
SUBSTITUTE HOUSE BILL 2917

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Energy & Utilities (originally sponsored by Representatives Grant, May, Cooper and Miller)

Read first time 02/07/92.

1 AN ACT Relating to water resources; amending RCW 43.21A.064 and
2 90.03.350; reenacting and amending RCW 86.16.035; and creating a new
3 section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature acknowledges that
6 the federal government regulates the safety of hydroelectric projects
7 subject to the federal power act.

8 (2) The legislature finds that:

9 (a) Applicants for hydropower licenses and holders of hydropower
10 licenses under the federal power act must demonstrate compliance with
11 all applicable federal dam safety laws and regulations.

12 (b) The federal energy regulatory commission has adopted
13 regulations, issued orders, developed policies and requirements, and

1 established engineering guidelines for the safety of water power
2 projects and project works.

3 (c) The federal energy regulatory commission conducts thorough
4 inspections of federally licensed projects that assure that these
5 projects remain in compliance with applicable federal safety laws and
6 regulations.

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

12 (3) The legislature declares that state efforts to regulate and
13 inspect federally licensed hydropower projects would merely duplicate
14 federal regulation and inspection, could lead to conflicts between
15 federal and state regulatory actions, and would not provide additional
16 safety for the citizens of the state.

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)(a) Except as provided in (b) of this subsection, insofar as may
25 be necessary to assure safety to life or property, ((he)) the director
26 shall inspect the construction of all dams, canals, ditches, irrigation
27 systems, hydraulic power plants, and all other works, systems, and
28 plants pertaining to the use of water, and ((he)) the director may
29 require such necessary changes in the construction or maintenance of

1 said works, to be made from time to time, as will reasonably secure
2 safety to life and property;

3 (b) The provisions of (a) of this subsection shall not apply to any
4 dam, hydraulic power plant, reservoir, project, or other work, system,
5 or plant licensed under the federal power act, except for those dams or
6 controlling works which are now or hereafter made subject to state
7 jurisdiction by an act of Congress or by agreement between the state
8 and the federal energy regulatory commission or its successor, as
9 authorized under the federal power act. Nothing in this subsection
10 shall be construed to prohibit the department from reviewing or
11 commenting upon reports, plans, or specifications that are submitted to
12 the federal energy regulatory commission or its successor, or to
13 accompany the commission on its inspections of dams or controlling
14 works licensed under the federal power act;

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

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

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

24 ((He)) The director shall keep a seal of the office, and all
25 certificates by ((him)) the director covering any of ((his)) the
26 director's acts or the acts of ((his)) the director's office, or the
27 records and files of ((his)) the director's office, under such seal,
28 shall be taken as evidence thereof in all courts;

29 (6) ((He)) The director shall render when required by the governor,
30 a full written report of the work of ((his)) the director's office with

1 such recommendations for legislation as ((he)) the director may deem
2 advisable for the better control and development of the water resources
3 of the state;

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

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

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

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

11 Except as provided in RCW 90.03.350(2), the department of ecology
12 shall have supervision and control over all dams and obstructions in
13 streams, and may make reasonable regulations with respect thereto
14 concerning the flow of water which ((he)) the director deems necessary
15 for the protection to life and property below such works from flood
16 waters.

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

19 (1) Except as provided in subsection (2) of this section, any
20 person, corporation or association intending to construct or modify any
21 dam or controlling works for the storage of ten acre feet or more of
22 water, shall before beginning said construction or modification, submit
23 plans and specifications of the same to the department for examination
24 and approval as to its safety. Such plans and specifications shall be
25 submitted in duplicate, one copy of which shall be retained as a public
26 record, by the department, and the other returned with its approval or
27 rejection endorsed thereon. No such dam or controlling works shall be
28 constructed or modified until the same or any modification thereof

1 shall have been approved as to its safety by the department. Any such
2 dam or controlling works constructed or modified in any manner other
3 than in accordance with plans and specifications approved by the
4 department or which shall not be maintained in accordance with the
5 order of the department shall be presumed to be a public nuisance and
6 may be abated in the manner provided by law, and it shall be the duty
7 of the attorney general or prosecuting attorney of the county wherein
8 such dam or controlling works, or the major portion thereof, is
9 situated to institute abatement proceedings against the owner or owners
10 of such dam or controlling works, whenever he or she is requested to do
11 so by the department.

12 (2) This section shall not apply to any dam, hydraulic power plant,
13 reservoir, project, or other work, system, or plant licensed under the
14 federal power act, except for those dams or controlling works which are
15 now or hereafter made subject to state jurisdiction by an act of
16 Congress or by agreement between the state and the federal energy
17 regulatory commission or its successor, as authorized under the federal
18 power act. Nothing in this subsection shall be construed to prohibit
19 the department from reviewing or commenting upon reports, plans, or
20 specifications that are submitted to the federal energy regulatory
21 commission or its successor, or to accompany the commission on its
22 inspections of dams or controlling works licensed under the federal
23 power act.