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**SUBSTITUTE SENATE BILL 6475**

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**State of Washington**

**52nd Legislature**

**1992 Regular Session**

**By** Senate Committee on Energy & Utilities (originally sponsored by Senators Saling, Snyder, Stratton, Thorsness, Patterson, Nelson, McDonald and Amondson)

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 licenses and holders of licenses under the  
10 federal power act must demonstrate compliance with all applicable  
11 federal 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 is responsible for  
4 conducting inspections of federally licensed projects that assure that  
5 such projects remain in compliance with applicable federal safety laws  
6 and 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 projects would merely duplicate federal  
14 regulation and inspection, could lead to conflicts between federal and  
15 state regulatory actions, and would contribute no additional protection  
16 for the citizens of the state in terms of safety.

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) 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)) the director may require such necessary changes in the

1 construction or maintenance of said works, to be made from time to  
2 time, as will reasonably secure 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 those dams or  
6 controlling works that are now or hereafter made subject to the  
7 director of the department of ecology jurisdiction by an act of  
8 congress or by agreement between the state and federal energy  
9 regulatory commission or its successor. 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 such federal agency 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 or her acts or  
26 the acts of his or her office, or the records and files of his or her  
27 office, under such seal, shall be taken as evidence thereof in all  
28 courts;

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

1 recommendations for legislation as he or she may deem advisable for the  
2 better control and development of the water resources of the state;

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

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

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

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

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

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

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

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

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