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## [H.R. 2647, Resilient Federal Forests Act of 2015](#)

### FLOOR SITUATION

On Thursday, July 9, 2015, the House will consider [H.R. 2647](#), *the Resilient Federal Forests Act of 2015*, under a [structured rule](#). H.R. 2647 was introduced on June 4, 2015, by Rep. Bruce Westerman (R-AR) and was referred to the Committee on Agriculture, and in addition, to the Committee on Natural Resources. The Committee on Natural Resources ordered the bill reported on June 11, 2015, by a vote of 22 to 15. The Committee on Agriculture ordered the bill reported on June 17, 2015, by voice vote.

### SUMMARY

H.R. 2647 would change the way Federal land management agencies conduct various activities related to forest management, including wildfire activities. The bill also would exempt lawsuits challenging certain forest management activities from the Equal Access to Justice Act (EAJA) and would require plaintiffs who sue the U.S. Forest Service (USFS) for conducting such activities to post a cash bond to cover the agency's legal expenses if the agency wins the lawsuit.

Major provisions of the bill are as follows:

**State-supported Forest Management**<sup>1</sup>- The bill would allow states to contribute money to a new federal fund and, subject to appropriation of those contributions, direct the USFS to use the funds to carry out certain activities related to managing forests. Any proceeds generated by those activities also would be deposited in the fund.

**Elimination of Certain Restrictions on Timber Harvesting**<sup>2</sup>- The bill would prohibit the USFS from enforcing provisions in existing land use plans that limit timber harvesting in certain areas to trees less than 21 inches in diameter, with certain exceptions.

<sup>1</sup> Congressional Budget Office (CBO) cost estimate, "[H.R. 2647, Resilient Federal Forests Act of 2015.](#)"

<sup>2</sup> Id.

**Lawsuits Related to Certain Activities Related to Forest Management**<sup>3</sup>- The bill would require certain plaintiffs who sue the USFS to post a bond to cover the agency’s legal expenses. Under the bill, if the USFS wins the lawsuit, an amount equal to the agency’s legal expenses or the amount of the bond, whichever is less, would be awarded to the agency and would be classified as an offsetting receipt. The bill also would exempt lawsuits related to certain forest management activities from EAJA, which requires the Federal government to pay attorneys’ fees for certain plaintiffs that prevail in lawsuits against the United States.

**Expedited Assessment, Implementation, and Completion of Reforestation Activities**<sup>4</sup>- The bill requires the Forest Service to complete a reforestation plan for public lands adversely impacted by a large-scale catastrophic event within three months. The bill also requires that at least 75 percent of the impacted land must achieve reforestation within five years after the event. The bill also provides certain provisions to improve, restore, or reduce the risk of wildfire within the Forest System and public lands.

**Proposed Collaborative Forest Management Activities**<sup>5</sup>- The bill requires the USFS, when analyzing appropriate responses to wildfire and wildfire prevention actions, to consider several alternative actions, including a “no-action” alternative.

**Tribal Forestry Participation and Protection**<sup>6</sup>- The bill authorizes Indian tribes to request to conduct forest management activities on Federal lands where they have a tribal interest and to conduct certain maintenance activities in conjunction with government authorities. The bill also requires the Secretary of the Interior to respond to tribal requests for forest management on agency lands within 120 days and to complete analysis within two years.

**Limit on the Use of Certain Funds for Administrative Costs**<sup>7</sup>- The Knutson-Vandenberg Trust Fund (K-V Fund) consists of amounts generated by timber sales that can be retained and spent by the Forest Service to carry out activities related to forest management. The bill would prohibit the agency from using amounts in the K-V Fund to cover administrative costs for personnel working outside of ranger districts where those funds were generated. Under current law, the Forest Service spends, without annual appropriation, about \$2 million a year from the K-V Fund for that purpose.

**Stewardship Contracting**<sup>8</sup>- The bill would allow the USFS and the Bureau of Land Management (BLM) to determine the amount of appropriated funds they reserve to pay for the costs of cancelling certain stewardship contracts. Under the Antideficiency Act, Federal agencies cannot spend funds in excess of amounts specifically made available to the agency. Since the bill could allow agencies to reserve insufficient funds to cover all the costs of cancelled contracts, the legislation would effectively allow them to obligate sums greater than the appropriations they have available when they enter into the contracts—thus creating direct spending authority. However, the amount of funds set aside to cover cancellation costs for all multi-year stewardship contracts over the last 10 years averaged less than \$200,000 a year, and no contracts were cancelled over that period.

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<sup>3</sup> Id.

<sup>4</sup> [H.R. 2647 section-by-section analysis](#) at 3.

<sup>5</sup> Id. at 1.

<sup>6</sup> Id. at 8.

<sup>7</sup> Congressional Budget Office (CBO) cost estimate, “[H.R. 2647, Resilient Federal Forests Act of 2015.](#)”

<sup>8</sup> Id.

## BACKGROUND

The Federal government is responsible for managing wildfires that begin on Federal lands—such as national forests or national parks—while the states are responsible for managing wildfires that originate on all other lands. The Federal government's wildfire management responsibilities—provided primarily through the USFS and Department of the Interior (DOI)—include prevention, detection, response, and recovery. The Federal Emergency Management Agency (FEMA) may also provide disaster relief for certain nonfederal wildfires.<sup>9</sup> Today, more than 70,000 communities are located within or adjacent to forests and rangelands prone to wildfires.<sup>10</sup>

Since 1995, the United States has seen a significant increase in the number of acres burned by wildfires, as the average number of acres burned has increased from approximately 3.3 million to 6 million. Since that time, 348 lives have been lost and since 2006, over 3,000 man-made structures have been destroyed as a result of catastrophic wildfires.

According to the Committee on Natural Resources, the dramatic increase in catastrophic wildfire impacts can be largely attributed to the decrease in timber production. “From the mid- 1950s to the mid-1990s, USFS typically harvested between 10 and 12 billion board feet annually. Since 1996, that number has declined to a range of 1.6 to 3.3 billion board feet.”<sup>11</sup>

“The reason for the declining amount of timber production is twofold: longer planning periods that result in increased time and money and leave our forests vulnerable to insect and disease, plus the chilling effect of unnecessary litigation on forest planning decisions. A 2012 USFS report estimated that between 65 million and 82 million acres are facing some level of threat of wildfire and are in need of restoration. This is more than one-third of the National Forest System. In 2014, USFS treated 2.9 million acres of land. At this pace, it would take the agency more than 20 years to treat this endangered land.”<sup>12</sup>

Wildfire spending has more than doubled since the 1990s, increasing from \$1.6 billion in FY1994 to \$3.9 billion in FY2014. A significant portion of that increase is related to rising suppression costs, even during years of relatively mild wildfire activity, although the costs vary annually and are difficult to predict in advance.<sup>13</sup> In 2014, the combined suppression cost of wildfires to the Federal government was over \$1.5 billion.<sup>14</sup>

The Federal Land Assistance, Management, and Enhancement (FLAME) Act of 2009 created an emergency FLAME funding account for both the USFS and Department of Interior (DOI), in part to account for the growing cost of wildfire suppression. The FLAME accounts provide a source of reserve funds used to cover the costs of large or complex fires or when amounts provided in their Wildlife Fire Management suppression accounts are exhausted. Since the FLAME accounts were established in FY2010, the USFS FLAME account has received an annual average of \$323 million and the DOI FLAME account has received an annual average of \$82 million.<sup>15</sup>

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<sup>9</sup> See Congressional Research Report, “[Wildfire Spending: Background, Issues, and Legislation in the 114<sup>th</sup> Congress](#),” June 26, 2015.

<sup>10</sup> <http://www.fs.fed.us/managing-land/fire>

<sup>11</sup> See [House Report 114-185](#), Part 2, at 14.

<sup>12</sup> *Id.*

<sup>13</sup> See Congressional Research Report, “[Wildfire Spending: Background, Issues, and Legislation in the 114<sup>th</sup> Congress](#),” June 26, 2015.

<sup>14</sup> [https://www.nifc.gov/fireInfo/fireInfo\\_documents/SuppCosts.pdf](https://www.nifc.gov/fireInfo/fireInfo_documents/SuppCosts.pdf)

<sup>15</sup> See Congressional Research Report, “[Wildfire Spending: Background, Issues, and Legislation in the 114<sup>th</sup> Congress](#),” June 26, 2015.

According to the bill sponsor, “[The bill] protects our national forests through proper management practices. [The bill] creates healthier forests, cleaner water, cleaner air, and protects the lives and property of Americans living in or near our national forests.”<sup>16</sup>

## **COST**

The Congressional Budget Office (CBO) [estimates](#) that implementing the bill would cost \$10 million over the 2016 to 2020 period, assuming appropriation of the necessary amounts. H.R. 2647 contains provisions that would affect direct spending, therefore pay-as-you-go procedures apply. However, CBO estimates that none of the provisions would have a significant effect on direct spending in any year and that enacting the bill would have a negligible net effect on direct spending over the 2016 to 2025 period. Enacting the legislation would not affect revenues.

## **AMENDMENTS**

- 1) [Rep. Jared Polis \(D-CO\)](#)—The amendment strikes Section 203, relating to the prohibition on restraining orders, preliminary injunctions, and injunctions pending appeals. Strikes Title III, relating to the imposition of a bond requirement as part of a potential legal challenge of certain forest management activities.
- 2) [Rep. Scott Tipton \(R-CO\)](#)—The amendment requests stewardship contracts awarded prior to Feb 7, 2014 shall be modified by the Secretary to include fire liability provisions described in Section 604(d)(7) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591c).
- 3) [Rep. Michelle Lujan Grisham \(D-NM\)](#)—The amendment allows the Forest Service to create a pilot program that would execute contracts with tribes to perform administrative, management, and other functions of programs of the Tribal Forest Protection Act of 2004.
- 4) [Rep. Derek Kilmer \(D-WA\)](#)—The amendment directs the Secretary of Agriculture to develop and implement at least one landscape-scale forest restoration project that includes, as a defined purpose of that project, the generation of material that will be used to promote advanced wood products. Requires that the project be developed through a collaborative process.

## **STAFF CONTACT**

For questions or further information please contact [John Huston](#) with the House Republican Policy Committee by email or at 6-5539.

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<sup>16</sup> See Press Release—Rep. Bruce Westerman, [“Natural Resources Committee Passes Critical Bipartisan Forest Management Bill.”](#) June 11, 2015.