

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 3043) TO MODERNIZE HYDROPOWER POLICY, AND FOR OTHER PURPOSES, AND PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 3441) TO CLARIFY THE TREATMENT OF TWO OR MORE EMPLOYERS AS JOINT EMPLOYERS UNDER THE NATIONAL LABOR RELATIONS ACT AND THE FAIR LABOR STANDARDS ACT OF 1938

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NOVEMBER 6, 2017.—Referred to the House Calendar and ordered to be printed

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Mr. BYRNE, from the Committee on Rules,  
submitted the following

## R E P O R T

[To accompany H. Res. 607]

The Committee on Rules, having had under consideration House Resolution 607, by a record vote of 9 to 2, report the same to the House with the recommendation that the resolution be adopted.

### SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 3043, the Hydropower Policy Modernization Act of 2017, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce. The resolution waives all points of order against consideration of the bill. The resolution makes in order as original text for the purpose of amendment the amendment in the nature of a substitute recommended by the Committee on Energy and Commerce now printed in the bill, and provides that it shall be considered as read. The resolution waives all points of order against that amendment in the nature of a substitute. The resolution makes in order only those further amendments printed in this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in this report. The resolution provides one motion to recommit with or without instructions.

Section 2 of the resolution provides for consideration of H.R. 3441, the Save Local Business Act, under a closed rule. The resolution provides one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Education and the Workforce. The resolution waives all points of order against consideration of the bill. The resolution provides that the amendment in the nature of a substitute recommended by the Committee on Education and the Workforce now printed in the bill shall be considered as adopted and that the bill, as amended, shall be considered as read. The resolution waives all points of order against provisions in the bill, as amended. The resolution provides one motion to recommit with or without instructions.

#### EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of H.R. 3043, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendment in the nature of a substitute to H.R. 3043 made in order as original text, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments to H.R. 3043 printed in this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against consideration of H.R. 3441, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against provisions in H.R. 3441, as amended, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

#### COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

##### *Rules Committee record vote No. 137*

Motion by Ms. Slaughter to provide H.R. 3441 and H.R. 3043 each an open rule. Defeated: 2–9

Majority Members	Vote	Minority Members	Vote
Mr. Cole .....	Nay	Ms. Slaughter .....	Yea
Mr. Woodall .....	Nay	Mr. McGovern .....	Yea
Mr. Burgess .....	Nay	Mr. Hastings of Florida .....	.....
Mr. Collins .....	Nay	Mr. Polis .....	.....
Mr. Byrne .....	Nay		
Mr. Newhouse .....	Nay		
Mr. Buck .....	Nay		
Ms. Cheney .....	Nay		
Mr. Sessions, Chairman .....	Nay		

##### *Rules Committee record vote No. 138*

Motion by Mr. Cole to report the rule. Adopted: 9–2

Majority Members	Vote	Minority Members	Vote
Mr. Cole .....	Yea	Ms. Slaughter .....	Nay
Mr. Woodall .....	Yea	Mr. McGovern .....	Nay
Mr. Burgess .....	Yea	Mr. Hastings of Florida .....	.....
Mr. Collins .....	Yea	Mr. Polis .....	.....
Mr. Byrne .....	Yea		
Mr. Newhouse .....	Yea		
Mr. Buck .....	Yea		
Ms. Cheney .....	Yea		
Mr. Sessions, Chairman .....	Yea		

SUMMARY OF THE AMENDMENTS TO H.R. 3043 MADE IN ORDER

1. Pocan (WI), Grothman (WI): Requires the U.S. Department of Interior consider the threat of invasive species when it makes decisions on hydropower licensing. (10 minutes)

2. Babin (TX): Allows FERC to examine the licenses of any project located in an area that was declared by the President to be a disaster area in 2017. (10 minutes)

3. Jenkins, Evan (WV): Ensures that when hydro projects have an existing Memorandum of Understanding for non-federal hydropower with FERC that all relevant federal agencies are authorized to fully study and review the potential expansion of non-federal hydropower, including a review of seasonal pool levels and slowing flood releases. (10 minutes)

4. Rush (IL): (SUBSTITUTE) Adds a new section to the Federal Power Act (FPA) to improve the hydropower licensing process. It directs the Commission and the Federal resource agencies to convene a negotiated rulemaking within 90 days of enactment with state and local government representatives, Indian tribes, and stakeholders to develop a process that will coordinate all necessary Federal authorizations and enable the Commission to make a final decision on a license not later than 3 years of receiving a completed license application. (10 minutes)

TEXT OF AMENDMENTS TO H.R. 3043 MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE POCAN OF WISCONSIN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following new section:

**SEC. 5. CONSIDERATION OF INVASIVE SPECIES.**

Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by inserting after “the Secretary of Commerce.” the following: “In prescribing a fishway, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall consider the threat of invasive species.”.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BABIN OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following new section:

**SEC. 5. EXAMINATION OF LICENSES FOR PROJECTS LOCATED IN DISASTER AREAS.**

Not later than one year after the date of enactment of this Act, the Federal Energy Regulatory Commission may examine the license issued by the Commission under part I of the Federal Power

Act for any project that is located in an area that was declared by the President to be a disaster area in 2017.

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JENKINS OF WEST VIRGINIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following new section:

**SEC. 5. STUDIES FOR NON-FEDERAL HYDROPOWER.**

Notwithstanding any other provision of law, if the Federal Energy Regulatory Commission has in place a memorandum of understanding with another Federal agency for non-federal hydropower with respect to a project licensed under part I of the Federal Power Act (regardless of explicit Congressional authorization for such non-federal hydropower), the other Federal agency may fully study and review the potential expansion of such non-federal hydropower at the project, including a review of seasonal pool levels and slowing flood releases.

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE RUSH OF ILLINOIS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Hydropower Policy Modernization Act of 2017”.

**SEC. 2. HYDROPOWER REGULATORY IMPROVEMENTS.**

(a) SENSE OF CONGRESS ON THE USE OF HYDROPOWER RENEWABLE RESOURCES.—It is the sense of Congress that—

(1) hydropower is a renewable resource for purposes of all Federal programs and is an essential source of energy in the United States; and

(2) the United States should increase substantially the capacity and generation of clean, renewable hydropower that would improve environmental quality in the United States.

(b) MODIFYING THE DEFINITION OF RENEWABLE ENERGY TO INCLUDE HYDROPOWER.—Section 203 of the Energy Policy Act of 2005 (42 U.S.C. 15852) is amended—

(1) in subsection (a), by amending paragraphs (1) through (3) to read as follows:

“(1) Not less than 17 percent in fiscal years 2017 through 2019.

“(2) Not less than 20 percent in fiscal years 2020 through 2024.

“(3) Not less than 25 percent in fiscal year 2025 and each fiscal year thereafter.”; and

(2) in subsection (b), by striking paragraph (2) and inserting the following:

“(2) RENEWABLE ENERGY.—The term ‘renewable energy’ means electric energy generated from solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, or municipal solid waste, or from a hydropower project.”.

(c) PRELIMINARY PERMITS.—Section 5 of the Federal Power Act (16 U.S.C. 798) is amended—

(1) in subsection (a), by striking “three” and inserting “4”; and

(2) by amending subsection (b) to read as follows:

“(b) The Commission may—

“(1) extend the period of a preliminary permit once for not more than 4 additional years beyond the 4 years permitted by subsection (a) if the Commission finds that the permittee has carried out activities under such permit in good faith and with reasonable diligence; and

“(2) if the period of a preliminary permit is extended under paragraph (1), extend the period of such preliminary permit once for not more than 4 additional years beyond the extension period granted under paragraph (1), if the Commission determines that there are extraordinary circumstances that warrant such additional extension.”.

(d) TIME LIMIT FOR CONSTRUCTION OF PROJECT WORKS.—Section 13 of the Federal Power Act (16 U.S.C. 806) is amended in the second sentence by striking “once but not longer than two additional years” and inserting “for not more than 8 additional years,”.

(e) CONSIDERATIONS FOR RELICENSING TERMS.—Section 15(e) of the Federal Power Act (16 U.S.C. 808(e)) is amended—

(1) by striking “(e) Except” and inserting the following:

“(e) LICENSE TERM ON RELICENSING.—

“(1) IN GENERAL.—Except”; and

(2) by adding at the end the following:

“(2) CONSIDERATION.—In determining the term of a license under paragraph (1), the Commission shall consider project-related investments by the licensee over the term of the existing license (including any terms under annual licenses) that resulted in new development, construction, capacity, efficiency improvements, or environmental measures, but which did not result in the extension of the term of the license by the Commission.”.

### SEC. 3. HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.

(a) HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.—Part I of the Federal Power Act (16 U.S.C. 792 et seq.) is amended by adding at the end the following:

#### “SEC. 34. HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.

“(a) DEFINITION.—In this section, the term ‘Federal authorization’—

“(1) means any authorization required under Federal law with respect to an application for a license under this part; and

“(2) includes any conditions, prescriptions, permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law to approve or implement the license under this part.

“(b) DESIGNATION AS LEAD AGENCY.—The Commission shall act as the lead agency for the purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an application for a license under this part.

“(c) RULEMAKING TO ESTABLISH PROCESS TO SET SCHEDULE.—

“(1) NEGOTIATED RULEMAKING.—Not later than 90 days after the date of enactment of this section the Commission, the Secretary of Agriculture, the Administrator of the National Oceanic and Atmospheric Administration, and the Secretary of the Interior shall enter into a negotiated rulemaking pursuant to subchapter III of chapter 5 of title 5, United States Code, to develop and publish a rule providing a process for the Commission to evaluate, and issue a final decision on, a completed application for a license under this part.

“(2) NEGOTIATED RULEMAKING COMMITTEE.—The negotiated rulemaking committee established pursuant to the negotiated rulemaking process entered into under paragraph (1) shall include representatives of State and Indian tribal governments, and other stakeholders who will be significantly affected by a rule issued under this subsection.

“(3) DEADLINES.—

“(A) PROPOSED RULE.—Not later than 2 years after the date of enactment of this section, the Commission shall publish a proposed rule resulting from the negotiated rulemaking under this subsection.

“(B) FINAL RULE.—Not later than 3 years after the date of enactment of this section, the Commission shall publish a final rule resulting from the negotiated rulemaking under this subsection.

“(4) ELEMENTS OF RULE.—In publishing a rule under this subsection, the Commission shall ensure that—

“(A) the rule includes a description of the Commission’s responsibility as the lead agency in coordinating Federal authorizations;

“(B) the rule includes a process for development of a schedule for the review and disposition of a completed application for a license under this part;

“(C) each schedule developed pursuant to such process shall—

“(i) include deadlines for actions on the applicable completed application—

“(I) that are consistent with the duties of each agency under this Act and under applicable State, tribal, and other Federal laws; and

“(II) by—

“(aa) each Federal agency responsible for a Federal authorization;

“(bb) each State agency, local government, or Indian tribe that may consider an aspect of an application for a Federal authorization or is responsible for conducting any separate permitting and environmental reviews of the applicable project;

“(cc) the applicant;

“(dd) the Commission; and

“(ee) other participants in a license proceeding;

“(ii) facilitate the identification and completion of Federal, State, and tribal agency-requested studies, reviews, and any other procedures required to be con-

ducted prior to, or concurrent with, the preparation of the Commission's environmental review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), to the extent practicable; and

“(iii) provide for a final decision on the applicable completed application to be made by not later than 3 years after the date on which the Commission receives such completed application;

“(D) the rule includes a mechanism for resolving issues of concern that may delay the completion of a license application or review of a completed application;

“(E) the rule includes a definition of a completed application; and

“(F) the rule provides for an opportunity for public notice and comment on—

“(i) a completed application; and

“(ii) the schedule developed for the review and disposition of the application.

“(d) APPLICATION PROCESSING.—The Commission, Federal, State, and local government agencies, and Indian tribes may allow an applicant seeking a Federal authorization to fund a third-party contractor selected by such an agency or tribe to assist in reviewing the application. All costs of an agency or tribe incurred pursuant to direct funding by the applicant, including all costs associated with the third party contractor, shall not be considered costs of the United States for the administration of this part under section 10(e).

“(e) ISSUE RESOLUTION.—The Commission may forward any issue of concern that has delayed either the completion of the application or the issuance of a license for a completed application beyond the deadline set forth in the schedule established under the final rule published under subsection (c) to the heads of the relevant State, Federal, or Indian tribal agencies for resolution. If the Commission forwards an issue of concern to the head of a relevant agency, the Commission and the relevant agency shall enter into a memorandum of understanding to facilitate interagency coordination and resolution of the issue of concern, as appropriate.

“(f) NO EFFECT ON OTHER LAWS.—Nothing in this section—

“(1) expands or limits the application of any power or authority vested in an agency, State, or Indian tribe by any applicable law or regulation;

“(2) shall be construed to affect any requirements of State, tribal, or other Federal law (including under the Federal Water Pollution Control Act, the Fish and Wildlife Coordination Act, the Endangered Species Act of 1973, section 14 of the Act of March 3, 1899 (commonly known as the Rivers and Harbors Appropriation Act of 1899), the Coastal Zone Management Act of 1972, the Magnuson-Stevens Fishery Conservation and Management Act, and those provisions in subtitle III of title 54, United States Code, commonly known as the National Historic Preservation Act) with respect to an application for a license under this part; or

“(3) abrogates, diminishes, or otherwise affects any treaty or other right of any Indian tribe.

**“SEC. 35. LICENSING STUDY IMPROVEMENTS.**

“(a) IN GENERAL.—To facilitate the timely and efficient completion of the license proceedings under this part, the Commission shall, in consultation with applicable Federal and State agencies and interested members of the public—

“(1) compile current and accepted best practices in performing studies required in such license proceedings, including methodologies and the design of studies to assess the full range of environmental impacts of a project that reflect the most recent peer-reviewed science;

“(2) compile a comprehensive collection of studies and data accessible to the public that could be used to inform license proceedings under this part; and

“(3) encourage license applicants, agencies, and Indian tribes to develop and use, for the purpose of fostering timely and efficient consideration of license applications, a limited number of open-source methodologies and tools applicable across a wide array of projects, including water balance models and streamflow analyses.

“(b) USE OF STUDIES.—To the extent practicable, the Commission and other Federal, State, and local government agencies and Indian tribes considering an aspect of an application for Federal authorization (as defined in section 34) shall use relevant, existing studies and data and avoid duplicating such studies that are applicable to the project. Studies repeated for the purpose of characterizing seasonal or annual variation of a relevant characteristic or resource shall not be considered duplicative.

**“SEC. 36. EVALUATION OF EXPEDITED LICENSING FOR QUALIFYING PROJECT UPGRADES.**

“(a) DEFINITIONS.—In this section:

“(1) EXPEDITED LICENSE AMENDMENT PROCESS.—The term ‘expedited license amendment process’ means an expedited process for issuing an amendment to an existing license issued under this part for a project.

“(2) QUALIFYING PROJECT UPGRADE.—The term ‘qualifying project upgrade’ means a change—

“(A) to a project; and

“(B) that meets the criteria under subsection (b).

“(b) IN GENERAL.—To improve the regulatory process and reduce the time and cost of making upgrades to existing projects, the Commission shall investigate the feasibility of implementing an expedited license amendment process for a change to a project that meets the following criteria:

“(1) The change to the project—

“(A) is limited to the power house equipment of the project; or

“(B) will result in environmental protection, mitigation, or enhancement measures to benefit fish and wildlife resources or other natural or cultural resources.

“(2) The change to the project is unlikely to adversely affect any species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), as determined by the Secretary of the Interior.

“(3) The Commission ensures, in accordance with section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536), that the



change to the project will not result in the destruction or modification of critical habitat.

“(4) The change to the project is consistent with any applicable comprehensive plan under section 10(a).

“(5) The change to the project is unlikely to adversely affect water quality and water supply, as determined in consultation with any applicable State or Indian tribe.

“(6) Any adverse environmental effects resulting from the change to the project will be insignificant.

“(c) WORKSHOPS AND PILOTS.—The Commission shall—

“(1) not later than 60 days after the date of enactment of this section, hold an initial workshop to solicit public comment and recommendations on how to implement an expedited license amendment process for qualifying project upgrades;

“(2) evaluate pending applications for an amendment to an existing license of a project for a qualifying project upgrade that may benefit from an expedited license amendment process;

“(3) not later than 180 days after the date of enactment of this section, identify and solicit participation by project developers in, and begin implementation of, a 3-year pilot program to evaluate the feasibility and utility of an expedited license amendment process for qualifying project upgrades; and

“(4) not later than 3 months after the end of the 3-year pilot program under paragraph (3), hold a final workshop to solicit public comment on the expedited license amendment process.

“(d) MEMORANDUM OF UNDERSTANDING.—The Commission shall, to the extent practicable, enter into a memorandum of understanding with any applicable Federal, State, or tribal agency to implement the pilot program described in subsection (c).

“(e) REPORTS.—Not later than 3 months after the date of the final workshop held pursuant to subsection (c)(4), the Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that includes—

“(1) a summary of the public comments received as part of the initial workshop held under subsection (c)(1);

“(2) a summary of the public comments received as part of the final workshop held under subsection (c)(4);

“(3) a description of the expedited license amendment process for qualifying project upgrades evaluated under the pilot program, including—

“(A) a description of the procedures or requirements that were waived under the expedited license amendment process;

“(B) a comparison between—

“(i) the average amount of time required to complete the licensing process for an amendment to a license under the expedited license amendment process tested under the pilot program; and

“(ii) the average amount of time required to complete the licensing process for a similar amendment to a license under current Commission processes;

“(4) the number of requests received by the Commission to participate in the expedited license amendment process for qualifying project upgrades;

“(5) a description of changes to Commission rules required to create and standardize an expedited license amendment process for qualifying project upgrades;

“(6) a description of factors that prevented any participant in the pilot program from completing the expedited license amendment process in the expedited time frame.

“(f) IMPLEMENTATION.—If the Commission determines, based upon the workshops and results of the pilot program under subsection (c), that an expedited license amendment process will reduce the time and costs for issuing amendments to licenses for qualifying project upgrades, the Commission shall revise its policies and regulations, in accordance with applicable law, to establish an expedited license amendment process.

“(g) PUBLIC INPUT.—In carrying out subsection (f), the Commission shall solicit and consider public comments before finalizing any change to policies or regulations.”.

**SEC. 4. PILOT PROGRAM FOR CONSOLIDATED LICENSING PROCESS FOR INTRA-WATERSHED PROJECTS.**

(a) DEFINITIONS.—In this section:

(1) COMMISSION.—The term “Commission” means the Federal Energy Regulatory Commission.

(2) PROJECT.—The term “project” has the meaning given such term in section 3 of the Federal Power Act (16 U.S.C. 796).

(b) INITIAL WORKSHOP.—Not later than 3 months after the date of enactment of this Act, the Commission shall hold a workshop to solicit public comment and recommendations on how to implement a pilot program described in subsection (c).

(c) ESTABLISHMENT OF PILOT PROGRAM.—The Commission shall establish a voluntary pilot program to enable the Commission to consider multiple projects together in a consolidated licensing process in order to issue a license under part I of the Federal Power Act (16 U.S.C. 792 et seq.) for each such project.

(d) CANDIDATE PROJECT IDENTIFICATION.—Not later than 1 year after the date of enactment of this Act, the Commission, in consultation with the head of any applicable Federal or State agency or Indian tribe and licensees, shall identify and solicit candidate projects to participate in the pilot program established under subsection (c). In order to participate in such pilot program a project shall meet the following criteria:

(1) The current license for the project expires between 2019 and 2029 or the project is not licensed under part I of the Federal Power Act (16 U.S.C. 792 et seq.).

(2) The project is located within the same watershed as other projects that are eligible to participate in the pilot program.

(3) The project is located in sufficiently close proximity and has environmental conditions that are sufficiently similar to other projects that are eligible to participate in the pilot program so that watershed-wide studies and information may be developed, thereby significantly reducing the need for, and scope of, individual project-level studies and information.

(e) DESIGNATION OF INDIVIDUAL PROJECTS AS A SINGLE GROUP.—The Commission may designate a group of projects to be considered together in a consolidated licensing process under the pilot program established under subsection (c). The Commission may designate such a group only if each licensee (or applicant) for a project in the group, on a voluntary basis and in writing, agrees—

(1) to participate in the pilot program; and

(2) to a cost-sharing arrangement with other licensees (or applicants) and applicable Federal and State agencies with respect to the conduct of watershed-wide studies to be considered in support of the license applications for the group of projects.

(f) PROJECT LICENSE TERMS.—The Commission may change the term of any existing license for an individual licensee in a group designated under subsection (e) by up to 5 years—

(1) to provide sufficient time to develop a consolidated study plan for—

(A) studies for individual projects in the group, as necessary; and

(B) relevant watershed-wide studies for purposes of the consolidated licensing process under the pilot program established under subsection (c) that will be applicable to each project in the group; and

(2) to align the terms of the existing licenses such that they expire on the same date.

(g) MEMORANDUM OF UNDERSTANDING.—The Commission shall, to the extent practicable, enter into a memorandum of understanding with any applicable Federal or State agency or Indian tribe to implement the pilot program established under subsection (c).

(h) INITIAL REPORT.—Not later than 3 months after the date of the initial workshop held pursuant to subsection (b), the Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that includes—

(1) a summary of the public comments received as part of such initial workshop; and

(2) a preliminary plan for identifying and soliciting participants in the pilot program established under subsection (c).

(i) INTERIM REPORT.—Not later than 4 years after the establishment of the pilot program under subsection (c), the Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that includes—

(1) a description of the status of the pilot program, including a description of the individual projects that are participating in the pilot program and the watersheds in which such projects are located; or

(2) if no projects are participating in the pilot program, a summary of any barriers the Commission has identified to proceeding with the pilot program and the reasons provided by potential participants for their preference for using an individual license process.

#### **SEC. 5. INTERAGENCY COMMUNICATIONS AND COOPERATION.**

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

**“SEC. 37. INTERAGENCY COMMUNICATIONS AND COOPERATION.**

“(a) EX PARTE COMMUNICATIONS.—Interagency communications relating to the preparation of environmental documents under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an application for a license under this part, or to the licensing process for a license under this part, shall not be considered to be ex parte communications under Commission rules.

“(b) PARTICIPATION IN PROCEEDINGS.—Interagency cooperation, at any time, in the preparation of environmental documents under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an application for a license under this part, or in the licensing process for a license under this part, shall not preclude an agency from participating in a licensing proceeding under this part.

“(c) SEPARATION OF STAFF.—Notwithstanding subsection (a), to the extent the Commission determines necessary, the Commission may require Federal and State agencies participating as cooperating agencies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to demonstrate a separation of staff that are cooperating with the Commission with respect to a proceeding under this part from staff that may participate in an intervention in the applicable proceeding.”.

**SEC. 6. HYDROELECTRIC PRODUCTION INCENTIVES AND EFFICIENCY IMPROVEMENTS.**

(a) HYDROELECTRIC PRODUCTION INCENTIVES.—Section 242 of the Energy Policy Act of 2005 (42 U.S.C. 15881) is amended—

- (1) in subsection (c), by striking “10” and inserting “20”;
- (2) in subsection (f), by striking “20” and inserting “30”; and
- (3) in subsection (g), by striking “each of the fiscal years 2006 through 2015” and inserting “each of fiscal years 2017 through 2026”.

(b) HYDROELECTRIC EFFICIENCY IMPROVEMENT.—Section 243(c) of the Energy Policy Act of 2005 (42 U.S.C. 15882(c)) is amended by striking “each of the fiscal years 2006 through 2015” and inserting “each of fiscal years 2017 through 2026”.

**SEC. 7. TECHNICAL AMENDMENTS.**

(a) ALTERNATIVE CONDITIONS.—Section 33(a)(2)(B) of the Federal Power Act (16 U.S.C. 823d(a)(2)(B)) is amended, in the matter preceding clause (i), by inserting “deemed necessary” before “by the Secretary”.

(b) LICENSES.—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended by striking “adequate protection and utilization of such reservation” and all that follows through “That no license affecting the navigable capacity” and inserting “adequate protection and utilization of such reservation. The license applicant and any party to the proceeding shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of no more than 90 days, on any disputed issues of material fact with respect to such conditions. All disputed issues of material fact raised by any party shall be determined in a single trial-type hearing to be conducted by the relevant resource agency in accordance with the regulations promulgated under this subsection and within the time frame established by the Commission for each license proceeding. Within 90 days of the date of enactment of the Energy Policy Act of 2005, the Secretaries of the Interior, Commerce, and Ag-

riculture shall establish jointly, by rule, the procedures for such expedited trial-type hearing, including the opportunity to undertake discovery and cross-examine witnesses, in consultation with the Federal Energy Regulatory Commission: *Provided further*, That no license affecting the navigable capacity”.

**SEC. 8. IMPROVING CONSULTATION WITH INDIAN TRIBES.**

(a) GUIDANCE DOCUMENT.—

(1) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Federal Energy Regulatory Commission and the Secretary of the Interior shall prepare, in consultation with interested Indian tribes, licensees under part I of the Federal Power Act, and the public, a guidance document that identifies best practices for the Commission, Federal and State resource agencies, Indian tribes, and applicants for licenses under part I of the Federal Power Act for effective engagement of Indian tribes in the consideration of applications for licenses under part I of the Federal Power Act that may affect an Indian reservation, a treaty, or other right of an Indian tribe.

(2) UPDATES.—The Commission and Secretary shall update the guidance document prepared under paragraph (1) every 10 years.

(3) PUBLIC PARTICIPATION.—In preparing or updating the guidance document, the Commission and the Secretary shall convene public meetings at different locations in the United States, and shall provide an opportunity for written public comments.

(b) PUBLIC WORKSHOPS.—

(1) IN GENERAL.—Not later than one year after preparing or updating the guidance document under subsection (a), the Commission shall convene public workshops, held at different locations in the United States, to inform and educate Commission staff, Federal and State resource agencies, Indian tribes, applicants for licenses under part I of the Federal Power Act, and interested members of the public, on the best practices identified in the guidance document.

(2) CONSULTATION.—In preparing the agenda for such workshops, the Commission shall consult with the Secretary of the Interior, interested Indian tribes, and licensees under part I of the Federal Power Act.

**SEC. 9. TRIBAL MANDATORY CONDITIONS.**

(a) IN GENERAL.—Section 4 of the Federal Power Act (16 U.S.C. 797) is amended—

(1) in subsection (e), in the first proviso, by inserting “, or, in the case of tribal land, subject to subsection (h), the Indian tribe having jurisdiction over the tribal land,” after “under whose supervision such reservation falls”; and

(2) by adding at the end the following:

“(h) TRIBAL MANDATORY CONDITIONS.—

“(1) CRITERIA.—An Indian tribe may deem conditions necessary under the first proviso of subsection (e) only if the Secretary of the Interior (referred to in this subsection as the ‘Secretary’) determines that the Indian tribe has—

“(A) confirmed the intent of the Indian tribe to deem conditions necessary under the first proviso of subsection (e) by resolution or other official action by the governing body of the Indian tribe;

“(B) demonstrated financial stability and financial management capability over the 3-fiscal-year period preceding the date of the determination of the Secretary under this paragraph; and

“(C) demonstrated the ability to plan, conduct, and administer all services, functions, and activities that would otherwise be administered by the Secretary with respect to deeming conditions necessary on tribal land under the first proviso of subsection (e).

“(2) DETERMINATION ON REQUEST.—On request of an Indian tribe, not later than 1 year after the date on which the Secretary receives the request, the Secretary shall make the determination under paragraph (1).

“(3) WITHDRAWAL OF DETERMINATION.—

“(A) IN GENERAL.—Subject to subparagraph (B), if the Secretary determines that an Indian tribe no longer meets the criteria under paragraph (1), the Secretary may withdraw the determination under paragraph (2).

“(B) NOTICE AND OPPORTUNITY TO RESPOND.—Before withdrawing a determination under subparagraph (A), the Secretary shall provide to the Indian tribe—

“(i) notice of the proposed withdrawal; and

“(ii) an opportunity to respond and, if necessary, address the deficiencies identified by the Secretary.”

(b) ALTERNATIVE CONDITIONS.—Section 33(a) of the Federal Power Act (16 U.S.C. 823d(a)) is amended—

(1) in paragraph (1), by inserting “or an Indian tribe” before “deems a condition”;

(2) in paragraph (2), by inserting “or Indian tribe” after “the Secretary” each place it appears;

(3) in paragraph (3), by inserting “or Indian tribe” after “the Secretary” each place it appears;

(4) in paragraph (4)—

(A) by inserting “or Indian tribe” before “concerned shall submit”;

(B) by inserting “or Indian tribe” before “gave equal consideration”;

(C) by inserting “or Indian tribe” after “may be available to the Secretary”;

(D) by inserting “or Indian tribe” before “shall also submit,”; and

(E) by striking “available to the Secretary and relevant to the Secretary’s decision” and inserting “available to the Secretary or Indian tribe and relevant to the decision of the Secretary or Indian tribe”; and

(5) in paragraph (5)—

(A) by striking “Secretary’s final condition” and inserting “final condition of the Secretary or Indian tribe”;

(B) by inserting “or Indian tribe” after “consult with the Secretary”;

(C) by inserting “or Indian tribe” before “may accept the Dispute Resolution”;

(D) by inserting “or Indian tribe” after “advisory unless the Secretary”;

(E) by inserting “or Indian tribe” before “shall submit the advisory and”; and

(F) by striking “Secretary’s final written determination” and inserting “final written determination of the Secretary or Indian tribe”.

**SEC. 10. CONSIDERATION OF INVASIVE SPECIES.**

Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by inserting after “the Secretary of Commerce.” the following: “In prescribing a fishway, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall consider the threat of invasive species.”.

