

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5448

To establish the Louisiana Hurricane and Flood Protection Council for the improvement of hurricane and flood protection in Louisiana.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2006

Mr. JINDAL introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To establish the Louisiana Hurricane and Flood Protection Council for the improvement of hurricane and flood protection in Louisiana.

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 “Louisiana Hurricane  
5       and Flood Protection Council Act of 2006”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

8               (1) COUNCIL.—The term “Council” means the  
9       Louisiana Hurricane and Flood Protection Council  
10       established by section 3(a).

1           (2) DISASTER AREA.—The term “disaster area”  
2 means any area along the coast of the State of Lou-  
3 isiana in which a major disaster relating to Hurri-  
4 cane Katrina or Hurricane Rita was declared by the  
5 President to exist on or after August 29, 2005, in  
6 accordance with section 401 of the Robert T. Staf-  
7 ford Disaster Relief and Emergency Assistance Act  
8 (42 U.S.C. 5170).

9           (3) SECRETARY.—The term “Secretary” means  
10 the Secretary of the Army.

11 **SEC. 3. ESTABLISHMENT OF COUNCIL.**

12           (a) ESTABLISHMENT.—There is established a council  
13 to be known as the “Louisiana Hurricane and Flood Pro-  
14 tection Council”.

15           (b) PURPOSES.—The purposes of the Council are—

16           (1) to manage and oversee each aspect of the  
17 implementation of a system-wide, comprehensive  
18 plan for projects of the Corps of Engineers (includ-  
19 ing the study, planning, engineering, design, con-  
20 struction, operation, and maintenance of the projects  
21 or components of projects and functions or activities  
22 of the Corps of Engineers relating to other projects)  
23 that addresses hurricane protection, flood control,  
24 ecosystem restoration, storm surge damage reduc-  
25 tion, or navigation in the disaster area that—

1 (A) on a system-wide basis, as the Council  
2 determines to be practicable, coordinates and  
3 integrates projects or components of projects  
4 that comprehensively implement activities for  
5 hurricane protection, flood control, ecosystem  
6 restoration, storm surge damage reduction, and  
7 navigation projects in order to—

8 (i) ensure consistency and efficiency  
9 between projects and components of  
10 projects;

11 (ii) enhance project effectiveness and  
12 the overall effectiveness of the larger com-  
13 prehensive plan; and

14 (iii) ensure that projects and compo-  
15 nents of projects of the comprehensive plan  
16 are implemented in an efficient, timely,  
17 and reliable manner to maximize results  
18 and reduce costs in implementing projects  
19 or components of projects;

20 (B) restores and reconstructs critical  
21 coastal wetlands;

22 (C) protects the disaster area from future  
23 flooding and reduces storm damage and devas-  
24 tation caused by hurricanes;

25 (D) provides for navigational interests; and

1 (E) ensures that each project for the con-  
2 struction of a segment of the southeast Lou-  
3 isiana hurricane protection system conforms to  
4 safety standards that account for—

5 (i) current understanding of the struc-  
6 tural design of levees and floodwalls;

7 (ii) geotechnical characteristics of the  
8 site of the project;

9 (iii) mechanisms to address potential  
10 failures of the system; and

11 (iv) hydrology and hydraulics for a  
12 range of storm and flood events; and

13 (2) through the demonstration program estab-  
14 lished under section 4(b), to manage each aspect of  
15 the implementation of projects of the Corps of Engi-  
16 neers in the disaster area (including the study, plan-  
17 ning, engineering, design, construction, operation,  
18 and maintenance of such projects or components of  
19 projects and functions or activities of the Corps of  
20 Engineers relating to other projects), including  
21 projects for—

22 (A) hurricane protection;

23 (B) flood control;

24 (C) coastal and ecosystem restoration;

25 (D) storm surge damage reduction; and

1 (E) navigation.

2 (c) MEMBERSHIP.—

3 (1) COMPOSITION OF COUNCIL.—

4 (A) DEFINITION OF EXPERTISE.—In this  
5 paragraph, the term “expertise”, with respect  
6 to a field of work or study, means—

7 (i) at least 10 years of professional  
8 experience in the field of work or study; or

9 (ii) a master’s degree (or the equiva-  
10 lent) in the field of work or study.

11 (B) COMPOSITION.—The Council shall be  
12 composed of 9 members appointed by the Presi-  
13 dent, of whom—

14 (i) 3 members shall be selected from  
15 the Corps of Engineers, 1 of whom shall be  
16 appointed by the President, by and with  
17 the advice and consent of the Senate (un-  
18 less the member is already confirmed by  
19 the Senate), as Chairperson of the Council;  
20 and

21 (ii) 6 members shall be selected from  
22 individuals who are not otherwise employed  
23 by the Federal Government or a State gov-  
24 ernment, of whom—

1 (I) 2 members shall have exper-  
2 tise in civil engineering relating to  
3 hurricane and flood protection;

4 (II) 2 members shall have exper-  
5 tise in the environment relating to—

6 (aa) the interaction of salt-  
7 water and freshwater estuaries;  
8 and

9 (bb) coastal ecosystem res-  
10 toration;

11 (III) 1 member shall have exper-  
12 tise in civil engineering relating to  
13 navigation; and

14 (IV) 1 member shall have exper-  
15 tise in fiscal matters relating to  
16 project management.

17 (C) SUGGESTIONS OF GOVERNOR.—The  
18 Governor of Louisiana may suggest to the  
19 President nominees for consideration for ap-  
20 pointment to the Council under subparagraph  
21 (B)(ii).

22 (D) LOUISIANA RESIDENCE OR WORK RE-  
23 QUIRED.—Of the members of the Council ap-  
24 pointed under subparagraph (B)(ii), at least 2  
25 members shall—

1 (i) have resided in the State of Lou-  
2 isiana for not less than 2 years and have  
3 expertise in the field of work or study of  
4 the member; or

5 (ii) have worked in the applicable field  
6 of expertise in the State of Louisiana for  
7 not less than 2 years.

8 (2) DATE OF APPOINTMENTS.—The appoint-  
9 ment of a member of the Council shall be made not  
10 later than 30 days after the date of enactment of  
11 this Act.

12 (d) TERM; VACANCIES.—

13 (1) TERM.—

14 (A) CORPS OF ENGINEERS.—A member  
15 appointed under subsection (c)(1)(B)(i) (or a  
16 designee of such a member) shall be appointed  
17 for the life of the Council, subject to removal by  
18 the President.

19 (B) NON-FEDERAL EMPLOYEES.—A mem-  
20 ber appointed under subsection (c)(1)(B)(ii)  
21 shall be appointed for a term of 5 years and  
22 may be reappointed, except that, of the mem-  
23 bers first appointed—

1 (i) of the members appointed under  
2 subsection (c)(1)(B)(ii)(I), 1 member shall  
3 be appointed for a term of 4 years; and

4 (ii) of the members appointed under  
5 subsection (c)(1)(B)(ii)(II), 1 member  
6 shall be appointed for a term of 4 years.

7 (2) VACANCIES.—A vacancy on the Council—

8 (A) shall not affect the powers of the  
9 Council; and

10 (B) shall be filled not later than 30 days  
11 after the date on which the vacancy occurred in  
12 the same manner as the original appointment  
13 was made.

14 (e) INITIAL MEETING.—Not later than 30 days after  
15 the date on which the majority of members of the Council  
16 have been appointed, the Council shall hold the initial  
17 meeting of the Council.

18 (f) MEETINGS.—The Council shall meet at the call  
19 of the Chairperson, who shall provide due notice of the  
20 meetings to members of the Council.

21 (g) QUORUM.—A majority of the members of the  
22 Council shall constitute a quorum, but a lesser number  
23 of members may hold hearings.

1 (h) VICE CHAIRPERSON.—The Council shall select a  
2 Vice Chairperson from among the members of the Council  
3 appointed under subsection (c)(1)(B)(ii).

4 (i) CLERK.—

5 (1) IN GENERAL.—The Council shall select a  
6 Clerk from among the members of the Council ap-  
7 pointed under subsection (c)(1)(B)(ii).

8 (2) DUTIES.—The Clerk shall establish and  
9 maintain an accurate record of—

10 (A) proceedings of the Council;

11 (B) information received by the Council;

12 and

13 (C) reports or recommendations prepared  
14 by the Council.

15 (j) LOCATION.—The headquarters, general offices,  
16 and meetings of the Council shall be at a location des-  
17 ignated by the Secretary.

18 **SEC. 4. DUTIES.**

19 (a) COMPREHENSIVE PLAN.—

20 (1) IN GENERAL.—The Council shall manage  
21 and oversee each aspect of the implementation of a  
22 system-wide, comprehensive plan for projects of the  
23 Corps of Engineers in the disaster area (including  
24 the study, planning, engineering, design, construc-  
25 tion, operation, and maintenance of the projects, and

1 functions and activities of the Corps of Engineers  
2 relating to other projects or components of projects)  
3 in accordance with the comprehensive hurricane pro-  
4 tection program authorized by Congress during 2005  
5 to take a comprehensive approach to improving hur-  
6 ricane protection, flood control, coastal and eco-  
7 system restoration, storm surge damage reduction,  
8 and navigation in the disaster area.

9 (2) REQUIREMENTS.—In managing and over-  
10 seeing the plan under paragraph (1), the Council  
11 shall—

12 (A) integrate, as the Council determines to  
13 be practicable, projects and components of  
14 projects that comprehensively implement activi-  
15 ties for hurricane protection, flood control,  
16 coastal and ecosystem restoration, storm surge  
17 damage reduction, and navigation in the dis-  
18 aster area;

19 (B) recommend priorities among the  
20 projects and components of projects identified  
21 under the comprehensive plan;

22 (C) establish a benefit/risk analysis for the  
23 disaster area that properly accounts for risks  
24 posed to high population areas to assist in

1 prioritizing projects described in subparagraph  
2 (A);

3 (D) review Corps of Engineers documents  
4 and prepare recommendations and modifica-  
5 tions for Congress to enhance project or compo-  
6 nent effectiveness and the overall larger com-  
7 prehensive plan;

8 (E) request comments regarding, and pro-  
9 pose resolutions for, problems confronted in im-  
10 plementing any project or component within the  
11 comprehensive plan; and

12 (F) ensure that the comprehensive plan is  
13 implemented in an efficient, timely, and reliable  
14 manner to maximize results and reduce costs in  
15 implementing projects described in subpara-  
16 graph (A).

17 (b) DEMONSTRATION PROGRAM.—

18 (1) IN GENERAL.—During the 20-year period  
19 beginning on the date of enactment of this Act, the  
20 Council shall establish and carry out a demonstra-  
21 tion program for the study, design, integrated imple-  
22 mentation, and system-wide management of any  
23 project or component of a project of the Corps of  
24 Engineers in the disaster area, including the integra-  
25 tion of projects relating to—

- 1 (A) hurricane protection;
- 2 (B) flood control;
- 3 (C) coastal and ecosystem restoration;
- 4 (D) storm surge damage reduction; and
- 5 (E) navigation.

6 (2) FUTURE DISASTERS.—

7 (A) RECOMMENDATIONS.—

8 (i) IN GENERAL.—In carrying out the  
9 demonstration program under paragraph  
10 (1), the Council shall develop, and submit  
11 to the Committee on Environment and  
12 Public Works of the Senate and the Com-  
13 mittee on Transportation and Infrastruc-  
14 ture of the House of Representatives, rec-  
15 ommendations for an emergency strategy  
16 to repair infrastructure relating to projects  
17 or components of projects under the com-  
18 prehensive plan and to supplement the au-  
19 thority of the Corps of Engineers under  
20 any other law, in any area in Louisiana af-  
21 fected by a major disaster or emergency  
22 declared by the President to exist in ac-  
23 cordance with section 401 of the Robert T.  
24 Stafford Disaster Relief and Emergency

1 Assistance Act (42 U.S.C. 5170) during  
2 the period of the demonstration program.

3 (ii) REQUIREMENTS.—The rec-  
4 ommendations under clause (i) shall—

5 (I) be in accordance with the  
6 comprehensive plan under subsection  
7 (a); and

8 (II) include recommendations or  
9 modifications regarding priorities of  
10 the comprehensive plan as the com-  
11 prehensive plan relates to projects or  
12 components of projects for purposes  
13 of restoring, repairing, rebuilding, or  
14 protecting affected disaster areas.

15 (B) APPROVAL PROCESS.—The approval  
16 process described in paragraph (3)(C)(ii) shall  
17 apply to recommendations of the Council under  
18 subparagraph (A), in accordance with para-  
19 graph (3)(C)(iii)(II)(bb).

20 (C) EFFECT OF PARAGRAPH.—Nothing in  
21 this paragraph affects any authority of the  
22 Corps of Engineers under any other law, includ-  
23 ing section 5 of the Act of August 18, 1941  
24 (commonly known as the “Flood Control Act of  
25 1941”) (55 Stat. 650; 69 Stat. 186).

## 1 (3) CORPS OF ENGINEERS STUDIES.—

2 (A) IN GENERAL.—Notwithstanding any  
3 other law (including regulations), each study of  
4 the Corps of Engineers in the disaster area au-  
5 thorized pursuant to a study resolution of a  
6 Committee of Congress during the 20-year pe-  
7 riod beginning on the date of enactment of this  
8 Act shall be conducted in accordance with the  
9 demonstration program established under para-  
10 graph (1).

11 (B) STUDY REPORTS.—Not later than 18  
12 months after the date on which a study under  
13 subparagraph (A) is authorized, the Council  
14 shall submit to the Committee on Environment  
15 and Public Works of the Senate and the Com-  
16 mittee on Transportation and Infrastructure of  
17 the House of Representatives a report describ-  
18 ing the results of the study and any rec-  
19 ommendations, including modifications, of the  
20 Council.

21 (C) IMPLEMENTATION OF RECOMMENDA-  
22 TIONS.—

23 (i) IN GENERAL.—The Corps of Engi-  
24 neers shall not implement a report or rec-  
25 ommendation of the Council until the re-

1 port or recommendation is approved in the  
2 manner of a study resolution by the Com-  
3 mittee on Environment and Public Works  
4 of the Senate and the Committee on  
5 Transportation and Infrastructure of the  
6 House of Representatives under clause (ii).

7 (ii) APPROVAL PROCESS.—

8 (I) IN GENERAL.—Not later than  
9 120 days after the date of receipt of  
10 a recommendation or report describ-  
11 ing the results of a study under sub-  
12 paragraph (B), the Committee on En-  
13 vironment and Public Works of the  
14 Senate and the Committee on Trans-  
15 portation and Infrastructure of the  
16 House of Representatives shall deter-  
17 mine whether to adopt a resolution in  
18 the manner of a study resolution ap-  
19 proving each report or recommenda-  
20 tion submitted by the Council.

21 (II) ADDITIONAL INFORMA-  
22 TION.—To facilitate a Committee de-  
23 scribed in subclause (I) in making a  
24 determination under that subclause,  
25 the Council may submit to the Com-

1           mittee such additional information re-  
2           lating to a report or recommendation  
3           of the Council as the Committee may  
4           request, including information from  
5           the Corps of Engineers.

6                   (III)   RESCISSION   OF   AP-  
7           PROVAL.—If the Corps of Engineers  
8           fails to begin the implementation of a  
9           report or recommendation of the  
10          Council by not later than 1 year after  
11          the date of approval of the report or  
12          recommendation, the Committee on  
13          Environment and Public Works of the  
14          Senate or the Committee on Trans-  
15          portation and Infrastructure of the  
16          House of Representatives, by resolu-  
17          tion, may rescind the approval of the  
18          Committee of the report or rec-  
19          ommendation.

20          (iii) PERIOD OF EFFECTIVENESS.—

21                   (I) IN GENERAL.—Except as pro-  
22           vided in subclause (II), the approval  
23           process described in clause (ii) shall  
24           apply only during the 6-year period

1 beginning on the date of enactment of  
2 this Act.

3 (II) EXTENSION.—Notwith-  
4 standing subclause (I), the approval  
5 process described in clause (ii) shall  
6 apply with respect to a report or rec-  
7 ommendation of the Council sub-  
8 mitted after the date that is 6 years  
9 after the date of enactment of this  
10 Act if—

11 (aa) during the 2-year pe-  
12 riod preceding the date on which  
13 the report or recommendation is  
14 submitted, a major bill reauthor-  
15 izing water resource programs of  
16 the United States has not been  
17 enacted; or

18 (bb) a major disaster or  
19 emergency is declared by the  
20 President to exist in accordance  
21 with section 401 of the Robert T.  
22 Stafford Disaster Relief and  
23 Emergency Assistance Act (42  
24 U.S.C. 5170) in any area of

1 southeast Louisiana after that  
2 date.

3 (iv) EFFECT OF SUBPARAGRAPH.—

4 The approval process described in this sub-  
5 paragraph shall apply only in a case in  
6 which such an approval process is nec-  
7 essary, as determined by the Committee,  
8 because of a major disaster or emergency  
9 declared by the President to exist in ac-  
10 cordance with section 401 of the Robert T.  
11 Stafford Disaster Relief and Emergency  
12 Assistance Act (42 U.S.C. 5170) after Au-  
13 gust 1, 2005, that caused a significant loss  
14 of life or property.

15 (v) FEDERAL SHARE.—

16 (I) IN GENERAL.—The Federal  
17 share of the cost of implementing a  
18 recommendation of the Council shall  
19 be—

20 (aa) for the period of fiscal  
21 years 2006 through 2016, 90  
22 percent; and

23 (bb) for the period of fiscal  
24 years 2017 and thereafter for the

1 life of the demonstration pro-  
2 gram, 85 percent.

3 (II) RECOMMENDATIONS.—The  
4 Council may make recommendations  
5 to reduce or modify the cost share for  
6 any project or component of a project  
7 in the comprehensive plan.

8 (D) EFFECT OF PARAGRAPH.—In imple-  
9 menting a report or recommendation of the  
10 Council under this paragraph, the Corps of En-  
11 gineers may waive a requirement under the Na-  
12 tional Environmental Policy Act of 1969 (42  
13 U.S.C. 4321 et seq.) only if the Council deter-  
14 mines that—

15 (i) an imminent threat to life requires  
16 the waiver; and

17 (ii) the waiver will not result in sig-  
18 nificant environmental damage.

19 (c) NONAPPLICABILITY OF FACAs.—The Federal Ad-  
20 visory Committee Act (5 U.S.C. App.) shall not apply to  
21 the Council in carrying out this Act.

22 **SEC. 5. POWERS.**

23 (a) HEARINGS.—The Council may hold such hear-  
24 ings, meet and act at such times and places, take such

1 testimony, and receive such evidence as the Council con-  
2 siders advisable to carry out this Act.

3 (b) INFORMATION FROM FEDERAL AGENCIES.—

4 (1) IN GENERAL.—The Council may secure di-  
5 rectly from a Federal agency such information as  
6 the Council considers necessary to carry out this  
7 Act.

8 (2) PROVISION OF INFORMATION.—On request  
9 of the Chairperson of the Council, the head of the  
10 agency shall provide the information to the Council.

11 (c) POSTAL SERVICES.—The Council may use the  
12 United States mails in the same manner and under the  
13 same conditions as other agencies of the Federal Govern-  
14 ment.

15 (d) GIFTS.—The Council may accept, use, and dis-  
16 pose of gifts or donations of services or property.

17 **SEC. 6. COUNCIL PERSONNEL MATTERS.**

18 (a) COMPENSATION OF MEMBERS.—

19 (1) NON-FEDERAL EMPLOYEES.—A member of  
20 the Council who is not an officer or employee of the  
21 Federal Government shall be compensated at a rate  
22 equal to the daily equivalent of the annual rate of  
23 basic pay prescribed for level IV of the Executive  
24 Schedule under section 5315 of title 5, United  
25 States Code, for each day (including travel time)

1 during which the member is engaged in the perform-  
2 ance of the duties of the Council.

3 (2) FEDERAL EMPLOYEES.—A member of the  
4 Council who is an officer or employee of the Federal  
5 Government shall serve without compensation in ad-  
6 dition to the compensation received for the services  
7 of the member as an officer or employee of the Fed-  
8 eral Government.

9 (b) TRAVEL EXPENSES.—A member of the Council  
10 shall be allowed travel expenses, including per diem in lieu  
11 of subsistence, at rates authorized for an employee of an  
12 agency under subchapter I of chapter 57 of title 5, United  
13 States Code, while away from the home or regular place  
14 of business of the member in the performance of the duties  
15 of the Council.

16 (c) DETAIL OF FEDERAL GOVERNMENT EMPLOY-  
17 EES.—

18 (1) IN GENERAL.—An employee of the Federal  
19 Government may be detailed to the Council without  
20 reimbursement.

21 (2) CIVIL SERVICE STATUS.—The detail of the  
22 employee shall be without interruption or loss of civil  
23 service status or privilege.

1 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

2       There are authorized to be appropriated such sums  
3 as are necessary to carry out this Act, to remain available  
4 until expended.

5 **SEC. 8. TERMINATION OF COUNCIL.**

6       The Council shall terminate on December 31, 2026.

○