
SENATE BILL 5801

State of Washington**54th Legislature****1995 Regular Session**

By Senators Loveland, Finkbeiner, Hargrove, Rasmussen, Hochstatter, Morton, Heavey, Haugen, Quigley, Owen, Smith, Sutherland, Sellar, Wojahn, Snyder, Newhouse and West

Read first time 02/07/95. Referred to Committee on Energy, Telecommunications & Utilities.

1 AN ACT Relating to safety inspections of federally licensed
2 hydroelectric projects; amending RCW 43.21A.064, 86.16.025, 90.03.350,
3 and 90.03.370; reenacting and amending RCW 86.16.035; adding a new
4 section to chapter 43.21A RCW; and creating a new section.

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

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

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

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

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

1 (1) With respect to the safety of any dam, canal, ditch, hydraulic
2 power plant, reservoir, project, or other work, system, or plant that
3 requires a license under the federal power act, no licensee shall be
4 required to:

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

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

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

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

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

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

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

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

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

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

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

36 (5) He shall keep such records as may be necessary for the
37 recording of the financial transactions and statistical data thereof,
38 and shall procure all necessary documents, forms, and blanks. He shall

1 keep a seal of the office, and all certificates by him covering any of
2 his acts or the acts of his office, or the records and files of his
3 office, under such seal, shall be taken as evidence thereof in all
4 courts;

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

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

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

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

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

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

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

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

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

30 Except as provided in section 2 of this act, any person,
31 corporation or association intending to construct or modify any dam or
32 controlling works for the storage of ten acre feet or more of water,
33 shall before beginning said construction or modification, submit plans
34 and specifications of the same to the department for examination and
35 approval as to its safety. Such plans and specifications shall be
36 submitted in duplicate, one copy of which shall be retained as a public

1 record, by the department, and the other returned with its approval or
2 rejection endorsed thereon. No such dam or controlling works shall be
3 constructed or modified until the same or any modification thereof
4 shall have been approved as to its safety by the department. Any such
5 dam or controlling works constructed or modified in any manner other
6 than in accordance with plans and specifications approved by the
7 department or which shall not be maintained in accordance with the
8 order of the department shall be presumed to be a public nuisance and
9 may be abated in the manner provided by law, and it shall be the duty
10 of the attorney general or prosecuting attorney of the county wherein
11 such dam or controlling works, or the major portion thereof, is
12 situated to institute abatement proceedings against the owner or owners
13 of such dam or controlling works, whenever he or she is requested to do
14 so by the department.

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

25 **Sec. 7.** RCW 90.03.370 and 1987 c 109 s 93 are each amended to read
26 as follows:

27 Except as provided in section 2 of this act, all applications for
28 reservoir permits shall be subject to the provisions of RCW 90.03.250
29 through 90.03.320. But the party or parties proposing to apply to a
30 beneficial use the water stored in any such reservoir shall also file
31 an application for a permit, to be known as the secondary permit, which
32 shall be in compliance with the provisions of RCW 90.03.250 through
33 90.03.320. Such secondary application shall refer to such reservoir as
34 its source of water supply and shall show documentary evidence that an
35 agreement has been entered into with the owners of the reservoir for a
36 permanent and sufficient interest in said reservoir to impound enough
37 water for the purposes set forth in said application. When the
38 beneficial use has been completed and perfected under the secondary

1 permit, the department shall take the proof of the water users under
2 such permit and the final certificate of appropriation shall refer to
3 both the ditch and works described in the secondary permit and the
4 reservoir described in the primary permit.

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