

Calendar No. 216

105TH CONGRESS
1ST SESSION

S. 439

[Report No. 105-111]

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.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 1997

Mr. MURKOWSKI (for himself, Mr. AKAKA, Mr. DOMENICI, and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

OCTOBER 15, 1997

Reported under authority of the order of the Senate of October 9, 1997, by
Mr. MURKOWSKI, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

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,*

3 **SECTION. 1. ALASKA STATE JURISDICTION OVER SMALL**
 4 **HYDROELECTRIC PROJECTS.**

5 The Federal Power Act, as amended (16 U.S.C.
 6 1791a et seq.) is further amended by adding the following
 7 at the end of section 23:

8 “(e) In the case of any project works in the State
 9 of Alaska—

10 “(1) that are not part of a project licensed
 11 under this Act prior to the date of enactment of this
 12 subsection;

13 “(2) for which a preliminary permit or a license
 14 application has not been accepted for filing by the
 15 Commission prior to the date of enactment of this
 16 subsection (unless such application is withdrawn at
 17 the election of the applicant);

18 “(3) that have a power production capacity of
 19 5,000 kilowatts or less;

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

22 “(5) that are not located in whole or in part on
 23 any Indian reservation, unit of the National Park
 24 System, component of the Wild and Scenic Rivers

1 System or segment of a river designated for study
2 for potential addition to such system,
3 the State of Alaska shall have the exclusive authority to
4 authorize such project works under State law, in lieu of
5 licensing by the Commission under the otherwise applica-
6 ble provisions of this part, effective upon the date on which
7 the Governor of the State of Alaska notifies the Secretary
8 of Energy that the State has in place a process for regu-
9 lating such projects which gives appropriate consideration
10 to the improvement or development of the State's water-
11 ways for the use or benefit of intrastate, interstate, or for-
12 eign commerce, for the improvement and use of water-
13 power development, for the adequate protection, mitiga-
14 tion of damage to, and enhancement of fish and wildlife
15 (including related spawning grounds), and for other bene-
16 ficial public uses, including irrigation, flood control, water
17 supply, recreational and other purposes, and Indian
18 rights, if applicable.

19 “(d) In the case of a project that would be subject
20 to authorization by the State under subsection (e) but for
21 the fact that the project has been licensed by the Commis-
22 sion prior to the enactment of subsection (e), the licensee
23 of such project may in its discretion elect to make the
24 project subject to the authorizing authority of the State.

1 “(e) With respect to projects located in whole or in
 2 part on Federal lands, State authorizations for project
 3 works pursuant to subsection (e) of this section shall be
 4 subject to the approval of the Secretary having jurisdiction
 5 with respect to such lands and subject to such terms and
 6 conditions as the Secretary may prescribe.”

7 “(f) Nothing in subsection (e) shall preempt the
 8 application of Federal environment, natural, or cul-
 9 tural resources protection laws according to their
 10 terms.”

11 **SECTION 1. ALASKA STATE JURISDICTION OVER SMALL HY-**
 12 **DROELECTRIC PROJECTS.**

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

15 **“SEC. 32. ALASKA STATE JURISDICTION OVER SMALL HY-**
 16 **DROELECTRIC PROJECTS.**

17 “(a) *DISCONTINUANCE OF REGULATION BY THE COM-*
 18 *MISSION.—Notwithstanding sections 4(e) and 23(b), the*
 19 *Commission shall discontinue exercising licensing and reg-*
 20 *ulatory authority under this Part over qualifying project*
 21 *works in the State of Alaska, effective on the date on which*
 22 *the Commission certifies that the State of Alaska has in*
 23 *place a regulatory program for water-power development*
 24 *that—*

1 “(1) protects the public interest, the purposes
2 listed in paragraph (2), and the environment to the
3 same extent provided by licensing and regulation by
4 the Commission under this Part and other applicable
5 Federal laws, including the Endangered Species Act
6 (16 U.S.C. 1531 et seq.) and the Fish and Wildlife
7 Coordination Act (16 U.S.C. 661 et seq.);

8 “(2) gives equal consideration to the purposes
9 of—

10 “(A) energy conservation;

11 “(B) the protection, mitigation of damage
12 to, and enhancement of, fish and wildlife (in-
13 cluding related spawning grounds and habitat);

14 “(C) the protection of recreational opportu-
15 nities,

16 “(D) the preservation of other aspects of en-
17 vironmental quality,

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

19 “(F) other beneficial public uses, including
20 irrigation, flood control, water supply, and navi-
21 gation; and

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

24 “(A) the construction, maintenance, and op-
25 eration by a licensee at its own expense of such

1 *lights and signals as may be directed by the Sec-*
 2 *retary of the Department in which the Coast*
 3 *Guard is operating, and such fishways as may*
 4 *be prescribed by the Secretary of the Interior or*
 5 *the Secretary of Commerce, as appropriate;*

6 “(B) *the operation of any navigation facili-*
 7 *ties which may be constructed as part of any*
 8 *project to be controlled at all times by such rea-*
 9 *sonable rules and regulations as may be made by*
 10 *the Secretary of the Army; and*

11 “(C) *conditions for the protection, mitiga-*
 12 *tion, and enhancement of fish and wildlife based*
 13 *on recommendations received pursuant to the*
 14 *Fish and Wildlife Coordination Act (16 U.S.C.*
 15 *661 et seq.) from the National Marine Fisheries*
 16 *Service, the United States Fish and Wildlife*
 17 *Service, and State fish and wildlife agencies.*

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

21 “(1) *that are not part of a project licensed under*
 22 *this Part or exempted from licensing under this Part*
 23 *or section 405 of the Public Utility Regulatory Poli-*
 24 *cies Act of 1978 prior to the date of enactment of this*
 25 *section;*

1 “(2) for which a preliminary permit, a license
2 application, or an application for an exemption from
3 licensing has not been accepted for filing by the Com-
4 mission prior to the date of enactment of subsection
5 (c) (unless such application is withdrawn at the elec-
6 tion of the applicant);

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

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

11 “(5) that are not located in whole or in part on
12 any Indian reservation, a conservation system unit
13 (as defined in section 102(4) of the Alaska National
14 Interest Lands Conservation Act (16 U.S.C.
15 3102(4))), or segment of a river designated for study
16 for addition to the Wild and Scenic Rivers System.

17 “(c) *ELECTION OF STATE LICENSING.*—In the case of
18 nonqualifying project works that would be a qualifying
19 project works but for the fact that the project has been li-
20 censed (or exempted from licensing) by the Commission
21 prior to the enactment of this section, the licensee of such
22 project may in its discretion elect to make the project subject
23 to licensing and regulation by the State of Alaska under
24 this section.

1 “(d) *PROJECT WORKS ON FEDERAL LANDS.*—With re-
2 spect to projects located in whole or in part on a reserva-
3 tion, a conservation system unit, or the public lands, a
4 State license or exemption from licensing shall be subject
5 to—

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

8 “(2) such conditions as the Secretary may pre-
9 scribe.

10 “(e) *CONSULTATION WITH AFFECTED AGENCIES.*—
11 The Commission shall consult with the Secretary of the In-
12 terior, the Secretary of Agriculture, and the Secretary of
13 Commerce before certifying the State of Alaska’s regulatory
14 program.

15 “(f) *APPLICATION OF FEDERAL LAWS.*—Nothing in
16 this section shall preempt the application of Federal envi-
17 ronmental, natural resources, or cultural resources protec-
18 tion laws according to their terms.

19 “(g) *OVERSIGHT BY THE COMMISSION.*—The State of
20 Alaska shall notify the Commission not later than 30 days
21 after making any significant modification to its regulatory
22 program. The Commission shall periodically review the
23 State’s program to ensure compliance with the provisions
24 of this section.

1 “(h) *RESUMPTION OF COMMISSION AUTHORITY.*—Not-
2 *withstanding subsection (a), the Commission shall reassert*
3 *its licensing and regulatory authority under this Part if*
4 *the Commission finds that the State of Alaska has not com-*
5 *plied with one or more of the requirements of this section.*

6 “(i) *DETERMINATION BY THE COMMISSION.*—

7 “(1) *Upon application by the Governor of the*
8 *State of Alaska, the Commission shall within 30 days*
9 *commence a review of the State of Alaska’s regulatory*
10 *program for water-power development to determine*
11 *whether it complies with the requirements of sub-*
12 *section (a).*

13 “(2) *The Commission’s review required by para-*
14 *graph (1) shall be completed within one year of initi-*
15 *ation, and the Commission shall within 30 days*
16 *thereafter issue a final order determining whether or*
17 *not the State of Alaska’s regulatory program for*
18 *water-power development complies with the require-*
19 *ments of subsection (a).*

20 “(3) *If the Commission fails to issue a final*
21 *order in accordance with paragraph (2), the State of*
22 *Alaska’s regulatory program for water-power develop-*
23 *ment shall be deemed to be in compliance with sub-*
24 *section (a).”.*

1 **SEC. 2. VOLUNTARY LICENSING OF HYDROELECTRIC**
2 **PROJECTS ON FRESH WATERS IN THE STATE**
3 **OF HAWAII.**

4 Section 4(e) of the Federal Power Act is amended
5 by striking “several States, or upon” and inserting “sev-
6 eral States (except fresh waters in the State of Hawaii,
7 unless a license would be required by section 23 of the
8 Act), or upon”.

9 **SEC. 3. LIMITED EXEMPTION FOR TRANSMISSION FACILI-**
10 **TIES ASSOCIATED WITH THE EL VADO HY-**
11 **DROELECTRIC PROJECT.**

12 (a) Part I of the Federal Power Act, and the jurisdic-
13 tion of the Federal Energy Regulatory Commission under
14 such part I, shall not apply to the transmission line facili-
15 ties associated with the El Vado Hydroelectric project
16 (FERC project No. 5226) which are described in sub-
17 section (b).

18 (b) The facilities to which the exemption under sub-
19 section (a) applies are those transmission facilities located
20 near the Rio Chama, a tributary of the Rio Grande, in
21 Rio Arriba County, New Mexico, referred to as the El
22 Vado transmission line, a three phase 12-mile long 69 kV
23 power line installed within a 50-foot wide right-of-way in
24 Rio Arriba County, New Mexico, originating at the El
25 Vado project’s switchyard and connecting to the Spills 69

1 kV switching station operated by the Northern Arriba
2 Electric Cooperative Inc.

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

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

15 **SEC. 5. TECHNICAL CORRECTION.**

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

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

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