March 8, 2023

TO: Co-Chair Bynum, Co-Chair Sollman, Vice Chairs and members of the Joint Committee on Semiconductors

FROM: Andrew Desmond, Director of Economic Development, Oregon Business Council

RE: Technical guidance for Senate Bill 4 -3 amendments

SB 4 represents strong first steps on the road to making Oregon competitive for CHIPs applications. It recognizes and acts on industry's call for cash-aid to help offset their upfront capital costs, and it proposes a bold step toward making the industrial land we need for this opportunity available on an expedited timeframe. What follows is a series of suggested technical amendments to ensure that SB 4 -3 will accomplish its goals.

But SB 4 alone will not get us there. Oregon will be seriously disadvantaged if all elements of the Task Force's roadmap are not implemented. That's because these elements are what companies told us are required to make Oregon competitive for their investments, and because the Department of Commerce reiterated their importance in the NOFO. These elements include:

- Industrial site readiness program funding, both to make sites made newly available ready, and to ready sites across the state that may be viable for semiconductor and advanced manufacturing uses.
- Talent, workforce and research systems investments
    - As chipmakers face serious talent shortages, the U.S. Dept. of Commerce is clear they are looking for states to provide "investments [that] are designed to create spillover benefits that benefit a wide range of stakeholders." Nowhere are these spillovers greater than through investments in workforce and site readiness infrastructure.
- Extended sunsets for our critical property tax abatement programs like Enterprise Zones and SIP/Gain Share, which currently allow us to simply tread water with other states.
- Robust R&D tax credit and Investment Tax Credit – both of which industry told us would significantly improve Oregon's competitiveness for their investment, provide on-going incentive for their investment in the community, and that are "covered incentives" under the definitions of the NOFO.

We look forward to continuing to work with the members of this committee to deliver a historic package that contains all these elements this spring.

On making fixes to ensure that SB 4 accomplishes its desired goals, the bulk of our feedback is on Section 10 regarding the governor's siting authority. On this point I also want to emphasize that OBC is agnostic to the mechanism used to bring sites into UGBs, so long as it meets a timeline of bringing the quantities of land required by the Task Force into service in 18-24mos *from today*.

To accomplish that timeline goal, SB 4 -3 amendments need to be modified in the following ways, all of which I will submit to the record with more detail on the changes needed and the rationale for them.

We and our lawyers are at your disposal for any questions you may have (perhaps more our lawyer than me).

- **SECTION 10(1): Remove tie to covered entity.** The requirement that executive siting authority be used "as part of the state's covered incentive…" creates a timeline problem. Bringing this land into a UGB as part of a "covered incentive" means the land must be offered to a "covered entity," per federal definitions. There is likely to be a situation where the land needs to be brought into UGB before it is offered as an incentive. If the intent was to ensure this land concession is considered a covered incentive, we should find a way to make that point without tying the land to a covered entity.
    - This prevents the ability to simultaneously move forward with (1) the many steps of urbanizing land such as UGB amendment, city annexation, infrastructure provision, and (2) individual project development, application, Gov review, and Gov approval. Requiring this to be sequenced with (2) first, followed by (1), could easily add 12 to 24 months to the timeline to get to construction (if applicants even believed that this new system could work and were willing to spend to develop an application to the Gov in the face of all this uncertainty).
    - It is also unlikely that a company will choose a site while there is uncertainty on the land (still needs to go through appeals, etc.). Authority should be allowed to be preemptively exercised to make land available and ready ASAP for industrial users to then use.
- **Next, Subsection 10(3)(d) requires approval from all landowners, developers, and local jurisdictions as a prerequisite to the Governor's decision.** This is extremely hard and rare to achieve - getting all landowners to approve a plan could take 18 months on its own. In a normal process, the local government leads the rezoning process. Suggest requiring the governor to approve a plan by each local government with jurisdiction over the land to rezone the land under subsection (7) and to plan infrastructure within 18 months.
- **There needs to be a specified appeals route for the gov's decision**. In Section 10(4) the -3 states that the Gov's order is not appealable, but in the words of our lawyer, that does not make it so. US and OR constitutions afford due process for all executive and legislative decisions. Not specifying an expedited appeal of the Gov's decision means that it would probably go through the standard route of initial Circuit Court decision, followed by Ct. of Appeals review, followed by Sup Court review. Supreme Court review in Section 10(7) appears to only apply to review of the legislation, and not the Gov's decision. This typical appeal route could easily take two to four years. The Gov's decision would be valid during that time (unless ruled otherwise by a court), but most developers will not invest substantial sums on a development while and appeal is pending. SEE ATTACHMENT
- **Metro needs to be added to Section 10 (6), and the preemption language in that section is too narrow.** As written, section 10 does not apply to Metro even if *ORS* 195.144 is addressed. Cities in the Metro area do not have their own UGBs. For all cities in Metro, it is the Metro UGB. *ORS* 268.390 needs to be addressed as that is the statute that is Metro's authority to establish and amend urban growth boundaries. It also needs to not withstand any statewide planning goals or "any other statute or administrative rule" because there are a host of land use laws that a sophisticated opponent could argue still apply. This is important to avoid CFEC. Otherwise, we are looking at an additional 3 – 5 years to redo TSPs before any shovels are in the ground.
-

- **Section 11's UGB Reversion timeline** would scare away a lot of industrial developers. Section 11 basically says that the project needs to be constructed by a specified date or brought within a UGB by a certain date. The timeframe for both these things are not entirely in the developer's or sponsor's control. Hundreds of millions or billions is a lot to risk without certainty. Land should only revert under existing law (ORS 197).
- **Any funds for site readiness should be structured as grants, not loans.** And remove subsection 2 of Section 16, saying that "the department may not expend in one biennium more than 1% of the value of the industrial lands loan fund for planning projects." Assuming $10M is applied to this fund, all of that money is needed immediately for due diligence planning to commence.