

106TH CONGRESS  
1ST SESSION

# S. 422

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IN THE HOUSE OF REPRESENTATIVES

APRIL 12, 1999

Referred to the Committee on Commerce

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## AN ACT

To provide for Alaska state jurisdiction over small  
hydroelectric projects.

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 ‘quali-  
13   fying 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).”.

Passed the Senate March 25, 1999.

Attest:

GARY SISCO,  
*Secretary.*