

December 2011

APWA Urges Flexibility in Meeting Proposed Access Board Accessibility Guidelines

APWA filed comments with the US Access Board in response to the Board's release of new proposed accessibility guidelines for pedestrian facilities in the public rights of way. APWA's comments, filed November 23, urge the Board to provide local governments the highest level of flexibility in meeting the new guidelines.

The Board released a set of proposed guidelines for accessible public rights-of-way in July. They provide design criteria for public streets and sidewalks, including pedestrian access routes, street crossings, curb ramps and blended transitions, on-street parking, street furniture and other elements.

APWA's comments address several specific guidelines, including accessible pedestrian signals and pushbuttons; cross slope requirements for pedestrian access routes; and pedestrian activated signals at roundabouts with multi-lane pedestrian crossings. They assert that without funding assistance from federal or other sources, many communities lack the means and ability to pay for the costs of implementing new standards.

Once finalized and implemented as standards, the guidelines will apply to newly constructed or altered portions of public rights-of-way covered by the Americans with Disabilities Act (ADA). They will also apply to public rights-of-way built or altered with funding from the federal government under the Architectural Barriers Act (ABA) and the Rehabilitation Act. Existing pedestrian networks not undergoing alteration will not be required to meet these requirements.

The comment period closed November 23. However, the Board announced December 2 that it was reopening the comment period until February 2. The Board is taking this action to allow interested persons additional time to submit comments.

Created in 1973 the Access Board is an independent federal agency devoted to accessibility for people with disabilities. The Board develops and maintains design criteria for the built environment, transit vehicles, telecommunications equipment, and for electronic and information technology. It also provides technical assistance and training on these requirements and on accessible design and continues to enforce accessibility standards that cover federally funded facilities.

Further information on the rulemaking is available at: <http://www.access-board.gov/provac/nprm.htm>. The proposed guidelines can be accessed and comments to them submitted or viewed through the federal government's rulemaking portal at www.regulations.gov.

Consideration of a House Transportation Authorization Bill Postponed until 2012

House Transportation and Infrastructure Committee Chairman John Mica (R-FL) announced that he would hold off introducing a House surface transportation authorization bill until 2012 due to a crowded House legislative calendar in December.

Weeks earlier, House Speaker John Boehner (R-OH) had announced that legislation combining a five-year transportation authorization with measures to expand oil and gas drilling would be introduced and brought to the House floor before the end of the year. The *American Energy and Infrastructure Jobs Act*, H.R. 7, would utilize revenues from expanded drilling to help pay for increased investment for Mica's reauthorization bill.

Although no specifics about H.R. 7 have been released, including specific transportation reauthorization language, H.R. 7 is expected to include the following three bills: the *Energy Security and Transportation Jobs Act*, introduced by Rep. Steve Stivers (R-OH), which would lift the drilling ban on new offshore areas by requiring the administration to lease offshore areas estimated to contain the most oil and natural gas resources; the *Protecting Investment in Oil Shale the Next Generation of Environmental, Energy, and Resource Security Act* (PIONEERS Act), introduced by Rep. Doug Lamborn (R-CA), which would set clear rules for the development of U.S. oil shale resources and promote shale technology research and development; and the *Alaskan Energy for American Jobs Act*, introduced by Rep. Doc Hastings (R-WA) and Rep. Don Young (R-AK), which would open a portion of the Arctic National Wildlife Refuge's North Slope for oil and natural gas development.

In response to the House Speaker's proposal, House Democrats introduced the Fair Payment for Energy and Mineral Production on Public Lands Act, H.R. 3446, which they say will generate \$18 billion over 10 years. The bill, introduced by Rep. Ed Markey (D-MA), would change royalty and leasing regulations to generate revenues for transportation. Unofficial estimates of H.R. 7 have cited \$1 billion in revenue over 10 years. Revenue estimates of both proposals are contested on both sides and seem to vary.

A blueprint for Mica's reauthorization bill was released in July. It calls for expediting the project delivery process, consolidating programs, expanding private sector involvement in financing infrastructure and boosting investment in safety. Mica this fall said he would seek new revenue sources to increase transportation funding for his bill by as much as \$100 billion. His blueprint called for a six year \$235 billion bill, about a one-third reduction in current funding levels.

The Senate Environment and Public Works (EPW) Committee November 9 unanimously passed *Moving Ahead for Progress in the 21st Century*, MAP-21, (S.1813) a bipartisan, two-year, \$109 billion surface transportation authorization. The Senate Commerce, Science and Transportation Committee December 14 marked up several transportation safety and research bills which will be incorporated into a larger Senate reauthorization bill, but a dispute over inclusion of an amendment to provide grant funds for multi-modal freight projects indicates hurdles may remain for smooth passage on the Senate floor. The Committee will consider additional reauthorization-related legislation at the Committee's first markup in 2012. The Senate Banking Committee, which has jurisdiction over transit provisions, has yet to consider a transit bill. A complete Senate reauthorization bill is not expected to be brought to the Senate floor until revenue to close a \$12 billion funding shortfall to pay for the bill is agreed to.

Senate Finance Committee Republicans Offer Recommendations for Financing Transportation Bill

Senate Finance Committee Republicans sent a letter to Senate Finance Committee Chairman Max Baucus (D-MT) outlining several recommendations for closing a \$12 billion funding gap in MAP-21, the Senate's 2-year surface transportation reauthorization bill.

Recommendations include rescission of funding from a loan program for advanced technology vehicle manufacturing; transfer of funds from the Leaking Underground Storage Tank Trust Fund; reclamation of certain Highway Trust Fund dollars transferred to land and water conservation; expanded oil and gas exploration; and rescission of \$30 billion in unspent federal funds to produce \$12 billion outlay savings over 10 years. The letter also notes that repeal or "relaxation" of Davis-Bacon requirements would increase efficiency of transportation spending.

Traffic Fatalities Fall to Lowest Level in Six Decades

The U. S. Department of Transportation (USDOT) reported that updated 2010 fatality and injury data show that highway deaths fell to 32,885 for the year, the lowest level since 1949. The record-breaking decline in traffic fatalities occurred even as drivers in the U.S. traveled nearly 46 billion more miles during the year, an increase of 1.6 percent over the 2009 level.

The updated information released by USDOT's National Highway Traffic Safety Administration (NHTSA) indicated 2010 also saw the lowest fatality rate ever recorded, with 1.10 deaths per 100 million vehicle miles traveled in 2010, down from 1.15 deaths per 100 million vehicle miles traveled in 2009. Fatalities, however, rose among pedestrians, motorcycle riders and large truck occupants.

More information is available at www.dot.gov.

T&I Democrats Introduce Buy America Bill

House Transportation and Infrastructure (T&I) Committee Ranking Member Nick Rahall (D-WV) and other Democrats on the T&I Committee introduced legislation to strengthen Buy America requirements for federal transportation and infrastructure projects.

H.R. 3533, *Invest in American Jobs Act of 2011*, ensures that all steel, iron and manufactured goods used to construct infrastructure projects are produced in the US. Specifically, the bill strengthens existing Buy America requirements for investments in highway, bridge, public transit, rail, and aviation infrastructure and equipment. It also applies the requirements to other transportation and infrastructure investment, including rail infrastructure grants, loans, and loan guarantees, Clean Water State Revolving Fund grants, and Economic Development Administration (EDA) grants. The legislation requires federal agencies to justify any proposed waiver of the Buy America requirements and ensures that the public has notice of and an opportunity to comment on any proposed waiver prior to it taking effect.

More information about the bill is posted at: <http://democrats.transportation.house.gov/press-release/rahall-unveils-major-proposal-create-american-jobs>.

President Signs 3 Percent Withholding into Law

President Obama signed into law legislation repealing a three percent withholding requirement scheduled to take effect in less than one month. Beginning January 1, 2012 federal, state, and local governments with more than \$100 million in annual expenditures would have been required to withhold three percent of their payments for goods and services. The unpopular requirement was intended to assist the Internal Revenue Service with collecting unpaid taxes.

The House and Senate overwhelmingly approved the bill, H.R. 674 and the President signed the legislation November 21. APWA supported the repeal.

House Approves Pipeline Safety Bill

The House of Representatives December 12 and the Senate the next day passed legislation to reauthorize pipeline safety programs through fiscal year 2015. The Pipeline Safety, Regulatory Certainty and Job Creation Act, H.R. 2845, legislation representing a bipartisan, bicameral agreement between the House Transportation and Infrastructure Committee, House Energy and Commerce Committee and the U.S. Senate, authorizes funding through fiscal year 2015 for programs of the Pipeline and Hazardous Materials Safety Administration (PHMSA), the federal agency that oversees safety programs for the 2.3 million miles of natural gas, petroleum and other hazardous liquid pipelines in the United States.

The bill strengthens enforcement of current safety laws, increasing civil fines for major safety violations from \$100,000 per violation to \$200,000, with a cap of \$2 million. In addition, the bill incorporates recommendations of the National Transportation Safety Board following recent pipeline incidents and prohibits state one-call notification programs from exempting municipalities, state agencies or their contractors from one-call system notification requirements.

The President is expected to sign the legislation into law.

USDOT Announces Funding for 46 Transportation Projects under TIGER III Grants

The US Department of Transportation (USDOT) announced December 15 that 46 transportation projects in 33 states and Puerto Rico will receive a total of \$511 million from the third round of the USDOT TIGER program. The Department received 848 project applications from all 50 states, Puerto Rico and Washington, DC, requesting a total of \$14.29 billion, far exceeding the \$511 million made available for grants under the TIGER III program.

The grants will fund a wide range of innovative transportation projects in urban and rural areas across the country:

- Of the \$511 million in TIGER III funds available for grants, more than \$150 million will go to critical projects in rural areas.
- Roughly 48 percent of the funding will go to road and bridge projects, including more than \$64 million for Complete Streets projects that will spur small business growth and benefit motorists, bicyclists and pedestrians.
- 29 percent of the funding will support transit projects like the Westside Multimodal Transit Center in San Antonio.
- 12 percent will help build port projects like the Port of New Orleans Rail Yard Improvements.
- 10 percent will go to freight rail projects like the Muldraugh Bridge Replacement in Kentucky.
- Three grants were also directed to tribal governments to create jobs and address critical transportation needs in Indian country.
- Three grants will provide better multimodal access to airports, including DFW in Texas.

Work has already begun on 33 planning projects while 58 capital projects are under way across the country from the previous two rounds of TIGER, and an additional 13 projects are expected to break ground over the next six months.

In 2009 and 2010, the USDOT received a total of 2,400 applications requesting \$76 billion, greatly exceeding the \$2.1 billion available in the TIGER I and TIGER II grant programs. In the previous two rounds, the TIGER program awarded grants to 126 freight, highway, transit, port and bicycle/pedestrian projects in all 50 states and the District of Columbia.

TIGER grants are awarded to transportation projects that have a significant national or regional impact. Projects are chosen for their ability to contribute to the long-term economic competitiveness of the nation, improve the condition of existing transportation facilities and systems, increase energy efficiency and reducing greenhouse gas emissions, improve the safety of U.S. transportation facilities and enhance the quality of living and working environments of communities through increased transportation choices and connections. The Department also gives priority to projects that are expected to create and preserve jobs quickly and stimulate increases in economic activity.

A complete list of grant recipients can be viewed on USDOT's website: www.dot.gov

APWA Expresses Support for EPA Smart Growth Program

As the House and Senate conclude negotiations over the Fiscal Year 2012 Interior and Environment Appropriations bill, funding for the EPA Smart Growth program is in jeopardy. When the House Appropriations committee reported out the Interior and Environment Appropriations bill, it included severe cuts to the EPA Office of Smart Growth. The committee report, which details how programs are to spend appropriated funding, included language explicitly defunding the Office of Smart Growth for Fiscal Year 2012 and prohibiting the agency from participating in the Partnership for Sustainable Communities. APWA sent a letter to House and Senate Conferees stressing the importance of funding for these important programs.

The EPA Smart Growth program provides technical assistance to communities to help them ensure residents have housing and transportation choices near jobs, shops and schools to support thriving local economies. The technical assistance program enables communities to leverage their assets and efficiently implement their long term sustainability needs. As a result of the program communities are able to grow their economies, protect public health and improve local infrastructure. To learn more about the Smart Growth program, visit <http://www.epa.gov/smartgrowth/>.

Post Construction Stormwater Rule behind Schedule

EPA will miss a court ordered deadline to issue a new regulation to control post construction stormwater by December 15, 2011. The December deadline was the result of a negotiated settlement agreement with the Chesapeake Bay Foundation, which had sued to force the agency to issue new stormwater rules. The original settlement required EPA to propose the new rules by September 30, 2011 but the agency was unable to meet that deadline. The new rules are expected to create new standards for how much stormwater can runoff a site during a rainfall event. The new rule will also include policies promoting the use of low impact development and green infrastructure techniques. EPA has not announced a new deadline for issuance of the proposed rule. To learn more about the potential changes to the stormwater program please visit <http://cfpub.epa.gov/npdes/stormwater/rulemaking.cfm>.

Senate Environment and Public Works Committee Holds Water Infrastructure Funding Hearing

A recent Senate Environment and Public Works Committee hearing on the water infrastructure funding crisis produced a rare moment of bipartisanship as Republican and Democratic Senators all agreed that federal spending on water infrastructure could be used to boost the economy, create jobs and address the current infrastructure crisis.

Representatives from local government, utilities, engineers, and state financing agencies all called for more funding to repair and upgrade the nation's deteriorating water infrastructure. Witnesses told committee members that reauthorization of the state revolving fund programs and new innovative funding mechanisms, such as private activity bonds, is urgently needed to keep our aging systems

from breaking down, polluting the environment and causing unnecessary and costly economic disruptions.

To see the testimony of the witnesses please visit

http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_id=1e6b5ff0-802a-23ad-4dbb-4683dd40ae03.

EPA Plans Regional Meetings on New Framework for Integrated Wastewater Planning

Last month EPA's Offices of Water and Compliance and Enforcement Assistance issued a memo to all regional offices, announcing the agency's commitment to using an integrated planning process to help local governments prioritize infrastructure investments to address the most serious water quality issues first and to provide flexibility to use innovative, cost-effective stormwater and wastewater management solutions.

At a stakeholder dialogue, EPA Water Permits Division Director Deborah Nagel and Water Enforcement Division Director Mark Pollins announced that the agency intends to hold public meetings early in the New Year to present the new framework for integrated municipal stormwater and wastewater management plans. The dates, times and directions for participating will be published in the Federal Register shortly, and APWA will make that information available to members through the website and infoNOW communities.

To learn more about the EPA integrated planning and permitting approach please visit

<http://cfpub.epa.gov/npdes/integratedplans.cfm>.

President Obama Declares December Critical Infrastructure Protection Month

On November 30, President Obama issued a proclamation designating December 2011 as "Critical Infrastructure Protection Month." Led by the Department of Homeland Security (DHS), Critical Infrastructure Protection Month is intended to reinvigorate communities' awareness of and dedication to safeguarding infrastructure systems. The proclamation specifically emphasizes making cyber infrastructure more resilient—as cyber terrorism is one of the newest, and perhaps one of the most destructive forms of terrorism in the 21st Century.

President Obama called attention to the fact that protecting the nation's critical infrastructure is an endeavor that all Americans must work toward, for "strengthening our national security and resilience is a task for all of us, and by promoting awareness and partnering with one another, we can make essential progress toward safe, secure, and prosperous horizons for every American."

To read the President's proclamation, click here: <http://www.whitehouse.gov/the-press-office/2011/11/30/presidential-proclamation-critical-infrastructure-protection-month-2011>.

For additional information on DHS and critical infrastructure protection, go to:
<http://www.dhs.gov/files/programs/national-critical-infrastructure-protection-month.shtm>.

APWA Attends National Homeland Security Consortium

On December 13 and 14, APWA Emergency Management Response Subcommittee member David Himes, attended the semi-annual National Homeland Security Consortium (NHSC) meeting in Miami, Florida as APWA's representative. Consortium participants discussed a wide variety of subjects and heard from Tim Manning, FEMA Deputy Administrator for Protection and National Preparedness who discussed implementation of Homeland Security Presidential Policy Directive 8 (PPD-8) and FEMA's lessons learned from Hurricane Irene.

NHSC participants also had an extensive business session where they discussed updating the Consortium's white paper, *Protecting Americans in the 21st Century: Imperatives for the Homeland*, in anticipation of the 2012 election cycle. During the 2008 presidential campaign, both the Obama and McCain camps reached out to the Consortium for their position on homeland security/emergency management issues. It is anticipated that President Obama and the Republican nominee will also approach the NHSC during the 2012 presidential campaign.

Tim Manning discussed the following two key issues:

Implementation of HSPPD-8

With the release of Homeland Security Presidential Policy Directive-8 on March 30, the President has charged the Federal Emergency Management Agency with the implementation of this directive. The directive sets forth an all-of-nation, capabilities-based approach to prevention, protection, response, recovery and mitigation.

On December 6, FEMA released the description of the National Preparedness System description—which is the second deliverable required by Homeland Security Presidential Policy Directive 8.

According to Mr. Manning, the National Preparedness System description outlines six areas to improve national preparedness specifically pertaining to terrorist and cyber attacks, pandemics and catastrophic natural disasters:

- Identifying and assessing risks;
- Estimating capability requirements;
- Building or sustaining capabilities;
- Developing and implementing plans to deliver those capabilities;
- Validating and monitoring progress made towards achieving the National Preparedness Goal; and
- Reviewing and updating efforts as needed to promote continuous improvement

These six components outlined in the System description further explain the resources and tools needed to achieve the National Preparedness Goal. Earlier this year, on September 30, FEMA released the first edition of the National Preparedness Goal, which is the first deliverable called for by HSPPD-

8. The Goal outlines the vision for preparedness—that it is a shared nationwide responsibility—and identifies core capabilities and capability targets necessary to achieve across five mission areas: prevention, protection, mitigation, response and recovery.

The final deliverable of PPD-8 is a National Preparedness Report which is due to the President by March 2012. The report will be based on progress towards achieving the National Preparedness Goal and will serve as a tool to inform the President’s annual budget.

For additional information on HSPPD-8 implementation, go to www.fema.gov/ppd8.

Lessons Learned from Hurricane Irene

Mr. Manning also discussed FEMA’s lessons learned from Hurricane Irene—as this natural disaster was the first multi-state response since the post-Katrina reforms. Hurricane Irene affected 6 million East Coast residents, caused 56 casualties and cost \$7 billion. During the response and recovery phase, Mr. Manning reported that FEMA successfully took on a supportive role, therefore allowing State-run response and recovery teams to take the lead.

It was also reported that FEMA relied heavily on social media—Facebook and Twitter, general medial (radio and television), and iPhone apps, FEMA was able to significantly increase the use of public messaging during and after the hurricane. For example, through social medial and iPhone apps, FEMA was able to alert residents as to where emergency shelters were located.

House Passes Payroll Tax Bill which Includes NFIP Extension and Interoperable Communications Network for Public Safety

On December 13, the House of Representatives passed the *Middle Class Tax Relief and Job Creation Act of 2011* (H.R. 3630) by a vote of 234-193. The payroll tax bill includes a five-year extension of the National Flood Insurance Program and allocates the 700 MHz D Block broadband spectrum to the public safety community in order to create a wireless interoperable emergency communications network.

On December 8 the Senate passed legislation by a voice vote that would extend the National Flood Insurance Program (NFIP) to May 31, 2012. The legislation (S. 1958), which is sponsored by Senator David Vitter (R-LA), has now moved to the House Financial Services Committee for consideration.

As of midnight on December 16, the NFIP lapsed, as Congress is still working to find a compromise with the payroll tax legislation, and the House Financial Services Committee has yet to take up S. 1958.

The NFIP has been extended many times since the reauthorization expired in September 2008 (PL 108-264). Since then, Congress has attempted to amend the NFIP and pass a long-term reauthorization of the program.

On July 12, the House passed the “Flood Insurance Reform Act of 2011” (H.R. 1309) by a vote of 406 – 22. The legislation, which is sponsored by Representative Judy Biggert (R-IL, 13), Chairwoman of the House Financial Services Subcommittee on Insurance, Housing and Community Opportunity,

seeks to extend the NFIP until September 30, 2016. On September 8, the Senate Banking, Housing and Urban Affairs Committee approved the “Flood Insurance and Modernization Act of 2011” (S. 1940). Sponsored by Banking Committee Chairman Tim Johnson (D-SD), S. 1940 also extends the NFIP through 2016. The bill will now head to the full Senate for consideration.

The payroll tax bill also includes provisions that would allocate the 700 MHz D Block broadband spectrum to the public safety community in order to create a wireless interoperable emergency communications network. D Block language that was rolled into H.R. 3630 originally came from draft legislation sponsored by House Communications and Technology Chairman Greg Walden (R-OR, 2).

However, the D Block provisions in H.R. 3630 have been controversial among public safety stakeholders and lawmakers alike. H.R. 3630 proposes that in return for the allocation of 700 MHz broadband spectrum to the public safety community, the 700 MHz narrowband spectrum must be given back and used for incentive auctions. Proceeds from these incentive auctions would be used to fund the build out of network. Lawmakers and public safety stakeholders have argued that in order to create an effective wireless interoperable communications network for public safety, first responders must have access to both broadband (which is data such as email, maps, etc.) and narrowband (which is voice).

Currently, H.R. 3630 is in the Senate awaiting consideration.

Two Bills that Aim to Expedite Project Delivery were Introduced in the House

In November, Representative Tom Reed (R-NY) introduced H.R. 3327 *Beneficial Upgrades for Investment and Local Development of Bridges Act of 2011* or the BUILD Bridges Act. The BUILD Bridges Act extends the projects eligible for categorical exclusions to projects with minimal anticipated environmental impact such as:

- Bridges not on the Interstate System
- Bridges replacing existing roadway alignments or new bridges that will keep the existing width of the roads they are replacing
- Modernizations of existing highways (excluding interstate highways) through resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes

The *National Environmental Policy Act of 1969* or NEPA requires most infrastructure projects using federal dollars to submit to an environmental impact statement (EIS) or an environmental assessment (EI) conducted by the federal agency that has jurisdiction over the project. Projects that are not required to submit to EISs or EAs are issued a categorical exclusion

In July, Representative Ken Calvert (R-CA) introduced H.R. 2538 *Reducing Environmental Barriers to Unified Infrastructure and Land Development Act of 2011* or the REBUILD Act. REBUILD modifies NEPA by permitting federal agencies to delegate the task of conducting EISs or EAs to state agencies, providing:

- The federal agency publicizes the requirements to complete the EIS or EA
- The state agency has the capability to conduct their own EAs or EISs
- The state agency agrees to assume full responsibility of conducting the EI or EA and will do so in full compliance of federal law

Both of these bills aim to increase efficiency and streamline the project delivery process, without circumventing environmental regulations.

House and Senate Pass FY 2012 Spending Bill

On Saturday, December 17, the Senate approved H.R. 2055, a \$915 billion spending measure to fund the U.S. government for FY 2012. The bill has already cleared the House so H.R. 2055 only awaits the President's signature. H.R. 2055 appropriates funds for the Department of Defense, Energy-Water, Financial Services, Homeland Security, Interior-Environment, Labor-HHS-Education, Legislative Branch and State-Foreign Operations. The Department of Transportation appropriations are omitted from this bill because President Obama already approved a package that combined the Agriculture, Commerce-Justice-Science and Transportation-HUD spending bills last month. The government was previously funded by a short-term continuing resolution bill that was set to expire by midnight on Friday, December 16. However, H.R. 2055 includes an additional continuing resolution that will keep the government funded through December 23rd to give the President enough time to approve the bill.