

SB 1069 GRANT PROGRAM ADMINISTRATIVE RULES - HEARING DRAFT
(Public Comment – Department Response)

Format:

Entity/Person/Association submitting the public comment.

- Summary of or “duplication” of public comment presented by entity/person/association.

Italic:

Department response to public comment.

690-600-0020

Application Requirements

WaterWatch

- 690-600-0020 (2) should read: “Applications for funding may not exceed \$500,000 per project.” (suggested language is underlined).

Department Response:

The Department agrees with this comment in that it more accurately reflects language used in SB 1069. Changes were made to the hearing draft as a result of this public comment.

WaterWatch:

- 690-600-0020 (4) should include the following statutory trigger language: “Identification of the projects as either a water conservation, reuse or storage project.” In addition to the trigger language, we suggest that all storage project-related applications be required to contain the name of the affected stream and location of the proposed project; all above ground storage project-related applications indicate whether the proposed project will be off-channel or on-channel; and that all applications contain information whether the project will likely result in an instream benefit for the source stream.

Department Response:

A provision in the hearing draft [690-600-0020 (4) (c)] will result in the Department receiving information in the application about the project associated with the proposed project planning study, including whether the project is a water conservation, reuse, or storage project. The hearing draft of the rules, with the addition of changes proposed in the final proposed rules regarding SB 1069, Section 2. (2) and 690-600-0020 (4) (h), provide full coverage of the information that SB 1069 requires, either expressly or by clear inference, be included in the application for funding under the grant program. In

addition, the Department would note that the grant program established under SB 1069 is designed to pay the qualifying costs of *planning studies* to evaluate the feasibility of developing a water conservation, reuse or storage project; the principle emphasis and focus being on planning studies and not the projects themselves. No changes were made to the hearing draft as a result of this public comment.

WaterWatch:

- 690-600-0020 (4) The applicant should be required to provide information, to the best of their knowledge, if a storage project will divert greater than 500 acre-feet of surface water annually, impound water on a perennial stream, or divert water from a stream that supports sensitive, threatened, or endangered species.

Department Response:

The Department agrees with the premise of this comment, that information required by SB 1069, Section 2. (2) should be expressed in the final proposed rules as an application requirement. Changes were made to the hearing draft as a result of this public comment.

WaterWatch:

- 690-600-0020 (4) (c). The rules should provide more detail on the information the Department will require of applicants regarding the water conservation, reuse or storage projects.

Department Response:

The Application Requirements Section of the hearing draft (as modified in response to public comment) contains provisions requiring specific information for project planning studies that are associated with above ground storage projects, water conservation, and reuse projects. In addition, the Department anticipates that evaluation criteria and selection processes established for the Program by the Department in consultation with members of the rules advisory committee will require and/or encourage applicants to provide additional information on the projects associated with the proposed project planning study. Finally, the grant program established under SB 1069 is designed to pay the qualifying costs of *planning studies* to evaluate the feasibility of developing a water conservation, reuse or storage project; the principle emphasis and focus being on planning studies and not the projects themselves. The hearing draft contains considerable provision for information regarding the project planning study that the applicant is required to submit in order to be considered for funding under the program. No changes were made to the hearing draft as a result of this public comment.

WaterWatch:

- 690-600-0020 (4) (h). The rules should clearly spell out what information the Department will need from the applicant in order to evaluate the application for funding based on evaluation criteria developed by the Department.

Department Response:

SB 1069 expressly directs the Water Resources Commission (Commission) to adopt rules that (1) establish reporting requirements for grants awarded under the program, (2) provide for public comment before the award of funding, and (3) implement the priorities required by the Act. The final proposed rules contain provisions to meet these requirements. In particular, the rules expressly state that in its evaluation of applications it will give priority to the projects that SB 1069 specifically directs the Commission to prioritize. In the application requirements section, the final proposed rules require the applicant to provide information on the projects that SB 1069 specifically directs the Commission to prioritize. The Department does agree that the hearing draft rule provision related to information required of the applicant regarding certain above ground storage projects that shall be prioritized should provide greater guidance on what information should be submitted in the application. Changes were made to the hearing draft as a result of this public comment.

The Nature Conservancy – Oregon

- 690-600-0020 (4)(h): Change wording to: “Information requested by the Department that is necessary to evaluate the application for funding based on evaluation criteria developed by the Rules Advisory Committee.”

Department Response:

The Department has made a commitment to continue to invite suggestions and comments from members of the SB 1069 rules advisory committee to develop and finalize the evaluation criteria and selection process that will be used by the Department in its initial solicitation for applications in the Water Conservation, Reuse, and Storage Grant Program. No changes were made to the hearing draft as a result of this public comment.

The Nature Conservancy – Oregon

- 690-600-0020 (5) (d): The program should require that at least 25% of the match be in the form of a cash contribution. Add the following language, “Value of in-kind counted as match should be limited to 75 % of the total required match.”

Department Response:

The Department believes it would be preferable not to deny prospective applicants that are unable to bring at least a 25% cash contribution to the table the

opportunity to participate in the program. No changes were made to the hearing draft as a result of this public comment.

690-600-0030

Application Process

The Nature Conservancy – Oregon

- OAR 690-600-0030: Add new number to this section with the wording: “Evaluation of projects will be based on criteria developed by the Rules Advisory Committee.”

Department Response:

The Department has made a commitment to continue to invite suggestions and comments from members of the SB 1069 rules advisory committee to develop and finalize the evaluation criteria and selection process that will be used by the Department in its initial solicitation for applications in the Water Conservation, Reuse, and Storage Grant Program. No changes were made to the hearing draft as a result of this public comment.

The Nature Conservancy – Oregon

- OAR 690-600-0030 (2): The review team should not include people from private engineering firms or local governments due to potential conflicts of interest. The review team could be made up of agency people, alone. There are plenty of qualified technical people in the state agencies, if you look at OWRD, DEQ, DOGAMI, ODFW, etc., and you could also tap into federal agencies. Add the wording in bold: “The Department may use an application review team consisting of persons with water supply and planning knowledge and interdisciplinary expertise **from state and federal agencies**, appointed by the Director, to review applications and make funding recommendations to the Department.”

WaterWatch:

- OAR 690-600-0030 (2): To ensure that funding decisions are as least biased as possible, the interdisciplinary team should be limited to state and federal agency representatives. We do not think it is appropriate for industry representatives (including consultants) to be part of the state review of applications.

Department Response:

The Department anticipates that there may be a need to revisit the rules as a result of lessons learned during the grant program’s initial phase of operations. The final proposed rule provision directly related to these public comments [OAR 690-600-0030 (2)] states that the application review team will consist “of persons with water supply and planning knowledge and interdisciplinary expertise.” The Department believes that the final proposed rules, via this provision, provide sufficient guidance for the Director and

that it is preferable to retain flexibility and discretion within the rules generally, and not to be overly prescriptive, for the grant program's initial phase of operations. These public comments will be taken under advisement as the Department continues to develop and finalize the evaluation criteria and selection process that it will use in the initial solicitation for applications in the Water Conservation, Reuse, and Storage Grant Program. No changes were made to the hearing draft as a result of these public comments.

WaterWatch:

- OAR 690-600-0030 (3) and (4): Although sections (3) and (4) of the Application Process section of the hearing draft reiterate two priorities set forth in statute, the section fails to direct the Department to rank projects based upon evaluation criteria and to lay out the actual evaluation criteria that the Department will use to rank projects. Both the direction and the actual evaluation criteria need to be included in the rule. If the final proposed rules do not contain these items, then they should provide a "placeholder", so that ranking criteria can be inserted once they are developed.

"In addition to the inclusion of actual ranking criteria, this application processing subsection needs to include language that states:

- Applications will be reviewed based on administrative completeness and evaluation criteria as set forth in section XXX.
- The Department will rank applications based upon evaluation criteria set forth in section XXX."

Department Response:

The Department believes that it is preferable to retain a certain degree of flexibility and discretion within the rules generally, and not to be overly prescriptive, for the grant program's initial phase of operations. The Department has consistently expressed its strong preference to not include the evaluation criteria in the final proposed rules. In addition, SB 1069 does not direct the Commission to adopt rules that include a ranking system or evaluation criteria. Provisions in SB 1069 do, however, provide direction on the evaluation of applications for funding with respect to prioritization [SB 1069, Section 1. (5)(a) (b)] and eligible studies (SB 1069, Section 2.). These provisions are directly and fully represented in the final proposed rules, and if adopted, will find full expression in the criteria the Department develops and uses in its evaluation and ranking of applications for the purpose of making final funding recommendations to the Commission for their consideration. No changes were made to the hearing draft as a result of these public comments.

690-600-0060

Public Notice and Comment

WaterWatch:

- OAR 690-600-0060: “Studies funded by this program should be made available to the public through WRD. This section should be amended to provide for this.”

Department Response:

The Department appreciates this comment and fully intends to make all final and complete planning studies available to the public. The Department agrees that the rules should express this intent. However, the Department believes that this change in the rules should occur in Grant Agreement and Conditions section of the rules and not in the Public Notice and Comment section. Changes were made to the hearing draft as a result of this public comment.

General Comments

WaterWatch:

- “OAR 690-600-XXX, Reporting Requirements: SB 1069 specifically directs the WRC to adopt rules that establish rules to establish reporting requirements for grants. The rules do not contain any such requirements. A section needs to be added addressing this.”

Department Response:

Although the Department would note that the hearing draft does contain provisions that require grantees to account for the expenditure of program funds, procure required permits and licenses, and comply with all grant agreements and conditions, the Department agrees that SB 1069 requires a greater degree of specificity with respect to reporting requirements for grants awarded under the program. Changes were made to the hearing draft as a result of this public comment.

The Nature Conservancy – Oregon

- Given that this is a new program, and that the rules were developed under a very short timeline, I would like to see the rules include a sunset date, or a date in which the rules will be re-evaluated. Suggest a 2-3 year timeline for the current rules.

Department Response:

The Department anticipates that there may be a need to revisit the rules as a result of lessons learned during the grant program’s initial phase of operations. The Department believes that it is preferable to retain a certain degree of flexibility and discretion to respond to any need for a review of the rules as the need arises than to do so as a result of a date certain set in rule. No changes were made to the hearing draft as a result of this public comment.