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REPORT
116–637

RESILIENCY ENHANCEMENT ACT OF 2020

DECEMBER 9, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 5756]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 5756) to amend the Bipartisan Budget Act of 2018 to extend the provision of assistance for critical services with respect to certain disasters, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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19–006

PURPOSE OF LEGISLATION

The purpose of H.R. 5756 is to amend the *Bipartisan Budget Act of 2018* (Pub. L. 115–123) to extend the provision of assistance for critical services with respect to certain disasters, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Section 406(a) of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act, Pub. L. 93–288 as amended) allows the President to make contributions to private nonprofit facilities and infrastructure for the repair of damage caused by disasters if those facilities provide "critical services"' as defined by the act. The *Stafford Act* currently includes power, water, sewer, wastewater treatment, communications, education, and emergency medical care within the Section 406 definition of "critical services."

H.R. 5756 would expand the definition of critical services under Section 406 of the Stafford Act for the purposes of Section 20601 of the *Bipartisan Budget Act of 2018*, authorizing assistance for public infrastructure, pursuant to Section 428 of the *Stafford Act* for certain disasters declared in Puerto Rico and the U.S. Virgin Islands. This expansion would include: solid waste management, stormwater management, emergency supply transportation, non-emergency medical, first response, and security.

Several Committee members and staff have visited the Commonwealth of Puerto Rico and the U.S. Virgin Islands to meet with local and Federal officials and review the status of recovery from Hurricanes Irma and Maria since the storms struck in 2017. Limitations in Federal disaster assistance program authorities identified by officials tasked with recovery have resulted in this legislative effort to further expand language enacted as part of the *Bipartisan Budget Act of 2018*.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearings were used to develop or consider H.R. 5756:

On May 22, 2019, the Subcommittee on Economic Development, Public Buildings, and Emergency Management held a hearing titled "Disaster Preparedness: DRRA Implementation and FEMA Readiness." Witnesses included: Dr. Daniel Kaniewski, Deputy Administrator for Resilience, FEMA; Ms. Sima Merick, Executive Director, Ohio Emergency Management Agency, testifying on behalf of the National Emergency Management Association; Mr. Nick Crossley, Director, Hamilton County Ohio Emergency Management and Homeland Security Agency, testifying on behalf of the International Association of Emergency Managers; Mr. James Gore, Supervisor, County of Sonoma, California, testifying on behalf of the Nation Association of Counties; Mr. Al Davis, Deputy Director, Texas A&M Engineering Extension Service, testifying on behalf of the National Domestic Preparedness Consortium; and Mr. Randy Noel, President, Reve, Inc., testifying on behalf of the National Association of Home Builders. Topics discussed included the state of federal disaster preparedness programs since the enactment of the *Disaster Recovery Reform Act of 2018*, the status of Federal disaster

recovery assistance funding appropriated in the wake of major disaster declarations granted by the President from 2017–2019, and the increasing frequency of extreme weather-related hazards.

On October 22, 2019, the Subcommittee on Economic Development, Public Buildings, and Emergency Management held a hearing titled "An Assessment of Federal Recovery Efforts from Recent Disasters." The Subcommittee received testimony from Mr. Jeffrey Byard, Associate Administrator, Office of Response and Recovery, Federal Emergency Management Agency, Department of Homeland Security; Mr. Dennis Alvord, Deputy Assistant Secretary, Economic Development Administration, U.S. Department of Commerce; Mr. Chris P. Currie, Director, Homeland Security and Justice, U.S. Government Accountability Office; Mr. Mike Sprayberry, Director, Emergency Management, Department of Public Safety, State of North Carolina, testifying on behalf of the National Emergency Management Association; Hon. Fernando Gil-Enseñat, Secretary, Department of Housing, Commonwealth of Puerto Rico; Ms. Rhonda Wiley, Emergency Management/911 Director/Floodplain Administrator, Atchison County, State of Missouri; and Mr. Reese C. May, Chief Strategy and Innovation Officer, The Saint Bernard Project. The Department of Housing and Urban Development submitted a statement for the record.

LEGISLATIVE HISTORY AND CONSIDERATION

H.R. 5756 was introduced in the House on February 5, 2020, by Ms. Plaskett, Ms. González-Colón and eight original bipartisan cosponsors and referred to the Committee on Transportation and Infrastructure. Within the Committee, H.R. 5756 was referred to the Subcommittee on Economic Development, Public Buildings, and Emergency Management.

On February 26, 2020, the Chair discharged the Subcommittee on Economic Development, Public Buildings, and Emergency Management from further consideration of H.R. 5756.

The Committee met in open session to consider H.R. 5756 on February 26, 2020, and ordered the measure to be reported to the House with a favorable recommendation, by voice vote, a quorum being present.

The following amendment was offered:

An amendment offered by Mr. Graves of Louisiana (#1) was withdrawn by unanimous consent.

Page 2, line 11, insert ", any major disaster (as such term is defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act) declared under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act" before ", and".

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules 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.

No recorded votes were taken in consideration of H.R. 5756.

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.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

With respect to the requirements 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 and with respect to requirements 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 requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Chairman of the Committee shall cause such estimate and statement to be printed in the *Congressional Record* upon its receipt by the Committee.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to expand eligibility for facility and infrastructure repair funding for entities that provide critical services, as well as ensure that this expanded eligibility is consistent across overlapping recoveries from the 2017 hurricane season and the 2019–2020 seismic activity.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 5756 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the *Unfunded Mandates Reform Act* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

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 finds that H.R. 5756 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 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).

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that this bill may be cited as the "Resiliency Enhancement Act of 2020".

Sec. 2. Repair, restoration, and replacement of damaged facilities

This section strikes and replaces the original re-definition of "critical services" to include solid waste management, stormwater management, emergency supply transportation, nonemergency medical, first response, and security. Additionally, the period of eligible declared events is extended to expire on September 30, 2022.

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 italics, and existing law in which no change is proposed is shown in roman):

BIPARTISAN BUDGET ACT OF 2018

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DIVISION B—SUPPLEMENTAL APPROPRIATIONS, TAX RELIEF, AND MEDICAID CHANGES RELATING TO CERTAIN DISASTERS AND FURTHER EXTENSION OF CONTINUING APPROPRIATIONS

SUBDIVISION 1—FURTHER ADDITIONAL SUPPLEMENTAL APPROPRIATIONS FOR DISASTER RELIEF REQUIREMENTS ACT, 2018

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TITLE VI—DEPARTMENT OF HOMELAND SECURITY

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RESEARCH, DEVELOPMENT, TRAINING, AND SERVICES

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GENERAL PROVISIONS—THIS TITLE.

SEC. 20601. The Administrator of the Federal Emergency Management Agency may provide assistance, pursuant to section 428 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), for critical services as defined in section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act*, and including, for purposes of this section, solid waste management, stormwater management, public housing, transportation infrastructure, and medical care,* for the duration of the recovery for incidents DR–4336–PR, DR–4339–PR, DR–4340–USVI**[**, and**]***,* DR–4335–USVI*, and any subsequent major disaster (as such term is defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act) declared under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act in Puerto Rico or the Virgin Islands on or before September 30, 2022* to—

(1) replace or restore the function of a facility or system to industry standards without regard to the pre-disaster condition of the facility or system; and

(2) replace or restore components of the facility or system not damaged by the disaster where necessary to fully effectuate the replacement or restoration of disaster-damaged components

to restore the function of the facility or system to industry standards.

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ADDITIONAL VIEWS

Since 2017, Puerto Rico and the Virgin Islands have been faced with numerous natural disasters. Between Hurricanes Irma and Maria and the subsequent earthquakes, U.S. citizens in the territories experienced significant administrative dysfunction and delays in disaster recovery. These challenges exist both within the Federal Emergency Management Agency (FEMA) and with the local territorial governments. These legal issues and capacity problems are not tied to funding shortfalls: there are billions of dollars available for recovery in the territories not just under Individual and Public Assistance, but other Federal programs as well.

The 115th Congress was vocal on the subject of the use of Federal dollars after a disaster as an opportunity to improve resiliency and prevent damage in future natural hazards. For example, the Disaster Recovery Reform Act (P.L. 115–254) created additional flexibilities for the use of federal funds to allow State, local, territorial, and tribal governments to build back more resiliently after a disaster. However, Section 20601 of the Balanced Budget Act of 2018 (P.L. 115–123) went even further and set an unprecedented condition for the recovery of critical public assets damaged in relation to certain disaster declarations for the territories. For these disasters, the BBA allowed the function of a facility or system to be replaced or restored without regard to the pre-disaster condition of the public asset.

The fact remains that under current law and for every other Federally declared disaster, the condition of a public asset prior to a disaster is relevant to a determination of assistance under Section 428 of the Stafford Act. While it is appropriate for the Federal government to step in and lend a helping hand after a significant natural disaster, it is equally critical that Federal disaster assistance programs incentivize local governments to remain invested in the upkeep of their public assets and infrastructure. Throwing out the condition of the public asset prior to the disaster altogether sets a concerning precedent that, over time, may create disincentives for routine maintenance and upkeep.

H.R. 5756 amends the BBA of 2018 to expand the eligibility of public facilities beyond the scope of disaster-damaged public and private nonprofit facilities (permanent work) to include solid waste management, storm water management, public housing, transportation infrastructure, and even medical care. It is concerning that the Congress continues to propose opening up the eligibility of assistance for public facilities under Sec. 428 of the Stafford Act, especially without regard to the prior condition of those assets. The addition of 'medical care' is especially worrying, as it is unclear if it would apply to expenses related to medical care of individuals or publicly owned medical care *facilities*. The text also applies that expansion to any future major disaster that may strike Puerto Rico

or the Virgin Islands on or before September 30, 2022, which raises questions about what this expansion will cost taxpayers.

The intent of the bill to help Americans in the territories is laudable, and one which I fully support. There have been significant emergency management shortfalls in Puerto Rico and the Virgin Islands that have caused needless human suffering. Both FEMA and the territorial governments have demonstrated a capacity problem with implementing existing disaster recovery programs, but further expanding program eligibility is not the solution to that shortfall. The Federal government also has an obligation to taxpayers to ensure that our disaster programs incentivize local governments to act responsibly.

GARRET GRAVES,
Member of Congress.

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