

Enrolled Senate Bill 4

Sponsored by Senator SOLLMAN, Representative BYNUM, Senator KNOPP, Representative WALLAN; Senators CAMPOS, LIEBER, MEEK, Representatives HIEB, SOSA

CHAPTER

AN ACT

Relating to economic development; and declaring an emergency.

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

SECTION 1. (1) As used in sections 1 to 6 of this 2023 Act:

(a) "Covered entity" has the meaning given that term by 15 U.S.C. 4651(2).

(b) "Covered incentive" has the meaning given that term by 15 U.S.C. 4651(3).

(c) "Federal semiconductor financial assistance" means assistance available under the program established pursuant to 15 U.S.C. 4652(a)(1) for financial assistance to the semiconductor industry.

(d) "Program grants and loans" means grants awarded and loans made under the program developed by the Oregon Business Development Department pursuant to this section.

(2)(a) The Oregon Business Development Department shall develop a program to award grants and make loans from moneys in the Oregon CHIPS Fund established under section 6 of this 2023 Act to businesses applying for federal semiconductor financial assistance.

(b)(A) The program shall be administered by the department and the Governor as set forth in this section.

(B) Notwithstanding the duties and powers conferred respectively on the department and the Governor under sections 1 to 6 of this 2023 Act, the department and the Governor may consult each other with respect to any duty or power so conferred.

(c) It is the intent of the Legislative Assembly that program grants and loans be treated by the U.S. Secretary of Commerce as covered incentives for purposes of the federal semiconductor financial assistance program.

(3)(a) Program grant and loan proceeds may be used solely for:

(A) If a business's application for federal semiconductor financial assistance is approved, activities undertaken in connection with the federal semiconductor financial assistance program; and

(B) Regardless of whether a business's application for federal semiconductor financial assistance is approved:

(i) The development of a site for a semiconductor or other advanced manufacturing facility, including, but not limited to, the acquisition and aggregation of land;

(ii) Research and development with respect to semiconductors or advanced manufacturing; or

(iii) Partnering with institutions of higher education, including, but not limited to, historically Black colleges and universities, career technical training institutions, regional

collaborative groups, local workforce development boards as defined in ORS 660.300, programs funded through the federal Workforce Innovation and Opportunity Act (P.L. 113-128) and apprenticeship programs registered with the State Apprenticeship and Training Council for the purpose of workforce development and the creation of training, registered apprenticeship and internship opportunities, with respect to semiconductors or advanced manufacturing.

(b) Contractors and subcontractors on construction projects funded by program grant or loan proceeds must pay for such projects a rate of wage that meets or exceeds the greater of:

(A) The prevailing rate of wage for workers in each trade or occupation in each locality as determined by the Commissioner of the Bureau of Labor and Industries under ORS 279C.815; or

(B) The prevailing rate of wage as determined by the United States Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 3141 et seq.).

(4)(a) A business that is a covered entity may apply to the department under section 2 of this 2023 Act for a program grant or loan.

(b)(A) Except as provided in subparagraph (B) of this paragraph, program grants and loans may not be awarded or made to any applicant in an amount greater than \$50 million.

(B) The Governor may approve a program grant or loan under section 3 of this 2023 Act in an amount greater than \$50 million only after having given the Legislative Assembly at least 30 calendar days' notice of the amount of the program grant or loan the Governor intends to approve.

(c)(A) Program loans:

(i) May be made for a term not to exceed 10 years, as negotiated by the business and, in consultation with the Governor, the department; and

(ii) Except as provided in section 5 (3) of this 2023 Act, shall be made at a zero rate of interest.

(B) All amounts received by the department in repayment of a program loan shall be transferred to the Oregon CHIPS Fund established under section 6 of this 2023 Act.

(d) Proceeds from a program grant or loan may be distributed in a single payment or in multiple, conditional payments, as specified in the program grant or loan agreement.

(e)(A) Except as provided in paragraph (f) of this subsection, for every \$1 million in program grant or loan proceeds received, the recipient business must, over the period of the grant or loan agreement, generate at least:

(i) If the term of the agreement is not more than five years, \$1.25 million in state and local revenue; or

(ii) If the term of the agreement is more than five years, \$1.5 million in state and local revenue.

(B) The department and the recipient business may specify in the program grant or loan agreement what the term "revenue" includes.

(f) In lieu of the requirement under paragraph (e) of this subsection, a recipient business may instead commit to the creation of new jobs in Oregon:

(A) At least 65 percent of which are permanent, full-time positions; and

(B) That pay on average at least the average median income for the region of this state in which the services will be performed.

(g)(A) In addition to program grants and loans, an application assistance grant, in an amount not to exceed \$50,000, may be awarded to a business whose application is approved under section 3 of this 2023 Act, for the costs of preparing and submitting the business's application for federal semiconductor financial assistance.

(B) Application assistance grants may be made from moneys in the fund or from any other source of funding available for such purpose to the department or the Governor.

SECTION 1a. (1) The Governor shall convene an advisory panel with the following membership:

(a) The Governor or the Governor's designees;

(b) One or more representatives of the Oregon Business Development Department, appointed by the Governor; and

(c) No fewer than five individuals with expertise or experience in the semiconductor and advanced manufacturing industry, appointed by the Governor.

(2) The advisory panel shall assist the Governor and the department in:

(a) Establishing a statewide strategy to promote and expand Oregon's semiconductor and advanced manufacturing industry and the supply chains associated with the industry;

(b) Establishing application requirements for the grant and loan program developed by the department under section 1 of this 2023 Act so that program grants and loans will advance the statewide strategy established under paragraph (a) of this subsection; and

(c) Determining the criteria for reviewing and scoring applications and weighting the preferences for approving applications and setting program grant and loan amounts under section 3 (2) of this 2023 Act.

(3) The advisory panel shall meet at least once before the department begins to develop the grant and loan program under section 1 (2) of this 2023 Act and once before the department begins to prescribe the application process for the grant and loan program under section 2 (1) of this 2023 Act.

SECTION 2. (1)(a) The Oregon Business Development Department shall prescribe an application process, including forms and deadlines, by which businesses may apply under this section for program grants and loans.

(b) At a minimum, the application form must require the applicant business to:

(A) Establish its eligibility to be treated by the U.S. Secretary of Commerce as a covered entity;

(B) Include its statement of interest or draft application for federal semiconductor financial assistance;

(C) Explain how the applicant business plans to comply with all applicable federal employment, labor and environmental standards;

(D) Explain how the proposed activities of the applicant business will promote the expansion and long-term economic viability of the semiconductor industry in Oregon, including research and development, manufacturing and other critical links in the semiconductor supply chain;

(E) State the amount of program grant or loan proceeds sought under this section along with a detailed description of the proposed expenditure of the proceeds;

(F) If the application includes a request for an application assistance grant, state the amount of the application assistance grant sought and demonstrate the applicant business's need for the application assistance grant;

(G) Explain how the applicant business will meet the requirements under section 1 (4)(e) or (f) of this 2023 Act, setting forth at a minimum such information as:

(i) For state and local revenue, the kinds, amounts and timing of the revenue to be generated; or

(ii) For job creation, such information as the number, job descriptions, weekly hours, pay scale and locations of the proposed jobs;

(H) Include any other information that the department or the Governor considers necessary or important for review of the application; and

(I) Sign the application through an authorized director, officer, employee or agent under penalties for false swearing.

(2)(a) Upon request, the department may consult with an applicant business about the business's application, before or after submission.

(b) An applicant business may amend and resubmit its application at any time within the application period.

(3) Trade secrets, as defined in ORS 646.461, that are submitted to the department as part of an application under this section shall be exempt from disclosure under ORS 192.311 to 192.478 until January 1, 2027.

SECTION 3. (1)(a) The Oregon Business Development Department and the Governor shall review all timely and complete applications for program grants and loans, with such distribution of duties and powers as the department and the Governor may arrange.

(b) Within 90 days following receipt of an application, the department and the Governor shall:

(A) Approve the application;

(B) Approve the application for a program grant or loan, or application assistance grant, in an amount other than the amount requested; or

(C) Reject the entire application or only the request for an application assistance grant.

(c) For a program grant or loan in an amount greater than \$50 million, the Governor shall provide notice to the Legislative Assembly in accordance with section 1 (4)(b)(B) of this 2023 Act.

(d) The decisions made with respect to an application are not subject to appeal.

(2) In approving applications and setting program grant and loan amounts, the department and the Governor shall give preference to:

(a) Projects that will promote the expansion and long-term economic viability of the semiconductor industry in Oregon, including research and development, manufacturing and other critical links in the semiconductor supply chain;

(b) Projects that will promote and extend Oregon's leadership in the field of technology;

(c) Projects that will attract manufacturing jobs to Oregon;

(d) Projects that will secure supply in Oregon for critical sectors of the state economy;

(e) Projects that reflect an applicant business's established relationship, or commitment to build a relationship, with organizations focused on developing a diverse workforce pipeline;

(f) Applicant businesses that have at least 10 full-time employees in Oregon;

(g) Applicant businesses that have formed partnerships for the purpose of workforce development or the creation of training, registered apprenticeship or internship opportunities;

(h)(A) Applicant businesses that commit to generating a greater amount of state and local revenue in accordance with section 1 (4)(e) of this 2023 Act; or

(B) Applicant businesses that commit to creating a higher percentage of new permanent full-time jobs in accordance with section 1 (4)(f) of this 2023 Act;

(i) Applications that propose projects described in 15 U.S.C. 4652(a)(2)(B)(i) that will incorporate significant participation by businesses owned by members of underrepresented communities and economically disadvantaged individuals; and

(j) Applications that, taken together, represent regional diversity in Oregon.

(3)(a) As soon as practicable after making decisions under subsection (1) of this section, the department shall:

(A) Notify the applicant business of the decision and the reasons for the decision; and

(B) For an approved application, offer to the applicant business a program grant or loan agreement and, if applicable, an application assistance grant.

(b) Upon entering into a program grant or loan agreement with the applicant business, the department shall distribute to the business from the Oregon CHIPS Fund established under section 6 of this 2023 Act the amount set forth in the agreement.

(4)(a) If a business that has entered into an agreement pursuant to this section changes ownership during the term of the agreement, the department and the Governor may allow the continued use of the program grant or loan proceeds provided the business enters into a new agreement with the department that commits the business to continuing the project as proposed in the application approved under this section.

(b) In the new agreement, the department may agree to minor changes in the terms of the original agreement that the department and the Governor considers reasonable in the circumstances and faithful to the purpose for which the business's application was approved.

SECTION 4. (1) At least once every six months following the date on which a business enters into a program grant or loan agreement with the Oregon Business Development Department under section 3 of this 2023 Act, for as long as the agreement is in effect, the business shall report to the department the following:

(a) The status of the business's application for federal semiconductor financial assistance;

(b) Progress on the project to construct, expand or modernize the facility for which the grant was awarded or the loan made, including, but not limited to, the acquisition or aggregation of land and the status of the permits required for the project;

(c)(A) State and local revenue generated in accordance with section 1 (4)(e) of this 2023 Act, setting forth at a minimum the kinds, amounts and timing of the revenue generated, as well as of any proposed revenue yet to be generated; or

(B) The number of jobs created in accordance with section 1 (4)(f) of this 2023 Act and the job descriptions, weekly hours, pay scale and locations of the jobs, as well as of jobs yet to be created;

(d) Any research and development work conducted with respect to semiconductors or advanced manufacturing;

(e) Any partnerships the business has engaged in with institutions of higher education or regional workforce programs for the purpose of workforce development and the creation of training, registered apprenticeship and internship opportunities;

(f) The status of any other consideration for which the business's application was given preference under section 3 (2) of this 2023 Act;

(g) The economic impact of the project on businesses in this state, including, but not limited to, the impact on supply chains;

(h) The economic and environmental impact of the project on communities in this state; and

(i) Any other information required by the department or the Governor.

(2) Not later than March 15 and September 15 of each year in which any program grant or loan agreement remains in effect, the department shall submit to the Oregon Business Development Commission established under ORS 285A.040 a report summarizing the semi-annual information received from businesses pursuant to subsection (1) of this section.

(3) Not later than September 15 of each year in which any program grant or loan agreement remains in effect, the department shall submit, in the manner required under ORS 192.245, a report summarizing the information received from businesses pursuant to subsection (1) of this section, to the interim committees of the Legislative Assembly related to economic development.

SECTION 5. (1)(a) A business that received a program grant or loan, including an application assistance grant, shall become liable for immediate repayment of the full amount of the grant or the outstanding principal amount of the loan, if:

(A) The business has not begun, on or before January 1, 2027, the process of applying for permits required for the project for which the grant was awarded or the loan made;

(B) The project changes substantially from the project for which the business's application was approved such that the project would not have been eligible for the program grant or loan;

(C) On or before the earlier of a date, if any, specified in the program grant or loan agreement or January 1, 2033:

(i) The business has not generated state and local revenue in accordance with section 1 (4)(e) of this 2023 Act; or

(i) The business has not created new permanent full-time jobs in accordance with section 1 (4)(f) of this 2023 Act;

(D) The business has not complied with all environmental standards applicable to the project under law or has not cured its noncompliance within a reasonable time, as determined by the Oregon Business Development Department or the Governor; or

(E) The business has not complied with all labor standards applicable to the project under law or the program grant or loan agreement or has not cured its noncompliance within a reasonable time, as determined by the department or the Governor.

(b) If a project is suspended for a reason beyond the control of the business, as determined by the department or the Governor, the amount to be repaid shall be in proportion to the percentage of the project that has not been completed at the time of suspension.

(2) Any and all amounts required to be repaid under this section shall be considered to be liquidated and delinquent, and the Oregon Business Development Department shall assign such amounts to the Department of Revenue for collection as provided in ORS 293.250.

(3) If the Oregon Business Development Department or the Governor discovers that a business willfully made a false statement or misrepresentation, or willfully failed to report a material fact, to obtain a program grant or loan, or an application assistance grant, under sections 1 to 6 of this 2023 Act, the Oregon Business Development Department may add to the amount the business is obligated to repay a penalty not to exceed 20 percent of the principal amount of the program grant or loan so obtained, plus any applicable interest and fees associated with the Department of Revenue's costs of collection.

(4) Subject to ORS 293.250, all amounts repaid to the Oregon Business Development Department or the Department of Revenue under this section, including award amounts, penalties, interest, fees and any other charges, shall be transferred to the Oregon CHIPS Fund established under section 6 of this 2023 Act.

SECTION 6. (1) The Oregon CHIPS Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon CHIPS Fund shall be credited to the fund.

(2) Moneys in the fund shall consist of:

(a) Amounts appropriated or otherwise transferred or credited to the fund by the Legislative Assembly;

(b) Earnings received on moneys in the fund; and

(c) Other moneys, or proceeds of property, from any public or private source that are transferred, donated or otherwise credited to the fund.

(3) Moneys in the Oregon CHIPS Fund are continuously appropriated to the Oregon Business Development Department for the following purposes:

(a) Paying the actual costs incurred by the department in developing and administering sections 1 to 6 of this 2023 Act; and

(b) Carrying out the provisions of sections 1 to 6 of this 2023 Act.

(4) Moneys in the Oregon CHIPS Fund on June 30, 2023, shall be retained in the fund, and used for the purposes set forth in subsection (3) of this section, until June 30, 2025.

(5) Any moneys remaining in the Oregon CHIPS Fund on June 30, 2025, shall be transferred to the General Fund.

SECTION 7. Sections 1 to 6 of this 2023 Act are repealed on January 2, 2033.

SECTION 8. In addition to and not in lieu of any other appropriation, there is appropriated to Oregon Business Development Department, for the biennium ending June 30, 2023, out of the General Fund, the following amounts, for the following purposes:

(1) \$190,000,000 for deposit in the Oregon CHIPS Fund established under section 6 of this 2023 Act, to be used for the purpose of carrying out the provisions of sections 1 to 6 and 10 of this 2023 Act; and

(2) \$10,000,000 for deposit in the Industrial Lands Loan Fund established under section 23 of this 2023 Act, to be used for any purpose for which moneys in the Industrial Lands Loan Fund may be used.

SECTION 8a. In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Business Development Department, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$10,000,000, for deposit in the University Innovation Research Fund established under ORS 285A.230, to be used for any purpose related to economic development for which moneys in the University Innovation Research Fund may be used.

SECTION 8b. Notwithstanding any other law limiting expenditures, the amount of \$190,000,000 is established for the biennium ending June 30, 2023, as the maximum limit for payment of expenses by the Oregon Business Development Department from the Oregon CHIPS Fund established under section 6 of this 2023 Act for the purpose of carrying out the provisions of sections 1 to 6 and 10 of this 2023 Act.

SECTION 8c. Notwithstanding any other law limiting expenditures, the amount of \$10,000,000 is established for the biennium ending June 30, 2023, as the maximum limit for payment of expenses by the Oregon Business Development Department from the Industrial Lands Loan Fund established under section 23 of this 2023 Act for any purpose for which moneys in the Industrial Lands Loan Fund may be used.

SECTION 8d. Notwithstanding any other law limiting expenditures, the amount of \$10,000,000 is established for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses by the Oregon Business Development Department from the University Innovation Research Fund established under ORS 285A.230 for any purpose related to economic development for which moneys in the University Innovation Research Fund may be used.

SECTION 9. Sections 10 and 11 of this 2023 Act are added to and made a part of ORS 197.286 to 197.314.

SECTION 10. (1) On or before December 31, 2024, the Governor by executive order and subject to section 11 of this 2023 Act may bring within an existing urban growth boundary designated lands for the purposes of providing lands available for industrial uses to become part of the state's covered incentive as defined in section 1 of this 2023 Act that relate to the semiconductor industry, advanced manufacturing or the supply chain for semiconductors or advanced manufacturing.

(2) Lands designated by an executive order under this section must be within a site that consists of one or more tracts of land that are:

- (a) Contiguous to the city's existing urban growth boundary;
- (b) Entirely within three miles of the city's existing urban growth boundary; and
- (c) Not within areas designated as acknowledged urban reserves or rural reserves under ORS 195.144 (1), (2)(c) to (e) or (3).

(3) Before issuing an executive order under this section, the Governor shall:

(a) Conduct one public meeting, in coordination with the city nearest to the site and each county in which the site is located, to be held in that city for the purpose of discussing bringing within the urban growth boundary the lands or potential lands;

(b) Accept public comments for a period of no fewer than 20 days following the public meeting in paragraph (a) of this subsection; and

(c) Make a determination that existing lands within an urban growth boundary in this state would not meet the needs of the specific project.

(4) A determination made by the Governor under subsection (3)(c) of this section is final and not subject to appeal.

(5) The Governor may designate up to a maximum of eight sites, as follows:

- (a) Two sites that exceed 500 acres; and
- (b) Six sites that do not exceed 500 acres.

(6) Notwithstanding any other provision of this chapter or ORS chapter 195, 215, 227 or 268 or any statewide land use planning goal, lands designated in an executive order under this section are considered to be within the acknowledged urban growth boundary, as described in this chapter and ORS chapter 268, as of the date of the executive order.

(7)(a) Jurisdiction is conferred upon the Supreme Court to determine the legal effect of subsections (1) to (6) of this section or the legal effect of any order issued by the Governor under subsections (1) to (6) of this section.

(b) A person who is or will be adversely affected by subsections (1) to (6) of this section or by an order issued by the Governor under subsections (1) to (6) of this section may institute a proceeding for review of the order only by filing a petition with the Supreme Court within 60 days following:

(A) The effective date of this 2023 Act; or

(B) The date of issuance of an executive order that is being challenged by the petition.

(c) A copy of the petition must be served on the Attorney General and Governor.

(d) If the Supreme Court determines that the petition contains factual issues, the Supreme Court may appoint a special master to hear evidence and to prepare recommended findings of fact.

(e) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court.

(8) Notwithstanding any other provision of this chapter or ORS chapter 195, 215, 227 or 268 or any statewide land use planning goal, the Land Conservation and Development Commission shall treat as acknowledged, as described in this chapter, an amendment to a comprehensive plan or an adoption of or amendment to a land use regulation made by a local government with land use jurisdiction over the lands designated under subsection (1) of this section, if:

(a) The enactment or amendment is passed by an ordinance of the governing body of the county after a public hearing;

(b) The ordinance is to allow the use of the land for industrial uses under subsection (1) of this section;

(c) The ordinance is adopted no later than six months following the entry of the executive order designating the lands; and

(d) A copy of the ordinance is delivered to the Land Conservation and Development Commission within 14 days after passage.

SECTION 11. Land brought within an acknowledged urban growth boundary under section 10 of this 2023 Act is removed from the urban growth boundary upon an order of the Governor upon determining that development of the land will not be receiving federal semiconductor financial assistance, as defined in section 1 of this 2023 Act.

SECTION 12. Sections 10 and 11 of this 2023 Act are repealed on January 2, 2029.

SECTION 13. Sections 14 to 23 of this 2023 Act are added to and made a part of ORS chapter 285B.

SECTION 14. Definitions. As used in sections 14 to 23 of this 2023 Act:

(1) “Administrative costs” includes, but is not limited to, the direct and indirect costs incurred by the Oregon Business Development Department for:

(a) Investigating and processing applications submitted under section 19 of this 2023 Act;

(b) Negotiating agreements for the purposes of sections 14 to 23 of this 2023 Act;

(c) Monitoring the use of moneys provided to project sponsors under sections 14 to 23 of this 2023 Act;

(d) Closing a project; and

(e) Providing financial assistance to a project sponsor.

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

(3)(a) “Development project” means a project for the acquisition, improvement, construction, demolition or redevelopment of publicly or privately owned utilities, buildings,

land, transportation facilities or other facilities that assist the economic and community development of a municipality.

(b) "Development project" includes planning project activities that are necessary or useful to a development project as determined by the department.

(4) "Eligible project" means a development project or a planning project.

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

(6) "Industrial land" means land planned and zoned for industrial use that:

(a) Is suitable for new semiconductor industry uses, or the expansion of existing semiconductor industry uses, that can provide significant additional employment in Oregon;

(b) Has land characteristics that provide significant competitive advantages that are difficult or impossible to replicate; and

(c) Has access to transportation and freight infrastructure, including, but not limited to, rail, port, airport, multimodal freight or transshipment facilities and other major transportation facilities or routes.

(7) "Planning project" means:

(a) A project related to a potential development project for preliminary and final land use planning and engineering;

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

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

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

(8) "Private owner" means a private business entity or property owner that has entered into an agreement with a local jurisdiction for the development of public infrastructure to serve a private site.

(9) "Project sponsor" means:

(a) A public entity or private owner of industrial land that is investing in the preparation of the land for a development project by a third party; or

(b) A public entity that has entered into a development or other agreement with the private owner of industrial land to prepare the land for a development project.

(10) "Public entity" means:

(a) A city or county in Oregon;

(b) A port formed under ORS 777.005 to 777.725;

(c) The Port of Portland created by ORS 778.010;

(d) The tribal council of a federally recognized Indian tribe in this state; or

(e) An airport district established under ORS chapter 838.

(11) "Semiconductor industry use" means the use of property to:

(a) Construct, expand, or modernize a facility for the fabrication, assembly, testing, advanced packaging or production of semiconductors, materials used to manufacture semiconductors or semiconductor manufacturing equipment; or

(b) Conduct research and development with respect to semiconductors, materials used to manufacture semiconductors or semiconductor manufacturing equipment.

SECTION 15. Financial assistance for development projects. (1)(a) The Oregon Business Development Department may provide financial assistance to a project sponsor, for allowable costs expended for an industrial land development project, from moneys in the Industrial Lands Loan Fund established under section 23 of this 2023 Act, in accordance with this section.

(b) The financial assistance to a project sponsor may be in the form of a repayable or forgivable loan or the purchase of bonds issued by the project sponsor.

(c) The department shall determine the amount of the financial assistance on a case-by-case basis.

(2) Financial assistance may be provided only with respect to a development project that is:

- (a) Directly owned and operated by the project sponsor; or
- (b) The subject of a management contract or an operating agreement to which the project sponsor is a party.

(3)(a) If a development project consists solely of the purchase or acquisition of land, financial assistance may be provided only if the land is:

(A) Identified in the applicable land use or capital plan as necessary for a potential industrial land development project; or

(B) Zoned solely for industrial use.

(b) Notwithstanding paragraph (a) of this subsection, financial assistance may not be denied under this subsection solely because the costs of the development project include the costs of acquiring off-site property for purposes that are directly related to the development project, including, but not limited to, wetland mitigation.

(4) Financial assistance provided to a project sponsor under this section may not be used for:

(a) The payment of:

(A) A penalty or fine; or

(B) Environmental remediation activities conducted at an industrial land site that is listed or proposed to be listed as a national priority pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605), for which the project sponsor, or any party to the loan agreement entered into pursuant to section 20 of this 2023 Act to which the project sponsor is a party, is liable under 42 U.S.C. 9607;

(b) Retirement of debt;

(c) 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 be located outside Oregon; or

(d) Ongoing operations or maintenance expenses of any person.

(5) Contractors and subcontractors on development projects funded under sections 14 to 23 of this 2023 Act must pay for such projects a rate of wage that meets or exceeds the greater of:

(a) The prevailing rate of wage for workers in each trade or occupation in each locality as determined by the Commissioner of the Bureau of Labor and Industries under ORS 279C.815; or

(b) The prevailing rate of wage as determined by the United States Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 3141 et seq.).

(6) The department shall adopt rules to administer and implement the provisions of this section.

SECTION 16. Forgivable loans for planning projects. (1)(a) The Oregon Business Development Department may make a forgivable loan to a project sponsor, for allowable costs related to a planning project, from moneys in the Industrial Lands Loan Fund established under section 23 of this 2023 Act, in accordance with this section.

(b) The department shall determine the amount of a forgivable loan on a case-by-case basis.

(2) A planning project eligible for a forgivable loan under this section may:

(a) Be a stand-alone project that is not intended to lead to a development project.

(b) Be a project that is intended to lead to a development project.

(c) Include planning or investigation for an environmental action on a brownfield.

SECTION 17. Other forms of financial assistance. The Oregon Business Development Department may directly or indirectly expend or loan moneys in the Industrial Lands Loan Fund established under section 23 of this 2023 Act or extend credit to:

(1) Provide to project sponsors of an industrial land eligible project any allowable form of financial assistance that the department considers appropriate, including the refinancing of temporary project financing.

(2) Purchase goods or services related to an eligible project on behalf of the project sponsor.

(3)(a) Finance guaranty agreements that are issued to guarantee any portion of the obligation of a project sponsor to finance an industrial land development project and that are not sold to the State of Oregon.

(b) Guaranty agreements under this subsection shall be payable solely from moneys in the fund and shall not constitute a debt or obligation of the State of Oregon.

(c) The department may, on behalf of the state, establish a special account in the fund and commit to deposit into the special account specified portions of current and future moneys credited to the fund.

(d) 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.

SECTION 18. Allowable costs. For purposes of sections 14 to 23 of this 2023 Act:

(1) The allowable costs of a development project include:

(a) Property acquisition and assembly costs associated with creating large development parcels, including any easement or right of way directly related to and necessary for a development project.

(b) Transportation improvements such as access roads, rail spurs and sidings, marine facility access, airport facilities necessary to provide industrial land access, intersections, turning lanes, signals, sidewalks, curbs, transit stops and storm drains.

(c) Infrastructure for providing broadband, electric power, natural gas, water and sewer service.

(d) Natural resource mitigation.

(e) Land grading activities.

(f) Environmental remediation and mitigation activities to address brownfield issues, in accordance with state and federally approved remediation plans.

(g) Interest-carrying costs incurred by a project sponsor for amounts borrowed to develop industrial land and financing costs, including capitalized interest.

(h) Direct project management costs.

(i) Costs of consultant services and expenses.

(j) Construction costs and expenses.

(k) Costs of acquiring off-site property for purposes directly related to a development project, including, but not limited to, wetland mitigation.

(L) Other costs that the Oregon Business Development Department determines to be necessary or useful for the project.

(2) The allowable costs of a planning project include:

(a) Necessary planning, engineering, legal and other professional services associated with:

(A) The preparation of applications for local, state and federal permits and related administrative costs.

(B) Carrying out the project and related administrative costs.

(b) Other costs that the department determines to be necessary or useful for the project.

SECTION 19. Application process for financial assistance. (1)(a) A project sponsor seeking financial assistance from the Industrial Lands Loan Fund must submit an application in the manner and form required by the Oregon Business Development Department.

(b) At a minimum, each application must include:

(A) The name and nature of the project sponsor;

(B) A description of the nature of the project;

(C) The provisions of sections 14 to 23 of this 2023 Act under which the project is eligible for financial assistance;

(D) The proposed activities to be funded;

- (E) A description and estimate of the allowable costs to be incurred for the project; and
 - (F) All other information and documentation that the department requires.
- (2)(a) The department shall review all timely and complete applications and approve or reject each application in accordance with rules adopted by the department.
- (b) The department shall notify each applicant of its decision. The rejection of an application may not be appealed.

SECTION 20. Agreement for financial assistance. (1) Upon approval of an application submitted under section 19 of this 2023 Act, the Oregon Business Development Department, notwithstanding any other provision of law or any restriction on indebtedness contained in a charter, and the project sponsor of the eligible project to which the application relates may enter into an agreement for financial assistance based on the application. The department shall determine the maximum amount of financial assistance based on a reasonable and prudent expectation of the ability of the project sponsor to repay the financial assistance.

- (2) An agreement entered into pursuant to this section must include:
- (a) A provision that the obligation of the state under the agreement is contingent on the availability of moneys in the Industrial Lands Loan Fund for the financial assistance agreed upon.
 - (b) A provision that grants the department a lien on, or a security interest in, collateral to secure repayment of a loan made to, or bonds issued by, the project sponsor, in a form and amount determined by the department and specified in the agreement.
 - (c) Provisions that the department considers necessary to ensure expenditure of the funds for the purposes set forth in the approved application.
 - (d) Any other provision the department considers necessary or appropriate.
- (3) For an eligible project owned by a public entity, a loan agreement entered into pursuant to this section must be authorized by an ordinance, resolution or order adopted by the governing body of the project sponsor.
- (4) In making a determination to enter into a loan agreement with the project sponsor for an industrial land development project, the department shall consider the reasonableness of the project sponsor's estimated costs to prepare the land for industrial use, including, but not limited to, allowable costs for land preparation.
- (5) Financial assistance approved by the department for an eligible project shall be paid, in accordance with the terms of the agreement entered into pursuant to this section, from the Industrial Lands Loan Fund established under section 23 of this 2023 Act.
- (6) In assisting project sponsors with eligible projects, and to meet the goals of sections 14 to 23 of this 2023 Act, the department and other state agencies shall cooperate to the greatest extent possible with each other and federal agencies.

SECTION 21. Repayment. (1) A project sponsor may repay financial assistance provided for an eligible project under sections 14 to 23 of this 2023 Act from any source, including, but not limited to:

- (a) Revenues generated by the eligible project, including special assessment revenues.
 - (b) Amounts withheld under section 22 of this 2023 Act.
 - (c) The general fund of the project sponsor.
- (2) A plan for repayment to the Industrial Lands Loan Fund of financial assistance provided for an industrial land development project:
- (a) Shall provide for repayment by the project sponsor of the financial assistance with interest to begin no later than seven years after the date of project completion or at such other time as the Oregon Business Development Department may provide.
 - (b) Shall provide for such evidence of debt assurance of, and security for, repayment by the project sponsor as is considered necessary by the department.
 - (c) Shall set forth a schedule of payments and the period of the loan, not to exceed the useful life of the contracted project or 30 years from the date of the project completion, whichever is less, and the manner of determining when loan payments are delinquent.

(d) May provide for a reasonable extension of the time for making any repayment as set forth under paragraph (c) of this subsection in emergency or hardship circumstances, if approved by the department.

(e) Shall include repayment of interest that accrues during any period of delay in repayment authorized under paragraph (a) of this subsection. The repayment of accrued interest may be in varying amounts.

(f) Shall allow for other forms of payment than principal and interest payments on loans, in accordance with rules adopted by the department.

SECTION 22. Breach; default. (1) If a project sponsor fails to comply with sections 14 to 23 of this 2023 Act or an agreement entered into under section 20 of this 2023 Act, the Oregon Business Development Department may seek appropriate legal remedies to secure any repayment of obligations due from the project sponsor to the Industrial Lands Loan Fund.

(2)(a) If a project sponsor defaults on payments of obligations to the fund under sections 14 to 23 of this 2023 Act, the State of Oregon may withhold any amounts otherwise due to the project sponsor to offset against the obligations. The department may waive this right to withhold.

(b) Moneys withheld under paragraph (a) of this subsection shall be deposited in the fund and shall be used to repay any account in the fund from which moneys were expended to pay obligations upon which the project sponsor defaulted.

SECTION 23. Industrial Lands Loan Fund. (1)(a) The Industrial Lands Loan Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Industrial Lands Loan Fund shall be credited to the fund.

(b) Moneys in the fund are continuously appropriated to the Oregon Business Development Department for the purposes set forth in sections 14 to 23 of this 2023 Act. In addition, the department may finance administrative costs incurred by the department under sections 14 to 23 of this 2023 Act.

(c) The department may establish other accounts within the 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 sections 14 to 23 of this 2023 Act.

(2) Moneys in the fund may be invested as provided by ORS 293.701 to 293.857, and the earnings from the investments shall be credited to the account in the fund designated by the department.

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

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

(b) Moneys transferred to the fund by the department;

(c) Earnings on moneys in the fund;

(d) Repayment of financial assistance, including interest, under sections 21 and 22 of this 2023 Act;

(e) Moneys received from the federal, state or local governments; and

(f) Moneys, or the proceeds of assets, from any other public or private source, including, but not limited to, grants and gifts.

(4)(a) The department may commit moneys in the fund, or reserve future income of the fund, for expenditure in future years in accordance with this section.

(b) The department may commit moneys or reserve future income under this subsection only after:

(A) Allowing for contingencies; and

(B) Determining that there will be sufficient unobligated net moneys in the fund to make the future payments, consistent with the requirements of this section.

SECTION 24. The section captions used in this 2023 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.

SECTION 25. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by Senate March 29, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House April 6, 2023

.....
Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

.....
Shemia Fagan, Secretary of State