

118TH CONGRESS
2D SESSION

S. _____

To improve wildfire mitigation, management, and recovery, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. KELLY (for himself and Mr. ROMNEY) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To improve wildfire mitigation, management, and recovery, 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 “Enhancing Mitigation
5 and Building Effective Resilience Act” or the “EMBER
6 Act”.

7 **SEC. 2. WILDFIRE MITIGATION, MANAGEMENT, AND RECOV-**
8 **ERY.**

9 (a) STATE, LOCAL, AND TRIBAL MATCHING FUNDS
10 WAIVER AND REDUCTION AUTHORITY.—

1 (1) IN GENERAL.—The Secretary of Agri-
2 culture, the Secretary of the Interior, or the Admin-
3 istrator of the Federal Emergency Management
4 Agency Administrator (referred to in this Act as the
5 “FEMA Administrator”) may reduce or waive appli-
6 cant matching or cost-sharing requirements applica-
7 ble to funds provided by the Secretary of Agri-
8 culture, the Secretary of the Interior, or the FEMA
9 Administrator, respectively, to a State, Indian Tribe,
10 county, municipality, or other unit of local govern-
11 ment for—

12 (A) planning or implementing a wildfire
13 mitigation or management project to reduce the
14 risk of wildfire;

15 (B) preparing a needs assessment in prep-
16 aration for post-wildfire cascading impacts be-
17 fore a wildfire occurs; or

18 (C) planning or implementing post-wildfire
19 recovery projects on land in the State, county,
20 municipality, or other unit of local government
21 or on land of the Indian Tribe.

22 (2) LIMITATION.—The amount that the Sec-
23 retary of Agriculture, the Secretary of the Interior,
24 or the FEMA Administrator, as applicable, may re-
25 duce or waive under paragraph (1) shall not exceed

1 the amount that the applicable State, Indian Tribe,
2 county, municipality, or other unit of local govern-
3 ment expended on the activities described in that
4 paragraph.

5 (3) INCLUSIONS.—Amounts described in para-
6 graph (2) may include amounts used for activities
7 described in paragraph (1) that were collected by a
8 State, Indian Tribe, county, municipality, or other
9 unit of local government from—

10 (A) the sale of bonds;

11 (B) sales taxes, property taxes, income
12 taxes, or other tax revenue sources;

13 (C) the pooling of contributions from cus-
14 tomers of a quasi-governmental utility; or

15 (D) conservation finance agreements.

16 (b) WOOD PROCESSING INVENTORY.—

17 (1) DEFINITION OF SECRETARY.—In this sub-
18 section, the term “Secretary” means the Secretary
19 of Agriculture, in coordination with the Secretary of
20 the Interior.

21 (2) INVENTORY, STUDIES, AND REPORT.—The
22 Secretary shall—

23 (A) conduct an inventory of wood proc-
24 essing facilities, including sawmills and biomass

1 utilization facilities, in each region of the
2 United States, as determined by the Secretary;

3 (B) conduct additional economic studies,
4 workforce studies, and biomass feasibility stud-
5 ies to better understand solutions to the devel-
6 opment and redevelopment of regional wood
7 products markets, as the Secretary determines
8 to be appropriate;

9 (C) identify each region described in sub-
10 paragraph (A) that—

11 (i) is at high risk of wildfire, as deter-
12 mined by the Secretary; and

13 (ii) does not have a wood processing
14 facility or needs additional wood processing
15 infrastructure or capacity; and

16 (D) submit a report describing the inven-
17 tory, studies, and regions described in subpara-
18 graphs (A), (B), and (C), respectively, to the
19 relevant committees of Congress, including—

20 (i) the Committee on Energy and
21 Natural Resources of the Senate;

22 (ii) the Committee on Homeland Se-
23 curity and Governmental Affairs of the
24 Senate;

1 (iii) the Committee on Commerce,
2 Science, and Transportation of the Senate;

3 (iv) the Committee on Appropriations
4 of the Senate;

5 (v) the Committee on Natural Re-
6 sources of the House of Representatives;

7 (vi) the Committee on Homeland Se-
8 curity of the House of Representatives;

9 (vii) the Committee on Science, Space,
10 and Technology of the House of Represent-
11 atives; and

12 (viii) the Committee on Appropria-
13 tions of the House of Representatives; and

14 (E) made the report described in subpara-
15 graph (D) publicly available on the website of
16 the Department of Agriculture.

17 (c) LAND-FOR-WOOD PROCESSING PROGRAM.—

18 (1) IN GENERAL.—The Secretary of Agriculture
19 and the Secretary of the Interior shall jointly estab-
20 lish a program under which the Secretary of Agri-
21 culture and the Secretary of the Interior shall au-
22 thorize Federal land under the jurisdiction of the
23 Secretary of Agriculture or the Secretary of the In-
24 terior for the purpose described in paragraph (2).

1 (2) USE.—Land authorized under paragraph
2 (1) shall be used for 1 or more wood processing fa-
3 cilities, including sawmills and biomass utilization
4 facilities, in each region identified under subsection
5 (b)(2)(C) that is included in the report submitted
6 under subsection (b)(2)(D).

7 (d) SMALL BUSINESS SUPPORT.—The Secretary of
8 the Interior shall enter into cost-share agreements with,
9 and provide technical assistance to, States, Indian Tribes,
10 counties, and municipalities to support small businesses,
11 as determined by the Secretary of the Interior, that utilize
12 biomass that is a byproduct of wildfire risk reduction and
13 forest restoration activities.

14 (e) RENEWABLE FUEL STANDARD PROGRAM.—

15 (1) RENEWABLE IDENTIFICATION NUMBERS
16 REQUIRED.—Not later than 180 days after the date
17 of enactment of this Act, the Administrator of the
18 Environmental Protection Agency shall—

19 (A) incorporate into, and establish path-
20 ways for credit under, the Renewable Fuel Pro-
21 gram under section 211(o) of the Clean Air Act
22 (42 U.S.C. 7545(o)) for sustainable aviation
23 fuel, renewable natural gas, hydrogen, biodiesel,
24 and all other biofuels with the potential to be
25 commercially viable in the 10-year period begin-

1 ning on the date of enactment of this Act that
2 are made from biomass derived from wildfire
3 risk reduction and forest restoration activities
4 on public and private lands; and

5 (B) provide renewable identification num-
6 bers for the products described in subparagraph
7 (A).

8 (2) FOREST BIOMASS AS RENEWABLE BIO-
9 MASS.—Section 211(o)(1)(I) of the Clean Air Act
10 (42 U.S.C. 7545(o)(1)(I)) is amended—

11 (A) by striking clauses (iv) and (v) and in-
12 serting the following:

13 “(iv) Forest biomass, regardless of
14 whether the biomass is sourced from public
15 or private land, which may include—

16 “(I) slash;

17 “(II) pre-commercial thinnings;

18 “(III) plantation materials and
19 residues;

20 “(IV) biomass obtained from
21 areas at risk of wildfire;

22 “(V) sawmill and forest products
23 manufacturing residues; and

1 “(VI) any other uncontaminated
2 byproduct of forest management and
3 forest products manufacturing.”; and
4 (B) by redesignating clauses (vi) and (vii)
5 as clauses (v) and (vi), respectively.

6 (f) PROGRAM ALIGNMENT.—The Secretary of Agri-
7 culture shall direct the Under Secretary for Rural Devel-
8 opment and the Chief of the Forest Service to coordinate
9 with each other for the purpose of supporting investments
10 in sawmills and biomass utilization facilities in areas that
11 have the greatest need for wildfire risk reduction.

12 (g) BIOMASS UTILIZATION.—The Secretary of Agri-
13 culture and the Secretary of Energy shall cooperate to
14 support—

15 (1) research relating to biomass utilization
16 methods; and

17 (2) large-scale forest biomass utilization re-
18 search, including the development of, and support
19 for, pilot projects that promote the utilization and
20 commercialization of biomass as a byproduct of wild-
21 fire risk reduction and forest restoration activities.

22 (h) GRAZING.—

23 (1) IN GENERAL.—The Secretary of Agriculture
24 and the Secretary of the Interior shall manage fine
25 fuels and shrubs on Federal land under the jurisdic-

1 tion of the Secretary of Agriculture or the Secretary
2 of the Interior, respectively, through the expanded
3 use of flexible, targeted grazing that—

4 (A) aligns with wildfire impact reduction
5 objectives and desired environmental conditions
6 and landscape goals in the ecological system in
7 which the grazing is conducted; and

8 (B) complies with other obligations, includ-
9 ing requirements applicable to congressionally
10 designated wilderness areas.

11 (2) DEPARTMENT OF THE INTERIOR NON-
12 RENEWABLE GRAZING PERMITS AND LEASES.—The
13 Secretary of the Interior shall—

14 (A) direct the use of nonrenewable grazing
15 permits and leases described in section 4130.6–
16 2 of title 43, Code of Federal Regulations (or
17 successor regulations), to reduce fine fuel loads
18 and the risk of catastrophic wildfire where and
19 when such use is ecologically appropriate;

20 (B) direct the use of cooperative agree-
21 ments described in section 29.2 of title 50,
22 Code of Federal Regulations (or successor regu-
23 lations); and

24 (C) identify and deploy technologies such
25 as remote sensing and virtual fencing to expe-

1 dite, simplify, and encourage the use of non-
2 renewable grazing permits and leases referred
3 to in subparagraph (A) to reduce fine fuel
4 loads.

5 (3) FOREST SERVICE TEMPORARY GRAZING
6 PERMITS.—The Secretary of Agriculture shall—

7 (A) direct the issuance of temporary graz-
8 ing permits under part 222 of title 36, Code of
9 Federal Regulations (or successor regulations,
10 to permittees under that part for the purpose of
11 grazing to reduce fine fuel loads and the risk of
12 catastrophic wildfire where and when such
13 issuance is ecologically appropriate; and

14 (B) identify and deploy technologies such
15 as remote sensing and virtual fencing to expe-
16 dite, simplify, and encourage the use of tem-
17 porary permits referred to in subparagraph (A)
18 to reduce fine fuel loads.

19 (i) WORKFORCE NEEDS REPORT.—

20 (1) IN GENERAL.—Not later than 1 year after
21 the date of enactment of this Act, the Secretary of
22 Agriculture, the Secretary of the Interior, and the
23 Secretary of Homeland Security shall jointly prepare
24 and submit to Congress a report describing—

1 (A) needs in the Federal workforce relating
2 to a more comprehensive approach to wildfire
3 management, including pre-fire mitigation and
4 post-fire recovery in the built and natural envi-
5 ronments;

6 (B) positions needed to more effectively
7 partner with and enable the utilization of State,
8 Tribal, and local capacity; and

9 (C) challenges with contract and agree-
10 ment mechanisms, including recommendations
11 to reduce staffing and cost burdens relating to
12 State, Tribal, and local use of contracts and
13 agreements.

14 (2) CONSULTATION.—In identifying the posi-
15 tions needed to partner with States, Indian Tribes,
16 and units of local government under paragraph
17 (1)(B), the Secretary of Agriculture, the Secretary
18 of the Interior, and the Secretary of Homeland Se-
19 curity shall consult with—

20 (A) representative organizations of those
21 entities, such as the National Governors Asso-
22 ciation, the National Association of State For-
23 esters, the National Association of Counties, the
24 National League of Cities, and the National
25 Congress of American Indians; and

1 (B) representatives of community non-
2 governmental organizations and other relevant
3 partners, including local utility providers, public
4 safety personnel, fire service representatives,
5 and emergency managers, including State haz-
6 ard mitigation officers.

7 (j) INCIDENT RECOVERY.—

8 (1) IN GENERAL.—The Secretary of Agri-
9 culture, the Secretary of the Interior, and the Sec-
10 retary of Homeland Security, acting through the
11 FEMA Administrator, shall jointly develop policies
12 and guidance for post-fire incident recovery, specifi-
13 cally relating to the transition between wildfire re-
14 sponse and the wildfire recovery period.

15 (2) INCLUSIONS.—The policies and guidance
16 developed under paragraph (1) shall—

17 (A) identify areas for coordination between
18 Federal agencies;

19 (B) support consistent implementation of
20 incident response and recovery policies across
21 landscapes; and

22 (C) provide a pathway with defined time-
23 frames and areas of Federal responsibility for
24 the transition between wildfire operations and
25 locally led recovery efforts.

1 (3) UPDATES AND REVIEW.—Not later than 1
2 year after the date of enactment of this Act, the
3 FEMA Administrator shall—

4 (A) update the Public Assistance Program
5 and Policy Guide of the Federal Emergency
6 Management Agency to include guidance on
7 wildfire-specific recovery challenges, including
8 debris removal, emergency protective measures,
9 and toxicity of drinking water resources result-
10 ing from wildfire;

11 (B) conduct a review of the criteria for
12 evaluating the cost-effectiveness of projects in-
13 tended to mitigate the impacts of wildfire under
14 sections 203 and 404 of the Robert T. Stafford
15 Disaster Relief and Emergency Assistance Act
16 (42 U.S.C. 5133; 5170c), including—

17 (i) the establishment of pre-calculated
18 benefits criterion for common defensible
19 space mitigation projects for wildfire miti-
20 gation;

21 (ii) the use of nature-based infrastruc-
22 ture in wildfire mitigation;

23 (iii) considerations for vegetation
24 management for wildfire mitigation;

1 (iv) reducing the negative effects of
2 wildfire smoke on public health; and

3 (v) lessening the impact of wildfires
4 on water infrastructure; and

5 (C) issue such guidance as is necessary
6 to—

7 (i) update criteria described in sub-
8 paragraph (B), based on the results of the
9 review conducted under that subparagraph;
10 and

11 (ii) prioritize projects under sections
12 203 and 404 of the Robert T. Stafford
13 Disaster Relief and Emergency Assistance
14 Act (42 U.S.C. 5133; 5170c) based on the
15 criteria updated under clause (i).

16 (k) EMERGENCY WATERSHED PROTECTION PRO-
17 GRAM CROSS-BOUNDARY FUNDING.—Section 403 of the
18 Agricultural Credit Act of 1978 (16 U.S.C. 2203) is
19 amended by adding at the end the following:

20 “(c) CROSS-BOUNDARY FUNDING.—The Secretary
21 may undertake emergency watershed protection measures
22 under this section across boundaries between Federal land
23 (including land managed by different Federal agencies),
24 State land, and private land for the purpose of protecting

1 lives, property, or resources at risk as a result of the appli-
2 cable impairment described in subsection (a).”.

3 (l) FUNDING TO WATER ENTITIES.—

4 (1) DEFINITION OF COVERED AGENCY.—In this
5 subsection, the term “covered agency” means—

6 (A) the Environmental Protection Agency;

7 (B) the Department of Housing and
8 Urban Development;

9 (C) the Department of Agriculture;

10 (D) the Federal Emergency Management
11 Agency; and

12 (E) the Department of the Interior.

13 (2) REQUIREMENT.—After a wildfire has oc-
14 curred, as determined by the head of the applicable
15 covered agency, the head of the covered agency shall
16 expedite to less than 90 days after the wildfire oc-
17 curred the provision of grants under grant programs
18 carried out by the covered agency, for the purpose
19 of maintaining drinking water delivery in the area in
20 which the wildfire occurred, for—

21 (A) drinking water collection and delivery
22 restoration and repair;

23 (B) drinking water plant restoration and
24 repair;

1 (C) the development of additional drinking
2 water treatment infrastructure; and

3 (D) the development of access to alter-
4 native sources of drinking water.

5 (3) INDIRECT COSTS.—Notwithstanding any
6 other provision of law, a grant provided using the
7 authority to expedite grants under paragraph (2)
8 may be used to restore and repair drinking water
9 collection systems, delivery systems, and treatment
10 plants damaged by direct flame contact or indirect
11 impacts of wildfire, such as damage to infrastructure
12 from increased sediment delivery resulting from a
13 burned watershed.

14 (m) JOINT CHIEFS LANDSCAPE RESTORATION PART-
15 NERSHIP PROGRAM.—Section 40808(d) of the Infrastruc-
16 ture Investment and Jobs Act (16 U.S.C. 6592d(d)) is
17 amended—

18 (1) in paragraph (1)(F), by striking “and” at
19 the end;

20 (2) by redesignating paragraph (2) as para-
21 graph (3); and

22 (3) by inserting after paragraph (1) the fol-
23 lowing:

24 “(2) whether the proposal enhances drought
25 and wildfire resilience; and”.

1 (n) NATIONAL SCIENCE AND TECHNOLOGY COUNCIL
2 WILDFIRE SUBCOMMITTEE.—The President shall estab-
3 lish within the Environmental Committee of the National
4 Science and Technology Council a Wildfire Subcommittee,
5 which shall, in coordination with non-Federal partners,
6 prioritize, review, and direct funding to—

7 (1) reports on areas in which research is needed
8 relating to effective pre-fire mitigation and post-fire
9 recovery;

10 (2) the development of new fire models to better
11 reflect scientific advancements and altered fire be-
12 havior under current and future climate conditions;

13 (3) map and model the current and anticipated
14 development of communities and infrastructure and
15 include the built environment in fuel models;

16 (4) study behavioral and social sciences to bet-
17 ter understand and guide public and individual deci-
18 sion-making; and

19 (5) study organizational science to support ad-
20 aptation of effective pre-fire mitigation and post-fire
21 recovery strategies by Federal, State, Tribal, and
22 local agencies.

23 (o) LOCAL WILDFIRE TRAINING.—The Secretary of
24 Homeland Security, acting through the United States Fire
25 Administrator, in consultation with the Secretary of Agri-

1 culture and the Secretary of the Interior, shall develop,
2 coordinate, and deliver expanded wildfire response and
3 suppression training and prescribed fire training to local
4 fire entities in preparation for the increased likelihood that
5 local fire entities will engage in work relating to wildfires.

6 (p) QUANTITATIVE AND QUALITATIVE REVIEW.—

7 Every 5 years, the Secretary of Agriculture, the Secretary
8 of the Interior, and the Secretary of Homeland Security,
9 acting through the FEMA Administrator and United
10 States Fire Administrator, shall jointly—

11 (1) conduct a quantitative and qualitative re-
12 view of the comprehensive wildfire environment, in-
13 cluding—

14 (A) an analysis of wildfire mitigation work
15 completed and wildfire recovery efforts under-
16 taken;

17 (B) changes in the built and natural envi-
18 ronments;

19 (C) impacts to public health from wildfire;

20 (D) an assessment of the level of integra-
21 tion of planning and implementation across all
22 temporal phases of wildfire;

23 (E) an assessment of anticipated changes
24 and challenges in wildfire management in the
25 upcoming decade; and

1 (F) policy recommendations to address
2 needed changes;

3 (2) submit a report describing the findings of
4 the review under paragraph (1) to the relevant com-
5 mittees of Congress, including the committees de-
6 scribed in subsection (b)(2)(D); and

7 (3) make publicly available the report submitted
8 under paragraph (2).

9 (q) BUREAU OF LAND MANAGEMENT LAND TRANS-
10 FERS.—

11 (1) IN GENERAL.—The Secretary of the Inte-
12 rior may transfer land administered by the Bureau
13 of Land Management to an Indian Tribe for the
14 purpose described in paragraph (2).

15 (2) USE.—Land transferred under paragraph
16 (1) shall be used for wildfire mitigation and restora-
17 tion workforce housing for the Indian Tribe.

18 (r) TRIBAL PARTICIPATION.—The Secretary of Agri-
19 culture, acting through the Chief of the Forest Service,
20 and the Secretary of the Interior shall enter into contracts
21 and agreements with, and provide grants to, Indian Tribes
22 to promote participation of Indian Tribes in wildfire re-
23 sponse, mitigation, and management.

24 (s) PANEL TO STUDY TRIBAL INCLUSION.—

1 (1) IN GENERAL.—The Secretary of Agriculture
2 and the Secretary of the Interior shall jointly estab-
3 lish a panel to study opportunities for the inclusion
4 of Indian Tribes in Federal wildfire response, miti-
5 gation, and co-stewardship.

6 (2) MEMBERS.—The panel established under
7 paragraph (1) shall be composed of 9 members, each
8 of whom shall represent an Indian Tribe with for-
9 estry interests or at risk of wildfire.

10 (3) DUTIES.—Not later than 1 year after the
11 date of enactment of this Act, the panel established
12 under paragraph (1) shall—

13 (A) conduct a study to identify opportuni-
14 ties described in paragraph (1); and

15 (B) make available on a publicly accessible
16 website a report describing the opportunities
17 identified through the study under subpara-
18 graph (A).

19 (t) WILDFIRE CASCADING IMPACTS.—

20 (1) IN GENERAL.—With respect to a wildfire
21 that results in the declaration of a major disaster
22 pursuant to the Robert T. Stafford Disaster Relief
23 and Emergency Assistance Act (42 U.S.C. 5121 et
24 seq.), the FEMA Administrator shall hold the inci-
25 dent period open for 1 year, beginning on the date

1 of fire containment, for emergency assistance under
2 section 403 of that Act (42 U.S.C. 5170b) required
3 from flooding, mud flow, or debris flow resulting
4 from the wildfire.

5 (2) RISK-BASED MONITORING PLANS.—With re-
6 spect to a wildfire described in paragraph (1), an
7 agency requesting emergency assistance may submit
8 to the FEMA Administrator a risk-based monitoring
9 plan, which shall include—

10 (A) an assessment of the risk of debris
11 flows, flooding or other impact resulting from
12 the wildfire;

13 (B) a plan for monitoring the risk and
14 alerting the public to imminent threats to life
15 and property; and

16 (C) an estimate of the duration of the risk.

17 (3) EXTENSION.—

18 (A) IN GENERAL.—Upon submission of a
19 risk-based monitoring plan described in para-
20 graph (2), the FEMA Administrator shall ex-
21 tend the incident period, holding the incident
22 period open until the earlier of the end of—

23 (i) the estimated duration of the risk;

24 or

1 (ii) 5 years after the date of fire con-
2 tainment.

3 (B) DEEMED GRANTED.—If the FEMA
4 Administrator takes no action during the 90-
5 day period after submission of a risk-based
6 monitoring plan described in paragraph (2), an
7 extension of the relevant incident period under
8 subparagraph (A) shall be deemed granted.

9 (u) CATEGORICAL EXCLUSION.—The Secretary of
10 Homeland Security, in coordination with the FEMA Ad-
11 ministrator shall amend the Department of Homeland Se-
12 curity Instruction Manual on Implementation of the Na-
13 tional Environmental Policy Act (Instruction Manual 023-
14 01-001-01, Revision 01) to include post-fire revegetation,
15 waterway protection, water resource protection, and other
16 post-fire community environmental needs in the list of cat-
17 egorical exclusions.

18 (v) INTERAGENCY RESOURCE ORDERING.—The Sec-
19 retary of Agriculture and the Secretary of the Interior
20 shall direct agencies of the Department of Agriculture and
21 the Department of the Interior, respectively, to utilize ex-
22 isting interagency resource ordering systems for pre-
23 scribed fire assignments.

1 (w) PROGRAMMATIC ENVIRONMENTAL ANALYSES.—
2 The Secretary of Agriculture and the Secretary of the In-
3 terior shall—

4 (1) increase the use of programmatic environ-
5 mental analyses that are broad, include similar or
6 connected projects, are large in scale, or will be im-
7 plemented over a longer period of time, with appro-
8 priate Tribal consultation and incorporation of In-
9 digenous knowledge; and

10 (2) use phased planning for projects on large
11 landscapes.

12 (x) PERFORMANCE METRICS.—The Secretary of Ag-
13 riculture, the Secretary of the Interior, and the Secretary
14 of Homeland Security, acting through the FEMA Admin-
15 istrator, shall jointly revise performance metrics applicable
16 to land management agencies and the United States Fire
17 Administration to include—

18 (1) the number of protected assets and values,
19 including sacred sites and other cultural resources
20 and values;

21 (2) the degree to which long-term risks to land-
22 scapes are reduced and landscapes are maintained in
23 a more resilient state;

1 (3) watershed conditions, fuels reduction out-
2 comes, biodiversity, and ecosystem services benefits;
3 and

4 (4) social metrics, including collaboration, com-
5 munity empowerment, and partnerships.

6 (y) UNIFORM DATASETS.—The Secretary of Agri-
7 culture, the Secretary of the Interior, and the Secretary
8 of Homeland Security, acting through the United States
9 Fire Administrator, shall jointly develop and maintain uni-
10 form wildfire hazard datasets.