Calendar No. 269

107TH CONGRESS
1st Session

SENATE

REPORT
107–116

WORLD TRADE CENTER ATTACK CLAIMS ACT

DECEMBER 7, 2001.—Ordered to be printed

Mr. JEFFORDS, from the Committee on Environment and Public Works, submitted the following

REPORT

[to accompany S. 1624]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S.1624), to establish the Office of World Trade Center Attack Claims to pay claims for injury to businesses and property suffered as a result of the attack on the World Trade Center in New York City that occurred on September 11, 2001, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

BACKGROUND

On September 11, 2001, terrorists attacked the Pentagon and the World Trade Center. These horrible events marked the first time since the 1941 attack on Pearl Harbor that the United States has suffered a foreign attack on domestic soil. The magnitude and enormity of these attacks are unprecedented in our Nation's history. Thousands of innocent people lost their lives. Tens of thousands more lost their homes, their businesses, their jobs, their livelihoods as a result of this attack.

In New York, the attack left in its wake a mountain of debris, damaged buildings and inaccessible businesses and residences. New York City will lose an estimated $105 billion as a result of the attacks over the next two years. The attack damaged or destroyed nearly 25 million square feet of office space, roughly equivalent to 20 percent of all the office space in downtown New York. The at-

99–010

tack physically displaced some 850 businesses and over 125,000 workers, and an additional 9,000 businesses and over 145,000 people have only restricted access to their property.

Before the work of rebuilding lower Manhattan can begin, crews must remove over a million tons of debris from the site, a process that will likely take more than a year. Physical reconstruction of destroyed buildings is most likely years away. Many businesses and individuals do not have adequate insurance or resources to sustain themselves in the near term or to rebuild their businesses and lives in the long term.

S. 1624, the "World Trade Center Attack Claims Act," responds to the overwhelming needs of the businesses and the people of lower Manhattan, those directly and seriously impacted by the recent attacks. The bill would provide compensation for residential and business losses suffered by injured persons as a result of the events of September 11th. The bill would create an Office of World Trade Center Attack Claims (Office) within the Federal Emergency Management Agency (FEMA). The Office would process and pay claims at the discretion of the Director of the Federal Emergency Management Agency (Director) acting in accordance with the legislation and regulations promulgated by FEMA.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

The World Trade Center Attack Claims Act.

Section 2. Findings and Purposes

SUMMARY

Section 2 sets out the Congressional findings and purposes of the legislation.

DISCUSSION

The purpose of the legislation is to compensate certain individuals and businesses located within a specific geographic region within lower Manhattan suffering injury as a direct result of the attack. It is not the intent of this committee to create an entitlement to disaster relief funds made available under this Act. Nor is it the intent of this committee to compensate claimants for losses that bear no relation to the September 11th attack. The intent of the legislation is to allow the Director to determine and to make discretionary awards on a case-by-case basis for qualifying business and residential loss caused by the September 11th attacks until the Office exhausts funds authorized and appropriated under this Act. For businesses and residences located in a specific geographic region in Lower Manhattan prior to September 11, 2001, this Act provides aid to assist attack victims to continue, replace, start, establish, or locate their business or residence in New York City.

Section 3. Definitions

Section 3 defines the following terms for purposes of the legislation.

Affected area.—The term "affected area" means the area in lower Manhattan, New York City, that is comprised of the area located on or south of Canal Street, on or south of East Broadway (east of its intersection with Canal Street), or on or south of Grand Street (east of its intersection with East Broadway).

Attack.—The term "attack" means the attack on the World Trade Center in New York City that occurred on September 11, 2001.

Claim.—The term "claim" means a claim by an injured person under this Act for payment for injury suffered by the injured person as a result of the attack.

Claimant.—The term "claimant" means an injured person that submits a claim under section 5(b) of the bill.

Director.—The term "Director" means—

(A) the Director of the Federal Emergency Management Agency; or

(B) if an Independent Claims Manager is appointed under section 4(d)(4) of the bill, the Independent Claims Manager.

Injured person.—

(A) In General.—The term "injured person" means an individual, corporation, partnership, company, association, cooperative, joint venture, limited liability company, estate, trust, or nonprofit organization that

(i) suffered injury as a result of the attack; and

(ii) resides or maintains a place of business in the affected area.

(B) Exclusions.—The term "injured person" does not include

(i) a lender that holds a mortgage on or security interest in real or personal property affected by the attack; or

(ii) a person that holds a lien on real or personal property affected by the attack.

Office.—The term "Office" means the Office of World Trade Attack Claims established in section 4 of the legislation.

Section 4. Office of World Trade Center Attack Claims

SUMMARY

Section 4 establishes within FEMA an Office of World Trade Center Attack Claims. This section also authorizes the Director to appoint an Independent Claims Manager to head the Office and to assume the duties of the Director under this Act.

DISCUSSION

The purpose of the Office is to receive, to process, and to pay claims in accordance with the provisions set out in section 5 of the bill. The Office will not diminish FEMA's authority or funding under the Stafford Act. Funding for the Office will come from funds authorized through this legislation, and not from the Disaster Relief Fund or other FEMA sources. But the committee does not intend to prohibit FEMA from utilizing Stafford Act resources in the administration of the program on a cost reimbursable basis provided that the use of those resources does not substantially affect FEMA's ability to carry out its Stafford Act mission. Examples of Stafford Act resources that FEMA might use in administering the Office include FEMA's National Processing Service Centers, its information technology capabilities, and its cadre of experienced, customer-service oriented disaster assistance employees. The Director may also hire temporary personnel to staff the Office, and other Federal agencies may detail, on a reimbursable basis, personnel to assist in carrying out the duties of the Office.

The committee does not view the Office established under S. 1624 as duplicative of other Federal programs currently available to victims of the September 11th attack. Recent news accounts concerning various relief agencies and their slow and sometimes ineffectual administration of disaster assistance shows that many directly affected victims are not receiving the necessary funds to restart their lives and their businesses. The intent of S. 1624 is to provide direct and timely assistance to victims who qualify under this Act.

Section 5. Compensation for Victims of the Attack

SUMMARY

Section 5 establishes the framework for the processing and payment of claims by the Office of World Trade Center Attack Claims and places the burden of substantiating loss on the claimant. Section 5 also establishes a claimant appeals process.

DISCUSSION

Processing Claims

In processing claims and making payment decisions, the Director will have complete discretion to determine disposition of each claim in accordance with the provisions of this legislation and with regulations promulgated by FEMA for the purpose of processing claims under this Act. The Director will publish final interim regulations in the federal register not later than 45 days after enactment of this legislation. Not later than two years after the publication of the final interim regulations, an injured person may file a claim for injury suffered as a result of the September 11th terrorist attacks.

Qualifying claims fall into two categories of compensable loss residential loss and business loss. Residential losses include uninsured or underinsured property loss, damage to or destruction of physical infrastructure, insurance deductibles, temporary living or relocation expense, debris removal and other cleanup costs, or any other type of related injury that Director determines appropriate.

Business loss may include uninsured or underinsured property loss, damage to or destruction of tangible assets or inventory, business interruption loss, overhead costs, employee wages for work not performed, insurance deductibles, temporary relocation expenses, debris removal and cleanup costs, and any other type of injury that the Director determines appropriate. Business loss claims are subject to an additional limitation. An injured person may receive compensation for business loss only if the injured person's business facility has suffered disruption of power, disruption in telecommunications capacity, damage to or destruction of physical infrastructure, or disruption in physical access by employees or customers to the business facility.

Any qualifying claim is subject to a payment ceiling and other offsets. Payment on a claim submitted by an injured person may not exceed the amount necessary to compensate for injuries suffered during the 18-month period following the September 11th attack. Also, payment on an injured person's claim may not exceed $500,000, except in those instances where the Director determines a greater amount is appropriate.

To prevent recovery by a claimant in excess of the equivalent of actual compensatory damages, the committee anticipates that insured claimants will seek redress from their insurance companies first. The committee expects that the Office will require insured claimants to file claims with their insurance companies first and to disclose the extent of their insurance coverage to the Office. However, it is not the committee's intent that insured claimants wait for insurance companies to fully process their claims before filing a claim or receiving payment under this Act.

In calculating the amount of any compensable claim, the committee expects the Office will consider expected insurance proceeds an injured party may receive. Awards are also offset by other benefits received through FEMA's individual and public assistance benefits program and other government programs as a result of the September 11th attacks. But the office should not offset awards by the amount of any government loan received by the claimant.

It is important to note that the intent of the committee is not to eliminate or to supplant the duty owed by individual insurance companies to their policyholders. To the maximum extent possible, the committee expects that insured claimants will seek redress under existing insurance policies first. The intent of the legislation is to provide a secondary source of remuneration for actual compensatory damages suffered as a direct result of the attack.

Burden of Proof

Under this section, the claimant has the burden of substantiating loss. If documentary evidence substantiating the injury is not available, the Director may pay a claim based on an affidavit or other documentation provided by the claimant.

Payment of Claims

Once an injured person has submitted a claim for loss to the Office, the Director, to the maximum extent practicable, will process the claim within 180 days. If the Director determines the injured party has suffered compensable loss under this section, the Director will pay the claim subject to the limitations set out in this section. The Director may give processing priority to certain claims based on the claimants' assessed needs and any other criteria the Director deems appropriate. In determining the validity of a claim, the Director will determine whether the claimant is an injured person, whether the injuries suffered resulted directly from the attack, the amount, if any, to be paid under this section, and the person or persons entitled to receive payment.

Again, in considering the amount of a claim, the Director will reduce the award by the amount of any payments on insurance policies made as a result of the September 11th attack. The Director will also reduce the award by the amount of any benefits received in response to the September 11th attack under the public assistance program or any other FEMA program. But the Director will not reduce the award by the amount of any government loan received by the injured person.

The United States may recover any portion of a payment improperly paid to the claimant because of fraud or misrepresentation on the part of the claimant, a material mistake on the part of the United States, insurance benefits not properly accounted for, or failure of the claimant to cooperate with an audit.

The Director may make one or more advance or partial payments before the final settlement of the claim.

Appeals

If the claimant does not agree with the Director's disposition of a claim, the claimant may appeal the decision in accordance with the appellate process regulations jointly promulgated by FEMA and the Small Business Administration. The claimant must file the notice of appeal no later than 60 days after the date the Director notifies the claimant that the claim will or will not be paid. The Administrator of the Small Business Administration will consider the business loss appeals, and in the case of residential loss, the Director will consider the appeal. In either case, appellate decisions must be rendered not later than 90 days after receipt of the notice of appeal.

Debt Collection Requirements

Section 5 also includes a provision stating that the Debt Collection Act shall not preclude the payment of any claim. Injured persons cannot assign claims paid under this Act, and this bill exempts paid claims from creditors. However, the Director may require repayment of Small Business Administration disaster loans from the proceeds of claims paid under this Act.

Section 6. Acceptance of Services of Other Agencies and Volunteers; Gifts

Section 6 allows the Director to accept and to use the facilities or employees of any State or local government or agency with the consent of the government. The Director may also accept voluntary and uncompensated services by individuals or organizations and gifts of supplies, equipment, and facilities as needed.

Section 7. Relationship to Federal Entitlement Programs

SUMMARY

Section 7 states that nothing in the bill prevents an injured person from seeking benefits under any Federal entitlement program. Further, calculation of eligibility for any Federal benefit or entitlement program should not include any compensation received under this Act.

DISCUSSION

Section 7 is necessary to prevent injured persons receiving compensation under this Act from being excluded from receiving benefits under Federal entitlement programs. Asset calculations for programs such as the food stamp program under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) and any program established under the Social Security Act (42 U.S.C. 301 et seq.) should not include monetary compensation for compensable loss under this Act.

This section insures that injured persons can receive compensation from the Office without fear of losing essential Federal entitlements.

Section 8. Reports and Audits

SUMMARY

Section 8 mandates that the Director submit to Congress a report describing the claims submitted under this Act during the year preceding the report. Section 8 also directs the Comptroller General to conduct an annual audit of the payment of all claims submitted under this Act and to report the results to Congress.

DISCUSSION

Not later than one year after the promulgation date of final interim regulations and annually thereafter, the Director must submit to Congress a report describing the claims submitted under this Act during the preceding year. The report should include information on each claim including the amount claimed and a brief description of the nature and status of each claim including any payment on the claim.

The Comptroller General must complete the first annual audit not later than 120 days after the Director submits the first claims report to Congress, and annually thereafter. The purpose of the audit is to ascertain adherence to the requirements and standards of this Act, particularly with regard to the qualifications of the applicants.

The committee expects that FEMA's Office of Inspector General will maintain a full-time presence in the Office of World Trade Center Attack Claims to deter fraud and to promote efficiency, consistent with its obligations under the Inspector General Act of 1978, as amended.

Section 9. Authorization of Appropriations

SUMMARY

Section 9 authorizes $2 billion for the purposes of carrying out this Act.

DISCUSSION

The section authorizes $100 million for administrative expenses and $1.9 billion for the payment of claims. The committee anticipates that these funds will be part of the President's proposed $20 billion relief package for New York. These will remain available until expended. The Director will not spend disaster relief funds to carry out this Act.

Section 10. Termination of Authority

The authority of this Act terminates 42 months after the date of enactment of this Act.

Legislative History

Senator Hillary Rodham Clinton introduced S. 1624, "The World Trade Center Attack Claims Act," on November 1, 2001. The committee held a legislative hearing to take testimony on the proposed legislation on November 1, 2001. The committee reported the bill, with an amendment in the nature of a substitute, on November 8, 2001 by voice vote.

Hearings

On November 1, 2001, the committee held a legislative hearing on S. 1624, a bill to establish the Office of World Trade Center Attack Claims to pay claims for injury to businesses and property suffered as a result of the attack on the World Trade Center in New York City that occurred on September 11, 2001, and for other purposes, receiving testimony from Michael Brown, Deputy Director, Federal Emergency Management Agency; Joe Moravec, Commissioner, Public Building Service, General Services Administration; Dr. David Sampson, Assistant Secretary for Economic Development, Economic Development Administration, U.S. Department of Commerce; Richard Meserve, Chairman, Nuclear Regulatory Commission; Herbert Mitchell, Associate Administrator for Disaster Assistance, Small Business Administration; and Marianne L. Horinko, Assistant Administrator. Office of Solid Waste and Emergency Response, Environmental Protection Agency.

Rollcall Votes

The Committee on Environment and Public Works met to consider S. 1624 on November 8, 2001. By voice vote, the committee agreed to amendment offered by Sentor Clinton in the nature of a substitute. In addition, the committee adopted a second degree amendment offered by Senator Clinton by voice vote. The committee then agreed to report S. 1624, as amended, by voice vote with Senator Bond recorded as voting "no."

Regulatory Impact Statement

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes evaluation of the regulatory impact of the reported bill.

The bill does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

Mandates Assessment

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that S. 1624 would impose no unfunded mandates on local, State, or tribal governments.

Cost of Legislation

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 5, 2001.

Hon. JAMES JEFFORDS, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1624, the World Trade Center Attack Claims Act. If you wish further details on this estimate, we will be pleased to provide them.

The CBO staff contact is Julie Middleton, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1624, World Trade Center Attack Claims Act, As ordered reported by the Senate Committee on Environment and Public Works on November 8, 2001.

SUMMARY

S. 1624 would authorize the Federal Emergency Management Agency (FEMA) to establish the Office of World Trade Center Attack Claims to process and pay claims for injury to businesses and property suffered as a result of the September 11, 2001, terrorist attack in New York. The bill would authorize the appropriation of $2 billion for this purpose. Under this bill, FEMA would be authorized to issue claims for residential and business losses, though each individual claim could not exceed $500,000 except under certain circumstances. (The funding authorized by this legislation would not be used for compensation to injured individuals or families of individuals killed in the terrorist attack. That compensation will be provided under Public Law 107-42, the Air Transportation Safety and System Stabilization Act.)

Under S. 1624, residential losses would include an uninsured or under-insured property loss, damage to or destruction of physical infrastructure, an insurance deductible, temporary living or relocation expenses, and clean-up costs. In addition, business losses would include all of those listed as residential losses as well as damage to or destruction of assets or inventory, a business interruption loss, overhead costs, and employee wages for work not performed. Any amounts awarded would be net of insurance claims that the person or business receives. Such claims would also be net of any public assistance provided by federal, state, or local agencies. Under the bill, the authority to approve claims would end 42 months after enactment.

Assuming appropriation of the authorized amount, CBO estimates that implementing S. 1624 would cost $2 billion over the 2002-2006 period. S. 1624 would also have an insignificant effect on receipts by establishing a new civil penalty; therefore, pay-as-you-go procedures would apply.

S. 1624 would exempt the compensation awarded under the bill from the attempts of creditors to collect outstanding debts. That is, the bill would prohibit public and private creditors from making claims against awards made to individuals or businesses who qualify for compensation under the bill. This prohibition would be both an intergovernmental and private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates, however, that any costs to comply with that mandate would be negligible.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 1624 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

	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	1,925	25	25	25	0
Estimated Outlays	385	500	510	410	195

BASIS OF ESTIMATE

For this estimate, CBO assumes S. 1624 will be enacted early in fiscal year 2002. The bill would authorize the appropriation of $2 billion to pay business and property-loss claims related to the September 11, 2001, terrorist attack in New York. According to a report issued by the New York City Office of the Comptroller, the city estimates the level of uninsured property loss and damage as a result of the terrorist attack will be about $17 billion. Under that information, CBO assumes that there would be strong demand for the grants offered under this program and that all of the funds authorized to be appropriated would be spent. Under the process established in the bill, CBO assumes that it would take five years to resolve all of the claims submitted to FEMA. Consequently. we estimate that implementing S. 1624 would cost $2 billion over the 2002-2006 period, assuming appropriation of the authorized amounts.

S. 1624 would establish a ci viI penalty for lawyers who overcharge victims for their services. Collections of civil fines are recorded in the budget as governmental receipts (revenues). CBO expects that any additional receipts would be less than $500,000 because the number of cases involved is likely to be small.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedmes for legislation affecting direct spending or receipts. CBO estimates that enacting S. 1624 would increase revenues by less than $500,000.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 1624 would exempt the compensation awarded under the bill from the attempts of creditors to collect outstanding debts. That is, the bill would prohibit public and private creditors from making claims against awards made to individuals or businesses who qualify for compensation under the bill. This prohibition would be both an intergovernmental and private-sector mandate as defined in UMRA. Because the compensation would be new income generated under the bill, creditors would not lose access to funds that they could have made claims against in the absence of the bill. Consequently, CBO estimates that the costs to comply with the mandate would be negligible, if any, and would fall well below the annual thresholds established by UMRA ($56 million for intergovernmental mandates and $113 million for private-sector mandates in 2001, adjusted annually for inflation).

Estimate Prepared by: Federal Costs: Julie Middleton (226-2860); Impact on State, Local, and Tribal Governments: Leo Lex (225-3220); Impact on the Private Sector: Lauren Marks and Patrice Gordon (226-2966).

Estimate Approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate, provides that reports to the Senate should show changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.