

109TH CONGRESS  
1ST SESSION

# H. R. 4650

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

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## 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

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## 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 2005”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act, the following definitions apply:

1           (1) BOARD.—The term “Board” means the Na-  
2           tional Levee Safety Review Board established under  
3           section 6(a).

4           (2) COMMITTEE.—The term “Committee”  
5           means the Interagency Committee on Levee Safety  
6           established under section 5(a).

7           (3) LEVEE.—

8           (A) IN GENERAL.—The term “levee”  
9           means an embankment (including floodwalls)—

10                   (i) the primary purpose of which is to  
11                   provide hurricane and flood protection re-  
12                   lating to seasonal high water and storm  
13                   surges; and

14                   (ii) that normally is subject to water  
15                   loading for only a few days or weeks dur-  
16                   ing a year.

17           (B) INCLUSION.—The term “levee” in-  
18           cludes structures along drainage canals that are  
19           subject to more frequent water loadings but  
20           that do not constitute a barrier across a water-  
21           course.

22           (4) FEDERAL AGENCY.—The term “Federal  
23           agency” means a Federal agency that designs, fi-  
24           nances, constructs, owns, operates, maintains, or

1 regulates the construction, operation, or mainte-  
2 nance of a levee.

3 (5) SECRETARY.—The term “Secretary” means  
4 the Secretary of the Army, acting through the Chief  
5 of Engineers.

6 (6) STATE.—The term “State” means—

7 (A) a State;

8 (B) the District of Columbia;

9 (C) the Commonwealth of Puerto Rico;

10 and

11 (D) any other territory or possession of the  
12 United States.

13 (7) STATE LEVEE SAFETY AGENCY.—The term  
14 “State levee safety agency” means the State agency  
15 that has regulatory authority over the safety of any  
16 non-Federal levee in a State.

17 (8) UNITED STATES.—The term “United  
18 States”, when used in a geographical sense, means  
19 all of the States.

20 **SEC. 3. INSPECTION OF LEVEES.**

21 (a) IN GENERAL.—The Secretary shall carry out a  
22 program under which, as soon as practicable after the date  
23 of enactment of this Act, the Secretary shall inspect levees  
24 in the United States for the purpose of protecting human  
25 life and property.

1 (b) LEVEES TO BE INSPECTED.—

2 (1) IN GENERAL.—In carrying out the program  
3 under subsection (a), the Secretary shall inspect—

4 (A) each levee in the United States con-  
5 structed by the Secretary;

6 (B) each levee in the United States main-  
7 tained by the Secretary; and

8 (C) each levee located in a State identified  
9 by the Governor of the State in a list trans-  
10 mitted to the Secretary.

11 (2) EXCEPTIONS.—Notwithstanding paragraph  
12 (1), in carrying out the program under subsection  
13 (a), the Secretary shall not be required to inspect—

14 (A) any levee that has been inspected by a  
15 State levee safety agency during the 1-year pe-  
16 riod immediately preceding the date of enact-  
17 ment of this Act, if the Governor of the State  
18 requests an exception; and

19 (B) any levee that the Secretary deter-  
20 mines would not pose a significant threat to  
21 human life or property in case of failure.

22 (c) STATE PARTICIPATION.—On request of a State  
23 levee safety agency, with respect to any levee the failure  
24 of which would affect the State, the head of a Federal  
25 agency shall—

1           (1) provide information to the State levee safety  
2 agency relating to the construction, operation, or  
3 maintenance of the levee; and

4           (2) allow an official of the State levee safety  
5 agency to participate in the inspection of the levee.

6           (d) DETERMINATION.—

7           (1) INSPECTION REQUIREMENTS.—For the pur-  
8 pose of determining whether the failure a levee, in-  
9 cluding the release of any water constrained by the  
10 levee, constitutes a danger to human life or prop-  
11 erty, the Secretary shall take into consideration the  
12 possibility that the levee may be in danger of failing  
13 due to disparities in floodwall height or construction  
14 materials, overtopping due to storm surges, seepage,  
15 settlement, piping or internal erosion, sediment,  
16 cracking, earth movement, earthquakes, hurricanes,  
17 the failure of bulkheads or sheet walls, flashboards,  
18 gates or conduits, or other conditions that exist or  
19 may occur in any area in the vicinity of the levee.

20           (2) PREVIOUSLY-INSPECTED LEVEES.—For any  
21 levee with respect to which the Secretary made any  
22 determination regarding the safety of the levee be-  
23 fore the date of the inspection of the levee under this  
24 section, the Secretary shall review the determination,

1 taking into consideration information most recently  
2 available to the Secretary relating to—

3 (A) the likelihood that a storm surge would  
4 exceed the designed level of protection of the  
5 levee; and

6 (B) the effect of wetlands erosion, subsid-  
7 ence, or any other natural process on the vul-  
8 nerability of the area surrounding the levee to  
9 flooding or an extreme weather event.

10 (e) INSPECTION RESULTS.—

11 (1) NOTICE TO STATES.—As soon as prac-  
12 ticable after the inspection of a levee, the Secretary  
13 shall notify the Governor of the State in which such  
14 levee is located of the results of the inspection.

15 (2) HAZARDOUS CONDITIONS.—

16 (A) ENGINEERING STUDIES.—In any case  
17 in which a hazardous condition is found during  
18 an inspection of a levee, the Secretary may per-  
19 form, upon request of the owner of the levee,  
20 detailed engineering studies to determine the  
21 structural integrity of the levee, subject to reim-  
22 bursement of such expense by the owner.

23 (B) NOTICE AND REMEDIAL MEASURES.—

24 The Secretary shall—

1 (i) immediately notify the Governor of  
2 a State of a hazardous condition found  
3 during an inspection of a levee located in  
4 the State under subparagraph (A); and

5 (ii) provide to the Governor, upon re-  
6 quest, advice relating to timely remedial  
7 measures necessary to mitigate or obviate  
8 the hazardous condition.

9 (f) PRIORITY LIST.—

10 (1) IN GENERAL.—Not later than August 1 of  
11 each year, the Secretary shall submit to the Com-  
12 mittee on Transportation and Infrastructure of the  
13 House of Representatives and the Committee on En-  
14 vironment and Public Works of the Senate a priority  
15 list of flood damage reduction studies and projects  
16 that constitutes a ranking of studies and projects  
17 that should be carried out, taking into consideration  
18 the results of any inspection under this section.

19 (2) CONSIDERATIONS.—In establishing the pri-  
20 ority list under paragraph (1), the Secretary shall  
21 consider—

22 (A) the potential risk to human life or the  
23 environment if a study or project to address po-  
24 tential flood damage is not carried out;

1 (B) the benefits of protecting critical infra-  
2 structure and population centers; and

3 (C) the implementation of Federal guide-  
4 lines relating to levee safety.

5 **SEC. 4. NATIONAL LEVEE INVENTORY.**

6 The Secretary may maintain and periodically publish  
7 an inventory of levees in the United States, including the  
8 results of any levee inspection conducted under section 3.

9 **SEC. 5. INTERAGENCY COMMITTEE ON LEVEE SAFETY.**

10 (a) ESTABLISHMENT.—There is established a com-  
11 mittee to be known as the “Interagency Committee on  
12 Levee Safety”.

13 (b) MEMBERSHIP.—The Committee shall be com-  
14 posed of 4 members as follows:

15 (1) The Secretary (or the Secretary’s designee),  
16 who shall serve as the chairperson of the Committee.

17 (2) The Secretary of Agriculture (or the Sec-  
18 retary’s designee).

19 (3) The Secretary of the Interior (or the Sec-  
20 retary’s designee).

21 (4) The Director of the Federal Emergency  
22 Management Agency (or the Director’s designee).

23 (c) DUTIES.—The Committee shall support the es-  
24 tablishment and maintenance of effective Federal pro-  
25 grams, policies, and guidelines to enhance levee safety for

1 the protection of human life and property through coordi-  
2 nation and information exchange among Federal agencies  
3 concerning the implementation of Federal guidelines relat-  
4 ing to levee safety.

5 **SEC. 6. NATIONAL LEVEE SAFETY REVIEW BOARD.**

6 (a) ESTABLISHMENT.—The Secretary shall establish  
7 an advisory board, to be known as the “National Levee  
8 Safety Review Board”, to—

9 (1) monitor the safety of levees in the United  
10 States;

11 (2) monitor the implementation of this Act by  
12 State levee safety agencies; and

13 (3) advise the Secretary on policy relating to  
14 national levee safety.

15 (b) MEMBERSHIP.—

16 (1) VOTING MEMBERS.—The Board shall be  
17 composed of 10 voting members as follows:

18 (A) The Secretary (or the Secretary’s des-  
19 ignee), who shall serve as the chairperson of the  
20 Board.

21 (B) The Secretary of Agriculture (or the  
22 Secretary’s designee).

23 (C) The Secretary of the Interior (or the  
24 Secretary’s designee).

1           (D) The Administrator of the Environ-  
2           mental Protection Agency (or the Administra-  
3           tor's designee).

4           (E) The Director of the Federal Emer-  
5           gency Management Agency (or the Director's  
6           designee).

7           (F) 4 representatives of State levee safety  
8           agencies, to be appointed by the Secretary.

9           (G) 1 representative of the private sector  
10          who has expertise in levee safety, to be ap-  
11          pointed by the Secretary.

12          (2) NONVOTING MEMBERS.—The Secretary, in  
13          consultation with the voting members of the Board,  
14          may invite to participate in meetings of the Board  
15          as a nonvoting member—

16                (A) a representative of the National Lab-  
17                oratories;

18                (B) a representative of any Federal or  
19                State agency; or

20                (C) a levee safety expert.

21          (c) DUTIES.—

22                (1) IN GENERAL.—The Board shall support the  
23                establishment and maintenance of effective pro-  
24                grams, policies, and guidelines to enhance levee safe-

1 ty for the protection of human life and property  
2 throughout the United States.

3 (2) COORDINATION AND INFORMATION EX-  
4 CHANGE AMONG AGENCIES.—In carrying out para-  
5 graph (1), the Board shall support coordination and  
6 information exchange among Federal agencies and  
7 State levee safety agencies that share common prob-  
8 lems and responsibilities relating to levee safety, in-  
9 cluding planning, design, construction, operation,  
10 emergency action planning, inspections, mainte-  
11 nance, regulation or licensing, technical or financial  
12 assistance, research, and data management.

13 (d) CONTRACTS.—The Board may use the expertise  
14 of Federal agencies and request the Secretary to enter into  
15 contracts for necessary studies to carry out this section.

16 (e) WORKING GROUPS.—

17 (1) IN GENERAL.—The Secretary, in consulta-  
18 tion with the Board, may establish working groups  
19 to assist the Board in carrying out this section.

20 (2) MEMBERSHIP.—A working group under  
21 paragraph (1) shall be composed of—

22 (A) members of the Board; and

23 (B) any other individual, as the Secretary  
24 determines to be appropriate.

25 (f) COMPENSATION OF MEMBERS.—

1           (1) FEDERAL EMPLOYEES.—A member of the  
2 Board who is an officer or employee of the United  
3 States shall serve without compensation in addition  
4 to compensation received for the services of the  
5 member as an officer or employee of the United  
6 States.

7           (2) OTHER MEMBERS.—A member of the Board  
8 who is not an officer or employee of the United  
9 States shall serve without compensation.

10          (g) TRAVEL EXPENSES.—

11           (1) REPRESENTATIVES OF FEDERAL AGEN-  
12 CIES.—To the extent amounts are made available in  
13 advance in appropriations Acts, a member of the  
14 Board who represents a Federal agency shall be re-  
15 imbursemented for travel expenses by the agency of the  
16 member, including per diem in lieu of subsistence, at  
17 rates authorized for an employee of an agency under  
18 subchapter I of chapter 57 of title 5, United States  
19 Code, while away from home or regular place of  
20 business of the member in the performance of serv-  
21 ices for the Board.

22           (2) OTHER INDIVIDUALS.—To the extent  
23 amounts are made available in advance in appropria-  
24 tions Acts, a member of the Board who represents  
25 a State levee safety agency, a member of the Board

1 who represents the private sector, and a member of  
2 a working group created under subsection (e) shall  
3 be reimbursed for travel expenses by the Secretary,  
4 including per diem in lieu of subsistence, at rates  
5 authorized for an employee of an agency under sub-  
6 chapter 1 of chapter 57 of title 5, United States  
7 Code, while away from home or regular place of  
8 business of the member in performance of services  
9 for the Board.

10 (h) APPLICABILITY OF FEDERAL ADVISORY COM-  
11 MITTEE ACT.—The Federal Advisory Committee Act (5  
12 U.S.C. App.) shall not apply to the Board.

13 **SEC. 7. NATIONAL LEVEE SAFETY PROGRAM.**

14 (a) IN GENERAL.—The Secretary, in consultation  
15 with the Committee, the Board, and State levee safety  
16 agencies, shall establish and maintain a national levee  
17 safety program.

18 (b) PURPOSES.—The purposes of the program under  
19 this section are—

20 (1) to ensure that new and existing levees are  
21 safe through the development of technologically and  
22 economically feasible programs and procedures for  
23 hazard reduction relating to levees;

24 (2) to encourage acceptable engineering policies  
25 and procedures to be used for levee site investiga-

1 tion, design, construction, operation and mainte-  
2 nance, and emergency preparedness;

3 (3) to encourage the establishment and imple-  
4 mentation of effective levee safety programs in each  
5 State based on State standards;

6 (4) to develop and support public education and  
7 awareness projects to increase public acceptance and  
8 support of State levee safety programs;

9 (5) to develop technical assistance materials for  
10 Federal and State levee safety programs;

11 (6) to develop methods of providing technical  
12 assistance relating to levee safety to non-Federal en-  
13 tities; and

14 (7) to develop technical assistance materials,  
15 seminars, and guidelines to improve the security of  
16 levees in the United States.

17 (c) STRATEGIC PLAN.—In carrying out the program  
18 under this section, the Secretary shall—

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

21 (2) not later than 120 days after the date of  
22 enactment of this Act, transmit the plan to the Com-  
23 mittee on Transportation and Infrastructure of the  
24 House of Representatives and the Committee on En-  
25 vironment and Public Works of the Senate.

1 (d) FEDERAL GUIDELINES.—

2 (1) IN GENERAL.—In carrying out the program  
3 under this section, the Secretary, in consultation  
4 with the Board, shall establish Federal guidelines re-  
5 lating to levee safety.

6 (2) INCORPORATION OF FEDERAL ACTIVI-  
7 TIES.—The Federal guidelines under paragraph (1)  
8 shall incorporate, to the maximum extent prac-  
9 ticable, activities and practices carried out by a Fed-  
10 eral agency as of the date on which the guidelines  
11 are established.

12 (3) INCORPORATION OF STATE AND LOCAL AC-  
13 TIVITIES.—The program under this section shall in-  
14 corporate, to the maximum extent practicable—

15 (A) the activities and practices carried out  
16 by States, local governments, and the private  
17 sector to safely build, regulate, operate, and  
18 maintain levees; and

19 (B) Federal activities that foster State ef-  
20 forts to develop and implement effective pro-  
21 grams for the safety of levees.

22 (e) ASSISTANCE FOR STATE LEVEE SAFETY PRO-  
23 GRAMS.—

24 (1) IN GENERAL.—To encourage the establish-  
25 ment and maintenance of effective State programs

1 intended to ensure levee safety, to protect human  
2 life and public property, and to improve State levee  
3 safety programs, the Secretary shall provide assist-  
4 ance, using amounts made to carry out this Act, to  
5 assist States in establishing and carrying out levee  
6 safety programs.

7 (2) CRITERIA.—To be eligible for assistance  
8 under this subsection, a State shall have in effect a  
9 State levee safety program under which the State  
10 levee safety agency shall, in accordance with State  
11 law—

12 (A) review and approve plans and speci-  
13 fications to construct, enlarge, modify, remove,  
14 and abandon levees;

15 (B) perform periodic inspections during  
16 levee construction to ensure compliance with  
17 approved plans and specifications;

18 (C) require or perform the inspection, at  
19 least once every 5 years, of all levees that would  
20 pose a significant threat to human life and pub-  
21 lic property in case of failure to determine the  
22 continued safety of the levees and a procedure  
23 for more detailed and frequent safety inspec-  
24 tions;

1           (D) require that all inspections of levees be  
2 performed under the supervision of a State-reg-  
3 istered professional engineer with related expe-  
4 rience in levee design and construction;

5           (E) issue notices, when appropriate, to re-  
6 quire owners of levees to perform necessary  
7 maintenance or remedial work, improve secu-  
8 rity, revise operating procedures, or take other  
9 actions, including breaching levees when nec-  
10 essary;

11           (F) provide necessary funds—

12                 (i) to ensure timely repairs or other  
13 changes to, or removal of, a levee in order  
14 to protect human life and public property;  
15 and

16                 (ii) if the owner of the levee does not  
17 take an action described in clause (i), to  
18 take appropriate action as expeditiously as  
19 practicable;

20           (G) establish a system of emergency proce-  
21 dures to be used if a levee fails or if the failure  
22 of a levee is imminent;

23           (H) identify—

1 (i) each levee the failure of which  
2 could be reasonably expected to endanger  
3 human life;

4 (ii) the maximum area that could be  
5 flooded if the levee failed; and

6 (iii) necessary public facilities that  
7 would be affected by the flooding; and

8 (I) issue regulations to carry out the pro-  
9 gram.

10 (3) BUDGETING REQUIREMENT.—To be eligible  
11 for assistance under this subsection, a State shall al-  
12 locate sufficient funds in its budget to carry out a  
13 State levee safety program.

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

20 (5) MAINTENANCE OF EFFORT.—Assistance  
21 may not be provided to a State under this subsection  
22 for a fiscal year unless the State enters into such  
23 agreement with the Secretary as the Secretary re-  
24 quires to ensure that the State will maintain the ag-  
25 gregate expenditures of the State from all other

1 sources for programs to ensure levee safety for the  
2 protection of human life and property at or above a  
3 level equal to the average annual level of such ex-  
4 penditures for the 2 fiscal years preceding the fiscal  
5 year.

6 (6) APPROVAL OF PROGRAMS.—

7 (A) SUBMISSION.—To be eligible for as-  
8 sistance under this subsection, a State shall  
9 submit to the Secretary a State levee safety  
10 program and receive the Secretary's approval of  
11 the program.

12 (B) APPROVAL.—

13 (i) IN GENERAL.—If the Secretary de-  
14 termines that a program submitted by a  
15 State under subparagraph (A) substan-  
16 tially meets the requirements of this sub-  
17 section, the Secretary shall approve the  
18 program and immediately notify the State  
19 in writing of the approval.

20 (ii) DEEMED APPROVAL.—A program  
21 submitted by a State under subparagraph  
22 (A) shall be deemed to be approved by the  
23 Secretary on the 120th day following the  
24 date of the Secretary's receipt of the pro-  
25 gram unless the Secretary before such

1           120th day approves or disapproves the pro-  
2           gram.

3           (C) NOTIFICATION OF DISAPPROVAL.—If  
4           the Secretary determines that a program sub-  
5           mitted by a State under subparagraph (A) does  
6           not substantially meet the requirements of this  
7           subsection, the Secretary shall disapprove the  
8           program, immediately notify the State in writ-  
9           ing of the disapproval, and provide the reasons  
10          for the disapproval and the changes that are  
11          necessary for the program to be approved.

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

14                (A) PERIODIC REVIEWS.—Using the exper-  
15                tise of the Board, the Secretary shall periodi-  
16                cally review State levee safety programs.

17                (B) REVOCATION OF PROGRAM AP-  
18                PROVAL.—If the Board finds that a State levee  
19                safety program has proven inadequate to rea-  
20                sonably protect human life and public property  
21                and the Secretary concurs, the Secretary shall  
22                revoke approval of the State levee safety pro-  
23                gram, and withhold assistance under this sub-  
24                section, 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 describ-  
8 ing—

9           (1) the status of the program under this sec-  
10          tion;

11          (2) the progress made by Federal agencies dur-  
12          ing the 2 preceding fiscal years in implementing  
13          Federal guidelines for levee safety;

14          (3) the progress made by State levee safety  
15          agencies participating in the program; and

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

19 **SEC. 8. RESEARCH PROGRAM.**

20          (a) IN GENERAL.—The Secretary, in cooperation  
21 with the Board, shall carry out a program of technical and  
22 archival research to develop and support—

23           (1) improved techniques, historical experience,  
24           and equipment for rapid and effective levee construc-  
25           tion, rehabilitation, and inspection;

1           (2) the development of devices for the continued  
2 monitoring of levee safety;

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

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

9           (b) PARTICIPATION BY STATE LEEVE SAFETY AGEN-  
10 CIES.—In carrying out the program under subsection (a),  
11 the Secretary shall—

12           (1) solicit participation from State levee safety  
13 agencies; and

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

19 **SEC. 9. LEEVE SAFETY TRAINING PROGRAM.**

20           The Secretary shall establish a program under which  
21 the Secretary shall provide, upon request of a State that  
22 has (or intends to develop) a State levee safety program,  
23 training for State levee safety agency staff and inspectors.

24 **SEC. 10. EFFECT OF ACT.**

25           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  
5           a legal duty, obligation, or liability incident to the  
6           ownership or operation of a levee.

7 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

8           There is authorized to be appropriated to the Sec-  
9           retary to carry out this Act \$10,000,000 for each of fiscal  
10          years 2007 through 2012. Such sums shall remain avail-  
11          able until expended.

○