ALCALDE & FAY

GOVERNMENT & PUBLIC AFFAIRS CONSULTANTS

MEMORANDUM

TO: Chairman Joe A. Martinez
Board of County Commissioners

FROM: Hector Alcalde
Lois Moore
Danielle McBeth
Tandy Bondi
Charlotte Hrncir

SUBJECT: **September Monthly Report**

With little progress made on reconciling any of the appropriations bills before the end of the fiscal year September 30, 2011, the federal government is now operating under a Continuing Resolution (CR) recently approved by Congress. The CR, signed into law on October 5, 2011, gives Congress until November 18, 2011 to finalize these bills.

House and Senate leaders had been at odds in recent weeks regarding the $3.65 billion in disaster relief funding provided in the proposed CR, specifically how and whether the funds should be offset. Ultimately the Senate chose to reduce the disaster relief to $2.65 billion by eliminating $1 billion that would have been made available immediately and offset by eliminating the Energy Department's Advanced Technology Vehicles Manufacturing Loan Program, which provides incentives for auto companies to produce fuel-efficient vehicles. The final six-week CR signed into law last week funds the federal government at a rate that reflects the $1.043 trillion cap for FY 2012 that was included as part of the debt limit law enacted in August. Fifty-three Republicans voted against the CR, many of whom were hoping to resort back to the $1.019 trillion cap that House Republicans had passed earlier this year as part of their Budget Resolution.

With enactment of the six-week CR, Congress will begin working on reconciling each of their appropriations bills for FY 2012. On October 3, 2011, Senate Majority Leader Harry Reid (D-NV) announced that the Senate would take up three of the FY 2012 appropriations bills approved by the Appropriations Committee; early indications are that the Senate will address the Agriculture, Commerce-Justice-Science (CJS), and Transportation, Housing and Urban Development (T-HUD) bills, as these received bipartisan support during the committee markup process. Of these three, only the corresponding Agriculture bill was passed by the House, while the CJS bill has been awaiting floor action since July and the T-HUD bill has still not been marked up by the full Committee. However, it is very possible that the majority of the spending bills will be combined into an omnibus spending measure, or that some bills may move separately as part of several smaller packages of spending bills. With regards to this process, House and Senate leaders would look to reconcile the funding differences in each of their respective bills.

Below is a summary of our work and an update on legislative issues of interest to the County for the month of September.

SEAPORT DEPARTMENT

Miami Harbor Deep Dredge

While the Office of Management and Budget (OMB) and the Senate Appropriations Committee have each approved the Department of the Army's plans to move forward with the Miami Harbor deep dredge project, approval is still pending before the House Appropriations Committee. The House committee is the very last federal approval needed to enable the Army Corps to move forward into the next stage which is the Project Partnership Agreement (PPA).

Congressman Mario Diaz-Balart (R-FL) has spoken with Chairman Frelinghuysen on two separate occasions over the past several weeks regarding the urgency of moving forward with the project. During the August recess period, we stayed in contact with Congressman Diaz-Balart's staff and Congresswoman Ros-Lehtinen's staff. In addition, Port Director Johnson made inquiries to House Appropriations Committee majority and minority staff members.

At the request of Alcalde and Fay, on September 22, 2011, Congressman Bill Young (R-FL), also spoke personally with Chairman Frelinghuysen. At that time, the Chairman advised Congressman Young that the committee could not approve the project because, despite the assumption of the entire construction cost by the non-federal sponsor, it was his (the Chairman's) understanding that a deeper draft would result in additional federal maintenance costs. This is not accurate and we immediately moved to correct this misunderstanding. We worked with the Seaport Department and the Army Corps Jacksonville District Office staff to prepare a letter. The final letter signed by the Army Corps Jacksonville District, dated September 23, 2011 stated:

"Maintenance dredging is typically performed on a ten year cycle at the Port of Miami, which has one of the lowest average annual maintenance costs along the east coast, and is on average $350,000 per year. Any increase in shoaling of the newly authorized channel, once constructed, is expected to be negligible." The letter went on to state that future federal maintenance costs could actually decrease over time, as cost sharing "kicks in" after 48 feet.

We provided this letter to the staff of Congressmen Diaz-Balart and Young and both Members have indicated that they will personally deliver it to Chairman Frelinghuysen once Congress reconvenes the week of October 3.

We anticipate a decision by the committee the week of October 3, 2011. We are preparing to schedule additional meetings for Director Johnson on October 12 and 13, 2011 should this matter not be decided by that time, or if a favorable decision is not received by the committee.

As a recap, we scheduled and accompanied Director Bill Johnson to meetings on July 15 and 16, 2011 with Members of Congress, congressional staff and agency officials. We coordinated the meeting schedule with the Miami Dade Washington Office. Bill Couch and Director Joe Rasco also participated in the following meetings.

- Stacey Brown, Chief, Integrations Division, South Atlantic Division; Susan Nee, Legal Department, Army Corps Headquarters;
- Sally Ericsson, Associate Director, Office of Management and Budget;
- Richard Patrick, Legislative Director to Congressman Ed Pastor (D-AZ), Ranking Democrat, Energy and Water Development Appropriations Subcommittee;
- John Anderson, Staff Director, Water Resources Subcommittee, Transportation and Infrastructure Committee;
- Roger Cockrell, Professional Staff, Energy and Water Subcommittee, Senate Appropriations Committee;
- Michael Higdon, Chief of Staff, Office of Congressman Hal Rogers (R-KY), Chair, House Appropriations Committee;
- Angie Giancarlo, Professional Staff (Majority) Energy and Water Development Subcommittee, House Appropriations Committee;
- Taunja Berquam, Professional Staff (Minority), Energy and Water Development Subcommittee, House Appropriations Committee;
- Senator Bill Nelson (D-FL); and
- Miguel Mendoza, Legislative Director, Office of Congressman Mario Diaz-Balart.

The purpose of the meetings was to facilitate support for the Army Corps' proposal to accept and use non-federal funds for the deep draft (50 foot) dredging project. The proposed authority originates from a 1925 Rivers and Harbors Act/ Section 561 of federal code. A letter which proposes the use of the 1925 authority was sent by Secretary Darcy to OMB Director Lew on June 22, 2011. Another letter from Secretary Darcy was sent to the House and Senate Appropriations Committees on July 19, 2011.

As previously reported, in May, the House and Senate Appropriations Committees approved the Army Corps' Accelerated Funds Agreement for the Preconstruction, Engineering and Design (PED) stage of the project. Also during the month of May, the Army Corps' FY 2011 work plan was released. For the Port of Miami, the Corps included $1 million for completion of the PED and $200,000 for regular Operation and Maintenance needs in the Miami federal channel. These allocations by the Army Corps were significant, as neither had been included within the original FY 2011 Corps budget introduced in February of 2010. These initiatives on the part of the Corps are indicative of the agency's growing support for the deep dredge project.

The Miami-Dade delegation members and Senator Nelson continue to be thoroughly supportive of the deep dredge project. As previously reported, during the month of April, Congresswoman Ileana Ros-Lehtinen (R-FL) held a delegation meeting in her office with the Assistant Secretary of the Army (for Civil Works), JoEllen Darcy. We assisted in preparing talking points in advance of the meeting and in coordinating with Congresswoman Ros-Lehtinen's staff and other delegation members.

We were pleased to hear that the Members received a commitment from Secretary Darcy at that time that the Port of Miami deep dredge would be a priority of the Department.

Port of Miami Landside Infrastructure Improvements

On October 19, 2010, the Department of Transportation announced a $22.7 million grant to the Port of Miami for the proposed Intermodal and Rail Interconnection project at the Port of Miami. As indicated above, this was one of the largest grant awards under the TIGER II program and only one of seven port grants nationwide.
The Department of Transportation released the TIGER III solicitation notice on June 30, 2011. Approximately $500 million is available for federal grant awards under the TIGER III program.

WRDA 2011/Maritime Section of Transportation Bill

On July 7, 2011, Congressman John Mica (R-FL), Chairman of the House Transportation and Infrastructure Committee (T&I), introduced a summary of his Transportation Reauthorization bill.

As anticipated, the legislation includes a maritime title. One of the title's key provisions ensures that funds collected for the Harbor Maintenance Trust Fund (HMTF) are used as intended, which is accomplished by tying HMTF expenditures to revenues. Other provisions in the maritime title include:

- Expediting permits administered by the Corps to help address backlogs that increase project costs;
- Streamlining the study process for Corps navigation projects;
- Ensuring that policies and projects among departments sharing jurisdiction of maritime transportation are coordinated and streamlined;
- Encouraging short-sea shipping by prohibiting double-taxation of vessels shipping goods between domestic ports;
- Allowing non-federal project sponsors that have already arranged financing to contract with the Corps to expedite studies for navigation projects;
- Stimulating domestic shipbuilding and creation of maritime jobs by expanding the allowable use of tax-deferred Capital Construction Fund accounts; and
- Clarifying provisions relating to credit for work carried out by non-federal sponsors.

Staff is continuing to draft the maritime provisions at this time and introduction is expected within the next couple of weeks, or earlier. We anticipate that the introduced bill will include language which amends the cost share formula for construction channel depths greater than 45 feet. While current law provides for a local cost share of 60 percent (50 percent plus 10 percent over three years) for depths greater than 45 feet, the proposed amendment will change the depth threshold from 45 to 53 feet. This is one of the WRDA requests which has been submitted to the committee by the Miami Dade delegation on behalf of the Seaport Department.

<u>Water Resources Development Legislation (WRDA 2011)</u>
While Chairman Mica has indicated an interest in moving WRDA legislation later this year, House leadership will not allow project-specific authorizations, as they are defined as "earmarks." Therefore, a House WRDA bill would need to be restricted to policy provisions only. However, the Chair and Ranking member of the Senate Environment and Public Works (EPW) Committee, Barbara Boxer (D-CA) and James Inhofe (R-OK) do plan to include projects within their FY 2011 WRDA legislation.

Senators Boxer and Inhofe forwarded letters to all Senators in the spring, requesting that they submit individual WRDA project requests by April 28. That deadline has since been moved to September 18, 2011. We prepared the submissions for the Port of Miami and submitted them to Senator Bill Nelson's (D-FL) office by his deadline of April 25. The requests are as follow. (Senator Marco Rubio (R-FL) will not make WRDA requests).

- Language which amends the cost sharing formula for construction of channel depths greater than 45 feet.

  In previous WRDA conferences, the Senate committee has opposed any change in the cost share. Therefore, we will work with the American Association of Port Authorities to generate support for the issue in the Senate. Assuming a minimum of two years of PED work, a cost share change in WRDA 2011 would be timely to impact the cost sharing on the Phase III construction project.

- Language (report) which clarifies that Sec. 221(4) - Credit for In-Kind Contributions of the 2007 Water Resources Development Act is applicable for "in-kind" work accomplished by the Port during the preparation of the General Reevaluation Report (GRR).

  This integral in-kind contribution included research assistance and other planning efforts in consultation with the Army Corps. The amount of the credit is estimated at $400,000. The requested language reads:

  > ***Miami – Harbor, Miami-Dade County Florida: Credit for In- Kind Contributions***
  >
  > *Section 221(4) – Credit for In-kind Contributions of the Water Resources Development Act of 2007 shall be applicable for work undertaken by the Port of Miami during the preparation of the General Reevaluation Report (GRR) which resulted in the Report of the Chief of Engineers dated April 25, 2005.*

- Language which federalizes the Dodge Island Cut extension for maintenance dredging. This is important, should operation and maintenance (O&M) be needed in the future in this area of the Miami Harbor.

  On the above request, since "earmarks" are not allowed on House legislation this year, we submitted suggested language for consideration by staff of the House and Transportation Committee which establishes a process whereby non-federal entities could apply to the Secretary of the Army Corps of Engineers to request consideration for federal assumption of maintenance.

WATER AND SEWER DEPARTMENT

The upcoming Senate WRDA bill will present an opportunity to secure authorizations for Water and Sewer Department priorities, and, along with the Seaport Department's WRDA requests, we prepared submissions to Senator Nelson's office for the following projects.

$6.25 million for the Water Transmission Pipeline authorized in the Water Resources Development Act of 2007. Congress authorized this reclaimed water pipeline to receive up to $6.25 million in grant assistance from the Army Corps, pending an appropriation.

Authorization of $30 million for a pipeline to convey reclaimed water to the Florida Power and Light (FPL) complex at Turkey Point. The $120 million project would require a nine-mile pipeline from the South District Water Treatment Plant to the FPL complex. The reclaimed water would be used to cool a proposed power plant addition, and to replace cooling water for existing units.

Authorization of $1.5 million for a Water Main to convey reclaimed water to Fisher Island and Miami Beach. The $3 million project includes the construction of a 20-inch reclaimed water main from the Central District Wastewater Treatment Plant on Virginia Key to Fisher Island and Miami Beach. The reclaimed water, delivered through the 8,300 foot pipeline, would be used for irrigation replacing potable water from the Biscayne Aquifer.

Increase to $20 million the authorization for the South Miami Dade Reuse Pipeline. Section 5158 (128) of the Water Resources Development Act of 2007 included the authorization of $6.25 million for the $357 million project to construct new water reuse treatment facilities and pipelines. This request will increase the federal participation level, in this important environmental project, to six percent.

We will continue to seek federal grant funding for the following project:

$5 million for the Pump Station Optimization Program (PSOP). The PSOP consists of the installation of a program addition to pump station Supervisory Control and Data Acquisition (SCADA) controls for each station. Five million is needed for program upgrades and monitoring well installations, upgrades to pump station control panels and level sensing equipment to allow for increased pressures, which result from increased wastewater elevations during the PSOP operations.

Chemical Facilities Security Bill

On June 29, 2011 the Senate Homeland Security and Governmental Affairs Committee reported out legislation which extends the Department of Homeland Security's program requiring high-risk chemical facilities to comply with federal security standards. The Chemical Facility Anti-Terrorism Standards program, or CFATS, sets 18 risk-based performance standards that high-risk chemical facilities must meet. The security standards cover a range of vulnerabilities, such as perimeter security, access control, theft, internal sabotage and cyber security.

Water Quality Standards/ Clean Water Cooperative Federalism Act

On June 24, 2011 the House Transportation and Infrastructure Committee reported a bill that would strip the Environmental Protection Agency (EPA) of its authority under the Clean Water Act to revise state water-quality standards once they are agreed to by the state and EPA. Under current law, EPA may veto a new state water quality standard for a previously regulated pollutant if the EPA determines that the new standard is not consistent with the Clean Water Act. H.R. 2018, the Clean Water Cooperative Federalism Act, would give each state the final say in whether a revised state water-quality standard satisfies the Clean Water Act. Thirty Republicans and five Democrats on the committee supported the legislation.

TRANSPORTATION

FY 2012 Budget Resolution

On July 11, 2011, Senate Budget Committee Chairman Kent Conrad (D-ND) unveiled a summary of his FY 2012 budget proposal. The proposal would produce $4 trillion in deficit reduction over 10 years, which is nearly the same level of reduction as offered in House Budget Committee Chairman Paul Ryan's (R-WI) proposal. However, Chairman Conrad's proposal would achieve this through $2 trillion in spending cuts and $2 trillion in new revenue. Despite the introduction of this plan, Senate Appropriations Chairman Daniel Inouye (D-HI) and other members of the Committee have indicated that they are waiting for a final agreement from the debt limit negotiations before they move forward with any more of the FY12 appropriations bills. The Appropriations Committee had unanimously approved the Military Construction-VA appropriations bill on June 30, 2011.

As previously reported, the House voted 235 to 193 on April 15, 2011, in favor of Chairman Ryan's FY 2012 House Republican Budget Resolution, entitled "The Path to Prosperity." Chairman Ryan noted in an op-ed published by the Wall Street Journal that the proposal "cuts $6.2 trillion in spending from the President's budget over the next 10 years," accomplished in part by reducing spending for "domestic government agencies to below 2008 levels," and locking in that level of spending for a five-year period. This would lead to deep across-the-board cuts in discretionary spending for transportation infrastructure, community development, and justice programs to name a few. It is important to note that the Budget Resolution, which is intended to establish budgetary guidelines for the current fiscal year, is a non-binding proposal that will still need to be reconciled with the Senate Budget Resolution.

FY 2012 Transportation Appropriations

With enactment of the six-week CR completed, Congress will begin working on reconciling each of their appropriations bills for FY 2012, including the Transportation, Housing and Urban Development (T-HUD) bills. On October 3, 2011, Senate Majority Leader Harry Reid (D-NV) announced that the Senate would take up three of the FY 2012 appropriations bills approved by the Appropriations Committee; early indications are that the Senate will address the Agriculture, Commerce-Justice-Science (CJS), and Transportation, Housing and Urban Development (T-HUD) bills, as these received bipartisan support during the committee markup process. Of these three, only the corresponding Agriculture bill was passed by the House, while the CJS bill has been awaiting floor action since July and the T-HUD bill has still not been marked up by the full Committee. It is very possible that the majority of the spending bills will be combined into an omnibus spending measure, or that some bills may move separately as part of several smaller packages of spending bills. With regard to this process, House and Senate leaders would look to reconcile the funding differences in each of their respective bills.

While the two T-HUD bills only differ slightly in their total funding levels (Senate bill provides $55.3 billion and the House bill provides $55.15 billion), the funding allocations for Transportation programs in each bill reflect two different approaches. The Senate bill provides $10.629 billion for all Federal Transit Administration (FTA) programs, including $8.361 billion for transit formula and bus grant programs. The House bill, however, would only provide $7.043 billion for FTA programs, including $5.2 billion for transit formula and bus grant programs, which represents a 38 percent reduction below the FY 2011 level. Furthermore, while the Senate bill would provide $550 million for TIGER grants and $25 million for the FTA's greenhouse gas and energy reduction (TIGGER) grant, the House bill zeroes out both programs. Ultimately, as the

House and Senate leadership work to reconcile the differences between the two versions of the FY12 T-HUD bill, they may look for guidance from any progress that is made on funding authorization levels in reauthorization proposals discussed by the House T&I and Senate EPW Committees.

Federal Highway Administration

On June 3, 2011, the County submitted an application under the Federal Highway Administration (FHWA) Transportation, Community and System Preservation (TCSP) grant program. Following submission, we provided members of the Congressional Delegation with suggested letters of support for the submission and have secured a letter from Congresswoman Ros-Lehtinen.

Surface Transportation Authorization Act

On September 16, 2011, President Obama signed into law the Surface and Air Transportation Extension Act of 2011 (H.R. 2887), which provided a "clean" six-month extension (through March 31, 2012) of the authorizations for highway and transit programs provided in SAFETEA-LU. The bill had been approved by voice vote in the House on September 13, 2011, and two days later the Senate followed suit with a 92 to 6 vote. Although the Senate EPW Committee had previously approved a four-month extension on September 8, 2011, House and Senate leadership ultimately agreed on the six-month extension in order to give both chambers enough time to reconcile their opposing long-term reauthorization proposals. The legislation also provides an extension of the federal gas tax, which was set to expire on September 30, 2011, and serves as the main source of funding for the Highway Trust Fund (HTF). In addition to providing a six-month extension of SAFETEA-LU, the bill also included a four-month extension of FAA and aviation programs through January 31, 2012.

Although the Senate ultimately voted in favor of the extensions provided in this bill, the legislation was nearly abandoned due to an objection raised by Senator Tom Coburn (R-OK) regarding a provision included in the SAFETEA-LU extension. For nearly two days, Senator Coburn prevented a vote on the bill as he attempted to remove a provision requiring states to allocate 10 percent of surface transportation funds for "transportation enhancement" (TE) activities related to surface transportation, which include bicycle and pedestrian projects/programs. Senator Coburn also suggested that in order to avoid another lapse in FAA funding, the FAA extension should be considered separately while efforts continued on the enhancement issue between him and Chairwoman Boxer and Ranking Member Inhofe. Majority Leader Harry Reid (D-

NV), however, refused to separate the bills and after facing pressure from his own party's leadership who were unwilling to risk another FAA lapse, Senator Coburn removed his objection which allowed a vote to be held. There is currently a discrepancy regarding the terms of an agreement that was reached in order to persuade Senator Coburn to remove his objection to the vote.

Following the Senate vote to approve the bill, Senator Coburn announced he had been promised that the 10 percent TE mandate would not be included in the two-year reauthorization bill that the EPW Committee had been working on in recent months. He promised that "the next bill coming six months from now will have an opt-out," and that Chairwoman Boxer and Ranking Member Inhofe had concurred with "an agreement that the next bill will be an opt-out for people on enhancements." However, Chairwoman Boxer was quick to disagree with this statement, arguing that while she and Ranking Member Inhofe had agreed to certain "reforms" to the TE program in the two-year reauthorization bill, Senator Coburn was mistaken in his interpretation because "there's no opt-out. . .there's still dedicated funding. It gives more flexibility to the states as to how they will use that funding. . .it's flexibility for the states within the transportation enhancements program." Despite this assertion, it remains unclear what specific language or provisions will be included in the reauthorization bill when it is introduced.

With the newest extension signed into law, the House and Senate are now likely to begin work on enacting a long-term reauthorization bill after reconciling the House and Senate proposals. As previously reported, Senate EPW Committee Chairwoman Barbara Boxer (D-CA) has confirmed that that the Committee would be moving forward with a two-year $109 billion bill, currently titled "Moving Ahead for Progress in the 21st Century" or MAP-21. The legislation would reflect current funding levels plus inflation. Chairwoman Boxer also noted that she would be working with Senate Finance Committee Chairman Max Baucus (D-MT) to find funding to cover the bill's $12 billion shortfall, and she indicated earlier this month that they were "making progress on the offset."

On July 7, 2011, Chairman Mica released a general overview of his proposal, which would authorize $230 billion over six years from HTF. This level of funding represents a nearly 33 percent cut below the current level of $51 billion and limits funding levels to the amount of revenue provided by HTF. Despite the Chairman's past criticism of the Senate's two-year proposal, recent reports indicate that he is open to a reauthorization bill that would continue funding highway and transit programs at their current levels. This sentiment is a change in position made possible after the House leadership agreed to increase the level of funding provided in the Chairman's proposal. The Chairman's spokesperson, Justin Harclerode, confirmed the report stating, "the leadership has committed to him that we will look at our options for additional revenue," which it is estimated would need to reach $15 billion annually in order to fully supplement HTF. While Mr. Harclerode gave no indication as to where the new revenue would come from, he did make it clear that the House T&I Committee would not consider proposals that involve "increasing the gas tax, that's one thing we do know, but we'll look at our other options and see what those are."

Metrorail Orange Line Expansion

We remain in discussions with the Federal Transit Administration (FTA) and House and Senate appropriators regarding the FY 2009 funding allocation of $20 million and the FY 2010 funding allocation of $4 million for the Metrorail Orange Line Expansion. While we understand that the funding cannot be used for the North Corridor because the County voluntarily withdrew from the New Starts process, our goal is to utilize the allocations for another segment of the Metrorail Orange Line that would fit FTA criteria including activities such as alternative analysis and preliminary engineering.

National Infrastructure Investments (TIGER II)

On June 30, 2011, U.S. Department of Transportation Secretary Ray LaHood announced that approximately $527 million would be available for a third round of the Transportation Investment Generating Economic Recovery (TIGER) grant program, and we provided the County with the **Interim Notice of Funding Availability.**

TIGER III grants can be used for capital investments in surface transportation infrastructure and are to be awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region. Eligible projects include, but are not limited to: (1) highway or bridge projects eligible under title 23, United States Code; (2) public transportation projects eligible under chapter 53 of title 49, United States Code; (3) passenger and freight rail transportation projects; and (4) port infrastructure investments. Grants may not be less than $10 million and may not be greater than $200 million. TIGER III grants will require a 20 percent local cost share, although this requirement can be waived for "rural" entities.

National Infrastructure Investments (TIGER III)

We have not yet been advised of the County's submission of a TIGER III application. We provided the County with the Interim Notice of Funding Availability, along with a “blueprint” of the grant to assist with drafting an application. Approximately $527 million is available nationwide for this third round of TIGER (Transportation Investment Generating Economic Recovery).

As you know based on previous success with the Port of Miami, TIGER III grants can be used for capital investments in surface transportation infrastructure and are to be awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region. Eligible projects include, but are not limited to: (1) highway or bridge projects eligible under title 23, United States Code; (2) public transportation projects eligible under chapter 53 of title 49, United States Code; (3) passenger and freight rail transportation projects; and (4) port infrastructure investments. Grants may not be less than $10 million and may not be greater than $200 million. TIGER III grants will require a 20 percent local cost share, although this requirement can be waived for “rural” entities.

The Department began accepting pre-applications on August 22, 2011 and they were to be submitted by October 3, 2011. Final applications must be submitted through grants.gov by October 31, 2011 at 5:00 p.m. EST.

ECONOMIC DEVELOPMENT

Community Development Block Grant Program (CDBG)

On September 8, 2011 the House Appropriations Committee approved the FY 2012 Transportation, Housing and Urban Development (T-HUD) bill. The bill includes $55.15 billion in discretionary spending. Included is $3.5 billion in funding for the Community Development Block Grant program (CDBG), the same as FY 2011 funding. The Senate Committee on Appropriations approved their FY 2012 T-HUD bill on September 21, 2011. Included in the Senate’s version was $2.85 billion for CDBG grant funding. This is $485 below the FY 2011 enacted level.

Build America Bonds (BABs) &
Transportation and Regional Infrastructure Project Bonds (TRIPs)

As you are aware, Congress did not renew the BAB program prior to its expiration on December 31, 2010, and while the program has enjoyed some renewed support in the 112th Congress, the majority in Congress has been opposed to reauthorizing the BAB program because of its costs to the federal government, and neither Chairman Mica nor Chairwoman Boxer included the program in their respective surface transportation reauthorization proposals. However, prior to the August recess, Senator Ron Wyden

(D-OR) introduced bipartisan legislation, with Senators John Hoeven (R-ND) and Mark Begich (D-AK), that would create Transportation and Regional Infrastructure Project Bonds, or TRIPs bonds, in an attempt to rebrand BABs by changing certain aspects of the original program that concerned members of Congress. The "Transportation and Regional Infrastructure Project Bonds Act of 2011" (S. 1436) differs from BABs in that TRIP bonds would exclusively fund transportation investments and the program would be capped at providing $50 billion over six years. Also, TRIPs would be issued/run by State Infrastructure Banks, which would be authorized to issue $1 billion over the program's six-year duration for projects in their state, while also allowing multiple states to work together on larger projects of regional and national significance. Senator Wyden commented recently that, "TRIPs will build on recent experience with tax-credit bonds and leverage private funding in a fair and efficient [manner] that has been proven to save taxpayer money."

Senator Wyden plans to pitch the plan to state and local officials in the coming weeks and has already secured the support of the U.S. Chamber of Commerce and the American Association of State Transportation and Highway Officials (AASHTO). Initially, the Senator supported including these bonds as part of the surface transportation reauthorization bill currently being formulated, with Senator Hoeven saying they were working to incorporate it into the larger bill "while ensuring that it is fully paid for so that it doesn't contribute to the deficit." However, Senator Begich recently indicated that a more likely scenario would be to discuss the plan as a possible alternative to President Obama's proposal to establish a national infrastructure bank, which has met with opposition from Republicans who are hesitant to create another large federal agency or overarching organization. Senator Begich said this could provide Republicans with a bipartisan solution for providing transportation financing options to state and local governments as part of the push to create jobs, noting that the TRIP bonds proposal "will be part of the jobs debate… it makes a lot of sense."

ELECTIONS

As we reported previously, there has been no further action on H.R.672 which would transfer most of the Election Assistance Commission's responsibilities to the Federal Election Commission. As you may remember the bill was defeated in June; however, the bill's sponsor, Rep. Gregg Harper (R-MS), has indicated that he hopes to bring the bill up again under a rule rather than suspension.

FY 2012 Budget Information

As reported previously, for FY 2012 the Administration did not request funding for the Help America Vote Act (HAVA) grants to the states. The House Appropriations Committee reported out H.R. 2434, the FY 2012 Financial Services and General Government Act, on July 7, 2011 and the Senate Appropriations Committee did so on September 15 in Senate Report 112-079.

Election Assistance Commission (EAC)

FY 2011 Actual	*FY 2012 Administration Request*	*H.R. 2434 House Mark*	*Senate Mark*
$16,267,000	$13,716,000	$6,858,000	$14,750,000

In H. Rept. 112-136, which accompanies the bill as reported, the House Appropriations Committee states the following about the EAC:

> The Committee believes that while the request is less than fiscal year 2011, it does not go far enough in realizing efficiencies within the EAC. The EAC is close to the end of distributing all of the Section 251 Requirements grant payments under HAVA and no additional election reform grant funding is provided this year that requires administration. The Committee remains concerned that the EAC's operating costs are too high. The Commission's fiscal year 2012 requested amount for management expenses is 40 percent higher than the requested amount for grants programs to be managed. The Committee believes there are efficiencies yet to be realized within the Commission's administrative operations.
> The Committee notes that the National Association of Secretaries of State (NASS) has once more adopted a resolution encouraging dissolving the EAC. The Committee finds this especially concerning as NASS is the constituency that the EAC should be serving most. The Committee believes it is possible that the EAC has outgrown its utility in this area. While the Committee strongly supports the successful administration of Federal elections, it has significant concerns about the effectiveness of the EAC in this regard.

Minority Views included the following statement:

> The Election Assistance Commission will receive only $6,858,000 in funding, which will devastate the agency. The agency will no longer be able to help states improve their election practices and equipment to ensure fair and well-run elections in our nation.

OTHER LEGISLATION AND ISSUES OF INTEREST

Draft Internet Travel Tax Fairness Act

We continue to monitor the internet hotel tax issue. Of recent interest are stories about the State of Connecticut considering implementing a tax on internet travel brokers, and about the Florida Restaurant and Lodging Association's panel discussion supporting the implementation of a similar tax. Also, the towns of Frisco and Vail, CO are considering joining 80 Colorado towns and cities in a class action suit against companies including Expedia, Hotwire, Orbitz, Hotels.com, Priceline and Travelocity for the collection of unpaid back taxes, and a California state court rejected the City of San Diego's attempts to impose hotel occupancy taxes on online travel companies (OTCs). Ruling that OTCs are neither owners nor operators of hotels, the Los Angeles Superior Court held that San Diego's occupancy tax ordinance did not apply to the booking services offered by the OTCs. In doing so, the Court overturned a decision by a San Diego administrative hearing officer assessing more than $21 million in taxes and penalties against the OTCs.

National Flood Insurance Program (NFIP)

Following the September 8, 2011 Senate Banking Committee mark-up of its NFIP reauthorization bill, we alerted the County that the bill includes a 15 percent cap on annual premium rate increases, instead of the 10 percent the County advocates or the 20 percent cap included in the House version of the bill. During the Committee's markup session, Committee Chairman Tim Johnson (D-SD) and Ranking Member Richard Shelby (R-AL) decided not to allow any amendments to the bill at that time, but promised to work with members in the coming weeks to reach an agreement on many of the 22 amendments offered. One amendment of particular interest was offered by Senator Roger Wicker (R-MS) who sought to address the issue of wind vs. water coverage by establishing a formula to determine how much property loss is caused by wind and water during hurricanes. Senator Wicker had included this proposal in his Consumer Option for an Alternative System to Allocate Losses, or COASTAL Act (S.1091), which he introduced on May 26, 2011. It is important to note that the issue of wind coverage was brought up during the 111th Congress but was summarily defeated, and with Senators working to agree on a NFIP reauthorization bill that they feel could successfully be reconciled with the House version, more controversial policies such as these may be dismissed prior to Senate passage.

The legislation that is ultimately approved by the full Senate will still need to be reconciled with the House-passed NFIP reauthorization bill, the "Flood Insurance Reform Act of 2011" (H.R. 1309), which passed the House on July 12, 2011, by an overwhelming 406 to 22 vote. As previously reported, the House-passed bill would extend the program for five years, provide for a five-year phase-in of full premium rates for newly re-mapped areas, and allow for qualifying "areas" to apply for three one-year delays for the mandatory purchase of flood insurance. The bill also allows for a fourth and fifth year of extensions, provided that a community can demonstrate that "more than adequate progress has been made on the construction of a flood protection system for such area."

The bill would also establish a 16-member Technical Mapping Advisory Council to provide recommendations and reports to FEMA regarding the adoption of updated mapping standards to be used in creating 100-year flood insurance rate maps. With regard to these new mapping protocols, the House voted 261 to 163 in favor of an amendment by Congressman Dennis Cardoza (D-CA) to remove a provision requiring "areas of residual risk, including areas behind levees, dams, and other man-made structures," to be included in the new rate maps. While the bill did not include language necessarily making it mandatory for these "residual risk" areas to purchase flood insurance, as had been included in a similar Senate bill during the 110th Congress, Congressman Cardoza argued that regions currently protected by levees could be subjected to flood insurance requirements.

As earlier referenced, the House and Senate have approved a Continuing Resolution (CR) that would fund the federal government through November 18, 2011. Included in the CR is an extension, also through November 18, 2011, of NFIP. The NFIP had previously been extended through October 4, 2011 as part of the mini-CR enacted last week. The extension theoretically gives the Senate additional time to finalize its legislation and could even provide adequate time for a final long-term reauthorization bill to be agreed upon by both chambers. The Senate is also currently facing a hurdle surrounding the debate over how to deal with approximately 800,000 former State Farm insurance policies which have been administered by FEMA since State Farm closed its flood insurance division last year. These policies are usually sold and administered by local independent agents who are able to then sell various other types of insurance to the customer. At issue is language in the House-passed bill that would limit the number of policies FEMA directly administers to 10 percent of the policy market, essentially giving rival companies nearly half of the old State Farm policies. State Farm has argued that this would hurt the business of independent agents, whose customers would likely move all of their policies if they were forced to switch flood insurance providers. The bill passed by the Senate Banking Committee does not include this language, however reports indicate that Senator Sherrod Brown (D-OH) may offer an amendment to include the language. With the threat of a drawn-out and contentious fight over this issue taking up a great deal of the limited floor time remaining, Majority Leader Reid may choose to postpone debate until both sides can reach an agreement.