

116TH CONGRESS
1ST SESSION

S. 1426

To amend the Endangered Species Act of 1973 to establish a procedure for approval of certain settlements.

IN THE SENATE OF THE UNITED STATES

MAY 13, 2019

Mr. CORNYN (for himself, Mr. BOOZMAN, Mr. CRAPO, Mr. CRUZ, Mr. ENZI, Mr. LANKFORD, Mr. RISCH, Mr. SULLIVAN, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Endangered Species Act of 1973 to establish a procedure for approval of certain settlements.

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. DEFINITIONS.

4 Section 3 of the Endangered Species Act of 1973 (16)

5 U.S.C. 1532) is amended—

6 (1) by redesignating—

7 (A) paragraphs (12) through (21) as para-
8 graphs (13) through (22), respectively;

1 (B) paragraphs (5) through (10) as para-
2 graphs (7) through (12), respectively; and

3 (C) paragraphs (1) through (4) as para-
4 graphs (2) through (5), respectively;

5 (2) by inserting before paragraph (2) (as so re-
6 designated) the following:

7 “(1) AFFECTED PARTY.—The term ‘affected
8 party’ means any person, including a business enti-
9 ty, or any State, Tribal government, or local subdivi-
10 sion the rights of which may be affected by a deter-
11 mination made under section 4(a) in a suit brought
12 under section 11(g)(1)(C).”; and

13 (3) by inserting after paragraph (5) (as so re-
14 designated) the following:

15 “(6) COVERED SETTLEMENT.—The term ‘cov-
16 ered settlement’ means a consent decree or a settle-
17 ment agreement in an action brought under section
18 11(g)(1)(C).”.

19 SEC. 2. INTERVENTION; APPROVAL OF COVERED SETTLEMENT.

21 Section 11(g) of the Endangered Species Act of 1973
22 (16 U.S.C. 1540(g)) is amended—

23 (1) in paragraph (3), by adding at the end the
24 following:

1 “(C) PUBLISHING COMPLAINT; INTERVEN-
2 TION.—

3 “(i) PUBLISHING COMPLAINT.—

4 “(I) IN GENERAL.—Not later
5 than 30 days after the date on which
6 the plaintiff serves the defendant with
7 the complaint in an action brought
8 under paragraph (1)(C) in accordance
9 with Rule 4 of the Federal Rules of
10 Civil Procedure, the Secretary of the
11 Interior shall publish the complaint in
12 a readily accessible manner, including
13 electronically.

14 “(II) FAILURE TO MEET DEAD-
15 LINE.—The failure of the Secretary to
16 meet the 30-day deadline described in
17 subclause (I) shall not be the basis for
18 an action under paragraph (1)(C).

19 “(ii) INTERVENTION.—

20 “(I) IN GENERAL.—After the end
21 of the 30-day period described in
22 clause (i), each affected party shall be
23 given a reasonable opportunity to
24 move to intervene in the action de-
25 scribed in clause (i), until the end of

1 which a party may not file a motion
2 for a consent decree or to dismiss the
3 case pursuant to a settlement agree-
4 ment.

4 “(AA) plaintiff;

7 “(CC) intervenor.”;

10 “(4) LITIGATION COSTS.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), the court, in issuing any
13 final order in any suit brought under paragraph
14 (1), may award costs of litigation (including
15 reasonable attorney and expert witness fees) to
16 any party, whenever the court determines such
17 award is appropriate.

1 “(I) IN GENERAL.—For a pro-
2 posed covered settlement other than a
3 consent decree, the court shall ensure
4 that the covered settlement does not
5 include payment to any plaintiff for
6 the costs of litigation.

7 “(II) MOTIONS.—The court shall
8 not grant any motion, including a mo-
9 tion to dismiss, based on the proposed
10 covered settlement described in sub-
11 clause (I) if the covered settlement in-
12 cludes payment to any plaintiff for the
13 costs of litigation.”; and

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

15 “(6) APPROVAL OF COVERED SETTLEMENT.—

16 “(A) DEFINITION OF SPECIES.—In this
17 paragraph, the term ‘species’ means a species
18 that is the subject of an action brought under
19 paragraph (1)(C).

20 “(B) IN GENERAL.—

21 “(i) CONSENT DECREES.—The court
22 shall not approve a proposed covered set-
23 tlement that is a consent decree unless
24 each State and county in which the Sec-

1 “(ii) DETERMINATION OF RELEVANT
2 STATES AND COUNTIES.—The defendant in
3 a covered settlement shall consult with
4 each State described in clause (i) to deter-
5 mine each county in which the Secretary of
6 the Interior believes a species occurs.

7 “(D) FAILURE TO RESPOND.—The court
8 may approve a covered settlement or grant a
9 motion described in subparagraph (B)(ii)(II) if,
10 not later than 45 days after the date on which
11 a State or county is notified under subpara-
12 graph (C)—

13 “(i)(I) a State or county fails to re-
14 spond; and

15 “(II) of the States or counties that re-
16 spond, each State or county approves the
17 covered settlement; or

18 “(ii) all of the States and counties fail
19 to respond.

20 “(E) PROOF OF APPROVAL.—The defend-
21 ant in a covered settlement shall prove any
22 State or county approval described in this para-
23 graph in a form—

24 “(i) acceptable to the State or county,
25 as applicable; and

1 “(ii) signed by the State or county of-
2 ficial authorized to approve the covered
3 settlement.”.

○