

111TH CONGRESS  
2D SESSION

# H. R. 5118

To amend the Clean Air Act to require the exclusion of data of an exceedance or violation of a national ambient air quality standard caused by a prescribed fire in the Flint Hills Region, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 2010

Mr. MORAN of Kansas introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Clean Air Act to require the exclusion of data of an exceedance or violation of a national ambient air quality standard caused by a prescribed fire in the Flint Hills Region, 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 “Flint Hills Preserva-  
5       tion Act”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

1           (1) The Flint Hills Region of Kansas and Okla-  
2           homa contains the world’s largest share of the re-  
3           maining tallgrass prairie, and is the only place where  
4           that habitat is in landscape proportions. Only 4 per-  
5           cent of North America’s presettlement tallgrass prai-  
6           rie survives to this day, and 80 percent is located in  
7           Kansas.

8           (2) The Flint Hills Region is also home to cer-  
9           tain declining avian species such as the greater prai-  
10          rie chicken and Henslow’s sparrow that cannot con-  
11          tinue to exist without large expanses of native  
12          tallgrass prairie in an original state. Further, it is  
13          a significant corridor for migrating shorebirds such  
14          as the American golden plover, the buff-breasted  
15          sand-piper, and the upland sandpiper.

16          (3) Beginning in the mid-19th century, cattle-  
17          men understood that the richness of the Flint Hills  
18          grasses depended on a good spring burn—something  
19          they learned from the Native Americans. Fire still  
20          thrives in the Flint Hills because the ranchers, and  
21          others using the land, know that the natural eco-  
22          system depends on fire.

23          (4) Ranchers, landowners, and conservation  
24          groups use prescribed burns to mimic the seasonal  
25          fires that have shaped the tallgrass prairie for thou-

1       sands of years. Areas not burned for several years  
2       develop mature grasses and thicker, thatch-like vege-  
3       tation, which habitat is preferred by invasive species.

4           (5) The Flint Hills Region is one of the few  
5       places in the United States where the prevailing ag-  
6       ricultural system works essentially in tandem with  
7       an ancestral native ecosystem, preserving most of its  
8       complexity and the dynamic processes that helped  
9       shape it.

10          (6) Due to the uniqueness of the Flint Hills  
11       tallgrass prairie and the historic manner in which  
12       the tallgrass prairie has been managed by fire, exist-  
13       ing prescribed burn practices should be allowed to  
14       continue and ambient air data resulting from fires  
15       used to manage the Flint Hills tallgrass prairie  
16       should be not be included in determinations of com-  
17       pliance with the Clean Air Act.

18   **SEC. 3. PRESCRIBED FIRES.**

19       The Clean Air Act (42 U.S.C. 7401 et seq.) is amend-  
20   ed by inserting after section 329 the following:

21   **“SEC. 330. PRESCRIBED FIRES IN THE FLINT HILLS RE-**  
22                   **GION.**

23       “(a) IN GENERAL.—In determining whether, with re-  
24   spect to a specific air pollutant, an exceedance or violation  
25   of a national ambient air quality standard has occurred

1 for purposes of this Act, a State and the Administrator  
2 shall exclude data from a particular air quality monitoring  
3 location if emissions from one or more prescribed fires in  
4 the Flint Hills Region cause a concentration of the air  
5 pollutant at the location to be in excess of the standard.

6 “(b) SPECIFIC LIMITATIONS.—If emissions data is  
7 excluded under subsection (a) from a particular air quality  
8 monitoring station because of emissions from one or more  
9 prescribed fires in the Flint Hills Region—

10 “(1) the Administrator shall not, as a result of  
11 such emissions, find under section 113 that a State  
12 has failed to enforce, or that a person has violated,  
13 a State implementation plan (for national primary  
14 or secondary ambient air quality standards) under  
15 section 110; and

16 “(2) a State shall not, as a result of such emis-  
17 sions, find that a person has violated, or bring an  
18 enforcement action for violation of, a State imple-  
19 mentation plan (for national primary or secondary  
20 ambient air quality standards) under section 110.

21 “(c) PROHIBITION AGAINST SMOKE MANAGEMENT  
22 PLANS.—The Administrator shall not require, and a State  
23 shall not adopt, a smoke management plan under this Act  
24 in connection with any prescribed fire in the Flint Hills  
25 Region.

1       “(d) NOT A STATIONARY SOURCE.—No building,  
 2 structure, facility, or installation may be treated as a sta-  
 3 tionary source under section 111 as a result of one or  
 4 more prescribed fires in the Flint Hills Region.

5       “(e) NO TITLE V PERMIT REQUIRED.—No person  
 6 shall be required to obtain or modify a permit under title  
 7 V in connection with a prescribed fire in the Flint Hills  
 8 Region.

9       “(f) DEFINITION.—In this section:

10           “(1) The term ‘Flint Hills Region’—

11                   “(A) means the band of hills in eastern  
 12 Kansas that stretch into north-central Okla-  
 13 homa; and

14                   “(B) includes—

15                           “(i) Butler, Chase, Chautauqua, Clay,  
 16 Cowley, Dickinson, Elk, Geary, Greenwood,  
 17 Harvey, Jackson, Lyon, Marion, Marshall,  
 18 Morris, Ottawa, Pottawatomie, Riley, Sa-  
 19 line, Shawnee, Wabaunsee, Washington,  
 20 and Woodson Counties in Kansas; and

21                           “(ii) Osage, Tulsa, and Washington  
 22 counties in Oklahoma.

23           “(2) The term ‘prescribed fire’ means a fire  
 24 that is set or managed by a person with the goal of  
 25 enhancing a fire-dependent ecosystem or enhancing

1       the productivity of agricultural grazing land, irre-  
2       spective of the frequency with which the burn oc-  
3       curs.”.

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