

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 4493

To reestablish the Federal Emergency Management Agency as a cabinet-level independent establishment in the executive branch that is responsible for the Nation's preparedness and response to disasters, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2005

Mr. OBERSTAR (for himself, Ms. NORTON, Mr. CUMMINGS, Ms. MILLENDER-McDONALD, Mr. HIGGINS, Ms. CORRINE BROWN of Florida, Mr. COSTELLO, Ms. BERKLEY, Mr. RAHALL, Mr. BAIRD, Mr. NADLER, Ms. CARSON, Mr. CAPUANO, Mr. DEFazio, Mr. HONDA, Mr. LARSEN of Washington, Mr. BLUMENAUER, Mr. SALAZAR, Mr. HOLDEN, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. WEINER, Mr. BISHOP of New York, Mr. CARNAHAN, Mr. FILNER, Mr. MENENDEZ, Mr. TAYLOR of Mississippi, Mr. BOSWELL, Mr. MATHESON, Ms. SCHWARTZ of Pennsylvania, Mr. CHANDLER, Mr. MICHAUD, and Mr. DAVIS of Tennessee) 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

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## A BILL

To reestablish the Federal Emergency Management Agency as a cabinet-level independent establishment in the executive branch that is responsible for the Nation's preparedness and response to disasters, 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 “Federal Emergency  
3 Management Agency Restoration Act”.

4 **SEC. 2. FEDERAL EMERGENCY MANAGEMENT AGENCY.**

5 (a) INDEPENDENT ESTABLISHMENT.—The Federal  
6 Emergency Management Agency shall be a cabinet-level  
7 independent establishment in the executive branch that is  
8 responsible for emergency preparedness, response, recov-  
9 ery, and mitigation for all hazards, including major disas-  
10 ters, acts of terrorism, and other emergencies.

11 (b) DIRECTOR.—

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

20 (2) QUALIFICATION.—The Director shall be ap-  
21 pointed from among persons who have extensive ex-  
22 perience in emergency preparedness, response, recov-  
23 ery, and mitigation for all hazards, including major  
24 disasters, acts of terrorism, and other emergencies.

25 (3) TERM OF OFFICE.—The term of office of an  
26 individual appointed as the Director shall be 5 years.

1 Such individual may be appointed in accordance  
2 with paragraph (1) for an additional term of 5  
3 years.

4 (4) CONFORMING AMENDMENT.—Section 5312  
5 of title 5, United States Code, is amended by adding  
6 at the end the following:

7 “Director of the Federal Emergency Manage-  
8 ment Agency.”.

9 (c) DEPUTY DIRECTOR.—

10 (1) IN GENERAL.—The Federal Emergency  
11 Management Agency shall have one deputy director  
12 appointed in the competitive service by the Director.

13 (2) QUALIFICATIONS.—The Deputy Director  
14 shall be appointed from among persons who have ex-  
15 tensive experience in emergency preparedness, re-  
16 sponse, recovery, and mitigation for all hazards, in-  
17 cluding major disasters, acts of terrorism, and other  
18 emergencies.

19 (3) DUTIES.—The Deputy Director shall—

20 (A) carry out duties and powers prescribed  
21 by the Director;

22 (B) serve as a liaison to the Department of  
23 Homeland Security in the event of an act of  
24 terrorism; and

1 (C) act for the Director when the Director  
2 is absent or unable to serve or when the posi-  
3 tion of the Director is vacant.

4 (d) LIMITATIONS ON DEFINITION OF EMERGENCY  
5 PREPAREDNESS.—For purposes of this Act, the term  
6 “emergency preparedness” does not include law enforce-  
7 ment efforts to prevent or deter acts of terrorism, protect  
8 critical infrastructure, and conduct intelligence activities.

9 **SEC. 3. TRANSFER OF FUNCTIONS.**

10 (a) IN GENERAL.—There shall be transferred to the  
11 Director of the Federal Emergency Management Agency  
12 the functions, personnel, assets, and liabilities of the De-  
13 partment of Homeland Security relating to the Federal  
14 Emergency Management Agency, including the functions  
15 of the Department under paragraphs (3) and (8) of sec-  
16 tion 430(c) and sections 502 (other than paragraph (2))  
17 and 503(1) of the Homeland Security Act of 2002 (6  
18 U.S.C. 238(c), 312, 313) and other functions of the Pre-  
19 paredness Directorate of the Department (other than  
20 those functions relating to law enforcement efforts to pre-  
21 vent and deter acts of terrorism, protect critical infra-  
22 structure, and conduct intelligence activities), the func-  
23 tions relating to firefighter assistance grants under the  
24 Federal Fire Prevention and Control Act of 1974 (15  
25 U.S.C. 2229 et seq.), and the functions relating to the

1 Federal Emergency Management Agency under any other  
2 law, including those functions relating to emergency man-  
3 agement performance grants, under the National Flood  
4 Insurance Act of 1968 (42 U.S.C. 4001 et seq.), the Rob-  
5 ert T. Stafford Disaster Relief and Emergency Assistance  
6 Act (42 U.S.C. 5121 et seq.), the Earthquake Hazards  
7 Reductions Act of 1977 (42 U.S.C. 7701 et seq.), the Na-  
8 tional Dam Safety Program Act (33 U.S.C. 467 et seq.),  
9 and Reorganization Plan No. 3 of 1978 (5 U.S.C. App.).

10 (b) **TRANSITION PERIOD.**—The transfers under this  
11 section shall be carried out as soon as practicable after  
12 the date of enactment of this Act, but not later than the  
13 120th day following 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. 4. SAVINGS PROVISIONS.**

20 (a) **PERSONNEL PROVISIONS.**—

21 (1) **APPOINTMENTS.**—The Director of the Fed-  
22 eral Emergency Management Agency may appoint  
23 and fix the compensation of such officers and em-  
24 ployees, including investigators, attorneys, and ad-  
25 ministrative law judges, as may be necessary to

1 carry out the respective functions transferred under  
2 section 3. Except as otherwise provided by law, such  
3 officers and employees shall be appointed in accord-  
4 ance with the civil service laws and their compensa-  
5 tion fixed in accordance with title 5, United States  
6 Code.

7 (2) EXPERTS AND CONSULTANTS.—The Direc-  
8 tor may obtain the services of experts and consult-  
9 ants in accordance with section 3109 of title 5,  
10 United States Code, and compensate such experts  
11 and consultants for each day (including traveltime)  
12 at rates not in excess of the rate of pay for level IV  
13 of the Executive Schedule under section 5315 of  
14 such title. The Director may pay experts and con-  
15 sultants who are serving away from their homes or  
16 regular place of business, travel expenses and per  
17 diem in lieu of subsistence at rates authorized by  
18 sections 5702 and 5703 of such title for persons in  
19 Government service employed intermittently.

20 (b) DELEGATION AND ASSIGNMENT.—Except where  
21 otherwise expressly prohibited by law or otherwise pro-  
22 vided by this Act, the Director may delegate any of the  
23 functions transferred to the Director by section 3 and any  
24 function transferred or granted to the Director after the  
25 date of the transfers by section 3 to such officers and em-

1 ployees of the Federal Emergency Management Agency as  
2 the Director may designate and may authorize successive  
3 redelegations of such functions as may be necessary or ap-  
4 propriate. No delegation of functions by the Director  
5 under this subsection or under any other provision of this  
6 Act shall relieve the Director of responsibility for the ad-  
7 ministration of such functions.

8       (c) REORGANIZATION.—The Director is authorized to  
9 allocate or reallocate any function transferred under sec-  
10 tion 3 among the officers of the Federal Emergency Man-  
11 agement Agency, and to establish, consolidate, alter, or  
12 discontinue such organizational entities in the Federal  
13 Emergency Management Agency as may be necessary or  
14 appropriate if the Director, on or before the 30th day pre-  
15 ceding the date of the allocation or reallocation, provides  
16 to the Committee on Transportation and Infrastructure  
17 of the House of Representatives and the Committee on  
18 Homeland Security and Government Affairs of the Senate  
19 written notice of the allocation or reallocation.

20       (d) RULES.—The Director is authorized to prescribe,  
21 in accordance with the provisions of chapters 5 and 6 of  
22 title 5, United States Code, such rules and regulations as  
23 the Director determines necessary or appropriate to ad-  
24 minister and manage the functions of the Federal Emer-  
25 gency Management Agency.

1           (e) TRANSFER AND ALLOCATIONS OF APPROPRIA-  
2 TIONS AND PERSONNEL.—Except as otherwise provided  
3 in this section, the personnel employed in connection with,  
4 and the assets, liabilities, contracts, property, records, and  
5 unexpended balances of appropriations, authorizations, al-  
6 locations, and other funds employed, used, held, arising  
7 from, available to, or to be made available in connection  
8 with the functions transferred by section 3, subject to sec-  
9 tion 1531 of title 31, United States Code, shall be trans-  
10 ferred to the Federal Emergency Management Agency.  
11 Unexpended funds transferred pursuant to this subsection  
12 shall be used only for the purposes for which the funds  
13 were originally authorized and appropriated.

14           (f) INCIDENTAL TRANSFERS.—The Director of the  
15 Office of Management and Budget, at such time or times  
16 as the Director shall provide, is authorized to make such  
17 determinations as may be necessary with regard to the  
18 functions transferred by section 3, and to make such addi-  
19 tional incidental dispositions of personnel, assets, liabil-  
20 ities, grants, contracts, property, records, and unexpended  
21 balances of appropriations, authorizations, allocations,  
22 and other funds held, used, arising from, available to, or  
23 to be made available in connection with such functions,  
24 as may be necessary to carry out the provisions of this  
25 Act. The Director of the Office of Management and Budg-



1 et shall provide for the termination of the affairs of all  
2 entities terminated by this Act and for such further meas-  
3 ures and dispositions as may be necessary to effectuate  
4 the purposes of this Act.

5 (g) EFFECT ON PERSONNEL.—

6 (1) IN GENERAL.—Except as otherwise pro-  
7 vided by this section, the transfer pursuant to this  
8 section of full-time personnel (except special Govern-  
9 ment employees) and part-time personnel holding  
10 permanent positions shall not cause any such em-  
11 ployee to be separated or reduced in grade or com-  
12 pensation for one year after the date of transfer of  
13 such employee under this section.

14 (2) EXECUTIVE SCHEDULE POSITIONS.—Except  
15 as otherwise provided in this section, any person  
16 who, on the day preceding the date of the transfers  
17 of functions under section 3, held a position com-  
18 pensated in accordance with the Executive Schedule  
19 prescribed in chapter 53 of title 5, United States  
20 Code, and who, without a break in service, is ap-  
21 pointed in the Federal Emergency Management  
22 Agency to a position having duties comparable to the  
23 duties performed immediately preceding such ap-  
24 pointment shall continue to be compensated in such  
25 new position at not less than the rate provided for

1 such previous position, for the duration of the serv-  
2 ice of such person in such new position.

3 (h) SAVINGS PROVISIONS.—

4 (1) CONTINUING EFFECT OF LEGAL DOCU-  
5 MENTS.—All orders, determinations, rules, regula-  
6 tions, permits, agreements, grants, contracts, certifi-  
7 cates, licenses, registrations, privileges, and other  
8 administrative actions—

9 (A) which have been issued, made, grant-  
10 ed, or allowed to become effective by the Presi-  
11 dent, any Federal agency or official thereof, or  
12 by a court of competent jurisdiction, in the per-  
13 formance of functions which are transferred  
14 under section 3, and

15 (B) which are in effect on the date of the  
16 transfers of functions under section 3, or were  
17 final before such date and are to become effec-  
18 tive on or after such date,

19 shall continue in effect according to their terms until  
20 modified, terminated, superseded, set aside, or re-  
21 voked in accordance with law by the President, the  
22 Director of the Federal Emergency Management  
23 Agency or other authorized official, a court of com-  
24 petent jurisdiction, or by operation of law.

1           (2) PROCEEDINGS NOT AFFECTED.—The provi-  
2           sions of this section and section 3 shall not affect  
3           any proceedings, including notices of proposed rule-  
4           making, or any application for any license, permit,  
5           certificate, or financial assistance pending before the  
6           Federal Emergency Management Agency on the date  
7           of the transfers of functions under section 3, with  
8           respect to functions transferred by section 3 but  
9           such proceedings and applications shall continue.  
10          Orders shall be issued in such proceedings, appeals  
11          shall be taken therefrom, and payments shall be  
12          made pursuant to such orders, as if this section and  
13          section 3 had not been enacted, and orders issued in  
14          any such proceedings shall continue in effect until  
15          modified, terminated, superseded, or revoked by a  
16          duly authorized official, by a court of competent ju-  
17          risdiction, or by operation of law. Nothing in this  
18          paragraph shall be deemed to prohibit the dis-  
19          continuance or modification of any such proceeding  
20          under the same terms and conditions and to the  
21          same extent that such proceeding could have been  
22          discontinued or modified if this section and section  
23          3 had not been enacted.

24           (3) SUITS NOT AFFECTED.—The provisions of  
25          this section and section 3 shall not affect suits com-

1       menced before the date of the transfers of functions  
2       under section 3, and in all such suits, proceedings  
3       shall be had, appeals taken, and judgments rendered  
4       in the same manner and with the same effect as if  
5       this section and section 3 had not been enacted.

6               (4) NONABATEMENT OF ACTIONS.—No suit, ac-  
7       tion, or other proceeding commenced by or against  
8       the Federal Emergency Management Agency, or by  
9       or against any individual in the official capacity of  
10      such individual as an officer of the Federal Emer-  
11      gency Management Agency, shall abate by reason of  
12      the enactment of this section or section 3.

13              (5) ADMINISTRATIVE ACTIONS RELATING TO  
14      PROMULGATION OF REGULATIONS.—Any administra-  
15      tive action relating to the preparation or promulga-  
16      tion of a regulation by the Federal Emergency Man-  
17      agement Agency relating to a function transferred  
18      under section 3 may be continued by the Federal  
19      Emergency Management Agency with the same ef-  
20      fect as if this section and section 3 had not been en-  
21      acted.

22              (i) REFERENCES.—Any reference in any other Fed-  
23      eral law, Executive order, rule, regulation, or delegation  
24      of authority, or any document of or pertaining to a depart-

1 ment, agency, or office from which a function is trans-  
2 ferred by section 3—

3           (1) to the head of such department, agency, or  
4 office is deemed to refer to the head of the depart-  
5 ment, agency, or office to which such function is  
6 transferred; or

7           (2) to such department, agency, or office is  
8 deemed to refer to the department, agency, or office  
9 to which such function is transferred.

10       (j) REPEALS.—The following provisions of the Home-  
11 land Security Act of 2002 (6 U.S.C. 101 et seq.) are re-  
12 pealed:

13           (1) Section 503(1).

14           (2) Section 507.

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