

119TH CONGRESS
2D SESSION

S. _____

To require the Secretary of the Army to issue guidance relating to the review of applications for alteration or temporary or permanent occupation or use of certain hydropower projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. DAINES (for himself and Ms. HASSAN) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To require the Secretary of the Army to issue guidance relating to the review of applications for alteration or temporary or permanent occupation or use of certain hydropower projects, 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. STANDARDIZED REVIEW PROCEDURES FOR HY-**
4 **DROPOWER PROJECTS.**

5 (a) DEFINITIONS.—In this section:

6 (1) COMPLETENESS REVIEW.—The term “com-
7 pleteness review” means a review by the Secretary

1 (or a designee) regarding whether a section 408 ap-
2 plication is complete.

3 (2) HYDROPOWER PROJECT.—The term “hy-
4 dropower project” means any non-Federal hydro-
5 power project requiring a license or exemption under
6 the Federal Power Act (16 U.S.C. 791a et seq.).

7 (3) SECRETARY.—The term “Secretary” means
8 the Secretary of the Army.

9 (4) SECTION 408 APPLICATION.—The term
10 “section 408 application” means an application re-
11 lating to a hydropower project for permission under
12 section 14 of the Act of March 3, 1899 (30 Stat.
13 1152, chapter 425; 33 U.S.C. 408), for an alter-
14 ation, or temporary or permanent occupation or use,
15 described in subsection (a) of that section.

16 (b) STANDARDIZED REVIEW PROCEDURES.—

17 (1) MANDATORY GUIDANCE.—Not later than 1
18 year after the date of enactment of this Act, the
19 Secretary shall issue guidance establishing the fol-
20 lowing:

21 (A) APPLICATION CHECKLIST.—A stand-
22 ardized checklist of required materials for sec-
23 tion 408 applications, to be developed in con-
24 sultation with—

1 (i) the Federal Energy Regulatory
2 Commission;

3 (ii) the Hydroelectric Design Center
4 of the Corps of Engineers;

5 (iii) hydropower project operators; and

6 (iv) relevant industry associations.

7 (B) COMPLETENESS CRITERIA.—A clear
8 description of what constitutes a complete sec-
9 tion 408 application, including with respect
10 to—

11 (i) required documents and analyses;

12 (ii) formatting and submission re-
13 quirements; and

14 (iii) evidence of compliance with any
15 applicable Federal Energy Regulatory
16 Commission license.

17 (C) PHASED REVIEW PROCEDURES.—For
18 section 408 applications for which a phased de-
19 sign review is required—

20 (i) the specific scope and objectives of
21 each review phase;

22 (ii) a timeline for each review phase;

23 (iii) an applicable definition of the
24 terms “fatal flaw”, “final quality assur-
25 ance”, and “technical review”; and

1 (iv) a clear statement that a complete-
2 ness review shall not include—

3 (I) detailed technical analysis; or

4 (II) any engineering-related judg-
5 ment with respect to design adequacy.

6 (D) ESCALATION PROCEDURES.—Proce-
7 dures for referring a section 408 application to
8 the head of the applicable Division Office of the
9 Corps of Engineers or an official at the Corps
10 of Engineers headquarters in any case in which
11 a deadline applicable to the section 408 applica-
12 tion is not met.

13 (2) SCOPE OF COMPLETENESS REVIEWS.—The
14 guidance issued under paragraph (1) shall establish
15 that a completeness review shall be limited to
16 verification that—

17 (A) all required documents have been sub-
18 mitted;

19 (B) those documents are in the required
20 format; and

21 (C) the section 408 application addresses
22 the applicable requirements of the checklist
23 under paragraph (1)(A).

24 (3) PROHIBITIONS.—In conducting a complete-
25 ness review, the Secretary (or a designee) may not—

1 (A) conduct a detailed technical review of
2 any engineering calculations;

3 (B) evaluate the design adequacy of, or al-
4 ternative approaches to, the hydropower project
5 that is the subject of the section 408 applica-
6 tion;

7 (C) request any design modification to, or
8 additional analysis of, the hydropower project
9 that is the subject of the section 408 applica-
10 tion;

11 (D) consider any factor other than a factor
12 included in the standardized checklist under
13 paragraph (1)(A); or

14 (E) require compliance with any environ-
15 mental standard that was not established by a
16 Federal or relevant State agency before the
17 date of submission of the section 408 applica-
18 tion.