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**ENGROSSED SUBSTITUTE HOUSE BILL 1125**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**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)

Read first time 02/09/95.

1       AN ACT Relating to dam safety inspections; amending RCW 43.21A.064,  
2       86.16.025, and 90.03.350; reenacting and amending RCW 86.16.035; adding  
3       a new section to chapter 43.21A RCW; and creating a new section.

4       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       NEW SECTION.   **Sec. 1.** The legislature finds and declares:

6       (1) The federal energy regulatory commission, under the federal  
7       power act, licenses hydropower projects in navigable waters and  
8       regularly and extensively inspects facilities for safety; and

9       (2) Nothing in this act alters or affects the department of  
10      ecology's authority to: (a) Participate in the federal process of  
11      licensing hydropower projects; or (b) ensure that hydropower projects  
12      comply with federal statutes such as the coastal zone management act  
13      and the clean water act and, subject to section 2 of this act, all  
14      applicable state law.

15      NEW SECTION.   **Sec. 2.** A new section is added to chapter 43.21A RCW  
16      to read as follows:

17      (1) With respect to the safety of any dam, canal, ditch, hydraulic  
18      power plant, reservoir, project, or other work, system, or plant that

1 requires a license under the federal power act, no licensee shall be  
2 required to:

3 (a) Submit proposals, plans, specifications, or other documents for  
4 approval by the department;

5 (b) Seek a permit, license, or other form, permission, or  
6 authorization from the department;

7 (c) Submit to inspection by the department; or

8 (d) Change the design, construction, modification, maintenance, or  
9 operation of such facilities at the demand of the department.

10 (2) For the purposes of this section, "licensee" means an owner or  
11 operator, or any employee thereof, of a dam, canal, ditch, hydraulic  
12 power plant, reservoir, project, or other work, system, or plant that  
13 requires a license under the federal power act.

14 **Sec. 3.** RCW 43.21A.064 and 1977 c 75 s 46 are each amended to read  
15 as follows:

16 Subject to section 2 of this act, the director of the department of  
17 ecology shall have the following powers and duties:

18 (1) The supervision of public waters within the state and their  
19 appropriation, diversion, and use, and of the various officers  
20 connected therewith;

21 (2) Insofar as may be necessary to assure safety to life or  
22 property, he shall inspect the construction of all dams, canals,  
23 ditches, irrigation systems, hydraulic power plants, and all other  
24 works, systems, and plants pertaining to the use of water, and he may  
25 require such necessary changes in the construction or maintenance of  
26 said works, to be made from time to time, as will reasonably secure  
27 safety to life and property;

28 (3) He shall regulate and control the diversion of water in  
29 accordance with the rights thereto;

30 (4) He shall determine the discharge of streams and springs and  
31 other sources of water supply, and the capacities of lakes and of  
32 reservoirs whose waters are being or may be utilized for beneficial  
33 purposes;

34 (5) He shall keep such records as may be necessary for the  
35 recording of the financial transactions and statistical data thereof,  
36 and shall procure all necessary documents, forms, and blanks. He shall  
37 keep a seal of the office, and all certificates by him covering any of  
38 his acts or the acts of his office, or the records and files of his

1 office, under such seal, shall be taken as evidence thereof in all  
2 courts;

3 (6) He shall render when required by the governor, a full written  
4 report of the work of his office with such recommendations for  
5 legislation as he may deem advisable for the better control and  
6 development of the water resources of the state;

7 (7) The director and duly authorized deputies may administer oaths;

8 (8) He shall establish and promulgate rules governing the  
9 administration of chapter 90.03 RCW;

10 (9) He shall perform such other duties as may be prescribed by law.

11 **Sec. 4.** RCW 86.16.025 and 1989 c 64 s 2 are each amended to read  
12 as follows:

13 Subject to section 2 of this act, with respect to such features as  
14 may affect flood conditions, the department shall have authority to  
15 examine, approve or reject designs and plans for any structure or  
16 works, public or private, to be erected or built or to be reconstructed  
17 or modified upon the banks or in or over the channel or over and across  
18 the floodway of any stream or body of water in this state.

19 **Sec. 5.** RCW 86.16.035 and 1987 c 523 s 9 and 1987 c 109 s 53 are  
20 each reenacted and amended to read as follows:

21 Subject to section 2 of this act, the department of ecology shall  
22 have supervision and control over all dams and obstructions in streams,  
23 and may make reasonable regulations with respect thereto concerning the  
24 flow of water which he deems necessary for the protection to life and  
25 property below such works from flood waters.

26 **Sec. 6.** RCW 90.03.350 and 1994 c 232 s 20 are each amended to read  
27 as follows:

28 Except as provided in section 2 of this act, any person,  
29 corporation or association intending to construct or modify any dam or  
30 controlling works for the storage of ten acre feet or more of water,  
31 shall before beginning said construction or modification, submit plans  
32 and specifications of the same to the department for examination and  
33 approval as to its safety. Such plans and specifications shall be  
34 submitted in duplicate, one copy of which shall be retained as a public  
35 record, by the department, and the other returned with its approval or  
36 rejection endorsed thereon. No such dam or controlling works shall be

1 constructed or modified until the same or any modification thereof  
2 shall have been approved as to its safety by the department. Any such  
3 dam or controlling works constructed or modified in any manner other  
4 than in accordance with plans and specifications approved by the  
5 department or which shall not be maintained in accordance with the  
6 order of the department shall be presumed to be a public nuisance and  
7 may be abated in the manner provided by law, and it shall be the duty  
8 of the attorney general or prosecuting attorney of the county wherein  
9 such dam or controlling works, or the major portion thereof, is  
10 situated to institute abatement proceedings against the owner or owners  
11 of such dam or controlling works, whenever he or she is requested to do  
12 so by the department.

13 A metals mining and milling operation regulated under chapter 232,  
14 Laws of 1994 is subject to additional dam safety inspection  
15 requirements due to the special hazards associated with failure of a  
16 tailings pond impoundment. The department shall inspect these  
17 impoundments at least quarterly during the project's operation and at  
18 least annually thereafter for the postclosure monitoring period in  
19 order to ensure the safety of the dam or controlling works. The  
20 department shall conduct additional inspections as needed during the  
21 construction phase of the mining operation in order to ensure the safe  
22 construction of the tailings impoundment.

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