RSC
Republican Study Committee
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Legislative Bulletin……………………………….………June 27, 2006

Contents:

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 1

Total Cost of Discretionary Authorizations: $0

Effect on Revenue: increased by $5 million over five years

Total Change in Mandatory Spending: $1.1 billion over five years

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of *Bills* Without Committee Reports: 0

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 4973 — Flood Insurance Reform and Modernization Act of 2006 — *as reported* (Baker, R-LA)

Order of Business: The bill is scheduled for consideration on Tuesday, June 27, 2006, under a structured rule (H.RES. 891).

Note: FEMA's borrowing authority was also increased earlier this year, from $18.5 billion to $20.8 billion, when Congress passed S. 2275 (signed into law on March 23, 2006). See Additional Information for the recent history of increases in FEMA's borrowing authority.

Summary: H.R. 4973 would increase the amount that the Federal Emergency Management Agency (FEMA) may borrow from the U.S. Treasury from $20.8 billion to $25 billion to cover expenses incurred by the National Flood Insurance Program (NFIP). The bill would also phase in actuarial rate increases to reflect actual risk, modify NFIP guidelines to include second homes and vacation homes for actuarial rate properties, increase civil penalties for violations of the

NFIP, and raise the maximum amount premiums may increase annually to 15 percent. The specific provisions of H.R. 4973 are summarized below:

GAO Study: Directs GAO to complete a study to determine the status of the national flood insurance program regarding the provision of flood insurance coverage for pre-FIRM (Flood Insurance Reform Act of 1994) properties and requires that certain considerations are included in the study.

Actuarial Rate Changes: Modifies the National Flood Insurance Act to include nonresidential properties and non-primary residences within the guidelines for actuarial rate properties. The bill also directs FEMA to phase-in actuarial rate increases for premiums for properties and residences covered under NFIP, to be no more than 15 percent per year, until the chargeable premium rates equal the applicable estimated risk premium rates (the premiums charged reflected the actual risk involved for the applicable properties and locations).

Reduction of Waiting Period: Changes the required waiting period from 30 days to 15 days before the effective date of flood insurance takes effect.

Enforcement & Fines: Increases civil monetary penalties that a single regulated lending institution may be fined per calendar year: 1) from $350 to $2,000 for each violation, and 2) from $100,000 to $1 million for the cumulative amount. The bill also provides that no penalty may be imposed on a regulated lending institution that has made a "good faith effort" to comply with the requirements of these provisions or for any non-material violation of these requirements.

Maximum Coverage Limits. Increases the maximum flood insurance coverage for residential properties: 1) from $250,000 to $335,000 for single-family dwellings, 2) from $100,000 to $135,000 for contents per dwelling unit, and 3) from $500,000 to $670,000 for structure and related contents of a non-residential property, including churches.

Expanded Policy Coverage: For new or renewal contracts, provides for at least $1,000 liability per residential dwelling unit for necessary increases in living expenses and basement improvements, and for business interruption and replacement cost of unit contents for commercial property units.

Annual Premium Increases: Increases the annual limitation on premium increases from 10 percent to 15 percent.

Borrowing Authority: Increases FEMA's borrowing authority from the current level of $20.775 billion to $25 billion. To see past increases in FEMA's borrowing authority, please see the **Additional Information** section below.

FEMA Participation in Mediation Programs: Requires FEMA, upon the request by a state insurance commissioner, to participate in a state nonbinding mediation program for disaster claims, and stipulates the terms of FEMA's participation (such as providing FEMA adjusters, requiring their attendance at mediation meetings and their good-faith participation, and other coordination activities).

Financial Status of Insurance Program: Requires the FEMA Director to report twice a year (by June 30 and December 31) to Congress on the financial status of the NFIP. The report must include current and projected levels of claims, premium receipts, expenses, and borrowing under the program.

Mitigation Pilot Program Extension: Extends funding for the pilot program for mitigation of severe repetitive loss properties through FY2011 (currently set to expire in September 30, 2009).

Notice of Flood Insurance Availability: Requires that each good faith estimate under the Real Estate Settlement Procedures Act must state: 1) that flood insurance coverage for residential real estate is generally available under the NFIP whether or not the real estate is located in an area having special flood hazards and that, to obtain such coverage, a home owner or purchaser should contact a property insurance agent, and 2) that the escrowing of flood insurance payments is required for many loans (under the Flood Disaster Protection Act).

Reiteration of FEMA Responsibilities: Directs the FEMA Director (as previously provided under section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act, P.L. 108-264) to: 1) establish an appeals process for flood insurance policy holders (within 90 days of enactment), 2) implement specified minimum training and education requirements for all insurance agents who sell flood insurance policies, and 3) report to Congress (within 6 months of enactment) regarding the implementation of each provision of P.L. 108-264 and identify each regulation, order, notice, and other material issued by the Director in implementing each provision.

Updating Flood Maps: Requires the FEMA Director to establish a new program under which the Director must review, update, and maintain national flood insurance program rate maps, and provides for certain map requirements (e.g. – gives priority to updating maps of coastal areas affected by Hurricanes Katrina and Rita). The bill requires the Director to coordinate his efforts with the Technical Mapping Advisory Council, to submit an annual report to Congress describing the activities of the Director under this program, to conduct a review of all floodplain areas and flood-risk zones, and revise and update all such areas and zones, as soon as possible, and report to Congress upon completion. The bill also reestablishes the Technical Mapping Advisory Council (42 U.S.C. 4101 note). **The bill authorizes to be appropriated $300 million for FY07-FY12 for this program.**

National Levee Inventory: Requires the FEMA Director to maintain and periodically publish an inventory of levees in the U.S., and consult with the U.S. Army Secretary as necessary to main the inventory.

Clarification of Replacement Cost Provisions: Directs the FEMA Director (within 3 months of enactment) to: 1) issue regulations to clarify the applicability of replacement cost coverage under the NFIP, 2) revise regulations relating to the full cost of repair or replacement under the replacement cost coverage to "more clearly describe" the coverage to flood insurance policyholders and information to be provided, and 3) revise the language in standard flood insurance policies regarding rating and coverage descriptions to be more consistent with language used in other homeowners and property and casualty insurance policies.

Authorization of Additional FEMA Staff: Authorizes the FEMA Director to hire additional staff at FEMA "as may be necessary" to carry out all of the responsibilities of the Agency, including those required under this Act, and authorizes to be appropriated such sums as may be necessary to employ additional staff.

Additional Background: Under current law, FEMA offers flood insurance through the NFIP to reduce flood losses. If premiums and interest income are insufficient to pay claims, FEMA can borrow from the U.S. Treasury up to a level set in statute. This loan must then be repaid with interest. Until last September, FEMA could borrow up to $1.5 billion. However, Congress increased that borrowing authority by $2 billion to $3.5 billion by passing P.L. 109-65 on September 20, 2005. Congress then increased FEMA's borrowing authority an additional $15 billion, to $18.5 billion by passing P.L. 109-106 (signed into law on November 21, 2005). Finally, FEMA's borrowing authority was increased to its current level of $20.8 billion with passage of P.L. 109-208 (S. 2275).

As a result of losses resulting from Hurricanes Katrina and Rita, there is projected to be over $22 billion in total NFIP claims that FEMA is legally obligated to pay over the next few months. Accordingly, the limit on FEMA's borrowing authority needs to be increased again.

According to FEMA, the total level of claims from Hurricanes Katrina and Rita have far surpassed the total claims paid over the entire history of the program. From the program's inception in 1968 to 2004, the total cost of NFIP claims was $15 billion—meaning that at $20.8 billion, Gulf Coast claims are nearly 150% more than total claims over the entire 36-year history of the program. Given this historical context, CBO recently testified that "*it is highly unlikely that the program will be able to repay the amount of borrowing authority out of its income from premium and fees*."

Possible Conservative Concerns: Some conservatives may be concerned that as a result of the sizable claims against the flood insurance program, the increases in FEMA's borrowing authority (1) may be forgiven in the future and the funds never repaid and (2) are not being coupled with enough needed reforms to lower the long-term cost of the NFIP. Reps. Mike Pence and Jeb Hensarling sent a letter to House Leadership outlining such concerns and noting that "any long-term extension must include comprehensive structural reforms" to NFIP.
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Even putting its credit line to the Treasury aside, NFIP is not current self-supporting. 24% of all NFIP policies are federally subsidized, costing taxpayers roughly $1.3 billion annually, with premiums covering only 40% of the actuarial risk. For the most part, this subsidy applies to "pre-FIRM" properties, existing before 1975. In addition, NFIP continues to subsidize property that has experienced repetitive losses over the years only to have homes rebuilt on the same property. For more information on the NFIP and opportunities for reform, please visit the Senate Banking Committee's website.

However, this legislation *does* make several important structural reforms to the program including moving to actuarial rates with non-residential homes, increased enforcement penalties, rate of annual premium increased to 15 percent. In addition, there are several provisions that may be of concern to conservatives. For example, the bill significantly increases the maximum coverage limits for various properties, which in turn increases the program's potential future liabilities. It requires expanded policy coverage for future contracts to include living expenses, basement improvements, and business interruptions. Finally, the bill authorizes "such sums as necessary" to hiring additional FEMA staff that the Director deems necessary.

Administration Policy: No Statement of Administration Policy was available at press time.

Amendments: Amendments made in order under the rule will be summarized in a separate RSC document.

Committee Action: H.R. 4973 was introduced on March 16, 2006, and referred to the Committee on Financial Services. The bill was marked-up and reported to the House by voice vote on April 6 (H. Rept. 109-410).

Cost to Taxpayers: Under this bill, FEMA's borrowing authority would increase from $20.8 billion to $25 billion. As a result, CBO estimates that "enacting H.R.4973 would increase direct spending by $1.4 billion in 2006 and $2.8 billion in 2007. By raising certain civil penalties, the bill would also increase governmental receipts (revenues) by an estimated $1 million per year."

H.R. 4973 would also increase the authorization of appropriations for FEMA's flood mitigation and flood mapping programs. CBO estimates that, assuming appropriation of the authorized amounts, "resulting outlays would total about $1.1 billion over the 2007-2011 period and an additional $735 million after that period."

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. As described above, it creates at least one federal program and expands the National Flood Insurance Program.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Committee Report, (H. Rept. 109-410), cites constitutional authority for this legislation in Article 1, Section 8, Clause 1 (relating to the general welfare of the United States) and Clause 3 (relating to the power to regulate interstate commerce) of the Constitution. House Rule XIII, Section 3(d)(1), requires that all committee reports contain "a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution." *[emphasis added]*

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