

119TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

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

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**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.