

117TH CONGRESS
1ST SESSION

S. 1734

To direct the Secretary of the Interior and the Secretary of Agriculture to encourage and expand the use of prescribed fire on land managed by the Department of the Interior or the Forest Service, with an emphasis on units of the National Forest System in the western United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 20, 2021

Mr. WYDEN (for himself, Mr. MANCHIN, Ms. CANTWELL, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To direct the Secretary of the Interior and the Secretary of Agriculture to encourage and expand the use of prescribed fire on land managed by the Department of the Interior or the Forest Service, with an emphasis on units of the National Forest System in the western United States, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “National Prescribed Fire Act of 2021”.

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

Sec. 1. Short title; table of contents.
 Sec. 2. Findings.
 Sec. 3. Definitions.

TITLE I—USE OF FUNDS

Sec. 101. Prescribed fire accounts.
 Sec. 102. Policies and practices.
 Sec. 103. Collaborative prescribed fire program.
 Sec. 104. Large cross-boundary prescribed fire incentive program.

TITLE II—FACILITATING IMPLEMENTATION AND OUTREACH

Sec. 201. Cooperative agreements and contracts.
 Sec. 202. Human resources.
 Sec. 203. Liability of certified prescribed fire managers.
 Sec. 204. Environmental review.
 Sec. 205. Prescribed fire education program.

TITLE III—REPORTING; TERMINATION

Sec. 301. Annual reports to the National Fire Planning and Operations Database.
 Sec. 302. Termination date.

3 **SEC. 2. FINDINGS.**

4 Congress finds that—

5 (1) in 2018, the Forest Service Fire Modeling
 6 Institute determined that 63,070,000 acres of Na-
 7 tional Forest System land and 171,200,000 acres of
 8 other forest land were at high or very high risk of
 9 experiencing a wildfire that would be difficult to sup-
 10 press;

11 (2) according to the National Interagency Co-
 12 ordination Center, between 2009 and 2018, in the
 13 United States, on average—

14 (A) 67,000 wildfires burned 7,000,000
 15 acres annually; and

1 (B) 86,345 prescribed fires burned only
2 3,000,000 acres annually;

3 (3) indigenous communities have used con-
4 trolled burns to manage landscapes since time imme-
5 morial;

6 (4) according to the National Interagency Co-
7 ordination Center, the annual cost of suppressing
8 wildfires in a State with an active prescribed burn-
9 ing program is less than 1 percent of the annual
10 cost of suppressing wildfires in a State without an
11 active prescribed burning program, despite each
12 State having the same number of wildfires;

13 (5) according to a 2017 study published in the
14 Journal of Forestry, on a given acre, a prescribed
15 fire burning in April or May produces less than $\frac{1}{5}$
16 of the smoke emissions of a wildfire that would burn
17 on that acre in August;

18 (6) according to a 2019 study conducted by
19 Stanford University, smoke from prescribed fires ex-
20 poses children to fewer negative health effects than
21 the detrimental smoke generated by wildfires;

22 (7) according to a 2015 study published in
23 Ecology, trees that have not been burnt by a low-in-
24 tensity fire are unusually prone to bark beetle at-
25 tacks, and between 2000 and 2010, bark beetles

1 killed the majority of trees on 32,000,000 acres of
2 the 193,000,000 acres of National Forest System
3 land;

4 (8) as of September 30, 2019, there were—

5 (A) 37 prescribed fire councils in 33
6 States; and

7 (B) 64 prescribed burn associations in 11
8 States;

9 (9) according to the 2018 National Prescribed
10 Fire Use Survey Report—

11 (A) 37 States regulate prescribed fires by
12 issuing burn permits;

13 (B) 23 States offer prescribed burn man-
14 ager certification courses to facilitate respon-
15 sible burning on private land;

16 (C) only 5 States (Vermont, Massachu-
17 setts, Missouri, Connecticut, and Rhode Island)
18 lack laws to reduce liability associated with the
19 responsible use of prescribed fire; and

20 (D) only 8 States (Florida, Montana, Ne-
21 vada, Colorado, Michigan, Georgia, South Caro-
22 lina, and Washington) have laws that use a
23 standard of gross negligence for determining li-
24 abilities for the responsible use of prescribed
25 fire; and

1 (10) as of September 30, 2019, 31 States have
2 a formal process to track the number of acres treat-
3 ed for forestry purposes using prescribed fire.

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) **FEDERAL LAND.**—The term “Federal land”
7 means—

8 (A) public land (as defined in section 103
9 of the Federal Land Policy and Management
10 Act of 1976 (43 U.S.C. 1702));

11 (B) units of the National Park System;

12 (C) units of the National Wildlife Refuge
13 System;

14 (D) land held in trust by the United States
15 for the benefit of Indian Tribes or members of
16 an Indian Tribe; and

17 (E) land in the National Forest System.

18 (2) **NATIONAL FOREST SYSTEM.**—

19 (A) **IN GENERAL.**—The term “National
20 Forest System” has the meaning given the term
21 in section 11(a) of the Forest and Rangeland
22 Renewable Resources Planning Act of 1974 (16
23 U.S.C. 1609(a)).

24 (B) **EXCLUSION.**—The term “National
25 Forest System” does not include—

1 (i) the national grasslands and land
 2 utilization projects administered under title
 3 III of the Bankhead-Jones Farm Tenant
 4 Act (7 U.S.C. 1010 et seq.); or

5 (ii) National Forest System land east
 6 of the 100th meridian.

7 (3) PRESCRIBED FIRE.—The term “prescribed
 8 fire” means a fire deliberately ignited to burn
 9 wildland fuels in a natural or modified state—

10 (A) under specified environmental condi-
 11 tions that allow the fire to be confined to a pre-
 12 determined area and produce the fireline inten-
 13 sity and rate of spread required to attain
 14 planned resource management objectives; and

15 (B) in accordance with applicable law, in-
 16 cluding applicable regulations.

17 (4) SECRETARIES.—The term “Secretaries”
 18 means—

19 (A) the Secretary; and

20 (B) the Secretary of Agriculture.

21 (5) SECRETARY.—The term “Secretary” means
 22 the Secretary of the Interior.

1 **TITLE I—USE OF FUNDS**

2 **SEC. 101. PRESCRIBED FIRE ACCOUNTS.**

3 (a) DEFINITION OF SECRETARY CONCERNED.—In
4 this section, the term “Secretary concerned” means—

5 (1) the Secretary of Agriculture, with respect to
6 an account established by this section for the De-
7 partment of Agriculture; and

8 (2) the Secretary, with respect to an account
9 established by this section for the Department of the
10 Interior.

11 (b) ESTABLISHMENT OF ACCOUNTS.—There are es-
12 tablished in the Treasury of the United States the fol-
13 lowing accounts:

14 (1) The Prescribed Fire account for the De-
15 partment of Agriculture.

16 (2) The Prescribed Fire account for the De-
17 partment of the Interior.

18 (c) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated for fiscal year 2022 and
20 each fiscal year thereafter for the accounts established by
21 subsection (b) such sums as are necessary to carry out
22 this section, not to exceed \$300,000,000.

23 (d) PRESIDENTIAL BUDGET REQUESTS.—For fiscal
24 year 2023 and each fiscal year thereafter, each Secretary
25 concerned shall submit, through the budget request of the

1 President, a request for amounts in the Wildland Fire
2 Management appropriation account of the Secretary con-
3 cerned to carry out the activities described in subsection
4 (e).

5 (e) AUTHORIZED ACTIVITIES.—The Secretary con-
6 cerned shall use amounts in the accounts established by
7 subsection (b) as follows:

8 (1) The Secretary concerned shall—

9 (A) develop a prescribed fire plan, carry
10 out necessary environmental review, conduct
11 outreach to the public, Indian Tribes, and adja-
12 cent landowners, and implement a prescribed
13 fire on Federal land;

14 (B) hire additional personnel and procure
15 additional equipment, including unmanned aer-
16 ial systems equipped with an aerial ignition sys-
17 tem, to implement a greater number of pre-
18 scribed fires;

19 (C) provide training for the implementa-
20 tion of a prescribed fire;

21 (D) conduct post-prescribed fire activities,
22 including reseeding to prevent the spread of
23 invasive species; and

24 (E) conduct monitoring for safety and fire
25 effects.

1 (2) The Secretaries shall coordinate to jointly
2 develop a common data management and analysis
3 system for planning and post-treatment account-
4 ability.

5 (3) The Secretary concerned may assist State,
6 Tribal, local government, or private prescribed fire
7 programs—

8 (A) to provide federally sponsored insur-
9 ance administered by States, in conjunction
10 with State-sponsored training and certification
11 programs, for private persons implementing
12 prescribed fires;

13 (B) to establish a training or certification
14 program for teams comprised of citizens or
15 local fire services to conduct prescribed fires on
16 private land, consistent with any standards de-
17 veloped by the National Wildfire Coordinating
18 Group or State prescribed fire standards;

19 (C) to enable additional fire managers and
20 apparatus, whether provided by the local re-
21 sources of an agency, private contractors, non-
22 governmental organizations, Indian Tribes, local
23 fire services, or qualified individuals, to be
24 present while implementing a prescribed fire;

1 (D) pursuant to the memorandum of
2 agreement authorized under section 203; or

3 (E) to finance the implementation of a pre-
4 scribed fire on State, Tribal, or private land
5 and any post-prescribed fire activities as are de-
6 termined to be necessary by the Secretary con-
7 cerned.

8 (4) The Secretary concerned may provide tech-
9 nical or financial assistance to a prescribed fire
10 council or prescribed burn association for the estab-
11 lishment or operation of the council or association.

12 (5) The Secretary may provide funding for the
13 collaborative prescribed fire program established
14 under section 103.

15 (6) The Secretary may provide funding for the
16 large cross-boundary prescribed fire program estab-
17 lished under section 104.

18 (f) PRIORITIZATION OF FUNDING.—

19 (1) IN GENERAL.—Subject to paragraph (2),
20 the Secretary concerned shall coordinate with Fed-
21 eral, State, and local agencies, Indian Tribes, and
22 qualified nongovernmental organizations, including
23 through the Wildland Fire Leadership Council, to
24 establish prioritization criteria for expending funds

1 under this section for each activity described in sub-
2 section (e).

3 (2) REQUIREMENT.—In establishing criteria
4 under paragraph (1), the Secretary concerned shall
5 give priority to a project that is—

6 (A) implemented across a large contiguous
7 area;

8 (B) cross-boundary in nature;

9 (C) in an area that is threatening to, or lo-
10 cated in, the wildland-urban interface;

11 (D) in an area identified as a priority area
12 in a statewide forest resource assessment;

13 (E) on acres at high or very high risk of
14 experiencing a wildfire that would be difficult to
15 suppress;

16 (F) in an area that is designated as critical
17 habitat and in need of ecological restoration or
18 enhancement; or

19 (G) supportive of potential operational de-
20 lineations or a strategic response zone.

21 **SEC. 102. POLICIES AND PRACTICES.**

22 (a) IN GENERAL.—The Secretaries shall significantly
23 increase the number and size of prescribed fires conducted
24 on Federal land.

1 (b) USE OF FUNDS FOR PRESCRIBED FIRES.—From
 2 amounts appropriated to carry out the activity described
 3 in section 101(e)(1), the Secretaries may carry out pre-
 4 scribed fires on not more than 20,000,000 acres of Fed-
 5 eral land per year.

6 (c) REQUIRING MINIMUM ACREAGE.—Subject to the
 7 availability of appropriations, the Secretaries shall carry
 8 out prescribed fires annually on at least 1,000,000 acres
 9 of Federal land.

10 (d) INCREASE IN FAMILIARITY WITH PRESCRIBED
 11 FIRES IN LOCAL UNITS.—Subject to the availability of
 12 appropriations, not later than September 30, 2023, the
 13 Secretaries shall each have carried out a minimum of 1
 14 prescribed fire on each unit of the National Forest Sys-
 15 tem, unit of the National Wildlife Refuge System, unit of
 16 the National Park System, and Bureau of Land Manage-
 17 ment district under the jurisdiction of the Secretaries—

18 (1) that includes an area that—

19 (A) has a historical low-severity fire re-
 20 gime;

21 (B) has a historical fire-return interval of
 22 not more than 35 years; and

23 (C) is larger than 100 acres; and

1 (2) less than 50 percent of the land of which
2 was burned by a wildland fire during the previous
3 10-year period.

4 **SEC. 103. COLLABORATIVE PRESCRIBED FIRE PROGRAM.**

5 (a) IN GENERAL.—The Secretary shall establish
6 within the Department of the Interior a collaborative pre-
7 scribed fire program (referred to in this section as the
8 “program”) to provide financial assistance to eligible enti-
9 ties, including units of Federal land management agencies,
10 Indian Tribes, and prescribed fire councils, for the imple-
11 mentation of proposals for the conduct of prescribed fires
12 in priority landscapes in accordance with applicable exist-
13 ing policies, including the National Cohesive Wildland Fire
14 Management Strategy.

15 (b) PROPOSAL CRITERIA.—To be eligible for selection
16 for the program, a proposal shall—

17 (1) identify and prioritize planned prescribed
18 fires for a 6-year period within a landscape;

19 (2) establish annual accomplishment targets for
20 prescribed fires under the proposal;

21 (3) be developed through a collaborative proc-
22 ess;

23 (4) be implemented across multiple jurisdic-
24 tions;

25 (5) provide an estimate of—

1 (A) the amount of annual Federal financial
2 assistance necessary to implement the proposal;
3 and

4 (B) the amount of non-Federal funds that
5 would be leveraged;

6 (6) describe benefits to sensitive wildlife species
7 of concern; and

8 (7) describe any established record of successful
9 collaborative planning or use of prescribed fire by
10 the eligible entity.

11 (c) SELECTION CRITERIA.—Subject to the avail-
12 ability of appropriations, the Secretary shall select pro-
13 posals for financial assistance under the program that, as
14 determined by the Secretary, would likely use the least
15 amount of Federal funding to treat the most acres at high
16 or very high risk of experiencing a wildfire that would be
17 difficult to suppress.

18 (d) LIMITATIONS.—

19 (1) NUMBER OF PROJECTS.—The Secretary
20 may select not more than 20 proposals to be funded
21 under the program in any fiscal year.

22 (2) PROJECT FUNDING.—The Secretary may
23 not provide more than \$1,000,000 of Federal funds
24 under the program to any 1 project in a fiscal year.

1 (3) PROJECT PERFORMANCE.—The Secretary
2 shall cease funding any proposal that, for 3 consecu-
3 tive years, fails to meet the annual accomplishment
4 targets that were established under subsection
5 (b)(2).

6 (e) PRESCRIBED FIRE TRAINING EXCHANGES.—Not
7 less frequently than once every 3 years, a recipient of fi-
8 nancial assistance under the program shall provide to local
9 entities and non-local entities experiential training relating
10 to prescribed fires.

11 (f) REPORTING.—

12 (1) PROJECT REPORTING.—A recipient of fi-
13 nancial assistance under the program shall annually
14 submit to the Secretary a report summarizing, at a
15 minimum—

16 (A) the numbers of acres treated with pre-
17 scribed fire by the recipient under the program;
18 and

19 (B) the amount of Federal and non-Fed-
20 eral funds used by the recipient under the pro-
21 gram.

22 (2) PROGRAM REPORTING.—Not later than 2
23 years after the first fiscal year in which funding is
24 made available to carry out prescribed fires under
25 the program, and every 2 years thereafter, the Sec-

1 retary shall submit to the Committee on Energy and
 2 Natural Resources of the Senate and the Committee
 3 on Natural Resources of the House of Representa-
 4 tives a report on the program.

5 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
 6 authorized to be appropriated to carry out this section
 7 \$10,000,000 for each of fiscal years 2022 through 2031,
 8 to remain available until expended.

9 **SEC. 104. LARGE CROSS-BOUNDARY PRESCRIBED FIRE IN-**
 10 **CENTIVE PROGRAM.**

11 (a) IN GENERAL.—Subject to the availability of ap-
 12 propriations, the Secretary shall establish an incentive
 13 program to encourage the implementation of large, cross-
 14 boundary prescribed fires by providing incentive payments
 15 for conducting a qualified prescribed fire.

16 (b) QUALIFIED PRESCRIBED FIRES.—

17 (1) CRITERIA.—A qualified prescribed fire
 18 under the program under this section is a prescribed
 19 fire that—

20 (A) occurred on not less than 2 parcels of
 21 land that were under different ownership;

22 (B) occurred on land under Federal, State,
 23 or local government ownership; and

24 (C) had a target area identified in a pre-
 25 scribed fire plan of not less than 50,000 acres.

1 (2) MULTIPLE FIRES.—The Secretary may con-
2 sider a series of prescribed fires conducted within 1
3 fiscal year by the same 1 or more entities to be a
4 qualified prescribed fire under the program under
5 this section if the series of fires collectively meet the
6 criteria under paragraph (1).

7 (c) PAYMENTS.—

8 (1) STATE AND COUNTY INCENTIVE PAY-
9 MENTS.—The Secretary shall make payments to the
10 State and county in which a qualified prescribed fire
11 was implemented in an amount not greater than
12 \$100,000.

13 (2) NATIONAL FOREST SYSTEM LAND.—In the
14 case of each qualified prescribed fire on a unit of the
15 National Forest System, the Secretary shall transfer
16 to the Secretary of Agriculture, acting through the
17 Chief of the Forest Service, an amount not greater
18 than \$100,000, which shall be used for that unit of
19 the National Forest System.

20 (3) OTHER FEDERAL LAND.—In the case of
21 each qualified prescribed fire on land under the ju-
22 risdiction of the Secretary, the Secretary shall in-
23 crease the funding allocation to the agency of the
24 Department of the Interior that manages the land in
25 an amount not greater than \$100,000.

1 (4) INDIAN COUNTRY.—In the case of each
 2 qualified prescribed fire in Indian country (as de-
 3 fined in section 1151 of title 18, United States
 4 Code), the Secretary shall make a payment to the
 5 applicable Indian Tribe in an amount not greater
 6 than \$100,000.

7 **TITLE II—FACILITATING IMPLE-** 8 **MENTATION AND OUTREACH**

9 **SEC. 201. COOPERATIVE AGREEMENTS AND CONTRACTS.**

10 (a) DEFINITION OF ELIGIBLE ENTITY.—In this sec-
 11 tion, the term “eligible entity” means a State, an Indian
 12 Tribe, a county or municipal government, a fire district,
 13 a nongovernmental organization, including the Nature
 14 Conservancy, or a private entity.

15 (b) AUTHORIZATION.—The Secretaries may enter
 16 into a cooperative agreement or contract with an eligible
 17 entity to authorize the eligible entity to coordinate, plan,
 18 or conduct a prescribed fire on Federal land.

19 (c) SUBCONTRACTS.—A State, Indian Tribe, or coun-
 20 ty that enters into a cooperative agreement or contract
 21 under subsection (b) may enter into a subcontract, in ac-
 22 cordance with applicable contracting procedures of the
 23 State, Indian Tribe, or county, to conduct a prescribed
 24 fire on Federal land pursuant to that cooperative agree-
 25 ment or contract.

1 (d) AGENT OF SECRETARY.—A cooperative agree-
 2 ment or contract entered into under subsection (b) may
 3 authorize the eligible entity to serve as the agent for the
 4 Secretary or the Secretary of Agriculture in coordinating,
 5 planning, or conducting a prescribed fire—

6 (1) on Federal land; or

7 (2) across an area that—

8 (A) includes adjacent landowners; and

9 (B) includes Federal land.

10 (e) INDEMNITY REQUIREMENTS.—Each eligible enti-
 11 ty contracted for implementing a prescribed fire shall pro-
 12 cure and maintain sufficient indemnity insurance during
 13 the entire period of performance under the cooperative
 14 agreement or contract entered into under this section.

15 (f) APPLICABLE LAW.—A prescribed fire conducted
 16 under this section shall be carried out on a project-to-
 17 project basis under existing authorities of the applicable
 18 agency responsible for the management of the Federal
 19 land.

20 (g) PRESERVATION OF DECISION AUTHORITY.—No
 21 project authorized under this section may be undertaken
 22 without the prior written approval of the Secretary or the
 23 Secretary of Agriculture.

24 (h) LONG-TERM CONTRACTS.—A cooperative agree-
 25 ment or contract with an eligible entity under subsection

1 (b) may authorize the eligible entity to conduct a series
2 of prescribed fires on Federal land for a period of not
3 longer than 10 years.

4 **SEC. 202. HUMAN RESOURCES.**

5 (a) **PRESCRIBED FIRE WORKFORCE.**—

6 (1) **TRAINING.**—The Secretaries shall hire addi-
7 tional employees and provide training and develop-
8 ment activities, including through partnerships with
9 community colleges, to increase the number of
10 skilled and qualified prescribed fire practitioners in
11 the Department of the Interior, the Department of
12 Agriculture, Indian Tribes, and other qualified orga-
13 nizations, including training in smoke management
14 practices.

15 (2) **TEMPORARY WORKERS.**—

16 (A) **IN GENERAL.**—The Director of the Of-
17 fice of Personnel Management shall provide to
18 the Secretaries direct hire authority in accord-
19 ance with section 3304(a)(3) of title 5, United
20 States Code, to appoint qualified individuals to
21 positions performing temporary or emergency
22 work relating to prescribed fires, including
23 training, implementation, and post-prescribed
24 burning activities.

(B) TERM OF EMPLOYMENT.—The term of the appointment of an individual under subparagraph (A) shall be restricted to a period that—

(i) begins not more than 72 hours prior to planned ignition; and

(ii) ends not more than 72 hours after the prescribed fire has stopped burning.

(3) OVERTIME PAYMENTS.—

(A) PURPOSE.—The purpose of the amendment made by subparagraph (B) is to allow the Secretaries to use additional new budget authority for wildfire suppression for the cost of overtime payments to employees implementing a prescribed fire.

(B) AMENDMENT.—Section 251(b)(2)(F)(ii)(II) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(F)(ii)(II)) is amended—

(i) in item (bb), by striking “and” at the end;

(ii) in item (cc), by striking the period at the end and inserting “; and”; and

(iii) by adding at the end the following:

1 “(dd) overtime payments to
 2 employees implementing a pre-
 3 scribed fire (as defined in section
 4 3 of the National Prescribed Fire
 5 Act of 2021).”.

6 (4) DEDICATED PRESCRIBED FIRE CREWS.—

7 (A) IN GENERAL.—The Secretaries shall
 8 establish not fewer than 1 crew of Federal em-
 9 ployees the primary responsibility of which is
 10 implementing prescribed fires.

11 (B) TERM OF EMPLOYMENT.—Notwith-
 12 standing section 213.104 or 316.401 of title 5,
 13 Code of Federal Regulations (or successor regu-
 14 lations), an employee of a crew established
 15 under subparagraph (A) may—

16 (i) be hired as a seasonal employee or
 17 temporary employee; and

18 (ii) work more than 1,040 hours per
 19 year.

20 (C) PERMANENT PRESCRIBED FIRE EM-
 21 PLOYEES.—The Secretaries may noncompeti-
 22 tively convert a Federal seasonal employee of a
 23 crew established under this paragraph to a Fed-
 24 eral permanent employee, subject to paragraph
 25 (5).

1 (5) CONVERSION OF SEASONAL FIREFIGHTERS
 2 TO PERMANENT EMPLOYEES.—The Secretaries may
 3 noncompetitively convert a Federal seasonal em-
 4 ployee to a Federal permanent employee if—

5 (A) the listed job duties of the employee
 6 include wildland firefighting;

7 (B) the employee received a rating of at
 8 least “Fully Successful” in each of the perform-
 9 ance appraisals of the employee for the 5 most
 10 recent seasons of Federal employment of the
 11 employee; and

12 (C) the job duties and performance stand-
 13 ards of the position into which the permanent
 14 employee converts include implementing pre-
 15 scribed fires.

16 (6) EMPLOYMENT OF FORMERLY INCARCER-
 17 ATED INDIVIDUALS.—

18 (A) IN GENERAL.—The Secretaries, in
 19 consultation with the Attorney General and
 20 State departments of corrections, shall seek to
 21 provide a career pathway, including through
 22 partnerships with the Corps Network, to indi-
 23 viduals described in subparagraph (B) to work
 24 as prescribed fire practitioners.

1 (B) INDIVIDUALS DESCRIBED.—An indi-
2 vidual referred to in subparagraph (A) is an in-
3 dividual that—

4 (i) has been convicted in any court of
5 a criminal offense, other than arson, and
6 was sentenced to a term of imprisonment
7 for that offense; and

8 (ii) during the term of imprisonment
9 described in clause (i), served on a
10 wildland firefighting crew or received other
11 comparable training.

12 (7) UNDERREPRESENTED EMPLOYEES.—To
13 further address the gender disparity in wildland fire-
14 fighting, the Secretaries shall support the develop-
15 ment and participation of women in leadership op-
16 portunities, mentorship networks, and training in
17 prescribed fire, including the Fire Leadership for
18 Women course and Women-In-Fire Training Ex-
19 change—

20 (A) to develop strong leaders;

21 (B) to increase the number of women over-
22 seeing prescribed fires; and

23 (C) to enhance the longevity and success of
24 women in wildland fire management.

25 (8) VETERANS CREWS.—

1 (A) IN GENERAL.—The Secretaries, in
 2 consultation with the Secretary of Veterans Af-
 3 fairs, shall seek—

4 (i) to provide a career pathway to in-
 5 dividuals described in subparagraph (B) to
 6 work as prescribed fire practitioners; and

7 (ii) to establish crews composed pre-
 8 dominantly of veterans to conduct pre-
 9 scribed fires.

10 (B) INDIVIDUALS DESCRIBED.—An indi-
 11 vidual referred to in subparagraph (A) is an in-
 12 dividual who—

13 (i) served in the active military, naval,
 14 or air service; and

15 (ii) was discharged or released under
 16 conditions other than dishonorable.

17 (9) INTER-TRIBAL ORGANIZATIONS.—The Sec-
 18 retaries may provide funding to Tribal and inter-
 19 Tribal organizations, including the Intertribal Tim-
 20 ber Council, to provide training and workforce devel-
 21 opment opportunities in wildland fire.

22 (b) ADDITIONAL TRAINING CENTERS.—Subject to
 23 the availability of appropriations, not later than Sep-
 24 tember 30, 2023, the Secretary, in cooperation with the
 25 Secretary of Agriculture (and the Secretary of Defense in

1 the case of a center located on a military installation),
 2 shall—

3 (1) establish and operate a prescribed fire
 4 training center in a western State;

5 (2) continue to operate a prescribed fire train-
 6 ing center in an eastern State;

7 (3) establish a virtual prescribed fire training
 8 center; and

9 (4) establish and operate a managed-wildfire
 10 training center.

11 (c) COMPETENCIES FOR FIREFIGHTERS.—

12 (1) UPDATES TO REQUIRED COMPETENCIES
 13 FOR SPECIFIC FIREFIGHTER POSITIONS.—The Sec-
 14 retaries, in coordination with the Fire Executive
 15 Council, the National Association of State Foresters,
 16 and the Intertribal Timber Council, shall task the
 17 National Wildfire Coordinating Group to add a re-
 18 quirement for an individual to obtain the necessary
 19 certification to serve in—

20 (A) the position of a single-resource boss;
 21 and

22 (B) any other positions determined to be
 23 necessary by the Secretaries.

24 (2) ADDITIONAL EXPERIENCE.—The Secre-
 25 taries shall require significant additional experience,

1 gained exclusively during a prescribed fire, to obtain
2 a certification described in paragraph (1).

3 (d) INDEMNITY OF FEDERAL AND TRIBAL EMPLOY-
4 EES.—Except in the case of gross negligence, a Federal
5 employee or an employee contracted by an Indian Tribe
6 pursuant to a contract under the Indian Self-Determina-
7 tion Act (25 U.S.C. 5321 et seq.) overseeing a prescribed
8 fire that escaped—

9 (1) shall not be subject to criminal prosecution;

10 and

11 (2) shall not be subject to civil proceedings, ex-
12 cept in accordance with section 2672 of title 28,
13 United States Code.

14 **SEC. 203. LIABILITY OF CERTIFIED PRESCRIBED FIRE MAN-**
15 **AGERS.**

16 (a) DEFINITION OF COVERED LAW.—In this section,
17 the term “covered law” means a State law that establishes
18 the standard of care in a civil suit against a certified pre-
19 scribed fire manager for an escaped prescribed fire to be
20 “gross negligence”, if the certified prescribed fire man-
21 ager—

22 (1) obtained a permit for the prescribed fire;

23 (2) conducted the prescribed fire consistent
24 with a written prescribed fire plan;

1 (3) was at the site of prescribed fire for the du-
2 ration of the prescribed fire;

3 (4) ensured adequate personnel, equipment, and
4 firebreaks were in place during the prescribed fire,
5 in accordance with the written prescribed fire plan;
6 and

7 (5) complied with any applicable Federal, Trib-
8 al, State, and local laws.

9 (b) MEMORANDUM OF AGREEMENT.—Subject to the
10 availability of appropriations, in accordance with rec-
11 ommendation A3C of the special report of the Western
12 Governors’ National Forest and Rangeland Management
13 Initiative, dated June 2017, the Secretary may enter into
14 a memorandum of agreement with the National Gov-
15 ernors’ Association to host a conference, at which gov-
16 ernors can meet to discuss the benefits of addressing li-
17 ability protection and possible incentives for States to
18 enact a covered law.

19 (c) FUNDING.—The Secretary may provide not more
20 than \$1,000,000 under the memorandum of agreement
21 under subsection (b).

22 **SEC. 204. ENVIRONMENTAL REVIEW.**

23 (a) SMOKE MANAGEMENT AGENCIES.—

1 (1) POLICY.—The Secretaries shall ensure that
2 policies, training, and programs of the Secretaries
3 are consistent with this subsection—

4 (A) to facilitate greater use of prescribed
5 fire; and

6 (B) to address public health and safety, in-
7 cluding impacts from smoke from prescribed
8 fires.

9 (2) EXPENDITURE OF FUNDS.—When a smoke-
10 sensitive facility or vulnerable individual is identified
11 in an area to be impacted by smoke from a pre-
12 scribed fire, the Secretaries may expend funding ap-
13 propriated for hazardous fuel reduction to mitigate
14 the impacts of the prescribed fire.

15 (3) COORDINATION AMONG FEDERAL AND
16 STATE AIR QUALITY AGENCIES AND FEDERAL AND
17 STATE LAND MANAGEMENT AGENCIES.—The Admin-
18 istrator of the Environmental Protection Agency, in
19 cooperation with Federal and State land manage-
20 ment agencies, shall coordinate with State, Tribal,
21 and local air quality agencies that regulate smoke
22 under the Clean Air Act (42 U.S.C. 7401 et seq.)
23 to facilitate the use of prescribed fire on Federal
24 land and State, Tribal, and private land, including
25 by—

1 (A) streamlining the decisionmaking proc-
 2 ess for approving the use of prescribed fire
 3 under a State, Tribal, or local government
 4 smoke management program; and

5 (B)(i) promoting basic smoke management
 6 practices;

7 (ii) disseminating information about basic
 8 smoke management practices; and

9 (iii) educating landowners that use pre-
 10 scribed fire about the importance of—

11 (I) using basic smoke management
 12 practices; and

13 (II) including basic smoke manage-
 14 ment practices as a component of a pre-
 15 scribed fire plan.

16 (4) EXCEPTIONAL EVENT DEMONSTRATIONS.—

17 (A) REQUIREMENT TO SEEK EXCEPTIONAL
 18 EVENT DEMONSTRATION.—Subject to subpara-
 19 graph (C), the appropriate State or Tribal air
 20 quality agency shall develop and submit to the
 21 Administrator of the Environmental Protection
 22 Agency a demonstration in accordance with sec-
 23 tion 50.14 of title 40, Code of Federal Regula-
 24 tions (or successor regulations), if—

1 (i) the Secretary, the Secretary of Ag-
2 riculture, a State land management agen-
3 cy, or an Indian Tribe conducts a pre-
4 scribed fire on Federal land or State land,
5 as applicable, in accordance with a State
6 or Tribal smoke management program that
7 incorporates basic smoke management
8 practices; and

9 (ii) the prescribed fire described in
10 clause (i) contributes to an exceedance or
11 other violation of a national ambient air
12 quality standard under section 109 of the
13 Clean Air Act (42 U.S.C. 7409), as meas-
14 ured using a Federal reference monitor or
15 an equivalent method.

16 (B) DEMONSTRATION ASSISTANCE.—For
17 an exceedance or other violation described in
18 clause (ii) of subparagraph (A), the Secretary
19 or Secretary of Agriculture, with the concu-
20 rrence of the State or Tribal air quality agency,
21 may assist with the development of the dem-
22 onstration under that subparagraph.

23 (C) SAVINGS PROVISION.—Subparagraph
24 (A) shall not apply if the exceedance or other

violation described in clause (ii) of that subparagraph is the result of—

(i) a violation of a smoke management program;

(ii) a failure to use basic smoke management practices; or

(iii) a violation of applicable permit conditions.

(5) EXEMPTION FOR LARGE PRESCRIBED FIRES.—

(A) FEDERAL LAND MANAGEMENT AGENCY EXEMPTION.—Consistent with subsection (b) of section 118 of the Clean Air Act (42 U.S.C. 7418), a prescribed fire conducted on Federal land by the Secretary or the Secretary of Agriculture that burns more than 1,000 acres per day shall be deemed to be in the paramount interest of the United States and shall be exempt from requirements with respect to the control of pollution from Federal facilities under that Act (42 U.S.C. 7401 et seq.) if the Secretary or the Secretary of Agriculture determines that the prescribed fire—

(i) will be conducted in an area where the terrain or fuel load makes the area in-

1 accessible or unsafe for firefighting per-
2 sonnel;

3 (ii) is necessary to reduce hazardous
4 fuels;

5 (iii) will be conducted to minimize
6 smoke impacts on populated areas through
7 the use of basic smoke management prac-
8 tices; and

9 (iv) will be conducted under a smoke
10 management program, if applicable.

11 (B) STATE EXEMPTION.—If the Secretary
12 concerned conducts a prescribed fire that is
13 deemed to be in the paramount interest of the
14 United States under subparagraph (A) on Fed-
15 eral land, a prescribed fire conducted by a State
16 land management agency on State or private
17 land that is contiguous to that Federal land
18 shall be exempt from any applicable national
19 ambient air quality standards under section 109
20 of the Clean Air Act (42 U.S.C. 7409).

21 (C) TRIBAL EXEMPTION.—Consistent with
22 subsection (b) of section 118 of the Clean Air
23 Act (42 U.S.C. 7418), a prescribed fire con-
24 ducted on Tribal land by an Indian Tribe that
25 burns more than 1,000 acres per day shall be

1 deemed to be in the paramount interest of the
2 United States and shall be exempt from re-
3 quirements with respect to the control of pollu-
4 tion from Federal facilities under that Act (42
5 U.S.C. 7401 et seq.) if the Indian Tribe deter-
6 mines that the prescribed fire—

7 (i) will be conducted in an area where
8 the terrain or fuel load makes the area in-
9 accessible or unsafe for firefighting per-
10 sonnel;

11 (ii) is necessary to reduce hazardous
12 fuels;

13 (iii) will be conducted to minimize
14 smoke impacts on populated areas through
15 the use of basic smoke management prac-
16 tices; and

17 (iv) will be conducted under a smoke
18 management program, if applicable.

19 (D) SAVINGS PROVISION.—Consistent with
20 section 118(b) of the Clean Air Act (42 U.S.C.
21 7418(b))—

22 (i) an exemption granted under this
23 paragraph shall apply to the applicable en-
24 tity for a period of not more than 1 year;
25 and

1 (ii) on a new determination of the
2 Secretary, the Secretary of Agriculture, or
3 an Indian Tribe under subparagraph (A)
4 or (C), as applicable, additional exemptions
5 under this paragraph may be granted for
6 subsequent periods after the expiration of
7 the exemption described in clause (i), each
8 of which shall apply for a period of not
9 more than 1 year.

10 (6) STATE AND TRIBAL STANDARDS.—

11 (A) APPROVAL OF STATE OR TRIBAL
12 STANDARDS.—Notwithstanding section 110 of
13 the Clean Air Act (42 U.S.C. 7410), when ap-
14 proving a State or Tribal implementation plan
15 under that section, the Administrator of the
16 Environmental Protection Agency may not ap-
17 prove any standards with respect to—

18 (i) preventing nuisance impacts that
19 result from prescribed fires that incor-
20 porate basic smoke management practices;
21 or

22 (ii) criteria pollutants that result from
23 prescribed fires that are more stringent
24 than what is required to meet the national
25 ambient air quality standards for those

1 pollutants under section 109 of that Act
2 (42 U.S.C. 7409), as measured using a
3 Federal reference monitor or an equivalent
4 method.

5 (B) STATE AND TRIBAL ENFORCEMENT.—

6 A State or Indian Tribe may not enforce stand-
7 ards in a State or Tribal implementation plan
8 that was approved under the Clean Air Act (42
9 U.S.C. 7401 et seq.) before the date of enact-
10 ment of this Act with respect to—

11 (i) preventing nuisance impacts that
12 result from prescribed fires that incor-
13 porate basic smoke management practices;
14 or

15 (ii) criteria pollutants that result from
16 prescribed fires that are more stringent
17 than what is required to meet the national
18 ambient air quality standards for those
19 pollutants under section 109 of that Act
20 (42 U.S.C. 7409), as measured using a
21 Federal reference monitor or an equivalent
22 method.

23 (C) AMENDMENT TO ANTI-BACKSLIDING

24 PROVISION.—If a State or Tribal implementa-
25 tion plan under section 110 of the Clean Air

1 Act (42 U.S.C. 7410) is revised to include a
2 smoke management program for prescribed
3 fires in that implementation plan, subsection (l)
4 of that section shall not apply with respect to
5 that revision.

6 (7) EVALUATION.—The Secretary or the Sec-
7 retary of Agriculture, as applicable, shall conduct an
8 evaluation to facilitate learning new approaches for
9 predicting and preventing exceedances during subse-
10 quent prescribed fires if the Secretary or the Sec-
11 retary of Agriculture—

12 (A) conducts a prescribed fire on Federal
13 land—

14 (i) for which a demonstration is devel-
15 oped and submitted under paragraph
16 (4)(A); or

17 (ii) that is subject to an exemption
18 under paragraph (5)(A); and

19 (B) the prescribed fire described in sub-
20 paragraph (A) contributes to an exceedance of
21 a national ambient air quality standard under
22 section 109 of the Clean Air Act (42 U.S.C.
23 7409).

24 (8) PROGRAMS AND RESEARCH.—To address
25 the public health and safety risk of the expanded use

1 of prescribed fire under this Act, the Secretary of
 2 Agriculture and the Secretary, in coordination with
 3 the Administrator of the Environmental Protection
 4 Agency and the Director of the Centers for Disease
 5 Control and Prevention, shall conduct research to
 6 improve or develop—

7 (A) wildland fire smoke prediction models;

8 (B) smoke impact display tools for the
 9 public and decisionmakers;

10 (C) appropriate, cost-effective, and con-
 11 sistent mitigation strategies for communities
 12 impacted adversely by smoke from prescribed
 13 fire;

14 (D) consistent nationally and scientifically
 15 supported messages regarding personal protec-
 16 tion equipment for the public; and

17 (E) prescribed fire activity tracking and
 18 emission inventory systems for planning and
 19 post-treatment accountability.

20 (b) NATIONAL ENVIRONMENTAL POLICY ACT OF
 21 1969 EFFICIENCIES.—

22 (1) PURPOSE.—The purpose of this subsection
 23 is to require the Secretaries to develop a series of
 24 categorical exclusions from the requirements of the
 25 National Environmental Policy Act of 1969 (42

1 U.S.C. 4321 et seq.) for implementing prescribed
2 fires in accordance with this subsection.

3 (2) PREVIOUS ENVIRONMENTAL REVIEW DECISIONS.—The Secretaries shall—
4

5 (A) gather and evaluate all of the decision
6 memos, decision notices, and records of decision
7 and associated findings of no significant impact
8 or environmental impact statements under the
9 National Environmental Policy Act of 1969 (42
10 U.S.C. 4321 et seq.) prepared for recent pre-
11 scribed fire projects;

12 (B) review any documented environmental
13 impacts of those prescribed fire projects, if the
14 Secretaries monitored or evaluated the effects
15 of the implemented actions; and

16 (C) develop findings of—

17 (i) similarities and differences among
18 prescribed fire projects; and

19 (ii) elements and mitigation measures
20 that consistently appeared in those pre-
21 scribed fire projects that did not individ-
22 ually or cumulatively have a significant im-
23 pact on the environment.

24 (3) RULEMAKING.—Not later than 2 years after
25 the date of enactment of this Act, the Secretaries

1 shall publish in the Federal Register for public re-
 2 view and comment a series of notices of proposed
 3 categorical exclusions from the requirements of the
 4 National Environmental Policy Act of 1969 (42
 5 U.S.C. 4321 et seq.) for implementing prescribed
 6 fire projects in, at a minimum, the following forest
 7 types:

8 (A) Longleaf pine forest.

9 (B) Shortleaf pine forest.

10 (C) Ponderosa pine forest.

11 (D) Pinyon-juniper forest.

12 (E) Dry-site Douglas-fir forest.

13 (F) Chaparral shrubland.

14 (4) EXTRAORDINARY CIRCUMSTANCES.—The
 15 Secretaries shall apply the extraordinary cir-
 16 cumstances procedures under section 220.6 of title
 17 36, Code of Federal Regulations (or successor regu-
 18 lations), in determining whether to use a categorical
 19 exclusion established under this subsection.

20 (5) OREGON AND CALIFORNIA GRANT LANDS.—
 21 On Oregon and California Railroad grant land re-
 22 vested in the United States by the Act of June 9,
 23 1916 (39 Stat. 218, chapter 137), the Secretary,
 24 acting through the Director of the Bureau of Land
 25 Management, shall—

1 (A) implement not fewer than 2 impact
2 demonstration projects to assess the environ-
3 mental effects of prescribed fires;

4 (B) monitor the actual environmental ef-
5 fects during and after that implementation; and

6 (C) evaluate the merits of using a categor-
7 ical exclusion from the requirements of the Na-
8 tional Environmental Policy Act of 1969 (42
9 U.S.C. 4321 et seq.) for prescribed fires on that
10 land.

11 **SEC. 205. PRESCRIBED FIRE EDUCATION PROGRAM.**

12 (a) IN GENERAL.—The Secretary of Agriculture, act-
13 ing through the Chief of the Forest Service, and the Sec-
14 retary, acting through the Director of the Office of
15 Wildland Fire, may enter into a memorandum of agree-
16 ment with the Longleaf Alliance to carry out a national
17 prescribed fire education program, including the use of—

18 (1) the character known as “Burner Bob”; and

19 (2) an anthropomorphic black-backed wood-
20 pecker character, to be known as “Burner Betty”.

21 (b) PROGRAM ELEMENTS.—A prescribed fire edu-
22 cation program authorized under subsection (a) may in-
23 clude—

24 (1) public service advertisements;

25 (2) the use of social media;

- 1 (3) campaign and educational activities and ma-
 2 terials;
 3 (4) commercial licensing;
 4 (5) character images and appearances; and
 5 (6) awards and recognition.

6 **TITLE III—REPORTING;** 7 **TERMINATION**

8 **SEC. 301. ANNUAL REPORTS TO THE NATIONAL FIRE PLAN-** 9 **NING AND OPERATIONS DATABASE.**

10 (a) PURPOSE.—The purpose of this section is to en-
 11 sure an accurate reporting of annual prescribed fire ac-
 12 complishments in the United States.

13 (b) COST-SHARE.—Subject to the availability of ap-
 14 propriations, the Secretary may provide financial assist-
 15 ance to States to pay a portion of the costs associated
 16 with annually reporting prescribed fire accomplishments
 17 to the National Fire Planning and Operations Database.

18 (c) ELIGIBILITY FOR FUNDS.—If, by December 31
 19 of each year, a State has not reported to the National Fire
 20 Planning and Operations Database, at a minimum, the
 21 number of acres treated using prescribed fire in the State,
 22 the State shall not be eligible to receive any amounts made
 23 available under this Act for the previous fiscal year.

1 **SEC. 302. TERMINATION DATE.**

2 The authority to carry out this Act terminates on the
3 date that is 10 years after the date of enactment of this
4 Act.

