

109TH CONGRESS
1ST SESSION

H. R. 3656

To reestablish the Federal Emergency Management Agency as an independent establishment in the executive branch, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 6, 2005

Mr. DINGELL (for himself, Mr. STUPAK, Mr. HASTINGS of Florida, Mr. BOREN, Ms. LEE, Mr. MOORE of Kansas, Mr. SHERMAN, Ms. DEGETTE, Mr. BOUCHER, Mr. TOWNS, Mr. ROTHMAN, Mr. ANDREWS, Mr. ROSS, Mr. RUPPERSBERGER, Mr. BROWN of Ohio, Ms. DELAURO, Mr. ENGEL, Mr. GRIJALVA, Mr. LEVIN, Mr. HINCHEY, Ms. LINDA T. SÁNCHEZ of California, Ms. KAPTUR, Mr. KUCINICH, Mr. RYAN of Ohio, Mr. KILDEE, Mr. BACA, Mr. VISCLOSKEY, Mr. THOMPSON of California, Mr. DAVIS of Florida, Ms. MCCOLLUM of Minnesota, Mr. WEINER, Mr. CARDOZA, Mr. MEEHAN, Mr. WU, Mr. BERMAN, Ms. KILPATRICK of Michigan, Mrs. MALONEY, Mr. CROWLEY, Mr. INSLEE, Ms. BORDALLO, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. HOLT, Mr. KANJORSKI, Mr. McDERMOTT, Mr. NADLER, Mr. GONZALEZ, Mrs. LOWEY, and Mr. MORAN of Virginia) 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 an independent establishment in the executive branch, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Emergency
3 Management Restoration and Improvement Act”.

4 **TITLE I—FEDERAL EMERGENCY**
5 **MANAGEMENT AGENCY**

6 **SEC. 101. FEDERAL EMERGENCY MANAGEMENT AGENCY.**

7 (a) INDEPENDENT ESTABLISHMENT.—The Federal
8 Emergency Management Agency shall be an independent
9 establishment in the executive branch.

10 (b) DIRECTOR.—

11 (1) IN GENERAL.—The Agency shall be headed
12 by a Director, who shall be appointed by the Presi-
13 dent, by and with the advice and consent of the Sen-
14 ate, and who shall report directly to the President.
15 The Director of the Federal Emergency Manage-
16 ment Agency shall be compensated at the rate pro-
17 vided for at level I of the Executive Schedule under
18 section 5312 of title 5, United States Code.

19 (2) QUALIFICATIONS.—The Director of the
20 Federal Emergency Management Agency shall be
21 appointed from among persons who have significant
22 experience, knowledge, training, and expertise in the
23 area of emergency preparedness, response, recovery,
24 and mitigation as related to natural disasters and
25 other national cataclysmic events.

26 (c) DEPUTY DIRECTOR.—

1 (1) IN GENERAL.—There shall be in the Fed-
 2 eral Emergency Management Agency one Deputy
 3 Director, who shall be appointed by the President,
 4 by and with the advice and consent of the Senate.
 5 The Deputy Director shall be compensated at the
 6 rate provided for at level II of the Executive Sched-
 7 ule under section 5313 of title 5, United States
 8 Code.

9 (2) QUALIFICATIONS.—The Deputy Director
 10 shall be appointed from among persons who have ex-
 11 tensive background in disaster response and disaster
 12 preparedness.

13 (3) RESPONSIBILITIES.—Subject to the direc-
 14 tion and control of the Director of the Federal
 15 Emergency Management Agency, the Deputy Direc-
 16 tor shall have primary responsibility within the
 17 Agency for natural disasters and non-natural disas-
 18 ters, including large-scale terrorist attacks.

19 **TITLE II—TRANSFER AND** 20 **SAVINGS PROVISIONS**

21 **SEC. 201. TRANSFER OF FUNCTIONS.**

22 There shall be transferred to the Director of the Fed-
 23 eral Emergency Management Agency—

24 (1) the functions (including the functions under
 25 paragraphs (3) and (8) of section 430(c) of the

1 Homeland Security Act of 2002 (6 U.S.C. 238(c)),
2 personnel, assets, and liabilities of the Department
3 of Homeland Security relating to the Federal Emer-
4 gency Management Agency; and

5 (2) the functions of the Department of Home-
6 land Security under sections 502 (other than para-
7 graph (2)) and 503(2) of the Homeland Security Act
8 of 2002 (6 U.S.C. 312, 313), and the personnel, as-
9 sets, and liabilities of the Department relating to
10 such functions.

11 **SEC. 202. TRANSITION PERIOD.**

12 The transfers under this title shall be carried out as
13 soon as practicable after the date of enactment of this Act.
14 During the transition period, the Secretary of Homeland
15 Security shall provide to the Director of the Federal
16 Emergency Management Agency such assistance, includ-
17 ing the use of personnel and assets, as the Director may
18 request in preparing for the transfer.

19 **SEC. 203. PERSONNEL PROVISIONS.**

20 (a) APPOINTMENTS.—The Director of the Federal
21 Emergency Management Agency may appoint and fix the
22 compensation of such officers and employees, including in-
23 vestigators, attorneys, and administrative law judges, as
24 may be necessary to carry out the respective functions
25 transferred under this title. Except as otherwise provided

1 by law, such officers and employees shall be appointed in
2 accordance with the civil service laws and their compensa-
3 tion fixed in accordance with title 5, United States Code.

4 (b) EXPERTS AND CONSULTANTS.—The Director of
5 the Federal Emergency Management Agency may obtain
6 the services of experts and consultants in accordance with
7 section 3109 of title 5, United States Code, and com-
8 pensate such experts and consultants for each day (includ-
9 ing traveltime) at rates not in excess of the rate of pay
10 for level IV of the Executive Schedule under section 5315
11 of such title. The Director of the Federal Emergency Man-
12 agement Agency may pay experts and consultants who are
13 serving away from their homes or regular place of busi-
14 ness, travel expenses and per diem in lieu of subsistence
15 at rates authorized by sections 5702 and 5703 of such
16 title for persons in Government service employed intermit-
17 tently.

18 **SEC. 204. DELEGATION AND ASSIGNMENT.**

19 Except where otherwise expressly prohibited by law
20 or otherwise provided by this title, the Director of the Fed-
21 eral Emergency Management Agency may delegate any of
22 the functions transferred to the Director of the Federal
23 Emergency Management Agency by this title and any
24 function transferred or granted to such Director after the
25 effective date of this title to such officers and employees

1 of the Federal Emergency Management Agency as the Di-
2 rector may designate, and may authorize successive redele-
3 gations of such functions as may be necessary or appro-
4 priate. No delegation of functions by the Director of the
5 Federal Emergency Management Agency under this sec-
6 tion or under any other provision of this title shall relieve
7 such Director of responsibility for the administration of
8 such functions.

9 **SEC. 205. REORGANIZATION.**

10 The Director of the Federal Emergency Management
11 Agency is authorized to allocate or reallocate any function
12 transferred under section 201 among the officers of the
13 Federal Emergency Management Agency, and to estab-
14 lish, consolidate, alter, or discontinue such organizational
15 entities in the Federal Emergency Management Agency as
16 may be necessary or appropriate.

17 **SEC. 206. RULES.**

18 The Director of the Federal Emergency Management
19 Agency is authorized to prescribe, in accordance with the
20 provisions of chapters 5 and 6 of title 5, United States
21 Code, such rules and regulations as the Director deter-
22 mines necessary or appropriate to administer and manage
23 the functions of the Federal Emergency Management
24 Agency.

1 **SEC. 207. TRANSFER AND ALLOCATIONS OF APPROPRIA-**
2 **TIONS AND PERSONNEL.**

3 Except as otherwise provided in this title, the per-
4 sonnel employed in connection with, and the assets, liabil-
5 ities, contracts, property, records, and unexpended bal-
6 ances of appropriations, authorizations, allocations, and
7 other funds employed, used, held, arising from, available
8 to, or to be made available in connection with the func-
9 tions transferred by this title, subject to section 1531 of
10 title 31, United States Code, shall be transferred to the
11 Federal Emergency Management Agency. Unexpended
12 funds transferred pursuant to this section shall be used
13 only for the purposes for which the funds were originally
14 authorized and appropriated.

15 **SEC. 208. INCIDENTAL TRANSFERS.**

16 The Director of the Office of Management and Budg-
17 et, at such time or times as the Director shall provide,
18 is authorized to make such determinations as may be nec-
19 essary with regard to the functions transferred by this
20 title, and to make such additional incidental dispositions
21 of personnel, assets, liabilities, grants, contracts, property,
22 records, and unexpended balances of appropriations, au-
23 thorizations, allocations, and other funds held, used, aris-
24 ing from, available to, or to be made available in connec-
25 tion with such functions, as may be necessary to carry out
26 the provisions of this title. The Director of the Office of

1 Management and Budget shall provide for the termination
2 of the affairs of all entities terminated by this title and
3 for such further measures and dispositions as may be nec-
4 essary to effectuate the purposes of this title.

5 **SEC. 209. EFFECT ON PERSONNEL.**

6 (a) IN GENERAL.—Except as otherwise provided by
7 this title, the transfer pursuant to this title of full-time
8 personnel (except special Government employees) and
9 part-time personnel holding permanent positions shall not
10 cause any such employee to be separated or reduced in
11 grade or compensation for one year after the date of trans-
12 fer of such employee under this title.

13 (b) EXECUTIVE SCHEDULE POSITIONS.—Except as
14 otherwise provided in this title, any person who, on the
15 day preceding the effective date of this title, held a posi-
16 tion compensated in accordance with the Executive Sched-
17 ule prescribed in chapter 53 of title 5, United States Code,
18 and who, without a break in service, is appointed in the
19 Federal Emergency Management Agency to a position
20 having duties comparable to the duties performed imme-
21 diately preceding such appointment shall continue to be
22 compensated in such new position at not less than the rate
23 provided for such previous position, for the duration of
24 the service of such person in such new position.

1 **SEC. 210. SAVINGS PROVISIONS.**

2 (a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—

3 All orders, determinations, rules, regulations, permits,
4 agreements, grants, contracts, certificates, licenses, reg-
5 istrations, privileges, and other administrative actions—

6 (1) which have been issued, made, granted, or
7 allowed to become effective by the President, any
8 Federal agency or official thereof, or by a court of
9 competent jurisdiction, in the performance of func-
10 tions which are transferred under this title, and

11 (2) which are in effect at the time this title
12 takes effect, or were final before the effective date
13 of this title and are to become effective on or after
14 the effective date of this title,

15 shall continue in effect according to their terms until
16 modified, terminated, superseded, set aside, or revoked in
17 accordance with law by the President, the Director of the
18 Federal Emergency Management Agency or other author-
19 ized official, a court of competent jurisdiction, or by oper-
20 ation of law.

21 (b) PROCEEDINGS NOT AFFECTED.—The provisions
22 of this title shall not affect any proceedings, including no-
23 tices of proposed rulemaking, or any application for any
24 license, permit, certificate, or financial assistance pending
25 before the Federal Emergency Management Agency at the
26 time this title takes effect, with respect to functions trans-

1 ferred by this title but such proceedings and applications
2 shall continue. Orders shall be issued in such proceedings,
3 appeals shall be taken therefrom, and payments shall be
4 made pursuant to such orders, as if this title had not been
5 enacted, and orders issued in any such proceedings shall
6 continue in effect until modified, terminated, superseded,
7 or revoked by a duly authorized official, by a court of com-
8 petent jurisdiction, or by operation of law. Nothing in this
9 subsection shall be deemed to prohibit the discontinuance
10 or modification of any such proceeding under the same
11 terms and conditions and to the same extent that such
12 proceeding could have been discontinued or modified if
13 this title had not been enacted.

14 (c) SUITS NOT AFFECTED.—The provisions of this
15 title shall not affect suits commenced before the effective
16 date of this title, and in all such suits, proceedings shall
17 be had, appeals taken, and judgments rendered in the
18 same manner and with the same effect as if this title had
19 not been enacted.

20 (d) NONABATEMENT OF ACTIONS.—No suit, action,
21 or other proceeding commenced by or against the Federal
22 Emergency Management Agency, or by or against any in-
23 dividual in the official capacity of such individual as an
24 officer of the Federal Emergency Management Agency,
25 shall abate by reason of the enactment of this title.

1 (e) ADMINISTRATIVE ACTIONS RELATING TO PRO-
2 MULGATION OF REGULATIONS.—Any administrative ac-
3 tion relating to the preparation or promulgation of a regu-
4 lation by the Federal Emergency Management Agency re-
5 lating to a function transferred under this title may be
6 continued by the Federal Emergency Management Agency
7 with the same effect as if this title had not been enacted.

8 **SEC. 211. REFERENCES.**

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

13 (1) to the head of such department, agency, or
14 office is deemed to refer to the head of the depart-
15 ment, agency, or office to which such function is
16 transferred; or

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

20 **SEC. 212. CONFORMING AMENDMENTS AND REPEALS.**

21 (a) HOMELAND SECURITY ACT OF 2002.—

22 (1) SECTION 504.—Section 504(a) of the Home-
23 land Security Act of 2002 (6 U.S.C. 314(a)) is
24 amended by striking “, major disaster,”.

1 (2) REPEALS.—The following provisions of the
2 Homeland Security Act of 2002 (6 U.S.C. 101 et
3 seq.) are repealed:

4 (A) Section 2(11).

5 (B) Section 503(1).

6 (C) Section 507.

7 (D) Section 508.

8 (b) TITLE 5, UNITED STATES CODE.—

9 (1) DIRECTOR.—Section 5312 of title 5, United
10 States Code, is amended by adding at the end the
11 following:

12 “Director of the Federal Emergency Manage-
13 ment Agency.”.

14 (2) DEPUTY DIRECTOR.—Section 5313 of title
15 5, United States Code, is amended by adding at the
16 end the following:

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

19 (c) ADDITIONAL CONFORMING AMENDMENTS.—

20 (1) RECOMMENDED LEGISLATION.—After con-
21 sultation with the appropriate committees of the
22 Congress and the Director of the Office of Manage-
23 ment and Budget, the Director of the Federal Emer-
24 gency Management Agency shall prepare and submit
25 to Congress recommended legislation containing

1 technical and conforming amendments to reflect the
2 changes made by this Act.

3 (2) SUBMISSION TO CONGRESS.—Not later than
4 6 months after the effective date of this title, the Di-
5 rector of the Federal Emergency Management Agen-
6 cy shall submit the recommended legislation referred
7 to under subsection (a).

8 **SEC. 213. LIMITATION ON STATUTORY CONSTRUCTION.**

9 Nothing in this Act shall be construed to limit the
10 primary mission of the Department of Homeland Security
11 set forth in subparagraphs (A), (B), (E), (F), (G), and
12 (H) of section 101(b) of the Homeland Security Act of
13 2002 (6 U.S.C. 111(b)).

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