

House Bill 2238

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Environmental Quality)

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 **as introduced**.

Changes name of Assessment Deferral Loan Program Revolving Fund to Small Community Clean Water Grant Program Revolving Fund. Specifies conditions for grants made from fund. Specifies requirements for public agencies that receive funding.

A BILL FOR AN ACT

1
2 Relating to a clean water grant program for public agencies; creating new provisions; amending ORS
3 454.430, 454.433, 454.436, 454.439, 454.442 and 468.220; and repealing ORS 454.445.

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

5 **SECTION 1.** ORS 454.430 is amended to read:

6 454.430. As used in ORS 454.430 to 454.445:

7 *[(1) "Assessment" includes all costs, fees or other charges for the construction of or connection to*
8 *sewage treatment works that are eligible for installment payments under ORS 223.205 to 223.775.]*

9 *[(2) "Commission" means the Environmental Quality Commission.]*

10 *[(3) "Department" means the Department of Environmental Quality.]*

11 *[(4) "Extreme financial hardship" has the meaning given within the assessment deferral programs*
12 *adopted by public agencies and approved by the Department of Environmental Quality.]*

13 *[(5)]* **(1) "Public agency" means any state agency, incorporated city, county, sanitary authority,**
14 **county service district, sanitary district, metropolitan service district or other special district au-**
15 **thorized to construct water pollution control facilities, or a federally recognized Indian tribal**
16 **government.**

17 *[(6) "Treatment works" means a sewage collection system.]*

18 **(2) "Small community" means:**

19 **(a) A city, including areas within a city's urban growth boundary, or an urban**
20 **unincorporated community, that has a population of 5,000 or less; or**

21 **(b) A community within the reservation of a federally recognized Indian tribe that is**
22 **provided with services related to water pollution control by a public agency.**

23 **SECTION 2.** ORS 454.433 is amended to read:

24 454.433. It is declared to be the policy of this state **to provide financial assistance to small**
25 **communities for the construction, upgrade and repair of wastewater treatment and disposal**
26 **systems through a grant program administered by the Department of Environmental Qual-**
27 **ity.[.]**

28 *[(1) To provide assistance to property owners who will experience extreme financial hardship re-*
29 *sulting from payment of assessed costs for the construction of treatment works required by a federal*
30 *grant agreement or an order issued by a state commission or agency.]*

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 [(2) To provide assistance through an interest loan program to defer all or part of property as-
2 sessments.]

3 [(3) To capitalize an assessment deferral loan program with moneys available in the Pollution
4 Control Fund, available federal funds or available local funds.]

5 **SECTION 3.** ORS 454.436 is amended to read:

6 454.436. (1) [There is established the Assessment Deferral Loan] **The Small Community Clean**
7 **Water Grant** Program Revolving Fund **is established** separate and distinct from the General Fund
8 [in the State Treasury]. The moneys in the [Assessment Deferral Loan] **Small Community Clean**
9 **Water Grant** Program Revolving Fund are [appropriated] continuously **appropriated** to the De-
10 partment of Environmental Quality to be used for the purposes described in ORS 454.439.

11 (2) The [Assessment Deferral Loan] **Small Community Clean Water Grant** Program Revolving
12 Fund may be capitalized from any one or a combination of the following sources of funds in an
13 amount sufficient to fund [assessment deferral loan] programs provided for in ORS 454.439:

14 (a) From the Water Pollution Control Revolving Fund.

15 (b) From capitalization grants or loans from the Pollution Control Fund.

16 (3) In addition to those funds used to capitalize the [Assessment Deferral Loan] **Small Commu-**
17 **nity Clean Water Grant** Program Revolving Fund, the fund shall consist of:

18 (a) Any other revenues derived from gifts, grants or bequests pledged to the state for the pur-
19 pose of providing financial assistance to water pollution control projects;

20 (b) All repayments of money borrowed from the fund;

21 (c) All interest payments made by borrowers from the fund;

22 (d) Any other fee or charge levied in conjunction with administration of the fund; and

23 (e) Any available local funds.

24 (4) The State Treasurer may invest and reinvest moneys in the [Assessment Deferral Loan] **Small**
25 **Community Clean Water Grant** Program Revolving Fund in the manner provided by law. All
26 earnings from such investment and reinvestment shall be credited to the [Assessment Deferral
27 Loan] **Small Community Clean Water Grant** Program Revolving Fund.

28 **SECTION 4.** (1) **The amendments to ORS 454.436 by section 3 of this 2013 Act are intended**
29 **to change the name of the Assessment Deferral Loan Program Revolving Fund to the Small**
30 **Community Clean Water Grant Program Revolving Fund.**

31 (2) **For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel**
32 **may substitute for words designating the Assessment Deferral Loan Program Revolving**
33 **Fund, wherever they occur in statutory law, words designating the Small Community Clean**
34 **Water Grant Program Revolving Fund.**

35 **SECTION 5.** ORS 454.439, as amended by section 15, chapter 107, Oregon Laws 2012, is
36 amended to read:

37 454.439. (1) The Department of Environmental Quality shall use the moneys in the [Assessment
38 Deferral Loan] **Small Community Clean Water Grant** Program Revolving Fund to provide [funds
39 for assessment deferral loan programs administered by] **grants to public agencies for programs** that
40 meet all of the following conditions:

41 [(a) The program demonstrates that assessments or charges in lieu of assessments levied against
42 benefited properties for construction of treatment works required by a federal grant agreement or by
43 an order issued by a state commission or agency will subject property owners to extreme financial
44 hardship.]

45 (a) **The program serves a small community that has a median household income that is**

1 equal to or less than the median household income for this state based upon data obtained
 2 from the latest federal decennial census or upon other data that the department deems to
 3 be reliable.

4 (b) The governing body [*has*] of the public agency must have adopted a program [*and the de-*
 5 *partment has approved the program.*] for the construction, upgrade or repair of a wastewater
 6 treatment or disposal system. A program may include:

7 (A) Any project in a small community eligible for funding under ORS 468.423 to 468.440.

8 (B) The repair or replacement of equipment or materials integral to the function of a
 9 public agency's sewage collection system or wastewater treatment works in a small com-
 10 munity.

11 (C) A project of a public agency that subsidizes the cost of the replacement or repair of
 12 a subsurface sewage disposal system in a small community owned by a person making less
 13 than 100 percent of the median household income for this state based upon data obtained
 14 from the latest federal decennial census or upon other data that the department deems to
 15 be reliable, if the existing subsurface sewage disposal system is not functioning properly and
 16 either is causing water pollution or is a risk to public health.

17 (c) Except for federally recognized Indian tribal governments, for programs related to a
 18 public agency's sewage collection system or wastewater treatment works in a small com-
 19 munity, the department must have approved a program for the construction, upgrade or
 20 repair of the public agency's sewage collection system or wastewater treatment works, or
 21 the public agency must propose to undertake predesign studies that may be used to develop
 22 a program for the construction, upgrade or repair of the public agency's sewage collection
 23 system or wastewater treatment works.

24 [(c)] (d) The wastewater treatment [*works meets*] or disposal system must meet the require-
 25 ments of [*section 2,*] Article XI-H, section 2, of the Oregon Constitution, concerning eligibility of
 26 pollution control bond funds if the project is to be funded using pollution control bond funds
 27 in the Small Community Clean Water Grant Program Revolving Fund.

28 (2) A public agency may submit only one application per grant cycle to the department
 29 for a grant from the Small Community Clean Water Grant Program Revolving Fund.

30 [(2) *The department also may use the moneys in the Assessment Deferral Loan Program Revolving*
 31 *Fund to pay the expenses of the department in administering the Assessment Deferral Loan Program*
 32 *Revolving Fund and to repay capitalization loans.*]

33 (3) In administering the [*Assessment Deferral Loan*] Small Community Clean Water Grant
 34 Program Revolving Fund, the department shall:

35 (a) Allocate funds to public agencies for [*assessment deferral loan programs in accordance with*
 36 *a priority list adopted by the Environmental Quality Commission.*] grants of not less than \$5,000
 37 and not more than \$60,000 per project, taking into account the following:

38 (A) The amount of moneys remaining in the Small Community Clean Water Grant Pro-
 39 gram Revolving Fund.

40 (B) The number of eligible applicants.

41 (C) The costs of the projects.

42 (D) The ability of the community to finance the project from its own revenues or from
 43 other sources of grants or loans.

44 (E) The ability of the community to financially support the operation, maintenance and
 45 replacement costs for the project.

1 **(F) The benefits of the project for improved water quality.**

2 **(G) The benefits of the project for improved public health.**

3 (b) Use accounting, audit and fiscal procedures that conform to generally accepted government
4 accounting standards.

5 *[(c) Prepare any reports required by the federal government as a condition to the award of federal
6 capitalization grants.]*

7 *[(4) The Department of Environmental Quality shall submit an informational report to the Joint
8 Committee on Ways and Means or, if during the interim between sessions of the Legislative Assembly,
9 to the Emergency Board or to the Joint Interim Committee on Ways and Means before awarding the
10 first loan from the Assessment Deferral Loan Program Revolving Fund. The report shall describe the
11 assessment deferral loan program and set forth in detail the operating procedures of the program.]*

12 **(4)(a) The department shall award grants under this section once each fiscal year. The
13 department may award grants in an amount less than the amount applied for in the grant
14 application.**

15 **(b) In each fiscal year, the department may award grants whose total amount is less than
16 the total amount of moneys in the Small Community Clean Water Grant Program Revolving
17 Fund. If moneys remain available in the fund at the end of a fiscal year, the department may
18 use the remaining moneys to provide grants in a subsequent fiscal year.**

19 **SECTION 6.** ORS 454.442 is amended to read:

20 454.442. Any public agency desiring *[funding of its assessment deferral loan program from the
21 Assessment Deferral Loan Program Revolving Fund may borrow from the Assessment Deferral Loan
22 Program Revolving Fund in accordance]* **a grant from the Department of Environmental Quality
23 from the Small Community Clean Water Grant Program Revolving Fund must comply** with
24 the procedures contained in ORS 454.430 to 454.445 and 468.220*.[The public agency shall]* **and** sub-
25 mit an application to the Department of Environmental Quality on a form provided by the depart-
26 ment. After final approval of the application, the department shall offer the public agency funds from
27 the *[Assessment Deferral Loan]* **Small Community Clean Water Grant** Program Revolving Fund
28 through a *[loan]* **grant** agreement with terms and conditions that:

29 *[(1) Require the public agency to repay the loan with interest according to a repayment schedule
30 corresponding to provisions governing repayment of deferred assessments by property owners as de-
31 fined in the public agency's adopted assessment deferral loan program;]*

32 *[(2) Require the public agency to secure the loan with an assessment deferral loan program fi-
33 nancing lien as described in ORS 454.445; and]*

34 *[(3) Limit the funds of the public agency that are obligated to repay the loan to proceeds from re-
35 payment of deferred assessments by property owners participating in the assessment deferral loan pro-
36 gram adopted by the public agency.]*

37 **(1) Specify project costs eligible for funding under a grant.**

38 **(2) Require the public agency to comply with all federal, state and local laws and ordi-
39 nances applicable to the activities to be performed under the grant agreement.**

40 **(3) Specify recordkeeping and reporting requirements and requirements regarding in-
41 voices for expenditures under a grant. The department may approve advance payments un-
42 der a grant agreement only if the department determines the advance payments are
43 necessary for the success of the project.**

44 **SECTION 7.** ORS 454.445 is repealed.

45 **SECTION 8.** The repeal of ORS 454.445 by section 7 of this 2013 Act does not affect the

1 **validity of any liens against assessed property that arose under the provisions of ORS 454.445**
2 **prior to the effective date of the repeal by section 7 of this 2013 Act.**

3 **SECTION 9.** ORS 468.220, as amended by section 16, chapter 107, Oregon Laws 2012, is
4 amended to read:

5 468.220. (1) The Department of Environmental Quality is the agency for the State of Oregon for
6 the administration of the Pollution Control Fund. The department is authorized to use the Pollution
7 Control Fund for one or more of the following purposes:

8 (a) To grant funds not to exceed 30 percent of total project costs for eligible projects as defined
9 in ORS 454.505 or sewerage systems as defined in ORS 468B.005.

10 (b) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any
11 municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, is-
12 sued or made for the purpose of paragraph (a) of this subsection in an amount not to exceed 100
13 percent of the total project costs for eligible projects.

14 (c) To acquire, by purchase, or otherwise, other obligations of any city that are authorized by
15 its charter in an amount not to exceed 100 percent of the total project costs for eligible projects.

16 (d) To grant funds not to exceed 30 percent of the total project costs for facilities for the dis-
17 posal of solid waste, including without being limited to, transfer and resource recovery facilities.

18 (e) To make loans or grants to any municipal corporation, city, county, or agency of the State
19 of Oregon, or combinations thereof, for planning of eligible projects as defined in ORS 454.505,
20 sewerage systems as defined by ORS 468B.005 or facilities for the disposal of solid waste, including
21 without being limited to, transfer and resource recovery facilities. Grants made under this paragraph
22 shall be considered a part of any grant authorized by paragraph (a) or (d) of this subsection if the
23 project is approved.

24 (f) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any
25 municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, is-
26 sued or made for the purpose of paragraph (d) of this subsection in an amount not to exceed 100
27 percent of the total project costs.

28 (g) To advance funds by contract, loan or otherwise, to any municipal corporation, city, county
29 or agency of the State of Oregon, or combination thereof, for the purpose of paragraphs (a) and (d)
30 of this subsection in an amount not to exceed 100 percent of the total project costs.

31 (h) To pay compensation required by law to be paid by the state for the acquisition of real
32 property for the disposal by storage of environmentally hazardous wastes.

33 (i) To dispose of environmentally hazardous wastes by the Department of Environmental Quality
34 whenever the department finds that an emergency exists requiring such disposal.

35 (j) To acquire for the state real property and facilities for the disposal by landfill, storage or
36 otherwise of solid waste, including but not limited to, transfer and resource recovery facilities.

37 (k) To acquire for the state real property and facilities for the disposal by incineration or oth-
38 erwise of hazardous waste or PCB.

39 (L) To provide funding for the [*Assessment Deferral Loan*] **Small Community Clean Water**
40 **Grant Program Revolving Fund** established in ORS 454.436.

41 (m) To provide funding for the Orphan Site Account established in ORS 465.381 but only to the
42 extent that the department reasonably estimates that debt service from bonds issued to finance such
43 facilities or activities shall be fully paid from fees collected pursuant to ORS 453.402 (2)(c), under
44 ORS 459.236 and under ORS 465.101 to 465.131 for the purpose of providing funds for the Orphan
45 Site Account and other available funds, but not from repayments of financial assistance under ORS

1 465.265 to 465.310 or from moneys recovered from responsible parties.

2 (n) To advance funds by contract, loan or otherwise, to any municipal corporation, city, county
 3 or agency of this state, or combination thereof, for facilities or activities related to removal or re-
 4 medial action of hazardous substances.

5 (o) To provide funding for the Water Pollution Control Revolving Fund established under ORS
 6 468.427, either as a grant or an advance. If the funding provided is an advance, the department shall
 7 establish the program described in ORS 468.433 (2) to pay the bonds that funded the advance.

8 (p) To fund loans to or buy debt obligations of a public agency, as defined in ORS 468.423, that
 9 finance the costs of treatment works, as defined in ORS 468.423, which are funded in part through
 10 the Water Pollution Control Revolving Fund.

11 (q) To provide funding for remedial actions related to contaminated sediment found in the sub-
 12 merged and submersible lands, as those terms are defined in ORS 274.005, within the Willamette
 13 River between Swan Island and the confluence of the Willamette and Columbia Rivers and associ-
 14 ated remedial actions. The funding provided under this paragraph may be used for remedial action
 15 costs, as defined in ORS 465.200.

16 (2) The facilities referred to in subsection (1)(a) to (c) of this section shall be only such as
 17 conservatively appear to the department to be not less than 70 percent self-supporting and self-
 18 liquidating from revenues, gifts, grants from the federal government, user charges, assessments and
 19 other fees.

20 (3) The facilities referred to subsection (1)(d), (f) and (g) of this section shall be only such as
 21 conservatively appear to the department to be not less than 70 percent self-supporting and self-
 22 liquidating from revenues, gifts, grants from the federal government, user charges, assessments and
 23 other fees.

24 (4) The real property and facilities that receive funding under subsection (1)(j), (k), (o) and (p)
 25 of this section shall be only such as conservatively appear to the department to be not less than 70
 26 percent self-supporting and self-liquidating from revenues, gifts, grants from the federal government,
 27 user charges, assessments and other fees.

28 (5) The department may sell or pledge any bonds, notes or other obligations acquired under
 29 subsection (1)(b) of this section.

30 (6) Before making a loan or grant to or acquiring general obligation bonds or other obligations
 31 of a municipal corporation, city, county or agency for facilities for the disposal of solid waste or
 32 planning for such facilities, the department shall require the applicant to demonstrate that it has
 33 adopted a solid waste management plan that has been approved by the department. The plan must
 34 include a waste reduction program.

35 (7) Any grant authorized by this section shall be made only with the prior review of the Joint
 36 Committee on Ways and Means during the legislative sessions or the Emergency Board or the Joint
 37 Interim Committee on Ways and Means during the interim period between sessions.

38 (8) The department may assess those entities to whom grants and loans are made under this
 39 section to recover expenses incurred in administering this section.

40