

**DECEMBER 7, 2009**

*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 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**

Congressional leaders are hoping to adjourn on December 18, but are using the holiday calendar to facilitate Senate passage of the health care reform legislation. Consideration of amendments in the Senate began November 30, after a vote to proceed with debate succeeded just prior to Thanksgiving recess. Senators have been advised to expect weekend sessions in December. The House of Representatives approved its version on November 7.

Importantly, congressional leaders are trying to finish FY 2010 appropriations bills, some individually and the remaining ones combined into an omnibus appropriations bill. The current Continuing Resolution expires December 18.

November was also an election month. Republicans won in the Virginia and New Jersey gubernatorial races, while Democrats were elected to replace the Republican House member in Upstate New York and an open House Democratic seat in California. Political analysts stressed that voters focused on the economy and jobs. Congressional leaders are working on draft legislation to further stimulate the economy. The White House hosts its jobs summit on December 3 to build consensus on future actions. The event will bring together small business owners, corporate executives, economists, financial experts, and union leaders to discuss ideas for accelerating job creation.

## **BUDGET and APPROPRIATIONS**

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

Congressional leaders are still trying to make their goal of finishing all the FY 2010 appropriations bills separately, or they will move forward to prepare a year-end omnibus package with the remaining bills. Congress passed a Continuing Resolution to fund the federal agencies until December 18.

The President has signed the FY 2010 Agriculture, Energy and Water, Homeland Security, Interior-Environment, and Legislative Branch Appropriations bills, so those agencies have their new budgets. The remaining agencies will continue to operate at FY 2009 funding levels until their bills are enacted. Defense, Transportation-HUD, Commerce-Justice-Science, and Military Construction-Veterans Affairs Appropriations bills have been passed by both the House and Senate, so they are ready for House-Senate conferences. The Senate has not yet acted on Financial Services, Labor-HHS-Education and the State-Foreign Operations Appropriations bills. President Obama's newly announced troop buildup in Afghanistan will influence the final defense spending allocations and Senate leaders are trying to reach agreement to dual-track consideration of health care reform legislation and appropriations bills.

An omnibus appropriations bill will include any remaining bills and either Defense or Military Construction-Veterans Affairs will be the likely legislative vehicles. Passage is hoped by December 18 when the Continuing Resolution expires.

### **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 (ARRA) approved by Congress in February. The Ferguson Group (TFG), who manages NATaT, provides the most up-to-date federal funding information on our website to our clients. Some ARRA 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.

### **ARRA Job Creation Figures Challenged**

Recipients of funding from the ARRA were required to submit reports on how they used the funds by October 10. Beginning on October 30, recipient reports became accessible to the public on [www.recovery.gov](http://www.recovery.gov). Since these reports were posted online, several have come under scrutiny for misrepresenting the numbers of jobs created. On November 19, the House Committee on Oversight and Government Reform convened a hearing to discuss the ARRA data and review a report from the Government Accountability Office (GAO) on this issue. The GAO report concluded that while recipients reported data in good faith, there were multiple discrepancies and errors in the aggregate data. In his closing remarks, Committee Chairman Edolphus Towns (D-NY) dismissed accusations that the data lacked integrity as —partisan political cheap shots|| and asserted that even cynics admit ARRA funding has created or saved hundreds of thousands of jobs. While there is likely to be further debate about reported data in the coming months, the Recovery Accountability and Transparency Board has stated that it is continuing to fine-tune the reporting process to ensure more accurate data in the future.

### **Second Stimulus Bill Possible**

There are rumblings in Congress about a second stimulus or jobs bill. In fact, House Democrats recently formed a Jobs Now Caucus with more than 160 members. The House leadership wants to complete a bill before the end of the year, while the Senate is looking at the beginning of next year, so timing is still uncertain. NATaT has submitted a proposal describing the programs that should be included in a jobs bill; programs that will provide the greatest benefit to local

governments. Congressional leadership has touted this proposal as the best information it has received from any interest group.

## 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.)

NATaT proposal for the second stimulus, or jobs bill, lists inclusion of H.R. 3007 as the organization's top priority.

### **Extensions to Unemployment Compensation and Homebuyer Tax Credits Signed into Law**

On November 6, President Obama signed into law legislation that extends unemployment compensation payments and extends tax credits for homebuyers.

The bill provides an additional 14 weeks of unemployment compensation payments to those who have exhausted their benefits. Residents in states where the unemployment rate exceeds 8.5 percent will receive checks for six additional weeks.

Also included is an \$8,000 tax credit that will be extended to April 30, 2010 for first-time homebuyers who enter sales contracts by that date and close within 60 days. Individuals could claim the credit for purchases in 2010 on their 2009 tax returns, which would mean they could get the money relatively quickly. The measure also adds a \$6,500 credit for current homeowners buying a new home, as long as they have lived in their homes for five consecutive years. The income cap for qualifying for the homebuyer credit was raised to \$125,000 for individuals and \$225,000 for married couples, up from \$75,000 and \$150,000, respectively. However, homes sold for more than \$800,000 are not eligible for the credit.

### **Parks and Recreation**

On November 6, Senators Jeff Bingaman (D-NM) and Max Baucus (D-MT) introduced legislation, S. 2747, to permanently provide \$900 million to the Land and Water Conservation Fund (LWCF). The legislation would provide \$450 million annually to states and local communities for close-to-home parks and outdoor recreation facilities. Additionally, \$450 million would be available annually to the four federal land managing agencies for national parks, forests and refuge acquisitions for land protection and critical conservation. Unlike the provision in the CLEAR Act sponsored by Representative Nick Rahall (D-WV), the Senate bill does not evenly split federal and state funding.

Each year, \$900 million goes into LWCF from oil and gas leases on federal land. However, Congress has often diverted the money for other purposes, putting forth 100% of the money for its original intent only once in the history of the fund. This year, Congress provided the greatest allocation in many years at more than \$300 million—one third of the full authorization. According to the National Park Service, there is a backlog of more than \$30 billion worth of lands that federal agencies would like to protect, in addition to a huge unmet need for local parks and recreation resources totaling more than \$27 billion in eligible projects.

The Stateside Assistance Program portion of the LWCF is a matching grant program that provides funding to state and local governments for the acquisition of land and the development of outdoor recreation areas and facilities. Grant recipients are required to match LWCF grants dollar for dollar and to keep the land and facilities in protected status in perpetuity. The LWCF Stateside Assistance Program has supported more than 41,000 state and local projects in 98% of all U.S. counties. The FY 2010 Interior Environment Appropriations bill, signed by President Obama, provides \$40 million for the LWCF Stateside Assistance Program.

## **ENVIRONMENT, WATER and ENERGY**

### **New EPA Rule on Construction Sites for Stormwater Sediment Discharge**

On November 23, the Environmental Protection Agency (EPA) issued a final rule that sets new standards for construction sites to reduce stormwater sediment discharge. The EPA estimates that the new regulations will reduce about four billion pounds of sediment per year which will improve water quality and reduce the need for dredging. The new regulations, which will be incorporated into the general construction permit, will require property owners of construction sites over an acre to use best management practices. Sites that are over 20 acres will be subject to numeric pollution standards within 18 months of the rule.

## **Chemical and Water Security Act of 2009**

On November 6, the House of Representatives passed H.R. 2868, the Chemical and Water Security Act of 2009, aimed at increasing security at chemical and water and wastewater facilities. The bill, a controversial measure that cleared the House mostly on party lines, would give the Department of Homeland Security (DHS) and the EPA new authorities over chemical and water and wastewater facilities. The legislation would allow the federal agencies to create a list of "substances of concern" and require increased security measures at facilities that the federal agency deemed high risk.

The legislation also would allow state governments to implement their own chemical security regulations as long as they exceed federal rules. Republicans opposed the measure citing concerns of job losses and costs to facility owners.

Senator Frank Lautenberg (D-NJ), Chairman of the Senate Superfund, Toxics and Environmental Health Subcommittee of the Environment and Public Works Committee is considering similar legislation.

## **Nationwide EECBG Competition – 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.

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 Legislation Clears Senate Environment and Public Works Committee**

On November 5, the Senate Environment and Public Works Committee approved climate change legislation, the Clean Energy Jobs and American Power Act, S. 1733, by a vote of 11-1. Markup of the legislation was boycotted by Committee Republicans who insisted that EPA conduct further economic analysis of the bill. Committee Democrats countered that EPA had already

completed enough economic analysis and that additional studies would be a waste of taxpayer dollars.

The TFG-managed Climate Communities coalition worked with the bill's sponsors, Senators John Kerry (D-MA) and Barbara Boxer (D-CA), to empower localities to achieve major energy savings and emissions reductions. The legislation dedicates significant funding to the Energy Efficiency and Conservation Block Grants, transit and vehicle miles traveled reductions, adaptation, and other local activities that reduce greenhouse gas emissions.

Senators Kerry, Lindsey Graham (R-SC) and Joe Lieberman (I-CT) are working with the Obama Administration in a bid to find 60 votes for passage. Majority Leader Harry Reid (D-NV) has indicated that he hopes to bring climate legislation to the Senate floor in spring 2010.

## HEALTH CARE

### **Congress Now Moving on Health Care Legislation**

On November 30, the Senate began its lengthy debate on health care reform and votes on amendments are expected to start by the end of the week. Back from the Thanksgiving break, Democrats offered an amendment to make preventive services more affordable and Republicans offered an amendment to strip Medicare Advantage cuts from the measure.

On November 21, the Senate voted to start debate on legislation that would reform the nation's health care system. The vote, 60-39, was a strict party-line vote with no Republican support. Senate Majority Leader Harry Reid (D-NV) merged bills approved separately by the Finance and Health, Education, Labor, and Pensions Committees. The bill's supporters were happy that the Congressional Budget Office (CBO) assessed the cost of the Senate bill at \$848 billion over 10 years, below the \$900 billion spending limit set by the Obama Administration. The bill includes the much-debated —public option that would provide government subsidies for a program to provide health insurance to most Americans. The Senate bill also would require that all American citizens secure health insurance, either through an employer-provided plan, Medicare/Medicaid or one of many alternatives that would be subsidized by the federal government. While it would expand coverage for Medicaid (covering up to 80% of the cost of expansion, with states picking up the rest), it would reform the way Medicare and Medicaid payments for services are structured. This would largely be accomplished through cuts in the fee-for-service system and overall cuts to Medicare Advantage, the HMO system that provides Medicare benefits through private insurers. The vote to proceed with floor debate is a major victory for health care reform proponents, but Senate Democratic leaders acknowledge that they do not know whether they have sufficient votes for final passage. Majority Leader Reid hopes to have Senate passage by the end of the year.

On November 7, the House of Representatives voted 220-215 for passage of its health care reform legislation, H.R. 3962, the Affordable Health Care for America Act. The House bill, which the CBO scored at \$898 billion, would expand coverage to an estimated 36 million additional Americans by creating an insurance exchange that offers private plans, as well as a public insurance option, providing premium subsidies to help individuals and families purchase coverage, broadening the Medicaid program and implementing a series of insurance market reforms. The House vote came amid controversial amendments ensuring that no federal funds would pay for abortions and no services would be available to illegal immigrants. The abortion

prohibition would also apply to private plans offered through an exchange in which individuals can purchase coverage in part using federal subsidies.

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

### **Efforts to Rescind Harmful OMB Guidance on DHS Grant Programs**

The House of Representatives and Senate are moving quickly to consider legislation that would effectively rescind a recent Office of Management and Budget (OMB) order restricting the use of various Department of Homeland Security (DHS) grant program funds for state and local governments.

In September, OMB issued a grant guidance and clarification that restricts the use of funds under the Urban Area Security Initiative, Port Security Grant Program, State Homeland Security Grant Program, and others deemed critical to state and local officials that prohibits them from using grant funds for maintenance agreements that support technology and equipment acquired in previous funding cycles. State and local officials fear that things such as interoperable equipment and HAZMAT response equipment that require annual service agreements to extend their use would become their sole financial responsibility. Customarily, they have been able to use DHS grant funds to support ongoing maintenance necessary to keep equipment and technology fully functional.

On November 18, Senate Judiciary Committee Chairman Patrick Leahy (D-VT) and Senator George Voinovich (R-OH) introduced a bill would prohibit DHS from banning the use of first responder grant money for maintenance and other sustainability programs. Their bill would explicitly permit grant recipients to use funds for these purposes. Their bill would require approval by both the Judiciary Committee and the Homeland Security and Government Affairs Committee before full Senate consideration. The legislation is similar to H.R. 3837, introduced in the House by Representative Mary Jo Kilroy (D-OH) along with 25 co-sponsors. That bill was approved by the House Homeland Security Committee on November 17.

### **Streamline Grant Reporting**

On November 3, the House Homeland Security Subcommittee on Emergency Preparedness approved H.R. 3980, the Redundancy Elimination and Enhanced Performance for Preparedness Grants Act. The bill would require DHS to identify redundant report requirements for the major state and local grant programs and to devise a system of streamlining them to ease the burden on state and local governments. The legislation is expected to be approved by the full Homeland Security Committee before the end of the year.

### **Firefighter Hiring Grant Program – Deadline December 18**

The Staffing for Adequate Fire and Emergency Response (SAFER) Grant Program is now accepting applications through December 18. The program provides funding to help local fire service agencies (volunteer, career or mixed) recruit, employ and retain positions. Due to changes in the program included in the American Reinvestment and Recovery Act (ARRA), funding will now support the rehiring of positions that were eliminated by local governments due to budget cuts. Those positions must have been approved for eliminated between January 1 and

October 31, 2009. Application materials and program guidance can be obtained at [www.firegrantsupport.com](http://www.firegrantsupport.com).

Support for the program remains strong in Congress. On November 18, the House approved H.R. 3791, the Fire Grants Reauthorization Act of 2009. It would extend authorization for program funds for an additional five years and covers both the SAFER Program and the Assistance to Firefighters Grant (AFG) program. Senate Majority Leader Harry Reid (D-NV) is reportedly seeking floor time and a unanimous consent agreement to consider the House bill in the Senate in an expedited procedure.

## TAX

### **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). The measure as introduced in the House on December 2, 2009 (H.R. 4185). 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. H.R. 4185/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

### **Federal Rural Broadband Program Implementation**

On November 19, the House Agriculture Committee's Subcommittee on Rural Development, Biotechnology, Specialty Crops, and Foreign Agriculture led by Chairman Mike McIntyre (D-NC) held a hearing to review the work of the U.S. Department of Agriculture (USDA) and Department of Commerce to award \$2.4 billion in grants and loans to expand broadband access in rural areas funded in the American Recovery and Reinvestment Act (ARRA). The application process has proven to be difficult to many. In some cases, the requirements for the grant application have made it impossible for some organizations to apply for these funds. The purpose of the hearing was to make sure the policies and regulations associated with the broadband grant program allow applicants from rural America to compete for grant funds to provide the infrastructure to bridge the digital divide in these communities.

Larry Strickling, head of the National Telecommunications and Information Administration (NTIA) testified that Broadband Technology Opportunities Program grant announcements for

the \$1.6 billion available in the first funding round will begin by mid-December and will continue into early 2010. USDA Rural Utilities Service (RUS) Administrator Jonathan Adelstein stated that his agency is currently evaluating first round applications and expects to begin issuing awards shortly. More than half of the total investments projected under the USDA Broadband Initiatives Program (BIP) program has been reserved for subsequent funding rounds. On November 10, USDA and NTIA announced plans to compress the planned second and third rounds into a single round to give applicants additional time to develop strong proposals and to ensure that we are able to meet the goal of obligating all funds by September 2010. Subsequent funding may also include enhancements to eligibility and scoring criteria used in round one, which proved to be challenging to applicants.

## 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. However, Congress enacted a one-month extension until December 18 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. At this time, some members of Congress have begun discussions on a second stimulus or —jobs|| bill, with a target of completing a bill before the end of the year or early next year. There are rumors that a further extension of SAFETEA-LU and additional transportation funding may be included in this bill.