

PRE-DISASTER MITIGATION ACT OF 2009

APRIL 23, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. OBERSTAR, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 1746]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 1746) to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the pre-disaster mitigation program of the Federal Emergency Management Agency, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

H.R. 1746, the “Pre-Disaster Mitigation Act of 2009”, reauthorizes the Pre-Disaster Mitigation (PDM) program for three years, at a level of \$250 million for each of fiscal years 2010 through 2012. The bill increases the minimum amount that each State can receive under the program from \$500,000 to \$575,000, and codifies the competitive selection process of the program, as currently administered by the Federal Emergency Management Agency (FEMA).

BACKGROUND AND NEED FOR LEGISLATION

In the 1990s, under the leadership of FEMA Administrator James Lee Witt, FEMA developed a pre-disaster mitigation pilot program known as “Project Impact”. Congress appropriated funds for Project Impact in each of fiscal years 1997 through 2001. The PDM Mitigation program is the successor to the Project Impact pilot program.

The PDM program was first authorized in section 102 of the Disaster Mitigation Act of 2000.¹ The program is administered by FEMA through its Mitigation Division. It is currently authorized under section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Stafford Act”).² Pursuant to section 203(m) of the Stafford Act, the PDM program terminates on September 30, 2009, unless Congress reauthorizes the program.³

The PDM program provides cost-effective technical and financial assistance to state and local governments to reduce injuries, loss of life, and damage to property caused by natural hazards. Examples of mitigation activities include the seismic strengthening of buildings and infrastructure, acquiring repetitively flooded homes, installing shutters and shatter resistant windows in hurricane-prone areas, and the building of “safe rooms” in houses and other buildings to protect from high winds. For instance, in 2005, FEMA provided PDM program funds to finance roll-down storm shutter systems at five fire stations in Broward County, Florida. Soon after completion of the project, Hurricane Wilma struck Florida. The retrofitted fire stations were not damaged and were able to operate effectively during and after the storm.

The PDM program provides grants to States, Territories, Tribal governments, and local communities on a competitive basis, with each State receiving a statutory minimum of \$500,000, or one percent, of the funds appropriated, whichever is less.⁴ The Federal share of the PDM project costs is up to 75 percent, or up to 90 percent for small or impoverished communities.

In 2007, 47 States, seven Tribal governments, and three Territories submitted applications for 430 communities requesting \$292 million—about three times the available funding of \$100 million.⁵ In 2008, 45 States, five Tribal governments, and one Territory submitted 485 applications requesting \$318.6 million—almost three times the available funding of \$114 million. In 2009, 46 States, six Tribal governments, and six Territories submitted 485 applications requesting \$310.3 million—more than three times the available funding of \$90 million.⁶

FEMA’s mitigation programs, including the PDM program and the post-disaster Hazard Mitigation Grant Program (HMGP) authorized by section 404 of the Stafford Act, are effective in accomplishing their goals of reducing the risk of future damage, hardship, and loss from all hazards. A number of reports, including two mandated by Congress, have cited the cost-effectiveness of these programs. In 2005, the Multihazard Mitigation Council (“Council”), an advisory body of the National Institute of Building Sciences, found that “a dollar spent on mitigation saves society an average

¹ See Disaster Mitigation Act of 2000, Pub. L. No. 106–390, § 102, 114 Stat. 1552, 1553 (2000).

² See 42 U.S.C. § 5133 (2008).

³ 42 U.S.C. § 5133(m)(2008).

⁴ 42 U.S.C. § 5133(f)(2008).

⁵ Congressional Budget Office (CBO), Potential Cost Savings from the Pre-Disaster Mitigation Program (2007), at 1 (hereinafter CBO Report). This report was prepared pursuant to § 209 of the Disaster Mitigation Act of 2000, as amended.

⁶ Source: FEMA.

of \$4.”⁷ The Council found that flood mitigation measures yield even greater savings.⁸

In 2007, the Congressional Budget Office estimated the reduction in Federal disaster assistance that is likely to result from the PDM program.⁹ CBO estimated that PDM-funded projects from 2004 to June 2007 had total costs of almost \$500 million and that the reduction in future losses associated with those projects is \$1.6 billion (present value).¹⁰ According to CBO, “on average, future losses are reduced by about \$3 (measured in discounted present value) for each \$1 spent on those projects, including both federal and non-federal spending.”¹¹

SUMMARY OF THE LEGISLATION

Section 1. Short title

Section 1 designates the short title of the Act as the “Pre-Disaster Mitigation Act of 2009”.

Section 2. Pre-Disaster Hazard Mitigation

Subsection (a) amends section 203(f) of the Stafford Act. This subsection increases the minimum allocation that each State receives from \$500,000 under current law to \$575,000, but maintains that each State shall receive the lesser of this amount or one percent of the total funds appropriated for the fiscal year. The section codifies the competitive aspects of the program as currently administered by FEMA, and retains a provision that any State may not receive more than 15 percent of the total funds appropriated for the fiscal year.

Subsection (b) authorizes appropriations for the PDM program of \$250 million for each of fiscal years 2010, 2011, and 2012. This subsection also eliminates the provision in section 203(m) of the Stafford Act to sunset the PDM program on September 30, 2009.

Subsection (c) changes references in section 203 of the Stafford Act from “Predisaster” to “Pre-Disaster,” consistent with how FEMA refers to the program.

ADDITIONAL MATTERS

On April 30, 2008, the Subcommittee on Economic Development, Public Buildings, and Emergency Management held a hearing on FEMA’s PDM program. At this hearing, there was a discussion of the important role of building codes in reducing damage to buildings from natural hazards. The Committee reminds FEMA that adoption and enforcement of appropriate building codes should be considered under section 203(g)(2).

At the hearing, emergency management representatives also suggested that private non-profits (“PNPs”) be allowed to be sub-applicants and sub-grantees for the PDM program, when local govern-

⁷Multihazard Mitigation Council, National Institute of Building Sciences, Natural Hazard Mitigation Saves: An Independent Study to Assess the Future Savings from Mitigation Activities, 5 (2005). Congress mandated this report pursuant to the Departments of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act of 2000; Pub. L. No. 106–74 (2000); see also Senate Report 106–161.

⁸*Id.*

⁹See note 5, *supra*.

¹⁰*Id.* at 2.

¹¹*Id.* at 1.

ments do not have the resources to perform this function on the PNPs behalf. The Committee is not aware of any specific cases of this problem, and believes that if a local government is unable to serve as the sub-applicant and sub-grantee on behalf of a PNP, an appropriate State agency may do so on its behalf.

One of the few criticisms of the PDM program has been the time that it takes for FEMA to obligate PDM funds.¹² The Committee notes that FEMA is taking steps to streamline grant processes and encourages FEMA to use all appropriate flexibility. The Committee reminds the Department of Homeland Security that Congress specifically exempted the PDM Mitigation Program from grant administration and other requirements imposed in the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110–53), to avoid additional administrative requirements that would slow down the disbursement of funds.

The Committee is aware of the difficulties that several small localities in Minnesota faced when attempting to apply for PDM grants, due in part to the limited application timeframes. In addition, the Committee is aware of the challenges that communities in Minnesota and other small communities around the country have faced in completing well-developed applications due to the time-consuming requirement of using FEMA’s eGrants application system. The Committee urges FEMA to continue develop a streamlined application process and continue to seek ways by which small communities can make the most efficient use of their limited resources during the application process.

FEMA has begun a multi-year effort to harmonize administrative requirements for all of FEMA’s hazard mitigation programs; these include the all hazards PDM program and HMGP authorized by the Stafford Act, as well as flood mitigation programs (Flood Mitigation Assistance, Repetitive Flood Loss, and Severe Repetitive Loss). FEMA’s goal is to unify the administrative requirements of hazard mitigation assistance programs by using common systems and tools, and by simplifying and streamlining the application and eligibility determination process. FEMA expects this will improve program implementation, management and close-out. The focus is on simplifying the process for both FEMA and the communities they serve. The Committee supports these efforts.

The Committee recognizes that some communities have less capability than others to develop competitive hazard mitigation applications, and that some States are less able than others to build and maintain the capacity to provide needed technical assistance. The Committee encourages FEMA to continue to make available technical assistance, and allow States the greatest flexibility permitted to provide technical assistance to communities that require such assistance and capacity building to identify and develop applications in accordance with the specifications of the nationally competitive program.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

In 2000, Congress enacted the Disaster Mitigation Act of 2000 (Public Law 106–390). In 2005, Congress reauthorized the program

¹²Francis X. McCarthy, Congressional Research Service, Pre-Disaster Mitigation Program (2008).

through fiscal year 2008 (Public Law 109–139). In 2008, Congress extended the program’s authorization for one year (Public Law 110–329). Under current law, the PDM program terminates on September 30, 2009, unless Congress reauthorizes the program.

On April 30, 2008, the Subcommittee on Economic Development, Public Buildings, and Emergency Management held a hearing on FEMA’s Pre-Disaster Mitigation program.

On May 21, 2008, Chairman James L. Oberstar introduced H.R. 6109, the “Pre-Disaster Mitigation Act of 2008”. On May 22, 2008, the Committee on Transportation and Infrastructure met in open session to consider H.R. 6109. The Committee ordered the bill reported favorably to the House by voice vote with a quorum present. On June 19, 2008, the Committee reported the bill to the House (H. Rept. 110–275). On June 23, 2008, the House passed H.R. 6109 by voice vote with a quorum present. No further action was taken on the bill.

On July 30, 2008, Chairman James L. Oberstar introduced H.R. 6658, the “Disaster Response, Recovery and Mitigation Enhancement Act of 2008”, which included reauthorization of the PDM program. On July 31, 2008, the Committee ordered H.R. 6658 reported favorably to the House by voice vote with a quorum present. No further action was taken on the bill.

On March 26, 2009, Chairman James L. Oberstar introduced H.R. 1746, the “Pre-Disaster Mitigation Act of 2009”. On April 2, 2009, the Committee on Transportation and Infrastructure met in open session to consider H.R. 1746. The Committee ordered the bill reported favorably to the House by voice vote with a quorum present.

RECORD VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with consideration of H.R. 1746 or ordering the bill reported. A motion to order H.R. 1746 reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included in the report.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to reauthorize the Pre-Disaster Mitigation program for three years.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 1746 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 16, 2009.

Hon. JAMES L. OBERSTAR,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1746, the Pre-Disaster Mitigation Act of 2009.

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

Sincerely,

ROBERT A. SUNSHINE
(For Douglas W. Elmendorf).

Enclosure.

H.R. 1746—Pre-Disaster Mitigation Act of 2009

Summary: H.R. 1746 would authorize appropriations to the Federal Emergency Management Agency (FEMA) for grants to states and localities for pre-disaster mitigation programs, such as constructing levies, relocating homes from flood-prone areas, and retrofitting buildings in earthquake zones. CBO estimates that implementing H.R. 1746 would cost \$700 million over the 2010–2014 period and \$50 million in later years, assuming appropriation of the specified amounts. Enacting H.R. 1746 would not affect direct spending or revenues.

H.R. 1746 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1746 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010– 2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	250	250	250	0	0	750
Estimated Outlays	25	100	200	225	150	700

Basis of estimate: Under current law, FEMA is authorized through 2009 to provide grants and technical assistance to state and localities to implement measures that prevent damage in areas frequented by natural disasters. This legislation would extend this authority through 2012 and authorize the appropriation of \$250 million in each year over the 2010–2012 period, an increase of \$160 million over the 2009 appropriation level of \$90 million (as provided in Public Law 110–329). CBO’s estimate of outlays is based on historical spending patterns for such grants.

Intergovernmental and private-sector impact: H.R. 1746 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, and tribal governments. Assuming appropriation of authorized amounts, those governments would benefit from \$700 million in grants over the 2010–2014 period for pre-disaster mitigation activities. Any costs to those governments, including matching funds, would be incurred voluntarily.

Estimate prepared by: Federal costs: Daniel Hoople; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1746 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or tribal law. The Committee states that H.R. 1746 does not preempt any State, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**ROBERT T. STAFFORD DISASTER RELIEF AND
EMERGENCY ASSISTANCE ACT**

* * * * *

**TITLE II—DISASTER PREPAREDNESS
AND MITIGATION ASSISTANCE**

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SEC. 203. [PREDISASTER] *PRE-DISASTER* HAZARD MITIGATION.

(a) * * *

(b) **ESTABLISHMENT OF PROGRAM.**—The President may establish a program to provide technical and financial assistance to States and local governments to assist in the implementation of **[predisaster]** *pre-disaster* hazard mitigation measures that are cost-effective and are designed to reduce injuries, loss of life, and damage and destruction of property, including damage to critical services and facilities under the jurisdiction of the States or local governments.

(c) **APPROVAL BY PRESIDENT.**—If the President determines that a State or local government has identified natural disaster hazards in areas under its jurisdiction and has demonstrated the ability to form effective public-private natural disaster hazard mitigation partnerships, the President, using amounts in the National **[Predisaster]** *Pre-Disaster* Mitigation Fund established under subsection (i) (referred to in this section as the “Fund”), may provide

technical and financial assistance to the State or local government to be used in accordance with subsection (e).

* * * * *

(e) USES OF TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—Technical and financial assistance provided under this section—

(A) shall be used by States and local governments principally to implement **[[predisaster]** *pre-disaster* hazard mitigation measures that are cost-effective and are described in proposals approved by the President under this section; and

* * * * *

[(f) ALLOCATION OF FUNDS.—The amount of financial assistance made available to a State (including amounts made available to local governments of the State) under this section for a fiscal year—

[(1) shall be not less than the lesser of—

[(A) \$500,000; or

[(B) the amount that is equal to 1.0 percent of the total funds appropriated to carry out this section for the fiscal year;

[(2) shall not exceed 15 percent of the total funds described in paragraph (1)(B); and

[(3) shall be subject to the criteria specified in subsection (g).]

(f) ALLOCATION OF FUNDS.—

(1) IN GENERAL.—*The President shall award financial assistance under this section on a competitive basis and in accordance with the criteria in subsection (g).*

(2) MINIMUM AND MAXIMUM AMOUNTS.—*In providing financial assistance under this section, the President shall ensure that the amount of financial assistance made available to a State (including amounts made available to local governments of the State) for a fiscal year—*

(A) is not less than the lesser of—

(i) \$575,000; or

(ii) the amount that is equal to one percent of the total funds appropriated to carry out this section for the fiscal year; and

(B) does not exceed the amount that is equal to 15 percent of the total funds appropriated to carry out this section for the fiscal year.

* * * * *

(i) NATIONAL **[[PREDISASTER]** *PRE-DISASTER* MITIGATION FUND.

(1) ESTABLISHMENT.—The President may establish in the Treasury of the United States a fund to be known as the “National **[[Predisaster]** *Pre-Disaster* Mitigation Fund”, to be used in carrying out this section.

(2) TRANSFERS TO FUND.—There shall be deposited in the Fund—

(A) * * *

(B) sums available from gifts, bequests, or donations of services or property received by the President for the purpose of **[[predisaster]]** *pre-disaster* hazard mitigation.

* * * * *

[(m) TERMINATION OF AUTHORITY.—The authority provided by this section terminates September 30, 2009.**]**

(m) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$250,000,000 for each of fiscal years 2010, 2011, and 2012.

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