

**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 those statewide priority list projects that also pay fees under ORS**
17 **543.765 (14), and give priority to projects that have the ability to lev-**
18 **erage matching dollars. The department may not use subaccount**
19 **moneys to fund culvert projects or projects that are state-owned**
20 **structures. The department may not expend more than six percent of**
21 **the annual contributions to the subaccount to pay staffing costs as-**
22 **sociated with the advancement of capital projects funded by the sub-**

1 **account.**

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

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

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

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

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

28 **“543.765. (1) Notwithstanding ORS 537.145 and ORS chapter 543, the**
29 **holder of a water right may apply to the Water Resources Department for a**
30 **certificate to use water for hydroelectric purposes within an artificial deliv-**

1 ery system under the applicant’s existing water right. If the proposed hy-
2 droelectric project [*qualifies*] **meets the applicable capacity limitation**
3 **under this subsection and meets the qualifications** for a Federal Energy
4 Regulatory Commission exemption **from licensing**, the applicant may use
5 the expedited application process under this section **regardless of which**
6 **federal agency is responsible for authorizing the project. To qualify**
7 **under this subsection:**

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

11 “(b) For in-conduit projects, the capacity may not exceed 15 mega-
12 watts for a nonmunicipal facility or 40 megawatts for a municipal fa-
13 cility. Projects described in this paragraph must comply with
14 subsection (5)(b) of this section.

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

17 “(a) The certificate number, or decree reference if no confirming certif-
18 icate has been issued, of the applicant’s existing water right associated with
19 the proposed hydroelectric project.

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

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

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

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

30 “(f) An application processing fee of \$500. The department shall deposit

1 fees collected under this section into the Water Resources Department Hy-
2 droelectric Fund established pursuant to ORS 536.015.

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

8 “(h) If the water to be used for the proposed hydroelectric project is de-
9 livered by a public entity other than the applicant for a certificate under this
10 section, a statement from that entity that the entity will be able to deliver
11 water as described in the application.

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

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

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

20 “(b) The Water Resources Department may issue a final order and certifi-
21 cate to use water for hydroelectric purposes upon making a final determi-
22 nation that the proposed hydroelectric use does not impair, or is not
23 detrimental to, the public interest in the manner provided in ORS 537.170 (8).

24 “(4) If the Water Resources Department determines that public interest
25 issues have been identified, the department shall issue a final order denying
26 the application. The department shall also issue a final order denying the
27 application if the department identifies issues related to the public interest.
28 If the applicant does not appeal the final order as provided in ORS chapter
29 183 and, within one year of the department’s final order denying the
30 applicant’s application, files an application with the department for a pre-

1 liminary permit to operate a hydroelectric project as provided in ORS 537.130
2 and 543.210, the applicant shall receive a credit toward the applicant's ap-
3 plication fees in the amount of \$500.

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

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

8 “(b) **Except as provided in this paragraph, fish passages as required**
9 **by the State Department of Fish and Wildlife. If the application is for**
10 **a hydroelectric project that is to be installed in or on a conduit deliv-**
11 **ery system, the certificate does not need to include a requirement for**
12 **fish passage at the diversion point for the conduit delivery system if:**

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

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

17 “(C) **The conduit delivery system is operated for the distribution of**
18 **water for agricultural, municipal or industrial consumption; and**

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

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

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

30 “[*d*] (e) That the applicant measure and report the quantity of water

1 diverted.

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

4 “(f) That the restrictions established in ORS 543.660 shall apply as con-
5 ditions of use to a certificate issued under this section to a district as de-
6 fined in ORS 543.655.

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

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

14 “[i] **(h)** That the right to use water under a certificate issued under this
15 section is invalidated if the [*Federal Energy Regulatory Commission ex-*
16 *emption*] **federal exemption or authorization** related to the certificate is
17 canceled or invalidated.

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

20 “**(6) The Water Resources Department shall conduct a review of**
21 **certificates issued under this section and shall issue a final order and**
22 **a superseding certificate that corresponds to any changes or adjust-**
23 **ments made to the applicant’s existing water right described in sub-**
24 **section (2)(a) of this section.**

25 “**(7) Subsection (5)(b) of this section does not affect any require-**
26 **ment for fish passage applicable to a project that is otherwise required**
27 **by law.**

28 “**(8) Upon request, the State Department of Fish and Wildlife and**
29 **the Water Resources Department shall arrange a preapplication**
30 **meeting with a person to discuss the requirements associated with the**

1 **installation of a hydroelectric project in an artificial delivery system.**

2 “[6] (9) A certificate issued under this section may not have its own
3 priority date. The **Water Resources** Department may not regulate for or
4 against any certificate issued under this section based on the priority date
5 of the certificate.

6 “[7] (10) A certificate issued under this section does not grant a right
7 to divert water for hydroelectric purposes.

8 “[8] (11) A certificate issued under this section may not be included in
9 the determination of injury to other water rights pursuant to ORS chapter
10 540.

11 “[9] (12) A certificate issued under this section is subject to review 50
12 years after the date of issuance and pursuant to the terms described in this
13 section.

14 “[10] (13) Failure to fully develop and put to use a certificate issued
15 under this section within five years of issuance invalidates the hydroelectric
16 certificate.

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

22 **“(A) Except as provided in subparagraph (D) of this paragraph, for
23 the first five years, four times the base hydropower fee amount as-
24 sessed for the project under ORS 543.078 for the year.**

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

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

1 **“(D) \$100 for any year in which the base hydropower fee amount**
2 **assessed for the project under ORS 543.708 is less than \$100.**

3 **“(b) If the certificate is for a hydroelectric project that will operate**
4 **on a partial-year basis, the fee shall be three-fifths of the amount es-**
5 **tablished in paragraph (a) of this subsection.**

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

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

15 **“(A) The project provides for fish passages;**

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

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

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

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

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

30 **“[(11)] (16) If a certificate under this section is issued, the certificate**

1 holder must pay fees consistent with the fees described in ORS 543.078.
2 Failure to pay a required fee invalidates a certificate issued under this sec-
3 tion.

4 “[~~(12)~~] **(17)** The **Water Resources** Department shall issue invoices for
5 fees required under this section, and the state shall have a preference lien
6 for delinquent fees, as provided in ORS 543.082.

7 “[~~(13)~~] **(18)** An applicant for a certificate issued under this section must
8 provide evidence of a Federal Energy Regulatory Commission exemption **or**
9 **treatment under a similar commission process** before a certificate can
10 be issued, if applicable.

11 “[~~(14)~~] **(19)** Nothing in this section shall alter the preference of munici-
12 palities in ORS 543.260 (3) and 543.270.

13 **“SECTION 5. The amendments to ORS 543.765 by section 4 of this**
14 **2013 Act apply to hydroelectric projects for which a certificate appli-**
15 **cation is filed under ORS 543.765 on or after the effective date of this**
16 **2013 Act.**

17 **“SECTION 6. This 2013 Act being necessary for the immediate**
18 **preservation of the public peace, health and safety, an emergency is**
19 **declared to exist, and this 2013 Act takes effect on its passage.”.**

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