

D R A F T

SUMMARY

Provides that municipal corporation or people's utility district may apply for certificate to use water for hydroelectric purposes within artificial delivery system even if municipal corporation or people's utility district is not holder of underlying water right, with permission of holder of underlying water right.

A BILL FOR AN ACT

1
2 Relating to certificates to use water for hydroelectric purposes within an
3 artificial delivery system; creating new provisions; and amending ORS
4 497.141 and 543.765.

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

6 **SECTION 1.** ORS 543.765 is amended to read:

7 543.765. (1) Notwithstanding ORS 537.145 and ORS chapter 543[,]:

8 (a) The holder of a water right may apply to the Water Resources De-
9 partment for a certificate to use water for hydroelectric purposes within an
10 artificial delivery system under the applicant's existing water right.

11 (b) **A municipal corporation or people's utility district, as defined**
12 **in ORS 261.010, may apply to the department for a certificate to use**
13 **water for hydroelectric purposes within an artificial delivery system**
14 **even if the municipal corporation or people's utility district is not the**
15 **holder of the underlying water right, if the municipal corporation or**
16 **people's utility district obtains from the holder of the underlying water**
17 **right, and provides to the department with the application, a written**
18 **statement authorizing the municipal corporation or people's utility**
19 **district to use the water for hydroelectric purposes.**

1 **(2)** If the proposed hydroelectric project meets the applicable capacity
2 limitation under this subsection and meets either the qualifications for a
3 Federal Energy Regulatory Commission exemption from licensing or similar
4 qualifications of another federal agency responsible for authorizing the
5 project, the applicant may use the expedited application process under this
6 section regardless of which federal agency issues the authorization. To
7 qualify under this subsection:

8 (a) For a project that is to be built as part of an existing dam, the ca-
9 pacity may not exceed five megawatts. Subsection [(5)(b)] **(6)(b)** of this sec-
10 tion does not apply to a project described in this paragraph.

11 (b) For in-conduit projects, the capacity may not exceed 15 megawatts for
12 a nonmunicipal facility or 40 megawatts for a municipal facility. Projects
13 described in this paragraph must comply with subsection [(5)(b)] **(6)(b)** of
14 this section.

15 [(2)] **(3)** An application, which shall be on a form provided by the Water
16 Resources Department, for a hydroelectric certificate under this section must
17 include:

18 (a) The certificate number, or decree reference if no confirming certificate
19 has been issued, of the applicant's existing water right, **or the underlying**
20 **water right**, associated with the proposed hydroelectric project.

21 (b) A copy of either a Federal Energy Regulatory Commission exemption
22 application or a similar application submitted to the federal agency respon-
23 sible for authorizing the project, if applicable.

24 (c) A proposed schedule of annual water use and an estimate of the max-
25 imum power generation of the proposed hydroelectric project.

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

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

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

4 (g) A map or drawing and all other data concerning the proposed hydro-
5 electric project, as may be prescribed by the department. The map or drawing
6 must be of sufficient quality and scale to establish the location of the ex-
7 isting point of diversion and the proposed location of the hydroelectric
8 project.

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

13 (i) Evidence that the water has been used over the past five years ac-
14 cording to the terms and conditions of the applicant's existing water right,
15 **or the underlying water right**, described in paragraph (a) of this sub-
16 section.

17 [(3)] (4) If an applicant provides the information required by subsection
18 [(2)] (3) of this section:

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

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

26 [(4)] (5) If the Water Resources Department determines that public inter-
27 est issues have been identified, the department shall issue a final order de-
28 denying the application. The department shall also issue a final order denying
29 the application if the department identifies issues related to the public in-
30 terest. If the applicant does not appeal the final order as provided in ORS
31 chapter 183 and, within one year of the department's final order denying the

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

5 [(5)] (6) At a minimum, a certificate issued under this section must con-
6 tain the following conditions:

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

10 (b) If the application is for a hydroelectric project that is to be installed
11 in or on a conduit delivery system, the certificate does not need to include
12 a requirement for fish passage at the diversion point for the conduit delivery
13 system if:

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

16 (B) The hydroelectric generating equipment for the project is installed
17 within or at the end of a conduit delivery system;

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

20 (D) Except as provided in subsection [(15)] (16) of this section, the cer-
21 tificate includes a condition for the making of annual payments under sub-
22 section [(14)] (15) of this section.

23 (c) That use of water be limited to periods when the applicant's existing
24 water right, **or the underlying water right**, is put to beneficial use without
25 waste and that the amount used is not greater than the quantity of water
26 diverted to satisfy the authorized specific use under the existing water
27 right, **or the underlying water right**, described in subsection [(2)(a)] (3)(a)
28 of this section.

29 (d) That use of water be limited by rate, duty, season and any other lim-
30 itations of the applicant's existing water right, **or the underlying water**
31 **right**, described in subsection [(2)(a)] (3)(a) of this section.

1 (e) That the applicant measure and report the quantity of water diverted.

2 (f) That the restrictions established in ORS 543.660 shall apply as condi-
3 tions of use to a certificate issued under this section to a district as defined
4 in ORS 543.655.

5 (g) That a certificate issued under this section shall be invalidated upon
6 a change in the point of diversion of the existing water right, **or the**
7 **underlying water right**, described in subsection [(2)(a)] **(3)(a)** of this sec-
8 tion.

9 (h) That the right to use water under a certificate issued under this sec-
10 tion is invalidated if the federal exemption or authorization related to the
11 certificate is canceled or invalidated.

12 (i) Any other conditions the Water Resources Department deems neces-
13 sary to protect the public interest.

14 [(6)] **(7)** The Water Resources Department shall conduct a review of cer-
15 tificates issued under this section and shall issue a final order and a super-
16 seding certificate that corresponds to any changes or adjustments made to
17 the applicant's existing water right, **or the underlying water right**, de-
18 scribed in subsection [(2)(a)] **(3)(a)** of this section.

19 [(7)] **(8)** Subsection [(5)(b)] **(6)(b)** of this section does not affect any re-
20 quirement for fish passage applicable to a project that is otherwise required
21 by law.

22 [(8)] **(9)** Upon request, the State Department of Fish and Wildlife and the
23 Water Resources Department shall arrange a preapplication meeting with a
24 person to discuss the requirements associated with the installation of a hy-
25 droelectric project in an artificial delivery system.

26 [(9)] **(10)** A certificate issued under this section may not have its own
27 priority date. The Water Resources Department may not regulate for or
28 against any certificate issued under this section based on the priority date
29 of the certificate.

30 [(10)] **(11)** A certificate issued under this section does not grant a right
31 to divert water for hydroelectric purposes.

1 ~~[(11)]~~ **(12)** A certificate issued under this section may not be included in
2 the determination of injury to other water rights pursuant to ORS chapter
3 540.

4 ~~[(12)]~~ **(13)** A certificate issued under this section is subject to review 50
5 years after the date of issuance and pursuant to the terms described in this
6 section.

7 ~~[(13)]~~ **(14)** Failure to fully develop and put to use a certificate issued un-
8 der this section within five years of issuance invalidates the hydroelectric
9 certificate.

10 ~~[(14)(a)]~~ **(15)(a)** If a certificate contains a condition described in sub-
11 section ~~[(5)(b)]~~ **(6)(b)** of this section for annual payments, the payment shall
12 be collected as provided in paragraph (c) of this subsection. Except as pro-
13 vided in paragraph (b) of this subsection, the annual payment amount must
14 be:

15 (A) Except as provided in subparagraph (D) of this paragraph, for the first
16 five years, four times the base hydropower fee amount assessed for the
17 project under ORS 543.078 for the year.

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

21 (C) Except as provided in subparagraph (D) of this paragraph, after the
22 10th year, 15 times the base hydropower fee amount assessed for the project
23 under ORS 543.078 for the year.

24 (D) \$100 for any year in which the base hydropower fee amount assessed
25 for the project under ORS 543.078 is less than \$100.

26 (b) If the certificate is for a hydroelectric project that will operate on a
27 partial-year basis, the fee shall be three-fifths of the amount established in
28 paragraph (a) of this subsection.

29 (c) The Water Resources Department shall collect the fee on behalf of the
30 State Department of Fish and Wildlife and forward the fee moneys for cred-
31 iting to the Fish Passage Restoration Subaccount created under ORS 497.141.

1 ~~[(15)(a)]~~ **(16)(a)** Notwithstanding subsection ~~[(14)]~~ **(15)** of this section, a
2 certificate for a project to install hydroelectric generating equipment as de-
3 scribed in subsection ~~[(5)(b)]~~ **(6)(b)** of this section may provide for the ter-
4 mination of annual payments being made under subsection ~~[(14)]~~ **(15)** of this
5 section if, after the date the project commences operation:

6 (A) The project provides for fish passages;

7 (B) There is an agreement between the applicant and the State Depart-
8 ment of Fish and Wildlife providing for fish passages associated with the
9 project; or

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

12 (b) A certificate for a project to install hydroelectric generating equip-
13 ment as described in subsection ~~[(5)(b)]~~ **(6)(b)** of this section does not need
14 to include a condition for the making of annual payments under subsection
15 ~~[(14)]~~ **(15)** of this section if:

16 (A) There is an agreement between the applicant and the State Depart-
17 ment of Fish and Wildlife providing for the conduit delivery system to have
18 fish passages associated with the project; or

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

21 ~~[(16)]~~ **(17)** If a certificate under this section is issued, the certificate
22 holder must pay fees consistent with the fees described in ORS 543.078.
23 Failure to pay a required fee invalidates a certificate issued under this sec-
24 tion.

25 ~~[(17)]~~ **(18)** The Water Resources Department shall issue invoices for fees
26 required under this section, and the state shall have a preference lien for
27 delinquent fees, as provided in ORS 543.082.

28 ~~[(18)]~~ **(19)** An applicant for a certificate issued under this section must
29 provide evidence of a Federal Energy Regulatory Commission exemption or
30 approval under a similar process by the federal agency responsible for au-
31 thorizing the project before a certificate can be issued, if applicable.

1 [(19)] (20) Nothing in this section shall alter the preference of municipi-
2 palities in ORS 543.260 (3) and 543.270.

3 **SECTION 2. On or before December 31, 2024, to implement the**
4 **amendments to ORS 543.765 by section 1 of this 2023 Act, the Water**
5 **Resources Department may amend OAR 690-051-0050 (5)(b), if needed,**
6 **to require that a municipal corporation or people’s utility district that**
7 **applies for a certificate to use water for hydroelectric purposes within**
8 **an artificial delivery system as described in ORS 543.765 (1)(b) must**
9 **provide the department with a written statement from the holder of**
10 **the underlying water right authorizing the municipal corporation or**
11 **people’s utility district to use the water for hydroelectric purposes.**

12 **SECTION 3.** ORS 497.141 is amended to read:

13 497.141. (1) There is created a Fish Passage Restoration Subaccount
14 within the Fish Passage Fund established under ORS 497.139. Fees described
15 in ORS 543.765 [(14)] (15) shall be paid into the subaccount. The State De-
16 partment of Fish and Wildlife may solicit and accept additional moneys for
17 crediting to the subaccount, including but not limited to federal funds, ap-
18 propriations, donations, grants from nongovernmental entities and moneys
19 from other public or private sources. Any interest earned by moneys within
20 the subaccount shall be credited to the subaccount.

21 (2) The department shall use the subaccount moneys to fund priority fish
22 passage restoration projects. The department shall give priority to the fund-
23 ing of projects on the statewide inventory of artificial obstructions priority
24 list described in ORS 509.585, with an emphasis on those statewide priority
25 list projects that also pay fees under ORS 543.765 [(14)] (15), and give priority
26 to projects that have the ability to leverage matching dollars. The depart-
27 ment may not use subaccount moneys to fund culvert projects or projects
28 that are state-owned structures. The department may not expend more than
29 six percent of the annual contributions to the subaccount to pay staffing
30 costs associated with the advancement of capital projects funded by the
31 subaccount.

