

---

HOUSE BILL 2338

---

State of Washington                      58th Legislature                      2004 Regular Session

By Representatives Morris, Sullivan, Mielke and Hudgins

Prefiled 1/7/2004.      Read first time 01/12/2004.      Referred to  
Committee on Technology, Telecommunications & Energy.

1            AN ACT Relating to the determination of mitigation recommendations  
2 for licensing of nonfederal hydropower projects under the energy  
3 facility site evaluation council; and amending RCW 80.50.010,  
4 80.50.020, 80.50.030, 80.50.040, 80.50.060, 80.50.071, 80.50.080,  
5 80.50.085, 80.50.090, 80.50.100, and 80.50.110.

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

7            **Sec. 1.** RCW 80.50.010 and 2001 c 214 s 1 are each amended to read  
8 as follows:

9            The legislature finds that the present and predicted growth in  
10 energy demands in the state of Washington requires the development of  
11 a procedure for the selection and utilization of sites for energy  
12 facilities and the identification of a state position with respect to  
13 each proposed site. The legislature recognizes that the selection of  
14 sites will have a significant impact upon the welfare of the  
15 population, the location and growth of industry and the use of the  
16 natural resources of the state.

17            The legislature further finds that as federally licensed  
18 hydroelectric projects seek to be relicensed, the demand for affordable

1 and reliable electricity requires that a process be developed for  
2 identification of a state position on mitigation recommendations  
3 submitted under the federal licensing process.

4 It is the policy of the state of Washington to recognize the  
5 pressing need for increased energy facilities, and to ensure through  
6 available and reasonable methods, that the location and operation of  
7 such facilities will produce minimal adverse effects on the  
8 environment, ecology of the land and its wildlife, and the ecology of  
9 state waters and their aquatic life.

10 It is the intent to seek courses of action that will balance the  
11 increasing demands for energy facility location and operation in  
12 conjunction with the broad interests of the public. Such action will  
13 be based on these premises:

14 (1) To assure Washington state citizens that, where applicable,  
15 operational safeguards are at least as stringent as the criteria  
16 established by the federal government and are technically sufficient  
17 for their welfare and protection.

18 (2) To preserve and protect the quality of the environment; to  
19 enhance the public's opportunity to enjoy the esthetic and recreational  
20 benefits of the air, water and land resources; to promote air  
21 cleanliness; and to pursue beneficial changes in the environment.

22 (3) To provide abundant energy at reasonable cost.

23 (4) To avoid costs of complete site restoration and demolition of  
24 improvements and infrastructure at unfinished nuclear energy sites, and  
25 to use unfinished nuclear energy facilities for public uses, including  
26 economic development, under the regulatory and management control of  
27 local governments and port districts.

28 (5) To avoid costly duplication in the siting process and in the  
29 determination of mitigation recommendations by state and local  
30 governments for the licensing of nonfederal hydroelectric projects  
31 under the federal energy regulatory commission and to ensure that  
32 decisions are made timely and without unnecessary delay.

33 **Sec. 2.** RCW 80.50.020 and 2001 c 214 s 3 are each amended to read  
34 as follows:

35 The definitions in this section apply throughout this chapter  
36 unless the context clearly requires otherwise.

1 (1) "Applicant" means any person who makes application for a site  
2 certification pursuant to the provisions of this chapter or who makes  
3 application for a federal hydropower license through the federal energy  
4 regulatory commission using the alternative licensing process.

5 (2) "Application" means any request for approval of a particular  
6 site or sites filed in accordance with the procedures established  
7 pursuant to this chapter or any request to determine mitigation  
8 recommendations for major existing nonfederal dams under the federal  
9 energy regulatory commission using the alternative licensing process,  
10 unless the context otherwise requires.

11 (3) "Person" means an individual, partnership, joint venture,  
12 private or public corporation, association, firm, public service  
13 company, political subdivision, municipal corporation, government  
14 agency, public utility district, or any other entity, public or  
15 private, however organized.

16 (4) "Site" means any proposed or approved location of an energy  
17 facility.

18 (5) "Certification" means a binding agreement between an applicant  
19 and the state which shall embody compliance to the siting guidelines,  
20 in effect as of the date of certification, which have been adopted  
21 pursuant to RCW 80.50.040 as now or hereafter amended as conditions to  
22 be met prior to or concurrent with the construction or operation of any  
23 energy facility.

24 (6) "Associated facilities" means storage, transmission, handling,  
25 or other related and supporting facilities connecting an energy plant  
26 with the existing energy supply, processing, or distribution system,  
27 including, but not limited to, communications, controls, mobilizing or  
28 maintenance equipment, instrumentation, and other types of ancillary  
29 transmission equipment, off-line storage or venting required for  
30 efficient operation or safety of the transmission system and overhead,  
31 and surface or subsurface lines of physical access for the inspection,  
32 maintenance, and safe operations of the transmission facility and new  
33 transmission lines constructed to operate at nominal voltages in excess  
34 of 200,000 volts to connect a thermal power plant to the northwest  
35 power grid: PROVIDED, That common carrier railroads or motor vehicles  
36 shall not be included.

37 (7) "Transmission facility" means any of the following together  
38 with their associated facilities:

1 (a) Crude or refined petroleum or liquid petroleum product  
2 transmission pipeline of the following dimensions: A pipeline larger  
3 than six inches minimum inside diameter between valves for the  
4 transmission of these products with a total length of at least fifteen  
5 miles;

6 (b) Natural gas, synthetic fuel gas, or liquified petroleum gas  
7 transmission pipeline of the following dimensions: A pipeline larger  
8 than fourteen inches minimum inside diameter between valves, for the  
9 transmission of these products, with a total length of at least fifteen  
10 miles for the purpose of delivering gas to a distribution facility,  
11 except an interstate natural gas pipeline regulated by the United  
12 States federal power commission.

13 (8) "Independent consultants" means those persons who have no  
14 financial interest in the applicant's proposals and who are retained by  
15 the council to evaluate the applicant's proposals, supporting studies,  
16 or to conduct additional studies.

17 (9) "Thermal power plant" means, for the purpose of certification,  
18 any electrical generating facility using any fuel, including nuclear  
19 materials, for distribution of electricity by electric utilities.

20 (10) "Energy facility" means an energy plant (~~(or)~~), transmission  
21 facilities, or a major existing nonfederal dam: PROVIDED, That the  
22 following are excluded from the provisions of this chapter:

23 (a) Facilities for the extraction, conversion, transmission or  
24 storage of water, other than water specifically consumed or discharged  
25 by energy production or conversion for energy purposes; and

26 (b) Facilities operated by and for the armed services for military  
27 purposes or by other federal authority for the national defense.

28 (11) "Council" means the energy facility site evaluation council  
29 created by RCW 80.50.030.

30 (12) "Counsel for the environment" means an assistant attorney  
31 general or a special assistant attorney general who shall represent the  
32 public in accordance with RCW 80.50.080.

33 (13) "Construction" means on-site improvements, excluding  
34 exploratory work, which cost in excess of two hundred fifty thousand  
35 dollars.

36 (14) "Energy plant" means the following facilities together with  
37 their associated facilities:

1 (a) Any stationary thermal power plant with generating capacity of  
2 three hundred fifty thousand kilowatts or more, measured using maximum  
3 continuous electric generating capacity, less minimum auxiliary load,  
4 at average ambient temperature and pressure, and floating thermal power  
5 plants of one hundred thousand kilowatts or more, including associated  
6 facilities. For the purposes of this subsection, "floating thermal  
7 power plants" means a thermal power plant that is suspended on the  
8 surface of water by means of a barge, vessel, or other floating  
9 platform;

10 (b) Facilities which will have the capacity to receive liquified  
11 natural gas in the equivalent of more than one hundred million standard  
12 cubic feet of natural gas per day, which has been transported over  
13 marine waters;

14 (c) Facilities which will have the capacity to receive more than an  
15 average of fifty thousand barrels per day of crude or refined petroleum  
16 or liquified petroleum gas which has been or will be transported over  
17 marine waters, except that the provisions of this chapter shall not  
18 apply to storage facilities unless occasioned by such new facility  
19 construction;

20 (d) Any underground reservoir for receipt and storage of natural  
21 gas as defined in RCW 80.40.010 capable of delivering an average of  
22 more than one hundred million standard cubic feet of natural gas per  
23 day; and

24 (e) Facilities capable of processing more than twenty-five thousand  
25 barrels per day of petroleum into refined products.

26 (15) "Land use plan" means a comprehensive plan or land use element  
27 thereof adopted by a unit of local government pursuant to chapters  
28 35.63, 35A.63, or 36.70 RCW.

29 (16) "Zoning ordinance" means an ordinance of a unit of local  
30 government regulating the use of land and adopted pursuant to chapters  
31 35.63, 35A.63, or 36.70 RCW or Article XI of the state Constitution.

32 (17) "Alternative energy resource" means: (a) Wind; (b) solar  
33 energy; (c) geothermal energy; (d) landfill gas; (e) wave or tidal  
34 action; or (f) biomass energy based on solid organic fuels from wood,  
35 forest, or field residues, or dedicated energy crops that do not  
36 include wood pieces that have been treated with chemical preservatives  
37 such as creosote, pentachlorophenol, or copper-chrome-arsenic.

1       (18) "Major existing nonfederal dam" means a licensed or unlicensed  
2 hydroelectric project that has a total installed generating capacity of  
3 more than one and one-half megawatts.

4       **Sec. 3.** RCW 80.50.030 and 2001 c 214 s 4 are each amended to read  
5 as follows:

6       (1) There is created and established the energy facility site  
7 evaluation council.

8       (2)(a) The chair of the council shall be appointed by the governor  
9 with the advice and consent of the senate, shall have a vote on matters  
10 before the council, shall serve for a term coextensive with the term of  
11 the governor, and is removable for cause. The chair may designate a  
12 member of the council to serve as acting chair in the event of the  
13 chair's absence. The salary of the chair shall be determined under RCW  
14 43.03.040. The chair is a "state employee" for the purposes of chapter  
15 42.52 RCW. As applicable, when attending meetings of the council,  
16 members may receive reimbursement for travel expenses in accordance  
17 with RCW 43.03.050 and 43.03.060, and are eligible for compensation  
18 under RCW 43.03.250.

19       (b) The chair or a designee shall execute all official documents,  
20 contracts, and other materials on behalf of the council. The  
21 Washington state department of community, trade, and economic  
22 development shall provide all administrative and staff support for the  
23 council. The director of the department of community, trade, and  
24 economic development has supervisory authority over the staff of the  
25 council and shall employ such personnel as are necessary to implement  
26 this chapter. Not more than three such employees may be exempt from  
27 chapter 41.06 RCW.

28       (3)(a) The council shall consist of the directors, administrators,  
29 or their designees, of the following departments, agencies,  
30 commissions, and committees or their statutory successors:

31       (i) Department of ecology;

32       (ii) Department of fish and wildlife;

33       (iii) Department of community, trade, and economic development;

34       (iv) Utilities and transportation commission; and

35       (v) Department of natural resources.

36       (b) The directors, administrators, or their designees, of the  
37 following departments, agencies, and commissions, or their statutory

1 successors, may participate as councilmembers at their own discretion  
2 provided they elect to participate no later than sixty days after an  
3 application is filed:

4 (i) Department of agriculture;

5 (ii) Department of health;

6 (iii) Military department; and

7 (iv) Department of transportation.

8 (c) In addition to those departments, agencies, and commissions  
9 designated in (a) of this subsection, the parks and recreation  
10 commission shall participate as a council member for purposes of  
11 determining mitigation recommendations for the licensing of a major  
12 existing nonfederal dam under the federal energy regulatory commission.

13 (d) Council membership is discretionary for agencies that choose to  
14 participate under (b) of this subsection only for applications that are  
15 filed with the council on or after May 8, 2001. For applications filed  
16 before May 8, 2001, council membership is mandatory for those agencies  
17 listed in (b) of this subsection.

18 (4) The appropriate county legislative authority of every county  
19 wherein an application for a proposed site is filed, or where  
20 mitigation recommendations may be submitted as conditions for granting  
21 a federal hydropower license, shall appoint a member or designee as a  
22 voting member to the council. The member or designee so appointed  
23 shall sit with the council only at such times as the council considers  
24 the proposed site, or proposed mitigation recommendations for a federal  
25 hydropower license, for the county which he or she represents, and such  
26 member or designee shall serve until there has been a final acceptance  
27 or rejection of the proposed site or proposed mitigation  
28 recommendations for a federal hydropower license.

29 (5) The city legislative authority of every city within whose  
30 corporate limits an energy plant is proposed to be located, or where a  
31 major existing nonfederal dam is located, shall appoint a member or  
32 designee as a voting member to the council. The member or designee so  
33 appointed shall sit with the council only at such times as the council  
34 considers the proposed site, or proposed mitigation recommendations for  
35 a federal hydropower license, for the city which he or she represents,  
36 and such member or designee shall serve until there has been a final  
37 acceptance or rejection of the proposed site or proposed mitigation  
38 recommendations for a federal hydropower license.

1 (6) For any port district wherein an application for a proposed  
2 port facility is filed subject to this chapter, the port district shall  
3 appoint a member or designee as a nonvoting member to the council. The  
4 member or designee so appointed shall sit with the council only at such  
5 times as the council considers the proposed site for the port district  
6 which he or she represents, and such member or designee shall serve  
7 until there has been a final acceptance or rejection of the proposed  
8 site. The provisions of this subsection shall not apply if the port  
9 district is the applicant, either singly or in partnership or  
10 association with any other person.

11 **Sec. 4.** RCW 80.50.040 and 2001 c 214 s 6 are each amended to read  
12 as follows:

13 The council shall have the following powers:

14 (1) To adopt, promulgate, amend, or rescind suitable rules and  
15 regulations, pursuant to chapter 34.05 RCW, to carry out the provisions  
16 of this chapter, and the policies and practices of the council in  
17 connection therewith;

18 (2) To develop and apply environmental and ecological guidelines in  
19 relation to the type, design, location, construction, and operational  
20 conditions of certification of energy facilities subject to this  
21 chapter;

22 (3) To establish rules of practice for the conduct of public  
23 hearings pursuant to the provisions of the Administrative Procedure  
24 Act, as found in chapter 34.05 RCW;

25 (4) To prescribe the form, content, and necessary supporting  
26 documentation for site certification or for mitigation recommendations  
27 made for a major existing nonfederal dam under a federal alternative  
28 licensing process;

29 (5) To receive applications for energy facility locations and to  
30 investigate the sufficiency thereof;

31 (6) To make and contract, when applicable, for independent studies  
32 of sites proposed by the applicant or of mitigation recommendations  
33 made for a major existing nonfederal dam under a federal alternative  
34 licensing process;

35 (7) To conduct hearings on the proposed location of the energy  
36 facilities or on proposed mitigation recommendations for a major  
37 existing nonfederal dam under a federal alternative licensing process;



1 (8) To prepare written reports to the governor which shall include:  
2 (a) A statement indicating whether the application is in compliance  
3 with the council's guidelines, (b) criteria specific to the site and  
4 transmission line routing, (c) a council recommendation as to the  
5 disposition of the application, and (d) a draft certification agreement  
6 when the council recommends approval of the application;

7 (9) To prescribe the means for monitoring of the effects arising  
8 from the construction and the operation of energy facilities to assure  
9 continued compliance with terms of certification and/or permits issued  
10 by the council pursuant to chapter 90.48 RCW or subsection (12) of this  
11 section: PROVIDED, That any on-site inspection required by the council  
12 shall be performed by other state agencies pursuant to interagency  
13 agreement: PROVIDED FURTHER, That the council may retain authority for  
14 determining compliance relative to monitoring;

15 (10) To integrate its site evaluation activity, or its  
16 consideration of mitigation recommendations for a major existing  
17 nonfederal dam under a federal alternative licensing process, with  
18 activities of federal agencies having jurisdiction in such matters to  
19 avoid unnecessary duplication;

20 (11) To present state concerns and interests to other states,  
21 regional organizations, and the federal government on the location,  
22 construction, and operation of any energy facility which may affect the  
23 environment, health, or safety of the citizens of the state of  
24 Washington;

25 (12) To issue permits in compliance with applicable provisions of  
26 the federally approved state implementation plan adopted in accordance  
27 with the Federal Clean Air Act, as now existing or hereafter amended,  
28 for the new construction, reconstruction, or enlargement or operation  
29 of energy facilities: PROVIDED, That such permits shall become  
30 effective only if the governor approves an application for  
31 certification and executes a certification agreement pursuant to this  
32 chapter: AND PROVIDED FURTHER, That all such permits be conditioned  
33 upon compliance with all provisions of the federally approved state  
34 implementation plan which apply to energy facilities covered within the  
35 provisions of this chapter; and

36 (13) To serve as an interagency coordinating body for energy-  
37 related issues.

1       **Sec. 5.** RCW 80.50.060 and 2001 c 214 s 2 are each amended to read  
2 as follows:

3       (1) The provisions of this chapter shall apply to the construction  
4 of energy facilities which includes the new construction of energy  
5 facilities and the reconstruction or enlargement of existing energy  
6 facilities where the net increase in physical capacity or dimensions  
7 resulting from such reconstruction or enlargement meets or exceeds  
8 those capacities or dimensions set forth in RCW 80.50.020 (7) and (14).  
9 No construction of such energy facilities may be undertaken, except as  
10 otherwise provided in this chapter, after July 15, 1977, without first  
11 obtaining certification in the manner provided in this chapter.

12       (2) The provisions of this chapter apply to the construction,  
13 reconstruction, or enlargement of a new or existing energy facility  
14 that exclusively uses alternative energy resources and chooses to  
15 receive certification under this chapter, regardless of the generating  
16 capacity of the project.

17       (3) The provisions of this chapter apply to the determination of  
18 mitigation recommendations by state agencies and local governments as  
19 a condition to the granting of a federal hydropower license where the  
20 applicant for the hydropower license is proceeding under the  
21 alternative licensing process and chooses to have the mitigation  
22 recommendations determined under this chapter.

23       (4) The provisions of this chapter shall not apply to normal  
24 maintenance and repairs which do not increase the capacity or  
25 dimensions beyond those set forth in RCW 80.50.020 (7) and (14).

26       ~~((+4))~~ (5) Applications for certification of energy facilities  
27 made prior to July 15, 1977 shall continue to be governed by the  
28 applicable provisions of law in effect on the day immediately preceding  
29 July 15, 1977 with the exceptions of RCW 80.50.190 and 80.50.071 which  
30 shall apply to such prior applications and to site certifications  
31 prospectively from July 15, 1977.

32       ~~((+5))~~ (6) Applications for certification shall be upon forms  
33 prescribed by the council and shall be supported by such information  
34 and technical studies as the council may require.

35       **Sec. 6.** RCW 80.50.071 and 1977 ex.s. c 371 s 16 are each amended  
36 to read as follows:

37       (1) The council shall receive all applications for energy facility

1 site certification and applications to determine mitigation  
2 recommendations for a major existing nonfederal dam under a federal  
3 alternative licensing process. The following fees or charges for  
4 application processing or certification monitoring shall be paid by the  
5 applicant or certificate holder:

6 (a) A fee of twenty-five thousand dollars for each proposed site,  
7 to be applied toward the cost of the independent consultant study  
8 authorized in this subsection, shall accompany the application and  
9 shall be a condition precedent to any further consideration or action  
10 on the application by the council. The council shall commission its  
11 own independent consultant study to measure the consequences of the  
12 proposed energy facility on the environment for each site application.  
13 The council shall direct the consultant to study any matter which it  
14 deems essential to an adequate appraisal of the site. The full cost of  
15 the study shall be paid by the applicant: PROVIDED, That said costs  
16 exceeding a total of the twenty-five thousand dollars paid pursuant to  
17 subsection (1)(a) of this section shall be payable subject to the  
18 applicant giving prior approval to such excess amount.

19 (b) Each applicant shall, in addition to the costs of the  
20 independent consultant provided by subsection (1)(a) of this section,  
21 pay such reasonable costs as are actually and necessarily incurred by  
22 the council in processing the application. Such costs shall include,  
23 but are not limited to, costs of a hearing examiner, a court reporter,  
24 additional staff salaries, wages and employee benefits, goods and  
25 services, travel expenses within the state and miscellaneous expenses,  
26 as arise directly from processing such application.

27 Each applicant shall, at the time of application submission,  
28 deposit twenty thousand dollars, or such lesser amount as may be  
29 specified by council rule, to cover costs provided for by subsection  
30 (1)(b) of this section. Reasonable and necessary costs of the council  
31 directly attributable to application processing shall be charged  
32 against such deposit.

33 The council shall submit to each applicant a statement of such  
34 expenditures actually made during the preceding calendar quarter which  
35 shall be in sufficient detail to explain such expenditures. The  
36 applicant shall pay the state treasurer the amount of such statement to  
37 restore the total amount on deposit to the originally established  
38 level: PROVIDED, That such applicant may, at the request of the

1 council, increase the amount of funds on deposit to cover anticipated  
2 expenses during peak periods of application processing. Any funds  
3 remaining unexpended at the conclusion of application processing shall  
4 be refunded to the applicant, or at the applicant's option, credited  
5 against required deposits of certificate holders.

6 (c) Each certificate holder shall pay such reasonable costs as are  
7 actually and necessarily incurred by the council for inspection and  
8 determination of compliance by the certificate holder with the terms of  
9 the certification relative to monitoring the effects of construction  
10 and operation of the facility.

11 Each certificate holder, within thirty days of execution of the  
12 site certification agreement, shall deposit twenty thousand dollars, or  
13 such other amount as may be specified by council rule, to cover costs  
14 provided for by subsection (1)(c) of this section. Reasonable and  
15 necessary costs of the council directly attributable to inspection and  
16 determination of compliance by the certificate holder with the terms of  
17 the certification relative to monitoring the effects of construction  
18 and operation of the facility shall be charged against such deposit.

19 The council shall submit to each certificate holder a statement of  
20 such expenditures actually made during the preceding calendar quarter  
21 which shall be in sufficient detail to explain such expenditures. The  
22 certificate holder shall pay the state treasurer the amount of such  
23 statement to restore the total amount on deposit to the originally  
24 established level: PROVIDED, That if the actual, reasonable, and  
25 necessary expenditures for inspection and determination of compliance  
26 in the preceding calendar quarter have exceeded the amount of funds on  
27 deposit, such excess costs shall be paid by the certificate holder.

28 (2) If an applicant or certificate holder fails to provide the  
29 initial deposit, or if subsequently required payments are not received  
30 within thirty days following receipt of the statement from the council,  
31 the council may (a) in the case of the applicant, suspend processing of  
32 the application until payment is received; or (b) in the case of a  
33 certificate holder, suspend the certification.

34 (3) All payments required of the applicant or certificate holder  
35 under this section are to be made to the state treasurer who shall make  
36 payments as instructed by the council from the funds submitted. All  
37 such funds shall be subject to state auditing procedures. Any

1 unexpended portions thereof shall be returned to the applicant or  
2 certificate holder.

3 **Sec. 7.** RCW 80.50.080 and 1977 ex.s. c 371 s 6 are each amended to  
4 read as follows:

5 After the council has received a site application or an application  
6 to determine mitigation recommendations for a major existing nonfederal  
7 dam under a federal alternative licensing process, the attorney general  
8 shall appoint an assistant attorney general as a counsel for the  
9 environment. The counsel for the environment shall represent the  
10 public and its interest in protecting the quality of the environment.  
11 Costs incurred by the counsel for the environment in the performance of  
12 these duties shall be charged to the office of the attorney general,  
13 and shall not be a charge against the appropriation to the energy  
14 facility site evaluation council. He shall be accorded all the rights,  
15 privileges and responsibilities of an attorney representing a party in  
16 a formal action. This section shall not be construed to prevent any  
17 person from being heard or represented by counsel in accordance with  
18 the other provisions of this chapter.

19 **Sec. 8.** RCW 80.50.085 and 2001 c 214 s 5 are each amended to read  
20 as follows:

21 (1) After the council has received a site application or an  
22 application to determine mitigation recommendations for a major  
23 existing nonfederal dam under a federal alternative licensing process,  
24 council staff shall assist applicants in identifying issues presented  
25 by the application.

26 (2) Council staff shall review all information submitted and  
27 recommend resolutions to issues in dispute that would allow site  
28 approval or determination of mitigation recommendations.

29 (3) Council staff may make recommendations to the council on  
30 conditions that would allow site approval or determination of  
31 mitigation recommendations.

32 **Sec. 9.** RCW 80.50.090 and 2001 c 214 s 7 are each amended to read  
33 as follows:

34 (1) The council shall conduct an informational public hearing in  
35 the county of the proposed site or in the county of the location of a

1 major existing nonfederal dam as soon as practicable but not later than  
2 sixty days after receipt of an application for site certification or  
3 determination of mitigation recommendations for a major existing  
4 nonfederal dam under a federal alternative licensing process:  
5 PROVIDED, That the place of such public hearing shall be as close as  
6 practical to the proposed site.

7 (2) Subsequent to the informational public hearing, the council  
8 shall conduct a public hearing to determine whether or not the proposed  
9 site is consistent and in compliance with county or regional land use  
10 plans or zoning ordinances. If it is determined that the proposed site  
11 does conform with existing land use plans or zoning ordinances in  
12 effect as of the date of the application, the county or regional  
13 planning authority shall not thereafter change such land use plans or  
14 zoning ordinances so as to affect the proposed site.

15 (3) Prior to the issuance of a council recommendation to the  
16 governor under RCW 80.50.100 a public hearing, conducted as an  
17 adjudicative proceeding under chapter 34.05 RCW, the Administrative  
18 Procedure Act, shall be held. At such public hearing any person shall  
19 be entitled to be heard in support of or in opposition to the  
20 application for certification or an application to determine mitigation  
21 recommendations for a major existing nonfederal dam under a federal  
22 alternative licensing process.

23 (4) Additional public hearings shall be held as deemed appropriate  
24 by the council in the exercise of its functions under this chapter.

25 **Sec. 10.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to  
26 read as follows:

27 (1) The council shall report to the governor its recommendations as  
28 to the approval or rejection of an application for certification, or an  
29 application to determine mitigation recommendations for a major  
30 existing nonfederal dam under a federal alternative licensing process,  
31 within twelve months of receipt by the council of such an application,  
32 or such later time as is mutually agreed by the council and the  
33 applicant. If the council recommends approval of an application for  
34 certification, it shall also submit a draft certification agreement  
35 with the report. The council shall include conditions in the draft  
36 certification agreement to implement the provisions of this chapter,  
37 including, but not limited to, conditions to protect state or local

1 governmental or community interests affected by the construction or  
2 operation of the energy facility, and conditions designed to recognize  
3 the purpose of laws or ordinances, or rules or regulations promulgated  
4 thereunder, that are preempted or superseded pursuant to RCW 80.50.110  
5 as now or hereafter amended.

6 (2) Within sixty days of receipt of the council's report the  
7 governor shall take one of the following actions:

8 (a) Approve the application and execute the draft certification  
9 agreement or approve the proposed mitigation recommendations; (~~or~~)

10 (b) Reject the application; or

11 (c) Direct the council to reconsider certain aspects of the draft  
12 certification agreement or the proposed mitigation recommendations.

13 The council shall reconsider such aspects of the draft  
14 certification agreement or the proposed mitigation recommendations by  
15 reviewing the existing record of the application or, as necessary, by  
16 reopening the adjudicative proceeding for the purposes of receiving  
17 additional evidence. Such reconsideration shall be conducted  
18 expeditiously. The council shall resubmit the draft certification or  
19 the proposed mitigation recommendations to the governor incorporating  
20 any amendments deemed necessary upon reconsideration. Within sixty  
21 days of receipt of such draft certification agreement or proposed  
22 mitigation recommendations, the governor shall either approve the  
23 application and execute the certification agreement or reject the  
24 application. The certification agreement shall be binding upon  
25 execution by the governor and the applicant.

26 (3) The rejection of an application for certification by the  
27 governor shall be final as to that application but shall not preclude  
28 submission of a subsequent application for the same site on the basis  
29 of changed conditions or new information.

30 **Sec. 11.** RCW 80.50.110 and 1975-'76 2nd ex.s. c 108 s 37 are each  
31 amended to read as follows:

32 (1) If any provision of this chapter is in conflict with any other  
33 provision, limitation, or restriction which is now in effect under any  
34 other law of this state, or any rule or regulation promulgated  
35 thereunder, this chapter shall govern and control and such other law or  
36 rule or regulation promulgated thereunder shall be deemed superseded  
37 for the purposes of this chapter.

1           (2) The state hereby preempts the regulation and certification of  
2 the location, construction, and operational conditions of certification  
3 of the energy facilities included under RCW 80.50.060 as now or  
4 hereafter amended.

5           (3) For applications where the applicant chooses to determine  
6 mitigation recommendations under this chapter, only those state and  
7 local government mitigation recommendations determined under this  
8 chapter may be submitted as part of the federal hydropower licensing  
9 process.

--- END ---