

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2867

53rd Legislature
1994 Regular Session

Passed by the House March 5, 1994
Yeas 88 Nays 5

**Speaker of the
House of Representatives**

Passed by the Senate March 1, 1994
Yeas 46 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2867** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2867

AS AMENDED BY THE SENATE

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1994 Regular Session

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

Read first time 01/26/94. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to water resources; amending RCW 43.21A.064,
2 86.16.025, 90.03.350, and 90.03.370; reenacting and amending RCW
3 86.16.035; adding a new section to chapter 43.21A RCW; and creating a
4 new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

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

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

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

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

12 (2) The department may review and comment upon reports, plans, and
13 specifications submitted by a licensee to the federal energy regulatory
14 commission, and conduct inspections for the purpose of commenting upon
15 reports, plans, and specifications when requested by the federal energy
16 regulatory commission or a licensee.

17 (3) For the purposes of this section, "licensee" means an owner or
18 operator, or any employee thereof, of a dam, canal, ditch, hydraulic
19 power plant, reservoir, project, or other work, system, or plant that
20 requires a license under the federal power act.

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

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

25 (1) The supervision of public waters within the state and their
26 appropriation, diversion, and use, and of the various officers
27 connected therewith;

28 (2) Insofar as may be necessary to assure safety to life or
29 property, he shall inspect the construction of all dams, canals,
30 ditches, irrigation systems, hydraulic power plants, and all other
31 works, systems, and plants pertaining to the use of water, and he may
32 require such necessary changes in the construction or maintenance of
33 said works, to be made from time to time, as will reasonably secure
34 safety to life and property;

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

37 (4) He shall determine the discharge of streams and springs and
38 other sources of water supply, and the capacities of lakes and of

1 reservoirs whose waters are being or may be utilized for beneficial
2 purposes;

3 (5) He shall keep such records as may be necessary for the
4 recording of the financial transactions and statistical data thereof,
5 and shall procure all necessary documents, forms, and blanks. He shall
6 keep a seal of the office, and all certificates by him covering any of
7 his acts or the acts of his office, or the records and files of his
8 office, under such seal, shall be taken as evidence thereof in all
9 courts;

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

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

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

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

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

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

26 **Sec. 5.** RCW 86.16.035 and 1987 c 523 s 9 and 1987 c 109 s 53 are
27 each reenacted and amended to read as follows:

28 Subject to section 2 of this act, the department of ecology shall
29 have supervision and control over all dams and obstructions in streams,
30 and may make reasonable regulations with respect thereto concerning the
31 flow of water which he deems necessary for the protection to life and
32 property below such works from flood waters.

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

35 Except as provided in section 2 of this act, any person,
36 corporation or association intending to construct or modify any dam or

1 controlling works for the storage of ten acre feet or more of water,
2 shall before beginning said construction or modification, submit plans
3 and specifications of the same to the department for examination and
4 approval as to its safety. Such plans and specifications shall be
5 submitted in duplicate, one copy of which shall be retained as a public
6 record, by the department, and the other returned with its approval or
7 rejection endorsed thereon. No such dam or controlling works shall be
8 constructed or modified until the same or any modification thereof
9 shall have been approved as to its safety by the department. Any such
10 dam or controlling works constructed or modified in any manner other
11 than in accordance with plans and specifications approved by the
12 department or which shall not be maintained in accordance with the
13 order of the department shall be presumed to be a public nuisance and
14 may be abated in the manner provided by law, and it shall be the duty
15 of the attorney general or prosecuting attorney of the county wherein
16 such dam or controlling works, or the major portion thereof, is
17 situated to institute abatement proceedings against the owner or owners
18 of such dam or controlling works, whenever he is requested to do so by
19 the department.

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

22 Except as provided in section 2 of this act, all applications for
23 reservoir permits shall be subject to the provisions of RCW 90.03.250
24 through 90.03.320. But the party or parties proposing to apply to a
25 beneficial use the water stored in any such reservoir shall also file
26 an application for a permit, to be known as the secondary permit, which
27 shall be in compliance with the provisions of RCW 90.03.250 through
28 90.03.320. Such secondary application shall refer to such reservoir as
29 its source of water supply and shall show documentary evidence that an
30 agreement has been entered into with the owners of the reservoir for a
31 permanent and sufficient interest in said reservoir to impound enough
32 water for the purposes set forth in said application. When the
33 beneficial use has been completed and perfected under the secondary
34 permit, the department shall take the proof of the water users under
35 such permit and the final certificate of appropriation shall refer to

- 1 both the ditch and works described in the secondary permit and the
- 2 reservoir described in the primary permit.

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