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CHAPTER 123
OREGON BUSINESS DEVELOPMENT DEPARTMENT

FILING CAPTION: These rules relate to the Industrial Lands Loan Fund.

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AGENCY APPROVED DATE: 12/20/2023

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RULES:
123-099-0010, 123-099-0020, 123-099-0030, 123-099-0040, 123-099-0050, 123-099-0060, 123-099-0070, 123-099-0080

ADOPT: 123-099-0010

RULE TITLE: Purpose

NOTICE FILED DATE: 10/31/2023

RULE SUMMARY: This rule provides the purpose of the Semiconductor Industrial Lands Loan Program.

RULE TEXT:
The purpose of these rules is to establish the Industrial Lands Loan Fund required by the 82nd Oregon Legislative Assembly, 2023 Regular Session, passed chapter 25, sections 14 to 23, Oregon Laws 2023 (Enrolled Senate Bill 4). The scope of these rules includes requirements to administer and implement the Semiconductor Industrial Lands Loan Program ("Program") developed by the Department for the state to make financial assistance awards in the form of a repayable or forgivable loan to fund development projects, including planning projects. These rules are designed to support private and public investment in industrial lands development projects associated with new or expanded semiconductor industry uses.

STATUTORY/OTHER AUTHORITY: ORS 285A.075, OR Laws 2023 ch. 25, § 15.

STATUTES/OTHER IMPLEMENTED: OR Laws 2023 ch. 25, § 15., OR Laws 2023 ch. 25 §§14-23

ADOPT: 123-099-0020

RULE TITLE: Definitions

NOTICE FILED DATE: 10/31/2023

RULE SUMMARY: This rule is being adopted to provide a list of definitions for the Semiconductor Industrial Lands Loan Program.

RULE TEXT:

(1) “Act” means Chapter 25, sections 14 to 23, Oregon Laws 2023.

(2) “Agreement” means a program repayable or forgivable loan contract between the Department and a Project Sponsor for an approved application that provides for the award amount from the Industrial Lands Loan Fund and the terms of the contract.

(3) “Application” means the Department-prescribed form that an applicant submits to propose a project and to request a Program repayable or forgivable loan.

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

(5) “Department” means the Oregon Business Development Department.

(6) “Development project” has the meaning given that term in chapter 25, section 14(3), Oregon Laws 2023.

(7) “Eligible project” means a development project or a planning project.

(8) “Financial assistance” means a repayable loan or a forgivable loan.

(9) “Environmental action” has the meaning given that term in ORS 285A.188.

(10) “Industrial land” has the meaning given that term in chapter 25, section 14(6), Oregon Laws 2023.

(11) “Industrial land 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 on land planned and zoned for industrial use.

(12) “Planning project” has the meaning given that term in chapter 25, section 14(7), Oregon Laws 2023.

(13) “Program” means the Semiconductor Industrial Lands Loan Program created by the Act that is authorized to provide certain repayable and forgivable loans.

(14) “Private owner” has the meaning given that term in chapter 25, section 14(8), Oregon Laws 2023.

(15) “Project sponsor” has the meaning given that term in chapter 25, section 14(9), Oregon Laws 2023.

(16) “Semiconductor industry use” has the meaning given that term in chapter 25, section 14(11), Oregon Laws 2023.

(17) “Public entity” has the meaning given that term in chapter 25, section 14(10), Oregon Laws 2023.

(18) “Utilities” means broadband, electric power, natural gas, water service, sewer service, and any renewable energy source.

STATUTORY/OTHER AUTHORITY: ORS 285A.075, OR Laws 2023 ch. 25, § 15

STATUTES/OTHER IMPLEMENTED: OR Laws 2023 Ch. 25 §§14-23

ADOPT: 123-099-0030

RULE TITLE: Project and Applicant Eligibility

NOTICE FILED DATE: 10/31/2023

RULE SUMMARY: This rule is being adopted to detail project eligibility requirements for Semiconductor Industrial Lands Loan Program awards.

RULE TEXT:

(1) An applicant seeking a forgivable loan for a planning project under Section 16, chapter 25, 2023 Oregon Laws, must demonstrate in the Program application that the proposed planning project, as that term is defined, is an eligible project under the Act.

(2) An applicant seeking financial assistance for a development project under Section 15, chapter 25, 2023 Oregon Laws, must demonstrate in the Program application that the proposed project is an industrial land development project as that term is defined in OAR 123-099-0020(11) and is an eligible project under the Act.

(3) To comply with this rule, an applicant must demonstrate in the application to the Department's satisfaction that the proposed project is suitable for new semiconductor industry uses, or the expansion of existing semiconductor industry uses that could reasonably provide significant additional employment in Oregon. When reviewing and evaluating Program applications for compliance with this requirement, the Department shall give preferences to projects that can demonstrate a reasonable likeliness to:

(a) Aid in the addition of at least 100 additional semiconductor industry jobs in Oregon; or

(b) Aid in the addition of at least 1 additional semiconductor industry job in Oregon per $45,000 of Program financial assistance provided.

(4) To comply with this rule, an applicant must demonstrate in the application the proposed project has:

(a) Land characteristics that provide significant competitive advantages that are difficult or impossible to replicate;

(b) 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;

(c) Land zoned for industrial use that is located within 50 miles from present semiconductor industry clusters in Oregon (i.e. Corvallis, Eugene, Gresham, Hillsboro, Medford and Redmond). The Department presumes that such locations provide significant competitive advantages that are difficult or impossible to replicate and have access to the requisite transportation and freight infrastructure.

(5) Applicant eligibility

(a) An applicant must demonstrate eligibility by detailing how the public entity or private owner meets the requirements of a Project Sponsor.

(b) For the Department to confirm eligibility, a private owner applicant must provide within or attached to its application either:

(A) evidence to the Department's satisfaction of the private entity's investment in the preparation of the industrial land for a development project by a third party; or

(B) a copy of the agreement entered into with a public entity for the development of public infrastructure to serve their privately owned site.

(c) For the Department to confirm eligibility, a public entity applicant must provide within or attached to its application either:

(A) evidence to the Department's satisfaction of the public entity's ownership of industrial land that the public entity is investing in for a development project by a third party; or

(B) the public entity's development or other agreement with a private owner of industrial land to prepare the land for a development project.

STATUTORY/OTHER AUTHORITY: ORS 285A.075, OR Laws 2023 ch. 25, § 15

STATUTES/OTHER IMPLEMENTED:

ADOPT: 123-099-0040

RULE TITLE: Application Review and Approval

NOTICE FILED DATE: 10/31/2023

RULE SUMMARY: This rule is being adopted to outline the application review process. It also provides information regarding follow up communications that shall be received by applicants.

RULE TEXT:

1) The Department shall review all timely and complete applications for Program financial assistance. The Department's review shall include:

(a) Review of proposed projects for determination of compliance with eligible uses of program funds and loan proceeds as provided by sections 14 to 23, chapter 25, Oregon Laws 2023, and as further defined by this division of rules;

(b) Review of application for determination of applicant's eligibility as a Project Sponsor as that term is defined;

(c) Review for completion of the application, including satisfaction of requirements provided under section 19, chapter 25, Oregon Laws 2023 and requirements provided by this division of rules;

(d) Consideration of 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;

(e) Consideration of the potential economic impacts for the proposed project;

(f) Consideration of each application and the requested amount based on program guidelines and program priorities as determined by the Department. While forgivable loans do not require match, the Department shall give preferences for projects that are not solely funded from the Department's financial assistance;

(g) Applying the preferences provided by this division of rules; and

(h) Applying any other criteria set forth in the applicable Request for Applications ("RFA").

(2) Within 30 days of the applicable RFA close date, the Department shall approve or reject program applications.

(3) Approved applicants shall receive a notice of intent to award, and unsuccessful applicants shall receive a letter of explanation from the Department.

(4) As applicable, the notice of intent to award provided to approved applicants shall contain an offer of an amount for a program repayable or forgivable loan for a development project; and/or an offer of an amount for a program forgivable loan for a planning project. The Department may make an offer that is less than what was requested by the applicant. For development projects, the Department shall condition loan awards on satisfactory collateral or other security such as requiring a co-signer or guarantor or other conditions to secure repayment of a loan made. Generally, public entity awards shall be conditioned on a pledge of the entity's full faith and credit and taxing power within Article XI, sections 11 and 11b of the Oregon Constitution and a pledge of appliable net revenues from the public infrastructure system that is the subject of the public entity's development project.

STATUTORY/OTHER AUTHORITY: ORS 285A.075, OR Laws 2023 ch. 25, § 19

STATUTES/OTHER IMPLEMENTED: OR Laws 2023 Ch. 25 §19

ADOPT: 123-099-0050

RULE TITLE: Forgivable Loan Agreement Conditions

NOTICE FILED DATE: 10/31/2023

RULE SUMMARY: This rule is being adopted to detail terms and conditions of Semiconductor Industrial Lands Loan Program forgivable loans.

RULE TEXT:

(1) If a Project Sponsor completes a planning project funded by a program forgivable loan by the project completion deadline in accordance with the terms of the Agreement, and provided that no event of default has occurred, the Department shall, 90 days after the project completion date, forgive repayment of the forgivable loan amount and any interest accrued thereon and cancel the forgivable loan.

(2) If a Project Sponsor completes a development project funded by a program forgivable loan by the project completion deadline in accordance with the terms of the Agreement, and fulfills requirements related to the ownership and operation of the project, as determined by the Department, and provided that no event of default has occurred, the Department shall forgive repayment of the forgivable loan amount and any interest accrued thereon and cancel the forgivable loan.

(3) If a Project Sponsor fails to meet the Agreement's covenant of a term of years for the completed project (not including planning projects) to be directly owned or operated by the Project Sponsor or the subject of a management contract or an operating agreement to which the Project Sponsor is a party, the forgivable loan amount disbursed shall be due and payable in full by the Project Sponsor within 30 days of the appliable change in ownership, operation, management contract or operating agreement by the Project Sponsor.

(4) Noncompliance with performance, including failure to complete the project by the project completion deadline or other conditions set forth in the Agreement shall trigger a forgivable condition default requiring a forgivable loan to be repaid.

(5) The Department may in its discretion allow Project Sponsors to cure noncompliance with performance or other conditions set forth in the Agreement.

STATUTORY/OTHER AUTHORITY: ORS 285A.075

STATUTES/OTHER IMPLEMENTED: OR Laws 2023 Ch. 25 §§15, 16

ADOPT: 123-099-0060

RULE TITLE: Agreements

NOTICE FILED DATE: 10/31/2023

RULE SUMMARY: This rule is being adopted to outline the agreements required to be executed with recipients of Semiconductor Industrial Lands Loan Program financial assistance awards funded by the Industrial Lands Loan Fund.

RULE TEXT:

(1) After approval of an application for a program loan award for a Project and conditional notice, the Department shall promptly begin preparation and negotiation of an Agreement with the Project Sponsor. The Department conducts a financial review on approved applications in accordance with prudent lending practices, including ability to service debt if a forgivable condition default requires a forgivable loan to be repaid.

(2) Agreements for program loans:

(a) Shall set the maximum amount of financial assistance (loan amount);

(b) Include 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 amount of financial assistance;

(c) Shall include a provision that grants the Department a lien on, or a security interest in, collateral to secure repayment of a loan made to the Project Sponsor, in a form and amount determined by the Department;

(d) Shall provide the terms for forgiveness if the program loan is a forgivable loan;

(e) Shall provide terms for loan repayment by the Project Sponsor, including a schedule of payments of principal and interest and the manner for determining when loan payments are delinquent. If the Department determines a Forgivable Loan fails to meet its conditions for forgiveness, loan repayment shall start on December 1 following such determination;

(f) Shall provide terms for repayment of a forgivable loan if the terms and conditions for forgiveness are not met during the term of the loan. Repayment terms may include full repayment and partial repayment obligations, including repayment obligations that are prorated. If a repayment is required, interest shall be imposed on the loan proceeds;

(g) Shall provide for a maturity date for the loan. Forgivable loans for project planning may be made for a term not to exceed 3 years after the Agreement execution date. Forgivable loans for development projects may be made for a term of years not to exceed the useful life of the contracted project or up to 10 years after the Agreement execution date, as agreed to by the Department. Repayable loans for development projects may be made for a term of years not to exceed the useful life of the contracted project or 30 years from the date of project completion, whichever is less;

(h) Shall set an interest rate and start date for interest accrual on the loan that is determined by the Department at the time of award, based on market conditions for similar debt. The Department shall forgive repayment of accrued interest if the terms of forgiveness for a program forgivable loan are met;

(i) May provide for a reasonable extension of the maturity dates provided in the Agreement for making any repayment in emergency or hardship circumstances, if approved by the Department;

(j) Shall include an approved budget for allowable costs of Program funds;

(k) Shall provide terms for loan proceeds disbursements, which shall be made in compliance with the approved budget, and which may be in a single payment or in multiple, conditional payments. The Project Sponsor must submit each disbursement request for the loan on a Department-provided or Department-approved disbursement request form for Department review and approval. Loan proceeds shall be disbursed to approved Project Sponsors:

(A) on an expense reimbursement or costs-incurred basis; or

(B) upon Project Sponsor's request and approval from the Department, loan proceeds may be disbursed as an advanced payment for approved budgeted costs to be incurred. Advanced payments may be for partial or full amounts of budgeted costs. Expenditure reports and invoices shall be required to verify that any advance payments were used for approved allowable costs;

(l) Shall provide prevailing rate of wage requirements;

(m) Shall provide for a covenant of a term of years for the completed project (not including planning projects) to be

directly owned or operated by the Project Sponsor or the subject of a management contract or an operating agreement to which the Project Sponsor is a party;
(n) Shall provide for terms of breach and default of the Agreement and remedies for breach or default, including the right to withhold any amounts otherwise due to the Project Sponsor; and
(o) Shall contain such other terms and conditions as the Department requires.

STATUTORY/OTHER AUTHORITY: ORS 285A.075

STATUTES/OTHER IMPLEMENTED: OR Laws 2023 ch. 25

ADOPT: 123-099-0070

RULE TITLE: Records and Data Confidentiality

NOTICE FILED DATE: 10/31/2023

RULE SUMMARY: This rule is being adopted to detail records and confidentiality procedures for Semiconductor Industrial Lands Loan Program documentation submitted to the Department.

RULE TEXT:

(1) Data or information regarding a Program applicant, proposed Project, Project Sponsor or Program Project in an application, application attachment, Agreement, semiannual report or related materials or communications provided to the Department shall be public records subject to disclosure, except for data or information that qualifies as a public records exemption under ORS 192.311 to 192.478 (Oregon Public Records Law).

(2) Section (1) of this rule applies notwithstanding a nondisclosure agreement, but such an agreement may nevertheless spell out data or information anticipated to be exempt under the Oregon Public Records Law, including but not limited to trade secrets or confidential information under ORS 192.355(4), as may facilitate obligations under section (3) of this rule.

(3) When providing items referenced in subsection (1) of this rule, it is the applicant or Project Sponsor's, its agent's or its representatives' responsibility to mark data and information that legitimately and specifically qualify for an exemption from disclosure. To designate an item or portion of one as exempt from disclosure, the applicant or Project Sponsor shall:

(a) Clearly identify in the body of the application, application attachment, Agreement, report and other materials only the limited data or information exempt;

(b) Stipulate the Oregon Public Records Law exemption(s) believed to apply; and

(c) Provide justification for how each identified portion meets that exemption's criteria.

(4) The Department shall determine whether data or any information is actually exempt from disclosure and shall redact from disclosure only that data or information.

(5) Applicants and Project Sponsors are advised to consult with their legal counsel regarding disclosure issues. Applicants and Project Sponsors may wish to limit the amount of truly trade secret or other data or information provided only to what is necessary.

STATUTORY/OTHER AUTHORITY: ORS 285A.075

STATUTES/OTHER IMPLEMENTED:

ADOPT: 123-099-0080

RULE TITLE: Reporting Requirements

NOTICE FILED DATE: 10/31/2023

RULE SUMMARY: This rule is being adopted to outline reporting requirements associated with projects receiving Industrial Lands Loan Fund awards.

RULE TEXT:

(1) Every Project Sponsor that enters into an Agreement with the Department shall be required to report on project activities, project expenditures, project milestones completed, overall outcomes any other information required by the Department, on forms or in a format prescribed by the Department. The time periods to be covered in each report, and the deadlines for submission shall be determined by the Department on a case by case basis depending upon the nature of the project activities and their schedule, and prescribed in the Agreement. Project activity reports shall be provided every six months from the date of the Agreement is executed until the Agreement is closed reporting on project activity, project expenditures, project milestones completed and overall outcomes unless otherwise modified and agreed to by the Department.

(2) The reporting obligations provided in section (1) cease on the earlier of the date the Agreement expires, the date the Agreement is terminated, or the date the Department has determined that the Project Sponsor has met their contractual obligations to have the loan forgiven or the Project Sponsor has repaid the loan in full.

STATUTORY/OTHER AUTHORITY: ORS 285A.075

STATUTES/OTHER IMPLEMENTED: OR Laws 2023 ch. 25 §4