

Chapter 468 — Environmental Quality Generally

2009 EDITION

FINANCING TREATMENT WORKS

468.423 Definitions for ORS 468.423 to 468.440. As used in ORS 468.423 to 468.440:

(1) “Fund” means the Water Pollution Control Revolving Fund established under ORS 468.427.

(2) “Public agency” means:

(a) A state agency, incorporated city, county, sanitary authority, federally recognized Indian tribal government, 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.

(3) “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. [1987 c.648 §1; 1995 c.79 §278; 1995 c.98 §1; 2007 c.783 §232a]

468.425 Policy. 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 accept and use any federal grant funds available to capitalize a perpetual revolving loan fund; and

(3) 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. [1987 c.648 §2]

468.427 Water Pollution Control Revolving Fund; sources. (1) The Water Pollution Control Revolving Fund is established separate and distinct from the General Fund in the State Treasury. The moneys in the Water Pollution Control Revolving Fund are appropriated continuously to the Department of Environmental Quality to be used for the purposes described in ORS 468.429.

(2) The Water Pollution Control Revolving Fund shall consist of:

(a) All capitalization grants provided by the federal government under the federal Water Quality Act of 1987 (Public Law 100-4);

(b) All state matching funds appropriated or authorized by the legislature;

(c) Any other revenues derived from gifts, grants or bequests pledged to the state for the purpose of providing financial assistance for water pollution control projects;

(d) All repayments of moneys borrowed from the fund;

(e) All interest payments made by borrowers from the fund; and

(f) Amounts granted or advanced to the Water Pollution Control Revolving Fund from the Pollution Control Fund under ORS 468.220 (1).

(3) The State Treasurer may invest and reinvest moneys in the Water Pollution Control Revolving Fund in the manner provided by law. All earnings from such investment and reinvestment shall be credited to the Water Pollution Control Revolving Fund. [1987 c.648 §3; 1993 c.411 §6]

468.428 Lottery bonds. (1) Pursuant to ORS 286A.560 to 286A.585, lottery bonds may be issued to provide loans and other financial assistance to public agencies, as defined in ORS 468.423, for waste water pollution control, reduction or abatement as described in ORS 468.429.

(2) The use of lottery bond proceeds is authorized upon the following findings:

(a) Financial assistance for public agency waste water pollution control, reduction or abatement activities will result in additional wastewater treatment capacity in Oregon.

(b) Wastewater treatment capacity comprises a portion of the physical foundation for industrial and commercial activities and provides a portion of the basic framework for continued and expanded economic opportunities throughout Oregon.

(c) Such financial assistance will therefore further economic development within this state, making the use of net proceeds derived from the operation of the Oregon State Lottery to pay debt service on lottery bonds issued under this section to provide financial assistance to public agencies for wastewater pollution control, reduction or abatement activities an authorized use of state lottery funds under section 4, Article XV of the Oregon Constitution, and ORS 461.510.

(3) The aggregate principal amount of lottery bonds issued pursuant to this section to provide financial assistance for public agency waste water pollution control, reduction or abatement activities shall not exceed \$8 million and an additional amount estimated by the State Treasurer to be necessary to pay bond-related costs. Lottery bonds authorized by this section shall be issued only at the request of the Director of the Department of Environmental Quality.

(4) The net proceeds of lottery bonds issued pursuant to this section shall be deposited in the Water Pollution Control Revolving Fund established by ORS 468.427.

(5) The proceeds of lottery bonds issued pursuant to this section shall be used only for the purposes set forth in subsection (1) of this section and for bond-related costs. [2001 c.942 §3]

Note: 468.428 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468.429 Uses of revolving fund. (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) 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) 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 treatment works' debt obligations of public agencies if such debt 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. [1987 c.648 §4; 1993 c.411 §7; 1995 c.79 §279]

468.430 [1983 c.218 §1; repealed by 1985 c.222 §6]

468.431 Water Pollution Control Administration Fund; sources; uses. (1) The Water Pollution Control Administration Fund is established separate and distinct from the General Fund in the State Treasury. Moneys in the Water Pollution Control Administration Fund are appropriated continuously to the Department of Environmental Quality to be used for the payment of costs of administering the Water Pollution Control Revolving Fund, including all costs of staffing for the program described in ORS 468.433 (2) and all costs of making loans from the Water Pollution Control Revolving Fund and collecting loan payments.

(2) The Water Pollution Control Administration Fund shall consist of:

(a) Any administrative fee levied by the department in conjunction with administration of the Water Pollution Control Revolving Fund.

(b) Any transfers to the Water Pollution Control Administration Fund from the Water Pollution Control Revolving Fund.

(c) Any loans made from the Water Pollution Control Revolving Fund.

(d) Any other revenues derived from gifts, grants or bequests pledged to the state for the purpose of administering the Water Pollution Control Revolving Fund.

(3) The State Treasurer may invest and reinvest moneys in the Water Pollution Control Administration Fund in the manner provided by law. All earnings from such investment and

reinvestment shall be credited to the Water Pollution Control Administration Fund. [1993 c.411 §2; 1995 c.79 §280]

468.433 Duties of department; public agency loan program. (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, 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.

(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. [1987 c.648 §5; 1993 c.411 §8; 1995 c.79 §281]

468.435 [1983 c.218 §2; repealed by 1985 c.222 §6]

468.437 Loan applications; eligibility; repayment; default remedy. (1) Any public agency 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 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 defaults on payments due to the Water Pollution Control Revolving Fund, the state may withhold any amounts otherwise due to the public agency 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 is otherwise adequately secured, the department may waive this right in the loan agreement or other loan documentation. [1987 c.648 §6; 1989 c.560 §3; 2007 c.783 §205]

468.439 Borrowing authority of public agency. Notwithstanding any limitation contained in any other provision of law or local charter, a public agency may:

(1) Borrow money from the Water Pollution Control Revolving Fund through the Department of Environmental Quality;

(2) Enter into loan agreements and make related agreements with the department in which the public agency agrees to repay the borrowed money in accordance with the terms of the loan agreement;

(3) Covenant with the department regarding the operation of treatment works and the imposition and collection of rates, fees and charges for the treatment works;

(4) Pledge all or part of the revenues of the treatment works to pay the amount due under the loan agreement and notes in accordance with ORS chapter 287A; and

(5) Provide any additional security and exercise any powers permitted to an issuer of revenue bonds under ORS chapter 287A. [1989 c.560 §2; 1993 c.411 §9; 2007 c.783 §206]

468.440 Loan terms and interest rates; considerations; rules. (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 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 20 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. [1987 c.648 §7; 1993 c.411 §10; 1995 c.79 §282; 2005 c.137 §1]