
HOUSE BILL 1920

State of Washington

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1999 Regular Session

By Representatives G. Chandler, Grant, Mastin, Linville, Clements, Lisk, Kessler, B. Chandler, Cox, Delvin, Schoesler, Mitchell, Huff, Buck, Mulliken, McMorris, McDonald, Reardon, Hatfield, D. Sommers, Thomas, Conway, Ogden, Bush, Hankins, Skinner, Koster and Dunn

Read first time 02/10/1999. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to dams licensed or owned by the federal
2 government; and adding a new chapter to Title 90 RCW.

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

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

5 (a) The United States supreme court has determined that the states
6 are responsible for enforcing water quality standards within their
7 various jurisdictions;

8 (b) The United States supreme court has also recognized that, in
9 addition to these primary enforcement responsibilities, the federal
10 clean water act requires states to provide water quality certification
11 before federal licenses or permits can be issued for activities that
12 may result in any discharge into the waters of the states;

13 (c) In addition to these responsibilities and powers, this state
14 has a sovereign responsibility to protect its citizens and resources
15 against any action, even one motivated by natural resource objectives,
16 that would sacrifice one vital resource for another;

17 (d) Some have proposed that the reservoirs of dams on the main
18 stems of the Columbia and Snake river system in this state be lowered

1 below their operational levels or the dams be breached as a means of
2 enhancing stocks of anadromous fish; and

3 (e) The environmental effects of any action of such a magnitude
4 must be carefully examined to ensure that the action will: (i) Serve
5 its objectives in a manner that is superior to other alternatives, and
6 (ii) serve those objectives without sacrificing water quality
7 including, but not limited to, that needed for fish habitat.

8 (2) The purpose of this chapter is to ensure that no action is
9 taken to breach, remove, or circumvent a federally owned or federally
10 licensed dam, or to reduce the reservoir of a federally owned or a
11 federally licensed dam below the operating level of the dam without the
12 effects of the action on water quality being carefully examined and
13 water quality being protected. It is also the purpose of this chapter
14 to ensure that property rights, including property rights to the use of
15 water and contractual rights, are protected and to ensure that, as
16 environmental analyses are being undertaken, the economic effects of a
17 proposal regarding federally owned or licensed dams are fully
18 disclosed.

19 NEW SECTION. **Sec. 2.** The definitions in this section apply
20 throughout this chapter unless the context clearly requires otherwise.

21 (1) "Federally owned dam" means a dam owned by the United States or
22 by an agency of the United States on the effective date of this act.

23 (2) "Federally licensed dam" means a dam licensed for hydroelectric
24 power generation by the United States or by an agency of the United
25 States on the effective date of this act.

26 (3) "Department" means the department of ecology.

27 NEW SECTION. **Sec. 3.** (1) No action may be taken by any entity
28 whatsoever to breach, remove, or circumvent a federally owned or
29 federally licensed dam, or to reduce the reservoir of a federally owned
30 or a federally licensed dam below the operating level of the dam unless
31 each of the following conditions has been satisfied:

32 (a) The department has issued a discharge permit under chapter
33 90.48 RCW for the action, or the state, through the department, has
34 granted certification regarding water quality under 33 U.S.C. Sec. 1341
35 for the action and the issuance of the permit or granting of the
36 certification are in compliance with section 4 of this act;

1 (b) A final version of a detailed statement under RCW
2 43.21C.030(2)(c), generally known as a final environmental impact
3 statement, has been prepared and issued by the department regarding the
4 issuance of a permit or granting of certification under (a) of this
5 subsection. In comparing in the statement the environmental impacts of
6 the proposed action to alternative actions that would accomplish the
7 same or similar objective of the action, the department shall ensure
8 that it includes an analysis of the environmental impacts of generating
9 electrical power to replace any hydroelectric generation reduced or
10 lost under the proposal. The department shall also prepare and append
11 to the draft and final versions of the statement an analysis of the
12 economic costs of the proposal and compare these costs to the economic
13 costs of the alternatives identified in the statement;

14 (c) The department determines through the procedures described in
15 section 5 of this act that the action will not be detrimental to or
16 impair existing water rights; and

17 (d) A comprehensive water resources program has been developed and
18 adopted by the department under chapter 90.54 RCW that identifies how
19 unallocated water resources will be managed in the portion of the river
20 basin in which the dam and the reservoir for the dam are located.

21 (2) An action in subsection (1) of this section may not be taken
22 with regard to a federally licensed dam unless, in addition to the
23 conditions listed in subsection (1)(a) through (d) of this section, the
24 state's attorney general certifies that the action will not directly
25 preclude the entity operating or owning the dam from fulfilling its
26 obligations in any contract held by or impliedly held by holders of
27 bonds issued by the entity.

28 NEW SECTION. **Sec. 4.** The department shall issue a permit or grant
29 a certification under section 3(1)(a) of this act only if the action
30 that is the subject of the permit or certification will not cause water
31 quality standards to be violated in the reservoir of the dam, at the
32 dam, or in any segments of water bodies downstream from the dam. Such
33 water quality standards include, but are not limited to, the
34 antidegradation policies that apply to such standards. Although not a
35 limitation on the standards that shall be examined under this section,
36 the department shall take care to examine the effects of the action on
37 any habitat that constitutes a use of these water bodies under the
38 state's water quality standards. Because of the magnitude of such an

1 action, a temporary water quality modification permit may not be issued
2 for the action.

3 NEW SECTION. **Sec. 5.** (1) In determining whether such an action
4 will be detrimental to, or impair existing water rights, the department
5 shall review the rights documented in certificates, permits, and claims
6 in the records held by the department and shall prepare a draft written
7 report on the effects of the action on existing water rights. The
8 department shall make the draft report and a draft of its determination
9 readily available to the public without charge. Not sooner than thirty
10 days after the draft report has been made readily available to the
11 public, the department shall convene a public meeting of water right
12 holders and take public testimony from water right holders on the
13 contents of the draft report and on the draft determination. The
14 department shall provide public notice of the meeting and shall send
15 written notice of the meeting by mail to holders of water rights or
16 water claims who collectively hold, based on the department's records,
17 rights or claims to not less than sixty percent of the water withdrawn:
18 (a) From the reservoir of the dam; (b) from the river impounded by the
19 dam within ten miles downstream of the dam; and (c) from wells in areas
20 the department has determined, for the purposes of processing
21 applications for new water rights, to be in hydraulic continuity with
22 the waters in the reservoir or with the waters in such a ten-mile
23 downstream reach of the river. The department shall also provide
24 written notice of the meeting to each federally recognized Indian tribe
25 with tribal treaty rights to such waters or to activities or resources
26 directly affected by such waters. As part of its final written report
27 and determination, the department shall generally summarize and respond
28 to the testimony provided at that meeting. Copies of the department's
29 final report and determination shall be made readily available to the
30 public without charge and shall be submitted to the appropriate
31 committees of the state legislature.

32 (2) The public notice required under this section shall include
33 publication of notice in a newspaper of general circulation in the area
34 of the dam once a week for two consecutive weeks before the meeting.

1 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute
2 a new chapter in Title 90 RCW.

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