

Union Calendar No. 350

109TH CONGRESS
2^D SESSION

H. R. 4650

[Report No. 109-609]

To direct the Secretary of the Army to carry out programs and activities
to enhance the safety of levees in the United States.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 22, 2005

Mr. DUNCAN (for himself, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. YOUNG of Alaska, Mr. OBERSTAR, Mr. BOUSTANY, Mr. BAKER, and Mr. MELANCON) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

JULY 28, 2006

Additional sponsors: Mr. HERGER, Mr. MCGOVERN, Mr. JINDAL, Mr. MURPHY, Mr. FORD, Ms. WOOLSEY, Mr. CALVERT, and Mr. CARNAHAN

JULY 28, 2006

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on December 22, 2005]

A BILL

To direct the Secretary of the Army to carry out programs
and activities to enhance the safety of levees in the
United States.

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

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “National Levee Safety*
5 *Program Act of 2006”.*

6 **SEC. 2. DEFINITIONS.**

7 *In this Act, the following definitions apply:*

8 (1) *BOARD.*—*The term “Board” means the Na-*
9 *tional Levee Safety Advisory Board established under*
10 *section 4(d).*

11 (2) *COMMITTEE.*—*The term “Committee” means*
12 *the Interagency Committee on Levee Safety estab-*
13 *lished by section 4(a).*

14 (3) *LEVEE.*—

15 (A) *IN GENERAL.*—*The term “levee” means*
16 *an embankment (including floodwalls)—*

17 (i) *the primary purpose of which is to*
18 *provide hurricane, storm, and flood protec-*
19 *tion relating to seasonal high water and*
20 *storm surges; and*

21 (ii) *that normally is subject to water*
22 *loading for only a few days or weeks during*
23 *a year.*

24 (B) *INCLUSION.*—*The term “levee” includes*
25 *structures along canals that constrain water*

1 *flows and are subject to more frequent water*
2 *loadings but that do not constitute a barrier*
3 *across a watercourse.*

4 (4) *FEDERAL ENTITY.*—*The term “Federal enti-*
5 *ty” means a Federal agency or entity that designs, fi-*
6 *nances, constructs, owns, operates, maintains, or reg-*
7 *ulates the construction, operation, or maintenance of*
8 *a levee.*

9 (5) *SECRETARY.*—*The term “Secretary” means*
10 *the Secretary of the Army.*

11 (6) *STATE.*—*The term “State” means—*
12 (A) *a State;*
13 (B) *the District of Columbia;*
14 (C) *the Commonwealth of Puerto Rico; and*
15 (D) *any other territory or possession of the*
16 *United States.*

17 (7) *STATE LEVEE SAFETY AGENCY.*—*The term*
18 *“State levee safety agency” means the State agency*
19 *that has regulatory authority over the safety of any*
20 *non-Federal levee in a State.*

21 (8) *UNITED STATES.*—*The term “United States”,*
22 *when used in a geographical sense, means all of the*
23 *States.*

1 **SEC. 3. INSPECTION AND INVENTORY OF LEVEES.**

2 (a) *IN GENERAL.*—*The Secretary shall carry out a*
3 *program under which, as soon as practicable after the date*
4 *of enactment of this Act, the Secretary shall inspect levees*
5 *in the United States for the purpose of protecting human*
6 *life and property.*

7 (b) *LEVEES TO BE INSPECTED.*—

8 (1) *IN GENERAL.*—*In carrying out the program*
9 *under subsection (a), the Secretary shall inspect—*

10 (A) *each levee in the United States con-*
11 *structed by the Secretary;*

12 (B) *each levee in the United States main-*
13 *tained by the Secretary;*

14 (C) *each levee constructed by a Federal enti-*
15 *ty and identified to the Secretary by the head of*
16 *such entity;*

17 (D) *each levee constructed by a federally*
18 *recognized Indian tribe, located on tribal lands,*
19 *and identified to the Secretary by the head of*
20 *such tribe; and*

21 (E) *each levee located in a State identified*
22 *by the Governor of the State in a list trans-*
23 *mitted to the Secretary.*

24 (2) *EXCEPTIONS.*—*Notwithstanding paragraph*
25 *(1), in carrying out the program under subsection*
26 *(a), the Secretary shall not be required to inspect—*

1 (A) any levee that has been inspected by a
2 State levee safety agency during the 1-year pe-
3 riod immediately preceding the date of enact-
4 ment of this Act if the Governor of the State re-
5 quests an exception; and

6 (B) any levee that the Secretary determines
7 would not pose a significant threat to human life
8 or property in case of failure.

9 (c) *STATE PARTICIPATION.*—On request of a State
10 levee safety agency with respect to any levee subject to an
11 inspection under this Act and the failure of which would
12 affect the State, the Secretary shall—

13 (1) allow an official of the State levee safety
14 agency to participate in the inspection of the levee;
15 and

16 (2) provide information to the State levee safety
17 agency relating to the location, construction, oper-
18 ation, or maintenance of the levee.

19 (d) *DETERMINATION.*—

20 (1) *INSPECTION REQUIREMENTS.*—For the pur-
21 pose of determining whether the failure of a levee, in-
22 cluding the release of any water constrained by the
23 levee, constitutes a danger to human life or property,
24 the Secretary shall take into consideration the possi-
25 bility that the levee may be in danger of failing due

1 *to disparities in floodwall height or construction ma-*
2 *terials, overtopping due to flooding or storm surges,*
3 *seepage, settlement, piping or internal erosion, crack-*
4 *ing, earth movement, earthquakes, hurricanes, the*
5 *failure of bulkheads or sheet walls, flashboards, gates*
6 *or conduits, wetlands erosion, soil erosion, hydrologic*
7 *modification, or other conditions that exist or may*
8 *occur in any area in the vicinity of the levee.*

9 (2) *PREVIOUSLY-INSPECTED LEVEES.—For any*
10 *levee with respect to which the Secretary made any*
11 *determination regarding the safety of the levee before*
12 *the date of the inspection of the levee under this sec-*
13 *tion, the Secretary shall review the determination,*
14 *taking into consideration information most recently*
15 *available to the Secretary relating to the matters re-*
16 *ferred to in paragraph (1).*

17 (e) *INSPECTION RESULTS.—*

18 (1) *NOTICE TO STATES.—As soon as practicable*
19 *after the inspection of a levee under this Act, the Sec-*
20 *retary shall notify the Governor of the State in which*
21 *such levee is located, the Governor of any other af-*
22 *ected State, any affected local government authority,*
23 *and any affected federally recognized Indian tribe of*
24 *the results of the inspection.*

1 (2) *HAZARDOUS CONDITIONS.*—*If the Secretary*
2 *finds a hazardous condition during an inspection, the*
3 *Secretary shall—*

4 (A) *immediately notify the Governor of the*
5 *State in which such levee is located, the Governor*
6 *of any other affected State, any affected local*
7 *government authority, and any affected federally*
8 *recognized Indian tribe; and*

9 (B) *provide to a Governor or entity referred*
10 *to in subparagraph (A), upon request, advice re-*
11 *lating to timely remedial measures necessary to*
12 *mitigate or obviate the hazardous condition.*

13 (f) *NATIONAL LEVEE INVENTORY.*—

14 (1) *IN GENERAL.*—*Not later than August 1,*
15 *2007, and every 2 years thereafter, the Secretary shall*
16 *publish and submit to the Committee on Transpor-*
17 *tation and Infrastructure of the House of Representa-*
18 *tives and the Committee on Environment and Public*
19 *Works of the Senate an inventory of—*

20 (A) *levees subject to inspection under this*
21 *Act, and a characterization of the risk posed by*
22 *such levees; and*

23 (B) *levees identified by a State under sec-*
24 *tion 5(e)(2)(H).*

1 (2) *CONSIDERATIONS.*—*In determining the risk*
 2 *a levee poses under paragraph (1)(A), the Secretary*
 3 *shall consider the condition of the levee and the poten-*
 4 *tial impact on human lives and property if the levee*
 5 *fails.*

6 (3) *CONTENTS.*—*An inventory to be submitted*
 7 *under paragraph (1) shall include for each levee the*
 8 *following information:*

9 (A) *The location of the levee.*

10 (B) *The owner of the levee and any other re-*
 11 *sponsible party.*

12 (C) *The physical condition of the levee.*

13 (D) *The probability and consequences of a*
 14 *failure of the levee.*

15 **SEC. 4. INTERAGENCY COMMITTEE ON LEVEE SAFETY.**

16 (a) *ESTABLISHMENT.*—*There is established a com-*
 17 *mittee to be known as the “Interagency Committee on Levee*
 18 *Safety”.*

19 (b) *MEMBERSHIP.*—*The Committee shall be composed*
 20 *of 5 members as follows:*

21 (1) *The Secretary (or the Secretary’s designee),*
 22 *who shall serve as the chairperson of the Committee.*

23 (2) *The Secretary of Agriculture (or the Sec-*
 24 *retary’s designee).*

1 (3) *The Secretary of the Interior (or the Sec-*
2 *retary's designee).*

3 (4) *The Director of the Federal Emergency Man-*
4 *agement Agency (or the Director's designee).*

5 (5) *The United States Commissioner of the Inter-*
6 *national Boundary and Water Commission (or the*
7 *Commissioner's designee).*

8 (c) *DUTIES.—The Committee shall support the estab-*
9 *lishment and maintenance of effective Federal programs,*
10 *policies, and guidelines to enhance levee safety for the pro-*
11 *tection of human life and property through coordination*
12 *and information exchange among and between Federal and*
13 *non-Federal entities concerning the implementation of Fed-*
14 *eral guidelines relating to levee safety.*

15 (d) *NATIONAL LEVEE SAFETY ADVISORY BOARD.—*

16 (1) *ESTABLISHMENT.—The Committee shall es-*
17 *tablish an advisory board, to be known as the “Na-*
18 *tional Levee Safety Advisory Board”, to advise the*
19 *Committee on—*

20 (A) *the safety of levees in the United States;*

21 (B) *the implementation of this Act by State*
22 *levee safety agencies; and*

23 (C) *policy relating to national levee safety.*

24 (2) *MEMBERSHIP.—The Board shall be composed*
25 *of 14 members appointed by the Secretary as follows:*

1 (A) *A representative of State levee safety*
2 *agencies for each of the 8 civil works divisions of*
3 *the Corps of Engineers.*

4 (B) *2 representatives of the private sector*
5 *who have expertise in levee safety.*

6 (C) *4 representatives of local and regional*
7 *governmental agencies with expertise in levee*
8 *safety.*

9 (3) *DUTIES.—*

10 (A) *IN GENERAL.—The Board shall support*
11 *the activities of the Committee and the establish-*
12 *ment and maintenance of effective programs,*
13 *policies, and guidelines to enhance levee safety*
14 *for the protection of human life and property*
15 *throughout the United States.*

16 (B) *COORDINATION AND INFORMATION EX-*
17 *CHANGE AMONG AGENCIES.—In carrying out*
18 *subparagraph (A), the Board shall assist the*
19 *Committee in coordination and information ex-*
20 *change among and between Federal entities and*
21 *State levee safety agencies that share common*
22 *problems and responsibilities relating to levee*
23 *safety, including planning, design, construction,*
24 *operation, emergency action planning, inspec-*
25 *tions, maintenance, regulation or licensing, tech-*

1 *nical or financial assistance, research, and data*
 2 *management.*

3 (4) *COMPENSATION OF MEMBERS.*—*A member of*
 4 *the Board shall serve without compensation.*

5 (5) *TRAVEL EXPENSES.*—*To the extent amounts*
 6 *are made available in advance in appropriations*
 7 *Acts, the Secretary shall reimburse a member of the*
 8 *Board for travel expenses, including per diem in lieu*
 9 *of subsistence, at rates authorized for an employee of*
 10 *an agency under subchapter 1 of chapter 57 of title*
 11 *5, United States Code, while away from the home or*
 12 *regular place of business of the member in perform-*
 13 *ance of services for the Board.*

14 (6) *APPLICABILITY OF FEDERAL ADVISORY COM-*
 15 *MITTEE ACT.*—*The Federal Advisory Committee Act*
 16 *(5 U.S.C. App.) shall not apply to the Board.*

17 **SEC. 5. NATIONAL LEVEE SAFETY PROGRAM.**

18 (a) *IN GENERAL.*—*The Secretary, in consultation with*
 19 *the Committee and State levee safety agencies, shall estab-*
 20 *lish and maintain a national levee safety program.*

21 (b) *PURPOSES.*—*The purposes of the program under*
 22 *this section are—*

23 (1) *to ensure that human life and property pro-*
 24 *ected by new and existing levees are safe through the*
 25 *development of technologically, economically, socially,*

1 *and environmentally feasible programs and proce-*
2 *dures for hazard reduction and mitigation relating to*
3 *levees;*

4 *(2) to encourage acceptable engineering policies*
5 *and procedures to be used for levee site investigation,*
6 *design, construction, operation and maintenance, and*
7 *emergency preparedness;*

8 *(3) to encourage the establishment and imple-*
9 *mentation of effective levee safety programs in each*
10 *State;*

11 *(4) to develop and support public education and*
12 *awareness projects to increase public acceptance and*
13 *support of State levee safety programs;*

14 *(5) to build public awareness of the residual*
15 *risks associated with living in levee protected areas;*

16 *(6) to develop technical assistance materials for*
17 *Federal and State levee safety programs;*

18 *(7) to develop methods of providing technical as-*
19 *sistance relating to levee safety to non-Federal enti-*
20 *ties; and*

21 *(8) to develop technical assistance materials,*
22 *seminars, and guidelines to improve the security of*
23 *levees in the United States.*

24 *(c) STRATEGIC PLAN.—In carrying out the program*
25 *under this section, the Secretary shall—*

1 (1) *prepare a strategic plan to achieve the pur-*
2 *poses of the program under this section; and*

3 (2) *transmit, not later than 120 days after the*
4 *date of enactment of this Act, the plan to the Com-*
5 *mittee on Transportation and Infrastructure of the*
6 *House of Representatives and the Committee on Envi-*
7 *ronment and Public Works of the Senate.*

8 (d) *FEDERAL GUIDELINES.—*

9 (1) *IN GENERAL.—In carrying out the program*
10 *under this section, the Secretary, in consultation with*
11 *the Committee, shall establish Federal guidelines re-*
12 *lating to levee safety.*

13 (2) *INCORPORATION OF FEDERAL ACTIVITIES.—*
14 *The Federal guidelines under paragraph (1) shall in-*
15 *corporate, to the maximum extent practicable, activi-*
16 *ties and practices carried out by a Federal entity as*
17 *of the date on which the guidelines are established.*

18 (3) *INCORPORATION OF STATE AND LOCAL AC-*
19 *TIVITIES.—The program under this section shall in-*
20 *corporate, to the maximum extent practicable—*

21 (A) *the activities and practices carried out*
22 *by States, local governments, and the private sec-*
23 *tor to safely build, regulate, operate, and main-*
24 *tain levees; and*

1 (B) *Federal activities that foster State ef-*
2 *forts to develop and implement effective pro-*
3 *grams for the safety of levees.*

4 (e) *ASSISTANCE FOR STATE LEVEE SAFETY PRO-*
5 *GRAMS.—*

6 (1) *IN GENERAL.—To encourage the establish-*
7 *ment and maintenance of effective State programs in-*
8 *tended to ensure levee safety to protect human life*
9 *and property and to improve State levee safety pro-*
10 *grams, the Secretary shall provide assistance, using*
11 *amounts made available to carry out this Act, to as-*
12 *sist States in establishing and carrying out levee safe-*
13 *ty programs.*

14 (2) *CRITERIA.—To be eligible for assistance*
15 *under this subsection, a State shall be in the process*
16 *of establishing or have in effect a State levee safety*
17 *program under which the State levee safety agency, in*
18 *accordance with State law, shall—*

19 (A) *review and approve plans and speci-*
20 *fications to construct, enlarge, modify, remove,*
21 *and abandon levees;*

22 (B) *perform periodic inspections during*
23 *levee construction to ensure compliance with ap-*
24 *proved plans and specifications;*

1 (C) require or perform the inspection, at
2 least once every 5 years, of all levees that would
3 pose a significant threat to human life and prop-
4 erty in case of failure to determine the continued
5 safety of the levees and a procedure for more de-
6 tailed and frequent safety inspections;

7 (D) require that all inspections of levees be
8 performed under the supervision of a State-reg-
9 istered professional engineer with experience in
10 levee design and construction;

11 (E) issue notices, when appropriate, to re-
12 quire owners of levees to perform necessary
13 maintenance or remedial work, improve security,
14 revise operating procedures, or take other ac-
15 tions, including breaching levees when necessary;

16 (F) provide necessary funds from State
17 sources or by requiring levee owners to pay for
18 timely repairs or other changes to, or removal of,
19 a levee in order to protect human life and prop-
20 erty;

21 (G) establish a system of emergency proce-
22 dures to be used by the State, or required to be
23 used by levee owners, if a levee fails or the fail-
24 ure of a levee is imminent;

1 (H) identify and provide information to the
2 Secretary on—

3 (i) each levee the failure of which could
4 be reasonably expected to endanger human
5 life and property;

6 (ii) the maximum area that could be
7 flooded if the levee failed; and

8 (iii) critical public facilities that
9 would be affected by the flooding, including
10 costs and consequences of the flooding; and

11 (I) issue regulations necessary to carry out
12 the program.

13 (3) *BUDGETING REQUIREMENT.*—To be eligible
14 for assistance under this subsection, a State shall allo-
15 cate sufficient funds in its budget to carry out a State
16 levee safety program.

17 (4) *WORK PLANS.*—The Secretary shall enter
18 into an agreement with each State receiving assist-
19 ance under this subsection to develop a work plan
20 necessary for the State levee safety program to reach
21 a level of program performance specified in the agree-
22 ment.

23 (5) *MAINTENANCE OF EFFORT.*—Assistance may
24 not be provided to a State under this subsection for
25 a fiscal year unless the State enters into such agree-

1 *ment with the Secretary as the Secretary requires to*
 2 *ensure that the State will maintain the aggregate ex-*
 3 *penditures of the State from all other sources for pro-*
 4 *grams to ensure levee safety for the protection of*
 5 *human life and property at or above a level equal to*
 6 *the average annual level of such expenditures for the*
 7 *2 fiscal years preceding the fiscal year.*

8 *(6) APPROVAL OF PROGRAMS.—*

9 *(A) SUBMISSION.—To be eligible for assist-*
 10 *ance under this subsection, a State shall submit*
 11 *to the Secretary a State levee safety program*
 12 *and receive the Secretary's approval of the pro-*
 13 *gram.*

14 *(B) APPROVAL.—*

15 *(i) IN GENERAL.—If the Secretary de-*
 16 *termines that a program submitted by a*
 17 *State under subparagraph (A) substantially*
 18 *meets the requirements of this subsection,*
 19 *the Secretary shall approve the program*
 20 *and immediately notify the State in writ-*
 21 *ing of the approval.*

22 *(ii) DEEMED APPROVAL.—A program*
 23 *submitted by a State under subparagraph*
 24 *(A) shall be deemed to be approved by the*
 25 *Secretary on the 120th day following the*

1 *date of the Secretary's receipt of the pro-*
 2 *gram unless the Secretary before such 120th*
 3 *day approves or disapproves the program.*

4 (C) *NOTIFICATION OF DISAPPROVAL.—If the*
 5 *Secretary determines that a program submitted*
 6 *by a State under subparagraph (A) does not sub-*
 7 *stantially meet the requirements of this sub-*
 8 *section, the Secretary shall disapprove the pro-*
 9 *gram, immediately notify the State in writing of*
 10 *the disapproval, and provide the reasons for the*
 11 *disapproval and the changes that are necessary*
 12 *for the program to be approved.*

13 (7) *REVIEWS OF STATE LEVEE SAFETY PRO-*
 14 *GRAMS.—*

15 (A) *PERIODIC REVIEWS.—The Secretary*
 16 *shall periodically review State levee safety pro-*
 17 *grams.*

18 (B) *REVOCATION OF PROGRAM APPROVAL.—*
 19 *If the Secretary finds that a State levee safety*
 20 *program has proven inadequate to reasonably*
 21 *protect human life and property, the Secretary*
 22 *shall revoke approval of the State levee safety*
 23 *program, and withhold assistance under this*
 24 *subsection, until the State levee safety program*

1 *again substantially meets the requirements for*
 2 *approval.*

3 (f) *REPORT.*—*Not later than January 1, 2007, and*
 4 *every 2 years thereafter, the Secretary shall submit to the*
 5 *Committee on Transportation and Infrastructure of the*
 6 *House of Representatives and the Committee on Environ-*
 7 *ment and Public Works of the Senate a report describing—*

8 (1) *the status of the program under this section;*

9 (2) *the progress made by Federal entities during*
 10 *the 2 preceding fiscal years in implementing Federal*
 11 *guidelines relating to levee safety;*

12 (3) *the progress made by State levee safety agen-*
 13 *cies participating in the program; and*

14 (4) *recommendations for legislative or other ac-*
 15 *tion that the Secretary considers to be necessary, if*
 16 *any.*

17 **SEC. 6. RESEARCH PROGRAM.**

18 (a) *IN GENERAL.*—*The Secretary, in cooperation with*
 19 *the Committee, shall carry out a program of technical and*
 20 *archival research to develop and support—*

21 (1) *improved techniques, historical experience,*
 22 *and equipment for rapid and effective levee construc-*
 23 *tion, maintenance, rehabilitation, and inspection;*

24 (2) *the development of devices for the continued*
 25 *monitoring of levee safety;*

1 (3) *the development and maintenance of infor-*
 2 *mation resources systems required to manage levee*
 3 *safety projects; and*

4 (4) *public policy initiatives and other improve-*
 5 *ments relating to levee safety engineering, security,*
 6 *and management.*

7 (b) *PARTICIPATION BY STATE LEVEE SAFETY AGEN-*
 8 *CIES.—In carrying out the program under subsection (a),*
 9 *the Secretary shall—*

10 (1) *solicit participation from State levee safety*
 11 *agencies; and*

12 (2) *periodically update State levee safety agen-*
 13 *cies, the Committee on Transportation and Infra-*
 14 *structure of the House of Representatives, and the*
 15 *Committee on Environment and Public Works of the*
 16 *Senate on the status of the program.*

17 **SEC. 7. LEVEE SAFETY TRAINING PROGRAM.**

18 *Upon request of a State that has (or intends to de-*
 19 *velop) a State levee safety program, the Secretary shall es-*
 20 *tablish a program under which the Secretary shall provide*
 21 *training for State levee safety agency staff.*

22 **SEC. 8. EFFECT OF ACT.**

23 *Nothing in this Act—*

1 (1) *creates any liability of the United States or*
2 *its officers or employees for the recovery of damages*
3 *caused by an action or failure to act; or*

4 (2) *relieves an owner or operator of a levee of a*
5 *legal duty, obligation, or liability incident to the*
6 *ownership or operation of a levee.*

7 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

8 *There is authorized to be appropriated to the Secretary*
9 *to carry out this Act \$15,000,000 for each of fiscal years*
10 *2007 through 2012. Such sums shall remain available until*
11 *expended.*

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H. R. 4650

[Report No. 109-609]

A BILL

To direct the Secretary of the Army to carry out programs and activities to enhance the safety of levees in the United States.

JULY 28, 2006

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed