

OVERVIEW OF ORIGINAL VERSION OF H.R. 4100: THE “BAKER BILL” ESTABLISHING THE LOUISIANA RECOVERY CORPORATION

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This memo provides advocates with a discussion of specific problems with the original version of H.R. 4100, the Baker Bill. A revised version is expected to be introduced around December 7th. The memo focuses on one aspect of the Baker Bill, namely its failure to provide for significant local control over the shape of redevelopment, and suggests areas of improvement. We are still studying the other important aspect of the bill – the “bailout” provision for homeowners – and hope to have an analysis prepared soon.

1. Introduction

In the aftermath of Hurricane Katrina and the hundreds of thousands of destroyed homes and businesses in Louisiana, redevelopment will be a major task. One proposal for addressing how to conduct the rebuilding effort is contained in H.R. 4100, a bill in the U.S. House of Representatives. This bill was introduced by Rep. Richard Baker (R-Baton Rouge), and would establish a new federal agency empowered and funded to purchase property in hurricane-affected areas in Louisiana, and to sell that property to private developers.

While there may be better models for rebuilding, this one has momentum and may well be implemented. This memo is intended to provide grass-roots groups and decision-makers with information that can help (a) determine whether to support this bill at all, and (b) identify some specific amendments that might significantly improve this bill's provisions regarding redevelopment..

In a nutshell:

- ✧ We think that this bill, while possibly providing important relief to individual homeowners whose homes have been damaged, *poses very serious risks with regard to the redevelopment of New Orleans and other affected areas.*
- ✧ Specifically, the current draft of the bill contains *no mechanism for local control* over land use decisions that will shape New Orleans for decades to come.
- ✧ While we are still studying the “bail-out” provisions of the bill, the current draft does not do enough to protect the interest of homeowners, especially those wanting to retain ownership over their property.

2. Status of Legislation

Recent press coverage indicates that the bill is gathering momentum. On November 17, the House Financial Services Committee held a hearing on the bill. Testifying in support were Ray Nagin, Walter Isaacson of the Louisiana Recovery Authority, New Orleans City Council member Jay Batt, and others, including two state legislators. Governor Blanco is on the record in support as well. U.S. Rep. William Jefferson, whose district includes New Orleans, has not taken a public position on the bill. The Congressional Black Caucus has expressed concern.

Rep. Baker is apparently attempting to move the bill to the House floor for a vote. Baker's office has announced that they are making to changes to the language of the bill on certain key points, described below. He has not released new language as of the date of this writing, however, so the following description relies on the most recent draft of the bill, dated October 20th.

3. The "Louisiana Recovery Corporation"

The bill would establish the "Louisiana Recovery Corporation," a new federal agency. The bill states that:

The primary mission and purpose of the Corporation shall be the economic stabilization and redevelopment of areas within Louisiana that were devastated or significantly distressed by Hurricane Katrina or Hurricane Rita.

These purposes would be accomplished by the Corporation (the "LRC") purchasing commercial and residential property, making infrastructure improvements around it, and selling it in tracts to developers. The bill sets forth certain procedures the LRC would need to follow to do this.

The LRC would be controlled by a seven-member board of directors. The current draft of the bill indicates that two of these members will be nominated by the Governor of Louisiana; Rep. Baker has indicated that the next draft will bump this number to three. The remainder of the board members will be nominated by the President. All seven board members will need to be confirmed by the U.S. Senate.

The LRC would obtain money for purchase of property and for its operations through sale of U.S. Treasury bonds.

4. "Bailout" of Property Owners and Lenders

Individual landowners are at great risk of being saddled with mortgage payments on properties that are unlivable and un-sellable. Press accounts discussing the bill have indicated that many mortgage companies have granted 90-day grace periods for mortgage payments on damaged properties, and that these grace periods are set to expire in December. Foreclosure proceedings on property that is currently uninhabitable would of course be a great economic hardship to individual owners – and, crucially, the banks that hold mortgages.

The bill has therefore been termed “bailout” legislation, providing federal funds to purchase property in hurricane-affected areas, thereby relieving the economic hardship to homeowners and to lenders. The bill requires that mortgages for property purchased by the LRC shall be considered paid in full, ensuring that the original owner does not carry debt on the property after it is sold. But many factors will go into the price offered to the owner by the LRC, including the cost of repairing the property and the amount of any outstanding mortgage. If good prices are offered to individual owners, the LRC’s involvement could provide crucial assistance to homeowners whose homes were damaged, particularly those who have a substantial mortgage balance but had no homeowners’ insurance.

The bill also gives property owners other means of participating in or benefiting from the LRC’s activities. These include a right of first refusal to purchase similar-sized property in an area that is being redeveloped, and a right to retain an interest in their current property with some degree of involvement from the LRC. Whether these options will be a benefit to a substantial number of property owners depends on administrative details and implementation.

While we are still assessing these “bail-out” provisions, we want to note one possible area for advocacy. The bill lists a number of factors to be used in determining how much compensation to offer to property owners and mortgage holders, but does not specify how these factors will be considered, explain what the primary purpose of the compensation is intended to be, or state whether a formula will be used to weight the factors. Community-based organizations may wish to advocate for provisions: (a) stating that the dominant purpose of the compensation is to protect the investment and financial future of the property owner; and (b) providing that the LRC shall develop some means to consistently determine compensation and ensure that relative investments of the mortgage holder and property owner are reflected in the compensation paid to each.

5. The LRC’s Land Use Authority

A. Eminent Domain

The October version of the bill would have given the LRC eminent domain power, allowing it to purchase property over an owner’s objection in certain circumstances. In response to criticism, Rep. Baker has stated that he is dropping that provision from the bill, and that the new version will not permit the LRC to purchase property from owners who do not want to sell.

However, even if the LRC is not given the power of eminent domain, the LRC could work with a local entity, like the New Orleans Redevelopment Authority, to redevelop an area – and that local entity will likely have eminent domain authority that could be used to purchase property from an unwilling owner. The bottom line is that the LRC will be a major force in redevelopment of affected areas, and an individual owner is unlikely to be able to hold up its plans by refusing to sell. For these reasons, local control over the LRC’s activities is crucial to individual owners, even if the LRC does not have eminent domain power.

B. Local Control

The October version of the bill provides no mechanism for local control of the LRC's redevelopment activities, and only limited mechanisms for local input. The bill provides that:

1. The Governor of Louisiana can nominate two (or three) members to the LRC's seven-member board of directors, which has ultimate control over the LRC's activities.
2. The LRC shall carry out its redevelopment activities only "after consultation with State and local officials."
3. Developers to whom the LRC sells land must demonstrate "capacity to oversee major development projects through a community-based collaborative process."
4. Redevelopment decisions shall "provide for the protection and preservation of historical and other sites of cultural significance in such a manner that promotes local heritage and interest," and State and local officials must be consulted on these points.

Note that none of these provisions provide for any actual local control over LRC's redevelopment decisions. Consultation with unnamed local officials, and general language about community-based processes and local heritage, are clearly insufficient to ensure broad-based community involvement and control over the crucial land-use decisions that the LRC will make. We cannot think of any other federal program in which federal officials are given *carte-blanche* to make land-use decisions that are quintessentially local in nature. The LRC would lack even the minimal public processes and safeguards that typically accompany the land use decisions made by local governments, and which are themselves inadequate to ensure responsible, community-oriented development.

6. Possible Amendments to Ensure Local Control

Advocates may want to simply oppose H.R. 4100 for the reasons enumerated above. However, if the possible relief for individual homeowners facing mortgage difficulties make the bill attractive – or if the bill seems likely to pass regardless of community opposition – they may want to consider pushing for the following amendments to the bill, or for similar procedures ensuring local control:

1. Include a provision stating that the LRC must, through a process providing opportunities for community input, develop a "master plan" for its redevelopment activities in any jurisdiction; that the plan cannot be implemented until it has been approved by the voters of that jurisdiction; and that all redevelopment activities must be carried out in conformance with that plan.
2. Include a provision stating that all of the LRC's redevelopment activities conform to local and state laws and decisions regarding land uses and redevelopment. These include zoning laws, environmental laws, land use plans and policies, and redevelopment plans.

3. Include a provision stating that disposition of property over a certain size requires approval of the governing legislative body for the jurisdiction in question; and/or may be submitted to the voters of the jurisdiction through a referendum process.
4. Include a provision requiring that redevelopment activities of the LRC be carried out jointly by LRC and by a local agency, with the public processes applicable to that local agency applicable to all such redevelopment activities. (This would not necessarily lead to better results, but it would at least bring the decisions down to the local level.)

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Please contact us if we can provide more detailed information on any aspect of the bill, or if we can assist in developing or analyzing amendments to the language.



Technical Assistance in the Gulf Coast Region



The Brennan Center for Justice and the Partnership for Working Families are providing technical assistance to grassroots groups and advocacy organizations working to ensure that Katrina survivors can rebuild their own communities. We have expertise in:

- (1) Drafting local hiring and contracting policies;
- (2) Designing pre-apprenticeship programs to prepare individuals for careers in the construction industry; and
- (3) Developing tools to ensure community involvement in land-use planning and redevelopment decisions.

We are currently tracking and analyzing state and federal legislative activity in the above areas, and responding to specific requests for assistance where we can.

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