

Enrolled House Bill 2143

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Water Resources Department, Department of Environmental Quality, Department of Fish and Wildlife)

CHAPTER

AN ACT

Relating to annual fees for hydroelectric projects; creating new provisions; amending ORS 536.015, 543.078, 543.085, 543.090, 543.300, 543.710 and 543A.405; repealing ORS 543A.415; and prescribing an effective date.

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

SECTION 1. ORS 536.015 is amended to read:

536.015. (1) The Water Resources Department Hydroelectric Fund is established separate and distinct from the General Fund of the State Treasury. Except as provided in subsections (4) [to (6)] **and (5)** of this section, of the moneys in the Water Resources Department Hydroelectric Fund:

(a) A portion equal to 67 percent of the total moneys received each year shall be transferred to the fund created under ORS 496.835;

(b) A portion equal to 10.3 percent of the total moneys received each year shall be transferred to an account of the Department of Environmental Quality to be used to review applications for certification of hydroelectric projects under ORS 468B.040 and 468B.045; and

(c) All of the remaining moneys received each year are continuously appropriated to the Water Resources Commission and the Water Resources Department to provide for the payment of the administrative expenses of the commission and the department in carrying out their responsibilities related to the issuance of permits, licenses or water right certificates for hydroelectric projects.

(2) The following shall be deposited into the State Treasury and credited to the Water Resources Department Hydroelectric Fund:

(a) Fees received by the Water Resources Department for hydroelectric projects under ORS 536.050, 543.078 to 543.092, 543.210, 543.280, 543.300, 543.710[,] **and** 543A.405 [*and 543A.415*]; and

(b) All moneys received on behalf of this account by gift, grant or appropriation from whatever source.

(3) All interest, if any, from moneys credited to the Water Resources Department Hydroelectric Fund shall be credited to the fund and shall inure to the benefit of the Water Resources Department Hydroelectric Fund.

(4) Application fees received under ORS 543A.405 shall be disbursed to the various agencies in the amounts specified in the cost reimbursement agreement executed with each reauthorization applicant.

[(5) Four cents of each 28 cents paid as a reauthorization fee under ORS 543A.415 shall be paid to the Department of Environmental Quality.]

[(6)] (5) Annual fees paid under ORS 543.078 shall be disbursed to state agencies pursuant to a memorandum of agreement developed by the Department of Environmental Quality, the State Department of Fish and Wildlife and the Water Resources Department.

SECTION 2. ORS 543.078 is amended to read:

543.078. (1) On or before January 1 of each year, each holder shall pay to the State of Oregon an annual fee for each hydroelectric project that is subject to this section. The annual fee required by this section shall be based on the theoretical horsepower specified in the water right for each project.

(2) The amount of the annual fee required under subsection (1) of this section shall be determined in the following manner:

(a) Subject to the [*schedule set forth in subsection (3) of this section,*] **adjustment required under this paragraph, for a project producing more than 123.5 theoretical horsepower** each holder shall pay an amount[, *in 1998 dollars,*] equal to [*\$.405*] **a base rate of \$0.687** per theoretical horsepower covered by the water right for the holder's hydroelectric project. The annual fee may be set forth in the water right or may be established by order of the Water Resources Director. [*and shall be adjusted annually for inflation according to rules established by the Water Resources Commission.*] **The Water Resources Commission shall annually adjust the fee established in this paragraph based on the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor, using a base date of January 1, 2021.** The annual fee also may be adjusted through the periodic review process established in ORS 543.085.

(b) Each holder of a hydroelectric project that produces **15 or more theoretical horsepower but not more than 123.5 theoretical horsepower** [*or less*] shall pay an annual fee of \$50 for that project.

(c) **Each holder of a hydroelectric project that produces less than 15 theoretical horsepower shall pay an annual fee of \$15 for that project.**

(d) **The amount of theoretical horsepower upon which the fees are paid must be computed by multiplying the maximum amount of water appropriated, expressed in cubic feet per second, by the average total fall utilized, expressed in feet, and dividing the number resulting from the multiplication by 8.8.**

(e) **For a project that diverts water from a point on a river that forms a border with another state, the fee computation described in paragraph (d) of this subsection may not use as the maximum amount of water appropriated more than half of the capacity of the project.**

[(3) *The fee determined in subsection (2) of this section shall apply to a project on the January 1 following the occurrence of an event enumerated as follows:*]

[(a) *A licensee or water right certificant shall begin to pay the annual fee after the final order for the reauthorized water right is issued under ORS 543A.130.*]

[(b) *Notwithstanding paragraph (a) of this subsection, if a licensee holds, on October 23, 1999, an original state hydroelectric license for which the original expiration date was or is more than five years after the expiration date of the original Federal Energy Regulatory Commission license for the project, the licensee shall begin payment of the annual fee established under this section after the expiration date of the original state hydroelectric license.*]

[(c) *A power claimant, or uncertificated claimant, licensed by the Federal Energy Regulatory Commission shall begin to pay the annual fee after the Federal Energy Regulatory Commission issues a new license. A power claimant or uncertificated claimant that received a new license from the Federal Energy Regulatory Commission within 10 years prior to October 23, 1999, shall begin to pay the annual fee on January 1, 2000.*]

[(d) *A power claimant, or uncertificated claimant, whose project is exempted from licensure by the Federal Energy Regulatory Commission or not licensed by the Federal Energy Regulatory Commission shall begin paying the annual fee under this section on January 1, 2008, for that project.*]

[(4) *No fee shall be assessed under ORS 543.710 for a project subject to an annual fee under this section.*]

SECTION 2a. Notwithstanding ORS 543.078 (2)(a), a holder of a hydroelectric project shall pay \$0.48 per theoretical horsepower for a project producing more than 123.5 theoretical horsepower if:

(1) The project is not exempt from relicensing under ORS chapter 543A; and

(2) The holder has not received either:

(a) A final order described in ORS 543A.130 that approves an application for reauthorization of a water right or license; or

(b) A new license issued by the Federal Energy Regulatory Commission on or after the effective date of this 2021 Act to replace an original license issued by the commission.

SECTION 2b. Section 2a of this 2021 Act is repealed on December 31, 2023.

SECTION 3. ORS 543.085 is amended to read:

543.085. (1) **At least once every eight years** the Water Resources Director shall appoint a review panel to review the amount of the annual fee established under ORS 543.078 [*in 2003 and 2009 and every eight years thereafter*]. The review panel shall consist of at least one representative from the following and others at the director's discretion:

(a) The Department of Environmental Quality;

(b) The State Department of Fish and Wildlife;

(c) The Public Utility Commission;

(d) The Water Resources Department;

(e) Investor owned utilities;

(f) Publicly owned utilities;

(g) Municipalities;

(h) Environmental organizations;

(i) Agricultural organizations; and

(j) Nonutility owners of hydroelectric projects.

(2) All holders paying annual fees under ORS 543.078 (2)(a) shall be notified by the Water Resources Department at least 60 days in advance of the meeting of the review panel established in subsection (1) of this section, and provided the opportunity to submit comments to the panel.

(3) Any periodic review conducted under subsection (1) of this section shall evaluate each agency's hydroelectric program to determine if current staffing levels, activities and funding are appropriate to fulfill program objectives. There shall be a presumption that the fee should not change. To overcome the presumption and alter the existing fee, the panel must find compelling reasons for alteration and must reach unanimous consent on the new fee. If the presumption is overcome, upon completion of the review process the director shall either adjust the annual fee as recommended by the panel or elect not to adjust the fee. Any change in the annual fee as a result of this section shall become effective on the January 1 following the director's action. The director shall notify all holders of any change in the annual fee and the effective date of such change.

SECTION 4. ORS 543.090 is amended to read:

543.090. (1) Any project operating under a hydroelectric license issued by the Federal Energy Regulatory Commission and concurrently operating under the authority of a power claim or uncertificated claim shall pay all expenses related to the review and decision of a Hydroelectric Application Review Team established under ORS 543A.075 that:

(a) Are incurred by the team and any agency participating as part of the team in the federal relicensing process; and

(b) Are not otherwise covered by [*the reauthorization fee paid under ORS 543A.415*] **a fee described in ORS 543.078.**

(2) Not later than six years before the expiration of a hydroelectric license issued by the Federal Energy Regulatory Commission to any project operating concurrently under the authority of a power claim or uncertificated claim, the Water Resources Department shall contact the holder to schedule a consultation meeting regarding expected fees to be incurred by the Hydroelectric Application Review Team.

(3) Relicensing fees shall be calculated and assessed according to the terms and conditions set forth in ORS 543A.405 and 543A.410 for application fees.

SECTION 5. ORS 543.300 is amended to read:

543.300. Any license issued under ORS 543.010 to 543.610 shall take into consideration, and shall be on, the following conditions:

(1) That the proposed project shall be such as, in the judgment of the Water Resources Commission, is well adapted to the development and utilization of the water power involved.

(2) That the licensee shall construct and build the project according to the maps, plans and specifications filed with and approved by the commission, and within the time fixed by the license or by any lawful extension thereof.

(3) The operations of the licensee so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules as the commission may prescribe for the protection of life, health and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes. The licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the commission may prescribe.

(4) That the licensee *[will]* **shall** maintain the project, and each part thereof, in good order and repair and in efficient operation, for the development and transmission of electricity to its reasonable capacity; shall make all necessary renewals and replacements as required; and shall maintain and operate the project, and all parts thereof, conformably to the rules of the commission not inconsistent with ORS 543.010 to 543.610.

(5) That the licensee *[will pay to the state annually not more than \$1 for each horsepower covered by the license]* **shall annually pay to the state the applicable fee under ORS 543.078 for the project.** This sum shall constitute a first lien upon the project, which lien may be enforced by suit in equity or other appropriate proceeding, or payment thereof may be enforced by the state in an action for debt. Payment of such license fees may be waived by the commission during all or any part of the period of construction. The fees need not be uniform throughout the entire period of the license, but may be for different amounts for different periods. *[The amount of the license fees, within the minimum and maximum limits herein specified, shall be determined by the commission and expressed in the license.]*

(6) Other and further conditions not inconsistent with ORS 543.010 to 543.610 as the commission may require in the public interest.

(7) In issuing a license for a minor project of not more than 100 horsepower the commission may waive all or any of the conditions and requirements of ORS 543.010 to 543.610 except the period for which a license may be issued, and the annual charge *[as determined by the commission]* under subsection (5) of this section. In issuing licenses for projects in excess of 100 horsepower for which the applicants are required to secure permits and licenses from the United States as a condition precedent to the construction of the projects, the commission may waive and modify such of the terms, conditions and requirements of ORS 543.010 to 543.610, except the period for which a license may be issued and the annual charge *[as determined by the commission]* under subsection (5) of this section, as the commission, by order, after full investigation and public hearing, shall find to make impracticable the construction of such projects. During the time that a licensee is not a public utility and does not sell electric energy, and does not sell bonds or other evidences of debt against the licensee's plant, the commission may waive the accounting and amortization requirements of ORS 543.010 to 543.610, even *[where]* **if** the project involved exceeds 100 horsepower.

[(8) Subsection (5) of this section does not apply to a water right reauthorized pursuant to ORS chapter 543A.]

SECTION 6. ORS 543.710 is amended to read:

543.710. Every claimant other than a licensee under ORS 543.010 to 543.610 shall on or before January 1 of each year pay to the state in advance an annual fee based upon the theoretical water horsepower claimed under each separate claim to water **and calculated using the formula under**

ORS 543.078 for a project of similar theoretical horsepower.[, graduated as follows: Thirty cents for each theoretical water horsepower or fraction thereof up to and including 50 and 28 cents for each theoretical water horsepower or fraction thereof in excess of 50. However, upon filing the statement provided in ORS 543.720, the United States or the state, claiming the right to the use of water to any extent for the generation of power, or any other claimant to the right to use water for the generation of 10 theoretical water horsepower or less, shall be exempted from the payment of all fees provided for in this section. Four cents of each 28 cents collected as an annual fee under this section shall be deposited to the Water Resources Department Hydroelectric Fund and disbursed to the Department of Environmental Quality.]

SECTION 7. ORS 543A.405 is amended to read:

543A.405. (1) Subject to the provisions of ORS 543A.410, any person submitting a notice of intent to seek reauthorization, a preliminary application or an application for reauthorization of a project under ORS 543A.030, 543A.035, 543A.075, 543A.080 or 543A.095 shall pay all expenses related to the review and decision of the Hydroelectric Application Review Team that are incurred by the team and any agency participating as part of the team, and that are not otherwise covered by the [reauthorization fee paid under ORS 543A.415] **fee paid under ORS 543.078.**

(2) Every person submitting a notice of intent to seek reauthorization of a project shall submit the fee required under ORS 536.050 (1)(r) to the Water Resources Department when the notice of intent is submitted.

(3) Before submitting an application to reauthorize a state project under ORS 543A.035, the applicant shall request from the team an estimate of the costs expected to be incurred in processing the application. The team shall inform the applicant of that amount and require the applicant to make periodic payments of such costs pursuant to a cost reimbursement agreement. The cost reimbursement agreement shall provide for payment of 25 percent of the estimated costs when the applicant submits an application under ORS 543A.035.

(4) Before the close of public comment on study proposals developed by the applicant for a federally licensed project under ORS 543A.085, the team shall estimate the costs expected to be incurred in evaluating the project. The team shall inform the applicant of that amount and require the applicant to make periodic payments of such costs pursuant to a cost reimbursement agreement. The cost reimbursement agreement shall provide for a first payment of 25 percent of the estimated costs on a schedule established in the agreement.

(5) If costs of the team's evaluation of a project exceed the estimate in the cost reimbursement agreement, the applicant shall pay any excess costs shown in an itemized statement prepared by the team. In no event shall the team and its participating agencies incur evaluation expenses in excess of 110 percent of the fee initially estimated unless the team provided prior notification to the applicant and a detailed projected budget the team believes is necessary to complete evaluation of the application. If costs are less than the fee paid, the team shall refund the excess to the applicant.

(6) The Water Resources Department shall reimburse participating agencies for costs incurred in their review of a project. Such costs shall not include expenses of other state agencies for which a fee is otherwise collected under state law.

SECTION 8. ORS 543A.415 is repealed.

SECTION 9. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House June 21, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 25, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State