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## Budget Wars Begin in Earnest and the Prevailing Question is Where is the Budgetary Rubicon

The past week saw the official start of what may be a clash of epic proportions. The House Committee on Appropriations' subcommittees started marking up spending bills for the federal agencies for fiscal year 2013. At the same time, the Senate Committee on Budget rolled out a proposed budget paralleling the Simpson-Bowles proposal of last year. However, Senate Democrats have no intent to bring the measure to the floor for a vote. And to add to the budget vortex, the White House suggested the President would veto any budget that seeks to impose additional spending cuts beyond the levels agreed upon last year as part of the Deficit Control Act of 2011. With the looming threat of spending sequestration and expiring tax cuts, this past week's activities was not an auspicious start for cutting a budget deal before December.

## House Approves 10th Highway Bill Extension - Conference Next?

On April 18, U.S. House of Representatives passed the Surface Transportation Extension Act of 2012, Part II ([H.R. 4348](#)). The bill extends current transportation authority to the end of the fiscal year, and includes amendments to force approval of the Keystone XL pipeline, shorten environmental reviews of transportation projects, require that taxes collected for the Harbor Maintenance Trust Fund be used only for harbor maintenance, and give states authority to regulate coal ash.

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The White House announced earlier this week it would veto a transportation bill that included language to accelerate a decision on the Keystone XL pipeline. The Administration believes further environmental studies need to be completed, which would postpone a decision to 2013. See the Office of Management and Budget Statement of Administration Policy [here](#).

The motivation behind the House Republican effort to move the extension is two-fold; first to provide a process for conference negotiations with the Senate on a more comprehensive transportation plan, and second to force yet another vote on the controversial Keystone XL pipeline issue. House Committee on Transportation and Infrastructure Chairman Rep. John Mica (R-FL) stated "the purpose of this extension is that we can hopefully bring about resolution and conference legislation to complete our transportation bill." Should a conference begin, the foundation for negotiations would be the Senate passed S. 1813, "[Moving Ahead for Progress in the 21st Century Act](#)," (MAP-21) and the Surface Transportation Extension Act of 2012, Part II ([H.R. 4348](#)).

**A conference committee** is a committee of the Congress appointed by the House of Representatives and Senate to resolve disagreements on a particular bill. The conference committee is usually composed of the senior Members of the standing committees of each House that originally considered the legislation.

Following House passage, Senate Committee on Environment and Public Works Chairman Barbara Boxer (D-CA) stated, "I have spoken to Senate Majority Leader Harry Reid, and he has committed to appoint Senate conferees as soon as Senate rules allow." House Majority Leader Eric Cantor (R-VA) stated on the House floor on Thursday that he has every intention to name conferees next week.

### **House Hearing on Bill to Provide Safe Harbor for Fuels Industry - Water Community Opposed**

On April 19, the House Committee on Energy and Commerce, Subcommittee on Environment and the Economy held a hearing on [H.R. 4345](#), the Domestic Fuels Act introduced by Chairman John Shimkus (R-IL). The bill would provide immunity from liability (Safe Harbor) to producers and

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retailers of all current and future transportation fuels or fuel additives and that any pending or filed civil action be dismissed with prejudice. [Testifying](#) at the hearing were: Charles Drevna, President of the American Fuels and Petrochemical Manufacturers; John Eichberger, vice president for government relations at the National Association of Convenience Stores; and Bob Dinneen, president of the Renewable Fuels Association.

Chairman Shimkus, in his opening statement, admitted to a “drafting error” and said that he would work Representative Charlie Bass (R-NH) to “ensure H.R. 4345 does not infringe upon ongoing litigation and cleanup in his state involving MTBE.” Shimkus made no similar commitment to protect litigation pending in other states or address other controversial provisions in the legislation. The legislation is currently opposed by over 50 organizations, including the California Association of Sanitation Agencies, the California Association of Water Agencies, Natural Resources Defense Council, the Association of Metropolitan Water Agencies, and Americans for Prosperity.

Representatives Henry Waxman (D-CA) and Lois Capps (D-CA) expressed strong opposition to the bill. Waxman categorized the bill as being “flawed beyond drafting’ and highlighted the liability protection provision would apply to over “1,500 registered fuels and almost 7,500 registered fuel additives.” The fate of the legislation is uncertain; Chairman Shimkus expressed a desire to move forward with minor changes, however, the strength and diversity of opposition creates a barrier to future action. Committee mark-up of the legislation has not been scheduled.

### **Water Infrastructure Funding Options Back to the Future**

The never-ending question on how to close the funding gap that exists in the water infrastructure sector has come full circle as Representative Earl Blumenauer (D-OR) readies the reintroduction of his water trust fund. The bill is anticipated to be unveiled within the next week. According to congressional staff, the Water Protection and Reinvestment Act will differ from its predecessor from the past Congress. Key distinctions will include targeting resources to wastewater projects and excluding from the tax base corporate earnings and other revenue sources that proved too controversial including a tax on wine and beer.

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As drafted, the legislation seeks to raise revenue from water-based beverages, flushables including toothpaste, cosmetics and toilet paper, and pharmaceuticals. Based upon these tax receipts, the fund would be expected to generate at least \$9.3 billion annually. Unlike other proposals being floated, the proposal would rely on the existing state revolving loan fund program to distribute funding assistance. Actual funding allocation to the states would be based on the Clean Water Act's allocation formula. Assistance for green infrastructure and water efficiency use would be explicitly authorized. On the water efficiency program grants would be provided to support energy water nexus issues of concern including climate induced impacts. Grant assistance in support of "drug take back" programs at the state and local levels would be established. A new technology development program would be implemented to help move promising technologies into the field. In order to address high priority water pollution projects such as CSO's, a program dedicated to grants assistance would be authorized. The bill is expected to garner bipartisan support upon introduction, but it is unclear whether actual committee hearings will be held on the matter this session of Congress.

### **Senate Hearing: Impacts of Rising Sea Levels on Domestic Infrastructures**

The Senate Committee on Energy and Natural Resources held a full committee hearing on Thursday about the impacts of rising sea levels on domestic energy and water infrastructure. In his opening remarks, Chairman Jeff Bingaman (D-NM) emphasized the concern about rising sea levels, and stated a desire to restart the national conversation on the importance of this issue. The Committee received testimony from several federal and non-governmental experts in climate change and sea level rise. Each witness agreed that sea level rise is a reality and will continue to have an adverse effect upon domestic infrastructure, such as roads, rail lines, wastewater treatment plants, and energy facilities located below 4 feet of low tide levels. The witnesses further emphasized that rising sea levels are a current problem, rather than a problem for future generations.

During questioning, Bingaman and other members of the committee asked what steps the federal government should take to assist local entities in preparing for rising sea levels. The witnesses resoundingly responded that the highest priorities are investing in more research and better monitoring of sea levels in order to more fully understand short and long-term impacts on energy and water infrastructure. Senator Al Franken (D-MN) also stressed the importance of

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addressing climate change and greenhouse gas emissions in relation to rising sea levels. The committee concluded with a strong consensus to hold additional hearings.

### APPROPRIATIONS

#### House To Bring First Appropriation Bill to Floor Week of May 7

On Thursday, House Majority Leader Eric Cantor (R-VA), in a colloquy with House Minority Whip Steny Hoyer (D-MD), said that they would begin floor consideration of the first FY 2013 appropriations bill the week of May 7, starting either with a Commerce, Justice, Science bill or the Water and Energy bill.

- The Departments of Commerce, Justice bill would provide \$51.1 billion in funding, \$1.6 billion below the FY 2012 level
  - **Commerce – Economic Development Administration** - \$220 million, \$38 million below enacted fiscal year 2012
  - **Justice – Grant Programs (COPS)** - \$1.85 billions, \$378 million below enacted fiscal year 2012
  
- The Energy and Water bill would spend \$32.1 billion, \$88 million higher than above the FY 2012 level
  - **Department of Energy** - \$26.3 billion, \$365 million below enacted fiscal year 2012, \$1.8 billion below President's request
    - **Energy Programs** - \$554 million, \$207 million above enacted fiscal year 2012 - funding for research and development to advance coal, natural gas, oil and other fossil energy technologies
  - **Army Corps of Engineers** - \$4.8 billion; no congressionally earmarked projects within this bill
  - **Bureau of Reclamation** - \$988 million, \$89 million below enacted fiscal year 2012, \$47 million below President's request - funding to help manage, develop, and protect water resources of the western states

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### Senate Sets FY 2013 Spending Allocations

On April 19, the Senate Committee on Appropriations announced discretionary spending allocations (302(b)) for fiscal 2013. The total allocation is \$1.047 trillion, as mandated by the Budget Control Act, a reduction of \$42 billion from fiscal year 2010, equivalent to a reduction of 9.1 percent.

- **Agriculture/Rural Development** - \$20.8 billion, up from \$19.9 billion enacted for fiscal year 2012, President's request: \$20.8 billion.
- **Financial Services** - \$23.2 billion, up from \$21.7 billion, President's request: \$23.5 billion.
- **Interior-Environment** - \$29.7 billion, up from \$29.2 billion, President's request: \$29.7 billion.
- **Labor-HHS** - \$158.8 billion, up from \$156.8 billion, President's request: \$158.8 billion.
- **Legislative Branch** - \$4.4 billion, up from \$4.3 billion, President's request: \$4.5 billion.
- **Military Construction/VA** - \$72.2 billion, up from \$71.7 billion, president's request: \$72.44 billion.
- **Commerce-Justice-Science** - \$51.9 billion, down from \$52.9 billion, President's request: \$51.9 billion.
- **Defense** - \$604.5 billion, down from \$633.2 billion, President's request: \$604.7 billion.
- **Energy-Water** - \$33.4 billion, down from \$33.7 billion, President's request: \$33.1 billion.
- **Homeland Security** - \$45.2 billion, down from \$46.3 billion, President's request: \$45 billion.
- **State-Foreign Operations** - \$53 billion, down from \$53.3 billion, President's request: \$54.7 billion.
- **Transportation/HUD** - \$53.4 billion, down from \$57.3 billion, President's request: \$51.8 billion.

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## Senate - Transportation Appropriations

On April 20, the Senate Committee on Appropriations approved the fiscal year 2013 Transportation-Housing funding bill. The bill includes the following funding levels:

- **Federal Highways** - \$39.1B for the highway obligation limitation, the same as FY12
- **Transit** - \$10.4B for the total transit program including \$2.04B for the New Starts/ Small Starts program, a \$89M increase over FY12, and \$8.36B for the formula grant program, the same as FY12.
- **FAA** - \$3.35B for the Airport Improvement Program (AIP), the same as FY12
- **High Speed Rail** - \$100M, there was no money appropriated for HSR in FY'12
- **TIGER V** - \$500M, the same as FY12, with \$120M of that amount reserved for projects in rural communities
- **HUD** - \$50M for the Sustainable Communities Initiative, there was no money appropriated for this program in FY12

## House Committee Hears Legislation on Desalination

The House Committee on Natural Resources, Subcommittee on Water and Power reviewed the Water Desalination Act of 2011 ([H.R. 2664](#)). Witnesses included David Murillo, Deputy Commissioner & Director of Operations, U.S. Bureau of Reclamation, Washington, D.C. and Wayne Crews, Vice President for Policy, Director of Technology Studies, Competitive Enterprise Institute, Washington, D.C.

H.R. 2664's sponsor and Ranking Democrat on the subcommittee, Grace Napolitano (D-CA), urged action on the legislation as a means to ensure that the nation remains competitive in the technology worldwide. H.R. 2664 seeks to renew the current desalination research program, extending the appropriations for research and studies through the year 2016. Murillo called the bill consistent with the existing DWPR Program suggesting that the Administration may support the measure. However, opposition from the subcommittee chair suggests that prospects for passage of the measure are slim.

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### **New Reports/Bill/Grants**

[Intelligent Transportation Systems: Improved DOT Collaboration and Communication Could Enhance the Use of Technology to Manage Congestion](#)

### **Hearings**

#### **Senate**

Date: April 24, Time: 2:30 pm

Committee: Appropriations

Hearing: Fiscal 2013 Appropriations: Labor, HHS, Education

#### **House**

Date: April 20, Time: 9:00 am

Committee: Agriculture

Hearing: 2012 Farm Bill: Rural Development Programs

Date: April 26, Time: 9:00 am

Committee: Transportation and Infrastructure

Hearing: Maritime Industry Regulation

Date: April 26, Time: 2:00 pm

Committee: Homeland Security

Hearing: Homeland Security Grants Oversight

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