

Union Calendar No. 110

115TH CONGRESS
1ST SESSION

H. R. 1873

[Report No. 115–165, Part I]

To amend the Federal Land Policy and Management Act of 1976 to enhance the reliability of the electricity grid and reduce the threat of wildfires to and from electric transmission and distribution facilities on Federal lands by facilitating vegetation management on such lands.

IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2017

Mr. LAMALFA (for himself, Mr. SCHRADER, Ms. CHENEY, Mr. COSTA, Mr. WESTERMAN, and Mr. O'HALLERAN) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JUNE 12, 2017

Additional sponsors: Mr. PEARCE, Ms. SINEMA, Mr. JONES, Mr. AMODEI, Mr. PETERSON, Mr. SIMPSON, Mr. WEBER of Texas, Mr. MEADOWS, Mr. THOMAS J. ROONEY of Florida, Mr. CALVERT, Mr. KIND, Ms. MCSALLY, Mr. DENHAM, Mr. MCCLINTOCK, and Mr. EMMER

JUNE 12, 2017

Reported from the Committee on Natural Resources with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

JUNE 12, 2017

The Committee on Agriculture discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on April 4, 2017]

A BILL

To amend the Federal Land Policy and Management Act of 1976 to enhance the reliability of the electricity grid and reduce the threat of wildfires to and from electric transmission and distribution facilities on Federal lands by facilitating vegetation management on such lands.

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.**

4 *This Act may be cited as the “Electricity Reliability*
5 *and Forest Protection Act”.*

6 **SEC. 2. VEGETATION MANAGEMENT, FACILITY INSPECTION,**
7 **AND OPERATION AND MAINTENANCE ON FED-**
8 **ERAL LANDS CONTAINING ELECTRIC TRANS-**
9 **MISSION AND DISTRIBUTION FACILITIES.**

10 *(a) IN GENERAL.—Title V of the Federal Land Policy*
11 *and Management Act of 1976 (43 U.S.C. 1761 et seq.) is*
12 *amended by adding at the end the following new section:*

13 **“SEC. 512. VEGETATION MANAGEMENT, FACILITY INSPEC-**
14 **TION, AND OPERATION, AND MAINTENANCE**
15 **RELATING TO ELECTRIC TRANSMISSION AND**
16 **DISTRIBUTION FACILITY RIGHTS-OF-WAY.**

17 *“(a) GENERAL DIRECTION.—In order to enhance the*
18 *reliability of the electricity grid and reduce the threat of*
19 *wildfires to and from electric transmission and distribution*
20 *rights-of-way and related facilities and adjacent property,*
21 *the Secretary, with respect to public lands and other lands*
22 *under the jurisdiction of the Secretary, and the Secretary*
23 *of Agriculture, with respect to National Forest System*
24 *lands, shall provide direction to ensure that all existing and*
25 *future rights-of-way, however established (including by*

1 *grant, special use authorization, and easement), for elec-*
2 *trical transmission and distribution facilities on such lands*
3 *include provisions for utility vegetation management, facil-*
4 *ity inspection, and operation and maintenance activities*
5 *that, while consistent with applicable law—*

6 “(1) *are developed in consultation with the hold-*
7 *er of the right-of-way;*

8 “(2) *enable the owner or operator of a facility to*
9 *operate and maintain the facility in good working*
10 *order and to comply with Federal, State and local*
11 *electric system reliability and fire safety require-*
12 *ments, including reliability standards established by*
13 *the Electric Reliability Organization as defined under*
14 *16 U.S.C. 824o(a) and plans to meet such reliability*
15 *standards;*

16 “(3) *minimize the need for case-by-case or an-*
17 *nuual approvals for—*

18 “(A) *routine vegetation management, facil-*
19 *ity inspection, and operation and maintenance*
20 *activities within existing electrical transmission*
21 *and distribution rights-of-way; and*

22 “(B) *utility vegetation management activi-*
23 *ties that are necessary to control hazard trees*
24 *within or adjacent to electrical transmission and*
25 *distribution rights-of-way; and*

1 “(4) when review is required, provide for expedited review and approval of utility vegetation management, facility inspection, and operation and maintenance activities, especially activities requiring prompt action to avoid an adverse impact on human safety or electric reliability to avoid fire hazards.

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7 “(b) *VEGETATION MANAGEMENT, FACILITY INSPECTION, AND OPERATION AND MAINTENANCE PLANS.*—

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9 “(1) *DEVELOPMENT AND SUBMISSION.*—Consistent with subsection (a), the Secretary and the Secretary of Agriculture shall provide owners and operators of electric transmission and distribution facilities located on lands described in such subsection with the option to develop and submit a vegetation management, facility inspection, and operation and maintenance plan, that at each transmission or distribution owner or operator’s discretion may cover some or all of the owner or operator’s transmission and distribution rights-of-way on Federal lands, for approval to the Secretary with jurisdiction over the lands. A plan under this paragraph shall enable the owner or operator of a facility, at a minimum, to comply with applicable Federal, State, and local electric system reliability and fire safety requirements, as provided in

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1 subsection (a)(2). The Secretaries shall not have the
2 authority to modify those requirements.

3 “(2) *REVIEW AND APPROVAL PROCESS.*—The
4 Secretary and the Secretary of Agriculture shall joint-
5 ly develop a consolidated and coordinated process for
6 review and approval of—

7 “(A) vegetation management, facility in-
8 spection, and operation and maintenance plans
9 submitted under paragraph (1) that—

10 “(i) assures prompt review and ap-
11 proval not to exceed 90 days;

12 “(ii) includes timelines and bench-
13 marks for agency comments to submitted
14 plans and final approval of such plans;

15 “(iii) is consistent with applicable law;
16 and

17 “(iv) minimizes the costs of the process
18 to the reviewing agency and the entity sub-
19 mitting the plans; and

20 “(B) amendments to the plans in a prompt
21 manner if changed conditions necessitate a modi-
22 fication to a plan.

23 “(3) *NOTIFICATION.*—The review and approval
24 process under paragraph (2) shall—

1 “(A) include notification by the agency of
2 any changed conditions that warrant a modi-
3 fication to a plan;

4 “(B) provide an opportunity for the owner
5 or operator to submit a proposed plan amend-
6 ment to address directly the changed condition;
7 and

8 “(C) allow the owner or operator to con-
9 tinue to implement those elements of the ap-
10 proved plan that do not directly and adversely
11 affect the condition precipitating the need for
12 modification.

13 “(4) CATEGORICAL EXCLUSION PROCESS.—The
14 Secretary and the Secretary of Agriculture shall
15 apply his or her categorical exclusion process under
16 the National Environmental Policy Act of 1969 (42
17 U.S.C. 4321 et seq.) to plans developed under this
18 subsection on existing transmission and distribution
19 rights-of-way under this subsection.

20 “(5) IMPLEMENTATION.—A plan approved under
21 this subsection shall become part of the authorization
22 governing the covered right-of-way and hazard trees
23 adjacent to the right-of-way. If a vegetation manage-
24 ment plan is proposed for an existing transmission or
25 distribution facility concurrent with the siting of a

1 *new transmission or distribution facility, necessary*
2 *reviews shall be completed as part of the siting proc-*
3 *ess or sooner. Once the plan is approved, the owner*
4 *or operator shall provide the agency with only a noti-*
5 *fication of activities anticipated to be undertaken in*
6 *the coming year, a description of those activities, and*
7 *certification that the activities are in accordance with*
8 *the plan.*

9 “(6) *DEFINITIONS.—In this subsection:*

10 “(A) *VEGETATION MANAGEMENT, FACILITY*
11 *INSPECTION, AND OPERATION AND MAINTENANCE*
12 *PLAN.—The term ‘vegetation management, facil-*
13 *ity inspection, and operation and maintenance*
14 *plan’ means a plan that—*

15 “(i) *is prepared by the owner or oper-*
16 *ator of one or more electrical transmission*
17 *or distribution facilities to cover one or*
18 *more electric transmission and distribution*
19 *rights-of-way; and*

20 “(ii) *provides for the long-term, cost-ef-*
21 *fective, efficient and timely management of*
22 *facilities and vegetation within the width of*
23 *the right-of-way and adjacent Federal lands*
24 *to enhance electricity reliability, promote*
25 *public safety, and avoid fire hazards.*

1 “(B) *OWNER OR OPERATOR.*—*The terms*
2 *‘owner’ and ‘operator’ include contractors or*
3 *other agents engaged by the owner or operator of*
4 *a facility.*

5 “(C) *HAZARD TREE.*—*The term ‘hazard*
6 *tree’ means any tree inside the right-of-way or*
7 *located outside the right-of-way that has been*
8 *designated, prior to tree failure, by either the*
9 *owner or operator of a transmission or distribu-*
10 *tion facility, or the Secretary or the Secretary of*
11 *Agriculture, to be likely to fail and cause a high*
12 *risk of injury, damage, or disruption within 10*
13 *feet or less of an electric power line or related*
14 *structure if it fell.*

15 “(c) *RESPONSE TO EMERGENCY CONDITIONS.*—*If vege-*
16 *tation on Federal lands within, or hazard trees on Federal*
17 *lands adjacent to, an electrical transmission or distribution*
18 *right-of-way granted by the Secretary or the Secretary of*
19 *Agriculture has contacted or is in imminent danger of con-*
20 *tacting one or more electric transmission or distribution*
21 *lines, the owner or operator of the transmission or distribu-*
22 *tion lines—*

23 “(1) *may prune or remove the vegetation or haz-*
24 *ard tree to avoid the disruption of electric service and*
25 *risk of fire; and*

1 “(2) shall notify the appropriate local agent of
2 the relevant Secretary not later than 24 hours after
3 such removal.

4 “(d) *COMPLIANCE WITH APPLICABLE RELIABILITY*
5 *AND SAFETY STANDARDS.*—If vegetation on Federal lands
6 within or adjacent to an electrical transmission or distribu-
7 tion right-of-way under the jurisdiction of each Secretary
8 does not meet clearance requirements under standards es-
9 tablished by the Electric Reliability Organization as de-
10 fined under 16 U.S.C. 824o(a), or by State and local au-
11 thorities, and the Secretary having jurisdiction over the
12 lands has failed to act to allow a transmission or distribu-
13 tion facility owner or operator to conduct vegetation man-
14 agement activities within 3 business days after receiving
15 a request to allow such activities, the owner or operator
16 may, after notifying the Secretary, conduct such vegetation
17 management activities to meet those clearance require-
18 ments.

19 “(e) *REPORTING REQUIREMENT.*—The Secretary or
20 Secretary of Agriculture shall report requests and actions
21 made under subsections (c) and (d) annually on each Sec-
22 retary’s website.

23 “(f) *LIABILITY.*—An owner or operator of a trans-
24 mission or distribution facility shall not be held liable for

1 *wildfire damage, loss or injury, including the cost of fire*
2 *suppression, if—*

3 “(1) *the Secretary or the Secretary of Agri-*
4 *culture fails to allow the owner or operator to operate*
5 *consistently with an approved vegetation manage-*
6 *ment, facility inspection, and operation and mainte-*
7 *nance plan on Federal lands under the relevant Sec-*
8 *retary’s jurisdiction within or adjacent to a right-of-*
9 *way to comply with Federal, State or local electric*
10 *system reliability and fire safety standards, including*
11 *standards established by the Electric Reliability Or-*
12 *ganization as defined under 16 U.S.C. 824o(a); or*

13 “(2) *the Secretary or the Secretary of Agri-*
14 *culture fails to allow the owner or operator of the*
15 *transmission or distribution facility to perform ap-*
16 *propriate vegetation management activities in re-*
17 *sponse to a hazard tree as defined under subsection*
18 *(b)(6), or a tree in imminent danger of contacting the*
19 *owner’s or operator’s transmission or distribution fa-*
20 *cility.*

21 “(g) *TRAINING AND GUIDANCE.—In consultation with*
22 *the electric utility industry, the Secretary and the Secretary*
23 *of Agriculture are encouraged to develop a program to train*
24 *personnel of the Department of the Interior and the Forest*
25 *Service involved in vegetation management decisions on*

1 *rights-of-way relating to transmission and distribution fa-*
2 *cilities to ensure that such personnel—*

3 “(1) *understand electric system reliability and*
4 *fire safety requirements, including reliability stand-*
5 *ards established by the Electric Reliability Organiza-*
6 *tion as defined under 16 U.S.C. 824o(a);*

7 “(2) *assist owners and operators of transmission*
8 *and distribution facilities to comply with applicable*
9 *electric reliability and fire safety requirements; and*

10 “(3) *encourage and assist willing owners and op-*
11 *erators of transmission and distribution facilities to*
12 *incorporate on a voluntary basis vegetation manage-*
13 *ment practices to enhance habitats and forage for pol-*
14 *linators and for other wildlife so long as the practices*
15 *are compatible with the integrated vegetation man-*
16 *agement practices necessary for reliability and safety.*

17 “(h) *IMPLEMENTATION.—The Secretary of the Interior*
18 *and the Secretary of Agriculture shall—*

19 “(1) *not later than one year after the date of the*
20 *enactment of this section, prescribe regulations, or*
21 *amend existing regulations, to implement this section;*
22 *and*

23 “(2) *not later than two years after the date of the*
24 *enactment of this section, finalize regulations, or*
25 *amend existing regulations, to implement this section.*

1 “(i) *EXISTING VEGETATION MANAGEMENT, FACILITY*
2 *INSPECTION AND OPERATION AND MAINTENANCE PLANS.*—
3 *Nothing in this section requires an owner or operator to*
4 *develop and submit a vegetation management, facility in-*
5 *spection, and operation and maintenance plan if one has*
6 *already been approved by the Secretary or Secretary of Ag-*
7 *riculture before the date of the enactment of this section.*”.

8 (b) *CLERICAL AMENDMENT.*—*The table of sections for*
9 *the Federal Land Policy and Management Act of 1976 (43*
10 *U.S.C. 1761 et seq.), is amended by inserting after the item*
11 *relating to section 511 the following new item:*

“Sec. 512. *Vegetation management, facility inspection, and operation and main-*
tenance relating to electric transmission and distribution facility
rights-of-way.”.

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