

# APWA *Washington* REPORT

April 2005

## TRANSPORTATION

### TEA-21 Reauthorization

#### **TIMETABLE SLIPS FOR FLOOR DEBATE OF SENATE BILL**

Congress watchers view what happens in the Senate the week of April 25, 2005, as critical to whether TEA-21 reauthorization comes to a conclusion before another extension is necessary. The Chamber's floor discussions on a \$284 billion reauthorization bill began on April 25. This bill is \$34 billion less than the Senate originally voted. The Administration has issued veto warnings against a bill that exceeds \$284 billion.

The Senate Environment and Public Works Committee in March approved the highway portion of the Senate's \$284 billion Safe, Accountable, Flexible and Efficient Transportation Equity Act (SAFETEA), S. 732. Within days, the Senate Banking, Housing and Urban Affairs Committee approved the transit portion, and on April 14 the Senate Commerce Committee passed the safety title. The three sections will be combined into one bill once floor debate begins.

Major issues dividing the Senate are the overall funding level and the amount of money to be divided up among the states--the donor-donee levels. Current law returns 90.5 cents per dollar on gas tax revenues to the states. Many want this increased to 95 cents per dollar.

Several Senators have indicated that the funding level in the Senate bill is too low and that they will seek to increase funding later in the process. One "fix" being talked about is shifting the cost of the fuel tax exemption for states, municipalities and segments of the agriculture industry from the Highway Trust Fund to the general fund. Offsetting this for the states, municipalities, etc would be a tax credit.

Concern is growing that there may not be sufficient time to complete a reauthorization bill before the sixth temporary extension of TEA-21 expires on May 31, 2005. The House of Representatives in March overwhelmingly passed its version, the Transportation Equity Act: A Legacy for Users (TEA-LU), H.R. 3, by a vote of 417-9.

Like its Senate counterpart, the House bill authorizes \$284 billion over six years for highway, transit and safety programs. However, both House and Senate bills have numerous policy differences which will have to be reconciled in a House-Senate Conference Committee before a final bill can be sent to the President and signed into law. The President must sign a measure into law by May 31 to avoid the need for a seventh extension. TEA-21 expired on September 30, 2003.

APWA is urging Congress to act quickly to pass an adequately funded, multi-year authorization which secures an enhanced role for local decision-making and places needed emphasis on flexibility, intermodal goals and on addressing local and regional needs. *For more information contact Jim Fahey at 202-218-6730 or jfahey@apwa.net*

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## **Planning Tool**

### **NEW WEBSITE ASSISTS WITH GROWTH PLANNING**

The Federal Highway Administration has launched a new website with information on the use of scenario planning as a tool to help communities plan for growth. Scenario planning provides a framework for developing a shared vision for the future by analyzing various factors which affect growth, such as health, transportation, economic, environmental and land use. Such planning efforts may be done on a statewide level or for metropolitan regions.

The new site provides a range of resources to encourage the use of scenario planning, including background, noteworthy practices, resources, and contacts. It also provides links to reports from scenario planning workshops held in 2004 in New York, Rhode Island, Hawaii, and Florida. *The new site is available at:*  
<http://www.fhwa.dot.gov/planning/scenplan/index.htm>

## **Wetland Mitigation**

### **GUIDANCE CLARIFIES WETLAND/HABITAT BANKS ELIGIBLE FOR FEDERAL AID**

The Federal Highway Administration has issued guidance clarifying previous guidance on wetland and natural habitat mitigation. Specifically, it emphasizes that wetland and natural habitat mitigation measures, such as wetland and habitat banks or statewide and regional conservation measures, are eligible for Federal-aid participation when they are undertaken to create mitigation resources for future transportation projects.

The guidance is available at: <http://www.fhwa.dot.gov/environment/wetland/wethabmitmem.htm>

## **Section 4(f) Policy**

### **REVISED POLICY ADDRESSES LAND USE APPROVALS**

The Federal Highway Administration (FHWA) has posted a revised policy paper on the implementation of section 4(f) of the Department of Transportation Act to clarify existing policy.

Under section 4(f), the Administration may not approve the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that there is no feasible and prudent alternative to the use of land from the property and the action includes all possible planning to minimize harm to the property resulting from such use.

The paper explains how Section 4(f) applies generally and to specific situations where resources meeting the Section 4(f) criteria may be involved. It is based on court decisions, experience and on policies developed by FHWA and USDOT over the years. The paper serves as a guide for the applicability of Section 4(f) for common project situations often encountered by FHWA division offices, state departments of transportation and other partners.

The policy paper is available at: <http://environment.fhwa.dot.gov/projdev/4fpolicy.htm>

## **Section 4(f) Streamlining**

### **FHWA OFFERS REVIEW AND CONSULTATION TIME-SAVING PROCESS**

If the transportation agency and the official with jurisdiction over the property agree that the project would achieve a "net benefit," transportation improvement projects in historic properties and parklands may be allowed to skip lengthy review and consultation requirements.

The "net benefit," according to a Federal Register notice is "intended to address those projects where there is agreement among the FHWA, the Applicant and the official(s) with jurisdiction that, (1) a use of property does not result in a substantial impairment; (2) the project includes all possible planning to minimize harm, including mitigation; and (3) that the cumulative result is an overall improvement and enhancement of the Section 4(f) property.

The Federal Register notice is at <http://www.access.gpo.gov/su-docs/fedreg/a050420c.html>

## **Air Travel**

### **AIR PASSENGER LEVELS TO TOP ONE BILLION IN THE NEXT 10 YEARS**

The number of people flying in the United States will return to pre-2001 levels this year, with an average annual growth rate of 3.4 percent expected over the next 12 years, according to an annual 12-year aviation forecast report released by APWA *Washington Report, April 2005*

the U.S. Department of Transportation's Federal Aviation Administration (FAA).

FAA statistics show that 688.5 million flew on U.S. commercial air carriers last year. By 2015, the number

of passengers is expected to top one billion. In 2004, total landings and takeoffs at combined FAA and contract towers rose 0.5 percent, the first increase in activity since 2000. Of the users in the aviation community, commuters/air taxis increased their operations by seven percent and 0.8 percent respectively.

General aviation, or private flying, and military flights both declined in activity. Commercial aircraft operations are now at 1999 levels, while non-commercial operations are at 1996 levels.

The FAA bases its forecast of sustained aviation growth on economic projections from the Office of Management and Budget (OMB). According to OMB, the nation's Gross Domestic Product is projected to increase from \$10.7 billion in 2004 to \$15.6 billion in 2016, with a moderate inflation rate of 1.5 percent annually during that period.

### **Highway-Rail Crossings**

#### **FRA CHANGES EFFECTIVE DATE OF RULE ON USE OF TRAIN HORNS**

The Federal Railroad Administration (FRA) announced that it has changed the effective date of its Interim Final Rule (IFR) on the Use of Locomotive Horns at Highway-Rail Crossings to June 24, 2005 from April 1, 2005. The action is detailed in a notice published in the March 18<sup>th</sup> *Federal Register*.

The extension of the effective date for the IFR provides additional time to complete the required approval process of the Final Rule. FRA intends to publish the Final Rule this spring.

This change will give public authorities additional time to establish the necessary conditions that will permit them to preserve pre-existing whistle bans or establish new quiet zones within their respective jurisdictions.

The Federal Railroad Safety Authorization Act of 1994 required FRA to issue regulations that would require railroads to sound locomotive horns on approach to, and while traveling through public highway-rail grade crossings, except under specified conditions. Extensive information about the train horn proceeding is available at [www.fra.dot.gov](http://www.fra.dot.gov)

### **Rehabilitation Rule**

#### **PROPOSED HIGHWAY BRIDGE REPLACEMENT/REHABILITATION RULE WITHDRAWN**

A proposed rule to revise the regulations governing the Highway Bridge Replacement and Rehabilitation Program (HBRRP) has been withdrawn by FHWA.

Published in the *Federal Register* June 21, 2004, it proposed a number of changes including clarifying "ambiguous language," increased emphasis on preventive maintenance, guidance on types of bridges to which eligible and ineligible activities could be applied and changing the name of the program to reflect programmatic flexibility.

In response to many questions raised by the comments received, FHWA is withdrawing the proposed rule to evaluate alternative approaches.

## **INTERGOVERNMENTAL**

### **APWA Advocacy**

#### **MEMBERS MEET IN DC TO ADVOCATE FOR PUBLIC WORKS**

Members of APWA's Government Affairs Committee (GAC) met in Washington, DC for a two-day policy meeting to discuss public works issues with senior officials from federal agencies and with lawmakers and Congressional staff.

GAC members met with officials from the Federal Highway Administration, the Federal Transit Administration, the U.S. Environmental Protection Agency and the Department of Homeland Security. Top on the agenda were the reauthorization of TEA-21, water infrastructure investment and emergency response and preparedness. Committee members also met with Congressional staff from the House Transportation and Infrastructure and Senate Environment and Public Works Committees.

*APWA Washington Report, April 2005*

The meeting was held April 18 and 19. Members spent the second day on Capitol Hill meeting with their Congressional representatives and Congressional staff.

GAC members are: Ben Wolfe, Chair, Robert Murnane, Vice-Chair, Bob Freudenthal, Board Liaison, Robert Albee, Ann Burnett, Neil Dobler, Greg Dore, John German, Ken Hill, Diane Linderman, Bill Murphy, John Okamoto, Richard Ridings, Gary Stockhoff, Mickey Sullivan and Win Westfall.

### **Urban Forum Meeting**

**CORPS OF ENGINEERS GENERAL STROCK AND REPRESENTATIVE OBERSTAR SPEAK** APWA's Urban Forum met in Washington, D.C. April 14-16<sup>th</sup> and spent several days hearing the latest on the transportation bill, homeland security and water/wastewater issues.

Ranking Democrat on the House Transportation & Infrastructure Committee James Oberstar joined the group for dinner and gave a rousing speech on the importance of public works officials to the quality of life for the nation.

Army Corps of Engineers General Carl Strock spent the morning of April 15<sup>th</sup> with the group and encouraged closer collaboration and strategic alliances with the Forum and others in APWA. The Forum decided to meet again in Washington, D.C. in the spring of 2006.

## **ENVIRONMENT**

### **MTBE Cleanup**

#### **APWA CRITICIZES ENERGY BILL'S MTBE LIABILITY WAIVER FOR PRODUCERS**

In a sharply critical statement, the American Public Works Association expressed disappointment in the House-passed Energy Bill which provides liability immunity to the producers for clean up of the gasoline additive methyl tertiary butyl ether (MTBE). (Releases of MTBE are known to rapidly contaminate drinking water supplies and the health risks range from kidney or liver damage to cancer.)

APWA President Tom Trice pointed out that local taxpayers will have to bear the cost of the clean up, though they were not responsible for the contamination and termed. He said it was "incredible to think that Congress is permitting MTBE producers to avoid their environmental responsibilities" and place the costly clean up burden on financially strapped municipalities. *For more information go to [www.apwa.net](http://www.apwa.net) or contact Heather Doucet at 202-218-6732 or [hdoucet@apwa.net](mailto:hdoucet@apwa.net)*

### **Smart Growth**

#### **EPA ANNOUNCES ACHIEVEMENT AWARDS**

The U.S. Environmental Protection Agency (EPA) is seeking applications for the fourth annual National Award for Smart Growth Achievement. This competition is open to local or state governments and other public sector entities that have used the principles of smart growth to create better places.

This year, applications will be accepted in five categories: (1) Built Projects; (2) Policies and Regulations; (3) Small Communities; (4) Military Base Redevelopment; AND (5) Overall Excellence in Smart Growth

Interested parties are encouraged to submit applications for smart growth activities that have shown significant activity between May 19, 2000, and May 18, 2005. Successful applicants will have incorporated the principles of smart growth to create places that respect community culture and the environment, foster economic development, and enhance quality of life and public health.

Applications are due on May 18, 2005. Up to five winners will be recognized at a ceremony in Washington, DC, in November 2005.

For more details about the National Award for Smart Growth Achievement, including an application packet, visit: <http://www.epa.gov/smartgrowth/awards.htm>

For more information on the US EPA Brownfields Program visit: <http://www.epa.gov/brownfields/>  
*APWA Washington Report, April 2005*

### **Brownfields**

#### **GRANTS OFFERED FOR BROWNFIELDS ASSESSMENT, CLEANUP, REDEVELOPMENT**

The Office of Brownfields Cleanup and Redevelopment of the U.S. Environmental Protection Agency's (EPA's) Office of Solid Waste and Emergency Response is soliciting proposals for brownfields training, research and technical assistance.

The purpose of the grants is to focus brownfields programs on the environmental and human health conditions in low income communities and socio-economically disadvantaged communities that are unable to draw on alternative sources of funding for assessment or cleanup of brownfields and their subsequent redevelopment.

Projects can also provide technical assistance to communities which will enable them to stimulate economic and other beneficial reuses. For more information, click on the following URL: [http://www.epa.gov/swerosps/bf/pg/rta\\_0205.htm](http://www.epa.gov/swerosps/bf/pg/rta_0205.htm)

### **Toxic Pollutants**

#### **RISK REDUCTION FROM EXPOSURE TO TOXIC CHEMICALS GRANTS AVAILABLE**

Through a new grant program, Community Action for a Renewed Environment (CARE), EPA is offering communities financial and technical assistance to help communities understand and reduce the risk of exposure to toxic chemicals.

Communities will be empowered to create local collaborative partnerships to identify sources of toxic exposure and set priorities for risk reduction. Communities also will have access to tools from EPA's voluntary programs that focus on reducing exposure to toxic pollutants. Applications are due May 20, 2005. For more information, click on the following URL: <http://www.epa.gov/air/grants/05-08.pdf>

### **Clean Air**

#### **INDOOR AIR QUALITY FUNDING AVAILABLE IN EPA REGION 8**

EPA Region 8 (CO, MT, ND, SD, UT, WY and 27 Tribal Nations) is soliciting proposals from eligible entities for indoor air quality projects. These projects should promote the coordination and acceleration of education, research, investigations, experiments, demonstrations, surveys and studies related to the causes, effects, extent, reductions and elimination of indoor air pollution. For more information, click on the following URL: <http://www.epa.gov/region8/air/iaq/requestnotice.html>

### **Air Quality Rule**

#### **EPA Announces Landmark Clean Air Interstate Rule**

EPA Administrator Steve Johnson signed the final Clean Air Interstate Rule (CAIR). CAIR will permanently cap emissions of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) in the eastern United States.

When fully implemented, CAIR will reduce SO<sub>2</sub> emissions in 28 eastern states and the District of Columbia by over 70 percent and NO<sub>x</sub> emissions by over 60 percent from 2003 levels. For more information, go to <http://www.epa.gov/cair/>

### **Stormwater**

#### **EPA TRAINING SCHEDULE**

EPA has announced its stormwater training schedule for 2005 titled: *Getting in Step with Phase II: A Workshop for Stormwater Program Managers*. Training sessions will be held:

Memphis, Tennessee - May 17 & 18, 2005

Oklahoma City, Oklahoma - June 15, 2005

Indianapolis, Indiana - August 3 & 4, 2005

*For more information on these training sessions, visit [www.epa.gov/npdes/stormwater](http://www.epa.gov/npdes/stormwater) and click training.*

## **FROM THE STATES**

### **North Dakota Gas Taxes**

#### **LEGISLATURE VOTES 2 CENTS GAS TAX INCREASE**

Beginning July 1, 2005, the North Dakota gasoline tax will raise to 23 cents per gallon, an increase of 2 cents per gallon. The newly passed legislation is estimated to generate about \$20.4 million in new tax revenues during 2005-07.

*APWA Washington Report, April 2005*

All new revenues are to be dedicated to the state's highway distribution fund. The tax measure also will allow North Dakota cities to levy sales taxes on rental cars.

### **Washington Gas Taxes**

#### **LEGISLATURE VOTES 9.5 CENT GAS TAX INCREASE**

As part of an omnibus tax bill, the Washington 2005 Legislature passed a 9.5 cents per gallon increase for gasoline and other fuels over four years. The measure is expected to fund over four years \$8.6 billion in projects, including critical work on structures that could fall in an earthquake, according to reports.

The omnibus bill also raised taxes on cigarettes and liquor and modified some tax credits and estate tax provisions. Overall the tax measure is expected to fill an estimated \$1.6 billion budget gap for the new biennium which begins July 1, 2005.

### **Missouri Biodeisel Plant**

#### **FIRST BIODEISEL PLANT IN MISSOURI TO BREAK GROUND**

Construction of a facility that will be able to produce 30 million gallons of biodiesel a year using soybean oil soon will begin in Mexico, MO. Biodeisel advocates see this as not only a boon to soybean farmers but beneficial to clean air efforts and energy security.

## **EMERGENCY MANAGEMENT/DISASTER MITIGATION**

### **Intercity Bus Security**

#### **DEPARTMENT OF HOMELAND SECURITY ANNOUNCES \$9.6 MILLION FOR BUS SAFETY**

Security grants totaling over \$9.6 million to help intercity bus systems prevent and detect possible explosive devices as well as chemical, biological, nuclear and other agents are available to eligible intercity bus service owners, the US Department of Homeland Security (DHS) has announced.

Some of the activities the program will fund are support of passenger and baggage screening, enhancing bus facility security, improving systems to better monitor, track and communicate with vehicles and conducting training and exercises.

DHS awarded \$10 million in 2004; \$5 million in 2003 to intercity bus systems. Grant recipients will be selected through a competitive application process. *For more information go to the DHS home page at [www.dhs.gov](http://www.dhs.gov)*

### **DHS Efficiency**

#### **SECRETARY CHERTOFF DEFENDS GRANT PROCESS AMID HILL SPECULATION**

DHS Secretary Michael Chertoff has said recently that the department is undergoing a structural review to assure that the massive agency works at top efficiency.

It has been reported that some on the Hill are pushing for DHS to reinvigorate the Federal Emergency Management Agency (FEMA) after what many call "death by a thousand cuts." Chair of the powerful House Transportation and Infrastructure Committee Don Young (D-AK) offered an amendment April 27, 2005, to move the preparedness functions back to FEMA, thus indicating a strong signal from the Hill that the essential functions of the agency may have been weakened by the recent reorganization.

### **Mitigation Grants**

#### **BILL TO ASSURE MITIGATION GRANTS REMAIN TAX FREE SIGNED BY BUSH**

Hounded by the deadline of tax day April 15, 2005, Congress passed and President Bush signed H.R. 1134 to assure that FEMA disaster mitigation assistance was not deemed taxable. APWA worked closely with the Stafford Act coalition to overturn an IRS ruling from 2004 that made mitigation payments to property owners who performed mitigation projects taxable. The coalition's position is that such payments were never intended to be taxable and the legislation assured that no mitigation payments from the past or moving into the future are taxable.

**Incident Response**

**NATIONAL INCIDENT MANAGEMENT/NATIONAL RESPONSE PLAN ROAD SHOW SET**

At the unveiling of the National Response Plan, DHS announced a “roadshow” of sorts to address local issues and concerns over the new NRP and the National Incident Management System. DHS recently announced that the meetings are planned for Los Angeles on April 27, Chicago on May 11, and Miami on May 27. More information is available at: [www.ojp.usdoj.gov/odp/assessments/hspd8.htm](http://www.ojp.usdoj.gov/odp/assessments/hspd8.htm)

**Water Safety**

**NEW REPORT FROM AWWA PROVIDES INFO ON CONTAMINATION WARNING SYSTEMS**

The American Water Works Association has released a report entitled, “Contamination Warning Systems for Water: An Approach for Providing Actionable Information to Decision-makers” available by contacting J. Alan Roberson at [aroberson@awwa.org](mailto:aroberson@awwa.org)

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