To reestablish the Federal Emergency Management Agency as a cabinet-level independent establishment in the executive branch that is responsible for the Nation’s preparedness and response to disasters, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2005

Mr. Oberstar (for himself, Ms. Norton, Mr. Cummings, Ms. Millender-McDonald, Mr. Higgins, Ms. Corrine Brown of Florida, Mr. Costello, Ms. Berkley, Mr. Rahall, Mr. Baird, Mr. Nadler, Ms. Carson, Mr. Capuano, Mr. DeFazio, Mr. Honda, Mr. Larsen of Washington, Mr. Blumenauer, Mr. Salazar, Mr. Holden, Ms. Eddie Bernice Johnson of Texas, Mr. Weiner, Mr. Bishop of New York, Mr. Carnahan, Mr. Filner, Mr. Menendez, Mr. Taylor of Mississippi, Mr. Boswell, Mr. Matheson, Ms. Schwartz of Pennsylvania, Mr. Chandler, Mr. Michaud, and Mr. Davis of Tennessee) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reestablish the Federal Emergency Management Agency as a cabinet-level independent establishment in the executive branch that is responsible for the Nation’s preparedness and response to disasters, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Emergency Management Agency Restoration Act”.

SEC. 2. FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) INDEPENDENT ESTABLISHMENT.—The Federal Emergency Management Agency shall be a cabinet-level independent establishment in the executive branch that is responsible for emergency preparedness, response, recovery, and mitigation for all hazards, including major disasters, acts of terrorism, and other emergencies.

(b) DIRECTOR.—

(1) IN GENERAL.—The Agency shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall report directly to the President. The Director of the Federal Emergency Management Agency shall be compensated at the rate provided for at level I of the Executive Schedule under section 5312 of title 5, United States Code.

(2) QUALIFICATION.—The Director shall be appointed from among persons who have extensive experience in emergency preparedness, response, recovery, and mitigation for all hazards, including major disasters, acts of terrorism, and other emergencies.

(3) TERM OF OFFICE.—The term of office of an individual appointed as the Director shall be 5 years.
Such individual may be appointed in accordance with paragraph (1) for an additional term of 5 years.

(4) CONFORMING AMENDMENT.—Section 5312 of title 5, United States Code, is amended by adding at the end the following:

“Director of the Federal Emergency Management Agency.”.

d (e) DEPUTY DIRECTOR.—

(1) IN GENERAL.—The Federal Emergency Management Agency shall have one deputy director appointed in the competitive service by the Director.

(2) QUALIFICATIONS.—The Deputy Director shall be appointed from among persons who have extensive experience in emergency preparedness, response, recovery, and mitigation for all hazards, including major disasters, acts of terrorism, and other emergencies.

(3) DUTIES.—The Deputy Director shall—

(A) carry out duties and powers prescribed by the Director;

(B) serve as a liaison to the Department of Homeland Security in the event of an act of terrorism; and
(C) act for the Director when the Director is absent or unable to serve or when the position of the Director is vacant.

(d) LIMITATIONS ON DEFINITION OF EMERGENCY PREPAREDNESS.—For purposes of this Act, the term “emergency preparedness” does not include law enforcement efforts to prevent or deter acts of terrorism, protect critical infrastructure, and conduct intelligence activities.

SEC. 3. TRANSFER OF FUNCTIONS.

(a) IN GENERAL.—There shall be transferred to the Director of the Federal Emergency Management Agency the functions, personnel, assets, and liabilities of the Department of Homeland Security relating to the Federal Emergency Management Agency, including the functions of the Department under paragraphs (3) and (8) of section 430(c) and sections 502 (other than paragraph (2)) and 503(1) of the Homeland Security Act of 2002 (6 U.S.C. 238(c), 312, 313) and other functions of the Preparedness Directorate of the Department (other than those functions relating to law enforcement efforts to prevent and deter acts of terrorism, protect critical infrastructure, and conduct intelligence activities), the functions relating to firefighter assistance grants under the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229 et seq.), and the functions relating to the

(b) TRANSITION PERIOD.—The transfers under this section shall be carried out as soon as practicable after the date of enactment of this Act, but not later than the 120th day following the date of enactment of this Act. During the transition period, the Secretary of Homeland Security shall provide to the Director of the Federal Emergency Management Agency such assistance, including the use of personnel and assets, as the Director may request in preparing for the transfer.

SEC. 4. SAVINGS PROVISIONS.

(a) PERSONNEL PROVISIONS.—

(1) APPOINTMENTS.—The Director of the Federal Emergency Management Agency may appoint and fix the compensation of such officers and employees, including investigators, attorneys, and administrative law judges, as may be necessary to
carry out the respective functions transferred under section 3. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code.

(2) EXPERTS AND CONSULTANTS.—The Director may obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate such experts and consultants for each day (including traveltime) at rates not in excess of the rate of pay for level IV of the Executive Schedule under section 5315 of such title. The Director may pay experts and consultants who are serving away from their homes or regular place of business, travel expenses and per diem in lieu of subsistence at rates authorized by sections 5702 and 5703 of such title for persons in Government service employed intermittently.

(b) DELEGATION AND ASSIGNMENT.—Except where otherwise expressly prohibited by law or otherwise provided by this Act, the Director may delegate any of the functions transferred to the Director by section 3 and any function transferred or granted to the Director after the date of the transfers by section 3 to such officers and em-
ployees of the Federal Emergency Management Agency as
the Director may designate and may authorize successive
redelegations of such functions as may be necessary or ap-
propriate. No delegation of functions by the Director
under this subsection or under any other provision of this
Act shall relieve the Director of responsibility for the ad-
ministration of such functions.

(c) REORGANIZATION.—The Director is authorized to
allocate or reallocate any function transferred under sec-
tion 3 among the officers of the Federal Emergency Man-
age ment Agency, and to establish, consolidate, alter, or
discontinue such organizational entities in the Federal
Emergency Management Agency as may be necessary or
appropriate if the Director, on or before the 30th day pre-
ceding the date of the allocation or reallocation, provides
to the Committee on Transportation and Infrastructure
of the House of Representatives and the Committee on
Homeland Security and Government Affairs of the Senate
written notice of the allocation or reallocation.

(d) RULES.—The Director is authorized to prescribe,
in accordance with the provisions of chapters 5 and 6 of
title 5, United States Code, such rules and regulations as
the Director determines necessary or appropriate to ad-
minister and manage the functions of the Federal Emer-
gency Management Agency.
(c) **Transfer and Allocations of Appropriations and Personnel.**—Except as otherwise provided in this section, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by section 3, subject to section 1531 of title 31, United States Code, shall be transferred to the Federal Emergency Management Agency. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(f) **Incidental Transfers.**—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, is authorized to make such determinations as may be necessary with regard to the functions transferred by section 3, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this Act. The Director of the Office of Management and Budg-
et shall provide for the termination of the affairs of all
entities terminated by this Act and for such further meas-
ures and dispositions as may be necessary to effectuate
the purposes of this Act.

(g) EFFECT ON PERSONNEL.—

(1) IN GENERAL.—Except as otherwise pro-
vided by this section, the transfer pursuant to this
section of full-time personnel (except special Government
employees) and part-time personnel holding
permanent positions shall not cause any such em-
ployee to be separated or reduced in grade or com-
pensation for one year after the date of transfer of
such employee under this section.

(2) EXECUTIVE SCHEDULE POSITIONS.—Except
as otherwise provided in this section, any person
who, on the day preceding the date of the transfers
of functions under section 3, held a position com-
pensated in accordance with the Executive Schedule
prescribed in chapter 53 of title 5, United States
Code, and who, without a break in service, is ap-
pointed in the Federal Emergency Management
Agency to a position having duties comparable to the
duties performed immediately preceding such ap-
pointment shall continue to be compensated in such
new position at not less than the rate provided for
such previous position, for the duration of the service of such person in such new position.

(h) **Savings Provisions.**—

(1) **Continuing Effect of Legal Documents.**—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

(A) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under section 3, and

(B) which are in effect on the date of the transfers of functions under section 3, or were final before such date and are to become effective on or after such date,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Director of the Federal Emergency Management Agency or other authorized official, a court of competent jurisdiction, or by operation of law.
(2) PROCEEDINGS NOT AFFECTED.—The provisions of this section and section 3 shall not affect any proceedings, including notices of proposed rule-making, or any application for any license, permit, certificate, or financial assistance pending before the Federal Emergency Management Agency on the date of the transfers of functions under section 3, with respect to functions transferred by section 3 but such proceedings and applications shall continue. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section and section 3 had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this paragraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section and section 3 had not been enacted.

(3) SUITS NOT AFFECTED.—The provisions of this section and section 3 shall not affect suits com-
menced before the date of the transfers of functions under section 3, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section and section 3 had not been enacted.

(4) Nonabatement of Actions.—No suit, action, or other proceeding commenced by or against the Federal Emergency Management Agency, or by or against any individual in the official capacity of such individual as an officer of the Federal Emergency Management Agency, shall abate by reason of the enactment of this section or section 3.

(5) Administrative Actions Relating to Promulgation of Regulations.—Any administrative action relating to the preparation or promulgation of a regulation by the Federal Emergency Management Agency relating to a function transferred under section 3 may be continued by the Federal Emergency Management Agency with the same effect as if this section and section 3 had not been enacted.

(i) References.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a depart-
1. ment, agency, or office from which a function is trans-
2. ferred by section 3—
3.  (1) to the head of such department, agency, or
4.    office is deemed to refer to the head of the depart-
5.    ment, agency, or office to which such function is
6.    transferred; or
7.  (2) to such department, agency, or office is
8.    deemed to refer to the department, agency, or office
9.    to which such function is transferred.
10. (j) REPEALS.—The following provisions of the Home-
11.    land Security Act of 2002 (6 U.S.C. 101 et seq.) are re-
12.    pealed:
13.     (1) Section 503(1).
14.     (2) Section 507.