
HOUSE BILL 2867

State of Washington

53rd Legislature

1994 Regular Session

By Representatives Kessler, Chandler, Kremen, Finkbeiner, Long, Casada, Bray and Foreman

Read first time 01/26/94. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to water resources; amending RCW 43.21A.064,
2 86.16.025, 90.03.350, and 90.03.370; reenacting and amending RCW
3 86.16.035; adding a new section to chapter 43.21A RCW; and creating a
4 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) Under federal law, the federal energy regulatory commission has
8 exclusive control over the construction, operation, and maintenance of
9 dams located in navigable waters. The federal energy regulatory
10 commission, pursuant to the federal power act, licenses hydropower
11 projects in navigable waters, determines compliance with applicable
12 federal and state laws, and regularly and extensively inspects
13 facilities for safety.

14 (2) Nothing in this act is intended to alter or affect the
15 department of ecology's role with respect to (a) its authority under
16 state statute to participate in the federal process of licensing
17 hydropower projects, or (b) state compliance with federal statutes such
18 as the coastal zone management act and the clean water act.

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

3 Neither the director nor the department has any authority to
4 regulate, supervise, or assure the safety of any project that requires
5 a license under the federal power act. This section applies to the
6 design, construction, maintenance, modification, and operation of any
7 such dam, canal, ditch, hydraulic power plant, reservoir, project, or
8 other work, system, or plant. With respect to the safety of such
9 project, no person is required to:

10 (1) Submit proposals, plans, specifications, or other documents for
11 approval by the department;

12 (2) Seek a permit, license, or other form of permission or
13 authorization from the department;

14 (3) Submit to inspection by the department; or

15 (4) Change the design, construction, modification, maintenance, or
16 operation of such facilities at the demand of the department.

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

19 Subject to section 2 of this act, the director of the department of
20 ecology shall have the following 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)) the director shall inspect the construction of all
26 dams, canals, ditches, irrigation systems, hydraulic power plants, and
27 all other works, systems, and plants pertaining to the use of water,
28 and ((he)) may require such necessary changes in the construction or
29 maintenance of said works, to be made from time to time, as will
30 reasonably secure safety to life and property;

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

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

37 (5) ((He)) The director shall keep such records as may be necessary
38 for the recording of the financial transactions and statistical data

1 thereof, and shall procure all necessary documents, forms, and blanks.
2 ((He)) The director shall keep a seal of the office, and all
3 certificates by ((him)) the director covering any of his or her acts or
4 the acts of ((his)) the office, or the records and files of ((his)) the
5 office, under such seal, shall be taken as evidence thereof in all
6 courts;

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

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

13 (8) ((He)) The director shall establish and promulgate rules
14 governing the administration of chapter 90.03 RCW;

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

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

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

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

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

32 **Sec. 6.** RCW 90.03.350 and 1987 c 109 s 91 are each amended to read
33 as follows:

34 Except as provided in section 2 of this act, any person,
35 corporation or association intending to construct or modify any dam or
36 controlling works for the storage of ten acre feet or more of water,

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

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

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

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