

A-Engrossed
House Bill 3602

Ordered by the House February 12
Including House Amendments dated February 12

Sponsored by Representative JENSON (Pre-session 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.

[Makes forfeiture of hydroelectric project license due to nonuse subject to same presumption, rebuttal of presumption and process applicable for forfeiture of water right due to nonuse.]

[Deletes provision terminating license of hydroelectric project that transfers to state or municipal corporation by sale upon foreclosure, execution or other involuntary means.]

Specifies circumstances in which hydroelectric project license may be transferred to Umatilla County and in which transferred license is terminated. Sunsets on January 2, 2018.

Specifies rights and duties of new owner of hydroelectric project.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the loss of licenses by hydroelectric projects; and declaring an emergency.

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

4 **SECTION 1. (1) Notwithstanding ORS 543.440, and subject to subsections (2) and (3) of**
5 **this section, a license issued for a project under ORS 543.010 to 543.610 shall continue in ef-**
6 **fect following a transfer of the license, rights or property of the project to a county if:**

7 (a) **The project is located in the Umatilla Basin;**

8 (b) **The transfer of the license, rights or property is to Umatilla County;**

9 (c) **The transfer occurred through the foreclosure of a tax lien; and**

10 (d) **The transfer occurred on or before January 1, 2010.**

11 (2) **The license for a project described in subsection (1) of this section, and any water**
12 **right that is included in the license, shall terminate:**

13 (a) **Upon Umatilla County commencing to operate the project for purposes of hydroelec-**
14 **tric generation;**

15 (b) **Two years after transfer of the license, rights or property of the project to Umatilla**
16 **County, unless the county has transferred all county-held licenses, rights and property of the**
17 **project to a new owner that is unaffiliated with the county; or**

18 (c) **If a new owner of the project fails to comply with subsection (3) of this section prior**
19 **to operating the project.**

20 (3) **If a project is transferred as described in subsection (2)(b) of this section:**

21 (a) **The project license authorizing the use of water by the project for hydroelectric**
22 **purposes, and any water right included in the license, is subordinate in priority to any in-**
23 **stream water right for which a water right certificate is issued on or before the effective**
24 **date of this 2010 Act.**

25 (b) **Prior to the new owner operating the project, the Water Resources Department shall**

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.

1 **modify the conditions of the license, and of any water right included in the license, to include**
2 **an implementation plan for fish passage and fish screening approved by the State Depart-**
3 **ment of Fish and Wildlife as described in paragraph (c) of this subsection.**

4 **(c) The new owner of the project shall develop an implementation plan for fish passage**
5 **and fish screening for the project. The implementation plan shall identify project repairs or**
6 **modifications necessary for the project to meet the fish passage and fish screening criteria**
7 **of the State Department of Fish and Wildlife. The new owner shall submit the plan to the**
8 **State Department of Fish and Wildlife for approval. The department shall consult with the**
9 **Confederated Tribes of the Umatilla Indian Reservation before approving or disapproving a**
10 **submitted plan. Upon approval of a plan by the State Department of Fish and Wildlife, the**
11 **department shall notify the Water Resources Department to incorporate the approved plan**
12 **as a condition of the project license and of any water right included in the license.**

13 **(d) An implementation plan may contain provisions allowing the new owner to operate**
14 **the project while project repairs or modifications are in progress. An implementation plan**
15 **shall include, but need not be limited to, the following:**

16 **(A) Provisions for the protection of salmonids and lamprey.**

17 **(B) Interim measures identified by the State Department of Fish and Wildlife to reduce**
18 **entrainment and improve fish passage. The implementation plan shall require that the new**
19 **owner install the interim measures prior to the new owner operating the project.**

20 **(C) A schedule for making repairs or modifications that provides for all of the repairs**
21 **and modifications to be completed no later than four years after the project resumes opera-**
22 **tion.**

23 **(D) Provisions for monitoring, reporting and site access to the extent the State Depart-**
24 **ment of Fish and Wildlife considers necessary to ensure compliance with the implementation**
25 **plan.**

26 **(E) Procedures for immediately addressing significant fish mortality, or significant delay**
27 **in fish passage, resulting from project operations. The procedures shall include, at a mini-**
28 **imum, provisions for giving notice to the State Department of Fish and Wildlife and Water**
29 **Resources Department, and for suspending project operations until the cause of the mortal-**
30 **ity or delay is identified and remedied.**

31 **(4) Notwithstanding any provision of a license, certificate, permit or water right, a water**
32 **right that is included in the license of a project described in subsection (1) of this section is**
33 **not subject to termination based upon a failure to make beneficial use of water:**

34 **(a) During the period of any legal proceeding for the foreclosure of a tax lien;**

35 **(b) During a period, not exceeding two years, in which Umatilla County owns the project;**
36 **or**

37 **(c) During a period, not exceeding five years following transfer of the license, rights or**
38 **property of the project from Umatilla County to a new owner, if the new owner is actively**
39 **engaged in:**

40 **(A) Attempting to obtain government authorization for operation of the project; or**

41 **(B) Attempting to install interim measures to reduce entrainment and improve fish pas-**
42 **sage under an implementation plan.**

43 **(5) If the water right that is included in the license of a project described in subsection**
44 **(1) of this section is terminated based upon a failure to make beneficial use of water, the**
45 **Water Resources Department shall convert the water right to an in-stream water right as**

1 provided under ORS 543A.305.

2 (6) Subject to subsections (1) to (4) of this section, a new owner that acquires a license,
3 right or property of a project described in subsection (1) of this section following Umatilla
4 County ownership of the license, right or property is considered a successor or assignee of
5 an original licensee for purposes of ORS 543.440.

6 SECTION 2. Section 1 of this 2010 Act is repealed on January 2, 2018. The repeal of sec-
7 tion 1 of this 2010 Act does not terminate or alter the status, terms or conditions of any li-
8 cense, right, property, certificate, permit, water right or other authorization in effect
9 immediately prior to the repeal of section 1 of this 2010 Act.

10 SECTION 3. This 2010 Act being necessary for the immediate preservation of the public
11 peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect
12 on its passage.
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