

114TH CONGRESS
2D SESSION

H. R. 5605

To amend the Food Security Act of 1985 with respect to the administration of wetland determinations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 2016

Mrs. NOEM (for herself, Mr. CRAMER, and Mr. PETERSON) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the Food Security Act of 1985 with respect to the administration of wetland determinations, 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 “Wetland Determina-
5 tions Efficiency and Transparency Act”.

6 **SEC. 2. ADMINISTRATION OF WETLAND DETERMINATIONS.**

7 Section 1222(a) of the Food Security Act of 1985
8 (16 U.S.C. 3822(a)) is amended—

9 (1) in paragraph (1), by striking “subsection
10 (b) and paragraph (6)” and inserting “subsection

(b), paragraphs (6) and (7), and paragraphs (1)(B) and (2) of section 1244(e)”; and

(2) by adding at the end the following:

“(7) ADMINISTRATION.—

“(A) TIMELY COMPLETION.—

“(i) IN GENERAL.—The Secretary, acting through the Chief of the Natural Resources Conservation Service, shall ensure the completion of a wetland delineation, determination, or certification by the date that is 60 days after the date on which a person subject to this subtitle requests the delineation, determination, or certification.

“(ii) EFFECT OF DELAY.—If a wetland delineation, determination, or certification is not completed by the date described in clause (i), upon completion of the wetland delineation, determination, or certification, the Secretary shall provide for a reasonable transition period for coming into compliance with the wetland delineation, determination, or certification, as necessary, and a person shall not become ineligible under section 1221 for program

1 loans or payments as a result of actions
2 taken, between the date described in clause
3 (i) and the date on which such transition
4 period ends, in violation of the wetland de-
5 lineation, determination, or certification.

6 “(B) FINAL AGENCY ACTION.—A wetland
7 delineation, determination, or certification made
8 by the Secretary shall be considered a final
9 agency action subject to judicial review, and a
10 person challenging a wetland delineation, deter-
11 mination, or certification shall not be required
12 to exhaust all administrative remedies prior to
13 bringing a suit in Federal court.

14 “(C) DUTY TO DISCLOSE.—In the case of
15 a wetland delineation, determination, or certifi-
16 cation for which there exists a dispute, the Sec-
17 retary shall make available a copy of the agency
18 record, to a person involved in the dispute who
19 requests such a copy, not later than 30 days
20 after the date on which the person makes the
21 request.

22 “(D) BURDEN OF PROOF.—In the case of
23 a wetland delineation, determination, or certifi-
24 cation for which there exists a dispute, the Sec-

1 retary shall bear the burden of proof by a pre-
2 ponderance of the evidence.

3 “(E) EFFECT ON EXISTING PROCESS.—
4 Nothing in this paragraph shall be construed to
5 prohibit a person challenging a wetland delinea-
6 tion, determination, or certification from using
7 the administrative appeal process in place be-
8 fore the date of enactment of this paragraph.”.

9 **SEC. 3. TECHNICAL ASSISTANCE PERMITTED.**

10 Section 1244(e) of the Food Security Act of 1985 (16
11 U.S.C. 3844(e)) is amended to read as follows:

12 “(e) PROVISION OF TECHNICAL ASSISTANCE BY
13 OTHER SOURCES.—

14 “(1) THIRD-PARTY TECHNICAL ASSISTANCE
15 PERMITTED.—The Secretary shall permit a person
16 to secure technical assistance from an approved
17 source, as determined by the Secretary, other than
18 the Natural Resources Conservation Service—

19 “(A) in the preparation and application of
20 a conservation plan under subtitle B or similar
21 plan required as a condition for assistance from
22 the Department of Agriculture; and

23 “(B) in the preparation of a wetland delin-
24 eation or determination to submit to the Sec-
25 retary under section 1222.

1 “(2) REJECTION.—If the Secretary rejects a
2 technical determination made by an approved source
3 pursuant to paragraph (1)(A), or a wetland delineation
4 or determination made by an approved source
5 pursuant to paragraph (1)(B), the basis of the Secretary’s
6 rejection must be supported by documented
7 evidence.”.

8 **SEC. 4. DATE OF RETURN OF WETLAND CHARACTERISTICS.**

9 Section 1222(b)(1)(G) of the Food Security Act of
10 1985 (16 U.S.C. 3822) is amended by striking “after that
11 date” and inserting “after such original conversion”.

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