

108TH CONGRESS
1ST SESSION

H. R. 1621

To provide environmentally sound, expedited procedures for the planning and implementation of hazardous fuels reduction activities for wild-fire prone National Forest System lands and lands administered by the Bureau of Land Management, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2003

Mr. GEORGE MILLER of California (for himself and Mr. DEFAZIO) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Resources, 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 environmentally sound, expedited procedures for the planning and implementation of hazardous fuels reduction activities for wild-fire prone National Forest System lands and lands administered by the Bureau of Land Management, 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 (a) SHORT TITLE.—This Act may be cited as the
5 “Federal Lands Hazardous Fuels Reduction Act of
6 2003”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Definitions.
- Sec. 3. Hazardous fuels reduction projects authorized.
- Sec. 4. Collaboration and public input process.
- Sec. 5. Expedited planning and implementation process.
- Sec. 6. Development of definitions of old and large trees.
- Sec. 7. Ongoing projects and existing authorities.
- Sec. 8. Preference to communities with fire prevention ordinances.
- Sec. 9. Sunset.
- Sec. 10. Authorization of appropriations.
- Sec. 11. Availability and use of Reforestation Trust Fund.

3 SEC. 2. DEFINITIONS.

4 (a) LAND TYPE AND FIRE REGIME DEFINITIONS
5 FROM FOREST SERVICE ROCKY MOUNTAIN RESEARCH
6 STATION.—In this Act:

7 (1) CONDITION CLASS 2.—The term "condition
8 class 2" refers to lands on which—

9 (A) fire regimes have been moderately al-
10 tered from their historical fire return intervals;
11 (B) there exists a moderate risk of losing
12 key ecosystem components; and

13 (C) vegetation attributes have been mod-
14 erately altered from their historical range.

15 (2) CONDITION CLASS 3.—The term "condition
16 class 3" refers to lands on which—

17 (A) fire regimes have been significantly al-
18 tered from their historical fire return intervals;
19 and

(B) there exists a high risk of losing key ecosystem components.

3 (3) FIRE REGIME I.—The term “fire regime I”
4 refers to lands—

11 (A) on which historically there are stand
12 replacement severity fires with a frequency of
13 0–35 years; and

(B) are located primarily in low- to mid-elevation forests, rangelands, grasslands, or shrublands.

17 (5) FIRE REGIME III.—The term “fire regime
18 III” refers to lands—

(A) on which historically there are mixed severity fires with a frequency of 35–100 years; and

22 (B) are located primarily in forests of
23 mixed conifer, dry Douglas Fir, and wet Pon-
24 derosa pine.

25 (b) OTHER DEFINITIONS.—In this Act:

16 (A) National Forest System lands; and

17 (B) public lands administered by the Sec-
18 retary of the Interior acting through the Bu-
19 reau of Land Management.

1 101(e) of division A of Public Law 105-277; 16
2 U.S.C. 2104 note).

6 (A) undertaken for the purpose of reducing
7 the amount of hazardous fuels resulting from
8 alteration of a natural fire regime as a result
9 of fire suppression or other activities; and

10 (B) accomplished through the use of pre-
11 scribed burning or mechanical treatment, or
12 combination thereof.

13 (10) SECRETARY CONCERNED.—The term
14 “Secretary concerned” means—

15 (A) the Secretary of Agriculture (or the
16 designee of the Secretary) with respect to Na-
17 tional Forest System lands; and

18 (B) the Secretary of the Interior (or the
19 designee of the Secretary) with respect to public
20 lands administered by the Secretary through
21 the Bureau of Land Management.

22 (11) WILDLAND-URBAN INTERFACE.—The term
23 “wildland-urban interface” means a geographic area
24 designated by the Secretary concerned as any area—

1 (A) defined on page 753 of volume 66 of
2 the Federal Register, as published on January
3 4, 2001;

4 (B) on which conditions are conducive to
5 large-scale fire disturbance events; and

6 (C) for which a significant risk exists of a
7 resulting spread of the fire disturbance event,
8 after ignition, which would threaten human life
9 and property.

10 (c) EXCLUDED FEDERAL LANDS.—This Act, includ-
11 ing the expedited process described in section 5, does not
12 apply to any Federal lands—

13 (1) included as a component of the National
14 Wilderness Preservation System;

15 (2) where commercial logging is prohibited or
16 restricted by Act of Congress, presidential proclama-
17 tion, or agency determination;

18 (3) included in a wilderness study area; or
19 (4) included in an inventoried roadless area

20 SEC. 3. HAZARDOUS FUELS REDUCTION PROJECTS AU-
21 THORIZED.

22 (a) CONSISTENCY WITH IMPLEMENTATION PLAN.—
23 The processes authorized or required by this Act shall be
24 consistent with the implementation plan for the Com-

1 prehensive Strategy to reduce hazardous fuels on Federal
2 lands.

3 (b) PRIORITY HAZARDOUS FUELS REDUCTION
4 PROJECTS.—

5 (1) PROJECTS ON CERTAIN FEDERAL LANDS.—

6 In implementing hazardous fuels reduction projects
7 under this Act, the Secretary concerned shall give
8 priority to projects on the following Federal lands:

9 (A) Federal lands that are located in the
10 wildland-urban interface within one-half mile of
11 a community where fire regime I, fire regime
12 II, or fire regime III exists and that are in con-
13 dition class 2 or condition class 3.

14 (B) Federal lands where fire regime I, fire
15 regime II, or fire regime III exists that are in
16 condition class 3, or condition class 2 if the
17 Federal lands are intermingled with condition
18 class 3 lands, and that are located in such prox-
19 imity to a municipal water supply system that
20 a hazardous fuels reduction project should be
21 carried out in order to reduce the risk of harm
22 to such system or the quality of a municipal
23 water supply resulting from an unusually severe
24 wildfire.

(2) LIMITATION ON OTHER PROJECTS PENDING COMPLETION OF PRIORITY PROJECTS.—In any management unit of the Federal lands in which Federal lands described in paragraph (1) are located, the Secretary concerned shall not carry out any hazardous fuels reduction project under this Act on any other lands in that management unit until the Secretary concerned completes treatment of all acreage in that management unit on Federal lands described in paragraph (1).

11 (c) COMPLIANCE WITH LAND MANAGEMENT
12 PLANS.—A hazardous fuels reduction project planned and
13 conducted under this Act must be consistent with the land
14 and resource management plan, land use plan, and other
15 agency plans and regulations applicable to the Federal
16 lands covered by the project.

17 (d) PROJECT CONTRACTING.—To conduct a haz-
18 ardous fuels reduction project under this Act, the Sec-
19 retary concerned shall use local preference contracting and
20 best value contracting. Payments under a contract entered
21 into to implement a project under this Act shall only be
22 made on a fee-for-service basis. The Secretary concerned
23 shall not use goods-for-service contracting to implement
24 a project under this Act.

1 (e) LIMITATIONS.—In conducting a hazardous fuels
2 reduction project under this Act, the Secretary con-
3 cerned—

4 (1) shall not construct new permanent or tem-
5 porary roads;

6 (2) shall maintain all old and large trees and
7 the structure, function, and composition of late-suc-
8 cessional forest stands appropriate for each eco-
9 system type, until the process required by section 6
10 is complete and Congress formally adopts or rejects
11 the recommendations by Act of Congress;

12 (3) shall focus on thinning from below when
13 using mechanical treatment.

14 (f) ACREAGE LIMITATION.—Not more than
15 20,000,000 acres of Federal land may be treated using
16 the authorities provided by this Act.

17 (g) FUNDING PRIORITY.—Of funds expended for haz-
18 ardous fuels reduction projects under this Act, at least 75
19 percent shall be expended on projects in the wildland-
20 urban interface within one-half mile of a community.

21 (h) MONITORING.—

22 (1) MONITORING REQUIRED.—The Secretary
23 concerned shall establish a balanced multiparty mon-
24 itoring process in order for Congress to assess a rep-

1 resentative sampling of the hazardous fuels reduc-
2 tion projects implemented under this Act.

3 (2) REPORT REQUIRED.—Not later than one
4 year after the expiration of this Act, as provided in
5 section 9, the Secretary concerned shall submit to
6 Congress a report containing, at a minimum, the fol-
7 lowing:

8 (A) An assessment of the cumulative ac-
9 complishments or adverse impacts of the fuels
10 reduction projects conducted under this Act.

11 (B) A description of the ecological effects
12 of the projects conducted under this Act.

13 (C) A description of the economic viability,
14 impacts, and costs of the projects conducted
15 under this Act.

16 **SEC. 4. COLLABORATION AND PUBLIC INPUT PROCESS.**

17 (a) PROCESS REQUIRED.—

18 (1) DEVELOPMENT.—As a condition on the se-
19 lection of hazardous fuels reduction projects under
20 section 3, the Secretary of Agriculture and the Sec-
21 retary of the Interior shall jointly develop a collabo-
22 rative process with interested parties, consistent with
23 the implementation plan for the Comprehensive
24 Strategy. The collaborative process developed by the
25 Secretaries may be the process set forth in title II

1 of the Secure Rural Schools and Community Self-
2 Determination Act of 2000 (Public Law 106–393;
3 16 U.S.C. 500 note).

4 (2) REQUIRED MAPS AND PUBLIC MEETINGS.—
5 As part of the process developed under subsection
6 (a), the Secretaries shall—

7 (A) produce maps designating the condi-
8 tion class of lands at the appropriate landscape
9 scale;

10 (B) make such maps readily available for
11 public inspection; and

12 (C) hold a public meeting to discuss condi-
13 tion classification of lands by management unit
14 and to identify priority areas for hazardous
15 fuels reduction projects.

16 (b) PUBLIC NOTICE.—

17 (1) QUARTERLY NOTICE.—The Secretary con-
18 cerned shall provide quarterly notice of each haz-
19 ardous fuels reduction project proposed to be con-
20 ducted using the expedited process described in sec-
21 tion 5. The quarterly notice shall be provided in the
22 Federal Register, in a local paper of record, and on
23 an agency website. The Secretary concerned may
24 combine this quarterly notice with other quarterly

1 notices otherwise issued regarding Federal land
2 management.

3 (2) CONTENT.—The notice required by para-
4 graph (1) shall include, at a minimum, the following
5 information regarding each hazardous fuels reduc-
6 tion project contained in the notice:

7 (A) Specific identification that the project
8 is a hazardous fuels reduction project for which
9 the expedited process described in section 5 will
10 be used, including a clear statement whether
11 the agency intends to use a categorical exclu-
12 sion or to prepare an environmental assessment
13 or environmental impact statement.

14 (B) A description of the project, including
15 as much information on its geographic location
16 as practicable.

17 (C) The approximate date on which
18 scoping for the project will begin.

19 (D) Information regarding how interested
20 members of the public can take part in the de-
21 velopment of the project pursuant to the expe-
22 dited process described in section 5.

23 (c) PUBLIC MEETING.—Following publication of each
24 quarterly notice under subsection (b), but before the be-
25 ginning of scoping for the project pursuant to the expe-

1 dited process described in section 5, the Secretary con-
2 cerned shall conduct a public meeting at an appropriate
3 location in each administrative unit of the Federal lands
4 regarding those hazardous fuels reduction projects con-
5 tained in the quarterly notice that are proposed to be con-
6 ducted in that administrative unit. The Secretary con-
7 cerned shall provide advance notice of the date and time
8 of the meeting in the quarterly notice or using the same
9 means described in subsection (b)(1).

10 (d) FINAL AGENCY ACTION.—The Secretary con-
11 cerned shall provide notice in the local paper of record and
12 on an agency website of any final agency action regarding
13 a hazardous fuels reduction project for which the expe-
14 dited process described in section 5 are used.

15 (e) PUBLIC PETITIONS FOR INCLUSION OR EXCLU-
16 SION OF LANDS.—

17 (1) RIGHT TO PETITION.—An entity referred to
18 in paragraph (4) may submit to the Secretary con-
19 cerned a petition, with supporting evidence, that re-
20 quested the inclusion or exclusion of an area of Fed-
21 eral lands in subsection (a) with regard to condition
22 class.

23 (2) EVALUATION.—The Secretary concerned
24 shall respond to a petition under paragraph (1) by
25 public notice of a public viewing of the area in ques-

1 tion, within 90 days of receipt the petition, with the
2 petitioner and any other interested parties.

12 (A) A political subdivision of a State.

13 (B) A federally formed resource advisory
14 council or provincial advisory committee.

15 (C) A resource advisory committee estab-
16 lished under section 205 of the Secure Rural
17 Schools and Community Self-Determination Act
18 of 2000 (Public Law 106-393; 16 U.S.C. 500
19 note).

22 (a) SCOPING.—The Secretary concerned shall con-
23 duct scoping with respect to each hazardous fuels reduc-
24 tion project for which the expedited process established by
25 this section are to be used.

1 (b) CATEGORICAL EXCLUSIONS.—

(1) PRESUMPTION NEAR COMMUNITIES.—If a hazardous fuels reduction project covered by section 3, for which the collaborative and public input process required by section 4 is used, covers Federal lands located in the wildland-urban interface within one-half mile of a community, the project is deemed to be categorically excluded from further analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.). The Secretary concerned need not make any findings as to whether the project, either individually or cumulatively, has a significant effect on the environment. However, within the one-half mile zone surrounding a community, the Secretary concerned shall vary the treatments used to achieve heterogeneity of forest conditions and to ensure forest health.

23 (3) EXTRAORDINARY CIRCUMSTANCES.—In the
24 case of a hazardous fuels reduction project for which
25 a categorical exclusion applies under paragraph (1),

1 if extraordinary circumstances exist with respect to
2 the project, the Secretary concerned shall follow
3 agency procedures (as contained in CEQ regulation
4 1508.4, Forest Service Handbook 1909.15, chapters
5 30–33, as of August 22, 2002, and Bureau of Land
6 Management Handbook H–1790–1, 516 DM 2.1–
7 2.10) related to categorical exclusions and extraor-
8 dinary circumstances.

9 (4) APPEALS.—Hazardous fuels reduction
10 projects implemented using a categorical exclusion
11 under paragraph (1) are not subject to appeal re-
12 quirements imposed by section 322 of the Depart-
13 ment of the Interior and Related Agencies Approp-
14 riations Act, 1993 (Public Law 102–381; 16
15 U.S.C. 1612 note), or the Department of the Inter-
16 rior Office of Hearings and Appeals.

17 (c) ENVIRONMENTAL ASSESSMENTS.—

18 (1) IN GENERAL.—With respect to priority
19 lands identified in section 3(b), if a categorical ex-
20 clusion does not apply under subsection (b) to a haz-
21 ardous fuels reduction project under section 3 for
22 the lands, the Secretary concerned shall determine,
23 consistent with the National Environmental Policy
24 Act of 1969, whether an environmental assessment

1 will be sufficient to meet the requirements for the
2 project under such Act.

3 (2) CONTENT.—An environmental assessment
4 prepared for a hazardous fuels reduction project
5 under section 3 shall—

6 (A) be concise, if possible not more than
7 10–15 pages;

8 (B) describe sufficient information and
9 analyses for determining whether to prepare an
10 environmental impact statement or a finding of
11 no significant impact;

12 (C) state the need for the proposed action;

13 (D) describe alternative actions, as re-
14 quired by section 102(2)(E) of the National
15 Environmental Policy Act of 1969;

16 (E) briefly describe the environmental im-
17 pacts of the proposed action and alternatives;

18 (F) list the agencies and persons con-
19 sulted, as required by section 1508.9 of title 40,
20 Code of Federal Regulations, with respect to
21 National Forest System lands;

22 (G) reference supporting data, inventories
23 and other documents on which the Secretary
24 concerned relied to make the decision; and

(H) involve interested agencies and the public in the preparation of the environmental assessment.

10 (A) provide notice of the decision docu-
11 ment in the Federal Register, the local paper of
12 record, and an agency website, including notice
13 stating how the documentation listed in sub-
14 paragraph (B) will be available; and

15 (B) make the environmental analysis docu-
16 ment, administrative record, and decision docu-
17 ment or memo for the project, pursuant to sec-
18 tion 215.2 of title 36, Code of Federal Regula-
19 tions, readily available for public review.

20 (4) APPEALS.—Notwithstanding the appeal re-
21 quirements imposed by section 322 of the Depart-
22 ment of the Interior and Related Agencies Appro-
23 priations Act, 1993 (Public Law 102-381; 16
24 U.S.C. 1612 note), or the Department of the Inter-
25 rior Office of Hearings and Appeals—

5 (B) the Secretary concerned shall resolve
6 any appeal not later than 20 days after the
7 closing date for filing an appeal; and

14 (d) ADDITIONAL LIMITATION ON ADMINISTRATIVE
15 APPEALS.—Notwithstanding section 322 of the Depart-
16 ment of the Interior and Related Agencies Appropriations
17 Act, 1993 (Public Law 102-381; 16 U.S.C. 1612 note),
18 if a draft document prepared pursuant to the National
19 Environmental Policy Act of 1969 for a hazardous fuels
20 reduction project covered by section 3 was available for
21 public comment, the Secretary of Agriculture may require
22 that a person filing an administrative appeal with respect
23 to the project must have been involved in the public com-
24 ment process for the project by submitting written com-
25 ments raising specific issues with regard to the project.

1 (e) STATEMENT OF COMPLIANCE.—A categorical ex-
2 clusion memo or environmental assessment decision docu-
3 ment prepared under this section shall include a short
4 statement as to how the hazardous fuels reduction project
5 complies with the requirement of section 3(c).

6 **SEC. 6. DEVELOPMENT OF DEFINITIONS OF OLD AND**

7 **LARGE TREES.**

8 (a) USE OF NATIONAL ACADEMY OF SCIENCES.—
9 The Secretary of Agriculture and the Secretary of the In-
10 terior shall jointly enter into a contract with the National
11 Academy of Sciences for the preparation of recommended
12 definitions of old and large trees appropriate for each eco-
13 system type to be used for purposes of this Act.

14 (b) QUALIFICATIONS.—To be eligible to serve on the
15 panel of the National Academy of Sciences used to prepare
16 the recommended definitions of old and large trees, a
17 member of the panel shall have scientific expertise in the
18 characteristics of old growth and the seral stages of forest
19 types.

20 (c) SUBMISSION OF RECOMMENDED DEFINITIONS.—
21 Not later than one year after the date of the enactment
22 of this Act, the National Academy of Sciences shall submit
23 to the Secretary of Agriculture, the Secretary of the In-
24 rior, and Congress the recommended definitions of old and
25 large trees appropriate for each ecosystem type.

1 **SEC. 7. ONGOING PROJECTS AND EXISTING AUTHORITIES.**

2 Nothing in this Act shall affect a hazardous fuels re-
3 duction projects for which scoping has begun before the
4 date of the enactment of this Act or affect authorities oth-
5 erwise granted to the Secretary concerned under existing
6 law.

7 **SEC. 8. PREFERENCE TO COMMUNITIES WITH FIRE PRE-
8 VENTION ORDINANCES.**

9 In determining the allocation of funding for the Com-
10 munity and Private Land Fire Assistance program under
11 section 10A(b) of the Cooperative Forestry Assistance Act
12 of 1978 (16 U.S.C 2106c(b)), the Secretary of Agriculture
13 shall prioritize funding to those communities that have
14 taken proactive steps through the enactment of ordinances
15 and other means to encourage property owners to reduce
16 fire risk on private property.

17 **SEC. 9. SUNSET.**

18 The provisions of this Act shall expire at the end of
19 the five-year period beginning on the date of the enact-
20 ment of this Act, except that a hazardous fuels reduction
21 project for which a decision notice, or memo in the case
22 of a categorical exclusion, has been issued before the end
23 of such period may continue to be implemented using the
24 provisions of this Act.

1 SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

2 (a) NATIONAL FOREST SYSTEM LANDS.—For the
3 purpose of planning and conducting hazardous fuels re-
4 duction projects under this Act on National Forest System
5 Lands, there are authorized to be appropriated to the Sec-
6 retary of Agriculture \$1,943,100,000 during the five-fiscal
7 year period beginning October 1, 2003. Subject to section
8 9, amounts appropriated in one fiscal year and unobli-
9 gated before the end of that fiscal year shall remain avail-
10 able for use in subsequent fiscal years.

11 (b) BLM LANDS.—For the purpose of planning and
12 conducting hazardous fuels reduction projects under this
13 Act on Federal lands described in section 2(b)(2)(B),
14 there are authorized to be appropriated to the Secretary
15 of the Interior \$1,888,000,000 during the five-fiscal year
16 period beginning October 1, 2003. Subject to section 9,
17 amounts appropriated in one fiscal year and unobligated
18 before the end of that fiscal year shall remain available
19 for use in subsequent fiscal years.

**20 SEC. 11. AVAILABILITY AND USE OF REFORESTATION
21 TRUST FUND.**

22 (a) WAIVER OF LIMITATION ON TRANSFERS.—Dur-
23 ing fiscal years 2004 through 2008, the limitation in sub-
24 section (b)(2) of section 303 of Public Law 96-451 (16
25 U.S.C. 1606a) shall not apply.

1 (b) CONSULTATION.—During fiscal years 2004
2 through 2008, the consultation required by subsection
3 (c)(1) of section 303 of Public Law 96–451 shall include
4 consultation with the Secretary of the Interior.

5 (c) EXPANSION OF OBLIGATION REQUIREMENTS.—
6 During fiscal years 2004 through 2008, the Secretary of
7 the Interior, in addition to the Secretary of Agriculture,
8 shall obligate funds in the Reforestation Trust Fund es-
9 tablished by section 303 of Public Law 96–451 on Federal
10 lands, but the authority otherwise provided by subsection
11 (d)(1) of such section to obligate such funds to reduce haz-
12 ardous fuel loads of forest stands shall not be used except
13 as provided in subsection (d)(2) of this section.

14 (d) OBLIGATION REQUIREMENTS AND AMOUNTS.—
15 (1) REDUCTION IN RISK OF WILDFIRE TO
16 STRUCTURES.—During fiscal years 2004 through
17 2008, the Secretary of Agriculture and the Secretary
18 of the Interior shall jointly obligate \$100,000,000
19 each fiscal year of funds in the Restoration Trust
20 Fund to reduce the risk of wildfire to structures on
21 tribal lands, nonindustrial private lands, and State
22 lands using the authorities available under the
23 Emergency Watershed Protection program, the Na-
24 tional Fire Plan, and grant programs authorized by
25 the Farm Security and Rural Investment Act of

1 2002 and other laws. As part of the Emergency Wa-
2 tershed Protection program, the Secretary of Agri-
3 culture, acting through the Natural Resources Con-
4 servation Service, may undertake measures, includ-
5 ing making cost-share grants to Indian tribes, local
6 fire districts, municipalities, homeowner associations,
7 and counties, to prevent destruction from wildfires
8 by treating vegetation within the defensible space of
9 homes and other structures.

10 (2) HAZARDOUS FUELS REDUCTION
11 PROJECTS.—During fiscal years 2004 through 2008,
12 amounts remaining in the Reforestation Trust Fund
13 after application of subsection (d) of section 303 of
14 Public Law 96–451 and paragraph (1) of this sub-
15 section shall be used for hazardous fuels reduction
16 projects conducted under this Act.

17 (e) RETENTION OF REVENUE.—During fiscal years
18 2004 through 2008, the Secretary of Agriculture and the
19 Secretary of the Interior may sell commercial vegetation
20 produced as a result of hazardous fuels reduction projects
21 under this Act. Revenue from the sale of such vegetation
22 shall be deposited in the Reforestation Trust Fund, and
23 may only be used for hazardous fuels reduction projects
24 described in section 5(b)(1).

1 (f) TRANSFERS TO REFORESTATION TRUST FUND.—
2 During fiscal years 2004 through 2008, in lieu of the
3 transfers required by subsection (b)(1) of section 303 of
4 Public Law 96–451, the Secretary of the Treasury may
5 transfer to the Reforestation Trust Fund an amount equal
6 to the sum of the tariffs received in the Treasury under
7 chapter 44 and subheadings 6808.00.00 and 6809.11.00
8 of chapter 68 of the Harmonized Tariff Schedule of the
9 United States. Subsection (b)(2) of such section, which
10 limits the total amount that may be transferred for a fiscal
11 year, shall not apply to transfers made under this sub-
12 section.

○