

**PROPOSED AMENDMENTS TO
SENATE BILL 837**

1 On page 1 of the printed bill, delete lines 5 through 30 and delete pages
2 2 through 5 and insert:

3 **“SECTION 1. (1) There is created a Fish Passage Restoration Sub-**
4 **account within the Fish Passage Fund established under ORS 497.139.**
5 **Fees described in ORS 543.765 (14) shall be paid into the subaccount.**
6 **The State Department of Fish and Wildlife may solicit and accept ad-**
7 **ditional moneys for crediting to the subaccount, including but not**
8 **limited to federal funds, appropriations, donations, grants from non-**
9 **governmental entities and moneys from other public or private**
10 **sources. Any interest earned by moneys within the subaccount shall**
11 **be credited to the subaccount.**

12 **“(2) The department shall use the subaccount moneys to fund pri-**
13 **ority fish passage restoration projects. The department shall give pri-**
14 **ority to the funding of projects on the statewide inventory of artificial**
15 **obstructions priority list described in ORS 509.585, with an emphasis**
16 **on inventory projects that pay fees under ORS 543.765 (14), and give**
17 **priority to projects that have the ability to leverage matching dollars.**
18 **The department may not use subaccount moneys to fund culvert**
19 **projects or the projects of state agencies. The department may not**
20 **expend more than six percent of the annual contributions to the sub-**
21 **account to pay staffing costs associated with the advancement of**
22 **capital projects funded by the subaccount.**

1 **“SECTION 2. (1) The Fish Passage Task Force established pursuant**
2 **to ORS 509.590 shall provide advice to the State Department of Fish**
3 **and Wildlife regarding the projects to be funded and the expenditures**
4 **to be made from the Fish Passage Restoration Subaccount created**
5 **under section 1 of this 2013 Act.**

6 **“(2) The department shall maintain a record of all moneys deposited**
7 **to or expended from the subaccount. The department shall make an**
8 **annual report of the deposits and expenditures available to the public**
9 **on the department’s website.**

10 **“SECTION 3. (1) The Water Resources Department and the State**
11 **Department of Fish and Wildlife shall jointly review the adequacy of**
12 **the amount and structure of the annual fee described in ORS 543.765**
13 **(14) in achieving the dual in-conduit energy development and fish**
14 **passage restoration objectives of ORS 543.765 and review the**
15 **functionality of the Fish Passage Restoration Subaccount and ex-**
16 **penditures made from the subaccount. The departments shall consult**
17 **with relevant interested parties in conducting the review.**

18 **“(2) The departments shall commence the review described in sub-**
19 **section (1) of this section five years after the effective date of this 2013**
20 **Act. Upon completing the review, the departments shall report any**
21 **findings and recommendations regarding the adequacy of the fee**
22 **amount and structure or the functionality of the subaccount or ex-**
23 **penditures made from the subaccount, including any recommendations**
24 **for legislation, to an interim committee of the Legislative Assembly**
25 **dealing with natural resources no later than October 1, 2018.**

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

27 **“543.765. (1) Notwithstanding ORS 537.145 and ORS chapter 543, the**
28 **holder of a water right may apply to the Water Resources Department for a**
29 **certificate to use water for hydroelectric purposes within an artificial deliv-**
30 **ery system under the applicant’s existing water right. If the proposed hy-**

1 droelectric project qualifies for [a] **an applicable** Federal Energy Regulatory
2 Commission exemption **or for treatment under a similar commission**
3 **process**, the applicant may use the expedited application process under this
4 section.

5 “(2) An application, which shall be on a form provided by the department,
6 for a hydroelectric certificate under this section must include:

7 “(a) The certificate number, or decree reference if no confirming certifi-
8 cate has been issued, of the applicant’s existing water right associated with
9 the proposed hydroelectric project.

10 “(b) A copy of a Federal Energy Regulatory Commission exemption ap-
11 plication, if applicable.

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

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

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

20 “(f) An application processing fee of \$500. The department shall deposit
21 fees collected under this section into the Water Resources Department Hy-
22 droelectric Fund established pursuant to ORS 536.015.

23 “(g) A map or drawing and all other data concerning the proposed hy-
24 droelectric project, as may be prescribed by the department. The map or
25 drawing must be of sufficient quality and scale to establish the location of
26 the existing point of diversion and the proposed location of the hydroelectric
27 [facility] **project**.

28 “(h) If the water to be used for the proposed hydroelectric project is de-
29 livered by a public entity other than the applicant for a certificate under this
30 section, a statement from that entity that the entity will be able to deliver

1 water as described in the application.

2 “(i) Evidence that the water has been used over the past five years ac-
3 cording to the terms and conditions of the applicant’s existing water right
4 described in paragraph (a) of this subsection.

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

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

10 “(b) The Water Resources Department may issue a final order and certifi-
11 cate to use water for hydroelectric purposes upon making a final determi-
12 nation that the proposed hydroelectric use does not impair, or is not
13 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
15 issues have been identified, the department shall issue a final order denying
16 the application. The department shall also issue a final order denying the
17 application if the department identifies issues related to the public interest.
18 If the applicant does not appeal the final order as provided in ORS chapter
19 183 and, within one year of the department’s final order denying the
20 applicant’s application, files an application with the department for a pre-
21 liminary permit to operate a hydroelectric project as provided in ORS 537.130
22 and 543.210, the applicant shall receive a credit toward the applicant’s ap-
23 plication fees in the amount of \$500.

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

26 “(a) Fish screens[,] **and** by-pass devices [*and fish passages*] as required
27 by the State Department of Fish and Wildlife.

28 “(b) **Except as provided in this paragraph, fish passages as required**
29 **by the State Department of Fish and Wildlife. If the application is for**
30 **a hydroelectric project that is to be installed in or on a conduit deliv-**

1 **ery system, the certificate does not need to include a requirement for**
2 **fish passage at the diversion point for the conduit delivery system if:**

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

5 **“(B) The hydroelectric generating equipment for the project is in-**
6 **stalled within or at the end of a conduit delivery system;**

7 **“(C) The conduit portion of the system is operated for the distrib-**
8 **ution of water for agricultural, municipal or industrial consumption;**
9 **and**

10 **“(D) Except as provided in subsection (15) of this section, the cer-**
11 **tificate includes a condition for the making of annual payments under**
12 **subsection (14) of this section.**

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

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

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

23 **“[(e) Any other conditions the Water Resources Department deems necessary**
24 **to protect the public interest.]**

25 **“(f) That the restrictions established in ORS 543.660 shall apply as con-**
26 **ditions of use to a certificate issued under this section to a district as de-**
27 **finied in ORS 543.655.**

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

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

5 “[(i)] **(h)** That the right to use water under a certificate issued under this
6 section is invalidated if the Federal Energy Regulatory Commission ex-
7 emption related to the certificate is canceled or invalidated.

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

10 **“(6) The Water Resources Department shall conduct a review of**
11 **certificates issued under this section and shall issue a final order and**
12 **a superseding certificate that corresponds to any changes or adjust-**
13 **ments 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 require-**
16 **ment for fish passage applicable to a project that is otherwise required**
17 **by law.**

18 **“(8) Upon request, the State Department of Fish and Wildlife and**
19 **the Water Resources Department will arrange a preapplication meet-**
20 **ing with a person to discuss the requirements associated with the in-**
21 **stallation of a hydroelectric project in an artificial delivery system.**

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

26 “[(7)] **(10)** A certificate issued under this section does not grant a right
27 to divert water for hydroelectric purposes.

28 “[(8)] **(11)** A certificate issued under this section may not be included in
29 the determination of injury to other water rights pursuant to ORS chapter
30 540.

1 “[(9)] **(12)** A certificate issued under this section is subject to review 50
2 years after the date of issuance and pursuant to the terms described in this
3 section.

4 “[(10)] **(13)** Failure to fully develop and put to use a certificate issued
5 under this section within five years of issuance invalidates the hydroelectric
6 certificate.

7 **“(14)(a) If a certificate contains a condition described in subsection
8 (5)(b) of this section for annual payments, the payment shall be col-
9 lected as provided in paragraph (c) of this subsection. Except as pro-
10 vided in paragraph (b) of this subsection, the annual payment amount
11 must be:**

12 **“(A) For the first five years, \$100 plus four times the base
13 hydropower fee amount assessed for the project under ORS 543.078 for
14 the year.**

15 **“(B) For the 6th through 10th years, \$100 plus eight times the base
16 hydropower fee amount assessed for the project under ORS 543.078 for
17 the year.**

18 **“(C) After the 10th year, \$100 plus 15 times the base hydropower fee
19 amount assessed for the project under ORS 543.078 for the year.**

20 **“(b) If the certificate is for a hydroelectric project that will operate
21 on a partial-year basis, the fee shall be the applicable amount deter-
22 mined under paragraph (a) of this subsection multiplied by three-
23 fifths.**

24 **“(c) The Water Resources Department shall collect the fee on behalf
25 of the State Department of Fish and Wildlife and forward the fee
26 moneys for crediting to the Fish Passage Fund subaccount created
27 under section 1 of this 2013 Act.**

28 **“(15)(a) Notwithstanding subsection (14) of this section, a certificate
29 for a project to install hydroelectric generating equipment as described
30 in subsection (5)(b) of this section may provide for the termination of**

1 annual payments being made under subsection (14) of this section if
2 the project provides for fish passages after the date the project com-
3 mences operation.

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

8 “(A) There is an agreement between the applicant and the State
9 Department of Fish and Wildlife providing for the conduit delivery
10 system to have fish passages; or

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

13 “[11] (16) If a certificate under this section is issued, the certificate
14 holder must pay fees consistent with the fees described in ORS 543.078.
15 Failure to pay a required fee invalidates a certificate issued under this sec-
16 tion.

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

20 “[13] (18) An applicant for a certificate issued under this section must
21 provide evidence of a Federal Energy Regulatory Commission exemption **or**
22 **treatment under a similar commission process** before a certificate can
23 be issued, if applicable.

24 “[14] (19) Nothing in this section shall alter the preference of munici-
25 palities in ORS 543.260 (3) and 543.270.

26 **“SECTION 5. The amendments to ORS 543.765 by section 4 of this**
27 **2013 Act apply to hydroelectric projects for which a certificate appli-**
28 **cation is filed under ORS 543.765 on or after the effective date of this**
29 **2013 Act.**

30 **“SECTION 6. This 2013 Act being necessary for the immediate**

1 **preservation of the public peace, health and safety, an emergency is**
2 **declared to exist, and this 2013 Act takes effect on its passage.”.**

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