

APWA *Washington* REPORT

July 2005

TRANSPORTATION

TEA-21 Reauthorization

THE BIGGEST TRANSPORTATION BILL IN HISTORY IS DONE, PRESIDENT EXPECTED TO SIGN

Before departing for the August Recess, the House and Senate on July 29th, 2005, gave final approval to a \$286.4 billion surface transportation reauthorization bill. Transit is to receive 18.5 percent of total guaranteed spending.

The new legislation provides a 30 percent increase in funding over its predecessor, TEA-21; includes a new core safety program; increases state minimum return on gasoline taxes paid to the highway trust fund from 90.5 percent to 92 percent; and assures each state at least a 19 percent increase in funding over TEA-21.

The House passed HR 3, the Safe Accountable, Flexible and Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU) by a vote of 412-8. The Senate approved the measure by a vote of 91-4. The President is expected to sign the measure into law.

Reauthorization of TEA-21 has been a top priority for APWA, which applauds completion of the long-overdue legislation. Passage of SAFETEA-LU caps a nearly two year effort in Congress to reauthorize the expired act.

After repeated extensions, a 12th extension was needed to give time for the conference report to be enrolled and arrange a presidential signing ceremony. Enrolling usually only takes a few days, but clerks are also working on the comprehensive energy conference report (HR 6) and the CAFTA measure (HR 3045). Even after signing, there are always "Technical Corrections" to such massive pieces of legislation.

Passage of the Conference Report only came after much negotiation and DOT staffers running many series of numbers based on different scenarios. The compromise agreement on the donor/donee (the amount a state contributes in gas tax and the amount it gets back) issue will bring the return up to 92 percent in 2008 and 2009 based on incremental increases starting from 90.5 percent for the rest of fiscal 2005.

The existing 13(C) labor protections to receive full pay and benefits for six years remained unchanged for public transit workers who lose their jobs due to privatization or contractual changes. The Senate sought a reduction to four years, the House five. However, the Transit in the Parks and New Freedoms Initiative will not be covered by 13 (C).

Look for more details about the SAFETEA-LU on infoNOW and APWA's website, www.apwa.net/advocacy. More details will appear in the August *APWA Washington Report* when all the corrections have been checked. Go to <http://www.house.gov/rules/109textTEALU.htm> for a text of the Conference Report.

The conference committee included 93 members, 63 from the House of Representatives and 30 from the Senate.

FHWA

FEDERAL HIGHWAY ADMINISTRATOR PETERS RESIGNS

Federal Highway Administrator Mary Peters has announced she will leave the Federal Highway Administration (FHWA) at the end of July to return to Arizona to be with family. Prior to becoming Administrator on October 2, 2001, Peters was director of the Arizona Department of Transportation. During her tenure at FHWA, she was a strong supporter of APWA and APWA's partnership with FHWA.

FHWA Deputy Administrator Rick Capka will assume her duties at the end of the month.

INSIDE YOU'LL FIND: TRANSPORTATION cont'd. P2--Amtrak Reauthorization, Workzone Safety; ENVIRONMENT--Energy Gill, EPA Appropriations; P4--Enforcement and Compliance, Electronic Products Recycling, Drinking Water, Municipal Waste; EMERGENCY MANAGEMENT/DISASTER PREPAREDNESS--P5--FEMA Changes, Homeland Security Appropriations, Transportation Security Agency

American Public Works Association • Washington Office

Peter B. King, Executive Director • 1401 K Street, NW, 11th Floor, Washington DC 20005
(202) 408-9541 • (202) 408-9542 fax • apwa.dc@apwa.net • www.apwa.net/advocacy



Transportation Appropriations

FULL HOUSE AND SENATE COMMITTEE APPROVE INCREASED AMTRAK FUNDING

Defying its Appropriators and the Administration, the House of Representatives June 30, 2005 approved an FY06 Transportation and Treasury Appropriations bill (HR 3058) which would boost funding for Amtrak to \$1.2 billion.

On the Senate side, the Appropriations Committee approved a \$1.45 billion Amtrak funding level July 19, 2005.

The House Appropriations Committee had set next year's funding for Amtrak at \$550 million and had prohibited any of the funding to be used on any routes needing more than a \$30-per-passenger subsidy, effectively directing the money to the northeast and west coast corridors and some Midwest routes.

Transportation Secretary Norman Y. Mineta in a statement said, "handing over more than a billion dollars with no reforms attached only gives Amtrak a blank check to continue misspending taxpayer money."

During debate, language funding highway, transit and aviation programs was stricken from the House bill because of a jurisdictional dispute between authorizers and appropriators. It is expected that the funds will be restored in conference. The bill which the House Appropriations Committee had approved compared to the Senate Appropriations Committee version follows:

- \$37 billion for highways, up by \$1.9 billion over current funding; (the Senate Committee appropriated \$40.2 billion which includes a \$2.3 billion recision in contract authority balances from the five core federal highway programs and cautioned that the highway funding level is still subject to the reauthorization of TEA-21 action.)
- \$8.5 billion for transit, up by \$386 million over current funding; (Senate Committee \$8.2 billion)
- \$3.6 billion for the Airport Improvement Program; (Senate Committee \$3.5 billion)

The House bill also keeps the Community Development Block Grant program within the Department of Housing and Urban Development rather than transferring it to the Department of Commerce as proposed by the Bush Administration. The CDBG program would receive nearly \$4 billion, a six percent cut from current levels.

In addition, the House approved an amendment to prohibit any funds in the bill from being spent on economic development for which eminent domain authority was exercised in taking property in accordance with the June 23 Supreme Court ruling in Kelo v. New London, CT. The court held that a government's exercise of eminent domain to take private property for economic development can be a public use. The Senate appropriation does not include an eminent domain restriction.

The Transportation Appropriations bill provides funding for the Departments of Transportation, Treasury, and Housing and Urban Development and for the Judiciary and the District of Columbia.

Amtrak Reauthorization

SENATE COMMITTEE APPROVES SIX YEAR AMTRAK REAUTHORIZATION BILL

The Senate Commerce, Science, and Transportation Committee has approved a six year Amtrak reauthorization bill that would provide \$11.4 billion for capital and operating needs to upgrade equipment and focus on Amtrak reform, accountability, cost cutting and restructuring.

The bill (S 1516) was approved by a vote of 18 to 4. Backers see it as necessary to fund Amtrak while reforms are made. The Administration has proposed a plan to privatize Amtrak.

Workzone Safety

INFORMATION AVAILABLE WITH OVERVIEW OF RECENTLY UPDATED RULE

The Federal Highway Administration (FHWA) has published a brochure and four fact sheets related to the recently updated work zone safety and mobility rule. The brochure provides an overview of the rule and includes a flow diagram illustrating how the rule can be applied to the typical DOT program delivery process for road projects.

The fact sheets cover the following topics: (1) Rule Overview, (2) Work Zone Impacts Assessment, (3) Transportation Management Plans (TMPs) for Work Zones, (4) Public Information and Outreach Strategies for Work Zones. These topics also will be the focus of a set of four implementation guidance documents to be available later this year.

The brochure and fact sheets are available at http://www.ops.fhwa.dot.gov/wz/resources/final_rule.htm For printed copies of these materials, please send an email request to workzonepubs@fhwa.dot.gov and include the number of copies desired and shipping information.

FHWA published the final rule on Work Zone Safety and Mobility in the *Federal Register* on September 9, 2004. All state and local governments which receive federal-aid funding are required to comply with the provisions of this rule no later than October 12, 2007.

ENVIRONMENT

Energy Bill

CONFEREES RECONCILE HOUSE-SENATE ENERGY BILLS AND PASS A BILL; BUSH TO SIGN

As this issue of APWA Washington Report was written, the House/Senate Conference Committee for the Energy Bill Report was approved by the House 275-156 and the Senate by 74-26. The MTBE (gasoline additive) liability waiver was not included. A history of the waiver follows:

The Conference Committee began its deliberations with no resolution of the MTBE (gasoline additive) liability waiver issue. The House-passed bill included a provision shielding producers of MTBE additive from product liability suits related to the cost of cleaning up water supplies contaminated by the additive. The Senate bill did not include the waiver. Also set aside was the highly partisan battle over drilling in the Arctic National Wildlife Refuge which is expected to be inserted in the FY 2006 budget reconciliation bill to be considered in September.

Committee members rejected Conference Committee Chair Senator Joe L. Barton's, (R-TX) proposed compromise to create an \$11.4 billion fund supported by federal taxes to pay for cleanup of ground water and a plan to protect the producers from liability. Ultimately, the waiver was dropped, apparently in exchange for a provision that oil companies may request that liability suits against them can be moved from state court to federal court

In response to earlier reports that a few members of Congress were working on the proposed MTBE compromise, APWA and other local government organizations placed an ad in *Roll Call* and *The Hill*, newspapers which circulate on Capitol Hill. The ad outlined the principles any deal must incorporate--full compensation for cleaning up MTBE in municipal water supplies; no unfunded mandates on communities, and a demand that the agreement not depend on annual appropriations. In addition to the ad, the coalition sent letters to members of Congress with the same message.

Two studies commissioned by the Association of Metropolitan Water Agencies and the American Water Works Association estimate the clean up costs to be in the range of \$25 billion to \$33 billion and could be as high as \$85 billion or more.

Energy legislation failed in the last Congress due to inclusion of the MTBE liability waiver. The Administration has indicated that it will sign the new bill. Among provisions included in the new legislation are:

- \$14.5 billion in tax incentives over 10 years to encourage energy companies to use alternative, renewable and more efficient sources and/or equipment.
- A 7.5 billion gallon ethanol mix with gasoline mandate by 2012. .
- A sense of the Senate provision placing the Senate on record in support of action on global warming was dropped. There is no such provision in the House bill.
- A \$1.8 billion program on new energy technologies and clean coal technologies.

More details will appear in the August *APWA Washington Report* and on the APWA web site as they become known.

EPA Appropriations

SENATE BOOSTS CLEAN WATER SRF FUNDING TO \$1.1 BILLION

The Senate has voted to increase funding for the Clean Water State Revolving Fund (SRF) to \$1.1 billion as compared to \$850 million approved by the House and \$730 million requested by the President. The increased funding level was included in the Senate's version of the FY06 Interior and Environment Appropriations bill, passed June 29, 2005, by a vote of 94-0.

APWA Washington Report, July 2005

The Senate agreed to reduce water security and brownfield cleanup programs and other Administration priorities to achieve the increased funding for SRF program. An unrelated spending amendment was added to the bill to address an unexpected \$1.5 billion funding shortfall in Veterans Healthcare programs. The additional funding could force further cuts to Interior Department and EPA programs. A separate emergency spending measure is expected address veteran's healthcare program funding. The appropriations measure is headed for a House and Senate conference committee.

Enforcement and Compliance

EPA NAMES NEW ENFORCEMENT CHIEF

Grant Y. Nakayama has been nominated to head the Environmental Protection's Office of Enforcement and Compliance Assurance. He will replace Thomas Skinner, the current acting Assistant Administrator, who leaves the post in the fall.

Nakayama is currently a partner for environmental law and product safety at the law firm Kirkland & Ellis and an adjunct professor for environmental law at the George Mason University School of Law. Previously he was chief of quality control for Welding and Nondestructive Testing Branch of the Naval Nuclear Propulsion Program and before that served as chief engineer for nuclear core manufacturing for the Program.

Electronic Products Recycling

SENATE ENERGY BILL INCLUDES TAX CREDIT TO SPUR RECYCLING

The Senate-passed energy bill (HR 6) includes a tax-credit provision intended to promote the recycling of used electronic products.

The recycling measure would allow a tax credit of up to 15 percent of the cost of equipment used in processing and sorting recyclable materials. Electronic waste is defined as any cathode ray tube, flat panel screen, or similar video display device with a screen size greater than 4 inches measured diagonally, or a central processing unit.

Electronic waste contains hazardous substances, including lead, mercury, cadmium and chromium, which can pose health and environmental hazards. The House-passed energy bill does not contain a similar provision.

Drinking Water

NEW LEGISLATION AIMS TO CONTROL LEAD

New legislation introduced in the House and Senate would require the US Environmental Protection Agency to revise its standard for lead to protect vulnerable populations and require improved citizen notification when a water system experiences high levels of lead.

The bills were introduced in both Houses June 29, 2005, by Senators Jim Jeffords (I-VT) and Paul Sarbanes (D-MD) and Delegate Eleanor Holmes Norton (D-DC) and Representative Henry Waxman (D-CA).

The bills provide increased funding for water system upgrades; require increased water testing and lead remediation in schools and day-care centers; and would ban plumbing parts with elevated lead levels.

Municipal Waste

HOUSE COMMITTEE PASSES BILL TO RESTRICT SOLID WASTE IMPORTS

The House Energy and Commerce Committee approved a bill granting states the authority to restrict imports of foreign municipal solid waste until the Environmental Protection Agency implements national regulations.

The International Solid Waste Importation and Management Act (HR 249), would direct the US Environmental Protection Agency to publish within two years regulations implementing a U.S-Canada agreement on trans-boundary movement of hazardous waste. The legislation permits states to limit the receipt and disposal of foreign municipal solid waste until federal regulations are issued to implement the international agreement.

The United States and Canada agreed in 1992 that the notice-and-consent provisions of the 1986 bilateral agreement, which to that point applied to hazardous waste only, also should apply to municipal solid waste. The agreement requires those who intend to export waste to provide specific information, including the types and quantities of waste, where the waste will cross the border, and the name of the facility to receive the waste.

Senators Debbie Stabenow (D-Mich.) and Carl Levin (D-Mich.) introduced a companion bill (S. 1198) in the Senate June 8.

EMERGENCY MANAGEMENT

FEMA Changes Planned

SPLITTING PREPAREDNESS AND RESPONSE PROPOSED WITH FEMA A STAND-ALONE

Homeland Security Secretary Michael Chertoff has briefed government officials on a draft plan to split the Federal Emergency Management Agency (FEMA) in half, it has been reported.

Expected to be the most controversial is the proposed dismantling of the Department's Emergency Preparedness and Response Directorate. FEMA, the Agency that currently makes up the bulk of the directorate, will return to being a stand-alone entity within the department, with a director, reporting straight to Chertoff, rather than the current undersecretary. Its focus is to be disaster response and recovery.

In another far-reaching change proposed, the Information Analysis and Infrastructure Protection Directorate, plagued with many problems, would be dismantled. It was set up in March 2003 to blend intelligence about terrorist threats with data about the nation's vulnerabilities to help direct federal attention and resources where they are most needed. The directorate is to be split into its component parts. The information analysis staff is to become Homeland Security's departmental intelligence operation -- much like the one in the Department of Energy -- headed by a chief intelligence officer reporting directly to Chertoff.

Infrastructure protection will be in the new preparedness directorate, along with the preparedness functions of FEMA and elements of the Office of State and Local Government Cooperation and Preparedness, which previously was the department's "one-stop shop" for handing out federal funds to, and working with, state and local government.

Other changes proposed are to consolidate the housing of the Border Patrol and Immigration and Customs Enforcement and establishment of a departmental level policy office. If Congress approves the plan, the policy office will be headed by an undersecretary. Organizational changes recommended were based on a review that involved over 200 people, organized in 18 teams -assigned to an issue or policy area.

Homeland Security Appropriations

SENATE APPROVES FIRST RESPONDER/ EMERGENCY MANAGEMENT FUNDS

The full Senate has approved its FY 2006 Homeland Security Appropriations bill (HR 2360) with a \$30.8 billion discretionary spending level for the Department of Homeland Security (DHS). Designed to encourage regional cooperation and planning, HR 2360 includes:

- \$400 million for the Local Law Enforcement Terrorism Prevention Grants, same as current funds
- \$665 million for firefighter assistance grants, down \$50 million that current funds
- \$2 billion for Disaster Relief, down \$42 million
- \$200 million for Flood Map Modernization, same as current fund
- \$95 million for the National Pre-Disaster mitigation fund, down \$5 million

Transportation Security Agency

SENATE COMMITTEE APPROVES HAWLEY NOMINATION

The nomination of Edmund S. Hawley, currently a member of the Federal Aviation Administration Air Traffic Services Committee, and former member of the National Commission on Intermodal Transportation and the Commercial Space Transportation Advisory, to be Assistant Secretary of Homeland Security for the Transportation Security Administration, has been approved by the Senate Committee on Homeland Security and Government Affairs.

Contributors to this APWA Washington Report were: Beth Denniston, Jim Fahey and Kristina Tanasichuk
The APWA Washington Report is edited by Beth Denniston