

110TH CONGRESS  
1ST SESSION

# H. R. 1052

To provide an option to proceed with an action in any Federal court to recover actual damages for physical or property damage in a major disaster that proximately results from the failure or negligence of the Army Corps of Engineers in the design, construction, or maintenance of a project for which the Corps is legally responsible.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2007

Mr. JEFFERSON (for himself, Mr. MELANCON, Ms. KILPATRICK, Mr. HASTINGS of Florida, Ms. JACKSON-LEE of Texas, Mr. BISHOP of Georgia, Ms. LEE, Mr. CLAY, Ms. MILLENDER-McDONALD, Mr. WATT, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. WYNN, Ms. NORTON, Mr. BUTTERFIELD, and Mrs. CHRISTENSEN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Transportation and Infrastructure, 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

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## A BILL

To provide an option to proceed with an action in any Federal court to recover actual damages for physical or property damage in a major disaster that proximately results from the failure or negligence of the Army Corps of Engineers in the design, construction, or maintenance of a project for which the Corps is legally responsible.

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 “Federal Engineering  
3 Accountability Act of 2007”.

4 **SEC. 2. CIVIL LIABILITY.**

5 (a) IN GENERAL.—Notwithstanding section 2680(a)  
6 of title 28, United States Code, and section 3 of the Flood  
7 Control Act of 1928 (33 U.S.C. 702c), and subject to sub-  
8 section (b), an action may be brought only in a Federal  
9 court for actual, not punitive, damages against the Army  
10 Corps of Engineers for the failure or negligence by the  
11 Corps to design, construct, or maintain a project, ad-  
12 versely impacted in a major disaster, for which the Corps  
13 is legally responsible.

14 (b) DETERMINATION OF LIABILITY.—An action  
15 brought under subsection (a) for monetary damages for  
16 injury or loss of property, or personal injury or death may  
17 proceed only if a claimant can demonstrate that—

18 (1) the Corps admitted by statement or in writ-  
19 ing that it failed or was negligent in designing, con-  
20 structing, or maintaining a project, adversely im-  
21 pacted by a major disaster, for which it was legally  
22 responsible; or

23 (2) the independent Commission established  
24 under section 3 makes a determination that the  
25 Corps failed or was negligent in designing, con-  
26 structing, or maintaining a project, adversely im-

1       pacted by the major disaster, for which the Corps  
2       was legally responsible.

3   **SEC. 3. COMMISSION.**

4       (a) ESTABLISHMENT.—There is hereby established a  
5   Commission to be known as the Federal Engineering Ac-  
6   countability Commission.

7       (b) DUTIES.—

8           (1) INITIAL DUTIES.—Not later than 60 days  
9       after a major disaster, the Commission shall begin  
10      an investigation to determine if the Corps failed or  
11      was negligent in designing, constructing, or main-  
12      taining a project, adversely impacted by such dis-  
13      aster, for which the Corps was legally responsible.

14          (2) INTERIM DUTIES.—Not later than 12  
15      months after a major disaster, the Committee shall  
16      complete its investigation under paragraph (1).

17          (3) REPORT.—Not later than 15 months after  
18      a major disaster, the Commission shall submit a re-  
19      port to the Secretary of the Army and the Secretary  
20      of the Department of Homeland Security regarding  
21      the findings of its investigation.

22      (c) MEMBERSHIP.—The Commission shall be com-  
23   posed of 7 members appointed by the President by and  
24   with the consent of the Senate.

1 (d) QUALIFICATIONS.—In appointing individuals to  
2 the Commission, the President shall consider—

3 (1) for appointment individuals who are experts  
4 in the field of civil engineering, water management,  
5 flood protection, or in another related area;

6 (2) the appointment of not more than 2 mem-  
7 bers who have ever worked for the Army Corps of  
8 Engineers;

9 (3) no appointment of a current employee of  
10 the Army Corps of Engineers or the Department of  
11 Homeland Security.

12 (e) TERMS OF APPOINTMENT.—Each member shall  
13 be appointed for a term of 5 years and terms may be re-  
14 newed for an unlimited number of additional 5-year terms.

15 (f) QUORUM.—At least 3 members of the Commission  
16 are necessary to conduct an investigation after a major  
17 disaster and to make a determination regarding the failure  
18 or negligence of the Corps in designing, constructing, or  
19 maintaining a project for which it is legally responsible.

20 (g) TRAVEL EXPENSES.—Each member shall receive  
21 travel expenses, including per diem in lieu of subsistence,  
22 in accordance with the applicable provisions under sub-  
23 chapter I of chapter 57 of title 5, United States Code.

24 (h) MEETINGS.—No later than 60 days after the oc-  
25 currence of a major disaster, the members shall convene

1 and begin its investigation and may meet as often as the  
2 members consider necessary during the 12-month period  
3 following the major disaster.

4 (i) SUBPOENA POWER.—

5 (1) IN GENERAL.—The Commission may issue  
6 subpoenas requiring the attendance and testimony of  
7 witnesses and the production of any evidence relat-  
8 ing to any matter under investigation by the Com-  
9 mission. The attendance of witnesses and the pro-  
10 duction of evidence may be required from any place  
11 within at any designated place of hearing within the  
12 United States.

13 (2) FAILURE TO OBEY A SUBPOENA.—If a per-  
14 son refuses to obey a subpoena issued under para-  
15 graph (1), the Commission may apply to a United  
16 States district court for an order requiring that per-  
17 son to appear before the Commission to give testi-  
18 mony, produce evidence, or both, relating to the  
19 matter under investigation. The application may be  
20 made within the judicial district where the hearing  
21 is conducted or where that person is found, resides,  
22 or transacts business. Any failure to obey the order  
23 of the court may be punished by the court as civil  
24 contempt.

1           (3) SERVICE OF SUBPOENAS.—The subpoenas  
2       of the Commission shall be served in the manner  
3       provided for subpoenas issued by a United States  
4       district court under the Federal Rules of Civil Pro-  
5       cedure for the United States district courts.

6           (4) SERVICE OF PROCESS.—All process of any  
7       Federal court to which application is made under  
8       paragraph (2) may be served in the judicial district  
9       in which the person required to be served resides or  
10      may be found.

11       (j) IMMUNITY.—Except as provided in this sub-  
12      section, a person may not be excused from testifying or  
13      from producing evidence pursuant to a subpoena on the  
14      ground that the testimony or evidence required by the sub-  
15      poena may tend to incriminate or subject that person to  
16      criminal prosecution. A person, after having claimed the  
17      privilege against self-incrimination, may not be criminally  
18      prosecuted by reason of any transaction, matter, or thing  
19      which that person is compelled to testify about or produce  
20      evidence relating to, except that the person may be pros-  
21      ecuted for perjury committed during the testimony or  
22      made in the evidence.

1 **SEC. 4. TIME FOR COMMENCING ACTION AGAINST THE**  
2 **CORPS.**

3 Every civil action commenced against the Army  
4 Corps of Engineers under section 2(a) shall be barred un-  
5 less the complaint is filed with 24 months after the earlier  
6 of the date in which—

7 (1) the Corps admitted by statement or in writ-  
8 ing that it failed or was negligent in designing, con-  
9 structing, or maintaining a project, adversely im-  
10 pacted by a major disaster, for which it was legally  
11 responsible; or

12 (2) an independent commission established  
13 under section 3 makes a determination that the  
14 Corps failed or was negligent in designing, con-  
15 structing, or maintaining a project, adversely im-  
16 pacted by the major disaster, for which the Corps  
17 was legally responsible.

18 **SEC. 5. NO STANDING.**

19 No State or local government shall have standing to  
20 bring an action under this Act. No insurance company  
21 shall have standing to bring an action under this Act to  
22 the extent that such insurance company's claim is founded  
23 in indemnity or recovery of claims the company has paid.

24 **SEC. 6. BENEFITS.**

25 A court shall not hear evidence or reduce an award  
26 made under this Act for any amounts the claimant re-

1 ceived from another party for injury or damages sustained  
2 in a major disaster proximately caused by the failure or  
3 negligence of the Army Corps of Engineers in the design,  
4 construction, or maintenance of a project, adversely im-  
5 pacted by a major disaster, for which the Corps is legally  
6 responsible.

7 **SEC. 7. NO SUBROGATION.**

8 An insurance company shall not have the right to  
9 seek subrogation for a claim.

10 **SEC. 8. MOTION FOR MANDAMUS.**

11 If the Commission fails to meet the deadlines speci-  
12 fied in this Act, a claimant may bring a motion to seek  
13 mandamus against the Commission.

14 **SEC. 9. DEFINITIONS.**

15 For purposes of this Act the following terms apply:

16 (1) The term “Commission” means the Federal  
17 Engineering Accountability Commission established  
18 under section 3.

19 (2) The term “Corps” means the Army Corps  
20 of Engineers.

21 (3) The term “major disaster” has the same  
22 meaning given such term in section 102 of the Rob-  
23 ert T. Stafford Disaster Relief and Emergency As-  
24 sistance Act (42 U.S.C. 5122).

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