



H.R. 1873 — Electricity Reliability and Forest Protection Act (Rep. LaMalfa, R-CA)

CONTACT: [Noelani Bonifacio](mailto:Noelani.Bonifacio@rsc.house.gov), 202-226-9719

FLOOR SCHEDULE:

Scheduled for consideration on June 21, 2017 under a structured [rule](#).

TOPLINE SUMMARY:

[H.R. 1873](#) would amend the Federal Land Policy Management Act of 1976 to allow owners and operators of electric power generation facilities to create plans for vegetation management, facility inspection, operation and maintenance. The bill would also prohibit owners and operators from being held liable for loss, injury or wildfire damage if the secretaries failed to approve a request to remove vegetation that may come into contact with a transmission line.

COST:

The Congressional Budget Office (CBO) [estimates](#) that implementing H.R. 1873 would cost \$12 million over the 2018-2022 period. The bill would affect direct spending by reducing damages collected by the federal government for some fires. As a result, pay-as-you-go procedures apply. CBO estimates that these effects would be negligible. The bill would not affect revenues, increase net direct spending or on-budget deficits in any of the four 10-year periods beginning in 2028.

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

H.R. 1873 adds an additional section to the Federal Land Policy and Management Act of 1976 ([43 U.S.C. 1761 et seq.](#)). The section would require the Secretary of the Interior and the Secretary of Agriculture to provide direction that ensures the rights-of-way for electrical transmission and that distribution facilities include provisions related to utility vegetation management, inspection of facilities, operation and maintenance. These provisions must be: (1) developed with those who hold the rights-of-way; (2) allow the facility's owner or operator to maintain the facility and comply with electric system reliability and fire safety requirements; (3) minimize the need for annual approvals for routine vegetation management, inspection of facilities, operation and maintenance, and utility vegetation management to control trees; and, (4) if a review is required, expedite the process, especially if the activities may affect safety or involve fire hazards.

The bill requires the secretaries to allow owners and operators of electric utilities to develop a plan for vegetation management, facility inspection, operation and maintenance. The plan may cover some, or all of the owner or operator's transmission and distribution rights-of-way that are located on federal lands. The lands impacted by this legislation are those managed by the Bureau of Land Management, the Department of the Interior, and the Forest Service, under the Department of Agriculture. The plan must be submitted for approval to the secretary with jurisdiction over the lands. The plan must allow the facility's owner or operator to comply with electric system reliability and fire safety requirements and the secretaries are not allowed to modify those requirements.

The secretaries must establish a plan review process that cannot exceed 90 days, includes timelines and benchmarks for approval, and minimizes costs to the agencies and the owner or operator submitting the plan. Under the review process the agency must notify the owner or operator of changed conditions that warrant a change to the plan and allow the owner or operator to amend the plan to address the condition change. The owner or operator must be allowed to implement the areas of the approved plan that are not affected by the condition change.

The bill requires the secretaries to apply their categorical exclusion process under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)) to the plans. This would exempt activities carried out under the plan from separate NEPA analysis.

Once the plan is approved, it becomes part of the authorization governing the right-of-way. Should a proposed plan for an existing electric utility facility run concurrent with the siting of a new facility, the necessary reviews must be completed as part of the siting process. When the plan is approved, the owner or operator must provide only a notification and description of upcoming activities in the next year and certify those activities are in accordance with the approved plan.

Should vegetation, including hazard trees, contact or threaten contact with a transmission line on federal land that is within a right-of-way as granted by one of the secretaries, the owner or operator may prune or remove the vegetation to avoid disrupting electric service or the risk of fire. The secretary's local agent must be notified within 24 hours.

Should vegetation not meet clearance requirements under [16 U.S.C. 824o\(a\)](#) or by state or local authorities and the secretary not respond to a request to allow vegetation management activities within three business days, the owner or operator may proceed with the vegetation management activities after notifying the secretary.

The secretaries must report requests and actions under the two previous paragraphs online annually.

The owner or operator will not be held liable for loss, injury or wildfire damage if the secretaries fail to allow them to operate within their approved plan in order to comply with electric system reliability and fire safety standards or fails to allow the owner or operator to perform vegetation management activities in response to a hazard tree.

The secretaries are encouraged to develop a training program for personnel involved in vegetation management decisions in consultation with the electric utility industry. The program is encouraged to help personnel: (1) understand system reliability and fire safety requirements; (2) assist owners and operators to comply with those requirements; and, (3) encourage the owners and operators to voluntarily incorporate vegetation management practices to enhance habitats for pollinators and other wildlife.

The secretaries have one year after enactment to prescribe or amend regulations for implementation and two years to fully implement the requirements of this bill.

If an owner or operator already has an approved plan before enactment, they are not required to resubmit one.

According to the committee [report](#), no streamlined process exists for vegetation management on federal lands that contain rights-of-way for electrical transmission. This has resulted in delays and contradictory requirements from agencies. This bill aims to create consistent guidelines between agencies so electric utilities, should they decide to submit vegetation management plans, have some predictability in regards to benchmarks and timelines for plan approval.

The House Report accompanying H.R. 1873 (H. Rept. 115-165) can be found [here](#).

AMENDMENTS:

1. [Rep. Beyer](#) (D-VA) – This amendment would state that nothing in the act shall detract from the availability of funds or other resources for wild-fire suppression.
2. [Reps. Sinema](#) (D-AZ), [Tipton](#) (R-CO), [Gosar](#) (R-AZ) and [O’Halleran](#) (D-AZ) - This amendment would add a provision to the section regarding training programs for personnel involved in vegetation management decisions. The new provision would encourage the training program to include training for personnel to understand how unmanned technologies can assist in identifying vegetation management needs, reducing the risk of wildfires and lowering energy costs for consumers.
3. [Rep. Carbajarl](#) (D-CA)- This amendment would make the submission of a vegetation management plan mandatory for all owners and operators. The amendment would also give the secretaries to modify plans required to be submitted. Some conservatives may be concerned that this amendment would result in unnecessary interference with the operations of the owners and operators, who, unless they have an approved voluntary plan under the legislation, would remain liable for losses resulting from any mismanagement.

COMMITTEE ACTION:

H.R. 1876 was introduced on April 4, 2017. The bill was referred to the House Committees on Natural Resources and Agriculture. A mark-up was held by the Natural Resources Committee and the bill was reported by a vote of 24-14.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

According to the bill’s sponsor: Congress has the power to enact this legislation pursuant to the following: “Article 1, Section 8 of the U.S. Constitution”. No specific enumerating clause was cited.

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*