

119TH CONGRESS
1ST SESSION

S. 3305

To preclude repeat litigation involving energy projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 2, 2025

Mr. COTTON introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To preclude repeat litigation involving energy projects, 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 “Curtailing Litigation
5 Excess and Abuse Reform Act of 2025” or the “CLEAR
6 Act of 2025”.

7 **SEC. 2. PRECLUSION OF REPEAT LITIGATION.**

8 (a) DEFINITIONS.—In this section:

9 (1) AUTHORIZATION.—The term “authoriza-
10 tion” means any license, permit, approval, finding,
11 determination, or administrative decision issued by

1 an agency and any interagency consultation that is
 2 required or authorized under Federal law in order to
 3 site, construct, reconstruct, or commence operations
 4 of an energy project administered by—

5 (A) a Federal agency; or

6 (B) in the case of a State participating in
 7 or administering a review required or author-
 8 ized under Federal law, as applicable, a State
 9 agency.

10 (2) COMPLETION.—

11 (A) IN GENERAL.—The term “comple-
 12 tion”, with respect to an energy project, means
 13 the earlier of—

14 (i) the date that the energy project
 15 commences commercial operation; and

16 (ii) the date that the energy project
 17 begins production or delivery of energy or
 18 resources.

19 (B) EXCLUSION.—The term “completion”,
 20 with respect to an energy project, does not in-
 21 clude construction activities pertaining to the
 22 energy project.

23 (3) ENERGY PROJECT.—The term “energy
 24 project” means a project for the development of a
 25 facility for—

1 (A) the generation, transmission, distribu-
2 tion, or storage of electric energy;

3 (B) the production, processing, transpor-
4 tation, or delivery of fossil fuels, fuels derived
5 from petroleum, or petrochemical feedstocks; or

6 (C) the extraction, processing, refining, re-
7 cycling, or transportation of critical minerals
8 essential to energy production, grid reliability,
9 or national security.

10 (4) LEGAL ACTION.—

11 (A) IN GENERAL.—The term “legal ac-
12 tion” means a legal claim brought in a Federal
13 or State court of competent jurisdiction pursu-
14 ant to applicable law to remand, reverse, re-
15 scind, overturn, modify, or otherwise seek judi-
16 cial relief (including equitable relief) with re-
17 spect to an authorization for an energy project.

18 (B) EXCEPTION.—The term “legal action”
19 does not include a legal claim involving an au-
20 thorization for an energy project brought by a
21 landowner for the fair market value of property
22 which has been or may be acquired by eminent
23 domain authority exercised pursuant to applica-
24 ble Federal law.

25 (b) PRECLUSION.—

1 (1) COMMON NUCLEUS OF OPERATIVE FACT.—

2 For the purposes of this section and res judicata, an
3 energy project and all associated authorizations for
4 that energy project shall be considered the common
5 nucleus of operative fact giving rise to any legal ac-
6 tion under Federal law.

7 (2) SINGLE ACTION RULE.—

8 (A) IN GENERAL.—Notwithstanding any
9 other provision of law, once a legal action or a
10 claim involving any other aspect of an energy
11 project has been finally adjudicated on the
12 record by a court of competent jurisdiction, no
13 subsequent legal action or a claim involving any
14 aspect of an energy project may be brought in
15 any Federal or State court with respect to the
16 same energy project, regardless of—

- 17 (i) the identity of the parties;
18 (ii) the form of relief sought; or
19 (iii) whether the subsequent legal ac-
20 tion or claim challenges a different author-
21 ization or agency decision related to the
22 same energy project.

23 (B) FINAL ADJUDICATION.—A final adju-
24 dication under subparagraph (A) includes any
25 judgment, degree, or order issued by a court

1 that disposes of the legal action on the merits
2 and is not subject to appeal.

3 (3) JURISDICTION.—No Federal or State court
4 shall have jurisdiction to hear or consider any legal
5 action barred under paragraph (2).

6 (c) EFFECT.—

7 (1) IN GENERAL.—The preclusive effect estab-
8 lished pursuant to subsection (b) is solely for the
9 benefit of, and may only be asserted by—

10 (A) the Federal agency that issued an au-
11 thorization for the applicable energy project; or

12 (B) the project sponsor of the applicable
13 energy project.

14 (2) NO EXPANSION OF RIGHTS.—Nothing in
15 this section creates, enlarges, or recognizes any right
16 of action, defense, or claim preclusion on behalf of
17 any party other than—

18 (A) the Federal agency that issued an au-
19 thorization for the applicable energy project;
20 and

21 (B) the project sponsor of the applicable
22 energy project.

23 (d) EXCEPTIONS.—Nothing in this section precludes
24 judicial review of—

1 (1) a legal action alleging operational violations
2 of Federal or State law occurring after completion of
3 the energy project; or

4 (2) an enforcement action brought by the
5 United States or a State in its sovereign capacity to
6 ensure compliance with applicable law.

7 **SEC. 3. JUDICIAL REVIEW.**

8 (a) STANDARD OF REVIEW.—Notwithstanding chap-
9 ter 7 of title 5, United States Code, in reviewing a legal
10 action, a court may hold that an applicable Federal agency
11 did not adequately comply with the procedural require-
12 ments needed to issue the authorization only if the court
13 determines that the applicable Federal agency abused its
14 substantial discretion in complying with the procedural re-
15 quirements in issuing the authorization.

16 (b) ROLE OF THE COURT.—A court reviewing a legal
17 action described in subsection (a) shall defer to the appli-
18 cable Federal agency and may not substitute its judgment
19 for the judgment of the applicable Federal agency regard-
20 ing factual determinations or the scope of review for
21 issuance of the authorization.

22 (c) REMAND.—

23 (1) IN GENERAL.—If a court holds that an ap-
24 plicable Federal agency failed to adequately comply
25 with the procedural requirements needed to issue an

1 authorization under subsection (a), the court may
2 only remand the authorization to the Federal agency
3 with—

4 (A) specific instruction to correct the er-
5 rors or deficiencies in compliance; and

6 (B) a reasonable schedule and deadline,
7 subject to the condition that the deadline may
8 not exceed—

9 (i) with respect to an order entered on
10 or after the date of enactment of this Act,
11 the date that is 180 days after the date on
12 which the order was entered; and

13 (ii) with respect to an order entered
14 before the date of enactment of this Act,
15 the date that is 180 days after that date
16 of enactment.

17 (2) CONTINUED EFFECT.—An authorization re-
18 manded under paragraph (1) shall remain in effect
19 while the Federal agency corrects any errors or defi-
20 ciencies specified by the court.

21 (d) LIMITATIONS ON CLAIMS.—Notwithstanding
22 chapter 7 of title 5, United States Code, a legal action
23 described in subsection (a) shall be barred unless—

24 (1) the legal action is filed not later than 150
25 days after the date on which the final agency action

1 regarding the applicable authorization is made pub-
2 lic, unless a shorter timeline is specified under Fed-
3 eral law; and

4 (2) in the case of an authorization for which
5 there was a public comment period, the legal ac-
6 tion—

7 (A) is filed by a party that submitted a
8 substantive and unique comment during a pub-
9 lic comment period by the noticed comment
10 deadline and that comment was sufficiently de-
11 tailed to put the applicable Federal agency on
12 notice of the issue on which the party seeks re-
13 view and shows that the party would suffer di-
14 rect harm if the comment was not addressed;
15 and

16 (B) concerns the same subject matter
17 raised in the comment submitted during the
18 public comment period.

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