

# HOUSE BILL REPORT

## SHB 1130

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### As Passed Legislature

**Title:** An act relating to water power license fees.

**Brief Description:** Concerning water power license fees.

**Sponsors:** House Committee on Environment (originally sponsored by Representatives Fey, Short, Tharinger, Fitzgibbon and Gregerson; by request of Department of Ecology and Department of Fish and Wildlife).

#### **Brief History:**

##### **Committee Activity:**

Environment: 1/20/15, 1/19/16 [DPS];

General Government & Information Technology: 1/26/16, 2/5/16 [DPS(ENVI)].

##### **Floor Activity:**

Passed House: 2/16/16, 71-27.

Senate Amended.

Passed Senate: 3/4/16, 46-3.

House Concurred.

Passed House: 3/8/16, 80-16.

Passed Legislature.

#### **Brief Summary of Substitute Bill**

- Extends a fee paid by water power development facilities that are licensed by the Federal Energy Regulatory Commission from the year 2017 to the year 2023.
- Establishes certain administrative requirements related to the hydropower project licensing activities of the Department of Ecology (ECY) and the Department of Fish and Wildlife, including requiring the departments to hold an annual meeting and develop an annual work plan.
- Requires the ECY to include detailed information regarding hydropower licensing program activities and costs in the ECY's biennial report on the hydropower license fee program to the Legislature.

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#### **HOUSE COMMITTEE ON ENVIRONMENT**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Short, Assistant Ranking Minority Member; Dye, Farrell, Fey, Goodman and McBride.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Shea, Ranking Minority Member; Pike and Taylor.

**Staff:** Jacob Lipson (786-7196).

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## HOUSE COMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

**Majority Report:** The substitute bill by Committee on Environment be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hudgins, Chair; Kuderer, Vice Chair; Caldier, Assistant Ranking Minority Member; Morris and Senn.

**Minority Report:** Without recommendation. Signed by 1 member: Representative MacEwen, Ranking Minority Member.

**Staff:** Dan Jones (786-7118).

### **Background:**

The Department of Ecology (ECY) issues federal Clean Water Act water quality certifications to hydroelectric dam operators licensed by the Federal Energy Regulatory Commission (FERC). The ECY's water quality certification process is typically conducted in conjunction with the FERC licensing or relicensing process for the hydropower project. The FERC licenses to hydropower operators under the Federal Power Act are issued for 30 to 50 years. After the FERC license and water quality certificate have been issued for a project, compliance with water quality protection criteria is monitored by the ECY and the Washington Department of Fish and Wildlife (WDFW).

Most claimants to water intended to be used for power development are required to pay an annual fee to the ECY. The fee is assessed on approximately 93 different power generation facilities and is based on the theoretical amount of water claimed by the entity developing power. All revenues are deposited into the Reclamation Account.

The fees for water power development are based on a two-step model that considers theoretical horsepower claimed. The first step is the base fee paid by all water power claimants. Base fees are calculated using the following formula:

- Facilities that generate between 51 and 1,000 horsepower pay 18 cents per horsepower.
- Facilities that generate between 1,001 and 10,000 horsepower pay 3.6 cents per horsepower.
- Facilities that generate more than 10,001 horsepower pay 1.8 cents per horsepower.

In addition to the base fee, all water power generation facilities that are regulated by the FERC must, until June 30, 2017, pay an additional fee. Only power generation facilities

above a certain power generating threshold are required to be licensed by the FERC. The additional fees are calculated using the following formula:

- Facilities that generate between 51 and 1,000 horsepower pay 32 cents per horsepower.
- Facilities that generate between 1,001 and 10,000 horsepower pay 6.4 cents per horsepower for horsepower above 1,001 and 32 cents per horsepower for the first 1,000 horsepower.
- Facilities that generate more than 10,001 horsepower pay 3.2 cents per horsepower for horsepower above 10,001, 6.4 cents per horsepower for horsepower above 1,001, and 32 cents per horsepower for the first 1,000 horsepower.

The base fee and the second fee paid by facilities licensed by the FERC are additive until June 30, 2017, when the additional fee expires and all facilities are only required to pay the base fee.

According to the ECY, the base fees generated \$583,000 in the 2012-2013 biennium and the additional fee generated \$1,017,000. These funds are used by the ECY and the WDFW to assist power generation facilities in meeting environmental regulatory requirements and other requirements associated with the FERC licensing process.

The ECY submits a biennial report to the Legislature describing how license fees were spent on the ECY and the WDFW's water quality certification work for the FERC-licensed hydropower projects.

#### **Summary of Substitute Bill:**

The expiration date for the additional fee charged to water power generating facilities that are licensed by the FERC is extended 10 years, from the year 2017 until the year 2023. The fee is also specified to only apply to FERC projects that are subject to review for federal Clean Water Act certification. The rates and collection methods of the additional fee is not changed.

After June 30, 2023, all claimants to water used for power generation will only pay the base fee.

In the biennial report to the Legislature, the ECY must detail how much licensing fees and other program funds were spent on work for each hydropower project. The detailed program expenditure information in the report must include:

- project-specific costs and staff time associated with work undertaken by the agencies during prelicensing, licensing or relicensing, and license implementation phases of a hydropower project;
- sufficient information to determine that hydropower license fees charged are not used for activities performed by other state agencies, federal agencies, or tribes, and that duplication is avoided; and
- an estimate of expected workload, program costs, and staff time for Clean Water Act certifications or FERC license implementation for projects in the upcoming two year reporting period.

Certain administrative requirements are established related to the implementation of the hydropower project licensing program by the ECY and the WDFW:

- The ECY and the WDFW must assign individual staff members as project leads for each hydropower project.
- The ECY and the WDFW must develop an annual work plan for their hydropower licensing programs.
- The ECY and the WDFW must circulate an annual survey to licensees regarding their interactions with the program staff of the departments. This summary must be analyzed and summarized prior to an annual meeting that the ECY and the WDFW must host for hydropower project licensees and other interested parties.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on March 4, 2016.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Environment):**

See Committee Records from 2015 Legislative Session.

**Staff Summary of Public Testimony (General Government & Information Technology):**

(In support) This bill came out of a report from stakeholder meetings held by the ECY and the WDFW in response to a budget proviso. The report contained some stakeholder recommendations on accountability and transparency that were incorporated into the bill. The increased reporting requirements have a slight cost to the agencies but provide better service to stakeholders. Moving out the expiration of the fees helps continue important license implementation work such as survival goals for salmon, fish passage, in-stream flow, and habitat improvement projects. The advantage to utilities of a consistent fee is that the utilities can count on the fee in their budgets, and take advantage of assistance from agency staff as it is needed. The relicensing process takes 10 to 12 years to run its course, so it is important to have the certainty of the program remain in place.

(Opposed) The bill extends the current fee structure, even though the need for services has changed. These fees were appropriate over the past 10 years, when 11 projects were relicensed, but only four projects are expected to be relicensed over the next 10 years. After collecting two years of data at the project level, ECY should consider a proportional fee structure that takes workload per project into the account.

**Persons Testifying (Environment):** See Committee Records from 2015 Legislative Session.

**Persons Testifying (General Government & Information Technology):** (In support) Don Seeberger, Department of Ecology; Justin Allegro, Department of Fish and Wildlife; Christine Brewer, Avista Corporation; and Dave Arbaugh, Chelan County Public Utility District and Snohomish County Public Utility District.

(Opposed) Al Aldrich, Grant County Public Utility District.

**Persons Signed In To Testify But Not Testifying** (Environment): None.

**Persons Signed In To Testify But Not Testifying** (General Government & Information Technology): None.