

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 6089
OFFERED BY MR. MARKEY OF MASSACHUSETTS**

Strike all after the enacting clause and insert the following:

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.

1 **TITLE I—AMENDMENTS TO**
2 **HEALTHY FORESTS RESTORA-**
3 **TION ACT OF 2003 RESPONSE**
4 **Subtitle A—Response to Insect**
5 **Infestations and Related Diseases**

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

7 (a) FINDINGS AND PURPOSES.—Section 401 of the
8 Healthy Forests Restoration Act of 2003 (16 U.S.C.
9 6551) is amended—

10 (1) in subsection (a)—

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

14 (B) by inserting after paragraph (2) the
15 following:

16 “(3) the mountain pine beetle is—

17 “(A) threatening and ravaging forests
18 throughout the Western region of the United
19 States, including Arizona, California, Colorado,
20 Idaho, Montana, Nevada, New Mexico, Oregon,
21 and South Dakota;

22 “(B) reaching epidemic populations and se-
23 verely impacting over 41,000,000 acres in west-
24 ern forests; and

1 “(C) deteriorating forest health in national
2 forests and, when combined with drought, dis-
3 ease, and storm damage, is resulting in extreme
4 fire hazards in national forests across the West-
5 ern United States and endangering the eco-
6 nomic stability of surrounding adjacent commu-
7 nities, ranches, and parks;” and

8 (2) in subsection (b)—

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

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

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

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

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

19 (1) by redesignating sections 405 and 406 (16
20 U.S.C. 6555, 6556) as sections 406 and 407, respec-
21 tively; and

22 (2) by inserting after section 404 (16 U.S.C.
23 6554) the following:

1 **“SEC. 405. DESIGNATION OF INSECT AND DISEASE TREAT-**
2 **MENT AND RESEARCH PILOT PROGRAM**
3 **AREAS.**

4 “(a) DESIGNATION OF TREATMENT AREAS.—Not
5 later than 60 days after the date of enactment of the De-
6 pleting Risk from Insect Infestation, Soil Erosion, and
7 Catastrophic Fire Act of 2012, the Secretary, in consulta-
8 tion with the Governor of each State, shall designate as
9 part of an insect and disease treatment and research pilot
10 program 1 or more subwatersheds (sixth-level hydrologic
11 units, according to the System of Hydrologic Unit Codes
12 of the United States Geological Survey) in at least 1 na-
13 tional forest in each State that is experiencing an insect
14 or disease epidemic.

15 “(b) REQUIREMENTS.—A subwatershed designated
16 under subsection (a) shall be—

17 “(1) experiencing substantially increased tree
18 mortality due to insect or disease infestation, based
19 on annual forest health surveys conducted by the
20 Secretary;

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

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

4 “(c) TREATMENT AREAS.—

5 “(1) IN GENERAL.—The Secretary may carry
6 out priority projects on Federal land in the sub-
7 watersheds designated under subsection (a) to re-
8 duce the risk or extent of, or increase the resilience
9 to, insect or disease infestation in the subwater-
10 sheds.

11 “(2) AUTHORITY.—Any project under para-
12 graph (1) for which a public notice to initiate
13 scoping is issued on or before September 30, 2017,
14 may be carried out in accordance with subsections
15 (b), (c), (d), and (g) of section 102, and sections,
16 104, 105, 106, and 401.

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

21 “(4) REPORT.—Not later than September 30,
22 2017, the Secretary shall issue a report that in-
23 cludes—

24 “(A) an evaluation of the progress towards
25 project goals; and

1 “(B) recommendations for modifications to
2 the projects and management treatments.

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

8 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
9 407 of the Healthy Forests Restoration Act of 2003 (as
10 redesignated by subsection (b)(1)) is amended by striking
11 “2008” and inserting “2017”.

12 **SEC. 102. CHANGE IN FUNDING SOURCE FOR HEALTHY**
13 **FORESTS RESERVE PROGRAM.**

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

16 (1) in subsection (a), by striking “IN GEN-
17 ERAL” and inserting “FISCAL YEARS 2009
18 THROUGH 2012”;

19 (2) by redesignating subsection (b) as sub-
20 section (d); and

21 (3) by inserting after subsection (a) the fol-
22 lowing:

23 “(b) FISCAL YEARS 2013 THROUGH 2017.—There is
24 authorized to be appropriated to the Secretary of Agri-

1 culture to carry out this section \$9,750,000 for each of
2 fiscal years 2013 through 2017.

3 “(c) **ADDITIONAL SOURCE OF FUNDS.**—In addition
4 to funds appropriated pursuant to the authorization of ap-
5 propriations in subsection (b) for a fiscal year, the Sec-
6 retary may use such amount of the funds appropriated
7 for that fiscal year to carry out the Soil Conservation and
8 Domestic Allotment Act (16 U.S.C. 590a et seq.) as the
9 Secretary determines necessary to cover the cost of tech-
10 nical assistance, management, and enforcement respon-
11 sibilities for land enrolled in the healthy forests reserve
12 program pursuant to subsections (a) and (b) of section
13 504.”.

14 **Subtitle B—Stewardship End**
15 **Result Contracting**

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

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

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

23 “(a) **DEFINITIONS.**—In this section:

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

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

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

10 “(c) LAND MANAGEMENT GOALS.—The land man-
11 agement goals of a project under subsection (b) may in-
12 clude—

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

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

17 “(3) setting of prescribed fires to improve the
18 composition, structure, condition, and health of
19 stands or to improve wildlife habitat;

20 “(4) removing vegetation or other activities to
21 promote healthy forest stands, reduce fire hazards,
22 or achieve other land management objectives;

23 “(5) watershed restoration and maintenance;

24 “(6) restoration and maintenance of wildlife
25 and fish; or

1 “(7) control of noxious and exotic weeds and re-
2 establishing.

3 “(d) AGREEMENTS OR CONTRACTS.—

4 “(1) PROCUREMENT PROCEDURE.—A source
5 for performance of an agreement or contract under
6 subsection (b) shall be selected on a best-value basis,
7 including consideration of source under other public
8 and private agreements or contracts.

9 “(2) CONTRACT FOR SALE OF PROPERTY.—A
10 contract entered into under this section may, at the
11 discretion of the Secretary of Agriculture, be consid-
12 ered a contract for the sale of property under such
13 terms as the Secretary may prescribe without regard
14 to any other provision of law.

15 “(3) TERM.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), the Chief and the Director
18 may enter into a contract under subsection (b)
19 in accordance with section 3903 of title 41,
20 United States Code.

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

24 “(4) OFFSETS.—

1 “(A) IN GENERAL.—The Chief and the Di-
2 rector may apply the value of timber or other
3 forest products removed as an offset against the
4 cost of services received under the agreement or
5 contract described in subsection (b).

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

9 “(i) shall be determined using appro-
10 priate methods of appraisal commensurate
11 with the quantity of products to be re-
12 moved; and

13 “(ii) may—

14 “(I) be determined using a unit
15 of measure appropriate to the con-
16 tracts; and

17 “(II) may include valuing prod-
18 ucts on a per-acre basis.

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

24 “(6) CONTRACTING OFFICER.—Notwithstanding
25 any other provision of law, the Secretary or the Sec-

1 retary of the Interior may determine the appropriate
2 contracting officer to enter into and administer an
3 agreement or contract under subsection (b).

4 “(e) RECEIPTS.—

5 “(1) IN GENERAL.—The Chief and the Director
6 may collect monies from an agreement or contract
7 under subsection (b) if the collection is a secondary
8 objective of negotiating the contract that will best
9 achieve the purposes of this section.

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

12 “(A) may be retained by the Chief and the
13 Director; and

14 “(B) shall be available for expenditure
15 without further appropriation at the project site
16 from which the monies are collected or at an-
17 other project site.

18 “(3) RELATION TO OTHER LAWS.—

19 “(A) IN GENERAL.—Notwithstanding any
20 other provision of law, the value of services re-
21 ceived by the Chief or the Director under a
22 stewardship contract project conducted under
23 this section, and any payments made or re-
24 sources provided by the contractor, Chief, or
25 Director shall not be considered monies received

1 from the National Forest System or the public
2 lands.

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

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

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

14 “(2) and the Act of June 30, 1914 (16 U.S.C.
15 498).

16 “(g) PERFORMANCE AND PAYMENT GUARANTEES.—

17 “(1) IN GENERAL.—The Chief and the Director
18 may require performance and payment bonds under
19 sections 28.103–2 and 28.103–3 of the Federal Ac-
20 quisition Regulation, in an amount that the con-
21 tracting officer considers sufficient to protect the in-
22 vestment in receipts by the Federal Government
23 generated by the contractor from the estimated
24 value of the forest products to be removed under a
25 contract under subsection (b).

1 “(2) EXCESS OFFSET VALUE.—If the offset
2 value of the forest products exceeds the value of the
3 resource improvement treatments, the Chief and the
4 Director may—

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

9 “(B) apply the excess to other authorized
10 stewardship projects.

11 “(h) MONITORING AND EVALUATION.—

12 “(1) IN GENERAL.—The Chief and the Director
13 shall establish a multiparty monitoring and evalua-
14 tion process that accesses the stewardship con-
15 tracting projects conducted under this section.

16 “(2) PARTICIPANTS.—Other than the Chief and
17 Director, participants in the process described in
18 paragraph (1) may include—

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

21 “(B) any other interested groups or indi-
22 viduals.

23 “(i) REPORTING.—Not later than 1 year after the
24 date of enactment of this section, and annually thereafter,
25 the Chief and the Director shall report to the Committee

1 on Agriculture, Nutrition, and Forestry of the Senate and
2 the Committee on Agriculture of the House of Representa-
3 tives on—

4 “(1) the status of development, execution, and
5 administration of agreements or contracts under
6 subsection (b);

7 “(2) the specific accomplishments that have re-
8 sulted; and

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

11 (b) REPEAL OF SUPERSEDED PROGRAM.—Section
12 347 of the Department of the Interior and Related Agen-
13 cies Appropriations Act, 1999 (16 U.S.C. 2104 note; Pub-
14 lic Law 105–277) is repealed.

15 **Subtitle C—Good Neighbor** 16 **Authority**

17 **SEC. 141. GOOD NEIGHBOR AUTHORITY.**

18 (a) DEFINITIONS.—In this section:

19 (1) AUTHORIZED RESTORATION SERVICES.—
20 The term “authorized restoration services” means
21 similar and complementary forest, rangeland, and
22 watershed restoration services carried out on adja-
23 cent Federal land and non-Federal land by either
24 the Secretary or a Governor pursuant to—

25 (A) a good neighbor agreement; and

1 (B) a cooperative agreement or contract
2 entered into under subsection (c).

3 (2) FEDERAL LAND.—

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

8 (i) National Forest System land.

9 (ii) Public lands (as defined in section
10 103 of the Federal Land Policy and Man-
11 agement Act of 1976 (43 U.S.C. 1702)).

12 (B) EXCLUSIONS.—The term “Federal
13 land” does not include—

14 (i) a component of the National Wil-
15 derness Preservation System, National
16 Wild and Scenic Rivers System, National
17 Trails System, or National Landscape
18 Conservation System;

19 (ii) a National Monument, National
20 Preserve, National Scenic Area, or Na-
21 tional Recreation Area; or

22 (iii) a wilderness study area.

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

1 (A) activities to treat insect- and disease-
2 infected trees;

3 (B) activities to reduce hazardous fuels;

4 (C) activities to maintain roads and trails
5 that cross a boundary between Federal land
6 and non-Federal land; and

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

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

12 (A) a nonfunding master cooperative
13 agreement entered into between the Secretary
14 and a Governor under chapter 63 of title 31,
15 United States Code; or

16 (B) a memorandum of agreement or un-
17 derstanding entered into between the Secretary
18 and a Governor.

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

22 (6) SECRETARY.—The term “Secretary”
23 means—

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

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

3 (b) GOOD NEIGHBOR AGREEMENTS.—

4 (1) IN GENERAL.—The Secretary may enter
5 into a good neighbor agreement with a Governor to
6 coordinate the procurement and implementation of
7 authorized restoration services in accordance with
8 this section.

9 (2) PUBLIC NOTICE AND COMMENT.—The Sec-
10 retary shall make each good neighbor agreement
11 available to the public.

12 (c) TASK ORDERS, CONTRACTS, AND COOPERATIVE
13 AGREEMENTS.—

14 (1) IN GENERAL.—The Secretary may issue a
15 task order for, or enter into a contract (including a
16 sole source contract) or cooperative agreement with,
17 a Governor to carry out authorized restoration serv-
18 ices.

19 (2) REQUIREMENTS.—Each task order, con-
20 tract, or cooperative agreement entered into under
21 paragraph (1) shall be executed in accordance
22 with—

23 (A) chapter 63 of title 31, United States
24 Code; and

1 (B) the applicable good neighbor agree-
2 ment.

3 (d) CONTRACT AND SUBCONTRACT REQUIRE-
4 MENTS.—

5 (1) REQUIREMENTS FOR SERVICES ON FED-
6 ERAL LAND.—

7 (A) IN GENERAL.—For authorized restora-
8 tion services carried out on Federal land under
9 subsection (c), each contract and subcontract
10 issued under the authority of a Governor shall
11 include the provisions described in subpara-
12 graph (B) that would have been included in the
13 contract had the Secretary been a party to the
14 contract.

15 (B) APPLICABLE PROVISIONS.—The provi-
16 sions referred to in subparagraph (A) are provi-
17 sions for—

18 (i) wages and benefits for workers em-
19 ployed by contractors and subcontractors
20 required by—

21 (I) subchapter IV of chapter 31
22 of part A of subtitle II of title 40,
23 United States Code; and

24 (II) chapter 6 of title 41, United
25 States Code;

1 (ii) nondiscrimination; and

2 (iii) worker safety and protection.

3 (2) REQUIREMENTS FOR SMALL BUSINESSES.—

4 Each contract and subcontract for authorized res-
5 toration services under subsection (c) shall comply
6 with provisions for small business assistance and
7 protection that would have been applicable to the
8 contract had the Secretary been a party to the con-
9 tract.

10 (3) LIABILITY.—The Secretary shall include
11 provisions in each good neighbor agreement, con-
12 tract, or cooperative agreement, as appropriate, gov-
13 erning the potential liability of the State and the
14 Secretary for actions carried out under this Act.

15 (e) TERMINATION OF EFFECTIVENESS.—

16 (1) IN GENERAL.—The authority of the Sec-
17 retary to enter into cooperative agreements and con-
18 tracts under this section terminates on September
19 30, 2019.

20 (2) CONTRACT DATE.—The termination date of
21 a cooperative agreement or contract entered into
22 under this section shall not extend beyond Sep-
23 tember 30, 2020.

24 (3) CONSOLIDATED AUTHORITY.—

1 (A) FEDERAL AND STATE COOPERATIVE
2 WATERSHED RESTORATION AND PROTECTION
3 IN COLORADO.—Section 331 of the Department
4 of the Interior and Related Agencies Appropria-
5 tions Act, 2001 (Public Law 106–291; 114
6 Stat. 996) is repealed.

7 (B) FEDERAL AND STATE COOPERATIVE
8 FOREST, RANGELAND, AND WATERSHED RES-
9 TORATION IN UTAH.—Section 337 of the De-
10 partment of the Interior and Related Agencies
11 Appropriations Act, 2005 (Public Law 108–
12 447; 118 Stat. 3102) is repealed.

13 (4) EXISTING CONTRACTS.—Nothing in the
14 amendments made by this section affects contracts
15 in effect on the day before the date of enactment of
16 this Act.

17 **TITLE II—POST FIRE** 18 **REHABILITATION**

19 **SEC. 201. EMERGENCY WATERSHED PROTECTION PRO-** 20 **GRAM.**

21 Section 403 of the Agricultural Credit Act of 1978
22 (16 U.S.C. 2203) is amended by adding at the end the
23 following new sentence: “In evaluating landowner and land
24 user applications for assistance under this section, the
25 Secretary shall give priority consideration to applications

1 submitted by landowners and land users for runoff retar-
2 dation and soil-erosion preventive measures needed to re-
3 mediate the effects of catastrophic wildfire on Federal
4 land that is the source of drinking water for the land-
5 owners and land users.”.

Amend the title so as to read: “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.”.

