

APWA *Washington* REPORT

April 2007

ENVIRONMENT

Water Resources

WATER RESOURCES DEVELOPMENT ACT OF '07 READIES FOR FLOOR ACTION

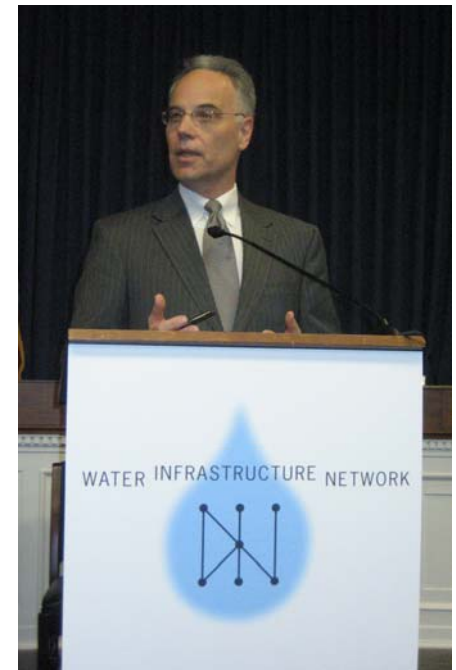
The House Infrastructure and Transportation and Senate Environment and Public Works Committees approved water resources development legislation in March; now both bills await floor action in the respective chambers.

The bipartisan bills authorize funding for various projects ranging from environmental restoration, constructing locks and dams and easing navigation. The Water Resources Development Act (WRDA) typically follows a biennial schedule for reauthorization, however, it has been six years since the Act has been reauthorized, leaving a backlog of important Army Corps' projects and causing the overall cost of the bill to grow. WRDA authorizes projects and deems them eligible for future funding, but it does not actually fund them. Last year, both Houses of Congress approved separate versions of WRDA but conference negotiators were unable to reach a compromise and send the final package to the President's desk for signature.

The 2007 Senate version of WRDA would authorize more than \$13 billion in projects, require independent review of projects costing more than \$40 million and create a Water Resources Coordinating Committee whose main purpose would be to review and formulate planning guidance for Corps' water resource projects. The 2007 House version would authorize more than \$14 billion in projects and includes an independent review provision with a threshold of \$50 million.

House Transportation and Infrastructure Committee Chair James L. Oberstar (D-MN) and Senate Environment and Public Works Chair Barbara Boxer (D-CA) agreed at the beginning of this session to focus on addressing the six year backlog of projects from the three previous failed WRDA bills, while saving new projects for consideration next year. WRDA typically enjoys strong support from members of Congress but concerns similar to those that stalled action last year, including the peer-review provisions and policy planning provisions, are likely to arise again this year. Floor action in both chambers is expected shortly after spring recess.

For more information on WRDA, visit www.apwa.net/advocacy and click on "Federal Legislation."



APWA Executive Director Peter King spoke at a press conference in March and emphasized the importance of a continued and sustained State Revolving Fund program to many of APWA's members. For more information, see the March issue of the *APWA Washington Report*.

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Water Quality

APWA SIGNS STATEMENT SUPPORTING GREEN INFRASTRUCTURE TO PROTECT WATER QUALITY

On March 5, the Environmental Protection Agency (EPA) issued a memo: “Using Green Infrastructure to Protect Water Quality in Stormwater, CSO, Non-point Source and other Water Programs,” in which the agency recognized the value of green infrastructure techniques and encouraged their use in addressing water quality problems. Green infrastructure, or “soft” infrastructure, generally refers to the use of soil and vegetation to reduce or divert stormwater from sewer systems and direct it to areas where it can be filtered, evaporated or reused instead of relying on pipes and tunnels or “hard” infrastructure to control water quality problems.

APWA recently joined with a coalition of organizations, including the Natural Resources Defense Council (NRDC), the National Association of Clean Water Agencies (NACWA), the Low Impact Development Center and EPA, in supporting and encouraging the use of green infrastructure solutions to address combined sewer overflows, storm water discharges and other wet weather water quality problems.

Green infrastructure can be both a cost-effective and environmentally preferable approach to reducing stormwater entering combined or separate sewer systems in combination with, or in lieu of, centralized hard infrastructure solutions. It can also be used to reduce stormwater discharges and help to restore the natural hydrology, water quality and habitat of urban and suburban watersheds.

Green infrastructure approaches currently in use include green roofs, trees and tree boxes, rain gardens, vegetated swales, pocket wetlands, infiltration planters, vegetated median strips, reforestation and protection and enhancement of riparian buffers and floodplains. These methods can be used almost anywhere soil and vegetation can be worked into the urban or suburban landscape and is most effective when supplemented with other decentralized storage and infiltration approaches, such as the use of permeable pavement and rain barrels and cisterns to capture and re-use rainfall for watering plants or flushing toilets. Green Infrastructure solutions also provide a number of other environmental and economic benefits including cleaner water, enhanced water supplies, cleaner air, reduced urban temperatures, increased energy efficiency, community benefits and cost savings.

To further action on the goals outlined in the statement, EPA is convening a Green Infrastructure forum to promote the exchange of innovative ideas and practices and provide input for an implementation strategy. The primary purpose of this discussion will be to promote understanding and opportunities, encourage support of the overall principle and focus resources and authority on improving the utilization of green infrastructure in managing water. This strategy can include activities in areas such as guidance, technical assistance, grants, research, and education and outreach efforts.

APWA will participate in this forum to provide input from the public works perspective as an implementation strategy is developed. For more information on the EPA statement, visit <http://www.nrdc.org/water/pollution/rooftops/contents.asp>.



The City of Battle Creek, Mich., Public Safety Building's green roof was named a 2006 Public Works Project of the Year by APWA. Awarded in the Structures category, less than \$2 million range, the 18,000-square-foot vegetated green roof atop the City's Public Safety Building is believed to be the first of its kind in southwest Michigan. A lightweight, layered system covering waterproofed roof surfaces, the building's green roof has growing vegetation including drought-tolerant succulents, grasses and native flowers.

TRANSPORTATION

SAFETEA-LU

HOUSE APPROVES TECHNICAL CORRECTIONS BILL

The House of Representatives passed a SAFETEA-LU technical corrections bill (HR 1195) which would give a national commission an additional six months to develop recommendations for financing future transportation needs. In addition, the bill makes technical corrections to SAFEATEA-LU-authorized projects, provides a fix for research funding and corrects other errors in the Act. The bill passed by voice vote on March 26.

The National Surface Transportation Policy and Revenue Study Commission, established under SAFETEA-LU, is studying the needs and alternative financing options for the future of the transportation system. It is required to present recommendations to Congress by July 2007. The extension, however, would give the Commission until the end of this year to submit its report. APWA President Bill Verkest testified before the Commission on March 19 to present APWA's recommendations. The bill now goes to the Senate.

More information is posted at www.apwa.net/advocacy/legislation.asp.

Transportation Financing

NEW COMMISSION TO ANALYZE TRANSPORTATION NEEDS/FINANCES

As directed by SAFETEA-LU, U.S. Secretary of Transportation Mary Peters has established a National Surface Transportation Infrastructure Financing Commission to analyze future highway and transit needs and the finances of the Highway Trust Fund. The Commission is to make recommendations regarding alternative approaches to financing transportation infrastructure. The U.S. Department of Transportation has chartered the Commission as a Federal Advisory Committee.

SAFETEA-LU called for the creation of two commissions with essentially overlapping missions. The National Surface Transportation Policy and Revenue Commission, known by its shorter name, the Revenue Commission, was appointed in 2006 and comprises 12 members representing federal, state and local governments; metropolitan planning organizations; transportation-related industries; and public-interest organizations. It is working to examine the condition and future needs of the nation's surface transportation system and the short- and long-term alternatives to replace or supplement the fuel tax as the principal revenue source to support the Highway Trust Fund over the next 30 years. The Revenue Commission has held more than a dozen field hearings and public meetings and is expected to issue a report at the end of the year, assuming passage of legislation to extend its authorization by six months.

The National Surface Transportation Infrastructure Finance Commission will hold its first meeting at the end of April. The Financing Commission consists of 15 members representing state and local governments, transportation providers and the financial community. It will provide policy advice to the Secretary of Transportation, the Secretary of the Treasury and the U.S. Congress from a knowledgeable and independent perspective and transmit a final report within two years.

Safety

FHWA SEEKS COMMENTS ON CRASH TEST LABORATORY REQUIREMENTS

The Federal Highway Administration (FHWA) is requesting comments on its proposed rulemaking to revise a regulation establishing the general requirements for quality assurance procedures for construction on all Federal-aid highway projects on the National Highway System (NHS), which includes the Interstate Highway System as well as other roads important to the nation's economy, defense and mobility. The NHS was developed by the Department of Transportation in cooperation with the states, local officials and metropolitan planning organizations.

Specifically, FHWA proposes to require accreditation of laboratories that conduct crash tests on roadside hardware by an accrediting body that is recognized by the National Cooperation for Laboratory Accreditation

(NCLA) or is a signatory to an International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA), an Asia Pacific Laboratory Accreditation Cooperation (APLAC) MRA or another comparable accreditation body approved by FHWA. The objective of the proposed rule is to improve the agency's ability to determine if crash test laboratories are qualified to conduct and evaluate tests intended to determine the crashworthiness of roadside safety features. Laboratory accreditation is widely recognized as a reliable indicator of technical competence.

Comments must be received on or before June 8, 2007. For more information contact Matt Lupes, (202) 366-6994, Nicholas Artimovich in the Office of Safety Design, (202) 366-1331, or Raymond Cuprill, Office of the Chief Counsel, (202) 366-0791. More information is also posted in the April 9th *Federal Register* under Federal Highway Administration, at http://www.access.gpo.gov/su_docs/fedreg/a070409c.html.

Highway Funding

FHWA SEEKS APPLICATIONS FOR '07 DISCRETIONARY GRANT PROGRAMS

The Federal Highway Administration (FHWA) issued a notice requesting applications for federal grant funding and issued a supplemental notice and information to eligible grantees concerning discretionary grant funds available for obligation in Fiscal Year 2007 in eight discretionary grant programs administered by FHWA. The agency seeks applications (either new or amended) to the programs that both meet the programs' respective statutory criteria and emphasize the proposed projects' highway safety and congestion reduction benefits. FHWA will make its funding determinations through a merit-based selection process.

The notice applies to the following programs: the Ferry Boat Discretionary Program, the Innovative Bridge Research and Construction Program, the Interstate Maintenance Discretionary Program, Public Lands Highway Discretionary Program, the Highways for Life Pilot Program, the Transportation Community and System Preservation Program, the Truck Parking Facilities Pilot Program, and the Delta Region Transportation Development Program.

Applications must be submitted by April 30, 2007, unless otherwise specified. For more information, see the March 22 *Federal Register* under Federal Highway Administration, Grants and Cooperative Agreements, at http://www.access.gpo.gov/su_docs/fedreg/a070322c.html.

Transit Programs

FINAL GUIDANCE POSTED FOR SECTION 5310, JARC AND OTHER PROGRAMS

The Federal Transit Administration (FTA) posted final guidance in the form of circulars to assist grantees in implementing the Elderly Individuals and Individuals with Disabilities (Section 5310), Job Access and Reverse Commute (JARC) and New Freedom Programs. The effective date of these circulars is May 1, 2007.

An electronic copy is available on FTA's Web site at www.fta.dot.gov. Paper copies of the circulars may be obtained by calling FTA's Administrative Services Help Desk at (202) 366-4865.

For more information contact Henrika Buchanan-Smith or Bryna Helfer at (202) 366-4020, fax (202) 366-7951 or e-mail henrika.buchanan-smith@dot.gov; byrna.helfer@dot.gov.

EMERGENCY MANAGEMENT/DISASTER MITIGATION

Chemical Facility Security

DHS RELEASES REGULATIONS FOR SECURING HIGH-RISK CHEMICAL FACILITIES

The Department of Homeland Security (DHS) released an interim final rule that imposes, for the first time, comprehensive federal security regulations for high-risk chemical facilities. The department sought and reviewed comments from state and local partners, Congress, private industry and the public to develop consistent guidelines using a risk-based approach. The new rule gives the department authority to seek compliance through the imposition of civil penalties, up to \$25,000 per day, and the ability to shut non-compliant facilities down. In addition, water agencies in particular were exempted from this rule.

The move was a large step-back from the previous stance that would have pre-empted state laws regulating chemicals at plants and facilities (even if the state rule was stricter).

Over the past year, DHS has been seeking regulatory authority that would give the agency the ability to create a federal standard for chemical security requirements. Early versions of the regulation, intending to standardize the industry, instead pre-empted state and local authority in drafting chemical security regulations, thus limiting state rights in the matter of chemical storage and security. States were understandably opposed to this “pre-emptive legislation” and mounted a vigorous fight in the House of Representatives. For our members working with local water agencies, this issue would have directly affected their scope of control.

In this new version, only state rules that conflict or interfere with federal provisions would be pre-empted. DHS has stated that no current state laws are currently in conflict. However, a proposed law in New Jersey that requires chemical sites to convert to safer chemicals might be the first test of this new rule. When asked if this proposed law would meet opposition, DHS Secretary Chertoff says that “If there’s a particular regulation . . . that a state passes mandating something, this department and ultimately a judge is going to have to evaluate it concretely in order to make a determination about whether it frustrates the rule.”

A press release is available at: http://www.dhs.gov/xnews/releases/pr_1175527925540.shtm.

DHS

UNDER SECRETARY FORESMAN RESIGNS



DHS Under Secretary for Preparedness George Foresman recently resigned.

Homeland Security Secretary Michael Chertoff accepted the resignation of Under Secretary for Preparedness George Foresman, saying in a statement that Foresman had given him and the entire Department of Homeland Security (DHS) senior leadership team “wise counsel in addressing complex homeland security challenges under trying conditions.”

“Through his tireless dedication, George helped sharpen the federal government's focus in the areas of infrastructure protection, including the security of chemical facilities, national information technology and telecommunications systems, and he has been instrumental in leading refinements to our grants processes, approaches to risk management, use of biometrics, and communications interoperability,” said the Secretary. “I am grateful for George's service to the American public and his lasting contributions to the security of our homeland. I regret seeing him leave, and look forward to our continued friendship.”

The Secretary’s complete statement is available at:
http://www.dhs.gov/xnews/releases/pr_1175266626235.shtm.

FEMA Leadership

FEMA ANNOUNCES LEADERSHIP POSITIONS

Last week Homeland Security Secretary Michael Chertoff and Deputy Secretary Michael Jackson made a series of announcements regarding senior leadership positions at the Federal Emergency Management Agency (FEMA) and the National Protection and Programs Directorate (NPPD).

In a statement, Secretary Chertoff announced that President Bush intended to nominate Dennis Schrader to be the Deputy Administrator for National Preparedness at FEMA. The secretary said Schrader is thoroughly familiar with the needs of state and local emergency management, having been Maryland’s first Homeland Security Advisor and responsible for partnering with the National Capital Region jurisdictions to develop homeland security programs in the area.

The secretary and deputy secretary announced the following appointments at NPPD and FEMA:

- Robert Jamison will serve as the Deputy Under Secretary for NPPD. He will help lead the national efforts to protect critical infrastructure and prevent attacks on it, and to improve the resiliency of essential cyber-security and communications capabilities. Since 2005, Jamison has served as deputy assistant secretary at TSA.
- Christopher Geldart will serve as the director of the Office of National Capitol Region Coordination (ONCRC) within FEMA, where he will oversee and coordinate federal programs and domestic preparedness initiatives for state, local and regional authorities in the National Capital Region.

Preparedness

PREPAREDNESS DIRECTORATE AT FEMA REORGANIZED

Changes related to the reorganization of the Preparedness Directorate and Federal Emergency Management Agency (FEMA) took place at 12:01 a.m. on April 1. Homeland Security Secretary Michael Chertoff announced the changes Jan. 18 in a memo to employees affected by the Post-Katrina Emergency Management Reform Act that Congress approved as part of the department's fiscal year 2007 appropriations.

Changes include:

- The U.S. Fire Administration, Office of Grants and Training, Chemical Stockpile Emergency Preparedness Division, Radiological Emergency Preparedness Program and Office of National Capital Region Coordination are transferring to FEMA from the current Preparedness Directorate.
- A new National Protection and Programs Directorate (NPPD) will include the Office of the Under Secretary, Office of Infrastructure Protection, Office of Cyber Security and Communications, Office of Risk Management and Analysis, Office of Intergovernmental Programs and US-VISIT.

Among the activities that have taken place since the Secretary's announcement are testimonies to Congress, which included one on Feb. 28 by FEMA Director David Paulison and Under Secretary George Foresman about the new organizational structure. More recently, Deputy Under Secretary for Preparedness Robert Zitz and Acting Director for US-VISIT Robert Mocny testified last week about the transition to the NPPD. Zitz said the main responsibility of NPPD will be to advance the department's risk reduction mission, and in doing so, integrate the risk reduction activities of the Office of Infrastructure Protection, Office of Cyber Security and Communications and US-VISIT. In his testimony, Mocny said US-VISIT's role would continue to focus on developing biometric information about U.S. visitors and analysis of this information for not only DHS components but for other federal agencies as well.

Hurricane Season Preparation

FEMA ADMINISTRATOR HIGHLIGHTS REFORMS IN SPEECH TO NATIONAL HURRICANE CONFERENCE

Federal Emergency Management Agency (FEMA) Administrator David Paulison highlighted reforms and improvements FEMA has implemented to prepare for the 2007 hurricane season when he made his keynote address at the 29th National Hurricane Conference held last week in New Orleans.

In his speech, Paulison noted the many reforms FEMA has already implemented in the areas of communications and disaster operations; disaster assistance and reducing the potential for waste, fraud, and abuse; logistics management; and operational planning and continuity. "FEMA is working closely with each of the 11 state emergency management communities in hurricane-prone states, using a consistent set of measures and tools to evaluate strengths and vulnerabilities. This will allow us to better tailor our response," Paulison told about 1,500 attendees.

The conference brings together federal, state and local officials, emergency managers, voluntary agency representatives, engineers, planners, news media, meteorologists and other response, recovery and hazard mitigation professionals.

Paulison's entire speech is available at <http://www.fema.gov/news/newsrelease.fema?id=35276>.

UTILITIES & PUBLIC RIGHTS-OF-WAY

Local Franchising

LOCAL GOVERNMENTS SEEK REVERSAL OF FCC VIDEO FRANCHISING ORDER

Several local government organizations representing county and municipal officials have asked the federal courts to reverse a recent video franchising Report and Order issued by the Federal Communications Commission (FCC). That order would undermine local franchising authority and restrict local governments' ability to protect their citizens, manage their rights of way and provide other services.

In March the Federal Communications Commission issued a Report and Order concluding that the "local franchising process in many jurisdictions constitutes an unreasonable barrier to entry," and therefore has issued rules pre-empting local franchising authority. The FCC's order sets fixed deadlines on local franchising authorities to rule on video franchise applications – 90 days for entities with pre-existing access to the rights of way, 180 days for those without. In addition, it limits build-out requirements, restricts compensation in the franchise agreement and sets other requirements.

In their formal Petitions for Review the groups said the FCC order "exceeds the FCC's statutory authority," is "arbitrary and capricious," "an abuse of discretion, unsupported by substantial evidence and in violation of the United States Constitution." Organizations filing the petition include the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors and the National Association of Telecommunications Officials and Advisors.

In a March notice of proposed rulemaking the FCC proposed applying the findings in the Report and Order to cable operators that have existing franchise agreements (the Report and Order changes the franchising process with respect to new applicants) as they negotiate renewal of those agreements with local franchising authorities.

Utility Management

APWA PARTICIPATES IN ENVIRONMENTAL LAW FORUM LINKING UTILITY MANAGEMENT AND STATE WILDLIFE ACTION PLANS

The Environmental Law Institute (ELI) recently initiated a project, Linking Utility Management and State Wildlife Action Plans, in recognition that water, sewer and electricity utilities can advance the conservation of wildlife habitat through use of State Wildlife Action Plans (also referred to as Comprehensive Wildlife Conservation Strategies) while managing their utilities.

State Wildlife Action Plans are designed to prevent species from becoming endangered or threatened thereby invoking the protections of the Endangered Species Act. The action plans provide comprehensive statewide wildlife information that can be used to design better management practices, develop effective conservation programs, minimize adverse impacts and enhance benefits to wildlife habitat. Utility managers' routine activities focus on resource protection and environmental compliance to provide safe and high quality products and services to the communities they serve while relying on the same habitat conservation and management practices contained in the State Wildlife Action Plans.

At the meeting, associations representing water, sewer and electric utilities, including the Water Environment Federation, National Association of Clean Water Agencies, American Water Works Association, National Association of Water Companies, Edison Electric Institute and National Rural Electric Cooperative, discussed current utility wildlife conservation activities, generated ideas about ways utilities can use State Wildlife Action Plans to inform management decisions and activities, and discussed strategies for disseminating and encouraging the use of these plans among the utility sector. Many routine management activities – such as wetland restoration or creation, adding riparian buffers along stream banks, incorporating green infrastructure solutions to reduce stormwater runoff and supporting up-stream preservation efforts to improve downstream water quality – support conservation of wildlife through habitat protection or enhancement. However, the participants at the meeting generally agreed utilities are unaware of the

development of these plans and state wildlife agencies need to do a better job of communicating with their state and local partners so information contained in the plans can be used to inform management decisions.

The ELI project will also include an examination of three states representing a diverse range of utility types and regulatory frameworks to develop case studies as a basis for identifying ways in which these plans can inform utility management and decision making.

Congress instructed the U.S. Fish and Wildlife Service to require all states to develop State Wildlife Action Plans in order to receive their allocations from the Wildlife Conservation and Restoration Program. The plans are designed to help conserve wildlife and vital natural areas before they become rarer and more costly to protect. Each plan assesses the condition of the state's wildlife and habitats, identifies the problems they face and outlines the actions needed to conserve them long-term. By drawing together all of the available scientific data, the wildlife action plans identify what needs to be done to conserve wildlife and the natural lands upon which they live. Each Plan reflects a different set of local issues, management needs and priorities.

For more information on the ELI discussion and project, contact Julia Anastasio at janastasio@apwa.net. More information on State Wildlife Plans is available at www.teaming.com.

APWA Washington Report contributors include Julia Anastasio, Jim Fahey, Dan Jensen and Elizabeth Kelsey. Becky Wickstrom is editor of the Report.