

117TH CONGRESS  
2D SESSION

# S. 4186

To provide compensation for victims of the fire initiated as a prescribed burn by the Forest Service in the Santa Fe National Forest in San Miguel County, New Mexico.

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## IN THE SENATE OF THE UNITED STATES

MAY 11 (legislative day, MAY 10), 2022

Mr. LUJÁN (for himself and Mr. HEINRICH) introduced the following bill;  
which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide compensation for victims of the fire initiated as a prescribed burn by the Forest Service in the Santa Fe National Forest in San Miguel County, New Mexico.

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 “Hermit’s Peak Fire  
5       Assistance Act”.

6       **SEC. 2. FINDINGS AND PURPOSES.**

7       (a) FINDINGS.—Congress finds that—

8               (1) on April 6, 2022, the Forest Service initi-  
9       ated a prescribed burn on Federal land in the Santa

1       Fe National Forest in San Miguel County, New  
2       Mexico, when erratic winds were prevalent in the  
3       area that was also suffering from severe drought  
4       after many years of insufficient precipitation;

5           (2) on April 12, 2022, the prescribed burn,  
6       which became known as the “Hermit’s Peak Fire”,  
7       exceeded the containment capabilities of the Forest  
8       Service, was reclassified as a wildland burn, and  
9       spread to other Federal and non-Federal land,  
10      quickly becoming characterized as a wildfire;

11          (3) on April 19, 2022, the Calf Canyon Fire,  
12      also in San Miguel County, New Mexico, began  
13      burning on Federal land;

14          (4) on April 27, 2022, the Hermit’s Peak Fire  
15      and the Calf Canyon Fire merged, and both fires  
16      were reported as the Hermit’s Peak Fire or the Her-  
17      mit’s Peak/Calf Canyon Fire, which shall be referred  
18      to hereafter as the Hermit’s Peak Fire;

19          (5) by May 2, 2022, the fire had grown in size  
20      and caused evacuations in multiple villages and com-  
21      munities in San Miguel County and Mora County,  
22      including in the San Miguel county jail, the State’s  
23      psychiatric hospital, the United World College, and  
24      New Mexico Highlands University;

1           (6) on May 4, 2022, the President issued a  
 2           major disaster declaration for the counties of Colfax,  
 3           Mora, and San Miguel, New Mexico;

4           (7) the fire resulted in the loss of Federal,  
 5           State, local, Tribal, and private property; and

6           (8) the United States should compensate the  
 7           victims of the Hermit’s Peak Fire.

8           (b) PURPOSES.—The purposes of this Act are—

9           (1) to compensate victims of the fire at Her-  
 10          mit’s Peak, New Mexico, for injuries resulting from  
 11          the fire; and

12          (2) to provide for the expeditious consideration  
 13          and settlement of claims for those injuries.

14   **SEC. 3. DEFINITIONS.**

15          In this Act:

16          (1) ADMINISTRATOR.—The term “Adminis-  
 17          trator” means—

18                  (A) the Administrator of the Federal  
 19                  Emergency Management Agency; or

20                  (B) if a Manager is appointed under sec-  
 21                  tion 4(a)(3), the Manager.

22          (2) HERMIT’S PEAK FIRE.—The term “Her-  
 23          mit’s Peak Fire” means the fire resulting from the  
 24          initiation by the Forest Service of a prescribed burn  
 25          in the Santa Fe National Forest in San Miguel

1 County, New Mexico, on April 6, 2022, which subse-  
2 quently merged with the Calf Canyon Fire, and both  
3 fires were reported as the Hermit’s Peak Fire or the  
4 Hermit’s Peak Fire/Calf Canyon Fire.

5 (3) INDIAN TRIBE.—The term “‘Indian Tribe”  
6 means the recognized governing body of any Indian  
7 or Alaska Native Tribe, band, nation, pueblo, village,  
8 community, component band, or component reserva-  
9 tion individually identified (including parenthetically)  
10 in the list published most recently as of the date of  
11 enactment of this Act pursuant to section 104 of the  
12 Federally Recognized Indian Tribe List Act of 1994  
13 (25 U.S.C. 5131).

14 (4) INJURED PERSON.—The term “injured per-  
15 son” means—

16 (A) an individual, regardless of the citizen-  
17 ship or alien status of the individual; or

18 (B) an Indian Tribe, corporation, Tribal  
19 corporation, partnership, company, association,  
20 county, township, city, State, school district, or  
21 other non-Federal entity (including a legal rep-  
22 resentative) that suffered injury resulting from  
23 the Hermit’s Peak Fire.

24 (5) INJURY.—The term “injury” has the same  
25 meaning as the term “injury or loss of property, or

personal injury or death” as used in section 1346(b)(1) of title 28, United States Code.

(6) MANAGER.—The term “Manager” means an Independent Claims Manager appointed under section 4(a)(3).

(7) OFFICE.—The term “Office” means the Office of Hermit’s Peak Fire Claims established by section 4(a)(2).

(8) TRIBAL ENTITY.—The term “Tribal entity” includes any Indian Tribe, tribal organization, Indian-controlled organization serving Indians, Native Hawaiian organization, or Alaska Native entity, as such terms are defined or used in section 166 of the Workforce Innovation and Opportunity Act (25 U.S.C. 5304).

**SEC. 4. COMPENSATION FOR VICTIMS OF HERMIT’S PEAK FIRE.**

(a) IN GENERAL.—

(1) COMPENSATION.—Each injured person shall be entitled to receive from the United States compensation for injury suffered by the injured person as a result of the Hermit’s Peak Fire.

(2) OFFICE OF HERMIT’S PEAK FIRE CLAIMS.—

1 (A) IN GENERAL.—There is established  
2 within the Federal Emergency Management  
3 Agency an Office of Hermit’s Peak Fire Claims.

4 (B) PURPOSE.—The Office shall receive,  
5 process, and pay claims in accordance with this  
6 title.

7 (C) FUNDING.—The Office—

8 (i) shall be funded from funds made  
9 available to the Administrator under this  
10 Act; and

11 (ii) may reimburse other Federal  
12 agencies for claims processing support and  
13 assistance.

14 (3) OPTION TO APPOINT INDEPENDENT CLAIMS  
15 MANAGER.—The Administrator may appoint an  
16 Independent Claims Manager to—

17 (A) head the Office; and

18 (B) assume the duties of the Administrator  
19 under this Act.

20 (b) SUBMISSION OF CLAIMS.—Not later than 2 years  
21 after the date on which regulations are first promulgated  
22 under subsection (f), an injured person may submit to the  
23 Administrator a written claim for 1 or more injuries suf-  
24 fered by the injured person in accordance with such re-

1   quirements as the Administrator determines to be appro-  
 2   pate.

3       (c) INVESTIGATION OF CLAIMS.—

4           (1) IN GENERAL.—The Administrator shall, on  
 5       behalf of the United States, investigate, consider, as-  
 6       certain, adjust, determine, grant, deny, or settle any  
 7       claim for money damages asserted under subsection  
 8       (b).

9           (2) APPLICABILITY OF STATE LAW.—Except as  
 10      otherwise provided in this Act, the laws of the State  
 11      of New Mexico shall apply to the calculation of dam-  
 12      ages under subsection (d)(4).

13          (3) EXTENT OF DAMAGES.—Any payment  
 14      under this Act—

15           (A) shall be limited to actual compensatory  
 16      damages measured by injuries suffered; and

17           (B) shall not include—

18               (i) interest before settlement or pay-  
 19      ment of a claim; or

20               (ii) punitive damages.

21      (d) PAYMENT OF CLAIMS.—

22          (1) DETERMINATION AND PAYMENT OF  
 23      AMOUNT.—

24           (A) IN GENERAL.—

1 (i) PAYMENT.—Not later than 180  
 2 days after the date on which a claim is  
 3 submitted under this Act, the Adminis-  
 4 trator shall determine and fix the amount,  
 5 if any, to be paid for the claim.

6 (ii) PRIORITY.—The Administrator, to  
 7 the maximum extent practicable, shall pay  
 8 subrogation claims submitted under this  
 9 Act only after paying claims submitted by  
 10 injured parties that are not insurance com-  
 11 panies seeking payment as subrogees.

12 (B) PARAMETERS OF DETERMINATION.—  
 13 In determining and settling a claim under this  
 14 Act, the Administrator shall determine only—

15 (i) whether the claimant is an injured  
 16 person;

17 (ii) whether the injury that is the sub-  
 18 ject of the claim resulted from the fire;

19 (iii) the amount, if any, to be allowed  
 20 and paid under this Act; and

21 (iv) the person or persons entitled to  
 22 receive the amount.

23 (C) INSURANCE AND OTHER BENEFITS.—

24 (i) IN GENERAL.—In determining the  
 25 amount of, and paying, a claim under this



1 Act, to prevent recovery by a claimant in  
2 excess of actual compensatory damages,  
3 the Administrator shall reduce the amount  
4 to be paid for the claim by an amount that  
5 is equal to the total of insurance benefits  
6 (excluding life insurance benefits) or other  
7 payments or settlements of any nature that  
8 were paid, or will be paid, with respect to  
9 the claim.

10 (ii) GOVERNMENT LOANS.—This sub-  
11 paragraph shall not apply to the receipt by  
12 a claimant of any government loan that is  
13 required to be repaid by the claimant.

14 (2) PARTIAL PAYMENT.—

15 (A) IN GENERAL.—At the request of a  
16 claimant, the Administrator may make 1 or  
17 more advance or partial payments before the  
18 final settlement of a claim, including final set-  
19 tlement on any portion or aspect of a claim that  
20 is determined to be severable.

21 (B) JUDICIAL DECISION.—If a claimant re-  
22 ceives a partial payment on a claim under this  
23 Act, but further payment on the claim is subse-  
24 quently denied by the Administrator, the claim-  
25 ant may—

1 (i) seek judicial review under sub-  
2 section (i); and

3 (ii) keep any partial payment that the  
4 claimant received, unless the Administrator  
5 determines that the claimant—

6 (I) was not eligible to receive the  
7 compensation; or

8 (II) fraudulently procured the  
9 compensation.

10 (3) RIGHTS OF INSURER OR OTHER THIRD  
11 PARTY.—If an insurer or other third party pays any  
12 amount to a claimant to compensate for an injury  
13 described in subsection (a), the insurer or other  
14 third party shall be subrogated to any right that the  
15 claimant has to receive any payment under this Act  
16 or any other law.

17 (4) ALLOWABLE DAMAGES.—

18 (A) LOSS OF PROPERTY.—A claim that is  
19 paid for loss of property under this Act may in-  
20 clude otherwise uncompensated damages result-  
21 ing from the Hermit's Peak Fire for—

22 (i) an uninsured or underinsured  
23 property loss;

24 (ii) a decrease in the value of real  
25 property;

1 (iii) damage to physical infrastruc-  
2 ture, including irrigation infrastructure  
3 such as acequia systems;

4 (iv) a cost resulting from lost subsist-  
5 ence from hunting, fishing, firewood gath-  
6 ering, timbering, grazing, or agricultural  
7 activities conducted on land damaged by  
8 the Hermit's Peak Fire;

9 (v) a cost of reforestation or revegeta-  
10 tion on Tribal or non-Federal land, to the  
11 extent that the cost of reforestation or re-  
12 vegetation is not covered by any other Fed-  
13 eral program; and

14 (vi) any other loss that the Adminis-  
15 trator determines to be appropriate for in-  
16 clusion as loss of property.

17 (B) BUSINESS LOSS.—A claim that is paid  
18 for injury under this Act may include damages  
19 resulting from the Hermit's Peak Fire for the  
20 following types of otherwise uncompensated  
21 business loss:

22 (i) Damage to tangible assets or in-  
23 ventory.

24 (ii) Business interruption losses.

25 (iii) Overhead costs.

1 (iv) Employee wages for work not per-  
2 formed.

3 (v) Any other loss that the Adminis-  
4 trator determines to be appropriate for in-  
5 clusion as business loss.

6 (C) FINANCIAL LOSS.—A claim that is  
7 paid for injury under this Act may include dam-  
8 ages resulting from the Hermit's Peak Fire for  
9 the following types of otherwise uncompensated  
10 financial loss:

11 (i) Increased mortgage interest costs.

12 (ii) An insurance deductible.

13 (iii) A temporary living or relocation  
14 expense.

15 (iv) Lost wages or personal income.

16 (v) Emergency staffing expenses.

17 (vi) Debris removal and other cleanup  
18 costs.

19 (vii) Costs of reasonable efforts, as  
20 determined by the Administrator, to reduce  
21 the risk of wildfire, flood, or other natural  
22 disaster in the counties impacted by the  
23 Hermit's Peak Fire to risk levels prevailing  
24 in those counties before the Hermit's Peak  
25 Fire, that are incurred not later than the

1 date that is 3 years after the date on  
2 which the regulations under subsection (f)  
3 are first promulgated.

4 (viii) A premium for flood insurance  
5 that is required to be paid on or before  
6 May 31, 2024, if, as a result of the Her-  
7 mit's Peak Fire, a person that was not re-  
8 quired to purchase flood insurance before  
9 the Hermit's Peak Fire is required to pur-  
10 chase flood insurance.

11 (ix) Any other loss that the Adminis-  
12 trator determines to be appropriate for in-  
13 clusion as financial loss.

14 (e) ACCEPTANCE OF AWARD.—The acceptance by a  
15 claimant of any payment under this Act, except an ad-  
16 vance or partial payment made under subsection (d)(2),  
17 shall—

18 (1) be final and conclusive on the claimant,  
19 with respect to all claims arising out of or relating  
20 to the same subject matter; and

21 (2) constitute a complete release of all claims  
22 against the United States (including any agency or  
23 employee of the United States) under chapter 171 of  
24 title 28, United States Code (commonly known as  
25 the “Federal Tort Claims Act”), or any other Fed-

1       eral or State law, arising out of or relating to the  
2       same subject matter.

3       (f) REGULATIONS AND PUBLIC INFORMATION.—

4               (1) REGULATIONS.—Notwithstanding any other  
5       provision of law, not later than 45 days after the  
6       date of enactment of this Act, the Administrator  
7       shall promulgate and publish in the Federal Register  
8       interim final regulations for the processing and pay-  
9       ment of claims under this Act.

10              (2) PUBLIC INFORMATION.—

11                   (A) IN GENERAL.—At the time at which  
12       the Administrator promulgates regulations  
13       under paragraph (1), the Administrator shall  
14       publish, online and in print, in newspapers of  
15       general circulation in the State of New Mexico,  
16       a clear, concise, and easily understandable ex-  
17       planation, in English and Spanish, of—

18                           (i) the rights conferred under this  
19       Act; and

20                           (ii) the procedural and other require-  
21       ments of the regulations promulgated  
22       under paragraph (1).

23                   (B) DISSEMINATION THROUGH OTHER  
24       MEDIA.—The Administrator shall disseminate  
25       the explanation published under subparagraph

1 (A) through websites, blogs, social media, bro-  
2 chures, pamphlets, radio, television, and other  
3 media that the Administrator determines are  
4 likely to reach prospective claimants.

5 (g) CONSULTATION.—In administering this Act, the  
6 Administrator shall consult with the Secretary of the Inte-  
7 rior, the Secretary of Energy, the Secretary of Agri-  
8 culture, the Administrator of the Small Business Adminis-  
9 tration, other Federal agencies, and State, local, and Trib-  
10 al authorities, as determined to be necessary by the Ad-  
11 ministrator, to—

12 (1) ensure the efficient administration of the  
13 claims process; and

14 (2) provide for local concerns.

15 (h) ELECTION OF REMEDY.—

16 (1) IN GENERAL.—An injured person may elect  
17 to seek compensation from the United States for 1  
18 or more injuries resulting from the Hermit’s Peak  
19 Fire by—

20 (A) submitting a claim under this Act;

21 (B) filing a claim or bringing a civil action  
22 under chapter 171 of title 28, United States  
23 Code (commonly known as the “Federal Tort  
24 Claims Act”); or

1 (C) bringing an authorized civil action  
2 under any other provision of law.

3 (2) EFFECT OF ELECTION.—An election by an  
4 injured person to seek compensation in any manner  
5 described in paragraph (1) shall be final and conclu-  
6 sive on the claimant with respect to all injuries re-  
7 sulting from the Hermit's Peak Fire that are suf-  
8 fered by the claimant.

9 (3) ARBITRATION.—

10 (A) IN GENERAL.—Not later than 45 days  
11 after the date of enactment of this Act, the Ad-  
12 ministrator shall establish by regulation proce-  
13 dures under which a dispute regarding a claim  
14 submitted under this Act may be settled by ar-  
15 bitration.

16 (B) ARBITRATION AS REMEDY.—On estab-  
17 lishment of arbitration procedures under sub-  
18 paragraph (A), an injured person that submits  
19 a disputed claim under this Act may elect to  
20 settle the claim through arbitration.

21 (C) BINDING EFFECT.—An election by an  
22 injured person to settle a claim through arbitra-  
23 tion under this paragraph shall—

24 (i) be binding; and



1                   (ii) preclude any exercise by the in-  
2                   jured person of the right to judicial review  
3                   of a claim described in subsection (i).

4                   (4) NO EFFECT ON ENTITLEMENTS.—Nothing  
5                   in this Act affects any right of a claimant to file a  
6                   claim for benefits under any Federal entitlement  
7                   program.

8                   (i) JUDICIAL REVIEW.—

9                   (1) IN GENERAL.—Any claimant aggrieved by a  
10                  final decision of the Administrator under this Act  
11                  may, not later than 60 days after the date on which  
12                  the decision is issued, bring a civil action in the  
13                  United States District Court for the District of New  
14                  Mexico, to modify or set aside the decision, in whole  
15                  or in part.

16                  (2) RECORD.—The court shall hear a civil ac-  
17                  tion under paragraph (1) on the record made before  
18                  the Administrator.

19                  (3) STANDARD.—The decision of the Adminis-  
20                  trator incorporating the findings of the Adminis-  
21                  trator shall be upheld if the decision is supported by  
22                  substantial evidence on the record considered as a  
23                  whole.

24                  (j) ATTORNEY'S AND AGENT'S FEES.—

1           (1) IN GENERAL.—No attorney or agent, acting  
2       alone or in combination with any other attorney or  
3       agent, shall charge, demand, receive, or collect, for  
4       services rendered in connection with a claim sub-  
5       mitted under this Act, fees in excess of 10 percent  
6       of the amount of any payment on the claim.

7           (2) VIOLATION.—An attorney or agent who vio-  
8       lates paragraph (1) shall be fined not more than  
9       \$10,000.

10       (k) WAIVER OF REQUIREMENT FOR MATCHING  
11       FUNDS.—

12           (1) IN GENERAL.—Notwithstanding any other  
13       provision of law, a State or local project that is de-  
14       termined by the Administrator to be carried out in  
15       response to the Hermit's Peak Fire under any Fed-  
16       eral program that applies to an area affected by the  
17       Hermit's Peak Fire shall not be subject to any re-  
18       quirement for State or local matching funds to pay  
19       the cost of the project under the Federal program.

20           (2) FEDERAL SHARE.—The Federal share of  
21       the costs of a project described in paragraph (1)  
22       shall be 100 percent.

23       (l) APPLICABILITY OF DEBT COLLECTION REQUIRE-  
24       MENTS.—Section 3716 of title 31, United States Code,  
25       shall not apply to any payment under this Act.

1 (m) INDIAN COMPENSATION.—Notwithstanding any  
2 other provision of law, in the case of an Indian Tribe, a  
3 Tribal entity, or a member of an Indian Tribe that sub-  
4 mits a claim under this Act—

5 (1) the Bureau of Indian Affairs shall have no  
6 authority over, or any trust obligation regarding,  
7 any aspect of the submission of, or any payment re-  
8 ceived for, the claim;

9 (2) the Indian Tribe, Tribal entity, or member  
10 of an Indian Tribe shall be entitled to proceed under  
11 this Act in the same manner and to the same extent  
12 as any other injured person; and

13 (3) except with respect to land damaged by the  
14 Hermit's Peak Fire that is the subject of the claim,  
15 the Bureau of Indian Affairs shall have no responsi-  
16 bility to restore land damaged by the Hermit's Peak  
17 Fire.

18 (n) REPORT.—Not later than 1 year after the date  
19 of promulgation of regulations under subsection (f)(1),  
20 and annually thereafter, the Administrator shall submit  
21 to Congress a report that describes the claims submitted  
22 under this Act during the year preceding the date of sub-  
23 mission of the report, including, for each claim—

24 (1) the amount claimed;

1           (2) a brief description of the nature of the  
2       claim; and

3           (3) the status or disposition of the claim, in-  
4       cluding the amount of any payment under this Act.

5       (o) AUTHORIZATION OF APPROPRIATIONS.—There  
6   are authorized to be appropriated such sums as are nec-  
7   essary to carry out this Act.

○