

**Enrolled**  
**House Bill 3602**

Sponsored by Representative JENSON (Pre-session filed.)

CHAPTER .....

AN ACT

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

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

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

- (a) The project is located in the Umatilla Basin;
- (b) The transfer of the license, rights or property is to Umatilla County;
- (c) The transfer occurred through the foreclosure of a tax lien; and
- (d) The transfer occurred on or before January 1, 2010.

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

(a) Upon Umatilla County commencing to operate the project for purposes of hydroelectric generation;

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

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

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

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

(b) Prior to the new owner operating the project, the Water Resources Department shall modify the conditions of the license, and of any water right included in the license, to include an implementation plan for fish passage and fish screening approved by the State Department of Fish and Wildlife as described in paragraph (c) of this subsection.

(c) The new owner of the project shall develop an implementation plan for fish passage and fish screening for the project. The implementation plan shall identify project repairs or modifications necessary for the project to meet the fish passage and fish screening criteria of the State Department of Fish and Wildlife. The new owner shall submit the plan to the State Department of Fish and Wildlife for approval. The department shall consult with the Confederated Tribes of the Umatilla Indian Reservation before approving or disapproving a submitted plan. Upon approval of a plan by the State Department of Fish and Wildlife, the

department shall notify the Water Resources Department to incorporate the approved plan as a condition of the project license and of any water right included in the license.

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

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

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

(C) A schedule for making repairs or modifications that provides for all of the repairs and modifications to be completed no later than four years after the project resumes operation.

(D) Provisions for monitoring, reporting and site access to the extent the State Department of Fish and Wildlife considers necessary to ensure compliance with the implementation plan.

(E) Procedures for immediately addressing significant fish mortality, or significant delay in fish passage, resulting from project operations. The procedures shall include, at a minimum, provisions for giving notice to the State Department of Fish and Wildlife and Water Resources Department, and for suspending project operations until the cause of the mortality or delay is identified and remedied.

(4) Notwithstanding any provision of a license for a project described in subsection (1) of this section, the license is not subject to termination based upon a failure to make beneficial use of water:

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

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

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

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

(B) Attempting to install interim measures to reduce entrainment and improve fish passage under an implementation plan.

(5) If the water right that is included in the license of a project described in subsection (1) of this section is terminated based upon a failure to make beneficial use of water, the Water Resources Department shall convert the water right to an in-stream water right as provided under ORS 543A.305.

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

**SECTION 2.** Section 1 of this 2010 Act is repealed on January 2, 2018. The repeal of section 1 of this 2010 Act does not terminate or alter the status, terms or conditions of any license, right, property, certificate, permit, water right or other authorization in effect immediately prior to the repeal of section 1 of this 2010 Act.

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

**Passed by House February 16, 2010**

**Repassed by House February 23, 2010**

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Chief Clerk of House

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Speaker of House

**Passed by Senate February 22, 2010**

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President of Senate

**Received by Governor:**

.....M,....., 2010

**Approved:**

.....M,....., 2010

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2010

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Secretary of State