

112TH CONGRESS
1ST SESSION

S. 989

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.

IN THE SENATE OF THE UNITED STATES

MAY 12, 2011

Mr. MORAN (for himself and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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 finds that—

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 in
4 which that habitat occurs in landscape proportions;

5 (2) only 4 percent of the presettlement tallgrass
6 prairie in North America survives to this day, and
7 80 percent of that prairie is located in Kansas;

8 (3) the Flint Hills Region is also home to cer-
9 tain declining avian species, such as the greater
10 prairie chicken and Henslow’s sparrow, that cannot
11 continue to exist without large expanses of native
12 tallgrass prairie in an original state;

13 (4) the Flint Hills Region is a significant cor-
14 ridor for migrating shorebirds, such as the American
15 golden plover, the buff-breasted sandpiper, and the
16 upland sandpiper;

17 (5) beginning in the mid-19th century, cattle-
18 men understood that the richness of the Flint Hills
19 grasses depended on a good spring burn—something
20 they learned from the Native Americans;

21 (6) fire still thrives in the Flint Hills because
22 the ranchers, and others using the land, understand
23 that the natural ecosystem depends on fire;

24 (7) ranchers, landowners, and conservation
25 groups use prescribed burns to mimic the seasonal

1 fires that have shaped the tallgrass prairie for thou-
2 sands of years;

3 (8) areas not burned for several years develop
4 mature grasses and thicker, thatch-like vegetation, a
5 habitat that is preferred by invasive species;

6 (9) the Flint Hills Region is a place in the
7 United States that is an example of the prevailing
8 agricultural system working essentially in tandem
9 with an ancestral native ecosystem, preserving most
10 of the complexity and the dynamic processes that
11 helped shape the area; and

12 (10) due to the uniqueness of the Flint Hills
13 tallgrass prairie and the historic manner in which
14 the tallgrass prairie has been managed by fire—

15 (A) prescribed burn practices used as of
16 the date of enactment of this Act to manage the
17 Flint Hills tallgrass prairie should be allowed to
18 continue; and

19 (B) ambient air data resulting from fires
20 used for that management should be not be in-
21 cluded in determinations of compliance with the
22 Clean Air Act (42 U.S.C. 7401 et seq.).

23 **SEC. 3. PRESCRIBED FIRES.**

24 The Clean Air Act is amended by inserting after sec-
25 tion 329 (42 U.S.C. 7628) the following:

1 **“SEC. 330. PRESCRIBED FIRES IN THE FLINT HILLS RE-**
2 **GION.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) FLINT HILLS REGION.—

5 “(A) IN GENERAL.—The term ‘Flint Hills
6 Region’ means the band of hills located in east-
7 ern Kansas and north-central Oklahoma.

8 “(B) INCLUSIONS.—The term ‘Flint Hills
9 Region’ includes—

10 “(i) Butler, Chase, Chautauqua, Clay,
11 Cowley, Dickinson, Elk, Geary, Greenwood,
12 Harvey, Jackson, Lyon, Marion, Marshall,
13 Morris, Ottawa, Pottawatomie, Riley, Sa-
14 line, Shawnee, Wabaunsee, Washington,
15 and Woodson Counties in the State of
16 Kansas; and

17 “(ii) Osage, Tulsa, and Washington
18 counties in the State of Oklahoma.

19 “(2) PRESCRIBED FIRE.—The term ‘prescribed
20 fire’ means a fire that is set or managed by a person
21 with the goal of enhancing a fire-dependent eco-
22 system or enhancing the productivity of agricultural
23 grazing land, irrespective of the frequency with
24 which the burn occurs.

25 “(b) EXCLUSION OF DATA.—In determining whether,
26 with respect to a specific air pollutant, an exceedance or

1 violation of a national ambient air quality standard has
2 occurred, or for any other purpose under this Act, a State
3 and the Administrator shall exclude data from a particular
4 air quality monitoring location if emissions from 1 or more
5 prescribed fires in the Flint Hills Region cause a con-
6 centration of the air pollutant at the location to be in ex-
7 cess of the standard.

8 “(c) SPECIFIC LIMITATIONS.—If emission data is ex-
9 cluded under subsection (b) from a particular air quality
10 monitoring station because of emissions from 1 or more
11 prescribed fires in the Flint Hills Region—

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

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

23 “(d) PROHIBITION AGAINST SMOKE MANAGEMENT
24 PLANS.—The Administrator shall not require, and a State
25 shall not adopt, a smoke management plan under this Act

1 in connection with any prescribed fire in the Flint Hills
2 Region.

3 “(e) NOT A STATIONARY SOURCE.—No building,
4 structure, facility, or installation may be treated as a sta-
5 tionary source under this Act as a result of 1 or more
6 prescribed fires in the Flint Hills Region.

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

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