House Bill 2988
Sponsored by Representatives MARSH, OWENS (Presession filed.)

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.

Establishes Community Benefiting Water Infrastructure Investment Program. Directs Oregon Business Development Department to award grants under program to certain entities for purpose of planning or developing community benefiting water infrastructure project.

Authorizes Director of Oregon Business Development Department to appoint Advisory Committee on Community Renewable Investment.

Establishes Community Benefiting Water Infrastructure Investment Fund. Continuously appropriates moneys in fund to department for purposes of grants.

Appropriates moneys to department for deposit in fund.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT
Relating to water infrastructure; and prescribing an effective date.

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

SECTION 1. Sections 2 to 5 of this 2023 Act are added to and made a part of ORS 448.115 to 448.285.

SECTION 2. As used in sections 2 to 5 of this 2023 Act:

(1) “Community benefiting water infrastructure project” means one or more water infrastructure projects that provide a direct benefit to a particular community in the form of improved drinking water quality and confidence, improved access to water, increased local jobs or increased water affordability and efficiency.

(2) “Nonprofit organization” means a nonprofit organization that:

(a) Provides housing;

(b) Provides weatherization or healthy homes services;

(c) Supports water efficiency or affordability; or

(d) Supports community engagement relating to water quality.

(3) “Planning costs” means the costs related to planning paid by an applicant described under section 3 of this 2023 Act.

(4) “Project cost” means the actual cost of the acquisition, construction and installation of a community benefiting water infrastructure project incurred by an applicant described under section 3 of this 2023 Act.

(5) “Public body” means a public body as defined in ORS 174.109.

(6) “Qualifying community” means a community that qualifies as an environmental justice community as defined in ORS 469A.400.

(7) “Water infrastructure project” means a project to improve or expand:

(a) An existing drinking or wastewater system including systems for reuse;

(b) Water infrastructure in a building, including systems for water reuse;

(c) Efficiency and management of water use or delivery;

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.

LC 2166
(d) Natural infrastructure for healthy ecosystems; or
(e) A partnership between upstream and downstream communities.

(8) “Watershed council” has the meaning given that term in ORS 541.890.
(9) “Water utility” has the meaning given that term in ORS 758.300.

SECTION 3. (1) The Community Benefiting Water Infrastructure Investment Program is established for the purpose of:

(a) Offsetting the cost of planning and developing community benefiting water infrastructure projects;
(b) Making community benefiting water infrastructure projects economically feasible for qualifying communities;
(c) Promoting small-scale community benefiting water infrastructure projects; and
(d) Providing direct benefits to communities across this state in the form of improved drinking water quality and confidence, improved access to water, increased local jobs and increased water affordability and efficiency.

(2)(a) A federally recognized Oregon Indian tribe, public body, water utility, nonprofit organization, community development financial institution certified by the Community Development Financial Institutions Fund at the United States Department of the Treasury or watershed council may submit to the Oregon Business Development Department an application for grant moneys from the Community Benefiting Water Infrastructure Investment Fund established under section 6 of this 2023 Act for the purpose of planning or developing a community benefiting water infrastructure project.

(b) An applicant may partner with a federally recognized Oregon Indian tribe, public body, water utility, nonprofit organization, community development financial institution certified by the Community Development Financial Institutions Fund at the United States Department of the Treasury or watershed council, but a grant for an approved application will only be awarded and released to an applicant that is a federally recognized Oregon Indian tribe, public body or water utility. Any federally recognized Oregon Indian tribe, public body, nonprofit organization, private business or owner of rental property that partners with the applicant must be listed in the application.

(3) An application for a grant for planning a community benefiting water infrastructure project must demonstrate that the planning:

(a) Will be completed within six months of execution of the performance agreement or a reasonable time frame if good cause to extend the deadline is demonstrated as determined by rule;
(b) Will result in a proposal for developing a community benefiting water infrastructure project; and
(c) Incorporates feedback from:
(A) Members of qualifying communities served by the community benefiting water infrastructure project;
(B) Businesses located in the communities served by the community benefiting water infrastructure project;
(C) Water utilities that have customers in the communities served by the community benefiting water infrastructure project; and
(D) Other regional stakeholders.

(4)(a) An application for a grant for developing a community benefiting water infrastructure project must demonstrate that the development:

(a) Will result in the installation, rehabilitation, or replacement of water infrastructure projects.
(b) Will be completed within a reasonable time frame if good cause to extend the deadline is demonstrated as determined by rule;
(c) Will result in the installation, rehabilitation, or replacement of water infrastructure projects; and
(d) Incorporates feedback from:
(A) Members of qualifying communities served by the community benefiting water infrastructure project;
(B) Businesses located in the communities served by the community benefiting water infrastructure project;
(C) Water utilities that have customers in the communities served by the community benefiting water infrastructure project; and
(D) Other regional stakeholders.
infrastructure project must be on a form prescribed by the Oregon Business Development
Department and contain:
  (A) A detailed description of the project's systems and the systems' operation;
  (B) Information showing that the project's systems will operate as represented in the
   application and remain in operation for at least a period of time established by the Director
   of the Oregon Business Development Department by rule;
  (C) The anticipated total project cost;
  (D) Information on the number and types of jobs directly connected to the awarding of
   the grant that will be:
   (i) Created by the project; and
   (ii) Sustained throughout construction, installation and operation of the project;
  (E) Information demonstrating that the project will comply with applicable state and lo-
   cal laws and regulations and obtain required licenses and permits; and
  (F) Any other information the director considers necessary to determine whether the
   project is in compliance with sections 2 to 5 of this 2023 Act and any applicable rules or
   standards adopted thereunder.

(b) An application for developing a community benefiting water infrastructure project
must demonstrate that the project:
  (A) Will begin construction within 12 months of execution of the performance agreement
   and be completed within 36 months of execution of the performance agreement or a reason-
   able time frame if good cause to extend the deadline is demonstrated as determined by rule;
  (B) Results in improved drinking water quality and confidence, improved access to water,
   increased local jobs or increased water affordability and efficiency;
  (C) Complies with applicable state and local laws and regulations and has the required
   licenses and permits; and
  (D) Will operate for at least a period of time established by the director by rule.

(5) Upon receipt of an application submitted under this section, the department shall re-
view and determine whether the applicant is eligible to receive a grant from the Community
Benefiting Water Infrastructure Investment Program established under this section. The
department may approve an application if the department finds that:
  (a) The planning or development proposal meets the requirements listed in subsection (3)
   or (4) of this section;
  (b) The proposal meets the standards described in subsection (7) of this section;
  (c) The proposal meets any standards adopted by rule under subsection (8) of this section;
  (d) The proposal is technically feasible; and
  (e) Any federally recognized Oregon Indian tribe, public body, nonprofit organization,
   private business or owner of rental property partnered with the applicant is listed in the
   application.

(6) If the department approves an application under this section, the department and the
applicant may enter into a performance agreement that meets the requirements set forth in
section 4 of this 2023 Act.

(7) In approving applications and awarding grant moneys, the department shall prioritize
planning and development proposals that:
  (a) Are for projects located in qualifying communities across the state.
  (b) When applicable, are for projects constructed in part or in whole by disadvantaged
business enterprises, emerging small businesses or businesses that are owned by minorities, women or disabled veterans.

(c) Include inclusive hiring and promotion policies for workers working on the projects.

(d) Incorporate equity metrics developed in coordination with the Environmental Justice Council established by ORS 182.538 for evaluating the involvement of and leadership by people of low income, Black, Indigenous or People of Color, members of tribal communities, people with disabilities, youth, people from rural communities and people from otherwise disadvantaged communities in the siting, planning, designing or evaluating of the proposed community benefitting water infrastructure projects.

(e) Help the applicants achieve goals included in the applicants’ natural hazard mitigation plans as approved by the Federal Emergency Management Agency.

(f) Ensure resilience and reliability for water systems in the event of a natural disaster or other potential disruption in access.

(g) Are unlikely to adversely affect water quality and water supply and do not interfere with access or availability of existing water rights, including in-stream water rights.

(h) Combine multiple water infrastructure projects or approaches through a systems approach that helps to achieve multiple benefits.

(i) Are for projects that are not receiving or cannot receive other state funding.

(8) The department shall adopt rules to carry out sections 2 to 5 of this 2023 Act. The rules must:

(a) Define the planning and project costs eligible to be covered by a grant provided under this section.

(b) Adopt a methodology to identify qualifying communities and assess the geographic diversity of the approved planning and development projects compared with the other planning and development project applications for which grants have been requested in each opportunity announcement.

(c) Establish guidelines for significant, unforeseeable or uncontrollable delays that will constitute good cause for extending the time lines agreed upon in performance agreements.

(9) The department may adopt rules capping the amount of grant funds that may be paid to individual consultants and contractors if the department finds such limitations necessary to ensure broad distribution of funds and opportunity for emerging small businesses as defined in ORS 200.005.

SECTION 4. (1)(a) A performance agreement for planning a community benefitting water infrastructure project entered into between the Oregon Business Development Department and an applicant under section 3 (6) of this 2023 Act must provide, at a minimum:

(A) A grant in an amount described in paragraph (b) of this subsection that covers up to 100 percent of the reasonable planning costs including, but not limited to, costs associated with:

(i) Consulting fees.

(ii) Water balance models, groundwater testing, streamflow analysis or information gathering about water quality or availability.

(iii) Siting, excluding property acquisition.

(iv) Ensuring code compliance.

(v) Infrastructure associated with connecting to existing water systems.

(vi) Other reasonable expenditures made in the community benefitting water
infrastructure project planning process as determined by the department by rule.

(B) A grant may not be used to cover any fixed costs the applicant would incur in the
applicant's normal course of business such as existing staff salaries or overhead costs.

(C) The department may recover grant moneys if a project fails to abide by the per-
formance agreement or if planning is not completed within six months of execution of the
performance agreement or a reasonable time frame if good cause to extend the deadline is
demonstrated as determined by rule.

(b) The department may establish differing limits on the maximum amount of grants for
planning community benefiting water infrastructure projects based on the scope and attrib-
utes of the planning applications not to exceed an amount of $100,000 per grant.

(2) A performance agreement for developing a community benefiting water infrastructure
project entered into between the Oregon Business Development Department and an applicant
under section 3 (6) of this 2023 Act must provide, at a minimum:

(a) For a community benefiting water infrastructure project that qualifies as a project
that ensures resilience and reliability for water systems in the event of a natural disaster
or other potential disruption in access, a grant that covers up to 100 percent of the project
cost not to exceed $2 million. The department shall reduce the grant amount, if the grant
combined with other incentives and grants received by the applicant exceeds 100 percent of
the total costs associated with the project.

(b) For a community benefiting water infrastructure project that does not qualify as a
project that ensures resilience and reliability for water systems in the event of a natural
disaster or other potential disruption in access, a grant that covers up to 50 percent of the
project cost not to exceed $1 million. The department shall reduce the grant amount, if the
grant combined with other incentives and grants received by the applicant exceeds 100 per-
cent of the total costs associated with the project.

(3) The department shall gather information from grantees necessary to evaluate indi-
cators of success as determined by rule.

SECTION 5. The Director of the Oregon Business Development Department may appoint
an Advisory Committee on Community Renewable Investment to provide consultation on the
implementation of sections 2 to 5 of this 2023 Act. A committee appointed under this section
shall consist of:

(1) A member of the Environmental Justice Council;
(2) A representative of the Oregon Health Authority;
(3) A representative of the Department of Environmental Quality;
(4) A representative of the Water Resources Department;
(5) A representative of the Watershed Enhancement Board;
(6) A representative of water utilities;
(7) A representative of small community water systems;
(8) A representative of watershed councils;
(9) A representative of irrigation districts;
(10) A representative of an organization that represents water users;
(11) A representative of an organization that represents water conservation;
(12) A representative of an organization that engages in water efficiency or reuse;
(13) A representative of a federally recognized Oregon Indian tribe;
(14) Representatives of local government to represent the interests of counties, cities and
special districts;
(15) Representatives of nongovernmental organizations that represent communities of low income or disadvantaged households; and
(16) Representatives from relevant state and federal emergency management or response agencies.

SECTION 6. (1) The Community Benefiting Water Infrastructure Investment Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Community Benefiting Water Infrastructure Investment Fund shall be credited to the fund. The fund consists of:
(a) Moneys appropriated or otherwise transferred to the fund by the Legislative Assembly;
(b) Moneys received from federal, state or local sources;
(c) Gifts, grants or other moneys contributed to the fund; and
(d) Other amounts deposited in the fund from any source.
(2) Moneys in the fund are continuously appropriated to the Oregon Business Development Department for the purpose of providing grants to applicants approved under section 3 of this 2023 Act.
(3) The department may use reasonable amounts from the fund necessary, but no more than 10 percent of the fund, to administer the Community Benefiting Water Infrastructure Investment Program described in section 3 of this 2023 Act.
(4) The Director of the Oregon Business Development Department shall submit a biennial report to the Legislative Assembly in the manner provided by ORS 293.640 regarding the expenditures of moneys deposited in the Community Benefiting Water Infrastructure Investment Fund and status of ongoing projects funded by the moneys, including but not limited indicators of program success.
(5) Upon the expenditure of all grant moneys in the Community Benefiting Water Infrastructure Investment Fund or four years from the effective date of this 2023 Act, whichever occurs earlier, the director shall submit a report to the Legislative Assembly regarding the expenditures of moneys deposited in the Community Benefiting Water Infrastructure Investment Fund and status of ongoing projects that have received moneys from the fund, including but not limited to indicators of program success.

SECTION 7. In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Business Development Department, for the biennium beginning July 1, 2023, out of the General Fund, the amount of $______, for deposit into the Community Benefiting Water Infrastructure Investment Fund established in section 6 of this 2023 Act.

SECTION 8. (1) Sections 2 to 5 of this 2023 Act become operative on January 1, 2024.
(2) The Oregon Business Development Department may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department to exercise, on or after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the department by sections 2 to 5 of this 2023 Act.

SECTION 9. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.