



NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 123
OREGON BUSINESS DEVELOPMENT DEPARTMENT

FILED
12/15/2020 7:32 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: This new division relates to the Tide Gate Grant and Loan Program.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/28/2021 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S):

These rules are needed to implement the Tide Gate Grant and Loan Program.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HB 4304 2020 Special Session

FISCAL AND ECONOMIC IMPACT:

Participation in this program is voluntary, there will be no negative fiscal and economic impact. With the offering of grants and low interest loans for tide gate infrastructure, a positive fiscal and economic impact could be realized.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. No state agencies, local governments, or members of public will be see a negative economic affect from these rules. The program is voluntary with local governments and members of the public potentially being eligible for funding awards. Business Oregon may coordinate with other state agencies in the implementation of this program but the economic affect will be negligible.

2a. No small businesses will be involuntary subject to the rule as it is a voluntary funding program. Some small businesses with agricultural focus may be eligible applicants but the number is unknown.

2b. Since the program is voluntary there will be no required reporting, recordkeeping or administrative activities. Funding recipients will be required to completed those tasks but such costs will be eligible project costs that will be subject to reimbursement.

2c, Since the program is voluntary there will be no required professional services, equipment, supplies, labor, or increased administration associated with the administrative rules. All of these line items will be eligible costs under the program. Cost is difficult to estimate as it will vary depending on the site specific characteristics of a tide gate project.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

While small businesses were not directly involved in the development of these rules, proposed program details were presented to a group that include the Oregon Cattlemen's Association and Oregon Farm Bureau both of which represent small agricultural focused businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

No. An advisory committee was not consulted. This program does not have a fiscal impact.

RULES PROPOSED:

123-046-0000, 123-046-0010, 123-046-0020, 123-046-0030, 123-046-0040, 123-046-0050, 123-046-0060, 123-046-0070, 123-046-0080, 123-046-0090, 123-046-0100, 123-046-0110, 123-046-0120, 123-046-0130, 123-046-0140

ADOPT: 123-046-0000

RULE SUMMARY: This rule sets forth the purpose of the rules found within division 046 for the Tide Gate Grant and Loan Program.

CHANGES TO RULE:

123-046-0000

Purpose and Objectives

These rules establish procedures for the Oregon Business Development Department in accepting applications and considering proposals for funding under the Tide Gate Grant and Loan Program established under section 21, House Bill 4304, 2020 2nd Special Session, which, among other things, includes funding for the planning and construction of tide gates and associated culverts and drainage infrastructure.

Statutory/Other Authority: Sec 21 & 22, HB 4304, 2nd Special Session of 2020, ORS 285A.075

Statutes/Other Implemented: Sec 21 & 22, HB 4304, 2nd Special Session of 2020

ADOPT: 123-046-0010

RULE SUMMARY: This rule provides for specified terms used throughout this division.

CHANGES TO RULE:

123-046-0010

Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, the following terms shall have the following meaning, unless the context clearly indicates otherwise:¶

(1) "Department" means the Oregon Business Development Department. ¶

(2) "Fund" means the Tide Gate Grant and Loan Fund. ¶

(3) "Municipality" means an Oregon city or county, a Port organized under ORS chapter 777 or 778, a county service district organized under ORS chapter 451, a district as defined in ORS chapter 198, a tribal council of a federally recognized Indian tribe in this state or an airport district organized under ORS chapter 838. ¶

(4) "Non-Profit Organization" means an organization that uses surplus revenues to achieve its goals rather than distributing them as profit or dividends. ¶

(5) "Persons" means Individuals, corporations, associations, firms, partnerships, or joint stock companies. ¶

(6) "Tide gate construction project" means improvements to a tide gate drainage system intended to ensure land drainage and flood protection including repair or replacement of tide gates, culverts, or other barriers to proper drainage of lands and flood protection. ¶

(7) "Tide gate drainage system" means interconnected tide gates and associated culverts and infrastructure needed to drain tidelands and ensure flood protection. ¶

(8) "Tide gate planning project" means design and engineering, legal costs, permitting, environmental review, regulatory processes, landowner coordination, and support activities needed to develop a tide gate project ready for construction. ¶

(9) "Tide gate project" means either a tide gate construction project or a tide gate planning project. ¶

(10) "Tide gate project" means either a tide gate construction project or a tide gate planning project.

Statutory/Other Authority: Sec 21 & 22, HB 4304, 2nd Special Session of 2020, ORS 285A.075

Statutes/Other Implemented: Sec 21 & 22, HB 4304, 2nd Special Session of 2020

ADOPT: 123-046-0020

RULE SUMMARY: This rule describes what costs and activities a tide gate project may include to be eligible for funding for the Tide Gate Grant and Loan Program.

CHANGES TO RULE:

123-046-0020

Eligible Project Costs and Activities

Eligible costs include the reasonable costs and necessary, as determined by the Department, for eligible tide gate projects and may include:

- (1) Tide gate project development costs including, but not limited to: direct costs associated with design and engineering, legal costs, permitting, environmental review, regulatory processes, landowner coordination, and support activities necessary to develop a tide gate construction project;
- (2) Funding award administration costs not to exceed \$10,000;
- (3) Construction, repair or replacement of tide gates, culverts, or other barriers to land drainage and flood protection associated with a tide gate drainage system;
- (4) Support activities necessary to construct a tide gate project;
- (5) Activities intended to stabilize drainage channels;
- (6) Construction contingencies for a tide gate construction project; and
- (7) Financing costs associated with the Department's financing including capitalized interest, issuance and debt service reserve costs, when such costs are incurred in funding a project.

Statutory/Other Authority: Sec 21 & 22, HB 4304, 2nd Special Session of 2020, ORS 285A.075

Statutes/Other Implemented: Sec 21 & 22, HB 4304, 2nd Special Session of 2020

ADOPT: 123-046-0030

RULE SUMMARY: This rule describes project expenses that are ineligible for reimbursement related to funding from the Tide Gate Grant and Loan Program.

CHANGES TO RULE:

123-046-0030

Ineligible Project Costs

Tide gate project expenses and costs expressly allowed by OAR 123-046-0020 are eligible for reimbursement from the fund. All other project costs, including but not limited to those listed below, are ineligible for reimbursement:

- (1) Cost of purchase of general purpose motor vehicles and other equipment not directly related to the project;
- (2) Indirect costs incurred by the applicant or a contractor; and
- (3) Project operating or maintenance expenses.

Statutory/Other Authority: Sec 21 & 22, HB 4304, 2nd Special Session of 2020, ORS 285A.075

Statutes/Other Implemented: Sec 21 & 22, HB 4304, 2nd Special Session of 2020

ADOPT: 123-046-0040

RULE SUMMARY: This rule describe the parties eligible to apply for funding through the Tide Gate Grant and Loan Program, as well as the Department's potential to limit the number of open projects per applicant.

CHANGES TO RULE:

123-046-0040

Loan and Grant Applicant Eligibility

(1) Parties eligible for a loan or grant under these rules include municipalities, Persons, and non-profit organizations.¶

(2) The Department may limit the number of open projects an applicant may have at any one time.

Statutory/Other Authority: Sec 21 & 22, HB 4304, 2nd Special Session of 2020, ORS 285A.075

Statutes/Other Implemented: Sec 21 & 22, HB 4304, 2nd Special Session of 2020

ADOPT: 123-046-0050

RULE SUMMARY: This rule describes the application for tide gate construction projects. It also describes grant and loan funding requests.

CHANGES TO RULE:

123-046-0050

Tide Gate Construction Projects

(1) Each application for construction funding shall address a single tide gate drainage system. A tide gate drainage system may include multiple tide gates and associated drainage infrastructure but may not include unrelated tide gate systems in the same or another watershed for which operation does not impact the drainage of the subject system as determined by the Department.

(2) Tide gate construction project applications shall be in the form provided by the Department and shall contain or be accompanied by such information and documentation as the Department may require. The Department will process only completed applications.

(3) A tide gate construction project application may include a grant funding request of up to \$500,000.

(4) Grant funding requests of \$100,000 or less for tide gate construction projects shall be subject to the following procedures:

(a) The Department may process applications and make funding awards in the order they are received and deemed complete.

(b) The Department may annually allocate available funds for those tide gate construction projects requesting a grant of \$100,000 or less.

(5) Grant funding requests of over \$100,000, and less than or equal to \$500,000 shall be subject to the following procedures:

(a) The Department will determine available funds for a given funding cycle and may conduct a competitive application solicitation cycle one or more times annually; and

(b) Proposed projects will be prioritized based on watershed and community/economic benefit as described in OAR 123-046-0090(2).

(6) Grant funding requests shall demonstrate matching funds in the amount of 10% of the total project cost. The following activities are eligible to be considered as match:

(a) Cash match for eligible project costs and activities described in OAR 123-046-0020;

(b) A loan from the fund; and

(c) In-Kind match from the funding recipient or other entity, if the in-kind match is approved by the Department prior to funding award.

(7) A tide gate construction project application may include a loan funding request of up to \$500,000.

(8) The total funding request for a single tide gate construction project application shall not exceed \$1 million.

(9) The Department may coordinate with other state and federal agencies, organizations, or contracted services to assist the Department in determining tide gate construction project eligibility, developing prioritization category criteria, or prioritizing tide gate construction project assistance requests.

Statutory/Other Authority: Sec 21 & 22, HB 4304, 2nd Special Session of 2020, ORS 285A.075

Statutes/Other Implemented: Sec 21 & 22, HB 4304, 2nd Special Session of 2020

ADOPT: 123-046-0060

RULE SUMMARY: This rule describes the criteria necessary for an application that the department will use to determine the eligibility for a tide gate construction project.

CHANGES TO RULE:

123-046-0060

Tide Gate Construction Project Application Eligibility Criteria

The Department will determine tide gate construction project application eligibility using criteria including but not limited to the following:

(1) The application must demonstrate shovel readiness including:

(a) Completion of all technical and engineering design work;

(b) Completion of all permitting and regulatory processes unless progress at time of application is adequate to proceed to construction as determined by the Department; and

(c) Evidence that all landowners on whose land tide gate drainage infrastructure will be constructed are aware of, and agree to, the proposal.

(2) The application must include feasibility documentation stamped and signed by an engineer licensed in the State of Oregon. Unless otherwise approved by the Department, feasibility documentation must include the following elements:

(a) Analyses of project feasibility including but not limited to engineering, regulatory, and legal feasibility;

(b) Analyses of project alternatives and the recommended option;

(c) Estimate of project costs including materials, labor, contingency budget, and other expenses;

(d) Construction timeline; and

(e) Operational feasibility analysis including identification of a plan for operation and maintenance of the tide gate drainage system.

(3) Application must demonstrate that authorized access exists for all properties on which construction activities will occur or equipment will be mobilized.

Statutory/Other Authority: Sec 21 & 22, HB 4304, 2nd Special Session of 2020, ORS 285A.075

Statutes/Other Implemented: Sec 21 & 22, HB 4304, 2nd Special Session of 2020

ADOPT: 123-046-0070

RULE SUMMARY: This rule describes the application for tide gate planning projects. It also describes grant and loan funding requests.

CHANGES TO RULE:

123-046-0070

Tide Gate Planning Projects

(1) Tide gate planning project applications shall be in the form provided by the Department and shall contain or be accompanied by such information and documentation as the Department may require. The Department will process only completed applications.¶

(2) The Department will determine available funds for a given funding cycle and may conduct a competitive application solicitation cycle one or more times annually.¶

(3) A tide gate planning project application may include a grant funding request of up to \$100,000.¶

(4) A tide gate planning project application may include a loan funding request of up to \$100,000.¶

(5) The total funding request for a single tide gate planning project application shall not exceed \$200,000.¶

(6) The Department may coordinate with other state and federal agencies, organizations, or contracted services to assist the Department in determining tide gate planning project eligibility, developing prioritization category criteria, or prioritizing tide gate planning project assistance requests.

Statutory/Other Authority: Sec 21 & 22, HB 4304, 2nd Special Session of 2020, ORS 285A.075

Statutes/Other Implemented: Sec 21 & 22, HB 4304, 2nd Special Session of 2020

ADOPT: 123-046-0080

RULE SUMMARY: This rule describes the criteria necessary for an application that the department will use to determine the eligibility for a tide gate planning project.

CHANGES TO RULE:

123-046-0080

Tide Gate Planning Project Application Eligibility Criteria

The Department will determine tide gate planning project application eligibility using criteria including but not limited to the following:¶

(1) The application must demonstrate that the study scope will include all elements needed to develop a shovel ready tide gate project consistent with OAR 123-046-0060(1).¶

(2) All required permits and regulatory authorizations must be addressed through the study scope.¶

(3) The study scope must result in feasibility documentation consistent with OAR 123-046-0060(2).¶

(4) The study scope must include a plan to communicate with all impacted landowners throughout the course of the planning project.

Statutory/Other Authority: Sec 21 & 22, HB 4304, 2nd Special Session of 2020, ORS 285A.075

Statutes/Other Implemented: Sec 21 & 22, HB 4304, 2nd Special Session of 2020

ADOPT: 123-046-0090

RULE SUMMARY: This rule describes how the department may prioritize tide gate project applications.

CHANGES TO RULE:

123-046-0090

Tide Gate Project Application Prioritization Criteria

(1) The Department may prioritize tide gate project applications using considerations including but not limited to the following:¶

(a) The technical merit of the proposal including the extent to which the approach would address the project need:¶

(b) Cost effectiveness including how the costs are aligned with the work necessary to accomplish objectives; and¶

(c) The qualifications of those involved with the project.¶

(2) Funding applications under OAR 123-046-0050(5) will be prioritized using criteria including but not limited to:¶

(a) The watershed benefit associated with the project.¶

(b) The community and economic benefit associated with the project.¶

(3) The Department may consider geographic diversity in the prioritization and selection of applications for funding.¶

(4) The Department may prioritize the funding of any tide gate project intended to protect a community or key infrastructure from flooding.

Statutory/Other Authority: Sec 21 & 22, HB 4304, 2nd Special Session of 2020, ORS 285A.075

Statutes/Other Implemented: Sec 21 & 22, HB 4304, 2nd Special Session of 2020

ADOPT: 123-046-0100

RULE SUMMARY: This rule describes the purposes of tide gate coordinators that may be contracted by the Department.

CHANGES TO RULE:

123-046-0100

Tide Gate Coordinator and Technical Studies

(1) The Department may contract with one or more tide gate coordinators for purposes including but not limited to:

(a) Proving technical assistance and program information to tide gate owners;

(b) Providing interagency liaison services to direct tide gate projects through the permitting and funding processes; and

(c) To assist the Department in determining project feasibility, eligibility, or to gather watershed or economic information for Department prioritization efforts.

(2) The Department may contract for technical studies that have a statewide benefit for tide gate project development.

Statutory/Other Authority: Sec 21 & 22, HB 4304, 2nd Special Session of 2020, ORS 285A.075

Statutes/Other Implemented: Sec 21 & 22, HB 4304, 2nd Special Session of 2020

ADOPT: 123-046-0110

RULE SUMMARY: This rule describes the terms of loans for those who may be awarded financing through the Tide Gate Grant and Loan Program.

CHANGES TO RULE:

123-046-0110

Loan and Grant Information

(1) The Department may award financing in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund. The Department shall determine the amount, type, interest rate and terms of any financing awarded. It may offer an alternate mix or lower amount of assistance than requested. The amount of the award may be the minimum amount that the Department determines is necessary to enable the project to proceed, and the Department may investigate and recommend other sources of funds for all or part of a proposed project. Projects that the Department determines are not financially feasible will not be funded.

(2) Loans for tide gate projects:

(a) The term of a loan for a tide gate construction project is limited to the usable life of the contracted project, or 30 years from the year of project completion, whichever is less;

(b) The term of a loan for a tide gate planning project shall not exceed 7 years from the year of project completion;

(c) A below market interest rate as determined by the Department shall be offered to eligible borrowers; and

(d) Security pledges shall be required for all approved financing with the form and amount of security determined by the Department consistent with the nature of the project and the creditworthiness of the borrower.

Statutory/Other Authority: Sec 21 & 22, HB 4304, 2nd Special Session of 2020, ORS 285A.075

Statutes/Other Implemented: Sec 21 & 22, HB 4304, 2nd Special Session of 2020

ADOPT: 123-046-0120

RULE SUMMARY: This rule describes the Department's review and approval process to award funding for tide gate projects.

CHANGES TO RULE:

123-046-0120

Application Review and Approval

(1) For a tide gate project, the Department must make the following determinations:¶

(a) That a tide gate construction project is feasible as demonstrated by certification from a professional engineer registered in the State of Oregon in a feasibility study, such as a feasibility study consistent with 123-046-0060(1)(b), that the proposed project is feasible, or other feasibility documentation approved by the Department.¶

(b) Any loan is secured by the pledge of utility revenues or other revenues or payments from owners of specially benefited properties, and these revenues or payments are sufficient, when considered with other security, to assure repayment of the loan and the borrower has certified to the Department that there will be adequate funds available to repay the loans made to the municipality from the fund.¶

(c) Moneys in the appropriate accounts of the fund are or will be available for the project.¶

(d) The applicant is willing and able to enter into a contract with the Department.¶

(e) The project is consistent with the requirements governing assistance from the fund. If the Department determines that the applicant or the proposed project does not meet the requirements of this OAR 123-046-0120, the Department may reject an application or require further documentation from the applicant.¶

(2) To award assistance from the fund for a tide gate project, the Department must determine that the applicant has, or has demonstrated the ability to secure, the administrative capacity to undertake and complete the project.

Statutory/Other Authority: Sec 21 & 22, HB 4304, 2nd Special Session of 2020, ORS 285A.075

Statutes/Other Implemented: Sec 21 & 22, HB 4304, 2nd Special Session of 2020

ADOPT: 123-046-0130

RULE SUMMARY: This rule describes the Department's obligation to enter into a contract with a recipient once they receive approved funding,

CHANGES TO RULE:

123-046-0130

Contract Requirements and Disbursement of Funds

(1) The Department's obligation to fund tide gate projects occurs only after entering into a binding contract with the recipient.¶

(2) The contract shall be in a form provided by the Department.¶

(3) If any portion of the assistance is in the form of a loan, a provision granting the Department a lien on or a security interest in the collateral as determined by the Department to be necessary to secure repayment of the loan or bond shall be included in the contract.¶

(4) Other funds that may be needed to complete the project must be available or the funding recipient must have a binding commitment for such funds at the time the contract is executed. If a portion of the other funds needed to complete the project is committed but not available at the time an award is made or the contract executed, the contract shall require that the project be fully funded prior to any disbursement from the fund. ¶

(5) By contract, recipient will be required to follow state procurement laws in ORS 279A, ORS 279B and ORS 279C.¶

(6) If the borrower is an entity, rather than an individual, the contract for a loan shall be authorized by an ordinance, order or resolution adopted by the governing body or partners of the entity, and in accordance with any applicable requirements for notice and authorizing debt.

Statutory/Other Authority: Sec 21 & 22, HB 4304, 2nd Special Session of 2020, ORS 285A.075

Statutes/Other Implemented: Sec 21 & 22, HB 4304, 2nd Special Session of 2020

ADOPT: 123-046-0140

RULE SUMMARY: This rule describes the responsibilities that the recipient of funding through the Tide Gate Grant and Loan Program must comply with.

CHANGES TO RULE:

123-046-0140

Recipient Responsibilities

(1) The recipient must comply with all applicable state and federal laws, regulations and requirements.¶

(2) The funding recipient shall certify that a registered professional engineer will be responsible for the design and construction of the project and it shall follow standard construction practices, such as bonding of engineers and contractors, requiring errors and omissions insurance, performing testing and inspections during construction, and obtaining as-built drawings.¶

(3) Project materials must include a notation indicating that Business Oregon funding from the Oregon Lottery was used for the project.¶

(4) For a tide gate construction project the funding recipient shall have a plan for ongoing operation and maintenance that will preserve the project's benefits over its useful life.

Statutory/Other Authority: Sec 21 & 22, HB 4304, 2nd Special Session of 2020, ORS 285A.075

Statutes/Other Implemented: Sec 21 & 22, HB 4304, 2nd Special Session of 2020