

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)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Changes annual fees for all power claimants to match annual fees for other hydroelectric projects.

Changes annual relicensing and reauthorization fees to match annual fees for other hydroelectric projects.

Revises fee structure for annual hydroelectric project fee. Changes timing requirement for appointment of panel to review fee amount.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to annual fees for hydroelectric projects; amending ORS 536.015, 543.078, 543.085, 543.090,
3 543.300, 543.710 and 543A.405; repealing ORS 543A.415; and prescribing an effective date.

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

5 **SECTION 1.** ORS 536.015 is amended to read:

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

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

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

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

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

20 (a) Fees received by the Water Resources Department for hydroelectric projects under ORS
21 536.050, 543.078 to 543.092, 543.210, 543.280, 543.300, 543.710[,] **and** 543A.405 *[and 543A.415]*; and

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 plicant.

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

4 [(6)] (5) Annual fees paid under ORS 543.078 shall be disbursed to state agencies pursuant to a
5 memorandum of agreement developed by the Department of Environmental Quality, the State De-
6 partment of Fish and Wildlife and the Water Resources Department.

7 **SECTION 2.** ORS 543.078 is amended to read:

8 543.078. (1) On or before January 1 of each year, each holder shall pay to the State of Oregon
9 an annual fee for each hydroelectric project that is subject to this section. The annual fee required
10 by this section shall be based on the theoretical horsepower specified in the water right for each
11 project.

12 (2) The amount of the annual fee required under subsection (1) of this section shall be deter-
13 mined in the following manner:

14 (a) Subject to the [*schedule set forth in subsection (3) of this section,*] **adjustment required un-**
15 **der this paragraph, for a project producing more than 123.5 theoretical horsepower** each
16 holder shall pay an amount[, *in 1998 dollars,*] equal to [*\$.405*] **a base rate of \$0.687** per theoretical
17 horsepower covered by the water right for the holder's hydroelectric project. The annual fee may
18 be set forth in the water right or may be established by order of the Water Resources Director.
19 [*and shall be adjusted annually for inflation according to rules established by the Water Resources*
20 *Commission.*] **The Water Resources Commission shall annually adjust the fee established in**
21 **this paragraph based on the Consumer Price Index for All Urban Consumers, West Region**
22 **(All Items), as published by the Bureau of Labor Statistics of the United States Department**
23 **of Labor, using a base date of January 1, 2020.** The annual fee also may be adjusted through the
24 periodic review process established in ORS 543.085.

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

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

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

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

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

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

44 [(d) *A power claimant, or uncertificated claimant, whose project is exempted from licensure by the*
45 *Federal Energy Regulatory Commission or not licensed by the Federal Energy Regulatory Commission*

1 shall begin paying the annual fee under this section on January 1, 2008, for that project.]

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

4 **SECTION 3.** ORS 543.085 is amended to read:

5 543.085. (1) **At least once every eight years** the Water Resources Director shall appoint a re-
6 view panel to review the amount of the annual fee established under ORS 543.078 [in 2003 and 2009
7 and every eight years thereafter]. The review panel shall consist of at least one representative from
8 the following and others at the director's discretion:

- 9 (a) The Department of Environmental Quality;
- 10 (b) The State Department of Fish and Wildlife;
- 11 (c) The Public Utility Commission;
- 12 (d) The Water Resources Department;
- 13 (e) Investor owned utilities;
- 14 (f) Publicly owned utilities;
- 15 (g) Municipalities;
- 16 (h) Environmental organizations;
- 17 (i) Agricultural organizations; and
- 18 (j) Nonutility owners of hydroelectric projects.

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

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

31 **SECTION 4.** ORS 543.090 is amended to read:

32 543.090. (1) Any project operating under a hydroelectric license issued by the Federal Energy
33 Regulatory Commission and concurrently operating under the authority of a power claim or uncer-
34 tificated claim shall pay all expenses related to the review and decision of a Hydroelectric Appli-
35 cation Review Team established under ORS 543A.075 that:

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

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

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

45 (3) Relicensing fees shall be calculated and assessed according to the terms and conditions set

1 forth in ORS 543A.405 and 543A.410 for application fees.

2 **SECTION 5.** ORS 543.300 is amended to read:

3 543.300. Any license issued under ORS 543.010 to 543.610 shall take into consideration, and shall
4 be on, the following conditions:

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

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

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

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

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

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

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

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

3 **SECTION 6.** ORS 543.710 is amended to read:

4 543.710. Every claimant other than a licensee under ORS 543.010 to 543.610 shall on or before
5 January 1 of each year pay to the state in advance an annual fee based upon the theoretical water
6 horsepower claimed under each separate claim to water **and calculated using the formula under**
7 **ORS 543.078 for a project of similar theoretical horsepower.** [*graduated as follows: Thirty cents*
8 *for each theoretical water horsepower or fraction thereof up to and including 50 and 28 cents for each*
9 *theoretical water horsepower or fraction thereof in excess of 50. However, upon filing the statement*
10 *provided in ORS 543.720, the United States or the state, claiming the right to the use of water to any*
11 *extent for the generation of power, or any other claimant to the right to use water for the generation*
12 *of 10 theoretical water horsepower or less, shall be exempted from the payment of all fees provided for*
13 *in this section. Four cents of each 28 cents collected as an annual fee under this section shall be de-*
14 *posited to the Water Resources Department Hydroelectric Fund and disbursed to the Department of*
15 *Environmental Quality.*]

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

17 543A.405. (1) Subject to the provisions of ORS 543A.410, any person submitting a notice of intent
18 to seek reauthorization, a preliminary application or an application for reauthorization of a project
19 under ORS 543A.030, 543A.035, 543A.075, 543A.080 or 543A.095 shall pay all expenses related to the
20 review and decision of the Hydroelectric Application Review Team that are incurred by the team
21 and any agency participating as part of the team, and that are not otherwise covered by the [*reau-*
22 *thorization fee paid under ORS 543A.415*] **fee paid under ORS 543.078.**

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

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

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

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

44 (6) The Water Resources Department shall reimburse participating agencies for costs incurred
45 in their review of a project. Such costs shall not include expenses of other state agencies for which

1 a fee is otherwise collected under state law.

2 **SECTION 8. ORS 543A.415 is repealed.**

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

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