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SENATE

{ REPORT
108-262

FLOOD INSURANCE REFORM ACT OF 2004

MAY 13, 2004.—Ordered to be printed

Mr. SHELBY, from the Committee on Banking, Housing and Urban Affairs, submitted the following

R E P O R T

[To accompany S. 2238]

The Committee on Banking, Housing, and Urban Affairs to which was referred the bill (S. 2238) to amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

On March 30, 2004 the Committee voted unanimously to report the bill to the Senate for consideration as promptly as circumstances permit.

HEARING RECORD AND WITNESSES

On March 25, 2004, the Economic Policy Subcommittee heard from a variety of witnesses as to concerns facing the National Flood Insurance Program.

The Subcommittee heard from United States Senator Barbara Mikulski, United States Representative Doug Bereuter, and United States Representative Earl Blumenauer.

In addition, the Subcommittee heard from the Honorable Anthony Lowe, Federal Insurance Administrator and Mitigation Division Director, Federal Emergency Management Agency; and Mr. William Jenkins, Jr., Director—Homeland Security and Justice, U.S. General Accounting Office.

Also appearing before the Subcommittee were Mr. William Stiglitz, III, Hyland, Block, Hyland Insurance of Louisville, KY; Mr. Steven M. Feldmann, Director of Community Affairs, The Fischer Group, Crestview Hills, KY; Mr. Chad Berginnis, CFM, Chair, Association of State Flood Plan Managers; and Mr. Greg

Kosse, Associate General Counsel, Kentucky Farm Bureau Mutual Insurance Company.

The Flood Insurance Reform Act of 2004 is intended to address the problems of severe repetitive loss properties—those that have been flooded numerous times, and are thus a financial drain on the National Flood Insurance Program (NFIP).

BACKGROUND AND NEED FOR LEGISLATION

NFIP is a federal insurance program, that provides flood insurance to over 4.4 million property owners across the United States. This program was established in 1968 to “provide the necessary funds promptly to assure rehabilitation or restoration of damaged property to pre-flood status or to permit comparable investment elsewhere.” (Senate Report 90–549 and House Report 90–786)

Approximately one-third of all insured properties are pre-FIRM (Flood Insurance Rate Map) properties, built prior to 1974 or before a flood map was available incorporating the property. These properties pay subsidized insurance rates since the risks to the property were not known at the time of construction. In an effort to make sure that buildings and homes are not built in harm’s way, those properties constructed after 1974 in communities that participate in NFIP must meet local floodplain ordinances. These local floodplain ordinances have helped to ensure that homes built in flood-prone areas are adequately elevated and/or flood-proofed. These homes account for approximately two-thirds of insured properties, and pay actuarial sound rates, to reflect their actual risk of flood loss.

While NFIP has, for the most part, been able to cover losses through the premiums it charges to policyholders, there have been times when NFIP has had to borrow from the U.S. Treasury to cover losses. NFIP has paid back all of the borrowed funds with interest; however, it is clear that one of the largest drains on the program are repetitive loss properties. While NFIP operates a basic mitigation program for all repetitive loss properties, it is a small program, and lacks the resources to mitigate many of the homes in need of elevation, floodproofing, and other mitigation activities. Repetitive loss properties only account for approximately 1 percent of all insured properties, yet according to FEMA, these properties account for over 30% of amounts paid in claims. Most of these properties are pre-FIRM properties, and are paying subsidized rates for flood insurance.

PURPOSE AND SUMMARY OF LEGISLATION

The Flood Insurance Reform Act of 2004 reauthorizes the flood insurance program for 5 years, ensuring that there will be no lapse in this critical program, while helping local communities and states work to mitigate repetitive loss properties. Under this bill, states and communities will be able to opt into a new \$40 million pilot program, designed to mitigate those properties that have had over 3 flood claims of over \$3,000 each, and cumulative claims of over \$15,000 (severe repetitive loss properties). This will ensure that those properties that have the most claims and flood damages will have an opportunity to receive federal mitigation funds.

Under this 5 year pilot program, communities will have to pay between 10 and 25 percent of the costs of mitigation activities,

while the federal pilot program will cover 75 to 90 percent of the costs. Communities will make mitigation offers, including elevation, demolition/rebuilding, flood-proofing, or buyouts, to severe repetitive loss properties. Unlike the basic mitigation program, if an owner of a severe repetitive loss property refuses a reasonable mitigation offer, the premiums for flood insurance will be increased by 50%. The rates will increase by an additional 50% after each flooding event resulting in a claim to NFIP of over \$1,500. Property owners will have the ability to appeal any decision to increase rates subsequent to the refusal of a mitigation offer. In no case will a property be ineligible for flood insurance, unless a fraudulent claim is filed. In no instance will an owner pay more than the actuarial rate for flood insurance. In order for a property owner to have their rates raised after subsequent flooding, an offer of mitigation must still be available. It is clear that in some cases, communities will have spent their mitigation funds and will no longer be able to offer mitigation assistance in those cases.

States and communities will be able to opt in to the pilot mitigation program. No community will be forced to participate in the pilot program regardless of the state's participation. The Committee expects that states will work with communities on identifying properties that will receive mitigation offers and the kinds of mitigation offers that would be made to property owners.

This bill provides an additional \$40 million for mitigation activities, and is meant to provide an incentive to communities to provide mitigation assistance to those properties that have had numerous floods. While no community will be forced to participate, the Committee anticipates that many communities will welcome these additional mitigation funds. While a consequence is attached to refusing a mitigation offer, it is the Committee's understanding that \$40 million covers only a small percentage of properties that need to be mitigated, and thus, communities should have no problem in finding residents of severe repetitive loss properties who are interested in receiving mitigation assistance voluntarily. In many cases, families who have been repeatedly flooded will welcome the opportunity to elevate their existing homes or to be given assistance in relocating. Many families are stuck in a cycle of flooding with no means to mitigate and reduce the risk of the loss of life and property. This bill provides funding to allow these families to get out of this cycle. The Committee urges communities to work with those families who volunteer to take part in this program. In addition, communities should fund the most cost-effective mitigation activities to make sure that the flood risks can be minimized to as many properties as possible.

While the bill does not contain a formula for the distribution of funds, it does provide that funds shall be offered in a way that results in the greatest savings to the flood insurance program in the shortest period of time. Many areas are prone to repeated flooding, and should be targeted with mitigation funds to allow families to rebuild and/or flood-proof their homes. While some properties may not flood in a way that results in individual high dollar claims to NFIP, mitigation funds should also be used where repeated low-level claims (above \$3,000 each) threaten the ability of families to continue to live in their homes, and continue to destroy portions of homes and possessions.

In addition to funding mitigation activities, the Flood Insurance Reform Act of 2004 also makes some programmatic changes to NFIP to help address administrative problems that were brought to the Committee's attention. As a result, flood victims who are covered under NFIP are finding that their flood insurance does not come close to covering the cost to repair their flood damage. This is troubling given Congressional intent in establishing this program in 1968. NFIP is not working in a way that allows flood victims to easily make claims or collect payments under their flood insurance policies. NFIP does not provide simple forms or claims guidelines for flood victims to follow, making access to information about NFIP and flood insurance policies difficult to attain.

The reported bill helps to provide some assurance that families will receive the information they need to understand their flood insurance policies, how to file claims after a flood loss, and how to follow those claims to completion to ensure proper settlement. FEMA will be required to provide simple and complete information to policyholders at the time of purchase, renewal and at the time of flood loss. FEMA should work with interested parties, such as insurance companies, insurance agents, adjusters, policyholders, and state and local officials, to ensure that policyholders are provided with accurate and timely information. In addition, the reported legislation requires FEMA to establish a formal appeals process so that flood victims who believe they are not being offered an adequate settlement can have their complaints heard. Unfortunately, FEMA does not currently have an appeals process, so flood victims who do not agree with adjuster estimates have no official recourse. This bill will ensure that all flood victims have adequate recourse if they disagree with decisions regarding their claims and settlements.

The reported bill also requires FEMA to establish minimum insurance agent training requirements. Insurance agents are the main points of contact for most policyholders, and are therefore the main source of information about the flood insurance program. In establishing education and training requirements, FEMA should work with interested parties, including insurance companies and agents as well as state regulators, where possible. In some cases, states may already have requirements to ensure that agents are well-versed in the flood insurance program. Where possible, FEMA should work to make sure that agents are not burdened with inconsistent state and federal training and education requirements. In addition, where possible, FEMA should work to implement the training requirements through the states, which already have continuing education processes in place.

As with any information that FEMA disseminates, whether guidance, notices, or training materials, the Committee expects FEMA to make its policies as clear and transparent as possible and to follow the letter and spirit of such formal policies and decisions. It has come to the Committee's attention that in some instances FEMA is using unwritten rules or policies to make decisions, leaving policyholders, insurance agents and others with no way of knowing what rules are to be used in the program. The goal of Title II of this program is to make the program more transparent and understandable. The Committee expects FEMA to work to make sure decisions and policies are consistent and public.

The reported legislation also requires the General Accounting Office to conduct a study of the National Flood Insurance Program. The GAO has been tasked with undertaking a comprehensive study of why many flood victims are not receiving adequate payments under NFIP. GAO will study the adequacy of payments to flood victims and how FEMA and adjuster practices affect the payments, as well as whether the limitations on flood insurance coverage, as contained in the current policy, work to the detriment of flood victims in their efforts to repair their homes. FEMA should also conduct a comprehensive review of their rules and the current flood insurance policy, to determine if changes should be made to ensure that families who are flooded receive adequate payments under their flood insurance policies to allow them to repair or rebuild their homes.

The Committee is aware of many problems in the flood insurance program as a result of recent flooding from Hurricane Isabel, which took place in September, 2003. As a result of this flood, 24,000 claims were made to NFIP. Unfortunately, many flood victims did not receive adequate settlements under NFIP to allow them to repair their homes. While the changes contained in this bill will ensure that future flood victims do not face these same problems, we expect FEMA to conduct a thorough review of all claims resulting from Hurricane Isabel, and to re-adjust those claims where flood victims did not receive fair and adequate payments. The Committee expects the review of claims to be an independent process, where adjusters are not reviewing claims for which they were initially responsible after Hurricane Isabel. FEMA must make all efforts to ensure that the claims in question are settled fairly.

The Committee also recognizes and encourages FEMA in its goal to eventually hand over the legal authority to oversee, maintain and administer flood mapping to states which are interested and capable of maintaining and administering their own flood mapping program. This includes the responsibility to publish maps, issue letters of map change, preliminary and post-preliminary processing and issuance of Flood Insurance Study reports, Digital Flood Insurance Rate Maps and authorize interested and capable states to charge review and processing fees for Letters of Map Change.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

This section establishes the title of the bill, the “Flood Insurance Reform Act of 2004” and provides a table of contents.

Section 2. Congressional findings

TITLE I—AMENDMENTS TO FLOOD INSURANCE ACT OF 1968

Section 101. Extension of program and consolidation of authorizations

This section amends the National Flood Insurance Act of 1968 by extending the National Flood Insurance Program (NFIP) from June 30, 2004 through September 30, 2008

Section 102. Establishment of pilot program for mitigation of severe repetitive loss properties

This section amends the National Flood Insurance Act of 1968 by adding a new Section 1361A which would establish a Pilot Program for the mitigation of severe repetitive loss properties. Under this section, the Director of FEMA may provide financial assistance to States and communities for the mitigation of severe repetitive loss properties.

“Severe repetitive loss properties” are properties:

For which three or more separate NFIP flood insurance claims payments have been made prior to the date of the enactment of this Act, with the cumulative amount of such claims payments exceeding \$15,000; or

For which 2 or more separate NFIP claims payments cumulatively exceed the value of the insured property.

The Director of FEMA shall provide mitigation offers for properties under the Pilot Program in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time. Mitigation activities include elevation, relocation, demolition, rebuilding at least one foot above Base Flood Elevation, flood-proofing of structures, minor physical localized flood control projects, and buyouts.

If an offer for mitigation under the pilot program is refused and any appeal is unsuccessful, rates for severe repetitive loss properties will be increased by 50%. Properties will be subject to additional 50% increases for each subsequent flood event where claims payments exceed \$1,500. Flood insurance rates, under any segment of the program, cannot be higher than the actuarial based NFIP rates. The Director is authorized to offer the policyholder a higher deductible for the flood insurance policy which would result in a lower premium payment if mitigation is refused.

Any owner of a severe repetitive loss property may appeal an increase to an actuarial rate of insurance to an arbitrator. One of the grounds for appeal is that the owner of the property will not be able to purchase a replacement primary residence of comparable value that is functionally equivalent to their current residence.

Up to an additional \$40 million for fiscal years 2004, 2005, 2006, 2007, and 2008 can be transferred from the National Flood Insurance Fund to the National Flood Mitigation Fund for severe repetitive loss properties and shall remain available until expended. The policyholders shall not be subject to higher premium rates for flood insurance coverage because of this transfer from the insurance fund into the mitigation fund. As a matter of clarification, the policy service fee charged by FEMA for each policy shall also not be increased because of this transfer.

Section 103. Amendments to existing flood mitigation assistance program

This section amends the National Flood Insurance Act of 1968 by extending the National Flood Insurance Program (NFIP) from June 30, 2004 through September 30, 2008. This section also amends Section 1366 of the National Flood Insurance Act of 1968 by directing FEMA to offer mitigation assistance under the existing FMA program in a manner consistent with the best interests of the NFIP.

Up to an additional \$40 million shall be transferred from the insurance fund into the FMA fund for fiscal years 2004, 2005, 2006, 2007, and 2008 for the existing mitigation assistance program.

Section 104. FEMA authority to fund mitigation activities for individual repetitive claims properties

This section creates a new Section 1323 of the National Flood Insurance Act of 1968, authorizing the Director to provide funding for mitigation actions for individual properties for which one or more claims payments for losses have been made if such activities are in the best interest of the National Flood Insurance Fund, and such activities cannot be funded under the Flood Mitigation Assistance Program because the requirements of the Flood Mitigation Assistance Program are not being met by the State or community in which the property is located; or the State or community does not have the capacity to manage such activities.

Up to an additional \$10 million shall be transferred from the National Flood Insurance Fund into the National Mitigation Fund for any fiscal year for these individual repetitive claims properties. The policyholders shall not be subject to offsetting collections through premium rates for flood insurance coverage. As a matter of clarification, the policy service fee charged by FEMA for each policy shall also not be increased because of this transfer.

Section 105. Amendments to additional coverage for compliance with land use and control measures

Section 1304(b) of the National Flood Insurance Act, established FEMA's "Increased Cost of Compliance (ICC)," authority. This authority is intended to pay for mitigation of those insured properties that have sustained repetitive losses and severe losses that have been identified as drains on the National Flood Insurance Fund. Since 1997 policyholders have been charged from \$3 to \$75 per year, contributing nearly \$80 million a year to the insurance fund. This section amends FEMA's ICC authority to increase its effectiveness by: (1) clarifying that additional insurance coverage is to cover the cost of implementing mitigation measures; and, (2) clarifying the definition of "repetitive loss structures" and "substantially damaged structure."

Section 106. Actuarial rate properties

This section amends Section 1308 of the National Flood Insurance Act of 1968 by charging actuarial based NFIP rates immediately for Federally leased properties located on the river-facing side of any dike, levee, or other riverine flood control structure, or seaward of any seawall, or other coastal flood control structure. These actuarial rates are not conditioned upon any other factor.

Section 107. Geospatial digital flood hazard data

This section creates a new section of the National Flood Insurance Act of 1968, to allow for a digital representation of the special flood hazard area theme to have equal legal standing in the program as the effective printed Flood Insurance Rate Map.

Section 108. Replacement of mobile homes on original sites

This section adds a new Section 1315 to the National Flood Insurance Act of 1968 which states that the replacement of mobile homes on any sites shall not affect the eligibility of any community to participate in the flood insurance program if the following occurs: such mobile home was previously located on such site; such mobile home was relocated from such site because of flooding that threatened or affected such site; and such replacement is conducted not later than the expiration of the 180-day period that begins upon the subsidence (in the area of such site) of the body of water that flooded to a level considered lower than flood levels.

Section 109. Reiteration of FEMA responsibility to map mudslides

This section states that, as directed in section 1360(b) of the National Flood Insurance Act, the Director of FEMA is again directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas in order to make known the degree of hazard within each such zone at the earliest possible date.

TITLE II—MISCELLANEOUS PROVISIONS

Title II requires FEMA to take actions to make sure that all policyholders understand their flood insurance policies and are treated fairly in making claims and receiving settlements after flood losses.

Section 201. Definitions

This Section provides definitions of the following terms: “Director,” “Flood Insurance Policy,” and “Program.”

Section 202. Supplemental Forms

This section requires FEMA to develop simple, easy to read forms for use within 6 months, to be given to all policyholders at the time of issuance and renewal, explaining exactly what is and is not covered in the flood insurance policy being purchased/renewed. This information should include the exact coverages being purchased, and exclusions from coverages, along with an explanation, including examples, of how items will be valued under the policy at the time of loss. In addition, the form should contain information on the number and dollar amount of any claims filed under NFIP with respect to that property. FEMA should make such information readily available to the insurance companies and agents responsible for providing the information to policyholders, if necessary.

Section 203. Acknowledgment Form

This section requires FEMA to develop, within 6 months, a form to be signed by the policyholder at the time of purchase and renewal, acknowledging that the policyholder has been given a copy of their flood insurance policy and any supplemental forms, as well as acknowledging that the person has been told that contents are not covered under the standard flood insurance policy, but additional insurance is available for that purpose. All purchasers of flood insurance should be told that their possessions are not covered by the standard flood insurance policy, and should be given an opportunity to purchase coverage for contents/possessions.

Section 204. Flood Insurance Claims Handbook

This Section requires FEMA to develop, within 6 months, a claims handbook to be given to all policyholders at the time of purchase, renewal and the time of loss, and to all insurance companies, agents and adjusters. The claims handbook should contain all information about claims, proof of loss requirements, and settlements, relevant to a flood victim filing and settling a claim under NFIP. The claims handbook should also contain information about the appeals process developed under Section 205. The claims handbook should be as simple as possible, yet it should contain all necessary information regarding claims and how they will be handled and settled, and what flood victims can do if they have any problems.

Section 205. Appeal of Decisions Relating to Flood Insurance Coverage

This section requires FEMA to establish a formal appeals process for flood victims within 6 months. FEMA must establish a formal, fair process for flood victims to follow to appeal decisions of FEMA or its contractors, insurance companies, insurance agents and adjusters regarding claims, proofs of loss, loss estimates and settlements under NFIP. Such an appeals process must ensure that all flood victims have a way to appeal what they believe are incorrect estimates and decisions regarding their claims and settlements, and should include the readjustment of claims and settlements where necessary. FEMA must ensure that all policyholders are aware of their rights to appeal and of the process established by FEMA under this Section.

Section 206. Study and Report on Use of Cost Compliance Coverage

This Section requires FEMA to submit a report to Congress, within one year, on the use of compliance coverage (Increased Cost of Compliance) funds. Such funds are used to bring substantially damaged buildings into compliance with local ordinances and building codes. This section requires that FEMA submit a report on the use of such funds, any barriers to using the funds, and recommendations about how to overcome any barriers so that more flood victims can access Increased Cost of Compliance funds when needed.

Section 207. Minimum Training and Education Requirements

This Section requires FEMA to establish minimum education and training requirements for all insurance agents, and to publish such requirements within 6 months. In working to devise education and training requirements, FEMA should consult with all interested parties, including insurance companies and agents, as well as state insurance regulators. While training requirements should not be burdensome, they should ensure that insurance agents, the main points of contact for policyholders and flood victims, have a thorough understanding of the National Flood Insurance Program.

Section 208. GAO Study And Report

This Section requires the General Accounting Office to conduct a thorough review of the National Flood Insurance Program, focusing on the adequacy of payments to flood victims under their flood in-

insurance policies, and report to Congress on those findings within a year. The Committee is concerned that flood victims may not be receiving adequate settlements after flood losses to repair their damages, and this Section asks GAO to study the causes for this, including the limitations and exclusions contained in the standard flood insurance policy, as well as FEMA rules and adjuster practices that may lead to inaccurate estimates of losses.

Section 209. Prospective Payment of Flood Insurance Premiums

This section clarifies that where FEMA determines that a policyholder is paying too little in premiums due to an error in the flood plain determination (made by FEMA or a third party), FEMA may adjust the premiums immediately, but may only charge the policyholder the increased premium prospectively. FEMA may no longer charge policyholders retroactively if the error in premiums charged is due to an error in the floodplain determination.

Section 210. Report on Changes to Fee Schedule or Fee Payment Arrangements

This Section requires FEMA to review its policies and practices regarding how it pays adjusters. The Committee is concerned that the way FEMA currently compensates adjusters may provide an incentive to complete adjustments and proofs of loss quickly, but not necessarily accurately. This Section requires FEMA to review its adjuster fee schedules and fee arrangements, and report back to Congress within 3 months on the findings and any changes made by FEMA to address these concerns.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b), rule XXVI, of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact of the bill.

The Flood Insurance Reform Act of 2004 is intended to address the problems of severe repetitive loss properties—those that have been flooded numerous times, and are thus a financial drain on the National Flood Insurance Program (NFIP). The long term goal of the pilot program, established in Section 102 of the reported bill, is to buy-out or mitigate those properties that have been the largest drain on the fund. In doing so, the Committee believes the National Flood Insurance Program will move toward actuarial soundness and no longer require a federal subsidy.

Currently the national flood insurance program insures approximately 4,400,000 policyholders. Approximately 48,000 properties currently insured under the program have experienced, within a 10-year period, 2 or more flood losses where each such loss exceeds the amount \$1,000. Of these repetitive-loss properties, approximately 10,000 have experienced either 2 or 3 losses that cumulatively exceed building value or 4 or more losses, each exceeding \$1,000. Repetitive-loss properties constitute a significant drain on the resources of the national flood insurance program, costing about \$200,000,000 annually. In addition, repetitive-loss properties comprise approximately 1 percent of currently insured properties but are expected to account for 25 to 30 percent of claims losses.

Currently about two-thirds of policy holders pay an actuarially fair rate. These properties would not be directly impacted by the

establishment of the pilot program. In fact, as the pilot program addresses worst case repetitive-loss properties, overall rates for actuarial rate properties should decline. For those repetitive-loss property holders that are subject to a buy-out or mitigation offers, it is expected that such policyholders will be fairly compensated for their properties, in the case of a buy-out, or that mitigation will increase the value or enjoyment of their homes. As FEMA is directly to concentrate on repetitive-loss property owners that wish to participate, it is expected that economic impact on such policyholders will be positive.

It is expected that the reported bill will have no impact on the personal privacy of the current or prospective flood insurance policyholders.

As Title II of the reported bill is intended to improve the quality and timeliness of information received by policyholders, the Committee expects the time and effort required on the part of policyholders to file claims will be substantially reduced. In particular the creation, by FEMA, of a Flood Insurance Claims Handbook, as required by Section 204 of the reported bill, should save policyholders, insurance agents and insurance companies considerable time in the processing of claims.

COST OF THE LEGISLATION

APRIL 22, 2004.

Hon. RICHARD C. SHELBY,
Chairman, Committee on Banking, Housing, and Urban Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2238, the Flood Insurance Reform Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Julie Middleton.

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

Flood Insurance Reform Act of 2004

Summary: S. 2238 would extend the National Flood Insurance Program (NFIP) within the Department of Homeland Security (DHS) until 2008. Under current law, the program expires on June 30, 2004. The bill also would establish a pilot program to give states and local communities financial assistance for mitigating potential future damages experienced by "severe repetitive loss properties" (properties that have made multiple sizable claims under the NFIP). The bill would authorize the appropriation of \$40 million a year over the 2004–2008 period for this new pilot program. S. 2238 also would increase the amounts authorized to be appropriated for the existing flood mitigation program by \$20 million each year. Finally, the bill would authorize the appropriation of an additional \$10 million a year for mitigating potential flood damage to individual properties in states and communities that do not have the capacity to manage their own mitigation programs.

Assuming appropriation of the authorized amounts, CBO estimates that implementing the bill would result in discretionary outlays totaling \$300 million over the 2004–2009 period. CBO also estimates that direct spending would decline by \$1 million a year relative to the budget resolution baseline (which assumes the flood insurance program continues over the 2004–2014 period).

S. 2238 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2238 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—					
	2004	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization level	40	70	70	70	70	30
Estimated Outlays	8	35	55	70	70	62
CHANGES IN DIRECT SPENDING						
Estimated budget authority	0	–1	–1	–1	–1	–1
Estimated outlays	0	–1	–1	–1	–1	–1

Basis of Estimate: For this estimate, CBO assumes that S. 2238 will be enacted in fiscal year 2004 and that the authorized amounts will be appropriated each year. Estimates of outlays are based on historical spending patterns of similar programs and information from the Department of Homeland Security.

Spending Subject to Appropriation

S. 2238 would authorize the appropriation of \$40 million in 2004, \$70 million a year through 2008, and \$30 million a year after 2008 for programs to reduce potential future damages to properties that have experienced repetitive losses from floods. Assuming appropriation of the authorized amounts, CBO estimates that the resulting outlays would total \$300 million over the 2004–2009 period.

According to DHS, about 48,000 properties with federal flood insurance have experienced two or more flood losses. DHS estimates that, under the proposed pilot program in S. 2238, approximately 7,500 severe repetitive loss properties would benefit immediately from mitigation activities such as increased elevation, relocation, demolition, or flood-proofing. Mitigating those properties could result in fewer claims paid by the federal flood insurance program following a subsequent flood.

For example, if DHS first mitigates properties with the highest ratio of benefits to cost—estimated to be 2,500 properties—DHS expects that it would take five to seven years to realize sufficient savings to cover the original cost of mitigation. If DHS then targets the remaining 5,000 that have a high ratio of benefits to costs, DHS expects that it could take eight to 10 years to realize sufficient savings to cover the cost of mitigation.

The average federal cost of a mitigation project is \$66,000. CBO estimates that implementing the pilot program and expanding the current mitigation program would cost \$300 million over the next five years and could finance the mitigation costs of over 4,500 properties. Over the next 10 years, some or all of such costs would like-

ly be recouped through lower claims payments, depending on the effectiveness of the mitigation efforts and the location and severity of future floods. The amount of such savings is difficult to predict because there is limited information about the effectiveness of prior mitigation efforts. Savings from lower future claims cannot be attributed directly to S. 2238 because the size and duration of any mitigation program would depend on amounts provided in future appropriation acts.

Under the bill, if an owner of a property refuses to participate in federal mitigation programs, the government would increase the premium rate for flood insurance to 150 percent of the chargeable rate for the property at the time of the original mitigation offer. If that same property sustains flood damage and receives a claim payment of \$1,500 or more, the government would increase the premium rate again to 150 percent of the chargeable rate for the property at the time of the flood. The premium rate could not exceed the actuarial rate for the area where the property is located.

For example, the average annual subsidized flood insurance premium, according to DHS, is \$436. If a property owner with a subsidized premium refused mitigation, the premium would increase to \$654. If that same property then sustains damage from a flood and receives a payment of \$1,500, the insurance premium for that property would increase again to \$981. If 25 percent of the 7,500 properties refused mitigation and then sustain damage from a flood, the National Flood Insurance Fund would collect about \$1 million more a year in premiums. The actual amount of any additional premiums collected under that provision also would depend on the scope of the mitigation program, which would be determined in future appropriation acts.

CBO estimates that implementing the administrative provisions in this bill, including a flood insurance claims handbook and a report by the General Accounting Office on the adequacy of the flood insurance program, would cost less than \$500,000 over the 2004–2005 period, subject to the availability of appropriated funds.

Direct Spending

Reauthorization of the National Flood Insurance Program

S. 2238 would reauthorize the NFIP through 2008. Consistent with section 257 of the Balanced Budget and Emergency Deficit Control Act, which specifies that certain expiring programs should be assumed to continue for budget projection purposes, the baseline projections underlying the current Congressional budget resolution assume that the National Flood Insurance Program continues beyond its scheduled expiration date. Over the near term, CBO projects that premiums collected by the National Flood Insurance Fund equal claims paid from the fund. (In fact, claims vary substantially from year to year, and net outlays are unlikely to be zero in a particular year.) In most recent years, premium income has exceeded claims payments, but over the long term, the NFIP is not considered to be actuarially sound because some properties receive subsidized insurance.

Actuarial Rate Properties

S. 2238 would make certain federally owned coastal and river properties that are leased to nonfederal entities subject to actuarially sound insurance premiums. CBO estimates that this provision would increase the amount of premiums collected, but the increase would be less than \$1 million a year because of the small number of properties involved.

Intergovernmental and Private-Sector Impacts: S. 2238 contains no intergovernmental or private-sector mandates as defined in UMR. State, local, and tribal governments would benefit from the new grant program for mitigation projects. Any cost incurred by those governments would be voluntary.

Previous CBO Estimates: On September 3, 2003, CBO transmitted a cost estimate for H.R. 253, a similar bill that was ordered reported by the House Committee on Financial Services on July 23, 2003. The differences in the CBO cost estimates for those two bills stem from different levels of authorized funding.

Estimate Prepared by: Federal Costs: Julie Middleton. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Paige Piper/Bach.

Estimate Approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW (CORDON RULE)

On March 30, 2004, the Committee unanimously approved a motion by Senator Shelby to waive the Cordon rule. Thus, in the opinion of the Committee, it is necessary to dispense with the requirement of section 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

