

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3800

To amend the Federal Power Act to reform the hydroelectric licensing process,  
and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2002

Mr. DINGELL (for himself and Mr. MARKEY) introduced the following bill;  
which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Federal Power Act to reform the hydroelectric  
licensing process, 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 AND TABLE OF CONTENTS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “Federal Investment in Sustainable Hydropower Act”.

6       (b) **TABLE OF CONTENTS.**—

- Sec. 1. Short title and table of contents.
- Sec. 2. Incentives for turbine upgrades.
- Sec. 3. FERC report on hydroelectric licensing.
- Sec. 4. Rehearing petitions.
- Sec. 5. Licensing schedule and environmental review.
- Sec. 6. Agency conditions.
- Sec. 7. License duration.
- Sec. 8. Fees and charges.
- Sec. 9. Availability of sufficient funds.

- Sec. 10. Baseline.
- Sec. 11. Annual licenses.
- Sec. 12. Agency costs.
- Sec. 13. Office of public participation.
- Sec. 14. Royalty for use of public waters.
- Sec. 15. Multiple projects on a waterway.
- Sec. 16. Alternative conditions and fishways.
- Sec. 17. FERC data on hydroelectric licensing.
- Sec. 18. Enforcement.
- Sec. 19. Sunshine in financial accounting.

1 **SEC. 2. INCENTIVES FOR TURBINE UPGRADES.**

2 (a) **ADVANCED TURBINES.**—The term “advanced  
3 turbine” means a hydroelectric generation turbine that  
4 achieves the maximum feasible generation of electricity  
5 per gallon of water together with the maximum feasible  
6 reduction in fish mortality.

7 (b) **STANDARDS.**—The Secretary of Energy, in con-  
8 sultation with other appropriate Federal and State depart-  
9 ments and agencies, and after receiving comments from  
10 representatives of the hydroelectric power generation in-  
11 dustry and other affected interests, shall, by rule, promul-  
12 gate standards for advanced turbines. Such standards  
13 shall be promulgated not later than 180 days after the  
14 enactment of this Act and shall be revised to insure con-  
15 formity with subsection (a) at 5-year intervals thereafter.

16 (c) **INCENTIVES FOR INSTALLATION OF ADVANCED**  
17 **TURBINES.**—(1) The Federal Energy Regulatory Commis-  
18 sion shall modify the fees imposed under the Federal  
19 Power Act in association with the licensing and operation  
20 of hydroelectric facilities under that Act so that the fees

1 imposed on licensees that have installed advanced turbines  
2 meeting or exceeding the standards under subsection (b)  
3 shall be entitled to a discount.

4       (2) In issuing new licenses for hydroelectric facilities  
5 under section 15 of the Federal Power Act after the expi-  
6 ration of existing licenses, the Federal Energy Regulatory  
7 Commission shall give a priority in the scheduling of its  
8 licensing processes to licensees that have installed ad-  
9 vanced turbines meeting or exceeding the standards under  
10 subsection (b).

11 **SEC. 3. FERC REPORT ON HYDROELECTRIC LICENSING.**

12       Section 4(d) of the Federal Power Act (16 U.S.C.  
13 797(d)) is amended by inserting “(1)” after “(d)” and by  
14 adding the following at the end thereof:

15       “(2) The Commission shall publish an annual, non-  
16 classified, report describing—

17               “(A) the status and schedule of pending permit,  
18       licensing, and enforcement proceedings, including  
19       annual licenses, rehearing requests, and judicial ap-  
20       peals;

21               “(B) the collection of annual charges and the  
22       reimbursement of a portion to agencies that incurred  
23       reasonable and necessary costs; and

24               “(C) recurring disputes or problems in imple-  
25       mentation of this part.

1 After consultation with other affected Federal and State  
2 agencies, the Commission shall publish a draft report in  
3 draft form for public comment. The final report shall in-  
4 clude the Commission's responses to comments filed with  
5 the Commission on the draft report.”.

6 **SEC. 4. REHEARING PETITIONS.**

7 Section 313 (a) of the Federal Power Act (16 U.S.C.  
8 313(a)) is amended by adding the following at the end  
9 thereof: “The Commission shall make a final determina-  
10 tion of each rehearing petition with respect to an order  
11 issued under Part I of this Act on the merits within 6  
12 months after receiving the petition.”.

13 **SEC. 5. LICENSING SCHEDULE AND ENVIRONMENTAL RE-**  
14 **VIEW.**

15 Section 4 of the Federal Power Act (16 U.S.C. 797)  
16 is amended by adding the following at the end thereof:

17 “(h)(1) As promptly as practicable following accept-  
18 ance of an original license, permit, or exemption applica-  
19 tion, or receipt of notice of intent to file a new license  
20 application, the Commission shall notify the Secretaries of  
21 departments referred to in the first proviso of subsection  
22 (e), the Secretary referred to in section 18, the agencies  
23 referred to in section 10(j), and affected State agencies.  
24 Within 30 days of receiving such notice, such Secretaries  
25 shall submit to the Commission a proposed schedule for

1 completing such department's actions with respect to the  
2 application concerned. Not later than 60 days following  
3 acceptance of such an application or receipt of such notice  
4 of intent, the Commission shall publish an estimated  
5 schedule for all actions by the applicant, Commission, and  
6 other parties to the proceeding concerned. The Commis-  
7 sion may periodically amend the schedule in the course  
8 of the proceeding and undertake affirmative actions, in-  
9 cluding substantial cooperation with other jurisdictional  
10 agencies, to assure an expeditious decision.

11       “(2) As promptly as practicable following acceptance  
12 of an original license, permit, or exemption application,  
13 or receipt of notice of intent to file a new license applica-  
14 tion, the Commission shall commence all environmental  
15 studies to be carried out by the Commission.

16       “(3) The Commission shall require any person apply-  
17 ing for an original license, permit, or exemption or for a  
18 new license to conduct all studies required by the Secre-  
19 taries of departments referred to in the first proviso of  
20 subsection (e), the Secretary referred to in section 18, the  
21 agencies referred to in section 10(j), and affected State  
22 agencies. The Commission shall incorporate the environ-  
23 mental studies provided by such Secretaries and agencies  
24 into any environmental review provided by the Commission  
25 in connection with the application.

1       “(4) After notice and opportunity for comment, the  
2 Commission shall prepare and make public draft license  
3 articles for purposes of environmental review, including  
4 any environmental review conducted by the departments  
5 referred to in the first proviso of subsection (e), the Sec-  
6 retary referred to in section 18 and the agencies referred  
7 to in section 10(j).

8       “(5) Each agency prescribing conditions under the  
9 first proviso of subsection (e) and the Secretary referred  
10 to in section 18 shall each promulgate rules that set forth  
11 procedures for issuance of draft and final conditions con-  
12 sistent with the development of the Commission’s draft  
13 and final environmental review documents and decision  
14 documents if all information deemed necessary by the Sec-  
15 retary of the agency concerned is furnished by the Com-  
16 mission or the license applicant in a timely manner. The  
17 rule shall include opportunities for public comment on  
18 both draft and final conditions. Such agencies shall adopt  
19 a final condition not later than 3 months after publication  
20 of final environmental review document.”.

21 **SEC. 6. AGENCY CONDITIONS.**

22       Section 10(j) of the Federal Power Act (16 U.S.C.  
23 803(j)) is amended by adding the following before the last  
24 sentence: “Such findings shall be submitted to the agency  
25 concerned, together with the Commission’s justification

1 for the findings, and such agency may resubmit the agen-  
2 cy's recommendations to the Commission under this sub-  
3 section with such modifications as the agency deems nec-  
4 essary.”.

5 **SEC. 7. LICENSE DURATION.**

6 Section 6 and section 10(i) of the Federal Power Act  
7 (16 U.S.C. 799 and 803(i)) are each amended by striking  
8 “fifty” and inserting “thirty” and section 15(e) of such  
9 Act is amended by striking “not less than 30 years, nor  
10 more than 50” and inserting “not more than 15”.

11 **SEC. 8. FEES AND CHARGES.**

12 Section 10(e) of the Federal Power Act (16 U.S.C.  
13 797(e)) is amended by adding the following at the end  
14 thereof:

15 “(5) The Commission shall collect fees on behalf of  
16 State agencies as well as Federal agencies. Annual charges  
17 shall include the reasonable and necessary costs of the  
18 State agencies issuing certifications of compliance with  
19 section 401 of the Clean Water Act. The agency incurring  
20 costs collected for administration of this part shall provide  
21 adequate and timely documentation according to proce-  
22 dures adopted by the Commission. This portion of such  
23 annual charges shall be paid into a revolving fund admin-  
24 istered by the Commission, to be available to the Commis-  
25 sion to reimburse the agencies without annual appropria-

1 tion. The charge for use and occupancy of Federal lands  
2 shall be set at fair market value. 50 percent of the fees  
3 collected for the use of those lands (other than tribal  
4 lands) shall be deposited in a river restoration revolving  
5 fund administered by the land managing agency and the  
6 remaining 50 percent shall be transferred to the county  
7 in which the project resides to be expended for watershed  
8 and streambed conservation and protection and for water  
9 quality protection and improvement.”.

10 **SEC. 9. AVAILABILITY OF SUFFICIENT FUNDS.**

11 (a) BOND.—Section 10(c) of the Federal Power Act  
12 (16 U.S.C. 803(c)) is amended by adding the following  
13 at the end thereof: “The Commission shall require each  
14 licensee to maintain a bond or other proof of financial re-  
15 sponsibility adequate to assure that sufficient funds will  
16 be available at the end of the useful life of the project,  
17 or in the event of abandonment of the project, for the de-  
18 commissioning of the project and the restoration of the  
19 lands and waters affected by the project to the conditions  
20 that existed prior to construction of the project, to the  
21 extent feasible.”.

22 (b) EFFECTIVE DATE.—The amendment made by  
23 this section shall take effect on the date one year after  
24 the enactment of this Act. The Commission shall promul-  
25 gate regulations under the amendment made by this para-

1 graph not later than 6 months after the enactment of this  
2 Act.

3 **SEC. 10. BASELINE.**

4 Section 10(j) of the Federal Power Act (16 U.S.C.  
5 803(j)) is amended by adding the following at the end  
6 thereof:

7 “(3) In its analysis of project impacts, the Commis-  
8 sion shall consider its baseline of analysis to be the river  
9 without the project.”.

10 **SEC. 11. ANNUAL LICENSES.**

11 Section 15(a)(1) of the Federal Power Act (16 U.S.C.  
12 808(a)(1)) is amended by adding the following at the end  
13 thereof: “Annual licenses shall contain interim terms and  
14 conditions deemed necessary by Federal and State re-  
15 source agencies to comply with standards and other legal  
16 requirements for beneficial uses of affected waters. The  
17 terms of any new license for a project shall be reduced  
18 by one year for each annual license issued for such  
19 project.”.

20 **SEC. 12. AGENCY COSTS.**

21 The first proviso of section 10(e)(1) of the Federal  
22 Power Act (16 U.S.C. 803(e)(1)) is amended by striking  
23 “subject to annual appropriations Acts” and by striking  
24 “shall be available” and inserting “shall be retained by  
25 the Commission and transferred to each such consulting

1 agency by the Commission and available, without further  
2 appropriation,”.

3 **SEC. 13. OFFICE OF PUBLIC PARTICIPATION.**

4 Section 319(b) of the Federal Power Act (16 U.S.C.  
5 825q-1(b)) is amended as follows:

6 (1) Paragraph (2) is amended to read as fol-  
7 lows:

8 “(2) The Commission shall reimburse any person  
9 granted intervener status in any proceeding under Part  
10 I of this Act for reasonable attorney’s fees, expert witness  
11 fees, and other costs incurred by such person to intervene  
12 and participate in such proceeding.”.

13 (2) Paragraph (4) is amended to read as fol-  
14 lows:

15 “(4) There are authorized to be appropriated to the  
16 Commission to carry out this section \$5,000,000 for each  
17 fiscal year beginning after the enactment of this para-  
18 graph.”.

19 **SEC. 14. ROYALTY FOR USE OF PUBLIC WATERS.**

20 Section 10(e) of the Federal Power Act (16 U.S.C.  
21 803(e)) is amended by adding the following at the end  
22 thereof:

23 “(5) In addition to the annual charges under the pre-  
24 ceding provisions of this subsection, the Commission shall  
25 require the licensee of each project under this part to pay

1 to the United States for deposit into the General Fund  
2 of the Treasury a royalty in the amount of 1 mill per kilo-  
3 watt hour of electricity generated by the project. Such roy-  
4 alty shall be paid at such times and in such manner as  
5 the Commission shall prescribe. 50 percent of amount of  
6 such royalties received with respect to licensed projects in  
7 each State in each fiscal year are authorized to be appro-  
8 priated to the State for purposes of fish and wildlife en-  
9 hancement projects in such State.”.

10 **SEC. 15. MULTIPLE PROJECTS ON A WATERWAY.**

11 Section 10 of the Federal Power Act (16 U.S.C. 803)  
12 is amended by adding the following new subsection at the  
13 end thereof:

14 “(k) MULTIPLE PROJECTS.—In the case of a project  
15 in a watershed in which other projects licensed by the  
16 Commission are operating, to the maximum extent prac-  
17 ticable, the Commission shall establish license conditions  
18 for each of such projects such as will adequately and equi-  
19 tably protect, mitigate damages to, and enhance fish and  
20 wildlife (including relating spawning grounds and habitat)  
21 affected by the cumulative impacts of all such projects on  
22 fish and wildlife.”.

1 **SEC. 16. ALTERNATIVE CONDITIONS AND FISHWAYS.**

2 (a) ALTERNATIVE MANDATORY CONDITIONS.—Sec-  
3 tion 4 of the Federal Power Act (16 U.S.C. 797) is  
4 amended by adding at the end the following:

5 “(h)(1) Whenever any person applies for a license for  
6 any project works within any reservation of the United  
7 States, and the Secretary of the department under whose  
8 supervision such reservation falls deems a condition to  
9 such license to be necessary under the first proviso of sub-  
10 section (e), the license applicant or any other party to the  
11 licensing proceeding may propose an alternative condition.

12 “(2) Notwithstanding the first proviso of subsection  
13 (e), the Secretary of the department under whose super-  
14 vision the reservation falls shall accept the proposed alter-  
15 native condition referred to in paragraph (1), and the  
16 Commission shall include in the license such alternative  
17 condition, if the Secretary of the appropriate department  
18 determines, based on substantial evidence provided by the  
19 party proposing such alternative condition, that the alter-  
20 native condition—

21 “(A) provides equal or greater protection for  
22 the reservation than provided by the condition  
23 deemed necessary by the Secretary; and

24 “(B) will either—

25 “(i) cost less to implement, or

1                   “(ii) result in improved operation of the  
2                   project works for electricity production,  
3 than the condition deemed necessary by the Secretary.

4           “(3) Within one year after the enactment of this sub-  
5 section, each Secretary concerned shall, by rule, establish  
6 a process to expeditiously resolve conflicts arising under  
7 this subsection.”.

8           (b) ALTERNATIVE FISHWAYS.—Section 18 of the  
9 Federal Power Act (16 U.S.C. 811) is amended by—

10           (1) inserting “(a)” before the first sentence;

11           and

12           (2) adding at the end the following:

13           “(b)(1) Whenever the Commission shall require a li-  
14 censee to construct, maintain, or operate a fishway pre-  
15 scribed by the Secretary of the Interior or the Secretary  
16 of Commerce under this section, the licensee or any other  
17 party to the proceeding may propose an alternative to such  
18 prescription to construct, maintain, or operate a fishway.

19           “(2) Notwithstanding subsection (a), the Secretary of  
20 the Interior or the Secretary of Commerce, as appropriate,  
21 shall accept and prescribe, and the Commission shall re-  
22 quire, the proposed alternative referred to in paragraph  
23 (1), if the Secretary of the appropriate department deter-  
24 mines, based on substantial evidence provided by the party  
25 proposing such alternative, that the alternative—

1           “(A) will be equally or more effective than the  
2 fishway initially prescribed by the Secretary, and

3           “(B) will either—

4                 “(i) cost less to implement, or

5                 “(ii) result in improved operation of the  
6 project works for electricity production,

7 than the fishway initially prescribed by the Secretary.

8           “(3) Within one year after the enactment of this sub-  
9 section, the Secretary of the Interior and the Secretary  
10 of Commerce shall each, by rule, establish a process to  
11 expeditiously resolve conflicts arising under this sub-  
12 section.”.

13 **SEC. 17. FERC DATA ON HYDROELECTRIC LICENSING.**

14           (a) DATA COLLECTION PROCEDURES.—The Federal  
15 Energy Regulatory Commission shall revise its procedures  
16 regarding the collection of data in connection with the  
17 Commission’s consideration of hydroelectric licenses under  
18 the Federal Power Act. Such revised data collection proce-  
19 dures shall be designed to provide the Commission with  
20 complete and accurate information concerning the time  
21 and costs to parties involved in the licensing process. Such  
22 data shall be available for each significant stage in the  
23 licensing process and shall be designed to identify projects  
24 with similar characteristics so that analyses can be made  
25 of the time and costs involved in licensing proceedings

1 based upon the different characteristics of those pro-  
2 ceedings.

3 (b) **REPORTS.**—Within 6 months after the date of en-  
4 actment of this Act, the Commission shall notify the Com-  
5 mittee on Energy and Commerce of the United States  
6 House of Representatives and the Committee on Energy  
7 and Natural Resources of the United States Senate of the  
8 progress made by the Commission under subsection (a),  
9 and within one year after such date of enactment, the  
10 Commission shall submit a report to such Committees  
11 specifying the measures taken by the Commission pursu-  
12 ant to subsection (a).

13 **SEC. 18. ENFORCEMENT.**

14 (a) **MONITORING AND INVESTIGATIONS OF MANDA-**  
15 **TORY CONDITIONS AND FISHWAY PRESCRIPTIONS.**—The  
16 first sentence of section 31(a) of the Federal Power Act  
17 (16 U.S.C. 823b(a)) is amended to read as follows: “The  
18 Commission shall monitor, investigate, and enforce com-  
19 pliance with each license and permit issued under this  
20 part, each condition imposed under section 4(e) or 4(h),  
21 each fishway prescription imposed under section 18, condi-  
22 tions of State water quality certification and protection of  
23 fish and game, and each exemption granted from any re-  
24 quirement of this part. Nothing in this section shall be  
25 construed to limit or abridge the authority of agencies ad-

1 ministering section 401 of the Clean Water Act or to af-  
2 fect the applicability of section 1365 of the Clean Water  
3 Act.”.

4 (b) COMPLIANCE ORDERS.—The third sentence of  
5 section 31(a) of the Federal Power Act (16 U.S.C. 823(a))  
6 is amended to read as follows: “After notice and oppor-  
7 tunity for public hearing, the Commission shall issue such  
8 orders as necessary to require compliance with all of the  
9 terms and conditions of licenses, permits, and exemptions  
10 issued under this part, with conditions imposed under sec-  
11 tion 4(e) or 4(h), with fishway prescriptions imposed  
12 under section 18, conditions of State water quality certifi-  
13 cation and protection of fish and game, and with the terms  
14 and conditions of exemptions granted from any require-  
15 ment of this part.”.

16 (c) CHANGES IN WATER QUALITY STANDARDS.—  
17 Within 12 months of the enactment of this section, the  
18 Federal Energy Regulatory Commission shall establish  
19 procedures to reopen and amend licenses to ensure that  
20 a project complies with State water quality standards for  
21 the duration of the license term.

22 **SEC. 19. SUNSHINE IN FINANCIAL ACCOUNTING.**

23 Section 9 of the Federal Power Act (16 U.S.C. 802)  
24 is amended by redesignating subsection (c) as paragraph

1 (3) of subsection (a) and by adding the following new sub-  
2 section at the end thereof:

3       “(c) Each applicant for an original license, permit,  
4 or exemption or for a new license under section 15, shall  
5 provide to the Commission such financial accounting infor-  
6 mation, including revenue and net revenue projections, re-  
7 garding the project as would be provided to potential in-  
8 vestors in the project concerned. Such information shall  
9 not be considered proprietary, and the Commission shall  
10 make such information available to the public. The Com-  
11 mission may prescribe such rules as may be necessary to  
12 carry out this subsection.”.

○