

MINUTES
SENATE AND HOUSE INTERIM COMMITTEES ON INSURANCE AND COMMERCE;
AGRICULTURE, FORESTRY, AND ECONOMIC DEVELOPMENT; CITY, COUNTY,
AND LOCAL AFFAIRS; AND HOUSE INTERIM COMMITTEE ON STATE AGENCIES
AND GOVERNMENTAL AFFAIRS MEETING JOINTLY

MAC, Room A
Little Rock, Arkansas

Thursday, August 1, 2019

The Senate and House Interim Committees on Insurance and Commerce; Agriculture, Forestry, and Economic Development; City, County, and Local Affairs; and House Interim Committee on State Agencies and Governmental Affairs met jointly Thursday, August 1, 2019, at 9:30 a.m., in the Multi-Agency Complex (MAC), Room A, in Little Rock, Arkansas.

Committee members present: Senators Jason Rapert, Gary Stubblefield, Chairmen; Cecile Bledsoe, Ricky Hill, Greg Leding, Vice Chairmen; Eddie Cheatham, Linda Chesterfield, Alan Clark, Joyce Elliott, Jane English, Missy Irvin, Mark Johnson, Blake Johnson, Bruce Maloch, Terry Rice, Larry Teague, and David Wallace. Representatives Mark Lowery, Lanny Fite, Dwight Tosh, Chairmen; David Hillman, Fredrick Love, Justin Gonzales, Vice Chairmen; Fred Allen, Rick Beck, Mary Bentley, Stan Berry, Karilyn Brown, Harlan Breaux, Joe Cloud, Nicole Clowney, Bruce Coleman, Andrew Collins, Cameron Cooper, Bruce Cozart, Carol Dalby, Andy Davis, Gary Deffenbaugh, Jana Della Rosa, Jim Dotson, Les Eaves, Jon Eubanks, Kenneth Ferguson, Vivian Flowers, Jack Fortner, Jimmy Gazaway, Megan Godfrey, Grant Hodges, Steve Hollowell, Lane Jean, Joe Jett, Jack Ladyman, Roger Lynch, John Maddox, Gayla McKenzie, Ron McNair, Stephen Meeks, Josh Miller, Reginald Murdock, Milton Nicks, Clint Penzo, Mark Perry, Aaron Pilkington, Chris Richey, Johnny Rye, Jamie Scott, Matthew Shepherd, Brandt Smith, James Sorvillo, Nelda Speaks, DeAnn Vaught, and Carlton Wing.

Also attending: Senators Trent Garner, Kim Hammer, and Bob Ballinger. Representatives Charlene Fite, Danny Watson, Tippi McCullough, and Keith Slape.

Senator Rapert called the meeting to order.

CONSIDERATION TO APPROVE SENATE AND HOUSE INSURANCE AND COMMERCE COMMITTEE MEETING MINUTES FOR JUNE 4, 2019 [EXHIBIT B]

Senator Chesterfield made a motion to approve the June 4, 2019, Senate and House Insurance and Commerce Committee meeting minutes. Senator Elliott seconded the motion, and the motion carried.

Congressman Bruce Westerman, Ranking Member, Water Resources and Environment Subcommittee of House Transportation and Infrastructure Committee, shared an assessment of historic flooding Arkansas faced this spring. He noted recognition of national waterways and federal funding for water-related projects are ensured by the Water Resources Reform and Development Act (WRRDA) which has funds available to maintain levees along the Arkansas River. His committee plans to continue hearings in the fall to assess the need to create a larger fund for the McClellan-Kerr Arkansas River Navigation System (MKARNS) and other rivers in the 2020 WRRDA bill. The committee will work with the U.S. Army Corps of Engineers (Corps) to do a full assessment of the overall operation and construction of the system with a follow-up of all data collected from this recent flood and whether new plans for managing water flow release down the river are needed. The briefing report will explain in detail how the process was done with a timeline showing the stages of events, decisions made on the releases going down the river, and were there opportunities to have done better. Federal dollars, funding sources for pre-disaster mitigation, and resiliency are available.

He contacted Brigadier General Paul Owen, Corps, SW Division and Assistant Secretary R.D. James, U.S. Army for Civil Works, regarding preparing for events such as this and deploying funds to build the infrastructure back better. There is currently a backlog of critical maintenance on MKARNS of \$235 million for FY2021. If critical maintenance is not completed the Corps notes there is a 50% probability the system will fail within five years. A 2015 study revealed closing the MKARNS would decrease national business sales approximately \$4.1 billion annually. The system is vital to the Arkansas, Oklahoma and national economies, because water is the most efficient transportation mode.

Congressman Westerman concluded that for direction or assistance with water or specific issues, constituents may reach his Hot Springs office. For concerns or issues with federal oversight or disbursements, people can call his DC office at 202-225-3772.

Ms. Anushree Jumde (AJ), District Director, speaking on behalf of Congressman French Hill who was unable to attend the meeting. Ms. Jumde read a letter from Congressman Hill stating he and Senator Mark Johnson visited affected areas in Perry County and noted other counties and shelters that received his and staff attention. He invited residents or constituents in need of federal assistance or who have not received disaster relief to contact his offices in Little Rock or Conway. Senator Chesterfield said she was disappointed in not getting a return call from Congressman Hill's office when she called regarding constituents telling her about rudeness when at the Federal Emergency Management Agency (FEMA) stations.

His letter stated that federal congressional delegation and state officials need to collaborate on follow-up such as: 1) assessing maintenance improvements for the MKARNS; 2) levee improvements and certifications; 3) legal status of the MKARNS as a federal inland waterway to insure it is getting federal dollars so projects can meet federally mandated cost-benefit ratio requirements. Work on these areas can ensure all of Arkansas is better prepared the next time a major flooding event occurs.

Mr. A.J. Gary, Director, Arkansas Division of Emergency Management (ADEM), introduced Ms. Tina Owens, Deputy Director, and Mr. Scott Bass, Response and Recovery Director. Mr. Gary noted all state agencies were represented in the Emergency Operation Center (EOC) and were activated for two weeks. Coordination with county and city partners began with calls to all jurisdictions before the EOC was activated. Communication about status of the river crests along the river and where resources were needed was ongoing throughout the event. Federal partners, FEMA, Corps, and Arkansas National Guard (the Guard) were present and helpful at the EOC from day one.

He updated the committees regarding disaster relief assistance. The Individual Assistance (IA) Program is assistance for home owners and there were 13 counties designated. There were 1,772 registrations and \$8.5 million approved and dispensed. The Public Assistance Grant Program is for infrastructure such as roads and bridges, and there were 12 counties designated with a damage estimate of \$15.36 million. Grant projects are coordinated jointly with local, state, and federal agencies. The application period ends August 8, 2019. The estimated damage cost is approximately \$40 million.

Due to coordination efforts with many partners through this event, the state received the Federal Emergency Declaration early on during the disaster. This made the federal resources available for emergency response. Governor Hutchinson requested the Presidential Declaration June 6, 2019, and it was approved June 8.

Mr. Scott Bass explained the process for individuals to apply to FEMA directly through an agent or online. Their applications are processed through FEMA Headquarters Office or National Processing Centers, then a FEMA contractor is requested to inspect the property. Applicants must show proof of residency and documentation of insurance policies and any insurance proceeds received, or not yet received, which will be

assessed toward their application and damage assessment. Upon completion of the inspection, all documentation is uploaded. There are disaster recovery centers in the counties and applicants can take documentation to the center where FEMA and SBA staff can help with uploading and making copies. There are appeal processes for applicants.

Mr. Bruce Holland, Director, Arkansas Natural Resources Commission (ANRC), noted Arkansas Code 15-24-102 disallows ANRC from exercising control or authority over levee districts or reports from them. Currently, the total number of levees and locations in the state are unknown, but the Association of Arkansas Counties (AAC) has reports from county judges and clerks. 2016 legislation by Senator Rapert encouraged levee board and district organizations within each county to solicit information for a report to the county clerk, and to be forwarded to ANRC to better understand the levee system. The legislation provided that if a levee board is not functioning, it is not reporting, and in that case there is a process by which a county judge will take action to appoint someone to the non-functioning levee board position(s), because district members must be in place for money to flow to that board. Organized levee boards that want to make improvements to their levees can request a loan from ANRC.

The county clerks collect the needed cost to maintain wastewater or levee systems. Money borrowed from the ANRC must be repaid. Combining levee districts produces a larger tax base and would allow for necessary project loans, but there are successful operating districts that do not need consolidation or want the ANRC to have authority over them.

Mr. Holland reported his assigned subcommittee on the Governor's Levee Task Force is to find funds and use them appropriately after determining where the funds are needed. He believes forging a process for better cooperation with the Corps in Memphis, Vicksburg, and Little Rock is needed, because each works differently yet each administers the same programs. District reorganization would combine county levee boards and districts in such a way as to allow shared assessments to finance compliance for standard levee maintenance. The legislature will decide whether the levee districts will remain locally controlled or be under state control with ANRC.

Brigadier General John Payne, Deputy Adjutant General, Arkansas National Guard, noted the Guard was notified in late May by A.J. Gary that the flood was coming. The first personnel mobilized were two high water teams, 22 personnel, May 25, 2019. Eventually the response consisted of 244 personnel, 35 trucks, including aircraft. The mission continued through June 11, 2019. Missions included sandbag delivery teams, traffic control, rotor wing support, and relief missions for livestock.

Mr. Scott Stanger, Chief of Staff, Department of the Military, noted \$1.21 million was spent for the cost of the mission, which initially comes from the state. As soon as the presidential disaster was declared, the reimbursements started coming through FEMA. Those reimbursement funds come back to state coffers and put into accounts that can be drawn from for future disasters during the fiscal year.

Mr. Scott Bennett, P.E., Director, Arkansas Department of Transportation (ARDOT), noted during the 28 day event from May 23 to June 19, 2019, a total of 51 segments (86 miles) of Arkansas highways were closed, impacting two million vehicles, due to flooding. Fort Smith lost availability of three of its four river crossings. A total of five river crossings were impassable, three in the Fort Smith area and Highway 23 at Ozark and Highway 60 at Toad Suck. Alternate routes were lengthy or there was no alternate route.
[PowerPoint-1]

ARDOT hauled sandbags; its public information office coordinated with ADEM to handle media matters; the Traveler Information Call Center ran from 7am to 7pm with 100 employee volunteers fielding over 3,000 calls and over 300 texts during its peak time; and extra cameras were put out for the I-Drive Arkansas

website to get the word out about closure locations and possible detours. I-Drive had approximately one million views during this time. Mr. Bennett estimates \$30 million worth of repairs.

River flooding, regardless of cause over the last ten years, has produced five significant multi-day events with 330 segments closed. During that time some segments closed multiple times and one segment closed during all five river events. ARDOT's priorities are either going to have no impact on drainage or they are going to improve it.

ARDOT works with the Federal Highway Administration (FHWA) which has an emergency relief fund that is typically 100% federal funds, but is a cost-reimbursable program. State money is used to repair damages then ARDOT must apply to get it back. A Notice of Intent has been filed to seek emergency relief money for recent flooding. The FHWA budget annually allocates emergency relief money for the entire nation; once a state is approved for reimbursement it may take several years to get the money.

Mr. Chris Villines, Executive Director, AAC, introduced County Judges Jimmy Hart, Conway County, Mark Thone, Yell County, and Mark Whitmore, Chief Counsel, AAC. Mr. Villines noted interaction with counties and their levees across the state, include, 1) public safety response; 2) collecting improvement district fees; and 3) county clerk offices act as the repository for documents and reports. He stated counties are working through recovery and rebuilding infrastructure. He asked the judges to talk about their recovery efforts.

Judge Jimmy Hart noted the challenges in his county were met with public and private resources regarding its eight levee districts, and the levee system was built in 1951. He proposed combining some county districts within the state's levee system. He stated county administrative government is complaint-driven and seeing repair and cleanup costs, the county wants to get ahead of its levee situation. It was good luck that Lentz Construction, City of Waldron road department, Lentz Sand and Gravel, and Mobley Contractors, all helped put in a \$375 thousand cofferdam. If not for this protection, Green Bay Packaging, which employees hundreds of people, could have been in jeopardy during this event.

Judge Mark Thone noted he is on the governor's task force and hopes rule and law changes are made, such as: 1) A county judge can work/fix a levee without fear of legalities for using government equipment, man power, and access to the levee land. 2) Provide guidance regarding a levee district's authority; and 3) addressing a situation where currently a highway and levee run along the same bed, it is less expensive to keep the project as one instead of two separate projects; highway and levee.

In response to Senator Rapert's concern as to why some of the county judges are not appointing people to fill vacancies on levee boards, Chris Villines clarified Act 386 of 2009 predates Senator Rapert's 2016 act and both acts were a result of flooding. Act 386 of 2009 was from the Black River flood in Pocahontas and required all levee, watershed, and irrigation districts to file a report with the County Clerk's Office. What AAC found is a lack of reporting from levee districts. Senate Rapert reiterated that if a levee district is not reporting, that is a signal to county officials there is a problem.

Mr. Whitmore, Chief Counsel, AAC, believes the counties with multiple levee and drainage districts will see consolidation among the districts, depending on their continuity. In the process, problems with existing laws may be discovered such as ANRC not being able to require reports from levee districts even though it loans money. There are levee districts that have the capacity to receive federal money through the state ANRC without a report from that levee district to ANRC.

He dovetailed Judge Thone's thoughts about a highway and levee running along the same bed being less expensive. He noted former Highway Commissioner and Speaker of the House, Robert Moore, being proud

of the Mississippi River levees where he is from in Desha County, Arkansas. The Mississippi River levees do not fail and have roads on top of them; the only problem the Mississippi River levees have is with sand boils. He stressed the state is dealing with critical infrastructure.

Mr. Mark Hayes, Executive Director, Arkansas Municipal League, noted Arkansas cities are still in a reactive mode. He gave initial figures of some larger cities affected: Van Buren, Ft. Smith and Pine Bluff are at \$23 million in damages to buildings and structures, and that figure does not include bridges, roads, and culverts. With time the figures will be much larger and these are budget breakers that will harm municipal services in the long run, police and fire protection will all suffer as a result of this flooding. Because cities are still reactive, appraisers and engineers are spending immense amounts of time in the field trying to learn how much damage was done to the cities along the Arkansas River.

Mr. Booth Rand, Managing Attorney, Arkansas Insurance Department (AID), noted the availability of flood coverage in the state is predominantly through the National Flood Insurance Program (NFIP). AID commissioner encourages the development and increased private availability of flood coverage to compete with NFIP rates. Arkansas has several companies that offer surplus coverage for losses above the NFIP limits. Consumers rely on their agent to advise them about the need for flood coverage, but what many consumers do not realize is their homeowner's insurance does not cover flooding. Better educated agents can explain availability of flood coverage where there is a need for it. **[Exhibit J]**

Senator Rapert asked for AID to provide feedback to the committee regarding mandatory offering flood coverage. Arkansans would need an affirmation that they were offered flood insurance then up to consumer if he takes it or not.

Mr. Chris Roark, Deputy Chief Operations/Executive Officer, Corps, Little Rock (LR) District, introduced Mr. Craig Pierce, Deputy District Engineer, Corps, LR District, Mr. Nathaniel Keen, Chief, Water Management, Corps, LR District, and Mr. Elmo Webb, Levee Safety Program Manager, Corps. **[Exhibit K]**

Mr. Pierce noted the Corps' role during the response included posting the inundation map, communication among districts, sandbag machines, equipment, and liaisons. Recovery roles include: return everything to where it was including the navigation system to continue its economic benefits; moving forward with levee safety and development; and determining eligibility for federal assistance for Corps of Engineers' repairs.

The MKARNS Little Rock and Tulsa Districts have a lot of flood storage and capability to minimize flood impacts. The MKARNS ensures there is enough water in the system to support navigation and minimizes flooding impact when there are massive rains. These rains exceeded the capacity of the reservoirs to hold it all. The Corps' operating plan is based on congressional authorization to minimize the flow at Van Buren, Arkansas, the decision point, to control water within the banks to certain levels.

The Corps' database has 98 levees in its system, with 60 levees being in an acceptable/minimally acceptable category, which would be eligible for federal funding. Federal levees qualify for 100% funding and non-federal levees qualify for 80% funding. The remaining 38 are in an unacceptable category. The Arkansas River has 38 levees with 25 in an acceptable/minimally acceptable category and 13 in an unacceptable category.

Mr. Elmo Webb, Levee Safety Program Manager, Corps, stated there are certain levees that are inventoried and in the system but are categorized as unacceptable even though they are connected with levees that are inventoried in an acceptable category. He discussed the levee damage assessment in progress; page 7 of the exhibit.

Senator Rapert noted that many levee areas are unprotected because of damage. He asked about an estimated timeline for when Arkansans can expect availability of funds for restoration and repair. Mr. Roark does not have that information but if it is based on priorities, Arkansas River could be last as damage was earlier and more severe on the Missouri River.

Senator Stubblefield asked the Corps' budget for Arkansas. Mr. Pierce stated operations and maintenance of MKARNS varies every year, and is approximately \$110 million for the entire state and of that, \$40-50 million per year for operation and maintenance.

Senator Rapert noted he would be in Washington in September with the National Council of Insurance Legislators. One of the topics is NFIP, and he requested Mr. Pierce provide him the names and contacts for the Corps' Washington Headquarters.

Senator Rapert concluded there is additional printed information included regarding a partnership ASU is working on with the Corps on the White River Basin. There is also information regarding free disaster legal assistance. **[Handout 1] [Exhibit L]**

OTHER BUSINESS

With no further business, the meeting adjourned at 1:30 p.m.