

SENATE AMENDMENTS TO SENATE BILL 839

By COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

April 22

- 1 On page 1 of the printed bill, delete lines 5 through 28 and delete pages 2 through 8 and insert:
- 2 **“SECTION 1. As used in sections 1 to 15 of this 2013 Act:**
- 3 **“(1) ‘Newly developed water’ means the new increment of water:**
- 4 **“(a) Stored for a project providing new or expanded storage;**
- 5 **“(b) Allocated to a new use under a secondary water right for a project involving the**
- 6 **allocation of water stored under an existing water right; or**
- 7 **“(c) Conserved for a project to allocate conserved water under the program described in**
- 8 **ORS 537.455 to 537.500.**
- 9 **“(2) ‘Seasonally varying flows’ means the streamflows needed to protect and maintain the**
- 10 **following biological, ecological and physical functions in a given basin:**
- 11 **“(a) Stream channel development and maintenance;**
- 12 **“(b) Longitudinal, lateral and vertical connectivity to floodplains;**
- 13 **“(c) Sediment transport and deposition;**
- 14 **“(d) Migration triggers for upstream movement of adult fish and downstream movement**
- 15 **of fry and juveniles;**
- 16 **“(e) Fish spawning and incubation;**
- 17 **“(f) Juvenile fish rearing; and**
- 18 **“(g) Adult fish passage.**
- 19 **“SECTION 2. (1) The Water Supply Development Account is established in the State**
- 20 **Treasury, separate and distinct from the General Fund. Interest earned by the Water Supply**
- 21 **Development Account shall be credited to the account. Moneys in the account are contin-**
- 22 **uously appropriated to the Water Resources Department for use in carrying out sections 1**
- 23 **to 15 of this 2013 Act.**
- 24 **“(2) The department may expend moneys from the account for:**
- 25 **“(a) Making loans and grants to evaluate, plan and develop in-stream and out-of-stream**
- 26 **water development projects approved by the Water Resources Commission, including but not**
- 27 **limited to projects to:**
- 28 **“(A) Repair or replace infrastructure;**
- 29 **“(B) Provide new or expanded water storage;**
- 30 **“(C) Improve or alter operations of existing water storage facilities;**
- 31 **“(D) Create new, expanded, improved or altered water distribution, conveyance or deliv-**
- 32 **ery;**
- 33 **“(E) Allocate stored water;**
- 34 **“(F) Promote water reuse;**
- 35 **“(G) Promote water conservation;**

1 “(H) Provide streamflow protection or restoration;

2 “(I) Provide for water management or measurement; and

3 “(J) Determine seasonally varying flow requirements.

4 “(b) Paying the related administrative costs of the department in carrying out sections
5 1 to 15 of this 2013 Act.

6 “(3)(a) In addition to any other permissible uses of moneys in the account, the depart-
7 ment may expend moneys from the account to support:

8 “(A) Ongoing studies conducted by the United States Army Corps of Engineers to real-
9 locate stored water; and

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

11 “(b) Expenditures described in this subsection are not subject to any grant or loan pro-
12 cedures, public benefit scoring or ranking or other requirements or restrictions for grants
13 or loans established under sections 1 to 15 of this 2013 Act.

14 “SECTION 3. Loans and grants may be made from the Water Supply Development Ac-
15 count to persons as defined in ORS 536.007, Indian tribes as defined in ORS 391.802 and
16 nonprofit organizations. If an applicant is required to have a water management and con-
17 servation plan, the plan must be submitted to the Water Resources Department and receive
18 approval prior to department acceptance of an application for a loan or grant from the ac-
19 count.

20 “SECTION 4. (1) A potential applicant for a loan or grant from the Water Supply Devel-
21 opment Account may participate in a preapplication conference with the Water Resources
22 Department.

23 “(2) At the preapplication conference, the department shall inform the potential applicant
24 of the procedural and substantive requirements of a loan or grant application and of the
25 scoring system used to evaluate loan and grant requests. The department shall assist the
26 potential applicant by identifying known issues that may affect project eligibility for a loan
27 or grant from the account.

28 “(3) Not less than 14 days before the preapplication conference, the applicant must pro-
29 vide the department with adequate project information to prepare for the preapplication
30 conference.

31 “(4) The applicant may request additional preapplication consultation with the depart-
32 ment.

33 “SECTION 5. Applications for a loan or grant from the Water Supply Development Ac-
34 count must be in a form prescribed by the Water Resources Department and must include
35 the following:

36 “(1) A description of the need, purpose and nature of the project, including what the ap-
37 plicant intends to complete and how the applicant intends to proceed.

38 “(2) Sufficient information to allow evaluation of the application based upon the public
39 benefit scoring and ranking of the project.

40 “(3) Current contact information for the principal contact, fiscal officer and involved
41 landowners.

42 “(4) For applications involving physical changes or monitoring on private land, evidence
43 that landowners are aware of and agree to the proposal and are aware that monitoring in-
44 formation is a public record.

45 “(5) The location of the proposed project, using public land survey reference points, lati-

1 tude and longitude, county, watershed, river and stream mile, if appropriate.

2 “(6) An itemized budget for the project, including fiscal and administrative costs.

3 “(7) A description of funds, services or materials available to the project.

4 “(8) A project schedule, including beginning and completion dates.

5 “(9) Any conditions that may affect the completion of the project.

6 “(10) A completed feasibility analysis if appropriate.

7 “(11) Suggestions for interim and long-term project performance benchmarks.

8 “(12) If the application is for a grant, demonstrated in-kind and cash cost match of not
9 less than 25 percent of the amount of the grant sought from the account.

10 “(13) If the application is for a loan, evidence demonstrating ability to repay the loan and
11 provide collateral.

12 “(14) Letters of support for the proposed project.

13 “(15) If required by the department, a description of consultations with affected Indian
14 tribes regarding the project.

15 “(16) Any other information required by the department.

16 “SECTION 6. (1) The Water Resources Commission shall adopt rules establishing a sys-
17 tem for scoring and ranking projects to determine which projects are to be awarded loans
18 and grants from the Water Supply Development Account, including but not limited to the
19 application of minimum criteria designed to achieve the outcomes described in section 8 of
20 this 2013 Act. The system shall be based on the public benefit categories described in section
21 7 of this 2013 Act. The commission shall make the loan and grant funding decisions once each
22 year. Applications must be filed with the Water Resources Department. The department
23 shall accept an application for a loan or grant at any time, but shall establish a yearly
24 deadline for the consideration of a pool of applications.

25 “(2) The department shall conduct a preliminary review of applications to check for
26 completeness, eligibility and minimum requirements upon receipt of each application. The
27 department shall return incomplete applications to the applicant. The department shall pro-
28 vide public notice by posting new funding applications on the department’s website for a
29 60-day period prior to reviewing the applications. The department shall provide for the re-
30 ceipt of public comment on the applications during the 60-day period that applications are
31 posted on the department’s website.

32 “(3) The department shall forward applications that have passed preliminary review,
33 along with any comments received from applicants or the public, to a technical review team
34 consisting of representatives of the Water Resources Department, the Department of Envi-
35 ronmental Quality, the State Department of Fish and Wildlife, the State Department of Ag-
36 riculture, the Oregon Business Development Department, affected Indian tribes, any
37 collaborative body established by the Governor to address challenges, opportunities and pri-
38 orities for the region affected by the project and additional experts as determined by the
39 Water Resources Department. The technical review team shall conduct the initial scoring
40 and ranking for the projects described in the applications, consider comments from appli-
41 cants and the public and make loan and grant funding recommendations to the commission.
42 The commission shall determine the final scoring and ranking of projects and make the final
43 decision regarding which projects are awarded loans or grants from the account. Before the
44 commission makes a final decision on an application, the commission shall offer one addi-
45 tional opportunity for public comment.

1 “(4) The department is not required to obligate all available account moneys during a
2 funding cycle. Any available account moneys that are not obligated during a funding cycle
3 shall be carried forward and be made available for projects in future funding cycles.

4 “(5) The department shall document the ranking of all applications and make the appli-
5 cation ranking publicly available after the funding decisions by the commission have been
6 published.

7 “SECTION 7. (1) Projects applying under section 6 of this 2013 Act for funding from the
8 Water Supply Development Account shall be evaluated based upon the public benefits of the
9 project. The evaluation must consider both positive and negative effects of a project. The
10 three categories of public benefit to be considered in the project evaluation are economic
11 benefits, environmental benefits and social or cultural benefits. Each category of benefits
12 shall be given equal importance in the evaluation of a project. The technical review team
13 described in section 6 of this 2013 Act shall use the evaluation system to assign initial scores
14 and rankings to projects. The Water Resources Commission shall use the evaluation system
15 to assign final scorings and rankings to the projects. The commission shall award loan and
16 grant funding from the account to the projects that have the greatest public benefit and will
17 best achieve the outcomes described in section 8 of this 2013 Act.

18 “(2) The evaluation of economic benefits for a project shall be based on the changes in
19 economic conditions expected to result from the project, including but not limited to condi-
20 tions related to:

21 “(a) Job creation or retention;

22 “(b) Increases in state, local or tribal government revenues;

23 “(c) Increases in efficiency or innovation;

24 “(d) Enhancement of infrastructure, farmland, public resource lands, industrial lands,
25 commercial lands or lands having other key uses; and

26 “(e) Enhanced economic value associated with tourism or recreational or commercial
27 fishing, with fisheries involving native fish of importance to Indian tribes or with other
28 economic values resulting from restoring or protecting water in-stream.

29 “(3) The evaluation of environmental benefits for a project shall be based on the changes
30 in environmental conditions expected to result from the project, including but not limited to
31 conditions related to:

32 “(a) A measurable improvement in protected streamflows that:

33 “(A) Restores the natural hydrograph;

34 “(B) Restores floodplain function; or

35 “(C) Supports fish species that are state or federally listed as sensitive, threatened or
36 endangered species;

37 “(b) A measurable improvement in ground water levels that enhances environmental
38 conditions in ground water restricted areas or other areas;

39 “(c) A measurable improvement in the quality of surface water or ground water;

40 “(d) Water conservation;

41 “(e) Increased ecosystem resiliency to climate change impacts; and

42 “(f) Improvements that address one or more limiting ecological factors in the project
43 watershed.

44 “(4) The evaluation of the social or cultural benefits for a project shall be based on the
45 changes in social or cultural conditions expected to result from the project, including but

1 not limited to conditions related to:

2 “(a) The promotion of public health and safety and of local food systems;

3 “(b) A measurable improvement in conditions for members of minority or low-income
4 communities, tribal communities or other communities traditionally underrepresented in
5 public processes;

6 “(c) The promotion of recreation and scenic values;

7 “(d) Contribution to the body of scientific data publicly available in this state;

8 “(e) The promotion of state or local priorities, including but not limited to the restoration
9 and protection of native fish species of cultural significance to Indian tribes; and

10 “(f) The promotion of collaborative basin planning efforts by the use of a place-based in-
11 tegrated water resource planning approach under the state integrated water resources
12 strategy.

13 “SECTION 8. (1) The Water Resources Commission shall design the minimum criteria for
14 the project scoring and ranking system described in section 6 of this 2013 Act to achieve the
15 following outcomes:

16 “(a) The issuance of grants or loans only to projects that provide benefits in each of the
17 three categories of public benefit described in section 7 of this 2013 Act.

18 “(b) Preference for partnerships and collaborative projects.

19 “(c) The funding of projects of diverse sizes, types and geographic locations.

20 “(d) If a project proposes to divert water, preference for projects that provide a meas-
21 urable improvement in protected streamflows.

22 “(2) The Water Resources Department shall review the loan and grant program on a
23 biennial basis to assess to what extent the outcomes described in subsection (1) of this sec-
24 tion are being achieved, and shall report the review findings to the Water Resources Com-
25 mission. The commission shall modify the project selection process as necessary to better
26 achieve the outcomes described in subsection (1) of this section.

27 “SECTION 9. (1) The recipient of a grant from the Water Supply Development Account
28 must agree to the conditions set forth in subsection (2) of this section if the grant is for the
29 development of a new or expanded above-ground storage facility that:

30 “(a) Impounds surface water on a perennial stream;

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

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

34 “(2) Twenty-five percent of the newly developed water from a project described in sub-
35 section (1) of this section must be dedicated to in-stream use.

36 “SECTION 10. (1) A project that receives a loan or grant from the Water Supply Devel-
37 opment Account must:

38 “(a) Demonstrate social or cultural benefits and economic benefits sufficient to qualify
39 the project under the scoring and ranking system described in section 6 of this 2013 Act; and

40 “(b) Demonstrate environmental benefits:

41 “(A) By dedicating 25 percent of conserved water or newly developed water to in-stream
42 use; or

43 “(B) If the project is not subject to section 9 of this 2013 Act, that are sufficient to
44 qualify the project under the scoring and ranking system described in section 6 of this 2013
45 Act.

1 “(2) As used in this section, ‘conserved water’ has the meaning given that term in ORS
2 537.455.

3 “**SECTION 11.** If a project dedicates water to in-stream use under the requirements de-
4 scribed in section 9 of this 2013 Act or as allowed under section 10 of this 2013 Act, the Water
5 Resources Department shall protect the dedicated water in-stream. Dedicated water may
6 come from newly developed water or from other sources and may be put in-stream at other
7 locations in the watershed if the Water Resources Department, in consultation with the
8 State Department of Fish and Wildlife, determines that the alternate location would provide
9 greater or equal environmental benefit. The Water Resources Department, in consultation
10 with the State Department of Fish and Wildlife, shall determine the timing of the flows to
11 maximize in-stream benefits in a manner consistent with public health and safety.

12 “**SECTION 12.** (1) The Water Resources Department shall make a determination as pro-
13 vided under subsection (2) of this section if an application for a loan or grant from the Water
14 Supply Development Account is for a project that requires the issuance of a new water
15 storage or aquifer recharge permit or limited license outside of the official irrigation season
16 and:

17 “(a) Impounds surface water on a perennial stream;

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

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

21 “(2) The department shall review a completed application for a project described in sub-
22 section (1) of this section to determine whether seasonally varying flow requirements have
23 been established under this section for the stream of interest. If the department determines
24 that the requirements have not been established, the department shall establish seasonally
25 varying flow requirements before issuing a loan or grant from the account. For purposes of
26 establishing the requirements, the department may rely upon existing scientific data and
27 analysis or may fund new data and analysis. The department may use account moneys to pay
28 the cost of establishing seasonally varying flow requirements and to pay other costs directly
29 related to project development.

30 “(3) The department shall develop methods and standards for establishing seasonally
31 varying flows in consultation with the State Department of Fish and Wildlife and affected
32 Indian tribes. Once a seasonally varying flow requirement is established for a stream of in-
33 terest, there is a rebuttable presumption that the flow requirement is accurate.

34 “(4) The Water Resources Department shall condition the loan or grant applicant’s new
35 water storage permit and resulting certificate, new aquifer recharge permit and resulting
36 certificate or new limited license associated with a project receiving a grant or loan from the
37 account to protect the seasonally varying flow requirement in effect at the time the loan or
38 grant is issued for the project.

39 “(5) If the department receives an application for a water permit or limited license after
40 a seasonally varying flow requirement has been established for the identified source stream
41 under this section, the department shall condition any water permit and resulting certificate
42 or any limited license issued as a result of the application as necessary to protect the sea-
43 sonally varying flow requirement.

44 “(6) Prior to applying conditions to a permit described in subsection (4) or (5) of this
45 section, the department must complete a determination of water availability and verify that

1 the permit applicant has complied with any requirements imposed by statute, rule or de-
2 partment policies.

3 **“SECTION 13. (1) Before loan or grant moneys are expended from the Water Supply De-**
4 **velopment Account for any construction project, the recipient must obtain all applicable lo-**
5 **cal, state, tribal and federal permits and show that the project complies with local land use**
6 **laws. Project materials must include a notation indicating that Water Resources Department**
7 **funding was used for the project.**

8 **“(2) Project completion and operation must comply with applicable local, state, tribal and**
9 **federal laws and permitting requirements.**

10 **“(3) Loan or grant recipients must complete and operate the funded project as described**
11 **in the loan or grant application. Before commencing implementation of a project funded with**
12 **account moneys, the recipient must demonstrate to the satisfaction of the department that**
13 **the public benefits identified for the project, including any environmental benefits proposed**
14 **at a location other than the project site, will be realized in a timely fashion.**

15 **“(4) At regular intervals, and upon completion of the project, the loan or grant recipient**
16 **must submit updates to the department that describe the completed work, the public benefits**
17 **achieved and project expenditures. The recipient must regularly measure and report the**
18 **water diverted and used from the project. The recipient must monitor, evaluate and main-**
19 **tain the project for the life of the loan, or for a specified number of years for a grant, and**
20 **provide annual progress reports to the department. The department may impose other**
21 **project-specific conditions by noting the conditions during project evaluation and including**
22 **the condition in the funding agreement for the project.**

23 **“(5) The department may terminate, reduce or delay funding for a project if the loan or**
24 **grant recipient fails to comply with any provision of subsections (1) to (4) of this section.**

25 **“SECTION 14. (1) The Water Resources Commission shall adopt rules establishing stan-**
26 **dards for borrowers obtaining loans issued from the Water Supply Development Account.**
27 **The commission shall design the standards to ensure that all loans have a high probability**
28 **of repayment and that all loans are adequately secured in the event of a default. The com-**
29 **mission shall solicit comments from the Oregon Department of Administrative Services and**
30 **the State Treasurer when designing the standards. The standards may include, but need not**
31 **be limited to, standards that give preference to entities with ad valorem taxing authority.**

32 **“(2) If the Water Resources Department approves the financing for the implementation**
33 **of a water development project, the department and the applicant may enter into a loan**
34 **contract, secured by a first lien or by other good and sufficient collateral in the manner**
35 **provided in ORS 541.740.**

36 **“SECTION 15. The Water Resources Department may enter into water service contracts**
37 **to recover all or a portion of moneys expended from the Water Supply Development Account.**
38 **Moneys received through the water service contracts, or as repayment of account loans,**
39 **must be deposited in the account.**

40 **“SECTION 16. Section 17, chapter 907, Oregon Laws 2009, is amended to read:**

41 **“Sec. 17. (1) As used in this section, ‘critical ground water storage project’ means an under-**
42 **ground or below-ground storage of river water in a critical ground water area designated under ORS**
43 **537.730 for use in:**

44 **“(a) Aquifer storage and recovery as described in ORS 537.534 and streamflow augmentation and**
45 **restoration; or**

1 “(b) Recharging ground water basins and reservoirs as described in ORS 537.135 and streamflow
2 augmentation and restoration.

3 “(2) The Water Resources Department may issue a grant under this section only for a critical
4 ground water storage project that is located in the Umatilla Basin and that meets the conditions
5 described in this section.

6 “(3)(a) [Except as provided in subsection (4) of this section, notwithstanding ORS 537.534,] If the
7 project uses artificial recharge to recharge an alluvial aquifer that is not confined, the project must
8 be designed:

9 “[a] (A) To provide [for no more than 75 percent of new stored water to be withdrawn and for
10 not less than 25 percent of the new water to be dedicated for the purpose of providing] net environ-
11 mental public benefits [or in-stream benefits] **in an amount equal to at least 25 percent of the**
12 **water stored by the project;** and

13 “[b] (B) To the extent practicable, to [return dedicated new stored water for stream] **deliver**
14 **any net environmental public benefit water to be provided in the form of in-stream flow**
15 augmentation at a time of year that the Water Resources Department, in consultation with the State
16 Department of Fish and Wildlife and relevant tribal governments, determines will provide the max-
17 imum net environmental public benefit or in-stream benefit.

18 “(b) **For purposes of determining whether a project described in this subsection produces**
19 **the required net environmental public benefit, the project shall be considered to be for the**
20 **development of not more than 25,000 acre-feet of aquifer recharge as described in a final**
21 **grant report submitted by the grantee to the department.**

22 “(4) If more than 25 percent of the funding for an aquifer storage and recovery project is from
23 grants of state moneys and is not subject to repayment, the project must be designed to [dedicate for
24 the purpose of providing] **provide** net environmental public benefit [or in-stream benefit a percentage
25 of the new stored water created by the project] **in an amount** that equals or exceeds the percentage
26 of funding for the project that is from grants of state moneys. The Water Resources Department
27 shall manage the [dedicated increment of new stored water] **amount of water provided** for net en-
28 vironmental public benefit [and in-stream benefit] **in the form of in-stream flow.**

29 “(5) On or before the earlier of six years after the issuance of the ground water recharge permit
30 or the date the water right certificate is issued, the department shall quantify and legally protect
31 in-stream the increment of new water returned in stream from a project described in this section.

32 “(6) The department shall require as a contractual condition for issuing the grant, and as a
33 condition of any new ground water recharge permit or water right certificate issued for the project,
34 that if the project receives grants or loans from state moneys other than a grant issued under this
35 section **or other state moneys used to complete the feasibility design and pilot phase of**
36 **project development funded by a grant under this section,** the project must be operated in a
37 manner that actually dedicates the percentage of new stored water for net environmental public
38 benefit or in-stream benefit that the project was designed to dedicate for those purposes.

39 “(7) This section does not limit the authority granted the Environmental Quality Commission
40 or the Department of Environmental Quality under ORS chapter 468B.

41 “(8) This section is repealed January 2, 2030.

42 “**SECTION 17. At the request of the grantee, the terms and conditions of a grant ap-**
43 **proved by the department under section 17, chapter 907, Oregon Laws 2009, prior to the ef-**
44 **fective date of this 2013 Act shall be amended to replace the terms and conditions originally**
45 **imposed for the grant with terms and conditions similar to the terms and conditions imposed**

1 for grants issued under section 17, chapter 907, Oregon Laws 2009, as amended by section 16
2 of this 2013 Act.

3 **“SECTION 18. (1) The Governor, or a designee of the Governor, shall convene a work**
4 **group composed of members the Governor or designee deems to be appropriate and to be**
5 **sufficiently representative of agricultural, municipal, conservation and tribal interests and**
6 **of other groups having an interest in water resources development.**

7 **“(2) The work group shall review the structure established for water development project**
8 **loans and grants under sections 1 to 15 of this 2013 Act and develop any proposals for**
9 **changing the structure. The review may include but need not be limited to possible changes**
10 **in the long-term structure of the decision-making process regarding:**

11 **“(a) The appropriate role of the state in providing loan and grant funding for multipur-**
12 **pose water resource development under sections 1 to 15 of this 2013 Act; and**

13 **“(b) The decision-making process for the allocation of newly developed water from**
14 **projects for which the uses of the water were not specified in the funding application.**

15 **“(3) The work group shall meet at times and places specified by the Governor or the**
16 **designee of the Governor.**

17 **“(4) The work group shall submit a report in the manner provided in ORS 192.245, in-**
18 **cluding any recommendations for legislation, to the Governor and to an interim committee**
19 **of the Legislative Assembly related to natural resources no later than October 1, 2013.**

20 **“(5) The Water Resources Department shall provide staff support to the work group.**

21 **“(6) Members of the work group are not entitled to compensation, but may be reimbursed**
22 **for actual and necessary travel and other expenses incurred by them in the performance of**
23 **their official duties in the manner and amounts provided for in ORS 292.495. Claims for ex-**
24 **periences shall be paid out of funds appropriated to the department for purposes of the work**
25 **group.**

26 **“SECTION 19. Section 18 of this 2013 Act is repealed on the date of the convening of the**
27 **2014 regular session of the Legislative Assembly as specified in ORS 171.010.**

28 **“SECTION 20. Section 12 of this 2013 Act applies to projects for which a new water**
29 **storage or aquifer recharge permit or new limited license is issued on or after the effective**
30 **date of this 2013 Act.**

31 **“SECTION 21. This 2013 Act being necessary for the immediate preservation of the public**
32 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
33 **on its passage.”.**