Details of technical changes to employee compensation criteria for business incentives in legislation

GENERAL –	Oregon Business Development Department (Business Oregon) and economic development
HOUSE BILL 2053 (2019) AS INTRODUCED	EXPLANATION, COMMENTS REGARDING ISSUES WITH SIMPLIFICATION, CLARIFICATIONS, HOUSEKEEPING
Page 1, lines 15–17 & 23–26	Institute common definitions across the department's three ORS chapters: (1) **Average wage**, against which a business firm's employee compensation is compared, means the most recent but final annual figure for the county or the state, whichever is less; only three counties, Clackamas (by a little), Multnomah and Washington, have higher average wages for 2017, and (2) Employee **compensation** is only the taxable income paid to them – wages, salary, etc. – not including employer-paid benefits like it does now in enterprise zones based on statutory construction of the Attorney General's office from 1994.
	(Also see miscellaneous below at the end of this document)

PROGRAM –	Business Retention and Expansion Program (BEP)
HOUSE BILL 2053 (2019) AS INTRODUCED	EXPLANATION, COMMENTS REGARDING ISSUES WITH SIMPLIFICATION, CLARIFICATIONS, HOUSEKEEPING
Needed Committee Amendment	To ensure common definitions actually apply (see General above): (1) On PAGE 5, line 11, before the colon, insert ", and in addition to the definitions under ORS 285A.010 applicable to ORS chapter 285B", and (2) Add new section – "ORS 285B.600 to 285B.620 is added to and made part of ORS chapter 285B."
Page 5, line 13	Eliminates reference unique to this program in defining compensation with essentially same effect as proposed here (see General above). This program already uses state wage if lower than the county.
Page 5, lines 14–18	Specifies (again, as this program currently operates) that Business Oregon may by rule use the annual private-sector wage rather than that of all employers. Removal of government jobs lowers the average wage only by 1.2% statewide, but the effect tends to be especially pronounced in most rural counties.
Page 5, lines 19–21	Clarifies consistent with practice that required hiring is based on full-time equivalent (FTE) employees in relation only to the business's traded-sector operations.
Page 5, lines 24–26 & 31–33	Stipulates consistent with current interpretation of law that based on the department's review of a business's application, its minimum existing workforce can be anywhere in the world, and it needs to have traded-sector operations in Oregon, besides not otherwise being a retailer now or in the future.
Page 5, lines 27–30	SUBSTANTIVE CHANGE: Cut in half for rural counties the in-state hiring objective by allowing new FTEs in any of the 23 counties currently outside a federally designated metropolitan statistical area (MSA) to count twice towards the goal of 50 or more new hires anywhere in Oregon. This would further align BEP with regionally significant industrial sites (RSIS, see below)—both are agency-run programs that estimate incremental personal income tax revenues as the basis of, respectively, a forgivable loan to a business or reimbursements for local investments in site readiness.

Details of technical changes to employee compensation criteria for business incentives in legislation

PROGRAM –	Business Retention and Expansion Program (BEP)
HOUSE BILL 2053 (2019) AS INTRODUCED	EXPLANATION, COMMENTS REGARDING ISSUES WITH SIMPLIFICATION, CLARIFICATIONS, HOUSEKEEPING
Page 5, lines 40–45 & lines 1–3 on page 6	Conveys more cleanly the effect of current law—compensation must average 150% or more of the county or state wage for hires in the 13 MSA counties, and 130%, in rural counties, in determining eligible employees and BEP awards, including amounts recouped if actual payrolls fall short. Further clarified is that compensation is measured based on the *average* for/among those employees.
Page 19, lines 32–33	Sets statutory revisions as operative for BEP applications *approved* as of new law's effective date.

PROGRAM –	Extension of standard exemption on qualified enterprise zone property from three to five years
HOUSE BILL 2053 (2019) AS INTRODUCED	EXPLANATION, COMMENTS REGARDING ISSUES WITH SIMPLIFICATION, CLARIFICATIONS, HOUSEKEEPING
Page 6, lines 5–6	Confirms applicability of agency-wide definitions (see General above), by referencing ORS 285A.010.
Page 6, line 15	Refers to common definition (see General above) for average wage, to which employee compensation is compared. Existing law would be changed in common with BEP & RSIS, such that the annual average state wage is used if less than the county wage. Nevertheless, of 13 enterprise zones in counties with a higher wage, 10 are Portland–area urban zones subject to special conditions (see below).
Page 6, lines 16–20	Current law relies on the county location of the enterprise zone and uses the higher or highest county wage in a multi-county zone (of which six zones span two counties at present). Though not a substantive problem to date, this normally forgotten detail will soon become pointlessly disruptive. The change here would rely simply on the county where exempt property is located, as is often assumed and is consistent with long-term program (below).
Page 6, line 36	Incidentally updates the definition of a federal enterprise zone (which may be designated as a state enterprise zone)—citing the newly created federal opportunity zones as an example and removing the long-defunct enterprise communities (one of which was once used in this way in Oregon).
Page 7, lines 16–21	Removes definition for qualified rural county (QRC). A QRC currently allows a business firm's new employees in the enterprise zone to have average wage **+** benefits that are as little as 130% rather than 150% of the county annual wage (applicable, however, to only 21 zones at the moment). Tracking QRCs has meant reaching out to several counties with differing systems to obtain timely assessment figures, and in one case, it was later discovered in 2018 with release of statewide statistics that a county's general property tax rate had jumped by more than had seemed possible, so that it met the 1.3% criterion. Only 7 of 23 non-MSA counties are presently not QRCs. These seven counties tend to have serious economic disadvantages, and their generally lower tax rates may not be an offsetting attraction for business investment, in that site-specific tax rates can vary significantly.

Details of technical changes to employee compensation criteria for business incentives in legislation

PROGRAM –	Extension of standard exemption on qualified enterprise zone property from three to five years
HOUSE BILL 2053 (2019) AS INTRODUCED	EXPLANATION, COMMENTS REGARDING ISSUES WITH SIMPLIFICATION, CLARIFICATIONS, HOUSEKEEPING
Page 7, line 42	Makes grammatical change by Legislative Counsel explicating that the U.S. Census does not directly determine or designate federal metropolitan statistical areas (MSAs).
Page 8, lines 4–6 & 10	Moves text that allows for extended abatements only if the business firm–zone sponsor agreement is done before local approval of authorization application, to improve flow of subsequent text.
Page 8, lines 10–15 & 28–40	Replaces criteria to receive extra two years of tax abatement (aside from local, additional requirements in the agreement), condensing requirement for all enterprise zones to 110% of current county/state wage over all five years. Right now, in rural zones and smaller-metro urban zones, which number 62 out of 73, an authorized business firm must pay its new, full-time employees in the zone, on average: a) Wages at least equal to the current county wage in 4th and 5th year (since 2017), and b) Wage **+** benefits in all five years that are at least 150% – or 130% if any part of the enterprise zone is inside a QRC – of the county wage as set at the time of authorization. Average compensation at 110% approximates the current 130% criterion with benefits, assuming that full-time workers averaging at least $20–30/hour would typically receive benefits. It would, however, generally become more stringent in later years, given annual growth in county/state average wages. Besides a single, uniform criterion in all cases, these changes also simplify matters, by using: 1) The most recent, final annual wage as available online from Employment Department rather than tracking wages from several years in the past, and 2) Only taxable business payroll, which is easier to communicate and calculate without benefits (a difficulty since 1993; government-required payroll costs are presently excluded by rule).
Page 8, lines 16–27 & 41–43	Drops current exclusion of 11 urban enterprise zones in Portland and Salem MSAs from these criteria, such that a business firm would need to satisfy the 110% requirement above or locally established conditions. Any of the 17 urban zone sponsors may adopt such a policy as uniformly applied to all firms under existing provisions for standard exemptions of any length. Comparable to some Portland-area zone policies, the baseline proposed for these conditions is that the compensation paid to at least 85% of new employees is at least 135% of the minimum wage, but local policy could be more stringent. This change would do four things: (1) ensure all larger-metro urban zones have a requirement; (2) apply the same exception to all urban zones; (3) set a bar for local flexibility in efforts to create lower-skill job opportunities in the traded-sector, and (4) clarify use of minimum wage relative to the schedule in state law, which has been a point of confusion with local policies that predate the law's current tiers.
Page 8, lines 44–45, and lines 1–3, 12–14 & 30–34 on page 9	Deletes complex contingencies for updating the county wage from the date of authorization in cases of a significant delay in a proposed investment that eventually proceeds. With a timely reactivated authorization, the wage might still be from seven years earlier by the 5th year of an extended abatement.

Details of technical changes to employee compensation criteria for business incentives in legislation

PROGRAM –	Extension of standard exemption on qualified enterprise zone property from three to five years
HOUSE BILL 2053 (2019) AS INTRODUCED	EXPLANATION, COMMENTS REGARDING ISSUES WITH SIMPLIFICATION, CLARIFICATIONS, HOUSEKEEPING
Page 19, lines 34–38	Sets statutory revisions as operative not only for local extended abatement agreements executed as of the new law's effective date, but also those amended on or after that effective date that were previously executed under 2017 Laws (specifically chapter 610, House Bill 2066) which added some of the above complications of an additional wage-to-wage criterion and QRC distinctions.

PROGRAM –	Long-term (7- to 15-year) exemption of rural enterprise zone facilities in an eligible county
HOUSE BILL 2053 (2019) AS INTRODUCED	EXPLANATION, COMMENTS REGARDING ISSUES WITH SIMPLIFICATION, CLARIFICATIONS, HOUSEKEEPING
Page 9, lines 38–39	Confirms applicability of agency-wide definitions (see General above), by referencing ORS 285A.010.
Page 10, line 15	Incidentally, provides for commonality between standard exemption (above) and this program for when property is in service and the tax abatement can commence, such that it ultimately depends on the facility's being commercially operational as intended, rather than overreliance on occupancy permits.
Page 10, line 17	Makes grammatical change by Legislative Counsel explicating that the U.S. Census does not directly determine or designate federal metropolitan statistical areas (MSAs).
Page 10, lines 35–36; page 11, lines 12–24 & 41–45, and lines 1–6, 18–19 & 27–28 on page 12	Restates more plainly and concisely the criteria for new full-time employees at the facility as in current law, clarifying that they are permanent/year-round jobs, but that they do not need to be hired directly by the business firm. The differing minimums relative to county population – 50, 35 & 10 new hires by the third year after facility operations begin – would be listed together for regular cases at least 10 miles from I–5. Within 10 miles of I–5, a facility is required to hire 75 or more by the fifth such year.
Page 10, lines 38–45, and lines 1–11 & 35–36 on page 11, and page 12, lines 15–16 & 30–31	Changes law, so that within I–5 corridor all facility employees (including existing ones) would need to receive average compensation that is at least 115% of the most recent county/state annual wage no later than the fifth full year of operations. Currently in all cases: (1) average facility wage **+** benefits must be 150% – or 130% in a QRC – of county wage as set when this requirement is first met, and (2) once it is first met, facility's average wage must also be at least 100% of the county wage, which updates annually. Please note: • The 115% criterion would also carry over to two existing special cases (two or more concurrent facilities by the same firm, and 10-job minimum with $200-million investment beyond I–5). • A 110% average compensation requirement is proposed consistent with lower program criteria for regular cases beyond the I–5 corridor, as discussed below. • The law would be clarified to say that FTE employees are used for these computations. • QRC definition is retained for this program as one way to determine eligible counties; difficulty of tracking QRCs is manageable enough for this purpose—see above for page 7, lines 16–21.

Details of technical changes to employee compensation criteria for business incentives in legislation

PROGRAM –	Long-term (7- to 15-year) exemption of rural enterprise zone facilities in an eligible county
HOUSE BILL 2053 (2019) AS INTRODUCED	EXPLANATION, COMMENTS REGARDING ISSUES WITH SIMPLIFICATION, CLARIFICATIONS, HOUSEKEEPING
Page 11, line 34	Specifies that straight-line distance from I–5 is measured from the highway's median.
Page 11, lines 37–40	Provides for lower average compensation requirement beyond the I–5 corridor as noted above – 110% rather than 115% by the 5th full year of facility operations. Existing program minimums for such facilities include much lower hiring and investment costs that are only half as high. This is also on par with modifications to the standard exemption's extended abatement program—see above for Page 8, lines 10–15 & 28–40—in that 110% without benefits approximates the 130% wage **+** benefits requirement. Of 26 eligible counties, 16 are qualified rural counties (QRCs), for which the current 130% requirement applies to 21 of the 39 enterprise zones that can even use this program. Of the remaining 18 zones, 10 would be subject to the proposed 115% requirement along I–5, leaving only 8 that should experience something of a decrease in stringency. In addition with this program, the county/state wage that is the basis of comparison would continue to climb in the future for as much as 10 to 14 years.
Page 12, lines 33–36	Bolsters obligations of business firm to notify county assessor when the facility has satisfied respective requirements, including if any has not been met by the time it is too late. (Program is fairly light on statutory specification with respect to compliance verification procedures)
Page 12, lines 43–45 & lines 1–2 on page 13	Sums up more efficiently and completely how hiring and compensation criteria must be maintained for the remainder of the exemption period, in the context of enforcement and claw-back provisions.
Page 19, lines 11, 12, 14 & 16	Conforming revisions to the program's now-expired corporate tax credits based on facility payroll.
Page 19, lines 39–43	Sets statutory revisions as operative not only for local agreements executed as of the new law's effective date, but also those amended on or after that effective date for exemptions that began in 2018 under 2017 Laws (specifically chapter 610, HB 2066) which added some of the above complications of an additional wage-to-wage criterion and QRC distinctions.

PROGRAM –	Oregon Investment Advantage (taxable income subtraction for facilities in certain counties)
HOUSE BILL 2053 (2019) AS INTRODUCED	EXPLANATION, COMMENTS REGARDING ISSUES WITH SIMPLIFICATION, CLARIFICATIONS, HOUSEKEEPING
Page 13, lines 38–40, and page 14, lines 5, 35–37 & 39	Effects housekeeping and clarification with respect to business applications to the department for preliminary certification, including local objection process and new operations at acquired facility.

Details of technical changes to employee compensation criteria for business incentives in legislation

PROGRAM –	Oregon Investment Advantage (taxable income subtraction for facilities in certain counties)
HOUSE BILL 2053 (2019) AS INTRODUCED	EXPLANATION, COMMENTS REGARDING ISSUES WITH SIMPLIFICATION, CLARIFICATIONS, HOUSEKEEPING
Page 14, lines 16–33	Substitutes an array of criteria for a single, basic requirement—that the compensation for each of a business firm's new employees is at least 110% of the current county/state average wage. Also clarified is that all of this pertains only to five new full-time hires at the facility, consistent with current law. This current-law array requires that the new employees' minimum wage **+** benefits are 150% or more of the county *per capita* income as set at the time preliminary certification, or … 130% in a non-MSA county (like 13 of program's current 15 counties), or … as little as 100% if employees receive health insurance equivalent to local municipal employees' (which has proven tough to even ever use). In addition, new employees must receive an average wage at least equal to the current, updated county *average* wage. Besides one criterion, these changes simplify and align better with other programs, namely, by eliminating inclusion of benefits and other complexities, and by basing the requirement on the latest county annual wage rather than an historic per capita income figure. If anything, this might make matters more stringent, albeit with respect to only five employees, in that relative to the prior discussion with enterprise zones—see above for Page 8, lines 10–15 & 28–40: • Only two of program's current 15 counties are in an MSA and subject to the 150% criterion; • Requiring minimum compensation of 110% or more is certainly a higher bar than average wages at 100% or the 100% option including benefits with health insurance; • Although it varies, the weighted mean of the 15 counties' average wage exceeds that of their per capita incomes by $144, and • County wage will rise over at least 12 years compared to locking in base with initial application.
Page 15, lines 6–9, 21 & 24–27	Moves references for defined terms consistent with current Legislative Counsel practice.
Page 15, lines 22–23	SUBSTANTIVE CHANGE: Caps the amount of taxable corporate income annually subject to subtraction at $10 million annually. This is outside the bill's main subject matter of employee compensation, but the program may have very large taxpayers whose revenue impacts greatly exceed what was once envisioned, and that warrant moderation going forward, even for existing users of the program.
Page 17, lines 26–27, 29, 37, 38 & 40–42	Confirms applicability of agency-wide definitions (see General above), by referencing ORS 285A.010, for which Legislative Counsel added ORS 285C.500 to the bill. Language regarding how eligible counties are determined is also cleaned up, clarifying that statistics from three most recent years available are used.
Page 19, lines 44–45, and page 20, lines 1–3	Sets statutory revisions as operative for businesses with preliminary certification applications that are made since July 1, 2017, to sidestep complications under 2017 Laws (specifically chapter 610, HB 2066). Cap on taxable corporate income would affect all business firms pursuant to annual certification applications that are approved on or after the new law's effective date.

Details of technical changes to employee compensation criteria for business incentives in legislation

PROGRAM –	Regionally Significant Industrial Site (RSIS)*
HOUSE BILL 2053 (2019) AS INTRODUCED	EXPLANATION, COMMENTS REGARDING ISSUES WITH SIMPLIFICATION, CLARIFICATIONS, HOUSEKEEPING
Needed Committee Amendments	To ensure common definitions actually apply (see General above): (1) On PAGE 15, line 29, before the colon, insert ", and in addition to the definitions under ORS 285A.010 applicable to ORS chapter 285B", and (2) Add new section – "ORS 285B.625 to 285B.632 is added to and made part of ORS chapter 285B." Restore bracketed text on PAGE 16, lines 4–5, to ensure that off-site employees are not included, but also set off restored text with commas, so that those hired before the first tax year are definitely included. Delete line 30 on PAGE 16, because it is unneeded with above insertions.
Page 15, lines 30–34	Establishes that Business Oregon may by rule use the average wage for only the private sector rather than all employers. Again, removal of government jobs lowers the average wage only by 1.2% statewide, but the effect tends to be especially pronounced in rural counties. This would further align the RSIS program more closely with BEP (see above). In addition, it is noted that the county wage (see General above) is based on location of the site. Like BEP, this program already uses the annual state wage if lower than that of the county, as is currently relevant only in the three METRO counties.
Page 15, lines 35–45 & lines 1–2 on page 16	Changes definition of 'eligible employer' with respect to traded-sector operations to specify: • Effect of current law more cleanly, in that there must be at least 25 new employees in a rural area, or otherwise 50 with compensation averaging 150% or more of the county/state wage. • That required hiring is based on full time equivalent (FTE) employees, consistent with practice. • Hiring needs to occur after the site's designation as regionally significant. • Rural area is defined like agency funding programs—i.e., outside urban growth boundary (UGB) of a city with 30,000 or more in population; current RSIS definitions (which were partly derived from enterprise zones?) leave some areas in an urban (MSA) county unaccounted. • Substantive changes in law that would— –allow site-wide satisfaction of hiring threshold in aggregate among multiple employers, and –reduce for rural areas the average compensation criterion to 130% for rural areas, like with BEP.

* These changes to RSIS are statutorily out of order in the bill and would normally come after BEP and before enterprise zones. Originally, to avoid potential conflict and confusion with what is Senate Bill 34, RSIS was left out. Legislative Counsel inserted ORS 285B.626 to make the grammatical change, explicating that the U.S. Census does not directly determine or designate MSAs, in text now to be deleted on page 16, lines 29 & 32. At that point, it was decided to propose further revisions to the section consistent with treatment of required employee compensation in the bill for business incentive programs (of which RSIS is not such a program), and to seek the Legislature's indulgence in achieving final agreement between bills, as necessary.

Details of technical changes to employee compensation criteria for business incentives in legislation

PROGRAM –	Regionally Significant Industrial Site (RSIS)*
HOUSE BILL 2053 (2019) AS INTRODUCED	EXPLANATION, COMMENTS REGARDING ISSUES WITH SIMPLIFICATION, CLARIFICATIONS, HOUSEKEEPING
To agree with Senate Bill 34 as introduced	For purposes of further substantive changes proposed in the other bill, this bill would need to be further amended, such that on PAGE 15, line 44, delete "150" and insert "130". This would reduce compensation criterion for non-rural sites, as well.
Page 20, lines 3–5	Sets statutory revisions as operative for estimates of incremental personal income tax revenues with the new law's effective date.

MISCELLANEOUS –	
HOUSE BILL 2053 (2019) AS INTRODUCED	EXPLANATION, COMMENTS REGARDING ISSUES WITH SIMPLIFICATION, CLARIFICATIONS, HOUSEKEEPING
Page 1, line 8; page 2, lines 20–29; page 3, lines 15 & 38; page 4, line 40, and page 5, line 1	Legislative Counsel added these revisions to update the statutes for the prior separation of the Oregon Tourism Commission (Travel Oregon) from Business Oregon, and to define terms independently for that commission, as well as cessation of Oregon Benchmarks program some years ago.
Page 16, line 39	Makes grammatical change by Legislative Counsel explicating that the U.S. Census does not directly determine or designate federal metropolitan statistical areas (MSAs) for enterprise zone designation.
Page 20, lines 6–7	Sets effective date of legislation 90 days *post sine die*.