

FINAL BILL REPORT

HB 2867

FULL VETO

Brief Description: Exempting federally licensed dams from state regulation.

By Representatives Kessler, Chandler, Kremen, Finkbeiner, Long, Casada, Bray and Foreman.

House Committee on Energy & Utilities
Senate Committee on Energy & Utilities

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

independently review plans. Construction inspections are conducted jointly, but FERC is the focal point for response by the project operator.

Summary: 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.

The Department of Ecology may review and comment on licensee submissions to FERC. When requested by FERC or a licensee, the department may conduct inspections to help in preparing comments.

Votes on Final Passage:

House	89	5	
Senate	46	0	(Senate amended)
House	88	5	(House concurred)

FULL VETO