

**Calendar No. 401**

117TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
117-119 }

WILDLAND FIREFIGHTER FAIR PAY ACT

—  
R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 138

TO WAIVE CERTAIN PAY LIMITATIONS FOR DEPARTMENT OF  
AGRICULTURE AND DEPARTMENT OF THE INTERIOR EMPLOYEES  
ENGAGED IN EMERGENCY WILDLAND FIRE SUPPRESSION  
ACTIVITIES, AND FOR OTHER PURPOSES



JUNE 9, 2022.—Ordered to be printed

—  
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**WILDLAND FIREFIGHTER FAIR PAY ACT**

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JUNE 9, 2022.—Ordered to be printed  
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Mr. PETERS, from the Committee on Homeland Security and  
Governmental Affairs, submitted the following

**R E P O R T**

[To accompany S. 138]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 138) to waive certain pay limitations for Department of Agriculture and Department of the Interior employees engaged in emergency wildland fire suppression activities, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill, as amended, do pass.

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**I. PURPOSE AND SUMMARY**

S. 138, the Wildland Firefighter Fair Pay Act, establishes a pay waiver for federal firefighters at the Departments of Agriculture and the Interior which ensures that firefighters receive pay for all the overtime hours they work through calendar year 2022. The waiver also applies to incident meteorologists in the National Weather Service who accompany firefighters in responding to wild-fire emergencies. The bill requires each agency head to submit to Congress by March 30, 2022 a plan for hiring and training additional wildland firefighters and incident meteorologists. The bill

also requires the plan to determine ways to modernize firefighter compensation to eliminate the need for such waivers going forward.

## II. BACKGROUND AND NEED FOR THE LEGISLATION

The size, spread, and danger posed by wildfires in the United States is worsening and intensifying.<sup>1</sup> Fires, including some of the largest wildfires in the history of the United States, have engulfed millions of acres of wildlands over the past decade, causing extensive property damage and loss of life.<sup>2</sup> Over the past 60 years, the top three highest amounts of acreage lost due to wild fires occurred in or after 2015. In 2020 alone, the country saw over 10.1 million acres burned.<sup>3</sup> In 2021, the United States set a record for the longest span of days in which the country remained at the two most severe Fire Preparedness Levels, Levels 4 and 5. The nation reached Fire Preparedness Level 4 early, in June 2021, and stayed at either Level 4 or 5 for 99 consecutive days.<sup>4</sup>

Federal firefighters play a critical role in responding to wildfire emergencies. There are approximately 14,500 wildland firefighters employed by the Department of Agriculture who manage the wildfire response across a 193-acre National Forest System.<sup>5</sup> The 5,000 wildland firefighters employed by the Department of the Interior carry out wildfire responses across 400 million acres of national parks, wildlife refuges and preserves, other public lands, and Indian reservations.<sup>6</sup> In addition, approximately 80 incident meteorologists employed by the National Weather Service accompany deployed wildland firefighters to provide critical weather information that influences the behavior and severity of wildfires, such as temperature, humidity, and wind speed.<sup>7</sup>

As fire seasons have lengthened and intensified, wildland firefighters have worked increasingly longer shifts and a greater number of days.<sup>8</sup> However, when federal wildland fire professionals hit their annual pay limit, they must make the unfair decision either to stop taking wildfire assignments or to work without overtime pay for the rest of the year.<sup>9</sup>

Title 5 of United States Code sets the limit on the total amount of combined basic pay and premium pay that federal fire response

<sup>1</sup> See, e.g., *Wildfires are Intensifying. Here's Why, and What Can be Done*, New York Times (July 16, 2021) ([www.nytimes.com/2021/07/16/climate/wildfires-smoke-safety-questions.html](http://www.nytimes.com/2021/07/16/climate/wildfires-smoke-safety-questions.html)).

<sup>2</sup> See, e.g., NASA Earthdata, *Wildfires* ([earthdata.nasa.gov/learn/toolkits/wildfires](http://earthdata.nasa.gov/learn/toolkits/wildfires)) (accessed Dec. 16, 2021); National Interagency Coordination Center, *Wildland Fire Summary and Statistics Annual Report 2020*, at 7–8 (2021); Congressional Research Service, *Wildfire Statistics* (IF10244) (July 15, 2021).

<sup>3</sup> Congressional Research Service, *Wildfire Statistics* (IF10244) (Oct. 4, 2021) ([www.crs.gov/reports/pdf/IF10244](http://www.crs.gov/reports/pdf/IF10244)).

<sup>4</sup> House Subcommittee on Natural Parks, Forests, and Public Lands, Testimony Submitted for the Record of Jeffery Rupert, Director of Office of Wildland Fire, U.S. Department of the Interior, *Hearing on Wildland Firefighter Workforce Reforms* (Oct. 27, 2021) (H. Hrg. 117–XX).

<sup>5</sup> Secretary of the Interior Deb Haaland and Agriculture Secretary Tom Vilsack: *Secretaries Haaland and Vilsack Announce Implementation of New Pay Initiatives for Wildland Firefighters* (Release No. 0181.21) (Aug. 17, 2021) ([www.usda.gov/media/press-releases/2021/08/17/secretaries-haaland-and-vilsack-announce-implementation-new-pay](http://www.usda.gov/media/press-releases/2021/08/17/secretaries-haaland-and-vilsack-announce-implementation-new-pay)); and Congressional Research Service, *Federal Assistance for Wildfire Response and Recovery* (IF10732) (Aug. 6, 2021) ([www.crs.gov/reports/pdf/IF10732](http://www.crs.gov/reports/pdf/IF10732)).

<sup>6</sup> *Id.*

<sup>7</sup> Production from National Weather Service Employees Organization (copy on file with Committee).

<sup>8</sup> Letter from Randy L. Erwin, National Federation of Federal Employees, to Chairman Peters and Ranking Member Portman (Nov. 1, 2021).

<sup>9</sup> Senate Committee on Homeland Security and Governmental Affairs, Statement Submitted for the Record of Senator Dianne Feinstein, *Business Meeting* (Nov. 3, 2021) (S. Hrg. 117–XX).

personnel can receive.<sup>10</sup> The pay is capped either at the maximum rate of pay for a GS 15 position or at the rate paid for a level V position of the Executive Schedule, whichever is greater.<sup>11</sup> In 2021, this equated to a cap of \$161,700.<sup>12</sup> The Departments of Agriculture and the Interior estimate that around 500 federal firefighters have been in the position of hitting the pay limitation given recent wildfire demands, projected to continue into 2022.<sup>13</sup>

In September 2021, Congress passed and the President signed into law, the Extending Government Funding and Delivering Emergency Assistance Act. This legislation contains provisions to address the wildland firefighter pay cap issue for calendar year 2021 by establishing a waiver to the title 5 pay limitation.<sup>14</sup>

The Wildland Firefighter Fair Pay Act will extend the pay cap waiver through calendar year 2022, and applies the waiver to federal incident meteorologists, who are dispatched to wildfires. The bill also requires the relevant Departments to submit a plan to Congress on how to address this issue long-term. The plan must include a more comprehensive strategy for hiring and training additional wildland firefighters and incident meteorologists, as well as a compensation model that guarantees sufficient firefighting resources each year without the use of pay cap waivers.

### III. LEGISLATIVE HISTORY

Senator Dianne Feinstein (D–CA) introduced S. 138, the Wildland Firefighter Fair Pay Act, on January 28, 2021. The bill was referred to the Committee on Homeland Security and Governmental Affairs on January 28, 2021. Senator Alex Padilla (D–CA) joined as a cosponsor on March 16, 2021, and Senators Steve Daines (R–MT) and Jacky Rosen (D–NV) joined as cosponsors on April 19, 2021.

The Committee considered S. 138 at a business meeting on November 3, 2021. During the business meeting, Senator Padilla offered a substitute amendment that made significant changes to the underlying text, including setting an expiration date for the pay cap waiver at the end of calendar year 2022 and requiring the affected agencies to submit a plan to Congress with recommendations for a longer term solution. Senators Rosen and Padilla offered an amendment to include National Weather Service incident meteorologists in the pay cap waiver. The Padilla substitute amendment was adopted by unanimous consent and the Rosen-Padilla amendment was adopted by voice vote, with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley present. The bill, as amended, was ordered reported favorably by voice vote, with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley present.

<sup>10</sup> 5 U.S.C. § 5547.

<sup>11</sup> *Id.*

<sup>12</sup> Office of Personnel Management, *Salary Table No. 2021-EX* ([www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/EX.pdf](http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/EX.pdf)) (accessed Dec. 16, 2021).

<sup>13</sup> *Statement Submitted for the Record of Senator Dianne Feinstein*, *supra* note 9.

<sup>14</sup> Extending Government Funding and Delivering Emergency Assistance Act, Pub. L. 117–43, Sec. 1701 (2021).

## IV. SECTION BY SECTION ANALYSIS OF THE BILL, AS REPORTED

*Section 1. Short title*

This section establishes the short title of the bill as the “Wildland Firefighter Fair Pay Act.”

*Sec. 2. Waiver of premium pay limitations for Department of Agriculture, Department of the Interior, and National Weather Service employees engaged in emergency wildland fire suppression activities*

Subsection (a) defines the terms “basic pay,” “covered employee,” “covered services,” “premium pay,” “relevant committees,” and “Secretary concerned” in the context of this section.

Subsection (b) establishes a waiver of the pay limitation for covered wildland firefighting services in calendar year 2022. It includes a directive to disregard premium pay for covered services when calculating the aggregate of basic pay and premium pay for the purposes of the pay limitation under section 5547 of title 5, United States Code, or any other provision of current law. The bill sets a new, higher cap for total premium pay under this subsection at level II of the Executive Schedule. In 2021, this would equate to \$199,300.

Subsection (c) requires a submission of a plan to the relevant committees in Congress no later than March 30, 2022. The plan must address the needs of the Department of Agriculture, Department of the Interior, and the National Weather Service to hire and train additional wildland firefighters and incident meteorologists and modernize their compensation so that pay cap waivers are not necessary going forward.

## V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or privatesector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

## VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 27, 2022.*

Hon. GARY PETERS,  
*Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 138, the Wildland Firefighter Fair Pay Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Janani Shankaran.

Sincerely,

PHILLIP L. SWAGEL,  
*Director.*

Enclosure.

<b>S. 138, Wildland Firefighter Fair Pay Act</b>			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on November 3, 2021			
By Fiscal Year, Millions of Dollars	2022	2022-2027	2022-2032
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Statutory pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2033?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 138 would exempt wildland firefighters, meteorologists, and incident management teams working in the Forest Service, the Department of the Interior, and the National Weather Service from premium pay limitations for work related to wildfire emergencies conducted in calendar year 2022. That is, the bill would increase the pay those federal employees could receive. S. 138 also would direct the affected agencies to submit a plan to the Congress that addresses the hiring and training of wildland firefighters.

For this estimate, CBO assumes that the legislation will be enacted near the end of fiscal year 2022. As a result, any additional pay under this bill would be disbursed in fiscal year 2023.

Public Law 117-103, the Consolidated Appropriations Act, 2022, increased the pay cap for firefighters within the Forest Service and Department of the Interior for calendar year 2022. Because of the small number of employees that would be affected, CBO estimates that extending the waiver to eligible National Weather Service employees and completing the required plan would have insignificant costs; any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

#### VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Because S. 138 would not repeal or amend any provision of current law, it would make no changes in existing law within the

meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.

