

## Calendar No. 71

113TH CONGRESS  
1ST SESSION**H. R. 267**

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2013

Received; read twice and referred to the Committee on Energy and Natural  
Resources

MAY 13, 2013

Reported by Mr. WYDEN, without amendment

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**AN ACT**

To improve hydropower, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Hydropower Regulatory Efficiency Act of 2013”.

6 (b) TABLE OF CONTENTS.—The table of contents of  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Promoting small hydroelectric power projects.
- Sec. 4. Promoting conduit hydropower projects.
- Sec. 5. FERC authority to extend preliminary permit periods.

Sec. 6. Promoting hydropower development at nonpowered dams and closed loop pumped storage projects.

Sec. 7. DOE study of pumped storage and potential hydropower from conduits.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the hydropower industry currently employs  
4 approximately 300,000 workers across the United  
5 States;

6 (2) hydropower is the largest source of clean,  
7 renewable electricity in the United States;

8 (3) as of the date of enactment of this Act, hy-  
9 dropower resources, including pumped storage facili-  
10 ties, provide—

11 (A) nearly 7 percent of the electricity gen-  
12 erated in the United States; and

13 (B) approximately 100,000 megawatts of  
14 electric capacity in the United States;

15 (4) only 3 percent of the 80,000 dams in the  
16 United States generate electricity, so there is sub-  
17 stantial potential for adding hydropower generation  
18 to nonpowered dams; and

19 (5) according to one study, by utilizing cur-  
20 rently untapped resources, the United States could  
21 add approximately 60,000 megawatts of new hydro-  
22 power capacity by 2025, which could create 700,000  
23 new jobs over the next 13 years.

1 **SEC. 3. PROMOTING SMALL HYDROELECTRIC POWER**  
2 **PROJECTS.**

3 Subsection (d) of section 405 of the Public Utility  
4 Regulatory Policies Act of 1978 (16 U.S.C. 2705) is  
5 amended by striking “5,000” and inserting “10,000”.

6 **SEC. 4. PROMOTING CONDUIT HYDROPOWER PROJECTS.**

7 (a) **APPLICABILITY OF, AND EXEMPTION FROM, LI-**  
8 **CENSING REQUIREMENTS.**—Section 30 of the Federal  
9 Power Act (16 U.S.C. 823a) is amended—

10 (1) by striking subsections (a) and (b) and in-  
11 serting the following:

12 “(a)(1) A qualifying conduit hydropower facility shall  
13 not be required to be licensed under this part.

14 “(2)(A) Any person, State, or municipality proposing  
15 to construct a qualifying conduit hydropower facility shall  
16 file with the Commission a notice of intent to construct  
17 such facility. The notice shall include sufficient informa-  
18 tion to demonstrate that the facility meets the qualifying  
19 criteria.

20 “(B) Not later than 15 days after receipt of a notice  
21 of intent filed under subparagraph (A), the Commission  
22 shall—

23 “(i) make an initial determination as to wheth-  
24 er the facility meets the qualifying criteria; and

25 “(ii) if the Commission makes an initial deter-  
26 mination, pursuant to clause (i), that the facility

1 meets the qualifying criteria, publish public notice of  
2 the notice of intent filed under subparagraph (A).

3 “(C) If, not later than 45 days after the date of publi-  
4 cation of the public notice described in subparagraph  
5 (B)(ii)—

6 “(i) an entity contests whether the facility  
7 meets the qualifying criteria, the Commission shall  
8 promptly issue a written determination as to wheth-  
9 er the facility meets such criteria; or

10 “(ii) no entity contests whether the facility  
11 meets the qualifying criteria, the facility shall be  
12 deemed to meet such criteria.

13 “(3) For purposes of this section:

14 “(A) The term ‘conduit’ means any tunnel,  
15 canal, pipeline, aqueduct, flume, ditch, or similar  
16 manmade water conveyance that is operated for the  
17 distribution of water for agricultural, municipal, or  
18 industrial consumption and not primarily for the  
19 generation of electricity.

20 “(B) The term ‘qualifying conduit hydropower  
21 facility’ means a facility (not including any dam or  
22 other impoundment) that is determined or deemed  
23 under paragraph (2)(C) to meet the qualifying cri-  
24 teria.

1           “(C) The term ‘qualifying criteria’ means, with  
2           respect to a facility—

3                   “(i) the facility is constructed, operated, or  
4                   maintained for the generation of electric power  
5                   and uses for such generation only the hydro-  
6                   electric potential of a non-federally owned con-  
7                   duit;

8                   “(ii) the facility has an installed capacity  
9                   that does not exceed 5 megawatts; and

10                   “(iii) on or before the date of enactment of  
11                   the Hydropower Regulatory Efficiency Act of  
12                   2013, the facility is not licensed under, or ex-  
13                   empted from the license requirements contained  
14                   in, this part.

15           “(b) Subject to subsection (c), the Commission may  
16           grant an exemption in whole or in part from the require-  
17           ments of this part, including any license requirements con-  
18           tained in this part, to any facility (not including any dam  
19           or other impoundment) constructed, operated, or main-  
20           tained for the generation of electric power which the Com-  
21           mission determines, by rule or order—

22                   “(1) utilizes for such generation only the hydro-  
23                   electric potential of a conduit; and

24                   “(2) has an installed capacity that does not ex-  
25                   ceed 40 megawatts.”;

1           (2) in subsection (c), by striking “subsection  
2           (a)” and inserting “subsection (b)”; and

3           (3) in subsection (d), by striking “subsection  
4           (a)” and inserting “subsection (b)”.

5           (b) CONFORMING AMENDMENT.—Subsection (d) of  
6 section 405 of the Public Utility Regulatory Policies Act  
7 of 1978 (16 U.S.C. 2705), as amended, is further amend-  
8 ed by striking “subsection (a) of such section 30” and in-  
9 serting “subsection (b) of such section 30”.

10 **SEC. 5. FERC AUTHORITY TO EXTEND PRELIMINARY PER-**  
11 **MIT PERIODS.**

12           Section 5 of the Federal Power Act (16 U.S.C. 798)  
13 is amended—

14           (1) by designating the first, second, and third  
15 sentences as subsections (a), (c), and (d), respec-  
16 tively; and

17           (2) by inserting after subsection (a) (as so des-  
18 ignated) the following:

19           “(b) The Commission may extend the period of a pre-  
20 liminary permit once for not more than 2 additional years  
21 beyond the 3 years permitted by subsection (a) if the Com-  
22 mission finds that the permittee has carried out activities  
23 under such permit in good faith and with reasonable dili-  
24 gence.”.

1 **SEC. 6. PROMOTING HYDROPOWER DEVELOPMENT AT**  
2 **NONPOWERED DAMS AND CLOSED LOOP**  
3 **PUMPED STORAGE PROJECTS.**

4 (a) IN GENERAL.—To improve the regulatory process  
5 and reduce delays and costs for hydropower development  
6 at nonpowered dams and closed loop pumped storage  
7 projects, the Federal Energy Regulatory Commission (re-  
8 ferred to in this section as the “Commission”) shall inves-  
9 tigate the feasibility of the issuance of a license for hydro-  
10 power development at nonpowered dams and closed loop  
11 pumped storage projects in a 2-year period (referred to  
12 in this section as a “2-year process”). Such a 2-year pro-  
13 cess shall include any prefiling licensing process of the  
14 Commission.

15 (b) WORKSHOPS AND PILOTS.—The Commission  
16 shall—

17 (1) not later than 60 days after the date of en-  
18 actment of this Act, hold an initial workshop to so-  
19 licit public comment and recommendations on how  
20 to implement a 2-year process;

21 (2) develop criteria for identifying projects fea-  
22 turing hydropower development at nonpowered dams  
23 and closed loop pumped storage projects that may be  
24 appropriate for licensing within a 2-year process;

1           (3) not later than 180 days after the date of  
2           enactment of this Act, develop and implement pilot  
3           projects to test a 2-year process, if practicable; and

4           (4) not later than 3 years after the date of im-  
5           plementation of the final pilot project testing a 2-  
6           year process, hold a final workshop to solicit public  
7           comment on the effectiveness of each tested 2-year  
8           process.

9           (c) MEMORANDUM OF UNDERSTANDING.—The Com-  
10          mission shall, to the extent practicable, enter into a memo-  
11          randum of understanding with any applicable Federal or  
12          State agency to implement a pilot project described in sub-  
13          section (b).

14          (d) REPORTS.—

15               (1) PILOT PROJECTS NOT IMPLEMENTED.—If  
16          the Commission determines that no pilot project de-  
17          scribed in subsection (b) is practicable because no 2-  
18          year process is practicable, not later than 240 days  
19          after the date of enactment of this Act, the Commis-  
20          sion shall submit to the Committee on Energy and  
21          Commerce of the House of Representatives and the  
22          Committee on Energy and Natural Resources of the  
23          Senate a report that—



1 (A) describes the public comments received  
2 as part of the initial workshop held under sub-  
3 section (b)(1); and

4 (B) identifies the process, legal, environ-  
5 mental, economic, and other issues that justify  
6 the determination of the Commission that no 2-  
7 year process is practicable, with recommenda-  
8 tions on how Congress may address or remedy  
9 the identified issues.

10 (2) PILOT PROJECTS IMPLEMENTED.—If the  
11 Commission develops and implements pilot projects  
12 involving a 2-year process, not later than 60 days  
13 after the date of completion of the final workshop  
14 held under subsection (b)(4), the Commission shall  
15 submit to the Committee on Energy and Commerce  
16 of the House of Representatives and the Committee  
17 on Energy and Natural Resources of the Senate a  
18 report that—

19 (A) describes the outcomes of the pilot  
20 projects;

21 (B) describes the public comments from  
22 the final workshop on the effectiveness of each  
23 tested 2-year process; and

24 (C)(i) outlines how the Commission will  
25 adopt policies under existing law (including reg-

1           ulations) that result in a 2-year process for ap-  
2           propriate projects;

3           (ii) outlines how the Commission will issue  
4           new regulations to adopt a 2-year process for  
5           appropriate projects; or

6           (iii) identifies the process, legal, environ-  
7           mental, economic, and other issues that justify  
8           a determination of the Commission that no 2-  
9           year process is practicable, with recommenda-  
10          tions on how Congress may address or remedy  
11          the identified issues.

12 **SEC. 7. DOE STUDY OF PUMPED STORAGE AND POTENTIAL**  
13 **HYDROPOWER FROM CONDUITS.**

14          (a) IN GENERAL.—The Secretary of Energy shall  
15          conduct a study—

16               (1)(A) of the technical flexibility that existing  
17               pumped storage facilities can provide to support  
18               intermittent renewable electric energy generation, in-  
19               cluding the potential for such existing facilities to be  
20               upgraded or retrofitted with advanced commercially  
21               available technology; and

22               (B) of the technical potential of existing  
23               pumped storage facilities and new advanced pumped  
24               storage facilities, to provide grid reliability benefits;  
25               and

1           (2)(A) to identify the range of opportunities for  
2           hydropower that may be obtained from conduits (as  
3           defined by the Secretary) in the United States; and

4           (B) through case studies, to assess amounts of  
5           potential energy generation from such conduit hy-  
6           dropower projects.

7           (b) REPORT.—Not later than 1 year after the date  
8           of enactment of this Act, the Secretary of Energy shall  
9           submit to the Committee on Energy and Commerce of the  
10          House of Representatives and the Committee on Energy  
11          and Natural Resources of the Senate a report that de-  
12          scribes the results of the study conducted under subsection  
13          (a), including any recommendations.

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