

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To establish a utility infrastructure rights-of-way  
vegetation management pilot program.

**IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.**

**S.** \_\_\_\_\_

To provide for the reform and continuation of agricultural  
and other programs of the Department of Agriculture  
through fiscal year 2023, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. BENNET

Viz:

1 At end of part II of subtitle F of title VIII, add the

2 following:

3 **SEC. 86\_\_.** **UTILITY INFRASTRUCTURE RIGHTS-OF-WAY**

4 **VEGETATION MANAGEMENT PILOT PRO-**

5 **GRAM.**

6 (a) DEFINITIONS.—In this section:

7 (1) NATIONAL FOREST SYSTEM LAND.—

8 (A) IN GENERAL.—The term “National

9 Forest System land” means land within the Na-

10 tional Forest System, as defined in section

11 11(a) of the Forest and Rangeland Renewable

1 Resources Planning Act of 1974 (16 U.S.C.  
2 1609(a)).

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

5 (i) a National Grassland; or

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

11 (2) PASSING WILDFIRE.—The term “passing  
12 wildfire” means a wildfire that originates outside of  
13 a right-of-way.

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

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

21 (5) UTILITY INFRASTRUCTURE.—The term  
22 “utility infrastructure” means electric transmission  
23 lines, natural gas infrastructure, or related struc-  
24 tures.

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

10           (c) ELIGIBLE PARTICIPANTS.—

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

14                 (2) SELECTION PRIORITY.—In selecting partici-  
15 pants for the pilot program, the Secretary shall give  
16 priority to an owner or operator of a right-of-way  
17 that has worked with Forest Service fire scientists  
18 and used technologies, such as light detection and  
19 ranging surveys, to improve utility infrastructure  
20 protection prescriptions.

21           (d) VEGETATION MANAGEMENT PROJECTS.—

22                 (1) IN GENERAL.—A vegetation management  
23 project conducted under the pilot program shall in-  
24 volve only limited and selective vegetation manage-  
25 ment activities that—

1 (A) shall create the least disturbance rea-  
2 sonably necessary to protect utility infrastruc-  
3 ture from passing wildfires based on applicable  
4 models, including Forest Service fuel models;

5 (B) may include thinning, fuel reduction,  
6 creation and treatment of shaded fuel breaks,  
7 and other appropriate measures;

8 (C) shall only be conducted on National  
9 Forest System land—

10 (i) adjacent to the right-of-way of a  
11 participant; or

12 (ii) within 75 feet of the right-of-way  
13 of a participant; and

14 (D) shall not be conducted on—

15 (i) a component of the National Wil-  
16 derness Preservation System;

17 (ii) a designated wilderness study  
18 area; or

19 (iii) an inventoried roadless area.

20 (2) APPROVAL.—Each vegetation management  
21 project described in paragraph (1) (including each  
22 vegetation management activity described in sub-  
23 paragraphs (A) through (D) of that paragraph) shall  
24 be subject to approval by the Forest Service in ac-  
25 cordance with this section.

1 (e) PROJECT COSTS.—

2 (1) IN GENERAL.—Except as provided in para-  
3 graph (2), a participant in the pilot program shall  
4 be responsible for all costs, as determined by the  
5 Secretary, incurred in participating in the pilot pro-  
6 gram.

7 (2) FEDERAL FUNDING.—The Secretary may  
8 contribute funds for a vegetation management  
9 project conducted under the pilot program if the  
10 Secretary determines that the contribution is in the  
11 public interest.

12 (f) LIABILITY.—

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

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

18 (B) apply to fires resulting from causes  
19 other than activities conducted pursuant to an  
20 approved vegetation management project con-  
21 ducted under the pilot program.

22 (2) PROJECT WORK.—A participant in the pilot  
23 program shall not be liable to the United States for  
24 damage proximately caused by an activity conducted

1       pursuant to an approved vegetation management  
2       project conducted under the pilot program, unless—

3               (A) the activity was carried out in a man-  
4               ner that was grossly negligent or that violated  
5               criminal law; or

6               (B) the damage was caused by the failure  
7               of the participant to comply with specific safety  
8               requirements expressly imposed by the Forest  
9               Service as a condition of participation in the  
10              pilot program.

11       (g) IMPLEMENTATION.—

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

16              (2) MODIFICATION OF REGULATIONS.—In order  
17              to implement the pilot program in an efficient and  
18              expeditious manner, the Secretary may waive or  
19              modify specific provisions of the Federal Acquisition  
20              Regulation, including waivers or modifications to  
21              allow for the formation of contracts or agreements  
22              on a noncompetitive basis.

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

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

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

6           (i) **REPORT TO CONGRESS.**—Not later than Decem-  
7           ber 31, 2020, and 2 years thereafter, the Secretary shall  
8           submit a report describing the status of the pilot program  
9           and vegetation management projects conducted under the  
10          pilot program to—

11           (1) the Committee on Energy and Natural Re-  
12           sources of the Senate;

13           (2) the Committee on Agriculture, Nutrition,  
14           and Forestry of the Senate;

15           (3) the Committee on Natural Resources of the  
16           House of Representatives; and

17           (4) the Committee on Agriculture of the House  
18           of Representatives.

19           (j) **DURATION.**—The authority to carry out the pilot  
20           program, including any vegetation management project  
21           conducted under the pilot program, expires on October 1,  
22           2023.