

SENATE BILL REPORT

HB 2867

AS REPORTED BY COMMITTEE ON ENERGY & UTILITIES,  
FEBRUARY 22, 1994

**Brief Description:** Exempting federally licensed dams from state regulation.

**SPONSORS:** Representatives Kessler, Chandler, Kremen, Finkbeiner, Long, Casada, Bray and Foreman

**HOUSE COMMITTEE ON ENERGY & UTILITIES**

**SENATE COMMITTEE ON ENERGY & UTILITIES**

**Majority Report:** Do pass as amended.

Signed by Senators Sutherland, Chairman; Ludwig, Vice Chairman; Amondson, Hochstatter, McCaslin, Roach, Vognild, West and Williams.

**Staff:** Jeff Baird (786-7444)

**Hearing Dates:** February 22, 1994

**BACKGROUND:**

The Department of Ecology (Ecology) has authority over many water resource issues 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 federal law, FERC has exclusive jurisdiction over those projects it regulates. This authority may preempt state law which 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, operation 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:**

The Department of Ecology has no authority to regulate, supervise or assure the safety of any project which requires a license from FERC under the Federal Power Act. The Department of Ecology may not require any licensee of the Federal Energy Regulatory Commission to submit to an inspection, submit plans, seek a permit or change the design or operation of a federally licensed dam.

An intent section outlines federal law of dams on navigable waters.

**SUMMARY OF PROPOSED COMMITTEE AMENDMENT:**

The intent section is removed.

The Department of Ecology may review and comment upon reports submitted by a licensee to FERC and may conduct inspections for the purpose of such comment when requested to do so by FERC.

Licensee is defined.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** available

**TESTIMONY FOR:**

This is an efficiency in government bill limiting the redundant state regulatory role in federally licensed dams. Ecology needs to focus its resources on the purely state regulated dams. Arguably, the federal government, under the Federal Power Act, already has exclusive regulatory power over the safety of dams it licenses.

**TESTIMONY AGAINST:**

This bill asks the state to surrender its existing authority to regulate dam safety. The state has a necessary role, like that of a physician offering a second opinion, in regulating dam safety, particularly because of the local expertise state personnel can offer and because of the burden on federal dam

inspectors. Ecology inspections add value and reduce mistakes.

**TESTIFIED:** PRO: Dave Ducharme, NW Hydroelectric Association (pro); Bob Barnes, Puget Power (pro); Bruce Meaker, Snohomish County PUD (pro); Barbara Serr, Tacoma Public Utilities (pro); CON: Terry Husseman, Ecology (con); Tom McDonald, Attorney General's Office (con but pro striking amendment); Mel Schaffer, Ecology (con)