

HOUSE BILL REPORT

SSB 6475

*As Reported By House Committee on:
Energy & Utilities*

Title: An act relating to water resources.

Brief Description: Declaring that the state has no regulatory authority over federally owned or licensed hydro projects.

Sponsor(s): Senate Committee on Energy & Utilities
(originally sponsored by Senators Saling, Snyder, Stratton, Thorsness, Patterson, Nelson, McDonald and Amondson).

Brief History:

Reported by House Committee on:
Energy & Utilities, February 27, 1992, DPA.

**HOUSE COMMITTEE ON
ENERGY & UTILITIES**

Majority Report: *Do pass as amended.* Signed by 9 members: Representatives Grant, Chair; H. Myers, Vice Chair; May, Ranking Minority Member; Hochstatter, Assistant Ranking Minority Member; Bray; Casada; Cooper; Miller; and Rayburn.

Minority Report: *Do not pass.* Signed by 2 members: Representatives R. Fisher and Jacobsen.

Staff: Harry Reinert (786-7110).

Background:

The Department of Ecology has authority over many aspects of water resources in the state, including a number of issues relating to the construction of dams in state waters. The department is required to inspect all dams to assure their safety and to set stream flows to protect against floods. The proponent of a dam must submit its plans to the department prior to construction for a review of the project's safety.

The Federal Energy Regulatory Commission (FERC) has the federal responsibility over hydropower facilities. Most hydropower facilities are subject to FERC jurisdiction and must obtain a license from FERC. Some very small projects may be exempt from FERC jurisdiction. Under federal law, FERC has exclusive jurisdiction and it may preempt state

law. FERC includes a dam safety component as part of its licensing process.

Summary of Amended Bill:

The Department of Ecology's authority to conduct safety reviews and inspections of dams does not extend to any project which is subject to the federal power act, unless the Federal Energy Regulatory Commission (FERC) and the department agree otherwise. The department may review and comment on submissions to FERC. The department may also inspect dams for which it believes a dangerous condition exists that FERC does not know about. The department must make any recommendations on remedial actions to FERC, unless FERC has delegated the responsibility to the department.

If the department determines that a dam not subject to FERC jurisdiction poses a significant hazard to life or property, it must inspect that dam every two years.

If the owner of a dam with a storage capacity of less than 10 acre feet requests, the department must inspect the dam.

Amended Bill Compared to Substitute Bill: The Senate bill contains an intent section stating that the federal government has responsibility to regulate hydropower projects and that state activities in this arena provide no additional protection. The amendment deletes the intent section. The Senate bill allows the department to review and comment on FERC proceedings and to accompany FERC on inspections. The amendment also allows the department to review and comment on FERC proceedings but does not provide for department authority to accompany FERC inspections. The amendment allows the department to inspect a dam that it believes poses a danger that has not been evaluated by FERC. The amendment also adds the requirement that the department inspect dangerous dams not regulated by FERC at least every two years and that the department inspect smaller dams at the request of the owner.

Fiscal Note: Requested on striking amendment February 27, 1992.

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

Testimony For: The Federal Energy Regulatory Commission has exclusive jurisdiction over hydropower dams. The Department of Ecology's efforts to involve itself in safety inspections of these federally licensed facilities merely duplicates federal activities and, in some cases, adds unnecessary costs and delays to the construction of these projects.

Testimony Against: The Department of Ecology has provided important advice to the Federal Energy Regulatory Commission. In some instances it has discovered serious design flaws that might not otherwise have been found. The department has no intent to create conflicts with FERC and is in the midst of negotiations with FERC to establish the respective responsibilities of the two agencies.

Witnesses: Senator Saling, prime sponsor (pro); Garth Jackson, Tacoma City Light (pro); Susan Markey, Department of Fisheries (con); Collins Sprague, Washington Water Power (pro); Jeff Parsons, National Audubon Society (con); Terry Husseman and Mel Schaefer, Department of Ecology (con); Terry Oxley, Puget Power (pro); and Ron Newbry, Pacific Power and Light (pro).