

110TH CONGRESS  
1ST SESSION

# S. 2238

To amend the National Dam Safety Program Act to establish a program to provide grant assistance to States for the rehabilitation and repair of deficient dams.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 25, 2007

Mr. AKAKA (for himself, Mr. VOINOVICH, Mr. SCHUMER, Mr. INOUE, and Mr. SPECTER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the National Dam Safety Program Act to establish a program to provide grant assistance to States for the rehabilitation and repair of deficient dams.

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 “Dam Rehabilitation  
5 and Repair Act of 2007”.

6 **SEC. 2. REHABILITATION AND REPAIR OF DEFICIENT**  
7 **DAMS.**

8 (a) DEFINITIONS.—Section 2 of the National Dam  
9 Safety Program Act (33 U.S.C. 467) is amended—

1           (1) by redesignating paragraphs (3), (4), (5),  
 2           (6), (7), (8), (9), (10), (11), (12), and (13) as para-  
 3           graphs (4), (5), (6), (7), (8), (9), (10), (13), (14),  
 4           (15), and (16), respectively;

5           (2) by inserting after paragraph (2) the fol-  
 6           lowing:

7           “(3) DEFICIENT DAM.—The term ‘deficient  
 8           dam’ means a dam that the State within the bound-  
 9           aries of which the dam is located determines—

10                   “(A) fails to meet minimum dam safety  
 11                   standards of the State; and

12                   “(B) poses an unacceptable risk to the  
 13                   public.”; and

14           (3) by inserting after paragraph (10) (as redес-  
 15           ignated by paragraph (1)) the following:

16           “(11) PUBLICLY-OWNED DAM.—

17                   “(A) IN GENERAL.—The term ‘publicly-  
 18                   owned dam’ means a dam that is owned by 1  
 19                   or more State agencies or governments, local  
 20                   governments, or municipal governments.

21                   “(B) INCLUSIONS.—The term ‘publicly-  
 22                   owned dam’ includes a dam owned by a non-  
 23                   profit organization that—

24                           “(i) is established by 1 or more State,  
 25                           local, or municipal governments; and

1                   “(ii) provides public benefits, such  
2                   as—

3                                 “(I) local flood control districts;

4                                 “(II) regional public water utili-  
5                   ties; and

6                                 “(III) local irrigation districts.

7                   “(12) REHABILITATION.—The term ‘rehabilita-  
8                   tion’ means the repair, replacement, reconstruction,  
9                   or removal of a dam that is carried out to meet ap-  
10                  plicable State dam safety and security standards.”.

11                  (b) PROGRAM FOR REHABILITATION AND REPAIR OF  
12 DEFICIENT DAMS.—The National Dam Safety Program  
13 Act is amended by inserting after section 8 (33 U.S.C.  
14 467f) the following:

15                  **“SEC. 8A. REHABILITATION AND REPAIR OF DEFICIENT**  
16                                 **DAMS.**

17                   “(a) ESTABLISHMENT OF PROGRAM.—The Director  
18 shall establish, within FEMA, a program to provide grant  
19 assistance to States for use in rehabilitation of deficient  
20 dams that are publicly-owned dams.

21                   “(b) AWARD OF GRANTS.—

22                                 “(1) APPLICATION.—

23                                 “(A) IN GENERAL.—A State interested in  
24                   receiving a grant under this section may submit  
25                   to the Director an application for the grant.

1           “(B) REQUIREMENTS.—An application  
2 submitted to the Director under this section  
3 shall be submitted at such time, be in such  
4 form, and contain such information as the Di-  
5 rector may prescribe by regulation.

6           “(2) GRANT.—

7           “(A) IN GENERAL.—The Director may  
8 make a grant in accordance with this section  
9 for rehabilitation of a deficient dam to a State  
10 that submits an application for the grant in ac-  
11 cordance with the regulations prescribed by the  
12 Director.

13           “(B) PROJECT GRANT AGREEMENT.—The  
14 Director shall enter into a project grant agree-  
15 ment with the State to establish the terms of  
16 the grant and the project, including the amount  
17 of the grant.

18           “(3) APPLICABILITY OF REQUIREMENTS.—The  
19 Director shall require a State receiving a grant  
20 under this section to comply with requirements ap-  
21 plicable to contributions of Federal funds under sec-  
22 tion 611(j)(9) of the Robert T. Stafford Disaster  
23 Relief and Emergency Assistance Act (42 U.S.C.  
24 5196(j)(9)), as in effect on the date of enactment of

1       this section, in carrying out a project funded using  
2       amounts from the grant.

3       “(c) PRIORITY SYSTEM.—The Director, in consulta-  
4       tion with the Board, shall develop a risk-based priority  
5       system for use in identifying deficient dams for which  
6       grants may be made under this section.

7       “(d) ALLOCATION OF FUNDS.—The total amount of  
8       funds appropriated pursuant to subsection (h)(1) for a fis-  
9       cal year shall be allocated for making grants under this  
10      section to States applying for the grants for that fiscal  
11      year as follows:

12             “(1)  $\frac{1}{3}$  divided equally among applying States.

13             “(2)  $\frac{2}{3}$  divided among applying States based on  
14      the proportion that—

15                     “(A) the number of non-Federal publicly-  
16                     owned dams that the Secretary of the Army  
17                     identifies in the national inventory of dams  
18                     maintained under section 6 as constituting a  
19                     danger to human health and that are located  
20                     within the boundaries of the State; bears to

21                     “(B) the number of non-Federal publicly-  
22                     owned dams that are so identified and that are  
23                     located within the boundaries of all applying  
24                     States.

1       “(e) USE OF FUNDS.—None of the funds provided  
2 in the form of a grant or otherwise made available under  
3 this section shall be used—

4           “(1) to rehabilitate a Federal dam;

5           “(2) to perform routine operation or mainte-  
6 nance of a dam;

7           “(3) to modify a dam to produce hydroelectric  
8 power;

9           “(4) to increase water supply storage capacity;  
10 or

11           “(5) to make any other modification to a dam  
12 that does not also improve the safety of the dam.

13       “(f) COST SHARING.—The Federal share of the cost  
14 of rehabilitation of a deficient dam for which a grant is  
15 made under this section may not exceed 65 percent of the  
16 cost of the rehabilitation.

17       “(g) CONTRACTUAL REQUIREMENTS.—

18           “(1) IN GENERAL.—Subject to paragraph (2),  
19 as a condition on the receipt of a grant under this  
20 section, a State that receives the grant shall require  
21 that each contract and subcontract for program  
22 management, construction management, planning  
23 studies, feasibility studies, architectural services,  
24 preliminary engineering, design, engineering, sur-  
25 veying, mapping, and related services entered into

1 using funds from the grant be awarded in the same  
2 manner as a contract for architectural and engineer-  
3 ing services is awarded under—

4 “(A) chapter 11 of title 40, United States  
5 Code; or

6 “(B) an equivalent qualifications-based re-  
7 quirement prescribed by the State.

8 “(2) NO PROPRIETARY INTEREST.—A contract  
9 awarded in accordance with paragraph (1) shall not  
10 be considered to confer a proprietary interest upon  
11 the United States.

12 “(h) AUTHORIZATION OF APPROPRIATIONS.—

13 “(1) IN GENERAL.—There are authorized to be  
14 appropriated to carry out this section—

15 “(A) \$10,000,000 for fiscal year 2008;

16 “(B) \$15,000,000 for fiscal year 2009;

17 “(C) \$25,000,000 for fiscal year 2010;

18 “(D) \$50,000,000 for fiscal year 2011;

19 and

20 “(E) \$100,000,000 for fiscal year 2012.

21 “(2) STAFF.—There is authorized to be appro-  
22 priated to provide for the employment of such addi-  
23 tional staff of FEMA as are necessary to carry out  
24 this section \$400,000 for each of fiscal years 2008  
25 through 2010.

1           “(3) PERIOD OF AVAILABILITY.—Amounts  
2           made available under this section shall remain avail-  
3           able until expended.”.

4 **SEC. 3. RULEMAKING.**

5           (a) PROPOSED RULEMAKING.—Not later than 90  
6           days after the date of enactment of this Act, the Director  
7           of the Federal Emergency Management Agency shall issue  
8           a notice of proposed rulemaking regarding the amend-  
9           ments made by section 2 to the National Dam Safety Pro-  
10          gram Act (33 U.S.C. 467 et seq.).

11          (b) FINAL RULE.—Not later than 120 days after the  
12          date of enactment of this Act, the Director of the Federal  
13          Emergency Management Agency shall promulgate a final  
14          rule regarding the amendments described in subsection  
15          (a).

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