

Calendar No. 637

115TH CONGRESS }
2d Session

SENATE

{ REPORT
115-347

COASTAL IMPLEMENTATION ACT OF 2017

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2242



NOVEMBER 13, 2018.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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COASTAL IMPLEMENTATION ACT OF 2017

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 2242]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2242) to amend the Omnibus Public Land Management Act of 2009 to clarify the authority of the Administrator of the National Oceanic and Atmospheric Administration with respect to post-storm assessments, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 2242 is to update the Consumer Option for an Alternative System to Allocate Losses Act of 2012 (COASTAL Act of 2012)¹ with technical edits so that the National Oceanic and Atmospheric Administration (NOAA) can continue to develop an assessment model for determining the magnitude and variations of coastal storm surges and wind speeds associated with hurricanes.

BACKGROUND AND NEEDS

The National Flood Insurance Program (NFIP) was first authorized by the National Flood Insurance Act of 1968,² and was reauthorized until the end of fiscal year 2017 by division F of the

¹P.L. 112-141; 126 Stat. 969.

²42 U.S.C. §4001 et seq.

Biggert-Waters Flood Insurance Reform Act of 2012.³ The NFIP is administered by the Federal Emergency Management Association (FEMA), and it was recently reauthorized until November 30, 2018.⁴ The general purpose of the NFIP is both to offer primary flood insurance to properties with significant flood risk and to reduce flood risk through the adoption of floodplain management standards.⁵ The NFIP is the primary source of flood insurance coverage for residential properties in the United States.⁶ As of January 2018, the NFIP had more than 5 million flood insurance policies providing nearly \$1.28 trillion in coverage, with approximately 23,000 participating communities nationwide (including territories and tribal organizations).⁷ The program currently collects about \$3.6 billion in annual premium revenue.

After Hurricane Katrina struck the Gulf Coast in 2005, a lack of clear property loss determinations in the NFIP program created a legal backlog and slowed assistance to hurricane-impacted Americans. Following a hurricane, it can be difficult to assess whether damages were caused by wind or water, particularly when only a structure's foundation, or slab, is left (Figure 1). For these "slab" properties, there may not be enough physical evidence to determine whether the damages were caused by wind, and thus covered by private home insurers, or by water, and thus covered by the NFIP. These so-called "indeterminate loss" properties, where the cause of the destruction is not identifiable, created many legal disputes post-Katrina between private home insurance providers and their policyholders over the loss-allocation between flood as a cause of loss, covered by the NFIP, and wind peril, covered by private home insurance.⁸

³P.L. 112–141; 126 Stat. 916.

⁴P.L. 115–225; 132 Stat. 1624.

⁵Congressional Research Service, Introduction to the National Flood Insurance Program (<http://www.crs.gov/reports/pdf/R44593>) (accessed 7.20.18).

⁶Congressional Research Service, What Happens If the National Flood Insurance Program (NFIP) Lapses? (<http://www.crs.gov/Reports/IN10835?source=search&guid=32dc3cb49a574eab920199dfa0f88c6&index=1>) (accessed 7.23.18).

⁷Ibid.

⁸U.S. Government Accountability Office, NOAA: Initial Response to Post-Storm Assessment Requirements (<https://www.gao.gov/assets/660/655843.pdf>) (accessed 20.18).



Figure 1. Only the foundation remains of a home in Waveland, Mississippi, after Hurricane Katrina.⁹

The COASTAL Act of 2012 was designed to mitigate future legal issues by requiring NOAA to produce detailed “post-storm assessments” in the aftermath of a damaging tropical cyclone that strikes the United States or its territories.¹⁰ The purpose of the COASTAL Act of 2012 is to reduce conflict over which party is responsible in “indeterminate loss” properties by better discerning wind versus water damage.¹¹ Using output from a hindcast model, NOAA’s assessments will indicate the strength of timing of damaging winds and water at a given location in the area impacted by the storm. If the assessment results for the location of a specific “slab” property can be certified by NOAA as being greater than 90 percent accurate, those results will be put into a FEMA-managed formula that considers a variety of factors that may have contributed to structural damage. Based on this Named Storm Event Model formula, FEMA determines the appropriate loss allocation between wind and water.¹²

After the COASTAL Act of 2012 was enacted, NOAA began to implement the policy changes and interagency coordination required by that Act, but did not receive appropriated funding for the work until 2016. Since receiving dedicated funding, NOAA has been building the modeling and data collection components necessary to implement the post-storm assessments. The COASTAL Implementation Act of 2018 would provide additional technical

⁹ Los Angeles Times, “A Sobering Look Back Five Years After Hurricane Katrina” (<http://framework.latimes.com/2010/08/27/hurricane-katrina/#/22>) (accessed 7.24.18).

¹⁰ United States Department of Commerce, Report to Congress Status of the National Oceanic and Atmospheric Administration’s Implementation of the Consumer Option for an Alternative System to Allocate Losses Act of 2012 (<https://www.weather.gov/media/sti/coastalact/COASTALActAppropriationsReportFY14.pdf>) (accessed 7.23.18).

¹¹ National Water Service, COASTAL Act Overview (<https://www.weather.gov/sti/coastalact>) (accessed 7.23.18).

¹² Ibid.

edits to the COASTAL Act of 2012 so that NOAA can successfully collect the required data to perform the post-storm assessments and provide it to FEMA for the loss-allocation. The Act also would give the NOAA Administrator the authority to deploy additional sensors before storms hit a coastal area that is likely to be severely damaged, in order to gather additional data for “indeterminate” property determinations by FEMA. It also would direct the NOAA Administrator to seek input and suggestions from the public before the Named Storm Event Model is implemented.

SUMMARY OF PROVISIONS

If enacted, S. 2242, the COASTAL Implementation Act of 2018 would do the following:

- Amend the Omnibus Public Land Management Act of 2009¹³ to align the definitions in that Act so they match NOAA’s definitions for specific technical terminology.
- Extend NOAA’s deadline for the implementation of the COASTAL Act of 2012 to December 31, 2019.
- Direct the NOAA Administrator to seek input and suggestions from the public before the Named Storm Event Model takes effect.
- Direct the NOAA Administrator to deploy additional sensors to enhance data collection in coastal areas that may be at high risk of experiencing indeterminate losses.
- Direct the NOAA Administrator to conduct separate post-storm assessments for each coastal State in which “indeterminate” losses are identified after a storm.

LEGISLATIVE HISTORY

S. 2242 was introduced on December 12, 2017, by Senator Wicker and was referred to the Committee on Commerce, Science, and Transportation of the Senate. A previous version of the bill, S. 2093, the COASTAL Implementation Act of 2017, was introduced on November 7, 2017, and was referred to the Homeland Security and Government Affairs Committee of the Senate. On August 1, 2018, the Committee met in open Executive Session and by voice vote ordered S. 2242 reported favorably with an amendment (in the nature of a substitute).

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 2242—COASTAL Implementation Act of 2018

S. 2242 would amend the Omnibus Public Land Management Act of 2009 to clarify the authority of the National Oceanic and Atmospheric Administration (NOAA) to conduct scientific assessments to determine the magnitude, timing, and spatial variations of winds, rainfall, and storm surges associated with hurricanes and tropical storms. The bill would largely codify current NOAA practices re-

¹³P.L. 111–11; 123 Stat. 991.

lated to such work. In 2018, NOAA allocated \$5 million to those activities.

Using information from NOAA, CBO estimates that implementing S. 2242 would have no significant cost.

Enacting S. 2242 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 2242 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 2242 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Robert Reese. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 2242, as reported, would not create any new programs or impose any new regulatory requirements, and therefore would not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

Enactment of this legislation is not expected to have a negative impact on the Nation's economy.

PRIVACY

The reported bill is not expected to impact the personal privacy of individuals.

PAPERWORK

S. 2242 would not create increases in paperwork burdens if enacted.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would provide that the bill may be cited as the "COASTAL Implementation Act of 2018".

Section 2. Named storm event model and post-storm assessments.

This section would amend section 12312 of the Omnibus Public Land Management Act of 2009¹⁴ by amending certain definitions to conform to NOAA definitions for specific terminology and fix ambiguity over the identification of indeterminate losses in coastal States. This section also would direct the NOAA Administrator to seek public review before the Named Storm Event Model takes effect, deploy additional sensors as needed to collect data before large storms, and to conduct separate post-storm assessments for multiple coastal States impacted by a single storm if necessary.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in *italic*, existing law in which no change is proposed is shown in roman):

NATIONAL FLOOD INSURANCE ACT OF 1968

[42 U.S.C. 4001 et seq.]

SEC. 1337. ALTERNATIVE LOSS ALLOCATION SYSTEM FOR INDETERMINATE CLAIMS.

[42 U.S.C. 4057]

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Federal Emergency Management Agency.

(2) COASTAL FORMULA.—The term “COASTAL Formula” means the formula established under subsection (b).

(3) COASTAL STATE.—The term “coastal State” has the meaning given the term “coastal state” in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)[.], *except that the term shall not apply with respect to a State or territory that has an operational wind and flood loss allocation system.*

(4) INDETERMINATE LOSS.—

(A) IN GENERAL.—The term “indeterminate loss” means, as determined by an insurance claims adjuster certified under the national flood insurance program and in consultation with an engineer as appropriate, a loss resulting from physical damage to, or loss of, property located in any coastal State arising from the combined perils of flood and wind associated with a named storm.

(B) REQUIREMENTS.—An insurance claims adjuster certified under the national flood insurance program shall only determine that a loss is an indeterminate loss if the claims adjuster determines that—

(i) no material remnant of physical buildings or man-made structures remain except building foundations for the specific property for which the claim is made; and

(ii) there is insufficient or no tangible evidence created, yielded, or otherwise left behind of the specific

¹⁴ 33 U.S.C. §3611.

property for which the claim is made as a result of the named storm.

(5) NAMED STORM.—The term “named storm” means any organized weather system with a defined surface circulation and maximum *sustained* winds of not less than 39 miles per hour which the National Hurricane Center of the United States National Weather Service names as a tropical storm or a hurricane.

(6) POST-STORM ASSESSMENT.—The term “post-storm assessment” means the post-storm assessment developed under section 12312(b) of the Omnibus Public Land Management Act of 2009.

(7) STATE.—The term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(8) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security.

(9) STANDARD INSURANCE POLICY.—The term “standard insurance policy” means any insurance policy issued under the national flood insurance program that covers loss or damage to property resulting from water peril.

(10) PROPERTY.—The term “property” means real or personal property that is insured under a standard insurance policy for loss or damage to structure or contents.

(11) UNDER SECRETARY.—The term “Under Secretary” means the Under Secretary of Commerce for Oceans and Atmosphere, in the Under Secretary’s capacity as Administrator of the National Oceanic and Atmospheric Administration.

* * * * *

(h) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to require the Administrator to make any payment under the national flood insurance program, or an insurance company *that issues a standard flood insurance policy under the national flood insurance program* to make any payment, for an indeterminate loss based upon post-storm assessment **[or the COASTAL Formula]**, *the COASTAL Formula, or any other loss allocation or post-storm assessment arising under the laws or ordinances of any State.*

(i) APPLICABILITY.—Subsection (c) shall apply with respect to an indeterminate loss associated with a named storm that occurs after the date on which the Administrator issues the rule establishing the COASTAL Formula under subsection (b).

(j) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to negate, set aside, or void any policy limit, including any loss limitation, set forth in a standard insurance policy.

OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009

[Public Law 111-11; 123 Stat. 991]

SEC. 12312. ASSESSING AND MODELING NAMED STORMS OVER COASTAL STATES.

[33 U.S.C. 3611]

(a) DEFINITIONS.—In this section:

(1) COASTAL FORMULA.—The term “COASTAL Formula” has the meaning given the term in section 1337(a) of the National Flood Insurance Act of 1968.

(2) COASTAL STATE.—The term “coastal State” has the meaning given the term “coastal state” in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)[.], *except that the term shall not apply with respect to a State or territory that has an operational wind and flood loss allocation system.*

(3) COASTAL WATERS.—The term “coastal waters” has the meaning given the term in such section.

(4) COVERED DATA.—The term “covered data” means, with respect to a named storm identified by the Administrator under subsection (b)(2)(A), empirical data that are—

(A) collected before, during, or after such storm; and

(B) necessary to determine magnitude and timing of wind speeds, rainfall, the barometric pressure, river flows, the extent, height, and timing of storm surge, topographic and bathymetric data, and other measures required to accurately model and assess damage from such storm.

(5) INDETERMINATE LOSS.—The term “indeterminate loss” has the meaning given the term in section 1337(a) of the National Flood Insurance Act of 1968.

(6) NAMED STORM.—The term “named storm” means any organized weather system with a defined surface circulation and maximum *sustained* winds of at least 39 miles per hour which the National Hurricane Center of the United States National Weather Service names as a tropical storm or a hurricane.

(7) NAMED STORM EVENT MODEL.—The term “Named Storm Event Model” means the official meteorological and oceanographic computerized model, developed by the Administrator under subsection (b)(1)(A), which utilizes covered data to replicate the magnitude, timing, and spatial variations of winds, rainfall, and storm surges associated with named storms [that threaten any portion of a coastal State] *for which post-storm assessments are conducted.*

(8) PARTICIPANT.—The term “participant” means a Federal, State, or private entity that chooses to cooperate with the Administrator in carrying out the provisions of this section by collecting, contributing, and maintaining covered data.

(9) POST-STORM ASSESSMENT.—The term “post-storm assessment” means a scientific assessment produced and certified by the Administrator to determine the magnitude, timing, and spatial variations of winds, rainfall, and storm surges associated with a specific named storm to be used in the COASTAL Formula.

(10) STATE.—The term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(b) NAMED STORM EVENT MODEL AND POST-STORM ASSESSMENT.—

(1) ESTABLISHMENT OF NAMED STORM EVENT MODEL.—

(A) IN GENERAL.—Not later than [540 days after the date of the enactment of the Consumer Option for an Alternative System to Allocate Losses Act of 2012] *December*

31, 2019, the Administrator shall develop [by regulation] the Named Storm Event Model.

(B) ACCURACY.—The Named Storm Event Model shall be designed to generate post-storm assessments, as provided in paragraph (2), that have a degree of accuracy of not less than 90 percent for [every] *an* indeterminate loss for which a post-storm assessment is utilized.

(C) PUBLIC REVIEW.—*The Administrator shall seek input and suggestions from the public before the Named Storm Event Model, or any modification to the Named Storm Event Model, takes effect.*

(2) POST-STORM ASSESSMENT.—

(A) IDENTIFICATION OF NAMED STORMS THREATENING COASTAL STATES.—After the establishment of the COASTAL Formula, the Administrator shall, in consultation with the Secretary of Homeland Security, identify named storms that may reasonably constitute a threat to any portion of a coastal State.

(B) DATA COLLECTION.—

(i) IN GENERAL.—*Upon identification of a named storm under subparagraph (A), and pursuant to the protocol established under subsection (c), the Administrator may deploy sensors to enhance the collection of covered data in the areas in coastal States that the Administrator determines are at the highest risk of experiencing geophysical events that would cause indeterminate losses.*

(ii) RULE OF CONSTRUCTION.—*If the Administrator takes action under clause (i), that action may not be construed as indicating that a post-storm assessment will be developed for any coastal State in which that action is taken.*

(C) IDENTIFICATION OF INDETERMINATE LOSSES IN COASTAL STATES.—*Not later than 30 days after the first date on which sustained winds of not less than 39 miles per hour are measured in a coastal State during a named storm identified under subparagraph (A), the Secretary of Homeland Security shall notify the Administrator with respect to the existence of any indeterminate losses in that coastal State resulting from that named storm.*

[(B)](D) POST-STORM ASSESSMENT REQUIRED.—Upon [identification of a named storm under subparagraph (A)] *confirmation of indeterminate losses identified under subparagraph (C) with respect to a named storm*, the Administrator shall develop a post-storm [assessment for such named storm] *assessment for each coastal State that suffered such indeterminate losses as a result of the named storm* using the Named Storm Event Model and covered data collected for such named storm pursuant to the protocol established under subsection (c)(1).

[(C)](E) SUBMITTAL OF POST-STORM ASSESSMENT.—Not later than 90 days after [an identification of a named storm is made under subparagraph (A)] *any indeterminate losses are identified under subparagraph (C)*, the Administrator shall submit to the Secretary of Homeland Security

the post-storm assessment developed **for such storm under subparagraph (B)** *under subparagraph (D) for any coastal State that suffered such indeterminate losses.*

(F) SEPARATE POST-STORM ASSESSMENTS FOR A SINGLE NAMED STORM.—

(i) IN GENERAL.—The Administrator may conduct a separate post-storm assessment for each coastal State in which indeterminate losses are identified under subparagraph (C).

(ii) TIMELINE.—If the Administrator conducts a separate post-storm assessment under clause (i), the Administrator shall complete the assessment based on the dates of actions that the Administrator takes under subparagraphs (C) and (D).

(3) ACCURACY.—The Administrator shall ensure, to the greatest extent practicable, that each post-storm assessment developed under paragraph (2) has a degree of accuracy of not less than 90 percent.

(4) CERTIFICATION.—For each post-storm assessment carried out under paragraph (2), the Administrator shall—

(A) certify the degree of accuracy for such assessment, including specific reference to any segments or geographic areas for which the assessment is less than 90 percent accurate; and

(B) report such certification to the Secretary of Homeland Security for the purposes of use with indeterminate loss claims under section 1337 of the National Flood Insurance Act of 1968.

(5) FINALITY OF DETERMINATIONS.—A certification of the degree of accuracy of a post-storm assessment under this subsection by the Administrator shall be final and shall not be subject to judicial review.

(6) AVAILABILITY.—The Administrator shall make available to the public the Named Storm Event Model and any post-storm assessment developed under this subsection.

(c) ESTABLISHMENT OF A PROTOCOL FOR POST-STORM ASSESSMENT.—

(1) IN GENERAL.—Not later than **540 days after the date of the enactment of the Consumer Option for an Alternative System to Allocate Losses Act of 2012** *December 31, 2019*, the Administrator shall establish a protocol, based on the plan submitted under subsection (d)(3), to collect and assemble all covered data required by the Administrator to produce post-storm assessments required by subsection (b), including assembling data collected by participants and stored in the database established under subsection (f) and from such other sources as the Administrator considers appropriate.

(2) ACQUISITION OF SENSORS AND STRUCTURES.—If the Administrator is unable to use a public or private asset to obtain covered data as part of the protocol established under paragraph (1), the Administrator may acquire such sensors and structures for the placement of sensors as may, *in the discretion of the Administrator*, be necessary to obtain such data.

(3) USE OF FEDERAL ASSETS.—If the protocol requires placement of a sensor to develop assessments pursuant to sub-

section (b), the Administrator shall, to the extent practicable, use Federal assets for the placement of such sensors.

(4) USE OF ACQUIRED STRUCTURES.—

(A) IN GENERAL.—If the Administrator acquires a structure for the placement of a sensor for purposes of such protocol, the Administrator shall to the extent practical permit other public and private entities to place sensors on such structure to collect—

- (i) meteorological data;
- (ii) national security-related data;
- (iii) navigation-related data;
- (iv) hydrographic data; or
- (v) such other data as the Administrator considers appropriate.

(B) RECEIPT OF CONSIDERATION.—The Administrator may receive *and expend* consideration for the placement of a sensor on a structure under subparagraph (A).

(C) IN-KIND CONSIDERATION.—Consideration received under subparagraph (B) may be received in-kind.

(D) USE OF CONSIDERATION.—To the extent practicable, consideration received under subparagraph (B) shall be used for the maintenance of sensors used to collect covered data.

(5) COORDINATED DEPLOYMENTS AND DATA COLLECTION PRACTICES.—The Administrator shall, in consultation with the Office of the Federal Coordinator for Meteorology, coordinate the deployment of sensors as part of the protocol established under paragraph (1) and related data collection carried out by Federal, State, academic, and private entities who choose to cooperate with the Administrator in carrying out this subsection.

(6) PRIORITY ACQUISITION AND DEPLOYMENT.—The Administrator shall give priority in the acquisition for and deployment of sensors under the protocol required by paragraph (1) to areas of coastal States that have the highest risk of being harmed by named storms.

* * * * *