

SENATE BILL REPORT

ESHB 1125

As Reported By Senate Committee On:
Energy, Telecommunications & Utilities, March 16, 1995

Title: An act relating to dam safety inspections.

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).

Brief History:

Committee Activity: Energy, Telecommunications & Utilities: 3/16/95 [DPA].

SENATE COMMITTEE ON ENERGY, TELECOMMUNICATIONS & UTILITIES

Majority Report: Do pass.

Signed by Senators Sutherland, Chair; Loveland, Vice Chair; Finkbeiner, Hochstatter and Owen.

Staff: Diane Smith (786-7410)

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

Testimony For: The overlapping jurisdictional requirements of FERC and DOE cause conflicting signals for the dam operators that can lead to disaster in the face of high water conditions. The department has taken 23 years to inspect the 1,000 dams which are not licensed by FERC. It has enough to do without insisting on inspecting the 60 FERC dams as well. This bill eliminates a needless and even counterproductive burden on electric utility rate payers.

Testimony Against: This is a state's rights issue. The state of Washington should not give away its authority to ensure the safety of the 100,000 people below the dams. This bill is part of a broader hydropower agenda being played out in our state.

Testified: PRO: David Ducharme, Washington Hydropower Assn.; Barbara See, Tacoma Public Utilities; Bruce Meaker, Snohomish PUD; CON: Linda Crerar, Mel Schaefer, Ecology.