

115TH CONGRESS
1ST SESSION

H. R. 3608

To amend the Endangered Species Act of 1973 to require publication on the Internet of the basis for determinations that species are endangered species or threatened species, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2017

Mr. McCLINTOCK (for himself, Mr. HUIZENGA, Mr. LAMALFA, Mr. JONES, Mr. GIANFORTE, and Mr. TIPTON) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Endangered Species Act of 1973 to require publication on the Internet of the basis for determinations that species are endangered species or threatened species, 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 “Endangered Species
5 Transparency and Reasonableness Act”.

1 **SEC. 2. REQUIREMENT TO PUBLISH ON THE INTERNET THE**
2 **BASIS FOR LISTINGS.**

3 Section 4(b) of the Endangered Species Act (16
4 U.S.C. 1533(b)) is amended by adding at the end the fol-
5 lowing:

6 “(9) The Secretary shall make publicly available on
7 the Internet the best scientific and commercial data avail-
8 able that are the basis for each regulation, including each
9 proposed regulation, promulgated under subsection (a)(1),
10 except that, at the request of a Governor, State agency,
11 or legislature of a State, the Secretary shall not make
12 available under this paragraph information regarding
13 which the State has determined public disclosure is pro-
14 hibited by a law or regulation of that State, including any
15 law or regulation requiring the protection of personal in-
16 formation; and except that within 30 days after the date
17 of the enactment of this paragraph, the Secretary shall
18 execute an agreement with the Secretary of Defense that
19 prevents the disclosure of classified information pertaining
20 to Department of Defense personnel, facilities, lands, or
21 waters.”.

22 **SEC. 3. DECISIONAL TRANSPARENCY AND USE OF STATE,**
23 **TRIBAL, AND LOCAL INFORMATION.**

24 (a) **REQUIRING DECISIONAL TRANSPARENCY WITH**
25 **AFFECTED STATES.**—Section 6(a) of the Endangered
26 Species Act of 1973 (16 U.S.C. 1535(a)) is amended—

1 (1) by inserting “(1)” before the first sentence;

2 and

3 (2) by striking “Such cooperation shall include”

4 and inserting the following:

5 “(2) Such cooperation shall include—

6 “(A) before making a determination under
7 section 4(a), providing to States affected by
8 such determination all data that is the basis of
9 the determination; and

10 “(B)”.

11 (b) ENSURING USE OF STATE, TRIBAL, AND LOCAL
12 INFORMATION.—

13 (1) IN GENERAL.—Section 3 of the Endangered
14 Species Act of 1973 (16 U.S.C. 1532) is amended—

15 (A) by redesignating paragraphs (2)
16 through (21) as paragraphs (3) through (22),
17 respectively; and

18 (B) by inserting after paragraph (1) the
19 following:

20 “(2) The term ‘best scientific and commercial data
21 available’ includes all such data submitted by a State, trib-
22 al, or county government.”.

23 (2) CONFORMING AMENDMENT.—Section 7(n)
24 of such Act (16 U.S.C. 1536(n)) is amended by

1 striking “section 3(13)” and inserting “section
2 3(14)”.

3 **SEC. 4. DISCLOSURE OF EXPENDITURES UNDER ENDAN-**
4 **GERED SPECIES ACT OF 1973.**

5 (a) REQUIREMENT TO DISCLOSE.—Section 13 of the
6 Endangered Species Act of 1973 (87 Stat. 902; relating
7 to conforming amendments which have executed) is
8 amended to read as follows:

9 **“SEC. 13. DISCLOSURE OF EXPENDITURES.**

10 “(a) REQUIREMENT.—The Secretary of the Interior,
11 in consultation with the Secretary of Commerce, shall—

12 “(1) not later than 90 days after the end of
13 each fiscal year, submit to the Committee on Nat-
14 ural Resources of the House of Representatives and
15 the Committee on Energy and Natural Resources of
16 the Senate an annual report detailing Federal Gov-
17 ernment expenditures for covered suits during the
18 preceding fiscal year (including the information de-
19 scribed in subsection (b)); and

20 “(2) make publicly available through the Inter-
21 net a searchable database of the information de-
22 scribed in subsection (b).

23 “(b) INCLUDED INFORMATION.—The report shall in-
24 clude—

1 “(1) the case name and number of each covered
2 suit, and a hyperlink to the record or decision for
3 each covered suit (if available);

4 “(2) a description of the claims in each covered
5 suit;

6 “(3) the name of each covered agency whose ac-
7 tions gave rise to a claim in a covered suit;

8 “(4) funds expended by each covered agency
9 (disaggregated by agency account) to receive and re-
10 spond to notices referred to in section 11(g)(2) or to
11 prepare for litigation of, litigate, negotiate a settle-
12 ment agreement or consent decree in, or provide ma-
13 terial, technical, or other assistance in relation to, a
14 covered suit;

15 “(5) the number of full-time equivalent employ-
16 ees that participated in the activities described in
17 paragraph (4);

18 “(6) attorneys fees and other expenses
19 (disaggregated by agency account) awarded in cov-
20 ered suits, including any consent decrees or settle-
21 ment agreements (regardless of whether a decree or
22 settlement agreement is sealed or otherwise subject
23 to nondisclosure provisions), including the bases for
24 such awards; and

1 “(7) any Federal funding used by a person or
2 a governmental or nongovernmental entity in bring-
3 ing a claim in a covered suit.

4 “(c) REQUIREMENT TO PROVIDE INFORMATION.—
5 The head of each covered agency shall provide to the Sec-
6 retary in a timely manner all information requested by the
7 Secretary to comply with the requirements of this section.

8 “(d) LIMITATION ON DISCLOSURE.—Notwith-
9 standing any other provision of this section, this section
10 shall not affect any restriction in a consent decree or set-
11 tlement agreement on the disclosure of information that
12 is not described in subsection (b).

13 “(e) DEFINITIONS.—

14 “(1) COVERED AGENCY.—The term ‘covered
15 agency’ means any agency of the Department of the
16 Interior, the Forest Service, the National Marine
17 Fisheries Service, the Bonneville Power Administra-
18 tion, the Western Area Power Administration, the
19 Southwestern Power Administration, or the South-
20 eastern Power Administration.

21 “(2) COVERED SUIT.—The term ‘covered suit’
22 means any civil action containing a claim against the
23 Federal Government, in which the claim arises under
24 this Act and is based on the action of a covered
25 agency.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 in the first section of such Act is amended by striking the
3 item relating to such section and inserting the following:
“Sec. 13. Disclosure of expenditures.”.

4 (c) PRIOR AMENDMENTS NOT AFFECTED.—This sec-
5 tion shall not be construed to affect the amendments made
6 by section 13 of such Act, as in effect before the enact-
7 ment of this Act.

8 **SEC. 5. AWARD OF LITIGATION COSTS TO PREVAILING PAR-**
9 **TIES IN ACCORDANCE WITH EXISTING LAW.**

10 Section 11(g)(4) of the Endangered Species Act of
11 1973 (16 U.S.C. 1540(g)(4)) is amended by striking “to
12 any” and all that follows through the end of the sentence
13 and inserting “to any prevailing party in accordance with
14 section 2412 of title 28, United States Code.”.

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