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**Technology, Telecommunications  
& Energy Committee**

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**HB 2338**

**Brief Description:** Concerning mitigation recommendations for nonfederal hydropower project licensing.

**Sponsors:** Representatives Morris, Sullivan, Mielke and Hudgins.

**Brief Summary of Bill**

- Allows an applicant for an existing nonfederal hydropower dam under the federal alternative licensing process to request that the state and local mitigation recommendations made as part of the licensing process be determined under the Energy Facility Site Evaluation Council.

**Hearing Date:** 1/14/04

**Staff:** Pam Madson (786-7166).

**Background:**

The Federal Energy Regulatory Commission (FERC) under the Federal Power Act is responsible for licensing the construction and operation of nonfederal hydropower projects. Licenses are issued for up to 50 years. As of 2000 more than 20 existing dams in Washington have licenses that have either reached their expiration date or will before 2012.

A number of other federal laws apply to the licensing of a hydropower project. The licensing process is a public process that includes a number of participants: Federal and state resource agencies, affected Indian tribes, recreational, cultural and historic preservation agencies and other interested parties.

FERC may not issue a license without the project obtaining a state Water Quality Certification under the Federal Clean Water Act. Nor may a license be issued without a state's certification that the project is consistent with an applicable coastal zone management program under the Federal Coastal Zone Management Act if the project lies within or affects a state's coastal zone.

In issuing a license, FERC must also include license conditions to adequately protect, mitigate damage to, and enhance fish and wildlife based on recommendations from state and federal fish and wildlife agencies.

Under FERC's traditional licensing process, it may take typically 5 to 8 years to complete the licensing process. Under an alternative licensing process, the typical time frame is 4 years. Both processes involve at least a 3 year period of pre-filing consultation. FERC is developing an integrated process to further facilitate a shorter time frame and increased coordination.

FERC must conduct an environmental review under the National Environmental Policy Act.

The Energy Facility Site Evaluation Council (EFSEC) was created in 1970 to provide one-stop licensing for large energy projects. Council membership includes mandatory representation from five state agencies and discretionary representation from four additional state agencies. The council's membership may include representatives from the particular city, county, or port district where potential projects may be located.

The EFSEC's jurisdiction includes the siting of large intrastate natural gas and petroleum pipelines, electric power plants above 350 megawatts, new oil refineries, large expansions of existing facilities, and underground natural gas storage fields. For electric power plants, EFSEC's jurisdiction extends to those associated facilities that include new transmission lines that operate in excess of 200 kilovolts necessary to connect the plant to the Northwest power grid. Developers of energy facilities that exclusively use alternative energy resources, regardless of the size of the facility's generation capacity, may choose to use the EFSEC process to site the facility.

The EFSEC siting process generally involves six steps: (1) A potential site study followed by an application; (2) State Environmental Policy Act review; (3) review for consistency with applicable local land use laws and plans; (4) a formal adjudication on all issues related to the project; (5) certain air and water pollution discharge permitting reviews as delegated by the U.S. Environmental Protection Agency; and (6) a recommendation to the Governor who then decides whether to accept, reject, or remand the application. A certification agreement approved by the Governor preempts any other state or local regulation concerning the location, construction, and operational conditions of an energy facility.

Under the EFSEC process, the applicant is required to pay the costs of the Council in processing an application.

### **Summary of Bill:**

Applicants for a federal hydropower license for an existing dam using the alternative licensing process under the Federal Energy Regulatory Commission (FERC) may choose to use the Energy Facility Site Evaluation Council process to determine state and local mitigation recommendations for the hydropower license. This provision applies to existing nonfederal dams with a generating capacity of 1.5 megawatts.

For purposes of determining mitigation recommendations, the Parks and Recreation Commission must participate as a council member as well as a county representative in counties where mitigation recommendations may be submitted. If a hydroelectric project is located in a city, a representative of the city also participates as a council member.

The process for approving sites for generating facilities may also be used to determine state and local mitigation recommendations necessary for the relicensing of an existing nonfederal dam. The applicant must pay the reasonable costs incurred by the council and must provide a deposit at the time of the application.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.