

**Calendar No. 1031**

110TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
110-471

HURRICANES KATRINA AND RITA  
RECOVERY FACILITATION ACT OF 2008

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R E P O R T

OF THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

H.R. 3247

TO IMPROVE THE PROVISION OF DISASTER ASSISTANCE FOR  
HURRICANES KATRINA AND RITA, AND FOR OTHER PURPOSES



SEPTEMBER 18 (legislative day SEPTEMBER 17), 2008.—Ordered to be  
printed

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### HURRICANES KATRINA AND RITA RECOVERY FACILITATION ACT OF 2008

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Mr. LIEBERMAN, from the Committee on Homeland Security and  
Governmental Affairs, submitted the following

### R E P O R T

[To accompany H.R. 3247]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 3247) to improve the provision of disaster assistance for Hurricanes Katrina and Rita, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

#### I. PURPOSE AND SUMMARY

The purpose of this legislation is to eliminate obstacles which have delayed the recovery and rebuilding of areas impacted by Hurricanes Katrina and Rita in order to improve and expedite the recovery and rebuilding process.

#### II. BACKGROUND AND NEED FOR THE LEGISLATION

As the flood waters receded from Hurricanes Katrina and Rita, the challenge of the rebuilding effort became immediately evident. Hurricane Katrina, which hit the Gulf Coast on August 29, 2005, devastated some 90,000 square miles of public infrastructure and destroyed thousands of homes. Hurricane Rita was another catastrophic storm that hit the Gulf Coast less than a month later, reopening levees that were under repair and causing significant damage to Southwestern Louisiana and Texas. Destruction to public buildings, roads, bridges, firehouses and other public infrastructure caused by these hurricanes reached an extraordinary level and the Gulf Coast continues to struggle to repair and restore this infrastructure. The Committee believes the recovery from Hurricanes Katrina and Rita is moving too slowly and is concerned that this is due, in part, to problems in the administration of disaster recov-

ery programs under the Federal Emergency Management Agency (FEMA). The Committee therefore finds that legislation is needed to provide a more efficient and practical approach to administering certain aspects of FEMA's programs in order to speed the Gulf Coast recovery.

Rebuilding such a large number of public structures requires a massive collaborative effort from state, local, and federal officials. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the "Stafford Act") authorizes the federal government to provide assistance after a disaster in various forms through FEMA, which can act with the assistance of other federal agencies. For example, during the aftermath of a disaster, federal assistance can be provided such as supplying food and water for victims, buses to evacuate victims, and equipment and personnel for search and rescue missions. The Stafford Act also authorizes FEMA to provide assistance to households who suffered eligible losses or damages. Finally, for State and local governments, the Stafford Act authorizes FEMA to provide assistance to repair or replace public and certain non-profit infrastructure through the Public Assistance program.

According to FEMA officials, as of August 2008, FEMA had obligated \$11 billion to Alabama, Louisiana, Mississippi, and Texas state and local governments through the Public Assistance program for damages from Hurricanes Katrina and Rita. Much of this Public Assistance funding, however, is yet to be actually spent to aid in the recovery. Although the Stafford Act is generally flexible, parts of the Stafford Act, as well as the regulations and FEMA policies implementing and administering the Stafford Act, have proven to be inadequate to deal with catastrophes on the size and scale of Hurricanes Katrina and Rita, and have contributed to the delay in rebuilding areas impacted by the hurricanes and in spending the Public Assistance funding that has been obligated for Hurricanes Katrina and Rita. Thus, legislation is needed to provide a more efficient and practical approach to administering some FEMA programs for Hurricanes Katrina and Rita damages. For example, in many localities throughout the Gulf Coast, firehouses, police stations, and criminal justice facilities remain in the damaged conditions wrought by the storm, in part due to highly detailed requirements in FEMA's Public Assistance Program that normally serve to document each project individually. In addition, the requirements impose penalties against otherwise available Stafford Act payments if a State chooses to rebuild a structure differently than the previously existing structure. In the case of Hurricanes Katrina and Rita, where many communities have lost all, or nearly all of their public infrastructure, these detailed requirements have unreasonably delayed progress on rebuilding. Previously, the same difficulties plagued the rebuilding of schools. To address this problem, the Consolidated Appropriations Act for fiscal year 2008 (Sec. 552 in P.L. 110-161) created a process to allow payments to be made to a group of schools, instead of one by one, in order to speed up the rebuilding process. That provision also capped the penalty for failure to obtain flood insurance and eliminated penalties for rebuilding structures differently than the previously existing structures. The bill as amended by the Committee applies that framework to the rebuilding of firehouses, police stations, and other criminal justice facilities.

The legislation also opens up the process for resolving disputes regarding FEMA's estimates of the cost of repairing or replacing public buildings, infrastructure, or privately owned facilities. State of Louisiana officials believe that many of FEMA's estimates are far below the actual costs of the eligible damages and have appealed some of the estimates. However, FEMA's practice of allowing appeals to be reviewed by the same individuals that made the original determinations is problematic in some situations. This bill, as amended by Committee, addresses this concern by expanding the procedures for resolving disputes under the Public Assistance program by authorizing and encouraging the President to use alternative dispute resolution procedures to facilitate the resolution of appeals in a timely and fair manner.

As a final example of measures designed to speed recovery in the Gulf Coast in this bill, the Committee believes that a measure included in the Post-Katrina Emergency Management Act of 2006 (the "Post-Katrina Act"), P.L. 109-295, may prove useful in resolving current rental housing shortages. This measure, section 689i of the Post-Katrina Act, authorized the President to provide for the reconstruction or renovation of certain rental property to house individuals displaced by disasters. Nearly three years after Hurricanes Katrina and Rita made landfall, even though a housing shortfall remains in many places along the Gulf Coast, empty, damaged rental properties can be found in the Gulf Coast region. This bill as amended by the Committee therefore extends Section 689i to FEMA's administration of recovery programs for Hurricanes Katrina and Rita.

The examples mentioned above are just a few of the measures the Committee has included in the bill as amended by Committee in order to speed the recovery of the Gulf Coast.

### III. LEGISLATIVE HISTORY

H.R. 3247 was introduced in the U.S. House of Representatives by Delegate Eleanor Holmes Norton on July 31, 2007. The bill was referred to the House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings and Emergency Management, and was voted to be reported out favorably by voice vote from the Subcommittee to the Full Committee on August 1, 2007. It was reported out of the House Transportation and Infrastructure Full Committee favorably on October 18, 2007 and passed the House of Representatives by suspension of the rules on October 29, 2007.

In the Senate, the House bill was referred to the Committee on Homeland Security and Governmental Affairs. At the Committee's April 10, 2008 business meeting, Senator Landrieu offered a substitute amendment to H.R. 3247, which omitted some provisions included in the House bill, maintained, and in some cases modified, some other House provisions, and added three new provisions.

The three new provisions in the Landrieu substitute amendment included provisions which authorized use of the following in the recovery from Hurricanes Katrina and Rita: (1) provisions to expedite reconstruction of fire stations, police stations, and criminal justice facilities; (2) case management services authorized in the Post-Katrina Act; and (3) a pilot program that funds repairs for certain rental units authorized in the Post-Katrina Act. The Landrieu sub-

stitute included modified versions of provisions included in H.R. 3247 which authorized use of the following in the recovery from Hurricanes Katrina and Rita: (1) increasing the federal in-lieu contribution from 75% to 90% for the cost of rebuilding a facility that will be replaced instead of repaired; (2) simplified procedures for certain Stafford Act projects if the federal estimate of costs is less than \$100,000; and (3) temporary housing units for volunteers.

The Landrieu substitute amendment omitted some provisions that were included in H.R. 3247 to reflect both the changing needs of the Gulf Coast recovery since the passage of the House bill and the need for compromise as there was significant opposition to certain provisions. The omitted provisions included authorization of use of the following in the recovery from Hurricanes Katrina and Rita: (1) the public assistance pilot project authorized in the Post-Katrina Act; (2) provisions related to the reimbursement to several different for-profit entities for lost profits associated with the aftermath of Hurricanes Katrina and Rita, as well as other related costs; and (3) use of Community Development Block Grant (CDBG) funds to count towards the 25% state cost share for eligible Hazard Mitigation Grant (HMGP) Program projects.

Members adopted the Landrieu substitute to the House bill by a roll call vote of 13 yeas and 3 nays and favorably reported the bill by a roll call vote of 8 yeas and 2 nays.

*H.R. 3247, Hurricanes Katrina and Rita Recovery Facilitation Act of 2007*

*Results:* Ordered reported favorably by roll call vote of 8 yeas and 2 nays (no instruction from Obama) as amended by the Landrieu Substitute Amendment.

Yeas: Lieberman, Levin, Akaka, Carper, Landrieu, McCaskill, Tester, Collins.

Nays: Voinovich, Sununu.

Yeas by Proxy: Pryor, Stevens, Coleman, Domenici, Warner.

Nays by Proxy: Coburn.

*A. Landrieu Substitute Amendment to H.R. 3247*

*Results:* Adopted by roll call vote of 13 yeas and 3 nays (no instruction from Obama).

Yeas: Lieberman, Levin, Akaka, Carper, Landrieu, McCaskill, Tester, Collins.

Nays: Voinovich, Sununu.

Yeas by Proxy: Pryor, Stevens, Coleman, Domenici, Warner.

Nays by Proxy: Coburn.

#### IV. SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

This section of the bill states that the short title of the Act is the "Hurricanes Katrina and Rita Recovery Facilitation Act of 2008".

*Section 2. Definitions*

This section of the bill defines the following terms: "Covered Hurricane Damages", "Major Disaster", "President" and "Stafford Act".



*Section 3. Special rules for covered hurricane damages*

This section authorizes use of the following for Hurricane Katrina and Rita-related recovery:

Subsection (a) increases the federal in-lieu contribution from 75% to 90% for the cost of rebuilding a facility that will be replaced instead of repaired.

Subsection (b) authorizes use of a pilot program included in the Post-Katrina Act through which the President can provide for the renovation or reconstruction of certain rental properties used to house individuals displaced by disasters.

Subsection (c) authorizes and encourages the FEMA Administrator to use alternative dispute resolution procedures to facilitate the review of appeals of certain Stafford Act Public Assistance project decisions. The provision also requires FEMA to submit a report to Congress on use of alternative dispute resolution.

Subsection (d) expands the use of simplified procedures for the administration of certain Stafford Act projects where the estimates for the cost of the project is less than \$100,000, an increase from the current limit of \$55,000.

Subsection (e) authorizes the FEMA Administrator in some instances to provide temporary housing units for volunteers assisting in the recovery from Hurricanes Katrina and Rita.

Subsection (f) requires FEMA to report in 180 days on the status of the recovery from Hurricanes Katrina and Rita in Louisiana and Mississippi.

*Section 4. Public assistance program*

This section requires the President to provide a single payment for any eligible costs under section 406 of the Stafford Act for police stations, firehouses, and criminal justice facilities. It eliminates alternate project penalties and limits flood insurance deductions to \$1 million per facility type for which a local government is receiving assistance.

*Section 5. Case management*

This section authorizes use of case management services authorized in the Post-Katrina Act.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirement of paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. CBO states that the bill contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

VI. ESTIMATED COST OF LEGISLATION

MAY 15, 2008.

Hon. JOSEPH I. LIEBERMAN,  
*Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3247, the Hurricane Katrina and Rita Recovery Facilitation Act of 2008.

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

Sincerely,

PETER R. ORSZAG.

Enclosure.

*H.R. 3247—Hurricanes Katrina and Rita Recovery Facilitation Act of 2008*

H.R. 3247 would authorize the Federal Emergency Management Agency (FEMA) to increase the amount of assistance provided to certain areas affected by Hurricanes Katrina and Rita. Funding for the additional assistance made available by H.R. 3247 would come from funds already appropriated to the Disaster Relief Fund (DRF) for Hurricanes Katrina and Rita. As of April 2008, \$40 billion had been allocated for the two hurricanes, of which about \$8.4 billion remained unspent, CBO estimates. We expect that enacting H.R. 3247 could lead to some reallocation of existing funds in the DRF but that the rate of spending of such balances would not change significantly. Because CBO does not expect that the proposed changes would have a significant effect on the pace of federal expenditures from the DRF, we estimate that enacting H.R. 3247 would have no significant effect on direct spending. Enacting the bill would not affect revenues.

H.R. 3247 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Under current law, Gulf Coast states are eligible to receive from FEMA 100 percent of the funds needed to repair or replace public infrastructure damaged by the 2005 hurricanes. If, however, the affected areas choose to relocate such buildings or other structures, the federal cost share falls to 75 percent. H.R. 3247 would increase the federal cost share to 100 percent for relocated fire and police stations and criminal justice facilities, and to 90 percent for all other relocated infrastructure projects. In addition, FEMA would be prohibited from reducing the amount of public assistance provided for such facilities that were not adequately covered by flood insurance at the time of the disaster. (Current law requires FEMA to reduce the federal cost share by an amount equal to the value of the facility on the date of damage, or the proceeds the facility would have received from the National Flood Insurance Program, whichever is less.)

Allowing states to receive a higher portion of their reconstruction costs from the federal government could accelerate the expenditure of previously appropriated funds, which would increase direct spending. Based on information from FEMA, CBO estimates that this legislation would affect a handful of projects that have applied to the agency for assistance. Other factors affecting the speed of reconstruction projects (for example, the supply and demand of contractors and construction supplies), however, would remain unchanged. As such, CBO estimates that increasing the federal cost share of those projects would not significantly affect the overall pace of expenditures from the DRF—resulting in no estimated effect on direct spending.

H.R. 3247 also would extend the pilot program for individual and household assistance established under the Department of Home-

land Security Appropriations Act, 2007 (Public Law 109–295), to include areas affected by the 2005 hurricanes. To date, FEMA has not created such a program under the authority granted by the 2007 law for any disaster area. If a pilot program is implemented in the near future, CBO estimates that expanding its eligibility under this legislation would have no significant effect on the pace of federal expenditures as the authority to operate the pilot program would expire in December 2008.

On September 24, 2007, CBO transmitted a cost estimate for H.R. 3247, the Hurricanes Katrina and Rita Recovery Facilitation Act of 2007, as ordered reported by the House Committee on Transportation and Infrastructure on August 2, 2007. That version of H.R. 3247 would authorize some different types of assistance for areas affected by the 2005 hurricanes. However, CBO estimates that both versions of the legislation would have no significant effect on the pace of federal expenditures.

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

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

Because this legislation would not repeal or amend any provision of current law, it would make no changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.