

May 2010

Compromise Climate & Energy Draft Released by Senators Kerry & Lieberman

Senators John Kerry (D-MA) and Joe Lieberman (I-CT) released a long awaited compromise climate and energy bill after months of negotiations. The *American Power Act (APA)* calls for a 17 percent reduction in greenhouse gas (GHG) emissions from 2005 levels by 2020, a 42 percent reduction by 2030 and an 83 percent reduction by 2050 and establishes the first ever mandatory cap on GHG emissions. These targets are similar to the GHG emission reduction targets included in the American Clean Energy and Security Act (ACES) (H.R. 2454) that was passed by the House of Representatives last year.

The draft bill includes twelve titles covering issues such as nuclear power, carbon capture and sequestration, transportation emissions, off-shore oil and gas production, consumer protection, and climate change adaptation provisions. Unlike ACES, APA does not include an economy-wide cap and trade system but rather treats each major sector of the economy differently. Electric utilities will be the first sector required to reduce their GHG emissions, followed six years later by the manufacturing sector. Electric utilities will face limits on their GHG emissions beginning in 2013, and the proposal provides the sector with a generous allotment of allowances to shield consumers from rising energy prices caused by carbon limits.

Energy intensive manufacturing and industrial sources of GHG emissions will have until 2016 before they are regulated and they will receive allowances beginning in 2013 to help offset their compliance costs. The transportation sector will also be regulated under the national GHG cap, although the sector will have a separate trading program. Oil companies would be required to purchase GHG emission allowances at a set price, but they would be kept out of the carbon market. The draft proposal would require states and cities to set GHG emission reduction goals for the transportation sector and develop plans to reach those targets.

The draft proposal also includes provisions that would direct revenues generated from the sale of allowances to clean transportation projects and language that would direct a portion of the revenue generated to the Highway Trust Fund to fund highways, mass transit and other transportation infrastructure. The APA also includes provisions pre-empting existing state climate change or GHG reduction programs.

Senators Kerry and Lieberman describe the bill as designed to secure the energy future of the United States by providing incentives for domestic production of clean energy technologies that will achieve meaningful pollution reductions and create jobs. To learn more about the American Power Act please visit <http://kerry.senate.gov/americanpoweract/intro.cfm>.

EPA Seeks Additional Comments on Proposed Stormwater Rulemaking

The US Environmental Protection Agency (EPA) is currently developing a proposed rulemaking to strengthen federal stormwater regulations and to establish a program to reduce stormwater discharges from developed sites. The purpose of the proposed information collection request is to collect data to support EPA's ultimate rulemaking activities by providing the agency with information to characterize the scope, components and implementation of existing local and state stormwater programs; the level of long term stormwater controls and best management practices at newly developed and redeveloped sites and retrofit of existing development; the burden and expenditures by states and MS4 permit holders associated with existing stormwater programs and the technical, financial and environmental data needed to quantify the incremental pollutant removals, compliance costs and impacts for the various regulatory options that EPA might consider.

EPA is proposing to use four mandatory questionnaires to gather this data: (1) for owners and developers of newly developed and redeveloped sites; (2) for National Pollution Discharge Elimination System permitting authorities; (3) for owners and operators of federally regulated and unregulated MS4s; and (4) for transportation related MS4s for state, county and local departments of transportation. EPA is accepting comments on the information collection request for 30 days and comments are due on or before June 10, 2010. To see the Federal Register notice visit <http://www.epa.gov/npdes/stormwater/rulemaking>.

Draft Legislation Reauthorizing Drinking Water State Revolving Fund Released

Representatives Henry Waxman (D-CA) and Edward Markey (D-MA) recently circulated a draft bill, *The Assistance, Quality and Affordability Act (AQAA)*, among House lawmakers before a scheduled hearing in the House Energy and Commerce Committee. The AQAA would reauthorize the drinking water state revolving fund (DWSRF) and provide \$14.7 billion in new funding for the program over five years. Additionally, the bill would authorize \$100 million over five years for technical assistance to small community water systems to ensure that they can comply with federal drinking water standards and authorize \$25 million to identify endocrine disrupting substances in drinking water systems and to reduce the amount of lead in drinking water.

The legislation is designed to prioritize infrastructure projects that improve energy or water efficiency and that create water delivery backup systems. To review the testimony submitted during the hearing visit http://energycommerce.house.gov/index.php?option=com_content&view=article&id=2002:hearing-on-hr-the-assistance-quality-and-affordability-act-of-2010&catid=130:subcommittee-on-energy-and-the-environment&Itemid=71.

America's Commitment to Clean Water Act Introduced in House

Representative James Oberstar (D-MN), Chairman of the House Transportation & Infrastructure Committee, introduced legislation that would amend the Clean Water Act (CWA) to clarify federal jurisdiction over "waters of the United States". The *America's Commitment to Clean Water Act (ACCWA)* (H.R. 5088) amends the CWA to reaffirm federal jurisdiction over waters of the United

States and aims to resolve the confusion over the scope of the CWA that resulted from recent Supreme Court decisions.

The ACCWA would delete the phrase “navigable waters” from the CWA and replace it with the current regulatory definition of “water of the United States” used by the US Army Corps of Engineers and EPA. (See 40 C.F.R. 230.3(s)). In addition to codifying the existing regulatory definitions, the bill codifies several existing regulatory exemptions including an exemption for existing wastewater treatment systems, including treatment ponds and lagoons.

ACCWA is similar to the *Clean Water Restoration Act (S. 787)* that was approved by the Senate Environment and Public Works Committee in June 2009. To review ACCWA visit http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h5088ih.txt.pdf.

New EPA Guidance Outlines FY10 Spending Priorities for State Water Infrastructure Programs

The Fiscal Year 2010 (FY10) Environmental Protection Agency (EPA) appropriations law set forth several new requirements for state administered drinking water and clean water state revolving fund (SRF) programs. The FY10 appropriations law provides about \$3.6 billion for drinking water and clean water SRF programs. In addition, the FY10 appropriations law required at least 20 percent of clean water and drinking water SRF programs funds to be targeted for “green” projects; 30 percent of drinking water SRF funds and about \$300 million of clean water SRF funds be used for principal forgiveness, negative interest loans, grants or any combination of these and that states should prioritize project funding upgrades at existing infrastructure in cities over projects intended to serve new developments. The green project reserve may be used for planning, design, and/or building activities and eligible projects include green infrastructure projects, and water efficiency or energy efficiency improvements.

In addition to the green project reserve, the guidance instructs SRF program administrators to adopt smart growth principles into their state SRF programs and prioritize projects for funding that repair, replace and upgrade infrastructure in existing communities. EPA, in partnership with the Department of Housing and Urban Development and the Department of Transportation through the Interagency Partnership for Sustainable Communities, is attempting to use federal funding to discourage sprawl and encourage or incentivize location efficient investments, smart growth practices and green infrastructure development. The procedures and requirements set forth in the memo are effective immediately and should be reflected in all capitalization grants that include FY 10 funds.

Senate Climate and Energy Proposal Would Allocate \$6 Billion to Transportation

Sens. John Kerry (D-MA) and Joe Lieberman on May 12th released a comprehensive energy and climate proposal that would allocate to transportation an estimated \$6 billion annually, or less than one-third of revenues expected to be generated from the sale of carbon credits to producers and refiners of petroleum.

The American Power Act, which was released as a discussion draft and has not been introduced yet in the Senate, would provide, beginning in 2013, about \$2 billion to the Federal Highway Trust Fund for

projects that reduce congestion and emissions and \$2 billion to the Transportation Investment Generating Economic Recovery (TIGER) program, a discretionary grant program created under last year's Economic Recovery Act. The remainder would be available for planning and other projects that reduce emissions. The measure also directs states and metropolitan planning organizations to address transportation-related greenhouse gas emissions by including emission reduction targets and strategies to meet those targets.

The proposal would cut greenhouse gas emissions by 17 percent from 2005 levels by 2020. Transportation groups have expressed concerns with the bill, saying the measure should direct all revenues generated from transportation fuel fees in transportation improvements.

DOT Releases Draft Strategic Plan, Invites Comments

The US Department of Transportation has released a draft strategic plan, *Transportation for a New Generation*, to help set the priorities of the department and offer a blueprint for providing the traveling public with safe, convenient, affordable and environmentally sustainable transportation choices for the 21st century.

The plan identifies five strategic goals:

- **SAFETY:** Improve public health and safety by reducing transportation-related fatalities and injuries.
- **STATE OF GOOD REPAIR:** Ensure the U.S. proactively maintains its critical transportation infrastructure in a state of good repair.
- **ECONOMIC COMPETITIVENESS:** Promote transportation policies and investments that bring lasting and equitable economic benefits to the Nation and its citizens.
- **LIVABLE COMMUNITIES:** Foster livable communities through place-based policies and investments that increase transportation choices and access to transportation services.
- **ENVIRONMENTAL SUSTAINABILITY:** Advance environmentally sustainable policies and investments that reduce carbon and other harmful emissions from transportation sources.

USDOT will use the strategic plan to develop and implement policies and programs that will transform transportation infrastructure into a truly multimodal system that provides travelers and businesses with safe, convenient, affordable and environmentally sustainable transportation choices. The full report is posted at <https://dotstrategicplan.ideascale.com/a/panel.do?id=8329>. Public comments will be accepted until June 15, 2010.

FTA Seeks Proposals for \$775 million in Bus Grants

The Federal Transit Administration (FTA) May 4th announced the availability of discretionary Section 5309 Bus and Bus Facilities grant funds in support of its "State of Good Repair" initiative. The State of Good Repair (SGR) Bus initiative will be funded with up to \$775 million in unallocated Fiscal Year 2010 discretionary Bus and Bus Facilities Program funds authorized by SAFETEA-LU. FTA may use

additional Bus and Bus Facilities program funding that becomes available in the future to further support this initiative.

The SGR Bus initiative will make funds available to public transit providers to finance capital projects to replace, rehabilitate and purchase buses and related equipment and to construct/rehabilitate bus-related facilities, including programs of bus and bus-related projects which may include assistance to sub-recipients that are public agencies, private companies engaged in public transportation or private non-profit organizations.

Complete proposals for the SGR Bus initiative must be submitted by June 18, 2010. All proposals must be submitted electronically through the GRANTS.GOV APPLY function. In order to apply through GRANTS.GOV, proposers should initiate the process of registering on the GRANTS.GOV site immediately to ensure completion of registration before the deadline for submission.

The announcement is available on the FTA website at: <http://www.fta.dot.gov>. For more information contact Darren Jaffe, Office of Program Management, (202) 366-4008, e-mail: darren.jaffe@dot.gov.

DOT Announces \$600 Million Available for TIGER II Grants

The US Department of Transportation (DOT) has issued an interim notice announcing the availability of funding and is requesting proposals for the Department's National Infrastructure Investments discretionary grant program. The notice, published in the April 26th *Federal Register*, announces selection criteria and pre-application and application requirements for the \$600 million program. This program is also being called TIGER II because it is similar to, although not identical with, the \$1.5 billion Transportation Investment Generating Economic Recovery, or TIGER Discretionary Grant program, authorized by last year's Recovery Act.

As with the TIGER program, funds for TIGER II are to be awarded on a competitive basis for projects that will have a significant impact on the nation, a metropolitan area or a region. Through its *Federal Register* notice, DOT is soliciting applications for TIGER II Discretionary Grants.

Eligible applicants include state and local governments, transit agencies, port authorities, MPOs and other political subdivisions of state or local governments and multi-state or multi-jurisdictional groups (through one lead agency). Eligible projects include, highway or bridge projects eligible under Title 23, public transportation projects eligible under Chapter 53, Title 49, passenger and freight rail projects and port infrastructure investment.

Up to \$35 million of the amount available for TIGER II Discretionary Grants may be used for TIGER II Planning Grants. TIGER II Planning Grants may be awarded, like TIGER II Discretionary Grants, to eligible applicants, and may be used for activities related to the planning, preparation or design of eligible projects, including transportation corridors or regional transportation systems. Applications for planning assistance may be made alone or as part of a TIGER II Discretionary Grant application.

Pre-applications are due by 5 P.M. EST on July 16, 2010. Final applications are due by August 23, 2010, at 5 p.m. EST. DOT will evaluate all applications and announce the projects that have been selected to receive TIGER II Discretionary Grants no sooner than September 15, 2010. The pre-application form will be posted on June 15th to the DOT Web site, <http://www.dot.gov/recovery/ost/TIGERII>, together with instructions for submitting the pre-application form electronically to DOT.

Applications (Stage 2) must be submitted through Grants.gov. To apply for funding through Grants.gov, applicants must be properly registered. Complete instructions on how to register and submit applications can be found at <http://www.grants.gov>. The registration process usually takes two to four weeks and must be completed before an application can be submitted. If interested parties experience difficulties at any point during the registration or application process, they may call the Grants.gov Customer Support Hotline at 1-800-518-4726, Monday-Friday from 7 a.m. to 9 p.m. EST. Questions may also be directed to the TIGER II Discretionary Grant program manager via e-mail at TIGERIIGrants@dot.gov, or call Robert Mariner at 202-366-8914.

More information is posted in the April 26th *Federal Register* under Transportation Department, funding availabilities, http://www.access.gpo.gov/su_docs/fedreg/a100426c.html, and by visiting the DOT website: <http://www.dot.gov/recovery/ost/tigerii/>.

FHWA Seeks Comments on Proposed Revisions Relating to Minimum Retroreflectivity for Pavement Markings

The Federal Highway Administration has announced that the agency proposes to amend the Manual on Uniform Traffic Control Devices (MUTCD) to include standards, guidance, options and supporting information relating to maintaining minimum levels of retroreflectivity for pavement markings.

FHWA requests comments on the proposed revisions which would establish a uniform minimum level of nighttime pavement marking performance based on the visibility needs of nighttime drivers. The proposed revisions will promote safety, enhance traffic operations and facilitate comfort and convenience for all drivers, including older drivers. The proposed revisions described would be designated as Revision 1 to the 2009 Edition of the MUTCD.

The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administration, and recognized as the national standard for traffic control devices used on all streets, highways, bikeways and private roads open to public travel.

Comments must be received on or before August 20, 2010. More information is available in the April 22nd *Federal Register* under Federal Highway Administration, http://www.access.gpo.gov/su_docs/fedreg/a100422c.html

New Congressional Report Concludes Implementation of Recovery Act's Transportation and Infrastructure Programs Has Been Successful

A new report from the House Transportation and Infrastructure Committee finds that as of April 16, 2010, Federal, State and local agencies administering programs within the Committee's jurisdiction have announced 19,121 transportation and other infrastructure projects totaling nearly 98 percent of the infrastructure funding allocated by the \$787 billion American Recovery and Reinvestment Act.

The 71-page report titled, *The American Recovery and Reinvestment Act of 2009 Transportation and Infrastructure Provisions Implementation Status as of April 16, 2010*, states that of the \$64 billion provided for transportation and infrastructure programs under the Recovery Act, the Federal, State and

local agencies administering programs within the Committee's jurisdiction have announced transportation and other infrastructure projects totaling almost \$63 billion. Of the \$38 billion available for highway, transit, and wastewater infrastructure formula program projects, \$34.4 billion, or 91 percent, has been put out to bid on 17,472 projects as of March 31, 2010. In addition, across the nation work has already begun on 13,796 projects totaling \$28.5 billion, or 75 percent.

The report also points out that during the first year of implementation, Recovery Act projects created or sustained nearly 350,000 direct, on-project jobs. Furthermore, every Recovery Act dollar available under the Clean Water program is now under contract.

The Recovery Act was signed into law February 17, 2009. To view the entire report, please go to tinyurl.com/HTIC050510.

FHWA Website Includes Information to Assist Local Agencies with Administration of Federal-Aid Projects

The Federal Highway Administration (FHWA) has created a Local Public Agency and Federal-aid to Program Administration website, <http://www.fhwa.dot.gov/federalaid/lpa/index.cfm>, to provide information and website links to better assist Local Public Agencies (LPA) and State Transportation Agency (STA) officials with the administration and oversight of federal-aid funded projects being delivered by LPAs.

The site will offer reference information, contact information, training information as well as other aids to assist public officials in meeting federal-aid program and project requirements. The website is envisioned to be an evolving site. Suggestions for improvement are welcome.

APWA Government Affairs Committee Meets in DC

The APWA Government Affairs Committee (GAC) met with federal agency leaders and with members of Congress and their staff to discuss APWA's advocacy priorities and public works issues during its spring meeting in Washington, DC April 27th-28th.

GAC Chair, Bob Freudenthal, led the committee meeting, which included discussions with senior-level officials representing the Federal Emergency Management Agency, the U.S. Environmental Protection Agency and the U.S. Department of Transportation.

Members also met with Representative Phil Hare, Illinois 17th District, a member of the House Transportation and Infrastructure Committee, who talked about the committee's current work on transportation and infrastructure bills and funding. GAC members also met individually with their Congressional representatives to discuss APWA's policy priorities for the year.

DHS Officials Brief APWA Committee on Cyber Resiliency Review

Senior officials with the Department of Homeland Security (DHS) this month briefed APWA's Emergency Management Committee on DHS National Cyber Security Division's (NCSD) initiatives

to combat cyber terrorism. Recently, the NCSO developed a Cyber Security Evaluation Program called the Cyber Resiliency Review designed to measure and enhance the implementation of key cyber security capacities and capabilities of critical infrastructure. Patrick Beggs, DHS Director of the Cyber Security Evaluation Program, and Kelvin Coleman, DHS Director of State, Local and Tribal Engagement briefed the committee by conference call.

The assessment review is a structured interview and appraisal to elicit evidence from on-site personnel, including chief information and security officers, IT systems, process control engineers and business continuity personnel. For public works agencies, the security of cyber systems is critical, as they help run traffic control systems, water treatment facilities, emergency services/communications and other operations and services.

Emergency Management Committee members volunteered to be test subjects for APWA, and invited DHS NCSO personnel to conduct site visits and evaluate their cyber systems. DHS expects to conduct the site visits this summer. Opportunities for future site visits are planned and will be announced later in the year.

For more information on cyber security, visit DHS's website: <http://www.dhs.gov>.

Supplemental Appropriations for Disaster Relief Fund Moves through Congress

On May 13th, the Disaster Relief and Summer Jobs Act of 2010 passed out of the Senate Appropriations Committee. This legislation would allocate emergency supplemental funding of \$5.1 million to the Disaster Relief Fund (DRF).

H.R. 4899 was first introduced by Representative David Obey (D-WI, 7) on March 22nd. Shortly thereafter, the legislation passed the House by a vote of 239 to 175 on March 24.

The Stafford Act Coalition—of which APWA is a member—sent a letter of support to Senate Appropriations Committee leadership, Sens. Daniel Inouye, Chairman (D-HI), and Thad Cochran, Ranking Member (R-MS). The letter urged the committee to take action on H.R. 4889, and emphasized that if the DRF is not replenished by June, the federal response to disasters will be compromised—putting citizens and the nation at a greater risk for loss of life and property. To view the Stafford Act Coalition's support letter, visit the APWA website's Advocacy – Resources section: <http://www.apwa.net/Advocacy/resources.asp>.

Current indications are that the bill will be considered by the full Senate some time before Congress' July 4th recess.

The DRF funds the Federal response to Presidentially declared major disasters and emergencies, enables FEMA to coordinate the Federal response and reimburse agencies for their efforts through mission assignments, and otherwise enables the Federal government to respond to, recover from and mitigate the results of specific disasters and emergencies. Public Assistance and Individual Assistance Grants, and Hazard Mitigation Grants are awarded from the DRF.

DHS Announces Fiscal Year 2009 Grant Guidance

On May 13th, Department of Homeland Security (DHS) Secretary Janet Napolitano released final allocations for preparedness grants for FY 2009. The grant programs total \$790 million to assist state, local and tribal governments, and private industry to further strengthen community preparedness. It is intended that DHS award grants throughout the summer. According to DHS, the grants include specific steps undertaken to improve the ability of grant applicants to maximize funding.

According to DHS, the following preparedness grants that impact public works professionals include:

- The Transit Security Grant Program received \$234.4 million to protect critical transit infrastructure from terrorism. This includes \$14.5 million and \$20 million allocated to the Freight Rail Security Grant Program and to Intercity Passenger Rail (Amtrak), respectively.
- The Intercity Bus Security Grant Program was awarded \$11.5 million to assist operators of fixed-route intercity and charter bus services to support security plans, facility security upgrades and vehicle and driver protection.
- The Port Security Grant Program received \$288 million to protect critical port infrastructure from terrorism, enhance maritime domain awareness and risk management capabilities to protect against improvised explosive devices and other non-conventional weapons; and to conduct training and exercises and support implementation of the Transportation Worker Identification Credential.
- The Buffer Zone Protection Program was awarded \$48 million to increase preparedness capabilities of jurisdictions responsible for safeguarding critical infrastructure sites and key resource assets, such as chemical facilities and nuclear power plants, through planning and equipment acquisition.
- The Emergency Operations Center (EOC) Grant Program received \$57.6 million to improve emergency management and preparedness capabilities by supporting flexible, sustainable, secure and interoperable EOCs to address identified deficiencies and needs. The grant provides funding for construction or renovation of a state, local or tribal government's principal EOC.
- The Interoperable Emergency Communications Grant Program was awarded \$48 million for planning, training, exercises and equipment to states, territories, local and tribal governments to carry out initiatives identified in Statewide Communication Interoperability Plans and improve interoperable emergency communications for responding to natural disasters and acts of terrorism.

Further information on preparedness grant programs is available at www.dhs.gov and www.fema.gov/grants.