

112TH CONGRESS
1ST SESSION

S. 1118

To authorize the construction and maintenance of levees on property acquired under hazard mitigation grant programs of the Federal Emergency Management Agency.

IN THE SENATE OF THE UNITED STATES

MAY 26, 2011

Mr. HOEVEN (for himself, Mr. CONRAD, Mr. CORNYN, Mr. WICKER, Ms. KLOBUCHAR, Mr. ALEXANDER, Mr. ENZI, Mr. FRANKEN, Mr. PORTMAN, Mr. JOHANNES, and Mr. SESSIONS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To authorize the construction and maintenance of levees on property acquired under hazard mitigation grant programs of the Federal Emergency Management Agency.

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 “FEMA Common Sense
5 and Cost Effectiveness Act of 2011”.

6 **SEC. 2. CONSTRUCTION AND MAINTENANCE OF LEVEES.**

7 (a) STAFFORD ACT.—

1 (1) PREDISASTER MITIGATION PROGRAM.—Sec-
2 tion 203(e) of the Robert T. Stafford Disaster Relief
3 and Emergency Assistance Act (42 U.S.C. 5133(e))
4 is amended by adding at the end the following:

5 “(3) CONSTRUCTION OF LEVEES ON ACQUIRED
6 LANDS.—Subject to paragraph (4), and notwith-
7 standing any requirement that property acquired or
8 accepted under this section be dedicated and main-
9 tained in perpetuity as open space for the conserva-
10 tion of natural flood plain functions, if financial as-
11 sistance provided under this section is used to ac-
12 quire or accept property for open space purposes,
13 the President may permit the construction or main-
14 tenance on the property of—

15 “(A) a levee that is federally owned and
16 operated;

17 “(B) a permanent levee that is federally
18 constructed and non-federally operated and
19 maintained;

20 “(C) a levee—

21 “(i) that is federally constructed as a
22 nonpermanent levee;

23 “(ii) that a non-Federal entity desires
24 to operate and maintain as a permanent
25 levee; and

1 “(iii) the owners of which—

2 “(I) are participating in the
3 emergency response to natural disas-
4 ters program established under sec-
5 tion 5 of the Act entitled ‘An Act au-
6 thORIZING the construction of certain
7 public works on rivers and harbors for
8 flood control, and for other purposes’,
9 approved August 18, 1941 (33 U.S.C.
10 701n); or

11 “(II) begin participating in the
12 program described in subclause (I)
13 within a reasonable period of time, as
14 determined by the President, after the
15 date on which the levee is constructed;
16 and

17 “(D) a non-Federal levee the owners of
18 which are participating in the program de-
19 scribed in subparagraph (C)(iii)(I).

20 “(4) DOWNSTREAM COMMUNITIES.—The Presi-
21 dent may deny an application to construct or main-
22 tain a levee described in paragraph (3) if the levee
23 poses a significant threat of harm to downstream
24 communities.”.

1 (2) HAZARD MITIGATION GRANT PROGRAM.—
2 Section 404(b) of the Robert T. Stafford Disaster
3 Relief and Emergency Assistance Act (42 U.S.C.
4 5170c(b)) is amended—

5 (A) in paragraph (2)(B)—

6 (i) in clause (i), by inserting “except
7 for the construction or maintenance of a
8 structure described in clause (ii) (including
9 a levee),” before “any property”; and

10 (ii) in clause (ii)—

11 (I) in subclause (II), by striking
12 “or” at the end;

13 (II) by redesignating subclause
14 (III) as subclause (IV); and

15 (iii) by inserting after subclause (II)

16 the following:

17 “(III) subject to paragraph (5), a

18 levee described in paragraph (4); or”;

19 and

20 (B) by adding at the end the following:

21 “(4) LEVEES.—A levee described in this para-
22 graph is—

23 “(A) a levee that is federally owned and
24 operated;

1 “(B) a permanent levee that is federally
2 constructed and non-federally operated and
3 maintained;

4 “(C) a levee—

5 “(i) that is federally constructed as a
6 nonpermanent levee;

7 “(ii) that a non-Federal entity desires
8 to operate and maintain as a permanent
9 levee; and

10 “(iii) the owners of which—

11 “(I) are participating in the
12 emergency response to natural disas-
13 ters program established under sec-
14 tion 5 of the Act entitled ‘An Act au-
15 thorizing the construction of certain
16 public works on rivers and harbors for
17 flood control, and for other purposes’,
18 approved August 18, 1941 (33 U.S.C.
19 701n); or

20 “(II) begin participating in the
21 program described in subclause (I)
22 within a reasonable period of time, as
23 determined by the President, after the
24 date on which the levee is constructed;
25 and

1 “(D) a non-Federal levee the owners of
2 which are participating in the program de-
3 scribed in subparagraph (C)(iii)(I).

4 “(5) DOWNSTREAM COMMUNITIES.—The Presi-
5 dent may deny an application to construct or main-
6 tain a levee described in paragraph (4) if the levee
7 poses a significant threat of harm to downstream
8 communities.”.

9 (b) CONSTRUCTION OF LEVEES UNDER HAZARD
10 MITIGATION PROGRAMS RELATING TO FLOODS.—

11 (1) FLOOD MITIGATION ASSISTANCE.—Section
12 1366 of the National Flood Insurance Act of 1968
13 (42 U.S.C. 4104c) is amended by adding at the end
14 the following:

15 “(n) CONSTRUCTION OF LEVEES ON ACQUIRED
16 LANDS.—

17 “(1) IN GENERAL.—Subject to paragraph (2),
18 and notwithstanding any requirement that property
19 acquired or accepted under this section be dedicated
20 and maintained in perpetuity as open space for the
21 conservation of natural flood plain functions, if the
22 mitigation activities funded under subsection (a) in-
23 clude the acquisition or acceptance of property for
24 open space purposes, the Administrator may permit

1 the construction or maintenance on the property
2 of—

3 “(A) a levee that is federally owned and
4 operated;

5 “(B) a permanent levee that is federally
6 constructed and non-federally operated and
7 maintained;

8 “(C) a levee—

9 “(i) that is federally constructed as a
10 nonpermanent levee;

11 “(ii) that a non-Federal entity desires
12 to operate and maintain as a permanent
13 levee; and

14 “(iii) the owners of which—

15 “(I) are participating in the
16 emergency response to natural disas-
17 ters program established under sec-
18 tion 5 of the Act entitled ‘An Act au-
19 thORIZING the construction of certain
20 public works on rivers and harbors for
21 flood control, and for other purposes’,
22 approved August 18, 1941 (33 U.S.C.
23 701n); or

24 “(II) begin participating in the
25 program described in subclause (I)

1 within a reasonable period of time, as
2 determined by the Administrator,
3 after the date on which the levee is
4 constructed; and

5 “(D) a non-Federal levee the owners of
6 which are participating in the program de-
7 scribed in subparagraph (C)(iii)(I).

8 “(2) DOWNSTREAM COMMUNITIES.—The Ad-
9 ministrator may deny an application to construct or
10 maintain a levee described in paragraph (1) if the
11 levee poses a significant threat of harm to down-
12 stream communities.”.

13 (2) GRANTS FOR REPETITIVE INSURANCE
14 CLAIM PROPERTIES.—Section 1323 of the National
15 Flood Insurance Act of 1968 (42 U.S.C. 4030) is
16 amended by adding at the end the following:

17 “(c) CONSTRUCTION OF LEVEES ON ACQUIRED
18 LANDS.—

19 “(1) IN GENERAL.—Subject to paragraph (2),
20 and notwithstanding any requirement that property
21 acquired or accepted under this section be dedicated
22 and maintained in perpetuity as open space for the
23 conservation of natural flood plain functions, if the
24 mitigation activities funded under subsection (a) in-
25 clude the acquisition or acceptance of property for

1 open space purposes, the Administrator may permit
2 the construction or maintenance on the property
3 of—

4 “(A) a levee that is federally owned and
5 operated;

6 “(B) a permanent levee that is federally
7 constructed and non-federally operated and
8 maintained;

9 “(C) a levee—

10 “(i) that is federally constructed as a
11 nonpermanent levee;

12 “(ii) that a non-Federal entity desires
13 to operate and maintain as a permanent
14 levee; and

15 “(iii) the owners of which—

16 “(I) are participating in the
17 emergency response to natural disas-
18 ters program established under sec-
19 tion 5 of the Act entitled ‘An Act au-
20 thORIZING the construction of certain
21 public works on rivers and harbors for
22 flood control, and for other purposes’,
23 approved August 18, 1941 (33 U.S.C.
24 701n); or

1 “(II) begin participating in the
2 program described in subclause (I)
3 within a reasonable period of time, as
4 determined by the Administrator,
5 after the date on which the levee is
6 constructed; and

7 “(D) a non-Federal levee the owners of
8 which are participating in the program de-
9 scribed in subparagraph (C)(iii)(I).

10 “(2) DOWNSTREAM COMMUNITIES.—The Ad-
11 ministrators may deny an application to construct or
12 maintain a levee described in paragraph (1) if the
13 levee poses a significant threat of harm to down-
14 stream communities.”.

15 (3) SEVERE REPETITIVE LOSS PROGRAM.—Sec-
16 tion 1361A(g) of the National Flood Insurance Act
17 of 1968 (42 U.S.C. 4102a(g)) is amended—

18 (A) in paragraph (1), by striking the pe-
19 riod at the end and inserting the following: “,
20 including that, subject to paragraph (5), and
21 notwithstanding any requirement that property
22 acquired or accepted under this section be dedi-
23 cated and maintained in perpetuity as open
24 space for the conservation of natural flood plain
25 functions, the Administrator may permit the

1 construction or maintenance on such property
2 of—

3 “(A) a levee that is federally owned and
4 operated;

5 “(B) a permanent levee that is federally
6 constructed and non-federally operated and
7 maintained;

8 “(C) a levee—

9 “(i) that is federally constructed as a
10 nonpermanent levee;

11 “(ii) that a non-Federal entity desires
12 to operate and maintain as a permanent
13 levee; and

14 “(iii) the owners of which—

15 “(I) are participating in the
16 emergency response to natural disas-
17 ters program established under sec-
18 tion 5 of the Act entitled ‘An Act au-
19 thORIZING the construction of certain
20 public works on rivers and harbors for
21 flood control, and for other purposes’,
22 approved August 18, 1941 (33 U.S.C.
23 701n); or

24 “(II) begin participating in the
25 program described in subclause (I)

1 within a reasonable period of time, as
2 determined by the Administrator,
3 after the date on which the levee is
4 constructed; and

5 “(D) a non-Federal levee the owners of
6 which are participating in the program de-
7 scribed in subparagraph (C)(iii)(I).”; and

8 (B) by adding at the end the following:

9 “(5) DOWNSTREAM COMMUNITIES.—The Ad-
10 ministrator may deny an application to construct or
11 maintain a levee described in paragraph (1) if the
12 levee poses a significant threat of harm to down-
13 stream communities.”.

14 (c) APPLICABILITY OF AMENDMENTS.—The amend-
15 ments made by this section shall apply to all property ac-
16 quired or accepted pursuant to section 203 or 404 of the
17 Robert T. Stafford Disaster Relief and Emergency Assist-
18 ance Act (42 U.S.C. 5133 and 5170c) or section 1323,
19 1366, or 1361A of the National Flood Insurance Act of
20 1968 (42 U.S.C. 4030, 4104e, and 4102a) before, on, or
21 after the date of enactment of this Act.

○