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Appropriations Policy Brief

H.R. 5441 — Homeland Security Appropriations Act for FY 2007

BY THE NUMBERS:

In Millions of Dollars

	FY06 Enacted	FY07 Request	FY07 House Bill	FY07 Senate Bill	FY07 Conf Report
Appropriations	30,461	31,018	32,080	30,846	31,905
Emergency	-23,690*	0	0	0	1,829
Total	6,771*	31,018	32,080	30,846	33,734

*The negative emergency spending results from a large rescission of unobligated FEMA balances that was used to offset non-FEMA activity (HUD, DOT, DOE, etc).

Excluding Emergency Appropriations, the Conference Report is:

- **\$1.4 billion (4.7%) above last year**
- **\$887 million (2.9%) above the President's request**
- **\$175 million (0.5%) less than the House-passed bill**
- **\$1.1 billion (3.4%) more than the Senate-passed bill**

Budget Compliance: According to CBO, the conference report is within the 302(b) allocation of the Homeland Security Appropriations Subcommittee and thus complies with the Budget Act. H.R. 5441 also includes \$1.8 billion in supplemental spending to fund border security, namely a fence along the U.S. and Mexico border. This funding is designated as funding for Contingency Operations Related to the Global War on Terror (GWOT) and therefore does not count against what the conferees are sanctioned to spend under the budget resolution.

Earmarks:

Note: The following earmarks are located in the Joint Explanatory Statement (under "alteration of bridges" on pg. 67). Under H.Res. 1000, the conferees are required to either include a list of all earmarks (and the requesting Member) "airdropped" or added in conference *or* include a statement that no earmarks were added that were neither passed by the House nor the Senate. The conferees provided the latter, asserting that any earmarks within the conference report had

already passed the House or the Senate. Included in the Conference Report are the following earmarks:

- \$7 million for the Fourteen Mile Bridge in Mobile, AL
- \$3 million for Chelsea Street Bridge in Chelsea, MA
- \$2 million for the Canadian Pacific Railway Bridge in LaCrosse, WI
- \$1 million for the Burlington Northern Railroad Bridge in Burlington, IA
- \$1 million for the Elgin, Joliet, and Eastern Railway Company Bridge in Morris, IL
- \$2 million for the Galveston Causeway Bridge in Galveston, TX

Items of Note:

Aviation Security Fee Increase: The Committee did **NOT** include the Administration's proposal to increase passenger aviation security fees. This proposal would have provided \$1.2 billion and mostly accounts for the difference between H.R. 5441's funding levels and the request.

Border Security Supplemental Spending: Includes \$1.8 billion in supplemental spending to fund border security, namely a fence along the U.S. and Mexico border. This spending is designated as funding for Contingency Operations Related to the Global War on Terror (GWOT), and therefore does not count against what the conferees are sanctioned to spend under the budget resolution.

Port Container Screening and Secure Border Initiative: Requires DHS to submit a comprehensive port, container, and cargo security strategic plan that requires screening all inbound cargo, doubles the percentage of inbound cargo currently inspected, and sets minimum standards for securing inbound cargo. In addition, the legislation requires DHS to submit the Secure Border Initiative multi-year strategic plan to Congress. The conference report would withhold appropriations for failure to submit these reports.

Gulf Coast Rebuilding Coordinator: Provides \$3 million for the Office of the Federal Coordinator for Gulf Coast Rebuilding, but withholds a third of the funding until a FY 2007 expenditure plan is received by the Appropriations Committees.

DHS Headquarters: Provides no funding for the Coast Guard to move their headquarters to the St. Elizabeths complex. The conferees provide the full \$8.2 million requested to complete renovations at the DHS headquarters on Nebraska Avenue, but none for the proposed consolidation of DHS activities to the St. Elizabeths complex. According to the Joint Explanatory Statement, DHS "is unable to elaborate on the reasons why St. Elizabeths is the best location for a permanent DHS headquarters, what other sites have been considered, which specific components would move to that site, the total space requirement for DHS headquarters, and the total costs associated with using the St. Elizabeths site as a headquarters location."

Passenger Screening and Government Officials: Requires that Members of Congress, including Leadership, heads of federal agencies, and senior members of the Executive Office of the President, including the OMB Director, be subject to passenger and baggage screening at airports.

Oath of Allegiance: Prohibits funds from being used to amend the oath of allegiance required of prospective citizens under the Immigration and Nationality Act.

Outsourcing/A-76 Activities: Prohibits funds from being used under OMB Circular A-76 (governing the federal government’s outsourcing policies) “to process or approve a competition” with regard to employees of the Citizenship and Immigration Services.

Dredging Costs in LA: Requires the DHS to consider the Hancock County Port and Harbor Commission in Mississippi eligible for FEMA public assistance for all costs incurred dredging the navigation channel, in Little Lake, LA, of sediment from Hurricane George in 1998.

Drug Reimportation: Prohibits funds from being used for Customs and Border Protection to prevent an individual (who is not in the business of importing prescription drugs as defined by current law) from importing prescription drugs. An individual could only transport, on their person, a 90-day supply for their own use.

Attorney Fees/Pending Litigation: Prohibits the use of funds to reimburse L.B.& B. Associates, Inc. or Olgoonik Logistics, LLC (or both) for attorneys fees related to pending litigation against Local 30 of the International Union of Operating Engineers.

Unlawful Border Crossings/Tunnels: Increases the penalties for constructing tunnels and subterranean passages that serve as unlawful international border crossings between the U.S. and another country. Any person who knowingly constructs or finances the construction would be fined and imprisoned for up to 20 years. Any person who knowingly disregards the construction or use of such a tunnel would be fined and imprisoned for up to 10 years. Any person who uses such a tunnel to smuggle an alien, goods, weapons of mass destruction, would be subject to a maximum term of imprisonment that is twice the maximum term of imprisonment that would have applied had the tunnel not been used to carry out the unlawful activity.

Firearms Policy in Disaster Areas: Bars officers and employees of the U.S., participating in relief efforts after a major disaster, from temporarily or permanently seizing any firearm whose possession is legally permitted under current law (federal, state, and local law), requiring a registration which is not required under current law, or prohibit the carrying of firearms by any person otherwise authorized to carry firearms under current law.

National Emergency Management: Includes the text of the Post-Katrina Emergency Management Reform Act. Below are the *highlights*:

Subtitle A—Federal Emergency Management Agency

- Defines FEMA’s primary mission as reducing the loss of life and property and protecting the nation from all hazards, including natural disasters, acts of terrorism, and other man made disasters, by leading and supporting the nation in a comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.
- States that FEMA’s Administrator would be the principal advisor to the President, Secretary of Homeland Security, and the Homeland Security Council on all matters relating to emergency management in the U.S. Accordingly, the Administrator must have a demonstrated ability in and knowledge of emergency management and homeland security and at least five years of executive leadership and management experience. The Administrator would report directly to the Secretary. In the event of a natural disaster,

act of terrorism, or other man-made disaster, the President would have the option of designating the Administrator to serve as a Member of the Cabinet.

- Transfers all of the functions, personnel, assets, components, authorities, grant programs, and liabilities of the Directorate of Preparedness to FEMA, except the Office of Infrastructure Protection, the National Communications System, the National Cybersecurity Division, and the Office of the Chief Medical Officer.
- Ensures that FEMA will remain a distinct entity within DHS and that its responsibilities, authorities, and functions may not be substantially changed or reduced by the Secretary.
- Establishes ten FEMA regional offices, each headed by a Regional Administrator with a demonstrated ability in and knowledge of homeland security and emergency management. The Regional Administrator must also be familiar with the geographic area and demographic characteristics of the population to be served. The bill requires that, within the appropriate regional office, there be specific offices for the Pacific, the Caribbean, and Alaska.
- Requires each Regional Administrator to establish Regional Advisory Councils to offer advice on specific emergency management issues, including any weaknesses or deficiencies in preparedness, mitigation, etc. In addition, each Regional Administrator would oversee a multi-agency Regional Office Strike Team, consisting of a federal coordinating officer, personnel trained in incident management, public affairs and communications support personnel, liaisons to other agencies, and individuals from other agencies with primary responsibility for each emergency support function in the National Response Plan.
- Requires the FEMA Administrator to appoint a National Advisory Council to provide advice on all aspects of emergency management. Appointees would serve terms of three years.
- Establishes a National Infrastructure Simulation and Analysis Center as a clearinghouse of expertise, modeling, and analysis designed to protect critical infrastructure. Each federal agency with such responsibilities would be required to cooperate with the Center and share information.
- Directs DHS to provide grants through the State Homeland Security Grant Program to State and local governments to develop mass evacuation plans and prepare for executing such plans (for instance, stockpiling supplies and shelters).
- Creates a position—a Disability Coordinator—to ensure that the needs of individuals with disabilities are being addressed in the emergency preparedness plans.
- Allows the President to appoint up to four FEMA Deputy Administrators, an Assistant Secretary for Cybersecurity and Communications, a Chief Medical Officer (with a demonstrated expertise in public health), and an Administrator of the U.S. Fire Administration.

Subtitle B—Personnel Reforms and Emergency Management Capabilities

- Requires the Administrator to develop and submit to Congress, within six months of enactment, a strategic human capital plan to improve FEMA's workforce, including critical skills needed, expected losses due to retirement and attrition, and current gaps in the workforce, among other things.
- Directs the Administrator to ensure that all FEMA personnel are provided an opportunity to acquire the education, training, and experience needed to be promoted within the Agency and to make the different career paths are published.
- Allows the Administrator (for five years after enactment) to offer recruitment and retention bonuses to fill positions that would otherwise be difficult to fill. The bonus may

not exceed 25% of the position's annual rate of pay. (Such a bonus may not be extended to a Senate-confirmed Presidential appointee.)

- **Establishes a DHS Homeland Security Program** to provide middle and senior level employees the opportunity to broaden their knowledge (through best practices) and build professional relationships throughout DHS. In addition, the bill would **establish a Homeland Security Education Program** to provide educational opportunities to senior officials (federal, state, local, and tribal) with homeland security and emergency management responsibilities.
- Requires FEMA to establish a Surge Capacity Force, within six months of enactment, to rapidly deploy highly-trained individuals to respond to disasters. Individuals would not have to be FEMA employees, freeing the Force to tap employees throughout all federal agencies.
- Requires states to adopt Catastrophic Incident Annexes to their State Emergency Management Plans that are modeled after that of the National Response Plan.
- Directs FEMA to provide evacuation preparedness technical assistance to States and localities, including hurricane evacuation studies and storm surge estimates.
- Establishes at least three national Emergency Response Teams and "sufficient" regional Emergency Response Teams, consisting of adequate numbers of properly trained, organized, and equipped personnel.
- Authorizes an Urban Search and Rescue Response System (at "an amount equal to the amount appropriated for the system for fiscal year 2007 and an additional \$20,000,000") and a **Metropolitan Medical Response Grant Program** (at "an amount equal to the amount appropriated for the system for fiscal year 2007 and an additional \$30,000").
- Requires FEMA to preposition standardized emergency equipment in at least 11 locations to sustain and replenish critical assets used in disaster response.
- Establishes Hurricanes Katrina and Rita recovery offices to provide all federal assistance to affected individuals in an expeditious and consistent manner. FEMA may establish these offices in MI, LA, AL, and TX. Each recovery office would be required to coordinate with faith-based and other relief entities. The Administrator would have the discretion as to when each office was terminated; the bill contains no firm sunset for these offices.
- Directs FEMA to coordinate with the Chief Information Officer of DHS to update the information technology systems of the Agency.
- Allows FEMA to disclose information to law enforcement agencies regarding sex offenders in the event of an evacuation or mass relocation.

Subtitle C—Comprehensive Preparedness System

- Establishes a national preparedness goal and a national preparedness system to prepare for natural disasters and acts of terrorism, including a target level of preparedness. This goal should be consistent with the National Response Plan. The system would include: 1) target capabilities, 2) equipment and training standards, 3) a comprehensive assessment system, 4) training and exercises, 5) a remedial action management program, 6) federal response capability inventory, 7) reporting requirements, and 8) federal preparedness requirements.
- **Authorizes \$4 million for FY 2008 for FEMA to provide grants** to administer the Emergency Management Assistance Compact.
- Authorizes funding for the Emergency Management Performance Grants Program for FY 2008 at the FY 2007 appropriated amount.
- Transfers the Noble Training Center to the Center for Domestic Preparedness.

- **Establishes a National Exercise Simulation Center** for training and exercises at the operational level.

Subtitle D—Emergency Communications

- Establishes an Office of Emergency Communications at DHS, headed by a Director for Emergency Communications. The Director is tasked with various duties designed to enhance and maintain interoperable emergency communications capabilities. The bill would consolidate under this Office the SAFECOM Program, the Integrated Wireless Network, and the Interoperable Communications Technical Assistance Program.
- Requires the Director to develop a National Emergency Communications Plan to provide recommendations on how the U.S. should (1) support the ability of emergency response providers to communicate in the event of a disaster and (2) accelerate interoperable emergency communications.
- Directs DHS to ensure that grant guidelines for assistance relating to interoperable emergency communications are consistent with the National Emergency Communications Plan.
- Establishes a Regional Emergency Communications Working Group in each FEMA region to assess the interoperability of local emergency communications.
- **Establishes an Emergency Communications Preparedness Center** to serve as the focal point for interagency efforts and a clearinghouse for all participating federal departments to promote interoperable emergency communications and the ability of emergency response providers to communicate in the event of a disaster.
- **Creates a research, development, testing, and evaluation program** to support interoperable emergency communications and the ability of emergency response providers at DHS' Office of Interoperability and Compatibility.

Subtitle E—Stafford Act Amendments

- Directs the President to issue guidelines to assist Governors in requesting a declaration of an emergency in advance of a disaster.
- Requires FEMA to develop a National Disaster Recovery and Housing Strategy to clearly define the role, programs, authorities, and responsibilities of each federal agency that may provide disaster relief.
- Increases the cap on assistance for hazard mitigation programs.
- Removes the \$5,000 cap on individual assistance to a household for repairs to an owner-occupied residence.
- Allows the President to appoint a single, federal coordinating officer for a multi-state area affected by a disaster.
- Requires FEMA to promulgate guidelines for addressing the needs of individuals with disabilities, including the accessibility of shelters, first aid stations and toilets.
- Ensures that individuals cannot be denied disaster assistance because of a disability or a lack of proficiency in English.
- Establishes a National Emergency Child Locator Center and a National Emergency Family Registry and Locator System to enable individuals to receive information about displaced children or adults.
- Allows FEMA's financial assistance to individuals or households to be used for the cost of utilities, excluding phone service.
- Authorizes the President to provide transportation assistance to evacuees returning to their homes and case management services to states and localities.

- Establishes a FEMA position titled the Small State and Rural Advocate to advocate for the fair treatment of small states and rural communities in the provision of Stafford Act assistance.
- **Creates a pilot program** designed to make better use of existing rental housing located in an area of a major disaster.
- **Creates a pilot program** designed to reduce costs to the federal government in providing debris removal assistance and reconstructing public facilities. For instance, under the program, the federal share for debris removal would increase (and thereby provide an incentive) if a state had already locked-in rates with a removal contractor *before* the onset of a major disaster.

Subtitle F—Prevention of Waste, Fraud, and Abuse

- Requires FEMA to enter into one or more contracts for each type of good and service that the Agency is capable of contracting for in advance of a natural disaster.
- Instructs DHS to issue regulations to minimize the excessive use of subcontractors or “tiers” of subcontractors to perform the principle work of the contract. At minimum, the regulations would preclude a contractor from using subcontracts for more than 65 percent of the cost of a contract or the cost of any individual task.
- Allows FEMA to direct up to one percent of its total budget for oversight efforts.
- Requires preference to be given in federal contracting for debris removal, supply distribution, and other activities (to the extent practicable and feasible) to those organizations, firms, and individuals residing or doing business primarily in the area affected by the major disaster or emergency.
- Instructs DHS to issue regulations to limit the use of sole source or non-competitive contracts.
- Establishes a federal registry of contractors who are willing to perform debris removal, to distribute supplies, perform reconstruction, etc.
- **Establishes a fraud prevention program at FEMA.**

Subtitle G—Authorization of Appropriations

- Authorizes funding for FEMA for FY 2008-2010 at the FY 2007 appropriated plus a ten percent increase each year.

