

---

HOUSE BILL 1995

---

State of Washington                      53rd Legislature                      1993 Regular Session

By Representatives Grant, Mastin, Hansen and G. Fisher

Read first time 02/19/93. Referred to Committee on Energy & Utilities.

1            AN ACT Relating to the creation of a task force to identify and  
2 resolve regulatory conflicts affecting federally licensed hydroelectric  
3 facilities; and creating new sections.

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

5            NEW SECTION.    **Sec. 1.** The legislature finds that a majority of the  
6 nonfederal hydroelectric dams located in the state of Washington are  
7 licensed by the federal energy regulatory commission which, under  
8 congressional authority, regulates the construction, operation, and  
9 maintenance of federally licensed hydroelectric facilities.

10           The legislature also finds that duplicative and conflicting  
11 regulatory authorities exercised over nonfederal hydroelectric  
12 facilities can cause interjurisdictional disputes; create regulatory  
13 compliance uncertainty for operators of federally licensed  
14 hydroelectric facilities; expose state agencies to litigation over  
15 jurisdiction questions; increase the cost of operating hydroelectric  
16 facilities; and create barriers to plans to improve the efficiency of  
17 hydroelectric facilities.

18           The legislature further finds that the safe and efficient operation  
19 of hydroelectric facilities is in the public interest.

1        NEW SECTION.

2        **Sec. 2.**

3        (1) There is created a task force to  
4 identify actual and potential regulatory conflicts affecting existing  
5 federally licensed hydroelectric facilities and to recommend ways in  
6 which such conflicts might be avoided. The task force shall:

7        (a) Review the federal power act and pertinent case law clarifying  
8 the scope and extent of the jurisdiction of the federal energy  
9 regulatory commission over federally licensed hydroelectric facilities;

10        (b) Review other federal laws regulating federally licensed  
11 hydroelectric facilities, including pertinent sections of the federal  
12 water pollution control act, review pertinent case law clarifying the  
13 scope and extent of jurisdiction of such laws over federally licensed  
14 hydroelectric facilities, and clarify the scope and extent of any state  
15 role in administering such federal programs;

16        (c) Identify state laws that may be construed to apply to the  
17 modification, operation, and management of federally licensed  
18 hydroelectric facilities. These state laws may include, but are not  
19 limited to, water right appropriation, in-stream flow, hydraulic  
20 permits, dam safety, shoreline management act, state environmental  
21 protection act, and coastal zone management act;

22        (d) Identify state laws that have been judicially held to be  
23 inoperative in their application to federally licensed hydroelectric  
24 facilities;

25        (e) Identify state laws and rules that, based on judicial precedent  
26 established by any state or federal court, may be construed to  
27 duplicate or conflict with the federal power act and its application to  
28 federally licensed hydroelectric facilities;

29        (f) Identify ways in which state laws and rules may conflict with  
30 each other as they may be construed to apply to federally licensed  
31 hydroelectric facilities;

32        (g) Identify ways in which state laws and rules and their  
33 administration may create barriers to efforts to increase the  
34 efficiency and productivity of federally licensed hydroelectric  
35 facilities;

36        (h) Identify how and to what extent it is appropriate and necessary  
37 for state laws and rules to apply to federally licensed hydroelectric  
38 facilities, without such laws and rules conflicting with the federal  
39 power act;

1 (i) Identify ways in which existing and potential conflicts between  
2 state and federal authorities, as they may be applied to federally  
3 licensed hydroelectric facilities, may be resolved or prevented;

4 (j) Identify whether the statutory and regulatory principles on  
5 which state program fees are assessed on the operators of federally  
6 licensed hydroelectric facilities are reasonable and fair, and identify  
7 how and to what extent the basis of these fees may be changed, if  
8 possible, to promote program cost-efficiency;

9 (k) Recommend to the legislature measures that can be undertaken to  
10 reduce, if possible, regulatory costs and to promote regulatory  
11 efficiency, predictability, and cooperation where such rules apply to  
12 federally licensed hydroelectric facilities;

13 (l) Recommend to the legislature how the state energy office might  
14 be structured to serve as an advocate in state government for  
15 hydroelectric development concerns, if the task force has deemed such  
16 a role to be appropriate for the state energy office; and

17 (m) Form technical advisory committees to advise the task force as  
18 may be necessary.

19 (2) The sixteen-member task force shall be composed as follows:

20 (a) The governor shall appoint seven members: One person  
21 representing investor-owned electric utilities, one person representing  
22 public utility districts engaged in the generation and retail sale of  
23 electricity, one person representing municipally owned electric  
24 utilities, one person representing small hydroelectric developers, two  
25 persons representing environmental organizations, and one person  
26 representing a civic organization;

27 (b) A member from each of the four legislative caucuses. The  
28 president of the senate shall appoint the two senate members and the  
29 speaker of the house of representatives shall appoint the two house  
30 members;

31 (c) The directors, or the respective director's designee, of the  
32 department of ecology, the department of fisheries, the department of  
33 wildlife, and the state energy office to serve as nonvoting members;  
34 and

35 (d) One person representing the attorney general's office, as  
36 designated by the attorney general, to serve as a nonvoting member.

37 (3) The state energy office shall fund the task force in an amount  
38 sufficient to meet its mission and shall provide staff assistance as  
39 required. Insofar as practicable, staff assistance may be provided by

1 other entities represented on the task force. Meetings of the task  
2 force shall be convened in Olympia.

3 (4) The task force shall be chaired by the member representing the  
4 state energy office.

5 (5) The task force shall report its findings and recommendations to  
6 the governor and legislature by January 1, 1994.

7 (6) Upon request, other state agencies may assist and advise the  
8 task force and any technical advisory committees created by the task  
9 force.

10 (7) This section shall expire June 30, 1994.

--- END ---