

MEMORANDUM

To: Jim Herz, Mary Popadiuk, other Budget Committee
Staff

From: Paul Restuccia

Date: June 27, 2015

Re: Wildfire Cap Adjustment in Interior Appropriations;
FY2016; S.1645 (S. Rpt. 114-70).

Summary: The legislative text amends BBEDCA to add a new cap adjustment. Right now adjustments may be made for emergencies, OCO/GWOT, disasters, health fraud and abuse, disability reviews, technical changes. The bill designates \$1.06 billion for the purpose as emergency spending.

Included herein are:

- Relevant legislative text from the bill.
- Report language describing text
- Ramseyer language (showing law if enacted)

TITLE V—WILDFIRE DISASTER FUNDING

SEC. 501. WILDFIRE DISASTER FUNDING AUTHORITY.

(a) DISASTER FUNDING.—Section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(D)) is amended—

(1) in clause (i)—

(A) in subclause (I), by striking “and” at the end and inserting “plus”;

(B) in subclause (II), by striking the period at the end and inserting “; less”; and

(C) by adding the following:

“(III) the additional new budget authority provided in an appropriation Act for wildfire suppression operations pursuant to subparagraph (E) for the preceding fiscal year.”; and

(2) by adding at the end the following:

“(v) Beginning in fiscal year 2018, and for each fiscal year thereafter, the calculation of the “average funding provided for disaster relief over the previous 10 years” shall include, for each year within that average, the additional new budget authority provided in an appropriation Act for wildfire suppression operations pursuant to subparagraph (E) for the preceding fiscal year.”.

(b) WILDFIRE SUPPRESSION.—Section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)) is amended by adding at the end the following:

“(E) WILDFIRE SUPPRESSION.—

“(i) DEFINITIONS.—In this subparagraph:

“(I) ADDITIONAL NEW BUDGET AUTHORITY.—The term “additional new budget authority” means the amount provided for a fiscal year in an appropriation Act that is—

“(aa) in excess of 100 percent of the average costs for wildfire suppression operations over the previous 10 years; and

“(bb) specified to pay for the costs of wildfire suppression operations.

“(II) WILDFIRE SUPPRESSION OPERATIONS.—The term “wildfire suppression operations” means the emergency and unpredictable aspects of wildland firefighting, including—

“(aa) support, response, and emergency stabilization activities;

“(bb) other emergency management activities; and

“(cc) the funds necessary to repay any transfers needed for the costs of wildfire suppression operations.

“(ii) ADDITIONAL NEW BUDGET AUTHORITY.—If a bill or joint resolution making appropriations for a fiscal year is enacted that specifies an amount for wildfire suppression operations in the Wildland Fire Management accounts at the Department of Agriculture or the Department of the Interior, then the adjustments for that fiscal year shall be the amount of additional new budget authority provided in that Act for wildfire suppression operations for that fiscal year, but shall not exceed—

“(I) for fiscal year 2016, \$1,460,000,000 in additional new budget authority;

“(II) for fiscal year 2017, \$1,557,000,000 in additional new budget authority;

“(III) for fiscal year 2018, \$1,778,000,000 in additional new budget authority;

“(IV) for fiscal year 2019, \$2,030,000,000 in additional new budget authority;

“(V) for fiscal year 2020, \$2,319,000,000 in additional new budget authority; and

“(VI) for fiscal year 2021, \$2,650,000,000 in additional new budget authority.

“(iii) AVERAGE COST CALCULATION.—The average

costs for wildfire suppression operations over the previous 10 years shall be calculated annually and reported in the budget of the President submitted under section 1105(a) of title 31, United States Code, for each fiscal year.”.

SEC. 502. REPORTING REQUIREMENTS.

(a) SUPPLEMENTAL APPROPRIATIONS.—If the Secretary of the Interior or the Secretary of Agriculture determines that supplemental appropriations are necessary for a fiscal year for wildfire suppression operations, a request for the supplemental appropriations shall promptly be submitted to Congress.

(b) NOTICE OF NEED FOR ADDITIONAL FUNDS.—Prior to the obligation of any of the additional new budget authority for wildfire suppression operations specified for purposes of section 251(b)(2)(E)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(E)(ii)), the Secretary of the Interior or the Secretary of Agriculture, as applicable, shall submit to the Committees on Appropriations and the Budget of the House of Representatives and the Committees on Appropriations and the Budget of the Senate written notification that describes—

- (1) that the amount for wildfire suppression operations to meet the terms of section 251(b)(2)(E) of that Act for that fiscal year will be exhausted imminently; and
- (2) the need for additional new budget authority for wildfire suppression operations.

(c) ACCOUNTING, REPORTS AND ACCOUNTABILITY.—

(1) ACCOUNTING AND REPORTING REQUIREMENTS.—For each fiscal year, the Secretary of the Interior and the Secretary of Agriculture shall account for and report on the amounts used from the additional new budget authority for wildfire suppression operations provided to the Secretary of the Interior or Secretary of Agriculture, as applicable, in an appropriations Act pursuant to section 251(b)(2)(E)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(E)(ii)).

(2) ANNUAL REPORT.—

(A) IN GENERAL.—Not later than 180 days after the end of the fiscal year for which additional new budget authority is used, pursuant to section 251(b)(2)(E)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(E)(ii)), the Secretary of the Interior or the Secretary of Agriculture, as applicable, shall—

- (i) prepare an annual report with respect to the additional new budget authority;
- (ii) submit to the Committees on Appropriations

tions, the Budget, and Natural Resources of the House of Representatives and the Committees on Appropriations, the Budget, and Energy and Natural Resources of the Senate the annual report prepared under clause (i); and

(iii) make the report prepared under clause (i) available to the public.

(B) COMPONENTS.—The annual report prepared under subparagraph (A) shall—

(i) document risk-based factors that influenced management decisions with respect to wildfire suppression operations;

(ii) analyze a statistically significant sample of large fires, including an analysis for each fire of—

(I) cost drivers;

(II) the effectiveness of risk management techniques and whether fire operations strategy tracked the risk assessment;

(III) any resulting ecological or other benefits to the landscape;

(IV) the impact of investments in wildfire suppression operations preparedness;

(V) effectiveness of wildfire suppression operations, including an analysis of resources lost versus dollars invested;

(VI) effectiveness of any fuel treatments on fire behavior and suppression expenditures;

(VII) suggested corrective actions; and

(VIII) any other factors the Secretary of the Interior or Secretary of Agriculture determines to be appropriate;

(iii) include an accounting of overall fire management and spending by the Department of the Interior or the Department of Agriculture, which shall be analyzed by fire size, cost, regional location, and other factors;

(iv) describe any lessons learned in the conduct of wildfire suppression operations; and

(v) include any other elements that the Secretary of the Interior or the Secretary of Agriculture determines to be necessary.

REPORT LANGUAGE

WILDLAND FIRE BUDGETING REFORMS

This bill provides a total of \$4,664,664,000 for wildland fire programs for the Forest Service and Department of the Interior, including a total amount of \$2,564,251,000 for wildland fire

suppression activities, of which \$1,054,578,000 is designated as emergency. The recommendation also includes an important reform proposal that amends the Budget Control Act of 2011 (Public Law 112-25) to allow certain wildland fire suppression activities to be funded through a disaster cap adjustment consistent with other natural disasters, as detailed below. This recommendation is a modification of the proposal included in the fiscal year 2016 budget request, and the subject of bipartisan legislation introduced in both the House and the Senate. Legislative language to enact this proposal is included in title V, but under congressional budgeting rules, this bill cannot both create a new cap adjustment to the statutory discretionary spending limits and appropriate funding under that cap. Therefore, the funds requested through the disaster cap adjustment have been designated as a one-time emergency spending requirement for the purposes of this bill. Historically, budgeting for wildland firefighting is determined by the 10-year average of suppression costs. The proposal continues this practice and only provides access to the cap adjustment when regular fire suppression amounts are exhausted.

The aim of this proposal is to finally put an end to the fire borrowing and repayment cycle. These changes are critically important because of the frequency with which the agencies exhaust firefighting funds and are required to transfer funds from other programs to continue their suppression operations. And since fiscal year 2002, the Forest Service and Department of the Interior collectively have “borrowed” more than \$3,200,000,000 from discretionary, mandatory, and permanent accounts to pay for fire suppression costs. These fire transfers have been highly disruptive to natural resource programs, and borrowed funds have not always been repaid by Congress. As importantly, the effects of fire borrowing are not only felt within the land management agencies. While the historical method for reimbursing transfers was through emergency supplements, \$1,000,000,000 has been provided over the last 3 years to repay firefighting transfers from within the subcommittee’s regular discretionary allocation. The result has been that with the ever-increasing cost of fire being directly shouldered by this bill, the other agencies funded by the subcommittee are being asked to forego important priorities to make room for fire. This bill authorizes bold action that will put an end to this unpredictable mechanism to pay for fire suppression needs and will greatly enhance the efficiency of the Forest Service and the Department of the Interior, where managers in traditional non-fire programs must frequently curtail contracts early in the field season because of the likelihood of fire borrowing. The legislative text also includes auditing and reporting requirements to track expenditures of funds from the disaster cap.

This is not a “blank check” for additional spending. To complement the new structure proposed in title V for fire suppression, this bill invests in funding for prevention activities and post-fire rehabilitation, in order to tackle the fire problem from both ends, which can dramatically decrease the suppression costs when fires do occur. The Forest Service and Department of the Interior are provided with a 4-percent increase for hazardous fuels reduction activities, to protect communities by treating high-priority areas in the wildland-urban interface and the backcountry. By employing all of these tools, this bill provides a multifaceted approach to combat the increasing cost of fighting wildfire. Without the additional resources made available for Federal wildland fire management within this bill to attack the problem before, during, and after a wildfire event, it is evident that the Federal land management agencies will not get ahead of the disastrous curve on catastrophic fire, and suppression costs and the economic costs to communities nationwide will continue to rise.

WILDFIRE DISASTER FUNDING

Title V of the bill includes language to create a new cap adjustment to the statutory discretionary spending limits for wildland fire suppression activities, to combat the most severe, complex, and threatening fires, and to serve as a contingency reserve. This mechanism is critically needed to provide certainty for the Federal agencies tasked with preventing and responding to the increasing incidence of catastrophic wildfires throughout the country. In addition, the language requires specific reporting and cost containment by the agencies utilizing this new cap adjustment. Further explanation can be found in the front matter of this statement. The language in title V is a modification of the proposal included in the fiscal year 2016 budget request, which is also the subject matter of bipartisan legislation introduced in both the House and the Senate.

BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985, PUBLIC LAW 99-177

PART C— EMERGENCY POWERS TO ELIMINATE DEFICITS IN EXCESS OF MAXIMUM DEFICIT AMOUNT

SEC. 251. ENFORCING DISCRETIONARY SPENDING LIMITS.

- (a) ENFORCEMENT.— [***]
- (b) ADJUSTMENTS TO DISCRETIONARY SPENDING LIMITS.—
 - (1) CONCEPTS AND DEFINITIONS.— [***]
 - (2) SEQUESTRATION REPORTS.— [***]
 - (A) EMERGENCY APPROPRIATIONS; OVERSEAS CONTINGENCY OPERATIONS/GLOBAL WAR ON TERRORISM.—

[***]

(B) CONTINUING DISABILITY REVIEWS AND REDETERMINATIONS

[***]

(C) HEALTH CARE FRAUD AND ABUSE CONTROL.—

[***]

(D) DISASTER FUNDING.—

(i) If, for fiscal years 2012 through 2021, appropriations for discretionary accounts are enacted that Congress designates as being for disaster relief in statute, the adjustment for a fiscal year shall be the total of such appropriations for the fiscal year in discretionary accounts designated as being for disaster relief, but not to exceed the total of—

(I) the average funding provided for disaster relief over the previous 10 years, excluding the highest and lowest years; plus

(II) the amount, for years when the enacted new discretionary budget authority designated as being for disaster relief for the preceding fiscal year was less than the average as calculated in subclause (I) for that fiscal year, that is the difference between the enacted amount and the allowable adjustment as calculated in such subclause for that fiscal year; less

(III) the additional new budget authority provided in an appropriation Act for wildfire suppression operations pursuant to subparagraph (E) for the preceding fiscal year.

(ii) OMB shall report to the Committees on Appropriations and Budget in each House the average calculated pursuant to clause (i)(II), not later than 30 days after the date of the enactment of the Budget Control Act of 2011.

(iii) For the purposes of this subparagraph, the term “disaster relief” means activities carried out pursuant to a determination under section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

(iv) Appropriations considered disaster relief under this subparagraph in a fiscal year shall not be eligible for adjustments under subparagraph (A) for the fiscal year.

(v) Beginning in fiscal year 2018, and for each fiscal year thereafter, the calculation of the “average funding provided for disaster relief over the previous 10 years” shall include, for each year within that average, the additional new budget authority provided in an appropriation Act for wildfire suppression op-

erations pursuant to subparagraph (E) for the preceding fiscal year.

(E) WILDFIRE SUPPRESSION.—

(i) DEFINITIONS.—In this subparagraph:

(I) ADDITIONAL NEW BUDGET AUTHORITY.—

The term “additional new budget authority” means the amount provided for a fiscal year in an appropriation Act that is—

(aa) in excess of 100 percent of the average costs for wildfire suppression operations over the previous 10 years; and

(bb) specified to pay for the costs of wildfire suppression operations.

(II) WILDFIRE SUPPRESSION OPERATIONS.—

The term “wildfire suppression operations” means the emergency and unpredictable aspects of wildland firefighting, including—

(aa) support, response, and emergency stabilization activities;

(bb) other emergency management activities; and

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(ii) ADDITIONAL NEW BUDGET AUTHORITY.—If a bill or joint resolution making appropriations for a fiscal year is enacted that specifies an amount for wildfire suppression operations in the Wildland Fire Management accounts at the Department of Agriculture or the Department of the Interior, then the adjustments for that fiscal year shall be the amount of additional new budget authority provided in that Act for wildfire suppression operations for that fiscal year, but shall not exceed—

(I) for fiscal year 2016, \$1,460,000,000 in additional new budget authority;

(II) for fiscal year 2017, \$1,557,000,000 in additional new budget authority;

(III) for fiscal year 2018, \$1,778,000,000 in additional new budget authority;

(IV) for fiscal year 2019, \$2,030,000,000 in additional new budget authority;

(V) for fiscal year 2020, \$2,319,000,000 in additional new budget authority; and

(VI) for fiscal year 2021, \$2,650,000,000 in additional new budget authority.

(iii) AVERAGE COST CALCULATION.—The average costs for wildfire suppression operations over the previous 10 years shall be calculated annually

and reported in the budget of the President submitted under section 1105(a) of title 31, United States Code, for each fiscal year.

Appropriations for Wildland Fire Suppression, designated as emergency spending.

Total designated as emergency: \$1,054,578,000

TITLE I

Department of the Interior Department Wide Programs

“For an additional amount, \$200,000,000 for wildfire suppression operations to meet the emergency and unpredictable aspects of wildland firefighting including support, response, and emergency stabilization activities, other emergency management activities, and funds necessary to repay any transfers needed for these costs, to remain available until expended: Provided, That such funds are also available for transfer to other appropriations accounts to repay amounts previously transferred for wildfire suppression: Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.”

TITLE III

Department of Agriculture Forest Service Wildland Fire Management

“For an additional amount, \$854,578,000 for wildfire suppression operations to meet the emergency and unpredictable aspects of wildland firefighting including support, response, and emergency stabilization activities, other emergency management activities, and funds necessary to repay any transfers needed for these costs, to remain available until expended: Provided, That such funds are also available for transfer to other appropriations accounts to repay amounts previously transferred for wildfire suppression: Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.”