



The National Association of Towns and Townships'

# WASHINGTON REPORT

A MONTHLY REPORT ON THE ISSUES AFFECTING THE NATION'S SMALL COMMUNITIES

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**JULY 9, 2010**

*The "NATaT Washington Report" is a monthly email newsletter that provides timely information to town and township officials on the legislative, regulatory, funding, and policy decisions in Washington that could affect your communities. The Washington Report focuses on federal issues that affect local governments, including towns and townships. The Washington Report is produced by NATaT's federal representative in Washington, The Ferguson Group. For more information on the legislation described in this report, see <http://thomas.loc.gov/> or contact The Ferguson Group. Contact NATaT Federal Director Jennifer Imo at 1.866.830.0008 or [jimo@tfgnet.com](mailto:jimo@tfgnet.com) for more information.*

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<b>CONGRESSIONAL SCHEDULE</b>
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Once again, Congress left Washington, DC for its Fourth of July recess/district work period without completing action on several major budget/stimulus related legislation, largely due to growing concerns over spending and deficits. The same was true for the schedule leading up to the Memorial Day recess. Consideration of a long-term tax extenders bill ground to a halt, causing the leadership to pull out the Medicare physician fee fix as a stand-alone bill and prevent Medicare physician pay cuts and patient dumping. Unfortunately, efforts to restore and extend long-term unemployment insurance benefits failed and people lost their coverage on July 1. Efforts to enact the FY 2010 Emergency Supplemental Appropriations bill by the July 4 recess failed and the conference agreement for the Wall Street reform legislation only passed the House of Representatives and is awaiting action in the Senate. Efforts to find off-sets for spending items included in the FY 2010 Emergency Supplemental bill and the Wall Street reform bill have resulted in the rescission of American Recovery and Reinvestment Act (ARRA) funding yet to be spent and an early termination of the Troubled Assets Relief Program (TARP). Support for economic stimulus funding is beginning to take a back seat to fiscal discipline. While the final outlook of annual FY 2011 appropriations bills is uncertain, half of the twelve House appropriations subcommittees did markup their bills before the recess.

The House and Senate will return to Washington on July 12. At that time, the Senate will either move first to the conference report on Wall Street reform legislation or resume work on passing an extension of unemployment insurance benefits. Senate leadership cannot move ahead on these or other priority items such as energy legislation or the FY 2010 Emergency Supplemental Appropriations bill until West Virginia Governor Joe Manchin (D) names a replacement for Senator Robert C. Byrd (D-WV) who passed away on June 28, because Majority Leader Reid must have 60 votes to head off a filibuster.

On July 13, the Senate Judiciary Committee was hoping to consider the nomination of Solicitor General Elena Kagan to serve on the U.S. Supreme Court, but Republican members are planning to delay the vote. The House leadership has announced that they will depart July 30, a week early, for August recess, while the Senate leadership has announced that they will start the recess a week later than planned, the week of August 16. Climate and energy legislation, and small

business lending initiatives remain a priority, as well as immigration reform, campaign finance reform, and spending bills.

## **BUDGET and APPROPRIATIONS**

### **\$80 Billion Emergency Supplemental Bill Passes House**

Before leaving Washington for the July 4 recess, the House of Representatives passed an \$80 billion FY 2011 Emergency Supplemental Appropriations bill, H.R. 4899, which provides funding for the wars in Iraq and Afghanistan, as well as domestic priorities including education, summer jobs, border security, and clean energy generation. The Senate bill passed in May provides \$58.8 billion for the war effort; the Federal Emergency Management Agency (FEMA), Community Development Block Grant (CDBG) and drought disaster relief; farm and rural housing loan funds; and compensation to Vietnam veterans exposed to Agent Orange. The House bill amended this legislation by adding \$10 billion to preserve teaching jobs; \$4.95 billion for student Pell Grants; \$1 billion for summer jobs; \$701 million for border security; \$180 million to support \$18 billion of loan guarantees for nuclear and renewable energy generation projects; \$163 million for schools on military installations; \$142 million in additional Gulf Coast oil spill funding; and other domestic programs. In order to pay for these provisions, the bill rescinds \$11.7 billion appropriated in previous years, including more than \$1.5 billion in American Recovery and Reinvestment Act (ARRA) funding, and produces \$4.7 billion in savings from making changes to mandatory programs.

The most controversial of these cuts is the rescission of \$800 million in ARRA funding from the Department of Education's Race to the Top program and Teacher Incentive Fund. The Obama Administration has threatened to veto the supplemental unless the cuts to these programs are removed from the final bill. Also, despite the urging by the White House to include \$50 billion in Federal Medical Assistance Percentages (FMAP) aid funding for the states, neither the House or Senate version of the emergency supplemental bill provides the six-month costly extension. Without the funding, governors and state legislators are making deep cuts in services, even as high unemployment persists, directly impacting available funding at the local level. The current enhanced FMAP funding is scheduled to expire at the end of 2010.

The House-passed emergency supplemental bill now goes back to the Senate for consideration.

### **Status of FY 2011 Appropriations Bills**

The fiscal year 2011 appropriations process began when President Obama delivered his budget request to Congress on February 1, 2010. The next step in the process would have been for Congress to approve a Budget Resolution, which sets overall spending levels for the various functions of government for the upcoming fiscal year and usually contains five to ten year projections. The Budget Resolution, which is the responsibility of the House and Senate Budget Committees, serves as a guideline for spending by the House and Senate Appropriations Committees.

On April 22, the Senate Budget Committee approved its budget outline which freezes all FY 2011 non-security discretionary spending at the FY 2010 level, as proposed by the President. In addition, it includes a \$4 billion reduction below the President's request for foreign aid programs. The full Senate has not acted on the Committee's recommendation and is not expected to do so.

The House Budget Committee held hearings but has not reported out a bill. Instead, House Majority Leader Steny Hoyer (D-MD) formally announced on June 22 that Congress would not adopt a Budget Resolution for FY 2011, which begins on October 1.

The Budget Act sets a deadline of April 15 for completion of the Budget Resolution, but permits Congress to begin considering appropriations measures by May 15 if no budget is adopted by that time. In place of the Budget Resolution, the House and Senate will be governed by their own spending limits for FY 2011. Any differences between the targets adopted by each body will have to be worked out later in the process. The annual spending guidelines are outlined in the FY 2010 Emergency Supplemental Appropriations bill currently being considered by Congress.

It is under these circumstances that the House Appropriations Committee began consideration of FY 2011 spending bills. During the last two weeks of June, the House subcommittees marked up Homeland Security; Commerce, Justice, Science; Agriculture; State, Foreign Operations; Legislative Branch; and Transportation-HUD. To date, none of the twelve Senate Appropriations Subcommittees have met to consider their bills.

Looking ahead, there is a great deal of uncertainty as to when and how the FY 2011 appropriations process will be completed. At this point, we anticipate subcommittee markups but final action on the FY 2011 appropriations bills will likely be sometime after the November elections and probably in the form of an omnibus appropriations package. The only thing that seems certain is that all appropriations bills will not be completed by the beginning of the fiscal year on October 1, 2010.

### **Significant Financial Reforms**

On June 30, by a vote of 237-192, the House of Representatives passed a comprehensive financial reform bill, the Dodd-Frank Wall Street Reform and Consumer Protection Act, that resulted from a conference committee reconciling House and Senate versions of the bill and headed up by Senator Christopher Dodd (D-CT), Chairman of the Senate Banking, Housing and Urban Affairs Committee and Representative Barney Frank (D-MA), Chairman of the House Financial Services Committee.

The bill is aimed at closing regulatory loopholes and further regulating financial practices that helped cause the recent financial crisis. The legislation seeks to end the possibility of future government bailouts by establishing a Financial Stability Oversight Council that would monitor and apply stringent rules to large and complex firms that pose threats to the wider financial system. The bill creates the Consumer Financial Protection Bureau which has the power to write new regulations on mortgages, credit cards, automobile loans, and other products and services offered by both banks and non-bank financial firms.

The bill passed with 234 Democrats and three Republicans voting yes, and 19 Democrats voting no, a sign of continued disagreement, mostly along party lines, over the far-reaching legislation that has plagued any bipartisan cooperation on the measure.

The Senate has indicated it will take up the conference agreement in early July. Delaying Senate consideration prior to the July 4 recess, the bill was revised when several previously supportive Senators went on record opposing the final conference bill due to the late night addition of \$19 billion in new fees on banks. On June 29, House and Senate conferees reopened the conference on the bill for two hours to revise the funding in order to win the necessary votes and assure passage in the Senate. Now, the bill will be funded through an early end to the Troubled Assets

Relief Program (TARP) using existing left-over funds that were not needed and an increase in FDIC premiums charged to banks.

Concerns of state and local governmental entities about a provision in the Senate derivative reform language that would have required swap dealers to have a fiduciary duty to such entities, and could hamper activities that use swaps to hedge against rising municipal bond interest rates or rising commodity prices, was softened in the conference committee. Such practices are sometimes used by public water and power agencies to minimize risk and keep rates low, and the revised version was improved to allow these practices to continue while redefining somewhat the roles swap dealers play in working with “special entities,” such as local and state governments. The next two years will include a heavy focus on regulatory implementation, such as rulemaking and other policy-related processes, of the many financial stability provisions, new restrictions on proprietary trading and the other features of the Dodd-Frank Act.

## **ENERGY, ENVIRONMENT and SUSTAINABLE DEVELOPMENT**

### **Local Greenhouse Gas Reduction Grants – July 26 Deadline**

The Environmental Protection Agency (EPA) has \$10 million available in FY 2010 to distribute competitively to local and tribal governments through the Climate Showcase Communities program. Funding will be awarded for innovative and replicable projects that produce significant and cost-effective reductions in greenhouse gas emissions. Approximately 20-30 grants ranging between \$100,000-\$500,000 will be awarded to localities, with an additional 1-3 grants distributed to tribal governments.

The deadline for applications is July 26, 2010, visit [www.epa.gov/slclimate](http://www.epa.gov/slclimate).

### **Climate Legislation Prospects Increase in the Senate**

On June 29, President Obama met with a group of Senate Democrats and Republicans to urge passage of climate and energy legislation this session. The Senate Energy and Natural Resources Committee passed a comprehensive energy bill last year authored by Senator Jeff Bingaman (D-NM) and several climate proposals have been offered recently. Senate Majority Leader Harry Reid (D-NV) has also indicated that he intends to bring climate and energy legislation to the floor in this session. Consensus is emerging that the Senate will tackle a utilities-only climate bill and shed provisions in previously introduced proposals that would have regulated manufacturers and industry.

### **PACE Financing Webinar - July 28**

The International City/County Management Association (ICMA), Climate Communities and The Ferguson Group (TFG) are launching a sustainability webinar series in 2010 to highlight cutting edge practices for local governments. The series will start with an overview of Property Assessed Clean Energy (PACE) bonds to incent energy efficiency improvements within communities, and will be followed by topics that include renewable energy, alternative fuel vehicles and community outreach.

PACE is an innovative financing model that helps local governments create green jobs, dramatically reduce carbon emissions and save property owners money on their utility bills. Through a PACE program, a local government can offer low-interest loans to property owners for energy efficiency improvements, and enable repayment of the loan through a voluntary long-

term assessment on their property taxes over a 15-20 year time period. Repayment of energy efficiency loans through property taxes follows the home or business if it is sold and PACE financing is also zero risk. Even if a property is foreclosed, new home/business owners will take over the payments and benefit from the reductions in their utility bills.

PACE financing has been named one of the “Breakthrough Ideas for 2010” by Harvard Business Review and a “World Changing Idea” by Scientific American. Originally developed in Berkeley, California, PACE financing is being successfully implemented in a number of cities and counties across the country. This webinar will feature case studies of the efforts of Sonoma County, California, and Boulder County, Colorado to implement local PACE energy efficiency programs. The objectives of the webinar are to provide a clear understanding of how PACE financing works; highlight how communities have been able to develop financially sustainable PACE programs; profile where PACE programs have been implemented and the results; describe the challenges with PACE financing programs; and identify which states are considering PACE-enabling legislation.

### **Sustainable Communities Initiative – July 26 Pre-Application Deadline**

For FY 2010, Congress provided the Department of Housing and Urban Development (HUD) a total of \$150 million for a Sustainable Communities Initiative to improve regional planning efforts that integrate housing and transportation decisions, and increase the capacity to improve land use and zoning. Of that total, \$100 million is available for the Sustainable Communities Regional Planning Grant Program which will support metropolitan and multijurisdictional planning efforts that integrate housing, land use, economic and workforce development, transportation, and infrastructure investments.

Sustainable Communities funding is available in two categories: Category 1 funds can be used to support the preparation of Regional Plans for Sustainable Development; and Category 2 funds can be used to support efforts to fine tune existing regional plans so that they address the Partnership’s Livability Principles to prepare more detailed execution plans for an adopted Regional Plan for Sustainable Development, and limited predevelopment planning activities for catalytic project or projects.

Grants will be made to regional consortia consisting of local governments, metropolitan planning organizations, educational institutions, and nonprofit organizations. The end product of a regional planning initiative will be a Regional Plan for Sustainable Development or a Detailed Execution Plan and Program for a Regional Plan for Sustainable Development that will provide a blueprint for investment decisions, both public and private, that will support a more sustainable future for a region. The size of awarded grant amounts are determined by whether the applicant represents a large metropolitan region, a medium sized region, a small sized region, rural communities, or small towns areas.

The pre-application deadline is July 26 and the deadline for applications is August 23, 2010. For more information, visit <http://www.hud.gov/offices/adm/grants/nofa10/scrpg.cfm>.

## **HEALTH CARE**

### **Medicare Physician Pay Fix Enacted for the Short-term**

On June 25, President Obama signed legislation reversing a scheduled 21 percent cut in physicians’ Medicare reimbursement and instead increased physician fees by 2.2 percent through

November 30, 2010. The scheduled cut became law on June 1, but the Centers for Medicare & Medicaid Services (CMS) only began paying claims with the reduction on June 18. CMS began processing claims at the new rates on July 1.

## **LAND USE and ECONOMIC DEVELOPMENT**

### **Local Jobs for America Act**

With Congress still focused on job creation, but hindered by budget hawks that do not want to increase the deficit, action has slowed on enacting a second stimulus package or extending expiring tax cuts. In March, House Education and Labor Committee Chairman George Miller (D-CA) introduced the Local Jobs for America Act, H.R. 4812. On June 16, Senator Sherrod Brown (D-OH) introduced a companion bill, S. 3500. The Senate legislation authorizes \$75 billion in emergency spending over two years to be directed to local governments, community based organizations and states to save and create jobs, along with an additional \$25 billion to save the jobs of teachers, police officers and firefighters.

Key details of the legislation include the establishment of a \$75 billion local job fund administered by the Department of Labor which would be distributed by a formula based on the Community Development Block Grant (CDBG) mechanism, with every local government with a population of 50,000 or more receiving direct funding. Also like CDBG, areas below 50,000 would be eligible to receive funding passed through the states. Each locality could use up to 50 percent to retain employees that might otherwise have to be let go because of budget shortfalls. Up to 25 percent can be given by a local government to local community based organizations that help provide needed services to hire people, and up to 25 percent can be for hiring new local government employees, or rehiring those recently let go. However, there is no requirement that a local government use this part of the program if it does not wish to hire or rehire employees. A local government could use five percent of funding for administration of the program. There is no requirement to keep employees once the money ends. There would be two years of funding, and then it would be up to the locality to keep the new employees based on need and local budgets. Employees would have to be hired full-time with benefits, under existing contracts or agreements. The federal funding can be used to cover all costs, including salaries and benefits. There is no cap on per-employee costs, however, no more than 20 percent of the funds can be used for management employees.

The bill also provides \$23 billion to help states support an estimated 250,000 education jobs, provides \$1.8 billion to put 5,500 law enforcement officers on the beat, and \$500 million to hire and retain fire fighters. The bill also provides \$500 million for approximately 50,000 additional on-the-job training positions slots to help private business expand employment. Since its introduction, 163 Representatives have co-sponsored the House bill. The Senate bill has garnered two co-sponsors at this time. The bill is gaining wide support from various national organizations including the U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, and the National Urban League.

Democrats' different jobs bills have had varying levels of success in winning bipartisan support. It is still unclear whether the Miller bill could garner bipartisan support. The Senate has encountered difficulty in passing large new jobs bills this year, with Senate Majority Leader Harry Reid (D-NV) opting to pare down some packages in order to win Republican support. Also, despite President Obama's support for the measure, the bill appears stalled due to deficit concerns.

## **FY 2011 Agriculture, Rural Development Appropriations Bill**

On June 30, the House Appropriations Subcommittee on Agriculture, Rural Development, and Food and Drug Administration approved its version of the FY 2011 Appropriations bill. The bill includes \$23 billion in total funding which is \$204 million below the FY 2010 enacted level of funding and \$27 million less than the President's request. Of that, just over \$20 billion will go to the Department of Agriculture (USDA), \$2.6 billion to the Food and Drug Administration (FDA), and \$261 million to the Commodities Future Trading Commission.

The bill proposes \$7.1 billion for the WIC program, \$19 billion for child nutrition programs, including the National School Lunch program and \$68 billion for the SNAP (food stamps) program, a \$10 billion increase over FY 2010. In addition, the bill provides \$1 billion for the Natural Resources Conservation Service (NRCS) and devotes \$12.5 million of that funding to NRCS Strategic Watershed Action Teams, a new program that will target more coordinated and cost-efficient approaches to watershed management.

The bill also provides just over \$2.85 billion for Rural Development programs, an increase of \$65 million over the President's request but a decrease of \$127 million from FY 2010. However, the subcommittee did choose to include \$176 million in funding for a new rural development initiative, the Regional Innovation Initiative, which will promote a regional approach to the planning and coordination of rural development programs.

While no specific markup date has been scheduled, the full House Appropriations Committee will most likely consider the FY 2011 Agriculture and Rural Development Appropriations bill when Congress returns from the July 4 recess. To date, the Senate has not yet determined when it will consider its version of the FY 2011 Agriculture spending bill.

## **Farm Bill 2012 Hearings Begin**

Traditionally authorized every five years, the Farm Bill is major legislation that sets agriculture and rural development policy for the country targeting farm support, conservation, energy, trade, marketing, food assistance, and rural development programs. The current bill, the Food, Conservation, and Energy Act of 2008, will expire at the end of September 2012. With this deadline in mind, the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture have begun holding Washington, DC and field hearings on Farm Bill 2012.

The Senate Committee on Agriculture, Nutrition, and Forestry held its first hearing on June 30 and concentrated on maintaining a strong U.S. farm policy. The remaining three hearings will take place throughout the summer and will focus on revitalizing rural economies, preserving natural resources and wildlife habitat and incorporating agriculture into the country's energy future.

House Agriculture Committee Chairman Collin Peterson (D-MN) began field hearings on the Farm Bill in late April and May. So far, hearings have been held in Alabama, California, Georgia, Idaho, Iowa, North Carolina, South Dakota, Texas, and Wyoming. This past month, House Agriculture Committee subcommittees also held hearings on Capitol Hill to discuss the various issues addressed in the reauthorization of the Farm Bill.

While the road to reauthorization is still long and windy, the hearings held by both the House and Senate Agriculture Committees reflect Congress' desire to complete the Farm Bill

reauthorization in a timely manner. With that said, we do not expect any formal movement on the bill until the next session of Congress convenes next year.

### **Home Buyer Tax Credit Extended to September 30**

On July 2, President Obama signed legislation, H.R. 5623, P.L. 111-198, to extend the closing deadline for the home buyer tax credit through September 30, 2010. The credit, worth up to \$8,000, is available to home buyers who entered into a written contract by April 30, but the original June 30 deadline for settlements on those purchases was impossible to meet for many buyers. Paperwork delays caused by a backlog at lenders have left as many as 180,000 of the buyers qualifying for the credit unable to close in time to collect it. The failure of many buyers to close by June 30 has also been attributed to the high number of homes being bought through the slower foreclosure or short-sale processes that result in a longer-than-usual amount of time to complete home sales. The \$49 million cost of extended home buyer tax credit for an additional three months is fully offset.

### **Hotel Occupancy Tax and Online Travel Companies**

Online travel companies, such as Orbitz and Expedia, are pushing to have an exemption included in the Small Business Lending Fund Act, H.R. 5297, which would allow them to avoid paying the full hotel occupancy taxes to local governments for rooms booked through their websites.

When a customer books a hotel room, they pay the relevant hotel occupancy tax on the site at the time of the transaction. However, when online travel companies submit payment to each hotel, less the negotiated booking fee, they only remit a portion of those taxes. For example, a customer might book a hotel room online for \$100. In this jurisdiction, assume there is a 10% hotel occupancy tax. In total, the customer pays \$110 for this hotel room and taxes online. The online travel company keeps their negotiated booking fee of \$20 per room and passes \$80 for the room and \$8 for the occupancy tax to the hotel. The hotel pays the local jurisdiction \$8 in taxes which represents 10% of their revenue from the transaction. Since the customer paid \$10 in occupancy tax, the online travel company has essentially withheld \$2 in local government revenue on this transaction.

Consumer class action lawsuits have been filed in many states to stop online travel companies from continuing this practice. H.R. 5297 has already passed in the House and is now working through the Senate. As of June 30, online travel companies were unsuccessful in getting exemption language into the legislation. Senate Majority Leader Harry Reid (D-NV) filed for cloture prior to the July 4 recess, and the Senate will resume consideration of the bill in early July.

<b>PUBLIC SAFETY and HOMELAND SECURITY</b>
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### **Collective Bargaining**

Both the House of Representatives and Senate are considering legislation that would require states to grant public-safety employees, including police, firefighters and emergency medical workers, the right to collectively bargain over hours and wages. The bill, known as the Public Safety Employer-Employee Cooperation Act (H.R. 413, S. 1611, S. 3194), would mainly affect 20 states that don't grant collective bargaining rights statewide for public-safety workers or that prohibit such bargaining.

The measure would require all states and localities to engage in collective bargaining with their public safety officers and first responders. States would administer and enforce their own labor laws, while the Federal Labor Relations Authority would step in only where such laws do not exist or do not meet minimum standards. The measure prohibits public safety officers from engaging in a lockout, sickout, work slowdown, strike, or any other organized job action that would disrupt the delivery of emergency services.

In the most recent attempt to pass mandatory collective-bargaining legislation, House leaders have attached Representative Kildee's (D-MI) bill, H.R. 413, to the FY 2010 Emergency Supplemental Appropriations Act, H.R. 4899, approved just before the July 4 recess.

The Senate already passed their version of the FY 2010 Emergency Supplemental on May 27, and did not include collective bargaining or domestic spending language, despite Senate Majority Leader Harry Reid's (D-NV) attempt to attach his Public Safety Employer-Employee Cooperation Act to the bill. The attempt to include the collective bargaining amendment in the Senate to H.R. 4899 was ultimately ruled non-germane and ineligible for consideration. The House-passed Emergency Supplemental bill will be considered in the Senate in mid July.

### **Homeland Security Committee Adopts New Measures**

On June 24, the House Homeland Security Committee adopted several bills designed to improve the nation's defense and anti-terrorism systems. The WMD Prevention and Preparedness Act of 2010, H.R. 5498, creates better systems of coordination among federal agencies to address the growing threat of nuclear weapons proliferation and empowers federal agencies to work more closely with state and local First Responders.

The Homeland Security Grant Management Improvement Act, H.R. 5562, is the product of extensive Committee oversight of the Federal Emergency Management Agency's (FEMA) administration of grant programs. It prohibits FEMA from mandating that specific percentages of awards be spent on eligible uses. It also directs FEMA to assess whether the cap on the use of funds for grant administration is prohibitive.

Finally, FEMA would study the suitability of issuing multi-year grant guidance, in place of the current year-by-year approach. H.R. 5105 would establish a Chief Veterinary Officer in the Department of Homeland Security and was adopted in response to repeated disasters with live animals. Post-disaster response and recovery has seldom met the needs of the owners of companion animals and farming operations. The Chief Veterinary Officer would be charged with coordinating disaster response resources to meet those needs.

### **TSA Nominee Awaits Further Hearings**

President Obama's third nominee to head the Transportation Security Administration appeared to sail through the Senate Commerce Committee's hearing earlier in June, avoiding direct answers regarding the unionization of TSA airport security screeners. The screeners' ability to collectively bargain has led to a partisan stalemate within the Senate over the President's two previous nominees. The nominee, FBI Deputy Director John S. Pistole, will appear before the Senate Homeland Security Committee, which also has oversight over the post, in early July. Pistole has received verbal support from the Homeland Security Chairman Joseph Lieberman (I-CT) and Ranking Member Susan Collins (R-ME).

## **FY 2011 Legislation to Fund the Departments of Commerce and Justice**

On June 29, the House Appropriations Subcommittee on Commerce, Justice and Science marked up legislation that would provide funding for the Department of Commerce, the Department of Justice (DOJ) and other agencies in FY 2011. The bill would provide \$30 billion for DOJ, an increase of \$300 million over the President's request. Included in this funding is \$729 million for the Office of Community Oriented Policing Services (COPS), \$2.767 billion for the Office of Justice Programs, \$459 million for the Office of Violence Against Women, and \$579 million for Interagency Law Enforcement. The legislation also funds the Economic Development Administration (EDA) at \$318 million, \$32 million more than the President requested and \$25 million more than was provided to EDA in FY 2010. The Senate Appropriations Subcommittee on Commerce, Justice and Science has not yet taken up a bill for FY 2011.

## **FY 2011 Homeland Security Appropriations Bill**

On June 24, the House Appropriations Subcommittee on Homeland Security approved by voice vote a bill that would provide \$43.89 billion to the Department of Homeland Security (DHS) in FY 2011. This amount is nearly \$300 million more than the White House requested and \$1.1 billion more than the amount enacted for FY 2010. The Subcommittee bill includes \$420 million for SAFER Act Grants; \$420 million for Assistance to Firefighters Grants; \$950 million for the State Homeland Security Grant Program; \$907 million for the Urban Area Security Initiative; \$50 million for Emergency Operations Centers; and \$300 million for Port Security Grants.

Although no specific date has yet been set, the full House Appropriations Committee will likely begin consideration of the FY 2011 DHS bill in mid to late July. The Senate Appropriations Subcommittee on Homeland Security has not yet determined when they will begin deliberations.

## **TELECOMMUNICATIONS**

### **Auction of D Block Proposed by House Committee**

On June 17, the House of Representatives' Energy and Commerce Subcommittee on Communications, Technology, and the Internet conducted a hearing on draft bipartisan legislation that would permit the Federal Communications Commission (FCC) to auction off the "D Block" of the 700 MHz public safety spectrum. Although the proposed bill, the Public Safety Broadband Act of 2010, has not yet been formally introduced in the House, it has nearly unanimous support among both Democrats and Republicans on the House Energy and Commerce Committee, including Chairman Henry Waxman (D-CA) and Ranking Member Joe Barton (R-TX). The bill is also strongly supported by the FCC and the Obama Administration. An estimated \$3-4 billion would be raised from the auction of the D Block, with another \$7.5 billion raised by the sale of other spectrums specified in the Public Safety Broadband Act of 2010. This revenue would be used to begin the construction of a national interoperable communications network for emergency responders.

However, the proposal is strongly opposed by many local governments and public safety agencies, including the U.S. Conference of Mayors, the National Association of Counties, the National League of Cities, the International City/County Management Association, the International Association of Chiefs of Police, and the International Association of Fire Chiefs. These entities were represented at the hearing by Deputy Chief Charles Dowd of the New York City Police Department, who argued forcefully that the D Block should be reserved for use by public safety agencies, rather than privatized. Although the draft legislation dedicates 10 MHz of

the D Block spectrum to exclusive use by public safety agencies, most emergency responders believe this level is inadequate to coordinate responses to large-scale emergencies and are hesitant to rely upon privately-owned networks if more bandwidth is required.

Subcommittee members are likely to seek compromises that could enhance local government and public safety agency support for the legislation before bringing it before the full House Energy and Commerce Committee. Meanwhile, Representative Peter King (R-NY) has introduced H.R. 5081, the Broadband for First Responders Act of 2010, which would reserve the D Block for use by public safety agencies. Representative King's legislation has 33 cosponsors as of June 29, but there is little chance of the bill being approved by the House Energy and Commerce Committee. No action has been taken to date in the Senate regarding this issue.

## TRANSPORTATION

### **FAA Programs Extended Until August 1**

The multi-year Federal Aviation Administration (FAA) authorization legislation expired on September 30, 2007. FAA programs have been funded through a series of legislative extensions. The current extension of aviation excise taxes, Airport and Airway Trust Fund expenditure authority and Airport Improvement Program contract authority was set to expire on July 3. Lawmakers negotiating a long-term authorization bill have signaled that they need more time to work on outstanding issues, including a dispute over labor laws.

Therefore, Congress passed a short-term extension, H.R. 5611, of federal aviation programs. The measure extends the authority of the Federal Aviation Administration to continue collecting fuel and ticket taxes to fund the Airport and Airway Trust Fund, and to continue to make expenditures from the fund until August 1.

### **FY 2011 Transportation Appropriations Bill**

On July 1, the Transportation-Housing and Urban Development Appropriations Subcommittee approved its FY 2011 bill to provide funding for the Department of Transportation. The appropriations bill sets an obligation limitation on the federal-aid highway program of \$45.2 billion, which is \$4.1 billion more than the FY 2010 funding level and \$3.9 billion more than the President's budget request.

In addition, the bill includes a provision requested by the Obama Administration to transfer \$200 million from highway and bridge construction formula funding to discretionary planning grants for livable communities.

With respect to public transit, the bill appropriates \$2 billion from the General Fund for Capital Investment Grants (new starts and small starts), which is the same as last year and is \$178 million above the President's budget request. Funding for individual new starts is listed in the subcommittee's earmark section. For aviation activities, the bill provides \$9.7 billion for FAA operations, an increase of \$443 million from last year. Additionally, the bill appropriates \$400 million for the TIGER II discretionary surface transportation program in the Office of the Secretary, which is \$200 million less than last year.

## **Emergency Transit Operating Assistance**

On May 25, Senate Banking, Housing, and Urban Affairs Committee Chairman Chris Dodd (D-CT) introduced the Public Transportation Preservation Act of 2010, S. 3412, which authorizes \$2 billion for emergency transit operating assistance for transit systems across the country.

The bill would distribute funds made available to help restore and prevent service reductions and layoffs, or fare increases that occurred due to decreased state and local funding from January 1, 2009 through September 30, 2011. Under this bill, 80 percent of the funds would be distributed through the Section 5307 Urbanized Area formula program, 10 percent under the Section 5340 High Density and Growing States formula program, and 10 percent through the Section 5311 Rural Area formula program. Transit systems could use the funds to address capital needs if they have not increased fares, cut services, or laid off employees, and do not plan to do so in the next year.

## **Historic Joint DOT-HUD Funding – July 26 Pre-Application Deadline**

On June 24, for the first time ever, Department of Transportation (DOT) Secretary Ray LaHood and Department of Housing and Urban Development (HUD) Secretary Shaun Donovan issued a joint request for proposals for HUD's Community Challenge Planning Grants and DOT's TIGER II Planning Grants. The collaborative DOT/HUD program will award up to \$75 million in funding, \$35 million in TIGER (Transportation Investment Generating Economic Recovery) II Planning Grants and \$40 million in Sustainable Community Challenge Grants for localized planning activities that ultimately lead to projects that integrate transportation, housing and economic development.

The new program builds on the Partnership for Sustainable Communities, an innovative new interagency collaboration, launched by President Obama in June 2009, between DOT, HUD and the Environmental Protection Agency (EPA). Guided by six "Livability Principles," the Partnership is designed to remove the traditional federal government roadblocks that exist between departments and strategically target the agencies' transportation, land use, environmental, housing, and community development resources to provide communities the resources they need to build more livable, sustainable communities.

TIGER II Planning Grants may be used to plan, prepare or design surface transportation projects that would be eligible for funding under the TIGER II Discretionary Grant program. These projects include highways, bridges, transit, railways, ports, or bicycle and pedestrian facilities. HUD's Sustainable Communities funding will target urban and community planning projects that foster reform and reduce barriers to achieving affordable, economically vital and sustainable communities. Such efforts may include amending or replacing local master plans, zoning codes and building codes either on a jurisdiction-wide basis or in a specific neighborhood or sector to promote mixed-use development, affordable housing and the re-use of older buildings for new purposes with the goal of promoting sustainability at the local level.

Under this innovative program, DOT and HUD will make joint awards, where appropriate, as well as individual TIGER II planning grants and HUD Sustainable Community Challenge Grants.

Eligible applicants include state and local governments, including U.S. territories, tribal governments, transit agencies, port authorities, metropolitan planning organizations (MPOs), other political subdivisions of state or local governments, and multi-state or multi-jurisdictional

groupings. Pre-applications must be submitted through the DOT pre-application system no later than 5:00 p.m. EDT on July 26, 2010 (for both DOT and HUD grants). Applicants must submit a pre-application as Stage 1, which qualifies applicants to submit an application in Stage 2.

Final applications must be submitted through Grants.gov by the Application Deadline of August 23, 2010 at 5:00 p.m. EDT. Awards will not be made until after September 15, 2010.

### **High-Speed Rail Grants - August 6 Deadline**

The Federal Railroad Administration (FRA) is seeking applications for \$2.1 billion in grants to continue the development of high-speed intercity passenger rail corridors. In addition, FRA will make another \$245 million available for individual construction projects within a corridor.

Applications and proposals for these funds will be due back to FRA by August 6. Grant awards are expected to be announced by September 30, 2010. The federal share of the costs of projects funded through this grant shall not exceed 80 percent.

The Notices of Funds Availability (NOFA) are available at [www.fra.dot.gov/Pages/477](http://www.fra.dot.gov/Pages/477).

### **Bicycling and Walking Resources**

On June 16, the Department of Transportation released new data from The National Bicycling and Walking Study: A 15-Year Status Report, which shows that both bicycling and walking trips have increased by 25 percent since 2001. Funded by the Federal Highway Administration, the update looked at progress toward goals presented in the original study and outlined federal, state and local programs that promote bicycling and walking throughout the country. The study concluded that the number of reported walking trips has more than doubled since the first survey, from 18 billion in 1990 to 42.5 billion in 2009. Bicycling trips saw a similar increase, from 1.7 billion to 4 billion during the same period.

Echoing the results of the study, Representative Blumenauer (D-OR) introduced H.R. 4722, the Active Community Transportation Act, to be incorporated into the SAFETEA-LU reauthorization bill to allow the Department of Transportation to administer competitive grants for investment in communities that need resources to shift short driving trips to walking and bicycling. Qualified communities would receive annual grants ranging from \$5 million to \$15 million for five years (total of \$25 - \$75 million) in the first round. Within two years after the passage of the bill, a second grant round would be available to eligible communities ranging from \$5 million to \$15 million for three years (total of \$15 - \$45 million). Unfortunately, House Republican Whip Eric Cantor (R-VA) has targeted the federal Safe Routes to School program established under the SAFETEA-LU as wasteful government spending saying that it duplicates other bicycling and walking programs, and that bicycling and walking infrastructure is a local government responsibility.

### **Automobile Safety Legislation**

Both the House of Representatives and Senate committees recently passed automobile safety legislation which would set new safety equipment standards for automobile manufacturers and attempt to eliminate driver distractions. In late May, the House Energy & Commerce Committee approved, H.R. 5381, which was introduced by the Chairman of the Committee, Representative Henry Waxman (D-CA). On June 9, the Senate Committee on Commerce, Science, and Transportation approved the companion bill, S. 3302, introduced by its Chairman, Senator Jay Rockefeller (D-WV).

The bills are a reaction to Toyota's recall related to acceleration and braking problems. These measures would require the National Highway Traffic Safety Administration (NHTSA) to promulgate safety standards to prevent unintended acceleration, remove pedal movement obstruction, and develop intuitive configuration and labeling of gear shifting controls. Manufacturers would also be required to improve communications with consumers regarding safety issues and provide an easy way for consumers to report safety issues. The legislation would also increase liability from \$15 million to \$300 million per incident for manufacturers who intentionally fail to report safety defects or provide NHTSA with misleading information.

The legislation also includes a shopping list of new devices and prohibitions aimed at improving safety, including requiring all passenger vehicles to be equipped with event data recorders (EDRs), devices similar to the "black box" found on aircraft; establishing a minimum sound requirement for electric and hybrid vehicles to ensure that those vehicles make some noise in order to alert pedestrians to their approach; and prohibiting former NHTSA employees from being hired by automobile manufacturers for three years.

Manufacturers criticize the legislation as overly prescriptive, premature and in some cases unnecessary. For example, the Alliance of Automobile Manufacturers support event data recorders, but feel the implementation timeline is too rapid and could increase car prices by thousands of dollars per vehicle. The Alliance also opposes the three year revolving door provision and corporate liability provisions of the legislation.

The Senate Commerce, Science, and Transportation Committee also passed related legislation, S. 1938, which authorizes grants to states enacting laws prohibiting texting and hand-held mobile phone use while driving. The bill directs NHTSA to promulgate regulations for the use of electronic and wireless devices by commercial drivers and school bus drivers. The legislation prohibits manufacturers from installing entertainment screens in positions which can be viewed by drivers.

No action has been taken to date in the Senate regarding this issue.

## **WATER and NATURAL RESOURCES**

### **Water and Environment Legislative Overview**

Even though the congressional committees that handle water and environmental bills had intended to consider numerous environmental and water related legislation prior to the July 4 recess, the BP oil spill in the Gulf Coast has usurped most of the relevant committees' time. As a result, Congress has not been very active on water and natural resource legislation. As was reported earlier in the year, the House of Representatives had started to take action on its water infrastructure package, H.R. 5320, a bill that would provide \$4.8 billion in funding for the reauthorization of the drinking water state revolving fund. There was also hope that the Senate Environment and Public Works Committee (EPW) would consider the Water Resources Development Act. Instead, committee staff resources and hearing time have been spent dealing with the BP disaster.

During the last two months, there have been many pieces of legislation introduced addressing different aspects of the oil spill. On June 30, EPW passed a bill that would eliminate the \$75 million liability cap on damages resulting from the oil spill. On the same day, the Senate Energy

and Natural Resources Committee passed a bill that would institute a series of reforms to Outer Continental Shelf drilling.

In addition to congressional time being diverted to the oil spill, because of the upcoming elections and the state of the U.S. economy, both Democrats and Republicans have become more sensitive to the federal deficit and have been unwilling to pass legislation that authorizes or spends large amounts of federal dollars. The same is even true for the annual appropriations bills. As of June 30, neither the Energy and Water nor the Interior and Environment Appropriations bills had been considered in House or Senate subcommittees. We expect subcommittee action in July before the August recess.