

# APWA Washington REPORT

April 2004

## TEA-21 Reauthorization

### **HOUSE OVERWHELMINGLY PASSES \$275 BILLION SURFACE TRANSPORTATION BILL**

Just days after the Bush Administration issued a veto threat against it, the House of Representatives overwhelmingly approved a \$275 billion six-year surface transportation reauthorization bill. The final vote, taken April 2, 2004, was 357-65, well over the two-thirds necessary to over-ride a veto.

As passed, the Transportation Equity Act: A Legacy for Users, TEA-LU, (HR 3550) is similar to the bill the House Transportation and Infrastructure (T&I) Committee approved on March 24, 2004. However, it is \$100 billion less than the Committee's original proposal, introduced in November 2003, and \$43 billion less than the Senate's \$318 billion bill, SAFETEA (S 1072), which passed the Senate on February 12, 2004 by a vote of 76-21. Amendments offered to increase the House bill's funding to \$318 billion failed.

The Administration favors a six-year bill totaling \$256 billion and opposes TEA-LU's funding level and other provisions. In February, the Administration also issued a veto warning in opposition to the Senate bill's funding levels and other provisions.

With TEA-LU stalled earlier this year over House leadership opposition to its \$375 billion price tag, House Speaker Dennis Hastert met in March with President Bush and broke the impasse by declaring he would move a \$275 billion bill. When the T&I Committee met to mark up the \$275 billion bill, it also passed by voice vote the original \$375 billion bill as a show of support for that level of funding.

The bill the House passed includes approximately:

- \$221 billion in guaranteed spending for the highway program
- \$55 billion in guaranteed spending for public transportation
- \$283.5 billion total contract authority
- \$11 billion for individual member's high priority projects (other wise referred to as ear marks for home districts).

With TEA-LU's funding reduced, concerns over state minimum funding guarantees and state allocations were a major focus of floor debate, which lasted two days. Donor states, which receive less from the federal highway trust fund than they contribute, have been pressing for a minimum 95 percent return on their share of highway trust fund contributions in the next reauthorization.

Despite the pressure for a higher return, TEA-LU retains current law's minimum 90.5 percent return, but to address donor state concerns, it includes a 're-opener' provision which cuts off highway funding at the end of fiscal year 2005 unless a new bill is enacted to increase states' minimum funding guarantees above the bill's 90.5 percent return. The provision requires that money be found to raise return-rates from 92 percent in 2006 to 95 percent by 2009. The Administration opposes the "re-opener" provision.

During floor consideration, several tax provisions were added to the bill, including about \$17 billion in new revenues

## **INSIDE YOU'LL FIND**

TRANSPORTATION--**P2:** Transportation Coordination; **P3:** Air Quality;  
INTERGOVERNMENTAL--**P3:** 2005 Budget;  
EMERGENCY MANAGEMENT/DISASTER MITIGATION--**P4:** Flood Mapping, Safety Clothing and Devices, Where's the Money?, Homeland Security

Committee Future, Funding Reform for Security;  
ENVIRONMENT--**P5:** Wetlands Hearing, Innovative Environmental Technology, Watershed Webcast, Effluent Guidelines Rule; **P6:** Lead in Water, State Revolving Loan Funds, State Environment Advocacy



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for transportation programs, achieved primarily by compensating the highway trust fund from losses due to the 5.2 cents per gallon ethanol exemption; by directing 2.5 cents per gallon of the ethanol tax from the general fund to the highway trust fund; and by new measures to crack down on fuel-tax evasion.

The bill contains a number of provisions supported by APWA, including language to continue the budgetary firewalls (which ensure that transportation revenues are distributed to state and local transportation programs); provisions to streamline the environmental review and project delivery process; and tax law changes directing ethanol tax revenues to transportation programs. The bill also increases the off-system bridge program minimum set-aside from 15 percent to 20 percent.

TEA-LU includes a few new provisions. It contains a new \$6.6 billion program to fund high-cost projects of national and regional significance. It requires states to spend a portion of their highway funds on congestion relief and contains a new high risk rural road safety program for which funding was reduced. The bill also includes increased funding for transit's Job Access and Reverse Commute program.

The House and Senate bills do not resemble each other in a number of areas besides the funding totals. The Senate bill:

- Brings all states to a 95 percent return rate on highway trust fund contributions by 2009;
- Approaches environmental streamlining and numerous programmatic details differently;
- Includes a \$958 million stormwater mitigation program;
- Provides for an increase to metropolitan planning funding from one percent to 1.5 percent of core highway programs;
- Does not include any kind of "e-opener."

The House bill now heads to a House-Senate conference committee with the Senate-passed bill, where the differences between the two bills will be reconciled. APWA is urging that a minimum \$318 billion six-year bill emerge from the conference.

To avoid a third temporary funding extension of federal transportation programs, a reconciled bill will need to come out of conference, be approved by each chamber and then be signed into law by April 30, when the current extension expires. The \$218 billion Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) expired September 30, 2003.

Previous transportation reauthorization bills, TEA-21 and its predecessor, the Intermodal Surface Transportation Efficiency Act, took two months in conference before House and Senate differences were reconciled.

APWA's statement on passage of TEA-LU is posted on APWA's government affairs webpage <http://www.apwa.net/govtaffairs>. Full text of both the House and Senate bills is available on APWA's Legislative Action Center, also on the APWA government affairs webpage.

The following table compares funding in TEA-21, the Bush Administration's proposal, and the Senate and House proposals, as passed.

<b>Contract Authority</b>	<b>TEA-21 (Actual)</b>	<b>Admin.</b>	<b>Senate</b>	<b>House</b>
Highways	\$182.8	\$201.6	\$255.8	\$225.5
Transit	\$41.0	\$45.8	\$56.5	\$55.0
Safety	\$2.4	\$3.4	\$6.5	\$5.0
Total	\$217.8	\$256.0	\$318.0	\$283.5
Percent increase over TEA-21		18%	46%	30%

**Transportation Coordination**

**PRESIDENT ISSUES ORDER CREATING TRANSPORTATION COORDINATION COUNCIL**

Recognizing the role transportation plays in providing access to employment, health care, education and other community services, the Bush Administration issued an Executive Order establishing an Interagency Transportation Coordinating Council on Access and Mobility within the U.S. Department of Transportation.

The Interagency Council was established to enhance access to transportation and to improve mobility, employment.  
*APWA Washington Report, April 2004* *Page 2*

opportunities and access to community services for persons who are transportation-disadvantaged. Council members include the Secretaries of Transportation, Health and Human Services, Education, Labor, Veterans Affairs, Agriculture, Housing and Urban Development and the Interior, the Attorney General and the Commissioner of Social Security.

The new Interagency Council will promote interagency cooperation and will establish appropriate mechanisms to minimize duplication and overlap of federal programs and services so that transportation-disadvantaged persons have access to more transportation services. The council is also charged with facilitating access to the most appropriate, cost-effective transportation services within existing resources; encouraging enhanced customer access to the variety of transportation and resources available; formulating and implementing administrative, policy, and procedural mechanisms that enhance transportation services at all levels; and developing and implementing a method for monitoring progress on achieving the goals of this order.

In a report to be submitted in one year, the Interagency Council is required, among other things, to identify federal, state, tribal and local laws, regulations, procedures and actions that have proven to be most useful and appropriate in coordinating transportation services for the targeted populations.

### **Air Quality**

#### **MORE THAN 500 COUNTIES EXPECTED TO BE DESIGNATED OZONE NONATTAINMENT**

More than 500 counties are expected to be designated as in non-attainment for a new, stricter ozone standard, when the US Environmental Protection Agency (EPA) issues designations April 15, 2004. The issuance of designations is expected to coincide with promulgation of a final implementation rule for a new standard governing ozone limits.

The new standard sets a maximum ozone level of 0.08 parts per million averaged over an eight-hour period and will replace the standard which established a maximum level of 0.12 parts per million averaged over a one-hour period.

EPA issued a proposed rule to implement the new ozone standard in June 2003. The rule included a preferred option, granting wide flexibility in complying with the stricter standard. A second option established specific requirements.

## **INTERGOVERNMENTAL**

### **2005 Budget**

#### **OMNIBUS APPROPRIATIONS BILL LIKELY**

With the realities of an austere federal discretionary budget playing out in an election year, Appropriations Committee leaders in Congress are discussing the possibility of passing an omnibus appropriations package this year as an alternative to passing the 13 annual appropriations bills individually.

Rep. Bill Young (R-FL), Chairman of the House Appropriations Committee, proposed such an approach to the House Republican leadership as a way to complete the appropriations process this year. The plan has tentative support.

Under the plan, the 13 appropriations committees would still write and mark up their bills in committee, but the bills would then be folded into one omnibus for floor action.

Each year, Congress must approve the 13 spending bills, which provide funding for federal departments and programs. Increasingly, Congress has relied on combining the bills together and bringing them to the House and Senate for floor consideration.

## **EMERGENCY MANAGEMENT/DISASTER MITIGATION**

### **Flood Mapping**

#### **MODERNIZATION PROGRAM MAKES PROGRESS; MORE DETAILS NEEDED**

A March 2004 Government Accounting Office (GAO) report says the Federal Emergency Management Agency's (FEMA's) Flood Map Modernization program shows progress, but has not provided information specific enough to mitigate accordingly.

The new digitized flood maps are intended to give communities vital information on how to mitigate damage from floods and other natural and man-made hazards before they occur. It also aims to increase property owners' use of flood  
*APWA Washington Report, April 2004*

insurance to protect against disaster.

The updated maps will be made available on the Internet. While FEMA has ranked the nation's 3,146 counties' relative risk, GAO posits that the maps do not provide as much detail as originally intended. GAO also suggests that the program could run into problems trying to collect data from communities with little technology or training and that this factor could cause variations and inconsistencies among the maps.

### **Safety Clothing and Devices**

#### **HOMELAND SECURITY MAKES STANDARDS PUBLIC**

The Department of Homeland Security's (DHS) science and technology division has released minimum standards for (1) protective gear, and (2) detecting radiation/nuclear activity.

The first set establishes standards for protective suits and other equipment that emergency responders use in the event of a chemical, biological, radiological, or nuclear situation.

The second set provides guidelines for many specific technical devices, from pocket-sized radiation detectors to portal monitors designed to screen people, packages or vehicles for illicit radiation. The standards were developed with the help of the National Fire Protection Association (NFPA) and the National Institute for Occupational Safety and Health (NIOSH).

### **Where's the Money?**

#### **TASK FORCE OF LOCAL GROUPS TO "UNSTICK" HOMELAND SECURITY GRANT FUNDS**

Due to growing complaints from local officials the Department of Homeland Security announced formation of a Homeland Security Funding Task Force of local government groups that will identify why homeland security funding does not seem to be reaching local communities.

### **Homeland Security Committee Future**

#### **EXISTENCE OF HOUSE SELECT COMMITTEE ON HOMELAND SECURITY UNSURE**

"Turf," said Jane Harman (D-CA), ranking member on the House Intelligence Committee, is "the dirtiest four letter word in government." Indeed turf battles are threatening the future existence of the House Select Committee on Homeland Security, a committee created as a congressional oversight board over DHS.

Since the creation of the Select Committee, the nine Republicans who chair other House committees have been skeptical of a need for a committee which encroaches on their turf. Chairman of the House Judiciary Committee F. James Sensenbrenner declared, "I emphatically believe Judiciary should retain jurisdiction over all the matters it now has." The senior official from Wisconsin also submitted a 68 page document covering the Judiciary's 111 year history of jurisdiction over immigration, anti-terrorism, and other criminal matters.

The Ways and Means Committee wants to maintain control over Customs which was absorbed by DHS in 2003. Representative Harman, Intelligence Select Committee Chair Peter Goss (R-FL), and Rules Subcommittee Chair Lincoln Diaz-Balart are outwardly supportive of the Select Committee on Homeland Security. House Select Committee on Homeland Security Chair Christopher Cox (R-CA) and ranking member Jim Turner (D-Texas) favor the continuation of their committee.

### **Funding Reform for Security**

#### **SELECT COMMITTEE PASSES FIRST BILL SINCE ITS FOUNDING**

The House Select Committee on Homeland Security March 11, 2003, unanimously passed HR 3266, "the Faster & Smarter Funding Act."

The bill takes steps to reform the "threat alert system" to provide more specifics, reform the flow of Federal funds to localities, and establish a Task Force to develop "minimum levels of preparedness" for communities around the country.

APWA sent a legislative action alert reminding Select Committee Members to provide money for training, allow for direct funding of reimbursement for overtime costs, and to continue the role of public works in emergency response.

## ENVIRONMENT

### **Wetlands Hearing**

#### **HOUSE COMMITTEE HOLDS HEARING ON IMPROVING WETLANDS REGULATIONS**

In an attempt to clarify regulations on wetlands as specified in the Clean Water Act, the House Transportation and Infrastructure Subcommittee on Water Resources and the Environment heard testimony March 30, 2004, from the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps), the agencies responsible for regulating activities in wetlands.

A 2001 Supreme Court decision denying the Corps federal jurisdiction over “an isolated, intrastate, non-navigable body of water, solely on that basis of use of that water by migratory birds” under the Clean Water Act highlights the inconsistency of regulation. In throwing out the migratory bird rule, the Supreme Court left open to interpretation the extent of federal jurisdiction over isolated, intrastate waters. The Corps’ regulations do not define “adjacency” or “tributaries” creating additional problems.

In January 2003, the Corps and EPA jointly published an advanced notice of a proposed rulemaking that sought to define the terms along with guidance directing the Corps’ district officials to elevate jurisdictional questions to the organization’s top officials. In December 2003, the rulemaking was withdrawn.

EPA has no intention of developing a new rule.

APWA has met with Rep. Baker (R-LA) who plans to introduce legislation that will define wetlands and associated terms and provide more consistency to the permitting program.

### **Innovative Environmental Technology**

#### **STAKEHOLDER MEETING ON APPROVAL PROCESS SCHEDULED THIS MAY BY EPA**

The Environmental Protection Agency will host a briefing on the status of the Environmental Technology Verification (ETV) Program in mid-May. The ETV program was created in 1995 as a mechanism to promote objective third-party testing of innovative environmental technologies to speed the process of approval for use.

ETV staff and industry vendors will be on hand to give demonstrations on new technologies and report on current ones. Some of the technology will relate to water and water security, air quality, energy, intoxication prevention, and safer buildings. The briefing is May 11-12, 2004 at the Hilton Crystal City in Arlington, VA.

*For further information, contact EPA’s Abby Waits at [waits.abby@epa.gov](mailto:waits.abby@epa.gov) or at 513-569-7884. To register, visit <http://www.scgcorp.com/etvbrief2004>.*

### **Effluent Guidelines Rule**

#### **EPA WILL NOT ISSUE A NEW RULE ON CONTROL OF CONSTRUCTION STORMWATER**

EPA’s final action on the Construction and Development Effluent Guidelines rule will not include a new ruling. In lieu of a new national effluent guideline, the final action is to continue to rely on existing programs and regulations at the federal, state and local level to control stormwater runoff from construction sites.

While EPA is concerned that stormwater runoff threatens water quality, they felt that existing authorities and tools, supplemented by additional guidance, workshops, and resources provide a more effective and flexible approach.

All 50 states require sediment and erosion control measures at sites during construction. In addition, in 2003 new National Pollutant Discharge Elimination Systems regulations went into effect for stormwater discharges from construction sites that are one to five acres in size (larger sites were regulated previously). Over 5000 municipalities are also developing or upgrading their programs to control stormwater runoff from construction sites.

Additional information is available at: <http://www.epa.gov/guide/construction>

### **Lead in Water**

#### **JEFFORDS TO INTRODUCE BILL TO IMPROVE COMMUNICATION ABOUT LEAD CONTAMINATION**

Senator James M. Jeffords (I-VT) announced he will introduce legislation to improve the process for informing the public when elevated levels of lead are detected in drinking water systems. He made the announcement during an April  
*APWA Washington Report, April 2004*

7, 2004, hearing of the Senate Environment and Public Works Subcommittee on Fisheries, Wildlife, and Water,

The hearing focused on high levels of lead recently discovered in older homes in the District of Columbia.

Jeffords' legislation will amend the Safe Drinking Water Act to improve public communication, require notification to all residents who have water lines that have shown an elevated lead level, and require immediate nationwide testing of public water systems. The bill also will address the water infrastructure conditions and will provide additional funding to replace lead service lines and lead pipes, prohibit lead in plumbing fixtures and require that public water systems provide in-home water filters to customers that have had problems with lead.

EPA Acting Administrator for Water, Benjamin Grumbles informed the committee of the actions EPA is taking at the national level including a national compliance review to determine compliance with and implementation of drinking water regulations on a regional basis. EPA is also conducting an internal review of current policies and regulations.

### **State Revolving Loan Funds**

#### **APWA ASKS CONFERENCE COMMITTEE FOR \$5.2 BILLION FOR CLEAN/SAFE WATER LOANS**

APWA signed onto a letter asking House and Senate members, now in Conference on the Fiscal Year 2005 budget resolution, to support \$3.2 billion for the Clean Water State Revolving Loan Fund (CWSRF) and \$2 billion for the Drinking Water State Revolving Loan Fund (DWSRF). The President's budget requested \$850 million for both the CWSRF and the DWSRF.

The April 12, 2004, letter outlines the use of the SRFs in local communities such as meeting water quality standards, protecting public health, repairing and replacing old and decaying pipelines and treatment plants. The letter also discusses the economic impact of fully funding the SRFs, creating at least 238,000 American jobs.

The letter, signed by local government organizations, elected officials and environmental groups, calls attention to an additional \$3.2 billion to \$4.1 billion in projects that are ready to move forward in less than 90 days but are stalled due to the lack of funding.

### **State Environment Advocacy**

#### **MICHIGAN ADOPTS LANDFILL LEGISLATION**

Michigan Governor Jennifer Granholm has signed into law an 11-bill package that is intended to reduce the amount of out-of-state trash the state accepts. The legislation creates a two-year moratorium on new landfills, prohibits landfills from accepting out-of-state waste that does not follow standards for Michigan's own trash, increases landfill inspections and emphasizes enforcement of solid waste laws. This legislation comes amid a feud with Toronto city officials over the amount of trash the Canadian city is sending to Michigan landfills. Currently, trash from other states and Canada accounts for about one-fourth of waste dumped in Michigan landfills each year.

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**The APWA Washington Report is edited by Beth Denniston**

*APWA Washington Report, March 2004*

*Page 6*