Congress Left Town with Much to Be Done In Lame Duck Session

After ensuring that the government could continue to operate in the new fiscal year and that the National Flood Insurance Program (NFIP) could continue to operate, the Congress adjourned on September 30, a week earlier than planned. This recess provides time for Members of Congress and those Senators up for re-election to return home to campaign.

A lame-duck Congressional session will begin on November 15 with a heavy legislative agenda anticipated. Certainly the Congress will have to deal with appropriations for the FY 2011 budgets of the federal departments and agencies as the Continuing Resolution passed just before adjournment funds the government only until December 3. Indications at present are that the House and Senate Appropriations Committees will develop a very large omnibus appropriations bill to fund all of the government for the full fiscal year. Consideration of an omnibus appropriations bill as well as the number and nature of bills to be considered during the lame-duck session will be very much related to the outcome of elections and whether or not the majority party will change in either the House or Senate or both.

It is widely assumed that both House and Senate, in addition to an omnibus appropriations bill, will take up the issue of extending earlier tax cuts, which are set to expire on December 31. The Senate has other major issues such as passage of the new START arms control treaty and energy legislation. There is a line-up of other bills to be considered if time allows, including the Livable Communities Act. On the House side, some of the bills that could possibly come to the floor include reauthorization of the Pre-Disaster Mitigation Program (PDM), the Water Resources Development Act (WRDA) and the bill to provide a federal reinsurance backstop for state catastrophe funds. During a lame-duck session, as the business wraps up and particularly if the leadership will change parties in the next session, there can be significant pressure to move bills. There can easily be surprises.

Appropriations

Continuing Resolution (CR) H.R. 3081, passed on September 29 and the very early hours of September 30, extends funding for the federal government through December 3 at FY 2010 levels. While the bill was almost a clean bill, it did include some extensions of authorities. Notably, it included extension through December 3 of authority for the Pre-Disaster Mitigation Program, which otherwise would have terminated on October 1 due to a sunset provision in its authorizing legislation.
The CR passed the Senate by a vote of 69-30 and, a few hours later, passed the House by a vote of 228-194. Republican efforts to reduce the overall spending level and to extend the CR until February 4, 2011, did not succeed. To quote an article in the “Congressional Quarterly”, “The two parties, however, are operating on different political calendars: Democrats are intent on getting fiscal 2011 appropriations settled in the lame-duck session, while they still have control of both chambers. Betting on wins in November, Republicans want to delay these decisions into the next Congress, when they might control one or both chambers.”

**Flood Insurance Reauthorization**

A clean bill reauthorizing the NFIP for one year through September 30, 2011 passed the Senate on September 22 and the House on September 24. The bill (S. 3814) was signed by the President late in the afternoon of September 30, just in time to avert another hiatus in the program’s authority to write new policies and renew existing policies.

**Flood Insurance Reform**

Passage of flood insurance reform legislation during this Congressional session is not at all likely. Since the NFIP has been reauthorized through September of next year, some further action will have to be taken in the first session of the 112th Congress and it remains to be seen whether or not that will involve substantial reform.

The House of Representatives passed H.R. 5114, the Flood Insurance Reform Priorities Act, in July. The measure would extend the authority of the NFIP for 5 years. It includes a number of provisions of earlier flood insurance reform legislation passed by the House but never enacted. The bill makes updates and changes to aspects of insurance coverage among its provisions, but does not represent a true reform bill. A summary of that bill’s provisions is included in the August 2010 issue of News and Views.

The Senate has not yet introduced its own version of flood insurance reform legislation. Indications are that a draft is being developed and that it may look quite a bit like the bill passed by the Senate in the last Congress. It appears unlikely that the Senate will take up the House-passed version. At this point, it is unclear whether or not a bill will be introduced during the lame-duck session, but in any event, it is very unlikely that there could be any final action on any flood insurance reform legislation during this Congress.

**FEMA’s Effort at “Re-thinking the NFIP”**

The Federal Emergency Management Agency (FEMA) is engaged in its major effort, “Re-Thinking the NFIP”, which involves review of many reports, analyses and evaluations concerning the NFIP during the past decade, consideration of many ideas and proposals for reform and development of recommendations for the future form and direction of the program. ASFPM has urged both the House and Senate Committees to await FEMA’s recommendations before acting on reform legislation.

**Senate Hearing**

The Senate Banking Committee held a hearing on NFIP reform on September 22 at which ASFPM was asked to present testimony. ASFPM Vice-Chair Sally McConkey testified for the Association. Her testimony can be found on the ASFPM website.

In her oral testimony, she noted the original purposes of the NFIP, the current problems presented by the convergence of new flood map accuracy, levee de-certification and flood insurance affordability concerns, and the opportunity to address these challenges constructively. She said, “While the spotlight is on our nation’s flood risk, it is an opportunity to examine our national flood risk management policy and take action to reduce our flood risk. Flood risk policy should be based on solid science and engineering. The results of these technical evaluations are showing areas that will flood and levees that may fail or be overtopped. We need to pay attention.”
She stated that ASFPM supports:

- A 2-3 year time frame for reauthorization to provide time for FEMA to complete its assessment and recommendations and for thorough consideration by stakeholders
- Development of more effective incentives for flood loss reduction in communities to support consideration of a range of options including strategic retreat from flood prone areas as well as utilizing the natural and beneficial functions of the floodplain
- Clear communication of flood risk through improved outreach and communication and support of FEMA’s new RiskMAP outreach and mitigation efforts
- No delay in delivery of updated floodplain maps that inform citizenry of hazards
- Development of creative solutions for the problem of flood insurance affordability through appropriate mechanisms such as means tested vouchers for low income at-risk citizens, community based flood policies or levee district flood insurance policies
- No addition of wind coverage to the NFIP
- Forgiveness of the NFIP debt

Senator Durbin (D-IL) and Senator Wicker (R-MS) testified. Senator Wicker’s testimony referenced a recent communication from Mississippi State Floodplain Manager (and immediate past Chair of ASFPM), Al Goodman.

Other testimony was presented by Taxpayers for Common Sense and the National Association of Realtors. The archived hearing can be viewed or testimony read by going to the Committee’s website: www.banking.senate.gov.

Wicker bill
Senator Roger Wicker (R-MS) has introduced a bill, S. 3672, which offers a new proposal for addressing issues highlighted in the aftermath of Hurricane Katrina involving resolution of insurance coverage issues between wind coverage under homeowners’ insurance and flood coverage under the NFIP. His bill would provide that in cases of dispute, each form of insurance would pay 50% of the damage initially. Negotiations and resolution of the issues would follow, but the homeowner would receive settlement promptly without having to wait for full resolution of the issues. His testimony at the Senate NFIP reauthorization and reform hearing included an explanation of his bill.

Pre-Disaster Mitigation Program Reauthorization

Legislation to reauthorize the PDM program has passed both the House and Senate in different forms, but differences have not yet been resolved. In the interim, since the program was scheduled to “sunset” on September 30, 2010, it has been extended until December 3 in the Continuing Resolution as noted earlier in this report.

The House passed a reauthorization bill, H.R. 1746, in April 2009. In an effort to address concerns about earmarks in bills making appropriations for PDM, the bill included language specifying that financial assistance under PDM must be made available on a competitive basis. Another bill, H.R. 3377, which makes amendments to the Stafford Act, includes similar language and also reauthorizes PDM. That bill was reported out of the House Transportation and Infrastructure Committee on July 22, 2010, but has not yet been considered on the House floor.

Meanwhile, on June 28, 2010, the Senate passed S. 3249 which reauthorizes PDM, includes the House language codifying the program as competitive grants and also includes language specifically prohibiting Congressionally directed spending (earmarks).
Some further action to reauthorize PDM will be important during the lame-duck session, since the program is now set to “sunset” on December 3rd.

**Stafford Act Reform**

As mentioned above, legislation making some changes to the Stafford Act is ready for House floor consideration. Legislation making substantial reforms of the Stafford Act is under active development in the Disaster Recovery Subcommittee of the Senate Homeland Security and Governmental Affairs Committee. It is possible that Subcommittee Chair Mary Landrieu (D-LA) will introduce that bill during the lame-duck session. Largely due to time and schedule constraints, any final action on Stafford amendments is not likely during this Congressional session.

**WRDA**

Although no direct action on a new Water Resources Development Act (WRDA) has taken place since the House Transportation and Infrastructure Committee reported out its bill on July 29, 2010, work on WRDA legislation has actively continued in both the House and Senate.

**House**

As reported out of committee, the House bill did not include a levee program. According to staff, the elements of a levee title were not ready for inclusion since they had only just received the legislative recommendations of the National Committee on Levee Safety (NCLS). ASFPM representatives have met with both Majority and Minority Subcommittee staff to discuss ideas for inclusion of a broad flood risk management component. At this point, it is not clear whether or not WRDA will be brought up on the House floor during the lame-duck session. If it is, a Chairman’s amendment could include the levee program. Otherwise, it is also possible that a stand-alone levee program bill could be introduced. Work is also continuing to develop a bill to encourage and support water resources planning.

**Senate**

The Senate Environment and Public Works Committee staff has been holding meetings and working on a draft bill. A WRDA hearing scheduled last spring was postponed until September 30th and then postponed again until November 17. ASFPM representatives have met with both Majority and Minority committee staff to discuss policy aspects of a new WRDA bill, particularly inclusion of recommendations for a levee risk management program and associated flood risk management.

**Liveable Communities Act**

Similar bills are actively underway in both the House and Senate. Both would promote sustainable housing and communities and would establish a program of community sustainability planning grants. At present, neither bill includes hazard risk reduction as a component of sustainability, but ASFPM has, at the request of staff, made suggestions as to inclusion of this element. The Senate bill, S. 1619, was introduced and is strongly supported by Banking Committee Chairman Christopher Dodd (D-CT). Since the Chairman is retiring at the end of this Congress, it is likely that this bill could come to the Senate floor during the lame-duck session. The House version was introduced by Rep. Ed Perlmutter (D-CO), and a hearing was held by the full Financial Services Committee on the bill on September 23. It is possible that the bill could be marked up in committee and considered on the House floor during the lame-duck session.

**Digital Coast Act**

The “Digital Coast Act “, H.R. 6215, was introduced in the House on September 23 by Rep. Dutch Ruppersberger (D-MD) and referred to the House Committee on Natural Resources. The bill would authorize the Secretary of Commerce to establish a program to develop a coordinated and comprehensive federal coastal
mapping effort. It would also authorize establishment of coastal service centers to assist with regional, state and local coastal management.

**Safe Treatment of Polluted Stormwater Runoff Act**

This bill, known as STOPS Runoff Act, (S. 3602) was introduced by Senator Ben Cardin (D-MD), Chairman of the Subcommittee on Water and Wildlife on July 15, 2010, and referred to the Senate Committee on Environment and Public Works. American Rivers and a number of other organizations noted in a letter to Committee leadership, “Incorporating smart stormwater mitigation strategies – such as vegetated swales and permeable pavement – into road and highway designs are cost effective, reduce stormwater runoff and flooding, and can significantly extend the lifespan and capacity of sewers and treatment plants by reducing flows into these systems.”

**Other Hearings of Interest**

A hearing entitled “Where We Are and What We Have Learned for Future Disasters Five Years after Hurricane Katrina” was held by a subcommittee on the House Transportation and Infrastructure Committee (T & I) on September 22.

A hearing entitled “Five Years Later: Lessons Learned, Progress Made and Work Remaining from Hurricane Katrina” was held by a subcommittee of the Senate Homeland Security and Governmental Affairs Committee on August 26 in Chalmette, Louisiana.

A hearing entitled, “Impact of Green Infrastructure and Low Impact Development on the Nation’s Water Quality” was held by a subcommittee of the House T & I Committee on September 30.

More information on these hearings and testimony presented can be found by going to the committees’ websites: [www.transportation.house.gov](http://www.transportation.house.gov) and [www.hsgac.senate.gov](http://www.hsgac.senate.gov).

**Other Developments of Interest**

FEMA, the USACE and the Office of Management and Budget (OMB) are working on a draft proposal for a Task Force on FEMA/USACE nexus issues. The 2010 Supplemental Disaster Relief and Summer Jobs Appropriations bill required establishment of such a task force “to track, address, and where possible, resolve concerns stemming from FEMA mapping in communities with issues related to flood control infrastructure protection, such as levees, drainage or dams.”

**Coalitions**

Several of the Coalitions in which ASFPM participates have been active.

**USGS Coalition**

The Coalition has been setting up meetings with Congressional offices to encourage support for the critical science and data collection work of the U.S. Geological Survey. When ASFPM participates in such meetings, Association representatives call attention to the water resources programs and to the need for long-term streamgage data for floodplain mapping and management.

**Flood Map Coalition**

This coalition, which was originally organized to point out the need for updating and modernizing the nation’s flood maps, is now seen by FEMA as an important stakeholder group. FEMA staff meet at regular intervals to
brief the Coalition on progress and issues with mapping and on development of the new Risk MAP. The next meeting is scheduled for October 21.

Congressional Hazards Caucus Alliance
This group primarily sponsors briefings on Capitol Hill on various hazards-related subjects. A meeting to plan upcoming briefings is scheduled for October 5.

Another group, the SmarterSafer Coalition, meets regularly to exchange information and support legislative efforts to improve mitigation. The coalition has opposed the effort to add wind coverage to the NFIP (H.R. 1264) and the effort to establish a federal reinsurance backstop for state catastrophe pools (H.R. 2555). Either of those bills could come to the House floor in the lame-duck session. ASFPM is not a member of this coalition, but maintains an affiliated status.

All referenced legislation can be reviewed by going to: http://thomas.loc.gov and typing in the bill number or title.