

# Senate Bill 1192

Sponsored by Senator MANNING JR

## 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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act concerns making power from water under a water right. The Act provides that a person cannot be banned from using the water right under certain circumstances. (Flesch Readability Score: 62.7).

Provides that the Water Resources Director may not forcibly convert a hydroelectric water right whose holder has ceased generating electricity on instruction from the Federal Energy Regulatory Commission if certain other criteria are met.

## A BILL FOR AN ACT

1  
2 Relating to hydroelectric water rights; amending ORS 543A.305.

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

4 **SECTION 1.** ORS 543A.305 is amended to read:

5 543A.305. (1) As used in this section:

6 (a) "Holder" has the meaning given that term in ORS 543.075.

7 (b) "In-stream water right" has the meaning given that term in ORS 537.332.

8 (c) "Reauthorize" has the meaning given that term in ORS 543.075.

9 (2) An in-stream water right [*shall*] **resulting from a conversion under subsection (3) of this**  
10 **section must:**

11 (a) Be subject to the limitations of ORS 537.350 [*and shall*].

12 (b) Be maintained in perpetuity, in trust for the people of the State of Oregon.

13 (c) [*The*] **Have a** priority date [*of the in-stream water right shall be*] **that is** the same as that  
14 of the converted hydroelectric water right.

15 (d) [*The*] **Have a** location [*of the in-stream water right shall be*] **that is** the same as the point  
16 of diversion identified in the hydroelectric water right.

17 (3) **Upon a finding by the Water Resources Director that conversion will not result in**  
18 **injury to other existing water rights, the director shall convert up to the full amount of a**  
19 **water right associated with a hydroelectric project to an in-stream water right:**

20 [(3)] (a) Five years after the use of water under a hydroelectric water right ceases[, *or*];

21 (b) Upon expiration of a hydroelectric water right not otherwise extended or reauthorized[,  
22 *or*];

23 (c) **Upon expiration of a time-limited hydroelectric water right that is transferred under**  
24 **ORS 540.520 and 540.530; or**

25 (d) At any time [*earlier*] with the written consent of the holder of the hydroelectric water  
26 right[, *up to the full amount of the water right associated with the hydroelectric project shall be con-*  
27 *verted to an in-stream water right, upon a finding by the Water Resources Director that the conversion*  
28 *will not result in injury to other existing water rights*].

**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 (4) In *[making the evaluation]* **determining whether to issue a finding described in sub-**  
 2 **section (3) of this section**, the director shall consider the actual use of the hydroelectric project  
 3 and the resulting impacts on actual use by other existing water rights as of October 23, 1999.

4 (5) **In converting all or part of a hydroelectric water right to an in-stream water right**  
 5 **under subsection (3) of this section**, the director may include mitigation measures as conditions  
 6 of the in-stream water right to avoid injury and to ensure the continuation of authorized water uses  
 7 by other existing water rights.

8 [(4)] (6) If *[the]* a hydroelectric project is authorized by a pre-1909 unadjudicated claim of  
 9 registration[,]:

10 (a) *[the]* **A determination, under subsection (3) of this section, of whether conversion will**  
 11 **result in injury to other existing water rights:**

12 (A) *[shall]* **Must** be based upon an evaluation of the actual use as measured during the five  
 13 years preceding the conversion action[,]; and

14 (B) *[shall]* **May** not constitute a determination under ORS 537.670 to 537.695 as to the underly-  
 15 ing claim of registration of the pre-1909 use.

16 (b) Judicial review of a final order relating to *[such]* a conversion **under subsection (3) of this**  
 17 **section** shall be limited to review of the conversion action.

18 [(5)] (7) **Subsection (3) of this section** *[shall]* **does** not apply to projects on boundary waters  
 19 that operate with water rights issued by the State of Oregon and by any other state, except upon  
 20 the written request of the water right holder.

21 [(6)] (8) If hydroelectric production is not the sole beneficial use authorized by a water right,  
 22 **subsection (3) of this section** *[shall apply]* **applies** only to conversion of that portion of the water  
 23 right used exclusively for hydroelectric purposes.

24 [(7)] (9) **A hydroelectric water right may not be converted under subsection (3) of this**  
 25 **section** *[shall not apply]*, **on the basis that use of water under the hydroelectric water right**  
 26 **has ceased for five years, if:**

27 (a) The holder, at any time prior to conversion *[under subsection (3) of this section]*, transfers  
 28 the hydroelectric water right under ORS 540.520 and 540.530[ *except that if a time-limited hydro-*  
 29 *electric water right is transferred under ORS 540.520 and 540.530, the provisions of this section shall*  
 30 *apply at the time of expiration of the time-limited water right.*]; **or**

31 (b)(A) **During any part of the period of five years, the use of water under the hydroelec-**  
 32 **tric water right ceased as a result of an instruction from the Federal Energy Regulatory**  
 33 **Commission to stop generating electricity;**

34 (B) **The hydroelectric project has the capacity to generate power at the maximum rate**  
 35 **authorized by the hydroelectric water right; and**

36 (C) **The holder is ready, willing and able to use the hydroelectric water right to generate**  
 37 **power.**

38 **SECTION 2. The exception described in ORS 543A.305 (9)(b) applies if:**

39 (1) **A use of water ceased, as described in ORS 543A.305 (9)(b)(A), before, on or after the**  
 40 **effective date of this 2025 Act; and**

41 (2) **The criteria described in ORS 543A.305 (9)(b)(B) and (C) are also met.**

42 **SECTION 3. Section 2 of this 2025 Act is repealed on January 2, 2036.**