

HOUSE BILL REPORT

ESHB 1125

As Passed Legislature

Title: An act relating to dam safety inspections.

Brief Description: Exempting federally licensed dams from state regulation.

Sponsors: By House Committee on Energy & Utilities (originally sponsored by Representatives Kessler, Casada, Chandler, Kremen, Patterson, Mastin, Morris, Quall, Foreman, L. Thomas, Brumsickle, Buck, Huff and Schoesler).

Brief History:

Committee Activity:

Energy & Utilities: 2/7/95 [DPS].

Floor Activity:

Passed House 2/22/95, 91-6.

Passed Legislature.

HOUSE COMMITTEE ON ENERGY & UTILITIES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Casada, Chairman; Crouse, Vice Chairman; Hankins, Vice Chairman; Kessler, Ranking Minority Member; Kremen, Assistant Ranking Minority Member; Chandler; Huff; Mastin; Mielke; Mitchell and Patterson.

Staff: Margaret Allen (786-7110).

Background: The Department of Ecology (Ecology) has authority over many aspects of water resources in the state, including a number of issues relating to the construction of dams in state waters. Ecology is required to inspect all dams to assure their safety and to set stream flows to protect against floods. The proponent of a dam must submit its plans to Ecology prior to construction for a review of the project's safety.

The Federal Energy Regulatory Commission (FERC) has the federal responsibility over most hydropower facilities. Under the Federal Power Act, FERC has exclusive jurisdiction over those projects it regulates. This authority may preempt state law that conflicts with or interferes with the federal regulatory scheme. FERC is required to consider state interests with respect to the federally licensed facilities. FERC must consider comprehensive plans developed by a state for the management and use of a

waterway. FERC must consider recommendations made by a state agency with administrative responsibility over flood control, navigation, irrigation, recreation, or other resources affected by a federally licensed project. FERC must also include in a license conditions recommended by state fish and wildlife agencies, unless FERC determines the conditions are inconsistent with the Federal Power Act.

FERC is responsible for assuring that a federally licensed dam is constructed and operated in a safe manner. Ecology and FERC have entered into a memorandum of agreement to coordinate their activities relating to dam safety. The agreement reinforces FERC's primacy in dam licensing, operating and safety inspections. However, it commits FERC to consulting with Ecology during inspections and in responding to emergencies. The agreement gives Ecology a definite role in reviewing plans for and in inspecting construction on new or modified dams. Ecology and FERC will independently review plans. Construction inspections will be conducted jointly, but FERC is the focal point for response by the project operator.

Summary of Bill: Ecology has no authority to regulate, supervise or assure the safety of any project that requires a license from FERC under the Federal Power Act. Ecology may not require any federal licensee to submit to an inspection, submit plans, seek a permit or change the design or operation of a federally licensed dam.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: State and federal dam safety inspections are completely redundant for dams licensed by FERC. FERC requires rigorous annual inspections of each project; dam inspectors from Ecology have no special expertise. FERC jurisdiction preempts conflicting state laws; federal preeminence in safety inspections of federally licensed dams is appropriate because a dam failure would have interstate consequences. Ecology should dedicate its resources to inspecting dams under its sole jurisdiction.

Testimony Against: This is a public safety and states' rights issue. Ecology spends only one-quarter of an FTE in its dam inspection program. While there is low probability of a dam failure, the consequences would be tremendous, as the dams at issue have large populations of residents below them. The expertise of Ecology's engineers in the subjects of high rainfall and seismic safety is nationally recognized. Ecology defers to FERC on most issues under the terms of the memorandum of agreement.

Testified: (Pro) Representative Kessler, prime sponsor; Collins Sprague and Dan Pfeiffer, Washington Water Power; David Ducharme, Northwest Hydroelectric Association; Bruce Meaker, Snohomish County PUD; Dolores Stegeman, Tacoma Public Utilities; Ron Newbry, PacifiCorp; Dave Arbaugh, Washington PUD Association; and Molly Bork, Puget Power. (Con) Linda Crerar and Mel Schaefer, Department of Ecology.