

107TH CONGRESS
1ST SESSION

H. R. 3196

To provide compensation to individuals who are injured by an escaped prescribed fire and to amend the tort procedure provisions of title 28, United States Code, relating to claims for such fires, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 2001

Mr. HERGER introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Resources and Agriculture, 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 provide compensation to individuals who are injured by an escaped prescribed fire and to amend the tort procedure provisions of title 28, United States Code, relating to claims for such fires, 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 “Escaped Prescribed
5 Fire Emergency Assistance Act”.

1 **SEC. 2. COMPENSATION FOR INJURIES FROM ESCAPED**
2 **PRESCRIBED FIRES.**

3 (a) GENERAL RULE.—In the case of an escaped pre-
4 scribed fire where there is partial or total loss of a primary
5 residence, the responsible agency head may authorize pay-
6 ment of reasonable emergency assistance (including hous-
7 ing, food, transportation, and other emergency needs) for
8 a period not to exceed 30 days. An extension of an addi-
9 tional 30 days may be authorized by the agency head in
10 extenuating circumstances.

11 (b) CONSTRUCTION.—Provision of assistance under
12 subsection (a) shall not be construed as a waiver of rights
13 under the tort claims procedures under chapter 171 of
14 title 28, United States Code.

15 (c) FUNDS.—Payments under subsection (a) may be
16 made from the account of the Department of Agriculture
17 entitled “Wildfire Management Account” and the Depart-
18 ment of Interior account entitled “Wildfire Management
19 Account”.

20 (d) DEFINITIONS.—As used in this section:

21 (1) AGENCY HEAD.—The term “agency head”
22 means the head of any Federal land management
23 agency.

24 (2) ESCAPED PRESCRIBED FIRE.—The term
25 “escaped prescribed fire” means a fire ignited by a
26 Federal land management agency or any authorized

1 representative to accomplish natural resource objec-
2 tives which has exceeded its planned boundaries and
3 which results in the destruction of private property.

4 (3) FEDERAL LAND MANAGEMENT AGENCY.—
5 The term “Federal land management agency”
6 means any department, agency, or bureau of the
7 United States that administers or otherwise man-
8 ages lands owned by the United States.

9 **SEC. 3. DECISIONS REGARDING PRESCRIBED FIRES ARE**
10 **NOT DISCRETIONARY DECISIONS.**

11 Section 2680(a) of title 28, United States Code, is
12 amended by adding at the end the following: “Any action
13 or decision taken respecting a prescribed fire shall not be
14 considered for purposes of this paragraph the exercise of
15 a discretionary function. For purposes of the preceding
16 sentence, the term ‘prescribed fire’ means a fire ignited
17 by a Federal land management agency or any authorized
18 representative to accomplish natural resource objectives.”.

19 **SEC. 4. AMENDMENT OF CLAIMS AND NOTICE RESPECTING**
20 **CLAIMS.**

21 (a) AMENDMENT.—Chapter 171 of title 28, United
22 States Code, is amended by adding after section 2671 the
23 following:

1 **“§ 2671A. Amendment of claims and notice respecting**
 2 **claims.**

3 “(a) Any individual having a claim before a Federal
 4 agency may amend such claim—

5 “(1) before final action is taken on it by the
 6 agency, or

7 “(2) before the individual brings a civil action
 8 under section 2675(a) against the United States,
 9 whichever may be later if the claim as amended relates
 10 to the same transaction or occurrence which gave rise to
 11 the original claim. The claim as amended shall be consid-
 12 ered as part of the original claim for all purposes.

13 “(b) Any individual having a claim before a Federal
 14 agency shall be given notice by such agency if it deter-
 15 mines that the claim fails to state a claim upon which such
 16 agency may take action under section 2675.

17 “(c) Each Federal agency shall have attached to any
 18 claim form it distributes notice in clear and explicit lan-
 19 guage that the claim may be amended as provided in sub-
 20 section (a).”.

21 (b) CLERICAL AMENDMENT.—The table of sections
 22 at the beginning of chapter 171 of title 28, United States
 23 Code, is amended by inserting after the item relating to
 24 section 2671 the following new item:

“2671A. Amendment of claims and notice respecting claims.”.