

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4488

To implement updated pay and personnel policies in order to improve the recruitment and retention of qualified Federal wildland firefighters and to reduce the Government's reliance on the more costly services of non-Federal wildfire resources.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 21, 2010

Mr. FILNER (for himself, Mr. FARR, and Mr. GALLEGLY) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committees on Natural Resources, Agriculture, and Armed Services, 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 implement updated pay and personnel policies in order to improve the recruitment and retention of qualified Federal wildland firefighters and to reduce the Government's reliance on the more costly services of non-Federal wildfire resources.

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; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “National Wildfire Infrastructure Improvement and Cost  
4 Containment Act”.

5 (b) TABLE OF CONTENTS.—The table of contents is  
6 as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Findings.
- Sec. 4. Mandatory separation.
- Sec. 5. Equal protection under the law from outsourcing.
- Sec. 6. Classification of wildland firefighters.
- Sec. 7. Pay and benefits.
- Sec. 8. Firefighter liability.

7 **SEC. 2. DEFINITIONS.**

8 For the purposes of this Act—

9 (1) the term “wildland firefighter” means an  
10 employee of a Federal land management agency, the  
11 duties of whose position are primarily to perform  
12 work directly related to the prevention, control, sup-  
13 pression, and management of wildfires, including—

14 (A) an employee of a Federal land man-  
15 agement agency who is assigned to support  
16 wildland fire suppression activities; and

17 (B) an employee who is transferred to a  
18 supervisory or administrative position from a  
19 position of wildland firefighter (as defined by  
20 the preceding provisions of this paragraph);

21 (2) the term “Federal land management agen-  
22 cy” means—

1 (A) within the Department of the Interior,  
2 the Bureau of Land Management, the Bureau  
3 of Indian Affairs, the National Park Service,  
4 and the Fish and Wildlife Service; and

5 (B) within the Department of Agriculture,  
6 the Forest Service; and

7 (3) the term “employee” has the meaning given  
8 such term by section 2105 of title 5, United States  
9 Code.

10 **SEC. 3. FINDINGS.**

11 Congress finds the following:

12 (1) Significant losses of Federal wildland fire-  
13 fighters to non-Federal fire agencies have been experi-  
14 enced by all 5 Federal land management agencies  
15 over the last several years. Federal land manage-  
16 ment agencies have failed to take actions within  
17 their authority to reduce or eliminate such losses de-  
18 spite being aware of the issues and solutions for over  
19 20 years.

20 (2) These losses have primarily been the result  
21 of Federal wildland firefighters leaving the Federal  
22 system for better pay and benefits offered by State  
23 and local fire agencies, particularly in the 11 west-  
24 ern contiguous States. Pay and benefits for Federal  
25 wildland firefighters have not kept pace with other

1 fire agencies, which continue to offer significantly  
2 higher pay and benefits to attract Federal fire-  
3 fighters.

4 (3) These firefighter losses have resulted in sig-  
5 nificant vacancies in critical fire positions, resulting  
6 in reduced levels of personnel and other resources  
7 within the Federal sector as compared to those envi-  
8 sioned by the National Fire Plan.

9 (4) Federal wildland firefighting resources are,  
10 by and large, inherently less costly to the Federal  
11 Government than the use of non-Federal resources.  
12 Therefore it stands to reason that strengthening the  
13 inherently less expensive Federal infrastructure will  
14 allow Federal land management agencies to reduce  
15 their reliance on higher-priced non-Federal resources  
16 and ultimately reduce wildfire suppression costs.

17 (5) Federal land management agencies have  
18 failed to maintain Federal wildland firefighter staff-  
19 ing and resource levels pursuant to the National  
20 Fire Plan and its “Most Efficient Level” (MEL) as  
21 envisioned by Congress.

22 (6) It is incumbent upon Congress and the Fed-  
23 eral Government to provide America’s taxpayers  
24 with the most fiscally effective and efficient wildland

1 fire programs managed by the five Federal land  
2 management agencies.

3 **SEC. 4. MANDATORY SEPARATION.**

4 Section 8425(b) of title 5, United States Code, is  
5 amended—

6 (1) by redesignating the last paragraph as  
7 paragraph (3); and

8 (2) by adding at the end the following:

9 “(4)(A) In the case of a wildland firefighter, para-  
10 graph (1) shall be applied—

11 “(i) by striking ‘becomes 57 years of age or  
12 completes 20 years of service if then over that age.’  
13 and inserting ‘(A) becomes 65 years of age or com-  
14 pletes 20 years of service if then over that age, or  
15 (B) is certified by a licensed physician as being un-  
16 able to successfully complete all applicable physical  
17 standards testing as directed by the employing agen-  
18 cy.’; and

19 “(ii) by disregarding the second sentence.

20 “(B) For purposes of this paragraph, the term  
21 ‘wildland firefighter’ has the meaning given such term by  
22 section 2 of the National Wildfire Infrastructure Improve-  
23 ment and Cost Containment Act.”.

1 **SEC. 5. EQUAL PROTECTION UNDER THE LAW FROM OUT-**  
2 **SOURCING.**

3 (a) PURPOSE.—To amend section 2465 of title 10,  
4 United States Code, to add the Department of Agriculture  
5 (United States Forest Service) and the Department of the  
6 Interior (Bureau of Land Management, Bureau of Indian  
7 Affairs, National Park Service, Fish and Wildlife Service)  
8 to the Department of Defense as agencies bound by the  
9 provisions set forth in subsection (a) of that section.

10 (b) FINDINGS.—Congress makes the following find-  
11 ings:

12 (1) Federal firefighters employed by the De-  
13 partment of Defense enjoy certain protections from  
14 the outsourcing, or “contracting out” of their posi-  
15 tions under section 2465 of title 10, United States  
16 Code.

17 (2) A number of feasibility studies performed  
18 over many years at significant taxpayer expense  
19 have clearly shown that outsourcing, or “contracting  
20 out” services historically performed by Federal fire-  
21 fighters in a variety of agencies including the De-  
22 partment of Defense, the Department of Agriculture,  
23 and the Department of the Interior is neither cost-  
24 effective or efficient.

25 (3) The specialization and unique responsibil-  
26 ities of protecting the Nation’s Federal assets, in-

1 including natural resources, demand the experience  
2 and expertise of well-trained, cost-effective Federal  
3 firefighters.

4 (4) All Federal firefighters from all Federal  
5 agencies should enjoy equal protection under the  
6 law.

7 (5) Congress concurs with the Undersecretary  
8 of Agriculture for Natural Resources and the Envi-  
9 ronment who indicated on July 14, 2008, that  
10 wildland firefighting is an “inherent government  
11 function”.

12 (c) REQUIREMENT.—

13 (1) IN GENERAL.—Section 2465(a) of title 10,  
14 United States Code, is amended—

15 (A) by inserting after “Department of De-  
16 fense” the following: “the Department of Agri-  
17 culture, the Department of the Interior, the De-  
18 partment of Veterans Affairs, the National In-  
19 stitute of Health, or any other Federal depart-  
20 ment or agency that employs firefighters”; and

21 (B) by striking “at any military installa-  
22 tion or facility” and inserting the following:  
23 “that are performed, as of the date of the en-  
24 actment of the National Wildfire Infrastructure  
25 Improvement and Cost Containment Act by a

1 Federal employee of any such department or  
2 agency at any location, including military in-  
3 stallations and facilities, national forests, na-  
4 tional parks, and all other locations where the  
5 services of Federal firefighters or security  
6 guards are required or requested”.

7 (2) EFFECTIVE DATE.—The amendments made  
8 by paragraph (1) shall apply with respect to a con-  
9 tract for the performance of firefighting or security  
10 guard functions entered into on or after the date of  
11 the enactment of this Act.

12 **SEC. 6. CLASSIFICATION OF WILDLAND FIREFIGHTERS.**

13 (a) REQUIREMENTS.—

14 (1) IN GENERAL.—Within 30 days after the  
15 date of the enactment of this Act, the Office of Per-  
16 sonnel Management, in cooperation with the Federal  
17 land management agencies, shall commence develop-  
18 ment of a separate and distinct wildland firefighter  
19 occupational series that will more accurately reflect  
20 the variety of duties performed by wildland fire-  
21 fighters.

22 (2) DESIGNATION.—The official title assigned  
23 to any occupational series established pursuant to  
24 paragraph (1) shall include the designation of  
25 “Wildland Firefighter”.

1           (3) POSITIONS DESCRIBED.—Paragraph (1) ap-  
2           plies with respect to any class or other category of  
3           positions that consists primarily or exclusively of for-  
4           estry technician positions, range technician posi-  
5           tions, or any other positions the duties and respon-  
6           sibilities of which include—

7                   (A) significant wildfire preparedness and  
8                   suppression activities; or

9                   (B) activities necessary to meet any other  
10                  emergency incident to which assigned.

11           (4) CONSULTATION.—Congress encourages the  
12           Office of Personnel Management to include recog-  
13           nized employee organizations, employee associations,  
14           and any other groups that represent Federal  
15           wildland firefighters in carrying out this subsection.

16           (b) HAZARDOUS DUTY DIFFERENTIAL NOT AF-  
17           FECTED.—Section 5545(d)(1) of title 5, United States  
18           Code, is amended by striking all after “except” and insert-  
19           ing an em-dash and the following:

20                   “(A) an employee in an occupational series  
21                   covering positions for which the primary duties  
22                   are wildland firefighting, as determined by the  
23                   Office; and

24                   “(B) in such other circumstances as the  
25                   Office may by regulation prescribe; and”.

1 (c) EMPLOYEES CURRENTLY IN 401 SERIES.—Any  
2 individual who, as of the date of the enactment of this  
3 Act, holds a position of wildland firefighter shall have the  
4 option of either remaining in the 401 series (as in effect  
5 on such date under chapter 51 of title 5, United States  
6 Code) or being included in the new wildland firefighter se-  
7 ries, as established pursuant to subsection (a).

8 **SEC. 7. PAY AND BENEFITS.**

9 (a) FINDINGS.—

10 (1) Along with proper classification, pay and  
11 benefits are the main reasons why wildland fire-  
12 fighters are leaving Federal service.

13 (2) Wildland firefighters responding to emer-  
14 gency incidents do not receive portal-to-portal pay,  
15 even though their own employing agencies often  
16 compensate higher-paid non-Federal firefighters on  
17 the same incident with portal-to-portal pay. This dis-  
18 parity in treatment adversely affects morale among  
19 wildland firefighters, causing many of them to leave  
20 Federal service.

21 (3) Wildland firefighters are often restricted to  
22 fire camps or left on fire lines while being taken “off  
23 the clock”, with no opportunity to use their own  
24 time as they wish, despite provisions of the Fair

1 Labor Standards Act which clearly state that such  
2 situations are compensable.

3 (4) Supervisors are expected to remain respon-  
4 sible for their crews 24 hours a day while on assign-  
5 ment and to ensure that their crews are able to re-  
6 spond at a moment's notice, even when both super-  
7 visors and crew members are in a non-pay status.

8 (5) Wildland firefighters must remain available  
9 and "fit to work" 24 hours a day in case of imme-  
10 diate need, even when "off the clock" and uncom-  
11 pensated.

12 (6) Developing, maintaining, and retaining  
13 skilled personnel in the Federal wildland firefighting  
14 agencies is a growing problem that jeopardizes pub-  
15 lic safety and the effectiveness of wildland fire pre-  
16 paredness and suppression efforts across the Nation.

17 (b) PORTAL-TO-PORTAL COMPENSATION PILOT PRO-  
18 GRAM.—

19 (1) IN GENERAL.—In the case of a wildland  
20 firefighter, for full-time, part-time, and intermittent  
21 tours of duty, hours of work officially ordered or ap-  
22 proved in excess of 40 hours per week or 8 hours  
23 per day shall be considered overtime work, inclusive  
24 of all time the firefighter is away from their official  
25 duty station assigned to an emergency incident, in

1 support of an emergency incident, or pre-positioned  
2 for emergency response, and shall be compensable as  
3 work time in accordance with 5542(a) of title 5,  
4 United States Code, as amended by paragraph  
5 (2)(A).

6 (2) REQUIREMENTS.—

7 (A) AMENDMENT TO TITLE 5.—Section  
8 5542(a) of title 5, United States Code, is  
9 amended by adding at the end (as a flush left  
10 sentence) the following:

11 “Notwithstanding paragraphs (1) and (2), for a wildland  
12 firefighter assigned to an emergency incident, assigned in  
13 support of an emergency incident, or pre-positioned for  
14 emergency response, the overtime hourly rate of pay is an  
15 amount equal to one and one-half times the hourly rate  
16 of the basic pay of the employee, and that entire amount  
17 is premium pay”.

18 (B) FAIR LABOR STANDARDS ACT OF  
19 1938.—For the purpose of applying the provi-  
20 sions of the Fair Labor Standards Act of 1938  
21 with respect to wildland firefighters, no viola-  
22 tion referred to in such provisions shall be con-  
23 sidered to have occurred if the requirements de-  
24 scribed in subparagraph (A) are met.

1           (C) FUNDING.—There is authorized to be  
2 appropriated \$25,000,000 to initiate a portal-  
3 to-portal pilot program under this subsection,  
4 commencing with the 2010 wildfire season. Any  
5 sums required in addition to amounts appro-  
6 priated pursuant to the preceding sentence may  
7 be secured from the existing wildfire suppres-  
8 sion budget for the fiscal year in which the sea-  
9 son occurs.

10           (D) DURATION.—The pilot program shall  
11 be carried out by the Department of the Inte-  
12 rior and the Department of Agriculture for a  
13 period not to exceed 3 calendar years beginning  
14 as of the start of the 2010 wildfire season.

15           (E) REPORT.—At the end of the pilot pro-  
16 gram, the Secretary of the Interior and the Sec-  
17 retary of Agriculture shall submit to Congress  
18 a joint report on the effectiveness of the pilot  
19 program. Such report shall specifically address  
20 the effect of the program with respect to—

- 21                   (i) recruitment and retention of  
22 wildland firefighters; and  
23                   (ii) any cost savings.

24           (F) ADDITIONAL REQUIREMENTS.—To en-  
25 sure adequate funding and to realize maximum

1 wildfire suppression savings, the Secretary of  
2 the Interior and the Secretary of Agriculture  
3 shall take appropriate measures to provide that  
4 total funding for non-Federal fire suppression  
5 resources by their respective Departments—

6 (i) for the first year of the pilot pro-  
7 gram, do not exceed 90 percent of their  
8 combined non-Federal fire suppression  
9 costs for the 2008 and 2009 wildfire sea-  
10 sons;

11 (ii) for the second year of the pilot  
12 program, do not exceed 75 percent of their  
13 combined non-Federal fire suppression  
14 costs for the 2008 and 2009 wildfire sea-  
15 sons; and

16 (iii) for the third year of the pilot pro-  
17 gram, do not exceed 65 percent of their  
18 combined non-Federal fire suppression  
19 costs for the 2008 and 2009 wildfire sea-  
20 sons.

21 (G) EXEMPTION.—Employees compensated  
22 under the pilot program shall, for the period of  
23 such program, be exempt from any limitation  
24 on premium pay under section 5547 of title 5,  
25 United States Code.

1 (c) HAZARDOUS DUTY DIFFERENTIAL TO BE  
2 TREATED AS PART OF A WILDLAND FIREFIGHTER'S  
3 BASE PAY FOR RETIREMENT PURPOSES.—

4 (1) IN GENERAL.—Section 8331(3) of title 5,  
5 United States Code is amended—

6 (A) in subparagraph (G), by striking  
7 “and” at the end;

8 (B) in subparagraph (H), by inserting  
9 “and” at the end; and

10 (C) by adding after subparagraph (H) the  
11 following:

12 “(I) with respect to a wildland firefighter  
13 (as defined by section 2 of the National Wild-  
14 fire Infrastructure Improvement and Cost Con-  
15 tainment Act), any pay differential received  
16 under section 5545(d);”.

17 (2) CONFORMING AMENDMENT.—Such section  
18 8331(3) is further amended, in the matter following  
19 subparagraph (I) (as added by paragraph (1)(C)),  
20 by striking “subparagraphs (B) through (H) of this  
21 paragraph” and inserting “subparagraphs (B)  
22 through (I);”.

23 (d) HAZARDOUS DUTY DIFFERENTIAL.—

24 (1) IN GENERAL.—In the administration of sec-  
25 tion 5545(d) of title 5, United States Code, the Of-

1        fice of Personnel Management shall take such meas-  
2        ures as may be necessary to ensure that, under the  
3        schedule or schedules of pay differentials for duty  
4        involving unusual physical hardship or hazard, a pay  
5        differential of 25 percent shall be payable to an indi-  
6        vidual while serving as a member of a wildland fire-  
7        fighting crew.

8            (2) DEFINITION.—For purposes this sub-  
9        section, the term “wildland firefighting crew” in-  
10       cludes ground (hand crew, hotshot, engine, and  
11       other fire apparatus personnel) and airborne (smoke  
12       jumper or helitack) firefighting personnel on the fire  
13       line of any wildfire or prescribed fuel treatment burn  
14       or fire, as further defined in regulations of the Of-  
15       fice.

16        (e) BENEFITS FOR SEASONAL WILDLAND FIRE-  
17       FIGHTERS.—

18            (1) PROVISIONS RELATING TO LIFE INSUR-  
19       ANCE.—Section 8716(b) of title 5, United States  
20       Code, is amended—

21            (A) in paragraph (2), by striking “or” at  
22       the end;

23            (B) in paragraph (3), by striking the pe-  
24       riod at the end and inserting “; or”; and

1 (C) by adding after paragraph (3) the fol-  
2 lowing:

3 “(4) a wildland firefighter within the meaning  
4 of section 2 of the National Wildfire Infrastructure  
5 Improvement and Cost Containment Act.”.

6 (2) PROVISIONS RELATING TO HEALTH BENE-  
7 FITS.—Section 8906a of title 5, United States Code,  
8 is amended by adding at the end the following:

9 “(c)(1) For purposes of this subsection, the term  
10 ‘wildland firefighter’ has the meaning given such term by  
11 section 2 of the National Wildfire Infrastructure Improve-  
12 ment and Cost Containment Act.

13 “(2) In the case of a wildland firefighter—

14 “(A) subsection (a)(2) shall be applied by sub-  
15 stituting ‘cumulative’ for ‘current continuous’; and

16 “(B) an individual is deemed not to have ceased  
17 to be a wildland firefighter during an interim period  
18 between wildfire seasons if such individual shows to  
19 the satisfaction of the Office of Personnel Manage-  
20 ment that such individual has a bona fide intention  
21 of continuing as a wildland firefighter immediately  
22 after such period, subject to section 8906(e)(1).”.

23 (f) BUY BACK OF CIVILIAN TIME AFTER 1989.—

24 (1) IN GENERAL.—Any individual who is sub-  
25 ject to the Federal Employees’ Retirement System

1 as a firefighter (within the meaning of section 8401  
2 of title 5, United States Code) on the date of the en-  
3 actment of this Act shall be entitled to have any  
4 qualifying firefighter service treated as creditable  
5 service under section 8411 of such title.

6 (2) QUALIFYING FIREFIGHTER SERVICE.—For  
7 purposes of this subsection, the term “qualifying  
8 firefighter service” means, in connection with an in-  
9 dividual, any service—

10 (A) which was performed by such indi-  
11 vidual, as a wildland firefighter, after 1989 and  
12 before the date of the enactment of this Act;  
13 and

14 (B) for which such individual was not al-  
15 lowed to receive retirement credit by reason of  
16 section 8347(g) or 8402(c) of such title 5.

17 (3) DEPOSIT REQUIREMENT.—Credit for a pe-  
18 riod of service may not be given under this sub-  
19 section unless the individual involved makes a de-  
20 posit, in such manner as the Office of Personnel  
21 Management may by regulation require, equal to the  
22 employee contributions that would have been re-  
23 quired (in the case of a firefighter) for such period  
24 under section 8334(c) or 8422(a) of such title 5,  
25 with interest.

1           (4) CERTIFICATION.—The Office of Personnel  
2           Management shall accept the certification of the  
3           Secretary of the Interior or the Secretary of Agri-  
4           culture, as the case may be, concerning whether an  
5           individual performed qualifying firefighter service  
6           and the length of the period of such service the indi-  
7           vidual performed.

8   **SEC. 8. FIREFIGHTER LIABILITY.**

9           (a) INSPECTOR GENERAL INVESTIGATION OF FIRE-  
10          FIGHTER DEATHS.—

11           (1) FOREST SERVICE EMPLOYEES.—In the case  
12           of each fatality of a firefighter or other employee of  
13           the Forest Service due to wildfire entrapment or  
14           burrower, the Inspector General of the Department  
15           of Agriculture shall conduct an investigation of the  
16           fatality.

17           (2) DEPARTMENT OF THE INTERIOR EMPLOY-  
18           EES.—In the case of each fatality of a firefighter or  
19           other employee of the Bureau of Land Management,  
20           the Bureau of Indian Affairs, the United States  
21           Fish and Wildlife Service, or the National Park  
22           Service due to wildfire entrapment or burrower, the  
23           Inspector General of the Department of the Interior  
24           shall conduct an investigation of the fatality.

1           (b) INVESTIGATION PROCEDURES AND PROTO-  
2 COLS.—Not later than 60 days after the date of the enact-  
3 ment of this Act, the Inspector Generals of the Depart-  
4 ment of Agriculture and the Department of the Interior  
5 shall publish the procedures and protocols to be used to  
6 conduct fatality investigations required by subsection (a).  
7 The procedures and protocols shall outline the training,  
8 experience, and expertise necessary to serve as an investi-  
9 gator conducting a fatality investigation.

10          (c) TRAINING.—The Inspector Generals of the De-  
11 partment of Agriculture and the Department of the Inte-  
12 rior shall ensure that persons assigned to conduct a fatal-  
13 ity investigation required by subsection (a) have the nec-  
14 essary training, skills, and experience to competently con-  
15 duct the investigation.

16          (d) INDEPENDENCE.—An investigation of a fatality  
17 under this section shall not rely on, and shall be com-  
18 pletely independent of, any investigation conducted by the  
19 head of the land management agency whose employee was  
20 killed.

21          (e) SUBMISSION OF RESULTS.—Not later than 30  
22 days after completing an investigation under subsection  
23 (a), the Inspector General conducting the investigation  
24 shall submit to the Committee on Agriculture, Nutrition,  
25 and Forestry and the Committee on Energy and Natural

1 Resources of the Senate, the Committee on Natural Re-  
2 sources of the House of Representatives, the Secretary of  
3 Agriculture, and the Secretary of the Interior a report  
4 containing the results of the investigation. The investiga-  
5 tions and accompanying reports shall be used by all land  
6 management agency fire programs to build upon the con-  
7 cept of lessons learned from the fire event. It is not the  
8 intent of Congress that the investigations and reports  
9 would be used to find fault or place blame for a fatality,  
10 but rather to recognize that wildland firefighting is an in-  
11 herently dangerous occupation and to reduce the number  
12 of fatalities from due to wildfire entrapment or burrower.

13 (f) REPEAL OF FORMER INVESTIGATION REQUIRE-  
14 MENT.—Public Law 107–203 (7 U.S.C. 2270b, 2270c) is  
15 repealed.

○