

118TH CONGRESS
1ST SESSION

H. R. 636

To establish an arbitration process pilot program as an alternative dispute resolution process for certain objections or protests to qualified forest management activities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 2023

Mr. ROSENDALE introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committees on Agriculture, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish an arbitration process pilot program as an alternative dispute resolution process for certain objections or protests to qualified forest management activities, 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 “Forest Litigation Re-
5 form Act of 2023”.

1 **SEC. 2. NO ATTORNEY FEES FOR FOREST MANAGEMENT**
2 **ACTIVITY CHALLENGES.**

3 Notwithstanding section 1304 of title 31, United
4 States Code, no award may be made under section 2412
5 of title 28, United States Code, and no amounts may be
6 obligated or expended from the Claims and Judgment
7 Fund of the United States Treasury to pay any fees or
8 other expenses under such sections to any plaintiff related
9 to an action challenging a qualified forest management ac-
10 tivity.

11 **SEC. 3. INJUNCTIVE RELIEF.**

12 (a) **BALANCING SHORT- AND LONG-TERM EFFECTS**
13 **OF FOREST MANAGEMENT ACTIVITIES IN CONSIDERING**
14 **INJUNCTIVE RELIEF.**—As part of its weighing the equities
15 while considering any request for an injunction that ap-
16 plies to any agency action as part of a qualified forest
17 management activity, the court reviewing the agency ac-
18 tion shall balance the impact to the ecosystem likely af-
19 fected by the forest management activity of—

20 (1) the short- and long-term effects of under-
21 taking the agency action; against

22 (2) the short- and long-term effects of not un-
23 dertaking the action.

24 (b) **TIME LIMITATIONS FOR INJUNCTIVE RELIEF.**—

25 (1) **IN GENERAL.**—Subject to paragraph (2),
26 the length of any preliminary injunctive relief and

1 stays pending appeal that applies to any agency ac-
2 tion as part of a forest management activity, shall
3 not exceed 60 days.

4 (2) RENEWAL.—

5 (A) IN GENERAL.—A court of competent
6 jurisdiction may issue one or more renewals of
7 any preliminary injunction, or stay pending ap-
8 peal, granted under paragraph (1).

9 (B) UPDATES.—In each renewal of an in-
10 junction in an action, the parties to the action
11 shall present the court with updated informa-
12 tion on the status of the authorized forest man-
13 agement activity.

14 **SEC. 4. USE OF ARBITRATION INSTEAD OF LITIGATION TO**
15 **ADDRESS CHALLENGES TO FOREST MANAGE-**
16 **MENT ACTIVITIES.**

17 (a) DISCRETIONARY ARBITRATION PROCESS PILOT
18 PROGRAM.—

19 (1) IN GENERAL.—The Secretary of Agri-
20 culture, with respect to National Forest System
21 lands, and the Secretary of the Interior, with respect
22 to public lands, shall each establish a discretionary
23 arbitration pilot program as an alternative dispute
24 resolution process for the activities described in
25 paragraph (2). Such arbitration pilot program shall

1 take place in lieu of judicial review for the activities
2 described in paragraph (2).

3 (2) ACTIVITIES DESCRIBED.—The Secretary
4 concerned, at the sole discretion of the Secretary,
5 may designate objections or protests to qualified for-
6 est management activities for arbitration under the
7 arbitration pilot program established under para-
8 graph (1).

9 (3) MAXIMUM AMOUNT OF ARBITRATIONS.—

10 (A) IN GENERAL.—Under the arbitration
11 pilot program, the Secretary concerned may not
12 arbitrate more than 10 objections or protests to
13 qualified forest management activities in a fis-
14 cal year in—

15 (i) each Forest Service Region; and

16 (ii) each State Region of the Bureau
17 of Land Management.

18 (B) NOT SUBJECT TO JUDICIAL REVIEW.—

19 A determination made by the Secretary con-
20 cerned that an objection or protest to a quali-
21 fied forest management activity is an activity
22 described under paragraph (2) shall not be sub-
23 ject to judicial review.

24 (4) DETERMINING AMOUNT OF ARBITRA-
25 TIONS.—An objection or protest to a qualified forest

1 management activity shall not be counted towards
2 the limitation on number of arbitrations under para-
3 graph (3) unless—

4 (A) on the date such objection or protest
5 is designated for arbitration, the qualified forest
6 management activity for which such objection
7 or protest is filed has not been the subject of
8 arbitration proceedings under the pilot pro-
9 gram; and

10 (B) the arbitration proceeding has com-
11 menced with respect to such objection or pro-
12 test.

13 (5) TERMINATION.—

14 (A) IN GENERAL.—The pilot programs es-
15 tablished pursuant to paragraph (1) shall ter-
16minate on the date that is 7 years after the
17 date of the enactment of this Act.

18 (B) ACTIVITY IN ARBITRATION.—An objec-
19tion or protest to a qualified forest management
20 activity that has commenced but has not com-
21 pleted arbitration on the date of termination
22 under subparagraph (A) shall continue until
23 such arbitration is completed.

24 (b) INTERVENING PARTIES.—

1 (1) REQUIREMENTS.—Any person that sub-
2 mitted a public comment on the qualified forest
3 management activity that is subject to arbitration
4 may intervene in the arbitration—

5 (A) by endorsing—

6 (i) the qualified forest management
7 activity; or

8 (ii) the modification proposal sub-
9 mitted under subparagraph (B); or

10 (B) by submitting a proposal to further
11 modify the qualified forest management activ-
12 ity.

13 (2) DEADLINE FOR SUBMISSION.—With respect
14 to an objection or protest that is designated for arbi-
15 tration under this subsection (a), a request to inter-
16 vene in an arbitration must be submitted not later
17 than the date that is 30 days after the date on
18 which such objection or protest was designated for
19 arbitration.

20 (3) MULTIPLE PARTIES.—Multiple intervening
21 parties may submit a joint proposal so long as each
22 intervening party meets the eligibility requirements
23 of paragraph (1).

24 (c) APPOINTMENT OF ARBITRATOR.—

1 (1) APPOINTMENT.—The Secretary of Agri-
2 culture and the Secretary of the Interior shall jointly
3 develop and publish a list of not fewer than 20 indi-
4 viduals eligible to serve as arbitrators for the pilot
5 programs under this section.

6 (2) QUALIFICATIONS.—In order to be eligible to
7 serve as an arbitrator under this subsection, an indi-
8 vidual shall be, on the date of the appointment of
9 such arbitrator—

10 (A) certified by the American Arbitration
11 Association; and

12 (B) not a registered lobbyist.

13 (3) SELECTION OF ARBITRATOR.—

14 (A) IN GENERAL.—For each arbitration
15 commenced under this section, the Secretary
16 concerned and each applicable objector or
17 protestor shall agree, not later than 14 days
18 after the agreement process is initiated, on a
19 mutually acceptable arbitrator from the list
20 published under this subsection.

21 (B) APPOINTMENT AFTER 14 DAYS.—In
22 the case of an agreement with respect to a mu-
23 tually acceptable arbitrator not being reached
24 within the 14-day limit described in subpara-
25 graph (A), the Secretary concerned shall ap-

1 point an arbitrator from the list published
2 under this subsection.

3 (d) SELECTION OF PROPOSALS.—

4 (1) IN GENERAL.—The arbitrator appointed
5 under subsection (c)—

6 (A) may not modify any of the proposals
7 submitted with the objection, protest, or request
8 to intervene; and

9 (B) shall select to be conducted—

10 (i) the qualified forest management
11 activity, as approved by the Secretary; or

12 (ii) a proposal submitted by an objec-
13 tor or an intervening party.

14 (2) SELECTION CRITERIA.—An arbitrator shall,
15 when selecting a proposal, consider—

16 (A) whether the proposal is consistent with
17 the applicable forest plan, laws, and regula-
18 tions;

19 (B) whether the proposal can be carried
20 out by the Secretary concerned; and

21 (C) the effect of each proposal on—

22 (i) forest health;

23 (ii) potential losses of life and prop-
24 erty;

25 (iii) habitat diversity;

- 1 (iv) wildfire potential;
2 (v) insect and disease potential;
3 (vi) timber production; and
4 (vii) the implications of a resulting de-
5 cline in forest health, loss of habitat diver-
6 sity, wildfire, or insect or disease infesta-
7 tion, given fire and insect and disease his-
8 toric cycles, on—
- 9 (I) potential losses of life and
10 property;
11 (II) domestic water costs;
12 (III) wildlife habitat loss; and
13 (IV) other economic and social
14 factors.

15 (e) EFFECT OF DECISION.—The decision of an arbi-
16 trator with respect to the qualified forest management ac-
17 tivity shall—

- 18 (1) not be considered a major Federal action;
19 (2) be binding; and
20 (3) not be subject to judicial review, except as
21 provided in section 10(a) of title 9, United States
22 Code.

23 (f) DEADLINE FOR COMPLETION.—Not later than 90
24 days after the date on which the arbitration is filed with

1 respect to the qualified forest management activity, the
2 arbitration process shall be completed.

3 **SEC. 5. DEFINITION.**

4 In this Act:

5 (1) **COLLABORATIVE PROCESS.**—The term “col-
6 laborative process” means a process relating to the
7 management of National Forest System lands or
8 public lands by which a project or forest manage-
9 ment activity is developed and implemented by the
10 Secretary concerned through collaboration with mul-
11 tiple interested persons representing diverse inter-
12 ests.

13 (2) **COMMUNITY WILDFIRE PROTECTION**
14 **PLAN.**—The term “community wildfire protection
15 plan” has the meaning given that term in section
16 101 of the Healthy Forests Restoration Act of 2003
17 (16 U.S.C. 6511).

18 (3) **NATIONAL FOREST SYSTEM.**—The term
19 “National Forest System” has the meaning given
20 that term in section 11(a) of the Forest and Range-
21 land Renewable Resources Planning Act of 1974 (16
22 U.S.C. 1609(a)).

23 (4) **PUBLIC LANDS.**—The term “public lands”
24 has the meaning given that term in section 103 of
25 the Federal Land Policy and Management Act of

1 1976 (43 U.S.C. 1702), except that the term in-
2 cludes Coos Bay Wagon Road Grant lands and Or-
3 egon and California Railroad Grant lands.

4 (5) QUALIFIED FOREST MANAGEMENT ACTIV-
5 ITY.—The term “qualified forest management activ-
6 ity” means any forest management activity that—

7 (A) will occur on lands identified as the
8 Secretary concerned as suitable for timber pro-
9 duction; and

10 (B) meets at least one of the following con-
11 ditions:

12 (i) The forest management activity
13 will occur on lands designated by the Sec-
14 retary (or designee thereof) pursuant to
15 section 602(b) of the Healthy Forests Res-
16 toration Act of 2003 (16 U.S.C.
17 6591a(b)), notwithstanding whether such
18 forest management activity is initiated
19 prior to the date of enactment of this Act.

20 (ii) The forest management activity is
21 developed through a collaborative process.

22 (iii) The forest management activity is
23 proposed by a resource advisory committee.

1 (iv) The forest management activity is
2 covered by a community wildfire protection
3 plan.

4 (6) RESOURCE ADVISORY COMMITTEE.—The
5 term “resource advisory committee” has the mean-
6 ing given that term in section 201 of the Secure
7 Rural Schools and Community Self-Determination
8 Act of 2000 (16 U.S.C. 7121).

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