

108TH CONGRESS  
1ST SESSION

# H. R. 988

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.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2003

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

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## 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.”.