

109TH CONGRESS
1ST SESSION

S. 807

To amend the Federal Land Policy and Management Act of 1976 to provide owners of non-Federal lands with a reliable method of receiving compensation for damages resulting from the spread of wildfire from nearby forested National Forest System lands or Bureau of Land Management lands, when those forested Federal lands are not maintained in the forest health status known as condition class 1.

IN THE SENATE OF THE UNITED STATES

APRIL 14, 2005

Mr. CRAIG (for himself, Mr. CRAPO, and Mr. SMITH) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Federal Land Policy and Management Act of 1976 to provide owners of non-Federal lands with a reliable method of receiving compensation for damages resulting from the spread of wildfire from nearby forested National Forest System lands or Bureau of Land Management lands, when those forested Federal lands are not maintained in the forest health status known as condition class 1.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Enhanced Safety from
3 Wildfire Act of 2005”.

4 **SEC. 2. UNITED STATES LIABILITY FOR DAMAGES RESULT-**
5 **ING FROM THE SPREAD OF WILDFIRE FROM**
6 **FORESTED PUBLIC LANDS.**

7 (a) IMPOSITION OF LIABILITY FOR SPREAD OF
8 WILDFIRE.—Title III of the Federal Land Policy and
9 Management Act of 1976 is amended by inserting after
10 section 318 (43 U.S.C. 1748) the following new section:

11 “SEC. 319. LIABILITY FOR DAMAGES RESULTING FROM
12 SPREAD OF WILDFIRE FROM PUBLIC LANDS OR NA-
13 TIONAL FOREST SYSTEM LANDS.

14 “(a) LIABILITY AS RULE OF LAW.—Except as pro-
15 vided in subsections (b), (c), and (d), and subject to the
16 delayed effective date specified in subsection (h), any in-
17 jury to or loss of property that occurs on non-Federal
18 lands as a direct result of a fire that spread from forested
19 Federal lands onto the non-Federal lands, either directly
20 or by first spreading to other non-Federal lands, shall be
21 deemed to be an injury or loss of property caused by the
22 negligent or wrongful act or omission of an employee of
23 the United States while acting within the scope of the em-
24 ployee’s office or employment for purposes of section 1346
25 and chapter 171 of title 28, United States Code (com-
26 monly known as the ‘Federal Tort Claims Act’).

1 “(b) ADDITIONAL REQUIREMENT FOR CERTAIN
2 NON-FEDERAL LANDS.—The owner or leasee of non-Fed-
3 eral lands damaged by the spread of wildfire from forested
4 Federal lands may not utilize the rule of law specified in
5 subsection (a) when the non-Federal lands exceed 6,400
6 acres and are used for the commercial production of tim-
7 ber, unless the owner or leasee proves that the damaged
8 non-Federal lands were being managed to achieve or main-
9 tain the forest health status known as condition class 1
10 immediately before the fire. In the event of a dispute be-
11 tween the owner or leasee and the Secretary concerned
12 regarding the status of the non-Federal lands before the
13 fire, the determination of the State Forester of the State
14 in which the lands are located shall control and any ex-
15 penses associated with State Foresters determination shall
16 be equally divided between the disputing parties.

17 “(c) EXCLUSION OF CONDITION CLASS 1 LANDS.—
18 The rule of law specified in subsection (a) shall not apply
19 if the forested Federal lands within the buffer zone adja-
20 cent to the Federal land boundary from which the fire
21 spread to non-Federal lands were managed as condition
22 class 1 immediately before the fire.

23 “(d) EXCLUSION OF OTHER FEDERAL LANDS.—The
24 rule of law specified in subsection (a) shall not apply to
25 the following Federal lands, even though wildfire may

1 originate on such lands and spread to adjacent non-Fed-
2 eral lands:

3 “(1) A component of the National Wilderness
4 Preservation System.

5 “(2) Federal lands where, by Act of Congress,
6 Presidential proclamation, or land and resource
7 management plan, the removal of vegetation is pro-
8 hibited.

9 “(3) Areas of Federal lands that comprise less
10 than 6,400 acres and are not contiguous to other
11 Federal lands.

12 “(e) EXCEPTION FOR O&C LANDS.—The rule of law
13 specified in subsection (a) shall apply to National Forest
14 System lands and Bureau of Land Management lands ad-
15 ministered under the authorities of the O&C Sustained
16 Yield Act of 1937 and that do not meet the acreage limita-
17 tion set forth in subsection (d)(3).

18 “(f) REPORT REGARDING STATUS OF BUFFER
19 LANDS.—Not later than two years after the date of the
20 enactment of this section, the Secretary concerned shall
21 submit to Congress a report describing the forest health
22 status of all buffer zones with non-Federal lands and the
23 extent to which the buffer zones are in, or are being man-
24 aged to achieve, the forest health status known as condi-
25 tion class 1.

1 “(g) DEFINITIONS.—In this section:

2 “(1) The term ‘buffer zone’ refers to those for-
3 ested Federal lands that are within a prescribed dis-
4 tance of a Federal land boundary with non-Federal
5 lands and comprise, or are part of a larger area of
6 Federal lands comprising, 6,400 acres or more. The
7 Secretary shall prescribe the actual buffer zone for
8 a particular area of forested Federal lands based on
9 the geography, topography, and forest cover of the
10 lands.

11 “(2) The term ‘condition class 1’, with respect
12 to an area of forested Federal lands or non-Federal
13 lands, means that the lands are managed so that—

14 “(A) fire regimes on the lands are within
15 historical ranges;

16 “(B) vegetation composition and structure
17 are intact; and

18 “(C) the risk of losing key ecosystem com-
19 ponents from the occurrence of fire remains rel-
20 atively low.

21 “(3) The term ‘forested Federal lands’ means
22 public lands and National Forest System lands that
23 contain trees as a significant component of the
24 lands.

1 “(4) The term ‘Secretary concerned’ means the
2 Secretary of the Interior (or the designee of that
3 Secretary) with respect to public lands and the Sec-
4 retary of Agriculture (or the designee of that Sec-
5 retary) with respect to National Forest System
6 lands.

7 “(h) DELAYED EFFECTIVE DATE.—The rule of law
8 specified in subsection (a) shall take effect at the end of
9 the eight-year period beginning on the date of the enact-
10 ment of this section and apply with respect to fires that
11 spread from Federal lands onto non-Federal lands after
12 the end of such period.”.

13 (b) CLERICAL AMENDMENT.—The table of contents
14 at the beginning of the Federal Land Policy and Manage-
15 ment Act of 1976 is amended by inserting after the item
16 relating to section 318 the following new item:

“Sec. 319. Liability for damages resulting from spread of wildfire from public
lands or National Forest System lands.”.

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