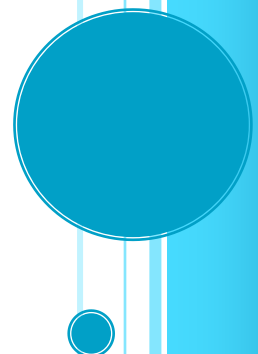


ASFPM WASHINGTON LEGISLATIVE REPORT

Annual Conference—Grand Rapids, Michigan (2016)



Meredith R. Inderfurth, ASFPM Washington Liaison
6/16/2016



ASFPM WASHINGTON LEGISLATIVE REPORT

Annual Conference—Grand Rapids, Michigan (2016)

From Last Year to This Year

After last year's ASFPM annual conference in Atlanta, Congress appeared on track to actually pass individual appropriations bills rather than Continuing Resolutions and an Omnibus Appropriations bill, which had become the pattern. Before the end of July, the House and Senate Appropriations committees had marked-up all 12 regular appropriations bills, which had not happened in the previous six years. Six of the bills had passed the House.

Unfortunately, the process stalled. Further action was halted by leadership in the House due to efforts to add amendments related to flying the Confederate flag. In the Senate, disputes over development of an overall budget agreement led to filibuster threats and consequent inaction on the Senate floor.

Conversations were beginning about reauthorization of the National Flood Insurance Program in 2017. The Senate Banking Committee held an oversight hearing on the NFIP. After the "unintended consequences" of the Biggert-Waters legislation and the attempted "fixes" of the Homeowners Flood Insurance Affordability Act, many interested parties showed interest in developing thoughtful recommendations for Congress to consider. The legislatively mandated studies on flood insurance affordability and community based flood insurance were underway.

Legislation was introduced in the House and Senate to facilitate development of a private market for flood insurance (H.R. 2901 and S. 1679).

ASFPM leaders invited representatives of insurance company, agent and broker groups to an informal, exploratory meeting in Washington D.C. to discuss NFIP reauthorization and issues associated with the private insurance bills. The conversation included far-ranging consideration of the long-term future of flood insurance as well as short-term improvements.

By September, political difficulties over the path forward for budget and appropriations led to the early resignation of the Speaker of the House. After two Continuing Resolutions funding the government during the leadership turmoil in the House, Congress finally passed an Omnibus Appropriations bill in mid-December (H.R. 2029).

During the fall, discussions began on the next Water Resources Development Act. ASFPM participated in those conversations and meetings. The Technical Mapping Advisory Council issued its first reports – its first annual report to Congress and its report on future conditions mapping.

The next congressional session got off to a fast start on flood issues in January. Two hearings on flood insurance and a Members-Only Flood Risk Mapping Roundtable happened during the first two weeks of the session. ASFPM Senior Policy Advisor and Director Emeritus Larry Larson participated in the mapping roundtable. The hearings were titled, “Opportunities and Challenges for the NFIP” and “How to Create a More Robust Private Insurance Marketplace.”

Also in January, FEMA issued its Advance Notice of Proposed Rulemaking on establishment of a disaster assistance deductible. The public comment period was open until mid-March and ASFPM submitted comments.

The Administration’s FY17 budget request was released in early February, kicking off the next couple of months of hearings in Appropriations subcommittees to hear from federal departments and agencies. ASFPM submitted Outside Witness Testimony to the Homeland Security subcommittees and Energy and Water subcommittees in the House and Senate and joined in group letters on aspects of USGS and NOAA budgets.

The House passed the FEMA Disaster Assistance Reform Act (H.R. 1471) in late February, a measure which included authorization of a major study on disaster costs to the nation and establishment of rates for reimbursing states and local governments for direct and indirect administrative costs associated with disaster recovery projects.

In March, the House Financial Services Committee reported out the bill facilitating development of a private market for flood insurance, the Flood Insurance Market Parity and Modernization Act. ASFPM sent a letter to committee leadership acknowledging the strong interest in development of a private market, but noting the importance of maintaining the structure and other functions of the NFIP such as floodplain management, flood risk mapping and flood hazard mitigation. The letter proposed that a fee equivalent to the NFIP policy fee be associated with private policies to help support the floodplain management and mapping activities funded by the NFIP policy fee.

The Senate Environment and Public Works Committee held hearings in February and March on WRDA development. Those were titled, “The Importance of Enacting a New WRDA” and “WRDA – Policies and Projects.” The House held a hearing titled, “A Review of US Army Corps of Engineers Reports to Congress on Future Water Resources

Development and Chief's Reports." The House and Senate committees continued their conversations with stakeholder groups on recommendations for the next WRDA.

Legislation was introduced in the House and Senate to codify the Digital Coast Partnership program at NOAA (H.R. 4738 and S. 2325). As an active member of the partnership, ASFPM participated in meetings and briefings on Capitol Hill about the program.

During the late winter and spring, many congressionally-mandated reports were issued. These included the Office of the Flood Insurance Advocate Annual Report (available at www.FEMA.gov), Part 2 of the Flood Insurance Affordability report, the report on "A Community-Based Flood Insurance Option" and the report on "Tying Flood Insurance to Flood Risk for Low-Lying Structures in the Floodplain" (all available at www.nap.edu). Another report on community based flood insurance released by Resources for the Future is titled, "A Proposed Design for Community Flood Insurance" (available at www.rff.org).

At the Present Time

Legislative activity is on a roll! Quite a bit of it has an impact on floodplain management.

Just in the past few weeks, the Senate version of appropriations for FEMA was marked up in subcommittee and full committee; the House version of FEMA appropriations was marked up in subcommittee and will be marked up in full committee June 14; the House Appropriations Committee finalized its action on the Transportation-HUD bill, which contains a provision to prohibit implementation of the Federal Flood Risk Management Standard; the Senate Environment and Public Works Committee held a hearing on the Waters of the U.S. regulation and a House committee marked-up its version of the 2016 Water Resources Development Act.

This is a very short legislative session since Congress will recess in mid-July for the Republican and Democratic Party Conventions. It will not reconvene until just after Labor Day in September, leaving very little time for action on FY17 appropriations before the beginning of the new fiscal year. Since Congress will also recess in October prior to the November elections, a lame duck session is already planned for mid-November into mid-December. All in all, this leaves very little time for action on other legislation.

There is a flurry of action on appropriations bills in an effort to get as much done as possible on individual appropriations bills before a likely Continuing Resolution in September and a probable omnibus bill to include whichever bills have not been completed before the end of the congressional session. Appropriations chairs and House

and Senate leadership are committed to moving as many of the 12 regular appropriations bills individually “under regular order” as possible.

Committees are feeling pressure to push out legislation that has been in development to finalize as much as possible during this Congressional session. Notable in this category are WRDA, the comparable but different House and Senate bills on FEMA programs and management, and legislation to facilitate development of a private market for flood insurance.

Active Legislation

Flood Insurance Market Parity and Modernization Act

Identical bills were introduced in the House (H.R. 2901) by Reps. Dennis Ross (R-FL) and Patrick Murphy (D-FL) and in the Senate (S. 1679) by Sens. Dean Heller (R-NV) and Jon Tester (D-MT). They are designed to facilitate lender acceptance of private market flood insurance policies and to allow portability between private policies and NFIP policies for the purpose of continuous coverage. The legislation passed in the House April 28 by a vote of 419-0. The Committee Report accompanying the bill is H. Rept. 114-524.

Because of concerns about some aspects of this legislation and potential long-term impacts on the NFIP, ASFPM has developed suggested amendments. Earlier this spring, ASFPM sent a letter to leadership of the House Financial Services Committee recommending that the bill include language providing for a policy fee equivalent to the NFIP policy fee to be associated with private flood insurance policies. This would ensure sufficient on-going support for the essential floodplain management and flood risk mapping activities funded by the NFIP policy fee. ASFPM noted in the letter that while expanding the private insurance market, it will be important to maintain a viable national flood insurance program which provides floodplain management, mapping and hazard mitigation functions.

ASFPM Executive Director Chad Berginnis has done a “deep dive” analysis of the legislation and its implications. His article in the May issue of “Insider” is now posted on the ASFPM website and can be found [here](#).

Water Resources Development Act

Different versions of WRDA 2016 are under consideration in the House and Senate. The Senate bill (S. 2848) was introduced April 26 and reported favorably out of the Senate Environment and Public Works Committee April 28. It has not yet been taken up on the Senate floor. The bill authorizes 25 new projects vetted under the procedures established

in the Water Resources and Reform Act of 2014 (WRRDA2014) Additionally, it includes major clean up and restoration initiatives, including Lake Tahoe, the Great Lakes and Long Island Sound. It includes a provision to assist Flint, Michigan and other municipalities with lead-tainted water problems. Further, it authorizes FEMA to provide assistance in rehabilitation or removal of high hazard potential dams. This largely incorporated legislation introduced by Sen. Jack Reed (D-RI) to address the problem of repairing high hazard small dams. According to the Committee, the bill “updates the Corps emergency rebuilding authority for flood control projects (PL84-99) to allow the Corps to rebuild projects stronger than originally designed if it will reduce risk of loss of life and property and minimize life cycle rehabilitation costs. The bill also allows the Corps to implement nonstructural alternatives, including wetland, stream and coastal restoration.” ASFPM worked with committee staff on these latter issues.

The House bill (H.R. 5303) was introduced May 23 and referred to the House Transportation and Infrastructure Committee and the House Natural Resources, each for the provisions that fall within their jurisdiction. The House Transportation and Infrastructure committee marked-up the bill and reported it out of committee May 25. It authorizes 28 new projects. It updates language from WRDA’07 on the inventory and inspection of levees. For nonstructural alternatives under PL84-99, it strikes “if requested” by the project sponsor and replaces that language in several places with “after consultation with the non-federal sponsor and if requested and agreed to.” ASFPM worked with Committee staff on the latter point. The managers’ amendment to the bill includes a requirement for written notice to potential non-federal project sponsors and local officials about the opportunity to submit project proposals. This is intended to assure better outreach to bring more project ideas into the pipeline. The manager’s amendment also directed the Corps to report on the use of natural and nature-based solutions in projects. During mark-up, an amendment was offered and then withdrawn, which would have added the clean up and restoration provisions in the Senate bill for Lake Tahoe, the Great Lakes and Long Island Sound.

A colloquy took place about possibly accepting the Senate language in a House-Senate Conference on the bill. An amendment offered by Rep. Graves (R-LA) was agreed to which would establish an environmental bank to aggregate dollars to facilitate funding of larger projects.

FEMA Disaster Assistance Reform Act and Disaster Management Act

The FEMA Disaster Assistance Reform Act (H.R. 1471) passed the House on a voice vote on Feb. 29. It has been sent to the Senate and referred to the Homeland Security and Governmental Affairs Committee. The Senate has its own bill, the Disaster Management

Act, which contains some of the elements of this bill. That measure (S. 2969), the Disaster Management Act, was set to be marked-up on May 25, but was pulled from the line up of bills to be marked-up.

The House bill authorizes appropriations for FEMA for two years. It provides authorizations for the National Urban Search and Rescue Response System and for the Emergency Management Assistance Compact (EMAC). It defines public broadcasting facilities as private nonprofit facilities for eligibility for disaster assistance, places a three-year statute of limitations on reclaiming disaster relief funds and permits waiver for collection of some disaster-related debts. It changes the eligibility threshold of certain small projects for expedited disaster assistance payments from \$35,000 to \$1 million. Rates for reimbursing states and local governments for direct and indirect administrative costs associated with disaster recovery projects are established. Hazard mitigation assistance for areas affected by fire is authorized regardless of whether or not a major disaster is declared as long as a Fire Management Assistance Grant (FMAG) has been declared.

Importantly, the bill authorizes a study leading to a report on comprehensive disaster costs to the nation. FEMA's National Advisory Council (NAC) is tasked with directing the study. ASFPM expressed support for H.R. 1471.

The Disaster Management Act provided for the study described above. Other elements of H.R. 1471 were introduced in the Senate as separate bills. A mark-up for more than 20 bills, including those was held May 25. Apparently because of concerns about amendments, which would add some additional elements from the House bill, the Chairman of the Senate Homeland Security and Governmental Affairs Committee, Sen. Ron Johnson (R-WI) pulled the bill from the line up. Future action remains unclear.

Reform, Streamline and Make Improvements to the Department of Homeland Security

This bill, S. 2976, was reported favorably out of the Senate Homeland Security and Governmental Affairs Committee May 15. Among its elements was language giving the secretary authority to establish various joint task forces to assist in coordinating activities of the many parts of DHS. ASFPM joined with the International Association of Emergency Managers (IAEM), NEMA, NACo and the International Association of Fire Chiefs in working to clarify that, while FEMA could be included in such arrangements, it would not interfere with the authority or mission of FEMA.

National Mitigation Investment Act

This bill (H.R. 5177) was introduced May 10 by Rep. Carlos Curbelo (R-FL) and Rep. Albio Sires (D-NJ). A related bill, the Safe Building Code Incentive Act (H.R. 1478) was introduced in April by Rep. Mario Diaz-Balart (R-FL). Both measures were referred to the House Committee on Transportation and Infrastructure. H.R. 5177 includes most of the provision of H.R. 1478 but adds other provisions. Both bills provide for 4 percent additional mitigation assistance for adoption and enforcement of approved state building codes. In an analysis of both bills, ASFPM agrees with much of the content, but has some recommendations for improvement and some serious concern with a section that would attempt to list activities that are eligible under the Hazard Mitigation Grant Program. No action has been scheduled on the bills.

Digital Coast Act

Bills to codify the Digital Coast program and partnership at NOAA have been introduced in the House and Senate with bipartisan cosponsors. The House bill (H.R. 4738) was introduced by Rep. C.A. Dutch Ruppersberger (D-MD). That bill has been referred to the House Committee on Natural Resources. The Senate bill (S. 2325) was introduced by Senator Tammy Baldwin (D-WI) and was reported favorably out of the Senate Committee on Commerce, Science and Transportation April 27. ASFPM is an active member of the Digital Coast Partnership.

Appropriations

Leadership in the House and Senate have expressed their resolve to conduct appropriations business "under regular order" for FY17, rather than relying on Continuing Resolutions and Omnibus appropriations measures as has been the case in recent years. The House and Senate Appropriations Committees have been busily marking up their bills and reporting them out. Of the 12 regular appropriations bills, the Senate has passed three and the House has passed two. Another six have been reported out of committee in the Senate and another five have been reported out of committee in the House. Two others have been marked up in subcommittee in the House.

The bills that are furthest along in the process are Transportation-HUD, Military Construction/VA and Energy and Water. Of these, the House version of the T-HUD carries language prohibiting implementation of Executive Order 13690 and the FFRMS. The House Financial Services and General Government bill, which will be considered on the House floor during the week of June 13, also contains such language.

Although progress looks reasonably good on achievement of regular order, two major problems make it increasingly likely that there will again be a need for a CR at the end of the fiscal year on Sept. 30. One problem is the short amount of legislative days remaining before then. Congress will not be in session in October prior to elections in November, meaning there will be a lame duck session beginning in mid-November, leading to the likelihood of another omnibus appropriations bill for at least portions of the government. The other problem is “poison pill” amendments being offered. That problem occurred when the Energy and Water Appropriations bill failed to pass the House on May 26 due to controversy over amendments dealing with rights for LGBT individuals, the nuclear agreement with Iran and other matters. House leadership has now decided to limit amendments by having the Rules Committee decide which amendments will be in order. This means abandoning a previously touted policy of openness to any amendments offered.

Appropriations – Energy and Water

The Senate passed its Energy and Water appropriations bill (S.2804) May 12.

The Senate committee report is S. Rept. 114-236. The House bill (H.R. 5055 and H. Rept. 114-532), however, failed to pass the House May 26 by a vote of 112 yeas to 305 nays. As explained above, this was due to controversy over “poison pill” amendments. The E & W Subcommittee Chairman says he expects the bill to come to the floor again, but he has “no idea when.”

The overall amounts for the Army Corps of Engineers Civil Works are \$6 billion in the Senate bill and \$6.089 billion in the House bill. Both are more than \$1 billion over the Administration’s budget request.

For Flood Control and Coastal Emergencies (FCCE), the House provides \$34 million and the Senate provides \$30 million. The request was \$30 million.

For Planning Assistance to States (PAS), the House provides \$7.5 million and the Senate provides \$6 million. The request was \$5.5 million.

For Flood Plain Management Services (FPMS), the House provides \$15 million and the Senate provides \$16 million. The request was \$15 million.

For the National Flood Risk Management Program (NFRMP), the House provides \$6 million and the Senate provides \$5 million. The request was \$5 million. The House report notes that the increase over the budget request is to support addition work under the Silver Jackets program.

The House provides \$0 for the Water Resources Priorities Study (authorized in WRDA 2007) and the Senate provides \$1 million. The request was \$1 million.

The House bill includes language prohibiting use of funds to implement the revised guidance on determining jurisdiction under the Clean Water Act. The Senate bill does not.

Appropriations – Homeland Security

This bill provides appropriations for FEMA along with the many other component parts of the Department of Homeland Security. The Senate version (S. 3001 and S. Rept. 114-264) was reported out of committee May 26. The House draft bill (no number yet) was marked-up in subcommittee on June 9 and will be taken up by the full committee on June 14.

The committee report will not be available until after full committee mark-up. During subcommittee mark-up the Ranking Democrat on the full committee, Rep. Nita Lowey (D-NY) observed that there were areas in the bill that should have been funded at higher levels and specifically named flood risk mapping and Pre-Disaster Mitigation.

For flood risk mapping, both bills provide \$177.5 million. The budget request was \$177.5 million. The FY16 funding level was \$190 million. The lesser amount requested, according to the Administration, anticipates additional mapping funds from the NFIP policy fee due to an increase implemented on April 1, 2016. The authorized amount for mapping (as opposed to appropriations) is \$400 million.

For Pre-Disaster Mitigation, the House provides \$54.5 million and the Senate provides \$100 million. The request was for \$54.5 million. The FY16 funding level was \$100 million.

For Flood Mitigation Assistance (FMA), both bills provide \$175 million from the National Flood Insurance Fund. Both bills provide \$350 million for Emergency Management Preparedness Grants. Both bills again reject the Administration proposal to consolidate several grant programs into a National Preparedness Grant Program. Neither bill contains language pertaining to implementation of FFRMS.

The report accompanying the Senate bill contains language directing FEMA and the MitFLG (Mitigation Federal Leadership Group) to create a strategy to guide federal agency and Congress in prioritizing resources to enhance disaster resilience. It also includes language allowing construction of earthen levees on deed restricted FEMA buyout land. Since this is a one year appropriations bill, the language can only take effect for FY17. Additional language notes that the Community Assistance Program “is essential

to effective implementation of the NFIP.” Language also notes that the Committee “is pleased that the Cooperating Technical Partners effort within the mapping budget contributes to supporting the mapping activities and fosters local confidence in map products. Community buy-in on flood maps often leads to local public and private risk reduction actions. This cooperative fiscal approach benefits all levels of government.”

Hearings

Here is a sampling of hearings of interest that have taken place recently.

Oversight of the U.S. Geological Survey

The Senate Energy and Natural Resources Committee held an oversight hearing April 7 and heard from USGS officials as well as representatives of academia.

FEMA: Assessing Progress, Performance and Preparedness

A subcommittee of the Senate Homeland Security and Governmental Affairs Committee held a hearing on April 12. Testimony was presented by officials of FEMA, GAO and the Department of Transportation.

Review of Recently completed US Army Corps of Engineers Chief's Reports

A subcommittee of the House Transportation and Infrastructure Committee held a hearing on May 17 and heard testimony from Major General Donald “Ed” Jackson, Deputy Commanding General, Civil and Emergency Operations

Implications of President Obama's National Ocean Policy

A subcommittee of the House Natural Resources Committee held a hearing on May 17 and heard from public witnesses.

Controlling the Rising Costs of Federal Responses to Disasters

A subcommittee of the House Transportation and Infrastructure Committee held a hearing on May 12. Witnesses included Joe Nimmich, FEMA Deputy Administrator, Sallie Clark, President of NACo, Bryan Koon, President of NEMA, Eric Nelson of Travelers Insurance representing the BuildStrong Coalition and Kevin Mickey, Chair of the Multihazard Mitigation Council of the National Institute of Building Sciences.

Erosion of Exemptions and Expansion of Federal Control: Implementation of the Definition of Waters of the U.S.

The Senate Committee on Environment and Public Works held this hearing on May 24.

Improvements in Hurricane Forecasting and the Path Forward

A subcommittee of the Senate Commerce, Science and Transportation Committee held a hearing on May 25 and heard from Dr. Rick Knabb, Director of the National Hurricane Center about new tools for storm surge watches and warnings.

Any legislation referenced may be found by going to www.Congress.gov and typing in the bill number or title. Committee websites are also accessible through www.Congress.gov.