Chapter 543

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Hydroelectric Power Projects

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GENERAL PROVISIONS

543.010 Definitions for ORS 543.010 to 543.620. As used in ORS 543.010 to 543.620:

(1) "Project" means a complete unit, improvement or development. It includes, among other things, power houses, water wheels, conduits or pipes, dams and appurtenant works and structures, storage, diverting or forebay reservoirs connected therewith, and primary lines transmitting power to the point of junction with a distributing system, or with any interconnected primary system, miscellaneous works and structures used in connection with the unit or any part thereof, rights of way, lands, flowage rights and all other properties, rights and structures necessary or appropriate in the use, operation and maintenance of any such unit.

(2) "Net investment" is the actual legitimate cost of a project constructed or acquired under a license as determined by the State Engineer and according to the classification of accounts established by him, plus similar cost of permanent additions thereto and betterments thereof, minus the sum of the following items, if any, earned and accumulated during the period of the license from earnings in excess of a fair return on the net investment:

(a) Current credit balance to amortization account.

(b) Current credit balance to depreciation account.

(c) Earnings expended for permanent additions or betterments.

(d) Surplus not appropriated to either of the accounts specified in paragraphs (a), (b) and (c).

The actual original cost of a project, or of permanent additions and betterments thereto, shall include the sum paid to the state at the time the application was made for a preliminary permit; the sum paid or secured to be paid to the state by the applicant for license at the time such application was made; such sums as may be paid to the United States or any department thereof; and such sums as shall have been reasonably and prudently expended in preliminary investigations, explorations and organization expenses, as determined by the State Engineer.

543.020 [Repealed by 1961 c.224 §20]

543.030 [Repealed by 1961 c.224 §20]

543.040 [Repealed by 1961 c.224 §20]

543.050 Powers of State Engineer as to permits, licenses, investigations, reports, forms and examinations; general powers. The State Engineer may:

(1) Issue preliminary permits, as provided in ORS 543.210 to 543.250, to any person qualified to become a licensee.

(2) Issue licenses, as provided in ORS 543.260, to citizens of the United States, associations of citizens, or private corporations organized under the laws of the United States or any state thereof, to appropriate, initiate, perfect, acquire and hold the right to the use of waters within the state, including waters over which the state has concurrent jurisdiction, and to construct, operate and maintain dams, reservoirs, power houses, conduits, transmission lines, and all other works and structures necessary or convenient for the use of such waters in the generation and utilization of electricity.

(3) Make such investigations and collect such information as the State Engineer deems necessary or useful for the purposes of ORS 543.010 to 543.620; cooperate with the Federal Government and adjoining states concerning all such matters, and particularly with reference to waters forming the boundary between this state and another state.

(4) Prescribe the forms of all accounts, records and memoranda to be kept by licensees under ORS 543.010 to 543.620, and make all rules and regulations with respect thereto deemed necessary or expedient. The State Engineer shall employ and promulgate standard regulations for accounting, determination of depreciation, amortization, net investment, rate of return and allocation of earnings, etc., and a certified copy of such accounting data shall be filed with the State Engineer from time to time, as may be required by him.

(5) Examine at any time all accounts, books of account and documents and data of whatever nature appertaining to the business of a licensee under ORS 543.010 to 543.620; and require a licensee to submit, whenever required by the State Engineer, reports and statements under oath, and in such form and on such blanks as the State Engineer may require, containing full information as to assets, liabilities, capitalization, gross receipts, interest and dividend requirements, interest due and paid, amortization and other reserves, net investment, cost of any project constructed, maintained or operated, in whole or in part, cost of maintenance,

operation, renewals, replacements, cost of production, transmission, distribution and sale of electricity, and such other data as the State Engineer, in his discretion, may require. Every licensee shall make adequate provision to currently determine all such matters.

(6) Perform all acts, exercise all powers, make all rules and regulations, and issue all orders which, in the judgment and discretion of the State Engineer, are necessary to effectuate the purposes of ORS 543.010 to 543.620.

[Amended by 1955 c.673 §3; 1955 c.707 §39; 1961 c.224 §13]

543.055 Hearings and witnesses. (1) The State Engineer may hold hearings and take testimony orally, by deposition or in such other form as he deems satisfactory, either within or without this state. The State Engineer may require, by subpena, the attendance of witnesses and the production of documentary evidence.

(2) The State Engineer may appoint any person as hearing examiner to conduct and preside over any hearing which the State Engineer is required or permitted by law to hold. A hearing examiner so appointed shall have the same powers with respect to the conduct of the hearing as are granted by law to the State Engineer, including the taking of testimony, the signing and issuance of subpenas and the administering of oaths and affirmations to witnesses. The hearing examiner shall keep a record of the proceedings on the hearing and shall transmit such record to the State Engineer. The State Engineer may take action upon such record to the same extent as though the hearing had been conducted and presided over by the State Engineer.

(3) The State Engineer may designate any person to take the testimony, affidavit or deposition of a witness. The person so designated may administer an oath or affirmation to any such witness and take the testimony thereof in accordance with such rules as the State Engineer may prescribe.

(4) Witnesses appearing before the State Engineer, his hearing examiner or any person designated by the State Engineer to take testimony shall be paid the same fees and mileage that are paid to witnesses summoned to appear as such in the courts of this state.

[1955 c.673 §2; 1961 c.224 §14]

543.060 Investigations; access to project, maps, books, etc. The State Engineer and his authorized agents and employes, at all reasonable times, shall have free access to any project, addition or betterment during or after construction or acquisition, and to all maps, plans, profiles, estimates, engineers' reports, books, accounts, records and other data relating to the project.

543.070 Appeal to Supreme Court. In any proceeding brought in the circuit court pursuant to the provisions of ORS 543.010 to 543.620, any party may appeal to the Supreme Court as in an ordinary civil cause.

APPROPRIATION OF WATER FOR POWER; APPLICATION OF LAW

543.110 Appropriation and use of water for power is governed by this chapter. After February 26, 1931, no right to appropriate or to use the waters of the lakes, rivers, streams or other bodies of water within this state, including water over which this state has concurrent jurisdiction, in connection with the development of any water power project for the generation of electricity, shall be initiated, perfected, acquired or held, except for and during the periods or extensions thereof stated in ORS 543.010 to 543.620, and pursuant to the provisions thereof.

543.120 Water power projects to be in conformity with this chapter. After February 26, 1931, no water power project involving the use of the waters of lakes, rivers, streams or other bodies of water within this state, including waters over which this state has concurrent jurisdiction, for the generation of electricity, shall be begun or constructed except in conformity with the provisions of ORS 543.010 to 543.620.

543.130 [Repealed by 1961 c.224 §20]

543.135 Projects licensed by Federal Power Commission as of March 16, 1961, and in operation without state license. (1) In any case where a hydroelectric project has been licensed by the Federal Power Commission, as of March 16, 1961, and said project has been constructed and is in operation without license under this chapter, or when such a federally licensed project comprises more than one hydroelectric plant, as soon as each hydroelectric plant in said license has been constructed and is in operation, the State Engineer may, upon application made therefor

as provided in this chapter and without public hearing, grant a license for such project, waiving and modifying such of the terms, conditions and requirements of ORS 543.010 to 543.620, as the State Engineer, by order, after full investigation, finds to be in conflict with the license issued by the Federal Power Commission, except the period for which license may be issued and the annual charge as determined by the State Engineer under subsection (5) of ORS 543.300. An application for license under this section shall not be subject to referral to the State Water Resources Board under provisions of ORS 543.225 and shall not be subject to the provisions of subsection (2) of ORS 543.220.

(2) Nothing in this section is to be construed to authorize any person, firm or corporation to begin or construct any water power project before obtaining a license for such project.
[1961 c.100 §§2, 3]

543.140 Projects or developments constructed by Federal Government excepted from law. The provisions of ORS 543.010 to 543.620 shall not apply to any water power project or development constructed by the United States.

543.150 Municipal corporations and utility districts; applicability of law; powers of State Engineer respecting districts. The provisions of ORS 543.010 to 543.620 shall not apply to cities, towns or other municipal corporations of this state, including utility districts organized under section 12, article XI, Oregon Constitution, and legislation enacted thereunder; saving, however, to such cities, towns and other municipal corporations the rights and preferences specified in ORS 543.260, 543.270 and 543.610. However, the State Engineer shall exercise the powers in relation to such utility districts as may be conferred upon him by any legislation providing for the creation of such utility districts.

PRELIMINARY PERMITS; LICENSES

543.210 Preliminary permits; application; contents; fee. (1) A preliminary permit may be issued by the State Engineer to any person possessing the qualifications of a licensee as specified in ORS 543.010 to 543.620. The application for a preliminary permit shall set forth the name and post-office address of the applicant, the approximate site of any proposed dam or diversion, the amount of water in cubic feet per second, the theoretical horsepower, and such other data as the State Engineer may by regulation or order prescribe.

(2) Upon receipt of an application for a preliminary permit the State Engineer shall make an indorsement thereon of the date of receipt, and keep a record thereof. The date so indorsed shall determine the priority of the use of water initiated under the provisions of ORS 543.010 to 543.620.

(3) At the time of filing application for preliminary permit the applicant shall pay to the state the minimum sum of $50, and such further sum, not exceeding $200, as shall be determined by the State Engineer, to cover costs of recording, publishing notices and making investigations necessary to determine whether or not a preliminary permit should be granted. If the State Engineer grants a preliminary permit the applicant shall pay to the state, at the time the preliminary permit is issued, and in addition to the sums hereinbefore specified, the sum of five cents for each theoretical horsepower as computed by the State Engineer and covered by the permit.
[Amended by 1961 c.224 §15]

543.220 Notice of filing of application; waiting period. (1) Whenever an application is made for a preliminary permit and after said application has been referred to the State Water Resources Board the board shall give written notice of the filing of the application to any municipality or other person or corporation which, in the judgment of the board, is likely to be interested in or affected thereby, and shall also publish notice of the application once each week for at least four successive weeks and for such further time, if any, as the board shall determine, in a newspaper published in the county in which the project covered by the application is located, and if in more than one county, then in a newspaper published in each county.

(2) No application for the appropriation or use of water for the development of 1,000 theoretical horsepower or more shall be granted until at least six months after the application for a preliminary permit has been filed.
[Amended by 1961 c.224 §16]

543.225 Reference of application to State Water Resources Board; hearing; policy. (1) The State Engineer shall refer any application or amended application for a preliminary

permit or for a license for a major project of more than 100 theoretical horsepower to the State Water Resources Board, and he shall also refer to the State Water Resources Board, an application for preliminary permit or license for a minor project of less than 100 theoretical horsepower if requested to do so by the board.

(2) The State Water Resources Board shall hold a public hearing on an application referred to it under subsection (1) of this section, on proper notice to the applicant and to each protestant, if any. If, after the hearing, the board determines that the proposed project would impair or be detrimental to the public interest so far as the coordinated, integrated state water resources policy is concerned, it shall enter an order rejecting the application or requiring its modification to conform to such public interest, to the end that the highest public benefit may result from the proposed project. The order may set forth any or all of the provisions or restrictions to be included in a preliminary permit or license concerning the use, control and management of the water to be appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.

(3) In determining whether the proposed project would impair or be detrimental to such public interest, the State Water Resources Board shall have due regard for:

(a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

(b) The maximum economic development of the waters involved.

(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

(d) The amount of waters available for appropriation for beneficial use.

(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

(f) All vested and inchoate rights to the waters of this state or to the use thereof, and the means necessary to protect such rights.

(g) The state water resources policy formulated under ORS 536.300 to 536.350.

(4) After the entry of the order specified in subsection (2) of this section, the application for a preliminary permit or for a license shall be referred to the State Engineer for such further proceedings as are not inconsistent therewith.

[1955 c.707 §42; 1961 c.224 §17]

543.230 Hearings on application; protest. (1) The State Water Resources Board shall, by order or regulation, provide for the time and manner of hearings upon applications.

(2) Every application for the appropriation of water for the generation of electricity subject to the terms of ORS 543.010 to 543.620 shall be subject to protest or remonstrance on behalf of the public, or any district organized for public purposes, or any interested private person, on the ground that the proposed construction, development or improvement would damage or destroy the use or utility of the stream or other body of water involved for other beneficial purposes, including propagation of fish, scenic, esthetic, recreational, park, highway or other beneficial use. All protests and remonstrances under this subsection must be filed with the board within the time specified in the notice and must be in writing and verified by the parties protesting, and a certified copy thereof shall be served upon the applicant for the permit. However, in the discretion of the board, or its hearing examiner, at the time of the hearing any interested party may make an oral protest if there exists any good reason therefor, and the board or its hearing examiner shall allow the applicant to be heard in opposition thereto. Every protest or remonstrance under this subsection which is not filed and served as required in this subsection shall be deemed waived.

[Amended by 1955 c.673 §4; 1955 c.707 §40; 1961 c.224 §18]

543.240 Purpose of issuing permits. The purpose for which a preliminary permit may be issued is to enable the applicant to make necessary examinations and surveys, and prepare maps, plans, specifications and cost estimates of the proposed project, and to make other preparations necessary to carry forward the work if a license is issued.

543.250 Permit; duration; renewal; transfer; cancellation; priority; terms and conditions; denial. A preliminary permit

may be issued for a period not exceeding two years, and may be renewed for an additional period not exceeding one year. It shall not be transferable except upon written approval of the State Engineer, and may be canceled by order of the State Engineer at any time upon proof to his satisfaction, after hearing, that the holder is not in good faith complying with the provisions of the permit. The holder of a preliminary permit which has not been canceled shall have priority of right to make application for a license covering the project for which the preliminary permit was issued, within the term of the permit or any lawful extension thereof. Except as otherwise specified in ORS 543.010 to 543.620, the State Engineer may fix the terms and conditions of any preliminary permit issued thereunder, and each preliminary permit issued shall set forth all the terms and conditions. The State Engineer, in his discretion, may decline to grant any application for a preliminary permit.

543.260 Licenses; duration; terms and conditions; termination; denial of application; preference of municipality or utility district. (1) A license may be issued by the State Engineer to any qualified licensee for a period not exceeding 50 years. Each license shall be conditioned upon acceptance by the licensee of all the terms and conditions of ORS 543.010 to 543.620, and such further terms and conditions as the State Engineer may, in his discretion, prescribe, not inconsistent with those sections. All such terms and conditions, and their acceptance by the licensee, shall be expressed in the license. A license may be terminated for the reasons and in the manner provided in ORS 543.010 to 543.620. The form of license containing all the terms and conditions may, in the discretion of the State Engineer, be set forth in the preliminary permit.

(2) The State Engineer may, in his discretion, deny any application for a license if it appears that the applicant has failed to comply substantially with the terms and conditions of the preliminary permit or, notwithstanding he has theretofore issued a preliminary permit, if in his judgment the project is unfeasible or the public interest requires the denial thereof.

(3) A municipal corporation or public utility district shall be given preference on any project in the issuance of a license, upon condition that the municipal corporation or public utility district exercising such preference right shall be required to reimburse the holder of a preliminary permit for all reasonable actual expenditures made by him upon the project described or referred to therein.

543.270 Preference in granting permit or license; municipal use. In issuing preliminary permits, and in issuing licenses where no preliminary permit is held by an applicant for a license, preference shall be given to the application which appears to the State Engineer to be best adapted to conserve and utilize the water power involved. However, any application for the use of water made by any municipal corporation of this state under any law of the state, before a preliminary permit is issued, or before a license is issued when no preliminary permit upon the proposed project has been issued, shall always have preference.

543.280 Payments by licensee. (1) An applicant for a license shall pay to the state, or secure payment to the state, as required by the State Engineer, the reasonable expense incurred and to be incurred by the State Engineer in examining into the application and the maps, plans, specifications, cost estimates and other matters relating to the project covered by the application, and the investigation from time to time of the acts done and work carried forward under the license until completion of the project.

(2) If no preliminary permit has been issued, an applicant for a license for a project of more than 100 theoretical horsepower shall pay to the state, at the time of filing such application, the minimum sum of $50 and such further sum, not exceeding $200, as shall be determined by the State Engineer, to cover the costs of recording, publishing notices and making investigations necessary to determine whether or not a license should be granted. If the State Engineer grants a license pursuant to such application, the applicant shall pay to the state, at the time the license is issued, and in addition to the sums hereinbefore specified in this section, the sum of five cents for each theoretical horsepower as computed by the State Engineer and covered by the license.

[Amended by 1957 c.581 §1]

543.290 Filing of maps, plans, estimates, etc.; incorporation as part of license; alteration; further statements and data. The applicant for a license shall submit to and file with the State Engineer:

(1) Such maps, plans, specifications and cost estimates as may be required by the State Engineer for a full understanding of the proposed project. All such maps, plans and specifications, when approved by the State Engineer, shall become a part of the license, if one is issued upon the application, and thereafter no change shall be made in any such maps, plans and specifications until the proposed change has been approved by the State Engineer. When so approved, they shall become a part of the license, whether theretofore or thereafter issued.

(2) Such further statements and data as may be required by the State Engineer concerning the proposed project, the market to be served, the financial responsibility of the applicant, the plan of financing and any other matters deemed material by the State Engineer.

543.300 Considerations and conditions governing license; fees; waiver of conditions. Any license issued under ORS 543.010 to 543.620 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 State Engineer, 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 State Engineer, 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 and regulations as the State Engineer may prescribe not inconsistent with any applicable order of the State Water Resources Board 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; and 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 State Engineer may prescribe for the purposes hereinbefore mentioned.

(4) That the licensee will 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 and regulations of the State Engineer not inconsistent with ORS 543.010 to 543.620.

(5) That the licensee will pay to the state annually not more than $1 for each horsepower covered by the license. 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 State Engineer 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 State Engineer and expressed in the license.

(6) Other and further conditions not inconsistent with ORS 543.010 to 543.620 as the State Engineer may require in the public interest.

(7) In issuing a license for a minor project of not more than 100 horsepower the State Engineer, in his discretion, may waive all or any of the conditions and requirements of ORS 543.010 to 543.620 except the period for which a license may be issued, and the annual charge as determined by the State Engineer 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 State Engineer may, in his discretion, waive and modify such of the terms, conditions and requirements of ORS 543.010 to 543.620, except the period for which a license may be issued and the annual charge as determined by the State Engineer under subsection (5) of this section, as the State Engineer, 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 State Engineer may, in his discretion, waive the accounting and amortization requirements of

ORS 543.010 to 543.620, even where the project involved exceeds 100 horsepower.
[Amended by 1959 c.560 §1; 1961 c.224 §19]

543.310 Moneys collected; disposition. All moneys collected under the provisions of ORS 543.010 to 543.620 shall forthwith be paid to the State Treasurer and become a part of the General Fund.

543.320 Effect of amendment or repeal of law. The right to alter, amend or repeal ORS 543.010 to 543.620, or any part thereof, hereby is expressly reserved; but no such alteration, amendment or repeal shall affect any license theretofore issued under the provisions of ORS 543.010 to 543.620, or the rights of any licensee thereunder, unless expressly assented to by the licensee.

TIME FOR CONSTRUCTION; TERMINATION, REVOCATION, TRANSFER OF LICENSE

543.410 Construction of project; time for commencement and completion; supply of service; extension of time; nonperformance; termination of license. (1) The licensee shall commence the construction of the project works within the time fixed in the license, which shall not be more than two years from the date thereof, shall thereafter in good faith and with due diligence prosecute such construction, and shall, within the time fixed in the license, complete and put into operation such part of the ultimate development as the State Engineer deems necessary to supply the reasonable needs of the then available market, and shall, from time to time thereafter construct such portion of the balance of the development as the State Engineer directs, so as to supply adequately the reasonable market demands until development is completed.

(2) The period for commencement of construction may be extended once but not longer than two additional years, and the period for the completion of construction carried on in good faith and with reasonable diligence may be extended by the State Engineer when not incompatible with the public interests.

(3) In case the licensee does not commence actual construction of the project works or of any specified part thereof, within the time prescribed in the license or as extended by the State Engineer, then, after due notice given, the license shall, as to the project works or part thereof, be terminated upon written order of the State Engineer.

543.420 Noncompletion of construction within prescribed time; judicial proceedings; sale of property; disposition of proceeds; rights of purchaser. In case construction of a project under license has been begun but has not been completed within the time prescribed in the license or in any lawful extension thereof, then the Attorney General, upon request of the State Engineer, shall institute proceedings in the circuit court for the county in which some part of the project is situated, for termination of the rights of the licensee under the license, the sale of the property embraced in the project, and for such other relief as the case may demand. Any judgment or decree entered in the proceeding shall provide for distribution of the proceeds of the sale to the parties equitably entitled thereto. The purchaser at any such sale shall take the property subject to all the terms and conditions of the license under which construction was begun, except in so far as they may be modified by the State Engineer.

543.430 Actions and proceedings after completion of project; suit to revoke license; sale of project after revocation; duties of purchaser; remedies as cumulative. The Attorney General shall, upon request of the State Engineer, institute proceedings in equity in the circuit court for the county in which any project, or major part thereof, is situated, after the project has been completed, for the purpose of revoking for violation of its terms any license issued under ORS 543.010 to 543.620, or for the purpose of correcting or remedying by injunction, mandamus or other appropriate writ or decree, any act of commission or omission by the licensee in violation of the terms of those sections, or of any lawful regulation or order of the State Engineer. The court shall have jurisdiction of the proceedings and may issue and execute all necessary process to compel compliance with the terms of any license, the terms of ORS 543.010 to 543.620, and the lawful orders and regulations of the State Engineer. In the event a decree revoking a license is entered, the court may sell the whole, or any part, of a project under the license; wind up the business of the licensee conducted in connection with the project; distribute the pro-

ceeds to the parties equitably entitled thereto; and make and enforce such further orders and decrees as equity and justice may require. At any such sale the purchaser shall take the rights and privileges belonging to the licensee and shall perform all the duties of the licensee under the license. The remedies provided by this section are in addition to the remedies otherwise provided by ORS 543.010 to 543.620.

543.440 Transfer of license, rights or property; effect. No voluntary transfer of any license or any rights thereunder or of any property acquired, constructed or operated pursuant to license issued under ORS 543.010 to 543.620 shall be made without written approval of the State Engineer. Any successor or assignee of any licensee under any project acquired, constructed or operated by licensee, whether by voluntary transfer approved by the State Engineer or sale upon foreclosure, execution or otherwise, shall be subject to all the terms and conditions of the license and of the provisions of ORS 543.010 to 543.620 to the same extent as though the successor or assignee was the original licensee thereunder. Any mortgage, deed of trust, or other lien suffered or created upon any such project shall be subject and subordinate to all the terms and conditions of ORS 543.010 to 543.620. However, the provisions of this section shall not apply to any transfer, voluntary or involuntary, to the state or any municipal corporation thereof, and upon such transfer the license shall terminate.

FINANCING OF PROJECTS; LIENS; BOND OF LICENSEE

543.510 Reserve for amortization of investment. It should be the policy of the State Engineer, so far as practicable, to establish a system of accounts under which, within the term of any license issued, the net investment of the licensee in any project shall be amortized and paid. To accomplish this purpose, and out of surpluses earned and accumulated, if any, in excess of a reasonable rate of return upon the actual net investment of the licensee, the licensee, in accordance with the regulations of the State Engineer, shall establish and maintain amortization reserves, which reserves, in the discretion of the State Engineer, shall be applied from time to time in reduction of the net investment. The proportion or amount of surplus, if any, earned and accumulated in excess of a reasonable rate of return, as aforesaid, to be paid or turned into the amortization reserves, in the discretion of the State Engineer, may be set forth in the license, or by orders made from time to time thereafter.

543.520 Complete amortization of investment prior to expiration of license; vesting of property in state; incomplete amortization; renewal of license. If at any time prior to expiration of any license, or thereafter, the whole net investment in a project under a license issued pursuant to ORS 543.010 to 543.620 is amortized and repaid, thereupon the project shall become the property of the state, free and clear of all claims, liens and rights whatsoever of the licensee or any person. If at or prior to expiration of any license the whole net investment in any project has not been so amortized and repaid, then the State Engineer shall issue a new license for a period not exceeding five years, and shall thereafter, from time to time, renew the same for a like period until the net investment in the project has been fully amortized and reimbursed.

543.525 ORS 543.530 to 543.550 not applicable to regulated utilities. The provisions of ORS 543.530 to 543.550 shall not apply to any licensee which is a utility as defined in ORS 757.005 and regulated by the Public Utility Commissioner of Oregon.
[1965 c.333 §1]

Note: ORS 543.525 was not added to and made a part of ORS 543.010 to 543.620 by legislative action.

543.530 Issuance of stocks, bonds, etc.; authorization of State Engineer; noncompliance prohibited. (1) No licensee shall issue any share of corporate stock, or any bond, or other evidence of interest in or indebtedness of the licensee, or assume any obligation or liability as lessor, lessee, guarantor, indorser, surety or otherwise, in respect of the corporate shares, bonds or other evidence of indebtedness of any person in connection with the financing, acquisition, construction, maintenance or operation of any project, unless and until, and then only to the extent that, upon application by the licensee, and after investigation by the State Engineer of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the State Engineer, by order, authorizes

the issue or assumption. The State Engineer shall make the order only if he finds that the issue or assumption:

(a) Is for some lawful object of the licensee, compatible with the public interest, and is necessary to, or appropriate for, the proper performance by the licensee of the terms and conditions of the license and will not impair his ability to perform the terms and conditions; and

(b) Is reasonably necessary and appropriate for such purposes.

(2) The State Engineer may grant or deny the application to authorize the issue or assumption, or grant the same in part and deny in part, and may modify the provisions of any previous order and prescribe such terms and conditions as he deems necessary or appropriate in the premises. Every such application shall be made in such form and contain such data as the State Engineer may prescribe.

(3) No licensee or any director, officer, attorney or agent thereof shall knowingly assent to or concur in any issue or assumption contrary to the provisions of this section, or the orders of the State Engineer made pursuant to this section or ORS 543.540. [Amended by 1953 c.271 §1]

543.540 Consideration for bonds, stock, etc.; issuance for property; corporate shares; sale price of securities; discount from face value, how considered. No bonds, notes or other obligations or securities or corporate stock shall be issued in connection with the financing, construction or acquisition of any project or part thereof, under a license issued pursuant to ORS 543.010 to 543.620, except for cash or property. If issued for property, the price or value at which the property is to be acquired by the licensee and made a part of any such project must be submitted to and approved by the State Engineer before it is purchased or acquired. All corporate shares issued in connection with any such project shall have a nominal or par value. All bonds, notes or other obligations or securities, and all shares of corporate stock issued or sold by any licensee in connection with the acquisition, construction or financing of any project, or part thereof, shall be issued or sold or used in the purchase or acquisition of property at the full face or nominal value thereof, unless the State Engineer consents to and approves the sale for cash, or the use thereof in the purchase or acquisition of property at a discount from the face or nominal value thereof. Any discount so approved and consented to shall be considered a part of the cost of financing.

543.550 Liens prohibited; exceptions; what may be included by mortgage, trust deed, or sale; determination of investment in case of sale of part. No lien for labor, services, materials, machinery or equipment shall exist or be acquired or enforced upon any property acquired, constructed or made a part of any project under license issued pursuant to ORS 543.010 to 543.620. No property shall be put into or made part of any such project unless owned by the licensee free and clear of all liens and claims whatsoever, except a lien created by the licensee upon the whole property embraced in the project by mortgage or deed of trust, to the end that the entire property embraced in the project be kept and maintained as an indivisible whole. The mortgage or deed of trust may include other property. Any voluntary sale or any sale upon a decree of foreclosure, execution or otherwise, shall be of the whole property embraced in the project unless the State Engineer, by an order in writing, consents to and approves of a sale of a part thereof. If less than the whole of any property embraced in a project is sold with the consent and approval of the State Engineer, the State Engineer shall determine at the time thereof the actual net investment in the part sold, as well as the actual net investment in the part remaining unsold.

543.560 Bond of licensee securing claims of artisans and materialmen; enforcement of obligation; action for sums due Industrial Accident Fund. Before entering upon the work of construction or acquisition of any project, the licensee shall execute to the state a bond, with good and sufficient sureties, to be approved by the State Engineer, to the effect that the licensee shall promptly make payment to all persons supplying labor, services, material, machinery or equipment for the prosecution of the work, and all amounts due the State Industrial Accident Fund from the licensee. Any person supplying the licensee with any labor, services, material, machinery or equipment for prosecution of the work who has not been paid therefor within 60 days after the same has been supplied, or when payment is due according to any special agreement, may, within one year after any payment has

become due, bring an action against the licensee, and the sureties upon the bond, for payment of the amount due to him, and prosecute the same to final judgment and execution. The action shall be brought in the name of the state upon the relation of the person to whom payment is due. The state, at the request of the State Accident Insurance Fund may prosecute an action to judgment and execution against the licensee and the sureties upon the bond for all sums due the State Industrial Accident Fund.

ACQUISITION OF PROJECT BY STATE OR MUNICIPALITY

543.610 Acquisition of project by state or municipality. (1) Upon not less than two years' notice in writing the state, or any municipality thereof, shall have the right at any time to take over and thereafter to maintain and operate any project constructed under a license pursuant to ORS 543.010 to 543.620, upon payment of the fair value of the property taken over, not exceeding the net investment as defined in subsection (2) of ORS 543.010, plus such reasonable damages, if any, to valuable, serviceable and dependent property of the holder of the license, not taken over, as may be caused by the severance therefrom of the property taken, and shall assume all contracts entered into by the licensee which are required to have and do have the express approval of the commission. The net investment shall be determined in accordance with the provisions of ORS 543.010 to 543.620. If the sum to be paid cannot be agreed upon by the holder of the license and the municipality or the state, as the case may be, it shall be determined in a proceeding in equity instituted by the state or municipality, as the case may be, in the circuit court of the county in which the major part of the project is located.

(2) There is also expressly reserved to the state, and any municipality thereof, the right to take over all or any part of any project by condemnation proceedings as may be provided by the laws of Oregon or the charter of any such municipality.

543.620 Property acquired by state; disposal. Any property which the state acquires or title to which is devolved upon or vested in the state pursuant to the provisions of ORS 543.010 to 543.620 may be operated, leased or otherwise disposed of as may be provided by law.

POWER DEVELOPMENT FEES

543.705 Definitions for ORS 543.710 to 543.730. As used in ORS 543.710 to 543.730, "claimant" means any person claiming the right to the use of water for power development.
[1957 c.333 §1]

543.710 Annual fee based on horsepower; exemptions. Every claimant other than a licensee under ORS 543.010 to 543.620 shall on or before January 1 of each year pay to the state in advance an annual license fee based upon the theoretical water horsepower claimed under each separate claim to water, graduated as follows: Twenty-five cents for each theoretical water horsepower or fraction thereof up to and including 50 and fifteen 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.
[Amended by 1957 c.333 §2; 1965 c.185 §1]

543.720 Payment in advance; accompanying statement of claim; penalty for nonpayment of fees or nonfiling; lien; foreclosure; amount of water claimed as affecting right of claimant; evidence of abandonment of right in excess of claim; computation of horsepower. (1) The fees provided for in ORS 543.710 shall be paid to the State Engineer in advance, and shall be accompanied by a written statement showing the extent of the claim. The statement shall set forth the name and address of the claimant; the name of the stream from which the water is appropriated or claimed for power development; a description of the 40 acres, or smallest legal subdivision in which the point of diversion and point of return are located; the date of the right as claimed;

the maximum amount of water claimed expressed in cubic feet per second of time; the total average fall utilized under such claim; the manner of developing power; and the use to which the power is applied. If the regular flow is supplemented by water stored in a reservoir, the location of the reservoir, its capacity in acre-feet and the stream from which it is filled and fed, should be given, also the date of the right as claimed, for storage purposes.

(2) Should any claimant fail or neglect to file the statement or to pay the fees within the time specified, the fees due and payable shall be the amount specified in ORS 543.710 increased 25 percent. The state shall have a preference lien therefor, together with interest at the rate of 10 percent per annum from date of delinquency, upon the property of the claimant used, or necessary for use, in the development of the right or claim, together with any improvements erected thereon for such development. Upon notice from the State Engineer, the Attorney General shall foreclose the lien and collect the amount due, as provided in this section, in the same manner as other liens on real property are foreclosed.

(3) The filing of a claim to water in excess of the amount to which the claimant is legally entitled shall not operate to vest in him any right to the use of such excess water, nor shall the payment of the annual license fee provided for in ORS 543.710 operate to vest in any claimant any right to the use of such water beyond the amount to which claimant is legally entitled. The filing of any such claim to water shall be conclusive evidence as to the abandonment by the claimant of all rights to water for power purposes in excess of the claim as filed.

(4) The amount of theoretical water horsepower upon which fees shall be paid under the provisions of ORS 543.710 and 543.720 shall be computed by multiplying the maximum amount of water claimed, expressed in cubic feet per second, by the average total fall utilized, expressed in feet, and dividing the product by 8.8.

543.730 Failure to file statement or pay fees as evidence of abandonment of claim; cancellation of claim, permit and water right certificate. (1) Failure of any claimant for a period of five successive years ending after August 20, 1957, to file the written statement showing the extent of the claim as required by ORS 543.720, or failure of any claimant for a period of five successive years ending after August 20, 1957, to pay the annual license fee as required by ORS 543.710, shall be conclusive evidence of the abandonment by the claimant of the claim and of all right to water for power purposes in connection with such claim.

(2) When a claim is abandoned under the provisions of subsection (1) of this section, or whenever a claimant has voluntarily authorized, in writing, the cancellation of his claim or the water right in connection therewith, the State Engineer shall:

(a) Cancel the claim on the records of his office.

(b) Cancel any permit to appropriate water or any water right certificate theretofore issued in connection with such claim.

(c) Send a certified copy of his order canceling the water right certificate to the county clerk of the county in which the water right was located.

(3) Upon receipt of the certified copy of the order referred to in subsection (2) of this section, the county clerk shall stamp or write across the face of the recorded water right certificate which evidenced the water right canceled the words "Canceled by order of State Engineer, dated————."

[1957 c.333 §3]

HYDROELECTRIC POWER COMMISSIONER

543.810 Governor constituted commissioner to secure federal aid. In order to secure federal aid for Oregon hydroelectric projects, the Governor is made ex officio Commissioner of Hydroelectric Power for Oregon.

543.820 Duties of commissioner. The Hydroelectric Power Commissioner shall collect data concerning hydroelectric resources of the navigable streams in Oregon and along its boundaries, and present them to the Federal Power Commission. He shall urge upon the Federal Power Commission the merit and desirability of any hydroelectric project in any navigable stream above referred to which he may deem worthy of presentation from the information available to him. He shall use all agencies at his command in securing necessary information and in urging upon the Federal Power Commission the merits of any Oregon project. He

also may act in conjunction with any commission or other accredited officials of adjoining states in order to present the claim of any project which may be located in any navigable stream flowing between Oregon and the other state.

543.830 Surveys, data and information furnished. All officers of the state of Oregon shall furnish to the Hydroelectric Power Commissioner, upon his request, all surveys, data and other information in their possession or readily available to them.

PENALTIES

543.990 Penalties. (1) Violation of subsection (3) of ORS 543.530 is punishable, upon conviction, by a fine of not more than $5,000, or by imprisonment for not more than one year, or both.

(2) Any person who wilfully fails or refuses to comply with any of the provisions of ORS 543.010 to 543.620, or with any of the conditions made a part of any license issued thereunder, or with any subpena of the State Engineer, a hearing examiner appointed by the State Engineer or any person designated by the State Engineer to take testimony, or with any lawful regulation or order of the State Engineer, shall, upon conviction, be punished by a fine of not more than $1,000 or by imprisonment for not more than six months, or both.

(3) Any person who wilfully and knowingly gives false testimony concerning a material matter in any hearing before the State Engineer, a hearing examiner appointed by the State Engineer or any person designated by the State Engineer to take testimony, or in any deposition or affidavit to be used in a matter pending before the State Engineer or his hearing examiner, or wilfully and knowingly verifies a false statement or report filed with the State Engineer, shall be guilty of perjury and may be prosecuted and punished as otherwise provided by law for the prosecution and punishment of perjury.
[Amended by 1955 c.673 §5]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 15, 1965.

Sam R. Haley
Legislative Counsel