

Enrolled
House Bill 3364

Sponsored by Representatives HELM, OWENS; Representative BOICE

CHAPTER

AN ACT

Relating to water; creating new provisions; amending ORS 541.561, 541.566, 541.576, 541.656, 541.657, 541.659, 541.666, 541.669, 541.677 and 541.689; and prescribing an effective date.

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

SECTION 1. ORS 541.561 is amended to read:

541.561. (1) The Water Resources Department shall establish a grant program to pay the qualifying costs of *[planning]* studies performed to evaluate the feasibility of *[developing a]* **projects related to:**

- (a) Water conservation[.].
- (b) **Water** reuse.
- (c) **Aquifer recharge.**
- (d) **Aquifer storage and recovery.**
- (e) **Streamflow protection or restoration.**
- (f) **Water** *[or]* storage *[project, as described in ORS 541.566].*
- (g) **Other activities identified by rule by the Water Resources Commission.**

(2) A grant under this section may be made to:

(a) *[a local government as defined in ORS 174.116, to]* **A person, as defined in ORS 536.007.**

(b) **A public body, as defined in ORS 174.109.**

(c) A federally recognized Indian tribe in Oregon that has members residing on a reservation or tribal trust lands in Oregon *[or to a person].*

(d) **A nonprofit organization.**

[(2)] (3) In lieu of grants, the department may pay the cost of providing direct services, including but not limited to technical *[planning]* services, for a *[planning]* study that is eligible for a grant under this section.

[(3)] A grant or the cost of direct services provided under this section may not exceed \$500,000 per project. A grant or payment for direct services may be provided only if the amount of the grant or the cost of the direct services is matched by funding from another source that is not less than a dollar-for-dollar match of the amount or cost.]

(4) **A grant may be provided only if the amount of the grant is matched by an in-kind or cash cost match of not less than 25 percent of the grant amount. The commission may establish a maximum per project amount of grant funding that a project may receive or may increase the cost match for upcoming project cycles based on the availability of funds.**

[(4)] (5) Grants and the cost of direct services provided under this section must be paid *[for]* from moneys available in the Water *[Conservation, Reuse and Storage]* **Project Feasibility** *[Investment]* Fund.

[(5)(a)] **(6)** In evaluating above ground storage projects for awards of grants or payments for direct services under this section, the department shall give priority to projects that include provisions for using stored water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish life or other ecological values.

[(b) In evaluating all other eligible projects, the department shall give priority to projects identified by the department in a statewide water assessment and inventory for the award of grants or provision of payment for direct services under this section.]

SECTION 2. ORS 541.566 is amended to read:

541.566. (1) A *[planning]* study receiving a grant or payment for direct services under ORS 541.561 **may include activities necessary to assess the type, location, design, cost or other factors affecting the feasibility of a project described in ORS 541.561. Specific activities** may include, but *[is]* **are** not limited to:

- (a) Analyses of hydrological refill capacity;
- (b) Water needs analyses;
- (c) Refined hydrological analyses;
- (d) Engineering and financial feasibility studies;
- (e) Geologic analyses;
- (f) Water exchange studies;
- (g) Analyses of by-pass, optimum peak, flushing and other ecological flows of the affected stream and the impact of a proposed *[water conservation, reuse or storage]* project on those flows;
- (h) Comparative analyses of alternative means of supplying water, including but not limited to the costs and benefits of conservation and efficiency alternatives and the extent to which long-term water supply needs may be met using those alternatives;
- (i) Analyses of **potential** environmental, **social, cultural or economic benefits**, harm or impacts from a proposed *[water conservation, reuse or storage]* project;
- (j) Analyses of **potential** public benefits accruing from a proposed *[water conservation, reuse or storage]* project;
- (k) Fiscal analyses of a proposed *[water conservation, reuse or storage]* project, including estimated project costs, financing for the project and projected financial returns from the project;
- (L) Hydrological analyses of a proposed *[water conservation, reuse or storage]* project, including the anticipated effects of climate change on hydrological refill capacity; *[and]*
- (m) Analyses of potential water quality impacts of the project~~].;~~
- (n) **The development of water management and conservation plans and associated analyses that assess alternatives to achieve water conservation;**
- (o) **Data collection and analyses related to the preparation of seasonally varying flow as prescribed in rules of the Water Resources Commission;**
- (p) **Analyses associated with evaluating the safety of existing dams and evaluating actions to address safety deficiencies related to existing dams; and**
- (q) **Analyses of impacts of a project on environmental justice or disproportionately impacted communities and ways to minimize impacts on environmental justice or disproportionately impacted communities.**

(2) If a *[planning]* study concerns a proposed storage project that would impound surface water on a perennial stream, divert water from a stream that supports sensitive, threatened or endangered fish or divert more than 500 acre-feet of surface water annually, a grant or direct services payment may be provided only if the study contains:

- (a) Analyses of by-pass, optimum peak, flushing and other ecological flows of the affected stream and the impact of the storage project on those flows;
- (b) Comparative analyses of alternative means of supplying water, including but not limited to the costs and benefits of conservation and efficiency alternatives and the extent to which long-term water supply needs may be met using those alternatives;
- (c) Analyses of environmental harm or impacts from the proposed storage project;

(d) Evaluation of the need for and feasibility of using stored water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish life and any other ecological values; and

(e) For a proposed storage project that is for municipal use, analysis of local and regional water demand and the proposed storage project's relationship to existing and planned water supply projects.

SECTION 3. ORS 541.576 is amended to read:

541.576. (1) The Water [*Conservation, Reuse and Storage Investment*] **Project Feasibility** Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Water [*Conservation, Reuse and Storage Investment*] **Project Feasibility** Fund shall be credited to the General Fund. Moneys in the Water [*Conservation, Reuse and Storage Investment*] **Project Feasibility** Fund are continuously appropriated to the Water Resources Department to award grants and to pay the cost of direct services provided under ORS 541.561.

(2) The Water [*Conservation, Reuse and Storage Investment*] **Project Feasibility** Fund shall consist of:

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

(b) Any moneys that may be transferred to the fund by the federal government, a state agency or a local government; and

(c) Grant repayments, if any.

SECTION 4. ORS 541.656 is amended to read:

541.656. (1) The Water Supply Development Account is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Water Supply Development Account shall be credited to the account. Moneys in the account are continuously appropriated to the Water Resources Department for use in carrying out ORS 541.651 to 541.696.

(2) The department may expend moneys from the account for:

(a) Subject to subsection (4) of this section, making loans and grants to evaluate, plan and develop in-stream and out-of-stream water development projects approved by the Water Resources Commission, including but not limited to projects that:

(A) Repair or replace infrastructure to increase the efficiency of water use;

(B) Provide new or expanded water storage;

(C) Improve or alter operations of existing water storage facilities in connection with newly developed water;

(D) Create new, expanded, improved or altered water distribution, conveyance or delivery systems in connection with newly developed water;

(E) Allocate federally stored water;

(F) Promote water reuse;

(G) Promote water conservation;

(H) Provide streamflow protection or restoration;

(I) Provide for water management or measurement in connection with newly developed water; and

(J) Determine seasonally varying flows in connection with newly developed water.

(b) Paying the necessary administrative and technical costs of the department in carrying out ORS 541.651 to 541.696.

(c) In connection with a water development project funded under paragraph (a) of this subsection, providing equipment for long-term monitoring of project outcomes, including but not limited to monitoring compliance with established seasonally varying flows in connection with newly developed water.

(3)(a) In addition to any other permissible uses of moneys in the account, the department may expend moneys from the account to support:

(A) Ongoing studies conducted by the United States Army Corps of Engineers to allocate stored water; and

(B) Comprehensive basin studies conducted by the United States Bureau of Reclamation.

(b) Expenditures described in this subsection are not subject to any grant or loan procedures, public benefit scoring or ranking or other requirements or restrictions for grants or loans established under ORS 541.651 to 541.696.

(4) The department may expend account moneys under subsection (2) of this section for loans and grants to develop in-stream and out-of-stream water development projects only if the department determines under ORS 540.530 that any transfer of water rights for the project will not injure existing water rights.

SECTION 5. ORS 541.657 is amended to read:

541.657. (1) **Unless otherwise specified in an Act referencing this section**, an expenditure of moneys from the Water Supply Development Account is not subject to *[any application process or public benefit scoring or ranking under]* ORS 541.663, 541.666, 541.669, 541.673 or 541.677 if the expenditure is for a *[purpose]* **project specifically named in an Act as subject to this section and the Act:**

[(1) Specifically identified in an appropriation to the account from the General Fund for carrying out the purpose; or]

[(2) Specifically identified in legislation that authorizes a transfer of lottery bond proceeds to the account for carrying out the purpose.]

(a) Appropriates moneys to the account from the General Fund; or

(b) Authorizes a transfer of lottery bond proceeds to the account.

(2) A recipient of funding for a project described in subsection (1) of this section shall provide information requested by the Water Resources Department to comply with the provisions of ORS 541.651 to 541.696 unless ORS 541.651 to 541.696 are excluded in the Act referenced in subsection (1) of this section, and shall enter into a grant or loan agreement prior to the department disbursing funds to the recipient.

SECTION 6. ORS 541.659 is amended to read:

541.659. (1) Loans and grants may be made from the Water Supply Development Account to persons as defined in ORS 536.007, to a federally recognized Indian tribe in Oregon that has members residing on a reservation or tribal trust lands in Oregon and nonprofit organizations.

(2) If an applicant is required to have a water management and conservation plan, the plan must be:

(a) Submitted to the Water Resources Department *[and receive approval]* prior to department acceptance of an application for a loan or grant from the account.

(b) Approved by the department before the project is awarded a loan or grant.

SECTION 7. ORS 541.666 is amended to read:

541.666. (1) Applications for a loan or grant from the Water Supply Development Account must:

(a) Be in a form prescribed by the Water Resources Department.

(b) Include any information required by the department.

(c) Be filed with the department.

(2) The department may require an application to *[and must]* include the following:

[(1)] **(a)** A description of the need, purpose and nature of the project, including what the applicant intends to complete and how the applicant intends to proceed.

[(2)] **(b)** Sufficient information to allow evaluation of the application based upon the public benefit scoring and ranking of the project.

[(3)] **(c)** Current contact information for the principal contact, fiscal officer and involved landowners.

[(4)] **(d)** For applications involving physical changes or monitoring on private land, evidence that landowners are aware of and agree to the proposal and are aware that monitoring information is a public record.

[(5)] **(e)** The location of the proposed project, using public land survey reference points, latitude and longitude, county, watershed, river and stream mile, if appropriate.

[(6)] **(f)** An itemized budget for the project, including fiscal and administrative costs.

- [(7)] (g) A description of funds, services or materials available to the project.
- [(8)] (h) A project schedule, including beginning and completion dates.
- [(9)] (i) Any conditions that may affect the completion of the project.
- [(10)] (j) A completed feasibility analysis if appropriate.
- [(11)] (k) Suggestions for interim and long-term project performance benchmarks.
- [(12)] (L) If the application is for a grant, demonstrated in-kind and cash cost match of not less than 25 percent of the amount of the grant sought from the account.
- [(13)] (m) If the application is for a loan, evidence demonstrating ability to repay the loan and provide collateral.
- [(14)] (n) Letters of support for the proposed project.
- [(15)] (o) If required by the department, a description of consultations with affected Indian tribes regarding the project.
- [(16)] (p) Any other information required by the department.

SECTION 8. ORS 541.669 is amended to read:

541.669. (1) The Water Resources Commission shall adopt rules establishing a system for scoring and ranking projects to determine which projects are to be awarded loans and grants from the Water Supply Development Account, including but not limited to the application of minimum criteria designed to achieve the outcomes described in ORS 541.677.

(2) The criteria **for evaluating projects** *[shall]* **must** be based on the public benefit categories described in ORS 541.673 **and preferences described in ORS 541.677.**

(3) The commission shall make the loan and grant funding decisions at least twice each year **so long as funds are available to award.** Applications must be filed with the Water Resources Department. The department shall accept an application for a loan or grant at any time, but shall establish a separate deadline for the filing of applications before each time the commission makes loan and grant funding decisions.

[(2)] (4) The department shall conduct a preliminary review of applications to check for completeness, eligibility and minimum requirements upon receipt of each application.

(5) The department shall return incomplete applications to the applicant.

(6) The department shall provide public notice by posting new funding applications on the department's website for a *[60-day]* **30-day** period prior to reviewing the applications.

(7) The department shall provide for the receipt of public comment on the applications during the *[60-day]* **30-day** period that applications are posted on the department's website.

[(3)] (8) The department shall forward applications that have passed preliminary review, along with any comments received from applicants or the public, to a technical review team consisting of representatives of the Water Resources Department, the Department of Environmental Quality, the State Department of Fish and Wildlife, the State Department of Agriculture, the Oregon Business Development Department, affected Indian tribes, any collaborative body established by the Governor to address challenges, opportunities and priorities for the region affected by the project and additional experts as determined by the Water Resources Department.

(9) The technical review team shall conduct the initial scoring and ranking for the projects described in the applications **using the system described in subsection (1) of this section,** consider comments from applicants and the public and make loan and grant funding recommendations to the *[commission]* **department.**

(10) **The department shall make the technical review team's project score and ranking available for public comment prior to a funding decision by the commission.**

(11) **The department shall make funding recommendations to the commission based on the scoring and ranking by the technical review team, consideration of comments from applicants and the public, and the availability of funds.**

(12) The commission shall determine the final scoring and ranking of projects and make the final decision regarding which projects are awarded loans or grants from the account. Before the commission makes a final decision on an application, the commission shall offer one additional opportunity for public comment.

[4)] (13) The commission is not required to obligate all available account moneys during a funding cycle.

(14) Any available account moneys that are not obligated during a funding cycle shall be carried forward and be made available for projects in future funding cycles.

[5)] (15) The department shall document the ranking of all applications and make the application ranking publicly available after the funding decisions by the commission have been published.

SECTION 9. ORS 541.677 is amended to read:

541.677. (1) The Water Resources Commission shall design the minimum criteria for the project scoring and ranking system described in ORS 541.669 to achieve the following outcomes:

(a) [*The issuance of*] **Issuing** grants or loans only to projects that provide benefits in each of the three categories of public benefit described in ORS 541.673.

(b) [*Preference for*] **Preferring** partnerships and collaborative projects.

(c) [*The funding of*] **Funding** projects of diverse sizes, types and geographic locations.

(d) If a project proposes to divert water, [*preference for*] **preferring** projects that provide a measurable improvement in protected streamflows.

(e) If a project proposes to increase efficiency, [*preference for*] **preferring** projects that provide a measurable increased efficiency of water use.

(2) The [*Water Resources Department*] **commission** shall **periodically** review the loan and grant program [*on a biennial basis*] to assess to what extent the [*outcomes described in subsection (1) of this section are being achieved, and shall report the review findings to the Water Resources Commission*] **loan and grant program is achieving desired outcomes and providing public benefits.**

(3) The commission shall modify the project selection process as necessary to better achieve the **desired** outcomes described in subsection (1) of this section.

SECTION 10. ORS 541.689 is amended to read:

541.689. (1) The Water Resources Department shall make a determination as provided under subsection (2) of this section if an application for a loan or grant from the Water Supply Development Account is for a project that requires a **limited license, water [*storage*] right certificate or water right permit that enables the storage of water, either in above-ground storage or in aquifer recharge, [*or aquifer recharge permit or limited license for the storage of water*]** outside of the official irrigation season and:

(a) Impounds surface water on a perennial stream;

(b) Diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or

(c) Diverts more than 500 acre-feet of surface water annually.

(2) The department shall review a completed application for a project described in subsection (1) of this section to determine whether the applicable seasonally varying flows have been established under this section for the stream of interest. If the department determines that the applicable seasonally varying flows have not previously been established, the department shall establish the seasonally varying flows before [*issuing*] **disbursing funds for** a loan or grant from the account. The department may use account moneys to pay the cost of establishing a seasonally varying flow, **to fund long-term monitoring of compliance with established seasonally varying flows** and to pay other costs directly related to project development.

(3) The Water Resources Department shall establish any seasonally varying flows under subsection (2) of this section in consultation with the State Department of Fish and Wildlife and any affected Indian tribes. The Water Resources Department may rely upon existing scientific data and analysis or may fund new data and analysis. The Water Resources Department shall establish seasonally varying flows using a methodology established by Water Resources Commission rules.

(4) **Notwithstanding ORS 537.270**, if the department establishes applicable seasonally varying flows for the stream of interest, the department shall make the seasonally varying flows a condition of:

(a) The new or existing **limited license, water [*storage*] right certificate or water right permit that enables the storage of water, either in above-ground storage or in [*or*] aquifer re-**

charge, *[permit or limited license for the storage of water]* **outside of the official irrigation season and that is** issued for any project described in subsection (1) of this section that receives a loan or grant from the account; and

(b) The new or existing **limited license, water *[storage]* right certificate or water right permit** *[or aquifer recharge permit or limited license for the storage of water]* issued for any subsequent project that:

(A) Receives a loan or grant from the account;

(B) Is for *[the storage of water]* **either above-ground storage or aquifer recharge** outside of the official irrigation season; and

(C) Has a diversion point that is subject to seasonally varying flows.

(5) The applicant for or holder of a **certificate, permit or license** described in subsection (4)(b) of this section may request that the applicable seasonally varying flows established under subsection (2) of this section for the stream of interest be altered based upon new information. There is, however, a rebuttable presumption that existing applicable seasonally varying flows protect and maintain the biological, ecological and physical functions of the stream to the extent required by commission rules.

(6) The department shall condition a water *[storage]* permit and resulting certificate, aquifer recharge permit and resulting certificate or limited license for a project that receives a grant or loan from the account and meets the other conditions described in subsection (4) of this section to protect the seasonally varying flow in effect at the time, **before disbursing funds for** the loan or grant *[is issued]* for the project.

(7) For purposes of any project that receives a loan or grant from the account and meets the other conditions described in subsection (4) of this section, the department shall use a seasonally varying flow methodology provided by commission rules in lieu of any other methodologies for determining seasonally varying flows or any methodologies for determining peak and ecological flows outside of the official irrigation season.

(8) Subsections (1) to (7) of this section do not eliminate or alter any applicable standard for department review of an application to determine whether water is available for purposes of reviewing an application for a new *[water storage or aquifer recharge permit or a limited license for the storage of water]* **limited license, water right certificate or water right permit that enables the storage of water, either in above-ground storage or in aquifer recharge, outside of the official irrigation season.**

(9) When conditioning an existing limited license, water right certificate or water right permit for aquifer recharge, the department shall only condition the use of water associated with a funded project.

SECTION 11. (1) At least every eight years, the Water Resources Department shall report, in the manner provided by ORS 192.245, to a committee or interim committee of the Legislative Assembly related to water, and to the Water Resources Commission, on the funding programs described in ORS 537.766, 537.767, 537.872, 537.873, 541.561 to 541.581 and 541.651 to 541.696.

(2) The report must:

(a) Evaluate the funding programs.

(b) Identify any improvements to statute and rule that are needed to better implement the purposes of the funding programs.

SECTION 12. The Water Resources Department shall submit the first report required by section 11 of this 2025 Act no later than eight years after the effective date of this 2025 Act.

SECTION 13. (1) The amendments to ORS 541.576 by section 3 of this 2025 Act are intended to change the name of the “Water Conservation, Reuse and Storage Investment Fund” to the “Water Project Feasibility Fund.”

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the “Water Conservation, Reuse and Storage Invest-

ment Fund,” wherever they occur in statutory law, other words designating the “Water Project Feasibility Fund.”

SECTION 14. This 2025 Act takes effect on the 91st day after the date on which the 2025 regular session of the Eighty-third Legislative Assembly adjourns sine die.

Passed by House April 16, 2025

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Timothy G. Sekerak, Chief Clerk of House

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Julie Fahey, Speaker of House

Passed by Senate May 6, 2025

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2025

Approved:

.....M.,....., 2025

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2025

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Tobias Read, Secretary of State