

Will Rasmussen Testimony & Proposed Amendments to SB 4 -10
March 13, 2023

- 1. Big Picture** – The industrial lands mechanism in Section 10 must be designed for maximum speed deliver development ready land in 18-24 months from today.
 - a. Section 10 must be written to make exactly clear that it is fully removed from Oregon's land use appeals routes.
 - b. A UGB amendment decision can easily be in appeals for 3-6 years.
 - c. Smaller related decisions like rezones, Transportation System Plan amendments, and the like can easily be in appeals for 2-3 years.
 - d. Section 10 must be quick, and fully stand separate from Oregon's land use appeals system.
 - e. There are three and a half points where Section 10 needs revision to deliver industrial land in the 18-24 month timeframe:
- 2. Subsection 10(1) and Subsection 10(3)(c)** – creates a major timeframe and certainty problem. They require a specific project to be proposed before industrial land planning can begin.
 - a. **Subsection 10(1)** - Gov may bring land into a UGB for “purposes of providing lands available for industrial uses to become part of the state’s covered incentive as defined in section 1”
 - b. **Subsection 10(3)(c)** – Before issuing an executive order, the Gov shall “Make a determination that existing lands within an urban growth boundary in this state would not meet the needs of the specific project.”
 - c. These basically require a specific project to be proposed and approved by Gov before land preparation can begin. This creates two fatal problems
 - i. First, this would delay planning for land prep by 6-18 months, which blows the development timeline past the Taskforce's 18-24 months.
 1. Brining land in the UGB does not make it development ready. Time is needed for the subsequent steps of annexation, rezoning, planning infrastructure, and providing urban services.
 - ii. Second, it adds too much uncertainty. Most developers will not propose their industrial project on rural EFU land hoping that the Gov will approve urbanization of the land through an untested process. They will go elsewhere without this material uncertainty.
- 3. Subsection 10(4)(c)** – A determination may by the Gov to bring lands into a UGB under this section “is final and not subject to appeal.”
 - a. Governor’s decision is subject to judicial review, even if the legislature says that it is not.
 - b. Without specifying a tight expedited appeal to the Sup Ct., this could add several years to the timeline to final decision.
 - c. We provided one mechanism for an expedited appeal of the Gov’s decision; that could be drafted a number of ways, but it needs to be quick.

4. **Subsection 10(6) and 10 (8)** – Notwithstanding ORS
 - a. Should add “and any other state statute or administrative rule ...”
 - b. Myriad of little land use rules could pull these areas into years of appeal
 - i. Example of the TPR.
5. **Section 11** – Land can be removed from UGB by Governor upon determination that the development of the land will not be receiving federal semiconductor financial assistance.
 - a. An improvement, but inserts a degree of uncertainty for project sponsors and developers that could scare them away for Oregon.

Proposed Amendments to SB 4 -10

“**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.

Commented [A1]: This is to allow industrial land planning to occur concurrently with State project identification/assessment/selection. It avoids delay in what will already be a very tight timeline for getting sites ready.

“(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; and
- “(b) Entirely within three miles of the city’s existing urban growth boundary.

“(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 provide sufficient suitable land to compete for federal semiconductor financial assistance for projects of all types, large and small. In making such a determination, the Governor may consider factors such as proximity to major commercial air service, freight transportation access, utility infrastructure, workforce availability, distance to existing industry clusters, and potential interest from an identified project.

Commented [A2]: This is also to allow industrial land planning to occur concurrently with State project identification/assessment/selection. It avoids delay in what will already be a very tight timeline for getting sites ready.

“(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 12 sites, as follows:

- “(a) Two sites of any size;
- “(b) Four sites that do not exceed 500 acres; and
- “(c) Six sites that do not exceed 100 acres

“(6) Notwithstanding any other provision of ORS 197.286 to 197.314 relating to amending an urban growth boundary or ORS 195.144 (2)(b), 197.626 or 268.390 or any statewide land use planning goal, statute, or administrative rule, lands designated in an executive order under this section are considered within the acknowledged urban growth boundary, as described in ORS chapter 197 and 268, as of the date of the executive order.

Commented [A3]: This is to catch other statutes or rules that arguably apply

“(7)(a) Jurisdiction is conferred upon the Supreme Court to determine the legal effect of subsections (1) to (68) of this section or the legal effect of any order issued by the Governor under subsections (1) to (68) of this section.

“(b) A person who is or will be adversely affected by subsections (1) to (68) of this section or by an order issued by the Governor under subsections (1) to (68) of this section may institute a proceeding for review of the order only by filing a petition and a brief with the Supreme Court within 60-30 days following the effective date of this 2023 Act and serving a copy of the petition on the Attorney General and Governor.

“(c) 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.

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

“(e) The Governor and Attorney General may, but need not, file a response in the form of a brief to the petition and brief within 21 days after the petition filing date. The Court may consolidate its review if multiple petitions for review are filed under this section. The Court may allow additional briefing in its sole discretion.

“(f) The Court may invalidate an executive order of the Governor under section 10 of this 2023 Act only if the Court finds that the Governor exceeded the Governor's constitutional authority or failed to comply with the criteria in Section 10, subsections (2) or (5) of this 2023 Act.

Commented [A4]: This is to avoid long traditional appeal periods for the subsequent zone change necessary after a parcel is brought in a UGB

“(8) No later than six months following the entry of an executive order under this section, each local and regional government with jurisdiction over the lands may, notwithstanding any statewide planning goals or ORS 215.431, 227.188, or 268.390 or this chapterother statute or administrative rule, amend its comprehensive plan or enact or amend any land use regulation to allow the use of the land for industrial uses under subsection (1) of this section provided that:

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

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

Commented [A5]: This tighter briefing schedule could save several months on the appeal timeline

Commented [A6]: By narrowing the courts review to these limited grounds it allows for a quicker judicial review

Commented [A7]: This is to catch other statutes or rules that arguably apply

“SECTION 11. Land brought within an acknowledged 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.