RULES COMMITTEE: 3/30/11
ITEM: D.2.a

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: RULES AND OPEN GOVERNMENT COMMITTEE **FROM:** Betsy Shotwell

SUBJECT: SEE BELOW **DATE:** March 23, 2011

Approved Date 3/25/11

SUBJECT: 112TH CONGRESS STATUS AND FORECAST OF NOTABLE FEDERAL LEGISLATION RELEVANT TO LOCAL GOVERNMENT INTERESTS

RECOMMENDATION

Acceptance of the attached status report from the City's Federal advocacy firm of Patton Boggs, LLP, in Washington, D.C.

OUTCOME

That the Rules and Open Government Committee and the City Council have the opportunity to review the status report by Patton Boggs staff on pending federal legislation in Washington, D.C. during the first session of the 112th Congress in 2011.

BACKGROUND

The firm of Patton Boggs, LLP, is providing the attached update on the status and prospects of pending federal legislation of particular relevance and interest to local governments. This activity supports the City's advocacy and education in promoting our federal legislative priorities.

ANALYSIS

The attached report describes in detail the status of high-profile federal legislation of interest to the City. The report references the status of the FY 2011 and FY 2012 appropriations, the Federal Aviation Administration and SAFETEA-LU reauthoriziations, the earmark moratorium, climate/energy legislation, and a number of bills on other priority topics. This Congressional recess report details action taken to date on these and other items. Patton Boggs will provide a subsequent update on what actions took place prior to Congress adjourning for their next recess in late April.

PUBLIC OUTREACH

- ☐ **Criteria 1:** Requires Council action on the use of public funds equal to $1 million or greater.
  (Required: Website Posting)
- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

By providing this document to the Rules and Open Government Committee in March, this document will be posted on the City's website with the March 30 meeting agenda and interested public will have the opportunity to review the document prior to the full Council acceptance.

COORDINATION

This memo was coordinated with the City's Washington, D.C. lobbyist firm of Patton Boggs, LLP.

Betsy Shotwell

BETSY SHOTWELL
Director, Intergovernmental Relations

Attachment: Patton Boggs, LLP memorandum, "112th Congress Status and Forecast of Notable Federal Legislation Relevant to Local Government Interests"

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MEMORANDUM

To: City of San Jose
From: Patton Boggs LLP
Date: March 18, 2011
Subject: 112th Congress Status and Forecast of Notable Federal Legislation Relevant to Local Government Interests

This memorandum provides a comprehensive update on the status and prospects of pending, high-profile federal legislation of particular relevance to local governments introduced during the first few months of the 112th Congress.

Specifically, the memo addresses –

- FY2011 Appropriations
  - UASI Provision in H.R. 1 and Potential Impacts
- FY2012 Budget and Appropriations
- Earmark Moratorium, Definition, and Continued Reform
- SAFETEA-LU Reauthorization
- Water Resources and Development Act Reauthorization (WRDA)
- Federal Aviation Administration Reauthorization
- Chemical Security
- Climate / Energy Legislation
- Neighborhood Stabilization Program
- Public Safety Interoperability / D Block Spectrum Allocation
- Net Neutrality
- PEG Legislation
- Build America Bonds
- Infrastructure Bank Legislation
- Legislation to Repeal Three Percent Withhold IRS Provision
- Meetings with Agency Officials

FY2011 Appropriations

As reported in our regular appropriations updates, the federal government has operated under a series of Continuing Resolutions (CR) since the beginning of the fiscal year on October 1, 2010. Today the President signed the 6th short-term CR of the fiscal year, which will fund the government through April 8, at which point Congressional leaders are hopeful they will have reached a compromise on a 'long-term' or end-of-the-year CR to run through the remainder of FY2011 (ending September 30, 2011).

To recap the highlights of Congressional FY2011 appropriations action so far this year --

House Republicans, particularly "Tea Party Republicans", have strongly pushed to fulfill their *Pledge for America* campaign promise to reduce federal budget spending in FY2011 by $100 billion. On January 20, the conservative Republican Study Committee (RSC) introduced the *Spending Reduction Act of 2011*, which proposed to recede domestic FY2011 spending to FY2008 levels – a reduction of $80 billion. The measure proposed to accomplish this reduction by eliminating or drastically cutting a number of programs important to local governments and their partners -- New Starts transit funding, Community Development Block Grants (CDBG), high-speed rail grants, weatherization grants, Economic Development Administration, National Endowment for the Arts, National Endowment for the Humanities, Save America's Treasures, HOPE VI, Manufacturing Extension Partnerships, Energy Star, most National Service programs, and the subsidy for Amtrak service. Senate Democrats countered this proposal with a report detailing the $1 trillion deficit increase and over one million job losses they anticipated would result from the RSC proposal.

On February 3, House Budget Chairman Paul Ryan (R-WI) announced an FY2011 discretionary spending limit of $1.055 trillion - a $74 billion cut from the President's budget request and $35 billion below last year's levels. The measure allocated $420 billion for domestic spending – a rescission to FY2008 levels. Security spending was set at $635 billion, an increase of $8 billion over FY2010.

On February 9, House Republican Appropriators released a list of 70 programmatic terminations or reductions they intended to include in a long-term CR (H.R. 1). The proposed cuts exceeded $74 billion, including $58 billion in non-security discretionary spending reductions. Immediately, House RSC Members expressed opposition to any measure that did not reach $100 billion in reductions. Needing RSC support to pass a CR, House Republican leaders agreed to meet the demand and increased spending cuts to $100 billion below the President's FY2011 Budget request. With the majority of its rank-and-file members still fighting for further reductions, House leadership brought up the bill under an open amendment process, enabling any Member to propose deeper cuts or restore funding (if offset). The House began debating H.R. 1 on February 15. After reaching a deal to reduce the number of amendments slated for debate from over 500 to just 129, the House passed the measure in the early morning hours of February 19. Sixty-seven amendments were adopted, adding $620 million in additional spending cuts (reducing discretionary spending approximately $60 billion from FY2010 enacted levels and approximately $101 billion below the President's FY2011 Budget request) and limiting UASI funding (detailed below). Amendments to restore funding to the Economic Development Administration, the COPS program, and SAFER grants were also adopted.

On March 4, the Senate Appropriations Committee introduced its own long-term CR that aligned with reductions proposed by the White House a few days earlier. The bill identified an additional $6.5 billion in cuts from FY2010 enacted levels ($51 billion below the President's FY2011 Budget request). Reducing programmatic funding by the amounts earmarked to each in FY2010 accounted for the majority of the savings in the proposal[1]. Unlike H.R. 1, the Democratic proposal provided level funding for CDBG, Community Services Block Grant (CSBG), and the Urban Area Security Initiative (UASI), and significantly smaller reductions to law enforcement programs, SAFER grants, HUD-VASH, public housing, homelessness assistance, Community Health Centers, Environmental Protection Agency (EPA) programs, and the National Endowments for the Arts and Humanities (NEA / NEH). It also retained programs that H.R. 1 proposed to eliminate such as Community Oriented Policing (COPS), TIGER grants, New Starts, Sustainable Communities, HOPE VI, Choice Neighborhoods, and job training programs.

On March 9 the Senate voted on both H.R. 1 (the House Republican's proposal for cutting approximately $60 billion from current spending for the remainder of FY2011) and the proposed Senate CR (the Senate Democratic proposal for cutting $6.5 billion from current spending). Both failed.

With Democrats and Republicans unable to reach an agreement on a long-term FY2011 appropriations bill and neither wanting to take the blame for a government shutdown, several short-term CRs were enacted to keep the government operating, though at reduced levels. Each CR reduced spending by $2 billion per week, though they did not include the severe spending cuts and policy restrictions included in H.R. 1 and pushed for by conservative House Republicans. With the exception of several specific program reductions and terminations, the majority of which were proposed by the President in his FY2012 Budget request, the CRs maintained federal funding at FY2010 levels, reduced by the amount designated to Congressional earmarks. The latest will provide funding through April 8.

Negotiations on an end-of-the-year CR to cover the remainder of FY2011 remain tenuous and there seems to be no basis for compromise as Members head into a weeklong recess. Democrats and Republicans are roughly $50 billion apart in the spending cuts they support and also at odds over whether taxes and entitlements should be considered as part of the CR. Additionally, policy riders being pushed by conservative House Republicans, such as de-funding Planned Parenthood and healthcare reform, are strongly opposed by Democrats and the President.

Moreover, fractures within the parties are growing, as evidenced by this week's votes on the CR, particularly in the House. The House vote was 271 – 158, with 54 Republicans, Minority Leader Nancy Pelosi (D-CA) and 103 other Democrats voting no. Minority Whip Steny Hoyer (D-MD) and 84 other Democrats voted for the CR. Yesterday's Senate vote was 87 – 13. What this means going forward is that Speaker of the House John Boehner (R-OH) will need some Democratic support to

[1] This action does not rescind FY2010 earmarks - even those that remain unobligated - it simply reduces programmatic allocations to FY2010 levels, minus the amount directed to Congressional earmarks, which essentially leaves federal agency discretionary funds at FY2010 levels.

pass any FY2011 spending measure in the House. The type of compromise required to garner adequate Senate support and prevent a Presidential veto will further alienate conservative House Republicans. It's likely that far more than 54 will not support a year-end measure with shallower cuts and no policy riders.

With only two weeks remaining after the recess to work out a deal, it appears there are three options for April 8 – (1) an end-of-the-year CR with cuts falling between $10 billion - $50 billion and no policy riders; (2) another short-term CR of one to two weeks, only if it seems a deal is imminent; or (3) a federal government shutdown.

Proposed UASI Provision and Impacts

As noted above, on February 18, the House adopted an amendment to H.R.1 which would limit the number of metropolitan areas eligible to receive Urban Area Security Initiative (UASI) funds to only 25 localities.

The amendment was sponsored by Representative Nita Lowey (D-NY) who cited the Najibulla Zazi and Faisal Shahzed cases in her floor statement to highlight the need for focusing UASI resources on the highest risk areas. Those cases were planned in jurisdictions (Denver, CO and Bridgeport, CT) which would be dropped from the list under this amendment.

Section 2003 of the Homeland Security Act of 2002, as amended by the 9/11 Commission bill, authorized risk-based designation and funding of UASI areas without setting a limit on the number of locations to be funded. In FY2010 sixty four jurisdictions received UASI funding.

As H.R. 1 did not pass the Senate, this provision will be a key component of the FY2011 appropriations resolution debate in the coming weeks.

FY2012 Budget and Appropriations

On February 14, President Obama delivered his FY2012 Budget proposal to Congress. The President proposed a $3.73 trillion budget and trimmed deficits by $1.1 trillion over ten years. Patton Boggs provided a comprehensive analysis of the Budget request on February 15, highlighting those programs most relevant to public agency interests.

In light of the economy and the Republican push for deep spending cuts, the President's Budget reflects that the Administration is willing to reduce spending to control the growing federal debt, while increasing targeted funding for some programs to make the nation more competitive. Building on his State of the Union, the President proposed investments in education and job training, research and rebuilding infrastructure, which he argues are critical to the nation's economic competitiveness.

The FY2012 Budget proposed to extend the domestic spending freeze for five years saving $400 billion over the next ten years. It is not an across the board cut but an overall freeze on spending. Billed as "belt tightening", the Budget proposed more than 200 terminations and reductions to programs across the entire government that result in over $30 billion in savings. Cuts include reductions for low income energy assistance, CSBG, and CDBG.

The Administration proposed, through a range of programs and tax incentives, putting one million electric vehicles on the nation's roads by 2015. The Budget featured an immediate, investment of $50 million for repairing, rebuilding and modernizing transportation infrastructure and suggests the creation of a National Infrastructure Bank to support critical infrastructure projects. The Budget also proposed doubling exports by 2014.

Additionally, the President's Budget opposed the permanent extension of the 2001 and 2004 tax cuts for families making more than $250,000 a year which now expire at the end of 2012. While last year's budget also opposed the extension of the tax cuts, the President accepted a short extension as part of compromise jobs legislation in the lame duck session of Congress at the end of 2010. The Budget also proposed a three year solution to the Alternative Minimum Tax.

Of course, the President's Budget serves only as a reference point for Congress as it considers FY2012 appropriations and makes its own funding and programmatic decisions. Despite the lack of resolution to the FY2011 appropriations process, House Appropriations Subcommittees already have held hearings on the FY2012 Budget and are scheduled to finalize a budget resolution, which sets overall funding parameters for the individual appropriations bills, by April 15.

House Budget Committee Chairman Paul Ryan (R-WI) is slated to lay down his FY2012 budget resolution in the coming weeks that will give wider context to the more narrow fight over the last six months of FY2011. The ongoing FY2011 debate has enabled the new Republican majority to lay down important political markers that will shape the spending debate over the FY2012 budget. We believe those spending debates are poised to dominate much of the Congressional work period later this summer and fall.

Earmark Moratorium, Definition, and Continued Reform

House and Senate Earmark Moratoriums

The anti-earmarking momentum leading up to the election continued into the 112th Congress with both the House and the Senate ultimately implementing earmark moratoriums – the Senate for the first session (FY2011 and FY2012); the House for the entire Congress (FY2011, FY2012, and FY2013). However, the moratoriums were implemented informally, not as part of a Rules package for either Chamber. Therefore, once the FY2011 appropriations process is resolved, we anticipate the "End It vs. Mend It" debate regarding an elimination of earmarks versus continued reform will pick up and the practice could resume in some fashion as early as FY2013.

In November, the House Republican conference voted to continue the moratorium they adopted in March 2010 to carry through the 112th Congress. Despite early pushback, Republican appropriators eventually agreed to the moratorium and in January, upon taking control of the House, Republican leadership implemented the moratorium which also impacts Democrats as the minority party.

Also in November, Senate Republican Caucus Senate adopted a nonbinding earmark moratorium resolution for the 112th Congress. While a full Senate vote on the measure (proposed as a legislative amendment) in late November failed, following President Obama's vow in his January State of the

Union to veto any bill with earmarks, on February 1 Senate Democrats reluctantly announced an earmark moratorium for the Senate as well.

Impact of Moratorium

Reauthorization bills are the vehicle for major program and policy content that determine the amount, use, and decision-making related to funding allocations for urban areas, and potentially mean more for targeting funds than individual projects.

Additionally, we still do see potential opportunities for other non-earmark approaches that can help to secure funding through the appropriations process via programmatic direction. And through our continued focus on federal agency discretionary and competitive options, such as raising profile for positioning, identifying program office internal topical priorities, promoting creation of demo projects, submitting unsolicited proposals, or encouraging incorporation of certain program development / implementation criteria.

However, we also expect increased need for defensive action on primary mainstream funding sources in the budget and legislation, given the various "deficit reduction" recommendations being floated proposing core policy changes to CDBG, the Airport Improvement Program (AIP), and other funding streams, as well as overall downward pressure on future appropriations levels.

Federal funding for earmarked accounts will continue to flow, although it will be funneled through federal departments and agencies via competitive and discretionary opportunities. Facing a comparable situation without earmarks in FY2007, several localities succeeded in securing as much or more funding through agency efforts than typically accomplished through appropriations. Similarly, work on ARRA funding direction within the Army Corps, Department of Energy, and other agencies yielded good results. Therefore, continuing with the internal vetting process already underway for your FY2012 federal funding priorities will serve well in this regard. As we did in FY2007, Patton Boggs will reach out to federal departments / agencies to build a comprehensive base of competitive and discretionary opportunities and potential new Administration priorities.

We will continue to work with you to prioritize your funding needs and target those options which will maximize your opportunity to secure federal funding.

Definition of "Earmark" and Anticipated Inhofe-McCain Proposal

An earmark moratorium does not necessarily mean the earmarking process will go away forever. It implies that the Congress will forego earmarks temporarily, while addressing additional reforms and transparency measures.

However, when earmarks return, they will return with tighter scrutiny and greater limitations on quantity both in total numbers and funding levels. They will likely be directly only to not-for-profit entities and public agencies such as local governments, transportation authorities, institutions of higher education, and their partners. The end result will probably include: a ban on earmarks to for-profit entities; greater project transparency; an emphasis on job creation; a strong nexus between the project and mission of the federal agency through which funds are sought; and broader benefit to the general public beyond the entity requesting funds.

Additionally, the definition of an "earmark" remains a point of debate and no determination has been regarding the application of limits to authorization bills – comments by some of the most prominent earmark opponents suggest distinguishing projects in SAFETEA and WRDA from the moratorium.

Senator Jim Inhofe (R-OK) is a long-time supporter of earmarks and one of the few Republicans to speak out as such in recent years. On the other hand, Senator John McCain (R-AZ) is a leader of the Senate anti-earmark campaign. However, it appears that the two may join together to endorse a proposal that would allow home-state project funding, provided that the projects are first authorized by the Senate committee of jurisdiction. Projects must also meet eligibility criteria established by the committee and would require the support of 75 Senators for enactment. A draft proposal has not yet been released as negotiations continue on the specific language to prevent carve-outs and secure additional anti-earmark supporters.

Re-introduction of Presidential Rescission Authority Legislation

The Reduce Unnecessary Spending Act of 2011 (H.R. 1043 / S. 102) was introduced on January 25 by Senator John McCain (R-AZ) and on March 11 by Congressman Chris Van Hollen (D-MD). The Senate bill currently has 34 cosponsors; the House bill has 26.

The legislation would provide the President with expedited rescission power, allowing him to provide a package of rescissions to Congress within 45 days of enactment of a spending bill. Congress would then be provided 25 days to consider the rescissions and pass the package, as a whole and without amendment, with an up-or-down vote (both timeframes are counted in terms of days Congress is in session, excluding weekends, holidays, etc.). The rescissions take effect only if approved by a majority vote in both Chambers. Keeping with tradition on budgetary matters, the House would consider the package first. If Congress does not take action within the designated 25 days, the rescissions would not take effect.

The process would not impact provisions contained in the bill that are not identified in the rescission package as the bill will be signed into law before the President submits his rescission package. Funding for the proposed rescissions, however, would be withheld until Congress acts, or for the 25 days designated for Congressional review. The fast-track procedure would apply to all discretionary spending with the exception of entitlement programs, such as Medicare, Social Security, etc.

There have been numerous attempts to secure President line-item veto in the past; most have failed due to lack of Congressional support. A successful Congressional effort, the Line Item Veto Act of 1996, was deemed unconstitutional by the Supreme Court in 1998 as a violation of the separation of power. By allowing Congress the opportunity to vote on the rescission package, the sponsors feels this preserves the constitutional balance between the Executive and Legislative branches.

Despite having bipartisan support in the Senate – cosponsors include 15 Democrats, 18 Republicans, and one Independent – House support so far is limited to 26 Democrats. It is unlikely House Republicans, particularly "Tea Party Republicans", will support giving this authority to the current Democratic Administration.

SAFETEA-LU Reauthorization

Efforts to reauthorize law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) during the 111th Congress were unsuccessful. The biggest challenge facing the reauthorization was and still remains the question of how to pay for it. Revenues -- primarily gas taxes paid into the Highway Trust Fund -- continue to decline as automobiles become more fuel efficient and more drivers switch to hybrids and to all-electric vehicles. The gas tax, which Congress has not increased since 1993, has become insufficient to sustain the program at even currently authorized levels. Since 2008, Congress has been forced to transfer $34.5 billion from the general fund to the Highway Trust Fund to maintain its solvency.

With a lack of consensus over a funding resolution, SAFETEA-LU continues to be extended. The President signed the most recent extension on March 4, which will keep the current surface transportation law active through September 30, 2011. Key congressional lawmakers and administration officials remain committed to approving a six-year highway and transit bill before the latest extension expires.

The next seven months will be spent working out the many policy differences expressed by Chairman of the House Transportation and Infrastructure Committee John Mica (R-FL), Chairwoman of the Senate Environment and Public Works Committee Barbara Boxer (D-CA), and the Administration.

The President's FY2012 Budget request included an outline for a $556 billion, six-year reauthorization proposal that restructures the Highway Trust Fund (HTF) and consolidates many of the Department of Transportation's current programs. A noticeably absent element of the proposal was a source of funding. The proposal surpasses the current revenue levels of the HTF but does not propose a solution for the funding gap. The Administration also remains strongly opposed to raising the gas tax and has suggested that Congress tackle the funding issue.

Rather than increasing programmatic levels, Chairman Mica would prefer to find a way to work within the current HTF levels. This will likely result in the exclusion of specific project designations within the bill and the elimination of non-highway, non-transit programs (i.e. bike trails and research funding). Hearings and markups will be held over the next several months as the House and Senate attempt to advance towards their intended deadline and address the bill's greatest challenges.

Water Resources and Development Act Reauthorization (WRDA)

The Water Resources Development Act (WRDA) authorizes various US Army Corps of Engineers project studies and construction and establishes a policy framework for the Corps' Civil Works Program. The legislation authorizes the Corps civil works program to conduct water resources studies; construct projects for navigation, flood and storm protection and ecosystem restoration; transfer Army Corps property to local entities; authorize funding for wastewater treatment projects and an array of other purposes.

WRDA is intended to be a biennial bill, but recent history has belied that intent. The last enactment in 2007, when Congress successfully over rode a Presidential veto, had been the first WRDA enacted since 2000 and the legislation tried to capture the backlog of projects that had accumulated over that period of time. In the last Congress, then House Transportation and Infrastructure Chairman Jim Oberstar (D-MN), introduced a bill July 28, 2010 but the legislation fell victim to the press of unfinished business and never moved to the House floor. Legislation was not introduced in the Senate.

This Congress, Chairwoman of the Senate Committee on Environment and Public Works, the committee of jurisdiction, Barbara Boxer (D-CA), kicked off the process of assembling the next WRDA with a bipartisan letter asking Senators to submit their highest priority water infrastructure plans to the Committee for consideration. The letter, signed by Chairwoman Boxer and Ranking Member James Inhofe (R-OK), asks Senators to provide detailed information on priority plans for the civil works plan of the Army Corps of Engineers no later than March 28, 2011 despite President Obama's pledge to veto all legislation that includes earmarks. The letter, however, does not mention the word earmark. Instead, the letter asks Senators to "provide the committee with specific project and programmatic requests you would like considered for inclusion in this bill". Traditionally, this legislation is comprised of many specific projects in addition to policy changes.

The letter goes on to state, "We believe Congress has a constitutional role to play in determining spending priorities for the Army Corps of Engineers Civil Works program. Without congressional input, the administration would be the sole voice in setting water resources priorities."

Many Democratic Senators are accepting project requests, but, due to the earmark moratorium, most Republican Senators are not. Recently, as noted above, Senator Inhofe teamed with long time earmark foe, Senator John McCain (R-AZ), to address the earmark controversy and define earmarks. Both Senators Inhofe and McCain face the challenging task of moving forward complex legislation which has relied on specific project inclusion for passage, such as WRDA, the surface transportation reauthorization and defense authorization bill.

The House Transportation and Infrastructure Committee is expected to hold hearings in the coming months on the policy implications and reforms of the WRDA but is unlikely to draft a bill this year. Moreover, without specific projects included, it is difficult to see how a traditional WRDA bill can be enacted in this Congress.

Federal Aviation Administration Reauthorization

Before Congress recessed for the November elections, it extended authority for FAA programs for three months, setting December 31, 2010 as deadline to reach a compromise between House and Senate bills passed earlier in the year. No such deal was reached during the lame duck session, as the Senate could not reach a consensus on whether and how to provide additional non-stop flights outside of the 1,250 mile perimeter around Reagan National Airport, and with the attention of the lame duck Congress on other legislative priorities. So a 17th extension of FAA programs was enacted on December 22, 2010 giving the 112th Congress until March 31, 2011 to get a bill done.

The Senate Commerce Committee moved in front of the House, to the surprise of many, and in late January introduced a bill containing the identical text of the bill the Senate passed 93-0 in March 2010 (S. 223). (Thus, it covers only FY2010, already expired, and FY2011, already begun). The bill moved straight to the Senate floor, and debate began February 1. In nearly three weeks of debate, the Senate considered over 100 amendments. Only after Commerce Committee Chairman John Rockefeller (D-WV) and Ranking Member Kay Bailey Hutchison (R-TX) introduced their compromise amendment on the Reagan National slots issue did the bill clear cloture and pass 87 - 8 on February 17.

S. 223, as amended, would provide 24 additional beyond-the-perimeter slots (12 daily roundtrips), 10 for new entrant or limited incumbent carriers and 14 for incumbent carriers. Incumbent carriers would be required to surrender a slot to an inside-the-perimeter large hub airport in exchange for an award of a beyond-the-perimeter slot. DOT would be authorized to allow an additional 8 beyond-the-perimeter slots to incumbent carriers (subject to the same exchange requirement), if, after a study, DOT determines that such additional operations will not have a substantial negative effect on Reagan National, Dulles or BWI. Also of interest were two amendments to the Essential Air Service program proposed by Senator Coburn and included in the final bill. One would limit an EAS subsidy to routes 90 or more miles from the nearest large or medium hub airport. The other would limit EAS subsidies to markets that average 10 or more daily enplanements.

House Committee on Transportation and Infrastructure Chairman John Mica (R-FL) introduced his bill, H.R. 658, on February 11, after holding two hearings earlier that week. After a committee mark up on February 16, the bill is now ready to move to the floor. (The Ways & Means mark up of the tax title will likely be added to the bill on the floor.) The House bill would authorize FAA programs through FY2014 (3 1/2 years). With the Republicans in charge of the House, it is not surprising that Chairman Mica's bill does not include any of the contentious provisions that were included in the House bill passed in the 111th Congress. Republicans removed provisions addressing Aircraft Rescue and Fire Fighting (ARFF) standards and requirements, and the provision addressing the antitrust immunity granted to international code sharing agreements. The so-called "FedEx" provision was also removed. It would have brought FedEx ground workers under the National Labor Relations Act.

Airports do not fare well under the House bill. It lacks any across-the-board increase in the Passenger Facility Charge, last increased in 2000, to $4.50. (Last year's House bill featured an increase to $7.) Thus, the only PFC increase in either the House or Senate bill is a pilot program in the Senate bill that would allow up to six airports to increase the PFC without limit provided that any amount over $4.50 must be collected directly from the passengers without airline involvement. (The House bill has a pilot provision for intermodal projects, but with no increase in the PFC.) While the Senate-passed bill would provide a robust $4.1 billion in Airport Improvement Program funds for FY2011, the House bill would reduce AIP funding to $3.176 billion in FY2011 and $3.0 billion in FY2012 – FY2014.

The House bill would gradually but significantly reduce EAS subsidies from $148 million in FY2011 to $80 million in FY13, and prohibit subsidies thereafter except for markets in Alaska and Hawaii.

While the House bill and Senate-passed bill are now more closely aligned, the House floor debate could potentially move the bills farther apart in one or more areas. Also, the House bill would repeal a May 2010 National Mediation Board ruling on election procedures that absent employees are no longer counted as "no" votes in representational elections. This provision will face opposition from labor organizations, and may jeopardize a deal with the Senate.

The House bill is expected to reach the floor, under a fairly open rule, very soon. With the week-long recess beginning March 21, time is very short to pass a bill after a week or so of debate and reach a compromise with the Senate in a conference (or through a ping-pong exchange), before the 17th extension expires March 31. Thus, we expect an 18th short-term extension to be floated in the coming days.

The Administration has come very late to the dance, recommending in its FY2012 budget proposal a reduction in AIP funding to $2.4 billion, suggesting that airports be allowed to increase the PFC charge (without specifying an amount) to make up the shortfall in AIP funds.

Chemical Security

The Department of Homeland Security's Chemical Facility Anti-Terrorism Standards (CFATS) have regulated activities at certain high-risk chemical facilities since 2007. One key security gap identified by the Administration and Democratic leaders in particular has been the statutory exclusion of drinking water and wastewater facilities from those rules. In the 111th Congress, the Democrat-controlled House passed comprehensive chemical security reform legislation that would have both extended and expanded the law to include these facilities. We successfully advocated for language that would allow a drinking or wastewater facility to appeal an adverse state decision to a local decision to continue using hazardous chemicals (*eg*, gaseous chlorine) in lieu of alternative treatment methods – such as over concerns with implementation costs or public safety tradeoffs. However, that legislation did not pass the Senate. Congress subsequently authorized a clean extension of CFATS through the annual appropriations process in lieu of allowing existing standards to lapse while reform discussions within the Administration and throughout Congress continue.

Little is expected to change before October, when CFATS is otherwise set to expire. With a new Congress in which Republicans now control the House and there are fewer Democrats in the Senate – and jurisdictional committee issues still in play – it would seem unlikely that Congress could enact legislation before October that would significantly reform the nation's chemical security laws. A more likely scenario at this time would be that that Congress extends CFATS, as is, for yet another year through October 2012 via the appropriations process, thus providing more time to consider substantive reforms. Nevertheless, "marker" legislation has already been introduced by various Members of jurisdictional committees; to summarize:

- Representatives Tim Murphy (R-PA) and Gene Green (D-TX) have introduced H.R. 908, bipartisan legislation to extend CFATS through September 30, 2018. House Energy and Commerce Committee Chairman Fred Upton (R-MI) has already announced his approval of its introduction; both original sponsors are members of the Committee.
- Representative Charlie Dent (R-PA) has introduced H.R. 916, also to extend CFATS. Last year, during consideration of comprehensive legislation to expand and reform CFATS, he had

sponsored an amendment that would have delayed the use of Inherently Safer Technology processes until DHS conducted cost-benefit analyses.

- Representative Dan Lungren (R-CA) has introduced H.R. 901, to reauthorize CFATS. He is the Chairman of the House Homeland Security infrastructure protection subcommittee and already on record as stating that extending CFATS would "provide our chemical facility partners...who are spending collectively millions of dollars implementing new security measures....that the rules and requirements won't change from year to year..."
- Senator Susan Collins (R-ME) has introduced S. 473, a companion piece to Represenatative Lungren's bill and similar to bipartisan legislation she introduced last year. She is Ranking Member of the Homeland Security Committee.

While Democrats may seek to advance components of legislation passed by the House in the last Congress, Republicans are more likely to take a watchful approach given the relatively short timeframe DHS has had to implement and evaluate CFATS at over 4,000 facilities. Democrats are again likely to pursue controversial proposals to dramatically expand the scope of the program and possibly seek language to require a study to evaluate, or even mandate, the use Inherently Safer Technologies (IST) at chemical facilities to reduce risks after an attack.

Republicans generally oppose any type of IST mandate, questioning its validity and associated cost-benefit justification, and the federal government's expertise and ability to fund programmatic implementation. Any reach into the water/wastewater scope to fill a security gap that Democrats and Administration officials are concerned about could therefore simply mean a requirement that water utilities periodically update vulnerability assessments and site security plans to consider IST use. Other key issues for consideration include whether any new federal law will pre-empt state laws, and how much protection sensitive documents will have from public information laws and circulating within the federal government itself.

Climate Change / Energy Legislation

When the Senate reconvened after the November election, Majority Leader Harry Reid (D-NV) had already abandoned efforts to move climate change legislation, a Renewable Electricity Standard, and oil spill response legislation through the Senate. Instead, he planned to hold a cloture vote on bipartisan legislation to promote natural gas and electric vehicles. But when Senator Orrin Hatch (R-UT) removed his support for the bill, concerned that the pay-for to increase the Oil Spill Liability Trust Fund industry financing rate would raise consumer energy prices, it was left with no bipartisan support. Majority Leader Reid then canceled the vote and efforts to broker a deal with Senate Republicans on even this narrowed energy-related bill by year end vanished.

With Republicans having gained seats in the Senate, we anticipate that the 112th Congress will take a more targeted approach in addressing outstanding energy issues. Senate Democrats – including John Kerry (MA), Joe Lieberman (I-CT), Jeanne Shaheen (NH), Sheldon Whitehouse (RI), and Tom Carper (DE) – have already met to discuss an energy agenda, without climate change. Senator Lieberman believes that Republicans Lisa Murkowski (AK), Lamar Alexander (TN), Bob Corker (TN) and Lindsey Graham (SC) are key targets to work with Democrats on a bipartisan energy

package. Indeed, Senator Graham has suggested that energy is an area in which Congress and the Administration should be able to work together to generate a legislative accomplishment.

We do not expect to see a single, economy-wide climate change bill anything like the "Waxman-Markey" bill that passed the House in the last Congress or the various versions that emerged in the Senate. As part of the *Pledge for America* campaign promise put forward by House Republicans, they indicated that they would "oppose attempts to impose a national 'cap and trade' energy tax". (Indeed, on March 15, the House Energy and Commerce Committee favorably reported legislation, the Energy Tax Prevention Act (H.R. 910), that would preempt the Environmental Protection Agency's authority to regulate greenhouse gas emissions under the Clean Air Act. While the House is expected to pass the bill before the April recess, it is not expected to become law.) But Republican control of the House doesn't mean Congress can't or won't legislate using some version of it or another structure using "carbon intensity" targets. We anticipate that pressure will inevitably grow to address most of these issues in a single bill, where regional and policy tradeoffs will be easier to accomplish.

In fact, we see great potential for legislation that would address reducing greenhouse gas emissions in a meaningful way – with the support of affected industries. With many utilities in particular seeking certainty about what the future holds and with the success of prior Republican Presidents to point to as precedent, Republicans have been presented a golden opportunity to co-opt the legislative high-ground from Democrats by making a business case for a less ambitious bill that would address climate change, grow the economy, and provide dividends to the American public.

Shortly after the November election, the President began talking about trying to enact more discrete elements of his broader renewable energy agenda. During his State of the Union Address, he provided more details about his revamped priorities; for example, he again called on Congress to support legislation that would put one million electric vehicles on the road by 2015, and rather than asking Congress to adopt a comprehensive climate change bill, he instead urged enactment legislation that would increase the percentage of electricity generated from "clean energy" sources to 80% by 2035. We think the President can achieve much of his renewable energy agenda, but only if he reaches out to the new Republican House majority and works with moderates in the Senate.

In the near term, House and Senate leaders are growing increasingly concerned with rising fuel prices – and focus has also turned to the issue of nuclear safety given the 9.0 magnitude earthquake and unfolding nuclear crisis in Japan. Near-term fuel price relief options offered range from tapping the Strategic Petroleum Reserve to expanding oil shale production; longer-term options offered include expanding offshore oil and gas production in the Gulf of Mexico to promoting smaller-scale nuclear reactors to opening areas along the Atlantic Coast and Alaska's Arctic National Wildlife Refuge to energy production. As gas prices at the pump continue to climb, the pressure for energy legislation will as well. That said, a clear consensus policy has yet to emerge in the House or Senate by either party, although the House has already scheduled two hearings through March to discuss the impact of rising energy prices on the American economy.

Neighborhood Stabilization Program (NSP)

Legislation has been introduced in the House that would terminate various federal housing foreclosure programs. This includes the NSP Termination Act (H.R. 861), that would repeal and rescind funds for the *third round* of Neighborhood Stabilization Program funding, as well as stand alone measures to terminate the FHA Refinance Program (H.R. 830), Emergency Mortgage Relief Program (H.R. 836), and the Home Affordable Modification Program (HAMP) (H.R. 839). House Financial Services Committee Chairman Spencer Bachus ((R-AL) said, "We should not waste taxpayer dollars on failed government programs that do not work and actually make things worse for struggling homeowners. These programs may have been well-intentioned, but they're doing more harm than good."

The House Financial Services Committee has already held a legislative hearing and favorably reported all four measures in two separate mark ups. During a tense markup on March 9, H.R. 861 was nominally amended and favorably reported to the House floor on a 31-24 vote. Both the NSP and HAMP programs were criticized by Republicans as being well-intended but only prolonging homeowners' economic stresses in the face of a national economic crisis. NSP was criticized for vague reporting requirements, lacking sufficient accountability for how taxpayer funds are spent, and not adequately targeting funds to vulnerable populations (*eg*, veterans, elderly, children). Democrats staunchly defended the program, touting community and job-related benefits, and noting support by various local governments and non-profit organizations.

The House has already passed all but the HAMP termination bill, touted as budget saving measures to help reduce the national deficit by ending failed Democrat-passed stimulus programs. (The NSP Termination Act passed the House on March 16, the same day the Administration issued a veto warning.) In order for any such legislation to become law it would have to pass the Democrat-controlled Senate and be signed into law by President Obama – something unlikely to happen as it would require a two-thirds vote of both the House and Senate to override a Presidential veto. Furthermore, the Congressional Budget Office has already assumed that even if the bill were to become law by Summer, it would not affect budgetary spending since the law would affect unobligated balanced – and it is assumed that all remaining NSP-3 funds would be obligated by then.

Public Safety Interoperability / D Block Spectrum Allocation

With the 10th anniversary of the September 11 attacks approaching, many in Congress are intent on crafting legislation that would reallocate the D-block spectrum for public safety's use and dedicate funding to the deployment of a nationwide public safety broadband network. Prospects for enactment of legislation this year are more likely than in the past, now that opposition from the wireless industry and among some in Congress on the merit of diverting the spectrum from commercial use appears to be waning.

Senate Commerce Committee Chairman Jay Rockefeller (D-VA) has made the reallocation of the D-block spectrum his priority. On January 25, Chairman Rockefeller introduced the Public Safety Spectrum and Wireless Innovation Act (S. 28) that would create grant funds to construct and maintain a nationwide public safety broadband network, each of which would receive $5.5 billion. The bill would authorize the FCC to hold voluntary incentive auctions of television broadcast

spectrum. Also, S. 28 would direct the National Telecommunications and Information Administration to identify for reallocation at least 25 MHz of spectrum in the 1675-1710 MHz band, which the FCC would have to pair and auction with the 2155-2180 MHz advanced wireless services (AWS-3) band.

Meanwhile, Senate Commerce Committee Ranking Member Kay Bailey Hutchison (R-TX) is sharing a discussion draft with stakeholders that would reallocate the D-block to public safety and dedicate at least $20 billion in federal funds to build the nationwide network. Of that amount, $4 billion would be in the form of grants for network deployment in rural or high cost areas; $16 billion to $28 billion would provide interest-free loans for network deployment nationwide; and $2 billion of appropriated funds would be leveraged to guarantee the loans, similar to the Department of Agriculture's Rural Utility Service loan program. The proposal is part of a comprehensive plan on spectrum that also would direct the FCC to auction 90 MHz of spectrum within two years. The spectrum would include 25 MHz between 1675-1710 MHz; the 1755-1780 MHz band; 10 MHz in the AWS-2 H Block; 10 MHz in the AWS-2 J Block; and 25 MHz in the AWS-3 band. In addition, the proposal would reallocate and auction for commercial use the 3550-3650 MHz band identified by NTIA or similar spectrum identified by the President.

Although Senator Hutchison's draft would provide the FCC with incentive auction authority, it would ensure that such auctions are voluntary and that broadcasters would not be forced to involuntarily share channels during the repacking process. In addition, an unspecified portion of incentive auction proceeds would be directed to assist broadcasters in their move to other spectrum. Staff and industry sources expect Senator Hutchison to marry her proposal with Chairman Rockefeller's and that a markup on a Senate proposal would likely occur in coming months.

With the Senate taking the lead on D-block legislation, the key House panel with spectrum jurisdiction, the Energy and Commerce Committee, has yet to introduce its own measure. However, on February 10, House Homeland Security Committee Chairman Peter King (R-NY) and Ranking Member Bennie Thompson (D-MS) introduced the Broadband First Responders Act of 2011 (H.R. 607). The bill would allow $2 billion in interest-free loans to be borrowed from the general Treasury for the construction and operation of the public safety broadband network. Additionally, the bill would reserve $11 billion in auction proceeds to be evenly split to fund the construction of the network and the maintenance and operation costs (for a total potential authorization of $13 billion).

The King-Thompson bill would require the 1755-1780 MHz band most coveted by the wireless industry to be paired with the 2155-2180 AWS-3 band and auctioned, with a share of the proceeds going to the public safety network. The 1755-1780 MHz band currently supports a variety of federal government functions, including: conventional fixed microwave communications systems; military tactical radio relay systems; air combat training systems; precision guided munitions; high-resolution video data links, and other law enforcement video surveillance applications. The radio systems supporting these functions are deployed across the United States. The bill also would extend the FCC's auction authority from 2012 to 2020.

Under the House measure, the FCC would have 60 days from the bill's enactment to reallocate the D-block spectrum. The FCC also would be required to ensure that any public safety broadband

network be "fully interoperable," provide roaming and priority access, have sufficient cyber security and be able to survive "most large-scale disasters." Within eight years of the bill's enactment into law, public safety entities would be required to stop using spectrum between 420 MHz and 512 MHz and move to the 700 MHz and 800 MHz bands. Within 10 years, federal law enforcement agencies would have to move their operations to the 700 MHz and 800 MHz bands.

Differences remain centered on jurisdictional, funding and technical issues on how to resolve lack of progress toward implementing interoperable public safety communications nationwide. The majority of the public safety community associations support the direct D-Block reallocation over the FCC alternative to auction the spectrum to commercial providers. The major local and state government associations also endorse spectrum transfer to public safety, so long as there is sufficient funding for network deployment and maintenance. The telecommunications industry remains more divided, generally between providers that want access to the new spectrum and others that already have enough or sell equipment to public safety. Broadcasters, while unopposed to D-block reallocation, are concerned about whether incentive auctions will be truly voluntary and do not want to be forced into repacking their channels.

Net Neutrality

The concept of "net neutrality" holds that companies providing Internet service should treat all sources of data equally. It has been the center of a debate over whether those companies can give preferential treatment to content providers who pay for faster transmission, or to their own content, in effect creating a two-tiered Internet, and about whether they can block or impede content representing controversial points of view. Currently, Internet users get access to any Web site on an equal basis. The Federal Communications Commission had come out in favor of keeping things that way, but its authority was cast into doubt in April 2010 by a federal appeals decision that restricted its authority over broadband service.

On December 21, 2010, the FCC approved a compromise that would create two broad classes of Internet, one for fixed-line providers and the other for the wireless Web. The FCC vote was 3 to 2, with Chairman Julius Genachowski and his two Democratic colleagues supporting it and the Republican commissioners voting against it. The debate is now playing out in Congress, where Republican members are seeking to strike down the Commission's rules and Democrats want to preserve them.

On February 23, net neutrality advocates Senator John Kerry (D-MA), chairman of the Commerce Subcommittee on Communications, Technology and the Internet, as well as Senators Ron Wyden (D-OR), Maria Cantwell (D-WA) and Al Franken (D-MN) sent a letter to Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) opposing use of the appropriations process or the Congressional Review Act (CRA, PL-104-121), which allows Congress to pass a joint resolution to nullify agency regulations, to block the FCC from implementing its net neutrality rules. This action followed the House of Representative's passage of a Continuing Resolution for the balance of FY2011 that would bar the FCC from using funds to implement its net neutrality rules.

The Kerry letter asked Reid and McConnell "to object to any similar efforts here in the Senate ... Such action aims to strip the FCC of its legal authority over modern communications and hand

control of the Internet over to the owners of the wires that deliver information and services over them." The letter adds that the net neutrality rules "lay down guidelines for how telephone and cable companies can treat information that travels over their wires and connect Americans to the Internet. It [the order] very clearly does not regulate that information any more than the regulation of telephone service regulates what Americans can say to each other or whom they can call or not call", the letter notes, adding further that "Telephone and cable companies do not own the Internet. But if the amendment the House passed is not struck ... they will."

In addition to the appropriations play to repeal the net neutrality rules undertaken by House Republicans, Senate Commerce Committee Ranking Member Kay Bailey Hutchison (R-TX), Subcommittee Ranking Member John Ensign (R-NV), and Minority Leader McConnell introduced a resolution of disapproval in February to repeal the FCC rules through the Congressional Review Act. House Republicans followed by introducing their own resolution of disapproval shortly thereafter.

On March 9, the House Energy and Commerce Subcommittee on Communications and Technology held a second hearing on the resolution of disapproval, H.J.Res. 37. Following the hearing, the Subcommittee approved H.J.Res. 37 on a party-line vote of 15-8 and it was subsequently reported out of the full committee on March 15 by a vote of 30-23. The bill has potential to pass the House before the spring recess in mid-April. The Senate is not expected to act on the companion resolution introduced by Senator Hutchison until this summer, at the earliest. President Obama has stated his intention to veto any such resolution.

Public, Educational and Governmental (PEG) Channel Access

In the 111th Congress, Representative Tammy Baldwin (D-WA) introduced H.R. 3745, the Community Access Preservation Act or CAP Act. The bill would allow for the optimum continuance of Public, Educational and Governmental (PEG) channel offerings across cable and other video franchise networks. Of importance to local communities, the bill:

- Allows negotiated PEG access fees to be used for any PEG-related purpose including programming. Current law only allows the use of those funds for capital costs, with general funds being used for programming costs;

- Clarifies and ensures federal standards requiring that franchise owners treat PEG channels as equal to local, commercial counterparts – i.e. place PEG channels on lower numbered channels, carry PEG channels with same quality feeds and provide PEG feeds without loss of content, and would prohibit requiring additional equipment to access PEG channels;

- Authorizes an FCC study and report to Congress on the impact of state video service franchising laws since 2005 on PEG use of cable systems; and

- Clarifies the definition of "cable service" to include all video delivery platforms including, but not limited to, traditional cable transmission, digital transmission, and IP protocols.

Despite having 30 cosponsors and efforts to move as a stand alone bill and as an amendment to the Twenty-First Century Communications and Video Accessibility Act (P.L. 111-260), ultimately, no final action was taken on the CAP Act last Congress. The bill has not been re-introduced in the 112th Congress, although we expect that Representative Baldwin will do so this year.

PEG access was also under consideration during last year's Federal Communications Commission (FCC) consideration of the Comcast-NBCU merger. In a condition-heavy approval order, the FCC imposed the following conditions regarding PEG access stating that Comcast-NBC Universal will:

- Refrain from migrating PEG channels to digital until the entire system is converted to digital or until "a community agrees";
- Maintain PEG channels on its digital starter tier, or on an equivalent tier that reaches at least 85 percent of Comcast's subscribers – in line with provisions of H.R. 3475; and
- Not discriminate against PEG with respect to the functionality, signal quality, and features from those of the broadcast stations that it carries.

After almost of year of consideration, the merger was approved by the FCC and the Department of Justice on January 18, 2011.

Build America Bonds (BABs)

Build America Bonds, a popular program created by the *American Recovery and Reinvestment Act* (ARRA) which allowed many state and local governments to support infrastructure projects, expired on December 31, 2010.

State and local officials hoped Congress would extend the program by a year or two but BABs were not included in the $858 billion dollar tax deal forged at the end of the last Congress. Under Build America Bonds, nearly $180 billion in debt was issued since the program's inception in April, 2009. The program was created to help state and local agencies gain access to the bond markets after the financial crisis made it difficult for them to borrow. They were taxable bonds with the federal government subsidizing 35% of the interest payments. The money was used to rebuild highways, shore up bridges, upgrade rail systems and put up college dormitories.

This year a couple of bills have been introduced to renew the Build America Bond program. H.R. 747 was introduced by Representative Adam Schiff (D-CA) to renew the BAB program while H.R. 992, introduced by Representative Sander Levin (D-MI), would extend the BAB program in addition to extending Recovery Zone bonds, AMT for tax exempt bonds and the New Markets Tax Credit.

Meanwhile, Senator Ron Wyden (D-OR) hopes to introduce a bill within the next few weeks that would modify the expired Build America Bonds program. Wyden's plan to authorize Transportation and Regional Infrastructure Project (TRIP) bonds is being scored on its cost by the Joint Tax Committee as he seeks out allies on both sides of the aisle to help sponsor the legislation. The proposal would allow municipalities to issue bonds that return some of the states' interest payments

as a tax credit, which would lower the cost of borrowing at a time when states are in desperate fiscal straits. The advantage over traditional tax-exempt municipal bonds is that these bonds would be taxable, which makes them appealing to a broad array of pension funds and other institutional investors who don't care about tax-exempt interest.

Although the original Build America Bonds were popular with municipalities and investors, Republicans criticized the program as lacking oversight, offering little to help to rural communities, and even as a form of bailout program. Senator Wyden is working to answer these concerns; his bill proposes more stringent management authorities and limits on what kind of projects could be funded through TRIP bonds.

Infrastructure Bank Legislation

On March 15, Senators John Kerry (D-MA), Kay Bailey Hutchison (R-TX), and Mark Warner (D-VA) announced they were working on the *BUILD Act* to establish a national infrastructure bank, aimed to leverage federal dollars to entice private investment in transportation, water, and energy infrastructure projects of regional or national significance.

Unlike prior proposals, this measure includes only loans and loan guarantees, not grants, and only revenue-generating projects will be considered. While the President proposed $30 billion in his FY2012 budget for an infrastructure bank (including grants) the Senate bill would start the bank with $10 billion of seed money.

Legislation to Repeal Three-Percent Withholding IRS Provision

Legislation has again been introduced to repeal the three-percent withholding law which mandates State and Local governments that expend more than $100 million per year in outside contracts to withhold three percent of all payments for goods and services, remit that three percent to the IRS and adhere to new reporting requirements. Set to go into effect on January 1, 2012, the law would impose new administrative and potential contract costs to local governments. The *Withholding Tax Relief Act of 2011* (H.R. 674 / S. 89 / S. 164) was introduced in the Senate in January and the House in February.

Meetings with Agency Officials

Department of Education Programs

Patton Boggs attended a briefing held by the Intergovernmental Staff of the Department of Education recently. The Department is hampered in that final budget levels for FY2011 have not been established five months into the fiscal year due to the standoff in Congress about spending cuts.

Education Secretary Arne Duncan recently announced that eight states (Alaska, Delaware, Maryland, Minnesota, Nevada, North Carolina, Washington, West Virginia) would receive School Improvement Grant funding to turn around the persistently lowest achieving schools. There are four models for awardees to choose from, but most states have opted for the "Transformation" model where the focus is on governance, teachers, principals, recruiting teachers and increases in learning time and family involvement. The Department seeks to provide technical assistance to states and school districts and they intend to have four regional conferences which will be posted on the Department's web site. The Department is also establishing a "community of practice" on line for states and schools to learn about best practices. .

Race to the Top III was proposed at $900 million in the President's proposed FY2012 budget. Twelve grants were awarded under rounds I and II. The President's budget would also authorize the program which was established by the *American Recovery and Reinvestment Act* (ARRA). In FY 2012, if funded, the funds will be focused on district level competition with an emphasis on rigorous standards, turning around low performing schools and teacher improvement. There may be a rural carve out.

Twenty one Promise Neighborhoods planning grants were awarded in FY2010. In FY2011, the Department would like to fund additional planning grants and administrative capacity building as well as some implementation grants depending on the final FY2011 funding levels. The Department staff cited their aspirations for breaking down silos and sought help in identifying barriers and impediments to a more integrated approach to education. They are working with the Department of Housing and Urban Development (HUD) on neighborhood revitalization grants focused on a more expansive, place based approach looking at parks and recreational assets, among other things, to address interconnected challenges between communities and education. The Department also referenced the Promise Neighborhoods Institute which is an independent, foundation supported non -profit resource providing communities with tools, webinars, information and strategies to aid in creating Promise Neighborhood.

Department of Labor

Assistant Secretary of Labor for Employment and Training Jane Oates confirmed in a meeting earlier this month that the Senate is working on a draft of WIA Reauthorization with the hope of marking up the draft this spring. A bi-partisan working group of Senators Michael Enzi (R-WY), Tom Harkin (D-IA), Johnny Isaacson (R-GA), and Patty Murray (D-WA) is said to be working on the draft. The Department has been providing technical assistance and was able to provide some insight into aspects of WIA reauthorization important to localities. Without providing detail, the Department indicated that localities would likely be pleased with the balance of state and local control. Specifically, the Department highlighted the ability of locals to compete for WIA Innovation Fund dollars. Otherwise, the Department indicated that there is "nothing shocking" in the Senate draft, although the titles have been rearranged, including the innovation title.

The Department has a number of NOFAs currently open, including the Trade Adjustment Assistance Community College and Career Training Grants which is due April 21, 2011. The Department also previewed a joint Department of Labor-Economic Development Administration Grant in the near term that will combine Economic Development and Workforce Development and

will be jointly reviewed and competed by both agencies. The Department of Labor will use unallocated "no-year dollars" for that program, which will not be dependent on Congressional appropriations. The Department also previewed another new, forthcoming $45 million joint grant with the Department of Health and Human Services (HHS) focused on Transitional Jobs.