

TESTIMONY OF DAVID TERRY, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF STATE ENERGY OFFICIALS, BEFORE THE SUBCOMMITTEE ON HOMELAND SECURITY, SENATE COMMITTEE ON APPROPRIATIONS REGARDING FY'22 APPROPRIATIONS FOR THE FEDERAL EMERGENCY MANAGEMENT AGENCY

June 7, 2021

Chairman Murphy and Ranking Member Capito, and members of the Subcommittee, I am David Terry, the Executive Director of the National Association of State Energy Officials (NASEO). NASEO represents the Governor-designated energy directors and their offices in the 56 states, D.C., and U.S. territories. One of the key functions of the state energy offices is Emergency Support Function (“ESF-12”) related planning, mitigation, and response actions at the state level, as well as coordination with local governments and the energy industry.

We are in the midst of a severe national crisis. DHS as a whole, FEMA specifically, the U.S. Department of Energy, and the states must all work together in a coordinated manner. We will (and are) facing both expected and unexpected barriers to action. The Subcommittee also must take specific action to reverse a terrible decision by DHS and OMB at the end of the last Administration. In December 2020, DHS wrote to the Speaker with “poison-pill” changes to the cyber security title of the Energy Act of 2020. The final Energy Act of 2020 (which was included in the 5500+ page end-of-year package, that was passed and signed into law) excluded the cyber security title because of these uniformed comments from DHS. As was evidenced by the cyber attack on the Colonial Pipeline, we must put in place far more robust cyber defenses into our energy systems as well as the rest of the economy. Included in that cyber title was expanded state actions for energy-sector cyber security, expanded public-private partnerships, expanded energy emergency preparedness (including “all-hazards”) and the “Pipeline and LNG Facility Cybersecurity Preparedness Act.” At the time, this DHS action made no sense, and sadly, subsequent developments such as the Colonial cyber attack, showed the impropriety of the DHS objections. The cyber security title of the energy bill would have begun to make a huge difference. This is not a partisan issue. Cyber security requires extensive agency coordination, including the ESF-12 function. The state energy offices work closely with our counterparts in the state emergency management agencies. We recommend specific bill text that provides:

“The Secretary of the Department of Homeland Security shall coordinate closely with the Secretary of the Department of Energy (DOE), and the Office of Cybersecurity, Energy Security and Emergency Response at DOE, and shall direct all staff to coordinate closely with the state emergency management offices and the state energy offices to ensure robust cyber security and energy emergency preparedness and response is occurring, including DOE leadership in implementation and preparation for ESF-12 related emergencies. The Secretary shall jointly convene regular meetings with state emergency management officials, state energy officials, and DOE to ensure that coordination and cooperation is occurring. \$20 million is specifically allocated for this purposes. The Secretary shall report to the Subcommittee, the House and Senate Homeland Security Committees, the House Energy and Commerce Committee and the Senate Energy and Natural Resources Committee on progress made, within 90 days of enactment.”

We recommend that the Subcommittee approve specific funding in the following areas in the

appropriations bill:

- 1) Full funding of the FEMA BRIC program at \$3.6 billion. The Administration's decision to increase the FY'21 amount to \$1 billion is a very positive step, but more is needed as is greater attention to critical energy actions within this program.
- 2) New state emergency planning and response grants of \$1 billion, with 10% of the funds directed to state energy offices, and the remainder targeted to state emergency management agencies including coordination between the energy offices, state emergency management agencies, FEMA and the DOE Office of Cybersecurity, Energy Security and Emergency Response.
- 3) New direct funding to states of \$5 billion for public facility resilience, energy, and water system retrofits to update mission critical facilities, especially including hospitals, schools, community shelters, non-profit nursing homes, and first responder facilities, utilizing private capital for energy efficiency improvements with federal funds directed to emergency response upgrades (this program could be operated by state energy offices, who already manage the existing \$5 - \$6 billion per year in energy service performance contracting programs). In addition, special provision could be made to target underserved rural healthcare facilities.

The program recommended in #3, above, would have the double benefit of assisting states in responding to hurricanes, floods, wildfires, earthquakes, and other hazards. More energy system resilient facilities with access to longer term back-up power, efficient HVAC, lighting, and hot water systems offer far greater reliability and durability of service for communities.

NASEO remains concerned that FEMA has not been implementing the Disaster Recovery and Reform Act in full compliance with congressional direction, intent, and the clear statutory language in the area of pre-disaster state and local building code training assistance.

We are encouraged by the FY'22 request to provide increased funding for the FEMA BRIC program. Practical, cost-effective building codes, voluntarily adopted by state and local governments, require robust training of code staff and the building trade community to be effective. The evidence that modern building energy codes result in more resilient and energy efficient construction and that such codes save lives and offer greater comfort to residents during a disaster is abundant.

FEMA had previously chosen to implement DRRA Section 1206 entirely through the Public Assistance Program. As a consequence, the draft policy would prohibit activities (1) associated with "non-disaster damaged buildings," (2) related to "[a]dopting new or updating current building codes or floodplain management ordinances," and (3) that extend beyond "180 days after the date of the major disaster declaration."

Where a community has not adopted disaster resistant codes pre-disaster, post-disaster is the ideal time for that adoption or update. Post-disaster is also when permitting loads and training needs are at their greatest. Addressing these challenges through Section 1206 would allow FEMA to provide support to jurisdictions seeking to ensure that rebuilding is done to modern

standards, which in turn can help impacted communities be better positioned to weather the next storm. Providing federal reimbursement for administering and enforcing older and less resilient codes risks perpetuating an unending cycle of damage and repair if those older codes are never updated.

DRRA Section 1206(a) permits FEMA to assist communities in adopting or updating building codes post disaster, in training code officials and builders on updated or existing building codes, and in boosting efforts to ensure rebuilding work community-wide is done to code. We believe FEMA should act now to implement that Section, which is consistent with the Agency's current Strategic Plan, ongoing programmatic work, the National Mitigation Investment Strategy, mitigation research, the DRRA, and congressional intent.

To ensure DRRA section 1206(a) is implemented appropriately in the near-term, we request the addition of the following report language in your appropriations bill or converted to bill text:

“The Committee is concerned that the Agency has implemented Disaster Recovery Reform Act Section 1206 solely through the Public Assistance program. In so doing, the Agency has not implemented Section 1206(a), which permits FEMA to assist communities in adopting or updating building codes post disaster, in training code officials and builders on updated or existing building codes, and in boosting efforts to ensure rebuilding work communitywide is done to code. The Committee urges the Agency to take immediate steps to implement Section 1206(a) as required under the law, which will ensure that rebuilding is done to modern standards, helping impacted communities be better positioned to confront future natural hazards.”

If the Subcommittee has any questions regarding this testimony, please contact David Terry, (NASEO Executive Director) (dterry@naseo.org) or Jeff Genzer (NASEO Counsel) (jcg@dwgp.com).