

SENATE AMENDMENTS TO A-ENGROSSED SENATE BILL 837

By JOINT COMMITTEE ON WAYS AND MEANS

June 27

1 On page 2 of the printed A-engrossed bill, delete lines 14 through 45 and delete pages 3 and 4.

2 On page 5, delete lines 1 through 30 and insert:

3 “**SECTION 4.** ORS 543.765 is amended to read:

4 “543.765. (1) Notwithstanding ORS 537.145 and ORS chapter 543, the holder of a water right may
5 apply to the Water Resources Department for a certificate to use water for hydroelectric purposes
6 within an artificial delivery system under the applicant’s existing water right. If the proposed hy-
7 droelectric project [*qualifies*] **meets the applicable capacity limitation under this subsection and**
8 **meets either the qualifications** for a Federal Energy Regulatory Commission exemption **from li-**
9 **icensing or similar qualifications of another federal agency responsible for authorizing the**
10 **project**, the applicant may use the expedited application process under this section **regardless of**
11 **which federal agency issues the authorization. To qualify under this subsection:**

12 “(a) **For a project that is to be built as part of an existing dam, the capacity may not**
13 **exceed five megawatts. Subsection (5)(b) of this section does not apply to a project described**
14 **in this paragraph.**

15 “(b) **For in-conduit projects, the capacity may not exceed 15 megawatts for a nonmunic-**
16 **ipal facility or 40 megawatts for a municipal facility. Projects described in this paragraph**
17 **must comply with subsection (5)(b) of this section.**

18 “(2) An application, which shall be on a form provided by the **Water Resources** Department,
19 for a hydroelectric certificate under this section must include:

20 “(a) The certificate number, or decree reference if no confirming certificate has been issued, of
21 the applicant’s existing water right associated with the proposed hydroelectric project.

22 “(b) A copy of **either** a Federal Energy Regulatory Commission exemption application **or a**
23 **similar application submitted to the federal agency responsible for authorizing the project,**
24 if applicable.

25 “(c) A proposed schedule of annual water use and an estimate of the maximum power generation
26 of the proposed hydroelectric project.

27 “(d) A statement by the applicant that the amount of water used by the proposed hydroelectric
28 project will not exceed the amount authorized and used under the applicant’s existing water right
29 for beneficial use without waste.

30 “(e) A statement that the applicant owns or otherwise controls the water conveyance system.

31 “(f) An application processing fee of \$500. The department shall deposit fees collected under this
32 section into the Water Resources Department Hydroelectric Fund established pursuant to ORS
33 536.015.

34 “(g) A map or drawing and all other data concerning the proposed hydroelectric project, as may
35 be prescribed by the department. The map or drawing must be of sufficient quality and scale to es-

1 tablish the location of the existing point of diversion and the proposed location of the hydroelectric
2 [facility] project.

3 “(h) If the water to be used for the proposed hydroelectric project is delivered by a public entity
4 other than the applicant for a certificate under this section, a statement from that entity that the
5 entity will be able to deliver water as described in the application.

6 “(i) Evidence that the water has been used over the past five years according to the terms and
7 conditions of the applicant’s existing water right described in paragraph (a) of this subsection.

8 “(3) If an applicant provides the information required by subsection (2) of this section:

9 “(a) The Water Resources Department shall provide notice to both the State Department of Fish
10 and Wildlife and the public, and provide a 30-day period for public comment.

11 “(b) The Water Resources Department may issue a final order and certificate to use water for
12 hydroelectric purposes upon making a final determination that the proposed hydroelectric use does
13 not impair, or is not detrimental to, the public interest in the manner provided in ORS 537.170 (8).

14 “(4) If the Water Resources Department determines that public interest issues have been iden-
15 tified, the department shall issue a final order denying the application. The department shall also
16 issue a final order denying the application if the department identifies issues related to the public
17 interest. If the applicant does not appeal the final order as provided in ORS chapter 183 and, within
18 one year of the department’s final order denying the applicant’s application, files an application with
19 the department for a preliminary permit to operate a hydroelectric project as provided in ORS
20 537.130 and 543.210, the applicant shall receive a credit toward the applicant’s application fees in
21 the amount of \$500.

22 “(5) At a minimum, a certificate issued under this section must contain the following conditions:

23 “(a) **Except as provided in paragraph (b) of this subsection**, fish screens, by-pass devices and
24 fish passages as required by the State Department of Fish and Wildlife.

25 “(b) **If the application is for a hydroelectric project that is to be installed in or on a**
26 **conduit delivery system, the certificate does not need to include a requirement for fish pas-**
27 **sage at the diversion point for the conduit delivery system if:**

28 “(A) **The hydroelectric generating equipment for the project is not located on a dam;**

29 “(B) **The hydroelectric generating equipment for the project is installed within or at the**
30 **end of a conduit delivery system;**

31 “(C) **The conduit delivery system is operated for the distribution of water for agricul-**
32 **tural, municipal or industrial consumption; and**

33 “(D) **Except as provided in subsection (15) of this section, the certificate includes a con-**
34 **dition for the making of annual payments under subsection (14) of this section.**

35 “[b] (c) That use of water be limited to periods when the applicant’s existing water right is
36 put to beneficial use without waste and that the amount used is not greater than the quantity of
37 water diverted to satisfy the authorized specific use under the existing water right described in
38 subsection (2)(a) of this section.

39 “[c] (d) That use of water be limited by rate, duty, season and any other limitations of the
40 applicant’s existing water right described in subsection (2)(a) of this section.

41 “[d] (e) That the applicant measure and report the quantity of water diverted.

42 “[e] *Any other conditions the Water Resources Department deems necessary to protect the public*
43 *interest.*]

44 “(f) That the restrictions established in ORS 543.660 shall apply as conditions of use to a cer-
45 tificate issued under this section to a district as defined in ORS 543.655.

1 “(g) That a certificate issued under this section shall be invalidated upon a change in the point
2 of diversion of the existing water right described in subsection (2)(a) of this section.

3 “[*h*] *The Water Resources Department shall conduct a review of certificates issued under this*
4 *section and shall issue a final order and a superseding certificate that corresponds to any changes or*
5 *adjustments made to the applicant’s existing water right described in subsection (2)(a) of this section.*]

6 “[*i*] **(h)** That the right to use water under a certificate issued under this section is invalidated
7 if the [*Federal Energy Regulatory Commission exemption*] **federal exemption or authorization** re-
8 lated to the certificate is canceled or invalidated.

9 **“(i) Any other conditions the Water Resources Department deems necessary to protect**
10 **the public interest.**

11 **“(6) The Water Resources Department shall conduct a review of certificates issued under**
12 **this section and shall issue a final order and a superseding certificate that corresponds to**
13 **any changes or adjustments made to the applicant’s existing water right described in sub-**
14 **section (2)(a) of this section.**

15 **“(7) Subsection (5)(b) of this section does not affect any requirement for fish passage**
16 **applicable to a project that is otherwise required by law.**

17 **“(8) Upon request, the State Department of Fish and Wildlife and the Water Resources**
18 **Department shall arrange a preapplication meeting with a person to discuss the require-**
19 **ments associated with the installation of a hydroelectric project in an artificial delivery**
20 **system.**

21 “[*6*] **(9)** A certificate issued under this section may not have its own priority date. The **Water**
22 **Resources** Department may not regulate for or against any certificate issued under this section
23 based on the priority date of the certificate.

24 “[*7*] **(10)** A certificate issued under this section does not grant a right to divert water for hy-
25 droelectric purposes.

26 “[*8*] **(11)** A certificate issued under this section may not be included in the determination of
27 injury to other water rights pursuant to ORS chapter 540.

28 “[*9*] **(12)** A certificate issued under this section is subject to review 50 years after the date of
29 issuance and pursuant to the terms described in this section.

30 “[*10*] **(13)** Failure to fully develop and put to use a certificate issued under this section within
31 five years of issuance invalidates the hydroelectric certificate.

32 **“(14)(a) If a certificate contains a condition described in subsection (5)(b) of this section**
33 **for annual payments, the payment shall be collected as provided in paragraph (c) of this**
34 **subsection. Except as provided in paragraph (b) of this subsection, the annual payment**
35 **amount must be:**

36 **“(A) Except as provided in subparagraph (D) of this paragraph, for the first five years,**
37 **four times the base hydropower fee amount assessed for the project under ORS 543.078 for**
38 **the year.**

39 **“(B) Except as provided in subparagraph (D) of this paragraph, for the 6th through 10th**
40 **years, eight times the base hydropower fee amount assessed for the project under ORS**
41 **543.078 for the year.**

42 **“(C) Except as provided in subparagraph (D) of this paragraph, after the 10th year, 15**
43 **times the base hydropower fee amount assessed for the project under ORS 543.078 for the**
44 **year.**

45 **“(D) \$100 for any year in which the base hydropower fee amount assessed for the project**

1 under ORS 543.078 is less than \$100.

2 “(b) If the certificate is for a hydroelectric project that will operate on a partial-year
3 basis, the fee shall be three-fifths of the amount established in paragraph (a) of this sub-
4 section.

5 “(c) The Water Resources Department shall collect the fee on behalf of the State De-
6 partment of Fish and Wildlife and forward the fee moneys for crediting to the Fish Passage
7 Restoration Subaccount created under section 1 of this 2013 Act.

8 “(15)(a) Notwithstanding subsection (14) of this section, a certificate for a project to in-
9 stall hydroelectric generating equipment as described in subsection (5)(b) of this section may
10 provide for the termination of annual payments being made under subsection (14) of this
11 section if, after the date the project commences operation:

12 “(A) The project provides for fish passages;

13 “(B) There is an agreement between the applicant and the State Department of Fish and
14 Wildlife providing for fish passages associated with the project; or

15 “(C) A waiver or exemption has been issued under ORS 509.585 for the project.

16 “(b) A certificate for a project to install hydroelectric generating equipment as described
17 in subsection (5)(b) of this section does not need to include a condition for the making of
18 annual payments under subsection (14) of this section if:

19 “(A) There is an agreement between the applicant and the State Department of Fish and
20 Wildlife providing for the conduit delivery system to have fish passages associated with the
21 project; or

22 “(B) A waiver or exemption has been issued under ORS 509.585 for the project.

23 “[11] (16) If a certificate under this section is issued, the certificate holder must pay fees
24 consistent with the fees described in ORS 543.078. Failure to pay a required fee invalidates a cer-
25 tificate issued under this section.

26 “[12] (17) The **Water Resources** Department shall issue invoices for fees required under this
27 section, and the state shall have a preference lien for delinquent fees, as provided in ORS 543.082.

28 “[13] (18) An applicant for a certificate issued under this section must provide evidence of a
29 Federal Energy Regulatory Commission exemption **or approval under a similar process by the**
30 **federal agency responsible for authorizing the project** before a certificate can be issued, if ap-
31 plicable.

32 “[14] (19) Nothing in this section shall alter the preference of municipalities in ORS 543.260
33 (3) and 543.270.”