

112TH CONGRESS
2D SESSION

S. 2202

To provide for the establishment of a private, nonprofit entity to assist the Government in providing disaster assistance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 2012

Mr. INOUE introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To provide for the establishment of a private, nonprofit entity to assist the Government in providing disaster assistance, 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,*

3 **SECTION 1. SHORT TITLE DEFINITIONS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Preparedness and Resilience Foundation Act”.

6 (b) DEFINITIONS.—In this Act—

7 (1) the term “Foundation” means the Pre-
8 paredness and Resilience Foundation established
9 under this Act;

1 (2) the terms “Board” and “Chair” mean the
2 board of directors of the Foundation and the Chair
3 of the board of directors, respectively;

4 (3) the terms “Department” and “Secretary”
5 mean the Department of Homeland Security and the
6 Secretary of Homeland Security, respectively;

7 (4) the term “Fund” means the Endowment
8 Fund established under this Act;

9 (5) the terms “FEMA” and “Administrator”
10 mean the Federal Emergency Management Agency
11 and the Administrator thereof, respectively; and

12 (6) the term “Director” means the executive di-
13 rector of the Foundation appointed under this Act.

14 **SEC. 2. ESTABLISHMENT AND DUTIES OF THE FOUNDA-**
15 **TION.**

16 (a) IN GENERAL.—There is established in accordance
17 with this section a nonprofit private corporation to be
18 known as the “Preparedness and Resilience Foundation”.
19 The Foundation shall not be an agency or instrumentality
20 of the Federal Government, and officers, employees, and
21 members of the board of directors of the Foundation shall
22 not be officers or employees of the Federal Government.

23 (b) PURPOSE OF THE FOUNDATION.—The purpose of
24 the Foundation shall be to support and carry out activities
25 that promote the resilience of individuals, communities,

1 structures, and systems against natural disasters and ter-
2 rorist attacks and other human caused disasters, and that
3 build and sustain the capabilities of the public, private,
4 and civic sectors to work together to prepare for, prevent,
5 protect against, respond to, recover from, and mitigate all
6 such hazards.

7 (c) ENDOWMENT FUND.—

8 (1) IN GENERAL.—In carrying out subsection
9 (b), the Foundation shall establish an Endowment
10 Fund for providing endowments for positions that
11 are associated with FEMA and dedicated to the pur-
12 pose described in subsection (b). The Fund shall
13 consist of such donations as may be provided by
14 non-Federal entities and such non-Federal assets of
15 the Foundation (including earnings of the Founda-
16 tion and the fund) as the Foundation may elect to
17 transfer to the Fund.

18 (2) AUTHORIZED EXPENDITURES OF THE
19 FUND.—The provision of funding and assistance
20 under paragraph (1) shall be the exclusive function
21 of the Fund. Such funds may be expended only for
22 the compensation of individuals holding positions en-
23 dowed by the Fund, for staff, equipment, quarters,
24 travel, and other expenditures that are appropriate
25 in supporting the positions endowed by the Fund,

1 and for recruiting individuals to hold the positions
2 endowed by the Fund.

3 (d) CERTAIN ACTIVITIES OF THE FOUNDATION.—In
4 carrying out subsection (b), the Foundation may provide
5 for, with respect to the purpose described in subsection
6 (b)—

7 (1) programs of fellowships among State, local,
8 and tribal officials to work and study in association
9 with each other and FEMA or the Department;

10 (2) programs of international arrangements to
11 provide opportunities for officials of other countries
12 engaged in preparedness or resilience programs and
13 activities to serve in voluntary or reciprocal capacities in the United States in association with FEMA
14 or the Department, or opportunities for employees of
15 FEMA (or other Federal officials in the United
16 States) to serve in such capacities in other countries,
17 or both;

18 (3) studies, projects, and research (which may
19 include applied research on the effectiveness of prevention activities, demonstration projects, and programs and projects involving international, Federal,
20 State, local, and tribal governments, private sector,
21 or non-governmental organizations);

1 (4) forums for government officials and appro-
 2 priate private entities to exchange information, par-
 3 ticipation in which may include institutions of higher
 4 education and appropriate international or non-gov-
 5 ernmental organizations;

6 (5) meetings, conferences, courses, and training
 7 workshops;

8 (6) programs to improve the collection and
 9 analysis of data on preparedness and resilience pro-
 10 grams, practices, activities, and events;

11 (7) programs for writing, editing, printing, and
 12 publishing of books and other materials; and

13 (8) other activities to carry out the purpose de-
 14 scribed in subsection (b).

15 (e) GENERAL STRUCTURE OF FOUNDATION; NON-
 16 PROFIT STATUS.—

17 (1) BOARD OF DIRECTORS.—The Foundation
 18 shall have a board of directors, which shall be estab-
 19 lished and conducted in accordance with subsection
 20 (f). The Board shall establish the general policies of
 21 the Foundation for carrying out subsection (b), in-
 22 cluding the establishment of the bylaws of the Foun-
 23 dation.

24 (2) EXECUTIVE DIRECTOR.—The Foundation
 25 shall have an executive director, who shall be ap-

1 pointed by the Board, who shall serve at the pleas-
 2 ure of the Board, and for whom the Board shall es-
 3 tablish the rate of compensation. Subject to compli-
 4 ance with the policies and bylaws established by the
 5 Board pursuant to paragraph (1), the Director shall
 6 be responsible for the daily operations of the Foun-
 7 dation.

8 (3) NONPROFIT STATUS.—In carrying out sub-
 9 section (b), the Board shall establish such policies
 10 and bylaws under paragraph (1), and the Director
 11 shall carry out such activities under paragraph (2),
 12 as may be necessary to ensure that the Foundation
 13 maintains status as an organization that—

14 (A) is described in section 501(c)(3) of the
 15 Internal Revenue Code of 1986 (26 U.S.C.
 16 501(c)(3)); and

17 (B) is, under section 501(a) of such Code,
 18 exempt from taxation.

19 (f) BOARD OF DIRECTORS.—

20 (1) CERTAIN BYLAWS.—In establishing bylaws
 21 under subsection (e)(1), the Board shall ensure that
 22 the bylaws of the Foundation—

23 (A) include policies for—

1 (i) the selection of the officers, em-
2 ployees, agents, and contractors of the
3 Foundation;

4 (ii) the acceptance and disposition of
5 donations to the Foundation and for, the
6 disposition of the assets of the Foundation,
7 including ethical standards;

8 (iii) the conduct of the general oper-
9 ations of the Foundation; and

10 (iv) writing, editing, printing, and
11 publishing of books and other materials,
12 and the acquisition of patents and licenses
13 for devices and procedures developed by
14 the Foundation; and

15 (B) do not, including with respect to the
16 activities carried out under the bylaws—

17 (i) reflect unfavorably upon the ability
18 of the Foundation or FEMA to carry out
19 its responsibilities or official duties in a
20 fair and objective manner; or

21 (ii) compromise, or appear to com-
22 promise, the integrity of any governmental
23 program or any officer or employee in-
24 volved in such a program.

25 (2) COMPOSITION.—The Board—

(A) subject to subparagraph (B), shall be composed of 7 individuals, appointed in accordance with paragraph (4), who—

(i) collectively possess education or experience appropriate for representing the general field of emergency management, preparedness, or resilience, and the general public; and

(ii) each shall be a voting member of the Board; and

(B) may, through amendments to the bylaws of the Foundation, provide that the number of members of the Board shall be a greater number than the number specified in subparagraph (A).

(3) CHAIR.—The Board shall, from among the members of the Board, designate an individual to serve as the chair of the Board.

(4) APPOINTMENTS, VACANCIES, AND TERMS.—Subject to subsection (j), the following shall apply to the Board:

(A) VACANCIES.—Any vacancy in the membership of the Board shall be filled by appointment by the Board, after consideration of suggestions made by the Chair and the Director

1 regarding the appointment. Any such vacancy
2 shall be filled not later than the expiration of
3 the 180-day period beginning on the date on
4 which the vacancy occurs.

5 (B) TERM OF OFFICE.—The term of office
6 of each member of the Board appointed under
7 subparagraph (A) shall be 5 years. A member
8 of the Board may continue to serve after the
9 expiration of the term of the member until the
10 expiration of the 180-day period beginning on
11 the date on which the term of the member ex-
12 pires.

13 (C) VACANCY DOES NOT AFFECT AUTHOR-
14 ITY.—A vacancy in the membership of the
15 Board shall not affect the power of the Board
16 to carry out the duties of the Board. If a mem-
17 ber of the Board does not serve the full term
18 applicable under subparagraph (B), the indi-
19 vidual appointed to fill the resulting vacancy
20 shall be appointed for the remainder of the sub-
21 ject term.

22 (5) COMPENSATION.—Members of the Board
23 may not receive compensation for service on the
24 Board. The members may be reimbursed for travel,

1 subsistence, and other necessary expenses incurred
2 in carrying out the duties of the Board.

3 (g) CERTAIN RESPONSIBILITIES OF THE EXECUTIVE
4 DIRECTOR.—The Director shall—

5 (1) hire, promote, compensate, and discharge
6 officers and employees of the Foundation, and define
7 the duties of the officers and employees;

8 (2) accept and administer donations to the
9 Foundation, and administer the assets of the Foun-
10 dation;

11 (3) establish a process for the selection of can-
12 didates for holding endowed positions under sub-
13 section (c);

14 (4) enter into such financial agreements as are
15 appropriate in carrying out the activities of the
16 Foundation;

17 (5) take such action as may be necessary to ac-
18 quire patents and licenses for devices and procedures
19 developed by the Foundation and the employees of
20 the Foundation;

21 (6) adopt, alter, and use a corporate seal, which
22 shall be judicially noticed;

23 (7) commence and respond to judicial pro-
24 ceedings in the name of the Foundation; and

1 (8) exercise such other functions as are appro-
2 priate, in the determination of the Director.

3 (h) GENERAL PROVISIONS.—

4 (1) AUTHORITY FOR ACCEPTING FUNDS.—The
5 Administrator of FEMA may accept and utilize, on
6 behalf of the Federal Government, any gift, dona-
7 tion, bequest, or devise of real or personal property
8 from the Foundation for the purpose of aiding or fa-
9 cilitating the work of FEMA. Funds may be accept-
10 ed and utilized by the Administrator without regard
11 to whether the funds are designated as general-pur-
12 pose funds or special-purpose funds.

13 (2) AUTHORITY FOR ACCEPTANCE OF VOL-
14 UNTARY SERVICES.—

15 (A) IN GENERAL.—The Administrator of
16 FEMA may accept, on behalf of the Federal
17 Government, any voluntary services provided by
18 the Foundation for the purpose of aiding or fa-
19 cilitating the work of the Federal Government.
20 In the case of an individual, such Administrator
21 may accept the services provided under this
22 subparagraph by the individual until such time
23 as the private funding for such individual ends.

24 (B) CLARIFICATION.—The limitation es-
25 tablished in subparagraph (A) regarding the pe-

1 riod of time in which services may be accepted
2 applies to each individual who is not an em-
3 ployee of the Federal Government and who
4 serves in association with FEMA pursuant to
5 financial support from the Foundation.

6 (3) ADMINISTRATIVE CONTROL.—No officer,
7 employee, or member of the Board may exercise any
8 administrative or managerial control over any Fed-
9 eral employee.

10 (4) APPLICABILITY OF CERTAIN STANDARDS TO
11 NON-FEDERAL EMPLOYEES.—In the case of any in-
12 dividual who is not an employee of the Federal Gov-
13 ernment and who serves in association with FEMA
14 pursuant to financial support from the Foundation,
15 the Foundation shall negotiate a memorandum of
16 understanding with the individual and the Adminis-
17 trator of FEMA specifying that the individual—

18 (A) shall be subject to the ethical and pro-
19 cedural standards regulating Federal employ-
20 ment, scientific investigation, and research find-
21 ings (including publications and patents) that
22 are required of individuals employed by FEMA,
23 including standards under this Act, the Ethics
24 in Government Act, and the Technology Trans-
25 fer Act; and

1 (B) shall be subject to such ethical and
2 procedural standards under chapter 11 of title
3 18, United States Code (relating to conflicts of
4 interest), as the Administrator of FEMA deter-
5 mines is appropriate, except that such memo-
6 randum may not provide that the individual
7 shall be subject to the standards of section 209
8 of such chapter (18 U.S.C. 209).

9 (5) FINANCIAL CONFLICTS OF INTEREST.—Any
10 individual who is an officer, employee, or member of
11 the Board may not directly or indirectly participate
12 in the consideration or determination by the Foun-
13 dation of any question affecting—

14 (A) any direct or indirect financial interest
15 of the individual; or

16 (B) any direct or indirect financial interest
17 of any business organization or other entity of
18 which the individual is an officer or employee or
19 in which the individual has a direct or indirect
20 financial interest.

21 (6) AUDITS; AVAILABILITY OF RECORDS.—The
22 Foundation shall—

23 (A) provide for biennial audits of the fi-
24 nancial condition of the Foundation; and

(B) make such audits, and all other records, documents, and other papers of the Foundation, available to the Secretary and the Comptroller General of the United States for examination or audit.

(7) REPORTS.—

(A) ANNUAL REPORTS.—

(i) IN GENERAL.—Not later than February 1 of each fiscal year, the Foundation shall publish a report describing the activities of the Foundation during the preceding fiscal year.

(ii) CONTENT.—Each such report required under this paragraph shall include for the fiscal year involved a comprehensive statement of the operations, activities, financial condition, and accomplishments of the Foundation, including—

(I) an accounting of the use of amounts provided for under subsection (i); and

(II) an explanation of how such funding has enhanced, and not supplanted, FEMA core missions.

(B) SPECIFIC DETAILS.—With respect to the financial condition of the Foundation, each report under subparagraph (A) shall include the source, and a description of, all gifts to the Foundation of real or personal property, and the source and amount of all gifts to the Foundation of money. Each such report shall include a specification of any restrictions on the purposes for which gifts to the Foundation may be used.

(C) AVAILABILITY OF REPORTS.—The Foundation shall make copies of each report submitted under subparagraph (A) available—

(i) for public inspection, and shall upon request provide a copy of the report to any individual for a charge not to exceed the cost of providing the copy; and

(ii) to the appropriate committees of Congress.

(8) LIAISON FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY.—The Administrator of FEMA shall serve as the liaison representative of FEMA to the Board and the Foundation.

(i) FEDERAL FUNDING.—

(1) AUTHORITY FOR ANNUAL GRANTS.—

1 (A) IN GENERAL.—The Administrator of
2 FEMA shall—

3 (i) for fiscal year 2013, make a grant
4 to an entity described in subsection (j)(9)
5 (relating to the establishment of a com-
6 mittee to establish the Foundation);

7 (ii) for fiscal year 2014, make a grant
8 to the committee established under sub-
9 section (j), or if the Foundation has been
10 established, to the Foundation; and

11 (iii) for fiscal year 2015, and each fis-
12 cal year thereafter, make a grant to the
13 Foundation.

14 (B) LIMITATIONS.—A grant under sub-
15 paragraph (A) may be expended—

16 (i) in the case of an entity receiving
17 the grant under subparagraph (A)(i), only
18 for the purpose of carrying out the duties
19 established in subsection (j)(9) for the en-
20 tity;

21 (ii) in the case of the committee es-
22 tablished under subsection (j)(9), only for
23 the purpose of carrying out the duties es-
24 tablished in subsection (j) for the com-
25 mittee; and

1 (iii) in the case of the Foundation,
2 only for the purpose of the administrative
3 expenses of the Foundation.

4 (C) LIMIT ON GRANT USES.—A grant
5 under subparagraph (A) may not be expended
6 to provide amounts for the Fund.

7 (D) UNOBLIGATED AMOUNTS.—For the
8 purposes described in subparagraph (B)—

9 (i) any portion of the grant made
10 under subparagraph (A)(i) for fiscal year
11 2013 that remains unobligated after the
12 entity receiving the grant completes the
13 duties established in subsection (j)(9) for
14 the entity shall be available to the com-
15 mittee established under subsection (j)(9);
16 and

17 (ii) any portion of a grant under sub-
18 paragraph (A) made for fiscal year 2014
19 that remains unobligated after such com-
20 mittee completes the duties established in
21 subsection (j)(9) for the committee shall be
22 available to the Foundation.

23 (2) FUNDING FOR GRANTS.—For the purpose
24 of grants under paragraph (1)—

1 (A) there is authorized to be appropriated
 2 \$1,500,000 for each fiscal year; and

3 (B) the Administrator of FEMA may, for
 4 each fiscal year, make available not less than
 5 \$500,000, and not more than \$1,500,000 from
 6 the amounts appropriated for the fiscal year for
 7 the programs of FEMA.

8 (3) CERTAIN RESTRICTION.—If the Foundation
 9 receives Federal funds for the purpose of serving as
 10 a fiscal intermediary between Federal agencies, the
 11 Foundation may not receive such funds for the indi-
 12 rect costs of carrying out such purpose in an amount
 13 exceeding 10 percent of the direct costs of carrying
 14 out such purpose. This paragraph may not be con-
 15 strued as authorizing the expenditure of any grant
 16 under paragraph (1) for such purpose.

17 (4) SUPPORT SERVICES.—The Administrator of
 18 FEMA may provide facilities, utilities, and support
 19 services to the Foundation if it is determined by the
 20 Administrator to be advantageous to the programs
 21 of FEMA or the Department.

22 (j) COMMITTEE FOR ESTABLISHMENT OF FOUNDA-
 23 TION.—

24 (1) IN GENERAL.—There is established in ac-
 25 cordance with this subsection a committee to carry

1 out the functions described in paragraph (2) (re-
2 ferred to in this subsection as the “Committee”).

3 (2) FUNCTIONS.—The functions referred to in
4 paragraph (1) for the Committee are as follows:

5 (A) To carry out such activities as may be
6 necessary to incorporate the Foundation under
7 the laws of the State involved, including serving
8 as incorporators for the Foundation. Such ac-
9 tivities shall include ensuring that the articles
10 of incorporation for the Foundation require
11 that the Foundation be established and oper-
12 ated in accordance with the applicable provi-
13 sions of this Act.

14 (B) To ensure that the Foundation quali-
15 fies for and maintains the nonprofit status de-
16 scribed in subsection (e)(3).

17 (C) To establish the general policies and
18 initial bylaws of the Foundation, which bylaws
19 shall include the bylaws described in subsections
20 (e)(3) and (f)(1).

21 (D) To provide for the initial operation of
22 the Foundation, including providing for quar-
23 ters, equipment, and staff.

24 (E) To appoint the initial members of the
25 Board in accordance with the requirements es-

1 tablished in subsection (f)(2)(A) for the com-
 2 position of the Board, and in accordance with
 3 such other qualifications as the Committee may
 4 determine to be appropriate regarding such
 5 composition. Of the Board members so ap-
 6 pointed—

7 (i) 2 shall be appointed to serve for a
 8 term of 3 years;

9 (ii) 2 shall be appointed to serve for
 10 a term of 4 years; and

11 (iii) 3 shall be appointed to serve for
 12 a term of 5 years.

13 (3) COMPLETION OF FUNCTIONS OF THE COM-
 14 MITTEE; INITIAL MEETING OF BOARD.—

15 (A) IN GENERAL.—The Committee shall
 16 complete the functions required in paragraph
 17 (1) not later than September 30, 2014.

18 (B) TERMINATION.—The Committee shall
 19 terminate upon the expiration of the 30-day pe-
 20 riod beginning on the date on which the Sec-
 21 retary determines that the functions of the
 22 Committee have been completed.

23 (C) INITIAL MEETING.—The initial meet-
 24 ing of the Board shall be held not later than
 25 November 1, 2014.

1 (4) COMPOSITION.—The Committee shall be
2 composed of 5 members, each of whom shall be a
3 voting member. Of the members of the Committee—

4 (A) not fewer than 2 shall have broad, gen-
5 eral experience in emergency management, pre-
6 paredness, or resilience; and

7 (B) not fewer than 2 shall have broad,
8 general experience in nonprofit private organi-
9 zations.

10 (5) CHAIRPERSON.—The Committee shall, from
11 among the members of the Committee, designate an
12 individual to serve as the chairperson of the Com-
13 mittee.

14 (6) TERMS; VACANCIES.—The term of members
15 of the Committee shall be for the duration of the
16 Committee. A vacancy in the membership of the
17 Committee shall not affect the power of the Com-
18 mittee to carry out the duties of the Committee. If
19 a member of the Committee does not serve the full
20 term, the individual appointed to fill the resulting
21 vacancy shall be appointed for the remainder of the
22 term subject.

23 (7) COMPENSATION.—Members of the Com-
24 mittee may not receive compensation for service on
25 the Committee. Members of the Committee may be

1 reimbursed for travel, subsistence, and other nec-
2 essary expenses incurred in carrying out the duties
3 of the Committee.

4 (8) COMMITTEE SUPPORT.—The Administrator
5 of FEMA may, from amounts available to the Ad-
6 ministrator for the general administration of FEMA,
7 provide staff and financial support to assist the
8 Committee with carrying out the functions described
9 in paragraph (2). In providing such staff and sup-
10 port, the Administrator may both detail employees
11 and contract for assistance.

12 (9) GRANT FOR ESTABLISHMENT OF THE COM-
13 MITTEE.—

14 (A) IN GENERAL.—With respect to a grant
15 under subsection (i)(1)(A)(i) for fiscal year
16 2013, an entity described in this paragraph is
17 a private nonprofit entity with significant expe-
18 rience in domestic and international issues of
19 emergency management, preparedness, or resil-
20 ience.

21 (B) CONDITIONS.—The grant referred to
22 in subparagraph (A) may be made to an entity
23 only if the entity agrees that—

1 (i) the entity will establish a com-
2 mittee that is composed in accordance with
3 paragraph (4); and

4 (ii) the entity will not select an indi-
5 vidual for membership on the Committee
6 unless the individual agrees that the Com-
7 mittee will operate in accordance with each
8 of the provisions of this subsection that re-
9 late to the operation of the Committee.

10 (C) GRANT TERMS.—The Administrator of
11 FEMA may make a grant referred to in sub-
12 paragraph (A) only if the applicant for the
13 grant makes an agreement that the grant will
14 not be expended for any purpose other than
15 carrying out subparagraph (B). Such a grant
16 may be made only if an application for the
17 grant is submitted to the Administrator con-
18 taining such agreement, and the application is
19 in such form, is made in such manner, and con-
20 tains such other agreements and such assur-
21 ances and information as the Administrator de-
22 termines to be necessary to carry out this para-
23 graph.

1 **SEC. 3. PERFORMANCE EVALUATIONS.**

2 (a) IN GENERAL.—To ensure that the Foundation
3 and its grantees are meeting their objectives, the Board
4 shall establish and implement performance evaluations—

5 (1) that monitor and evaluate the performance
6 and impact of the Foundation program activities in
7 a specific, measurable, achievable, relevant, and
8 timely fashion; and

9 (2) that assess the financial accountability of
10 appropriated and donated funds.

11 (b) IMPACT OR OUTCOME EVALUATIONS.—The
12 Board shall establish mechanisms to evaluate and assess
13 the effectiveness of individual programs supported by the
14 Foundation. Impact or outcome evaluations such as bal-
15 anced scorecard, innovations in risk reduction, and return
16 on investment shall be employed and reported through the
17 annual report of the Foundation under section 2(h)(7)(A).

18 (c) USE OF EVALUATION RESULTS.—The Founda-
19 tion shall—

20 (1) identify through its annual report under
21 section 2(h)(7)(A) its greatest needs and the ways
22 that the Foundation or others, will use evaluation
23 results; and

24 (2) use such information to set priorities for the
25 Foundation.

