

114TH CONGRESS
1ST SESSION

H. R. 2489

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, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2015

Mr. SEAN PATRICK MALONEY of New York (for himself and Mr. GIBSON) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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, and for other purposes.

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 2015”.

1 **SEC. 2. REHABILITATION AND REPAIR OF DEFICIENT**
2 **DAMS.**

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

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

9 (2) by inserting after paragraph (3) the fol-
10 lowing:

11 “(4) DEFICIENT DAM.—The term ‘deficient
12 dam’ means a dam that the State within the bound-
13 aries of which the dam is located determines—

14 “(A) fails to meet minimum dam safety
15 standards of the State or an Indian tribe; and

16 “(B) poses an unacceptable risk to the
17 public.”; and

18 (3) by inserting after paragraph (9) (as redesis-
19 gated by paragraph (1) of this subsection) the fol-
20 lowing:

21 “(10) PUBLICLY-OWNED DAM.—

22 “(A) IN GENERAL.—The term ‘publicly-
23 owned dam’ means a dam that is owned by 1
24 or more State agencies or governments, local
25 governments, municipal governments, or tribal
26 governments.

1 “(B) INCLUSIONS.—The term ‘publicly-
2 owned dam’ includes a dam owned by a non-
3 profit organization that—

4 “(i) is established by 1 or more State,
5 local, municipal, or tribal governments;
6 and

7 “(ii) provides public benefits, such
8 as—

9 “(I) local flood control districts;

10 “(II) regional public water utili-
11 ties; and

12 “(III) local irrigation districts.”;

13 and

14 (4) by inserting after paragraph (11) (as redes-
15 igned by paragraph (1) of this subsection) the fol-
16 lowing:

17 “(12) REHABILITATION.—The term ‘rehabilita-
18 tion’ means the repair, replacement, reconstruction,
19 or removal of a dam that is carried out to meet ap-
20 plicable State or tribal dam safety standards.”.

21 (b) PROGRAM FOR REHABILITATION AND REPAIR OF
22 DEFICIENT DAMS.—The National Dam Safety Program
23 Act is amended by inserting after section 8 (33 U.S.C.
24 467f) the following:

1 **“SEC. 8A. REHABILITATION AND REPAIR OF DEFICIENT**
2 **DAMS.**

3 “(a) ESTABLISHMENT OF PROGRAM.—The Adminis-
4 trator shall establish, within FEMA, a program to provide
5 grant assistance to States for use in rehabilitation of defi-
6 cient dams that are publicly-owned dams.

7 “(b) AWARD OF GRANTS.—

8 “(1) APPLICATION.—

9 “(A) IN GENERAL.—A State interested in
10 receiving a grant under this section may submit
11 to the Administrator an application for the
12 grant.

13 “(B) REQUIREMENTS.—An application
14 submitted to the Administrator under this sec-
15 tion shall be submitted at such time, be in such
16 form, and contain such information as the Ad-
17 ministrator may prescribe by regulation.

18 “(2) GRANT.—

19 “(A) IN GENERAL.—The Administrator
20 may make a grant in accordance with this sec-
21 tion for rehabilitation of a deficient dam to a
22 State that submits an application for the grant
23 in accordance with the regulations prescribed by
24 the Administrator.

25 “(B) PROJECT GRANT AGREEMENT.—The
26 Administrator shall enter into a project grant

1 agreement with the State to establish the terms
2 of the grant and the project, including the
3 amount of the grant.

4 “(C) GRANT ASSURANCE.—As part of a
5 project agreement entered into under subpara-
6 graph (B), the Administrator shall require a
7 State to provide an assurance, with respect to
8 the dam to be rehabilitated under the project,
9 that the owner of the dam has developed and
10 will carry out a plan for maintenance of the
11 dam during the expected life of the dam.

12 “(3) AGREEMENTS BETWEEN STATES AND IN-
13 DIAN TRIBES.—A State that receives a grant under
14 this section may enter into an agreement with an In-
15 dian tribe—

16 “(A) to transfer grant funds to the tribe
17 for rehabilitation of a tribally-owned deficient
18 dam consistent with this section; or

19 “(B) to authorize the State to use grant
20 funds to rehabilitate a tribally-owned deficient
21 dam consistent with this section.

22 “(4) APPLICABILITY OF REQUIREMENTS.—The
23 Administrator shall require recipients of grants
24 under this section to assure compliance with the
25 standards set forth in section 611(j)(9) of the Rob-

1 ert T. Stafford Disaster Relief and Emergency As-
2 sistance Act (42 U.S.C. 5196(j)(9)), as in effect on
3 the date of enactment of this section, in the same
4 manner that recipients of financial contributions
5 under section 611(j) of such Act are required to as-
6 sure compliance with such standards.

7 “(c) PRIORITY SYSTEM.—The Administrator, in con-
8 sultation with the Board, shall develop a risk-based pri-
9 ority system for use in identifying deficient dams for which
10 grants may be made under this section.

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

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

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

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

1 “(B) the number of non-Federal publicly-
2 owned dams that are so identified and that are
3 located within the boundaries of all applying
4 States.

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

8 “(1) to rehabilitate a Federal dam;

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

11 “(3) to modify a dam to produce hydroelectric
12 power;

13 “(4) to increase water supply storage capacity;
14 or

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

17 “(f) COST SHARING.—The Federal share of the cost
18 of rehabilitation of a deficient dam for which a grant is
19 made under this section may not exceed 75 percent of the
20 cost of the rehabilitation.

21 “(g) CONTRACTUAL REQUIREMENTS.—

22 “(1) IN GENERAL.—Subject to paragraph (2),
23 as a condition on the receipt of a grant under this
24 section, a State that receives the grant shall require
25 that each contract and subcontract for program

1 management, construction management, planning
2 studies, feasibility studies, architectural services,
3 preliminary engineering, design, engineering, sur-
4 veying, mapping, and related services entered into
5 using funds from the grant be awarded in the same
6 manner as a contract for architectural and engineer-
7 ing services is awarded under—

8 “(A) chapter 11 of title 40, United States
9 Code; or

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

12 “(2) NO PROPRIETARY INTEREST.—A contract
13 awarded in accordance with paragraph (1) shall not
14 be considered to confer a proprietary interest upon
15 the United States.

16 “(h) AUTHORIZATION OF APPROPRIATIONS.—

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

19 “(A) \$50,000,000 for fiscal year 2016;

20 “(B) \$100,000,000 for fiscal year 2017;

21 “(C) \$150,000,000 for fiscal year 2018;

22 “(D) \$250,000,000 for fiscal year 2019;

23 and

24 “(E) \$250,000,000 for fiscal year 2020.

1 “(2) STAFF.—There is authorized to be appro-
2 priated to provide for the employment of such addi-
3 tional staff of FEMA as are necessary to carry out
4 this section \$400,000 for each of fiscal years 2016
5 through 2020.

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

9 (c) RULEMAKING.—

10 (1) PROPOSED RULEMAKING.—Not later than
11 90 days after the date of enactment of this Act, the
12 Administrator of the Federal Emergency Manage-
13 ment Agency shall issue a notice of proposed rule-
14 making regarding the amendments made by this sec-
15 tion to the National Dam Safety Program Act (33
16 U.S.C. 467 et seq.).

17 (2) FINAL RULE.—Not later than 120 days
18 after the date of enactment of this Act, the Adminis-
19 trator of the Federal Emergency Management Agen-
20 cy shall promulgate a final rule regarding the
21 amendments described in paragraph (1).

22 **SEC. 3. BUY AMERICA.**

23 The National Dam Safety Program Act (33 U.S.C.
24 467 et seq.) is amended by adding at the end the fol-
25 lowing:

1 **“SEC. 15. BUY AMERICA.**

2 “(a) DOMESTIC SOURCE REQUIREMENT FOR STEEL,
3 IRON, AND MANUFACTURED GOODS.—

4 “(1) IN GENERAL.—Notwithstanding any other
5 provision of law, funds made available to carry out
6 this Act may not be obligated for a project unless
7 the steel, iron, and manufactured goods used for the
8 project are produced in the United States.

9 “(2) SCOPE.—The requirements of this section
10 apply to all contracts for a project carried out within
11 the scope of the applicable finding, determination, or
12 decision under the National Environmental Policy
13 Act of 1969 (42 U.S.C. 4321 et seq.) regardless of
14 the funding source of such contracts, if at least one
15 contract for the project is funded with amounts
16 made available to carry out this Act.

17 “(b) EXCEPTIONS.—

18 “(1) ISSUANCE OF WAIVERS.—The Adminis-
19 trator may waive the requirements of subsection (a)
20 only if the Administrator finds that—

21 “(A) applying subsection (a) would be in-
22 consistent with the public interest, as deter-
23 mined in accordance with the regulations re-
24 quired under paragraph (2);

1 “(B) the steel, iron, or manufactured
2 goods required for a project are not produced in
3 the United States—

4 “(i) in sufficient and reasonably avail-
5 able quantities; or

6 “(ii) to a satisfactory quality; or

7 “(C) the use of steel, iron, and manufac-
8 tured goods produced in the United States for
9 a project will increase the total cost of the
10 project by more than 25 percent.

11 “(2) REGULATIONS.—Not later than 1 year
12 after the date of enactment of this section, the Ad-
13 ministrator shall issue regulations establishing the
14 criteria that the Administrator shall use to deter-
15 mine whether the application of subsection (a) is in-
16 consistent with the public interest for purposes of
17 paragraph (1)(A).

18 “(3) REQUESTS FOR WAIVERS.—A recipient of
19 assistance under this Act seeking a waiver under
20 paragraph (1) shall submit to the Administrator a
21 request for the waiver in such form and containing
22 such information as the Administrator may require.

23 “(c) WAIVER REQUIREMENTS.—

1 “(1) PUBLIC NOTIFICATION OF AND OPPOR-
2 TUNITY FOR COMMENT ON REQUEST FOR A WAIV-
3 ER.—

4 “(A) IN GENERAL.—If the Administrator
5 receives a request for a waiver under subsection
6 (b), the Administrator shall provide notice of
7 and an opportunity for public comment on the
8 request at least 30 days before making a find-
9 ing based on the request.

10 “(B) NOTICE REQUIREMENTS.—A notice
11 provided under subparagraph (A) shall—

12 “(i) include the information available
13 to the Administrator concerning the re-
14 quest, including whether the request is
15 being made under subsection (b)(1)(A),
16 (b)(1)(B), or (b)(1)(C); and

17 “(ii) be provided by electronic means,
18 including on the official public Internet
19 Web site of FEMA.

20 “(2) DETAILED JUSTIFICATION IN FEDERAL
21 REGISTER.—If the Administrator issues a waiver
22 under subsection (b), the Administrator shall publish
23 in the Federal Register a detailed justification for
24 the waiver that—

1 “(A) addresses the public comments re-
2 ceived under paragraph (1)(A); and

3 “(B) is published before the waiver takes
4 effect.

5 “(3) ANNUAL REPORT.—Not later than Feb-
6 ruary 1 of each year beginning after the date of en-
7 actment of this section, the Administrator shall sub-
8 mit to the Committee on Transportation and Infra-
9 structure of the House of Representatives and the
10 Committee on Homeland Security and Governmental
11 Affairs of the Senate a report that—

12 “(A) specifies each project with respect to
13 which the Administrator issued a waiver under
14 subsection (b) during the preceding calendar
15 year;

16 “(B) identifies the country of origin and
17 product specifications for steel, iron, or manu-
18 factured goods acquired pursuant to each waiv-
19 er under subsection (b) issued by the Adminis-
20 trator during the preceding calendar year;

21 “(C) summarizes the monetary value of
22 contracts awarded pursuant to each such waiv-
23 er;

24 “(D) provides the justification for each
25 such waiver, including the specific law, treaty,

1 or international agreement under which the
2 waiver was granted;

3 “(E) summarizes the funds expended on—

4 “(i) steel, iron, and manufactured
5 goods produced in the United States for
6 projects with respect to which the Buy
7 America requirement under this section
8 applied during the preceding calendar year;
9 and

10 “(ii) steel, iron, and manufactured
11 goods produced outside the United States
12 for projects with respect to which the Ad-
13 ministrator issued a waiver under sub-
14 section (b) during the preceding calendar
15 year; and

16 “(F) provides an employment impact anal-
17 ysis of the cumulative effect of all waivers
18 under subsection (b) issued by the Adminis-
19 trator during the preceding calendar year on
20 manufacturing employment in the United
21 States.

22 “(d) STATE REQUIREMENTS.—The Administrator
23 may not impose a limitation or condition on assistance
24 provided under this Act that restricts—

1 “(1) a State from imposing requirements that
2 are more stringent than those imposed under this
3 section with respect to limiting the use of articles,
4 materials, or supplies mined, produced, or manufac-
5 tured in foreign countries for projects carried out
6 with such assistance; or

7 “(2) any recipient of such assistance from com-
8 plying with such State requirements.

9 “(e) INTENTIONAL VIOLATIONS.—Pursuant to proce-
10 dures established under subpart 9.4 of chapter 1 of title
11 48, Code of Federal Regulations, a person shall be ineli-
12 gible to receive a contract or subcontract funded with
13 amounts made available to carry out this Act if the Ad-
14 ministrators, the head of any department, agency, or in-
15 strumentality of the United States, or a court determines
16 that such person intentionally—

17 “(1) affixed a label bearing a ‘Made in Amer-
18 ica’ inscription, or any inscription with the same
19 meaning, to any steel, iron, or manufactured goods
20 that—

21 “(A) were used in a project to which this
22 section applies; and

23 “(B) were not produced in the United
24 States; or

1 “(2) represented that any steel, iron, or manu-
2 factured goods were produced in the United States
3 that—

4 “(A) were used in a project to which this
5 section applies; and

6 “(B) were not produced in the United
7 States.

8 “(f) CONSISTENCY WITH INTERNATIONAL AGREE-
9 MENTS.—

10 “(1) IN GENERAL.—This section shall be ap-
11 plied in a manner that is consistent with United
12 States obligations under international agreements.

13 “(2) TREATMENT OF FOREIGN COUNTRIES IN
14 VIOLATION OF INTERNATIONAL AGREEMENTS.—The
15 Administrator shall prohibit the use of steel, iron,
16 and manufactured goods produced in a foreign coun-
17 try in a project funded with amounts made available
18 to carry out this Act, including any project for which
19 the Administrator has issued a waiver under sub-
20 section (b), if the Administrator, in consultation
21 with the United States Trade Representative, deter-
22 mines that the foreign country is in violation of the
23 terms of an agreement with the United States by
24 discriminating against steel, iron, or manufactured

1 goods that are produced in the United States and
2 covered by the agreement.

3 “(g) EMERGENCY WAIVER.—Notwithstanding any
4 other provision of this section, the Administrator may
5 waive the applicability of this section, in whole or in part,
6 in an emergency.”.

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