

# HOUSE BILL REPORT

## HB 2867

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As Amended by Senate

**Title:** An act relating to water resources.

**Brief Description:** Exempting federally licensed dams from state regulation.

**Sponsors:** Representatives Kessler, Chandler, Kremen, Finkbeiner, Long, Casada, Bray and Foreman.

**Brief History:**

Reported by House Committee on:  
Energy & Utilities, February 4, 1994, DP;  
Passed House, February 12, 1994, 89-5.  
Amended by Senate.

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### HOUSE COMMITTEE ON ENERGY & UTILITIES

**Majority Report:** Do pass. Signed by 9 members:  
Representatives Bray, Chair; Finkbeiner, Vice Chair; Casada, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Caver; Johanson; Kessler; Kremen and Long.

**Staff:** Fred Adair (786-7110).

**Background:** The Department of Ecology (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. Ecology 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 Ecology prior to construction for a review of the project's safety.

The Federal Energy Regulatory Commission (FERC) has the federal responsibility over most hydropower facilities. Under federal law, FERC has exclusive jurisdiction over those projects it regulates. This authority may preempt state law which conflicts with or interferes with the federal regulatory scheme. FERC is required to consider state interests with respect to the federally-licensed facilities. FERC must consider comprehensive plans developed by a state for the management and use of a waterway. FERC must consider recommendations made by a state agency with administrative responsibility over flood control, navigation, irrigation, recreation or other

resources affected by a federally licensed project. FERC must also include in a license conditions recommended by state fish and wildlife agencies, unless FERC determines the conditions are inconsistent with the Federal Power Act.

FERC is responsible for assuring that a federally-licensed dam is constructed and operated in a safe manner. Ecology and FERC have entered into a memorandum of agreement to coordinate their activities relating to dam safety. The agreement reinforces FERC's primacy in dam licensing, operation and safety inspections. However, it commits FERC to consulting with Ecology during inspections and in responding to emergencies. The agreement gives Ecology a definite role in reviewing plans for and in inspecting construction on new or modified dams. Ecology and FERC will independently review plans. Construction inspections will be conducted jointly, but FERC is the focal point for response by the project operator.

**Summary of Bill:** The Department of Ecology has no authority to regulate, supervise or assure the safety of any project which requires a license from FERC under the Federal Power Act. Ecology may not require any federal licensee to submit to an inspection, submit plans, seek a permit or change the design or operation of a federally licensed dam.

**EFFECT OF SENATE AMENDMENT(S):** The amendment is a striking amendment which is designed to eliminate any wording that might be considered prejudicial to the Elkhorn Dam case now before the U.S. Supreme Court. In this case the state is asserting that it has primacy in setting minimum stream flow. Though modified for the foregoing consideration, the findings section has the same elements. The operative section, section 2, has the same prohibitions on the Department of Ecology, but powers are added for the department to review and comment on licensee submissions and, when requested by the Federal Energy Regulatory Commission or a licensee, to inspect facilities for the purpose of preparing comments.

**Fiscal Note:** Available.

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

**Testimony For:** Ecology is duplicating the efforts of FERC. Because it has limited resources, Ecology should spend its resources where another entity is not already reviewing dam safety. Ecology has a significant backlog in inspecting dams under its jurisdiction. This is regulatory reform.

**Testimony Against:** Ecology spends only one-quarter of an FTE to review the plans submitted by federal licensees. There is no additional burden placed on the licensees. FERC and Ecology have worked out a cooperative agreement to share resources. Many of the dams affected by this bill are upstream of populated areas. This provides an extra measure of protection for the state's citizens.

**Witnesses:** Representative Kessler, prime sponsor; Linda Crerar and Jerry Levasser, Department of Ecology (con); Dave Ducharme, NW Hydropower Association (pro); Catherine Leone, Tacoma City Light (pro); Roger Purdom, Chelan County PUD (pro); and Robert Barnes, Puget Power (pro).

**VOTES ON FINAL PASSAGE:**

Yeas 89; Nays 5; Excused 4

Nays: Representatives Anderson, King, Pruitt, Thibaudeau, Valle

Excused: Representatives Ballasiotes, Horn, Riley, Van Luven