

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2872
OFFERED BY M . _____**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Promoting Hydro-
3 power Development at Existing Nonpowered Dams Act”.

**4 SEC. 2. PROMOTING HYDROPOWER DEVELOPMENT AT EX-
5 ISTING NONPOWERED DAMS.**

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

**8 “SEC. 34. PROMOTING HYDROPOWER DEVELOPMENT AT
9 EXISTING NONPOWERED DAMS.**

10 “(a) EXPEDITED LICENSING PROCESS FOR NON-
11 FEDERAL HYDROPOWER PROJECTS AT EXISTING NON-
12 POWERED DAMS.—

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

17 “(2) RULE.—Not later than 180 days after the
18 date of enactment of this section, the Commission

1 shall issue a rule establishing an expedited process
2 for issuing and amending licenses and preliminary
3 permits for qualifying facilities under this section.

4 “(3) INTERAGENCY TASK FORCE.—In estab-
5 lishing the expedited process under this section, the
6 Commission shall convene an interagency task force,
7 with appropriate Federal and State agencies and In-
8 dian tribes represented, to coordinate the regulatory
9 processes associated with the authorizations required
10 to construct and operate a qualifying facility.

11 “(4) LENGTH OF PROCESS.—The Commission
12 shall ensure that the expedited process under this
13 section will result in a final decision on an applica-
14 tion for a license by not later than 2 years after re-
15 ceipt of a completed application for the license.

16 “(b) DAM SAFETY.—

17 “(1) ASSESSMENT.—Before issuing any license
18 for a qualifying facility, the Commission shall assess
19 the safety of existing non-Federal dams and other
20 non-Federal structures related to the qualifying fa-
21 cility (including possible consequences associated
22 with failure of such structures).

23 “(2) REQUIREMENTS.—In issuing any license
24 for a qualifying facility, the Commission shall ensure
25 that the Commission’s dam safety requirements

1 apply to such qualifying facility, and the associated
2 qualifying nonpowered dam, over the term of such li-
3 cense.

4 “(c) INTERAGENCY COMMUNICATIONS.—Interagency
5 cooperation in the preparation of environmental docu-
6 ments under the National Environmental Policy Act of
7 1969 (42 U.S.C. 4321 et seq.) with respect to an applica-
8 tion for a license for a qualifying facility under this sec-
9 tion, and interagency communications relating to licensing
10 process coordination pursuant to this section, shall not—

11 “(1) be considered to be ex parte communica-
12 tions under Commission rules; or

13 “(2) preclude an agency from participating in a
14 licensing proceeding under this part.

15 “(d) IDENTIFICATION OF NONPOWERED DAMS FOR
16 HYDROPOWER DEVELOPMENT.—

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

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

4 “(A) The compatibility of hydropower gen-
5 eration with existing purposes of the dam.

6 “(B) The proximity of the dam to existing
7 transmission resources.

8 “(C) The existence of studies to charac-
9 terize environmental, cultural, and historic re-
10 sources relating to the dam.

11 “(D) The effects of hydropower develop-
12 ment on release or flow operations of the dam.

13 “(3) AVAILABILITY.—The Commission shall—

14 “(A) provide the list developed under para-
15 graph (1) to—

16 “(i) the Committee on Energy and
17 Commerce, the Committee on Transpor-
18 tation and Infrastructure, and the Com-
19 mittee on Natural Resources, of the House
20 of Representatives; and

21 “(ii) the Committee on Environment
22 and Public Works, and the Committee on
23 Energy and Natural Resources, of the Sen-
24 ate; and

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

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

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

4 “(A) as of the date of enactment of this
5 section, the facility is not licensed under, or ex-
6 empted from the license requirements contained
7 in, this part;

8 “(B) the facility will be associated with a
9 qualifying nonpowered dam;

10 “(C) the facility will be constructed, oper-
11 ated, and maintained for the generation of elec-
12 tric power;

13 “(D) the facility will use for such genera-
14 tion any withdrawals, diversions, releases, or
15 flows from the associated qualifying nonpow-
16 ered dam, including its associated impoundment
17 or other infrastructure; and

18 “(E) the operation of the facility will not
19 result in any material change to the storage, re-
20 lease, or flow operations of the associated quali-
21 fying nonpowered dam.

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

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

4 “(A) the construction of which was com-
5 pleted on or before the date of enactment of
6 this section;

7 “(B) that is or was operated for the con-
8 trol, release, or distribution of water for agri-
9 cultural, municipal, navigational, industrial,
10 commercial, environmental, recreational, aes-
11 thetic, drinking water, or flood control pur-
12 poses; and

13 “(C) that, as of the date of enactment of
14 this section, is not generating electricity with
15 hydropower generating works that are licensed
16 under, or exempted from the license require-
17 ments contained in, this part.”.

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

19 Section 10(e) of the Federal Power Act (16 U.S.C.
20 803(e)) is amended by adding at the end the following:

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

