

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.

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## 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

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## 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.

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