Appropriations: Energy-Water Spending Bill Passes in House

On July 15, 2011, the House passed H.R. 2354 (H.Rpt. 112-118), the Energy and Water appropriations for Fiscal Year 2012. The vote was 219-196.

The bill provides a total of $30.6 billion, $5.9 billion (19 percent) below the President's request and $1 billion below the FY11 appropriations. The legislation provides the annual funding for the Department of Energy, as well as the Army Corps of Engineers, the Interior Department's Bureau of Reclamation, the Nuclear Regulatory Commission, and various regional water and power authorities. Unlike in previous years, the bill does not contain any earmarks.

The bill rescinds $1 billion in unobligated funding previously appropriated for high-speed rail in order to provide emergency aid to areas in the Midwest hard hit by storms and floods. Rep. Jim Costa (Fresno) decried the offset, calling it “highway robbery, plain and simple.” California’s high-speed rail project would run through the San Joaquin Valley and Costa has been a champion of the project. He estimates that constructing the rail system would generate almost 300,000 jobs and provide about 450,000 permanent jobs in the state once the project is completed.

For the Army Corps of Engineers, the bill provides $4.8 billion, of which $1.6 billion is for construction projects and $2.4 million for operations and maintenance. This amounts to less than a two percent decrease from FY 2011. The appropriations bill also provides $27 million in general funds for flood control and navigation projects. The Corps must provide a spending plan for these funds to Congress within 45 days of enactment. The Bureau of Reclamation's budget is $971 million, including $35.9 million for CALFED – a cut of almost 9% from FY11.

During floor consideration, the House adopted an amendment offered by Rep. Adam Schiff (Burbank) that cuts $79.6 million from Departmental Administration, and adds the funds to the Advanced Research Projects Agency - Energy (ARPA-E). The amendment passed on a vote of 214-213. The additional funding brings the ARPA-E appropriation back up to the FY11 level.

An amendment by Rep. Jeff Denham (Modesto) was also approved by voice vote. It prohibits funding to reintroduce salmon to the San Joaquin River.
The House also adopted an amendment by voice vote barring the use of any appropriated funds to implement the new standards to phase out the use of old incandescent light bulbs. The House failed to pass a bill earlier this week, H.R. 2417, that would have repealed the standards.

Two other amendments were also approved by voice vote, one that cuts $6 million from Energy Efficiency and Renewable Energy, and transfers the funds to the Spending Reduction Account, and another that cuts $200,000 from the same account and also transfers the funds to the Spending Reduction Account. Later, however, the House adopted an amendment that cuts $10 million from Departmental Administration, and adds the funding to Energy Efficiency and Renewable Energy. The amendment passed on a vote of 212-210.

Finally, the House approved another amendment by voice vote, this one prohibiting funding to expand the authorized uses of the Harbor Maintenance Trust Fund.


**APPROPRIATIONS: HOUSE FY12**

**INTERIOR/ENVIRONMENT & AG/FDA APPROPRIATIONS REPORTS AVAILABLE ON INSTITUTE’S WEBSITE**

**FY 2012 Interior and Environment Appropriations**

On July 13, 2011, the House Appropriations Committee approved its Fiscal Year 2012 appropriations for Interior and Environment (H.R. 2584/H.Rpt. 112-151). The vote was 28-18. The bill makes appropriations for the Department of the Interior (except the Bureau of Reclamation and the Central Utah Project), the Environmental Protection Agency, and for other related agencies, including the Forest Service, the Indian Health Service, the Smithsonian Institution, and the National Foundation on the Arts and the Humanities.

The Committee recommends $27,473,000,000 to fund the Department of the Interior, the Environmental Protection Agency, the U.S. Forest Service, the Indian Health Service, the Smithsonian Institution, and 18 other related agencies. This amount reflects a $2,086,000,000 reduction in spending from the fiscal year 2011 Continu ing Resolution and a $3,816,290,000 reduction from the budget request. Overall spending is reduced by seven percent from fiscal year 2011 and 12 percent below the budget request. As a result, overall funding in this bill is essentially on par with levels established in fiscal year 2009.

Funding for the EPA was reduced by $1.6 billion, or 16 percent, from the fiscal year 2010 enacted level in the fiscal year 2011 Continuing Resolution. An additional reduction of $1.5 billion, or 18 percent, from the fiscal year 2011 enacted level is proposed in this bill putting overall funding for the EPA well below fiscal year 2006 enacted levels. Cuts to the Clean Water State Revolving Fund...
(CWSRF) and Drinking Water State Revolving Fund (DWSRF) account for almost $1 billion of the reduction. California water agencies often use these two funds to finance a variety of infrastructure projects. The bill allocates $689 million to the CWSRF and $829 million to the DWSRF, together this is 30% reduction from FY 2011.

**FY 2012 Agriculture, Rural Development, and Food and Drug Appropriations**

On June 16, 2011, the House passed H.R. 2112, the Fiscal Year 2012 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations, by a vote of 217-203 (H.Rpt. 112-101). The legislation funds the various programs within the Department of Agriculture and related agencies, and totals $125.5 billion in both discretionary and mandatory funding, a reduction of more than $7 billion from the President's request. The bill reduces discretionary spending by $2.7 billion from last year's level – a cut of more than $5 billion from the President's request.


**Transportation: Senate Committee Discusses Transportation Reauthorization Issues**

On Thursday, July 21, 2011, the Senate Environment and Public Works Committee, chaired by Senator Barbara Boxer, held a hearing on transportation reauthorization issues. Witnesses included: Antonio Villaraigosa, Mayor, City of Los Angeles; Terence O’Sullivan, General President, Laborers’ International Union of North America; Donald James, Chairman and Chief Executive Officer, Vulcan Materials; Susan Martinovich, Director, Nevada Department of Transportation; Gary Ridley, Secretary, Oklahoma Department of Transportation; Deron Lovaas, Transportation Policy Director, Natural Resources Defense Council; and Greg Cohen, President and CEO, American Highway Users Alliance.

This week, Senator Boxer and Senator James Inhofe (OK), Ranking Member on the Committee, released an outline for “Moving Ahead for Progress in the 21st Century (MAP-21)”, a bipartisan proposal to reauthorize the nation's transportation programs for two years.

According to the Senators, the proposal maintains funding at the current levels, includes significant reforms to make the nation's transportation programs more streamlined and efficient, and provides robust assistance for transportation projects under the Transportation Infrastructure Finance and Innovation Act (TIFIA) program to leverage state, local and private-sector funding.

Senators Boxer said, "We have worked together to develop MAP-21, which is a bipartisan proposal that modernizes and reforms our current transportation systems to help create jobs, jumpstart our economy, and build the foundation for long-term prosperity."

The current surface transportation bill expires on September 30th, and many groups, ranging from the U.S. Chamber of Commerce to the AFL-CIO, have called for immediate action to reauthorize the nation's transportation programs. The Boxer/Inhofe approach is a clear rejection of the 34 percent cut in funding proposed by the House, which would result in 630,000 jobs in highways and transit being lost in 2012, according to Boxer.

Specific highlights from key areas of the proposal include:
**Funding**

MAP-21 authorizes Federal-aid highway programs for 2-years while maintaining current spending levels. The bill’s goal is to attain the optimum achievable authorization depending on the resources available and in a way that does not increase the deficit and can achieve bipartisan support. In addition, MAP-21 eliminates earmarks.

**Core Programs**

MAP-21 continues to provide the majority of Federal resources to the states through core programs using funding formulas such as the the National Highway Performance Program that consolidates the Interstate Maintenance program, the National Highway System program, and part of the Highway Bridge Program into a single program that focuses on the most critical 222,000 miles of roads in the nation. The National High Performance Program also provides states with increased flexibility in their use of funds if they adequately maintain the condition of their Interstate system and bridges.

The Transportation Mobility Program is another component of MAP-21 that consolidates several existing programs to provide funds to states for projects on all Federal-aid highways and all bridges and tunnels. This program also provides for the sub-allocation of some funds to metropolitan areas and to other areas of the State based on population. Other key components of MAP-21 include the National Freight Program, the Congestion Mitigation and Air Quality Improvement Program and the Highway Safety Improvement Program.

**Consolidation**

MAP-21 consolidates 87 programs under SAFETEA-LU to less than 30 programs. The activities for which dedicated funding has been removed have been consolidated into the very broad core programs, leaving states with the flexibility to fund these activities as they see fit.

**America Fast Forward**

MAP-21 is also intended to build upon the success of the TIFIA program to help communities leverage their transportation resources through federal credit assistance. The TIFIA program provides direct loans, loan guarantees, and lines of credit to large and nationally or regionally significant transportation projects with a revenue stream at terms that are more favorable than those available in the private sector and that will leverage private and other non-federal investment in transportation improvements.

The MAP-21 proposal increases the funding for the TIFIA program from $122 million per year to $1 billion per year. Other modifications include: increasing the maximum share of project costs from 33 percent to 49 percent; allowing TIFIA loans to be used to support a program of projects, and allowing upfront commitments of future TIFIA program dollars through the use of master credit agreements. In addition, MAP-21 sets aside $100 million per year for projects in smaller cities and rural areas under lower interest rates. The Federal Highway Administration has stated that historically every Federal dollar spent through the TIFIA program can mobilize up to $30 in transportation investments.

**Performance**

MAP-21 focuses the highway program on key outcomes, such as reducing fatalities, improving bridges, fixing roads, and reducing congestion, in order to ensure that taxpayers are receiving the most for their money. States will set their own targets for improving safety, road and bridge condition, congestion, and freight movement.

**Accelerated Project Delivery**

The proposal includes several provisions designed to reduce project delivery time and costs while protecting the environment. Examples of improvements include: expanding the use of innovative
contracting methods; creating dispute resolution procedures; allowing for early right-of-way acquisitions; reducing bureaucratic hurdles for projects with no significant environmental impact; encouraging early coordination between relevant agencies to avoid delays later in the review process; and providing incentives for accelerating project delivery decisions within specified deadlines.

At the hearing on July 21st, Los Angeles Mayor Antonio Villaraigosa testified in support of the legislation. He said, “Mayors understand the political and budgetary realities. In the coming years, the federal role must change from one of being the primary financier and developer of all infrastructure to one where prudent federal policy will target investments to better connect workers to their jobs and goods to markets.” He told the committee that any reduction in funding to U.S. transportation programs will deal a devastating blow to local projects, local jobs and the national recovery.

For more information, visit: http://epw.senate.gov.

**HEALTH: HOUSE ENERGY COMMITTEE EXAMINES FDA MEDICAL DEVICE REGULATION**

On Wednesday, July 20, 2011, the Oversight and Investigations Subcommittee of the House Energy and Commerce Committee held a hearing titled "FDA Medical Device Regulation: Impact on American Patients, Innovation and Jobs." This is the fifth in a series of hearings on regulatory overhaul. Witnesses included: Jeffrey E. Shuren, MD, JD, Director, Center for Devices and Radiological Health (CDRH), Food and Drug Administration (FDA); Marti Conger (Benicia, CA); Carol Murphy (Fairborn, OH); Robert Fishell (Dayton, MD); Pam Sagan (Los Altos, CA); Michael Mandel, Progressive Policy Institute (Washington, DC); and Sean Ianchulev, MD, MPH, Chief Medical Officer, Transcend Medical, Inc. (Menlo Park, CA), and Associate Clinical Professor, University of California, San Francisco.

The hearing examined the state of the medical device industry and the impact regulations and policies at the Center for Devices and Radiological Health have on patient access, innovation, and job creation. The U.S. medical device industry directly employs more than 400,000 Americans, and is indirectly responsible for over 2 million total jobs. According to Committee documents, numerous recent reports, case studies, and firsthand accounts indicate that a lack of consistency, predictability and transparency in FDA's review processes is jeopardizing the U.S. industry’s leadership position and depriving patients of innovative care that is often available in Canada and Europe. Common themes raised by device companies seeking FDA approval, the Committee said, include: unclear guidance; high turnover of review division staff; impractical clinical trial designs; changing "goal posts;" reluctance to approve protocols; and duplicative or overly burdensome data requests.

A Congressional Research Service report issued in April 2010 found that medical device review process funding increased from $275 million in FY2008 to $368 million in FY2010 -- a nearly 35% increase in funding. Comparing 2010 with the 2003 to 2007 time period, however, the average review time for lower-risk devices approved through the 510(k) process increased by 43% and the average review time for higher-risk, innovative devices under the Premarket Approval system increased 75%.

Ms. Conger of Benicia, CA and Ms. Sagan of Los Altos, CA, related their difficult personal experiences because of the unavailability of medical devices here in the United States that have been approved and available in Europe for several years. Dr. Ianchulev, a clinician and eye surgeon, testified: “On several occasions, I have had to refer patients to other countries to receive the necessary treatment because the medical devices were not available in the US and were years away from being commercialized.”
Dr. Shuren discussed the balance CDRH and the FDA must maintain between providing the safest and most effective medical products and facilitating innovations that produce safer and more effective products. He testified that, as a result of President Obama’s call for regulatory reform, FDA has identified over 40 rules that have a significant health impact or impose a burden on the agency or industry that are candidates for regulatory reform. FDA has also requested public comments on other rules that should be reformed, and is taking other steps to streamline the regulatory process, while ensuring the highest levels of safety and effectiveness of new products. Dr. Shuren, however, defended CDRH’s caution in approving some devices, because although they have been approved in Europe that have since been proven to cause significant adverse side effects and health problems.

For more information, visit: http://energycommerce.house.gov/.

TRANSPORTATION: SENATE COMMERCE ADDRESSES INFRASTRUCTURE FUNDING

On Wednesday, July 20, 2011, the Senate Commerce, Science and Transportation Committee held a hearing on ways of building national transportation infrastructure through innovative funding mechanisms. Witnesses included: The Honorable Polly Trottenberg, Assistant Secretary for Transportation Policy, U.S. Department of Transportation; Mr. Steve Bruno, Vice President, Brotherhood of Locomotive Engineers and Trainmen; Mr. Robert Dove, Managing Director, Carlyle Infrastructure Partners, The Carlyle Group; Mr. J. Perry Offutt, Managing Director, Head of Infrastructure, Investment Banking for the Americas, Morgan Stanley; and Mr. Pete Ruane, President & CEO, American Road & Transportation Builders' Association.

This hearing examined the means by which federal funds can be used to leverage and partner with private sector capital to supplement existing transportation funding and increase overall investment in transportation projects. In addition, the hearing looked at the effects investing in infrastructure projects can have on job creation.

According to Infrastructure Investor, the 30 largest infrastructure equity funds raised $180 billion of private capital for infrastructure investment over the last five years. These infrastructure equity funds include pension plans, private investment funds and infrastructure developers. Mr. Offutt, who testified on behalf of Morgan Stanley, said one of the most attractive benefits of major public investments in transportation infrastructure is they create tangible capital assets that are long lived. In addition, he said, these investments provide infrastructure improvements that foster and facilitate continuing economic growth over many years beyond the initial investment.

Mr. Bruno said the need for investment in our nation's infrastructure is significantly larger than any one revenue source, and there is a need to design policies to access different revenue sources while being good stewards of the nation's infrastructure and meeting the challenges its current condition presents. According to Bruno, a national infrastructure bank is one method by which private investment can serve as one of those revenue sources.

Ms. Trottenberg testified that one of DOT’s most important programs for facilitating private investment has been the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) program, which provides credit assistance for major surface transportation projects. The program offers direct loans, loan guarantees, or lines of credit for up to 33 percent of a project's eligible costs. TIFIA offers flexible and favorable repayment terms, which help fill market gaps in financing plans and encourage broader co-investment by the public and private sectors, Trottenberg said. These include interest rates that are equivalent to Treasury rates – currently about 4.23 percent – opportunities to defer interest and principal payments in the early years of the loan, and final maturity dates as much as 35 years from completion of construction.
Since its inception the TIFIA program has used $603.6 million of budget authority to support 22 direct loans and one loan guarantee totaling $8.3 billion in credit assistance (i.e. the face value of the loans), Trottenberg testified. This credit assistance facilitates transportation projects totaling $31 billion in public and private infrastructure investment, she said.

For more information, visit: http://commerce.senate.gov/.

REPORT: CIS REPORT ON DEPORTATION ENFORCEMENT RELEASED

The Center for Immigration Studies posted a report on its website on July 18, 2011 by W. D. Reasoner entitled “Deportation Basics: How Immigration Enforcement Works (or Doesn’t) in Real Life.” Reasoner (a pseudonym) is a retired government employee with many years of experience in immigration administration, law enforcement, and national security matters. The report focuses on the enforcement actions that take place prior to, and that result in initiation of, removal proceedings, one form of which is a hearing before an immigration judge. It spells out the “cumbersome and dysfunctional process” and also includes a set of recommendations to improve the system, all of which can be accomplished, the report concludes, with the agency’s regulatory process, without the need for legislative action.

Some of the key observations of this report include:
- A large percentage of aliens flee from removal proceedings — perhaps as many as 59 percent of all those released to await hearings.
- The exercise of “prosecutorial discretion” is problematic for ICE field officers. If the alien that they decline to remove goes on to commit a heinous act, they could be subject to lawsuits from victims and will be held accountable by their own agency (even if agency leadership encourages them to use the tool).
- Charging an alien with immigration violations is a paperwork-intensive, cumbersome process that requires agents to fill out nearly 20 different forms each time.
- ICE officers are supposed to consider two key factors in determining whether to detain or release an alien in proceedings — if the alien is a flight risk and if he is a risk to the community. The latter factor obviously is given serious consideration, but it is equally obvious from the large number of absconders that officers don’t give the same weight to the likelihood of flight, especially considering the scarcity of funded detention space.
- The Immigration and Nationality Act (INA) provides for several types of due process for aliens, depending on their circumstances of arrival and stay. The law does not require that all removals be ordered by an immigration judge.
- The option of Voluntary Return, where the alien requests to be returned home in lieu of removal proceedings, is not really “voluntary,” but is beneficial to the alien because it carries fewer consequences if the alien returns illegally.
- Immigration law provides for seven ways to remove an alien, which are explained in the report. Four of these options are relatively efficient, but used less frequently. If ICE chose to expand their use, the workload of the immigration court could be reduced and the immigration enforcement system would be less dysfunctional.
- The total number of apprehensions of illegal aliens by immigration enforcement agencies is less than half of what it was five years ago. For instance, the drop in apprehensions by Customs and Border Protection (CBP) is often explained by improvements in border security; however, this rationale is suspect, as has been pointed out by the Rand Corporation in a study of border metrics. But ICE
apprehensions also have dropped steeply, although there has been only a modest drop in the size of the illegal population inside the United States.

The full report can be found at: http://www.cis.org/deportation-basics.

**REPORT: PPIC ISSUES REPORT ON ILLEGAL IMMIGRATION**

On Tuesday, July 9, 2011, the Public Policy Institute of California released a report titled, *At Issue: Illegal Immigration*, co-authored by Hans Johnson and Laura Hill.

According to the report, illegal immigrants make up about 28 percent of all foreign-born U.S. residents and slightly less than 4 percent of the nation's total population. The vast majority of immigrants in California are legal residents. But as the state with the most undocumented immigrants, California has a critical stake in how well this issue is understood, the authors believe.

In a press release, PPIC stated that the purpose of the report is to provide basic information on undocumented immigration and the debate surrounding it. PPIC writes, "because illegal immigrants are not directly identified in censuses and national surveys, the information provided here is based on the best available estimates. These estimates are consistent across sources and are regarded by research experts as the most accurate available."

The report finds that, for the first time in decades, the number of undocumented immigrants living in the United States has fallen. In 2009, there were about a million fewer illegal immigrants in the United States than in 2007. This decline is all the more remarkable because it follows a period of dramatic increases, the authors write. From 1990 to 2007, the number of undocumented immigrants increased by an average of 500,000 per year, and the population grew from a few million to about 12 million. By 2009 the population had shrunk to approximately 11 million, and 2010 estimates suggest little change from 2009.

California has experienced a similar decline: the Department of Homeland Security estimates that 2.6 million illegal immigrants resided in California in 2010, a decline of 280,000 since 2008.

The vast majority of illegal immigrants in the United States are from Latin America, according to the study. About 60 percent are from Mexico alone; another 20 percent are from other Latin American countries, most notably El Salvador, Guatemala, and Honduras. More than one million undocumented immigrants also come from Asia and hundreds of thousands from Europe and Canada.

For more information, visit: http://www.ppic.org.