

House Bill 3602

Sponsored by Representative JENSON (Presession 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 **as introduced**.

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.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the loss of licenses by hydroelectric projects; creating new provisions; amending ORS
3 543.300 and 543.440; and declaring an emergency.

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

5 **SECTION 1.** ORS 543.300 is amended to read:

6 543.300. (1) Any license issued under ORS 543.010 to 543.610 shall take into consideration, and
7 shall be on, the following conditions:

8 [(1)] (a) That the proposed project shall be such as, in the judgment of the Water Resources
9 Commission, is well adapted to the development and utilization of the water power involved.

10 [(2)] (b) That the licensee shall construct and build the project according to the maps, plans and
11 specifications filed with and approved by the commission, and within the time fixed by the license
12 or by any lawful extension [*thereof*] **of the time fixed by the license**.

13 [(3)] (c) The operations of the licensee so far as they affect the use, storage and discharge from
14 storage of waters affected by the license, shall at all times be controlled by such reasonable rules
15 as the commission may prescribe for the protection of life, health and property, and in the interest
16 of the fullest practicable conservation and utilization of such waters for power purposes and for
17 other beneficial public uses, including recreational purposes. The licensee shall release water from
18 the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified
19 period of time, as the commission may prescribe.

20 [(4)] (d) That the licensee [*will*] **shall**:

21 (A) Maintain the project, and each part [*thereof*] **of the project**, in good order and repair and
22 in efficient operation, for the development and transmission of electricity to its reasonable capacity;

23 (B) [*shall*] Make all necessary renewals and replacements as required; and

24 (C) [*shall*] Maintain and operate the project, and all parts [*thereof*] **of the project**, conformably
25 to the rules of the commission not inconsistent with ORS 543.010 to 543.610.

26 [(5)] (e) That the licensee [*will*] **shall** pay to the state annually not more than \$1 for each
27 horsepower covered by the license. This sum shall constitute a first lien upon the project. [*which*]
28 **The** lien may be enforced by suit in equity or other appropriate proceeding, or payment [*thereof*]
29 may be enforced by the state in an action for debt. Payment of such license fees may be waived by
30 the commission during all or any part of the period of construction. The fees need not be uniform

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 throughout the entire period of the license, but may be for different amounts for different periods.
 2 The amount of the license fees, within the minimum and maximum limits herein specified, shall be
 3 determined by the commission and expressed in the license.

4 **(f) That nonuse of the licensed project for a period of five years creates a rebuttable**
 5 **presumption that the license is subject to forfeiture. Application and rebuttal of the**
 6 **presumption, and the process for license forfeiture, shall be the same as provided in ORS**
 7 **540.610 for forfeiture of a water right.**

8 [(6)] (g) Other and further conditions not inconsistent with ORS 543.010 to 543.610 as the com-
 9 mission may require in the public interest.

10 [(7)] (2) In issuing a license for a minor project of not more than 100 horsepower the commission
 11 may waive all or any of the conditions and requirements of ORS 543.010 to 543.610 except the period
 12 for which a license may be issued, and the annual charge as determined by the commission under
 13 subsection [(5)] (1)(e) of this section. In issuing licenses for projects in excess of 100 horsepower for
 14 which the applicants are required to secure permits and licenses from the United States as a con-
 15 dition precedent to the construction of the projects, the commission may waive and modify such of
 16 the terms, conditions and requirements of ORS 543.010 to 543.610, except the period for which a li-
 17 cense may be issued and the annual charge as determined by the commission under subsection [(5)]
 18 (1)(e) of this section, as the commission, by order, after full investigation and public hearing, shall
 19 find to make impracticable the construction of such projects. During the time that a licensee is not
 20 a public utility and does not sell electric energy, and does not sell bonds or other evidences of debt
 21 against the licensee's plant, the commission may waive the accounting and amortization require-
 22 ments of ORS 543.010 to 543.610, even [where] if the project involved exceeds 100 horsepower.

23 [(8)] (3) Subsection [(5)] (1)(e) of this section does not apply to a water right reauthorized pur-
 24 suant to ORS chapter 543A.

25 **SECTION 2.** ORS 543.440 is amended to read:

26 543.440. (1) [*No voluntary transfer of any license or any rights under a license or of any property*
 27 *acquired, constructed or operated pursuant to license issued under ORS 543.010 to 543.610 shall be*
 28 *made without written approval of the Water Resources Commission.*] **A license issued under ORS**
 29 **543.010 to 543.610, rights under the license or any property acquired, constructed or operated**
 30 **under the license may not be voluntarily transferred unless the Water Resources Commis-**
 31 **sion gives written approval for the transfer.**

32 (2) [*Any successor or assignee of any licensee under any project acquired, constructed or operated*
 33 *by licensee, whether by voluntary transfer approved by the commission or sale upon foreclosure, exe-*
 34 *cution or otherwise, shall be subject to all the terms and conditions of the license and of the provisions*
 35 *of ORS 543.010 to 543.610 to the same extent as though the successor or assignee was the original*
 36 *licensee thereunder. Any mortgage, deed of trust, or other lien suffered or created upon any such*
 37 *project shall be subject and subordinate to all the terms and conditions of ORS 543.010 to 543.610.*] **Except as provided in subsection (3) of this section, if a project acquired, constructed or**
 38 **operated by a licensee under ORS 543.010 to 543.610 passes by voluntary transfer or by sale**
 39 **upon foreclosure, execution or other involuntary means, the successor or assignee of the**
 40 **licensee is subject to ORS 543.010 to 543.610 and the terms and conditions of the license to**
 41 **the same extent as if the successor or assignee was the original licensee. A mortgage, deed**
 42 **of trust or other lien suffered or created upon the project is subject and subordinate to ORS**
 43 **543.010 to 543.610.**

44 (3) [*However, the provisions of this section shall not apply to any transfer, voluntary or involun-*
 45

1 tary, to the state or any municipal corporation thereof, and upon such transfer the license shall termi-
 2 nate.] **Subsection (2) of this section does not apply to the voluntary transfer of a project to**
 3 **the state or a municipal corporation. Upon the voluntary transfer of a project to the state**
 4 **or a municipal corporation, the license issued under ORS 543.010 to 543.610 for the project**
 5 **shall terminate.**

6 **SECTION 3. (1) The amendments to ORS 543.300 by section 1 of this 2010 Act apply to**
 7 **license forfeitures for which an administrative order becomes final on or after the effective**
 8 **date of this 2010 Act or for which an appeal is pending on the effective date of this 2010 Act.**
 9 **If the Water Resources Commission has issued an order described in this section that pro-**
 10 **vides for the forfeiture of a license issued under ORS 543.010 to 543.610 due to nonuse, upon**
 11 **request or motion by the licensee, the commission or court shall vacate the order and re-**
 12 **mand the matter for administrative hearing consistent with the amendments to ORS 543.300**
 13 **by section 1 of this 2010 Act.**

14 **(2) The amendments to ORS 543.440 by section 2 of this 2010 Act apply to the voluntary**
 15 **or involuntary transfer of a project for which the state or a municipal corporation takes title**
 16 **to the project on or after January 1, 2009.**

17 **SECTION 4. This 2010 Act being necessary for the immediate preservation of the public**
 18 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**
 19 **on its passage.**