

112TH CONGRESS
2D SESSION

H. R. 5892

IN THE SENATE OF THE UNITED STATES

JULY 10, 2012

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

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 duit;

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 proc-
21 ess shall include any prefiling 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.