

APWA Washington REPORT

November 2002

INTERGOVERNMENTAL

Election 2002

REPUBLICANS WIN SENATE, RETAIN CONTROL OF THE HOUSE

Republicans won control of both the U.S. Senate and U.S. House of Representatives in a mid-term election that had most forecasters unsure which party would control either chamber up to the final hours before the election. At this point, Republicans have 51 seats in the 108th Congress, while Democrats have 47. There is one Independent, James Jeffords of Vermont, who caucuses with Democrats. One contest in Louisiana will be decided by a runoff election on December 7, when incumbent Senator Mary Landrieu (D) will face Republican challenger Suzanne Haik Terrell.

In the House of Representatives, Republicans increased their margin in the 108th Congress by at least three seats. They now have 227 seats to the Democrats' 204, with one Independent. Four races are still being contested.

With control of the Senate in Republican hands, it is expected that James Inhofe (R-OK) will replace James Jeffords as chair of the Senate Environment and Public Works Committee, where legislation affecting water infrastructure investment, reauthorization of TEA-21 and other issues related to public works infrastructure and programs will be considered during the 108th Congress. Don Young (R-AK) is expected to remain chair of the House Transportation and Infrastructure Committee, which will have jurisdiction over the same public works issues.

Thirty-six states had gubernatorial races. Election results produced a close party balance, with 24 governorships belonging to Democrats and 25 to Republicans. The Alabama contest is undecided and facing a challenge.

2002 State Ballot Measures

VOTERS DECIDE STATE AND LOCAL FUNDING MEASURES FOR INFRASTRUCTURE

Voters in 30 states were offered the chance to decide 153 statewide ballot measures in election 2002 – the lowest number since 1986, and a 40 percent drop over the number in the 2000 general elections, according to ballotwatch.org.

On the ballot this year were 47 initiatives (citizen-placed advisory questions, memorials, statutes or constitutional amendments); 102 legislative referendums (governmental propositions submitted to the people for their approval or rejection); and four popular referendums (specific legislation referred by citizens and enacted by their legislatures for the voters to accept or reject).

Hot issues for voters were drug policy reform measures, education reform acts, and election reform measures. Tax cuts generally failed across the country, while education measures were successful. Following is a summary of infrastructure related referendums on the ballots on Tuesday, November 5, 2002.

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Alaska

PASSED: Bonding Proposition B—State Guaranteed Transportation Revenue Anticipation Bonds and State General Obligation State Transportation Project Bonds—totaling \$226,719,500

California

PASSED: Proposition 50- Authorizes \$3.44 billion in bonds for various clean water and drinking water projects.

FAILED: Proposition 51- Re-allocates 30% of certain state revenues to a trust fund for transportation improvement. The money would be earmarked and used only for construction and reconstruction of a variety of different modes of transportation.

Louisiana

FAILED: Number 10: 1233- Would create programs to assist farmers for the development and enhancement of surface water resources, and create the Drought Protection Trust Fund.

Maine

PASSED: Question 2: Bond Issue- Would authorize general bonds for water pollution control and other assorted environmental issues.

PASSED: Question 3: Constitutional amendment- Would allow loans to be repaid with federal transportation dollars.

Montana

FAILED: I-145: Would acquire hydroelectric dams and operate them for the benefit of Montanans.

Nevada

PASSED: Question 1: Asks voters to determine if the State be authorized to issue general obligation bonds in an amount not to exceed \$200 million in order to preserve water quality; protect open space, lakes, rivers, wetlands and wildlife habitat, and restore and improve parks, recreational areas, and historic and cultural resources.

PASSED: Question 10: (Clark County)- Authorizes the Board of Clark County Commissioners to implement a Regional Transportation Commission of Southern Nevada 2002 Fair Share Funding Program which will generate approximately \$2.7 billion over 25 years from taxes on developers, aviation fuel, and retail sales. This would fund improvements in local transportation, including additional street and highway projects, new and expanded transit, added transit services for senior citizens, and air quality improvements, and to make southern Nevada eligible to receive up to an additional \$3 billion in state and federal funding for transportation and air quality.

New Mexico

PASSED: General Obligation Bond D– Would authorize the issuance and sale of state facilities improvement and equipment bonds.

FAILED: General Obligation Bond E- Would authorize the issuance and sale of water project bonds.

Oklahoma

PASSED: State Question 693 – Would exempt storm shelters from ad valorem tax, therefore encouraging their installation. Storm shelters are extremely useful in areas subject to high wind hazards.

Oregon

PASSED: 15- Would authorize certain bonds for seismic rehabilitation of public education buildings.

PASSED: 16- Would authorize certain bonds for seismic rehabilitation of emergency services buildings.

Rhode Island

PASSED: Question 3- Would authorize the State to issue general obligation bonds, refunding bonds, and temporary notes in an amount not to exceed \$563,500,000 to match federal funds. Would provide direct funding for

improvements to the States' highways; roads and bridges; replace and repair transportation maintenance facilities and purchase buses; rehabilitate existing buses.

FAILED: Question 4- Would authorize the State to issue general obligation bonds, refunding bonds and temporary notes in an amount not to exceed \$11,000,000 for road and utility infrastructure, building demolition, site preparation and pier rehabilitation at the Quonset Point/Davisville Industrial Park.

Virginia

FAILED: Residents of several counties in Northern Virginia and Hampton Roads area voted on proposals to raise the sales tax one-half cent, with the money to be used for transportation improvements for their respective areas.

Washington

FAILED: Referendum 51- Would impose a 9-cent per gallon increase in the state's gasoline tax. The money would be used to fund transportation improvements across the state.

FY03 Appropriations

LAME DUCK SESSION EXPECTED TO ADDRESS UNFINISHED APPROPRIATIONS

The 107th Congress returns for a lame duck session November 12 with only two appropriations bills signed into law. Prior to recessing for the mid-term elections, Congress completed work on the \$355 billion Defense Appropriations bill and the \$10.5 billion Military Construction Appropriations bill, both of which were signed into law October 23, 2002.

Currently, all other federal programs without an enacted appropriation are operating under a sixth short-term continuing resolution (CR), due to expire November 22. CRs are funding federal programs at last fiscal year's levels, with the exception that the federal highway program is capped at an annual level of \$27.7 billion, which is the House Appropriations Committee's proposed level, although states may obligate at the 2002 fiscal year funding level of \$31.8 billion.

Just five bills have been passed this year in the House of Representatives: the Defense, Interior, Legislative Branch, Military Construction and Treasury/Postal bills. The Senate has further to go, having completed only three bills this year: the Legislative Branch, Military Construction and Defense bills.

Status of FY2003 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			✓				
Defense	✓	✓	✓	✓	✓	✓	✓
District of Columbia	✓		✓				
Energy & Water	✓		✓				
Foreign Operations	✓		✓				
Interior	✓	✓	✓				
Labor/HHS/ Education			✓				
Legislative Branch	✓	✓	✓	✓			
Military Construction	✓	✓	✓	✓	✓	✓	✓
Transportation	✓		✓				
Treasury/Postal	✓	✓	✓				
VA/HUD/ Independent Agencies	✓		✓				

US Access Board

APWA SUBMITS COMMENTS ON ACCESSIBLE PUBLIC RIGHTS-OF-WAY

In response to a request for public comments, APWA submitted recommendations to the Access Board's draft guidelines on accessible public rights-of-way, which cover pedestrian access to sidewalks and streets. APWA's

comments reflect statements approved by APWA's Engineering and Technology committee and are consistent with APWA's policy principles of respect for local authority, reasonable regulations and protection from unfunded mandates. The comments were outlined in a letter to the Access Board submitted October 28, 2002.

The guidelines were developed under the Americans with Disabilities Act (ADA), which covers access to a wide range of facilities in the public and private sectors, and the Architectural Barriers Act (ABA), which requires access to certain federally funded facilities. The new provisions would supplement the Board's ADA and ABA accessibility guidelines by adding a new chapter specific to public rights-of-way.

The Board's aim in developing the guidelines was to ensure that access for persons with disabilities is provided wherever a pedestrian way is newly built or altered. The draft guidelines were based on recommendations from an advisory committee chartered by the Board. The Board sought public comments on the draft guidelines for use in developing a proposed rule.

For more information about the Access Board, or the draft guidelines on accessible public rights-of-way, visit www.access-board.gov.

Public Rights-of-Way

APWA SUPPORTS LOCAL R-O-W MANAGEMENT AT FCC FORUM

APWA joined several local government organizations in support of deployment of broadband services and preservation of the rights of local government to manage the public rights-of-way and to charge just and reasonable compensation. APWA and local government organizations expressed these principles at a Federal Communications Commission (FCC) public forum in Washington, DC.

APWA joined the National Association of Telecommunications Officers and Advisors (NATOA), National League of Cities (NLC), United States Conference of Mayors (USCM) and National Association of Counties (NACo) to issue a statement of principles, as follows:

- * Local government officials want, need and promote the universal availability of broadband services. Universal access to broadband services is in the best interests of our constituents, both business and residential.
- * Because state and local elected officials have a fiduciary responsibility to their citizens—the taxpayers—to manage all public property for its greatest potential utilization and value, we cannot support a national policy of blind loyalty and commitment to broadband “at any cost.” Such an unbalanced approach of unfettered broadband deployment results in taxpayers at the local level subsidizing private industry.
- * Congress achieved a balanced approach to the deployment of such services when it enacted Section 253 of the Telecommunications Act of 1996. Section 253 preserves the rights of local government to manage their own rights-of-way and charge just and reasonable compensation for such access.
- * Local government is committed to examining how it might streamline the rights-of-way process so long as such streamlining does not prejudice local government decision-making.

The FCC forum focused on the jurisdictional question regarding state/local vs. federal authority; fair and reasonable compensation for use of rights-of-way; perspectives from the administration; and policy approaches to rights-of-way management. The forum was held October 16, 2002.

To see the statement of principles log onto: http://www.apwa.net/Documents/HotTopics/FCC_ROW_statement.pdf

TRANSPORTATION

Environmental Streamlining

APWA OFFERS RECOMMENDATIONS ON IMPLEMENTATION OF EXECUTIVE ORDER

APWA joined key transportation and environmental organizations to discuss plans for implementing a Presidential Executive Order to enhance environmental stewardship and streamline the environmental review process for transportation projects.

John Herzke, P.E., City Engineer of Virginia Beach, VA, and member of APWA's TEA-21 Reauthorization Task Force, represented APWA at the meeting held November 1, 2002 at US Department of Transportation headquarters in Washington, DC. Participants discussed best practices in environmental stewardship and suggested criteria for the US Department of Transportation to consider for selecting projects for expedited review under the Executive Order.

Executive Order 13274 was issued September 18, 2002. It requires the Secretary of Transportation to designate a list of high priority transportation projects to receive expedited review. Governors, Metropolitan Planning Organizations (MPO) and Airport Authorities were invited to nominate projects, which will be placed on a project review register. Project nominations are due November 12, 2002. The Department of Transportation will consider nominations from any source but strongly encourages nominations to be submitted through the appropriate State agency. The full list of projects will be announced in December 2002.

The Executive Order also established an Interagency Task Force, chaired by the Secretary of Transportation, to monitor and assist agencies in their efforts to expedite a review of transportation infrastructure projects and to identify procedures to streamline the process required to provide approvals. The task force includes senior officials from federal departments and agencies.

Seven projects have already been designated to receive expedited review. On October 31, Secretary of Transportation Mineta announced the following projects: the Philadelphia International Airport runway extension; Community and Environmental Transportation Acceptability Process in Riverside, CA; Interstate 93 in New Hampshire; Chittenden Circumferential Highway in Vermont; Louisville-Southern Indiana Ohio River Bridges Project; St. Croix River Crossing at Stillwater, MN; and Interstate 69 in Texas.

For more information about the implementation of the Executive Order visit: <http://www.fhwa.dot.gov/stewardshipeo>.

Transportation Regulations

REGULATORY ACTIVITIES CAN BE MONITORED ON DOT WEBSITE

The US Department of Transportation (USDOT) now offers on its website a report that describes significant transportation rulemakings currently under development and those recently completed. For each rulemaking, the report contains basic information, including a summary and the anticipated effects of the regulation. The report is available at <http://regs.dot.gov>.

The report also includes a schedule whenever one has been set for a rulemaking. The report, including the schedule, will be updated monthly, showing new projected dates when there are changes and dates for milestones that have been completed. These schedules begin with the date of submission to the Office of the Secretary of Transportation, and then follow the rulemaking through Office of Management and Budget review and subsequent publication in the *Federal Register*.

The Department will monitor its own progress in this regulatory report by using color codes to indicate whether rules are on or behind schedule. When there are delays, the report will include an explanation.

The public can use this report to identify USDOT rulemakings of special interest, and then sign up to automatically receive email notification whenever the Department places a substantive document, such as a notice of proposed rulemaking, in the public docket. Instructions for subscribing, free of charge, to this automatic email notification or "List Serve," are at <http://dms.dot.gov/>.

Traffic Control Devices

FHWA REQUESTS COMMENTS ON PROPOSED REVISIONS TO REGULATION

The Federal Highway Administration (FHWA) proposes to revise its regulation on traffic control devices on federal-aid and other highways, which prescribes procedures for obtaining basic uniformity of traffic control devices on all streets and highways. Recently, FHWA underwent agency reorganization and various offices and position title changes were made within the headquarters and field offices. Therefore, FHWA proposes to provide nomenclature changes and to remove a reference to an outdated regulation.

Comments must be made on or before December 30, 2002. For more information, contact Ernest Huckaby, Office of Transportation Operations, at 202-366-9064, or see the notice under Federal Highway Administration in the October 30, 2002 *Federal Register*.

ENVIRONMENT

EPA Appropriations

HOUSE COMMITTEE APPROVES INCREASED FUNDING FOR EPA

Before recessing for the elections, the House Appropriations Committee voted to increase EPA funding for fiscal year 2003 by \$126 million more than the current funding level, and by \$583 million more than the President's budget request. The VA-HUD and Independent Agencies Appropriations bill, which funds EPA programs, provides a total of \$8.3 billion for the agency, \$95 million less than the Senate appropriations bill. The House bill was approved October 9, 2002.

The House bill provides \$1.3 billion for the Clean Water State Revolving Loan Fund and specifies that \$75 million must be used for interest-free loans to communities or nonprofit groups "providing treatment that minimizes sewage or stormwater discharges using technologies including... decentralized or distributed stormwater controls, decentralized wastewater treatment, low-impact development practices, conservation easements, stream buffers or wetlands restoration."

In addition, the bill provides \$850 million for the Drinking Water State Revolving Loan Fund; \$195 million for Section 106 grants; \$250 million for Section 319 nonpoint source pollution grants; \$217 million for State Air Grants; \$1.4 billion for Superfund; and \$21 million for EPA Watershed Initiative Program.

Safe Drinking Water Act

SUIT CHALLENGES DRINKING WATER ACT, ARSENIC STANDARD'S CONSTITUTIONALITY

Citing the arsenic standard and the Safe Drinking Water Act (SDWA) to be unconstitutional, the State of Nebraska has filed a lawsuit against the Environmental Protection Agency (EPA). The city of Alliance, Nebraska and the Competitive Enterprise Institute, a Washington, DC organization representing five water utilities, joined the state in the lawsuit.

The state alleges that the SDWA exceeds the authority of the commerce clause of the US Constitution, according to the brief filed in the District of Columbia Circuit Court on October 21. "The Safe Drinking Water Act, the statutory authority for EPA's regulation, was enacted with minimal regard for contagion and interstate commerce, factors which were the original focus of federal drinking water regulation. For these reasons, both the standard and the Act exceed Congress's regulatory power under the Interstate Commerce Clause," the brief stated.

The brief also claims that the arsenic rule and SDWA violate both the First and Tenth amendments. "They unjustifiably intrude on the protection of health, an area that has long been a state government function in the absence of such special factors as communicability." The brief claims the Tenth amendment to be violated because the arsenic rule "imposes affirmative informational requirements on state and local governments."

A three judge panel in the U.S. Court of Appeals for the District of Columbia Circuit will hear oral arguments on April 15, 2003. EPA has until January 21, 2003 to file its formal court response.

The arsenic lawsuit is not the first lawsuit Nebraska has filed. In 1998, Nebraska challenged the legality of SDWA when it sued EPA over a pending rule regulating lead and copper levels in drinking water. A federal court rejected the argument, claiming that the rule had long been implemented.

Arsenic Treatment

EPA SOLICITS APPLICATIONS FOR ARSENIC TREATMENT TECHNOLOGIES

In an effort to find products that will ease the strain on utilities trying to meet new arsenic standards, the US Environmental Protection Agency is requesting proposals for commercially available arsenic removal technologies.

The eight to twelve chosen projects will not receive funds but rather the technology will be purchased by the government for a full year of operational use at small utilities. The request for applications closes January 7, 2003.

For additional information, log onto EPA's website at <http://www.epa.gov/ncer> under Announcements.

Effluent Guidelines

COMMENT PERIOD EXTENDED FOR CONSTRUCTION AND DEVELOPMENT CATEGORY

US EPA has extended the comment period for the Proposed Effluent Guidelines for the Construction and Development Category. The new comment deadline is December 23, 2002. EPA decided to extend the comment period after receiving requests from several organizations.

The proposed rule was published on June 24, 2002 (67 FR 42644). See the proposal notice for information on how to submit comments. The proposal and related documents are available on EPA's website at <http://www.epa.gov/waterscience/guide/construction/>.

Wastewater Infrastructure Security

HOUSE APPROVES GRANT FUNDING FOR VULNERABILITY ASSESSMENTS

Bipartisan legislation that would administer grants for vulnerability assessments, technical assistance and security enhancements at the nation's wastewater treatment works has passed the U.S. House of Representatives.

The Wastewater Treatment Works Security Act of 2002, HR 5169, would authorize \$200 million for wastewater utilities to conduct vulnerability assessments and implement security enhancements at publicly owned treatment works, \$15 million for technical assistance on security measures to small wastewater utilities, and \$5 million for the further development and refinement of vulnerability self-assessment methodologies and tools for wastewater utilities.

The bill was introduced by Transportation and Infrastructure Committee Chairman Don Young (R-AK), Ranking Member James Oberstar (D-MN), Water Resources and Environment Subcommittee Chairman John Duncan (R-TN) and Ranking Member Peter DeFazio (D-OR). The legislation was approved by the House of Representatives on October 8, 2002.

Chairman Duncan stated, "Limited attention has been given to security issues associated with our nation's wastewater treatment plants. These authorizations are designed to help wastewater treatment utilities take immediate, necessary steps to improve security at their facilities."

The bill has gone to the Senate where it has been referred to the Committee on the Environment and Public Works and will likely be voted on during the lame duck session after elections.

Water Quality Cooperative Agreements

EPA OFFERS ASSISTANCE FOR INNOVATIVE WET WEATHER PROJECTS

US EPA is soliciting Initial Proposals (IPs) from States, Tribes, local governments, universities, non-profits, and other eligible entities interested in applying for Federal assistance for Water Quality Cooperative Agreements under the Clean Water Act section 104(b)(3).

EPA intends to award an estimated \$3.1 million to eligible applicants through assistance agreements ranging in size from \$10,000 up to \$500,000 for Water Quality Cooperative Agreements, which are for unique and innovative projects that address the requirements of the National Pollutant Discharge Elimination Systems (NPDES) program with special emphasis on wet weather activities, i.e., storm water, combined sewer overflows, sanitary sewer overflows, and concentrated animal feeding operations as well as projects that enhance the ability of the regulated community to deal with non-traditional pollution problems in priority watersheds.

From the IPs received, EPA estimates that 30 to 35 projects may be selected to submit full applications.

The Agency intends to make available at least \$200,000 per year of the annual appropriation for Water Quality Cooperative Agreements, from FY 2001 through FY 2005, for projects which address cooling water intake issues to include technical and environmental studies. For FY 2003 it is expected that \$250,000 will be available for projects addressing cooling water intake issues.

EPA will consider IPs received on or before 5 p.m. Eastern Time, December 30, 2002. IPs received after the due date, may be reviewed at EPA's discretion. The Agency reserves the right to reject all Initial Proposals and make no awards. For more information contact: Barry Benroth by telephone at 202-564-0672 or by E-mail at benroth.barry@epa.gov.

Brownfields

EPA ACCEPTING GRANT PROPOSALS TO REVITALIZE BROWNFIELD SITES

US EPA is accepting proposals for national brownfields assessment, revolving loan fund and cleanup grants. These grants are part of the new Small Business Liability Relief and Brownfields Revitalization Act signed by President Bush in January 2002 to help states and communities around the country clean up and revitalize Brownfield sites.

Grants may be used to address sites contaminated by petroleum and hazardous substances (including substances mixed with petroleum.) The brownfields assessment grants (each funded up to \$200,000 over two years) provide funding for a grant recipient to inventory, characterize, assess and conduct planning and community involvement related to brownfield sites.

Grants will be awarded on a competitive basis. Initial proposals, due December 16, 2002, will be evaluated and ranked by EPA regional evaluation panels. EPA will then determine those initial proposals that have the highest rankings, and invite those applicants to prepare and submit final proposals. Final proposals, which are due March 5, 2003, will be evaluated and ranked by National Evaluation Panels composed of EPA and other federal officials.

For information and assistance regarding the application process, contact the EPA Call Center at 703-412-9810 or 1-800-424-9346. The proposal guidelines are also available at: <http://www.epa.gov/brownfields/>.

Isolated Wetlands

HOUSE SUBCOMMITTEE ASKS ABOUT STATUS OF ANTICIPATED WETLANDS GUIDANCE

The Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) have been asked by a House subcommittee to respond to an inquiry regarding the status of proposed guidance on federal jurisdiction over isolated wetlands. Rep. Doug Ose (R-CA), chair of the House Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, sent a letter October 17, 2002 to officials in both agencies, asking when guidance would be sent to EPA and Corps district offices. They were asked to respond by November 13, 2002.

EPA and the Corps are working on guidance and an advanced notice of proposed rulemaking to clarify definitions and other issues raised by a Supreme Court decision in January 2001, *SWANCC v. Army Corps of Engineers*, which invalidated the Migratory Bird rule used to assert authority to regulate isolated wetlands.

During the House subcommittee hearing, representatives from EPA and the Corps stated that they were in the final stages of meetings to develop the guidance and proposed rulemaking, but had no specifics as to when they would be released.

EMERGENCY MANAGEMENT/DISASTER MITIGATION

FEMA Appropriations

HOUSE COMMITTEE APPROVES LOWER FUNDING THAN SENATE

The House Appropriations Committee approved \$800 million less than the Senate in its bill to fund the Federal Emergency Management Agency (FEMA). The committee's fiscal year 2003 VA-HUD and Independent Agencies appropriations bill would set FEMA funding at \$3.6 billion. The Senate Appropriations Committee recommended a funding level of \$4.4 billion in its version of the legislation, which the Committee passed in August 2002. The House passed its bill October 9, 2002.

Specifically, the House bill provides \$1.82 billion for disaster relief; \$250 million for the Pre-Disaster Mitigation Grant Program; \$367 million for the Emergency Management Planning and Assistance program; \$450 million for the Firefighter Assistance Grants; \$153 million for the Emergency Food and Shelter Program; and \$200 million for the Flood Map Modernization Program. The Senate bill proposes \$300 million for the Flood Map Modernization Program.

The House bill is likely to go to conference with the Senate after the November elections in order to have it enacted by the end of the year.

Contributors to this month's Washington Report were: Beth Denniston, Jim Fahey and Heather McTavish.

The Washington Report is edited by Beth Denniston