

2 **HB 2867** - S AMD
3 By Committee on Energy & Utilities

4 ADOPTED AS AMENDED 3/1/94

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds and declares:

8 (1) The federal energy regulatory commission, under the federal
9 power act, licenses hydropower projects in navigable waters and
10 regularly and extensively inspects facilities for safety; and

11 (2) Nothing in this act alters or affects the department of
12 ecology's authority to: (a) Participate in the federal process of
13 licensing hydropower projects; or (b) ensure that hydropower projects
14 comply with federal statutes such as the coastal zone management act
15 and the clean water act and, subject to section 2 of this act, all
16 applicable state law.

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

19 (1) Except as provided in subsection (2) of this section, with
20 respect to the safety of any dam, canal, ditch, hydraulic power plant,
21 reservoir, project, or other work, system, or plant that requires a
22 license under the federal power act, no licensee shall be required to:

23 (a) Submit proposals, plans, specifications, or other documents for
24 approval by the department;

25 (b) Seek a permit, license, or other form, permission, or
26 authorization from the department;

27 (c) Submit to inspection by the department; or

28 (d) Change the design, construction, modification, maintenance, or
29 operation of such facilities at the demand of the department.

30 (2) The department may review and comment upon reports, plans, and
31 specifications submitted by a licensee to the federal energy regulatory
32 commission, and conduct inspections for the purpose of commenting upon
33 reports, plans, and specifications when requested by the federal energy
34 regulatory commission or a licensee.

35 (3) For the purposes of this section, "licensee" means an owner or

1 operator, or any employee thereof, of a dam, canal, ditch, hydraulic
2 power plant, reservoir, project, or other work, system, or plant that
3 requires a license under the federal power act.

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

6 Subject to section 2 of this act, the director of the department of
7 ecology shall have the following powers and duties:

8 (1) The supervision of public waters within the state and their
9 appropriation, diversion, and use, and of the various officers
10 connected therewith;

11 (2) Insofar as may be necessary to assure safety to life or
12 property, he shall inspect the construction of all dams, canals,
13 ditches, irrigation systems, hydraulic power plants, and all other
14 works, systems, and plants pertaining to the use of water, and he may
15 require such necessary changes in the construction or maintenance of
16 said works, to be made from time to time, as will reasonably secure
17 safety to life and property;

18 (3) He shall regulate and control the diversion of water in
19 accordance with the rights thereto;

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

24 (5) He shall keep such records as may be necessary for the
25 recording of the financial transactions and statistical data thereof,
26 and shall procure all necessary documents, forms, and blanks. He shall
27 keep a seal of the office, and all certificates by him covering any of
28 his acts or the acts of his office, or the records and files of his
29 office, under such seal, shall be taken as evidence thereof in all
30 courts;

31 (6) He shall render when required by the governor, a full written
32 report of the work of his office with such recommendations for
33 legislation as he may deem advisable for the better control and
34 development of the water resources of the state;

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

36 (8) He shall establish and promulgate rules governing the
37 administration of chapter 90.03 RCW;

38 (9) He shall perform such other duties as may be prescribed by law.

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

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

9 **Sec. 5.** 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 Subject to section 2 of this act, the department of ecology shall
12 have supervision and control over all dams and obstructions in streams,
13 and may make reasonable regulations with respect thereto concerning the
14 flow of water which he deems necessary for the protection to life and
15 property below such works from flood waters.

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

18 Except as provided in section 2 of this act, any person,
19 corporation or association intending to construct or modify any dam or
20 controlling works for the storage of ten acre feet or more of water,
21 shall before beginning said construction or modification, submit plans
22 and specifications of the same to the department for examination and
23 approval as to its safety. Such plans and specifications shall be
24 submitted in duplicate, one copy of which shall be retained as a public
25 record, by the department, and the other returned with its approval or
26 rejection endorsed thereon. No such dam or controlling works shall be
27 constructed or modified until the same or any modification thereof
28 shall have been approved as to its safety by the department. Any such
29 dam or controlling works constructed or modified in any manner other
30 than in accordance with plans and specifications approved by the
31 department or which shall not be maintained in accordance with the
32 order of the department shall be presumed to be a public nuisance and
33 may be abated in the manner provided by law, and it shall be the duty
34 of the attorney general or prosecuting attorney of the county wherein
35 such dam or controlling works, or the major portion thereof, is
36 situated to institute abatement proceedings against the owner or owners
37 of such dam or controlling works, whenever he is requested to do so by

1 the department.

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

4 Except as provided in section 2 of this act, all applications for
5 reservoir permits shall be subject to the provisions of RCW 90.03.250
6 through 90.03.320. But the party or parties proposing to apply to a
7 beneficial use the water stored in any such reservoir shall also file
8 an application for a permit, to be known as the secondary permit, which
9 shall be in compliance with the provisions of RCW 90.03.250 through
10 90.03.320. Such secondary application shall refer to such reservoir as
11 its source of water supply and shall show documentary evidence that an
12 agreement has been entered into with the owners of the reservoir for a
13 permanent and sufficient interest in said reservoir to impound enough
14 water for the purposes set forth in said application. When the
15 beneficial use has been completed and perfected under the secondary
16 permit, the department shall take the proof of the water users under
17 such permit and the final certificate of appropriation shall refer to
18 both the ditch and works described in the secondary permit and the
19 reservoir described in the primary permit."

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23 On page 1, line 1 of the title, after "resources;" strike the
24 remainder of the title and insert "amending RCW 43.21A.064, 86.16.025,
25 90.03.350, and 90.03.370; reenacting and amending RCW 86.16.035; adding
26 a new section to chapter 43.21A RCW; and creating a new section."

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