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HOUSE BILL 2917

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State of Washington                      52nd Legislature                      1992 Regular Session

By Representatives Grant, May, Cooper and Miller

Read first time 01/31/92. Referred to Committee on Energy & Utilities.

1            AN ACT Relating to water resources; amending RCW 43.21A.064,  
2 90.03.350, and 90.54.800; amending section 2, chapter 159, Laws of 1989  
3 (uncodified); reenacting and amending RCW 86.16.035; and creating a new  
4 section.

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

6            NEW SECTION.    **Sec. 1.**            (1) The legislature acknowledges that  
7 the federal government has preempted state regulation of hydroelectric  
8 projects subject to the federal power act.

9            (2) The legislature finds that:

10            (a) Applicants for licenses under the federal power act must  
11 demonstrate compliance with all applicable federal and state safety and  
12 environmental laws.

1 (b) The federal energy regulatory commission conducts thorough  
2 inspections of federally licensed projects that assure that such  
3 projects remain in compliance with applicable federal and state laws.

4 (c) State efforts to regulate and inspect federally licensed  
5 projects would merely duplicate federal regulation and inspection and  
6 would contribute no additional protection for the citizens of the state  
7 in terms of safety or the environment.

8 (d) State regulation and inspection of federally licensed projects  
9 would create unnecessary bureaucracy, would add to the cost of energy  
10 that must be paid by the citizens of the state, and would be  
11 inconsistent with state policy to reduce the burden of regulation on  
12 economic development.

13 (3) The legislature declares it to be the policy of the state of  
14 Washington that state agencies shall refrain from asserting any form of  
15 regulatory jurisdiction over federally owned or federally licensed  
16 hydro projects.

17 **Sec. 2.** RCW 43.21A.064 and 1977 c 75 s 46 are each amended to read  
18 as follows:

19 The director of the department of ecology shall have the following  
20 powers and duties:

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

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

1 safety to life and property. Nothing in this subsection shall apply  
2 to any dam, hydraulic power plant, reservoir, project, or other work,  
3 system, or plant owned by the United States or licensed under the  
4 federal power act;

5 (3) ((He)) The director shall regulate and control the diversion of  
6 water in accordance with the rights thereto;

7 (4) ((He)) The director shall determine the discharge of streams  
8 and springs and other sources of water supply, and the capacities of  
9 lakes and of reservoirs whose waters are being or may be utilized for  
10 beneficial purposes;

11 (5) ((He)) The director shall keep such records as may be necessary  
12 for the recording of the financial transactions and statistical data  
13 thereof, and shall procure all necessary documents, forms, and blanks.

14 ((He)) The director shall keep a seal of the office, and all  
15 certificates by him or her covering any of his or her acts or the acts  
16 of his or her office, or the records and files of his or her office,  
17 under such seal, shall be taken as evidence thereof in all courts;

18 (6) ((He)) The director shall render when required by the governor,  
19 a full written report of the work of his or her office with such  
20 recommendations for legislation as he or she may deem advisable for the  
21 better control and development of the water resources of the state;

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

23 (8) ((He)) The director shall establish and ((~~promulgate~~)) adopt  
24 rules governing the administration of chapter 90.03 RCW;

25 (9) ((He)) The director shall perform such other duties as may be  
26 prescribed by law.

27 **Sec. 3.** RCW 86.16.035 and 1987 c 523 s 9 and 1987 c 109 s 53 are  
28 each reenacted and amended to read as follows:

1 The department of ecology shall have supervision and control over  
2 all dams and obstructions in streams, and may make reasonable  
3 regulations with respect thereto concerning the flow of water which he  
4 deems necessary for the protection to life and property below such  
5 works from flood waters. Nothing in this section shall apply to any  
6 dam, obstruction, reservoir, project, or other work, system, or plant  
7 owned by the United States or licensed under the federal power act.

8 **Sec. 4.** RCW 90.03.350 and 1987 c 109 s 91 are each amended to read  
9 as follows:

10 Any person, corporation or association intending to construct or  
11 modify any dam or controlling works for the storage of ten acre feet or  
12 more of water, shall before beginning said construction or  
13 modification, submit plans and specifications of the same to the  
14 department for examination and approval as to its safety. Such plans  
15 and specifications shall be submitted in duplicate, one copy of which  
16 shall be retained as a public record, by the department, and the other  
17 returned with its approval or rejection endorsed thereon. No such dam  
18 or controlling works shall be constructed or modified until the same or  
19 any modification thereof shall have been approved as to its safety by  
20 the department. Any such dam or controlling works constructed or  
21 modified in any manner other than in accordance with plans and  
22 specifications approved by the department or which shall not be  
23 maintained in accordance with the order of the department shall be  
24 presumed to be a public nuisance and may be abated in the manner  
25 provided by law, and it shall be the duty of the attorney general or  
26 prosecuting attorney of the county wherein such dam or controlling  
27 works, or the major portion thereof, is situated to institute abatement  
28 proceedings against the owner or owners of such dam or controlling  
29 works, whenever he or she is requested to do so by the department.

1 This section shall have no application to any dam, controlling works,  
2 reservoir, project, or other work, system, or plant owned by the United  
3 States or licensed under the federal power act.

4 **Sec. 5.** RCW 90.54.800 and 1989 c 159 s 3 are each amended to read  
5 as follows:

6 Future development of hydropower and protection of river-related  
7 resources shall be guided by policies and programs which:

8 (1) Create opportunities for balanced development of cost-effective  
9 and environmentally sound hydropower projects by a range of development  
10 interests;

11 (2) Protect significant values associated with the state's rivers,  
12 including fish and wildlife populations and habitats, water quality and  
13 quantity, unique physical and botanical features, archeological sites,  
14 and scenic and recreational resources;

15 (3) Protect the interests of the citizens of the state regarding  
16 river-related economic development, municipal water supply, supply of  
17 electric energy, flood control, recreational opportunity, and  
18 environmental integrity;

19 (4) Fully utilize the state's authority in the federal hydropower  
20 licensing process;

21 (5) Prevent duplication of regulatory effort by abstaining from  
22 every attempt to regulate or otherwise assert administrative  
23 jurisdiction over dams, hydropower projects, reservoirs, appurtenant  
24 structures, and other works, systems, and plants that are owned by the  
25 United States or are licensed under the federal power act.

26 **Sec. 6.** 1989 c 159 s 2 (uncodified) is amended to read as follows:

27 (1) The Washington state energy office shall contract with an  
28 independent facilitator to reconvene and coordinate the task force

1 assembled to implement section 301, chapter 7, Laws of 1987 1st ex.  
2 sess. The task force shall prepare by March 31, 1991, a state  
3 comprehensive hydropower plan to serve the broad public interest  
4 regarding development of cost-effective electricity and conservation of  
5 river-related environmental values. Task force meetings shall be open  
6 to the public. The facilitator shall assist the task force in  
7 appropriate efforts to inform the general public regarding project  
8 concepts and progress. Task force members shall make appropriate  
9 efforts to inform the interest groups they represent.

10 (2) By December 15, 1989, the task force shall engage in a  
11 midpoint review whereby participants can jointly appraise the progress  
12 of the project. If, in the opinion of the participants, a consensus  
13 to continue as a task force cannot be achieved, the executive agencies  
14 shall use their existing statutory authority to develop a plan, with  
15 the assistance of all affected parties and participating agencies,  
16 building upon the work that has been done by the task force.

17 (3) If the task force continues beyond December 15, 1989, it shall  
18 by July 1, ((1990)) 1992, recommend to the legislature ((a lead agency  
19 ~~for implementation and management of the~~) proposals for a state  
20 comprehensive hydropower plan.