

# SENATE BILL REPORT

## SHB 1130

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As of February 25, 2016

**Title:** An act relating to water power license fees.

**Brief Description:** Concerning water power license fees.

**Sponsors:** House Committee on Environment (originally sponsored by Representatives Fey, Short, Tharinger, Fitzgibbon and Gregerson; by request of Department of Ecology and Department of Fish and Wildlife).

**Brief History:** Passed House: 2/16/16, 71-27.

**Committee Activity:** Energy, Environment & Telecommunications: 2/24/16.

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Staff:** Kimberly Cushing (786-7421)

**Background:** The Department of Ecology (Ecology) issues Clean Water Act water quality certifications to hydroelectric dam operators licensed by the Federal Energy Regulatory Commission (FERC). Ecology's water quality certification process is typically conducted in conjunction with the FERC licensing or relicensing process for the hydropower project. FERC licenses to hydropower operators under the Federal Power Act are issued for 30 to 50 years. After FERC license and water quality certificates have been issued for a project, the water quality protection criteria are monitored and permit condition compliance is overseen by Ecology and the Washington Department of Fish and Wildlife (WDFW).

Most claimants to water intended to be used for power development are required to pay an annual fee to Ecology. The fee is assessed on approximately 93 different power generation facilities and is based on the theoretical amount of water claimed by the entity developing power. All revenues are deposited into the Reclamation Account.

The fees for water power development are based on a two-step model that considers theoretical horsepower claimed. First, a base fee is paid by all water power claimants. Base fees are calculated using the following formula:

- Facilities that generate between 51 and 1000 horsepower pay 18 cents per horsepower.
- Facilities that generate between 1001 and 10,000 horsepower pay 3.6 cents per horsepower.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Facilities that generate more than 10,001 horsepower pay 1.8 cents per horsepower.

Second, all water power generation facilities that are required to be licensed by FERC must pay an additional fee until June 30, 2017. Only power generation facilities above a certain power generating threshold are required to be licensed by FERC. The additional fees are calculated using the following formula:

- Facilities that generate between 51 and 1000 horsepower pay 32 cents per horsepower.
- Facilities that generate between 1001 and 10,000 horsepower pay 6.4 cents per horsepower.
- Facilities that generate more than 10,001 horsepower pay 3.2 cents per horsepower.

Once the additional fee expires, all facilities are only required to pay the base fee. According to Ecology, the base fee generated \$583,000 in the 2012-2013 biennium and the additional fee generated \$1,017,000. These funds are used by Ecology and WDFW to assist power generation facilities in meeting environmental regulatory requirements and other requirements associated with the FERC licensing process.

Ecology submits a biennial report to the Legislature describing how license fees were spent on Ecology and WDFW's water quality certification work for the FERC-licensed hydropower projects.

**Summary of Bill:** The expiration date for the additional fee charged to water power generating facilities that are licensed by FERC is extended 10 years, from the year 2017 until the year 2027. The rates and collection methods of the additional fee is not changed.

In the biennial report to the Legislature, Ecology must detail how much licensing fees and other program funds were spent on work for each hydropower project. The detailed program expenditure information in the report must include project-specific costs associated with work undertaken by the agencies during pre-licensing, licensing or relicensing, and license implementation phases of a hydropower project.

Certain administrative requirements are established related to the implementation of the hydropower project licensing program by Ecology and WDFW:

- Ecology and WDFW must designate program managers for hydropower licensing activity work, and must assign individual staff members as project leads for each hydropower project.
- Ecology and WDFW must develop an annual work plan for their hydropower licensing programs.
- Ecology and WDFW must circulate an annual survey to licensees regarding their interactions with the program staff of the departments, and this summary must be analyzed and summarized prior to an annual meeting that Ecology and WDFW must host for hydropower project licensees and other interested parties.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: We want to have hydroelectric facilities comply with our state's water regulations. Our hydroelectric facilities offer an economic advantage to the state of Washington. Hydropower systems must continue to provide balance load. Last session, a proviso in the budget directed a stakeholder group to look at whether the current system is working and whether anything else needs to be included in the work. As a result of the work group, a lot of accountability measures were added to the bill as well as the extension of the fee for 10 years. Absent these funds, we don't have adequate resources to ensure compliance so projects are finished on time. Having consistency in agency staff is really critical. This bill should result in better data from the agencies. Avista has four FERC-licensed projects to provide reliable and affordable base load power to customers, which went through a rigorous re-license process and were issued a 50-year license. A post-license phase is a different phase within the 10-year period. Projects must achieve biological objectives to maintain ongoing compliance. It is inappropriate to shift a fee structure at this point, because utilities not being licensed have been supporting others who have been relicensed over the past 10 years. The fee has been in place since 1929 and was modified 10 years ago at request of stakeholders. It is based on the use of a state resource. Fees cover about 45 percent of the cost of the program, and the rest is covered by other state and federal funds. It is not a fee for service. Clean water certification is under the federal Clean Water Act, which is the responsibility of the state to verify. The state issues the clean water certifications which the hydropower facilities include as part of their application to FERC, which is under the Federal Powers Act. However, Ecology and WDFW don't do work for FERC per say.

CON: The key factor to not opposing the new fee in 2007 was the promise that it would expire after 10 years. The agency request for extension is counter to prior commitments. A 10-year extension costs Douglas County ratepayers \$500,000 and Grant County PUD ratepayers \$4 million. No data supports the extension of the fee. There is no accountability to how the money has been spent over the last 10 years. We find it hard to understand why utilities are being asked to fund the projects of other utilities. This bill could be in conflict with the Federal Power Act. The agencies will ask for another extension after 10 years.

**Persons Testifying:** PRO: Representative Fey, Prime Sponsor; Representative Short, Co-Sponsor; Justin Allegro, Washington Department of Fish and Wildlife/Renewable Energy Section Manager; Dave Arbaugh, Chelan and Snohomish PUDs; Christine Brewer, Avista; Don Seeberger, Ecology.

CON: Ron Skagen, Douglas County PUD; Al Aldrich, Ross Hendrick, Grant County PUD.

**Persons Signed In To Testify But Not Testifying:** No one.