

# HOUSE BILL REPORT

## HB 1995

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As Reported By House Committee On:  
Energy & Utilities

**Title:** An act relating to the creation of a task force to identify and resolve regulatory conflicts affecting federally licensed hydroelectric facilities.

**Brief Description:** Creating a task force to study federally licensed hydroelectric facilities.

**Sponsors:** Representatives Grant, Mastin, Hansen and G. Fisher.

**Brief History:**

Reported by House Committee on:  
Energy & Utilities, March 2, 1993, DPS.

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### HOUSE COMMITTEE ON ENERGY & UTILITIES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Grant, Chair; Finkbeiner, Vice Chair; Casada, Ranking Minority Member; Miller, Assistant Ranking Minority Member; Johanson; Kessler; Kremen; Long; and Ludwig.

**Staff:** Harry Reinert (786-7110).

**Background:** Licensing of hydropower facilities is subject to a complex set of federal and state laws. Since its adoption in the early part of this century, the Federal Power Act has given the Federal Energy Regulatory Commission (FERC) primary authority over the licensing of dams that are used to generate electricity. The federal statute recognizes that some state laws take precedence, such as provisions relating to water rights. However, FERC is not required to follow all state statutes governing natural resource protection. FERC's authority has been subject to interpretation by the United States Supreme Court on several occasions. In two cases, the court has upheld FERC's exclusive authority over issues relating to design and operation of facilities it licenses. In 1986, Congress gave the states some additional authority to affect FERC's decisions through the state adoption of comprehensive plans over water resources. The Washington State Energy Office, together with the departments of Ecology, Wildlife,

Fisheries, and Natural Resources, has adopted such a plan and submitted it to FERC.

The preemptive authority of FERC over hydropower issues has been a subject of concern by most of the states. In the most recent Supreme Court case upholding FERC's authority to determine minimum stream flows, all 50 states signed a brief supporting California's position. After the court's decision in favor of FERC, legislation was introduced in Congress to limit FERC's authority to overrule state laws relating to natural resource protection.

The Department of Ecology has statutory authority to inspect for safety, all dams in the state of Washington. The department recently entered into a memorandum of understanding with FERC to clarify the responsibilities of the state and FERC in reviewing federally licensed hydropower facilities.

**Summary of Substitute Bill:** A seven member task force is created to study issues related to the scope and extent of state and federal authority over federally licensed hydroelectric facilities. The task force is also directed to examine impediments to increasing the efficiency of federally licensed facilities. The task force is directed to make recommendations to state agencies for changes to improve their procedures and to the Legislature for appropriate changes in state laws.

Three members of the task force are appointed by the governor. One person shall represent a hydroelectric facility owner, one the governor's office, and one the public. Four members of the task force shall be legislators, two from each house.

The Washington State Energy Office (WSEO) shall provide staff assistance to the task force. The task force shall not convene until WSEO has received \$40,000 in funding from public and private entities to pay the costs of the task force.

The task force shall make a report to the governor and the appropriate standing committees of the Legislature not later than 12 months after it convenes. The task force shall expire June 30, 1994.

**Substitute Bill Compared to Original Bill:** The original bill had a 16 member task force with state agency representatives as non-voting members. The original bill also had a more detailed set of issues for the task force to study. The original bill also required the report to be submitted to the Legislature by January 1, 1994.

**Fiscal Note:** Requested February 23, 1993.

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

**Testimony For:** There has been an increasing frequency of conflicts between hydroelectric developers and state agencies over the agencies' authority on federally licensed projects. The task force will provide a forum for resolution of disputes over state authority and will make achievement of the Northwest Power Planning Council's goals more likely. The task force may also help to avoid litigation that costs both the state and energy developers time and money.

**Testimony Against:** None.

**Witnesses:** Collins Sprague, Washington Water Power (pro); David Mudd, Department of Wildlife (with concerns); Steve McLellan, Washington State Energy Office (with concerns); and Ron Newbry, Pacific Power and Light (pro).