April 2011

Congress Approves Compromise FY11 Funding Bill

Before recessing for a two-week break April 15th, Congress gave final approval to a fiscal year (FY) 2011 Continuing Resolution funding the federal government until September 30, 2011, the end of the fiscal year. Passage of the legislation followed a last-minute agreement reached between Congressional leaders and the Administration on a broad funding package for the year. The agreement averted a shutdown of most federal operations.

The Department of Defense and Full-Year Continuing Appropriations Act (HR 1473) replaced a one-week short-term continuing resolution which expired April 15th. The one-week agreement was put in place to allow time for the final agreement to be approved. HR 1473 includes $1.049 trillion in funding, a nearly $40 billion reduction from FY 2010 levels. This includes the $12 billion in reduction previously approved by Congress and signed into law under the previous three continuing resolutions, as well as nearly $28 billion in additional new spending cuts.

The legislation reduces the Federal Emergency Management Agency’s (FEMA) first responder grants by $786 million, whereas the Disaster Relief Fund would receive an increase of $2.7 billion—a $1.1 billion boost from FY 2010 funds. FEMA’s Flood Map Modernization Fund is trimmed by $26 million, whereas the Pre-Disaster Mitigation Program remains at FY 2010 levels.

The bill cuts about $8 billion from Department of Transportation programs. Spending for most programs funded out of the Highway Trust Fund is set at last year’s levels. The legislation rescinds $2.5 billion in highway contract authority and eliminates earmarks totaling $630 million for projects not expected to be built. Transit New Starts are trimmed by $400 million to $1.6 billion. The TIGER program, the discretionary transportation grant program created under the Recovery Act, is cut by $72 million to $528 million, and new funding for high speed rail is eliminated, and $400 million from FY2010 rescinded.

The Environmental Protection Agency’s (EPA) budget is reduced by $1.6 billion, a 16 percent decrease from last year’s level. EPA drinking water and wastewater programs would be cut by $1.6 billion.

House FY12 Budget Plan Proposes Steep Cuts to Transportation

The House Budget Committee April 6th approved a fiscal year 2012 budget resolution calling for a 30 percent cut in mandatory budget authority for all federal transportation programs including highway, safety, transit and airport construction. The federal highway program would be reduced to $30 billion
from a current level of $42 billion. Transit, which receives some funding from the general fund, would receive $5 billion from the Highway Trust Fund. Current funding for transit is $11 billion. The resolution also eliminates all federal funding for high speed rail.

Overall, the budget proposes cutting government spending over the next decade by $5.8 trillion compared to current baseline. The non-binding budget resolution will need to be considered by the full House.

APWA Transportation Sustainability Summit Provides Unique Forum on Future of US Transportation

Twenty-seven members of three APWA committees met in Washington, D.C. for APWA’s first Transportation Sustainability Summit held March 29-30, 2011. APWA’s Transportation Committee, SAFETEA-LU Reauthorization Task Force and Government Affairs Committee gathered in the nation’s capital to discuss ideas, hear from policy leaders and push for action on sustainable transportation, surface transportation authorization and accelerating project delivery.

The summit featured several speaker panels. The first included senior officials from the US Department of Transportation (USDOT), the US Environmental Protection Agency and the US Department of Housing and Urban Development. They provided an update on the Administration’s Partnership for Sustainable Communities which was formed to help improve access to affordable housing, provide more transportation options and lower transportation costs while protecting the environment in communities nationwide.

A second panel on expediting project delivery featured Federal Highway Deputy Administrator Gregory Nadeau, who discussed the agency’s Every Day Counts initiative, designed to identify and deploy innovation aimed at shortening project delivery and enhancing the safety of roadways and protecting the environment. Also on the panel were representatives from the US Army Corps of Engineers, the National Association of County Engineers and the American Association of State Highway and Transportation Officials, who discussed their work and ideas in support of expedited project delivery.

A third panel, led by SAFETEA-LU Reauthorization Task Force Chair John German, included an update on the status of surface transportation authorization in Congress and a roundtable discussion among attendees on APWA’s reauthorization priorities.

In addition to speakers and roundtable discussions, the Government Affairs Committee, led by Chair Shelby LaSalle, and the Transportation Committee, chaired by Debbie Hale, met for separate business meetings.

The second day of the Summit featured Polly Trottenberg, USDOT Assistant Secretary for Transportation Policy, who discussed the Administration’s recently released plan for a six-year, $556 billion surface transportation authorization.

Attendees then fanned out across Capitol Hill for more than 70 meetings with Congressional leaders and staff to advocate for APWA’s legislative priorities, including reauthorization of surface transportation programs, expediting project delivery, increased investments in drinking water and
wastewater infrastructure and increased funding for preparedness and response for public works as first responders.

**USDOT Announces Pipeline Safety Plan**

The US Department of Transportation (USDOT) launched a national pipeline safety initiative to repair and replace aging pipelines to prevent potentially catastrophic incidents.

The Department’s pipeline safety action plan will address immediate concerns in pipeline safety, such as ensuring pipeline operators know the age and condition of their pipelines; proposing new regulations to strengthen reporting and inspection requirements; and making information about pipelines and the safety record of pipeline operators easily accessible to the public.

The Pipeline and Hazardous Materials Safety Administration will also create a new web page to provide the public, community planners, builders and utility companies with clear and easy to understand information about their local pipeline networks. More information is available at [www.dot.gov](http://www.dot.gov).

**Senators Announce $10 Billion Infrastructure Bank Bill**

Sen. John Kerry (D-MA), Sen. Kay Bailey Hutchison (R-TX) and Sen. Mark Warner (D-VA) announced they will introduce an infrastructure bank bill called the Building and Upgrading Infrastructure for Long-Term Development (BUILD) Act, which would establish an independent American Infrastructure Financing Authority (AIFA) to provide loans and loan guarantees to complement existing infrastructure funding.

Eligible projects would include transportation, water and energy infrastructure. In general, projects would have to be at least $100 million in size and be of national or regional significance. Rural projects would only need to be $25 million in size. AIFA would receive initial funding of $10 billion, which would earn interest. It would be self-sufficient after the first few years.

The Obama Administration has proposed an infrastructure bank as part of its transportation reauthorization plan, funded at $30 billion over six years.

**GAO Report: Grant Programs Could Benefit from Increased Performance Focus**

A Government Accountability Office (GAO) report, released in March, recommends that Congress consider balancing the goals of merit-based selection of transportation projects with geographic distribution of funds, and limit the influence of geographic considerations in future Department of Transportation (DOT) competitive discretionary grant program. The report further recommends that DOT document decisions in its review of applications and, in consultation with Congress, develop and implement a strategy to disclose information about its decisions.
In February 2009, the American Recovery and Reinvestment Act appropriated $1.5 billion for discretionary grants for capital investments in surface transportation projects of national and regional significance, including highways, transit, rail, ports and others. The act required DOT to develop criteria to award these grants, known as the Transportation Investment Generating Economic Recovery (TIGER) grants, and to meet several statutory requirements.

GAO reviewed the criteria and process used to evaluate applications and award grants, the outcome of the process, and the extent to which DOT communicated information to applicants and the public. GAO is the audit, evaluative and investigative arm of Congress. The report titled, *Surface Transportation: Competitive Grant Programs Could Benefit from Increased Performance Focus, Better Documentation of Decisions*, is available at [www.gao.gov](http://www.gao.gov).

### Traffic Fatalities in 2010 Drop to Lowest Level

The US Department of Transportation (USDOT) announced that the number and rate of traffic fatalities in 2010 fell to the lowest levels since 1949, despite a significant increase in the number of miles driven during the year.

According to the National Highway Traffic Safety Administration's (NHTSA) early projections, the number of traffic fatalities fell three percent between 2009 and 2010, from 33,808 to 32,788. Since 2005, fatalities have dropped 25 percent, from a total of 43,510 fatalities in 2005. The same estimates also project that the fatality rate will be the lowest recorded since 1949, with 1.09 fatalities per 100 million vehicle miles traveled, down from the 1.13 fatality rate for 2009. The decrease in fatalities for 2010 occurred despite an estimated increase of nearly 21 billion miles in national vehicle miles traveled.

A regional breakdown showed the greatest drop in fatalities occurred in the Pacific Northwest states of Washington, Oregon, Idaho, Montana and Alaska, where they dropped by 12 percent. Arizona, California and Hawaii had the next steepest decline, nearly 11 percent.

To view NHTSA’s latest statistical projections of traffic fatalities in 2010, including regional estimates, visit: [http://www-nrd.nhtsa.dot.gov/Pubs/811451.pdf](http://www-nrd.nhtsa.dot.gov/Pubs/811451.pdf)

### US Access Board Seeks Comment on Access to Shared Use Paths

The US Access Board is seeking public comment on a new initiative to develop accessibility guidelines for shared use paths which provide a means of transportation and recreation for various users, including pedestrians, bicyclists, skaters and others, including people with disabilities. The new guidelines will provide technical provisions for incorporating accessibility into the construction or alteration of shared use paths covered by the Americans with Disabilities Act and, in the case of those federally funded, the Architectural Barriers Act.

Through a notice published March 28th, the Board invites comment on the guidelines to be developed, including their scope of coverage and the definition of “shared use paths.” The Board also seeks
feedback on draft technical provisions that address various features of paths, including surface characteristics, width, grade and cross slopes, changes in level, surface joints and openings, protruding objects, gates and barriers, and intersections and curb ramps. The notice explains these provisions and poses questions to the public on specific topics.

The rulemaking will complement guidelines the Board is developing for outdoor developed areas, including trails and public rights-of-way. Public comments previously received in these rulemaking efforts urged the Board to specifically address shared use paths which differ significantly from trails and public sidewalks in their use and design. Shared use paths are primarily designed for bicyclists and others for off-road transportation, such as commuting to work, as well as for recreation purposes.

The notice includes instructions for submitting comments, which are due by June 27, 2011. The notice is available at http://www.access-board.gov/sup/anprm.htm. It can also be accessed, and comments submitted, through www.regulations.gov.

**FHWA Launches New Bridge Safety Initiative**

The Federal Highway Administration (FHWA) announced a new bridge oversight initiative that will enable the agency to monitor more closely how states are performing their bridge inspections and maintenance.

The new approach allows FHWA to more clearly and easily identify bridge issues in each state. Previously, FHWA prepared a written assessment of a particular state’s bridge inspection program based on the outcome of a general review of key inspection areas.

Under the new system, FHWA will replace the narrative with an actual grid of 23 specific inspection program areas to identify potential safety challenges more easily. Inspection areas include such items as bridge load limits, loss of sediment from the foundation due to erosion and inspection frequency by individual states. Because the new system is based on more objective data, it provides for more consistency in the bridge inspection program nationwide and more targeted approaches to identifying problem areas in specific states.

FHWA helps ensure the safety of bridges through federal inspection regulations and the oversight of state programs. It also provides funding to assist states in replacing and rehabiliting and preserving bridges.

**EPA Seeks Comments on Storm Water TMDL Memorandum**

In November 2010 the Environmental Protection Agency (EPA) Office of Water issued a memorandum entitled, “Revisions to the November 22, 2002 Memorandum ‘Establishing Total Maximum Daily Loads (TMDL) Waste load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs’” that was intended to reflect current practices in numerous states establishing TMDL WLAs for storm water sources and NPDES permit requirements based on those WLAs. The 2010 memorandum addresses the use of numeric water quality based effluent limits in storm water permits, including the use of surrogates such as flow or impervious cover. According to the EPA, since 2002 the state of the storm water and TMDL programs have evolved and it is not possible to include numeric limits in storm water permits. The memorandum also
sets forth options for states to disaggregate the WLAs assigned to storm water sources in TMDLs and also discusses the option for states to more actively exercise their residual designation authority to regulate previously unregulated storm water sources.

Many stakeholders, including APWA, were surprised by the release of the memorandum while the EPA is under taking a major revision to the national storm water program and by the lack of consultation with affected stakeholders. APWA and other stakeholders were also concerned that the 2010 memorandum seemed to imply that NPDES permitting authority should impose the end of pipe limitations on each individual outfall in a municipal separate storm water system (MS4s). In response to the concerns raised by APWA and others, the EPA issued a response stating that the 2010 memorandum was not intended to result in widespread use of numeric end of pipe limits in storm water permits. In the context of the 2010 memorandum, the EPA maintains that the term “numeric effluent limitation” should be read as broader than just end of pipe limitations and could include limitations expressed as pollutant reduction levels for parameters that are applied system wide rather than to individual discharge locations. Numeric limits, in the EPA’s interpretation, as could be expressed as requirements to meet specific performance stands for surrogate parameters or for specific pollutant parameters or they could be expressed as in stream targets for specific pollutant parameters.

As a result of the concerns raised by APWA and others, the EPA recently published the 2010 memorandum in the Federal Register and is now accepting comments on the proposal. Comments on the 2010 memorandum are due by May 16, 2011 and the EPA anticipates making a decision by August 2011 as to whether to retain the memorandum as published without change, to reissue it with revisions, or to withdraw it. Comments on the memorandum should be submitted to Kevin Weiss. He can be reached at weiss.kevin@epa.gov or via mail at: Water Permits Division U.S. Environmental Protection Agency, Room 7334 EPA East 1200 Pennsylvania Avenue, NW Washington DC 20460.


**Justice Department Issues Policy on Federal Payment of Storm Water Fees**

The Department of Justice (DOJ) recently issued a memorandum clarifying federal responsibility for storm water assessments. The memorandum addresses legislation enacted at the end of the 111th Congress that clarified federal responsibility to pay for reasonable storm water fees (Pub. L. 111-378). According to the DOJ memorandum, federal agencies may pay for local fees for treating and monitoring storm water runoff from their general fund appropriations. The memorandum also makes clear that reasonable service charges payable by federal agencies include certain storm water assessments. The memorandum, “Reimbursement or Payment Obligation of the Federal Government Under Section 313(c)(2)(B) of the Clean Water Act,” is available at: http://www.justice.gov/olc/memoranda-opinions.html.

**9th Circuit Court of Appeals Holds Municipal Permittee Liable for Storm Water Discharges**

The 9th Circuit Court of Appeals upheld a lower court decision finding the Los Angeles County Flood Control District responsible for releases of untreated storm water runoff. The appeals court decision is
the result of a 2008 lawsuit filed by the Natural Resources Defense Council and Santa Monica Baykeeper. The Appeals Court held that the county’s flood control district is responsible for excess storm water discharges containing pollutants at levels above permit limits. According to the ruling, the county must do more to improve water quality, public health and the environment. Specifically, the county was held liable for permit exceedances of aluminum, copper, cyanide, fecal coliform bacteria and zinc that were discharged into rivers at monitoring stations owned by the MS4 system. The opinion is available at: http://www.ca9.uscourts.gov/datastore/opinions/2011/03/10/10-56017.pdf

Grassroots Rural and Small Community Water Systems Assistance Act Introduced

A bill was recently introduced to reauthorize an Environmental Protection Agency (EPA) program that offers technical assistance to groups providing on-site help and training to rural communities in meeting EPA rules, water security measures, source water protection and monitoring. The Grassroots Rural and Small Community Water Systems Assistance Act (HR 1427) would amend the Safe Drinking Water Act to provide technical assistance to community water systems serving populations of fewer than 10,000 people.

Administration Calls for Ideas to Improve NEPA

The Council on Environmental Quality (CEQ) is accepting nominations from stakeholders for projects that would increase the efficiency of environmental reviews conducted under the National Environmental Policy Act (NEPA). According to the CEQ announcement, the ideas do not have to be new; they could already be in use by a particular agency or organization. All that CEQ requires is that the project increases efficiency and uses fewer resources to complete. A panel of NEPA experts from various federal agencies involved in NEPA reviews will select up to five candidate projects that have a chance to be replicated across the government and ultimately become part of new or revised NEPA procedures. The selected projects will have their progress tracked and publicized as they are implemented in the CEQ pilot program. CEQ is accepting nominations until June 15, 2011. Further information can be found here http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/nepa-pilot-project.

7th Circuit Holds State Action Doctrine Shields Municipalities from Challenge to Trash Disposal Contracts

The US Court of Appeals for the Seventh Circuit recently affirmed a lower court ruling saying that municipalities entering into exclusive contracts for waste disposal cannot be liable under federal antitrust law, because the conduct is protected by the state action doctrine. In Active Disposal Inc. v. Darien, the 7th Circuit affirmed the lower court ruling saying that Illinois law permits municipalities to enter into contracts, including contracts for collecting and disposing of garbage and that any anticompetitive effects are the result of those state permitted contracts. Several municipalities in the state had entered into exclusive contracts for trash disposal with certain trash haulers and a group of trash haulers and businesses challenged those contracts on the grounds that they violated federal antitrust law. The state action doctrine allows municipalities to engage in conduct that would
otherwise violate antitrust law when the conduct is authorized by the state under a policy to displace competition. The decision is available at: http://www.ca7.uscourts.gov/tmp/710N5IPB.pdf.

**Obama Administration Releases HSPPD-8**


APWA was one of 24 national stakeholders that worked closely with the White House’s National Security Staff on developing the policy directive by way of providing comments on national preparedness, interagency coordination, response capabilities, and State and local resilience to natural and man-made emergencies.

White House National Security Staff, the Directive emphasizes three national preparedness principles:

1) An all-of-Nation approach, aimed at enhancing integration of effort across Federal, State, local, tribal, and territorial governments; closer collaboration with the private and non-profit sectors; and more engagement of individuals, families and communities.
2) A focus on capabilities, defined by specific and measurable objectives, as the cornerstone of preparedness. This will enable more integrated, flexible, and agile “all hazards” efforts tailored to the unique circumstances of any given threat, hazard, or actual event.
3) A focus on outcomes and rigorous assessment to measure and track progress in building and sustaining capabilities over time.

The Federal Emergency Management Agency (FEMA) will now take the lead in developing a National Preparedness Goal and a National Preparedness System. The National Preparedness Goal identifies will define core capabilities necessary to prepare for the specific types of incidents that pose the greatest risk to national security. The National Preparedness System will be an integrated set of guidance, programs and processes that will enable the nation to meet the National Preparedness Goal. It is anticipated that FEMA will take the lead in developing these documents and will reach out to stakeholders—including APWA—as the implementation plan is developed.

To view HSPPD-8, visit the Department of Homeland Security’s website: http://www.dhs.gov/xabout/laws/gc_1215444247124.shtm