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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A BILL

To authorize the construction and maintenance of levees on property acquired under hazard mitigation grant programs of the Federal Emergency Management Agency.

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 “FEMA Common Sense and Cost Effectiveness Act of 2011”.

SEC. 2. CONSTRUCTION AND MAINTENANCE OF LEVEES.

(a) Stafford Act.—
(1) **PREDISASTER MITIGATION PROGRAM.**—Section 203(e) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133(e)) is amended by adding at the end the following:

“(3) **CONSTRUCTION OF LEVEES ON ACQUIRED LANDS.**—Subject to paragraph (4), and notwithstanding any requirement that property acquired or accepted under this section be dedicated and maintained in perpetuity as open space for the conservation of natural flood plain functions, if financial assistance provided under this section is used to acquire or accept property for open space purposes, the President may permit the construction or maintenance on the property of—

“(A) a levee that is federally owned and operated;

“(B) a permanent levee that is federally constructed and non-federally operated and maintained;

“(C) a levee—

“(i) that is federally constructed as a nonpermanent levee;

“(ii) that a non-Federal entity desires to operate and maintain as a permanent levee; and
“(iii) the owners of which—

“(I) are participating in the emergency response to natural disasters program established under section 5 of the Act entitled ‘An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes’, approved August 18, 1941 (33 U.S.C. 701n); or

“(II) begin participating in the program described in subclause (I) within a reasonable period of time, as determined by the President, after the date on which the levee is constructed;

and

“(D) a non-Federal levee the owners of which are participating in the program described in subparagraph (C)(iii)(I).

“(4) DOWNSTREAM COMMUNITIES.—The President may deny an application to construct or maintain a levee described in paragraph (3) if the levee poses a significant threat of harm to downstream communities.”.
(2) HAZARD MITIGATION GRANT PROGRAM.—

Section 404(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c(b)) is amended—

(A) in paragraph (2)(B)—

(i) in clause (i), by inserting “except for the construction or maintenance of a structure described in clause (ii) (including a levee),” before “any property”; and

(ii) in clause (ii)—

(I) in subclause (II), by striking “or” at the end;

(II) by redesignating subclause (III) as subclause (IV); and

(iii) by inserting after subclause (II) the following:

“(III) subject to paragraph (5), a levee described in paragraph (4); or”;

and

(B) by adding at the end the following:

“(4) LEVEES.—A levee described in this paragraph is—

“(A) a levee that is federally owned and operated;
“(B) a permanent levee that is federally constructed and non-federally operated and maintained;

“(C) a levee—

“(i) that is federally constructed as a nonpermanent levee;

“(ii) that a non-Federal entity desires to operate and maintain as a permanent levee; and

“(iii) the owners of which—

“(I) are participating in the emergency response to natural disasters program established under section 5 of the Act entitled ‘An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes’, approved August 18, 1941 (33 U.S.C. 701n); or

“(II) begin participating in the program described in subclause (I) within a reasonable period of time, as determined by the President, after the date on which the levee is constructed; and
“(D) a non-Federal levee the owners of which are participating in the program described in subparagraph (C)(iii)(I).

“(5) **DOWNSTREAM COMMUNITIES.**—The President may deny an application to construct or maintain a levee described in paragraph (4) if the levee poses a significant threat of harm to downstream communities.”.

(b) **CONSTRUCTION OF LEVEES UNDER HAZARD MITIGATION PROGRAMS RELATING TO FLOODS.**—

(1) **FLOOD MITIGATION ASSISTANCE.**—Section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by adding at the end the following:

““(n) **CONSTRUCTION OF LEVEES ON ACQUIRED LANDS.**—

“(1) **IN GENERAL.**—Subject to paragraph (2), and notwithstanding any requirement that property acquired or accepted under this section be dedicated and maintained in perpetuity as open space for the conservation of natural flood plain functions, if the mitigation activities funded under subsection (a) include the acquisition or acceptance of property for open space purposes, the Administrator may permit
the construction or maintenance on the property of—

“(A) a levee that is federally owned and operated;

“(B) a permanent levee that is federally constructed and non-federally operated and maintained;

“(C) a levee—

“(i) that is federally constructed as a nonpermanent levee;

“(ii) that a non-Federal entity desires to operate and maintain as a permanent levee; and

“(iii) the owners of which—

“(I) are participating in the emergency response to natural disasters program established under section 5 of the Act entitled ‘An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes’, approved August 18, 1941 (33 U.S.C. 701n); or

“(II) begin participating in the program described in subclause (I)
within a reasonable period of time, as
determined by the Administrator,
after the date on which the levee is
constructed; and

“(D) a non-Federal levee the owners of
which are participating in the program de-
scribed in subparagraph (C)(iii)(I).

“(2) DOWNSTREAM COMMUNITIES.—The Ad-
ministrator may deny an application to construct or
maintain a levee described in paragraph (1) if the
levee poses a significant threat of harm to down-
stream communities.”.

(2) GRANTS FOR REPETITIVE INSURANCE
CLAIM PROPERTIES.—Section 1323 of the National
Flood Insurance Act of 1968 (42 U.S.C. 4030) is
amended by adding at the end the following:

“(c) CONSTRUCTION OF LEVEES ON ACQUIRED
LANDS.—

“(1) IN GENERAL.—Subject to paragraph (2),
and notwithstanding any requirement that property
acquired or accepted under this section be dedicated
and maintained in perpetuity as open space for the
conservation of natural flood plain functions, if the
mitigation activities funded under subsection (a) in-
clude the acquisition or acceptance of property for
open space purposes, the Administrator may permit
the construction or maintenance on the property
of—

“(A) a levee that is federally owned and
operated;
“(B) a permanent levee that is federally
constructed and non-federally operated and
maintained;
“(C) a levee—
“(i) that is federally constructed as a
nonpermanent levee;
“(ii) that a non-Federal entity desires
to operate and maintain as a permanent
levee; and
“(iii) the owners of which—
“(I) are participating in the
emergency response to natural disas-
ters program established under sec-
tion 5 of the Act entitled ‘An Act au-
thorizing the construction of certain
public works on rivers and harbors for
flood control, and for other purposes’,
approved August 18, 1941 (33 U.S.C.
701n); or
“(II) begin participating in the program described in subclause (I) within a reasonable period of time, as determined by the Administrator, after the date on which the levee is constructed; and

“(D) a non-Federal levee the owners of which are participating in the program described in subparagraph (C)(iii)(I).

“(2) DOWNSTREAM COMMUNITIES.—The Administrator may deny an application to construct or maintain a levee described in paragraph (1) if the levee poses a significant threat of harm to downstream communities.”.

(3) SEVERE REPEETITIVE LOSS PROGRAM.—Section 1361A(g) of the National Flood Insurance Act of 1968 (42 U.S.C. 4102a(g)) is amended—

(A) in paragraph (1), by striking the period at the end and inserting the following: “, including that, subject to paragraph (5), and notwithstanding any requirement that property acquired or accepted under this section be dedicated and maintained in perpetuity as open space for the conservation of natural flood plain functions, the Administrator may permit the
construction or maintenance on such property
of—

“(A) a levee that is federally owned and
operated;

“(B) a permanent levee that is federally
constructed and non-federally operated and
maintained;

“(C) a levee—

“(i) that is federally constructed as a
nonpermanent levee;

“(ii) that a non-Federal entity desires
to operate and maintain as a permanent
levee; and

“(iii) the owners of which—

“(I) are participating in the
emergency response to natural disas-
ters program established under sec-
tion 5 of the Act entitled ‘An Act au-
thorizing the construction of certain
public works on rivers and harbors for
flood control, and for other purposes’,
approved August 18, 1941 (33 U.S.C.
701n); or

“(II) begin participating in the
program described in subclause (I)
within a reasonable period of time, as
determined by the Administrator,
after the date on which the levee is
constructed; and

“(D) a non-Federal levee the owners of
which are participating in the program de-
scribed in subparagraph (C)(iii)(I).”; and

(B) by adding at the end the following:

“(5) DOWNSTREAM COMMUNITIES.—The Ad-
ministrator may deny an application to construct or
maintain a levee described in paragraph (1) if the
levee poses a significant threat of harm to down-
stream communities.”.

(e) APPLICABILITY OF AMENDMENTS.—The amend-
ments made by this section shall apply to all property ac-
quired or accepted pursuant to section 203 or 404 of the
Robert T. Stafford Disaster Relief and Emergency Assist-
ance Act (42 U.S.C. 5133 and 5170c) or section 1323,
1366, or 1361A of the National Flood Insurance Act of
1968 (42 U.S.C. 4030, 4104c, and 4102a) before, on, or
after the date of enactment of this Act.