

Enrolled
Senate Bill 884

Sponsored by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

CHAPTER

AN ACT

Relating to the Water Pollution Control Revolving Fund; creating new provisions; amending ORS 468.423, 468.425, 468.429, 468.433, 468.437 and 468.440; and declaring an emergency.

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

SECTION 1. ORS 468.423 is amended to read:
468.423. As used in ORS 468.423 to 468.440:

(1) "Available sewer" has the meaning given that term in ORS 454.779.

[(1)] **(2) "Fund" means the Water Pollution Control Revolving Fund established under ORS 468.427.**

(3) "On-site septic system" has the meaning given that term in ORS 454.779.

[(2)] **(4) "Public agency" means:**

(a) A state agency, incorporated city, county, sanitary authority, federally recognized Indian tribal government, school district, county service district, sanitary district, metropolitan service district or other special district authorized or required to construct water pollution control facilities; or

(b) An intergovernmental entity created by units of local government under ORS 190.003 to 190.130.

(5) "Qualified institution" means a nonprofit organization registered to operate in the State of Oregon that is certified as a community development financial institution by the Community Development Financial Institution Fund at the United States Department of the Treasury.

[(3)] **(6) "Treatment works" means:**

(a) The devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, necessary to recycle or reuse water at the most economical cost over the estimated life of the works. "Treatment works" includes:

(A) Intercepting sewers, outfall sewers, sewage collection systems, pumping power and other equipment, and any appurtenance, extension, improvement, remodeling, addition or alteration to the equipment;

(B) Elements essential to provide a reliable recycled water supply including standby treatment units and clear well facilities; and

(C) Any other acquisitions that will be an integral part of the treatment process or used for ultimate disposal of residues resulting from such treatment, including but not limited to land used to store treated waste water in land treatment systems prior to land application.

(b) Any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, storm water runoff, industrial waste or waste in combined storm water and sanitary sewer systems.

(c) Any other facility that the Environmental Quality Commission determines a public agency must construct or replace in order to abate or prevent surface or ground water pollution.

SECTION 2. ORS 468.425 is amended to read:

468.425. It is declared to be the policy of this state:

(1) To aid and encourage public agencies required to provide treatment works for the control of water pollution in the transition from reliance on federal grants to local self-sufficiency by the use of fees paid by users of the treatment works;

(2) To aid and encourage qualified institutions to assist in the protection or maintenance of water quality in the waters of this state by financing projects to repair or replace failing on-site septic systems or to replace failing on-site septic systems with connections to an available sewer;

~~[(2)]~~ (3) To accept and use any federal grant funds available to capitalize a perpetual revolving loan fund; and

~~[(3)]~~ (4) To assist public agencies in meeting treatment works' construction obligations in order to prevent or eliminate pollution of surface and ground water by making loans from a revolving loan fund at interest rates that are less than or equal to market interest rates.

SECTION 3. ORS 468.429 is amended to read:

468.429. (1) The Department of Environmental Quality shall use the moneys in the Water Pollution Control Revolving Fund to provide financial assistance:

(a) To public agencies for the construction or replacement of treatment works.

(b) To qualified institutions to finance projects to repair or replace failing on-site septic systems or to replace failing on-site septic systems with connections to an available sewer.

~~[(b)]~~ (c) For the implementation of a management program established under section 319 of the federal Water Quality Act of 1986 relating to the management of nonpoint sources of pollution.

~~[(c)]~~ (d) For development and implementation of a conservation and management plan under section 320 of the federal Water Quality Act of 1986 relating to the national estuary program.

(2) The department may also use the moneys in the Water Pollution Control Revolving Fund for the following purposes:

(a) To buy or refinance the debt obligations of public agencies for eligible projects as listed under subsection (1) of this section, if the debt obligation was incurred after March 7, 1985.

(b) To guarantee, or purchase insurance for, public agency obligations for treatment works' construction or replacement if the guarantee or insurance would improve credit market access or reduce interest rates, or to provide loans to a public agency for this purpose.

(c) To pay the expenses of the department in administering the Water Pollution Control Revolving Fund, to make transfers to the Water Pollution Control Administration Fund, or to pay other departmental costs including expenses of the program described in ORS 468.433 (2).

(3) If amounts are advanced to the Water Pollution Control Revolving Fund from the Pollution Control Fund under ORS 468.220 (1), the department shall transfer from the Water Pollution Control Revolving Fund to the Pollution Control Sinking Fund amounts sufficient to pay the bonds that funded the advance.

SECTION 4. ORS 468.433 is amended to read:

468.433. (1) In administering the Water Pollution Control Revolving Fund, the Department of Environmental Quality shall:

(a) Allocate funds for loans in accordance with procedures adopted by rule by the Environmental Quality Commission.

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

(c) Prepare any reports required by the federal government as a condition to awarding federal capitalization grants.

(d) Seek to maximize the ability of the Water Pollution Control Revolving Fund to operate on a self-sustaining basis and maintain a perpetual source of treatment works financing.

(2) If amounts are advanced to the Water Pollution Control Revolving Fund from the Pollution Control Fund under ORS 468.220 (1), the department shall develop and administer a program designed to loan amounts in the Water Pollution Control Revolving Fund to public agencies **and qualified institutions**, so the loan repayments are sufficient to pay the bonds that funded the advance, and to further the policies established in ORS 468.425. In connection with the program, the department may:

(a) Establish one or more accounts in the Water Pollution Control Revolving Fund, make covenants for the benefit of bondowners regarding the deposit of amounts into those accounts and the use of amounts in those accounts and pledge or reserve all or a portion of the amounts in the Water Pollution Control Revolving Fund to pay bonds issued to fund advances to the Water Pollution Control Revolving Fund under ORS 468.220 (1).

(b) Establish requirements for loans made from the Water Pollution Control Revolving Fund to assure that:

(A) Adequate funds are available in the Water Pollution Control Revolving Fund to permit payment of bonds that funded advances to the Water Pollution Control Revolving Fund; and

(B) Adequate funds will be available in the Water Pollution Control Administration Fund to pay for costs of the program and costs of operating the Water Pollution Control Revolving Fund.

(c) Exercise any remedies available to the department in connection with defaults on loans of advanced funds to public agencies **or qualified institutions**.

(d) Take any other action reasonably necessary to develop the program and provide for the payment of bonds issued to fund advances to the Water Pollution Control Revolving Fund.

(3) The department may make loans to finance treatment works that are funded in part from advances or grants to the Water Pollution Control Revolving Fund, and in part from funds available under ORS 468.220 (1). These loans may have a blended interest rate that reflects their different sources of funding, and repayments of these loans may be allocated proportionally between the Water Pollution Control Revolving Fund and the Pollution Control Sinking Fund.

SECTION 5. ORS 468.437 is amended to read:

468.437. (1) Any public agency **or qualified institution** desiring a loan from the Water Pollution Control Revolving Fund shall submit an application to the Department of Environmental Quality on the form provided by the department. The department may require an opinion from the department's bond counsel or other counsel that the applicant has the legal authority to borrow from the Water Pollution Control Revolving Fund. If a public agency relies on borrowing authority granted by charter or law other than ORS 468.439, then with the consent of the department and notwithstanding any limitation or requirement of the charter or law, the public agency may borrow directly from the Water Pollution Control Revolving Fund by issuing revenue bonds to the department. The requirements of ORS 287A.150 do not apply to revenue bonds that are sold to the department pursuant to this section.

(2) Any public agency **or qualified institution** receiving a loan from the Water Pollution Control Revolving Fund shall establish and maintain a dedicated source of revenue or other acceptable source of revenue for the repayment of the loan.

(3) If a public agency **or qualified institution** defaults on payments due to the Water Pollution Control Revolving Fund, the state may withhold any amounts otherwise due to the public agency **or qualified institution** and direct that such funds be applied to the payments and deposited into the fund. If the department finds that the loan to the public agency **or qualified institution** is otherwise adequately secured, the department may waive this right in the loan agreement or other loan documentation.

SECTION 6. ORS 468.440 is amended to read:

468.440. (1) The Environmental Quality Commission shall establish by rule policies for establishing loan terms and interest rates for loans made from the Water Pollution Control Revolving Fund that ensure that the objectives of ORS 468.423 to 468.440 are met and that adequate funds are

maintained in the Water Pollution Control Revolving Fund to meet future needs. In establishing the policy, the commission shall take into consideration at least the following factors:

- (a) The capability of the project to enhance or protect water quality.
- (b) The ability of a public agency **or qualified institution** to repay a loan.
- (c) Current market rates of interest.
- (d) The size of the community or district to be served by the treatment works.
- (e) The type of project financed.
- (f) The ability of the applicant to borrow elsewhere.
- (g) Whether advances have been made to the Water Pollution Control Revolving Fund from the Pollution Control Fund that must be repaid to the Pollution Control Sinking Fund.

(2) The commission may establish an interest rate ranging from zero to the market rate. The commission may establish the loan term, provided that the loans must be fully amortized not later than 30 years after project completion.

(3) The commission shall adopt by rule any procedures or standards necessary to carry out the provisions of ORS 468.423 to 468.440.

SECTION 7. (1) The amendments to ORS 468.423, 468.425, 468.429, 468.433, 468.437 and 468.440 by sections 1 to 6 of this 2019 Act become operative January 1, 2020.

(2) The Environmental Quality Commission and the Department of Environmental Quality may adopt rules or take any action before the operative date specified in subsection (1) of this section that is necessary to enable the commission or the department, on and after the operative date specified in subsection (1) of this section, to carry out the amendments to ORS 468.423, 468.425, 468.429, 468.433, 468.437 and 468.440 by sections 1 to 6 of this 2019 Act.

SECTION 8. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by Senate June 13, 2019

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 19, 2019

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2019

Approved:

.....M.,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

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Bev Clarno, Secretary of State