

111TH CONGRESS  
1ST SESSION

# S. 561

To authorize a supplemental funding source for catastrophic emergency wildland fire suppression activities on Department of the Interior and National Forest System lands, to require the Secretary of the Interior and the Secretary of Agriculture to develop a cohesive wildland fire management strategy, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 10, 2009

Mr. BINGAMAN (for himself, Ms. MURKOWSKI, Mrs. BOXER, Mr. WYDEN, Mr. UDALL of New Mexico, Ms. CANTWELL, Mr. TESTER, Mr. JOHNSON, Mrs. MURRAY, Mr. UDALL of Colorado, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To authorize a supplemental funding source for catastrophic emergency wildland fire suppression activities on Department of the Interior and National Forest System lands, to require the Secretary of the Interior and the Secretary of Agriculture to develop a cohesive wildland fire management strategy, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Federal Land Assistance, Management and Enhance-  
4 ment Act” or “FLAME Act”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Flame Fund for catastrophic emergency wildland fire suppression activi-  
ties.

Sec. 3. Cohesive wildland fire management strategy.

Sec. 4. Review of certain wildfires to evaluate cost containment in wildland fire  
suppression activities.

Sec. 5. Reducing risk of wildfires in fire-ready communities.

7 **SEC. 2. FLAME FUND FOR CATASTROPHIC EMERGENCY**  
8 **WILDLAND FIRE SUPPRESSION ACTIVITIES.**

9 (a) DEFINITIONS.—In this section:

10 (1) FEDERAL LAND.—The term “Federal land”  
11 means the following:

12 (A) Public lands, as defined in section 103  
13 of the Federal Land Policy and Management  
14 Act of 1976 (43 U.S.C. 1702).

15 (B) Units of the National Park System.

16 (C) Refuges of the National Wildlife Ref-  
17 uge System.

18 (D) Lands held in trust by the United  
19 States for the benefit of Indian tribes or indi-  
20 vidual Indians.

21 (E) Lands in the National Forest System,  
22 as defined in section 11(a) of the Forest and

1           Rangeland Renewable Resources Planning Act  
2           of 1974 (16 U.S.C. 1609(a)).

3           (2) FLAME FUND.—The term “Flame Fund”  
4           means the Federal Land Assistance, Management,  
5           and Enhancement Fund established by this section.

6           (3) SECRETARY CONCERNED.—The term “Sec-  
7           retary concerned” means—

8                   (A) the Secretary of the Interior, with re-  
9                   spect to Federal land described in subpara-  
10                  graphs (A), (B), (C), and (D) of paragraph (1);  
11                  and

12                   (B) the Secretary of Agriculture, with re-  
13                   spect to National Forest System land.

14           (4) SECRETARIES.—The term “Secretaries”  
15           means the Secretary of the Interior and the Sec-  
16           retary of Agriculture, acting jointly.

17           (b) ESTABLISHMENT AND AVAILABILITY OF FLAME  
18           FUND.—

19                   (1) ESTABLISHMENT.—There is established in  
20                   the Treasury of the United States a fund to be  
21                   known as the Federal Land Assistance, Manage-  
22                   ment, and Enhancement Fund.

23                   (2) CONTENTS.—The Flame Fund shall consist  
24                   of the following amounts:

1 (A) Amounts appropriated to the Flame  
2 Fund pursuant to the authorization of appro-  
3 priations in subsection (c).

4 (B) Amounts transferred to the Flame  
5 Fund pursuant to subsection (d).

6 (3) AVAILABILITY.—Subject to subsection (e),  
7 amounts in the Flame Fund shall be available to the  
8 Secretaries to pay the costs of catastrophic emer-  
9 gency wildland fire suppression activities that are  
10 separate from amounts annually appropriated to the  
11 Secretaries for the predicted annual workload for  
12 wildland fire suppression activities, based on anal-  
13 yses of historical workloads and anticipated in-  
14 creased workloads due to changing environmental or  
15 demographic conditions.

16 (c) AUTHORIZATION OF APPROPRIATIONS.—

17 (1) AUTHORIZATION OF APPROPRIATIONS.—  
18 There is authorized to be appropriated to the Flame  
19 Fund such amounts as may be necessary to carry  
20 out this section. It is the intent of Congress that the  
21 amount appropriated to the Flame Fund for fiscal  
22 year 2010 and each fiscal year thereafter should be  
23 not less than the average amount expended by the  
24 Secretaries for emergency wildland fire suppression

1 activities over the five fiscal years preceding that fis-  
2 cal year.

3 (2) SENSE OF CONGRESS ON DESIGNATION OF  
4 FLAME FUND APPROPRIATIONS AS EMERGENCY RE-  
5 QUIREMENT.—It is the sense of Congress that—

6 (A) the amounts appropriated to the  
7 Flame Fund should be designated as amounts  
8 necessary to meet emergency needs; and

9 (B) the new budget authority and outlays  
10 resulting therefrom should not count for the  
11 purposes of titles III and IV of the Congres-  
12 sional Budget Act of 1974.

13 (3) NOTICE OF INSUFFICIENT FUNDS.—The  
14 Secretaries shall notify the congressional committees  
15 specified in subsection (h)(2) whenever only an esti-  
16 mated two months worth of funding remains in the  
17 Flame Fund.

18 (d) TRANSFER OF EXCESS WILDLAND FIRE SUP-  
19 PRESSION AMOUNTS INTO FLAME FUND.—At the end of  
20 each fiscal year, the Secretary concerned shall transfer to  
21 the Flame Fund amounts appropriated to the Secretary  
22 concerned for wildland fire suppression activities for the  
23 fiscal year, but not obligated for wildland fire suppression  
24 activities before the end of the fiscal year.

25 (e) USE OF FLAME FUND.—

1           (1) DECLARATION REQUIRED.—Amounts in the  
2       Flame Fund shall be made available to the Secretary  
3       concerned only after the Secretaries issue a declara-  
4       tion that a wildland fire suppression activity is eligi-  
5       ble for funding from the Flame Fund.

6           (2) DECLARATION CRITERIA.—A declaration by  
7       the Secretaries under paragraph (1) shall be based  
8       on the following criteria:

9           (A) In the case of an individual wildland  
10      fire incident—

11                   (i) the fire covers 300 or more acres;

12                   (ii) the severity of the fire, which may  
13      be based on incident complexity or the po-  
14      tential for increased complexity; and

15                   (iii) the threat posed by the fire, in-  
16      cluding the potential for loss of lives, prop-  
17      erty, or critical resources.

18           (B) Consistent with subsection (f), in the  
19      case of a firefighting season, when the cumu-  
20      lative costs of wildland fire suppression activi-  
21      ties for the Secretary concerned are projected to  
22      exceed amounts annually appropriated for such  
23      activities.

24           (3) TRANSFER OF AMOUNTS TO SECRETARY  
25      CONCERNED.—After issuance of a declaration under

1 paragraph (1) and upon the request of the Secretary  
2 concerned, the Secretary of the Treasury shall trans-  
3 fer from the Flame Fund to the Secretary concerned  
4 such amounts as the Secretaries determine are nec-  
5 essary for wildland fire suppression activities associ-  
6 ated with the declared suppression emergency.

7 (4) STATE, PRIVATE, AND TRIBAL LAND.—Use  
8 of the Flame Fund for catastrophic emergency  
9 wildland fire suppression activities on State and pri-  
10 vate land and, where applicable, tribal land shall be  
11 consistent with existing agreements where the Secre-  
12 taries have agreed to assume responsibility for  
13 wildland fire suppression activities on the land.

14 (f) TREATMENT OF ANTICIPATED AND PREDICTED  
15 ACTIVITIES.—The Secretary concerned shall continue to  
16 fund anticipated and predicted wildland fire suppression  
17 activities within the appropriate agency budget for each  
18 fiscal year. Use of the additional funding made available  
19 through the Flame Fund is intended to supplement the  
20 budgeted and appropriated agency funding and is to be  
21 used only for purposes and in instances consistent with  
22 this section.

23 (g) PROHIBITION ON OTHER TRANSFERS.—All  
24 amounts in the Flame Fund, as well as all funds appro-  
25 priated for the purpose of wildland fire suppression on

1 Federal land, must be obligated before the Secretary con-  
 2 cerned may transfer funds from non-fire accounts for  
 3 wildland fire suppression.

4 (h) ACCOUNTING AND REPORTS.—

5 (1) ACCOUNTING AND REPORTING SYSTEM.—

6 The Secretaries shall establish an accounting and re-  
 7 porting system for the Flame Fund compatible with  
 8 existing National Fire Plan reporting procedures.

9 (2) ANNUAL REPORT; PUBLIC AVAILABILITY.—

10 The Secretaries shall submit to the Committee on  
 11 Natural Resources, the Committee on Agriculture,  
 12 and the Committee on Appropriations of the House  
 13 of Representatives and the Committee on Energy  
 14 and Natural Resources, the Committee on Indian  
 15 Affairs, and the Committee on Appropriations of the  
 16 Senate an annual report on the use of the funds  
 17 from the Flame Fund, together with any rec-  
 18 ommendations that the Secretaries may have to im-  
 19 prove the administrative control and oversight of the  
 20 Flame Fund. The annual report shall be made avail-  
 21 able to the public.

22 (3) ESTIMATES OF WILDFIRE SUPPRESSION  
 23 COSTS TO IMPROVE BUDGETING AND FUNDING.—

24 (A) PERIODIC ESTIMATES.—Consistent  
 25 with the schedule provided in subparagraph



(B), the Secretaries shall submit to the committees specified in paragraph (2) an estimate of anticipated wildfire suppression costs for the current fiscal year and the following fiscal year. The methodology for developing the estimates shall be subject to periodic peer review to ensure compliance with subparagraph (C).

(B) SUBMISSION SCHEDULE.—The Secretaries shall submit an estimate under subparagraph (A) during—

(i) the first week of February of each year;

(ii) the first week of April of each year;

(iii) the first week of July of each year; and

(iv) if the bill making appropriations for operations of the Department of the Interior and the Forest Service for the following fiscal year has not been enacted by September 1, the first week of September of each year.

(C) BASIS.—An estimate of anticipated wildfire suppression costs shall be developed using the best available—

1 (i) climate, weather, and other rel-  
2 evant data; and

3 (ii) models and other analytic tools.

4 **SEC. 3. COHESIVE WILDLAND FIRE MANAGEMENT STRAT-**  
5 **EGY.**

6 (a) STRATEGY REQUIRED.—Not later than one year  
7 after the date of the enactment of this Act, the Secretary  
8 of the Interior and the Secretary of Agriculture shall sub-  
9 mit to Congress a report that contains a cohesive wildland  
10 fire management strategy, consistent with the rec-  
11 ommendations contained in recent Comptroller General re-  
12 ports regarding this issue.

13 (b) ELEMENTS OF STRATEGY.—The strategy re-  
14 quired by subsection (a) shall address the findings of the  
15 Comptroller General in the reports referred to in such sub-  
16 section and include the following elements:

17 (1) A system to identify the most cost effective  
18 means for allocating fire management budget re-  
19 sources.

20 (2) An illustration of plans by the Secretary of  
21 the Interior and the Secretary of Agriculture to rein-  
22 vest in non-fire programs.

23 (3) A description of how the Secretaries will  
24 employ appropriate management response.

1           (4) A system for assessing the level of risk to  
2       communities.

3           (5) A system to ensure that the highest priority  
4       fuels reduction projects are being funded first.

5       **SEC. 4. REVIEW OF CERTAIN WILDFIRES TO EVALUATE**  
6                       **COST CONTAINMENT IN WILDLAND FIRE SUP-**  
7                       **PRESSION ACTIVITIES.**

8           (a) REVIEW REQUIRED.—The Secretary of the Inte-  
9       rior and the Secretary of Agriculture shall conduct a re-  
10      view, using independent panels, of each wildfire incident  
11      for which the Secretary concerned incurs expenses in ex-  
12      cess of \$10,000,000.

13          (b) REPORT.—The Secretary concerned shall submit  
14      to the Committee on Natural Resources, the Committee  
15      on Agriculture, and the Committee on Appropriations of  
16      the House of Representatives and the Committee on En-  
17      ergy and Natural Resources, the Committee on Indian Af-  
18      fairs, and the Committee on Appropriations of the Senate  
19      a report containing the results of each review conducted  
20      under subsection (a).

21       **SEC. 5. REDUCING RISK OF WILDFIRES IN FIRE-READY**  
22                       **COMMUNITIES.**

23          (a) FIRE-READY COMMUNITY DEFINED.—In this  
24      section, the term “fire-ready community” means a com-  
25      munity that—

1           (1) is located within a priority area identified  
2           pursuant to subsection (b);

3           (2) has a cooperative fire agreement that ar-  
4           ticulates the roles and responsibilities for Federal,  
5           State and local government entities in local wildfire  
6           suppression and protection;

7           (3) has local codes that require fire-resistant  
8           home design and building materials;

9           (4) has a community wildfire protection plan  
10          (as defined in section 101 of the Healthy Forests  
11          Restoration Act of 2003 (16 U.S.C. 6502)); and

12          (5) is engaged in a successful collaborative  
13          process that includes multiple interested persons  
14          representing diverse interests and is transparent and  
15          nonexclusive, such as a resource advisory committee  
16          established under section 205 of the Secure Rural  
17          Schools and Community Self-Determination Act of  
18          2000 (Public Law 106–393; 16 U.S.C. 500 note).

19          (b) FIRE RISK MAPPING.—As soon as is practicable  
20          after the date of the enactment of this Act, the Secretary  
21          of Agriculture and the Secretary of the Interior (in this  
22          section referred to as the “Secretaries”) shall develop re-  
23          gional maps of communities most at risk of wildfire and  
24          in need of hazardous fuel treatment and maintenance. The

1 maps shall identify priority areas for hazardous fuels re-  
 2 duction projects, including—

3 (1) at-risk communities in fire-prone areas of  
 4 the wildland-urban interface (as defined in section  
 5 101 of the Healthy Forests Restoration Act of 2003  
 6 (16 U.S.C. 6502));

7 (2) watersheds and municipal drinking water  
 8 sources;

9 (3) emergency evacuation corridors;

10 (4) electricity transmission corridors; and

11 (5) low-capacity or low-income communities.

12 (c) LOCAL WILDLAND FIREFIGHTING CAPABILITY  
 13 GRANTS.—

14 (1) GRANTS AVAILABLE.—The Secretaries may  
 15 provide cost-share grants to fire-ready communities  
 16 to assist such communities in carrying out activities  
 17 authorized by paragraph (2).

18 (2) ELIGIBLE ACTIVITIES.—Grant funds may  
 19 be used for the following:

20 (A) Education programs to raise aware-  
 21 ness of homeowners and citizens about wildland  
 22 fire protection practices, including FireWise or  
 23 similar programs.

1                   (B) Training programs for local fire-  
2                   fighters on wildland firefighting techniques and  
3                   approaches.

4                   (C) Equipment acquisition to facilitate  
5                   wildland fire preparedness.

6                   (D) Implementation of a community wild-  
7                   fire protection plan.

8           (d) WILDLAND FIRE COST-SHARE AGREEMENTS.—  
9   In developing any wildland fire cost-share agreement with  
10 a State Forester or equivalent official, the Secretaries  
11 shall, to the greatest extent possible, encourage the State  
12 and local communities involved to become fire-ready com-  
13 munities.

14           (e) AUTHORIZATION OF APPROPRIATIONS.—There is  
15 authorized to be appropriated to the Secretaries to carry  
16 out this section such sums as may be necessary.

○