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*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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## **CONGRESSIONAL SCHEDULE**

Congress is expected to adjourn on December 18. House leaders announced major schedule changes for November. This schedule alerts the House members that the Democratic leadership certainly intends to keep the House in session as long as necessary in order to facilitate passage of health reform legislation introduced on October 29.

The House is expected to be in session the entire week of November 2 and should be prepared for possible weekend votes. In addition, members have been advised that votes are possible on November 9 and November 10, even though Wednesday, November 11, is Veterans Day. The House is also expected to be in session the week of November 16 and votes are possible on Monday, November 23 and 24, of Thanksgiving week. The Senate could follow a similar schedule.

## **BUDGET and APPROPRIATIONS**

### **American Recovery and Reinvestment Act**

Federal agencies continue to publish guidelines and announce the availability of funding provided in the \$787 billion American Recovery and Reinvestment Act (Recovery Act) approved by Congress in February. The Ferguson Group (TFG), which runs NATaT, provides up-to-date federal funding information on our website to our clients. Some Recovery Act funding extends through the end of FY 2010. Visit TFG Stimulus Update page at ([http://www.fergusongroup.us/stimulus\\_update.htm](http://www.fergusongroup.us/stimulus_update.htm)) regularly for the latest news and announcements. Monitoring these announcements is very important so you don't miss federal funding opportunities.

### **Status of FY 2010 Appropriations Bills**

Congressional leaders are working hard to finalize FY 2010 appropriations bills before health care reform bills go to the full House of Representatives and Senate. Congress has passed another Continuing Resolution (CR) to fund the federal agencies until December 18. The President signed the FY 2010 Agriculture, Energy and Water, Homeland Security, Interior-

Environment, and Legislative Branch appropriations bills into law so those agencies have their new budgets. The remaining agencies will continue to operate at FY 2009 funding levels until their bills are enacted.

The House-Senate conference committees are finalizing the Defense and Transportation-HUD conference reports. The Senate hopes to pass its Commerce, Science, Justice (CJS) and Military Construction-Veterans Affairs Appropriations bills by the first week of November. The CJS Appropriations bill has been stalled because of an amendment by Senator David Vitter (R-LA) that would require the Census Bureau to ask about citizenship and immigration status during its decennial count next year.

Appropriations leaders are trying to complete each bill separately, but may have to combine those remaining into a mini-omnibus bill as we get closer to Thanksgiving. The Senate has only completed seven of the twelve bills. The House completed action on its FY 2010 appropriations bills prior to August recess.

## ECONOMIC DEVELOPMENT

### **Direct Federal Funding to Local Governments**

On June 23, 2009, Congressman Paul Kanjorski (D-PA) introduced H.R. 3007, the Local Fiscal Assistance Act. H.R. 3007 would establish a Local Fiscal Assistance Trust Fund and make direct payments to units of local government in support of priority community needs. The bill would provide local governments with a direct, flexible source of federal assistance to provide essential services, create jobs and improve infrastructure in their communities. H.R. 3007 is modeled after the successful General Revenue Sharing program established in the early 1970s that ended in the 1980s. This legislation would provide three years of funding support to localities (for a total of \$90 billion). The funds would come from the Department of Treasury's general fund of collections of federal individual income taxes that are not otherwise appropriated. Any money the Treasury Secretary determines is not needed for local governments would be transferred back to the general fund.

These funds could be used for priority community needs including maintenance, operating and capital expenditures for public safety such as law enforcement, fire protection and building code enforcement; environmental protection including sewage disposal, sanitation and pollution abatement; public transportation including transit systems and streets and roads; health; recreation; libraries; social services for the poor or aged; and financial administration.

The bill would establish several formulas to determine the funding allocations for different communities. The formulas would take into account a community's population, tax revenues and income.

***NATaT needs your help!*** H.R. 3007 currently has three cosponsors: Rep. Marcy Kaptur (D-OH), Rep. Eric Massa (D-NY), and Rep. Janice Schakowski (D-IL). We are working with the offices of Senator Debbie Stabenow (D-MI) and Senator Charles Schumer (D-NY) to get this measure introduced in the Senate. In the meantime, we need cosponsors for the House bill. ***Please call your Member of Congress in the House of Representatives and ask that they co-sponsor this important legislation.*** (All Members received a "Dear Colleague" letter from Congressman Kanjorski on September 9, 2009, asking that they co-sponsor this bill.)

## **Unemployment Benefits Expansion**

On November 4, 2009, the Senate approved a bill that would provide additional unemployment benefits to jobless Americans. This bill would provide 14 additional weeks of unemployment aid in all 50 states. People in states with high joblessness rates, exceeding 8.5 percent, would get an additional six weeks of benefits. Currently, 27 states, along with the District of Columbia and Puerto Rico, would qualify as high unemployment states.

The House version of the bill, which passed on September 22, by a vote of 331-83, would provide an additional 13 weeks of benefits only to jobless people in high-unemployment states. Senate Finance Committee Chairman Max Baucus (D-MT) said the Senate bill would cost \$2.4 billion and would be paid for with an extension of the federal unemployment tax until June 30, 2011. Republicans have proposed amendments that would pay for the benefit extension using funds already appropriated as part of the Recovery Act rather than by extending a payroll tax, as currently called for in the bill.

## **Parks and Recreation**

Advocates for park and recreation are successfully increasing funding for the Land and Water Conversation Fund (LWCF). The President requested \$30 million in his FY 2010 budget for the Stateside Assistance Program under LWCF. The previous Administration had recommended zero funding for the program for FY 2006-2009. In the House-passed Interior-Environment Appropriations bill, funding for the Stateside Assistance Program was slated for \$40 million after a \$10 million increase was approved as part of the manager's amendment. The Senate passed bill included \$35 million. The House-Senate conferees on the legislation agreed to the House's higher number, \$40 million.

On September 8, Representative Nick Rahall (D-WV) introduced H.R. 3534, entitled the Consolidated Land, Energy and Aquatics Resources Act (CLEAR Act) of 2009. The bill relates to the extraction of energy resources and focuses on raising revenue through new and existing energy leases and, among other things, includes a conservation provision that provides full and dedicated funding to the LWCF at \$900 million annually. Chairman Rahall's bill specifically states 50% of that funding should go to the Stateside Assistance Program.

# **ENVIRONMENT, WATER and ENERGY**

## **Interior-Environment Appropriations**

On October 29, Congress approved and the President signed the FY 2010 Interior-Environment Appropriations bill. The \$33.3 billion bill, which is a 17% increase over the previous year, will provide \$11 billion to the Department of the Interior, \$5 billion to the Forest Service and \$10.3 billion to the Environmental Protection Agency (EPA). The EPA budget was 36% larger than the FY 2009 bill with most of the additional funds going to water projects and programs. Specifically, \$2.1 billion was included for the Clean Water State Revolving Fund and \$1.38 billion to the Drinking Water State Revolving Fund.

Several controversial policy measures were included in the bill. One provision imposed Davis-Bacon wage requirements on State Revolving Funds.

## **Davis-Bacon Act Required for Clean Water and Drinking Water Loan Fund Projects**

The Davis-Bacon Act requires that federal government construction contracts, and most contracts for federally assisted construction over \$2,000.00, include provisions for paying workers on-site no less than the locally prevailing wages and benefits paid on similar projects. Under the original State Revolving Fund (SRF) program authorization enacted in 1987, the Davis-Bacon Act applied only to so-called “first use” monies provided by a state from its SRF such as loans made from initial federal capitalization grants, but not subsequent monies provided from repayments to the SRF. When that authorization expired at the end of FY 1994, the Davis-Bacon Act requirements also expired.

Applying the Davis-Bacon Act wage requirements to projects funded by SRF remains a contentious issue in Congress. Critics of the Davis-Bacon Act say that it unnecessarily increases public construction costs and hampers competition, while supporters say that it helps stabilize the local construction industry by preventing competition that would undercut local wages and working conditions.

The House of Representatives attempted to address this issue by including language in its version of the FY 2010 Interior-Environment Appropriators bill to permanently apply the Davis-Bacon Act wage requirements to SRF projects. However, inclusion of this provision threatened the ability of Congress to pass a final version of this measure. Therefore, a compromise was reached which will apply the Davis-Bacon Act prevailing wage requirements to the Clean Water and Drinking Water SRF for one year. This temporary application will give the appropriate authorizing committees time to review the requirements and their effect.

## **Nationwide EECBG Competition Begins – December 14 Deadline**

The Recovery Act made \$3.2 billion in funding available for the Energy Efficiency and Conservation Block Grant (EECBG) program. Approximately \$2.8 billion of this total has already been distributed to states and local governments through formula allocations. The remaining \$454 million in EECBG funds will be distributed through a competitive grant process. ***NATaT worked with the Department of Energy to ensure that towns and townships are eligible for these funds.*** On October 19, DOE released a solicitation detailing the guidelines and eligibility requirements of this grant competition. Applications are due on December 14 with an optional letter of intent due on November 19. The Department of Energy is hosting a webinar on Wednesday, November 14 from 4:00 p.m. to 5:00 p.m. EST.

A total of \$390 million is available for the Retrofit Ramp-up Program. Any state or local government can apply to this program, which will provide no more than 20 grants, with award sizes ranging from \$5 million to \$75 million. Grant funding must deliver significant energy savings through a large-scale building energy efficiency retrofit initiative. DOE expects that successful applicants will propose projects that have market transformation potential and leverage grant funding with other funds at a 5:1 ratio.

***The remaining \$64 million is available only to local governments that did not receive a direct allocation of EECBG funding earlier this year. Many towns and townships fall into this category and should consider applying for these funds.*** Out of this funding, DOE will award between 15 and 60 grants ranging from \$1 million to \$5 million for a variety of energy efficiency

projects, including building retrofits, transportation programs, renewable energy technologies on government building, energy audits, and emission reduction initiatives. Successful projects should be highly leveraged and replicable.

### **Climate Change Legislation Introduced in the Senate**

On October 23, Senator Barbara Boxer (D-CA), Chairman of the Environment and Public Works Committee, released the Chairman's mark of the Clean Energy Jobs and American Power Act, S. 1733. The legislation seeks to reduce carbon pollution 20 percent by 2020, 42 percent by 2030 and 80 percent by 2050 from 2005 levels. The bill creates a "Pollution Reduction and Investment" system, using a cap-and-trade mechanism to achieve pollution reductions. Revenue created through the system will support investments in energy efficiency, renewable energy technologies, green jobs, adaptation, and consumer protection.

Climate Communities – a coalition run by The Ferguson Group – worked with key Senators to empower localities to achieve major energy savings and emissions reductions. The Chairman's mark of the legislation recognizes and provides funding to support the critical role of local governments in mitigating and adapting to climate change, including through energy efficiency, community-scale renewables, green buildings, building retrofits, transit and vehicle miles traveled reductions, recycling, and sustainable economic development.

The legislation will create a carbon trading market that is estimated to generate from \$75-125 billion in new revenues. The bill allocates carbon allowances and auction proceeds to various sectors and programs, including local governments. In addition, the bill makes local governments eligible for offset credits for certain local projects that reduce greenhouse gas emissions. Specifically, the bill includes the following provisions important to local governments.

- Provides an average of 1.6 percent of carbon allowances for the EECBG program over the first ten years (2012-2021). This will generate an estimated \$1.2 - \$1.9 billion a year for the EECBG program.
- Provides an average of 2.1 percent of carbon allowances for investments in clean transportation over the first ten years (2012-2021). This will generate an estimated \$1.6 - \$2.6 billion a year. Fifty percent of the clean transportation investments will go to public transit agencies for projects that reduce greenhouse gas emissions. The remaining fifty percent will go to metropolitan planning organizations and states to develop and implement local, regional and state transportation plans that reduce carbon emissions.
- Creates an allowance pool for state greenhouse gas reduction and adaptation programs, of which states must direct 12.5 percent of their proceeds to units of local government. The bill provides an average of .075 percent of carbon allowances for investments in local adaptation and additional greenhouse gas reductions over the first ten years (2012-2021). This provision will generate an estimated \$60 - \$82 million a year.
- Makes landfill methane recovery projects, urban forestry and conservation of grassland and forested land eligible for offset credits.

Hearings on the bill began in late October, and Chairman Boxer is expected to markup the bill in mid-November. Climate Communities will continue working with key Senators in the coming months to ensure that the bill provides federal resources for local climate actions.

## **HEALTH CARE**

### **House “Compromise” Health Care Bill Unveiled**

On October 29, House Democratic leaders unveiled their legislation to overhaul the nation’s health care system. The bill includes the much-debated “public option” that would provide government subsidies for a program to provide health insurance to the general public. Several challenges remain before House Speaker Nancy Pelosi (D-CA) can secure enough votes to ensure passage of the Affordable Health Care for America Act, H.R. 3962. They include expected efforts to address immigration, abortion and cost controls. House Majority Leader Steny Hoyer (D-MD) pledged to bring the bill to the House floor during the first week of November. The immigration issue centers on the question of whether to allow undocumented immigrants to buy insurance through the health care exchanges set up by the bill. The Congressional Budget Office (CBO) scored the cost of the new House bill at \$894 billion, after tax revenues from the individual and employer mandates are subtracted from the gross cost. The bill includes provisions that would require all adults to carry health insurance and provides subsidies to ensure that the poor, working poor and those without employer-provided coverage can afford coverage. It also includes reforms to the way the insurance industry conducts its business, including requirements that people with pre-existing conditions be guaranteed coverage and providing coverage to small and medium-sized businesses. Finally, the bill would expand eligibility for Medicaid, with the federal government covering roughly 80% of the costs. That has concerned the National Governors’ Association, which still objects to having to cover the remaining 20%.

Senate Majority Leader Harry Reid (D-NV) has been meeting with key Senators to merge the Senate Health, Education, Labor, and Pensions Committee and the Finance Committee bills together. The Majority Leader is currently waiting for CBO to score the Senate bill prior to introduction and attempting to reach an agreement for consideration on the floor.

## **LAW ENFORCEMENT, HOMELAND SECURITY and EMERGENCY MANAGEMENT**

### **Hate Crimes Act Enacted**

On October 28, President Obama signed into law the FY 2010 Defense Authorization bill that includes the legislation that adds sexual orientation, disability and gender identity to existing hate crimes law. The Local Law Enforcement Hate Crimes Prevention Act allows the Justice Department to assist in hate crime investigations at the local level when local law enforcement is unable or unwilling to fully address these crimes; mandates that the Federal Bureau of Investigation begin tracking hate crimes based on actual or perceived gender identity, sexual orientation, gender, and disability; and removes limitations defining hate crimes to violence committed while a person is accessing a federally protected activity, such as voting. Supporters note that the legislation does not change current law but only adds three new categories of activity subject to the Justice Department’s jurisdiction.

## **Firefighter Grant Program Reauthorization**

On October 21, the House Science and Technology Committee approved one bill that would maintain the two big federal programs for firefighters and firefighting activities. The Fire Grants Reauthorization Act, H.R. 3791, would extend both the Staffing for Adequate Fire and Emergency Response (SAFER) Grant Program and the Assistance to Firefighters Grant program through FY 2014. The Assistance to Firefighters Grants program supports the equipment and training needs of local fire departments and emergency medical services organizations. The SAFER program supports those agencies' hiring and personnel retention needs. The only debate on the bill was a proposed amendment to restrict any of the authorized funding from the Association of Community Organizations for Reform Now (ACORN), an organization that has been under federal investigation for allegedly improper activities. The amendment was approved.

## **FEMA Grants Change Opposed by State and Local Groups**

The Federal Emergency Management Agency (FEMA) recently issued guidance to state governments concerning their major state and local homeland security grant programs. In a September 22 notice, the agency said that grant funds for the State Homeland Security Grant Program, the Urban Area Security Initiative (UASI), the Pre-Disaster Mitigation Program, and others could not be used for maintenance requirements for equipment and technology purchased with grant funds. The proposal would affect a host of interoperable communications systems and intelligence fusion operations. Such costs would only be available for the three years of the grant performance period. For instance, if a county used UASI funds to purchase a new radio system, the community could only use grant funds to cover the first three years of the associated maintenance contracts. The community would have to use non-federal funds to support any such costs starting in year four. Facing strong opposition from the National Governors' Association and several state and local government associations, the Acting Assistant Administrator for Grants Tracey Troutman told a group of stakeholders on a subsequent conference call that FEMA was not expected to fully implement the rule clarification. The impact will be made evident in the FY 2011 grant guidance expected from FEMA in early December. Meanwhile, several House members co-sponsored legislation, H.R. 3837, that would rescind the rule clarification. House Homeland Security Committee Chairman Bennie Thompson (D-MS) has voiced support for the legislation and has asked for further clarification from FEMA.

### **NATAT'S NATIONAL CONFERENCE**

## **2009 America's Town Meeting A Success – Save the Date for 2010!**

NATaT hosted its annual conference, "America's Town Meeting," in Washington, DC on September 8-11, 2009. America's Town Meeting provided local government leaders with an important opportunity to meet with their Members of Congress and help make the voice of towns and townships heard in Washington, DC. The conference also provided opportunities for NATaT members to network with their colleagues and share best practices, lessons learned and strategies for success. Highlights of the conference included remarks from Representative Paul Kanjorski (D-PA) regarding his legislation, the Local Fiscal Assistance Act of 2009 (H.R. 3007), which would provide local governments with a direct, flexible source of federal assistance to provide essential services, create job, and improve infrastructure in their communities. This year's conference also focused on important issues such as the upcoming reauthorization of the

nation's surface transportation law, climate and energy legislation, federal funding opportunities for priority projects in towns and townships, the 2010 Census, and the H1N1 flu virus. Next year's "America's Town Meeting" is scheduled for September 7-10, 2010. We hope to see you there!

If you missed the conference or were unable to attend all the education sessions, you can purchase a DVD-ROM that features speakers, discussions and sessions. Order information can be found at [www.natat.org](http://www.natat.org).

## TAX

### **A New Approach to the Local Officials Tax Relief Act**

For a number of years NATaT has worked to secure support for the Local Officials Tax Relief Act (S. 492). This legislation would amend the Internal Revenue Code (IRC) to exempt small payments to public officials from FICA tax withholding and reporting requirements. Currently, election workers who are compensated less than \$1,500 a year are excluded from the IRC's definition of "employment" for income and FICA tax purposes. S. 492 would expand that exclusion to include local public officials who are compensated less than \$1,500 a year. Local governments would still be required to provide the minimally compensated public officials with a 1099 tax form, but would avoid the burdensome and expensive FICA withholding and reporting requirements. Individuals that receive payment for their public service capacity will still be required to report this income for federal tax purposes.

NATaT is currently working with Senator Tim Johnson's (D-SD) office to draft and send a letter to Commissioner of the Internal Revenue Service from supporting Senators asking that the IRS make this change administratively – avoiding the legislative process altogether. With the precedent from the poll workers exemption, both Senate staff and NATaT staff hope that the IRS will agree to this change.

## TELECOMMUNICATIONS

### **Public Safety Communications**

Congress approved S. 1694, legislation sponsored by Senator John Rockefeller (D-WV) and Senator Kay Bailey Hutchinson (R-TX) that would extend the Public Safety Interoperable Communications (PSIC) grant program established under the Digital Television Transition and Public Safety Act of 2005 through FY 2012. The PSIC grant program provides funding for state projects that equip public safety personnel with interoperable communications equipment and the necessary training for system users. The extension of the program will provide an important boost to America's first responders by allowing them access to needed emergency communications funds.

Since 2007, the PSIC program has provided nearly \$1 billion in grants to state and local governments, and the deadline to spend the funds is next year. Unfortunately, Department of Homeland Security review of states' interoperability plans was delayed until the spring of 2008. The delay has prevented many states from using PSIC grant funds by next year's deadline. Many Members of Congress viewed the PSIC grant program extension as a means to support the nation's critical public safety communications infrastructure. The legislation is an important step

toward ensuring that state and local public safety professionals not only have the resources they need but the time necessary to implement their technology projects as well.

## **TRANSPORTATION**

### **SAFETEA-LU – One Month Extension**

The Safe, Affordable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) expired on September 30, 2009. Congress enacted a one-month extension in order to maintain funding for federal transportation programs in the absence of the enactment of a new bill. The House and Senate have been unable to reach an agreement on how to move forward with reauthorization. House Committee on Transportation and Infrastructure Chairman James Oberstar (D-MN) and many members of the House support extending SAFETEA-LU programs for three months in hopes to begin work right away on a new, multiyear surface transportation authorization bill.

However, Senate Environment and Public Works Chairman Barbara Boxer (D-CA) and the Obama Administration originally supported extending SAFETEA-LU programs for 18 months and taking up a new multiyear bill in 2011. It is rumored that the Obama Administration is contemplating backing off its 18-month timetable and moving a full surface transportation bill sooner, perhaps getting a bill signed into law by spring for summer 2010, in the interests of job creation.

Last week, Senate leaders attempted to move a bill extending funding for federal surface transportation programs for six additional months, through April 30, 2010. House Highways and Transit Subcommittee Chairman Peter DeFazio (D-OR) said that House approval of a six-month extension would be contingent on the Senate leadership's agreement to take up and move through the Senate floor the full multi-year surface transportation reauthorization bill in that period of time.

### **Climate Bill Addresses Clean Transportation Projects**

The transportation sector accounts for roughly one-third of the nation's greenhouse gas emissions. The latest draft of the Senate energy and climate bill would more than double the level of funding for public transit and other low-carbon transportation alternatives the House approved this summer. Environment and Public Works Chairman Barbara Boxer (D-CA) unveiled her Chairman's mark October 23 with the inclusion of Clean-TEA, S. 575, language that would tie the funding levels for cities and states to their emissions-reducing efforts. While the original Clean-TEA bill would require a significantly higher 10 percent of any cap-and-trade revenues to go toward low-carbon transportation, Chairman Boxer's language sets aside an average of nearly 2.8 percent of the allocations over the first four years for "clean" transportation projects. Under the House bill, H.R. 2454, states would have the option of using up to one percent of the allocations to address transportation emissions. An earlier draft of the Senate plan mandated states use all one percent. This new program will begin with an allocation at 2.21 percent of distributed allowances for 2012 and 2013, fall to 1.35 percent the following two years, and then will be between 0.9 percent 2.5 percent thereafter. Those allocations are in addition to the original one percent allocated to states to combat emissions from the transportation sector.