

## HOUSE AMENDMENTS TO HOUSE BILL 3602

By COMMITTEE ON ENVIRONMENT AND WATER

February 12

1 On page 1 of the printed bill, line 2, after the first semicolon delete the rest of the line.

2 In line 3, delete "543.300 and 543.440;"

3 Delete lines 5 through 30 and delete pages 2 and 3 and insert:

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

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

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

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

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

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

10 “(C) A schedule for making repairs or modifications that provides for all of the repairs  
11 and modifications to be completed no later than four years after the project resumes opera-  
12 tion.

13 “(D) Provisions for monitoring, reporting and site access to the extent the State De-  
14 partment of Fish and Wildlife considers necessary to ensure compliance with the implemen-  
15 tation plan.

16 “(E) Procedures for immediately addressing significant fish mortality, or significant delay  
17 in fish passage, resulting from project operations. The procedures shall include, at a mini-  
18 mum, provisions for giving notice to the State Department of Fish and Wildlife and Water  
19 Resources Department, and for suspending project operations until the cause of the mortal-  
20 ity or delay is identified and remedied.

21 “(4) Notwithstanding any provision of a license, certificate, permit or water right, a wa-  
22 ter right that is included in the license of a project described in subsection (1) of this section  
23 is not subject to termination based upon a failure to make beneficial use of water:

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

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

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

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

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

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

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

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

45 “SECTION 3. This 2010 Act being necessary for the immediate preservation of the public

1 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**  
2 **on its passage.”**

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