

**PROPOSED AMENDMENTS TO
SENATE BILL 360**

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating
2 new provisions; amending ORS 543.765;”.

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

4 **“SECTION 1.** ORS 543.765 is amended to read:

5 “543.765. (1) Notwithstanding ORS 537.145 and ORS chapter 543, the
6 holder of a water right may apply to the Water Resources Department for a
7 certificate to use water for hydroelectric purposes within an artificial deliv-
8 ery system under the applicant’s existing water right. If the proposed hy-
9 droelectric project qualifies for a Federal Energy Regulatory Commission
10 exemption, the applicant may use the expedited application process under
11 this section.

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

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

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

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

21 “(d) A statement by the applicant that the amount of water used by the
22 proposed hydroelectric project will not exceed the amount authorized and

1 used under the applicant's existing water right for beneficial use without
2 waste.

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

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

8 “(g) A map or drawing and all other data concerning the proposed hy-
9 droelectric project, as may be prescribed by the department. The map or
10 drawing must be of sufficient quality and scale to establish the location of
11 the existing point of diversion and the proposed location of the hydroelectric
12 facility.

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

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

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

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

25 “(b) The Water Resources Department may issue a final order and certif-
26 icate to use water for hydroelectric purposes upon making a final determi-
27 nation that the proposed hydroelectric use does not impair, or is not
28 detrimental to, the public interest in the manner provided in ORS 537.170 (8).

29 “(4) If the Water Resources Department determines that public interest
30 issues have been identified, the department shall issue a final order denying

1 the application. The department shall also issue a final order denying the
2 application if the department identifies issues related to the public interest.
3 If the applicant does not appeal the final order as provided in ORS chapter
4 183 and, within one year of the department's final order denying the
5 applicant's application, files an application with the department for a pre-
6 liminary permit to operate a hydroelectric project as provided in ORS 537.130
7 and 543.210, the applicant shall receive a credit toward the applicant's ap-
8 plication fees in the amount of \$500.

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

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

13 “**(b) Except as provided in this paragraph, fish passages as required**
14 **by the State Department of Fish and Wildlife. If the application is for**
15 **hydroelectric generating equipment that is to be installed in or on a**
16 **conduit delivery system, the certificate does not need to include a re-**
17 **quirement for fish passages at the diversion point for the conduit de-**
18 **livery system if:**

19 “**(A) The conduit delivery system is not on or in a dam structure;**

20 “**(B) The conduit system is operated for the distribution of water**
21 **for agricultural, municipal or industrial consumption; and**

22 “**(C) Except as provided in subsection (15) of this section, the cer-**
23 **tificate includes a condition for the making of annual payments under**
24 **subsection (14) of this section.**

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

30 “[*c*] **(d)** That use of water be limited by rate, duty, season and any other

1 limitations of the applicant's existing water right described in subsection
2 (2)(a) of this section.

3 “[~~(d)~~] **(e)** That the applicant measure and report the quantity of water
4 diverted.

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

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

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

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

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

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

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

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

30 “**(8) Upon request, the State Department of Fish and Wildlife and**

1 **the Water Resources Department will arrange a preapplication meet-**
2 **ing with a person to discuss the fish supportive measure requirements**
3 **associated with the installation of a hydroelectric project in an artifi-**
4 **cial delivery system.**

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

9 “[7] (10) A certificate issued under this section does not grant a right
10 to divert water for hydroelectric purposes.

11 “[8] (11) A certificate issued under this section may not be included in
12 the determination of injury to other water rights pursuant to ORS chapter
13 540.

14 “[9] (12) A certificate issued under this section is subject to review 50
15 years after the date of issuance and pursuant to the terms described in this
16 section.

17 “[10] (13) Failure to fully develop and put to use a certificate issued
18 under this section within five years of issuance invalidates the hydroelectric
19 certificate.

20 **“(14)(a) If a certificate contains a condition described in subsection**
21 **(5)(b) of this section for annual payments, the payment shall be made**
22 **to a subaccount of the Fish Passage Fund established under ORS**
23 **497.139. Except as provided in paragraph (b) of this subsection, the**
24 **annual payment amount must be:**

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

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

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

3 “(b) If the certificate is for hydroelectric generating equipment that
4 will operate on a partial-year basis, the fee shall be the applicable
5 amount determined under paragraph (a) of this subsection multiplied
6 by three-fifths.

7 “(c) The Water Resources Department may collect the fee on behalf
8 of the State Department of Fish and Wildlife and forward the fee
9 moneys for crediting to the subaccount described in paragraph (a) of
10 this subsection.

11 “(15)(a) Notwithstanding subsection (14) of this section, a certificate
12 for a hydroelectric generating equipment installation described in
13 subsection (5)(b) of this section may provide for the termination of
14 annual payments being made under subsection (14) of this section if
15 the installation provides for fish passages after the date the installa-
16 tion commences operation.

17 “(b) A certificate for a hydroelectric generating equipment instal-
18 lation described in subsection (5)(b) of this section does not need to
19 include a condition for the making of annual payments under sub-
20 section (14) of this section if:

21 “(A) Prior to the granting of the certificate there is an existing
22 agreement between the applicant and the State Department of Fish
23 and Wildlife providing for the conduit delivery system to have fish
24 passages; or

25 “(B) A waiver or exemption has been issued under ORS 509.585 for
26 the installation.

27 “[(11)] (16) If a certificate under this section is issued, the certificate
28 holder must pay fees consistent with the fees described in ORS 543.078.
29 Failure to pay a required fee invalidates a certificate issued under this sec-
30 tion.

1 “[(12)] (17) The **Water Resources** Department shall issue invoices for
2 fees required under this section, and the state shall have a preference lien
3 for delinquent fees, as provided in ORS 543.082.

4 “[(13)] (18) An applicant for a certificate issued under this section must
5 provide evidence of a Federal Energy Regulatory Commission exemption be-
6 fore a certificate can be issued, if applicable.

7 “[(14)] (19) Nothing in this section shall alter the preference of munici-
8 palities in ORS 543.260 (3) and 543.270.

9 “**SECTION 2. The amendments to ORS 543.765 by section 1 of this**
10 **2013 Act apply to hydroelectric projects for which a certificate appli-**
11 **cation is filed under ORS 543.765 on or after the effective date of this**
12 **2013 Act.**

13 “**SECTION 3. This 2013 Act being necessary for the immediate**
14 **preservation of the public peace, health and safety, an emergency is**
15 **declared to exist, and this 2013 Act takes effect on its passage.”.**

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