

MINUTES

SENATE AND HOUSE INTERIM COMMITTEES ON INSURANCE AND COMMERCE
and
SENATE AND HOUSE INTERIM COMMITTEES ON AGRICULTURE, FORESTRY, AND
ECONOMIC DEVELOPMENT

Meeting Jointly
Committee Room MAC A, Little Rock, Arkansas
Wednesday, June 24, 2015

The Senate and House Interim Committees on Insurance and Commerce met jointly with the Senate and House Interim Committees Agriculture, Forestry, and Economic Development Wednesday, June 24, 2015, at 9:30 a.m. in Committee Room MAC A in Little Rock, Arkansas.

Insurance and Commerce members present: Senators Jason Rapert, Chair; Terry Rice, Vice Chair; Jonathan Dismang and Larry Teague. Representatives Charlie Collins, Chair; Reginald Murdock, Vice Chair; John Baine, Scott Baltz, Deborah Ferguson, Bill Gossage, Joe Jett, Greg Leding, Fredrick Love, Mark Lowery, Robin Lundstrum, James Sorvillo, and Brent Talley.

Agriculture, Forestry and Economic Development members present: Senators Ronald Caldwell, Chair; John Cooper, Blake Johnson, and Bruce Maloch. Representatives David Hillman, Vice Chair; Charles Armstrong, Rick Beck, David Branscum, Andy Davis, Kim Hendren, Douglas House, Sheilla Lampkin, Mark McElroy, Ronald McNair, Stephen Meeks, James Ratliff and Mathew Pitsch.

Other legislators present: Senators Jimmy Hickey, Bill Sample, Linda Collins-Smith and Jim Hendren. Representatives Nate Bell, Jim Dotson, Trevor Drown, Kenneth Ferguson, Mary “Prissy” Hickerson, Betty Overbey, Chris Richey, Marcus Richmond, Sue Scott, Nelda Speaks, DeAnn Vaught and Dave Wallace.

Senator Rapert called the meeting to order.

CONSIDERATION TO APPROVE AUGUST 12, 2014, SENATE AND HOUSE INSURANCE AND COMMERCE COMMITTEES MEETING MINUTES [Exhibit C1]

Senator Rice made a motion to approve the August 12, 2014, meeting minutes. The motion was seconded by Senator Cooper, and without objection, the motion carried.

CONSIDERATION TO APPROVE OCTOBER 3, 2014, SENATE INSURANCE AND COMMERCE COMMITTEE MEETING MINUTES [Exhibit C2]

Senator Rice made a motion to approve the October 3, 2014, meeting minutes. The motion was seconded by Senator Cooper, and without objection, the motion carried.

Without objection there is a change in agenda order. Commissioner Kerr will be first to speak.

FLOOD INSURANCE

Mr. Allen Kerr, Commissioner, Arkansas Insurance Department (AID), was recognized and [EXHIBIT E1] noted according to the National Flood Insurance Program (NFIP), 90% of all natural disasters involve flooding. There are 100-year and 500-year flood plains which are determined by how often an area is likely to flood. There are two major disaster insurance coverages, earthquake and flood. Flood coverage is not automatically included in a homeowner’s policy; it is purchased separately through an agent.

The NFIP was created as a result of the passage of the actual Flood Insurance Act of 1968 and is a federal program managed by the Federal Emergency Management Administration (FEMA). Flood hazard mapping is part of NFIP as it is the basis of the program in regulations and flood insurance requirements. FEMA maintains and updates data through flood insurance rate maps and risk assessment. Individuals outside of the mapped high-risk areas file over 20% of all NFIP flood insurance claims and receive 1/3 of the federal disaster assistance. Those not in the 100-year flood plain can still purchase flood insurance.

Commissioner Kerr illustrated the advantage of flood insurance, noting federal disaster assistance is usually a loan that must be paid back with interest; a \$50,000 loan with 4% interest, would be approximately \$240 monthly or \$2880 a year for 30 years, compared to \$100,000 flood insurance coverage which is approximately \$33 monthly, \$400 a year.

From 2005-2014 total flood insurance claims averaged \$3.5 billion per year. Since 1978 the NFIP has paid nearly \$50 billion for flood insurance claims and related costs through February of this year. There are currently over 5.3 million flood policies in force across the 22,000 communities in the U.S., and AID will provide the number of Arkansas policies at a later date.

FLOODING AND LEVEE INTEGRITY IN ARKANSAS

Mr. David Maxwell, Director, Arkansas Department of Emergency Management (ADEM), was recognized and stated Arkansas' topography lends itself to flooding, noting major floods in 2008, 2009, 2011, and again in 2015. Since director, ADEM has had 17 presidentially declared disasters, and the governor has requested the most recent flooding event be declared a disaster.

He stated levees are designed to leak; they have "sand boils". Water tries to reach an equilibrium and as rivers rise on the levee, pressure is added to the levee and water will eventually penetrate the levee. Sand boils cannot be prevented, but should be slowed down so they are not eroding the levees. FEMA will do repairs on non-United States Army Corps of Engineers (USACE) or non-Arkansas Natural Resources Commission (ANRC) levees, but only emergency repairs, and only if those levees have been maintained. Those that are not maintained are the problem areas.

Mr. Randy Young, Executive Director, Arkansas Natural Resources Commission (ANRC), [Handouts A-E] was recognized and noted the 2009 Legislative Audit report was comprehensive, and one of the results from the report was authorizing a general obligation bond financing program, which included the ability for the ANRC to provide financing to levee and drainage districts to address deficiencies. Unfortunately, most of them are not able to afford to borrow the funds. Also, as a result of the 2009 Legislative Audit Report, ANRC was successful in getting legislation requiring improvement districts to file with county clerks information such as the district's name, when created, under whose authority, and board members' names.

ANRC has made attempts to survey the counties to assess registration program compliance. ANRC determined there are 244 different tax assessments being collected by improvement districts statewide. The functioning districts with active tax assessments are reporting. ANRC does not know the number of the non-reporting districts or where they are located. The biggest problem is non-functioning levee and drainage districts. For example, in Perry County most of the original board members are no longer living and those that are living are well into their 80s and 90s.

Mr. Young stated the USACE has a levee program with three categories of levees:

1. USACE Maintained. Nationwide there are 2800 miles.
2. USACE Constructed / Locally Maintained. Nationwide there are 9500 miles.
3. Non-Federally Constructed /Locally Maintained and in the USACE Rehabilitation Program. There are 2200 miles nationwide.

The Corps also maintains a nationwide levee database.

Mr. Young stated FEMA provides accreditation after the levee has met all certification requirements. Certification is by the responsible party, such as the improvement district, and is an involved process. It may cost a levee district as much as \$500,000 to get their levee certified and accredited.

Mr. Young offered the following recommendations:

1. Identify all the non-functioning levee districts as well as other improvement districts and boundaries. It will probably need to be done at the county level and by contracting with the local abstractor.
2. Have legislation to address the lack of oversight of levee boards and districts (as recommended in the 2009 Legislative Audit Report).

Mr. Young stated oversight is a serious issue; it is one of the 20 issues addressed by the National Levee Safety Committee which was formed by the USACE. **[Handout A]**

Senator Maloch made a motion that the Senate and House Agriculture, Forestry and Economic Development Committee in conjunction with the Senate and House Insurance and Commerce Committee send a resolution to the Mr. Tom Vilsack, Secretary of Agriculture, supporting the disaster declaration request of the governor and that the resolution would include the addition of any other counties that may be added as a result of this particular event or continued rains that add to this event.

The motion was seconded by Senator Caldwell, and without objection the motion carried.

Mr. Maxwell clarified there are two disaster declarations. The presidential declaration would include public assistance, roads, bridges, emergency levee repair work, and individual assistance for families affected by the floods. The second disaster declaration request is a letter the governor has sent to the Secretary of Agriculture asking for a declaration under the United States Department of Agriculture (USDA).

Senator Maloch requested staff work with Mr. Maxwell to draft the resolution to cover both declarations.

Representative Talley asked how levee heights were determined.

Mr. Tony Batey, Chief, Engineering & Construction Division, U.S. Army Corps of Engineers, Little Rock District, was recognized and stated the heights are variable and in the past were determined by high water marks.

Senator Rapert asked if there was a problem with the integrity of the levees in the latest flooding event.

Mr. Batey stated as a general rule the levees performed quite well and the protection level on the Arkansas River is pretty high for most of the levees, but there are exceptions. There are two risk factors concerning levees; the condition of the levee and the protection level they provide.

Senator Rapert asked if there is a record of what caused the flood event in the areas where individuals were evacuated.

Mr. Batey stated they are aware of a couple of instances, for example in Perry County where a levee in the federal program was over-topped. This was a privately-built levee that entered the federal program (Public Law 8499) many years ago. In the 60s and 70s that levee fell into a state of disrepair and was declared inactive due to lack of maintenance.

He stated Public Law 8499 is a voluntary program which provides a levee district an opportunity to receive federal assistance after the levee meets eligibility inspection requirements. The levee must be kept up to standards, and if the levee is a federally-constructed levee, then the government will pay 100% of the repair cost. If it is a privately constructed levee then it is an 80/20 cost share. Once a levee district ceases to maintain a levee, through our inspection process we communicate to them they are going to be declared inactive. In some cases when a levee has been declared inactive, the USACE ceases inspections. When there is an inactive levee board, information concerning deactivated or inactive levees is sent to the county judge in that area. In 2010, a comprehensive report of all the federally constructed levees and the inspection results was sent to the Attorney General's office.

Senator Rapert asked Mr. Batey to provide information to him concerning when the levee district was notified they were going to be deactivated or declared inactive.

Mr. Batey stated the USACE has records of the inspection dates of all levees and he would provide that information to Senator Rapert.

In response to Representative Hillman, Mr. Batey stated this is a problem in other states also regarding local control and no oversight. He will check on some best practices in states and share that information.

Representative Vaught asked how levee boards and districts are created.

Mr. Young stated there are a number of ways under state law that improvement districts are created. In the late 1800s and 1900s some of them were created by acts of the general assembly. In about 1949 there was legislation to create a comprehensive way to create levee, drainage, watershed improvement districts and a number of them were created under this law. If no improvement district exists in a county, there is no requirement for the county judge to do anything. Improvement districts are basically a group of people with a common problem who come together and form an entity to implement a solution to the problem.

Mr. Batey echoed the previous recommendations: knowing where the levees are, their condition and protection level, and identifying the responsible parties.

Mr. Walter Delp, P.E., Arkansas State Conservation Engineer, Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, was recognized and gave the following statistics concerning watershed improvement districts:

- There are 208 small dams protecting 38,000 Arkansans from \$51 million of damage every year.
- The Soil Conservation Service (currently NRCS) in partnership with 30 local watershed improvement districts built most of the 208 dams between 1955 and 1985. They are earthen dams between 30 and 100 feet tall with concrete and earthen auxiliary spillways. They are made to store the run-off of storms producing 7-11 inches of rainfall before the auxiliary flows. The lakes created by these dams are 5-600 acres.
- The dams not only provide flood erosion benefits but also reduce erosion along stream banks, provide water quality benefits as they trap and store nutrients, provide drinking water and municipal water for small communities and provide recreational opportunities. These benefits are in addition to the \$51 million in annual benefits in flood reduction. The 30 watershed districts are responsible for the maintenance of these dams. NRCS does not own these dams, but assists with the operation, maintenance and inspection. Common

maintenance issues are controlling brush and trees, fixing and preventing erosion from cattle, and replacing rusty gates.

- In addition to watershed improvement districts, there are 50 drainage districts NRCS works with through the PL566 Program to assist with drainage. One thing in common with all these districts is that the original board members are no longer part of the board or have passed away. Many have forgotten the purpose of these dams, or even that they exist.
- Many of the 208 dams are nearing the end of their design life. By 2020, 125 of these dams will be more than 50 years old. NRCS will continue to help with the inspections, but will no longer have any responsibility or ability to enforce the maintenance. One of the big concerns is what has happened downstream of these dams. There were 30 dams that were originally built as low risk dams, which means there was nothing below besides crop lands and bridges, now there are homes. NRCS agreed to build the dams as long as the watershed improvement district agreed to maintain them for 50 years. NRCS has the ability to go back, for example, the dam has not been maintained for the last 10 years and recover some of the cost to build the dam.
- Currently, there are 30 dams that need to be upgraded to a high hazard with an approximate cost of \$500,000 to \$1 million. Maintenance cost is approximately \$1500-\$3000 per dam.

Mr. Delp stated there are yearly inspections on the dams and NRCS invites districts to attend. Rarely does a district attend. In 2009 there was a conference for watershed dam maintenance and invited every district in the state, and only one district participated.

Mr. Doug Spencer, Supervisor, Arkansas Division of Legislative Audit, was recognized, **[Exhibit D4]** to summarize the report, “Levee District Oversight – Arkansas Natural Resources Commission, Performance Audit by Legislative Joint Auditing Committee, 2/13/2009.” He highlighted objectives as:

- To determine the number and location of levee districts around the state. There is not a complete centralized registry of levees or their districts. A central inventory is not maintained in part because Ark. Code Ann. 15-24-102 prohibits the ANRC from requiring any information from the districts. The report recommended the code be revised to require ANRC to create and maintain a complete listing of all levees in the state, develop procedures to approve the construction of new ones and to register levees over a determined size. There have been no changes to the code and the ANRC continues not to have oversight regulatory authority over levees.
- Determine oversight and maintenance responsibilities. City and county officials have no authority over levees if they are in the levee district, because the districts are political subdivisions of the state. ANRC is prohibited by Ark. Code An. 15-24-102 from taking oversight of unmaintained levees. Levees not participating in a federal levee program are not required to receive any reviews of their structure. USACE which provided physical inspections for those in a federal program have no authority to force the maintenance repairs on the levees if they are controlled by a local district. Ark. Code Ann. 14-207-04 authorizes the USACE to notify the Attorney General to force action if the levees are failing. However, a state statute cannot compel a federal agency to act.

It is recommended the General Assembly consider legislation designating a standard structure for how each district board is constructed, how members are appointed, and the process for electing

the members. We also recommended ANRC be directed to develop standards for levee maintenance and inspections and that levees report to ANRC indicating the maintenance and inspection status of their levees, and whether or not they are in a federal program. Also recommends revising the code to authorize ANRC to notify the Attorney General when a levee was not properly maintained, rather than USACE. There have been no changes to these codes and ANRC has not been authorized to notify the Attorney General. ANRC also has no authority to require levees report their maintenance and inspection to them.

- Address funding and financial accountability. Levee districts are generally funded through taxes on properties within the boundaries of their protected area. There is no uniform requirement for financial accountability through audit or publication of financial records. It was concluded that proper stewardship of district funds affects the ability of the district to finance necessary operations and maintenance activity. Legislation should be considered authorizing ANRC to develop regulations specifying uniform financial reporting and audit requirements. Currently no changes have been made, and ANRC has no oversight authority in that matter.
- In order to protect the citizens from becoming disqualified from the NFIP and its benefits, it was recommended the General Assembly consider authorizing ANRC to develop rules and procedures prompting the annexation or merging of districts that were found to be in non-compliance.

Mr. Spencer stated the only recommendation receiving action from the 2009 Legislative Audit report was Act 386 of 2009 which requires levees to report certain information to county clerks, however these reports are not required to be sent to the ANRC.

Mr. Chris Villines, Executive Director, Association of Arkansas Counties, was recognized and stated when levees fail, it is county government that finds itself in the role of cleaning up and mitigating disaster.

Miller County Judge Larry Burgess, Perry County Judge Baylor House, and Randolph County Judge David Jansen addressed the committees.

Tommy Bond, PE, PLS, Civil Engineer, Plum Bayou Levee District, suggested the General Assembly create laws that would give levee boards some authority.

There being no further business, the meeting adjourned at 12:06 p.m.

[Note: Interim Resolution 2015-003 resulted from today's meeting.]