

112TH CONGRESS
2D SESSION

H. R. 5960

To amend the Healthy Forests Restoration Act of 2003 to improve the response to insect infestations and related diseases and to change the funding source for the Healthy Forests Reserve Program, to codify the stewardship end result contracting and good neighbor authorities, and to amend the emergency watershed protection program to improve post fire rehabilitation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2012

Mr. MARKEY (for himself, Mr. GRIJALVA, and Mr. LUJÁN) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Natural Resources, 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

A BILL

To amend the Healthy Forests Restoration Act of 2003 to improve the response to insect infestations and related diseases and to change the funding source for the Healthy Forests Reserve Program, to codify the stewardship end result contracting and good neighbor authorities, and to amend the emergency watershed protection program to improve post fire rehabilitation, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Depleting Risk from Insect Infestation, Soil Erosion, and
4 Catastrophic Fire Act of 2012”.

5 (b) TABLE OF CONTENTS.—The table of contents of
6 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO HEALTHY FORESTS RESTORATION
ACT OF 2003 RESPONSE

Subtitle A—Response to Insect Infestations and Related Diseases

Sec. 101. Insect infestations and related diseases.

Sec. 102. Change in funding source for healthy forests reserve program.

Subtitle B—Stewardship End Result Contracting

Sec. 121. Stewardship end result contracting projects.

Subtitle C—Good Neighbor Authority

Sec. 141. Good neighbor authority.

TITLE II—POST FIRE REHABILITATION

Sec. 201. Emergency watershed protection program.

7 **TITLE I—AMENDMENTS TO**
8 **HEALTHY FORESTS RESTORA-**
9 **TION ACT OF 2003 RESPONSE**
10 **Subtitle A—Response to Insect**
11 **Infestations and Related Diseases**

12 **SEC. 101. INSECT INFESTATIONS AND RELATED DISEASES.**

13 (a) FINDINGS AND PURPOSES.—Section 401 of the
14 Healthy Forests Restoration Act of 2003 (16 U.S.C.
15 6551) is amended—

16 (1) in subsection (a)—

1 (A) by redesignating paragraphs (3)
2 through (12) as paragraphs (4) through (13),
3 respectively; and

4 (B) by inserting after paragraph (2) the
5 following:

6 “(3) the mountain pine beetle is—

7 “(A) threatening and ravaging forests
8 throughout the Western region of the United
9 States, including Arizona, California, Colorado,
10 Idaho, Montana, Nevada, New Mexico, Oregon,
11 and South Dakota;

12 “(B) reaching epidemic populations and se-
13 verely impacting over 41,000,000 acres in west-
14 ern forests; and

15 “(C) deteriorating forest health in national
16 forests and, when combined with drought, dis-
17 ease, and storm damage, is resulting in extreme
18 fire hazards in national forests across the West-
19 ern United States and endangering the eco-
20 nomic stability of surrounding adjacent commu-
21 nities, ranches, and parks;”; and

22 (2) in subsection (b)—

23 (A) in paragraph (2), by striking “and” at
24 the end;

1 (B) in paragraph (3), by striking the pe-
 2 riod at the end and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(4) to provide for designation of treatment
 5 areas pursuant to section 405.”.

6 (b) DESIGNATION OF TREATMENT AREAS.—Title IV
 7 of the Healthy Forests Restoration Act of 2003 (16
 8 U.S.C. 6551 et seq.) is amended—

9 (1) by redesignating sections 405 and 406 (16
 10 U.S.C. 6555, 6556) as sections 406 and 407, respec-
 11 tively; and

12 (2) by inserting after section 404 (16 U.S.C.
 13 6554) the following:

14 **“SEC. 405. DESIGNATION OF INSECT AND DISEASE TREAT-**
 15 **MENT AND RESEARCH PILOT PROGRAM**
 16 **AREAS.**

17 “(a) DESIGNATION OF TREATMENT AREAS.—Not
 18 later than 60 days after the date of enactment of the De-
 19 pleting Risk from Insect Infestation, Soil Erosion, and
 20 Catastrophic Fire Act of 2012, the Secretary, in consulta-
 21 tion with the Governor of each State, shall designate as
 22 part of an insect and disease treatment and research pilot
 23 program 1 or more subwatersheds (sixth-level hydrologic
 24 units, according to the System of Hydrologic Unit Codes
 25 of the United States Geological Survey) in at least 1 na-

1 tional forest in each State that is experiencing an insect
2 or disease epidemic.

3 “(b) REQUIREMENTS.—A subwatershed designated
4 under subsection (a) shall be—

5 “(1) experiencing substantially increased tree
6 mortality due to insect or disease infestation, based
7 on annual forest health surveys conducted by the
8 Secretary;

9 “(2) at risk of experiencing substantially in-
10 creased tree mortality over the next 15 years due to
11 insect or disease infestation, based on the most re-
12 cent National Insect and Disease Risk Map pub-
13 lished by the Forest Service; or

14 “(3) in an area in which the risk of hazard
15 trees poses an imminent risk to public infrastruc-
16 ture, health, or safety.

17 “(c) TREATMENT AREAS.—

18 “(1) IN GENERAL.—The Secretary may carry
19 out priority projects on Federal land in the sub-
20 watersheds designated under subsection (a) to re-
21 duce the risk or extent of, or increase the resilience
22 to, insect or disease infestation in the subwater-
23 sheds.

24 “(2) AUTHORITY.—Any project under para-
25 graph (1) for which a public notice to initiate

1 scoping is issued on or before September 30, 2017,
2 may be carried out in accordance with subsections
3 (b), (c), (d), and (g) of section 102, and sections,
4 104, 105, 106, and 401.

5 “(3) EFFECT.—Projects carried out under this
6 subsection shall be considered ‘authorized hazardous
7 fuel reduction projects’ for purposes of the authori-
8 ties described in paragraph (2).

9 “(4) REPORT.—Not later than September 30,
10 2017, the Secretary shall issue a report that in-
11 cludes—

12 “(A) an evaluation of the progress towards
13 project goals; and

14 “(B) recommendations for modifications to
15 the projects and management treatments.

16 “(d) TREE RETENTION.—The Secretary shall carry
17 out projects under subsection (c) in a manner that maxi-
18 mizes the retention of old-growth and large trees, as ap-
19 propriate for the forest type, to the extent that the trees
20 promote stands that are resilient to insects and disease.”.

21 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
22 407 of the Healthy Forests Restoration Act of 2003 (as
23 redesignated by subsection (b)(1)) is amended by striking
24 “2008” and inserting “2017”.

1 **SEC. 102. CHANGE IN FUNDING SOURCE FOR HEALTHY**
2 **FORESTS RESERVE PROGRAM.**

3 Section 508 of the Healthy Forests Restoration Act
4 of 2003 (16 U.S.C. 6578) is amended—

5 (1) in subsection (a), by striking “IN GEN-
6 ERAL” and inserting “FISCAL YEARS 2009
7 THROUGH 2012”;

8 (2) by redesignating subsection (b) as sub-
9 section (d); and

10 (3) by inserting after subsection (a) the fol-
11 lowing:

12 “(b) FISCAL YEARS 2013 THROUGH 2017.—There is
13 authorized to be appropriated to the Secretary of Agri-
14 culture to carry out this section \$9,750,000 for each of
15 fiscal years 2013 through 2017.

16 “(c) ADDITIONAL SOURCE OF FUNDS.—In addition
17 to funds appropriated pursuant to the authorization of ap-
18 propriations in subsection (b) for a fiscal year, the Sec-
19 retary may use such amount of the funds appropriated
20 for that fiscal year to carry out the Soil Conservation and
21 Domestic Allotment Act (16 U.S.C. 590a et seq.) as the
22 Secretary determines necessary to cover the cost of tech-
23 nical assistance, management, and enforcement respon-
24 sibilities for land enrolled in the healthy forests reserve
25 program pursuant to subsections (a) and (b) of section
26 504.”.

**Subtitle B—Stewardship End
Result Contracting**

**SEC. 121. STEWARDSHIP END RESULT CONTRACTING
PROJECTS.**

(a) IN GENERAL.—Title VI of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591) is amended by adding at the end the following:

**“SEC. 602. STEWARDSHIP END RESULT CONTRACTING
PROJECTS.**

“(a) DEFINITIONS.—In this section:

“(1) CHIEF.—The term ‘Chief’ means the Chief of the Forest Service.

“(2) DIRECTOR.—The term ‘Director’ means the Director of the Bureau of Land Management.

“(b) PROJECTS.—The Chief and the Director, via agreement or contract as appropriate, may enter into stewardship contracting projects with private persons or other public or private entities to perform services to achieve land management goals for the national forests and the public lands that meet local and rural community needs.

“(c) LAND MANAGEMENT GOALS.—The land management goals of a project under subsection (b) may include—

1 “(1) road and trail maintenance or obliteration
2 to restore or maintain water quality;

3 “(2) soil productivity, habitat for wildlife and
4 fisheries, or other resource values;

5 “(3) setting of prescribed fires to improve the
6 composition, structure, condition, and health of
7 stands or to improve wildlife habitat;

8 “(4) removing vegetation or other activities to
9 promote healthy forest stands, reduce fire hazards,
10 or achieve other land management objectives;

11 “(5) watershed restoration and maintenance;

12 “(6) restoration and maintenance of wildlife
13 and fish; or

14 “(7) control of noxious and exotic weeds and re-
15 establishing.

16 “(d) AGREEMENTS OR CONTRACTS.—

17 “(1) PROCUREMENT PROCEDURE.—A source
18 for performance of an agreement or contract under
19 subsection (b) shall be selected on a best-value basis,
20 including consideration of source under other public
21 and private agreements or contracts.

22 “(2) CONTRACT FOR SALE OF PROPERTY.—A
23 contract entered into under this section may, at the
24 discretion of the Secretary of Agriculture, be consid-
25 ered a contract for the sale of property under such

1 terms as the Secretary may prescribe without regard
2 to any other provision of law.

3 “(3) TERM.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), the Chief and the Director
6 may enter into a contract under subsection (b)
7 in accordance with section 3903 of title 41,
8 United States Code.

9 “(B) MAXIMUM.—The period of the con-
10 tract under subsection (b) may exceed 5 years
11 but may not exceed 10 years.

12 “(4) OFFSETS.—

13 “(A) IN GENERAL.—The Chief and the Di-
14 rector may apply the value of timber or other
15 forest products removed as an offset against the
16 cost of services received under the agreement or
17 contract described in subsection (b).

18 “(B) METHODS OF APPRAISAL.—The value
19 of timber or other forest products used as an
20 offset under subparagraph (A)—

21 “(i) shall be determined using appro-
22 priate methods of appraisal commensurate
23 with the quantity of products to be re-
24 moved; and

25 “(ii) may—

1 “(I) be determined using a unit
2 of measure appropriate to the con-
3 tracts; and

4 “(II) include valuing products on
5 a per-acre basis.

6 “(5) RELATION TO OTHER LAWS.—Notwith-
7 standing subsections (d) and (g) of section 14 of the
8 National Forest Management Act of 1976 (16
9 U.S.C. 472a), the Chief may enter into an agree-
10 ment or contract under subsection (b).

11 “(6) CONTRACTING OFFICER.—Notwithstanding
12 any other provision of law, the Secretary or the Sec-
13 retary of the Interior may determine the appropriate
14 contracting officer to enter into and administer an
15 agreement or contract under subsection (b).

16 “(e) RECEIPTS.—

17 “(1) IN GENERAL.—The Chief and the Director
18 may collect monies from an agreement or contract
19 under subsection (b) if the collection is a secondary
20 objective of negotiating the contract that will best
21 achieve the purposes of this section.

22 “(2) USE.—Monies from an agreement or con-
23 tract under subsection (b)—

24 “(A) may be retained by the Chief and the
25 Director; and

1 “(B) shall be available for expenditure
2 without further appropriation at the project site
3 from which the monies are collected or at an-
4 other project site.

5 “(3) RELATION TO OTHER LAWS.—

6 “(A) IN GENERAL.—Notwithstanding any
7 other provision of law, the value of services re-
8 ceived by the Chief or the Director under a
9 stewardship contract project conducted under
10 this section, and any payments made or re-
11 sources provided by the contractor, Chief, or
12 Director shall not be considered monies received
13 from the National Forest System or the public
14 lands.

15 “(B) KNUTSON-VANDERBERG ACT.—The
16 Act of June 9, 1930 (commonly known as the
17 ‘Knutson-Vanderberg Act’) (16 U.S.C. 576 et
18 seq.) shall not apply to any agreement or con-
19 tract under subsection (b).

20 “(f) COSTS OF REMOVAL.—Notwithstanding the fact
21 that a contractor did not harvest the timber, the Chief
22 may collect deposits from a contractor covering the costs
23 of removal of timber or other forest products under—

24 “(1) the Act of August 11, 1916 (16 U.S.C.
25 490); and

1 “(2) the Act of June 30, 1914 (16 U.S.C. 498).

2 “(g) PERFORMANCE AND PAYMENT GUARANTEES.—

3 “(1) IN GENERAL.—The Chief and the Director
4 may require performance and payment bonds under
5 sections 28.103–2 and 28.103–3 of the Federal Ac-
6 quisition Regulation, in an amount that the con-
7 tracting officer considers sufficient to protect the in-
8 vestment in receipts by the Federal Government
9 generated by the contractor from the estimated
10 value of the forest products to be removed under a
11 contract under subsection (b).

12 “(2) EXCESS OFFSET VALUE.—If the offset
13 value of the forest products exceeds the value of the
14 resource improvement treatments, the Chief and the
15 Director may—

16 “(A) collect any residual receipts under the
17 Act of June 9, 1930 (commonly known as the
18 ‘Knutson-Vanderberg Act’) (16 U.S.C. 576 et
19 seq.); and

20 “(B) apply the excess to other authorized
21 stewardship projects.

22 “(h) MONITORING AND EVALUATION.—

23 “(1) IN GENERAL.—The Chief and the Director
24 shall establish a multiparty monitoring and evalua-

1 tion process that accesses the stewardship con-
2 tracting projects conducted under this section.

3 “(2) PARTICIPANTS.—Other than the Chief and
4 Director, participants in the process described in
5 paragraph (1) may include—

6 “(A) any cooperating governmental agen-
7 cies, including tribal governments; and

8 “(B) any other interested groups or indi-
9 viduals.

10 “(i) REPORTING.—Not later than 1 year after the
11 date of enactment of this section, and annually thereafter,
12 the Chief and the Director shall report to the Committee
13 on Agriculture, Nutrition, and Forestry of the Senate and
14 the Committee on Agriculture of the House of Representa-
15 tives on—

16 “(1) the status of development, execution, and
17 administration of agreements or contracts under
18 subsection (b);

19 “(2) the specific accomplishments that have re-
20 sulted; and

21 “(3) the role of local communities in the devel-
22 opment of agreements or contract plans.”.

23 (b) REPEAL OF SUPERSEDED PROGRAM.—Section
24 347 of the Department of the Interior and Related Agen-

1 cies Appropriations Act, 1999 (16 U.S.C. 2104 note; Pub-
 2 lic Law 105–277) is repealed.

3 **Subtitle C—Good Neighbor** 4 **Authority**

5 **SEC. 141. GOOD NEIGHBOR AUTHORITY.**

6 (a) DEFINITIONS.—In this section:

7 (1) AUTHORIZED RESTORATION SERVICES.—

8 The term “authorized restoration services” means
 9 similar and complementary forest, rangeland, and
 10 watershed restoration services carried out on adja-
 11 cent Federal land and non-Federal land by either
 12 the Secretary or a Governor pursuant to—

13 (A) a good neighbor agreement; and

14 (B) a cooperative agreement or contract
 15 entered into under subsection (c).

16 (2) FEDERAL LAND.—

17 (A) IN GENERAL.—The term “Federal
 18 land” means the following land in a State lo-
 19 cated in whole or in part west of the 100th me-
 20 ridian:

21 (i) National Forest System land.

22 (ii) Public lands (as defined in section
 23 103 of the Federal Land Policy and Man-
 24 agement Act of 1976 (43 U.S.C. 1702)).

1 (B) EXCLUSIONS.—The term “Federal
2 land” does not include—

3 (i) a component of the National Wil-
4 derness Preservation System, National
5 Wild and Scenic Rivers System, National
6 Trails System, or National Landscape
7 Conservation System;

8 (ii) a National Monument, National
9 Preserve, National Scenic Area, or Na-
10 tional Recreation Area; or

11 (iii) a wilderness study area.

12 (3) FOREST, RANGELAND, AND WATERSHED
13 RESTORATION SERVICES.—The term “forest, range-
14 land, and watershed restoration services” means—

15 (A) activities to treat insect- and disease-
16 infected trees;

17 (B) activities to reduce hazardous fuels;

18 (C) activities to maintain roads and trails
19 that cross a boundary between Federal land
20 and non-Federal land; and

21 (D) any other activities to restore or im-
22 prove forest, rangeland, or watershed health, in-
23 cluding fish and wildlife habitat.

24 (4) GOOD NEIGHBOR AGREEMENT.—The term
25 “good neighbor agreement” means—

1 (A) a nonfunding master cooperative
 2 agreement entered into between the Secretary
 3 and a Governor under chapter 63 of title 31,
 4 United States Code; or

5 (B) a memorandum of agreement or un-
 6 derstanding entered into between the Secretary
 7 and a Governor.

8 (5) GOVERNOR.—The term “Governor” means
 9 the Governor or any other appropriate executive offi-
 10 cial of an affected State.

11 (6) SECRETARY.—The term “Secretary”
 12 means—

13 (A) the Secretary of Agriculture, with re-
 14 spect to National Forest System land; and

15 (B) the Secretary of the Interior, with re-
 16 spect to Bureau of Land Management land.

17 (b) GOOD NEIGHBOR AGREEMENTS.—

18 (1) IN GENERAL.—The Secretary may enter
 19 into a good neighbor agreement with a Governor to
 20 coordinate the procurement and implementation of
 21 authorized restoration services in accordance with
 22 this section.

23 (2) PUBLIC NOTICE AND COMMENT.—The Sec-
 24 retary shall make each good neighbor agreement
 25 available to the public.

1 (c) TASK ORDERS, CONTRACTS, AND COOPERATIVE
2 AGREEMENTS.—

3 (1) IN GENERAL.—The Secretary may issue a
4 task order for, or enter into a contract (including a
5 sole source contract) or cooperative agreement with,
6 a Governor to carry out authorized restoration serv-
7 ices.

8 (2) REQUIREMENTS.—Each task order, con-
9 tract, or cooperative agreement entered into under
10 paragraph (1) shall be executed in accordance
11 with—

12 (A) chapter 63 of title 31, United States
13 Code; and

14 (B) the applicable good neighbor agree-
15 ment.

16 (d) CONTRACT AND SUBCONTRACT REQUIRE-
17 MENTS.—

18 (1) REQUIREMENTS FOR SERVICES ON FED-
19 ERAL LAND.—

20 (A) IN GENERAL.—For authorized restora-
21 tion services carried out on Federal land under
22 subsection (c), each contract and subcontract
23 issued under the authority of a Governor shall
24 include the provisions described in subpara-
25 graph (B) that would have been included in the

1 contract had the Secretary been a party to the
2 contract.

3 (B) APPLICABLE PROVISIONS.—The provi-
4 sions referred to in subparagraph (A) are provi-
5 sions for—

6 (i) wages and benefits for workers em-
7 ployed by contractors and subcontractors
8 required by—

9 (I) subchapter IV of chapter 31
10 of part A of subtitle II of title 40,
11 United States Code; and

12 (II) chapter 6 of title 41, United
13 States Code;

14 (ii) nondiscrimination; and

15 (iii) worker safety and protection.

16 (2) REQUIREMENTS FOR SMALL BUSINESSES.—

17 Each contract and subcontract for authorized res-
18 toration services under subsection (c) shall comply
19 with provisions for small business assistance and
20 protection that would have been applicable to the
21 contract had the Secretary been a party to the con-
22 tract.

23 (3) LIABILITY.—The Secretary shall include
24 provisions in each good neighbor agreement, con-
25 tract, or cooperative agreement, as appropriate, gov-

erning the potential liability of the State and the Secretary for actions carried out under this Act.

(e) TERMINATION OF EFFECTIVENESS.—

(1) IN GENERAL.—The authority of the Secretary to enter into cooperative agreements and contracts under this section terminates on September 30, 2019.

(2) CONTRACT DATE.—The termination date of a cooperative agreement or contract entered into under this section shall not extend beyond September 30, 2020.

(3) CONSOLIDATED AUTHORITY.—

(A) FEDERAL AND STATE COOPERATIVE WATERSHED RESTORATION AND PROTECTION IN COLORADO.—Section 331 of the Department of the Interior and Related Agencies Appropriations Act, 2001 (Public Law 106–291; 114 Stat. 996) is repealed.

(B) FEDERAL AND STATE COOPERATIVE FOREST, RANGELAND, AND WATERSHED RESTORATION IN UTAH.—Section 337 of the Department of the Interior and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 3102) is repealed.

1 (4) EXISTING CONTRACTS.—Nothing in the
2 amendments made by this section affects contracts
3 in effect on the day before the date of enactment of
4 this Act.

5 **TITLE II—POST FIRE**
6 **REHABILITATION**

7 **SEC. 201. EMERGENCY WATERSHED PROTECTION PRO-**
8 **GRAM.**

9 Section 403 of the Agricultural Credit Act of 1978
10 (16 U.S.C. 2203) is amended by adding at the end the
11 following new sentence: “In evaluating landowner and land
12 user applications for assistance under this section, the
13 Secretary shall give priority consideration to applications
14 submitted by landowners and land users for runoff retar-
15 dation and soil-erosion preventive measures needed to re-
16 mediate the effects of catastrophic wildfire on Federal
17 land that is the source of drinking water for the land-
18 owners and land users.”.

○