Overview of Legislative and Related Activity

The Congress is now well into the work of the 2nd Session of the 111th Congress. As it is an election year, the likelihood is that there will be a relatively early adjournment in October to allow Members time for campaigning at home. A lame duck session is always possible after the elections, particularly if work has not been completed on appropriations bills for FY 2011. At this point, most appropriations hearings on agency budget requests have been completed, but no bills have been marked up to begin their movement through the process. It is not even clear if the House will develop a Budget Resolution, which is the usual process to establish a framework for appropriations bills. A Senate Budget Resolution has been reported out of committee and is awaiting consideration on the Senate floor.

At this stage in the Congressional session, the focus of action on many major issues has shifted to the Senate. Senate rules and procedures, however, have allowed much stalling and related backing up of the floor schedule. For this reason, it is possible that the result will be a number of bills of interest to floodplain managers passing the House, but not being considered in the Senate. As was the case last year, the agenda offers both opportunities and challenges for furthering policies and programs to support effective flood loss reduction. The number and complexity of major issues on the Congressional platter present challenges to gaining adequate Congressional attention for issues such as flood insurance reform and the problems highlighted by the convergence of levee accreditation, new flood map issuance and flood insurance affordability issues. This, too often leads to short term “fixes” rather than more thoughtful, meaningful efforts to address issues. There are, however, a number of bills being carefully and thoughtfully developed as well as a number of opportunities for inclusion of hazard mitigation considerations in climate change, insurance, transportation and appropriations measures.

A comprehensive list of ASFPM 2010 Legislative and Policy Priorities is posted on the website. Active issues at the moment include: re-authorization of the National Flood Insurance Program (NFIP), revisions and/or reform of the Stafford Act, development of a Water Resources Development Act (WRDA) 2010, development of levee safety and flood risk management legislation, development of legislation to promote and facilitate watershed planning, reauthorization of the Pre-Disaster
Mitigation (PDM) grant program, a flood insurance reform priorities bill, climate adaptation provisions and upcoming appropriations bills. ASFPM has been asked to testify twice in 2010. Testimony was presented in March commenting on recommendations of the Conference of Mayors for revisions to the Stafford Act. In April, testimony was presented on needed flood insurance reform and commenting on a discussion draft of flood insurance legislation.

Additionally, ASFPM submitted “outside witness testimony” on the Army Corps of Engineers’ budget request, pointing to the importance of work on the national levee inventory and to the need for expansion of Corps technical assistance through programs like Planning Assistance to States and Flood Plain Management Services. Testimony for the Record was submitted in conjunction with a hearing on WRDA development, focusing on the need for a flood risk management approach to levee safety.

**At the Moment**

This past month and, in particular, the past two weeks, has been a busy time for a number of issues of interest to floodplain managers. A hearing on flood insurance reform was held on April 21st, followed the next week with a mark-up of three bills including that one, a bill to add a wind and flood policy to the National Flood Insurance Program (NFIP) and a bill to create a federal catastrophe reinsurance backstop. A bill to reauthorize the Pre-Disaster Mitigation (PDM) program was marked up. A Supplemental Appropriations bill to replenish the Disaster Relief Fund (DRF) passed the House in March, but stalled in the Senate. A hearing was held on legislative proposals for a Water Resources Development Act of 2010.

All of this legislative work will continue next month with the marked-up bills likely proceeding to the House and Senate floors. Hopefully, there will be some action in the Senate on the Disaster Relief Supplemental. A Stafford Act revisions bill could be considered on the House floor and a Stafford Act reform bill is likely to be introduced in the Senate. A Senate committee hearing is scheduled on this for mid-May. Hearings are already scheduled for the first week in May on FEMA budget priorities with respect to disasters and on WRDA proposals. Work continues on development of levee safety (or flood risk management) legislation as well as sustainable watershed planning legislation. Mark up of FY 2011 appropriations bills could begin at any time, particularly if the House takes action on a Budget Resolution.

**Flood Insurance Reauthorization**

After a number of very short term reauthorizations of the National Flood Insurance Program (NFIP) since September, 2009, the program is again set to expire on May 31st. Three measures to authorize further extension are currently “in play”. 1) On May 7th, HR 5255 was introduced by Financial Services Committee Chairman Barney Frank. That bill would extend the NFIP and the Severe Repetitive Loss Pilot program until September, 2010. It also includes a 3 year delay in mandatory purchase requirements for areas newly mapped as floodplain, accompanied by outreach and notification requirements. 2) HR 4213 is a measure extending a number of expiring programs, including the NFIP, unemployment compensation and highway programs among others, until December 31, 2010. That bill includes tax provisions and could be further amended to include incentives for small business investment. The bill passed the House once, passed the Senate amended and is back in the House. The Speaker is pushing for movement on this bill. 3) HR 5114, the Flood Insurance Reform Priorities Act, extends the NFIP for 5 years. It was reported out of the House Financial Services Committee on April 21st and its many provisions are described below.
The Three “Weather” Bills

Dubbed the “weather” bills by committee staff, the flood insurance, wind and flood and catastrophe reinsurance bills were all marked up on April 27th in the House Financial Services Committee and reported favorably to the House of Representatives. Each will be discussed separately here. Time for consideration on the House floor has not yet been scheduled, but action in May is likely.

Flood Insurance Reform Priorities Act - HR 5114
A Discussion Draft of the bill was provided to those invited to testify at an April 21st hearing about a week before the hearing took place and introduced a few days before the hearing as H.R. 5114. ASFPM was invited to testify. Executive Director Larry Larson presented the testimony which was developed with contributions from several participants and is posted on the ASFPM website at: http://www.floods.org/index.asp?menuID=334&firstlevelmenuID=187&siteID=1. ASFPM’s testimony noted that this bill is not a full scale reform bill and recommends that significant reform legislation be considered when FEMA completes its substantial review of input from the NFIP Listening Session last November, the AIR NFIP Evaluation and many GAO and Congressional Research Service Reports. That effort is being called, “Re-Thinking the NFIP” and is expected to report its recommendations in 18-24 months.

The bill includes a number of provisions from the version of flood insurance reform passed in the last Congress, but, significantly, does not include the section authorizing the mapping program. Map Modernization, and now RiskMAP, has never had an authorization because Map Modernization was a Presidential Initiative. The earlier provision would have provided an ongoing foundation for the program in statute, expanded some of the mapping tasks and re-established the Technical Mapping Advisory Council.

Included in this bill:
- 5 year reauthorization of the NFIP and of the Severe Repetitive Loss Pilot program
- Increase in maximum coverage limits to $335,000 (from $250,000) for residential, $135,000 (from $100,000) for contents, and $670,000 (from $500,000) for non-residential
- Phase-in of actuarial rates for commercial and non-primary residential pre-FIRM properties (Does not apply to multifamily rentals or primary residence (for tenant) rentals)
- 5 year delay in mandatory purchase requirement for areas newly mapped as Special Flood Hazard Areas (SFHAs). Does not delay effective date of maps, notification of flood hazard, availability of flood insurance or eligibility for mitigation
- 5 year phase-in of actuarial rates at 20% per year after end of 5 year delay in mandatory purchase
- Increase in annual cap on premium increases from 10% to 20%
- Requires equal treatment of non-federal and federal flood control projects with regard to flood insurance mapping and rating
- Directs that there be no mandatory purchase requirement in areas behind a flood control project which was built using federal data and designs but does not meet FEMA’s accreditation standards.
- Eliminates waiting period if policy is purchased within 30 days of property purchase or transfer
- Increase in penalties to federally regulated lenders to $2,000 for each failure to enforce mandatory purchase with an increase in the annual cap in fines for institutions to $1 million.
- Requires landlords to advise tenants of location in SFHA and availability of contents coverage
- Establishes a competitive grant for communities to conduct outreach programs to encourage purchase of flood insurance
- Requires disclosure under the Real Estate Settlement Procedures Act (RESPA) that flood insurance is available whether or not a property is in a SFHA
- Authorizes additional FEMA staff
- Requires FEMA and HUD to develop plans to verify compliance with flood insurance purchase requirements associated with Homeowner Assistance Grants in Mississippi and Road Home Grants in Louisiana
- Creates an office of the National Flood Insurance Advocate within FEMA to be funded by up to $5 million from the National Flood Insurance Fund
- Requires a GAO study on extension of the mandatory purchase requirement to all properties in a SFHA
- Requires GAO study of ways to increase participation of low-income households in the NFIP
- Requires FEMA to conduct a 6 month study regarding inclusion of building codes in floodplain management criteria

During full Committee mark-up of the bill, seven amendments were offered, five were agreed to. Those are:

1. Manager’s Amendment (by Subcommittee Chair Maxine Waters, D-CA)
   a. expands notification requirements to include annual notification to those who reside in SFHAs, description of the flood insurance purchase requirement in SFHAs and a general estimate of actuarial rates in the area.
   b. provides optional coverage for additional living expenses and business interruption
   c. establishes minimum deductibles for pre and post-FIRM properties
   d. provides that the new Office of the Advocate assist homeowners with interpreting, implementing and appealing flood insurance maps and determinations
   e. makes demolition and rebuilding an eligible activity under the Flood Mitigation Assistance program (FMA)
   f. requires FEMA to submit to Congress in 6 months a plan for repayment of the NFIP debt to the U.S. Treasury within 10 years
   g. requires a GAO study of the impact of the phase-in of actuarial rates for pre-FIRM non-residential and non-primary properties, including impact on program participation

2. Rep. Garrett (R-NJ)
   a. adds pre-FIRM properties purchased after date of enactment of this bill to the categories of properties moving to phase-in of actuarial rates (ie. non-residential and non-primary residences)

3. Rep. Scott (D-GA)
   a. provides that a household with income below 200% of the poverty line may pay for flood insurance on a monthly installment basis

4. Rep. Speier (D-CA)
   a. provides that lenders may not require the purchase of flood insurance coverage in excess of replacement cost

5. Reps. Maffei (D-NY) and Speier (D-CA)
   a. makes the 5 year delay in mandatory purchase for areas newly mapped as SFHAs retroactive to September 1, 2008; clarifies that no refunds are authorized for policies purchased during the retroactive period.
Multiple Peril Insurance Act - HR 1264
This bill, introduced by Rep. Gene Taylor (D-MS), would provide for an optional flood and wind coverage policy to be offered by FEMA at actuarially sound premium rates. The bill was favorably reported, without amendment, by a recorded vote of 40-25.

Representative Taylor had introduced this bill in the last Congress as well. It was then included in the flood insurance reform bill (HR 3121) that passed the House. A similar provision was defeated in the Senate.

ASFPM has opposed the measure because it would add an unknown, significant new exposure to the NFIP. Further, it is designed to assist those properties exposed to both storm surge and wind, but could have much broader application and exposure to coverage of costs due to wind damage alone.

Homeowners’ Defense Act - HR 2555
This bill was introduced last year by Rep. Ron Klein (D-FL) and has 77 cosponsors. Discussion of the bill consumed almost the entire morning of the mark-up. After considering 15 amendments and accepting 6, the bill was favorably reported out of the House Financial Services Committee by a vote of 39-26.

The bill establishes a National Catastrophe Risk Consortium, a non-profit, non-federal entity to act as a repository for state risk information, to establish a database for research and analysis on standardization of the risk-linked securities market, maintain an inventory of catastrophe risk obligations held by state reinsurance funds and others as well as other duties. Importantly, the measure provides for federally backed catastrophe reinsurance for eligible state reinsurance funds and establishes a Federal Natural Catastrophe Reinsurance Fund in the Treasury. It also sets up a $15 million per year grant program at HUD to support mitigation of losses from natural catastrophes. Further, it requires a study of the need for and impact of expanding the programs in the Act to include coverage of losses from commercial insurance policies providing coverage for residential rental units.

ASFPM has expressed concern that a federal catastrophe reinsurance backstop could have the unfortunate effect of encouraging unwise development. Although the criteria for state reinsurance fund eligibility do include some provisions requiring mitigation efforts, ASFPM has also expressed concern that these are not sufficiently rigorous. Further, ASFPM has pointed out that the mitigation grant program to be operated by HUD, establishes no connections to FEMA’s mitigation program eligibility requirements, nor does it establish any connection with the state and local hazard mitigation plans required under the Disaster Mitigation Act of 2000. ASFPM made these points in a letter to the Chairmen and Ranking Minority Members of the Subcommittees of jurisdiction. That letter is posted on the ASFPM website.

The adopted amendments include:

1. Manager’s amendment by Rep. Klein
   a. provides that the Secretary of the Treasury is authorized to set the point at which the federal reinsurance coverage is made available
   b. provides for the Secretary to invest a portion of the Fund
   c. provides that no less than 35% of investment proceeds be used to support funding of the mitigation grant program
   d. directs that the GAO analyze risk based pricing to determine the use of actuarially sound pricing and rates for state insurance, reinsurance or residual market program that fail to cover exposure
2. Rep. Putnam (R-FL)
   a. a consumer protection amendment to provide for disclosure on a website for state
      insurance programs, information on estimated assessments and surcharges for a range
      of natural disaster or catastrophic events

   a. provides that eligible state reinsurance programs may not cover losses from flood
      damage in Special Flood Hazard Areas.

4. Rep. Campbell (R-CA)
   a. adds language on eligibility of state reinsurance programs to clarify that “actuarially
      sound” means “cover the expected value of all future costs associated with insurance
      policies or reinsurance contracts written by such program”.

5. Rep. Bachmann (R-MN)
   a. provides that the Consortium may not make any political contributions or hire a
      lobbyist

6. Rep. Campbell (R-CA)
   a. provides for somewhat reduced amounts under the debt guarantee program for state
      catastrophe insurance programs

Pre-Disaster Mitigation Reauthorization - S.3249

The Senate Committee on Homeland Security and Governmental Affairs marked-up and favorably
reported a bill to reauthorize the Pre-Disaster Mitigation (PDM) grant program on April 28th. The
measure codifies the program as a competitive grant program, reauthorizes it for 5 years and authorizes
$180 million in FY 2011, $190 million in FY 2012 and $200 million annually for the remaining 3
years.

The program will expire if not reauthorized before September 30, 2010. It has been reauthorized for
the past two years as a part of appropriations bills. The House did pass a bill last year which is similar
to this one, but it was not taken up in the Senate. At present, HR 3377, a bill revising the Stafford Act
and including a reauthorization of PDM, has been reported out of committee and is awaiting
consideration on the House floor.

Amendments
The only amendment accepted during mark-up was one offered by Senator Tom Coburn (R-OK). It
prohibits the use of PDM funds for earmarked projects. It does include a requirement that if any funds
are provided outside of the competitive process, the FEMA Administrator must report to Congress as
to the reason.

Another amendment was offered by Senator Mark Pryor (D-AR) which would have included flood
control projects as eligible for PDM funds. He withdrew his amendment but made clear his concern
that the cost of levee certification, repair and improvement associated with updated flood maps is a
serious, unresolved problem. He was seconded in expression of this concern by Senator Jon Tester
(D-MT).
Stafford Act Revisions and Reform

In the House, HR 3377, mentioned above, makes a number of revisions to the Stafford Act. The bill has been reported out of the House Committee on Transportation and Infrastructure and is awaiting consideration on the House floor, which could occur in May. A Manager’s amendment (Committee Chairman’s amendment) is likely to be offered on the floor, making some further revisions to the Act.

In the Senate, Senator Mary Landrieu (D-LA), Chairman of the Disaster Recovery Subcommittee of the Homeland Security and Governmental Affairs Committee, is developing a more comprehensive Stafford Act Reform bill. She is likely to introduce the bill in May. Her staff has consulted with the Stafford Coalition (of which ASFPM is a member) on its planned contents and has asked for recommendations. A hearing in the Disaster Recovery Subcommittee on the subject has been scheduled for May 12th.

Water Resources Development Act 2010

Progress towards a Water Resources Development Act of 2010 (WRDA 2010) is continuing in the House. Plans still call for introducing a draft bill in late May or early June. Two hearings have been held by the Water Resources and Environment Subcommittee of the House Transportation and Infrastructure Committee. ASFPM submitted Testimony for the Record associated with a hearing held on April 15th. That testimony is posted on the ASFPM website at: http://www.floods.org/index.asp?menuID=334&firstlevelmenuID=187&siteID=1.

Pursuant to ASFPM’s comments for the National Committee on Levee Safety’s Review Committee, developed by Vice Chair Sally McConkey, the ASFPM testimony reflects the view that a “levee safety” program should take a broad flood risk management approach to include both structural and non-structural options for dealing with flood risk in the nation.

The subcommittee has been working its way through many projects recommended by various Members of Congress as well as working to develop a section of the bill on levee safety and flood risk management.

The Senate Environment and Public Works Committee has asked Senators for their project recommendations and has scheduled a hearing on development of a WRDA 2010 and its relationship to jobs and economic development for May 6th. Committee staff has indicated their intent to schedule additional hearings on aspects of a WRDA bill.

Appropriations

Disaster Supplemental Appropriations - HR 4899

HR 4899, making a supplemental appropriation of $5.1 billion to replenish the Disaster Relief Fund (DRF), passed the House on March 24th. Because the measure also included funds for a summer jobs program, it has encountered problems in the Senate because of the view of some senators that the cost of the summer jobs portion should be offset by savings elsewhere. At present, it seems likely that the Senate leadership will associate the Disaster portion of the bill with the War Funds Supplemental that is also pending.

The near depletion of the DRF has already resulted in the curtailment of activity in mitigation and other programs at FEMA.
Budget Resolutions
Usually, the House and Senate both pass Budget Resolutions making assumptions about expenditure levels for the coming fiscal year. Those assumptions then form the basis for the Appropriations Committees’ allocation of spending ceilings to guide the work of their various subcommittees.

The Senate Budget Committee reported out its Budget Resolution, S. Con. Res. 60, on April 26th and it is awaiting consideration on the Senate floor. The House Budget Committee, on the other hand, has not yet put together a Budget Resolution. Apparently, disagreements within the Democratic Majority have impeded action. Committee Chairman John Spratt (D-SC) has noted the importance of action soon because the Appropriations subcommittees must begin to mark up their FY 2011 spending bills.

As of yet, no regular appropriations bills for FY 2011 have been marked up in either the House or Senate. A number of subcommittees are continuing to hold hearings to examine agency budget requests.

Coalitions

ASFPM continues to participate in a number of coalitions in order to follow, trade information and engage with certain issues. Those coalitions include:

Flood Map Coalition
Stafford Coalition
USGS Coalition
Streamgage Coalition
CZMA Coalition
Congressional Hazards Caucus Alliance

All legislation referenced (except drafts) can be found by going to: http://thomas.loc.gov.