

## NATIONAL LEVEE SAFETY PROGRAM ACT OF 2006

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JULY 28, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. YOUNG of Alaska, from the Committee on Transportation and Infrastructure, submitted the following

### R E P O R T

[To accompany H.R. 4650]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 4650) to direct the Secretary of the Army to carry out programs and activities to enhance the safety of levees in the United States, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “National Levee Safety Program Act of 2006”.

#### SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) BOARD.—The term “Board” means the National Levee Safety Advisory Board established under section 4(d).

(2) COMMITTEE.—The term “Committee” means the Interagency Committee on Levee Safety established by section 4(a).

(3) LEVEE.—

(A) IN GENERAL.—The term “levee” means an embankment (including floodwalls)—

(i) the primary purpose of which is to provide hurricane, storm, and flood protection relating to seasonal high water and storm surges; and

(ii) that normally is subject to water loading for only a few days or weeks during a year.

(B) INCLUSION.—The term “levee” includes structures along canals that constrain water flows and are subject to more frequent water loadings but that do not constitute a barrier across a watercourse.

(4) FEDERAL ENTITY.—The term “Federal entity” means a Federal agency or entity that designs, finances, constructs, owns, operates, maintains, or regulates the construction, operation, or maintenance of a levee.

(5) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(6) STATE.—The term “State” means—

- (A) a State;
- (B) the District of Columbia;
- (C) the Commonwealth of Puerto Rico; and
- (D) any other territory or possession of the United States.

(7) STATE LEVEE SAFETY AGENCY.—The term “State levee safety agency” means the State agency that has regulatory authority over the safety of any non-Federal levee in a State.

(8) UNITED STATES.—The term “United States”, when used in a geographical sense, means all of the States.

### SEC. 3. INSPECTION AND INVENTORY OF LEVEES.

(a) IN GENERAL.—The Secretary shall carry out a program under which, as soon as practicable after the date of enactment of this Act, the Secretary shall inspect levees in the United States for the purpose of protecting human life and property.

(b) LEVEES TO BE INSPECTED.—

(1) IN GENERAL.—In carrying out the program under subsection (a), the Secretary shall inspect—

- (A) each levee in the United States constructed by the Secretary;
- (B) each levee in the United States maintained by the Secretary;
- (C) each levee constructed by a Federal entity and identified to the Secretary by the head of such entity;
- (D) each levee constructed by a federally recognized Indian tribe, located on tribal lands, and identified to the Secretary by the head of such tribe; and
- (E) each levee located in a State identified by the Governor of the State in a list transmitted to the Secretary.

(2) EXCEPTIONS.—Notwithstanding paragraph (1), in carrying out the program under subsection (a), the Secretary shall not be required to inspect—

- (A) any levee that has been inspected by a State levee safety agency during the 1-year period immediately preceding the date of enactment of this Act if the Governor of the State requests an exception; and
- (B) any levee that the Secretary determines would not pose a significant threat to human life or property in case of failure.

(c) STATE PARTICIPATION.—On request of a State levee safety agency with respect to any levee subject to an inspection under this Act and the failure of which would affect the State, the Secretary shall—

- (1) allow an official of the State levee safety agency to participate in the inspection of the levee; and
- (2) provide information to the State levee safety agency relating to the location, construction, operation, or maintenance of the levee.

(d) DETERMINATION.—

(1) INSPECTION REQUIREMENTS.—For the purpose of determining whether the failure of a levee, including the release of any water constrained by the levee, constitutes a danger to human life or property, the Secretary shall take into consideration the possibility that the levee may be in danger of failing due to disparities in floodwall height or construction materials, overtopping due to flooding or storm surges, seepage, settlement, piping or internal erosion, cracking, earth movement, earthquakes, hurricanes, the failure of bulkheads or sheet walls, flashboards, gates or conduits, wetlands erosion, soil erosion, hydrologic modification, or other conditions that exist or may occur in any area in the vicinity of the levee.

(2) PREVIOUSLY-INSPECTED LEVEES.—For any levee with respect to which the Secretary made any determination regarding the safety of the levee before the date of the inspection of the levee under this section, the Secretary shall review the determination, taking into consideration information most recently available to the Secretary relating to the matters referred to in paragraph (1).

(e) INSPECTION RESULTS.—

(1) NOTICE TO STATES.—As soon as practicable after the inspection of a levee under this Act, the Secretary shall notify the Governor of the State in which such levee is located, the Governor of any other affected State, any affected local government authority, and any affected federally recognized Indian tribe of the results of the inspection.

(2) HAZARDOUS CONDITIONS.—If the Secretary finds a hazardous condition during an inspection, the Secretary shall—

- (A) immediately notify the Governor of the State in which such levee is located, the Governor of any other affected State, any affected local government authority, and any affected federally recognized Indian tribe; and

(B) provide to a Governor or entity referred to in subparagraph (A), upon request, advice relating to timely remedial measures necessary to mitigate or obviate the hazardous condition.

(f) NATIONAL LEVEE INVENTORY.—

(1) IN GENERAL.—Not later than August 1, 2007, and every 2 years thereafter, the Secretary shall publish and submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate an inventory of—

(A) levees subject to inspection under this Act, and a characterization of the risk posed by such levees; and

(B) levees identified by a State under section 5(e)(2)(H).

(2) CONSIDERATIONS.—In determining the risk a levee poses under paragraph (1)(A), the Secretary shall consider the condition of the levee and the potential impact on human lives and property if the levee fails.

(3) CONTENTS.—An inventory to be submitted under paragraph (1) shall include for each levee the following information:

(A) The location of the levee.

(B) The owner of the levee and any other responsible party.

(C) The physical condition of the levee.

(D) The probability and consequences of a failure of the levee.

**SEC. 4. INTERAGENCY COMMITTEE ON LEVEE SAFETY.**

(a) ESTABLISHMENT.—There is established a committee to be known as the “Interagency Committee on Levee Safety”.

(b) MEMBERSHIP.—The Committee shall be composed of 5 members as follows:

(1) The Secretary (or the Secretary’s designee), who shall serve as the chairperson of the Committee.

(2) The Secretary of Agriculture (or the Secretary’s designee).

(3) The Secretary of the Interior (or the Secretary’s designee).

(4) The Director of the Federal Emergency Management Agency (or the Director’s designee).

(5) The United States Commissioner of the International Boundary and Water Commission (or the Commissioner’s designee).

(c) DUTIES.—The Committee shall support the establishment and maintenance of effective Federal programs, policies, and guidelines to enhance levee safety for the protection of human life and property through coordination and information exchange among and between Federal and non-Federal entities concerning the implementation of Federal guidelines relating to levee safety.

(d) NATIONAL LEVEE SAFETY ADVISORY BOARD.—

(1) ESTABLISHMENT.—The Committee shall establish an advisory board, to be known as the “National Levee Safety Advisory Board”, to advise the Committee on—

(A) the safety of levees in the United States;

(B) the implementation of this Act by State levee safety agencies; and

(C) policy relating to national levee safety.

(2) MEMBERSHIP.—The Board shall be composed of 14 members appointed by the Secretary as follows:

(A) A representative of State levee safety agencies for each of the 8 civil works divisions of the Corps of Engineers.

(B) 2 representatives of the private sector who have expertise in levee safety.

(C) 4 representatives of local and regional governmental agencies with expertise in levee safety.

(3) DUTIES.—

(A) IN GENERAL.—The Board shall support the activities of the Committee and the establishment and maintenance of effective programs, policies, and guidelines to enhance levee safety for the protection of human life and property throughout the United States.

(B) COORDINATION AND INFORMATION EXCHANGE AMONG AGENCIES.—In carrying out subparagraph (A), the Board shall assist the Committee in coordination and information exchange among and between Federal entities and State levee safety agencies that share common problems and responsibilities relating to levee safety, including planning, design, construction, operation, emergency action planning, inspections, maintenance, regulation or licensing, technical or financial assistance, research, and data management.

(4) COMPENSATION OF MEMBERS.—A member of the Board shall serve without compensation.

(5) TRAVEL EXPENSES.—To the extent amounts are made available in advance in appropriations Acts, the Secretary shall reimburse a member of the Board for travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter 1 of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in performance of services for the Board.

(6) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Board.

#### SEC. 5. NATIONAL LEVEE SAFETY PROGRAM.

(a) IN GENERAL.—The Secretary, in consultation with the Committee and State levee safety agencies, shall establish and maintain a national levee safety program.

(b) PURPOSES.—The purposes of the program under this section are—

(1) to ensure that human life and property protected by new and existing levees are safe through the development of technologically, economically, socially, and environmentally feasible programs and procedures for hazard reduction and mitigation relating to levees;

(2) to encourage acceptable engineering policies and procedures to be used for levee site investigation, design, construction, operation and maintenance, and emergency preparedness;

(3) to encourage the establishment and implementation of effective levee safety programs in each State;

(4) to develop and support public education and awareness projects to increase public acceptance and support of State levee safety programs;

(5) to build public awareness of the residual risks associated with living in levee protected areas;

(6) to develop technical assistance materials for Federal and State levee safety programs;

(7) to develop methods of providing technical assistance relating to levee safety to non-Federal entities; and

(8) to develop technical assistance materials, seminars, and guidelines to improve the security of levees in the United States.

(c) STRATEGIC PLAN.—In carrying out the program under this section, the Secretary shall—

(1) prepare a strategic plan to achieve the purposes of the program under this section; and

(2) transmit, not later than 120 days after the date of enactment of this Act, the plan to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(d) FEDERAL GUIDELINES.—

(1) IN GENERAL.—In carrying out the program under this section, the Secretary, in consultation with the Committee, shall establish Federal guidelines relating to levee safety.

(2) INCORPORATION OF FEDERAL ACTIVITIES.—The Federal guidelines under paragraph (1) shall incorporate, to the maximum extent practicable, activities and practices carried out by a Federal entity as of the date on which the guidelines are established.

(3) INCORPORATION OF STATE AND LOCAL ACTIVITIES.—The program under this section shall incorporate, to the maximum extent practicable—

(A) the activities and practices carried out by States, local governments, and the private sector to safely build, regulate, operate, and maintain levees; and

(B) Federal activities that foster State efforts to develop and implement effective programs for the safety of levees.

(e) ASSISTANCE FOR STATE LEVEE SAFETY PROGRAMS.—

(1) IN GENERAL.—To encourage the establishment and maintenance of effective State programs intended to ensure levee safety to protect human life and property and to improve State levee safety programs, the Secretary shall provide assistance, using amounts made available to carry out this Act, to assist States in establishing and carrying out levee safety programs.

(2) CRITERIA.—To be eligible for assistance under this subsection, a State shall be in the process of establishing or have in effect a State levee safety program under which the State levee safety agency, in accordance with State law, shall—

(A) review and approve plans and specifications to construct, enlarge, modify, remove, and abandon levees;

(B) perform periodic inspections during levee construction to ensure compliance with approved plans and specifications;

(C) require or perform the inspection, at least once every 5 years, of all levees that would pose a significant threat to human life and property in case of failure to determine the continued safety of the levees and a procedure for more detailed and frequent safety inspections;

(D) require that all inspections of levees be performed under the supervision of a State-registered professional engineer with experience in levee design and construction;

(E) issue notices, when appropriate, to require owners of levees to perform necessary maintenance or remedial work, improve security, revise operating procedures, or take other actions, including breaching levees when necessary;

(F) provide necessary funds from State sources or by requiring levee owners to pay for timely repairs or other changes to, or removal of, a levee in order to protect human life and property;

(G) establish a system of emergency procedures to be used by the State, or required to be used by levee owners, if a levee fails or the failure of a levee is imminent;

(H) identify and provide information to the Secretary on—

(i) each levee the failure of which could be reasonably expected to endanger human life and property;

(ii) the maximum area that could be flooded if the levee failed; and

(iii) critical public facilities that would be affected by the flooding, including costs and consequences of the flooding; and

(I) issue regulations necessary to carry out the program.

(3) BUDGETING REQUIREMENT.—To be eligible for assistance under this subsection, a State shall allocate sufficient funds in its budget to carry out a State levee safety program.

(4) WORK PLANS.—The Secretary shall enter into an agreement with each State receiving assistance under this subsection to develop a work plan necessary for the State levee safety program to reach a level of program performance specified in the agreement.

(5) MAINTENANCE OF EFFORT.—Assistance may not be provided to a State under this subsection for a fiscal year unless the State enters into such agreement with the Secretary as the Secretary requires to ensure that the State will maintain the aggregate expenditures of the State from all other sources for programs to ensure levee safety for the protection of human life and property at or above a level equal to the average annual level of such expenditures for the 2 fiscal years preceding the fiscal year.

(6) APPROVAL OF PROGRAMS.—

(A) SUBMISSION.—To be eligible for assistance under this subsection, a State shall submit to the Secretary a State levee safety program and receive the Secretary's approval of the program.

(B) APPROVAL.—

(i) IN GENERAL.—If the Secretary determines that a program submitted by a State under subparagraph (A) substantially meets the requirements of this subsection, the Secretary shall approve the program and immediately notify the State in writing of the approval.

(ii) DEEMED APPROVAL.—A program submitted by a State under subparagraph (A) shall be deemed to be approved by the Secretary on the 120th day following the date of the Secretary's receipt of the program unless the Secretary before such 120th day approves or disapproves the program.

(C) NOTIFICATION OF DISAPPROVAL.—If the Secretary determines that a program submitted by a State under subparagraph (A) does not substantially meet the requirements of this subsection, the Secretary shall disapprove the program, immediately notify the State in writing of the disapproval, and provide the reasons for the disapproval and the changes that are necessary for the program to be approved.

(7) REVIEWS OF STATE LEVEE SAFETY PROGRAMS.—

(A) PERIODIC REVIEWS.—The Secretary shall periodically review State levee safety programs.

(B) REVOCATION OF PROGRAM APPROVAL.—If the Secretary finds that a State levee safety program has proven inadequate to reasonably protect human life and property, the Secretary shall revoke approval of the State levee safety program, and withhold assistance under this subsection, until the State levee safety program again substantially meets the requirements for approval.

(f) REPORT.—Not later than January 1, 2007, and every 2 years thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of

the House of Representatives and the Committee on Environment and Public Works of the Senate a report describing—

- (1) the status of the program under this section;
- (2) the progress made by Federal entities during the 2 preceding fiscal years in implementing Federal guidelines relating to levee safety;
- (3) the progress made by State levee safety agencies participating in the program; and
- (4) recommendations for legislative or other action that the Secretary considers to be necessary, if any.

#### **SEC. 6. RESEARCH PROGRAM.**

(a) **IN GENERAL.**—The Secretary, in cooperation with the Committee, shall carry out a program of technical and archival research to develop and support—

- (1) improved techniques, historical experience, and equipment for rapid and effective levee construction, maintenance, rehabilitation, and inspection;
- (2) the development of devices for the continued monitoring of levee safety;
- (3) the development and maintenance of information resources systems required to manage levee safety projects; and
- (4) public policy initiatives and other improvements relating to levee safety engineering, security, and management.

(b) **PARTICIPATION BY STATE LEEVE SAFETY AGENCIES.**—In carrying out the program under subsection (a), the Secretary shall—

- (1) solicit participation from State levee safety agencies; and
- (2) periodically update State levee safety agencies, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Environment and Public Works of the Senate on the status of the program.

#### **SEC. 7. LEEVE SAFETY TRAINING PROGRAM.**

Upon request of a State that has (or intends to develop) a State levee safety program, the Secretary shall establish a program under which the Secretary shall provide training for State levee safety agency staff.

#### **SEC. 8. EFFECT OF ACT.**

Nothing in this Act—

- (1) creates any liability of the United States or its officers or employees for the recovery of damages caused by an action or failure to act; or
- (2) relieves an owner or operator of a levee of a legal duty, obligation, or liability incident to the ownership or operation of a levee.

#### **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated to the Secretary to carry out this Act \$15,000,000 for each of fiscal years 2007 through 2012. Such sums shall remain available until expended.

### **PURPOSE OF THE LEGISLATION**

The purpose of H.R. 4650 is to direct the Secretary of the Army to carry out programs and activities to enhance the safety of levees and those living in levee-protected areas.

### **BACKGROUND AND NEED FOR LEGISLATION**

The 2005 hurricane season illustrated the importance of flood protection infrastructure and in particular the importance of levees. When they fail or are overwhelmed by a massive flood event, the consequences can be catastrophic. While much of the attention has been focused on the Gulf Coast, particularly on the hundreds of miles of levees protecting New Orleans, it is important to recognize that many other cities around the country face the same, if not greater risk, of flooding.

The United States Army Corps of Engineers has constructed nearly 9,000 miles of the nation's estimated 15,000 miles of levees. On the federal level, new levee construction requires complex engineering and its capacity is based on a level of protection that is justified by an analysis of the risks, costs, and benefits of constructing

the project. There are strict engineering standards required when a federal levee is designed and built.

There are undoubtedly thousands of miles of other levees built by other federal agencies, states, towns, farmers, and landowners. Some of these are well-built and well-maintained levees. Others are not. What we know about the existence and condition of these other levees we often learn when one fails or is overwhelmed by a flood event. There has never been an inventory of the levees in the country that could identify where they are, what condition they are in, or what resources are at risk if one should fail or be overtopped.

Except for the mainline levees of the lower Mississippi River, maintenance of the levees constructed by the Corps of Engineers is a non-federal responsibility. Little is known about the current condition of both federal and non-federal levees, including whether these levees were designed to meet current conditions, or whether they have been properly maintained by the non-federal interest.

People and property behind a levee are always subject to some level of risk although, often those living and working behind levees are unaware of the risk. That risk may have to do with the height or the condition of the levee or the risk that a flood event will occur that is greater than the design of the levee.

For urban areas, the federal government typically designs levees and flood damage reduction projects around a 1-percent annual probability of such an event, more commonly referred to as a "100-year flood", as the minimum standard for identifying, mapping, and managing flood hazards. Often in urban areas, a greater level of protection is warranted and larger levees are constructed. Levees that protect agricultural lands typically are designed to protect against smaller floods that are more likely to occur in a given year, such as a flood with an annual probability of 20 percent, more commonly referred to as a "five year flood."

The Federal Emergency Management Agency (FEMA) operates the National Flood Insurance Program as a way to manage flood risk without having to rely on federal disaster assistance. In the United States there is only a small private insurance market for flood insurance. Participating communities are required to adopt building codes and other types of activities that will reduce losses posed by a 100-year flood. However, structures built behind the protection of 100-year levees are not designated as being within the floodplain, and therefore occupants within these areas are not required to participate in the National Flood Insurance Program. FEMA does require levees protecting flood-prone areas to be certified for structural soundness, proper maintenance, and provide protection against a 100-year flood. The Army Corps of Engineers performs a majority of these certifications, however, this process is currently not designed to assess the geotechnical conditions of the levees or the hydrological conditions of the areas to be protected. While levee structures may be sound, the underlying geology or hydrology may impact the structure. Performing this type of assessment could represent a significant cost for levee owners. The Corps estimates that to perform these types of assessments for the 1,600 miles of levees in California's Central Valley will cost \$100 million, or \$60,000 per mile of levee.

While some States have programs to regulate levees constructed by non-federal entities, the majority of States do not have such pro-

grams. Those States that have programs are in response to the National Flood Insurance Program or regulatory programs that require localities to control land use or implement other floodplain management measures. Under the National Flood Insurance Program, the Federal Emergency Management Agency can exempt communities from certain requirements of the program if the communities can show that the levees protecting them are designed, constructed, located, and maintained according to certain criteria. The accuracy of maps used by the Federal Emergency Management Agency (FEMA) to define flood hazard areas are currently under review, as more than 75 percent of them are more than 10 years old, raising concerns that hydrologic data has changed since the maps were last reviewed. A 2004 analysis by the Army Corps of Engineers found some locations along the Missouri River where the 100-year flood elevation is four feet higher than what was shown on previous flood maps. As FEMA updates its maps through its Map Modernization Initiative, some communities that were once thought to be protected from the 100-year flood event may find themselves with less protection and subjected to different flood insurance requirements.

#### SUMMARY OF THE LEGISLATION

##### *Section 1. Short title*

Section 1 of the bill specifies that the short title is the “National Levee Safety Program Act of 2006.”

##### *Section 2. Definitions*

Section 2 of the bill defines (1) “Board” to mean the National Levee Safety Advisory Board, (2) “Committee” to mean the Inter-agency Committee on Levee Safety, (3) “Levee” to mean an embankment or structure that’s primary purpose is to provide hurricane, storm, and flood protection relating to seasonal high water and storm surges and that is normally subject to water loading for only a few days or weeks during a year, including structures along canals that constrain water flows and are subject to more frequent water loadings but do not constitute a barrier across a watercourse, (4) “Federal Entity” to mean a federal agency that designs, finances, constructs, owns, operates, maintains, or regulates the construction, operation, or maintenance of a levee, (5) “Secretary” to mean the Secretary of the Army, (6) “State” to mean a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial possession of the United States, (7) “State Levee Safety Agency” to mean a State agency that has regulatory authority over the safety of any non-federal levee in the State, and (8) “United States” to mean, in a geographical sense, all of the States.

##### *Section 3. Inspection and inventory of levees*

Section 3 of the bill creates a program authorizing the Secretary to inspect levees constructed or maintained by the Corps of Engineers, each levee constructed by other Federal entities or Indian tribe, and any levee identified by the Governor of a State. Levees that do not pose a significant threat in case of failure would be exempt from inspection under this Act. State officials are permitted to accompany the Secretary during inspections, and the Secretary



may provide information to the State levee safety agency relating to the location, construction, and maintenance of a levee.

In determining whether the failure of a levee constitutes a danger to life or property, the bill requires the Secretary during the levee inspection to take into consideration multiple scenarios that could lead to a levee failure. The Secretary will then report to the Governors of the affected States, local governments, and tribes the results of these levee inspections. Should hazardous conditions be found during the inspection, the Secretary shall also provide to the Governors of the affected States advice relating to measures necessary to mitigate or obviate the hazard.

Section 3 also requires the Secretary to submit to Congress by August 1, 2007, and every two years thereafter, a national inventory of levees inspected and a characterization of the risks posed by the levees. In determining the risk, the Secretary shall consider the condition of the levee and the potential impact on human lives and property if the levee fails. The inventory shall include the location of the levee, the owner of the levee, the physical condition of the levee, and the probability and consequences of failure of the levee. The Secretary is not required to conduct risk assessments of levees identified to the Secretary under section 5(e)(2)(H) of this Act.

#### *Section 4. Interagency Committee on Levee Safety*

Section 4 establishes the five-member Interagency Committee on Levee Safety to establish and maintain effective programs and policies to enhance levee safety among Federal and non-Federal entities. The five-member Committee shall include the Secretary of the Army, the Secretary of Agriculture, the Secretary of the Interior, the Director of the Federal Emergency Management Agency, and the United States Commissioner of the International Boundary and Water Commission.

The Committee shall be supported by the National Levee Safety Advisory Board. The Board shall assist the Committee in coordination and information exchange between the Federal agencies and State levee safety agencies that share common challenges and responsibilities. The Board shall be comprised of eight representatives from State levee safety agencies representing each of the eight Army Corps of Engineers divisions, two representatives from the private sector who have expertise in levee safety, and four representatives of local and regional governmental agencies with expertise in levee safety. These Board members shall serve without compensation, but may be reimbursed for travel expenses including per diem. The Federal Advisory Committee Act shall not apply to this section.

#### *Section 5. National levee safety program*

Section 5 authorizes the Secretary to establish and maintain a national levee safety program, in consultation with State levee safety agencies and the Interagency Committee on Levee Safety. The program shall ensure that life and property is protected by levees that are safe through the development of technologically, economically, socially, and environmentally feasible programs and procedures for hazard reduction and mitigation. The program will encourage acceptable engineering policies and procedures to be used

for levee site investigation, design, construction, operation and maintenance, and emergency preparedness. The program shall encourage the establishment and implementation of effective levee safety programs. The program shall develop and support public education and awareness projects to increase public acceptance and support of State levee safety programs. The program shall build public awareness of the residual risks associated with living in levee protected areas. The program shall develop technical assistance materials for federal and State levee safety programs. The program shall develop methods of providing technical assistance relating to levee safety to non-federal entities. The program shall develop technical assistance materials, seminars, and guidelines to improve the security of levees. The program shall incorporate the activities and practices carried out by States, local governments, and the private sector to safely build, regulate, operate, and maintain levees. The program shall incorporate federal activities that foster State efforts to develop and implement effective programs for the safety of levees.

In addition, the Secretary shall prepare a strategic plan to achieve the purposes of the program and submit it to the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works within 120 days of enactment. In carrying out the program, the Secretary, in consultation with the Interagency Committee on Levee Safety, shall establish federal guidelines relating to levee safety, and shall incorporate activities and practices currently being carried out by federal agencies.

To encourage the establishment and maintenance of State programs to ensure levee safety, and to improve State levee safety programs, the Secretary shall provide assistance through amounts available by the Act, to assist States in carrying out levee safety programs.

To be eligible for assistance, a State shall be in the process of establishing or have in effect a State levee safety program. The State levee safety program shall review and approve plans and specifications to construct, enlarge, modify, remove, and abandon levees. The State levee safety program shall perform periodic inspections during levee construction to ensure compliance with approved plans and specifications. The State levee safety program shall require or perform the inspection, at least once every five years, of all levees that pose a significant threat to human life and property in case of failure to determine the continued safety of the levees and a procedure for more detailed and frequent safety inspections. The State levee safety program shall require all inspections of levees be performed under the supervision of a State-registered professional engineer with experience in levee design and construction. The State levee safety program shall issue notices when appropriate to require owners of levees to perform necessary maintenance or remedial work, improve security, revise operating procedures, or take other actions, including breaching levees when necessary. The State levee safety program shall provide necessary funds from State sources or require levee owners to pay for timely repairs or other changes to, or removal of, a levee in order to protect human life or property. The State levee safety program shall identify and provide information to the Secretary for each levee the

failure of which could be reasonably expected to endanger human life and property, on the maximum area that could be flooded if a levee failed, and critical public facilities that would be affected by the flooding including the costs and consequences of the flooding. The State levee safety program shall issue regulations necessary to carry out the program. Lastly, to be eligible for assistance, the State shall allocate sufficient funds in its budget to carry out a State levee safety program.

The Secretary shall enter into an agreement with each State receiving assistance to develop a work plan necessary for the State levee safety program to reach a level of program performance specified in the agreement. Assistance may not be provided to a State for a fiscal year unless the State enters into such agreement with the Secretary as the Secretary requires to ensure the State will maintain the aggregate expenditures of the State from all other sources for programs to ensure levee safety for the protection of human life and property at or above a level equal to the average annual level of such expenditures for the two fiscal years preceding the fiscal year. To be eligible for assistance, a State shall submit to the Secretary for approval a State levee safety program. If the Secretary determines the program substantially meets the requirements, the Secretary shall approve the program and immediately inform the State in writing of the approval. A program submitted by a State shall be deemed to be approved by the Secretary on the 120th day of the Secretary's receipt of the program unless the Secretary approves or disapproves the program before the 120th day. If the Secretary determines the State program does not substantially meet the requirements, the Secretary shall disapprove the program, immediately notify the State in writing of the disapproval, and provide the reasons for the disapproval and the changes necessary for the program to be approved.

The Secretary shall periodically review State levee safety programs. If the Secretary finds that a State levee safety program has proven inadequate to reasonably protect human life and property, the Secretary shall revoke approval of the State levee safety program, and withhold assistance under this subsection, until the State levee safety program again substantially meets the requirements for approval. Not later than January 1, 2007, and every two years thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report describing the status of the program, the progress made by Federal agencies during the two preceding fiscal years in implementing Federal guidelines for levee safety, the progress made by State levee safety agencies participating in the program, and recommendations for legislative or other action that the Secretary considers to be necessary, if any.

#### *Section 6. Research program*

Section 6 authorizes the Secretary, in cooperation with the Inter-agency Committee on Levee Safety, to carry out a program of technical and archival research to develop and support improved techniques, historical experience, and equipment for rapid and effective levee construction, rehabilitation, and inspection, the development of devices for the continued monitoring of levee safety, the develop-

ment and maintenance of information resources systems required to manage levee safety projects, public policy initiatives and other improvements relating to levee safety engineering, security, and management.

In carrying out the program, the Secretary shall solicit participation from State levee safety agencies, and periodically update State levee safety agencies, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Environment and Public Works of the Senate on the status of the program.

*Section 7. Levee safety training program*

The Secretary shall establish a program under which the Secretary shall provide, upon request of a State, that has (or intends to develop) a State levee safety program, training for State levee safety agency staff.

*Section 8. Effect of Act*

Section 8 stipulates that nothing in this Act creates any liability of the United States or its officers or employees for the recovery of damages caused by an action or failure to act or relieves an owner or operator of a levee of a legal duty, obligation, or liability incident to the ownership or operation of a levee.

*Section 9. Authorization of appropriations*

Section 9 authorizes \$15,000,000 in appropriations to the Secretary to carry out this Act for each of fiscal years 2007 through 2012. Such sums shall remain available until expended.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

The Committee on Transportation and Infrastructure met in open session on June 28, 2006, and ordered H.R. 4650 favorably reported, with an amendment, to the House by voice vote.

ROLLCALL 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 rollcall 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 ordering H.R. 4650 reported. A motion to order H.R. 4650 reported to the House was agreed to by voice vote.

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(d)(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 time-

ly 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 section 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

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 objective of this legislation are to create a National Levee Safety Program, to encourage that new and existing levees are safe, to encourage acceptable levee engineering policies and procedures, to establish and implement State levee safety programs and standards, to support public education about levees, to develop technical assistance materials for Federal and State governments, to provide technical assistance to non-Federal entities, and to improve the security of levees.

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 following cost estimate for H.R. 4650 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 13, 2006.*

Hon. DON YOUNG,  
*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. 4650, the National Levee Safety Program Act of 2006.

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

Sincerely,

DONALD B. MARRON,  
*Acting Director.*

Enclosure.

#### *H.R. 4650—National Levee Safety Program Act of 2006*

Summary: H.R. 4650 would authorize the appropriation of \$15 million a year over the 2007–2012 period for a levee (i.e., flood control embankments) safety program, including the inspection and inventory of levees, to be administered by the Army Corps of Engineers. The Corps would inspect levees that it constructed and maintains, as well as those financed, constructed, or maintained by other federal agencies and Indian tribes. In addition, the Corps would inspect other levees that are identified by state Governors as a threat to human life or property in case of a failure. The bill also would establish a National Levee Safety Advisory Board. Finally, H.R. 4650 would authorize a research program on levee construction and maintenance, and a training and assistance program for state levee safety officials.

Assuming appropriation of the authorized amounts, CBO estimates that carrying out this program would cost \$71 million over the 2007–2011 period, and an additional \$19 million after that period. Enacting H.R. 4650 would not affect direct spending or revenues.

H.R. 4650 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA); the bill would benefit state, local, or tribal governments and any costs they incur would result from complying with conditions of federal assistance.

Estimated cost to the Federal Government: For this estimate, CBO assumes that H.R. 4650 will be enacted near the start of fiscal year 2007 and that the authorized amounts will be appropriated for each year. Estimated outlays are based on historical spending patterns for similar programs. The estimated budgetary impact of H.R. 4650 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2007	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level .....	15	15	15	15	15	15
Estimated Outlays .....	6	18	17	15	15	15

Intergovernmental and private-sector impact: H.R. 4650 contains no intergovernmental or private-sector mandates as defined in UMRA. Enacting this bill would benefit state, local, and tribal governments that implement programs to improve levee safety; any costs they incur from establishing and maintaining an approved program would be incurred voluntarily.

Estimate prepared by: Federal Costs: Julie Middleton. Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum. Impact on the Private Sector: Fatimot Ladipo.

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

#### 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. 4650 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 were 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

H.R. 4650 makes no changes to existing law.

