630 (1) (1985 Replacement Part), including returns on investments, interest earnings and other capital appreciation that provides capital for investment. [1985 c.814 §8; 1987 c.837 §7; 1989 c.259 §1; 1991 c.488 §4; 1993 c.210 §12]

**284.690 Other uses of fund.** (1) The fund may be used to carry out the purposes of ORS 284.610 to 284.710 by making applied research investments in research institutions and enterprises in key traded-sector areas of special importance to the Oregon economy. The fund shall account separately for moneys available for the purposes of this section.

(2) The board shall make investments only after:

(a) Developing, adopting and publishing the criteria it shall use when evaluating research proposals; and

(b) Reviewing applied research proposals which present:

(A) A description of the future commercial application and the industrial sectors that will likely benefit by the applied re-

search project and the potential for job creation;

(B) An itemized research budget, time line and research methodology; and

(C) Other information that may be required by the board.

(3) The board shall approve such applied research proposals after the board of directors finds, based upon the proposal submitted and such additional investigation as the fund staff or management company officers shall make and incorporate in its minutes, that a reasonable probability exists that:

(a) The proposed applied research project will expand that field's technological base within the state;

(b) The project's application will enhance employment opportunities within Oregon; and

(c) The project is technically sound and will produce a measurable result.

(4) In carrying out its functions under this section, the board of directors is encouraged to create an applied research committee to assist in evaluating potential applied research projects. The membership of this applied research committee may include both directors and staff members of the fund, and other persons drawn from sources other than the fund who meet standards similar to those applying to the board of directors and who are recognized by their peers for outstanding knowledge and leadership in their fields.

(5) Any commercialized research that results from a fund applied research contract shall be subject to the provisions of ORS 284.650 (22) and (23). [1985 c.814 §9; 1987 c.837 §8; 1991 c.488 §5; 1993 c.210 §13]

**284.695 Officers and employees; compensation for managing other funds.** (1) Any compensation received by officers, employees or management company officers of the fund from managing other funds as authorized by ORS 284.660 (4) shall be considered official salary for purposes of ORS 244.040. Such compensation may include equity participation by officers and employees of the fund and income allocated to, and funds or property distributed to, the officers, employees or management company officers by reason of such equity participation. No authorization or receipt of such compensation shall be considered a potential conflict of interest which would need to be declared under ORS 244.120 and 244.130. The board of directors of the fund shall not have any equity participation in the fund or in any enterprise in which the fund has invested.

(2) Notwithstanding ORS 244.040 (3), any officer or employee of the fund may become

an officer or employee of a management company referred to in ORS 284.630 (6). [1989 c.1090 §4; 1993 c.210 §14]

**284.700 Managerial assistance and technical referral services.** (1) The board of directors of the fund shall support activities to deliver managerial assistance and technical referral services, particularly to small, new, emerging or mature traded sector enterprises and shall encourage research institutions to establish technical information data bases and technology transfer offices which are easily accessible by both private and public sector organizations.

(2) The board of directors of the fund shall provide to enterprises and individuals services which include, but are not limited to:

(a) Disseminating such research and technical information as is available to the board of directors of the fund;

(b) Referring clients to researchers or laboratories for the purpose of testing and evaluating new products, processes or innovations;

(c) Assisting persons developing innovations or new technology in locating enterprises or entrepreneurs that may be interested in applying such innovations or new technologies; and

(d) Providing managerial assistance to enterprises requesting such assistance, but particularly to those small businesses in key traded sectors of special importance to the Oregon economy.

(3) The board of directors of the fund shall encourage business enterprises to use such technical support services as provided by research institutions and especially the state's small business development centers. [1985 c.814 §10; 1991 c.488 §6; 1993 c.210 §15]

**284.705 Fund and its board exempt from application of certain other laws.** (1) Actions of the board of directors of the fund in processing, approving or denying applications for financing from the fund are not subject to ORS 183.310 to 183.550.

(2) Except as otherwise provided by law, the provisions of ORS 184.305 to 184.345 and ORS chapters 240, 276, 279, 282, 283, 291 and 292 and ORS 293.075 to 293.660 do not apply to the fund or its board of directors.

(3) Notwithstanding subsections (1) and (2) of this section, ORS 279.053, 279.800 to 279.830, 282.210 to 282.230, 293.240, 293.260, 293.262 and 293.505 (2) shall apply to the fund and any subsidiary formed or acquired by the fund. [1987 c.837 §§2, 12; 1991 c.488 §7; 1993 c.210 §16]

**284.710 Cooperation in research and technological development services.** The

board of directors of the fund shall work cooperatively with existing organizations and agencies that provide research and technological development services, including, but not limited to:

(1) Those activities sponsored by research institutions, particularly the institutions within the State System of Higher Education; and

(2) Such other private profit or not-for-profit initiatives as may apply to this section. [1985 c.814 §11; 1991 c.488 §8; 1993 c.210 §17]

## OREGON CAPITAL CORPORATION

**284.750 Definitions for ORS 284.750 to 284.795.** As used in ORS 284.750 to 284.795, 315.504, 317.084, 317.267, 318.031, 708.078, 708.430, 716.588 and 722.304:

(1) "Department" means the Department of Consumer and Business Services established under ORS chapter 705.

(2) "Director" means the Director of the Department of Consumer and Business Services.

(3) "Enterprise" means any business owned by an Oregon resident, partnership, association or corporation with its principal place of business in Oregon, even if it is a wholly owned subsidiary of a foreign corporation that does substantially all of its production in Oregon.

(4) "Equity investment" means all forms of equity such as common stock, preferred stock, with or without voting rights, and without regard to seniority of equity position, forms of subordinate or convertible debt, or both, with warrants or other means of equity conversion attached, or any other means of near equity finance.

(5) "Traded sector" means those Oregon businesses that sell goods or services in markets for which national or international competition exists. [1987 c.911 §3; 1993 c.744 §14]

**284.755 Purpose; findings.** (1) ORS 284.750 to 284.795, 315.504, 317.084, 317.267, 318.031, 708.078, 708.430, 716.588 and 722.304 establishes the mechanism to certify a corporation that is incorporated under the general laws of this state as the Oregon Capital Corporation. ORS 284.750 to 284.795, 315.504, 317.084, 317.267, 318.031, 708.078, 708.430, 716.588 and 722.304 will, through a tax credit, help generate a \$40 to \$50 million fund for risk capital investments. These funds will be invested primarily in profitable and growing Oregon traded sector enterprises which will lead to further growth and diversification of businesses throughout the state.

(2) The purpose of ORS 284.750 to 284.795, 315.504, 317.084, 317.267, 318.031,

708.078, 708.430, 716.588 and 722.304 is to encourage the certification of an Oregon Capital Corporation which will:

(a) Enable potentially profitable enterprises to gain access to long-term, unsecured, subordinated debt and equity financing to promote growth, diversification and expansion;

(b) Encourage the growth, diversification and expansion of existing enterprises and the creation of new, wealth-creating enterprises; and

(c) Promote economic diversification and innovation within key traded sectors of special importance to Oregon's economy particularly in nonmetropolitan areas of the state.

(3) The Legislative Assembly finds that the certification of the Oregon Capital Corporation is likely to benefit the state's citizens and businesses by:

(a) Providing capital assistance to expanding or restructuring firms which have a potential for liquidity and earnings too limited to make them attractive to venture capitalists.

(b) Aiding entrepreneurs to obtain financial capital for expansion on terms that allow them to retain long-term control of their businesses rather than giving up control to the providers of financial capital.

(c) Enabling private financial institutions to expand the means by which they can provide financial capital to their customers.

(d) Broadening the base of capital resources for business expansion to include the shareholder equity of state utility holding companies, the investment portfolios of insurance companies and other major corporate and personal investors. [1987 c.911 §§1, 2; 1989 c.501 §1]

**284.760 Duties of department.** The department shall adopt rules to implement ORS 284.750 to 284.795, 315.504, 317.084, 317.267, 318.031, 708.078, 708.430, 716.588 and 722.304 on or before October 1, 1987, and shall serve as a clearinghouse for information relevant to potential incorporators or organizers of Oregon capital companies. [1987 c.911 §4]

**284.765 Application for certification; review by department; capitalization requirements.** (1) The Department of Consumer and Business Services shall adopt rules for making an application for certification of the Oregon Capital Corporation and shall specify the information that must be submitted at the time of application. The Oregon Capital Corporation shall not be certified until the department has adopted rules as required in ORS 284.760. The department's rules shall provide at a minimum, that an applicant seeking to be certified as

the Oregon Capital Corporation must specify the level of capitalization that the company expects to qualify for the tax credits provided for in ORS 284.750 to 284.795, 315.504, 317.084, 317.267, 318.031, 708.078, 708.430, 716.588 and 722.304.

(2) The department shall review the articles of incorporation or partnership of each applicant for certification and the business history of the applicant and determine that the capitalization is at least \$40 million. [1987 c.911 §5]

**284.770 Incorporation; articles and by-laws; directors; officers; powers.** The Oregon Capital Corporation shall be incorporated under and be governed by the laws of Oregon. The articles of incorporation and the bylaws of the Oregon Capital Corporation shall provide that:

(1) The corporation shall be governed by a board of directors that shall consist of not more than 15 members to oversee the operations of the Oregon Capital Corporation.

(2) In addition to the members appointed under subsection (1) of this section, not fewer than two members of the board shall be appointed by the Governor. Members of the board appointed by the Governor shall not have a vote, but shall have the right to attend all board meetings and observe and participate in the business of the board on behalf of the public interest.

(3) The purpose of the Oregon Capital Corporation is to earn a favorable rate of return for its investors consistent with the attainment of public policy objectives to:

(a) Make long-term, unsecured, subordinated debt and equity investments in Oregon-based, traded-sector firms by providing capital for expansion, restructuring and working capital needs.

(b) Promote economic diversification and innovation within basic industries in Oregon.

(c) Promote increased productivity and value-added products and processes among wealth creating enterprises and the export of those products created by Oregon companies.

(d) Contribute to the Oregon economy which provides increased revenue for state and local government.

(4) The board shall conduct a search and select a president or other chief executive officer, who is not a member of the board, for the Oregon Capital Corporation with experience, ability and initiative in similar executive positions in venture capital corporations participating in high-risk, equity and near-equity investment activities. The president or other chief executive officer may be compensated on a reward and penalty system ac-

cepted by the private sector for individuals managing such investment firms.

(5) The Oregon Capital Corporation may, at the board's discretion, contract with a qualified investment company to invest all or a portion of the Oregon Capital Corporation's moneys, provided the qualified investment company demonstrate a record of investing in:

- (a) Equity or near equity instruments;
- (b) Firms that have not been traditionally served by the risk capital markets; and
- (c) Firms located throughout the state.

(6) Not more than 30 percent of the stock of such a corporation may be owned by or held for the benefit of any one beneficial owner.

(7) Not less than once each year, the corporation shall provide for an evaluation of the value of the assets and liabilities of the corporation, and shall report the results of its valuation to shareholders and to the department. [1987 c.911 §6]

**284.775 Requirements to retain certification; limits on investments; confidentiality of certain records.** (1) To continue certification, the Oregon Capital Corporation shall:

(a) Invest at least 40 percent of its original capitalization at the end of the initial three years in equity investments in Oregon enterprises.

(b) Invest at least 60 percent of its original capitalization at the end of the initial five years in equity investments in Oregon enterprises.

(c) Invest at least 75 percent of its original capitalization at the end of the initial seven years in equity investments in Oregon enterprises.

(d) Invest at least 25 percent of the amounts required to be invested as provided in paragraphs (a) to (c) of this subsection in equity investments in Oregon enterprises located outside of Clackamas, Multnomah and Washington Counties.

(2) No more than 20 percent of the assets of the Oregon Capital Corporation may be invested in the equity of a single enterprise at any one time, unless the Oregon Capital Corporation can reasonably demonstrate and the department finds that a greater percentage in a single enterprise at any one time is the result of losses suffered by the Oregon Capital Corporation in other investments.

(3) The Oregon Capital Corporation may invest its funds in any Oregon enterprise. However, the use of invested funds by an Oregon enterprise for oil and gas exploration and development, real estate development or

appreciation, banking or lending operations, service or retail businesses shall not be considered acceptable investments for the purpose of qualifying for the purposes of subsection (1) of this section.

(4) Documents and other materials submitted by the Oregon Capital Corporation or by Oregon businesses for purposes of certification and continuation of certification shall not be public records if such records are determined to be trade or business secrets and shall be maintained in a secure environment by the department.

(5) No funds of the Oregon Capital Corporation may be invested in stock or obligations of, or property acquired from, any stockholder of the Oregon Capital Corporation or any directors, officers or employees of any stockholder. [1987 c.911 §9]

**284.780 Annual review; grounds for decertification; notice; compliance period; effect of decertification.** (1) The department shall review annually the Oregon Capital Corporation to determine if it is abiding by the requirements of certification, to advise the management as to the certification status of its investments and to insure that no investment has been made in violation of the provisions of ORS 284.750 to 284.795, 315.504, 317.084, 317.267, 318.031, 708.078, 708.430, 716.588 and 722.304 or rules adopted by the department. Any violation shall be grounds for decertification under this section.

(2) If the Oregon Capital Corporation has met the investment levels prescribed in ORS 284.775 (1) and has subsequently sold any of the companies in which those equities were made, the temporary liquidity of the corporation prior to reinvestment in the equity of new ventures will not be cause for decertification.

(3) In evaluating the corporation's annual performance, the department shall use reasonable standards of the venture capital practice to determine legislative intent in those cases where a technical violation might otherwise lead to a technical decertification.

(4) If the department determines that a corporation is not in compliance with ORS 284.775 for continuing in certification, the department shall, by written notice, inform the officers of the corporation and the board of directors or partners that they will be decertified in 120 days from the date of mailing of the notice unless they correct the deficiencies and are once again in compliance with the requirements for decertification.

(5) At the end of the 120-day period provided for in subsection (4) of this section, if the department determines the Oregon Capi-

tal Corporation is still not in compliance, the department shall send a notice of decertification to the company and to the Department of Revenue. In making a determination of noncompliance, the department may extend the 120-day period by up to 60 days, if in its sole discretion, it determines that the corporation has made a good faith effort to comply.

(6) Following each annual examination, the department shall notify the Department of Revenue if the Oregon Capital Corporation is not in compliance with this section.

(7) Decertification of the Oregon Capital Corporation shall cause the forfeiture of any tax credit previously allowed under ORS 315.504, or 318.031. The total amount of any tax credits previously claimed by any taxpayer under ORS 315.504, or 318.031 shall be reported and paid as additional tax for the taxable year in which notice of decertification is given to the taxpayer by the Department of Revenue. The Department of Revenue shall send written notice to the address of each person whose tax credit has been forfeited, using the address from such person's last income tax filing. [1987 c.911 §10]

**284.785 Voluntary decertification procedure; effect.** At any time, the Oregon Capital Corporation may voluntarily decertify itself by sending written notice of decertification to the department and by remitting to the Department of Revenue full payment of all tax credits claimed by investors under its participation in the certification program. Thereafter, the corporation shall be entitled to recover from its investors or equity owners such sums as were remitted by the corporation. The Department of Revenue shall not seek to recover from any taxpayer the amount of any tax credit for which payment has been made by the Oregon Capital Corporation. [1987 c.911 §11]

**284.790 Annual report.** (1) The Oregon Capital Corporation shall prepare and publish an annual report of its activities and present that report to the Governor, the Department of Consumer and Business Services, the Department of Revenue, the Joint Legislative Committee on Trade and Economic Development and the public which shall account for such information as required by the board and the department, but shall include at a minimum:

(a) The manner in which the need and mission as described in ORS 284.750 to 284.795, 315.504, 317.084, 317.267, 318.031, 708.078, 708.430, 716.588 and 722.304 have been carried out.

(b) The total investments made annually by the Oregon Capital Corporation.

(c) The names and amounts invested in other, qualified investment companies and their investments made that year.

(d) An estimate of the jobs created and preserved by investments from the Oregon Capital Corporation.

(e) An analysis of the disbursement of resources by the corporation by size, sector and location to qualifying enterprises.

(2) The department shall review the Oregon Capital Corporation's reports and evaluate the success of the Oregon Capital Corporation and may include specific recommendations for program improvement. [1987 c.911 §12; 1993 c.18 §49]

**284.795 State liability.** The State of Oregon shall be held harmless for any damages to an investor in the Oregon Capital Corporation. [1987 c.911 §13]

**284.800** [Formerly 447.800; 1991 c.11 §15; renumbered 285.253 in 1991]

**284.805** [Formerly 447.805; renumbered 285.255 in 1991]

**284.810** [Formerly 447.810; renumbered 285.257 in 1991]

**284.815** [Formerly 447.815; 1991 c.11 §16; renumbered 285.260 in 1991]

**284.820** [Formerly 447.820; repealed by 1991 c.11 §19]

**284.825** [Formerly 447.825; repealed by 1991 c.11 §19]

**284.831** [Formerly 447.831; repealed by 1991 c.11 §19]

**284.834** [Formerly 447.834; repealed by 1991 c.11 §19]

**284.835** [Formerly 447.835; repealed by 1991 c.11 §19]

**284.840** [Formerly 447.840; repealed by 1991 c.11 §19]

**284.845** [Formerly 447.845; repealed by 1991 c.11 §19]

**284.850** [Formerly 447.850; repealed by 1991 c.11 §19]

**284.855** [Formerly 447.855; repealed by 1991 c.11 §19]

**284.860** [Formerly 447.860; repealed by 1991 c.11 §19]

**284.865** [Formerly 447.865; repealed by 1991 c.11 §19]

**284.875** [Formerly 447.875; repealed by 1991 c.11 §19]

**284.880** [Formerly 447.880; repealed by 1991 c.11 §19]

**284.895** [Formerly 182.815; renumbered 285.250 in 1991]