

# APWA Washington REPORT

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November 2003

### TRANSPORTATION

#### TEA-21 Reauthorization

#### **SENATE COMMITTEE REACHES AGREEMENT ON A HIGHWAY BILL**

Senate Environment and Public Works (EPW) Committee leaders have reached bipartisan agreement on the highway portion of a TEA-21 reauthorization bill, clearing the way for Committee markup on November 12, 2003, shortly before Congress is expected to adjourn for the year. Draft versions of the bill bear the same name as the Bush Administration's proposal, the Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003 (SAFETEA), and the legislation shares many similar policy provisions.

Although funding numbers contained in the draft bill are incomplete, the measure is expected to provide \$255 billion over six years for federal highway and bridge programs, compared to the \$201 billion proposed by the Administration. That level of funding is consistent with the Senate's plan to provide \$311 billion over six years for federal surface transportation programs, the difference allocated to federal transit programs, which are under the jurisdiction of the Senate Banking, Housing and Urban Affairs Committee.

Mirroring the Administration's proposal, the Senate EPW Committee bill adds a new core highway safety program, the Highway Safety Improvement Program, authorized at \$7.9 billion over six years. The new program consolidates existing safety programs and increases flexibility to use funds.

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The bill also includes environmental streamlining provisions, another area of emphasis in the Administration's proposal. The Senate bill designates the US Department of Transportation as the lead agency in the NEPA review process and calls for establishing a coordinated process with concurrent environmental reviews. It specifies a dispute resolution process and includes provisions to synchronize transportation planning and air quality conformity schedules. In addition, the draft bill:

- Continues TEA-21's existing core programs: Interstate Maintenance, National Highway System (NHS), Bridge, Surface Transportation Program (STP) and Congestion Mitigation and Air Quality Improvement Program (CMAQ).
- Includes the Administration's new proposed program to fund ready-to-go highway projects, the Infrastructure Performance and Maintenance Program, providing \$12 billion over six years, double the Administration's level. States would have to begin the projects within six months or lose the funding to other states.
- Does not include obligation limits, firewalls or specific funding formulas.

The committee intends to have the bill considered on the Senate floor early next year. Neither the Senate Banking Committee nor the Senate Finance Committee, which has jurisdiction over tax provisions, has announced a date for release of its committee bill.

In the House of Representatives, the House Transportation and Infrastructure Committee has jurisdiction over both highways and transit programs. Committee leaders support a \$375 billion six year bill. They have not yet set a date for release of a bill, but have said that a draft may be released before December. The House Ways and Means Committee has jurisdiction over the tax provisions.

TEA-21 expired on September 30, 2003, the same day that President Bush signed a five-month temporary extension of TEA-21 into law. The extension maintains TEA-21's program structure and authorizes \$14.7 billion for federal highway program, \$3 billion for the transit program and \$266 million for safety programs. The extension keeps federal transportation programs operating through February 29, 2004.

The temporary extension gives Congress more time to continue work to complete reauthorization. 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. The Bush Administration opposes 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.

**DOT Appropriations**

**SENATE PASSES TRANSPORTATION SPENDING BILL**

Prospects that FY04 funding for transportation programs might be enacted in a stand alone appropriations bill, rather than as part of an omnibus package, improved when the Senate passed the Transportation/ Treasury Appropriations bill (HR 2989).

But action will need to occur quickly to resolve several controversial issues well before a targeted adjournment date to avoid having the legislation rolled into an omnibus package with other unfinished appropriations bills.

A conference committee has convened to reconcile differences between House and Senate bills, but action to complete work on the legislation has been delayed due to provisions in the bill related to lifting the ban on travel to Cuba, privatization and disagreements over Amtrak. Congress has set November 21, 2003 as its adjournment date for the year. A comparison of the bills follows:

<b>HOUSE</b>	<b>SENATE</b>
funds US DOT at \$58.4 billion	Funds US DOT at \$59 billion
includes \$33.4 billion for the federal highway programs	includes \$33.8 billion for the federal highway programs
\$7.2 billion for the federal transit programs	\$7.3 billion for federal transit programs
\$14 billion for federal aviation programs	\$13.2 billion for federal aviation programs
\$900 million for Amtrak	\$1.3 billion for Amtrak

The \$91-billion measure, which includes funding for the US Departments of Transportation (USDOT) and Treasury and for the White House, passed the Senate October 23, 2003. The House of Representatives passed its \$89.6 billion bill in September. Both the House and Senate bills include a provision overturning the travel restriction to Cuba, which the Bush Administration opposes. The House bill also includes language blocking the Administration from privatizing federal jobs. In addition, Amtrak issues, are proving controversial. *For more information contact Jim Fahey in APWA Washington Office 202-408-9541 or [jfahey@apwa.net](mailto:jfahey@apwa.net).*

### **Transportation Conformity**

#### **EPA PROPOSED RULE INCLUDES PROCEDURES FOR NEW 8-HOUR OZONE STANDARD**

US Environmental Protection Agency Acting Administrator Marianne Horinko signed a proposed rule that would amend the transportation conformity regulations to include criteria and procedures for the new 8-hour ozone and fine particulate matter (PM2.5) national ambient air quality standards (NAAQS). The proposal describes the general requirements for conducting conformity determinations for the new NAAQS, such as the conformity test(s) that would apply.

The proposed rule includes PM2.5 as a criteria pollutant subject to transportation conformity and outlines the specific conformity requirements that would apply in PM2.5 non-attainment areas. The proposal also includes a few miscellaneous rule revisions to clarify the existing regulation and improve implementation. The proposed rule was published in the *Federal Register* on November 5, 2003. [A 45-day public comment period on the proposal ends December 22, 2003.](#)

For more information contact Meg Patulski, phone: (734) 214-4842, email: [patulski.meg@epa.gov](mailto:patulski.meg@epa.gov) or visit <http://www.epa.gov/otaq/transp/conform/conf-regs.htm>.

### **AIR-21 Reauthorization**

#### **HOUSE PASSES AVIATION BILL AFTER PRIVATIZATION LANGUAGE REMOVED**

The House of Representatives narrowly approved a modified conference agreement on the federal aviation reauthorization, after language permitting privatization of air traffic control functions was dropped from the agreement. The House approved the conference report to HR 2115 on October 30, 2003. The vote was 211-207.

Several lawmakers in the Senate are prepared to filibuster the conference report unless it is changed to include an affirmative prohibition against privatization. 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 then changed to prohibit privatization of air traffic control jobs only until 2007, but to allow support services to be privatized immediately. The change prompted protests from some lawmakers and threats to defeat the conference report.

The legislation 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. It limits the amount of AIP funding available for capital projects intended to make security upgrades and authorizes a \$500 million fund for security projects.

Congress this year has been working on legislation to reauthorize the Aviation Investment and Reform Act for the 21<sup>st</sup> Century, AIR-21, which expired on September 30, 2003. A Continuing Resolution (CR) is funding certain FAA programs and operations.

## **INTERGOVERNMENTAL**

### **FY04 Appropriations**

#### **OMNIBUS EXPECTED WITH CONGRESSIONAL DEPARTURE PLANNED NOVEMBER 21, 2003**

With only three of the 13 annual appropriations bills enacted as the second Continuing Resolution (CR) expired on November 7, 2003, Congressional leaders worked out an agreement just days before to target November 21, 2003 for adjournment, then passed one more CR lasting through the scheduled adjournment date. An omnibus spending package incorporating all unfinished fiscal year 2004 appropriations bills is being prepared and expected to be passed before adjournment.

The end of fiscal year 2003 arrived September 30, 2003. Congress has passed a series of CRs since then to  
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ensure federal programs without an appropriation were able to continue operating. The House has approved all 13 of its appropriations bills. The Senate has passed all but four. The Defense, Homeland Security and Legislative Branch appropriations are the only bills which had been signed into law by November 7, 2003. The Interior Department conference report was approved November 3, 2003 by the Senate and the bill sent to the President for his signature.

Lawmakers are continuing to work on individual bills but do not have much time to complete them. Likely bills to be incorporated into the final omnibus include Department of Agriculture, Department of Commerce, Justice and State, VA-HUD and Independent Agencies, the District of Columbia, Departments of Labor and Health and Human Services appropriations.

An article with more information on appropriations for the Department of Transportation appears in this issue of the *APWA Washington Report* (See page 2).

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	✓	✓	✓				

**ENVIRONMENT/ENERGY**

**Energy Bill**

**AGREEMENT ON ETHANOL BRINGS BILL CLOSER TO COMPLETION**

Negotiators working on tax provisions in the energy bill (HR 6) reached agreement on the legislation's ethanol provisions after the White House stepped in to help broker a compromise. The agreement includes Senate Finance Committee Chairman Charles Grassley's (R-IA) proposal to change the way ethanol is taxed to include a volumetric excise tax credit to blenders of ethanol and gasoline. The deal, which was reached November 5, 2003, increased chances for completing the legislation this year.

Currently, gasoline blended with ethanol, known as gasohol, receives a tax exemption and is taxed at 13.2 cents per gallon instead of the 18.4 cents per gallon tax on gasoline. The compromise leaves the exemption in place but grants blenders the option of paying the full tax and receiving a tax credit later. A commitment reportedly has been made to enact a full repeal of the ethanol exemption as part of the reauthorization of TEA-21, the expired surface transportation law.

The ethanol compromise is intended to offset the expected impact of the energy bill's renewable fuels mandate on the highway trust fund. As currently structured in the bill, the mandate requires doubling the use of renewable fuels, primarily ethanol, to 5 billion gallons by 2010. Because ethanol is taxed at a lower rate than gasoline, an increase in the use of ethanol was expected to cost the federal highway trust fund as much as \$2 billion annually.

Energy bill conferees still need to resolve disputes over opt-out provisions to the renewable fuels mandate, liability waivers for the fuel additive MTBE, tax subsidies for hybrid vehicles and tax incentives for cleaner burning coal.

### **Administrator Confirmed**

#### **UTAH GOVERNOR LEAVITT IS NEW ENVIRONMENTAL PROTECTION AGENCY HEAD**

Utah Governor Michael O. Leavitt has been confirmed as Administrator for the US Environmental Protection Agency (US EPA). Lasting a total of 55 days, the confirmation process had been a forum to examine the policies of the Bush Administration more than to focus on Leavitt's environmental record. The Senate vote was 88-8.

Leavitt, Utah's Governor since 1992, was sworn in November 6, 2003 by then Acting EPA Administrator Marianne Lamont Horinko.

Several Senators placed holds on Leavitt's confirmation because of struggles they faced with the White House. Among them was Senator Hillary Clinton (D-NY) who placed a hold on the nominee after repeated requests to the White House concerning air quality around the World Trade Center post-September 11, went unanswered. After White House assurance that her request would be fulfilled, she agreed to vote for Leavitt.

Throughout the confirmation process, Leavitt was praised from both sides of the aisle for being a "consensus builder who works hard to bring those with different views to the table." Leavitt and the agency face a number of significant regulatory issues before the end of the year including proposed policy changes to the superfund program, and enforcement issues related to new source review under the Clean Air Act.

### **Stormwater Pollution Control**

#### **BILL OFFERED TO USE HISTORICALLY SET ASIDE 319 FUNDS TO COMBAT RUNOFF**

Senators. Lincoln Chafee (R-RI), Christopher "Kit" Bond (R-MO) and James Jeffords (I-VT) introduced legislation in October that would allow States to use money historically set aside under Section 319 of the Clean Water Act to be used to help fund state stormwater runoff control programs.

Senator Chafee introduced the measure, S 1716, in response to requests from the Rhode Island Department of Environmental Management and the New England Interstate Water Pollution Control Commission. Chafee stated, "This legislation will ensure that smaller communities required to comply with the stormwater regulations will continue to have access to grant funds under the Clean Water Act."

Section 319 is a general provision of the law whereby EPA gives states grants to combat all types of polluted runoff from farms, lawns and other "nonpoint sources." (Stormwater and other forms of runoff are a major contributor to the many U.S. waters that do not meet federal water quality standards, according to EPA.)

This legislation would permanently address whether funds provided to states through Section 319 of the Clean Water Act may be used for the purposes of developing and implementing the Phase II stormwater rule that went into effect in March 2003. Last year, in the Great Lakes and Lake Champlain Act of 2002, the Senate included a one year fix for states to retain maximum flexibility in utilizing 319 funding to address stormwater concerns. This bill is the first attempt by members of Congress to identify a source of federal funding that states can use to help financially strapped municipalities control stormwater.

*For more details contact, Heather Doucet in APWA's Washington Office at 202-408-9541 or [hdoucet@apwa.net](mailto:hdoucet@apwa.net) or see bill text at <http://capwiz.com/apwa/issues/bills/?bill=4065051>, the APWA Legislative Action Center*

### **Wastewater Systems**

#### **EPA TO PERMIT WET WEATHER "BLENDING" OF WASTEWATER**

Sewage treatment plants are to be allowed to route excess wastewater around part of their treatment system during wet weather and remix ("blend") it with treated wastewater under certain conditions, according to a new EPA guidance announced November 2, 2003.

The practice of "blending," used since the 1970s, is designed to prevent the biological treatment system from being overwhelmed during wet weather when wastewater overflows exceed a system's storage capacity. The *APWA Washington Report, November 2003*

overflows are blended with wastewater that has been routed around the biological system.

Although many worry about health concerns, EPA officials claim that those resulting flows still meet secondary standards and National Pollutant Discharge Elimination System (NPDES) permit limits. The blended discharges get disinfected before being discharged.

Environmental groups firmly oppose blending. They believe that blending does not address the problem of pathogens and other pollutants which are removed by the secondary treatment process. Critics also believe that it violates provisions in the Clean Water Act.

Municipalities have asked EPA to issue guidance on the blending issue. Some of EPA's regional offices bar blending when they issue permits to Publicly Owned Treatment Works (POTWs). The comment period closes January 9, 2004. The draft blending guidance and instructions for submitting comments are available at: <http://www.epa.gov/npdes/blending>.

### **Water Security**

#### **NEW DIVISION FORMED TO CONTINUE WATER PROTECTION WORK**

G. Tracy Mehan, III, EPA's Assistant Administrator for Water, has announced that EPA has formed a new, permanent Water Security Division to continue the work of the Water Protection Task Force that was created in October 2001.

Continued Task Force activities would include: awarding grants to the nation's largest drinking water systems to help them comply with the requirements of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; awarding grants to small and medium drinking water systems; developing a comprehensive research plan to address water security needs; and supporting the establishment of the Water Information Sharing Analysis Center (ISAC), a secure information sharing system.

### **National Wetlands Awards**

#### **2004 CALL FOR NOMINATIONS TO RECEIVE NATIONAL WETLANDS HONORS**

Nomination forms for the 2004 National Wetlands Awards Program are now available. The Awards program recognizes individuals from across the US that have demonstrated extraordinary effort, innovation, and excellence at the regional, state, or local level.

The 2004 categories are: Education and Outreach, Science Research, Conservation and Restoration, Landowner Stewardship, State, Tribal and Local Program Development, and Wetland Community Leader. Organizations and federal employees are not eligible. Awardees will be recognized at a Capitol Hill ceremony in May of 2004. The deadline for submitting nominations is December 15, 2003.

*For a copy of the 2004 National Wetlands Awards nomination form, visit Environmental Law Institute web site <http://www.eli.org/nwa/nwaprogram.htm> and download the form. For more information on the program, contact Erica Pencak at 202-939-3822 or e-mail: [wetlandsawards@eli.org](mailto:wetlandsawards@eli.org).*

*You may also write to the National Wetlands Awards Program, Environmental Law Institute, 1616 P St., NW, Suite 200, Washington, DC 20036.*

### **Arsenic Treatment**

#### **EPA SEEKS ARSENIC REMOVAL TECHNOLOGY PROPOSALS**

A Solicitation for Treatment Technologies for arsenic removal for Small Drinking Water Systems has been issued by the U.S. Environmental Protection Agency (US EPA).

Proposals from technology vendors are to demonstrate their arsenic treatment technology at a selected public water supply. The demonstration is to evaluate the efficiency and effectiveness of drinking water treatment technologies and engineering approaches to meet the new arsenic standard under varying source water quality conditions.

Selected proposals will not receive direct monetary awards, but will be pre-qualified for subsequent demonstration projects that will be supported by EPA through funding to a third party contractor.

This solicitation is available electronically at [http://es.epa.gov/ncer.rfa.current/2004\\_arsenic.html](http://es.epa.gov/ncer.rfa.current/2004_arsenic.html).

### **Safe Water Systems**

#### **NOVEMBER AND DECEMBER DESIGNATED WATER SECURITY MONTHS**

The Environmental Protection Agency has designated the months of November and December as Water Security Months to educate wastewater and drinking water plant employees, newspaper editors and citizens about the security of US water sources.

The Agency's Office of Water has developed a website from which flyers and brochures are available to promote community awareness and provide additional information to the law enforcement community. A drop-in news article about security for local media is available as well as information about the Water Information Sharing Analysis Center (ISAC) and a website for Health Care Providers on Water Terrorism Preparedness (<http://www.WaterHealthConnection.org>). Visit <http://www.epa.gov/safewater/security/flyers/index.html> for information about these flyers and brochures.

### **EMERGENCY MANAGEMENT/DISASTER MITIGATION**

#### **Weapons of Mass Destruction (WMD)**

##### **FEMA TASK FORCES READY FOR WMD ATTACK**

The Federal Emergency Management Agency (FEMA) reports that its 28 national Urban Search and Rescue task forces are now ready to respond to attacks from weapons of mass destruction (wmd) and other hazardous materials incidents. The task forces consist of 70 specialists composed of local responders who are ready to deploy with six hours notice. Prior to September 30, 2003, the task forces consisted of 62 members—the eight additional members represent specialists in hazmat.

#### **Interoperability Projects**

##### **DEPARTMENT OF HOMELAND SECURITY; FEMA FUND EMERGENCY OPERATIONS**

Responding to criticism over the lack of interoperability among responders, the Department of Homeland Security (DHS) released more than \$150 million in additional funds to seventeen communities for interoperability demonstration projects. FEMA allocated almost \$74 million in grants to 19 states and territories to improve or construct Emergency Operation Centers (EOCs).

#### **DHS One-Stop Shop**

##### **WEB PAGE CONSOLIDATES SECURITY GRANTS INFORMATION**

In an effort to consolidate and simplify access to homeland security grants, the Department of Homeland Security has created a web page at <http://www.dhs.gov/grants> that lists all of the grant and training opportunities offered by the department. The web page also lists grants from: Health and Human Services for public health preparedness, the Department of Justice for counter-terrorism, and the Environmental Protection Agency for water-security.

#### **First Responder Report**

##### **CITY OFFICIALS REPORT BEING SHORT-CHANGED ON FIRST RESPONDER FUNDS**

A survey of 168 cities finds city officials continue to be left out of the state resource planning process and that often when cities do receive funds, they are not allowed to allocate them where they are needed most. Additionally, the survey found that the distribution of funds was commonly behind schedule.

The U.S. Conference of Mayors' Homeland Security Monitoring Center conducted the survey and findings have been released in the "First Mayors' Report to the Nation: Tracking Federal Homeland Security Funds Sent to the 50 State Governments." The survey breaks down results by grant, and indicates how many of the respondents have received homeland security funds, if city officials were involved in the planning of resource allocation, and whether these funds addressed the city officials' highest priorities. The complete report is available at the following website: [http://www.usmayors.org/usem/news/publications/homelandreport\\_0903.pdf](http://www.usmayors.org/usem/news/publications/homelandreport_0903.pdf).

#### **Homeland Security Grants**

##### **THREE DHS PROGRAMS FUND STATE AND LOCAL SAFETY/SECURITY RESPONSES**

Homeland Security Secretary Tom Ridge announced the allocation of \$2.2 billion dollars available through three grant programs: (1) the **State Homeland Security Program** (\$1.685 billion for state and local public safety and

law enforcement personnel to pay for planning , training and equipping responders); (2) the **Law Enforcement Terrorism Prevention Program** (\$500 million to provide law enforcement communities with enhanced capabilities to detect, deter, disrupt and prevent acts of terrorism); and (3) the **Citizen Corp Grant Program** (\$35 million to support Citizen Corp Councils with planning, outreach and management of activities).

### **Essential Capabilities**

#### **PREPARE ACT INTRODUCED; WOULD CREATE BROAD-BASED TASK FORCE**

In an effort to organize first responder grant funds and to ensure that the nation's first responders are well prepared for the next terrorist attack, Rep. Jim Turner (D-TX), Ranking Member of the House Select Committee on Homeland Security introduced the PREPARE Act in late September.

With 130 Democrat cosponsors, the bill, H.R. 3158, would create a national task force charged with developing national "essential capabilities" standards for the country's communities. The 27 member task force would represent all first responder groups, specifically naming two public works officials who would be appointed to the Committee by the Secretary of Homeland Security.

The bill reflects many of the recommendations contained in a July report from the Council on Foreign Relations, "Emergency Responders: Drastically Underfunded, Dangerously Unprepared." Former Senator Warren B. Rudman chaired an Independent Task Force on Emergency Responders for the independent organization (publisher of *Foreign Affairs*) to research and produce the report for the Council. The report is available at: [http://www.cfr.org/pdf/Responders\\_TF.pdf](http://www.cfr.org/pdf/Responders_TF.pdf).

Republicans on the Committee are working on a bill that they say will be released later this month.

### **Preparedness Legislation Comments**

#### **APWA RESPONDS TO FEATURES IN THE PREPARE ACT**

APWA's emergency management committee submitted APWA's response to Ranking Minority Member Jim Turner's (D-TX) bill, H.R. 3158, the PREPARE Act. In it, APWA provided a definition of public works and thanked the Congressman for specifically including public works on a Task Force assigned with creating national standards for local preparedness.

APWA also supported efforts in the legislation to streamline the grant process, asked that matching requirements for first responder funds be waived, and recommended a new grant program to fund communities' participation in Information Sharing and Analysis Centers (ISACs). *For more information on First Responder and other Emergency Management issues, contact Kristina Tanasichuk in APWA's Washington Office 202-408-9541 or [ktanasichuk@apwa.net](mailto:ktanasichuk@apwa.net).*

### **Website To Focus On Public Works**

#### **APWA HELPING DEVELOP FIRST RESPONDER CONTENT**

The Office of Domestic Preparedness within the Department of Homeland Security has asked APWA to help it develop content for a new website, <http://www.firstresponder.gov>. On the site, public works is identified as a primary emergency responder and APWA will supply content pertinent to public works officials.

Expert discussions, polls, online courses and other content to help first responders prepare for and respond to a terrorist event will be included. The site is not yet operational but is scheduled to be available to the public March 1, 2004.

**Contributors to this month's APWA Washington Report are: Beth Denniston, Jim Fahey, Kristina Tanasichuk and Heather McTavish Doucet.**

**The Washington Report is edited by Beth Denniston**