

105TH CONGRESS
2^D SESSION

S. 439

AN ACT

To provide for Alaska State jurisdiction over small hydroelectric projects, to address voluntary licensing of hydroelectric projects on fresh waters in the State of Hawaii, to provide an exemption for portion of a hydroelectric project located in the State of New Mexico, 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. ALASKA STATE JURISDICTION OVER SMALL HY-**
 2 **DROELECTRIC PROJECTS.**

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

5 **“SEC. 32. ALASKA STATE JURISDICTION OVER SMALL HY-**
 6 **DROELECTRIC PROJECTS.**

7 “(a) DISCONTINUANCE OF REGULATION BY THE
 8 COMMISSION.—Notwithstanding sections 4(e) and 23(b),
 9 the Commission shall discontinue exercising licensing and
 10 regulatory authority under this Part over qualifying
 11 project works in the State of Alaska, effective on the date
 12 on which the Commission certifies that the State of Alaska
 13 has in place a regulatory program for water-power devel-
 14 opment that—

15 “(1) protects the public interest, the purposes
 16 listed in paragraph (2), and the environment to the
 17 same extent provided by licensing and regulation by
 18 the Commission under this Part and other applicable
 19 Federal laws, including the Endangered Species Act
 20 (16 U.S.C. 1531 et seq.) and the Fish and Wildlife
 21 Coordination Act (16 U.S.C. 661 et seq.);

22 “(2) gives equal consideration to the purposes
 23 of—

24 “(A) energy conservation;

1 “(B) the protection, mitigation of damage
2 to, and enhancement of, fish and wildlife (in-
3 cluding related spawning grounds and habitat);

4 “(C) the protection of recreational oppor-
5 tunities,

6 “(D) the preservation of other aspects of
7 environmental quality,

8 “(E) the interests of Alaska Natives, and

9 “(F) other beneficial public uses, including
10 irrigation, flood control, water supply, and navi-
11 gation; and

12 “(3) requires, as a condition of a license for any
13 project works—

14 “(A) the construction, maintenance, and
15 operation by a licensee at its own expense of
16 such lights and signals as may be directed by
17 the Secretary of the Department in which the
18 Coast Guard is operating, and such fishways as
19 may be prescribed by the Secretary of the Inte-
20 rior or the Secretary of Commerce, as appro-
21 priate;

22 “(B) the operation of any navigation facili-
23 ties which may be constructed as part of any
24 project to be controlled at all times by such rea-

1 sonable rules and regulations as may be made
2 by the Secretary of the Army; and

3 “(C) conditions for the protection, mitiga-
4 tion, and enhancement of fish and wildlife
5 based on recommendations received pursuant to
6 the Fish and Wildlife Coordination Act (16
7 U.S.C. 661 et seq.) from the National Marine
8 Fisheries Service, the United States Fish and
9 Wildlife Service, and State fish and wildlife
10 agencies.

11 “(b) DEFINITION OF ‘QUALIFYING PROJECT
12 WORKS’.—For purposes of this section, the term “qualify-
13 ing project works” means project works—

14 “(1) that are not part of a project licensed
15 under this Part or exempted from licensing under
16 this Part or section 405 of the Public Utility Regu-
17 latory Policies Act of 1978 prior to the date of en-
18 actment of this section;

19 “(2) for which a preliminary permit, a license
20 application, or an application for an exemption from
21 licensing has not been accepted for filing by the
22 Commission prior to the date of enactment of sub-
23 section (c) (unless such application is withdrawn at
24 the election of the applicant);

1 “(3) that are part of a project that has a power
2 production capacity of 5,000 kilowatts or less;

3 “(4) that are located entirely within the bound-
4 aries of the State of Alaska; and

5 “(5) that are not located in whole or in part on
6 any Indian reservation, a conservation system unit
7 (as defined in section 102(4) of the Alaska National
8 Interest Lands Conservation Act (16 U.S.C.
9 3102(4))), or segment of a river designated for
10 study for addition to the Wild and Scenic Rivers
11 System.

12 “(c) ELECTION OF STATE LICENSING.—In the case
13 of nonqualifying project works that would be a qualifying
14 project works but for the fact that the project has been
15 licensed (or exempted from licensing) by the Commission
16 prior to the enactment of this section, the licensee of such
17 project may in its discretion elect to make the project sub-
18 ject to licensing and regulation by the State of Alaska
19 under this section.

20 “(d) PROJECT WORKS ON FEDERAL LANDS.—With
21 respect to projects located in whole or in part on a reserva-
22 tion, a conservation system unit, or the public lands, a
23 State license or exemption from licensing shall be subject
24 to—

1 “(1) the approval of the Secretary having juris-
2 diction over such lands; and

3 “(2) such conditions as the Secretary may pre-
4 scribe.

5 “(e) CONSULTATION WITH AFFECTED AGENCIES.—
6 The Commission shall consult with the Secretary of the
7 Interior, the Secretary of Agriculture, and the Secretary
8 of Commerce before certifying the State of Alaska’s regu-
9 latory program.

10 “(f) APPLICATION OF FEDERAL LAWS.—Nothing in
11 this section shall preempt the application of Federal envi-
12 ronmental, natural resources, or cultural resources protec-
13 tion laws according to their terms.

14 “(g) OVERSIGHT BY THE COMMISSION.—The State
15 of Alaska shall notify the Commission not later than 30
16 days after making any significant modification to its regu-
17 latory program. The Commission shall periodically review
18 the State’s program to ensure compliance with the provi-
19 sions of this section.

20 “(h) RESUMPTION OF COMMISSION AUTHORITY.—
21 Notwithstanding subsection (a), the Commission shall re-
22 assert its licensing and regulatory authority under this
23 Part if the Commission finds that the State of Alaska has
24 not complied with one or more of the requirements of this
25 section.

1 “(i) DETERMINATION BY THE COMMISSION.—

2 “(1) Upon application by the Governor of the
3 State of Alaska, the Commission shall within 30
4 days commence a review of the State of Alaska’s
5 regulatory program for water-power development to
6 determine whether it complies with the requirements
7 of subsection (a).

8 “(2) The Commission’s review required by
9 paragraph (1) shall be completed within one year of
10 initiation, and the Commission shall within 30 days
11 thereafter issue a final order determining whether or
12 not the State of Alaska’s regulatory program for
13 water-power development complies with the require-
14 ments of subsection (a).

15 “(3) If the Commission fails to issue a final
16 order in accordance with paragraph (2), the State of
17 Alaska’s regulatory program for water-power devel-
18 opment shall be deemed to be in compliance with
19 subsection (a).”.

20 **SEC. 2. VOLUNTARY LICENSING OF HYDROELECTRIC**
21 **PROJECTS ON FRESH WATERS IN THE STATE**
22 **OF HAWAII.**

23 Section 4(e) of the Federal Power Act is amended
24 by striking “several States, or upon” and inserting “sev-
25 eral States (except fresh waters in the State of Hawaii,

1 unless a license would be required by section 23 of the
2 Act), or upon”.

3 **SEC. 3. LIMITED EXEMPTION FOR TRANSMISSION FACILI-**
4 **TIES ASSOCIATED WITH THE EL VADO HY-**
5 **DROELECTRIC PROJECT.**

6 (a) Part I of the Federal Power Act, and the jurisdic-
7 tion of the Federal Energy Regulatory Commission under
8 such part I, shall not apply to the transmission line facili-
9 ties associated with the El Vado Hydroelectric project
10 (FERC project No. 5226) which are described in sub-
11 section (b).

12 (b) The facilities to which the exemption under sub-
13 section (a) applies are those transmission facilities located
14 near the Rio Chama, a tributary of the Rio Grande, in
15 Rio Arriba County, New Mexico, referred to as the El
16 Vado transmission line, a three phase 12-mile long 69 kV
17 power line installed within a 50-foot wide right-of-way in
18 Rio Arriba County, New Mexico, originating at the El
19 Vado project’s switchyard and connecting to the Spills 69
20 kV switching station operated by the Northern Arriba
21 Electric Cooperative Inc.

1 **SEC. 4. FERC EXTENSION OF COMMENCEMENT OF CON-**
2 **STRUCTION DEADLINE FOR HYDROELECTRIC**
3 **PROJECTS.**

4 The second sentence in section 13 of the Federal
5 Power Act (15 U.S.C. 806) is amended to read as follows:
6 “The period for the commencement of construction may
7 be extended by the Commission for not longer than ten
8 years from the issuance date of the license when not in-
9 compatible with the public interest, and the period for the
10 completion of construction carried on in good faith and
11 with reasonable diligence may be extended by the Commis-
12 sion when not incompatible with the public interest.”.

13 **SEC. 5. TECHNICAL CORRECTION.**

14 Section 6 of the Federal Power Act (16 U.S.C. 799)
15 is amended by adding at the end the following:

16 Licenses may be revoked only for the reasons and in
17 the manner prescribed under the provisions of this Act,
18 and may be altered or surrendered only upon mutual
19 agreement between the license and the Commission after
20 thirty days’ public notice.

Passed the Senate June 25, 1998.

Attest:

Secretary.

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