

APWA Washington REPORT

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INTERGOVERNMENTAL

August 2003

FY04 Appropriations

RUSH TO COMPLETE SPENDING BILLS EXPECTED IN SEPTEMBER

Both the House of Representatives and Senate will need to work quickly to enact each of the 13 annual spending bills when they return the week of September 1, 2003 from the month-long August recess.

None of the 13 appropriations bills which fund federal programs has made it far enough through the process to reach conference approval needed before final enactment. The current fiscal year ends on September 30, 2003. The following chart shows the status of the 13 annual appropriations bills.

Status of FY04 Appropriations Bills

checkmark indicates approval

Appropriations Bill	House Committee Approval	House Passage	Senate Committee Approval	Senate Passage	House Conference Approval	Senate Conference Approval	Signed into Law
Agriculture	✓	✓	✓				
Commerce/Justice/State/Judiciary	✓	✓					
Defense	✓	✓	✓	✓			
District of Columbia	✓						
Energy & Water	✓	✓	✓				
Foreign Operations	✓	✓	✓				
Homeland Security	✓	✓	✓	✓			
Interior	✓	✓	✓				
Labor/HHS/Education	✓	✓	✓				
Legislative Branch	✓	✓	✓	✓			
Military Construction	✓	✓	✓	✓			
Transportation/Treasury	✓						
VA/HUD/Independent Agencies	✓	✓					

The House had passed 11 annual spending bills when members departed Washington, DC on July 25, 2003. The House (See next page)

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P2--Energy Bill, Americans with Disabilities Act, TRANSPORTATION: Transportation Appropriations; **P3**--Fast Lanes, TEA-21 Reauthorization, State Funding Equity; **P4**--AIR-21 Reauthorization, ENVIRONMENT: Air Quality Attainment, 8-Hour

Ozone Standard; **P5**--Arsenic Standards, Water Infrastructure, EPA Appropriations; **P6**--EMERGENCY MANAGEMENT/DISASTER MITIGATION: Homeland Security Appropriations, Transportation Security, Citizen Corps



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will need to pass the Commerce/Justice/State/Judiciary Appropriations and the Transportation/Treasury Appropriations when it resumes business in September.

The Senate, which remained in session a week later, passed four spending bills before leaving on August 1, 2003. Conference committees will be convened in September to reconcile differences between bills. Articles with more information on appropriations for Departments of Homeland Security and Transportation and the US Environmental Protection Agency programs appear elsewhere in this issue of the *APWA Washington Report* (Please see page 1 index)

The annual appropriations process is behind schedule this year due to a delay earlier this year in the distribution of allocations to each of the 13 appropriations subcommittees responsible for drafting spending bills.

Increasingly, Congress has passed extensions known as Continuing Resolutions to keep federal programs funded when a new fiscal year begins without an approved appropriation.

Energy Bill

SENATE PASSES COMPREHENSIVE ENERGY LEGISLATION

In order to pass a comprehensive energy bill before the August recess, the Senate Republican leadership abandoned efforts to pass its bill, S14, and instead brought to the Senate floor energy legislation drafted by the Democratic leadership in the last Congress. The legislation, now numbered HR4, passed by a vote of 84-14 on July 31, 2003.

The bill will go to conference in September with the House-passed bill. The legislation would:

- ban oil exploration in the Arctic National Wildlife Refuge,
- require the Department of Transportation to propose an increase in fuel economy standards for passenger vehicles,
- mandate doubling of ethanol production to five billion gallons annually within the next 10 years, and
- include financial incentives for a proposed natural gas pipeline from Alaska to the lower 48 states.

Americans with Disabilities Act

HIGH COURT CHOOSES NOT TO REVIEW SIDEWALK CASE

The U.S. Supreme Court refused to hear an appeal of a lower court ruling that requires the city of Sacramento, CA to make all public sidewalks accessible to people with disabilities. Shortly before the high court decision on June 27, 2003, the city of Sacramento announced an agreement that it would drop its appeal and dedicate 20 percent of designated transportation funds for the next 30 years to improve sidewalks, crosswalks and curb ramps.

A class action suit against the city in 1999 led to a 9th Circuit U.S. Court of Appeals ruling that the city was required under the Americans with Disabilities Act to ensure that sidewalks were clear and accessible. The city of Sacramento appealed the decision, saying that it would cost billions of dollars to meet the requirements. The appeal was supported by the US Conference of Mayors and the National League of Cities, but was opposed by the US Department of Justice.

TRANSPORTATION

Transportation Appropriations

APPROPRIATORS RESTORE ELGIBILITY OF TRANSPORTATION ENHANCEMENTS

The House Appropriations Committee, in a rare reversal of subcommittee action, voted to restore funding eligibility of Transportation Enhancements (TE) projects, as part of a broader package to fund federal transportation programs next fiscal year.

The committee also added funds cut from public transportation New Starts program, the Essential Air Service Program (EAS) and Amtrak when the committee approved the FY04 Transportation/Treasury Appropriations bill on July 25, 2003. The cuts were contained in a subcommittee bill passed July 11, 2003.

As passed by the full committee, the bill provides \$33.4 billion for the federal highway program, \$900 million less than the subcommittee approved, but \$2.7 billion more than current funding. It would change current law to make TE program expenditures optional. Current law requires states to spend 10 percent of Surface Transportation Program funds on TE programs, which include restoration of historic transportation facilities and bike and pedestrian trails.

For public transportation the bill provides \$7.2 billion, up from the \$7.1 billion approved by the subcommittee. The committee also agreed to add \$110 million to the New Starts program, funding it at \$1.2 billion.

The Airport Improvement Program, administered by the Federal Aviation Administration, is funded at \$3.4 billion, and funding for the Essential Air Service (EAS) program was restored to the current level of \$113 million, up from subcommittee approved level of \$47 million.

Funding for Amtrak was increased from \$520 million to \$900 million, and provisions in the subcommittee bill which would have allowed states flexibility to use highway funds for Amtrak were removed.

The bill is expected to be considered on the House floor in September. The Senate has not yet addressed its bill.

Fast Lanes

SENATE BILL WOULD ALLOW STATES TO COLLECT FEES FOR HIGHWAY EXPANSION

Senator Wayne Allard (R-CO) has introduced legislation designed to provide states with additional revenue for interstate highway expansion. The Freeing Alternatives for Speedy Transportation Act, S1384, known as the FAST Act, is a companion bill to HR1767, introduced earlier in the House by Representatives Mark Kennedy (R-MN) and Adam Smith (D-WA),.

The legislation would permit states and public or private groups to collect fees to finance construction of additional lanes on the Interstate Highway System if those lanes will reduce traffic congestion. The bill allows the collection of a user fee on expansion lanes only (the existing lanes remain free of charge) and sunsets the fee once the expansion is paid off.

TEA-21 Reauthorization

AS EXPIRATION DATE DRAWS NEAR, EXTENSION LIKELY

The likelihood that Congress will have to consider a temporary extension of the Transportation Equity Act for the 21st Century (TEA-21) became all but inevitable as the House and Senate began their August recess without the authorizing committees having introduced reauthorization legislation. The reason: Congress will have approximately only 20 legislative days in a busy legislative calendar to act on a successor to TEA-21, when lawmakers return in early September. TEA-21 expires on September 30, 2003.

Leaders of the authorizing committees in the House and Senate say they are prepared to markup bills in September. Sen. James Inhofe (R-OK), chair of one of the four Senate committees with jurisdiction over reauthorization, the Environment and Public Works Committee, said he plans to mark up his committee's bill in the first week of September. The only committee to have marked up reauthorization legislation is the Senate Commerce, Science and Transportation Committee, which passed safety provisions to be incorporated into a larger reauthorization package.

Major differences among lawmakers and the Administration over funding and financing issues, including whether to raise the federal motor fuels tax, index it or to use bond financing to increase funding, have delayed action.

Senate authorizers support a \$311 billion bill, while House authorizers support a \$375 billion bill. The Bush Administration reiterated its opposition in June to increasing or indexing motor fuel taxes. The Administration released its \$247-billion reauthorization proposal, the *Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003* (SAFETEA) in May 2003.

State Funding Equity

ALLIANCE CALLS FOR MAINTAINING CURRENT HIGHWAY PROGRAM FORMULA

A coalition of six states has formed in Congress to advocate maintaining the status quo of 90.5 percent return on each state's contribution to the Federal Highway Trust Fund. The Fair Alliance for Intermodal Reinvestment, FAIR, was formed as Congress considers reauthorizing the Transportation Equity Act for the 21st Century (TEA-21), which established the current state return.

FAIR's counterpart is the States' Highway Alliance for Real Equity, or SHARE coalition, comprising 17 'donor' states advocating a 95 percent return for each state. Donor states contribute more to the Highway Trust Fund than they
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receive for their highway programs.

Funding equity was a divisive issue during authorization of TEA-21.

AIR-21 Reauthorization

PRIVATIZING AIR TRAFFIC CONTROLLERS JEOPARDIZES CONFERENCE AGREEMENT

A conference report on legislation to reauthorize Federal Aviation Administration (FAA) programs could face a difficult floor fight in September because of provisions added in conference to permit privatizing air traffic control functions.

Congress this year has been working on legislation to reauthorize the Aviation Investment and Reform Act for the 21st Century, AIR-21, which expires on September 30, 2003. The conference report, HR2115, provides \$62 billion over four years for FAA programs, including the Airport Improvement Program (AIP), reauthorized at \$3.4 billion in 2004 and increasing by \$100 million annually through 2007. The report limits the amount of AIP funding available for capital projects intended to make security upgrades and authorizes a \$500 million fund for security projects.

The conference report restructures the Essential Air Service (EAS) Program to permit small communities to apply for grants, rather than to provide subsidies to airlines for service, and it creates a pilot program where up to 10 communities within 100 miles of a hub airport would have to provide a 10 percent match on EAS funding. The report also increases the number of long-distance slots at Reagan Washington National Airport.

Bills passed earlier this year by the House and Senate included prohibitions against traffic control privatization, which drew veto threats from the White House. The conference report was changed to prohibit privatization of air traffic controllers only until 2007, but to allow support services to be privatized immediately.

The changes drew protests from a number of lawmakers, who vowed to defeat the conference report when it reached the House and Senate floors. Conference reports cannot be amended and are subject to an up or down vote.

ENVIRONMENT

Air Quality Attainment

EPA WOULD SUPPORT LEGISLATION TO CODIFY ATTAINMENT DEADLINE EXTENSION

The US Environmental Protection Agency (EPA) would support legislation codifying an EPA policy to extend the air quality attainment deadlines for areas which are out of attainment due to pollution conveyed from other areas. Several Court rulings have invalidated the EPA policy.

Jeffrey Holmstead, assistant administrator for air and radiation, stated the agency's position at a House Energy and Air Quality Subcommittee hearing July 22, 2003. The extension policy was adopted in 1998 to allow some areas to come into compliance with ozone standards because those areas had ozone generated elsewhere. A number of federal court decision in 2002 ruled that the policy violated the Clean Air Act.

Representative Joe Barton (R-TX), who chairs the Energy and Air Quality Subcommittee, reportedly has not made a decision on whether or not he would introduce legislation.

8-Hour Ozone Standard

EPA PROPOSES DRAFT REGULATIONS TO IMPLEMENT NEW STANDARD

The U.S. Environmental Protection Agency (EPA) is requesting public comment on draft regulatory text for implementing the proposed 8-hour ozone standard. The draft regulatory text accompanies EPA's June 2, 2003 proposed plan to implement the stricter standard for ozone. The 8-hour standard was issued in 1997 under the Clean Air Act to replace the one-hour standard.

Implementation of the new standard will be managed by state, local and tribal authorities. The comment deadline for the draft regulatory text will be set 30 days from the date the draft rule was published in the *Federal Register* early in August. More information about the proposed rule and some fact sheets are posted on EPA's website,

www.epa.gov/airlinks/airlinks4.html.

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Arsenic Standards

LEGISLATION INTRODUCED TO HELP COMMUNITIES MEET NEW ARSENIC STANDARDS

Senator Pete Domenici (R-NM) has introduced legislation that would authorize \$11.4 billion over six years to help communities comply with new federal maximum contaminant levels for arsenic.

The Community Drinking Water Assistance Act, S1432, cosponsored by Senators Jeff Bingaman (D-NM) and Chuck Hagel (R-NE) provides \$1.9 billion per year in the form of grants from fiscal years 2004 through 2009. The legislation would authorize funds for grants to disadvantaged communities with populations of less than 200,000. Towns with less than 50,000 people would receive at least 20 percent of the grant funds. All grants would require a 10 percent nonfederal cost share.

According to sources in Domenici's office, the legislation would also authorize funds to help larger areas with naturally occurring arsenic in groundwater including Albuquerque, NM; Bernallillo and Sandoval counties, NM; El Paso County, TX; Mesquite and Washoe counties, NV; and Scottsdale, AZ.

The Environmental Protection Agency in 2006 will begin imposing new 10 parts per billion (ppb) arsenic standards for drinking water. The level currently stands at 50 ppb.

Water Infrastructure

HOUSE SUBCOMMITTEE PASSES TWO WATER PROJECT BILLS

The House subcommittee on Water Resources and the Environment has passed the following two bills providing funding for water projects:

(1) HR1560, The Water Quality Financing Act of 2003, introduced in the House by Transportation and Infrastructure Chair Don Young (R-AK) and Water Resources and Environment Subcommittee Chair John J. Duncan, Jr. (R-TN), authorizes \$20 billion over five years to capitalize State Revolving Loan Funds. (The Environmental Protection Agency (EPA) and the Congressional Budget Office (CBO) and the Water Infrastructure Network, of which APWA is a member, have projected the annual spending gap between current and needed levels of infrastructure spending to be as high as \$9.5 billion, \$11 billion, and \$12 billion, respectively.)

(2) HR2557, The Water Resources Development Act of 2003 (WRDA), legislation funding the Army Corps of Engineers, also was introduced by Representatives Young (R-AK) and Duncan (R-TN). It authorizes more than \$4 billion worth of beach erosion, dredging, dam and other water projects, including \$205 million for a flood-control project in California. The subcommittee did not debate the Corp reform issue. It's expected to be debated at the full committee markup.

EPA Appropriations

HOUSE PROVIDES \$8 BILLION FOR FY04 FUNDING

The House of Representatives has approved approximately \$8 billion in fiscal year 2004 (fy04) funding for the Environmental Protection Agency (EPA). HR 2861 was passed July 25, 2003, and provides \$375 more than the President's request and \$74 million below current funding levels. Nearly half of the agency's budget, a total of \$3.6 billion, has been allocated for state and tribal assistance grants, more than the \$3.1 billion requested by the Administration. Highlights include:

- \$5.4 million increase to the President's EPA enforcement fy04 request of \$503 million.
- \$1.2 billion provided to the Clean Water State Revolving Loan Fund (CWSRF), \$150 million less than current levels but an increase of \$500 million above the President's request of \$850 million.
- \$850 million provided to the Safe Drinking Water State Revolving Loan Fund (DWSRF), the same amount requested by the Administration and the same as the current fiscal year.
- \$180 million for grants to communities for the construction of improved drinking water, wastewater and stormwater infrastructures.
- \$1.2 billion in program assistance grants covering air and water pollution, pesticides, hazardous waste, underground storage tanks and enforcement.
- \$171 million for brownfields.
- \$1.3 billion for Superfund, includes an increase of \$39 million for toxic cleanups.

There has been no movement of the bill in the Senate.

EMERGENCY MANAGEMENT/DISASTER MITIGATION

Homeland Security Appropriations

SENATE PASSES FY04 SPENDING PLAN AT \$28.5 BILLION

The Fiscal Year 2004 (FY04) Department of Homeland Security (DHS) \$28.5 billion appropriations bill passed the Senate July 24. It is \$1 billion more than the President's budget request and below the House level of \$29.4 billion.

Senators Christopher Dodd (D-CT) and Debbie Stabenow (D-MI) failed in an attempt to add \$14.4 billion to the overall bill with the money going largely to local responders such as firefighters, law enforcement and emergency personnel. Eight last-day amendments that sought to increase some level of funding in the bill were rejected.

The DHS Office of Domestic Preparedness receives \$3.6 billion for the Nation's first responders to prepare for future terrorist events that includes:

- \$1.3 billion for the State and local basic formula grants;
- \$500 million for State and local law enforcement terrorism prevention grants;
- \$750 million for high-threat urban area discretionary grants;

FEMA, now referred to as Emergency Preparedness and Response receives \$3.6 billion for its operations that includes:

- \$2 billion for disaster relief;
- \$200 million for flood map modernization activities;
- \$153 million for the emergency food and shelter program;
- \$165 million for the Emergency Management Performance Grants; and
- \$38.1 million for the Office of Cerro Grande fire claims.

The bill now goes to conference committee where the differences between the House and Senate versions will be reconciled.

Transportation Security

REPORT LOOKS INTO ROLES/RESPONSIBILITIES FOR SECURING TRANSPORTATION

A General Accounting Office (GAO) report examining transportation security found that the roles and responsibilities of the Transportation Security Administration (TSA), now part of the Department of Homeland Security (DHS), and of the Department of Transportation (DOT) in securing the transportation system have not been clearly defined. This, the report concludes, creates the potential for overlap, duplication and confusion as both entities move forward with their security efforts.

In the report, *Transportation Security: Federal Action Needed to Help Address Security Challenges*, the GAO recommends that DHS and DOT use a mechanism, such as a memorandum of agreement, to clarify and delineate DOT's and TSA's roles and responsibilities in transportation security matters. DHS and DOT generally agreed with the report's findings; however, they disagreed with the recommendation. The report, numbered GAO-03-843, is available on the GAO website, www.gao.gov.

Citizen Corps

APWA BOARD MEMBER LUX SPEAKS AT CITIZEN CORPS PANEL

APWA Board Member Larry Lux represented APWA at a July 30 Citizen Corps meeting in Washington, DC. Lux participated in a panel titled, "Engaging the First Responders: A Panel Discussion from Law Enforcement, Fire, Medical Services, and Public Works." His discussion focused on the issues faced by public works during an emergency, and how to engage citizens in the citizen corps movement. Washington, DC Mayor Anthony Williams and Department of Homeland Security (DHS) Secretary Tom Ridge were also in attendance.

Lux also represented APWA in the second NEMA-led homeland security partnership summit in June.

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