

# A-Engrossed House Bill 3369

Ordered by the House May 8  
Including House Amendments dated May 8

Sponsored by Representatives JENSON, J SMITH; Representatives BOONE, BRUUN, CLEM, D EDWARDS, FREEMAN, GILLIAM, HANNA, HUFFMAN, MAURER, OLSON, SCHAUFLE, SPRENGER, THOMPSON, WINGARD, WITT

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

*[Authorizes issuance of lottery bonds to finance grants for water supply projects. Establishes program in Water Resources Department to further economic development by reviewing and approving applications for water supply projects and awarding grants to pay costs of approved projects.]*

*[Establishes Agriculture and Community Water Supply Grant Fund. Continuously appropriates moneys in fund to Water Resources Department for grant program.]*

**Creates process by which Water Resources Department may loan or grant moneys to enable construction of water development projects. Specifies applicants that qualify to receive certain loans or grants. Specifies procedures for applying for loan or grant. Specifies guidelines for evaluating applications.**

**Authorizes State Treasurer, for specified biennia, to issue Article XI-I(1) bonds. Directs State Treasurer to credit net proceeds of bonds to Water Development Fund. Authorizes department to use moneys in fund to make loans to water developers that propose projects that qualify to receive Article XI-I(1) funds.**

**Establishes Water Resources Investment Fund and Water Resources Grant Fund. Authorizes State Treasurer, for biennium beginning July 1, 2009, to issue lottery bonds. Directs State Treasurer to deposit specified amount of bond proceeds in each fund. Continuously appropriates moneys in Water Resources Investment Fund to department for purpose of making loans to persons other than water developers or to water developers that propose projects that do not qualify to receive Article XI-I(1) funds and for purpose of funding integrated strategy for implementing state water resources policy. Continuously appropriates moneys in Water Resources Grant Fund to department for purpose of making grants.**

**Requires certain moneys to be deposited in Water Conservation, Reuse and Storage Investment Fund.**

Declares emergency, effective July 1, 2009.

## A BILL FOR AN ACT

1  
2 Relating to water supply management; creating new provisions; amending ORS 541.705, 541.710,  
3 541.720, 541.755, 541.765, 541.780 and 541.830 and section 3, chapter 13, Oregon Laws 2008; ap-  
4 propriating money; and declaring an emergency.

5 Whereas the western United States is projected to experience substantial population growth this  
6 century, including an additional one million people in Oregon before 2030; and

7 Whereas climate change is expected to alter the timing and form of precipitation in Oregon; and

8 Whereas surface water is almost completely allocated across Oregon during summer months,  
9 ground water levels have declined precipitously in several areas and the hydrological connection  
10 between surface water and ground water levels is significant; and

11 Whereas Oregon needs to develop an integrated statewide water management plan to address  
12 existing and likely future demands on Oregon's water supplies; and

13 Whereas having coordinated plans and programs to address water needs will make Oregon a  
14 more likely recipient of federal investments and give Oregon stronger standing in interstate water

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.



1 (a) For the biennium beginning July 1, 2009, \$25 million.

2 (b) For the biennium beginning July 1, 2011, \$50 million.

3 (c) For the biennium beginning July 1, 2013, \$50 million.

4 (d) For the biennium beginning July 1, 2015, \$50 million.

5 (3) The State Treasurer shall credit the net proceeds of Article XI-I(1) bonds issued un-  
6 der this section as provided in ORS 541.785.

7  
8 **WATER RESOURCES INVESTMENT FUND**

9  
10 **SECTION 4.** (1) The Water Resources Investment Fund is established in the State  
11 Treasury, separate and distinct from the General Fund. Interest earned by the Water Re-  
12 sources Investment Fund shall be credited to the Water Resources Investment Fund. Mon-  
13 eys in the Water Resources Investment Fund are continuously appropriated to the Water  
14 Resources Department to fund loans under section 18 of this 2009 Act and to pay the ad-  
15 ministrative costs of the department in operating loan and grant programs under sections  
16 10 to 21 of this 2009 Act.

17 (2) The Water Resources Investment Fund consists of the following:

18 (a) Moneys appropriated to the fund by the Legislative Assembly.

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

21 (c) Any fees charged to loan or grant applicants under section 12 of this 2009 Act or es-  
22 tablished by the Water Resources Commission under section 18 of this 2009 Act.

23 (d) Principal and interest from repayments of loans issued from the fund.

24 (e) Proceeds from lottery bonds authorized for deposit to the fund.

25 (f) Gifts, grants or donations to the fund. Notwithstanding subsection (1) of this section,  
26 the department may use moneys received under this paragraph according to any terms and  
27 conditions of the gift, grant or donation.

28 **SECTION 5.** (1) The Water Resources Department may establish subaccounts within the  
29 Water Resources Investment Fund for any purpose the department considers reasonable for  
30 carrying out sections 4, 6 and 10 to 21 of this 2009 Act.

31 (2) The department shall administer the fund and any expenditures from, or transfers  
32 between, subaccounts of the fund for the purpose of ensuring that the fund provides a con-  
33 tinuing source of financing for water development projects.

34 (3) The department may commit moneys in the fund or reserve future income to the fund  
35 for disbursement in future years. The department shall commit or reserve moneys under this  
36 subsection only after:

37 (a) Allowing for defaults and other contingencies;

38 (b) Finding that unobligated net income of the fund will be sufficient to make future  
39 payments in a manner consistent with the purpose described in subsection (2) of this section;  
40 and

41 (c) Providing in any contract for the payment of moneys from the fund that the liability  
42 of the state to make annual payments is contingent on the availability of moneys in the fund.

43 **SECTION 6.** (1) The Water Resources Department may make a loan for a qualifying  
44 project from the Water Resources Investment Fund to:

45 (a) A public body as defined in ORS 174.109;

1 (b) An Indian tribe as defined in ORS 391.802;

2 (c) A person; or

3 (d) A for-profit or nonprofit cooperative.

4 (2) The Water Resources Commission shall adopt rules establishing standards for bor-  
5 rowers obtaining loans issued from the fund. The commission shall design the standards to  
6 ensure that all loans have a high probability of repayment and that all loans are adequately  
7 secured in the event of a default. The standards may include, but need not be limited to,  
8 standards that give preference to entities with ad valorem taxing authority.

9 (3) Pledged collateral, taxing authority, a contractual property lien or other source for  
10 secured repayment is a prerequisite to the advancement of loan moneys from the fund.

11  
12 **WATER RESOURCES GRANT FUND**

13  
14 **SECTION 6a.** (1) The Water Resources Grant Fund is established in the State Treasury,  
15 separate and distinct from the General Fund. Interest earned by the Water Resources Grant  
16 Fund shall be credited to the Water Resources Grant Fund. Moneys in the Water Resources  
17 Grant Fund are continuously appropriated to the Water Resources Department to fund  
18 grants under section 18 of this 2009 Act and to pay the administrative costs of the depart-  
19 ment in operating grant programs under sections 10 to 21 of this 2009 Act.

20 (2) The Water Resources Grant Fund consists of the following:

21 (a) Moneys appropriated to the fund by the Legislative Assembly.

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

24 (c) Proceeds from lottery bonds authorized for deposit to the fund.

25 (d) Gifts, grants or donations to the fund. Notwithstanding subsection (1) of this section,  
26 the department may use moneys received under this paragraph according to any terms and  
27 conditions of the gift, grant or donation.

28 (3) The Water Resources Department may make a loan for a qualifying project from the  
29 Water Resources Grant Fund to:

30 (a) A public body as defined in ORS 174.109;

31 (b) An Indian tribe as defined in ORS 391.802;

32 (c) A person; or

33 (d) A for-profit or nonprofit cooperative.

34 **SECTION 7.** (1) For the biennium beginning July 1, 2009, at the request of the Oregon  
35 Department of Administrative Services, after the department consults with the Water Re-  
36 sources Commission, the State Treasurer is authorized to issue lottery bonds pursuant to  
37 ORS 286A.560 to 286A.585 in an amount not to exceed net proceeds of \$10 million for the use  
38 described in subsection (2) of this section, plus an additional amount, to be estimated by the  
39 State Treasurer, for payment of bond-related costs.

40 (2) One-half of the proceeds of lottery bonds issued under this section shall be deposited  
41 to the Water Resources Investment Fund for use as provided under section 4 of this 2009  
42 Act. One-half of the proceeds shall be deposited to the Water Resources Grant Fund for use  
43 as provided under section 6a of this 2009 Act.

44 (3) The use of lottery bonds for the purposes described in this section is justified by the  
45 following findings:

1 (a) Development of future water supplies through water conservation or reuse, stream  
2 flow restoration, in-stream flow acquisition, water storage or other techniques is critical to  
3 agriculture and maintaining the economy of Oregon and to the restoration of watersheds,  
4 critical fish and wildlife habitat and preserving the ecological condition of water habitats in  
5 a manner that benefits recreational industries, industries related to fish and wildlife and  
6 other industries within the state; and

7 (b) Development of future water supplies will reduce the negative effect of existing and  
8 future water shortages on the agricultural, fishing and recreational industries in this state.  
9

10 **WATER CONSERVATION, REUSE AND STORAGE**  
11 **INVESTMENT FUND**  
12

13 **SECTION 8.** In addition to and not in lieu of any other appropriation, there is appropri-  
14 ated to the State Forestry Department, for the biennium beginning July 1, 2009, out of the  
15 General Fund, the amount of \$500,000 for deposit to the Water Conservation, Reuse and  
16 Storage Investment Fund.

17 **SECTION 9.** Section 3, chapter 13, Oregon Laws 2008, is amended to read:

18 **Sec. 3.** (1) The Water Conservation, Reuse and Storage Investment Fund is established in the  
19 State Treasury, separate and distinct from the General Fund. Interest earned by the Water Conser-  
20 vation, Reuse and Storage Investment Fund shall be credited to the General Fund. Moneys in the  
21 Water Conservation, Reuse and Storage Investment Fund are continuously appropriated to the Wa-  
22 ter Resources Department to award grants and to pay the costs of direct services provided under  
23 section 1, [of this 2008 Act] **chapter 13, Oregon Laws 2008.**

24 (2) The Water Conservation, Reuse and Storage Investment Fund shall consist of:

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

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

28 (c) Grant repayments, if any; and

29 (d) **Moneys from shared savings fees paid under section 10 of this 2009 Act and interest**  
30 **charged for an outstanding fee balance.**

31 **SECTION 10.** (1) **To the extent permitted under the Internal Revenue Code, the recipient**  
32 **of a loan under section 18 of this 2009 Act shall pay the Water Resources Department a**  
33 **shared savings fee in an amount determined as provided in subsections (3) and (4) of this**  
34 **section. The department shall deposit moneys from shared savings fees and interest charged**  
35 **under subsection (5) of this section to the Water Conservation, Reuse and Storage Invest-**  
36 **ment Fund.**

37 (2) **The department may charge one shared savings fee for each loan issued under section**  
38 **18 of this 2009 Act. The Water Resources Commission shall determine the shared savings fee**  
39 **amount after consultation with the State Treasurer.**

40 (3) **If the project loan is funded from the Water Development Fund, the department shall**  
41 **establish the shared savings fee to be not less than one-eighth, and not more than one-half,**  
42 **of the present value of the difference between the interest amount scheduled to be paid**  
43 **during the term of the loan issued by the department and the interest amount that would**  
44 **be paid over the scheduled term of the loan at the average market rate being charged for**  
45 **well-secured loans of a similar amount to borrowers having bond ratings or credit scores**

1 equivalent to the bond rating or credit score of the loan recipient.

2 (4) If the project loan is funded from the Water Resources Investment Fund, the de-  
3 partment shall establish the shared savings fee to be not less than one-tenth, and not more  
4 than one-half, of the present value of the difference between the interest amount scheduled  
5 to be paid over the term of the loan issued by the department and the interest amount that  
6 would be paid over the scheduled term of the loan at the average market rate being charged  
7 for well-secured loans of a similar amount to borrowers having bond ratings or credit scores  
8 equivalent to the bond rating or credit score of the loan recipient.

9 (5) A loan recipient may pay the shared savings fee at the time the loan is executed or  
10 request that the fee amount be added to the loan amount and paid at the time of loan issu-  
11 ance. However, if the borrower may not lawfully have the fee amount added to the loan  
12 amount the borrower may, instead of paying the fee at the time the loan is executed, pay the  
13 fee in annual installments equal to the total cost of the fee divided by the number of years  
14 in the scheduled loan term, plus any interest on the outstanding fee balance charged under  
15 this subsection. If the fee is paid in annual installments, the department may charge interest  
16 on the outstanding balance of the fee at a rate determined by the department after consul-  
17 tation with the State Treasurer.

18  
19 **DEFINITIONS**

20  
21 **SECTION 11. As used in sections 10 to 21 of this 2009 Act:**

22 (1) "Economic public benefit" means:

23 (a) Job creation;

24 (b) Encouragement of economic investments;

25 (c) Increases in state revenues;

26 (d) Protection of public resource lands;

27 (e) Increases in the efficiency of state spending; and

28 (f) Other activities that enhance economic activity within the state.

29 (2) "Environmental public benefit" means the maintenance or improvement of ecological  
30 conditions that relate to one or more of the following:

31 (a) Water velocity, temperature and level and other stream flow conditions during cer-  
32 tain periods of the year that are connected to the life stages and survival of the state or  
33 federally listed sensitive, threatened or endangered fish species.

34 (b) Stream flow conditions that support the life stages of native fish species or that will  
35 allow for the reintroduction of native fish species.

36 (c) The return of water to stream surface water from another surface or ground water  
37 source.

38 (d) Peak stream flows.

39 (e) Ecological flows.

40 (f) Water quality standards.

41 (g) Fish passage.

42 (h) The protection of ground water quality.

43 (i) Recharging of ground water.

44 (j) Aquatic or riparian protection, restoration or enhancement.

45 (k) Protection, restoration or enhancement of aquatic habitat.

1 (L) Eliminating nonpoint source pollutant transport.

2 (3) "Secondary use" has the meaning given that term in ORS 541.700.

3 (4) "Social and cultural public benefit" includes:

4 (a) Promotion of the public health and welfare; and

5 (b) Recreational use.

6 (5) "Water conservation" means an undertaking that results in:

7 (a) A decrease in the consumptive use of water;

8 (b) An increase in water use efficiency; or

9 (c) An increase in water available to meet in-stream needs.

10 (6) "Water development project" means:

11 (a) A water development project as defined in ORS 541.700;

12 (b) An undertaking, in whole or in part, in this state for the purpose of:

13 (A) Water management, measurement, conservation, efficiency, reuse or storage; or

14 (B) Benefitting multiple purposes such as agriculture and municipal, domestic, industrial,  
15 commercial, recreational and in-stream water use; or

16 (c) Secondary uses in conjunction with projects described in paragraph (b) of this sub-  
17 section.

18  
19 **LOANS AND GRANTS**  
20

21 **SECTION 12.** (1) Any person or entity described in section 6 (1) of this 2009 Act, and any  
22 water developer as defined in ORS 471.700, may file with the Water Resources Department  
23 an application to enable the construction of a water development project using funding pro-  
24 vided through the department.

25 (2) An application filed under this section must be in a form prescribed by the Water  
26 Resources Commission and include the following:

27 (a) A description of the nature and the primary and secondary purposes of the project.

28 (b) An analysis of the need for the project and for the water that the project is intended  
29 to deliver.

30 (c) Identification and description of the project components sufficient to meet the con-  
31 ditions for project approval under sections 15 and 16 of this 2009 Act.

32 (d) A description of the economic feasibility of the project, including but not limited to:

33 (A) The costs of the project; and

34 (B) Information about the financial and other aspects of the operation and maintenance  
35 plans for the project.

36 (e) Suggestions for interim and long-term project performance benchmarks.

37 (f) An analysis of the project impacts including, but not limited to, the:

38 (A) Expected economic public benefits.

39 (B) Expected social and cultural public benefits.

40 (C) Expected environmental harm or impacts.

41 (D) Expected environmental public benefits, including a plan describing possibilities for  
42 adaptation of the project in response to long-term climate change.

43 (g) An evaluation of potential impact to water quality standards.

44 (h) Proof that the applicant has acquired at least a final order for necessary water per-  
45 mits from the department.

- 1 (i) Letters of support for the proposed water resource development project.
- 2 (j) A statement regarding whether other moneys are available or have been sought for  
3 the implementation of the water resource development project.
- 4 (k) If the application is for a loan, a description of a loan repayment plan.
- 5 (L) If the application is for a grant, information sufficient to demonstrate that the  
6 amount of the requested funding will be matched by the funding from another source that  
7 is not less than a dollar-for-dollar match.
- 8 (m) Any other information required by the department.
- 9 (3) If the applicant is a water developer as defined in ORS 541.700 and wishes that a loan  
10 application be eligible for funding from the Water Development Fund, the applicant must:
- 11 (a) Affirmatively indicate on the application that the applicant wishes the application to  
12 be eligible for funding from the Water Development Fund; and
- 13 (b) In addition to the other information required under this section, include in the ap-  
14 plication any information required under ORS 541.705.
- 15 (4) If the application is for funding all or part of a storage project that would impound  
16 surface water on a perennial stream, divert water from a stream that supports sensitive,  
17 threatened or endangered fish, or divert more than 500 acre-feet of surface water annually,  
18 in addition to the other information required under this section the application shall include  
19 the following completed studies:
- 20 (a) An analysis of by-pass, optimum peak, flushing and other ecological flows of the af-  
21 fected stream and of the impact of the storage project on those flows, that conforms to  
22 standards set by the department in consultation with the State Department of Fish and  
23 Wildlife and other relevant agencies;
- 24 (b) An independent comparative analysis of alternative means of supplying the water in-  
25 tended to be generated by the project, including but not limited to the costs and benefits of  
26 conservation, reuse and alternatives and the extent to which long-term water supply needs  
27 may be met using those alternatives;
- 28 (c) Evaluation of the need for and feasibility of using stored water to augment in-stream  
29 flows to conserve, maintain and enhance aquatic life, fish life and any other ecological val-  
30 ues; and
- 31 (d) If the storage project is for municipal use, analysis of local and regional water de-  
32 mand and of the relationship between the proposed storage project and existing and planned  
33 water supply projects.
- 34 (5) If the applicant is a municipal water user, the applicant must have an approved water  
35 management and conservation plan, have submitted a completed water management and  
36 conservation plan proposal to the Water Resources Department for approval or be in the  
37 process of completing or updating a water management and conservation plan.
- 38 (6) If the applicant is an agricultural water user, the applicant must have an approved  
39 agriculture water management and conservation plan, have submitted a completed agricul-  
40 tural water management and conservation plan to the Water Resources Department for ap-  
41 proval or be in the process of completing or updating a water management and conservation  
42 plan.
- 43 (7) Except as provided in this subsection, the commission may establish fees for filing  
44 applications under this section. Moneys from the application fees established by the com-  
45 mission shall be deposited to the Water Resources Investment Fund. However, if the appli-



1 cation contains an affirmative indication as provided in subsection (3)(a) of this section, the  
2 applicant shall instead pay the application fee described in ORS 541.710.

3 **SECTION 13.** (1) If an application filed under section 12 of this 2009 Act lacks any re-  
4 quired information, the Water Resources Department may accept the application, reject the  
5 application or require the applicant to submit additional information.

6 (2) Upon acceptance by the department of a completed application filed under section 12  
7 of this 2009 Act, the department shall provide public notice by posting the application on the  
8 department's website for at least 45 days prior to issuing a loan or grant to the applicant.

9 (3) The department will provide reasonable notice of the receipt of an application to the  
10 State Department of Fish and Wildlife, the State Parks and Recreation Department and the  
11 Department of Environmental Quality.

12 (4) The Water Resources Department shall provide for the receipt of public comment on  
13 the application, as specified by the Water Resources Commission by rule, prior to issuing a  
14 loan or grant to the applicant.

15 **SECTION 14.** (1) The Water Resources Commission shall adopt rules establishing guide-  
16 lines for the Water Resources Department's evaluation of applications filed under section 12  
17 of this 2009 Act that the department considers for funding from the Water Resources In-  
18 vestment Fund or from the Water Resources Grant Fund. The guidelines shall include:

19 (a) Evaluation of the awarding of loans and grants as a financial incentive to accomplish  
20 the goals of the grant and loan programs;

21 (b) Consideration of the financial needs of applicants and other special circumstances;  
22 and

23 (c) Consideration of the economic public benefit, social and cultural public benefit and  
24 environmental public benefit of the project.

25 (2) The guidelines shall give priority to projects that:

26 (a) Recharge aquifers in limited and critical ground water areas;

27 (b) Are designed to deliver the greatest environmental public benefit;

28 (c) Include in-stream flow restoration components;

29 (d) Conserve water; or

30 (e) Are ground storage projects that provide for stored water to be used for augmenting  
31 in-stream flows in a manner that conserves, maintains and enhances water quality, aquatic  
32 life, fish life or other ecological values.

33 (3) The guidelines shall require that the department consider the following:

34 (a) Local support for the project;

35 (b) The likely impact of global climate change in regard to the project;

36 (c) The projected impact of the project on small family farms;

37 (d) The project's potential to facilitate economic development; and

38 (e) The projected impact of the project on public health matters relating to water.

39 **SECTION 15.** (1) The Water Resources Department shall review the application informa-  
40 tion filed under section 12 of this 2009 Act. In considering applications, the department shall  
41 give preference to loans and grants that will promote program participation by a large  
42 number of applicants.

43 (2) The department shall assess each project in consultation with the State Department  
44 of Fish and Wildlife, the State Parks and Recreation Department, the Department of Envi-  
45 ronmental Quality and affected tribal governments, and with other interested parties as ap-

1 appropriate.

2 (3) Subject to any additional qualifications or restrictions under Article XI-I(1) of the  
3 Oregon Constitution, sections 4 to 6 and 10 to 21 of this 2009 Act, Water Resources Com-  
4 mission rules or bondholder agreements, the Water Resources Department may approve a  
5 loan or grant application if the department finds that:

6 (a) The plan for the construction of the proposed project complies with all applicable  
7 provisions related to water well constructors under ORS 537.747 to 537.765, reservoirs and  
8 diversion dams under ORS 540.340 and dams, dikes and hydraulic structures or works in ORS  
9 540.350.

10 (b) Planned diversions of surface water include provision for fish screens and, if applica-  
11 ble, volitional fish passage.

12 (c) Planned diversions of surface water or ground water provide for the measurement  
13 and reporting of the diversions.

14 (d) The applicant or beneficiaries of water from the project measure and report, or have  
15 scheduled and financed the measurement of, all existing water use at the point of diversion.

16 (e) There is a reasonable certainty that the project will deliver a clear and measurable  
17 net environmental public benefit as compared to a preproject baseline.

18 (f) The project, if a storage project, is designed to deliver in-stream benefits.

19 (4) The commission shall adopt rules for use by the Water Resources Department in  
20 evaluating the net public benefit of a project. The commission must obtain concurrence of  
21 the State Department of Fish and Wildlife and the Department of Environmental Quality  
22 before the commission adopts a rule described in this subsection.

23 (5) In evaluating the net environmental public benefit of a project, the Water Resources  
24 Department may consult with the State Department of Fish and Wildlife, the State Parks  
25 and Recreation Department, the Department of Environmental Quality, affected tribal gov-  
26 ernments and other interested parties. The Water Resources Department shall assess the  
27 project for net environmental public benefit by weighing the project's various environmental  
28 impacts on, and enhancements to, all of the forms of benefit described in section 11 (2) of  
29 this 2009 Act, giving special consideration to peak and ecological flows.

30 SECTION 16. If an application filed under section 12 of this 2009 Act is for a grant, the  
31 Water Resources Department may approve the application only if the project qualifies under  
32 section 15 of this 2009 Act and the department determines that the project to which the ap-  
33 plicant is applying the grant, considered in total, provides a significant and measurable net  
34 environmental public benefit as compared to a preproject baseline. The department may  
35 provide a grant only for those portions of the project that will provide direct environmental  
36 public benefits. If the grant is to be applied to a storage project that will divert more than  
37 500 acre-feet annually, at least one-third of any increased amount of stored water resulting  
38 from the portion of the project to which the grant moneys are to be applied must be dedi-  
39 cated to in-stream purposes.

40 SECTION 17. (1) Notwithstanding sections 12 and 15 of this 2009 Act, an agricultural  
41 water user that fails to demonstrate water measurement is eligible for a loan or grant under  
42 section 18 of this 2009 Act if the Water Resources Department finds that:

43 (a) The applicant is seeking the loan or grant for the purpose of implementing water  
44 measurement and the department has approved an implementation plan to ensure that the  
45 water measurement requirement is met; or

1       **(b) The applicant has secured funding from a source other than the state that will ensure**  
2 **implementation of water measurement.**

3       **(2) The Water Resources Commission, by rule, may allow the department to waive any**  
4 **requirement under section 15 or 16 of this 2009 Act for a loan from the Water Resources**  
5 **Investment Fund or a grant from the Water Resources Grant Fund, if the project will pro-**  
6 **vide a measurable net environmental public benefit as compared to a preproject baseline and:**

7       **(a) The loan or grant application requests less than \$20,000; or**

8       **(b) The application is for a conservation, efficiency, restoration or reuse project that can**  
9 **be shown to the satisfaction of the Water Resources Department to cause no harm to the**  
10 **source, any receiving stream, fish or wildlife.**

11       **SECTION 18. (1) Upon the Water Resources Department approving a loan or grant ap-**  
12 **plication filed under section 12 of this 2009 Act:**

13       **(a) If the application is for a loan to a water developer as defined in ORS 541.700, and the**  
14 **water development project qualifies under Article XI-I(1) of the Oregon Constitution and**  
15 **ORS 541.700 to 541.855, the department may fund the project from the Water Development**  
16 **Fund or from the Water Resources Investment Fund.**

17       **(b) If the application is for a loan to a person other than a water developer as defined in**  
18 **ORS 541.700, or if the water development project does not qualify under Article XI-I(1) of the**  
19 **Oregon Constitution and ORS 541.700 to 541.855, the department may fund the project from**  
20 **the Water Resources Investment Fund.**

21       **(c) If the application is for a grant, the department may fund the water development**  
22 **project from the Water Resources Grant Fund.**

23       **(2) The department shall determine the amount of a loan from the Water Development**  
24 **Fund or Water Resources Investment Fund, or of a grant from the Water Resources Grant**  
25 **Fund, on a case-by-case basis. The department shall determine the maximum amount of a**  
26 **loan based in part upon a reasonable and prudent expectation of the ability of the borrower**  
27 **to repay the loan. A loan term may not exceed the usable life of the water development**  
28 **project or 30 years from the year of project completion, whichever is less. If the loan is**  
29 **funded from the Water Development Fund, the department shall also consider whether the**  
30 **applicant can meet the repayment plan requirements of ORS 541.730.**

31       **(3) The department may issue a loan or grant only if the applicant agrees to periodic**  
32 **review of the project by a loan or grant review panel, including but not limited to:**

33       **(a) Review of interim and long-term performance benchmarks set by the department;**

34       **(b) Program and fiscal audits to assure that performance benchmarks are achieved on**  
35 **project development, project benefits and return on investment; and**

36       **(c) Studying the project's impact within the context of global climate change.**

37       **(4) The department shall ensure that any necessary federal and state environmental im-**  
38 **port approval processes have been completed and relevant permits issued before the ad-**  
39 **vancement of any grant or loan moneys by the department.**

40       **(5) The department may not issue a loan or grant under this section to provide assistance**  
41 **for operational or maintenance expenses of a water development project other than project**  
42 **startup costs.**

43       **(6) The Water Resources Commission may establish reasonable fees for management,**  
44 **oversight or review services that the department provides for a water development project.**

45       **(7) The commission shall establish interest rates for loans issued from the Water Re-**

1 sources Investment Fund after consultation with the State Treasurer. All repayments of  
2 principal and interest on loans issued from the Water Resources Investment Fund shall be  
3 deposited to the fund.

4 **SECTION 19.** (1) If the borrower for a loan issued from the Water Resources Investment  
5 Fund fails to comply with the terms or conditions of the project for which the loan was  
6 granted, the Water Resources Department may seek appropriate legal remedies to secure  
7 any repayment due, including canceling any unused water rights of the borrower. If a bor-  
8 rower defaults on payments due under the terms of the loan, the state may withhold any  
9 moneys otherwise due to the borrower and apply the withheld moneys to the indebtedness.  
10 The department may waive the right to withhold moneys.

11 (2) Moneys withheld under this section shall be deposited to the Water Resources In-  
12 vestment Fund.

13 (3) The Water Resources Commission shall adopt rules to provide remedies that the de-  
14 partment may assert against a defaulting borrower. The remedies may include, but need not  
15 be limited to, lien foreclosure and contract acquisition.

16  
17 **INTEGRATED WATER RESOURCES STRATEGY FUNDING**

18  
19 **SECTION 20.** (1) For the biennium beginning July 1, 2009, at the request of the Oregon  
20 Department of Administrative Services, after the department consults with the Water Re-  
21 sources Commission, the State Treasurer is authorized to issue lottery bonds pursuant to  
22 ORS 286A.560 to 286A.585 in an amount not to exceed net proceeds of \$5 million for the use  
23 described in subsection (2) of this section, plus an additional amount, to be estimated by the  
24 State Treasurer, for payment of bond-related costs.

25 (2) Proceeds of lottery bonds issued under this section shall be deposited to the Water  
26 Resources Investment Fund and notwithstanding section 4 of this 2009 Act are appropriated  
27 to the Water Resources Department for the purpose of funding an integrated strategy for  
28 implementing the state water resources policy.

29 (3) The use of lottery bonds for the purposes described in this section is justified because  
30 the development and administration of an integrated strategy for implementing the state  
31 water resources policy is necessary to ensure the use of techniques that will develop an ad-  
32 equate water supply for:

33 (a) Maintaining the economy of Oregon by meeting the future needs of agriculture and  
34 other industries;

35 (b) Preserving the ecological condition of water habitats in a manner that benefits rec-  
36 reational industries, industries related to fish and wildlife and other industries within the  
37 state; and

38 (c) Reducing the negative effect of existing water shortages on the agricultural, fishing  
39 and recreational industries in this state.

40 **SECTION 21.** The Water Resources Commission may adopt rules the commission con-  
41 siders reasonable for the administration and enforcement of sections 4 to 6 and 10 to 21 of  
42 this 2009 Act.

43 **SECTION 22.** The Water Resources Department shall report to the Seventy-sixth Legis-  
44 lative Assembly in the manner provided by ORS 192.245 no later than October 1, 2012, re-  
45 garding the operation of the loan and grant programs described under sections 10 to 21 of

1 **this 2009 Act, including but not limited to:**

2 (1) **The number and types of jobs created by water development projects receiving loans**  
3 **or grants from the department;**

4 (2) **Any studies conducted by the department or loan or grant recipients during the**  
5 **2009-2011 biennium regarding peak and ecological flows in streams; and**

6 (3) **Any recommendations by the department for legislative changes to improve the op-**  
7 **eration of the loan and grant programs.**

8  
9 **AMENDMENTS TO OREGON REVISED STATUTES**

10  
11 **SECTION 23.** ORS 541.705 is amended to read:

12 541.705. *[(1) Any water developer may file with the Water Resources Commission an application*  
13 *to enable the construction of a water development project as provided in ORS 541.700 to 541.855. The*  
14 *application shall be filed in the manner, be in the form and contain or be accompanied by any infor-*  
15 *mation prescribed by the commission. The commission, in considering applications, shall encourage the*  
16 *largest number of users of the Water Development Fund and shall consider the impact on the family*  
17 *farm units of the state.] **In addition to any information required under section 12 of this 2009***  
18 **Act, if a water developer wishes for a loan application to be considered for funding under**  
19 **ORS 541.700 to 541.855, the application must include the following:**

20 *[(2) In addition to other requirements prescribed by the commission, an application filed under*  
21 *subsection (1) of this section shall:]*

22 *[(a) Describe the nature and purposes of the proposed water development project, including the need*  
23 *for the project and reason why the project would be in the public interest.]*

24 *[(b) State whether any purposes other than improvement of a drinking water system, irrigation,*  
25 *drainage, fish protection, watershed enhancement or municipal use, but consistent therewith, will be*  
26 *served by the proposed water development project, and the nature of the other purposes, if any.]*

27 *[(c) Set forth or be accompanied by a feasibility study for the construction, operation and mainte-*  
28 *nance of the proposed water development project, an estimate of the costs of construction and]*

29 (1) If the project includes as a primary purpose irrigation or drainage, an evaluation of the ag-  
30 ricultural potential of the land from any competent public agency.

31 *[(d) State whether any moneys other than those in the Water Development Fund are proposed to*  
32 *be used for the construction of the proposed water development project, and whether any other moneys*  
33 *are available or have been sought for the construction.]*

34 *[(e)] (2) [Show] **Information showing** that the applicant holds or can acquire all lands, other*  
35 *than public lands, and interests therein [and water rights] necessary for the construction, operation*  
36 *and maintenance of the proposed water development project.*

37 (3) If the application is for a safe drinking water project, *[the applicant also shall demonstrate]*  
38 **information demonstrating that:**

39 (a) The applicant is a city, county, district, water authority or other political subdivision of the  
40 state or an organization operated on a not-for-profit basis that makes drinking water available to  
41 members of the general public;

42 (b) The primary use of the loan will be to improve a drinking water system for the purpose of  
43 complying with applicable state or federal drinking water quality regulations; and

44 (c) The applicant has:

45 (A) Developed a water system master plan; and

1 (B) Either has a coordination agreement in place as defined in ORS 195.020, 195.025 and 197.712  
2 or can demonstrate that options to find a coordinated solution to the system's drinking water prob-  
3 lems have been fully explored.

4 **SECTION 24.** ORS 541.710 is amended to read:

5 541.710. *[(1) Upon receipt of an application filed as provided in ORS 541.705, the Water Resources*  
6 *Commission shall determine whether the feasibility study described in ORS 541.705 for the water de-*  
7 *velopment project set forth in or accompanying the application is satisfactory and if the commission*  
8 *determines that it is not satisfactory, the commission may:]*

9 *[(a) Reject the application;]*

10 *[(b) Require the applicant to submit additional information and revision of the feasibility study as*  
11 *may be necessary; or]*

12 *[(c) Make such revisions of the feasibility study as the commission considers necessary to make the*  
13 *plan satisfactory.]*

14 [(2)] (1) Except as provided in subsection [(3)] (2) of this section, the **Water Resources** Com-  
15 mission shall charge and collect from the applicant at the time the application is filed, a fee of \$100.  
16 In addition, the commission shall charge the applicant the amount required to reimburse the com-  
17 mission for costs that exceed the application fee incurred in connection with the application.  
18 Moneys referred to in this subsection shall be paid into the Water Development Administration and  
19 Bond Sinking Fund.

20 [(3)] (2) The commission may establish by rule an application fee of less than \$100 for a water  
21 development project that is for fish protection or for watershed enhancement.

22 **SECTION 25.** ORS 541.720 is amended to read:

23 541.720. The Water Resources Commission may approve the financing for the construction of a  
24 water development project described in an application filed as provided in ORS 541.705 using moneys  
25 in the Water Development Fund, secured by a first, parity or second lien in the manner provided in  
26 ORS 541.740 if, after investigation the commission finds that:

27 (1) The proposed water development project is feasible and a reasonable risk from practical and  
28 economic standpoints;

29 (2) The plan for the construction, operation and maintenance of the proposed water development  
30 project is satisfactory and, if the primary purposes of the project include irrigation or drainage, the  
31 agricultural potential is confirmed;

32 (3) The plan for construction and operation will provide multipurpose facilities, to the extent  
33 practicable;

34 (4) The applicant is a qualified, credit-worthy and responsible water developer **that meets the**  
35 **standards established by commission rule** and is willing and able to enter into a contract with  
36 the commission for construction and repayment as provided in ORS 541.730 **and for periodic review**  
37 **as described in section 18 of this 2009 Act;**

38 (5) Moneys in the Water Development Fund are or will be available for the construction of the  
39 proposed water development project;

40 (6) There is a need for the proposed water development project, the proposed project is in the  
41 public interest and the applicant's financial resources are adequate to provide the working capital  
42 needed to operate and maintain the project; and

43 (7) The construction cost associated with any secondary use does not exceed the construction  
44 cost of the primary use of the water development project.

45 **SECTION 26.** ORS 541.755 is amended to read:

1 541.755. Except as provided in ORS 541.760:

2 (1) If any water development project investigated under ORS 541.700 to 541.855, other than a  
3 safe drinking water project financed in whole or in part from moneys in the Special Public Works  
4 Fund created by ORS 285B.455 or the Water Fund created by ORS 285B.563, is constructed with  
5 funds other than those loaned under ORS 541.700 to 541.855 **or sections 10 to 21 of this 2009**  
6 **Act**, the amount expended by the state shall immediately become due and payable, together with  
7 interest at the rate provided in ORS 541.730 (2) from the date of notification of the amount due.

8 (2) If any water development project is refinanced or financial assistance is obtained from other  
9 sources, other than a safe drinking water project financed in whole or in part from moneys in the  
10 Special Public Works Fund created by ORS 285B.455 or the Water Fund created by ORS 285B.563,  
11 after the execution of the loan from the state, all such funds shall be first used to repay the state.

12 **SECTION 27.** ORS 541.765 is amended to read:

13 541.765. In addition to those uses of moneys in the Water Development Fund otherwise provided  
14 in ORS 541.700 to 541.855, the Water Resources Commission may authorize loans of such moneys to  
15 those persons to whom approval has been granted by the federal government or any agency or  
16 instrumentality of the United States for the funding and construction of federal water development  
17 projects. Any such person shall apply for a loan to the commission, in such form as the commission  
18 prescribes, and shall furnish such proof of federal approval for funding and construction as the  
19 commission considers appropriate. **An application or loan described in this section is not subject**  
20 **to sections 10 to 21 of this 2009 Act.**

21 **SECTION 28.** ORS 541.780 is amended to read:

22 541.780. In order to provide funds for the purposes specified in Article XI-I (1) of the Oregon  
23 Constitution, the Water Resources Commission may request the State Treasurer to issue bonds, **or**  
24 **the Oregon Department of Administrative Services to issue bonds with the State Treasurer's**  
25 **approval**, in accordance with the provisions of ORS chapter 286A.

26 **SECTION 29.** ORS 541.830 is amended to read:

27 541.830. (1) There hereby is created the Water Development Administration and Bond Sinking  
28 Fund, separate and distinct from the General Fund, to provide for payment of:

29 (a) Administrative expenses of the Water Resources Commission, [and] the Water Resources  
30 Department **and the Oregon Department of Administrative Services** in processing applications,  
31 investigating proposed water development projects and federal water development projects under  
32 ORS 541.700 to 541.855, **ensuring compliance with state and federal laws** and servicing and col-  
33 lecting outstanding loans made under ORS 541.700 to 541.855, if the expense is not paid directly by  
34 the applicant, including principal and interest due on bonds outstanding. These administrative ex-  
35 penses also may include all costs associated with the issuance of bonds and the funding of any credit  
36 enhancements or reserves determined to be necessary or advantageous in connection with the bonds.

37 (b) Administrative expenses of the State Treasurer in carrying out the duties, functions and  
38 powers imposed upon the State Treasurer by ORS 541.700 to 541.855.

39 (c) Principal and interest of all bonds issued pursuant to the provisions of ORS 541.780 to  
40 541.815.

41 (2) The fund created by subsection (1) of this section shall consist of:

42 (a) Application fees required by ORS 541.710.

43 (b) Repayments of moneys loaned to water developers from the Water Development Fund, in-  
44 cluding interest on such moneys.

45 (c) Repayments of moneys loaned for the acquisition of easements and rights of way for federal

1 water development projects, including interest on such moneys.

2 (d) Such moneys as may be appropriated to the fund by the Legislative Assembly, including ap-  
3 propriations dedicated to the partial payment for or repayment of projects affording public benefits.

4 (e) Moneys obtained from the sale of refunding bonds and any accrued interest on such bonds.

5 (f) Moneys received from ad valorem taxes levied pursuant to Article XI-I(1), Oregon Constitu-  
6 tion, and all moneys that the Legislative Assembly may provide in lieu of such taxes.

7 (g) Interest earned on cash balances invested by the State Treasurer.

8 (h) Any revenues received by the commission under the provisions of ORS 541.745.

9 (i) Moneys transferred from the Water Development Fund.

10 (3) The moneys referred to in subsection (2) of this section are continuously appropriated to the  
11 commission for the purposes provided in subsection (1) of this section.

12 (4) The commission, with the approval of the Governor, may identify those projects financed  
13 under the provisions of ORS 541.700 to 541.855 which offer significant public benefit, and recommend  
14 to the Legislative Assembly funding of those projects in proportion to the public benefits offered.

15 (5) The commission, with the approval of the State Treasurer, may transfer moneys from the  
16 fund created under subsection (1) of this section to the Water Development Fund if:

17 (a) A cash flow projection shows that the transfer will not have any negative impact on the  
18 commission's ability to pay bond principal, interest and administration costs;

19 (b) The transfer will not create the need for issuance of any bonds; and

20 (c) The transfer, together with loans outstanding from prior transfers and not refinanced by  
21 funds derived directly from a bond sale, shall not exceed \$1.

22 (6) The transfer amount authorized by subsection (5) of this section may be increased by the  
23 Emergency Board.

24  
25 **APPLICABILITY**

26  
27 **SECTION 30. Sections 10 to 21 of this 2009 Act and the amendments to ORS 541.705,**  
28 **541.710, 541.720, 541.755, 541.765, 541.780 and 541.830 by sections 23 to 29 of this 2009 Act apply**  
29 **to loans from the Water Development Fund for which an application is filed on or after the**  
30 **effective date of this 2009 Act.**

31  
32 **CAPTIONS**

33  
34 **SECTION 31. The unit captions used in this 2009 Act are provided only for the conven-**  
35 **ience of the reader and do not become part of the statutory law of this state or express any**  
36 **legislative intent in the enactment of this 2009 Act.**

37  
38 **EMERGENCY**

39  
40 **SECTION 32. This 2009 Act being necessary for the immediate preservation of the public**  
41 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
42 **July 1, 2009.**