

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5892

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IN THE SENATE OF THE UNITED STATES

JULY 10, 2012

Received; read twice and referred to the Committee on Energy and Natural  
Resources

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## AN ACT

To improve hydropower, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Hydropower Regulatory Efficiency Act of 2012”.

4 (b) TABLE OF CONTENTS.—The table of contents of  
5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Promoting small hydroelectric power projects.

Sec. 4. Promoting conduit hydropower projects.

Sec. 5. FERC authority to extend preliminary permit periods.

Sec. 6. Promoting hydropower development at nonpowered dams and closed  
loop pumped storage projects.

Sec. 7. DOE study of pumped storage and potential hydropower from conduits.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the hydropower industry currently employs  
9 approximately 300,000 workers across the United  
10 States;

11 (2) hydropower is the largest source of clean,  
12 renewable electricity in the United States;

13 (3) as of the date of enactment of this Act, hy-  
14 dropower resources, including pumped storage facili-  
15 ties, provide—

16 (A) nearly 7 percent of the electricity gen-  
17 erated in the United States; and

18 (B) approximately 100,000 megawatts of  
19 electric capacity in the United States;

20 (4) only 3 percent of the 80,000 dams in the  
21 United States generate electricity, so there is sub-

1       stantial potential for adding hydropower generation  
2       to nonpowered dams; and

3               (5) according to one study, by utilizing cur-  
4       rently untapped resources, the United States could  
5       add approximately 60,000 megawatts of new hydro-  
6       power capacity by 2025, which could create 700,000  
7       new jobs over the next 13 years.

8       **SEC. 3. PROMOTING SMALL HYDROELECTRIC POWER**  
9               **PROJECTS.**

10       Subsection (d) of section 405 of the Public Utility  
11       Regulatory Policies Act of 1978 (16 U.S.C. 2705) is  
12       amended by striking “5,000” and inserting “10,000”.

13       **SEC. 4. PROMOTING CONDUIT HYDROPOWER PROJECTS.**

14       (a) **APPLICABILITY OF, AND EXEMPTION FROM, LI-**  
15       **CENSING REQUIREMENTS.**—Section 30 of the Federal  
16       Power Act (16 U.S.C. 823a) is amended—

17               (1) by striking subsections (a) and (b) and in-  
18       serting the following:

19       “(a)(1) A qualifying conduit hydropower facility shall  
20       not be required to be licensed under this part.

21       “(2)(A) Any person, State, or municipality proposing  
22       to construct a qualifying conduit hydropower facility shall  
23       file with the Commission a notice of intent to construct  
24       such facility. The notice shall include sufficient informa-

1 tion to demonstrate that the facility meets the qualifying  
2 criteria.

3 “(B) Not later than 15 days after receipt of a notice  
4 of intent filed under subparagraph (A), the Commission  
5 shall—

6 “(i) make an initial determination as to wheth-  
7 er the facility meets the qualifying criteria; and

8 “(ii) if the Commission makes an initial deter-  
9 mination, pursuant to clause (i), that the facility  
10 meets the qualifying criteria, publish public notice of  
11 the notice of intent filed under subparagraph (A).

12 “(C) If, not later than 45 days after the date of publi-  
13 cation of the public notice described in subparagraph  
14 (B)(ii)—

15 “(i) an entity contests whether the facility  
16 meets the qualifying criteria, the Commission shall  
17 promptly issue a written determination as to wheth-  
18 er the facility meets such criteria; or

19 “(ii) no entity contests whether the facility  
20 meets the qualifying criteria, the facility shall be  
21 deemed to meet such criteria.

22 “(3) For purposes of this section:

23 “(A) The term ‘conduit’ means any tunnel,  
24 canal, pipeline, aqueduct, flume, ditch, or similar  
25 manmade water conveyance that is operated for the

1 distribution of water for agricultural, municipal, or  
2 industrial consumption and not primarily for the  
3 generation of electricity.

4 “(B) The term ‘qualifying conduit hydropower  
5 facility’ means a facility (not including any dam or  
6 other impoundment) that is determined or deemed  
7 under paragraph (2)(C) to meet the qualifying cri-  
8 teria.

9 “(C) The term ‘qualifying criteria’ means, with  
10 respect to a facility—

11 “(i) the facility is constructed, operated, or  
12 maintained for the generation of electric power  
13 and uses for such generation only the hydro-  
14 electric potential of a non-federally owned con-  
15 duct;

16 “(ii) the facility has an installed capacity  
17 that does not exceed 5 megawatts; and

18 “(iii) on or before the date of enactment of  
19 the Hydropower Regulatory Efficiency Act of  
20 2012, the facility is not licensed under, or ex-  
21 empted from the license requirements contained  
22 in, this part.

23 “(b) Subject to subsection (c), the Commission may  
24 grant an exemption in whole or in part from the require-  
25 ments of this part, including any license requirements con-

1 tained in this part, to any facility (not including any dam  
2 or other impoundment) constructed, operated, or main-  
3 tained for the generation of electric power which the Com-  
4 mission determines, by rule or order—

5 “(1) utilizes for such generation only the hydro-  
6 electric potential of a conduit; and

7 “(2) has an installed capacity that does not ex-  
8 ceed 40 megawatts.”.

9 (2) in subsection (c), by striking “subsection  
10 (a)” and inserting “subsection (b)”; and

11 (3) in subsection (d), by striking “subsection  
12 (a)” and inserting “subsection (b)”.

13 (b) CONFORMING AMENDMENT.—Subsection (d) of  
14 section 405 of the Public Utility Regulatory Policies Act  
15 of 1978 (16 U.S.C. 2705), as amended, is further amend-  
16 ed by striking “subsection (a) of such section 30” and in-  
17 serting “subsection (b) of such section 30”.

18 **SEC. 5. FERC AUTHORITY TO EXTEND PRELIMINARY PER-**

19 **MIT PERIODS.**

20 Section 5 of the Federal Power Act (16 U.S.C. 798)  
21 is amended—

22 (1) by designating the first, second, and third  
23 sentences as subsections (a), (c), and (d), respec-  
24 tively; and

1           (2) by inserting after subsection (a) (as so des-  
2           ignated) the following:

3           “(b) The Commission may extend the period of a pre-  
4           liminary permit once for not more than 2 additional years  
5           beyond the 3 years permitted by subsection (a) if the Com-  
6           mission finds that the permittee has carried out activities  
7           under such permit in good faith and with reasonable dili-  
8           gence.”.

9           **SEC. 6. PROMOTING HYDROPOWER DEVELOPMENT AT**  
10                           **NONPOWERED DAMS AND CLOSED LOOP**  
11                           **PUMPED STORAGE PROJECTS.**

12           (a) IN GENERAL.—To improve the regulatory process  
13           and reduce delays and costs for hydropower development  
14           at nonpowered dams and closed loop pumped storage  
15           projects, the Federal Energy Regulatory Commission (re-  
16           ferred to in this section as the “Commission”) shall inves-  
17           tigate the feasibility of the issuance of a license for hydro-  
18           power development at nonpowered dams and closed loop  
19           pumped storage projects in a 2-year period (referred to  
20           in this section as a “2-year process”). Such a 2-year pro-  
21           cess shall include any prefilings licensing process of the  
22           Commission.

23           (b) WORKSHOPS AND PILOTS.—The Commission  
24           shall—

1           (1) not later than 60 days after the date of en-  
2           actment of this Act, hold an initial workshop to so-  
3           licit public comment and recommendations on how  
4           to implement a 2-year process;

5           (2) develop criteria for identifying projects fea-  
6           turing hydropower development at nonpowered dams  
7           and closed loop pumped storage projects that may be  
8           appropriate for licensing within a 2-year process;

9           (3) not later than 180 days after the date of  
10          enactment of this Act, develop and implement pilot  
11          projects to test a 2-year process, if practicable; and

12          (4) not later than 3 years after the date of im-  
13          plementation of the final pilot project testing a 2-  
14          year process, hold a final workshop to solicit public  
15          comment on the effectiveness of each tested 2-year  
16          process.

17          (c) MEMORANDUM OF UNDERSTANDING.—The Com-  
18          mission shall, to the extent practicable, enter into a memo-  
19          randum of understanding with any applicable Federal or  
20          State agency to implement a pilot project described in sub-  
21          section (b).

22          (d) REPORTS.—

23                (1) PILOT PROJECTS NOT IMPLEMENTED.—If  
24          the Commission determines that no pilot project de-  
25          scribed in subsection (b) is practicable because no 2-



1 year process is practicable, not later than 240 days  
2 after the date of enactment of this Act, the Commis-  
3 sion shall submit to the Committee on Energy and  
4 Commerce of the House of Representatives and the  
5 Committee on Energy and Natural Resources of the  
6 Senate a report that—

7 (A) describes the public comments received  
8 as part of the initial workshop held under sub-  
9 section (b)(1); and

10 (B) identifies the process, legal, environ-  
11 mental, economic, and other issues that justify  
12 the determination of the Commission that no 2-  
13 year process is practicable, with recommenda-  
14 tions on how Congress may address or remedy  
15 the identified issues.

16 (2) PILOT PROJECTS IMPLEMENTED.—If the  
17 Commission develops and implements pilot projects  
18 involving a 2-year process, not later than 60 days  
19 after the date of completion of the final workshop  
20 held under subsection (b)(4), the Commission shall  
21 submit to the Committee on Energy and Commerce  
22 of the House of Representatives and the Committee  
23 on Energy and Natural Resources of the Senate a  
24 report that—

1 (A) describes the outcomes of the pilot  
2 projects;

3 (B) describes the public comments from  
4 the final workshop on the effectiveness of each  
5 tested 2-year process; and

6 (C)(i) outlines how the Commission will  
7 adopt policies under existing law (including reg-  
8 ulations) that result in a 2-year process for ap-  
9 propriate projects;

10 (ii) outlines how the Commission will issue  
11 new regulations to adopt a 2-year process for  
12 appropriate projects; or

13 (iii) identifies the process, legal, environ-  
14 mental, economic, and other issues that justify  
15 a determination of the Commission that no 2-  
16 year process is practicable, with recommenda-  
17 tions on how Congress may address or remedy  
18 the identified issues.

19 **SEC. 7. DOE STUDY OF PUMPED STORAGE AND POTENTIAL**  
20 **HYDROPOWER FROM CONDUITS.**

21 (a) IN GENERAL.—The Secretary of Energy shall  
22 conduct a study—

23 (1)(A) of the technical flexibility that existing  
24 pumped storage facilities can provide to support  
25 intermittent renewable electric energy generation, in-

1 including the potential for such existing facilities to be  
2 upgraded or retrofitted with advanced commercially  
3 available technology; and

4 (B) of the technical potential of existing  
5 pumped storage facilities and new advanced pumped  
6 storage facilities, to provide grid reliability benefits;  
7 and

8 (2)(A) to identify the range of opportunities for  
9 hydropower that may be obtained from conduits (as  
10 defined by the Secretary) in the United States; and

11 (B) through case studies, to assess amounts of  
12 potential energy generation from such conduit hy-  
13 dropower projects.

14 (b) REPORT.—Not later than 1 year after the date  
15 of enactment of this Act, the Secretary of Energy shall  
16 submit to the Committee on Energy and Commerce of the  
17 House of Representatives and the Committee on Energy  
18 and Natural Resources of the Senate a report that de-  
19 scribes the results of the study conducted under subsection  
20 (a), including any recommendations.

Passed the House of Representatives July 9, 2012.

Attest:

KAREN L. HAAS,

*Clerk.*