To establish the Federal Emergency Management Agency as an independent agency, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 6, 2005

Mrs. CLINTON (for herself, Ms. MIKULSKI, Mr. LAUTENBERG, and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To establish the Federal Emergency Management Agency as an independent agency, and for other purposes.

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

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Federal Emergency Management Agency Restoration Act of 2005”.

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TITLE I—FEDERAL EMERGENCY
MANAGEMENT AGENCY

SEC. 101. ESTABLISHMENT OF AGENCY AND DIRECTOR AND
DEPUTY DIRECTOR.

(a) Establishment.—The Federal Emergency
Management Agency is established as an independent es-
tablishment in the executive branch as defined under sec-
tion 104 of title 5, United States Code.

(b) Director.—

(1) In general.—The Director of the Federal
Emergency Management Agency shall be the head of
the Federal Emergency Management Agency. The
Director shall be appointed by the President, by and
with the advice and consent of the Senate. The Di-
rector shall report directly to the President.

(2) Qualifications.—The Director of the
Federal Emergency Management Agency shall have
significant experience, knowledge, training, and ex-
pertise in the area of emergency preparedness, re-
response, recovery, and mitigation as related to nat-
ural disasters and other national cataclysmic events.

(3) Executive schedule position.—Section
5312 of title 5, United States Code, is amended by
adding at the end the following:
“Director of the Federal Emergency Management Agency.”.

(c) DEPUTY DIRECTOR.—

(1) IN GENERAL.—The Deputy Director of the Federal Emergency Management Agency shall assist the Director of the Federal Emergency Management Agency. The Deputy Director shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—The Deputy Director of the Federal Emergency Management Agency shall have significant experience, knowledge, training, and expertise in the area of emergency preparedness, response, recovery, and mitigation as related to natural disasters and other national cataclysmic events.

(3) EXECUTIVE SCHEDULE POSITION.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

“Deputy Director of the Federal Emergency Management Agency.”.

SEC. 102. FUNCTIONS.

(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include the following:
• All functions and authorities prescribed by
the Robert T. Stafford Disaster Relief and Emer-
gency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss
of life and property and protect the Nation from all
hazards by leading and supporting the Nation in a
comprehensive, risk-based emergency management
program—

(A) of mitigation, by taking sustained ac-
tions to reduce or eliminate long-term risk to
people and property from hazards and their ef-
fects;

(B) of planning for building the emergency
management profession to prepare effectively
for, mitigate against, respond to, and recover
from any hazard;

(C) of response, by conducting emergency
operations to save lives and property through
positioning emergency equipment and supplies,
through evacuating potential victims, through
providing food, water, shelter, and medical care
to those in need, and through restoring critical
public services;

(D) of recovery, by rebuilding communities
so individuals, businesses, and governments can
function on their own, return to normal life, and protect against future hazards; and (E) of increased efficiencies, by coordinating efforts relating to mitigation, planning, response, and recovery.

(b) Federal Response Plan.—


(2) Revision of Response Plan.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of the Federal Emergency Management Agency as an independent establishment under this Act.

(c) Technical and Conforming Amendment.—


(2) Table of Contents.—The table of contents for the Homeland Security Act of 2002 (6
U.S.C. 101) is amended by striking the item relating to section 507.

SEC. 103. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to detract from the Department of Homeland Security’s primary mission to secure the homeland from terrorist attacks.

TITLE II—TRANSFER AND SAVINGS PROVISIONS

SEC. 201. DEFINITIONS.

In this title, unless otherwise provided or indicated by the context—

(1) the term “Federal agency” has the meaning given to the term “agency” by section 551(1) of title 5, United States Code;

(2) the term “function” means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

(3) the term “office” includes any office, administration, agency, institute, unit, organizational entity, or component thereof.

SEC. 202. TRANSFER OF FUNCTIONS.

There are transferred to the Federal Emergency Management Agency established under section 101 of this Act all functions which the Director of the Federal Emergency Management Agency of the Department of Home-
land Security exercised before the date of the enactment of this title.

SEC. 203. PERSONNEL PROVISIONS.

(a) 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 this title. 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.

(b) EXPERTS AND CONSULTANTS.—The Director of the Federal Emergency Management Agency 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 of the Federal Emergency Management Agency 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.
title for persons in Government service employed intermittently.

SEC. 204. DELEGATION AND ASSIGNMENT.

Except where otherwise expressly prohibited by law or otherwise provided by this title, the Director of the Federal Emergency Management Agency may delegate any of the functions transferred to the Director of the Federal Emergency Management Agency by this title and any function transferred or granted to such Director after the effective date of this title to such officers and employees of the Federal Emergency Management Agency as the Director may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions by the Director of the Federal Emergency Management Agency under this section or under any other provision of this title shall relieve such Director of responsibility for the administration of such functions.

SEC. 205. REORGANIZATION.

The Director of the Federal Emergency Management Agency is authorized to allocate or reallocate any function transferred under section 202 among the officers of the Federal Emergency Management Agency, and to establish, consolidate, alter, or discontinue such organizational
entities in the Federal Emergency Management Agency as
may be necessary or appropriate.

SEC. 206. RULES.

The Director of the Federal Emergency Management
Agency 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 deter-
mines necessary or appropriate to administer and manage
the functions of the Federal Emergency Management
Agency.

SEC. 207. TRANSFER AND ALLOCATIONS OF APPROPRIA-
TIONS AND PERSONNEL.

Except as otherwise provided in this title, the per-
sonnel employed in connection with, and the assets, liabil-
ities, contracts, property, records, and unexpended bal-
ances of appropriations, authorizations, allocations, and
other funds employed, used, held, arising from, available
to, or to be made available in connection with the func-
tions transferred by this title, 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 section shall be used
only for the purposes for which the funds were originally
authorized and appropriated.
SEC. 208. 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 this title, 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 title. The Director of the Office of Management and Budget shall provide for the termination of the affairs of all entities terminated by this title and for such further measures and dispositions as may be necessary to effectuate the purposes of this title.

SEC. 209. EFFECT ON PERSONNEL.

(a) In General.—Except as otherwise provided by this title, the transfer pursuant to this title of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer of such employee under this title.

(b) Executive Schedule Positions.—Except as otherwise provided in this title, any person who, on the
day preceding the effective date of this title, held a posi-
tion compensated in accordance with the Executive Sched-
ule prescribed in chapter 53 of title 5, United States Code,
and who, without a break in service, is appointed in the
Federal Emergency Management Agency to a position
having duties comparable to the duties performed imme-
diately preceding such appointment 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.

SEC. 210. SAVINGS PROVISIONS.

(a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—
All orders, determinations, rules, regulations, permits,
agreements, grants, contracts, certificates, licenses, reg-
istrations, privileges, and other administrative actions—
(1) 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 func-
tions which are transferred under this title, and
(2) which are in effect at the time this title
takes effect, or were final before the effective date
of this title and are to become effective on or after
the effective date of this title,
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.

(b) PROCEEDINGS NOT AFFECTED.—The provisions of this title shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the Federal Emergency Management Agency at the time this title takes effect, with respect to functions transferred by this title 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 title 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 subsection 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 title had not been enacted.
(c) Suits Not Affected.—The provisions of this title shall not affect suits commenced before the effective date of this title, 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 title had not been enacted.

(d) 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 title.

(e) 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 this title may be continued by the Federal Emergency Management Agency with the same effect as if this title had not been enacted.

SEC. 211. SEPARABILITY.

If a provision of this title or its application to any person or circumstance is held invalid, neither the remainder of this title nor the application of the provision to other persons or circumstances shall be affected.
SEC. 212. TRANSITION.

The Director of the Federal Emergency Management Agency is authorized to utilize—

(1) the services of such officers, employees, and other personnel of the Federal Emergency Management Agency with respect to functions transferred by this title; and

(2) funds appropriated to such functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this title.

SEC. 213. REFERENCES.

Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a department, agency, or office from which a function is transferred by this title—

(1) to the head of such department, agency, or office is deemed to refer to the head of the department, agency, or office to which such function is transferred; or

(2) to such department, agency, or office is deemed to refer to the department, agency, or office to which such function is transferred.

SEC. 214. ADDITIONAL CONFORMING AMENDMENTS.

(a) Recommended Legislation.—After consultation with the appropriate committees of the Congress and the Director of the Office of Management and Budget, the
Director of the Federal Emergency Management Agency shall prepare and submit to Congress recommended legislation containing technical and conforming amendments to reflect the changes made by this Act.

(b) Submission to Congress.—Not later than 6 months after the effective date of this title, the Director of the Federal Emergency Management Agency shall submit the recommended legislation referred to under subsection (a).