

LEVEE-LIKE STRUCTURE CONSIDERATION ACT OF 2007

DECEMBER 4, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

R E P O R T

[To accompany H.R. 4050]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4050) to require the Administrator of the Federal Emergency Management Agency to issue guidance providing a process for consideration of the flood protections afforded by certain structures for purposes of the national flood insurance program, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 4050, the Levee-Like Structure Consideration Act of 2007, provides for equity in the flood mapping process under the National

Flood Insurance Program (“NFIP”), administered by the Federal Emergency Management Administration (“FEMA”), by requiring FEMA to issue guidelines on levee-like structures similar to the guidelines it has issued on levees.

BACKGROUND AND NEED FOR LEGISLATION

FEMA and the NFIP are currently engaged in a multi-year flood map modernization. Instituted by Presidential initiative and subsequently funded by Congress, the NFIP Flood Map Modernization (“Map Mod”) initiative contributes to better floodplain management, flood risk reduction, and improved public safety. Before the Map Mod initiative, many of the flood maps in use in the United States dated to the NFIP’s inception more than 30 years ago. As a result of changes in climate, topography, watershed development, and technology many of the existing flood maps do not accurately reflect the flood risk both to properties required to participate in the NFIP and to properties not currently required to participate in the NFIP. The five-year, \$1 billion dollar Map Mod initiative is intended to update and reissue flood maps that more accurately identify the risk of flood to properties that previously participated in the NFIP, as well as to properties not previously required to participate in the NFIP.

During the NFIP’s history, some flood insurance rate maps (“FIRMs”) have identified natural or manmade structures including non-levee structures, expected to impact the retention or flow of water during a flood. In 2005, after questioning the protective value of non-levee structures, FEMA decided to include only accredited levees on the updated, digital FIRMs (“DFIRMs”) issued through the Map Mod process. Consequently, there are levee-like structures that appear on current FIRMs that are not included on updated DFIRMs, even though those structures may have the effect of restraining or diverting floodwaters.

To be an accredited levee, the levee owner must certify that the structure meets certain levee-specific criteria. In guidelines issued mid-way through the Map Mod initiative, FEMA created a process for provisionally accrediting levees that were previously recognized on FIRMs as having an impact on flood risk and were likely to meet criteria deemed equivalent to accreditation by the Corps of Engineers. Under this process, called the Provisionally Accredited Levee (“PAL”) process, a community can be granted up to 24 months to produce the documentation necessary to certify a levee. During the 24-month review period, a levee under review is designated as a PAL on any DFIRM issued through the Map Mod process and affected areas are not required to purchase flood insurance. In the meantime, the rest of the community risk map, except for the PAL area, becomes effective and is used to guide new development and is used as a basis for flood insurance rates.

While the PAL guidelines provide a process by which communities can be granted time to document that a levee has been designed, built, operated, and maintained to provide an adequate level of protection, the guidelines do not establish a similar process to allow communities to provide documentation for levee-like structures, even if those structures were shown on previous FIRMs as having an impact on flood risk. Examples of levee-like structures previously identified on FIRMs include railroad berms, highway

berms, and irrigation canals. Currently, FEMA does not have a process to allow communities with levee-like structures to offer evidence that previously-recognized levee-like structures continue to impact flood risk. Recently, FEMA acknowledged the inequity in its treatment of levees and levee-like structures and began negotiations with officials of a community with levee-like structures to allow that community to present evidence of the levee-like structures' protective value.

H.R. 4050 requires FEMA to issue guidelines that afford communities with flood risk affected in whole or in part by a levee-like structure that was previously recognized on a FIRM, the opportunity to demonstrate the actual effect of that structure on flood risk, and for such data to be incorporated into DFIRMs issued through the Map Mod process. A community can demonstrate the nature and extent of the flood protection afforded by the structure or feature through scientific and technical information compiled and submitted to FEMA at the community's expense, consistent with the PAL process. The Committee on Financial Services recognizes that in the course of its remapping initiative, FEMA may wish to take into consideration the ability of a community to finance scientific and technical studies and provide financial assistance where appropriate.

During the community's appeal, a two-year moratorium would apply to prevent rate increases or an extension of the mandatory purchase requirement based on the updated DFIRMs. The purpose of H.R. 4050 is to ensure that DFIRMs portray the true flood risk in a community with the greatest possible accuracy. In so doing, H.R. 4050 contributes to the overall effort to provide better risk identification data for flood risk reduction and public safety.

HEARINGS

No hearings were held on this legislation in the 110th Congress.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 7, 2007, and ordered H.R. 4050, the Levee-Like Structure Consideration Act of 2007, favorably reported to the House by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken in conjunction with the consideration of this legislation. A motion by Mr. Frank to report the bill to the House with a favorable recommendation was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 4050, the Levee-Like Structure Consideration Act of 2007, requires FEMA to issue guidelines on levee-like structures with the goal of providing a more accurate flood mapping process and more accurate flood insurance rates paid by homeowners.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

NOVEMBER 20, 2007.

Hon. BARNEY FRANK,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4050, the Levee-Like Structure Consideration Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Daniel Hoople.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 4050—Levee-Like Structure Consideration Act of 2007

H.R. 4050 would direct the Federal Emergency Management Agency (FEMA) to create a process to include certain levee-like structures (including any natural or man-made structures that provide some mitigating effect on flood risk but do not meet the definition of a levee set forth by the agency) on updated Flood Insurance Rate Maps (FIRMS). As a part of its current map modernization efforts, FEMA only includes levees on updated FIRMS. Because FEMA uses the maps to determine the premium rates for flood insurance, including levee-like structures could affect direct spending; however, CBO estimates that the net effect would be insignifi-

cant over the next 10 years. Enacting the bill would not affect revenues.

H.R. 4050 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Under the process established by the bill, a community participating in the National Flood Insurance Program (NFIP) could request that an updated flood map include a levee-like structure if the corresponding map in effect on January 2003 also included the structure. Following such a request, the bill would require that FEMA grant provisional accreditation to the structure for a two-year period and issue an updated flood map recognizing the designation. During this time period, the NFIP would charge its policyholders in the affected area a premium for flood insurance that takes into account the amount of flood protection previously attributed to the levee-like structure. Depending on the final determination of FEMA, such structure may or may not be included on any final flood map issued after the two-year period.

CBO estimates that this legislation would likely reduce net income to the flood insurance program. Including levee-like structures on flood maps would lower premium rates for owners of property located near those structures due to a lower estimate of flood risk. Lower rates would decrease receipts to the program, while actual claims would be unaffected—resulting in a net loss to the flood insurance program relative to current law. CBO does not have sufficient information to estimate the number of levee-like structures that would be included in updated FIRMs, and thus cannot estimate the possible magnitude of such premium losses.

However, CBO estimates that the net effect of any such changes on net outlays of the NFIP would be insignificant over the 2008–2017 period because of the current financial conditions of the flood insurance program. The NFIP may only use premium income and borrowing authority to cover its expenses. The borrowing authority will probably be exhausted in the next few years, and the premium income is not sufficient to cover all likely new claims. Thus, any net loss to the program over the next 10 years would result in a larger backlog of claims relative to current law but would have no net effect on spending over this period.

The CBO staff contact for this estimate is Daniel Hoople. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional

Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

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.

EARMARK IDENTIFICATION

H.R. 4050 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section establishes the short title of the bill, the “Levee-Like Structure Consideration Act of 2007.”

Section 2. Consideration of structures not certifiable as levees in flood insurance mapping

This section requires FEMA to issue and make effective notice of guidelines on levee-like structures within 90 days of enactment of the bill. This section also provides that insurance requirements and rates shall remain unchanged for 24 months while the flood risk impact of a levee-like structure is reviewed.