



Legislative Bulletin.....January 14, 2013

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H.R. ____— The Sandy Recovery Improvement Act of 2013

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Order of Business: The bill is scheduled to be considered on Monday, January 14, 2013, under a motion to suspend the rules and pass the bill.

Summary: The legislation would streamline the government's procedures for responding to disasters. The following are highlights of the legislation.

Public Assistance Program Alternative Procedures

The legislation would allow the President, acting through the administrator of the Federal Emergency Management Agency (FEMA), to approve projects under the alternative procedures for any major disaster or emergency declared on, after, or before the date of enactment of this law. Participation in the alternative procedures shall be at the election of a State, tribal or local government, or owner or operator of a private nonprofit facility consistent with procedures determined by the Administrator. The goal of the new procedures is to:

- reduce the costs to the Federal Government of providing such assistance;
- increase flexibility in the administration of such assistance;
- expedite the provision of such assistance to a State, tribal or local government, or owner or operator of a private nonprofit facility; and
- provide financial incentives and disincentives for a State, tribal or local government, or owner or operator of a private nonprofit facility for the timely and cost-effective completion of projects with such assistance.

The alternative procedures for repair, restoration, and replacement of damaged facilities shall include the following:

- making grants on the basis of fixed estimates, if the State, tribal or local government, or owner or operator of the private nonprofit facility agrees to be responsible for any actual costs that exceed the estimate;
- providing an option for a State, tribal or local government, or owner or operator of a private nonprofit facility to elect to receive an in-lieu contribution, without reduction, on the basis of estimates of:
 - the cost of repair, restoration, reconstruction, or replacement of a public facility owned or controlled by the State, tribal or local government or owner or operator of a private nonprofit facility; and
 - management expenses;
- consolidating, to the extent determined appropriate by the Administrator, the facilities of a State, tribal or local government, or owner or operator of a private nonprofit facility as a single project based upon the estimates adopted under the procedures;
- if the actual costs of a project completed under the procedures are less than the estimated costs thereof, the Administrator may permit a grantee or subgrantee to use all or part of the excess funds for—
 - cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster; and
 - other activities to improve future Public Assistance operations or planning;
- in determining eligible costs under this legislation, the Administrator shall make available, at an applicant’s request and where the Administrator or the certified cost estimate prepared by the applicant’s professionally licensed engineers has estimated an eligible Federal share for a project of at least \$5,000,000, an independent expert panel to validate the estimated eligible cost consistent with applicable regulations and policies implementing this section; and
- in determining eligible costs this legislation, the Administrator shall, at the applicant’s request, consider properly conducted and certified cost estimates prepared by professionally licensed engineers (mutually agreed upon by the Administrator and the applicant), to the extent that such estimates comply with applicable regulations, policy, and guidance.

As it pertains to debris removal:

- making grants on the basis of fixed estimates to provide financial incentives and disincentives for the timely or cost-effective completion if the State, tribal or local government, or owner or operator of the private nonprofit facility agrees to be responsible to pay for any actual costs that exceed the estimate;
- using a sliding scale for determining the Federal share for removal of debris and wreckage based on the time it takes to complete debris and wreckage removal;

- allowing use of program income from recycled debris without offset to the grant amount;
- reimbursing base and overtime wages for employees and extra hires of a State, tribal or local government, or owner or operator of a private nonprofit facility performing or administering debris and wreckage removal;
- providing incentives to a State or tribal or local government to have a debris management plan approved by the Administrator and have pre-qualified 1 or more debris and wreckage removal contractors before the date of declaration of the major disaster; and
- if the actual costs of projects under this legislation are less than the estimated costs of the project, the Administrator may permit a grantee or sub-grantee to use all or part of the excess funds for:
 - debris management planning;
 - acquisition of debris management equipment for current or future use; and
 - other activities to improve future debris removal operations, by the Administrator.

The legislation requires that until such time as the Administrator promulgates regulations to implement this legislation, the Administrator may:

- waive notice and comment rulemaking, if the Administrator determines the waiver is necessary to expeditiously implement this bill; and
- carry out the alternative procedures under this act as a pilot program.

The legislation requires that not earlier than 3 years, and not later than 5 years, after the date of enactment of this legislation, the Inspector General of the Department of Homeland Security shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the alternative procedures for the repair, restoration, and replacement of damaged facilities which is authorized under this legislation. The report is required contain an assessment of the effectiveness of the alternative procedures, including:

- whether the alternative procedures helped to improve the general speed of disaster recovery;
- the accuracy of the estimates relied upon;
- whether the financial incentives and disincentives were effective;
- whether the alternative procedures were cost effective;
- whether the independent expert panel described in the new alternative procedures was effective; and
- recommendations for whether the alternative procedures should be continued and any recommendations for changes to the alternative procedures.

Federal Assistance to Individuals and Households

The Legislation allows allow FEMA to lease and make repairs to damaged private multifamily rental properties in order to house disaster victims if that proves more cost-effective than the manufactured homes the agency typically offers. The legislation allows the President, to the extent the President determines it would be a cost-effective alternative to other temporary housing options, may:

- enter into lease agreements with owners of multifamily rental property located in areas covered by a major disaster declaration to house individuals and households eligible for assistance under this section; and
- make repairs or improvements to properties under such lease agreements, to the extent necessary to serve as safe and adequate temporary housing.

Hazard Mitigation

The legislation would require the president to ensure that environmental reviews for hazard-mitigation projects are completed expeditiously. The legislation requires the president to streamline environmental and historic requirements for rebuilding infrastructure. The President is required to ensure that:

- adequate resources are devoted to ensure that applicable environmental reviews under the National Environmental Policy Act of 1969 and historic preservation reviews under the National Historic Preservation Act are completed on an expeditious basis; and
- the shortest existing applicable process under the National Environmental Policy Act of 1969 and the National Historic Preservation Act is utilized.

The legislation also allows the President to utilize expedited procedures in addition to those required for the purpose of providing assistance under this law, such as procedures under the Prototype Programmatic Agreement of the FEMA, for the consideration of multiple structures as a group and for an analysis of the cost-effectiveness and fulfillment of cost-share requirements for proposed hazard mitigation measures. The President may provide not more than 25 percent of the amount of the estimated cost of hazard mitigation measures to a State grantee eligible for a grant under this legislation before eligible costs are incurred.

Dispute Resolution Pilot Program

The legislation creates a pilot program to help resolve disputes between FEMA and the states over which damages are eligible for federal reimbursements. The pilot program would offer the arbitration by an independent review panel and the program sunsets at the end of 2015. The dispute procedures established under this bill shall:

- allow a party of a dispute relating to eligible assistance to request an independent review panel for the review;
- require a party requesting an independent review panel to agree to forgo rights to any further appeal of the dispute relating to any eligible assistance;
- require that the sponsor of an independent review panel for any alternative dispute resolution under this bill be:
 - an individual or entity unaffiliated with the dispute (which may include a Federal agency, an administrative law judge, or a reemployed annuitant who was an employee of the Federal Government) selected by the Administrator; and
 - responsible for identifying and maintaining an adequate number of independent experts qualified to review and resolve disputes under this section;
- require an independent review panel to:
 - resolve any remaining disputed issue in accordance with all applicable laws, regulations, and Agency interpretations of those laws through its published policies and guidance;
 - consider only evidence contained in the administrative record, as it existed at the time at which the Agency made its initial decision;
 - only set aside a decision of the Agency found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; and
 - in the case of a finding of material fact adverse to the claimant made on first appeal, only set aside or reverse such finding if the finding is clearly erroneous.
- require an independent review panel to expeditiously issue a written decision for any alternative dispute resolution under this section; and
- direct that if an independent review panel for any alternative dispute resolution under this section determines that the basis upon which a party submits a request for alternative dispute resolution is frivolous, the independent review panel shall direct the party to pay the reasonable costs to the FEMA relating to the review by the independent review panel. Any funds received by the FEMA under the authority of this section shall be deposited to the credit of the appropriation or appropriations available for the eligible assistance in dispute on the date on which the funds are received. The legislation requires that not later than 270 days after the termination of authority of this act, the Comptroller General of the United States shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report analyzing the effectiveness of the program under this section.

Other Provisions

The legislation requires that not later than 18 months after the date of enactment of this bill, and in consultation with the Council on Environmental Quality and the Advisory Council on Historic

Preservation, the President shall establish an expedited and unified interagency review process to ensure compliance with environmental and historic requirements under Federal law relating to disaster recovery projects, in order to expedite the recovery process, consistent with applicable law. The legislation requires FEMA to review and update, through a rule-making process, the factors taken into account for disbursing assistance to individuals. Lastly the legislation would permit federally recognized tribes to request a disaster declaration even if their state does not and allow the president to waive cost-sharing requirements.

Committee Action: The legislation was introduced by Rep. Jeff Denham on January 14, 2013. This bill is similar to legislation introduced by Rep. Jeff Denham in the 112th Congress, H.R. [H.R. 2903](#), which passed by a [voice vote](#).

Administration Position: No statement of administration position was available at press time.

Cost to Taxpayers: No CBO report was available at the time of this bulletin's distribution.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill creates new programs in order to streamline government procedures.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment?: No.

Does the Bill Delegate Any Legislative Authority to the Executive Branch?: Yes, the legislation allows the President to expedite the process to which to disburse funds to states.

Does the Bill Contain Any Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: An earmarks/revenue benefits statement required under House Rule XXI, Clause 9(a) was not available at press time.

What Is the Constitutional Authority for the Legislation?: No statement of constitutional authority was available at the time of this bulletin's distribution.

Outside Organizations:

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NOTE: This bulletin is not a statement of support or opposition.