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City Manager's Office

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Betsy Shotwell

SUBJECT: SEE BELOW

DATE: April 23, 2012

Approved:

Date:

4/26/12

**SUBJECT: STATUS AND FORECAST OF NOTABLE FEDERAL LEGISLATION
RELEVANT TO LOCAL GOVERNMENT INTERESTS.**

INFORMATION

As Congress returned from recess last week, the City's Federal lobbyist firm of Patton Boggs LLP provided the attached comprehensive analysis of: the FY 2013 Federal budget and appropriations status and outlook; the surface transportation and Federal Aviation Administration reauthorizations; the status of various housing proposals; jobs proposals and workforce investment legislation; energy and water resources issues; tax issues; telecommunications; and advocacy efforts with Federal agencies and other governmental bodies. This Federal legislative update reflects the City's 2012 legislative policy goals and priorities and our efforts to work with our Federal partners to advocate on issues of concern and interest to the City in the second session of the 112th Congress.

Updates are also provided in Patton Boggs' weekly "Capital Thinking" reports found on their website: www.pattonboggs.com.

BETSY SHOTWELL
Director, Intergovernmental Relations

Attachment:

Patton Boggs' April 16 report: Status and Forecast of Notable Federal Legislation Relevant to Local Government Interests

MEMORANDUM

To: City of San Jose
From: Patton Boggs LLP
Date: April 16, 2012
Subject: Status and Forecast of Notable Federal Legislation Relevant to Local Government Interests

As the House and Senate return from a two-week recess today, this memorandum provides a comprehensive update on the status and prospects of pending, high-profile federal legislation of particular relevance to local governments and their partners.

Specifically, the memo addresses –

- President Barack Obama's State of the Union Address
- Budget and Appropriations
 - President Barack Obama's FY 2013 Budget Proposal
 - FY 2013 House Budget Resolution
 - FY 2013 Senate Budget Action
 - FY 2013 Appropriations Status and Outlook
- Surface Transportation Reauthorization
- Federal Aviation Administration (FAA) Reauthorization
- Jobs Proposals
 - Veterans Job Corps
 - Summer Jobs+ Initiative
 - Rebuild America Act
- Housing
 - Blueprint for an America Built to Last
 - Restore our Neighborhoods Legislative Proposal
 - HUD Regulations to Ensure Equal Access to Housing

- HUD Proposed Rules
- Homelessness Definition
- Workforce Investment Legislation
- Eminent Domain Legislation
- Energy / Climate Legislation
 - Energy Tax Legislation
 - Development of a National “Clean Energy Standard”
 - Property Assessment Clean Energy (PACE) Home Energy Program
 - Energy Efficiency and Conservation Block Grant (EEECGB) Program
 - EPA’s Greenhouse Gas and Related Regulatory Agenda
- Water Resources and Water Quality
 - Water Infrastructure Finance and Innovation Act (WIFIA)
 - Clean Water Act
 - Water Quality
- Chemical Security
- Telecommunications
 - Public Safety Spectrum
 - 700 MHz Waiver Recipients
 - 700 MHz Waiver Applicants
 - Tower Siting and Collocations
- Tax Issues
 - Municipal Bonds
 - President Barack Obama’s Corporate Tax Reform Proposal

PRESIDENT BARACK OBAMA’S STATE OF THE UNION ADDRESS

On January 24, President Barack Obama delivered his fourth State of the Union Address to Congress. As the de facto opening of the 2012 Presidential campaign, the speech provided the President the opportunity to lay out the case to Americans for his reelection and to meld a report on an improving economy with his ambitions for the balance of this term and the second one he hopes to secure in November. The President also chastised Congress for the amount of legislative business that was left unfinished in 2011.

With the speech serving as a precursor to the February release of his FY 2013 Budget Proposal, the President outlined his priorities for the coming year. As with his 2011 State of the Union Address, the President’s focus was on jobs. The President indicated that he wants Congress to provide incentives for manufacturing companies to bring jobs back to the United States. He also focused on

efforts related to increases in refinancing options and reductions of improper foreclosure activities to assist in the country's mortgage crisis recovery, announcing the creation of the Unit on Mortgage and Securitization Abuses to investigate the misconduct and illegalities that contributed to the current mortgage crisis. The President also called on Congress to adopt a clean energy standard and endorsed an "all of the above" domestic energy production strategy focused on developing the nation's vast natural gas resources. Citing the successful passage of three Free Trade Agreements, the President asserted that his 2010 pledge to double America's exports in five years and create two million jobs was ahead of schedule. The President also stressed the importance of workforce training and college affordability as critical factors in maintaining the country's global competitiveness. See *"The State of the Union and the 2012 Presidential Election"* provided on January 25, 2012 for a thorough analysis of the President's State of the Union Address and its impact going forward.

BUDGET AND APPROPRIATIONS

President Barack Obama's FY 2013 Budget Proposal

On February 13, President Barack Obama submitted his FY 2013 Budget Proposal to Congress. In his request the President adhered to the overall discretionary spending budget cap of \$1.047 trillion already established through last year's "Budget Control Act of 2011" (P.L. 112-25), as part of the debt ceiling crisis resolution. This legislation also established a sequestration process imposing automatic spending cuts of \$1.2 trillion across defense and non-defense programs that take effect in January 2013 should Congress fail to agree upon other deficit reduction measures. The President also incorporated a strategy within his Budget Proposal to meet the required deficit reduction to avoid the sequestration process.

Overall, the President's Budget includes \$3.8 trillion in spending, a slight increase from the \$3.79 trillion in FY 2012. Of that amount, 67 percent is mandatory entitlement spending (*e.g.* Medicare, Medicaid, Social Security) or interest on the national debt, and less than 15 percent is domestic non-defense spending. On the spending side, it calls for \$350 billion in investments to maintain lower payroll taxes, to strengthen incentives for domestic manufacturing while rewarding companies that have scaled back overseas operations, to hire first responders and teachers, to retrain workers, to invest in civilian scientific research and green energy, and to invest in infrastructure and school modernization. Two major new initiatives are added: \$12 billion for Pathways Back to Work, an initiative that would support summer youth and year round jobs for low-income youth and \$8 billion for Community College Partnerships to improve access to job training across the nation. It should be noted, however, that all new spending initiatives or tax changes are subject to PAYGO rules (in order not to add to the federal deficit), which requires offsets with savings derived from existing funds.

The President's FY 2013 Budget also projects about \$3.6 trillion in deficit reduction over ten years, including major entitlement reforms saving approximately \$600 billion and increased tax revenues of \$1.6 trillion. It proposes raising taxes over the next decade on corporations and the wealthy in part by letting the Bush Administration era tax cuts expire on annual household incomes over \$250,000. Moreover, the proposal encourages Congress to reform the tax code by eliminating the alternative minimum tax and places a budget cap on certain tax exclusions, including interest on municipal bonds issued by state and local governments.

The forecasts in the FY 2013 Budget also assume strong overall economic growth that many analysts challenge, including the Congressional Budget Office. The Budget proposes new revenue sources that either are not realistic for passage or not identified, such as the source of \$50 billion for upfront transportation spending.

The defense budget, which impacts most localities directly through military presence and indirectly through procurement or research spending, faces reductions in nearly all spending categories, totaling \$9 billion in FY 2013 and \$487 billion over ten years. Beyond reductions in military personnel and individual procurements, a central point of debate will be the proposal for two new rounds of the Base Realignment and Closure (BRAC) process in 2013 and 2015.

For local governments in general, the budget spending proposals cannot be characterized as exceptionally harmful or helpful. Annual priorities like preservation of Community Development Block Grant and public safety funding levels are accommodated, albeit with some reductions in housing and homeland security programs. Anticipated proposals for major new police and fire hiring programs actually reflect consolidations of existing efforts aggregated at historic funding levels. Meanwhile, high-profile initiatives remain relatively small scale, seeking new economic development opportunities focused on innovation and manufacturing and renewed requests for Sustainable Communities program funding, but all at levels which produce small grants impacting a few places.

More complex for localities – and a priority for action – are various tax proposals that position for anticipated comprehensive reform in 2013. As in prior years, the budget proposes caps on tax deductions that would notably impact the market for tax-exempt bond financing and costs of municipal capital projects. Other tax proposals around manufacturing and research incentives will greatly influence economic growth potential for localities, depending on the mix of industry clusters and assets.

Therefore, going forward into this budget cycle, effective local governments should be even more attentive to evolving tax-related issues and the annual funding or structural reform of large-scale programs that provide both direct and indirect benefits. See *“President’s FY 2013 Budget Proposal – Analysis Related to Administration Funding and Policy Priorities”* provided on February 15, 2012 for a comprehensive analysis of the President’s FY2013 Budget Proposal.

FY 2013 House Budget Resolution

On March 20, House Budget Committee Chairman Paul Ryan (R-WI) released his FY 2013 Budget Resolution - *“The Path to Prosperity: A Blueprint for American Renewal.”* Chairman Ryan’s proposal (H. Con. Res. 112) sets the FY 2013 discretionary spending limit at \$1.028 trillion, which is two percent, or \$19 billion, less than the cap of \$1.047 trillion established in the Budget Control Act of 2011 (“BCA” / P.L. 112-25).

The resolution was approved by the Budget Committee on March 21. After voting down six alternative budgets (detailed below) the House approved the resolution by a vote of 228 to 191 on March 29.

President Obama has been exceptionally critical of the House Budget Resolution, railing on Republicans for “gutting the very things we need to grow an economy that’s built to last – education and training, research and development, our infrastructure.” Moreover, with the Senate vowing to stick to the discretionary spending cap of \$1.047 trillion established in last year’s Budget Control Act of 2011 (P.L. 112-25), the House resolution will not be approved in the Senate, but will serve several purposes: (1) it establishes fiscal talking points for Republicans heading into the elections; (2) it sets the Republican “bar” for deficit reduction negotiations expected to occupy much of the lame duck session; (3) it instructs six committees to come up with the spending cuts necessary to avoid sequestration in time for a May vote; and (4) it ensures another very contentious and prolonged appropriations reconciliation process.

Highlights of Chairman Ryan’s proposal –

- Reduces spending by \$5.3 trillion and lowers taxes by \$2 trillion over ten years.
- Incorporates many of the budget reform and transparency measures proposed in a 10-bill package by the House Budget Committee in December 2011.
- Establishes a \$554 billion cap on Defense spending for FY 2013 (nearly level to FY 2012).
- Promotes new energy exploration.
- Privatizes Freddie Mac and Fannie Mae.
- Repeals healthcare reform law.
- Establishes a premium support model for Medicare – Medicare beneficiaries would have the option to purchase coverage through a new Medicare Exchange or to remain in traditional Medicare. The Medicare program would provide a payment to offset the premium for individuals electing to purchase health insurance through the Medicare Exchange. This would not impact existing or near-term retirees.
- Converts the federal share of Medicaid into a block grant.
- Suggests a path be established to ensure the solvency of Social Security.
- Repeals the Independent Payment Advisory Board.
- Caps non-economic damages in medical liability lawsuits.
- Calls for the consolidation of duplicative federal job-training programs into a streamlined workforce development system with fewer funding streams. The proposal is based on language provided in H.R. 3610, which would consolidate 33 federal programs into four “Workforce Investment Funds”:
 - (1) The Workforce Investment Fund – to provide job training services to adults, unemployed workers, and youth seeking employment;
 - (2) The State Youth Workforce Investment Fund – to serve the nation’s disadvantaged youth, with a focus on school completion;
 - (3) The Veterans Workforce Investment Fund – to deliver employment and training services to America’s veterans; and

(4) The Targeted Populations Workforce Investment Fund – to provide assistance to special populations, including Native Americans and seasonal farm workers.

- Proposes to reform the Credit Reform Act by authorizing the use of fair-value accounting principles for any legislation dealing with federal loan and loan-guarantee programs (including FHA and federal student-loan programs).
- Proposes two individual income tax brackets of 10 percent and 25 percent (there are currently six and the top rate is 35 percent).
- Reduces the corporate tax rate from 35 percent to 25 percent and establishes a “territorial” system in which companies pay tax on income earned in the United States (this was proposed last year by House Ways and Means Committee Chairman Dave Camp (R-MI)).
- Repeals the Alternative Minimum Tax (AMT).
- Converts the Supplemental Nutrition Assistance Program (SNAP) into a block grant and cuts \$122.5 billion from the program over ten years.
- **Avoids Sequestration.** The proposal provides budget reconciliation instructions to six authorizing Committees to produce legislation that achieves necessary spending cuts (\$261 billion over 10 years) to avoid the sequestration process mandated by the Budget Control Act of 2011 and scheduled to go into effect in January 2013. The six Committees and the level of spending cuts they are directed to recommend include:
 - Agriculture - \$33.2 billion for FY 2012 – FY 2022 (\$8.2 billion for FY 2012 and FY 2013);
 - Energy and Commerce - \$96.76 billion for FY 2012 – FY 2022 (\$3.75 billion for FY 2012 and FY 2013);
 - Financial Services - \$29.8 billion for FY 2012 – FY 2022 (\$3 billion for FY 2012 and FY 2013);
 - Judiciary - \$39.7 billion for FY 2012 – FY 2022 (\$100 million for FY 2012 and FY 2013);
 - Oversight and Government Reform - \$78.9 billion for FY 2012 – FY 2022 (\$2.2 billion for FY 2012 and FY 2013); and
 - Ways and Means - \$53 billion for FY 2012 – FY 2022 (\$1.2 billion for FY 2012 and FY 2013).

Chairman Ryan’s proposal assumes these cuts will be achieved in part through transforming public sector pensions to work more like those in the private sector, restructuring the federal government’s role in financial services, and changes to entitlement programs. This is reflected by the role of the six Committees – the Agriculture Committee will likely target food stamps and farm subsidies; the Energy and Commerce Committee oversees Medicaid and portions of the healthcare reform law; the Oversight and Government Reform Committee controls federal workers and their retirement system; and the Ways and Means Committee oversees Medicare (taxes are not expected to be addressed).

By utilizing the reconciliation process, Chairman Ryan concedes the purpose of this procedure is primarily for political positioning leading up to the November elections. For a

budget reconciliation to take effect, both chambers would have to approve the process. Senate Democratic leaders have already dismissed the idea.

The House Committees identified above are directed to report their recommendations by April 27, 2012, with the intent to bring the reconciliation measure to the House floor in May. The Judiciary, Financial Services, and Agriculture Committees have initial markups scheduled this week. It is anticipated that the Judiciary Committee will propose a strategy that already passed in the House to overhaul the medical liability system, capping non-economic damages at \$250,000, limiting attorney fees, and establishing a statute of limitations for filing medical malpractice lawsuits. This is reported to save \$100 million in FY 2013 and \$39.7 million over 10 years. The Financial Services Committee is expected to propose the elimination of federal authority to seize failing financial firms, which was provided under the Dodd-Frank law (P.L. 111-203). The panel will also recommend additional changes to the Federal Deposit Insurance Corporation (FDIC) and will also propose the elimination of the Home Affordable Modification Program, another measure that has previously been approved by the House.

Alternative Budget Proposals

As noted above, six alternative budgets were proposed as substitute amendments to Chairman Ryan's FY 2013 Budget Resolution during floor consideration, all of which were rejected:

- **Democratic Caucus Substitute (163 - 262; 22 Democrats joined the Republicans in voting against the amendment).** The Democratic proposal incorporated much of President Obama's FY 2013 Budget and recent jobs proposals. It included a 6-year surface transportation proposal; provided significant funding for transportation jobs, infrastructure, education initiatives, the Veterans Jobs Corps, and the hiring of police and fire personnel; protected Medicare, Medicaid, and Social Security; supported the Affordable Care Act; ended Bush-era tax cuts for millionaires and corporate tax loopholes; and established the Buffett Rule.
- **Republican Study Committee (RSC) Substitute (136 - 285).** The RSC plan included many of the same fiscal principles as Chairman Ryan's proposal, although it established an FY 2013 discretionary spending cap of \$931 billion and froze the cap through 2017, allowing only increases corresponding with inflation going forward. The RSC said the plan would balance the budget in five years without revenue increases. The proposal also: increased the Medicare eligibility age and phased-in the Social Security retirement age to 70 for those born after 1958; set two individual tax rates of 15 and 25 percent and a corporate tax rate of 25 percent; provided for Congressional approval of agency regulations; called for the sale of 5 percent of federal lands; and eliminated the Corporation for Public Broadcasting, the Economic Development Administration, the National Endowment for the Arts, the National Labor Relations Board, the Presidential Election Campaign Fund, the Consumer Financial Protection Bureau, and a number of Agriculture programs. The measure also called for making the current informal earmark ban part of the official House rules, which would create a point of order against earmarks.

- **Bipartisan (Simpson-Bowles) Substitute (38 - 382).** The plan proposed by Jim Cooper (D-TN) and Steve LaTourette (R-OH) was based on the President's 2010 National Commission on Fiscal Responsibility and Reform, led by former Senator Alan Simpson (R-WY) and Erskine Bowles, President Clinton's Chief of Staff. The Simpson-Bowles plan, which reduces the deficit by \$4 trillion over 10 years through 2/3 spending cuts and 1/3 tax reform, was believed by many to be a starting point for a bipartisan grand bargain (in fact, stand-alone legislative efforts are reportedly underway in both the House and the Senate). The vote on the substitute resolution reflects otherwise.
- **Progressive Caucus Substitute (78 - 346).** The "Budget for All" proposed the expiration of the Bush-era tax rates and the elimination of a number of other tax loopholes. It also called for a "no cuts" policy for Medicare, Medicaid, and Social Security benefits; the end of military presence in Iraq and Afghanistan; public financing of Congressional and Presidential elections; and a public health care option.
- **Congressional Black Caucus Substitute (107 - 314).** The CBC plan reduced the deficit by \$3.4 trillion over 10 years; called for tax reform including the Buffett Rule and a millionaire surcharge; proposed a public health option; and increased funding for education, jobs, healthcare services, and research and development.
- **Mulvaney Substitute (0 - 414).** Congressman Mick Mulvaney (R-SC) put forth a proposal that was reportedly based on the Congressional Budget Office scoring of President Obama's FY 2013 Budget Proposal.

FY 2013 Senate Budget Action

As noted above, Senate Majority Leader Harry Reid (D-NV) has repeatedly stated that an FY 2013 budget resolution is unnecessary because the spending limit is already established (in the Budget Control Act). However, Senate Budget Committee Chairman Kent Conrad (D-ND) intends to consider a budget resolution which includes a long-term deficit reduction plan when the Senate returns from recess this week. The Committee will hear opening statements on Wednesday and markup the measure on Thursday. Currently, there is no plan to bring the proposal to the floor for a vote; however, a recent opinion from the Senate Parliamentarian Elizabeth MacDonough states that the Budget Control Act does not preclude any Member from introducing an alternative budget resolution outside of the committee process after the April 1 statutory deadline has passed¹. Senators Patrick Toomey (R-PA) and Rand Paul (R-KY) each introduced budget resolutions prior to the recess (S. Con. Res. 37 and S. Con. Res. 39, respectively). Therefore, it is likely that we may see Senate votes on the House Budget Resolution and the President's Budget Proposal, among others.

FY 2013 Appropriations Status and Outlook

This week, House and Senate Appropriations Subcommittees will wrap up their FY 2013 Budget hearings and start marking up their FY 2013 spending bills. The Senate Commerce-Justice-Science

¹ The Congressional Budget Act requires the Senate Budget Committee to adopt a budget resolution by April 1, and the full Senate to adopt a resolution by April 15. There is no penalty if the deadline is not met.

and Transportation-Housing markups are scheduled for Tuesday, April 17; the House Energy and Water markup is scheduled for Wednesday, April 18; and the House Commerce-Justice-Science markup is currently scheduled for Thursday, April 19. Senate appropriators will adhere to the spending cap of \$1.047 trillion established in the Budget Control Act and will closely align to the funding priorities proposed by the President in his FY 2013 Budget Proposal. House Appropriators, on the other hand, will utilize the \$1.028 trillion cap set forth in the FY 2013 Budget Resolution (H. Con. Res. 112) and will certainly make adjustments to the funding priorities identified by the President. All in all, while there will certainly be plenty of partisan bickering over issues such as law enforcement funding, high speed rail funding, and Yucca Mountain, these bills are not expected to draw much controversy.

While it is likely we will see some spending bills passed out of each chamber prior to the start of the 2013 Fiscal Year on October 1, it is unlikely any will be reconciled and finalized before the November elections. The \$19 billion gap between the House and Senate top-line discretionary caps and the partisan divide over how to reach deficit reduction and avoid the sequestration process scheduled for January 2013 will dominate the Presidential and Congressional campaigns and prevent resolution of the FY 2013 appropriations process until the lame duck session.

SURFACE TRANSPORTATION REAUTHORIZATION

Before the recess, Congress passed a 90-day extension of SAFETEA-LU through June 30 to provide the time needed to complete work on the reauthorization. Prior to the recess, while the House continued working to find 217 votes for its five-year, \$260 billion energy and infrastructure bill (H.R. 7), the Senate passed its two-year, \$109 billion bill known as *Moving Ahead for Progress in the 21st Century* or "MAP-21" (S. 1813) by a vote of 74-22 on March 14.

House Action

The House -- beset by divisions within the Republican Conference and a bill that Democrats uniformly opposed -- has been unable to secure the 217 votes needed to advance H.R. 7. Initially, the bill, which was drafted to pass with purely Republican votes, lacked support from both moderate and conservative Republicans: moderates from suburban districts who objected principally to the bill's ending dedicated funding for mass transit; and conservatives who objected to the spending levels in the bill, which exceed incoming revenues to the Highway Trust Fund (HTF). While the Committee leadership subsequently announced that H.R. 7 would restore dedicated HTF funding for mass transit, the bill in essence never recovered from this initial faltering and -- even with moderate Republicans potentially willing to vote it with the transit fix -- the leadership simply has not been able to win over Members on the right to get to 217 Republican votes for H.R. 7.

Senate Action

As noted above, the Senate passed MAP-21 by a bi-partisan vote of 74-22 on March 14. Floor action on the bill included a number of amendments of importance to local governments, including the following:

- The Manager's Package included a modified version of the local control amendment proposed by Sens. Cardin (D-MD) and Cochran (R-MS). The Cardin-Cochran Amendment

requires state Departments of Transportation (DOT) to sub-allocate and competitively award the "Additional Activities" funding. In the original MAP-21 bill, Safe Routes to School, Transportation Enhancements and Recreational Trails were all consolidated into the Additional Activities program. However, the Additional Activities program also included broad eligibility for road and environmental mitigation projects. In the original language, state DOTs had full control over how to use the funding, resulting in concerns that the Additional Activities funding would be used by state DOTs for their highway priorities and that no funding would ultimately be made available for pedestrian, bicycle and other improvement projects in local communities. Under the revisions included in the final bill, a portion of the Additional Activities funding will be sub-allocated to Tier I Metropolitan Planning Organizations (MPOs), and most of the rest is to be distributed by states to local government authorities through a competitive grant process.

- The amendment by Senator Begich (D-AK) to maintain the current division of Surface Transportation Program (STP) funds between urbanized areas (62.5 percent) and "any area in the state" (37.5 percent) – instead of the 50/50 split included in the bill – was not adopted. As such, MAP-21 does reduce the MPO sub-allocation percentage under the newly titled Transportation Mobility Program (TMP) from 62.5 percent to 50 percent. Committee staff argued, however, that because the TMP program consolidates a number of programs and the overall program size is increased, the sub-allocation amount in absolute terms is actually consistent with what MPOs are receiving under SAFETEA-LU. In other words, because the overall funding level for the TMP program is increased versus the STP program, the smaller sub-allocation is said to still result in a comparable amount of funds.
- The Manager's Package also adopted a modified version of the amendment proposed by Senators Harkin (D-IA) and Moran (R-KS) intended to increase funding for bus systems, including through a \$300 million reduction in the New Starts authorization. The modified version included in the Manager's Amendment creates a new \$75 million bus discretionary program (40 percent of which is for rural areas) that it funds as a take-down from New Starts.

The Path Forward

With the House unable to secure the needed votes to move H.R. 7, the leadership has pivoted to a strategy of passing a "shell" bill in the House to get to conference. Last week, the House Leadership directed Transportation and Infrastructure Committee to draft another extension of current law through September 30, 2012 with the apparent intent of using that as a "shell" vehicle to move to conference with the Senate without passing a substantive House bill first. The extension / shell bill will go to the House Rules Committee on Tuesday and may be on the House floor as soon as Wednesday.

Under the provisions of the unanimous consent agreement governing consideration of S. 1813 (MAP-21) in the Senate, the Senate Majority and Minority Leaders have significant latitude to recognize a transportation vehicle from the House as the disagreeing bill to MAP-21, and to use expedited procedures to move to conference. The primary question with this approach is whether it can garner the needed 217 votes in the House, which will come into clearer relief once the

Leadership presents it to the Republican Conference this week and based on how House Democrats react.

Prior to the recess, both Speaker Boehner and the House Transportation and Infrastructure Committee Leadership had emphasized their commitment to moving H.R. 7 forward. In his weekly press conference before the recess, Speaker Boehner made clear that the House Republican Leadership was continuing to educate its members on H.R. 7 to build Republican support for the bill, emphasizing in particular the domestic energy provisions in the bill. H.R. 7 includes a range of domestic oil and gas drilling provisions, as well as provisions on the Keystone Pipeline. These energy issues are a signature election-year issue at a time of broad concern about rising gas prices.

For this reason, the House Leadership will attach the Keystone Pipeline provision to the shell bill, a very significant step that may well be victory enough for the House Republican Conference. During consideration of MAP-21 in the Senate, an amendment to expedite the Keystone Pipeline received 56 votes, giving House Republican leaders some confidence that the provision -- if attached to the House vehicle -- could be adopted in conference.

The question for the House Leadership, and the fundamental question at this point, is whether this approach can garner a majority in the House. This can either be done with near unanimity in the Republican Conference, which has been difficult to obtain to this point, or with significant Democratic support. For the Republican Conference, the upside is a legitimate chance at seeing the Keystone Pipeline provision enacted and simply having a way forward on what has proved a difficult and divisive issue for them. The downside is that the Republicans will have little leverage in conference negotiations, not having produced their own bill, and will have to vote up-or-down on an un-amendable conference report that will be substantially similar to the Senate bill. For Democrats who support this Senate bill, this is the significant upside -- but the challenge there is having to vote to expedite the Keystone Pipeline. The fate of this approach depends on whether this can be triangulated to result in the needed 217 votes in the House, but at this point it looks to be the likely scenario.

FEDERAL AVIATION ADMINISTRATION (FAA) REAUTHORIZATION

After 23 short-term extensions of FAA programs dating back to 2007, Congress finally agreed to a compromise multi-year authorization bill, which the President signed February 14. While some portrayed the legislation as a significant investment in the future, most observers were more relieved than pleased with the final legislative project. As enacted, the authorization covers the rest of FY 2012 and Fiscal Years 2013-2015.

When the dust settled, and the compromise language was revealed, airports were justifiably disappointed, although not surprised, while airline labor unions were also disappointed as well as justifiably surprised. Airlines, on the other hand, were not subject to any new onerous requirements.

The major issue that resulted in the impasse for most of 2011 was a provision in the House-passed bill to reverse a 2009 National Mediation Board (NMB) ruling that counts as votes in organizing elections only those who participate in that election. In the compromise bill, this provision was removed. However, other changes to the Railway Labor Act favorable to airlines were substituted for the repeal provision. The law now requires organizers to receive at least 50 percent of support

from the craft or class in order to trigger a representation election. Also, in any runoff election for which there are three or more options on the ballot (including the option of not being represented by a union) and no such option receives a majority of the votes cast, the NMB will hold a second election between the options receiving the largest and second largest number of votes. Even if the no-union option received the most votes among the three or more options (although not a majority), the runoff would be between the top two vote-getting unions.

Another big compromise involved beyond-the-perimeter slots at Reagan National Airport. As predicated, the compromise was not as expansive as the Senate bill. A total of 16 new beyond-the-perimeter slots (8 daily roundtrips) are now available, and the U.S. Department of Transportation (DOT) did not waste any time in initiating slot selection proceedings. The compromise bill permits the four "incumbent" carriers to select a roundtrip without having to compete for these slots with other carriers, although each must surrender a daily roundtrip to a city inside-the-perimeter. Delta picked Salt Lake City, United picked San Francisco, American picked Los Angeles, and US Airways picked San Diego. Several "new entrant" and "limited incumbent" carrier are competing for another 4 daily roundtrips (Virgin America, San Francisco; Sun Country, Las Vegas; Air Canada, Vancouver; Southwest, Austin; Frontier, Colorado Springs; Jet Blue, San Juan; and Alaska, San Diego and Portland). The law requires DOT to award these slots by May 14, 2012.

As noted, airports did not fare well in this legislation. The one positive is that a multi-year reauthorization of the Airport Improvement Program will restore some certainty and predictability essential to cost-effective and efficient airport construction and other projects. The biggest disappointment, although not a surprise, is that the bill does not increase the Passenger Facility Charge (PFC) maximum. Airport Improvement Program funding was authorized at \$3.35 billion each year for FY 2012-2015, a compromise between the House and Senate bills. It remains to be seen whether Congress will appropriate the full amount of this authorization. Airports remain focused on increasing the PFC. It remains to be seen whether airports must await the next FAA authorization bill in 2015, or will seek an increase in some other legislative vehicle before then.

The compromise bill also includes additional provisions to protect passengers during tarmac delays. DOT did not wait for the enactment of an FAA reauthorization bill to impose requirements on air carriers, issuing two final rules to date. The bill goes beyond DOT rules in requiring airports (large, medium, small, and non-hub airports) to develop tarmac delay contingency plans and submit the plan to DOT by May 14, 2012. DOT has 60 days from receipt of a plan to review and approve it. If DOT fails to act by the 60th day, the plan is deemed approved.

Two other laws that benefited airports over the last few years – the Build America Bonds program and providing Alternative Minimum Tax (AMT) relief on airport private activity bonds – expired at the end of 2010 and were not included in the FAA reauthorization legislation. However, an AMT holiday (limited only to calendar year 2012) is included in S. 1813, the Senate-passed surface transportation bill. Its fate is uncertain. The Obama Administration Budget for FY 2013 proposes to renew the Build America Bonds provision, with a 30 percent subsidy of borrowing costs in FY 2013 and 28 percent for FY 2014 and 2015. Its fate is also uncertain, and perhaps less likely than an AMT fix.

JOBS PROPOSALS

Veterans Job Corps

In his State of the Union Address, the President announced a Veterans Job Corps initiative to aid military veterans, particularly those who served post-9/11, in the transition to civilian employment. The three core components of the Veterans Job Corps initiative –

- **Incentives to Hire Veterans as First Responders.** In his FY 2013 Budget Proposal, President Obama announced that the FY 2012 Community Oriented Policing Services (COPS) Hiring grants and the Staffing for Adequate Fire and Emergency Response (SAFER) grants would prioritize applications from communities that recruit and hire post-9/11 veterans. The President also included two proposals from the American Jobs Act in his FY 2013 Budget Proposal: \$4 billion in COPS funding and \$1 billion in SAFER funding for 2012 to hire police and firefighters. Preference for these funds would also be given to the hiring of post-9/11 veterans.
- **Veterans Job Corps Conservation Program.** The President also proposed \$1 billion to develop a Veterans Job Corps conservation program aimed to employ 20,000 veterans over the next five years in areas focused on preserving and restoring land and resources.
- **Entrepreneurship Training.** The President proposed an expansion of Small Business Administration workforce training opportunities for veterans.

Summer Jobs+ Initiative

In January, the White House held a summit to roll out and highlight the White House Summer Jobs+ initiative to provide summer jobs to low-income and underprivileged youth in the U.S. Based on the success of the stimulus funding that came out of the American Recovery and Reinvestment Act (ARRA), which supported 367,000 summer jobs in 2009 and 2010 and despite a lack of current funding for a summer jobs program, the Administration recognizes the importance of summer employment for youth in local communities and encourages local businesses and governments to get involved in the Summer Jobs + program.

The Department of Labor has existing partnerships that are already in place for the Summer Jobs+ program. Jamba Juice, Wells Fargo, and other companies have committed to providing jobs this summer in local communities across the U.S. Additionally the U.S. Conference of Mayors is working with local businesses and helping to provide jobs within city governments as part of the initiative. The Administration has identified over 175,000 jobs for low-income youth this summer. Many of these jobs will be paid positions, but this program also includes unpaid internships, mentorships, and apprenticeships. Although the youth unemployment rate is the lowest it has been (16 percent) since the beginning of the recession, the Department of Labor continues to work to lower this number and increase job opportunities for youth.

In the coming weeks, the Department of Labor will unveil the Summer Jobs+ Bank that was developed with the help of Google, LinkedIn, and other partners. This is a tool for unemployed youth to help them find open job opportunities in their local areas. For more information, go to the

Department's website www.dol.gov/summerjobs or reach out to Assistant Secretary of Employment and Training Administration Jane Oates at 202-693-2700.

The Administration has highlighted the following action items that local governments can do to get involved in the Summer Jobs+ program:

- Encourage local partners and businesses to get involved in the program;
- Have the city make a commitment to sponsor jobs within the city government as part of the Summer Jobs+ program;
- Embed the Summer Jobs+ Bank into city websites when it is released in April;
- Host a Summer Jobs+ Fair to bring together youth and employers within cities; and
- Amplify the message about Summer Jobs+ by including talking points in speeches or filming a video that the Department of Labor can use to promote the program.

The Department of Labor encourages all participants to work with the Department of Labor to suggest corporate relationships that may increase the opportunities through Summer Jobs+. All Federal agencies were briefed on the program and asked to make a commitment to Summer Jobs+. The Department of Labor expects many agencies to participate in this program and will work to connect local governments to other agencies.

Rebuild America Act

On March 29, Senator Tom Harkin (D-IA) introduced the Rebuild America Act (S. 2252) which would provide \$300 billion over ten years for roads, bridges, and infrastructure; \$20 billion to modernize public schools; \$79 billion over two to three years to local governments for teacher, first responder and other critical personnel; \$50 billion over ten years for workforce development and job training programs; and a five-year extension to the Work Opportunity Tax Credits. These provisions have previously been introduced through a variety of Democratic jobs proposals and it is unlikely the legislation as a whole will garner much support. However, as Chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee and a senior appropriator, Senator Harkin will try to advance portions his bill as they are relevant to other pieces of legislation.

HOUSING

Blueprint for an America Built to Last

In his State of the Union Address, President Obama also laid out a *Blueprint for an America Built to Last* calling for action to help responsible borrowers and support a housing market recovery. Key aspects of the President's plan include:

- Broad Based Refinancing to Help Responsible Borrowers Save an Average of \$3,000 per Year: Would provide borrowers who are current on their payments with an opportunity to refinance and take advantage of historically low interest rates, cutting through the red tape that prevents these borrowers from saving hundreds of dollars a month and thousands of

dollars a year. This plan, which is paid for by a financial fee so that it does not add to the deficit, will:

- Provide access to refinancing for all non-government-sponsored enterprise (GSE) borrowers who are current on their payments and meet a set of simple criteria.
- Streamline the refinancing process for all GSE borrowers who are current on their loans.
- Give borrowers the chance to rebuild equity through refinancing.
- Homeowner Bill of Rights: Would propose a single set of standards to make sure borrowers and lenders play by the same rules, including:
 - Access to a simple mortgage disclosure form, so borrowers understand the loans they are taking out.
 - Full disclosure of fees and penalties.
 - Guidelines to prevent conflicts of interest that end up hurting homeowners.
 - Support to keep responsible families in their homes and out of foreclosure.
 - Protection for families against inappropriate foreclosure, including right of appeal.
- First Pilot Sale to Transition Foreclosed Property into Rental Housing to Help Stabilize Neighborhoods and Improve Home Prices: The Federal Housing Finance Agency (FHFA), in conjunction with the Departments of Treasury and Housing and Urban Development (HUD), has announced a pilot sale of foreclosed properties to be transitioned into rental housing in six jurisdictions around the country.
- Moving the Market to Provide a Full Year of Forbearance for Borrowers Looking for Work: Following the Administration's lead, major banks and the GSEs are now providing up to 12 months of forbearance to unemployed borrowers.
- Pursuing a Joint Investigation into Mortgage Origination and Servicing Abuses: This effort marshals new resources to investigate misconduct that contributed to the financial crisis under the leadership of federal and state co-chairs.
- Rehabilitating Neighborhoods and Reducing Foreclosures: In addition to the steps outlined above, the Administration is expanding eligibility for Home Affordable Modification Program (HAMP) to reduce additional foreclosures, increasing incentives for modifications that help borrowers rebuild equity, and is proposing to put people back to work rehabilitating neighborhoods through Project Rebuild.

On March 6, as part of this initiative the President also announced additional steps to support service members and veterans including those wrongfully foreclosed upon or denied a lower interest rate on their mortgages, and reducing fees for Federal Housing Administration (FHA) borrowers looking to refinance. It ties into the settlement completed by the Federal government and 49 state Attorneys General from the previous month and under the agreement, major service providers will:

- Conduct a review of every service member foreclosed upon since 2006 and provide any who were wrongly foreclosed upon with compensation equal to a minimum of lost equity, plus interest and \$116,785;
- Refund to service member's money lost because they were wrongfully denied the opportunity to reduce their mortgage payments through lower interest rates;
- Provide relief for service members who are forced to sell their homes for less than the amount they owe on their mortgage due to a Permanent Change in Station;
- Pay \$10 million dollars into the Veterans Affairs fund that guarantees loans on favorable terms for veterans; and
- Extend certain foreclosure protections afforded under the Service member Civil Relief Act to service members serving in harm's way.

Restore our Neighborhoods

On April 12, Representatives Steve LaTourette (R-OH) and Marcia Fudge (D-OH) announced they will introduce the *Restore our Neighborhoods Act of 2012*, which would provide funding for the demolition of vacant, abandoned, and foreclosed homes. According to Congressman LaTourette, Qualified Urban Demolition Bonds (QUDB) will be used for eligible demolition projects with \$2 billion allocated equally among all 50 states (approximately \$40 million per state) and \$2 billion directed to "qualified" states, those that have been hardest hit by the foreclosure crisis. Unemployment, increases in vacant housing, and foreclosure rates are among the criteria determining a "qualified" state.

The bill will also include language to provide greater flexibility for the use of Neighborhood Stabilization Program (NSP) funds by removing the 10 percent limitation of funds that can be used for demolition.

Equal Access to Housing Regulations

On January 30, Secretary Donovan announced new regulations intended to ensure that HUD's core housing programs are open to all eligible persons, regardless of sexual orientation or gender identity. Among the provisions of the new rule are:

- Requires owners and operators of HUD-assisted housing, or whose financing is insured by HUD, to make housing available without regard to the sexual orientation or gender identity of an applicant for, or occupant of, the dwelling whether renter or owner occupied.
- Prohibits lenders from using sexual orientation or gender identity as a basis to determine a borrower's eligibility for FHA insured mortgage financing. FHA's current regulations provide that a mortgage lenders determination of the adequacy of a borrower's income "shall be made in a uniform manner with regard to" specified prohibited grounds. The rule will add actual or perceived sexual orientation and gender identity to the prohibited grounds to

ensure FHA approved lenders do not deny or otherwise alter the terms of the mortgages on the basis of irrelevant criteria.

- Clarifies that all otherwise eligible families, regardless of marital status, sexual orientation or gender identity will have the opportunity to participate in HUD programs.

HUD Proposed Rules

HUD has proposed a rule to amend HUD's regulations governing Section 202 Supportive Housing for the Elderly Program and the Section 811 Supportive Housing for Persons with Disabilities program by streamlining the requirements for mixed finance Section 202 and Section 811 developments. The rule would streamline the requirements for mixed finance developments by removing restrictions on the portions of developments not funded through capital advances, thereby lifting barriers on participation in the development of the projects and eliminating burdensome funding requirements. The rule is intended to attract private capital and expertise of private developers to create attractive and affordable supportive housing developments for the elderly and persons with disabilities. Comments are due by May 28, 2012.

Another proposed rule would amend HUD's regulations governing portability in the Housing Choice Vouchers (HCV) program in order to clarify requirements already established in the existing regulations and improve the process involved with processing portability requests. Comments are due by May 29, 2012.

A HUD notice has established policies and procedures for the administration of tenant based Section 8 Housing Choice Voucher rental assistance under the HUD -Veterans Affairs Supportive Housing (HUD-VASH) program administered by public housing agencies that partner with local Department of Veterans Affairs medical facilities. It provides guidance regarding verification documentation, termination of assistance and portability moves within the same catchment area, and other measures. Effective March 23, 2012.

Definition of Homelessness

As previously reported, in November, HUD published the Final Rule on the definition of homelessness, which integrated the regulation for the definition with corresponding recordkeeping requirements for the Emergency Solutions Grants program, the Shelter Plus Care program, and the Supportive Housing Program which went into effect on January 4th. On February 6, the Housing Subcommittee of the House Financial Services Committee marked up the Homeless Children and Youth Act of 2011 (H.R. 32), authored by Representative Judy Biggert (R-IL), which would expand the definition of homelessness. The bill is likely to be marked up by the full committee when Congress returns.

A number of homeless providers and other national organizations are concerned about reopening this debate, which was extensively considered during Congressional action on the HEARTH Act which reauthorized the McKinney-Vento programs. They contend it would not only re-open an issue that was recently settled, but would add millions of people to the program eligibility without providing additional resources.

WORKFORCE INVESTMENT LEGISLATION

As noted above, the House FY 2013 Budget Resolution would consolidate duplicative federal job-training programs into a streamlined workforce development system with fewer funding streams. On the same day the House approved that resolution (March 29, 2012), Members of the House Education and the Workforce Committee's Subcommittee on Higher Education and Workforce Training – Subcommittee Chair Virginia Foxx (R-NC), Howard P. “Buck” McKeon (R-CA), and Joe Heck (R-NV) -- introduced legislation to consolidate 27 existing job training programs into a single Workforce Investment Fund aimed at assisting state and local workforce investment boards in developing comprehensive workforce development systems to get Americans back to work. The Workforce Investment Fund would include a new formula for state and local workforce investment boards for employment and training programs. The bill, the *Workforce Investment Improvement Act of 2012* (H.R. 4297), seeks to consolidate ineffective and redundant programs, cut through bureaucracy, empower employers, and promote accountability. A hearing is scheduled for April 17 to consider the legislation.

As part of the House Democratic Leadership's “Make It In America” agenda, House Democrats on the Committee also have introduced legislation related to workforce issues. *The Workforce Investment Act of 2012* (H.R. 4227) – introduced by Representatives John Tierney (D-MA), Ruben Hinojosa (D-TX), and George Miller (D-CA) on March 20 – seeks to improve the nation's workforce investment infrastructure, focusing on finding workers jobs and careers through strategic partnerships with in-demand sector employers, community colleges, labor organizations, and non-profits.

EMINENT DOMAIN LEGISLATION

On February 28, the House passed the *Private Property Rights Protection Act of 2012* (H.R. 1433), which prohibits state and local governments from exercising eminent domain for private economic development (localities were given this authority in a 2005 Supreme Court decision, *see Kelo V. City of New London*). The bill preempts state and local laws and prohibits violators from receiving federal economic development funds for two years (unless the property in question is returned, replaced, or repaired; states will also have to pay additional penalties and interest). Roads, airports, railroads, flood control areas, acquisition of abandoned properties, and clearing defective chains of title are exempted from the mandate.

Similar legislation was passed in the House in 2005, but the Senate did not act. Currently, there is not a companion stand-alone bill for H.R. 1433 in the Senate but there is an anti-eminent domain movement in the upper chamber. Senator John Boozman (R-AR) filed an eminent domain amendment to the Senate transportation reauthorization to “protect tenants and property owners from eminent domain abuse by prohibiting the Federal Government from exercising eminent domain for private economic development and by discouraging States and political subdivisions of states from exercising eminent domain for private economic development”. While the amendment did not make it through to final consideration of the Senate transportation bill, it will likely come up again.

ENERGY/CLIMATE CHANGE*Energy Tax Legislation*

Because Congress allowed a host of tax breaks to expire at the end of last year, it will continue to be under pressure in the next few months to move a tax bill that would extend these expired and expiring tax provisions. The list includes Treasury's \$3.9 billion "Section 1603" grant program that expired on December 31, 2011 and the renewable Production Tax Credit for wind that expires on December 31, 2012. In FY 2011, energy tax preferences (\$20.5 billion) and direct spending (\$3.5 billion) through the Department of Energy totaled \$24 billion. However, with Congress having agreed in late February to extend the payroll tax holiday, unemployment insurance benefits, and the Medicare "doc fix" until the end of the year, Congress is unlikely to consider any further tax legislation prior to the November elections.

As part of the discussions leading up to the payroll tax holiday agreement, Congress considered but decided not to address the expiring and expired energy tax provisions largely because the cost of doing so was so high. To pay for an extension, Democrats had urged their colleagues to eliminate energy tax incentives available to the major integrated oil and gas companies, but failed to do so in the end. As had happened last year, a Senate Democrat-backed bill this year to extend and expand alternative energy tax incentives and help reduce the national deficit by repealing certain "big oil" tax incentives failed when the same three "oil patch" Democrats crossed party lines to vote against the bill. It fell nine votes short of the 60 necessary to advance in the Senate last month.

The Senate Finance Committee has already begun discussions to address energy taxes. While the wind industry continues to seek an extension of the Production Tax Credit beyond this year, a growing number of Senators have said doing so should only be done if the wind tax credit were phased out over several years. They argue that wind energy has become more cost-competitive with traditional energy sources in recent years to justify a phase-out – an agreement for which could help garner support by Republicans in Congress for an extension.

House Republican leaders have thus far principally focused on legislative efforts intended to address high gas prices and spur energy-related job growth. The House has also already passed legislation to expand domestic offshore oil and gas production, limit the Environmental Protection Agency's (EPA) regulatory authority, and expedite onshore and offshore permitting. We do not anticipate that any of the energy legislation approved by the House in the 112th Congress will move through the Senate in the foreseeable future.

Development of a National "Clean Energy Standard"

In his 2011 State of the Union Address, President Obama called on Congress to enact legislation that would increase the percentage of electricity generated from clean energy sources (including nuclear and natural gas) to 80 percent by 2035.

Despite the difficulty a "Clean Energy Standard" (CES) would face in the current Congress, Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) introduced the *Clean Energy Standard Act of 2012* (S. 2146) in March. It would require larger utilities to gradually increase their clean energy portfolios over the next 40 years, beginning with a 45 percent target in 2035 and

increasing to a 95 percent target in 2050. An independent report concluded that Chairman Bingaman's base CES would significantly reduce coal-fired generation while increasing renewables generation; it would also raise natural gas prices due to "fuel switching" in early years and ultimately raise electricity prices in out years.

Chairman Bingaman himself has acknowledged the difficult prospects for enacting such a bill. As Ranking Member Lisa Murkowski (R-AK) best put it, if a CES bill becomes known as "cap and trade under a different name... then CES is not going to happen."

Property Assessment Clean Energy (PACE) Home Energy Program

Approximately 25 states have enacted programs that allow homeowners to take advantage of up-front municipal financing benefits to upgrade home energy systems (e.g., installing solar systems, energy efficiency retrofits) that are then repaid via property tax assessments. The popular program effectively stalled when the Federal Housing Finance Agency (FHFA) raised repayment concerns should a PACE-retrofitted home resident foreclose on their mortgage; the agency is being particularly cautious after the 2008-09 housing market crash reverberated across the economy.

The bipartisan House legislation, the *PACE Assessment Protection Act of 2011* (H.R. 2599), to reauthorize the PACE program, which reflects compromise language intended to rectify FHFA's concerns, currently has 53 cosponsors. Senators Michael Bennett (D-CO) and Johnny Isakson (R-GA) also introduced the *Sensible Accounting to Value Energy (SAVE) Act* (S. 1737) companion legislation in the Senate. It, too, is intended to address FHFA concerns and would essentially require the agencies to offer more attractive mortgage values on energy-efficient homes. The U.S. Chamber of Commerce, Center for American Progress, Natural Resources Defense Council, and U.S. Green Building Council all support the effort. Prospects for the legislation are uncertain. While it stands a better chance than many other bills that require funding in the current fiscal environment, it is not expected to move as stand-alone legislation and will likely need a moving legislative vehicle to reach the President's desk.

Comments on a California court-ordered FHFA rulemaking procedure in preparing an Environmental Impact Statement for mortgage assets affected by PACE programs were due by March 26. It provided supporters a formal opportunity to explain PACE benefits, defend a local government's ability to establish them, and address FHFA's objections to PACE programs. The Department of Energy submitted supportive comments, stating in part that, "PACE is an innovative approach to addressing market barriers that have challenged other financing approaches to residential energy efficiency, and appropriate next steps toward its development should proceed" – such as allowing a small number of pilot programs to move forward. The FHFA will next issue a proposed rule for another round of public comment before a final rule is published.

Energy Efficiency and Conservation Block Grant (EECBG) Program

The Department of Energy requested information and comments on efforts to continue to promote EECBG – principally the use of "evergreen funds" – by April 11. The Department has taken particular interest in revolving loan fund and loan loss reserve programs. (The \$2 billion EECBG program was authorized with enactment of the 2007 energy bill, but has only received one-time funding through the 2009 stimulus bill thus far.)

EPA's Greenhouse Gas and Related Regulatory Agenda

The Environmental Protection Agency (EPA) continues to forge ahead with its greenhouse agenda, and House and Senate Republicans continue to press for legislation that would preclude EPA from doing so. To date, the House has passed legislation that would block EPA implementation of the following initiatives: pollution control requirements for industrial boilers and incinerators ("Boiler MACT"), regulations for cement kilns, cross-state air pollution rule for coal ash, and the proposed Mercury and Air Toxics Standards rule for coal plants. The House is likely to consider further legislation on a host of other environmental policy matters. By contrast, every effort by Republicans and coal-state Democrats in the Senate has failed to generate sufficient votes for any of these EPA policy riders to move forward. In any event, given that any such legislation would be vetoed by the President in the unlikely event it cleared the Senate, we do not expect anything to be enacted into law this year that would preclude EPA from moving forward on these initiatives.

Indeed, on March 27, EPA proposed the first Clean Air Act standard to regulate carbon pollution from *new* power plants. It would effectively require any new coal-fired power plant to reduce carbon dioxide emission levels to that of combined-cycle natural gas power plants (*i.e.*, able to capture and sequester carbon emissions – technology not yet commercially available). The rule exempts all *existing* power plants, including plants that are already far along in the permitting process and due to begin construction in the next 12 months. Administrator Lisa Jackson has said that EPA has "no plans" to offer a source rule for *existing* power plants. (That rulemaking is expected eventually.)

WATER RESOURCES AND WATER QUALITY

Water Infrastructure Finance and Innovation Act (WIFIA)

On February 28, the House Subcommittee on Water Resources and Environment held the first of a two-part hearing to review Innovative Financing Approaches for Community Water Infrastructure projects. In conjunction with the hearing, Subcommittee Chairman Bob Gibbs (R-OH) released a discussion draft of his WIFIA bill, the Water Infrastructure Finance and Innovation Act of 2012. Chairman Gibbs has stated publicly that he expects to introduce WIFIA legislation this spring, in the late April or May timeframe. Until then, his staff continues to work on the draft legislation.

Witnesses at the February 28 hearing, including Mayor Stephanie Rawlings-Blake of Baltimore and Mayor Greg Ballard of Indianapolis, were uniformly supportive of a WIFIA-type program as another tool in the water infrastructure finance toolbox, with the only disagreement being over whether applicants should be able to apply directly to WIFIA for credit assistance (following the TIFIA model) or whether WIFIA should be run through the State Revolving Funds (SRFs). The latter model is included (along with a number of other proposals, such as the creation of a Clean Water Trust Fund) in Ranking Member Bishop's bill, the Water Quality Protection and Job Creation Act of 2012.

This remains a key issue for WIFIA as it moves forward. The water utility community is strongly opposed to dividing WIFIA financing among all SRFs, both as it would subdivide the budget authority to the point where it would be impossible to address large projects, and as it would subject WIFIA to the eligibility limitations and significant regulatory constraints attendant to SRF financing.

Both would defeat the goal of providing low-cost capital to large, regionally significant water infrastructure projects that address our nation's aging infrastructure as well as public health needs. On the other hand, while the utility community stands in strong support of WIFIA as a complement to the SRF programs, SRF administrators are concerned about WIFIA being a competitor program.

The Subcommittee on Water Resources and Environment held the second part of the hearing on March 21 and covered much the same ground. On the Senate side, there continues to be strong interest in WIFIA and it was endorsed by the U.S. Conference of Mayors as one of several important financing tools in a parallel Senate hearing on February 28. At this point, Senate staff continues to work through issues relating to where a potential WIFIA program would be housed and how it would interact with the SRFs, as well as what other proposals they may want to include in a potential companion bill to Chairman Gibbs' WIFIA bill.

Clean Water Act (CWA)

Whereas Democratic leaders in the 111th Congress moved legislation through Congressional Committees that would have reformed and dramatically expanded the scope of the Clean Water Act, a large coalition of bipartisan House Members have pressed the Environmental Protection Agency (EPA) to abandon efforts to craft (non-binding) Clean Water Protection Guidance in the 112th Congress. Opponents to expanding the Act's scope believe it will usurp local jurisdiction and negatively impact the economy; proponents continue to believe that reform is necessary to better protect the environment. Legislative efforts to strengthen the Clean Water Act are unlikely to gain Republican approval in the House.

EPA received 230,000 public comments on its proposed "Draft Guidance on Identifying Waters Protected by the Clean Water Act" by the July 31 submittal deadline. Numerous commenters requested that the agency undertake a traditional rulemaking process that would provide for additional public comments and agency briefings rather than simply finalizing the draft (non-binding) guidance. The Agency intends to undertake a formal rulemaking to define "waters of the United States" and that the draft guidance is intended to make clear which waterbodies are (and are not) protected under the Clean Water Act. The draft guidance has been under review at the Office of Management and Budget since February 21; without a pending legal deadline, and given a recent Supreme Court ruling that unanimously challenged EPA's broad authority to issue CWA compliance orders, and an upcoming election, EPA may further postpone its release.

Senate Environment and Public Works Committee Member James Barraso (R-WY), together with Ranking Member James Inhofe (R-OK) and 31 other Republican cosponsors introduced legislation (S. 2245) to stop EPA from issuing the draft guidance. It is highly unlikely that any such legislation or any related Congressional disapproval resolution, if it were to be introduced, would be enacted into law; a two-thirds vote in both chambers of Congress would be required to overturn a Presidential veto.

Water Quality

Congressman Adam Schiff (D-CA) has introduced the *Protecting Pregnant Women and Children From Hexavalent Chromium Act of 2012* (H.R. 4266) requiring the Environmental Protection Agency (EPA) to propose and finalize a national drinking water standard for hexavalent chromium within one year.

(The Congressman's district has had a long-standing problem with chromium-6 groundwater contamination.) It is similar to legislation sponsored in multiple Congresses by Senate Environment and Public Works Committee Chairman Barbara Boxer (D-CA). Aside from water utility and industry concerns with undertaking contaminant-by-contaminant federal regulations, the bill is not expected to advance in the Republican-controlled House.

The Office of Management and Budget recently completed its review of EPA's Third Unregulated Contaminant Monitoring Rule under the Safe Drinking Water Act. That Act requires EPA to establish criteria for a monitoring program of no more than 30 unregulated contaminants every five years. The Final Rule is expected to mirror what EPA had proposed last year – but it will likely add chromium-6 to the list of contaminants to be monitored by public water systems. The Final Rule is expected to be released in coming months.

State Revolving Funds (SRF)

Representative Tim Bishop (D-NY), Ranking Member of the jurisdictional House Transportation and Infrastructure Subcommittee, introduced the *Water Quality Protection and Job Creation Act* (H.R. 3145) to authorize \$13.8 billion for the Clean Water State Revolving Fund over five years. To finance water infrastructure investments, the bill would create a \$10 billion Clean Water Trust Fund, to be funded by revenue streams that will be suggested by the Congressional Budget Office, in consultation with the EPA Administrator and the Secretary of the Treasury. The bill would also allow EPA to provide loans to the State Revolving Funds and loan guarantees directly to large water infrastructure projects that are not otherwise likely to receive SRF funding. The loan authority would be divided among all states in proportion to their share of the SRF capitalization grants. All projects receiving a loan or loan guarantee would have to meet the same terms and conditions applicable to the Clean Water SRF program.

The bill faces serious challenges in the current Congress, both because of its nearly \$14 billion price tag and proposal to pay for it through a new Trust Fund, to be capitalized by unspecified taxes and revenue measures. The bill is written to apply only to wastewater infrastructure and thus to remain under the jurisdiction of the House Transportation and Infrastructure Committee.

CHEMICAL SECURITY

The Department of Homeland Security's Chemical Facility Anti-Terrorism Standards (CFATS) program will continue through October 4, with enactment of the Consolidated Appropriations Act of 2012. (The standards were otherwise set to expire in mid-December without an Act of Congress to continue programmatic funding through the appropriations process.) DHS has also been directed to "provide a report that details the Department's definition of inherently safer technology as it relates to chemical facilities". CFATS currently does not apply to drinking water or wastewater facilities.

Congressional efforts to advance legislation towards a long-term CFATS reauthorization now seem stalled. After an internal DHS memo was leaked to the press earlier this year, which was critical of program implementation and indicated that high-level Administration officials and Members of Congress believed that the program was further along than it was, Congress may continue with

short-term extensions and now may not complete longer-term reauthorization until a new Congress commences in 2013.

TELECOMMUNICATIONS

Public Safety Spectrum

Since our last report, the President signed the *Middle Class Tax Relief and Job Creation Act of 2012* into law on February 22. Contained in the law are spectrum provisions, known as the Spectrum Act, that would reallocate the so-called D block to first responders and dedicate \$7 billion of spectrum auction proceeds to the build out of a nationwide, interoperable public safety broadband network. The Federal Communications Commission (FCC) and the Commerce Department's National Telecommunications and Information Administration (NTIA) have spent the last two months analyzing and beginning implementing their respective provisions of the Spectrum Act.

For example, in March, the FCC, acting under the direction of the Spectrum Act, announced the election of members of the Technical Advisory Board for First Responder Interoperability (Interoperability Board). The members are: Charles L.K. Robinson, Director, Business Support Services, City of Charlotte, North Carolina, and Kenneth C. Budka, Senior Director, Advanced Mission-Critical Communications, Bell Labs Chief Technology Officer, Alcatel-Lucent, as Chair and Vice Chair, respectively. Finally, the FCC announced that it has been informed by State of Alaska representatives that James Kohler of the Alaska Department of Administration, who had previously been nominated to the Interoperability Board, is unable to serve. In his place the Chairman has appointed Bill Price, Director of Broadband Programs at the Department of Management Services of the State of Florida. The Interoperability Board has been charged with developing minimum technical requirements for interoperability of the nationwide public safety network that they will submit for recommendation to the First Responder Network Authority (FirstNET), an independent authority that NTIA must appoint by August 20. FirstNET will oversee and manage the public safety broadband network, among other duties.

On March 26, the FCC established a public docket, PS Docket 12-74, for the Interoperability Board. Parties that seek to contribute materials for the Interoperability Board to consider in developing its recommendations may submit their materials in this docket. Parties may seek confidential treatment of materials they submit. By creating this docket, the Commission provides a vehicle for outside parties to contribute to the Board's deliberations in an open and transparent manner. This docket is not intended to serve as the exclusive mechanism by which members of the Interoperability Board will receive information from outside sources to inform their deliberations.

The FCC will also host a public workshop on April 23 to collect additional input on topic areas which the Interoperability Board has determined are relevant to the development of minimum technical requirements to ensure a nationwide level of interoperability for the nationwide public safety broadband network.

The workshop will consist of four, 45-minute moderated panel discussions. The first panel discussion will focus on the scope (as described below) the Interoperability Board has established for its work. The Interoperability Board is interested in receiving comments on the appropriateness

of the scope, areas which should be added, deleted or expanded, and why such action should be taken.

The second panel discussion will focus on: relevant standards, interfaces, and guidelines (*e.g.* 3GPP, OMA, etc.), including those for network services and sub-network mobility; requirements relevant to user equipment and device management; requirements relevant to maintaining interoperability as the broadband network evolves; and requirements relevant to conformance, interoperability and performance testing.

The third session will focus on interoperability requirements associated with: Grade(s) of Service provided by the broadband network, covering such topics as data rates, coverage (including between networks or network segments), session persistence and Radio Frequency planning; prioritization and Quality of Service; and mobility and handover.

The fourth session will focus on security of the network. Those interested in presenting during any of the panel discussions are asked to submit a request by email to the Interoperability Board through FCC Public Safety Homeland Security Bureau Deputy Chief Jennifer Manner at jennifer.manner@fcc.gov.

FCC Seeks Comment on Future of 700 MHz Waiver Recipients

In the wake of the Spectrum Act, another issue facing the FCC is how to treat the 21 jurisdictions that have existing waivers to deploy public safety networks in the 700 MHz band adjacent to the D Block. Last week, the FCC's Public Safety and Homeland Security Bureau sought comment on the most efficient way to transition the authorizations of the waiver recipients to FirstNET. Comments are due April 20.

Among the questions is whether the Public Safety and Homeland Security Bureau should rescind all of the waiver authorizations, even though it noted that two jurisdictions, the state of Texas and Charlotte, N.C., plan to turn their networks on next month and in June, respectively.

On the NTIA front, recipients of Broadband Technology Opportunities Program grants that were intended to fund the early build out of public safety broadband networks were told to put some of their spending on hold. On April 3, NTIA Administrator Larry Strickling told BTOP recipients that NTIA was imposing a "temporary suspension" on the portion of BTOP grants that would fund "LTE equipment," such as core servers, radio equipment, antenna and user devices. Strickling also said the suspension would not impact funding for site costs, backhaul acquisition, etc.

FCC Considers Dismissing 700 MHz Waiver Applications

Meanwhile, the FCC is considering whether to adopt an order that would dismiss more than three dozen pending requests to deploy 700 MHz band public safety broadband networks across the country. FCC officials have notified jurisdictions that have sought waivers that the action is under consideration.

Thirty-nine waiver requests are pending at the agency.

Tower Siting and Collocations

The FCC Wireless Telecommunications Bureau, in cooperation with the National Association of Telecommunications Officers and Advisors (NATOA), will host an educational workshop addressing collocations of wireless and broadband antennas on communications towers and other structures. The workshop will take place on May 1, 2012, from 9:30 a.m. to 4 p.m. EDT in the Commission Meeting Room at the FCC's Washington, D.C., headquarters. The FCC will also webcast the workshop.

The workshop will provide an overview of how collocations can promote the availability of mobile broadband, public safety, and other wireless services in a manner consistent with community priorities. Panelists will discuss the technical, structural, and business considerations underlying collocations on a variety of structure types, including wireless towers, AM radio/broadcast towers, public safety communications towers, utility infrastructure, rooftops, and water tanks. The workshop will explore examples of cooperative solutions that have facilitated wireless deployment while recognizing community interests. The significance of the FCC's Nationwide Programmatic Agreement for the Collocation of Wireless Antennas also will be discussed.

The workshop is open to the public. Attendees are not required to pre-register, but may submit their name and company affiliation ahead of time by sending an email to Jim Swartz (james.swartz@fcc.gov) in order to expedite the check-in process. The FCC also will webcast the workshop on the FCC webpage. To view the webcast, go to www.fcc.gov/live on the day of the event. Viewers may submit questions by e-mail to livequestions@fcc.gov. Viewers are encouraged but not required to pre-register by e-mailing james.swartz@fcc.gov.

TAX ISSUES***Municipal Bonds***

President Obama's FY 2013 Budget proposes capping the exemption on municipal bond interest at 28 percent. This provision was also proposed by the Obama Administration as one of the options to offset the cost of the American Jobs Act. (As previously reported, the American Jobs Act had this provision stripped before it came to the Senate floor, when Majority Leader Reid (D-NV) removed all the Administration's offsets and instead inserted a 5.7 percent surtax on those earning over a million dollars. The American Jobs Act did not pass Congress.)

Most state and local officials oppose this proposal on the basis that the outcome would be higher borrowing costs for state and local governments, less investment in infrastructure and thus fewer jobs. They also maintain it would come at the wrong time when the country's economic recovery is faltering and state and local finances are already under pressure.

In January, the Joint Committee on Taxation released its annual tax expenditure estimates showing \$177.6 billion for public purpose municipal bonds over five years. The 2011-2015 estimated tax expenditures were \$54.5 billion for private activity bonds, \$24.4 billion for direct-pay bonds, including Build America Bonds and \$1.8 billion for tax credit bonds. All municipal related tax expenditures with the exception of tax credit bonds increased from the Joint Committee on Taxation's previous five year estimates.

As Congress mulls tax reform proposals, municipal bond interest will continue to be hotly debated. On April 25th, the Senate Finance Committee will hold a hearing to discuss what federal tax reform could mean for state and local fiscal policy. Several elements under consideration will be the deduction for state and local taxes and tax exemptions for bonds and how policy changes to those could impact state and local government finances. The hearing will also address federal policy to encourage states to coordinate their efforts to develop simplified, uniform tax rules to reduce the burden of compliance for businesses.

President Barack Obama's Corporate Tax Reform Proposal

On February 22, President Barack Obama and Treasury Secretary Timothy Geithner, unveiled a framework for corporate tax reform: *The President's Framework for Business Tax Reform*. The proposal focuses on corporate, rather than individual income tax, and, in general, seeks to lower rates while broadening the tax base, but does not eliminate the current worldwide system of taxation. The President's proposal outlines five key elements of corporate tax reform: (1) eliminate "loopholes and subsidies", broaden the tax base, and cut the top corporate tax rate to 28 percent; (2) strengthen American manufacturing; (3) reform international taxation by including a new minimum tax on foreign earning; (4) simplify and cut taxes for small businesses; and (5) restore fiscal discipline by not adding to the deficit.

Many of the elements of the plan, which is purposefully vague in several important areas, are not new to the dialogue and represent various tax reform principles that have been part of the discussion for the past year. While it remains to be seen how introduction of the plan will affect conversations on Capitol Hill, the report states that the President "recognizes that tax reform will take time, require work on a bipartisan basis, and benefit from additional feedback from stakeholders and experts." The proposal should be viewed as an outline, indicating what the President believes should be the key elements of business tax reform.