

115TH CONGRESS
1ST SESSION

S. 2160

To establish a pilot program under which the Chief of the Forest Service may use alternative dispute resolution in lieu of judicial review for certain projects.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 2017

Mr. DAINES (for himself, Mr. RISCH, and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To establish a pilot program under which the Chief of the Forest Service may use alternative dispute resolution in lieu of judicial review for certain projects.

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 “Protect Collaboration
5 for Healthier Forests Act”.

6 **SEC. 2. ALTERNATIVE DISPUTE RESOLUTION PILOT PRO-**
7 **GRAM.**

8 (a) DEFINITIONS.—In this Act:

1 (1) PARTICIPANT.—The term “participant”
 2 means an individual or entity that files an objection
 3 or scoping comments on a draft environmental docu-
 4 ment with respect to a project that is subject to an
 5 objection at the project level under part 218 of title
 6 36, Code of Federal Regulations (or successor regu-
 7 lations).

8 (2) PILOT PROGRAM.—The term “pilot pro-
 9 gram” means the pilot program established under
 10 subsection (b).

11 (3) PROJECT.—The term “project” means a
 12 project described in subsection (c).

13 (4) SECRETARY.—The term “Secretary” means
 14 the Secretary of Agriculture, acting through the
 15 Chief of the Forest Service.

16 (b) ARBITRATION PILOT PROGRAM.—Not later than
 17 180 days after the date of enactment of this Act, the Sec-
 18 retary shall establish within Region 1 of the Forest Service
 19 an arbitration pilot program as an alternative dispute res-
 20 olution process in lieu of judicial review for projects de-
 21 scribed in subsection (c).

22 (c) DESCRIPTION OF PROJECTS.—

23 (1) IN GENERAL.—The Secretary, at the sole
 24 discretion of the Secretary, may designate for arbi-
 25 tration projects that—

1 (A)(i) are developed through a collabo-
 2 rative process (within the meaning of section
 3 603(b)(1)(C) of the Healthy Forest Restoration
 4 Act of 2003 (16 U.S.C. 6591b(b)(1)(C)));

5 (ii) are carried out under the Collaborative
 6 Forest Landscape Restoration Program estab-
 7 lished under section 4003 of the Omnibus Pub-
 8 lic Land Management Act of 2009 (16 U.S.C.
 9 7303); or

10 (iii) are identified in a community wildfire
 11 protection plan (as defined in section 101 of the
 12 Healthy Forests Restoration Act of 2003 (16
 13 U.S.C. 6511));

14 (B) have as a purpose—

15 (i) hazardous fuels reduction; or

16 (ii) mitigation of insect or disease in-
 17 festation; and

18 (C) are located, in whole or in part, in a
 19 wildland-urban interface (as defined in section
 20 101 of the Healthy Forests Restoration Act of
 21 2003 (16 U.S.C. 6511)).

22 (2) INCLUSION.—In designating projects for ar-
 23 bitration, the Secretary may include projects that re-
 24 ceive categorical exclusions for purposes of the Na-

1 tional Environmental Policy Act of 1969 (42 U.S.C.
2 4321 et seq.).

3 (d) LIMITATION ON NUMBER OF PROJECTS.—The
4 Secretary may not designate for arbitration under the
5 pilot program more than 2 projects per calendar year.

6 (e) ARBITRATORS.—

7 (1) APPOINTMENT.—The Secretary shall de-
8 velop and publish a list of not fewer than 15 individ-
9 uals eligible to serve as arbitrators for the pilot pro-
10 gram.

11 (2) QUALIFICATIONS.—To be eligible to serve
12 as an arbitrator under this subsection, an individual
13 shall be—

14 (A) certified by—

15 (i) the American Arbitration Associa-
16 tion; or

17 (ii) a State arbitration program; or

18 (B) a fully retired Federal or State judge.

19 (f) INITIATION OF ARBITRATION.—

20 (1) IN GENERAL.—Not later than 7 days after
21 the date on which the Secretary issues the final deci-
22 sion with respect to a project, the Secretary shall—

23 (A) notify each applicable participant and
24 the Clerk of the United States District Court
25 for the district in which the project is located

1 that the project has been designated for arbi-
2 tration in accordance with this Act; and

3 (B) include in the decision document a
4 statement that the project has been designated
5 for arbitration.

6 (2) INITIATION.—

7 (A) IN GENERAL.—A participant may ini-
8 tiate arbitration regarding a project that has
9 been designated for arbitration under this Act
10 in accordance with—

11 (i) sections 571 through 584 of title
12 5, United States Code; and

13 (ii) this paragraph.

14 (B) REQUIREMENTS.—A request to initiate
15 arbitration under subparagraph (A) shall—

16 (i) be filed not later than the date
17 that is 30 days after the date of the notifi-
18 cation by the Secretary under paragraph
19 (1); and

20 (ii) include an alternative proposal for
21 the applicable project that describes each
22 modification sought by the participant with
23 respect to the project.

24 (C) NO JUDICIAL REVIEW.—A project for
25 which arbitration is initiated under subpara-

1 graph (A) shall not be subject to judicial re-
 2 view.

3 (3) COMPELLED ARBITRATION.—

4 (A) MOTION TO COMPEL ARBITRATION.—

5 (i) IN GENERAL.—If a participant
 6 seeks judicial review of a final decision
 7 with respect to a project, the Secretary
 8 may file in the applicable court a motion to
 9 compel arbitration in accordance with this
 10 Act.

11 (ii) FEES AND COSTS.—For any mo-
 12 tion described in clause (i) for which the
 13 Secretary is the prevailing party, the appli-
 14 cable court shall award to the Secretary—

15 (I) court costs; and

16 (II) attorney's fees.

17 (B) ARBITRATION COMPELLED BY
 18 COURT.—If a participant seeks judicial review
 19 of a project, the applicable court shall compel
 20 arbitration in accordance with this Act.

21 (g) SELECTION OF ARBITRATOR.—For each arbitra-
 22 tion commenced under this Act—

23 (1) the Secretary shall propose 3 arbitrators
 24 from the list published under subsection (e)(1); and

1 (2) the applicable participant shall select 1 arbi-
 2 trator from the list of arbitrators proposed under
 3 paragraph (1).

4 (h) RESPONSIBILITIES OF ARBITRATOR.—

5 (1) IN GENERAL.—An arbitrator selected under
 6 subsection (e)—

7 (A) shall address all claims of each party
 8 seeking arbitration with respect to a project
 9 under this Act; but

10 (B) may consolidate into a single arbitra-
 11 tion all requests to initiate arbitration by all
 12 participants with respect to a project.

13 (2) SELECTION OF PROPOSALS.—An arbitrator
 14 shall make a decision with respect to each applicable
 15 request for initiation of arbitration under this Act
 16 by—

17 (A) selecting the project, as approved by
 18 the Secretary;

19 (B) selecting an alternative proposal sub-
 20 mitted by the applicable participant; or

21 (C) rejecting both projects described in
 22 subparagraphs (A) and (B).

23 (3) LIMITATIONS.—

24 (A) ADMINISTRATIVE RECORD.—The evi-
 25 dence before an arbitrator under this subsection

1 shall be limited solely to the administrative
2 record for the project.

3 (B) NO MODIFICATIONS TO PROPOSALS.—

4 An arbitrator may not modify any proposal con-
5 tained in a request for initiation of arbitration
6 of a participant under this Act.

7 (i) INTERVENTION.—A party may intervene in an ar-
8 bitration under this Act if, with respect to the project to
9 which the arbitration relates, the party—

10 (1) meets the requirements of Rule 24(a) of the
11 Federal Rules of Civil Procedure (or a successor
12 rule); or

13 (2) participated in the applicable collaborative
14 process referred to in clause (i) or (ii) of subsection
15 (c)(1)(A).

16 (j) SCOPE OF REVIEW.—In carrying out arbitration
17 for a project, the arbitrator shall set aside the agency ac-
18 tion, findings, and conclusions found to be arbitrary, ca-
19 pricious, an abuse of discretion, or otherwise not in ac-
20 cordance with law, within the meaning of section
21 706(2)(A) of title 5, United States Code.

22 (k) DEADLINE FOR COMPLETION OF ARBITRA-
23 TION.—Not later than 90 days after the date on which
24 a request to initiate arbitration is filed under subsection

1 (f)(2), the arbitrator shall make a decision with respect
 2 to the request to initiate arbitration.

3 (l) EFFECT OF ARBITRATION DECISION.—A decision
 4 of an arbitrator under this Act—

5 (1) shall not be considered to be a major Fed-
 6 eral action;

7 (2) shall be binding; and

8 (3) shall not be subject to judicial review, ex-
 9 cept as provided in section 10(a) of title 9, United
 10 States Code.

11 (m) ADMINISTRATIVE COSTS.—

12 (1) IN GENERAL.—The Secretary shall—

13 (A) be solely responsible for the profes-
 14 sional fees of arbitrators participating in the
 15 pilot program; and

16 (B) use funds made available to the Sec-
 17 retary and not otherwise obligated to carry out
 18 subparagraph (A).

19 (2) ATTORNEY'S FEES.—No arbitrator may
 20 award attorney's fees in any arbitration brought
 21 under this Act.

22 (n) REPORTS.—

23 (1) IN GENERAL.—Not later than 1 year after
 24 the date on which the pilot program is established,
 25 and annually thereafter, the Secretary shall submit

1 to the Committee on Agriculture, Nutrition, and
2 Forestry and the Committee on Energy and Natural
3 Resources of the Senate and the Committee on Nat-
4 ural Resources of the House of Representatives, and
5 publish on the website of Region 1 of the Forest
6 Service, a report of not longer than 10 pages de-
7 scribing the implementation of the pilot program for
8 the applicable year, including—

9 (A) the reasons for selecting certain
10 projects for arbitration;

11 (B) an evaluation of the arbitration proc-
12 ess, including any recommendations for im-
13 provements to the process;

14 (C) a description of the outcome of each
15 arbitration; and

16 (D) a summary of the impacts of each out-
17 come described in subparagraph (C) on the
18 timeline for implementation and completion of
19 the applicable project.

20 (2) GAO REVIEWS AND REPORTS.—

21 (A) INITIAL REVIEW.—Not later than 2
22 years after the date on which the pilot program
23 is established, the Comptroller General of the
24 United States shall review the implementation
25 by the Secretary of the pilot program.

1 (B) REVIEW ON TERMINATION.—On termi-
2 nation of the pilot program under subsection
3 (o), the Comptroller General of the United
4 States shall review the implementation by the
5 Secretary of the pilot program.

6 (C) REPORT.—On completion of the review
7 described in subparagraph (A) or (B), the
8 Comptroller General of the United States shall
9 submit to the Committee on Agriculture, Nutri-
10 tion, and Forestry and the Committee on En-
11 ergy and Natural Resources of the Senate and
12 the Committee on Natural Resources of the
13 House of Representatives a report describing
14 the results of the applicable review.

15 (o) TERMINATION.—The pilot program shall termi-
16 nate on the date that is 5 years after the date.

17 (p) EFFECT.—Nothing in this Act affects the respon-
18 sibility of the Secretary to comply with—

19 (1) the Endangered Species Act of 1973 (16
20 U.S.C. 1531 et seq.); or

21 (2) the National Environmental Policy Act of
22 1969 (42 U.S.C. 4321 et seq.).

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