

115TH CONGRESS  
1ST SESSION

# S. 2073

To establish a vegetation management pilot program on National Forest System land to better protect utility infrastructure from passing wildfire, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 2017

Mr. BENNET (for himself, Mr. GARDNER, and Mr. THUNE) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To establish a vegetation management pilot program on National Forest System land to better protect utility infrastructure from passing wildfire, 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.**

4 This Act may be cited as the “National Forest Sys-  
5 tem Vegetation Management Pilot Program Act of 2017”.

6 **SEC. 2. UTILITY INFRASTRUCTURE RIGHTS-OF-WAY VEGE-**  
7 **TATION MANAGEMENT PILOT PROGRAM.**

8 (a) DEFINITIONS.—In this section:

9 (1) NATIONAL FOREST SYSTEM LAND.—

1 (A) IN GENERAL.—The term “National  
2 Forest System land” means land within the Na-  
3 tional Forest System, as defined in section  
4 11(a) of the Forest and Rangeland Renewable  
5 Resources Planning Act of 1974 (16 U.S.C.  
6 1609(a)).

7 (B) EXCLUSIONS.—The term “National  
8 Forest System land” does not include—

- 9 (i) a National Grassland; or  
10 (ii) a land utilization project on land  
11 designated as a National Grassland and  
12 administered pursuant to sections 31, 32,  
13 and 33 of the Bankhead-Jones Farm Ten-  
14 ant Act (7 U.S.C. 1010, 1011, 1012).

15 (2) PASSING WILDFIRE.—The term “passing  
16 wildfire” means a wildfire that originates outside of  
17 a right-of-way.

18 (3) PILOT PROGRAM.—The term “pilot pro-  
19 gram” means the pilot program established by the  
20 Secretary under subsection (b).

21 (4) RIGHT-OF-WAY.—The term “right-of-way”  
22 means a special use authorization issued by the For-  
23 est Service allowing the placement of utility infra-  
24 structure.

1           (5) SECRETARY.—The term “Secretary” means  
2           the Secretary of Agriculture.

3           (6) UTILITY INFRASTRUCTURE.—The term  
4           “utility infrastructure” means electric transmission  
5           lines, natural gas infrastructure, or related struc-  
6           tures.

7           (b) ESTABLISHMENT.—To encourage owners or oper-  
8           ators of rights-of-way on National Forest System land to  
9           partner with the Forest Service to voluntarily conduct  
10          vegetation management projects on a proactive basis to  
11          better protect utility infrastructure from potential passing  
12          wildfires, the Secretary shall establish a limited, voluntary  
13          pilot program, in the manner described in this section, to  
14          conduct vegetation management projects on National For-  
15          est System land adjacent to or near those rights-of-way.

16          (c) ELIGIBLE PARTICIPANTS.—

17               (1) IN GENERAL.—A participant in the pilot  
18               program shall be the owner or operator of a right-  
19               of-way on National Forest System land.

20               (2) SELECTION PRIORITY.—In selecting partici-  
21               pants for the pilot program, the Secretary shall give  
22               priority to an owner or operator of a right-of-way  
23               that has worked with Forest Service fire scientists  
24               and used technologies, such as light detection and

1 ranging surveys, to improve utility infrastructure  
2 protection prescriptions.

3 (d) VEGETATION MANAGEMENT PROJECTS.—

4 (1) IN GENERAL.—A vegetation management  
5 project conducted under the pilot program shall in-  
6 volve only limited and selective vegetation manage-  
7 ment activities that—

8 (A) shall create the least disturbance rea-  
9 sonably necessary to protect utility infrastruc-  
10 ture from passing wildfires based on applicable  
11 models, including Forest Service fuel models;

12 (B) may include thinning, fuel reduction,  
13 creation and treatment of shaded fuel breaks,  
14 and other appropriate measures;

15 (C) shall only be conducted on National  
16 Forest System land—

17 (i) adjacent to the right-of-way of a  
18 participant; or

19 (ii) within 75 feet of the right-of-way  
20 of a participant; and

21 (D) shall not be conducted on—

22 (i) a component of the National Wil-  
23 derness Preservation System;

24 (ii) a designated wilderness study  
25 area; or

1 (iii) an inventoried roadless area.

2 (2) APPROVAL.—Each vegetation management  
3 project described in paragraph (1) (including each  
4 vegetation management activity described in sub-  
5 paragraphs (A) through (D) of that paragraph) shall  
6 be subject to approval by the Forest Service in ac-  
7 cordance with this section.

8 (e) PROJECT COSTS.—

9 (1) IN GENERAL.—Except as provided in para-  
10 graph (2), a participant in the pilot program shall  
11 be responsible for all costs, as determined by the  
12 Secretary, incurred in participating in the pilot pro-  
13 gram.

14 (2) FEDERAL FUNDING.—The Secretary may  
15 contribute funds for a vegetation management  
16 project conducted under the pilot program if the  
17 Secretary determines that the contribution is in the  
18 public interest.

19 (f) LIABILITY.—

20 (1) IN GENERAL.—Participation in the pilot  
21 program shall not affect any legal obligations or li-  
22 ability standards that—

23 (A) arise under the right-of-way for activi-  
24 ties in the right-of-way; or

1 (B) apply to fires resulting from causes  
2 other than activities conducted pursuant to an  
3 approved vegetation management project con-  
4 ducted under the pilot program.

5 (2) PROJECT WORK.—A participant in the pilot  
6 program shall not be liable to the United States for  
7 damage proximately caused by an activity conducted  
8 pursuant to an approved vegetation management  
9 project conducted under the pilot program, unless—

10 (A) the activity was carried out in a man-  
11 ner that was grossly negligent or that violated  
12 criminal law; or

13 (B) the damage was caused by the failure  
14 of the participant to comply with specific safety  
15 requirements expressly imposed by the Forest  
16 Service as a condition of participation in the  
17 pilot program.

18 (g) IMPLEMENTATION.—

19 (1) IN GENERAL.—Except as provided in para-  
20 graph (2), the Secretary shall use the authority of  
21 the Secretary under other laws (including regula-  
22 tions) to carry out the pilot program.

23 (2) MODIFICATION OF REGULATIONS.—In order  
24 to implement the pilot program in an efficient and  
25 expeditious manner, the Secretary may waive or

1 modify specific provisions of the Federal Acquisition  
2 Regulation, including waivers or modifications to  
3 allow for the formation of contracts or agreements  
4 on a noncompetitive basis.

5 (h) TREATMENT OF PROCEEDS.—Notwithstanding  
6 any other provision of law, the Secretary may—

7 (1) retain any funds provided to the Forest  
8 Service by a participant in the pilot program; and

9 (2) use funds retained under paragraph (1), in  
10 such amounts as may be appropriated, to carry out  
11 the pilot program.

12 (i) REPORT TO CONGRESS.—Not later than Decem-  
13 ber 31, 2019, and every 2 years thereafter through De-  
14 cember 31, 2027, the Secretary shall submit a report de-  
15 scribing the status of the pilot program and vegetation  
16 management projects conducted under the pilot program  
17 to—

18 (1) the Committee on Energy and Natural Re-  
19 sources of the Senate;

20 (2) the Committee on Agriculture, Nutrition,  
21 and Forestry of the Senate;

22 (3) the Committee on Natural Resources of the  
23 House of Representatives; and

24 (4) the Committee on Agriculture of the House  
25 of Representatives.

1       (j) DURATION.—The authority to carry out the pilot  
2 program, including any vegetation management project  
3 conducted under the pilot program, expires on December  
4 31, 2027.

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