

Enrolled Senate Bill 195

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Water Resources Department)

CHAPTER

AN ACT

Relating to wave energy; creating new provisions; amending ORS 543.014; and declaring an emergency.

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

SECTION 1. ORS 543.014 is amended to read:

543.014. (1) A wave energy project is exempt from regulation under this chapter, except as provided in ORS 543.050 (3), 543.055 and 543.060 if:

- [(1)] (a) The project generates electricity from wave energy;
- [(2)] (b) The project is located within Oregon’s Territorial Sea, as defined in ORS 196.405;
- [(3)] (c) The nominal electric generating capacity, as defined in ORS 469.300, of the project does not exceed five megawatts; and
- [(4)] (d) A license under the Federal Power Act, 16 U.S.C. 791a et seq., is not required to either construct or operate the project.

(2) A wave energy project not covered by the exemption in subsection (1) of this section is exempt from the minimum standards specified in ORS 543.017 if:

- (a) The project generates electricity from wave energy;**
- (b) The project is located within Oregon’s Territorial Sea, as defined in ORS 196.405;**
- (c) The nominal electric generating capacity, as defined in ORS 469.300, of the project does not exceed five megawatts;**
- (d) A license under the Federal Power Act, 16 U.S.C. 791a et seq., is required to either construct or operate the project and the license provides for adaptive management to prevent or mitigate unexpected adverse impacts on the environment, fish and wildlife resources and commercial fishing and recreation; and**
- (e) The project is constructed and operated subject to an agreement with the Water Resources Department, State Department of Fish and Wildlife, Department of State Lands, Department of Land Conservation and Development, Department of Environmental Quality, State Department of Energy and State Parks and Recreation Department.**

(3) The agreement specified in subsection (2)(e) of this section:

- (a) Must provide for the collection and analysis of information necessary or desirable to determine, and measures to prevent or mitigate, the impact of the project on the environment, fish and wildlife resources and commercial fishing and recreation; and**

(b) May be developed with the assistance of an advisory group consisting of representatives of each local government and federally recognized Indian tribe that is affected by the wave energy project.

(4) The Water Resources Commission may adopt rules regarding wave energy projects that implement the policies of ORS 543.015 and that specify provisions for adaptive management and for the distribution of the information specified in subsection (3) of this section.

SECTION 2. ORS 543.014, as amended by section 1 of this 2009 Act, is amended to read:

543.014. *[(1)]* A wave energy project is exempt from regulation under this chapter, except as provided in ORS 543.050 (3), 543.055 and 543.060 if:

[(a)] (1) The project generates electricity from wave energy;

[(b)] (2) The project is located within Oregon's Territorial Sea, as defined in ORS 196.405;

[(c)] (3) The nominal electric generating capacity, as defined in ORS 469.300, of the project does not exceed five megawatts; and

[(d)] (4) A license under the Federal Power Act, 16 U.S.C. 791a et seq., is not required to either construct or operate the project.

[(2) A wave energy project not covered by the exemption in subsection (1) of this section is exempt from the minimum standards specified in ORS 543.017 if:]

[(a) The project generates electricity from wave energy;]

[(b) The project is located within Oregon's Territorial Sea, as defined in ORS 196.405;]

[(c) The nominal electric generating capacity, as defined in ORS 469.300, of the project does not exceed five megawatts;]

[(d) A license under the Federal Power Act, 16 U.S.C. 791a et seq., is required to either construct or operate the project and the license provides for adaptive management to prevent or mitigate unexpected adverse impacts on the environment, fish and wildlife resources and commercial fishing and recreation; and]

[(e) The project is constructed and operated subject to an agreement with the Water Resources Department, State Department of Fish and Wildlife, Department of State Lands, Department of Land Conservation and Development, Department of Environmental Quality, State Department of Energy and State Parks and Recreation Department.]

[(3) The agreement specified in subsection (2)(e) of this section:]

[(a) Must provide for the collection and analysis of information necessary or desirable to determine, and measures to prevent or mitigate, the impact of the project on the environment, fish and wildlife resources and commercial fishing and recreation; and]

[(b) May be developed with the assistance of an advisory group consisting of representatives of each local government and federally recognized Indian tribe that is affected by the wave energy project.]

[(4) The Water Resources Commission may adopt rules regarding wave energy projects that implement the policies of ORS 543.015 and that specify provisions for adaptive management and for the distribution of the information specified in subsection (3) of this section.]

SECTION 3. The amendments to ORS 543.014 by section 1 of this 2009 Act apply only to wave energy projects for which an application is made to the Department of State Lands on or before December 31, 2009, or on or before the date on which the Land Conservation and Development Commission adopts amendments to the Territorial Sea Plan pursuant to ORS 196.471 that address the siting of wave energy projects, whichever is earlier.

SECTION 4. The amendments to ORS 543.014 by section 2 of this 2009 Act become operative January 1, 2010.

SECTION 5. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate March 4, 2009

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Secretary of Senate

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President of Senate

Passed by House June 1, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State