

# FINAL BILL REPORT

## ESHB 1125

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Synopsis as Enacted

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

**Sponsors:** 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).

**House Committee on Energy & Utilities**

**Senate Committee on Energy, Telecommunications & Utilities**

**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 for a review of the project's safety prior to construction.

The Federal Energy Regulatory Commission (FERC) has federal responsibility for most hydropower facilities. Under the Federal Power Act, FERC has exclusive jurisdiction over those projects it regulates. This authority preempts 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. When issuing a license, FERC must also include 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 independently review plans. Construction inspections are to be conducted jointly, but FERC is the focal point for response by the project operator.

**Summary:** 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.

**Votes on Final Passage:**

House	91	6
Senate	45	0

**Effective:** July 23, 1995