

Union Calendar No.

115TH CONGRESS
1ST SESSION

H. R. 2872

[Report No. 115-]

To amend the Federal Power Act to promote hydropower development at existing nonpowered dams, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 2017

Mr. BUCSHON introduced the following bill; which was referred to the Committee on Energy and Commerce

DECEMBER --, 2017

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 12, 2017]

A BILL

To amend the Federal Power Act to promote hydropower development at existing nonpowered dams, 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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Promoting Hydropower*
5 *Development at Existing Nonpowered Dams Act”.*

6 **SEC. 2. PROMOTING HYDROPOWER DEVELOPMENT AT EX-**
7 **ISTING NONPOWERED DAMS.**

8 *Part I of the Federal Power Act (16 U.S.C. 792 et seq.)*
9 *is amended by adding at the end the following:*

10 **“SEC. 34. PROMOTING HYDROPOWER DEVELOPMENT AT EX-**
11 **ISTING NONPOWERED DAMS.**

12 *“(a) EXPEDITED LICENSING PROCESS FOR NON-FED-*
13 *ERAL HYDROPOWER PROJECTS AT EXISTING NONPOWERED*
14 *DAMS.—*

15 *“(1) IN GENERAL.—As provided in this section,*
16 *the Commission may issue and amend licenses and*
17 *preliminary permits, as appropriate, for any facility*
18 *the Commission determines is a qualifying facility.*

19 *“(2) RULE.—Not later than 180 days after the*
20 *date of enactment of this section, the Commission*
21 *shall issue a rule establishing an expedited process for*
22 *issuing and amending licenses and preliminary per-*
23 *mits for qualifying facilities under this section.*

24 *“(3) INTERAGENCY TASK FORCE.—In estab-*
25 *lishing the expedited process under this section, the*

1 *Commission shall convene an interagency task force,*
2 *with appropriate Federal and State agencies and In-*
3 *Indian tribes represented, to coordinate the regulatory*
4 *processes associated with the authorizations required*
5 *to construct and operate a qualifying facility.*

6 “(4) *LENGTH OF PROCESS.*—*The Commission*
7 *shall ensure that the expedited process under this sec-*
8 *tion will result in a final decision on an application*
9 *for a license by not later than 2 years after receipt*
10 *of a completed application for the license.*

11 “(b) *DAM SAFETY.*—

12 “(1) *ASSESSMENT.*—*Before issuing any license*
13 *for a qualifying facility, the Commission shall assess*
14 *the safety of existing non-Federal dams and other*
15 *non-Federal structures related to the qualifying facil-*
16 *ity (including possible consequences associated with*
17 *failure of such structures).*

18 “(2) *REQUIREMENTS.*—*In issuing any license for*
19 *a qualifying facility, the Commission shall ensure*
20 *that the Commission’s dam safety requirements apply*
21 *to such qualifying facility, and the associated quali-*
22 *fying nonpowered dam, over the term of such license.*

23 “(c) *INTERAGENCY COMMUNICATIONS.*—*Interagency*
24 *cooperation in the preparation of environmental documents*
25 *under the National Environmental Policy Act of 1969 (42*

1 *U.S.C. 4321 et seq.) with respect to an application for a*
2 *license for a qualifying facility under this section, and*
3 *interagency communications relating to licensing process*
4 *coordination pursuant to this section, shall not—*

5 “(1) *be considered to be ex parte communications*
6 *under Commission rules; or*

7 “(2) *preclude an agency from participating in a*
8 *licensing proceeding under this part.*

9 “(d) *IDENTIFICATION OF NONPOWERED DAMS FOR HY-*
10 *DROPOWER DEVELOPMENT.—*

11 “(1) *IN GENERAL.—Not later than 12 months*
12 *after the date of enactment of this section, the Com-*
13 *mission, with the Secretary of the Army, the Sec-*
14 *retary of the Interior, and the Secretary of Agri-*
15 *culture, shall jointly develop a list of existing non-*
16 *powered Federal dams that the Commission and the*
17 *Secretaries agree have the greatest potential for non-*
18 *Federal hydropower development.*

19 “(2) *CONSIDERATIONS.—In developing the list*
20 *under paragraph (1), the Commission and the Secre-*
21 *taries may consider the following:*

22 “(A) *The compatibility of hydropower gen-*
23 *eration with existing purposes of the dam.*

24 “(B) *The proximity of the dam to existing*
25 *transmission resources.*

1 “(C) *The existence of studies to characterize*
2 *environmental, cultural, and historic resources*
3 *relating to the dam.*

4 “(D) *The effects of hydropower development*
5 *on release or flow operations of the dam.*

6 “(3) *AVAILABILITY.—The Commission shall—*

7 “(A) *provide the list developed under para-*
8 *graph (1) to—*

9 “(i) *the Committee on Energy and*
10 *Commerce, the Committee on Transpor-*
11 *tation and Infrastructure, and the Com-*
12 *mittee on Natural Resources, of the House*
13 *of Representatives; and*

14 “(ii) *the Committee on Environment*
15 *and Public Works, and the Committee on*
16 *Energy and Natural Resources, of the Sen-*
17 *ate; and*

18 “(B) *make such list available to the public.*

19 “(e) *DEFINITIONS.—For purposes of this section:*

20 “(1) *QUALIFYING CRITERIA.—The term ‘quali-*
21 *fying criteria’ means, with respect to a facility—*

22 “(A) *as of the date of enactment of this sec-*
23 *tion, the facility is not licensed under, or ex-*
24 *empted from the license requirements contained*
25 *in, this part;*

1 “(B) the facility will be associated with a
2 qualifying nonpowered dam;

3 “(C) the facility will be constructed, oper-
4 ated, and maintained for the generation of elec-
5 tric power;

6 “(D) the facility will use for such genera-
7 tion any withdrawals, diversions, releases, or
8 flows from the associated qualifying nonpowered
9 dam, including its associated impoundment or
10 other infrastructure; and

11 “(E) the operation of the facility will not
12 result in any material change to the storage, re-
13 lease, or flow operations of the associated quali-
14 fying nonpowered dam.

15 “(2) *QUALIFYING FACILITY.*—The term ‘quali-
16 fying facility’ means a facility that is determined
17 under this section to meet the qualifying criteria.

18 “(3) *QUALIFYING NONPOWERED DAM.*—The term
19 ‘qualifying nonpowered dam’ means any dam, dike,
20 embankment, or other barrier—

21 “(A) the construction of which was com-
22 pleted on or before the date of enactment of this
23 section;

24 “(B) that is or was operated for the control,
25 release, or distribution of water for agricultural,

1 *municipal, navigational, industrial, commercial,*
2 *environmental, recreational, aesthetic, drinking*
3 *water, or flood control purposes; and*

4 “(C) that, as of the date of enactment of this
5 *section, is not generating electricity with hydro-*
6 *power generating works that are licensed under,*
7 *or exempted from the license requirements con-*
8 *tained in, this part.”.*

9 **SEC. 3. OBLIGATION FOR PAYMENT OF ANNUAL CHARGES.**

10 *Section 10(e) of the Federal Power Act (16 U.S.C.*
11 *803(e)) is amended by adding at the end the following:*

12 “(5) *Any obligation of a licensee for payment of an-*
13 *nual charges under this subsection shall commence when the*
14 *construction of the applicable facility commences.”.*