



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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**FEBRUARY 4, 2011**

*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**

The new 112<sup>th</sup> Congress began January 5 with members, their families and supporters coming to Washington for swearing in ceremonies. There are 96 new members of the House of Representatives and 20 new Senators.

Partisan organizational retreats have been held for House Republicans and Democrats, and the President presented his State of the Union speech on January 25. In addition, major staff changes at the White House have taken place and re-election campaign staff are relocating to Chicago.

The Senate leadership spent the month negotiating new rules. Hoping to ease the gridlock on the floor, the Republican Leader Mitch McConnell (R-KY) agreed to limit the use of the filibuster on initial motions to proceed to votes. Majority Leader Harry Reid (D-NV) agreed to exercise restraint on amendments, making it easier for Republicans to file their own.

The Senate also voted to limit, by several hundred, the number of executive branch nominees subject to confirmation; prevent senators from delaying publicly available amendments by forcing clerks to read them aloud; and limit senators from blocking legislation anonymously. These changes were the most substantial tweaks to the Senate rules since the Watergate years. However, it still takes 60 votes to overcome a filibuster. Efforts to change that rule were defeated.

### **BUDGET, APPROPRIATIONS & FISCAL POLICY**

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

When the new Congress convened in early January, the major piece of unfinished business left over from last year was the completion of the FY 2011 appropriations process. The federal government is currently operating under a Continuing Resolution which funds agencies at the FY 2010 level and runs until March 4.

One of the first actions taken by any Congress is the approval of the Rules that will govern operations for the next two years. The House of Representatives approved its new Rules package on January 5. Included in that package was a provision that grants the Chairman of the House Budget Committee Paul Ryan (R-WI) the authority to set overall spending limits for FY 2011.

It had been widely speculated that the new Republican majority in the House would attempt to reduce FY 2011 non-defense, non-security discretionary spending to the FY 2008 level. On January 25, the House voted on a resolution, H. Res. 38, to do just that. The resolution, passed by a margin of 256-165, directs the Chairman of the Budget Committee to submit an allocation for FY 2011 non-security related funding that is at the FY 2008 level, or less, in accordance with the House Rule described above. All Republican members voted in favor of the Resolution and were joined by 17 Democrats.

On February 3, Chairman Ryan announced the FY 2011 spending limits which are \$74 billion below the President's budget. Non-security discretionary spending is limited to \$420 billion to bring the spending back to pre-stimulus FY 2008 levels for the last seven months of the year.

Funding levels established by Chairman Ryan and the Republican majority in the House are much lower than the Democratically-controlled Senate or the President may be willing to accept. The House and Senate, and the White House, will have until March 4 to attempt to work out a compromise, approve another short-term Continuing Resolution to provide more time to negotiate or shut down the federal government. The Republican House leadership has announced the bill will be on the House floor the week of February 14.

### **Earmarks in the 112<sup>th</sup> Congress**

The new Republican majority in the House has stated that it will not include congressional earmarks in appropriations measures during the 112<sup>th</sup> Congress. Last fall, Senate Republicans also indicated that they would support an earmark moratorium in the 112<sup>th</sup> Congress. On January 25, President Obama promised to veto any legislation that included earmarks. On February 1, Senate Appropriations Committee Chairman Daniel Inouye (D-HI) announced that he would not accept earmark requests for FY 2012, but would revisit this issue next year and explore ways to improve the earmarking process. Both Senator Inouye and Senate Majority Leader Harry Reid (D-NV) strongly oppose the earmark ban.

The President's budget will be released February 14.

### **Republican Study Committee Introduces Spending Reduction Bill**

The Republican Study Committee is a group of 175 House Republicans organized for the purpose of advancing a conservative social and economic agenda in the House. On January 24, Chairman Jim Jordan (R-OH) introduced H.R. 408, The Spending Reduction Act of 2011. The bill currently has 24 cosponsors.

The sponsors of the Spending Reduction Act of 2011 claim it would reduce federal spending by \$2.5 trillion over ten years. The bill provides for FY 2011 non-security discretionary spending at the FY 2008 level, holds non-defense discretionary spending to FY 2006 levels thereafter for the rest of the ten-year budget window, and includes more than 100 other program eliminations or savings proposals. The bill would also prohibit FY 2011 funding from being used to carry out any provision of the health care reform legislation passed last year.

The bill would eliminate automatic pay increases for civilian federal workers for five years. Additionally, it would cut the civilian workforce by a total of 15 percent through attrition and allow the hiring of only one new worker for every two workers who leave federal employment until the reduction target has been met. The bill would also rescind all remaining funds from the American Recovery and Reinvestment Act for an estimated savings of \$45 billion.

Among the program eliminations and spending reforms included in the bill are the following:

- Corporation for Public Broadcasting Subsidy - \$445 million annual savings;
- Save America's Treasures Program - \$25 million annual savings;

- International Fund for Ireland - \$17 million annual savings;
- Legal Services Corporation - \$420 million annual savings;
- National Endowment for the Arts - \$167.5 million annual savings;
- National Endowment for the Humanities - \$167.5 million annual savings;
- Hope VI Program - \$250 million annual savings;
- Amtrak Subsidies - \$1.565 billion annual savings;
- Eliminate duplicative education programs - \$1.3 billion annual savings;
- U.S. Trade Development Agency - \$55 million annual savings;
- Woodrow Wilson Center Subsidy - \$20 million annual savings;
- Cut in half funding for congressional printing and binding - \$47 million annual savings;
- John C. Stennis Center Subsidy - \$430,000 annual savings;
- Community Development Fund - \$4.5 billion annual savings;
- Heritage Area Grants and Statutory Aid - \$24 million annual savings;
- Cut Federal Travel Budget in Half - \$7.5 billion annual savings;
- Trim Federal Vehicle Budget by 20% - \$600 million annual savings;
- Essential Air Service - \$150 million annual savings;
- Technology Innovation Program - \$70 million annual savings;
- Manufacturing Extension Partnership (MEP) Program - \$125 million annual savings;
- Department of Energy Grants to States for Weatherization - \$530 million annual savings;
- Beach Replenishment - \$95 million annual savings;
- New Starts Transit - \$2 billion annual savings;
- Exchange Programs for Alaska, Natives Native Hawaiians, and Their Historical Trading Partners in Massachusetts - \$9 million annual savings;
- Intercity and High Speed Rail Grants - \$2.5 billion annual savings;
- Title X Family Planning - \$318 million annual savings;
- Appalachian Regional Commission - \$76 million annual savings;
- Economic Development Administration - \$293 million annual savings;
- Programs under the National and Community Services Act - \$1.15 billion annual savings;
- Applied Research at Department of Energy - \$1.27 billion annual savings;
- FreedomCAR and Fuel Partnership - \$200 million annual savings;
- Energy Star Program - \$52 million annual savings;
- Economic Assistance to Egypt - \$250 million annual savings;
- U.S. Agency for International Development - \$1.39 billion annual savings;
- General Assistance to District of Columbia - \$210 million annual savings;
- Subsidy for Washington Metropolitan Area Transit Authority - \$150 million annual savings;
- Presidential Campaign Fund - \$775 million savings over ten years;
- Eliminate funding for federal office space acquisition - \$864 million annual savings;
- Repeal the Davis-Bacon Act – more than \$1 billion annual savings;
- USDA Sugar Program - \$14 million annual savings; and
- Eliminate the National Organic Certification Cost-Share Program - \$56.2 million annual savings.

While the prospects of this bill becoming law are unlikely, it provides an indication of the types of cost-saving measures that could be considered during the next federal appropriations cycle or by House Budget and Appropriations Committees to cut the pending FY 2011 bill.

Senator Jim DeMint (R-SC) has introduced a companion bill in the Senate.

### **House Replaces “Pay-As-You-Go” with “Cut-As-You-Go”**

As part of the Rules package it adopted at the beginning of the 112<sup>th</sup> Congress, the new Republican majority in the House replaced “pay-as-you-go” (PAYGO) requirements that had been in place with a “cut-as-you-go” (CUTGO) requirement.

PAYGO is the name given to rules established by Congress which govern mandatory programs and tax legislation. The purpose of PAYGO is to ensure that legislation affecting mandatory spending programs and the tax code do not increase the federal budget deficit. Under PAYGO, any new mandatory spending program, or an increase in an existing program would have to be offset with reductions in other mandatory spending programs and/or tax increases. Similarly, any tax cuts would have to be offset with other tax increases and/or reductions in mandatory spending programs.

The new CUTGO provision adopted by the House requires that any increase in mandatory spending would have to be offset with reductions to other mandatory spending programs. The use of tax increases as an offset would no longer be permitted.

PAYGO and CUTGO do not apply to discretionary spending. This means that federal programs funded through the annual appropriations process are not impacted by these rules. Because the Bush tax cuts were extended in December 2010, this provision makes it highly unlikely they would be repealed.

## **ECONOMIC DEVELOPMENT**

### **Parks and Recreation**

As the new 112<sup>th</sup> Congress begins work, decreasing federal spending is without question the primary focus for the newly elected House Republican majority. Every program and every department are on the table for consideration when it comes to budget cuts. This will certainly have a significant effect on park and recreation agencies by impacting funding for capital projects, afterschool programs and a host of other efforts. It is imperative that park and recreation advocates educate new members of Congress about the importance of parks and recreation to their local communities and the constituents they serve.

One of the park and recreation priorities during the 112<sup>th</sup> Congress is continuing the push for a 40 percent allocation to the Land and Water Conservation Fund (LWCF) State Assistance Program, one of the only programs specifically designed to help state and local governments preserve, develop and assure accessibility to quality outdoor recreation resources. Having community advocates, as well as city and county elected officials, weigh in on the importance of LWCF State Assistance will send a strong message to Congress at this critical time.

### **3% Withholding Law**

The 3% withholding law, which was enacted in Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222), mandates that federal, state and local governments withhold 3% of nearly all of their contract payments for goods and services. Compliance with

this law will impose significant, unnecessary financial burdens on both the public and private sectors. The effective date of this new withholding requirement was initially set for January 1, 2011 but it was delayed one year to January 1, 2012 by the American Recovery Reinvestment Act. Full repeal is necessary.

Senators David Vitter (R-LA), Richard Burr (R-NC), James Inhofe (R-OK), Johnny Isakson (R-GA), and Roger Wicker (R-MS) introduced S. 89 which repeals this requirement. An alternative bill, S. 164, introduced by Senators Scott Brown (R-MA) and Olympia Snowe (R-ME), repeals Section 511, but also includes repeal of the “1099 provision” language requiring companies, starting in 2012, to report all goods and services transactions valued over \$600 to the IRS. The 1099 repeal bill would be a good legislative vehicle to include the repeal of the 3% law, since 1099 repeal has significant support.

### **1099 Repeal – Offsets Are the Issue**

President Obama and lawmakers from both parties support repeal of a provision in the health care law that would require businesses and state and local governments to report any transaction of \$600 or more to the Internal Revenue Service on a 1099 form. Congressional Democrats and Republicans gave the President a standing applause when he cited it as a “bookkeeping burden” in his State of the Union address. However, it is unclear when the repeal will occur because Congress has been unable to agree on how to offset the \$19.2 billion the provision is expected to raise. A broad coalition of interested groups – ranging from government contractors to local governments – is working aggressively to gain passage of the repeal and we expect progress in the coming months.

A bill, H.R. 4, to repeal the mandate sponsored by Representative Daniel Lungren (R-CA) does not specify an offset. Senate Finance Committee Chairman Max Baucus (D-MT) offered identical legislation, S. 72. A separate Senate bill, S. 18, offered by Senator Mike Johanns (R-NE) has more than 60 cosponsors and an offset that would rescind \$39 billion in unspent, unobligated federal funds. On February 2, the Senate approved an amendment by Senator Debbie Stabenow (D-MI) to the Federal Aviation Administration reauthorization bill to repeal the 1099 tax reporting requirement by a vote of 81 to 17, providing the Office of Management and Budget (OMB) nearly complete authority to cut \$44 billion of discretionary budget authority where OMB sees fit in order to pay for the repeal. However, tax provisions are supposed to start in the House, but the vote shows strong support for repeal.

## **HEALTH CARE**

### **Attempts to Repeal Health Care Reform Fail**

Republican leaders in the House of Representatives fulfilled a campaign promise and held a vote on January 19 to repeal the Patient Protection and Affordable Care Act, H.R. 2. The measure passed 245-189, in a nearly party line vote with no Republicans voting against it. However, on February 2 Senate Republicans failed 47 to 51 to repeal the law as an amendment to the legislation reauthorizing the Federal Aviation Administration. Sixty votes were needed on the procedural vote. Senate Democrats are expected to hold a series of hearings in February that examine the benefits of the Affordable Care Act. The Senate Judiciary Committee will hold hearings on the law’s constitutionality and the Health, Education, Labor, and Pensions Committee will hold at least one hearing on insurance practices that prohibit coverage for people

with pre-existing conditions. House Judiciary Committee Chairman Lamar Smith (R-TX) said that his committee would also examine the constitutionality of the Affordable Care Act.

While there are 20 pending lawsuits challenging the health care reform law, two federal judges have upheld it and two federal judges have ruled against it. The U.S. District Court for the Eastern District of Virginia declared the individual mandate provision invalid, but refused to strike the entire law. The U.S. District Court for the Northern District of Florida held the entire statute invalid.

The U.S. District Court for the Eastern District of Michigan and the U.S. District Court for the Western District of Virginia both upheld the law.

As these cases go through the appeals process, legal scholars predict the U.S. Supreme Court will decide the law's fate by the spring of 2012 although there are efforts to force earlier consideration.

## **PUBLIC SAFETY and HOMELAND SECURITY**

### **D Block Spectrum to be Available for Public Safety**

On January 27, Department of Homeland Security (DHS) Secretary Janet Napolitano announced that the Administration plans to back efforts to turn a valuable swath of broadband spectrum over to public safety to create a national first-responder network. The 10 megahertz of spectrum in the 700 MHz range known as the D Block has been a topic of debate in the homeland security world for years. The Federal Communications Commission (FCC) had developed a plan to auction the block off to communications carriers, with the stipulation that they create a first-responder network, a proposal that drew criticism from some lawmakers and leaders in the first-response community who wanted it turned over directly to public safety. Secretary Napolitano's comments are a key indicator that the proposal has momentum because DHS and FCC have overlapping authority on the matter.

The announcement received the approval of Senate Commerce, Science and Transportation Chairman Jay Rockefeller (D-WV), who introduced legislation earlier this week, S. 28, to hand over the D Block to public safety providers. Senator Rockefeller added that his legislation will provide public safety officials with the spectrum resources they require to support a national, interoperable wireless broadband network that will help those who protect us from harm. House Homeland Security Chairman Peter King (R-NY), who introduced his own bill to give public safety the D Block in the last session, also said he was pleased by Secretary Napolitano's announcement.

### **Color Coded Threat System Scrapped**

DHS Secretary Janet Napolitano announced on January 26 that the Department would end the national terrorism alert system that uses colors to describe the level of threat. According to a memo DHS circulated on the change, they will implement a new system that is built on a clear and simple premise: When a threat develops that could impact the public, we will tell you. We will provide whatever information we can so you know how to protect yourselves, your families, and your communities. They immediately began a 90-day phase out of the old system and expect to have the new system in place and up and running by April. The new system will provide as

much information about the nature and location of the threat as is possible, according to Secretary Napolitano. The alerts are likely to include requests and/or instructions on specific actions people can take to mitigate and respond to the threat. Secretary Napolitano did not want to elaborate on the breadth of what those instructions might include.

## TRANSPORTATION

### **Guarantee of Funding for Transportation Programs Removed**

Earlier this month, the House of Representatives adopted a new package of changes to House Rules. One of the changes proposed by the House Republican leadership would repeal Clause 3 of House Rule XXI, which guaranteed a minimum level of funding for transportation programs funded out of the Highway Trust Fund. The rules package also included a stipulation designed to prevent the Appropriations Committees from using Trust Fund spending for new programs not authorized by the current surface transportation law, such as the \$200 million livable communities planning grant program.

### **Surface Transportation Authorization**

All the key parties in Washington are talking about producing a successor to SAFETEA-LU this year. The Administration, which had put the subject on hold two years ago, is now signaling that the White House will send a proposed bill to Capitol Hill. A draft is said to be circulating for comment now. The first indication of the Administration's priorities should be in the anticipated FY 2012 proposed budget due to be released February 14. The respective chairs of the Senate and House transportation committees also say they will produce bills in the months to come. Toward that end Senator Barbara Boxer (D-CA) convened her first hearing on January 26 and Representative John Mica (R-FL) has scheduled a series of field hearings, principally in the districts of his committee's Republican freshmen members.

All have easily agreed as to the objective: to enact a multi-year transportation bill. Achieving that is the tough part because money continues to be the determining, limiting factor. Highway Trust Fund revenues are in decline even as program spending is projected to grow. A forecast by the Congressional Budget Office projects that the five-year period from FY 2011 to FY 2015 will see \$187 billion in trust fund receipts and interest as compared to \$257 billion in projected spending under current law. And while Congress in recent years did approve transfers of General Treasury funds to supplement highway trust fund resources, House Republican leadership won approval of a measure to effectively preclude the need to continue making such transfers that make up for the diminishing trust fund balance.

The White House continues to put off the idea of an increase in highway fuel taxes, with new Chief of Staff William Daley saying as much on January 30. One supposes that if the Republican leaders were to say that the subject of new revenue is on the table, the White House view could change in favor of a consensus position, but there are no signs that will happen anytime soon.

Lacking such consensus we might anticipate the Administration proposing a new bill that will not rely on new revenue but try to leverage private sector funding and "creative" financing, including a reprise of the Administration's proposed national infrastructure bank.

The Administration's proposal to Congress may also advance metrics-and-merit recommendations along the lines of those forwarded by advisory commissions and bipartisan policy panels. Following what was considered the excesses of SAFETEA-LU, recommendations have been made for Congress to put in place performance measures by which to judge projects. Related to that is funding projects on the basis of merit, a principal in the popular TIGER grants program, which also opened funding to a broader range of project types such as multimodal. It is an approach that fits the notion of focusing limited financial resources on projects that will deliver greater benefits and address national needs.

### **Mica Field Hearings**

House Transportation and Infrastructure Committee Chairman John Mica (R-FL) will hold field hearings or "listening sessions" outside of Washington beginning in mid-February to get more input from local and regional officials on what should be in the next federal surface transportation reauthorization legislation. Below is a tentative schedule and locations. Other locations include Oklahoma City, OK; Jonesboro, AR; and Memphis, TN.

- February 14 - West Virginia
- February 17 - Pennsylvania (Philadelphia metropolitan area)
- February 18 - New York (Rochester)
- February 19-20 - Ohio (Columbus), Indiana (Indianapolis) and Illinois (Chicago metropolitan area)
- February 21-23 - Washington (Vancouver), California (Fresno and Los Angeles)

### **Senate EPW Kicks Off 2011 Transportation Authorization Effort**

On January 26, Chairman Barbara Boxer (D-CA) held the first Senate Environment and Public Works Committee (EPW) hearing in the new 112<sup>th</sup> Congress focusing on authorizing federal surface transportation programs and transportation construction's impact on the economy. The extension of current transportation law, SAFETEA-LU, will expire on March 4. Congress is expected to pass another short term extension at least through June.

The committee members and invited witnesses all agreed that a robust, multi-year transportation authorization bill must be passed soon to address the nation's crumbling transportation infrastructure, as well as to help improve the struggling economy. There was little discussion regarding how to pay for current and future needs. Notwithstanding this omission, it is encouraging to note that Senator Max Baucus (D-MT), Chairman of the Senate Finance Committee which has jurisdiction over revenue provisions of transportation authorization, attended a portion of the hearing and expressed strong support for vigorous infrastructure investment.

Perhaps the most controversial point of the hearing focused on the financial margins of the bill. Senator James Inhofe (R-OK) said that "non-transportation projects," including bike trails, might keep the Republicans from supporting the bill. He said he recognized he was focusing on only three percent of funding in the bill, but a perception that a bill carries non-transportation infrastructure could prove to be problematic with his fellow Republicans. Panelist William Dorey, representing the Associated General Contractors of America and the American Road and Transportation Builders Association, struck middle ground and offered that in some cases,

rebuilding crumbling infrastructure is not the best response and creative solutions to individual situations should be considered.

### **Senate FAA Reauthorization Bill Has Provision to Rescind Old Earmarks at DOT**

During the week of January 31, the Senate began consideration of the Federal Aviation Administration (FAA) reauthorization bill. Last March, former Senator Russ Feingold (D-WI) and Senator Tom Coburn (R-OK) introduced an amendment to the FAA reauthorization bill that would rescind the DOT funding of congressionally earmarked projects if ten years had passed since the funding was provided but less than ten percent of the total funding for that project had yet to be obligated. The Feingold-Coburn amendment passed the Senate by a vote of 87-11, and is part of the base bill being considered by the Senate.

DOT has estimated that approximately \$740 million of these earmarks would be rescinded by the amendment. This estimate included the 1998 TEA-21 law and prior legislation, but DOT did not have an estimate on old earmarks from appropriations bills that would be rescinded by the amendment.

## **WATER AND NATURAL RESOURCES**

### **EPA Regulatory and Policy Showdown Brewing**

The newly elected Chairman of the powerful House Energy and Commerce Committee Representative Fred Upton (R-MI) has wasted little time in drawing the Republican line in the sand: Prevent the Obama Administration's efforts to use EPA's authority to regulate greenhouse gases under the federal Clean Air Act. Just before Christmas, when EPA announced its intentions of moving forward, Chairman Upton responded by saying that EPA has its foot firmly on the throat of our economy recovery. Draft legislation is circulating.

There are a number of coal and oil state Democrats that are also opposed to EPA's efforts, led by Senator Jay Rockefeller (D-WV), making it possible to imagine a majority of the Senate and the House lined up against EPA's regulatory agenda. However, a majority in both houses is not enough since it is a given that the President would veto such a measure and there are not enough votes in either body to override a veto.

This dynamic either makes this effort totally symbolic – something that both parties do with increasingly regularity -- or foster a more behind-the-scenes energy deal in which the Obama Administration trades a delay in implementation for other clean energy measures that are less contentious. Either way, the EPA will be the agency attracting most of the wrath of the 112<sup>th</sup> Congress through oversight hearings. Besides House Energy and Commerce, the House Interior and Environment Appropriations Subcommittee, chaired by Representative Mike Simpson (R-ID), will be very active in holding hearings for EPA Administrator Lisa Jackson to explain why her agency's recent spate of new regulations and rules do not interfere with the Nation's economic recovery and job creation.

The House Natural Resources Committee has set the stage for oversight of the Department of the Interior's regulations on everything from off-shore oil permitting processes to hydraulic fracking used in drilling for natural gas.