



**NACo  
110<sup>th</sup> CONGRESS  
FIRST SESSION**

**2007 MID-YEAR  
LEGISLATIVE STATUS  
REPORT**

**August 2007**

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# 110<sup>th</sup> Congress Mid-Year Legislative Update

## August 6, 2007

### HIGHLIGHTS:

#### **PILT increased by \$20 million in the House**

Current \$233 million level is increased to \$253 million. Senate provides \$233.

#### **CDBG program increased by \$200 million in House appropriations**

Program increased to \$3.9 Billion. Senate pending

#### **HOME Program increased by \$200 million in House appropriations.**

Program increased to \$1.9 billion. Senate pending

#### **Preemption legislation, H.R. 2421, the Clean Water Restoration Act Introduced**

The bill essentially places all bodies of water or “perceived” bodies of water under federal jurisdiction — even those waters traditionally under state and local authority.

#### **Election Reform mandates bill (H.R.811) blocked again before reaching the House Floor**

House bill is approved in committee by a party-line vote but does not reach House floor consideration. Senate bill (S.1487) has 12 cosponsors – including all four of the members of the Senate who are running for the Democratic Presidential nomination. No committee vote has yet been scheduled.

#### **Legislation (HR 1023) introduced to repeal three percent withholding mandate**

NACo seeking 29 more co-sponsors to reach a majority of the House of Representatives. (Currently have 189 co-sponsors)

#### **Secure Rural Schools gets one year extension**

Efforts to obtain multiyear reauthorization still in the works.

#### **Internet Tax Freedom Act**

Two opposing bills attempt to tackle this issue. One offers permanent moratorium and the other includes a four year extension. The issue for counties is whether Congress can preempt local taxes, and whether new services offered over the Internet would be subject to local tax, or protected from tax by the moratorium.

#### **Farm Bill Reauthorization is moving slower than expected.** House Passes 2007 Farm bill.

Senate Agriculture Committee has not scheduled mark-up yet. NACo led Campaign for a Renewed Rural Development lobbying for increased rural development assistance.

**Airport and Aviation Reauthorization**-Both House and Senate committees increase funding levels for the Airport Improvement Program, which funds capital improvements at airports, and for the Essential Air Service Program, which subsidizes air service to about 140 small and rural communities.

# **UPDATE BY NACo STEERING COMMITTEE JURISDICTION:**

## **AGRICULTURE AND RURAL AFFAIRS**

### **Farm Bill Reauthorization:**

On July 27 the House passed the 2007 Farm Bill on a vote of 231-191. The bill Authorizes \$286 billion for fiscal years 2008-2012 for nutrition, conservation, commodities payments agricultural trade programs, rural development and other programs. Below is a detailed description. The Senate Agriculture Committee will mark up at full committee level but has not scheduled mark-up yet. The Current Farm Bill expires September 30.

### **Conservation, Credit, Energy and Research**

The Conservation section extends important land reserve programs, simplifies and improves the Conservation Security Program and substantially increases funding for the Environmental Quality Incentives Program (EQIP) and Farmland Protection Program. It also includes several provisions to encourage cooperation between USDA producers or other entities to deliver conservation programs.

### **Research**

The Research section reauthorizes many important research programs and establishes new initiatives for specialty crops and for bio-energy and bio-based products research. To maximize limited resources, it seeks to ensure greater integration in research efforts and establishes an Agricultural Research Institute to coordinate the programs and activities of the U.S. Department of Agriculture's research agencies.

### **Energy**

The Energy section includes a Federal loan guarantee program for bio-refineries and bio-fuel production plants. It also reauthorizes and improves several important existing bio-energy programs. Of interest to counties, Representative Jeff Fortenberry (R-NE) introduced an amendment to the Energy title creating a new Rural Energy Self-Sufficiency Initiative with the purpose of creating models of energy independence on a rural community level. This amendment allows the Secretary of Agriculture to provide grants to up to 5 eligible rural communities annually to develop integrated renewable energy systems in order to increase energy self-sufficiency. Preference for these grants will be given to those which propose a project developed or carried out in coordination federal, state, or local government agencies.

### **Credit**

The Credit section expands access to farm credit in order to further support renewable energy initiatives and creates a new loan guarantee program for producers to carry out conservation projects. It makes improvements to Farm Service Agency lending programs, updates the population limit for rural housing lending, and makes changes to stock requirements and insurance premium payments required for Farm Credit System institutions.

### **Livestock, Dairy, and Poultry**

The bill includes a dairy product price support program, makes permanent the dairy forward pricing program, extends the dairy export incentive program, revises the federal marketing

order amendment procedures, and requires the USDA Secretary to report on the department's reporting procedures for nonfat dry milk. The draft also includes a repeal of prohibition on the mandatory identification system for country of origin labeling, expresses the sense of Congress regarding pseudorabies eradication, and prevents a state or locality from prohibiting an article the Secretary of Agriculture has inspected and passed or determined to be of non-regulated status.

### **Rural Development**

The Rural Development, Title VII of the farm bill, contains a number of provisions of interest. The following is a brief outline of just some of the twenty-five sections in the Rural Development Title:

Section 617, the Northern Great Plains Regional Authority: Under the 2002 farm bill, Congress established the Northern Great Plains Regional Authority "to provide assistance in implementing the recommendations of the Northern Great Plains Rural Development Commission; acquiring and developing land; constructing or equipping a highway, road, bridge or facility; carrying out other economic development activities; or conducting research activities described above." The Authority is required to allocate "at least 75 percent of any appropriations made available under section 383M" of the 2002 farm bill "for programs and projects designed to serve the needs of distressed counties and isolated areas of distress in the region."

The Authority covers the five states of **Iowa, Minnesota, Nebraska, North Dakota and South Dakota**. This section reduces from 75 to 50 percent the minimum amount of funds that the authority is to allocate to "distressed counties," which are defined as the counties most severely and persistently distressed and underdeveloped, and have high rates of poverty, unemployment, or out migration. The section also eliminates the prohibition of providing funds to "nondistressed counties".

The Rural Strategic Investment Program, which NACo has long supported and lobbied for, was authorized at \$25 million and calls for the establishment of a National Board on Rural America that will serve to make planning grants and innovation grants to certified Regional Investment Boards.

Rural county governments will benefit from Section 619, which reauthorizes the Secretary to make telephone loans to local governments for the expansion of rural 911 access and integrated emergency communication in rural areas.

Section 623 will also benefit county governments, as it makes grants available to local governments to train rural firefighters and emergency personnel in firefighting, emergency medical practices, and hazardous material and bioagent response and to provide improved emergency medical services in rural areas. It is authorized at not more than \$30 million for each of the fiscal years 2008-2012.

## **Agriculture 2008 Appropriations**

Just as they were leaving for their month long recess August 2, the House finally passed \$90.7 billion in funding for the Agriculture Department and FDA in the 2008 appropriations bill. The bill restores about \$940 million in cuts, providing a nearly 6 percent increase above the current year. Rural economic and community development programs, such as grants for education and medical facilities and wastewater grants, while cut slightly from FY07, are increased about 20 percent above Bush's request to \$2.5 billion. Conservation programs would see a similar boost above the request, to \$980 million. The bill restores and increases funds for the Commodity Supplemental Food Program, providing monthly food packages to low-income elderly recipients, to \$150 million, a 40 percent increase. A total of \$131 million for food safety research at USDA is also provided. The bill provides \$7 million to improve the safety of imported foods, as the committee found that FDA inspects less than 1 percent of imports, and Chinese poultry imports are specifically prohibited. NACo has been lobbying through the Campaign for Renewed Rural Development to boost rural development funding. The bill provides an increase of about 21 percent over the President's request to nearly \$2.5 billion for RD. Nutrition is another major thrust, with an 8 percent increase over this year for programs to teach children better eating habits. Nutrition for women, infants and children, or WIC, would also get an 8 percent boost, and the bill rejects Bush's elimination of the Commodity Supplemental Food Program, which provides food to the elderly and others not covered by WIC. Renewable energy research would benefit from \$1.2 billion, more than triple FY07 funding, for research, business loans and grants to farmers and ranchers for biomass, wind energy and other projects. At \$18.8 billion in discretionary spending which is nearly \$1 billion above Bush's FY08 request, it will be facing a possible veto. The President says he will veto nearly every appropriations bill that exceeds his budget. Democrats on the Appropriations Committee argue that of the \$982 million increase above Bush's plan, roughly 95 percent is devoted to restoring funds cut or eliminated from the current year in the president's budget. The Senate is expected to take up the bill in September.

## **COMMUNITY AND ECONOMIC DEVELOPMENT**

### **CDBG and HOME Funding**

In its FY2008 budget proposal, the Administration proposed to slash CDBG funding by \$1 billion. Final FY 2007 funding legislation passed on February 15, 2007 provided \$3.7 billion for CDBG formula grants, level funding from FY 2006. The Administration proposed \$2.9 billion for CDBG in FY 2008, with an additional \$200 million subtracted from that amount for the creation of an incentive based grant program. With the final amount proposed for CDBG formula funding at \$2.7 billion, this represented a \$1 billion cut in CDBG formula funding from the FY 2007 final enacted level. The Administration proposed \$1.9 billion for the HOME program, an increase over the FY 2007 enacted level of \$1.75 billion – level funding from FY 2006. The Administration also proposed \$50 million for the American Dream Downpayment Initiative (ADDI), the Administration's low-income downpayment assistance program. ADDI received \$25 million in FY 2006.

NACo and other local government groups lobbied House and Senate Budget and Appropriations Committee members extensively during the months following the

Legislative Conference to urge the Committees to reject proposed cuts to the CDBG program and to provide at least \$2 billion for HOME. On July 25, the U.S. House of Representative passed HR 3074, the Transportation and Housing and Urban Development and Related Agencies appropriations bill. The bill passed on a 268 – 153 vote. The Senate Transportation and Housing & Urban Development Appropriations Committee approved its report July 16. The measure has yet to be taken up by the full Senate.

In a victory for NACo and other local government groups, the House bill rejects the Administration's proposed \$1 billion cut to the CDBG program. The legislation provides \$3.929 billion for CDBG formula grants, up from last year's \$3.7 billion. The Senate bill also expressly rejected the Administration's cut to the CDBG program and provides \$4.06 billion for CDBG, an increase from last year's funding level. However, the Senate increase is allocated mainly to special purpose economic development initiative grants, funded at \$248 million. This money is not allocated directly to state and local governments via formula. A second non-formula CDBG allocation in the Senate bill includes \$62 million for grants to Indian tribes for essential economic and community development activities. HR 3074 provides \$160 million for special purpose economic development grants, which received no funding last year.

The HOME Investment Partnerships Program (HOME) received \$1.75 billion in the House bill; level funding from FY 07. Neither the House nor the Senate bill provides new money for the American Dream Downpayment Assistance Program (ADDI), which received \$25 million in FY 07. The Senate bill provides \$1.97 billion for the HOME program, a \$212 million increase from FY 07.

Homeless Assistance Grants received \$1.56 billion in the House bill, up from \$1.5 billion in FY 07. The Senate bill provides \$1.585 billion for Homeless Assistance Grants, equal to the Administration's request and an increase of \$144 million over the FY 07 funded amount.

Additionally, the House allocated \$120 million to the HOPE VI Program, which was zeroed out in the Administration's budget proposal. The Senate bill recommended \$100 million for HOPE VI, which received \$99 million in FY 07. The HUD brownfields program received \$10 million under both the House and Senate bills; the program was zeroed out by the Administration in its FY 2008 budget proposal. The brownfields program received \$10 million last year. The Office of Rural Housing & Economic Development received \$16.8 million, which had also been targeted for elimination by the Administration. This amount is level funding from FY 07. The Senate recommended \$17 million for the Rural Housing and Economic Development Account.

Overall, the House bill is above the Administration's requested funding level for many programs, thus there is speculation that the President will veto this legislation if the final version contains these program funding levels.

## **GSE Reform Bill**

The U.S. House of Representatives passed HR 1427, the Federal Housing Finance Reform Act of 2007, in May. The legislation would create a new federal agency to regulate and oversee Fannie Mae, Freddie Mac, and the 12 Federal Home Loan Banks. Similar legislation stalled in the 109<sup>th</sup> Congress and was ultimately never passed into law. Debate on the current version of the bill surrounded the creation of an affordable housing fund, which would be financed by a percentage of the investment portfolios of Fannie Mae and Freddie Mac.

Language in the bill would sunset the fund in 2011, and priority distribution would emphasize areas affected by Hurricane Katrina. Republican critics of the fund argued that it was duplicative, and unnecessary, while Democratic proponents of the fund maintained that there is a dearth of federal money allocated specifically for the construction of housing for low-income families. In addition, the White House criticized the version of H.R. 1427 that was passed because of an amendment that was adopted on the floor that would scale back the new regulator's ability to assess the risk of the size of the Fannie Mae and Freddie Mac's investment portfolios.

The Administration wanted the regulator to have greater authority in assessing and limiting risks associated with the size of the government sponsored enterprises' (GSEs) portfolios. The bill passed the House on a 313-104 vote. Companion legislation has yet to be introduced in the Senate.

## **Section 8 Reform**

The U.S. House of Representatives Financial Services Committee approved H.R. 1851, the Section 8 Voucher Reform Act of 2007, in May. The legislation was adopted by the committee on a 52-9 vote after lengthy, mostly partisan, debate. Introduced by Rep. Maxine Waters (D-CA), the bill seeks to amend and update the Section 8 Housing Choice Voucher Program. At issue is the best way of achieving this outcome for this program, which now accounts for over 60 percent of the total budget for the U.S. Department of Housing & Urban Development (HUD).

Critics of the Section 8 Housing Choice voucher program argue that the program has grown too large and is overwhelming the HUD budget. Proponents of the program argue that the program is inefficiently administered and that it still does not meet the critical housing needs of low-income families and individuals, the majority of which are elderly or disabled. One important feature of the bill is that data used in the formula to calculate allocations to public housing agencies (PHA's) must be from the most recent twelve month period. HUD currently uses a formula for allocations that utilizes data from 2004. The bill also authorizes up to 100,000 new vouchers over the next five years. The bill has yet to be scheduled for a floor vote.

## **Housing Legislation Approved by Financial Services Committee**

The U.S. House of Representatives Financial Services Committee passed a major affordable housing bill, the National Affordable Housing Trust Fund Act of 2007 (H.R. 2895), on July 31. The goal of the legislation is to produce, rehabilitate or preserve over 1.5 million units of housing in the next 10 years. The legislation would allocate funding by formula. Sixty percent of funds provided would go to participating local jurisdictions, and 40 percent of funding

would go to states, Indian tribes and insular areas. Funding for the bill would be derived from savings identified in proposed reforms to the Federal Housing Administration and from a proposed affordable housing trust fund outlined in GSE reform legislation. States, participating local jurisdictions, and insular areas are allowed to make grants from trust fund monies to eligible recipients, which include non-profits, for-profits, agencies or faith-based organizations that have demonstrated capacity to carry out eligible trust fund activities. Eligible activities include construction, rehabilitation, acquisition, preservation, operating assistance and incentives to facilitate affordability of housing. All trust fund monies must be used for low-income families, which are defined as below 80 percent of state or local median income. Funds cannot be used for administrative costs or expenses, political activities, advocacy, lobbying, travel expenses, counseling, or preparation of or advice on tax returns. The bill outlines compliance and monitoring requirements, and also requires a local match.

## **ENERGY, ENVIRONMENT & LAND USE**

### **Energy Bill Passage**

On August 4, the House passed H.R. 3221, the *New Direction for Energy Independence, National Security, and Consumer Protection Act*. According to House leaders, the goal of the bill is to move the United State toward energy independence and security, while encouraging innovative new technologies, reduce carbon emissions, create green jobs and protect consumers. The Senate passed their version of the Energy Bill earlier this year.

The massive 700+ page bill passed the House by a vote of 241-172. It is nearly impossible to summarize and may take weeks to fully understand many of the provisions.

The bill does take the first step toward mandating renewable portfolio standards (RPS) for the states. An RPS states that minimal amount of a renewable energy that a private utility must utilize to produce electricity. In this case, the House passed a requirement that utilities must use 15 percent of their electricity from renewable energy sources such as wind, solar, etc. This is the first RPS to apply to all states. Approximately 20+ states have some form of an RPS already in place. The Senate bill does not contain an RPS provision.

H.R. 3221 sets new efficiency standards for appliances, lighting and buildings. Additionally, in Part 6 ,in the Energy Efficiency of Public Institutions section, the bill sets up a bond program for institutional entities (which includes counties) to utilize alternative energy sources.

Furthermore, in Part 9, the bill sets up the Energy Efficiency Block Grant Program for eligible entities, which includes counties with populations over 200,000, for energy conservation. It would provide funds for local governments and states to develop various energy efficiency and conservation programs. Counties, sized 200,000 population-wise and above, would be eligible to apply for the grants directly. Those counties below the 200,000 population threshold would be able to apply for the same grants directly through their states, who are required to provide a portion of the EEBG money they receive directly to non-eligible (200,00 and below) local governments for grants.

On June 21, the Senate passed the CLEAN Energy Act of 2007 by a vote of 65-27. It contains a number of provisions designed to address spiraling energy needs in the United States. Most notably, it contains language to raise corporate automobile fuel economy (cafe) standards for cars and light trucks to 35 miles per gallon by 2020. It also instructs the Transportation Department to establish a maximum feasible standard. The proposed standard would apply to all vehicles weighing under ten thousand pounds, except heavy-duty trucks. It also contains strong language to boost renewable fuel production while enlarging the current ethanol mandate. Unlike the Senate bill, H.R. 3221 does not address fuel economy standards (café). The Senate bill increases café standards to 35 miles per gallon by 2020 for cars, SUVs and small trucks. However, the House bill does provide tax credits for installing infrastructure for E-85 fueling stations. The Senate bill requires half of new cars made by 2015 to be capable for running on E-85. On hybrids, the House gives tax breaks for purchasers and promotes research into better batteries for plug-in hybrid cars. The Senate, on the other hand, gives loan guarantees for advanced diesel and hybrid battery technology.

The House and Senate energy bills will now be sent to a conference committee to reconcile the differences.

### **H.R. 2421, the Clean Water Restoration Act Introduced**

On May 22, 2007, Congressman Jim Oberstar (Minn.) along with Rep. John Dingell (Mich.) and Vernon Ehlers (Mich.) introduced H.R. 2421, the Clean Water Restoration Act of 2007.

The bill proposes to eliminate the word “navigable” from the definition of “waters of the U.S.” within the Clean Water Act (CWA), essentially placing all bodies of water or “perceived” bodies of water under federal jurisdiction — even those waters traditionally under state and local authority.

This one seemingly small change has dramatic implications for states and counties, who now will be required to apply for federal CWA permits for activities that are traditionally regulated at the state or local level.

Local governments, large and small, are also responsible for a number of public infrastructure projects that would be affected by the proposed changes. These include: roads, gutters and ditches; drainage channel maintenance; pesticide application, mosquito control and fire retardant sprays; sewers and wastewater disposal, including settling ponds; water supply, transfers and rights; solid waste disposal; county owned/operated airports; storm water detention infrastructure; erosion control; maintenance/construction of county-owned schools, nursing homes, hospitals, any municipal buildings; marinas, dams and reservoirs; parks, greenways and forestlands; cleanup/ rebuild after natural disasters; and economic development.

Applying for CWA permits can be a costly and time-consuming task. All sizes of counties would be affected by this change.

### **2008 Interior Appropriations Bill (EPA Section)**

Both chambers are rapidly moving to address free-standing appropriations bills, including the 2008 Interior Appropriations bill. In the Senate, the bill is waiting for Senate consideration

after the Appropriations Committee passed it on June 21st. In the House, the bill passed on June 27.

Currently, there are several funding differences in the two versions of the bill. In the Senate bill, the Environmental Protection Agency (EPA) is funded at \$7.7 billion that is \$547 million above the Administration request and \$48 million above last year's appropriated amount. In the House version, the EPA is funded at \$8.1 billion which is 900 million above the Administration's request. This is a 5.1 percent increase over last year's appropriated amounts.

For the Clean Water State Revolving Loan Fund (CWSRF), the Senate appropriated \$887 million as opposed to the House version that appropriates \$1.1 billion. This program helps pay for wastewater infrastructure projects via low-interest loans.

The State and Local Air Quality Grant program got \$200 million in the Senate version and \$220 million in the House bill. This program assists state, regional and local air pollution control agencies.

## **FINANCE AND INTERGOVERNMENTAL AFFAIRS**

### **NACo Again Delays Vote on Paper Ballot Bill**

Yet another concrete fax campaign by county officials has postponed a vote on H.R. 811, so-called "paper trail" legislation that would mandate expensive and potentially unworkable reforms even in those counties that currently use a paper ballot-based election system. Letters from county officials opposing the latest "compromise" draft flooded in, prompting leadership to take the bill off the list for consideration during the final week prior to the month-long August recess. Supporters of the bill had hoped for a vote last week, concerned that any further slippage would likely mean the legislation would not be enacted in time for the 2008 Presidential election. **County officials should keep the calls and faxes coming, because this legislation is almost certain to return to the House floor early in September.** Core provisions of H.R. 811 require that every vote cast in a federal election be on paper, that all polling places (including those used for early voting) be equipped with a sufficient number of pre-printed ballots for every voter to be offered the chance to hand-mark their ballot, and that an outside auditor conduct a hand count of a percentage of ballots before results are certified. All recounts would have to be conducted by human hand and eye, prohibiting the practice of electronically scanning ballots except in the initial count. The latest draft would not only require that ballot choices be converted in each polling place to an accessible media for verification by the visually impaired, but would require that this take place in a "hands-free" manner requiring the use of technology that does not currently exist. **Every polling place – even those in counties that have purchased accessible ballot marking devices for use with optical scan ballots – would have to upgrade to this undeveloped technology by 2012.**

NACo continues to oppose H.R. 811 and S. 1487, legislation that would effectively ban the electronic voting equipment that counties purchased to comply with the Help America Vote Act - even if it has been retrofitted to produce a paper receipt. Instead, counties would have to purchase a newer generation of ballot marking devices and devices that scan paper ballot into an audio format for verification by the disabled. This would throw away more than \$2 billion

in federal funding and impose an enormous new unfunded mandate on counties. In addition, hurried implementation of yet another generation of voting equipment nationwide would increase, rather than decrease, the potential for problems on Election Day.

H.R. 811 would require every voting system used to cast ballots in an election for federal office to be cast on paper beginning with the Presidential election in 2008. This would require counties in 18 states to upgrade or replace their voting equipment before next November. For the Presidential election in 2012, the latest draft of amendments to this legislation require both that the printed marks on every paper ballot be scanned into an audio format for verification by the visually impaired and hands-free verification of printed ballot options by the motor impaired. This technology is not currently offered by any vendor of voting equipment and would require every county - even those that recently purchased electronic optical scan ballot marking devices (i.e., the AutoMARK) to upgrade again. The counties that are required to upgrade for the 2008 election would have to replace their equipment a second time for 2012, since vendors are not expected to be able to offer equipment that meets the 2012 deadline until at least 2010. In addition, H.R. 811 would require every polling place to offer voters the option of marking their ballot by hand on pre-printed paper ballots, duplicating voting systems and likely eliminating the popular use of vote centers. Counties would be required to hire outside auditors to conduct a hand recount of ballots before the result could be certified. Electronic ballot scanning technology could not be used even for conducting additional recounts required under state law.

H.R. 811 is cosponsored by a majority of members of the House of Representatives. It was approved in committee by a party-line vote early in the spring and initially expected to pass the House of Representatives by the Easter break; however, county officials have been vociferous in opposition, helping to stall the legislation until after the August recess.

In contrast, Senator Dianne Feinstein, chairwoman of the Senate Rules and Administration Committee and sponsor of S. 1487, has made it clear that she does not intend to pursue a vote on her legislation without engaging in extended talks with local officials on the specifics of her reform legislation. She has also indicated that making changes before the 2008 Presidential election would be "an invitation to disaster". Although the requirements on voting equipment in S. 1487 are less burdensome than H.R. 811, S. 1487 in its current version would require nationwide no-excuse absentee voting, early voting, and allowing voters to cast their ballots for statewide offices at any polling place in the state. The statutory requirements of H.R. 811 can be construed very broadly and would be enforced in the courts by a private right of action. S. 1487 provides less interpretive authority to the courts and generally requires counties to adhere to benchmarks and guidelines issued by the Election Assistance Commission. S. 1487 has 12 cosponsors - including all four of the members of the Senate who are running for the Democratic Presidential nomination.

### **Withholding**

Section 511 of the Tax Increase Prevention and Reconciliation Act was never properly vetted before it was "air dropped" as a revenue raiser into a conference agreement on major tax legislation in 2006. It will require many counties beginning in 2011 to withhold federal taxes on nearly every payment for a service or product - from plumbing services to paper clips. In other words, a county employee who purchases a \$10 screwdriver will be required to pay the

hardware store \$9.70 and send the remaining 30 cents to the IRS. The county will also have to issue 1099 forms for tax purposes to every vendor, regardless of the dollar amount.

H.R. 1023, legislation introduced by Representatives Kendrick Meek (D-FL) and Wally Herger (R-CA) to repeal this requirement, now has 189 cosponsors, 29 shy of a majority of the House of Representatives. However, it will be costly to repeal, so the House Ways and Means Committee has elected to pursue a delay tactic, approving legislation to extend the deadline for one year (from 2011 to 2012) and require the Treasury Department to conduct a study on the costs to the federal government of implementing this legislation. Democrats in the Senate have opted to take a "wait and see" approach. H.R. 1023's companion legislation in the Senate, S. 777, has just ten cosponsors. Senate Finance Committee Chairman Baucus initially sponsored legislation to require the federal government to withhold taxes from payments to contractors, although he never intended the approach to apply to state and local governments. NACo is urging full repeal as a part of an expected package of new provisions to collect unpaid taxes, particularly from federal government contractors.

## **HEALTH**

### **New Medicaid Regulations**

States and Local Governments avoided a potentially devastating blow to the health care safety net system on May 25 when the President signed the fiscal year 2007 emergency supplemental appropriation bill, which included a one-year moratorium on new Medicaid rules. The rules, which were published in final form on May 29, contained provisions which the administration had proposed in the 2007 and 2008 budgets designed to curtail what it considers illegitimate financing arrangements by government health care providers.

The rule would require that only units of government may participate in funding the nonfederal share of Medicaid; set requirements for documenting costs when using a certified public expenditure; limit reimbursements to government operated providers to the actual cost of providing covered services to Medicaid recipients; and make the SCHIP program rules consistent with the new Medicaid rules. CMS is also soliciting comments on the definition of "unit of government" used in the new rules. Congress will have to take action again before the moratorium expires to prevent the administration from implementing the rules next year.

### **SCHIP Reauthorization**

By a vote of 225-204 the House voted on August 1 to approve a measure that would reauthorize and expand the State Children's Health Insurance Program (SCHIP). The bill would increase the program by \$50 billion over five years and postpone a scheduled cut to physicians under Medicare for two years. The bill's price tag is offset by a forty-five cent per pack increase to the federal cigarette tax and by trimming extra payments to private Medicare Advantage plans for seniors. Late in the day on August 2, the Senate passed its SCHIP reauthorization 68-31. The bi-partisan Senate bill increases funding by \$35 billion and pays for the increase by raising the cigarette tax by sixty-one cents per pack. The two measures must be reconciled by a conference committee whose recommendations must be approved by both chambers before being sent to the President, who has already promised to veto both bills. SCHIP expires on September 30.

## **Methamphetamine**

On May 3, Senate Majority Whip Richard Durbin (D-IL) and Senator Charles Grassley (R-IA) introduced Methamphetamine Production Prevention Act (S. 1276) which would establish a grant program to facilitate the creation of methamphetamine precursor electronic logbook systems. The bill aims to set up systems to alert local authorities when individuals are exploiting a loophole in the Combat Meth Act by acquiring pseudoephedrine – used in meth production – from a large number of pharmacies. Companion legislation has been introduced in the House by Minnesota Congressmen Keith Ellison (D) and Jim Ramstad (R).

On February 7, the House passed the Methamphetamine Remediation Research Act which would set up a research program for remediation of closed methamphetamine production laboratories. NACo supported identical legislation in the 109<sup>th</sup> Congress. Companion legislation, S. 635, is awaiting action in the Senate Committee on the Environment and Public Works.

On June 5, Congressman Dennis Rehberg (R-MT) introduced the CLEAN-UP of Methamphetamines Act (H.R. 955) which gives the USDA and the DOI authority to respond to environmental hazards associated with illegal manufacture of methamphetamine on public lands; sets up a grant program to assist State and local government and private response to environmental hazards associated with illegal manufacture of methamphetamine on agricultural lands; designates by-products of methamphetamine laboratories as hazardous materials and waste under Hazardous Materials Transportation Act and Solid Waste Disposal Act; creates a grant program to assist law enforcement agencies in the safe identification, cleanup, and disposal of methamphetamine laboratories; establishes a grant program to assist law enforcement agencies in meeting the costs of complying with Federal laws relating to methamphetamine laboratory cleanup; creates a grant for educational programs on prevention and treatment of methamphetamine abuse; provides local grants for treatment of methamphetamine abuse and related conditions; authorizes appropriations for methamphetamine laboratory seizure statistics, COPS grants, clandestine laboratory training; and expands the methamphetamine Hot Spots program to include personnel and equipment for enforcement, prosecution, and environmental cleanup.

### **Health Programs Appropriations Action:**

- Community Health Centers: \$2.2 billion in both House and Senate bills and 200 million more than current funding and the President's request.
- Rural Health: \$168 million for the Senate, which is \$23 million more than the House, \$16 million more than current funding and \$120 million more than the President's request.
- Mental Health and Substance Abuse Programs: \$3.4 billion in both bills, \$57 million more than current funding and \$200 million more than the President's request.
- Ryan White AIDS Programs: \$2.237 billion in the House bill, which is \$67 million more than the Senate bill, \$100 million more than current funding and \$80 million more than the President's request.

## HUMAN SERVICES & EDUCATION

### **Child Support Enforcement**

As a result of the Deficit Reduction Act of 2006 (DRA), states and counties will be prohibited from using federal incentive funds to leverage additional child support funds effective October 1, 2007. If Congress does not repeal or modify the child support provisions, federal administrative support for the program will be reduced by at least \$1.6 billion over the next five years and families will lose at least \$2.9 billion in uncollected support over the first five years and \$8.4 billion over the next ten years. Legislative action is not expected until the fall, and the bills will not move as stand-alone legislation, but as part of a larger vehicle.

The Child Support Protection Act of 2007 (S. 803/H.R. 1386), which would repeal the DRA provision, has been introduced by Senator Jay Rockefeller (D-WV) and Representative Jim McDermott (D-WA.) and referred to the Senate Finance Committee and the House Ways and Means Committee. NACo co-sponsored a congressional briefing July 13 that was very well attending. While the bill is receiving considerable support, more co-sponsors are needed, particularly House Republicans. To that end, Representative McDermott recently sent a “dear colleague” letter asking for co-sponsors.

### **Food Stamps**

The House passed the farm bill (H.R. 2419) Friday, July 27. Because of the budgetary constraints, this year’s reauthorization effort will not have program increases as significant as were achieved in the 2002 farm bill. Nonetheless, the bill does have some program expansions. These include the following:

- Increasing the standard deduction for households under four people from \$134 to \$156 and indexing it for inflation;
- Indexing the assets test for inflation;
- Increasing the deduction for child care expenses to \$200 a month for children under age 2 and \$175 for other children;
- Excluding combat pay and some retirement and education accounts from the assets test; and
- Increases to the School Lunch fruit and vegetable commodity purchase program.

Unfortunately, the bill also extends the cost allocation mechanism for administrative cost reimbursements through 2012. This mechanism has had the effect of reducing the federal reimbursement for program administration below 50 percent.

The Ways and Means Committee provided \$4 billion to pay for these increases, by taxing royalties, interest and other payments U.S. foreign-owned companies make to foreign affiliates. However, since this falls short of the \$5 billion that would have been required, the standard deduction increase was scaled back.

The Senate has yet to unveil its version of the nutrition title of the farm bill and is not expected to do so until after the summer recess. Additionally, Senate Finance Committee Chairman Max Baucus (D-Mont.) has already said that he doesn’t plan to use the same financing mechanism as the House.

### **Comprehensive Immigration Reform**

On June 27, the Senate stopped consideration the comprehensive immigration reform bill when a cloture vote failed 46-53. Those voting against the procedural vote included Senators opposed to a path to legalization and eventual citizenship for the nation's 12 million undocumented individuals and those opposed to a temporary worker program.

The defeat in the Senate is considered to have ended any prospects for comprehensive immigration reform in this Congress. The most that can be expected before a new President and Congress would be piecemeal reform. This could include a pilot program for permanent status for agricultural workers, known as the AgJobs bill, and more border security measures. Senator Diane Feinstein (D-Calif.), one of the supporters of the AgJobs bill has indicated that she may try to attach it to the farm bill.

### **Labor/HHS Appropriations**

On Thursday, July 19, the House approved the Labor/HHS appropriations bill (H.R. 3043) by a vote 276-140. The final vote was one shy of the two-thirds majority that would be needed if the President goes ahead with his veto threat. The Senate Appropriations Committee approved its version of the largest domestic discretionary bill (S. 1710) June 21.

The House bill has a rescission of \$335 million from current Workforce Investment Act funds, which include during the full committee mark-up, presumably to increase funding for the Individuals with Disabilities Education Act. There was no attempt to restore the funds on the floor. The Senate bill does not include this rescission. Some of the programs of interest to counties include:

#### Workforce Programs:

- Adult Job Training: \$864.2 million in both bills, the same as current funding and an increase of \$156.2 million over the President's request.
- Youth Job Training: 940.5 million in both bills, the same as current funding and an increase of \$100 million over the President's request.
- Dislocated Worker Assistance: \$1.472 billion in both bills, the same as current funding and \$357 million over the President's request.

#### Health Programs:

- Community Health Centers: \$2.2 billion in both bills and 200 million more than current funding and the President's request.
- Rural Health: \$168 million for the Senate, which is \$23 million more than the House, \$16 million more than current funding and \$120 million more than the President's request.
- Mental Health and Substance Abuse Programs: \$3.4 billion in both bills, \$57 million more than current funding and \$200 million more than the President's request.
- Ryan White AIDS Programs: \$2.237 in the House bill, which is \$67 million more than the Senate bill, \$100 million more than current funding and \$80 million more than the President's request.

#### Human Services Programs:

- Community Services Block Grant: the Senate Committee rejected the President's proposal to eliminate the program and appropriated \$670 million, an increase of \$40 million and \$10 million more than the House.
- Child Care and Development Block Grant: \$2 billion in the Senate, the same as current funding and the President's request and \$75 million less than the House.
- Low Income Home Energy Assistance: \$2.7 billion in the House, which is \$500 million more than Senate and current funding, and \$800 million above the President's request.

#### **Head Start**

Both the House and Senate have passed their respective bills to reauthorize the Head Start program. The House approved its bill (H.R. 1429) May 2 by a vote of 365-48. The Senate approved its version (S. 556) June 19 by unanimous consent. The Senate has appointed conferees, but the House has yet to do so. The Senate conferees are: Kennedy, Dodd, Harkin, Mikulski, Bingaman, Murray, Reed, Clinton, Obama, Sanders, Brown, Enzi, Gregg, Alexander, Burr, Isakson, Murkowski, Hatch, Roberts, Allard, and Coburn.

Both bills avoided the divisive issues that stalled reauthorization in the last two Congresses, particularly the controversial provision that would have allowed some states to take over the program and consolidate it with their own early childhood programs. The bills also suspend the controversial Head Start National Reporting System.

Both bills made two changes from the bill it adopted in the last Congress that coincide with NACo policy. First, they double the percentage that is set aside for Early Head Start to 20 percent. Second, while the bills include language that 50 percent of all Head Start teachers achieve an associate degree by 2012, they do not impose penalties on programs that fail to achieve this goal.

### **JUSTICE AND PUBLIC SAFETY**

#### **Justice Assistance Grant and Other Programs**

During the First Session of the 110<sup>th</sup> Congress, NACo continued its effort to increase funding for the Byrne Justice Assistance Grant program, the first major comprehensive grant program in more than 30 years, working closely with the law enforcement community and emphasizing the importance of JAG in combating the meth crisis. A number of the meetings with the appropriations staff were conducted jointly with the National Governors' Association.

Although the President had not requested any funds for the existing Byrne JAG formula program, the House appropriations subcommittee marked it at \$600 million-an \$80 million increase over FY07. The House Appropriations Committee and the full House affirmed the \$600 million total. The Senate mark was \$660 million- a \$140 million increase. However, \$60 million was ear-marked for Boys and Girls Clubs. Byrne Discretionary was marked at \$190 million in the Senate and \$125 million in the House.

Overall the House Subcommittee on Commerce, Justice, Science and Related Agencies set aside \$3.2 billion for state and local justice assistance programs in FY08, a 10 percent increase

over FY07 and a 53 percent increase over the President's request. The full committee and House endorsed the subcommittee recommendations in almost all cases. Among other highlights:

- The COPS program received \$725 million- a \$183 increase over FY07;
- Meth Hot Spots received \$85 million as compared to \$64 million in FY07;
- The SCAAP program was marked at \$375 million in subcommittee, \$405 million in full committee and \$460 million on the House Floor;
- Drug Courts was marked at \$40 million compared to \$10 million in FY07;
- The Juvenile Accountability Block Grant (JABG) was marked at \$60 million, a \$10 million increase;
- Title V of the Juvenile Justice and Delinquency Prevention Act dedicated to primary prevention received a \$15 million increase with a mark of \$80 million; and
- The Mentally Ill Offender Treatment and Crime Reduction Act received \$10 million or double its FY07 mark.

On June 28, the Senate Appropriations Committee approved the report on Commerce, Justice, Science and Related Agencies, funding state and local law enforcement at \$2.66 billion in FY08 or \$177 million above FY07 and \$1.55 billion above the President's budget request.

Among other highlights:

- The COPS program received \$550 million (of which \$110 million is for technology grants and \$80 million is for COPS/Meth Hot Spots earmarked account);
- DNA backlog received \$169 million;
- Violence Against Women Stop grants received \$186 million;
- SCAAP received \$375 million;
- Juvenile Justice Programs received \$340 million including \$65 million for Title V prevention and \$80 million for the Juvenile Accountability Block Grant, a \$30 million increase over FY07;
- Drugs Courts was marked at \$25 million; and
- The Mentally Ill Offender Treatment and Crime Reduction Act received \$10 million or double the FY07 mark.

### **Senate Judiciary Committee Unanimously Approves Second Chance Act**

The Senate Judiciary Committee on August 2 unanimously passed the "Recidivism Reduction and Second Chance Act of 2007" S.1060. The democrats accepted an amendment by Senator Jon Kyl (R-Ariz.) to exclude sex offenders from the elderly prisoners early release program but that was the only amendment that was adopted. Senator Tom Coburn (R-Okla.) offered an amendment to change the matching formula from 75-25 to 50/50. However, Senator Arlen Specter (R-Pa.) the Ranking Member spoke convincingly in opposition and the amendment and it was defeated. The bill will now be sent to the Senate floor shortly after the August recess. In the House negotiations were in progress but it appeared likely that the legislation would be placed on the Suspension Calendar when Congress reconvenes in September. The House Judiciary Committee approved a similar bill (H.R. 1593) on March 28.

### **Diverting the Non-Violent Mentally Ill from Jail**

Both the House Appropriations Subcommittee and the Senate Appropriations committee have set aside \$10 million to fund the Mentally Ill Offenders Treatment and Crime Reduction Act of 2004 (P.L. 108-414) in FY08 or double the FY07 amount.

NACo has called for a national commission to study the problem of the mentally ill in jail and prison and to design intergovernmental solutions. Several national organizations have supported NACo's request including the National Sheriffs' Association, the National District Attorneys Association and the American Psychiatric Association. Legislation will soon be introduced in both the House and Senate to accomplish this objective. The House Subcommittee on Crime, Terrorism and Homeland Security has included NACo's Commission proposal in draft reauthorizing legislation for the Mentally Ill Offender Treatment and Crime Reduction Act. In the Senate, Senator Biden has included the Commission as part of his omnibus crime package.

Implementing a wide range of community-based services is infinitely more preferable to jail for the non-violent mentally ill in terms of addressing the multiple issues facing this population. By keeping persons with mental illness within the health and human services system, counties are better able to monitor their condition, provide treatment and to dispense medication if needed. The public safety is better served.

### **Homeland Security and Public Safety**

In 2007, NACo's chief homeland security and public safety priorities have been sustained funding for key state and local first responder assistance programs during negotiations of the FY08 Department of Homeland Security (DHS) Appropriation bill, and enactment of the H.R. 1, the 9/11 Implementation Act. At the August recess, Congress has addressed both priorities and the FY08 Homeland Security bill is nearing completion.

### **FY08 DHS Appropriation Bill (H.R. 2638/S. 1644)**

H.R. 2638, the House version of the FY08 DHS spending bill was approved in mid June; and the Senate passed S. 1644 a week before adjourning for the August recess. S. 1644 proposes a total of \$40.6 billion for operations and activities that DHS manages in FY08, and provides \$177 million more in discretionary spending than the House version of the legislation. However, S. 1644 proposes around \$142 million less in funds to programs important to state and local first responders compared to its House counterpart. These programs include DHS' State Homeland Security Grant Program, DHS' Law Enforcement Terrorism Prevention Grant Program, the FIRE Grant Program, Citizen Corp and the Metropolitan Medical Response System. For the remainder of the year, NACo will be working with House and Senate Conferees to reconcile this \$142 million difference.

### **The 9/11 Implementation Act**

Congress has completed work on H.R. 1, the 9/11 Implementation Act and the President has signed the legislation into law. This bill was one of the first measures enacted by both chambers at the start of 110<sup>th</sup> Congress, but passage was delayed since early February due to numerous matters. Significantly, the legislation revises the distribution of key Department of Homeland Security (DHS) grants to state and local governments.

Over the last several years, Congress has gradually provided DHS with more control over funds it could allocate to States and local governments based on risk, and a minimum level of funding has remained available for all communities. H.R. 1 continues this format, and reduces the minimum formula for DHS' State Homeland Security Grant Program. DHS' State Homeland Security Grant Program minimum allocation to States would be lowered to 0.375 percent beginning in 2008. Thereafter, the formula would continue to decrease steadily for five years and the final minimum allocation would remain at 0.35 percent. All remaining funds would continue to be distributed to States strictly based on risk; and States would be required to distribute 80% of these funds to units of local governments within an expedited time frame.

Additionally, H.R. 1 creates a new interoperable communications grant program for state and local governments; requires 100 percent screening of all cargo transported on ships and planes; strengthens privacy and civil liberties oversight of executive branch programs; expands existing nuclear nonproliferation programs; and implements policy changes for improving U.S. diplomacy efforts.

## **LABOR AND EMPLOYMENT**

### **Workforce Investment Act Reauthorization and Appropriations**

There has been little movement on Workforce Investment Act (WIA) reauthorization legislation this congressional session. Neither the House nor Senate has introduced WIA reauthorization legislation this session. The House Education and Labor Subcommittee on Higher Education, Lifelong Learning, and Competitiveness held two hearings on Workforce Investment Act Reauthorization: Recommendations to Improve the Effectiveness of Job Training.

Major themes included the need for more quality and highly-skilled training, additional funding for workforce programs and better performance measurement data. Also, engaging business and providing incentives in WIA legislation to model the success of industry sector initiatives was highlighted. There have been some suggestions from a few witnesses to include a percentage requirement for training, and the National Governors Association witness suggested governors have expanded flexibility and fund transferability at the state level. However, most comments have been favorable to NACo's position for a locally based, demand driven workforce investment system, including those by NACo's affiliate, The National Workforce Association (NWA). NACo is submitting written comments on workforce improvements for the congressional record. Regarding fiscal year 2008 appropriations, initially the Senate Appropriations Committee and the House Appropriations Subcommittee for Labor, Health and Human Services included level funding for the majority of workforce and training programs.

#### Workforce Programs:

- Adult Job Training: \$864.2 million in bills - the same as current funding and an increase of \$156.2 million over the President's request.

- Youth Job Training: 940.5 million in both bills - the same as current funding and an increase of \$100 million over the President's request.
- Dislocated Worker Assistance: \$1.472 billion in both bills- the same as current funding and \$357 million over the President's request.

On July 11, during the House Appropriations Committee debate, Representative James Walsh (R-NY) offered an amendment to rescind \$335 million from WIA formula funds to provide additional funding for the Individuals with Disabilities Education Act (IDEA) program. This amendment was accepted by voice vote in committee. This funding rescission would be devastating on local areas trying to maintain sufficient funding of education and training of workers, since funding for WIA is obligated and thus expended over a multiple years. National, state and local workforce groups are trying to prevent this rescission by urging the House and Senate appropriators to fund WIA at the higher Senate Appropriations Committee passed levels.

### **Collective Bargaining Rights for Public Safety Employees**

On July 17, the House passed (by a vote of 314-97) H.R. 980, the Public Safety Employer-Employee Cooperation Act. This legislation would create minimum collective bargaining standards for state and local police, firefighters and emergency medical service personnel in all states. H.R. 980 would set minimum standards requiring state and local governments to allow eligible public safety employees to form and join unions, bargain over working conditions, sign legally enforceable labor contracts, and use an impasse resolution procedure. States could exempt political jurisdictions with populations of less than 5,000 or fewer than 25 full-time employees within the state. States would have roughly two years to enact new public safety collective bargaining laws. If not, these states would be subject to regulations of the Federal Labor Relations Authority. Senators Judd Gregg (R-NH) and Senators Ted Kennedy (D-MA) plan to introduce similar legislation in the Senate. NACo, along with other national groups opposed to such legislation have been meeting with key Senate staff about our concerns with this legislation. NACo believes that each state legislature should decide this issue based upon local conditions and circumstances and thus opposes a federal mandate for collective bargaining rights.

## **PUBLIC LANDS**

### **PILT Funding Receives Boost from House**

On June 27, the House passed the Interior/Environment Appropriations bill (HR 2643) that included an amendment to increase funds for the Payment In Lieu of Taxes (PILT) program by more than \$20 million. The amendment, offered by Rep. Chris Cannon (R-Utah), would redirect funds from the Department of the Interior's Office of the Secretary to PILT, effectively increasing PILT appropriations to \$253 million for fiscal 2008. President Bush has threatened to veto the \$27.6 billion bill due to excessive spending. The Senate Appropriations Committee reported their version of the bill with PILT funded at \$233 million – the same as was appropriated for FY2006 and FY2007. The bill is not likely to see floor action until after the August recess.

### **Secure Rural Schools**

A one year extension of funds for Secure Rural Schools was included in the Iraq war supplemental earlier this year. Both the House and Senate have made attempts this year to fund the Secure Rural Schools and Community Self-Determination Act (SRS). Two amendments to the House Interior/Environment Appropriations bill were offered related to funding for SRS and reauthorization of the Resource Advisory Committees (RAC). Both amendments, offered by Rep. Peterson (R-PA) and Rep. DeFazio (D-OR) were defeated by way of a point of order for technical reasons.

Senator Craig was forced to withdraw a \$2.4 billion amendment at the Appropriations Committee mark-up that would have provided four years of funding for SRS. The amendment was similar to an amendment (passed 74-23) included in the emergency supplemental appropriations bill (vetoed 5/1/2007). Senator Craig withdrew the amendment due to concerns over the lack of funding offsets and exceeding the appropriations budget cap. The measure is expected to be offered as a floor amendment when the Senate begins debate on the Interior Bill.

Attempts were made to include SRS funding in the recently passed Senate Energy bill. The Senate could not come to an agreement on a \$28.5 billion energy tax package offered by Sen. Baucus to encourage renewable energy usage. Along with renewable energy incentives, the package included a four year extension of SRS as well as authorization for five years of full funding for PILT. The measure failed cloture (57-36) after several Senators who have historically been strong supporters of PILT funding and SRS reauthorization chose to vote against it due to other controversial provisions.

### **Senate Confirms James Caswell as Next BLM Director**

On August 3, the Senate confirmed James Caswell as the 16<sup>th</sup> Director of the Bureau of Land Management (BLM). The Bush Administration announced Caswell's nomination May 30 following the departure of former Director Kathleen Clarke earlier this year. Caswell previously spent 33 years in various positions in the USDA Forest Service, BLM, Bonneville Power Administration, and most recently directed the State of Idaho's Office of Species Conservation.

Senator Ken Salazar (D-CO) had placed a hold on Caswell's nomination in response to a BLM decision to develop oil and gas production in Colorado's Roan Plateau. Coincidentally, Senator Salazar released the hold following the approval of a 120 day extension from DOI Secretary Dirk Kempthorne to allow for additional review of the BLM's Roan Plateau resource management plan, and the passage of a House energy package which included an amendment (authored by Rep. John Salazar) to prohibit surface occupancy for exploration or development on the Roan Plateau.

## **TELECOMMUNICATIONS AND TECHNOLOGY**

### **Internet Tax Freedom Act**

The recurring debate over whether Internet access can be taxed has begun in the 110<sup>th</sup> Congress with the introduction of two bills intended to extend the existing tax moratorium first applied in 1998. The issue for counties is whether Congress can preempt local taxes, and whether new

services offered over the Internet would be subject to local tax, or protected from tax by the moratorium.

One of the bills would make the existing moratorium permanent and eliminate the “grandfather clause” protecting those states with such taxes before 1998, and the other would change the definition of Internet access, temporarily extend the moratorium, and maintain the existing grandfather clause. S. 156, introduced by Senators Wyden (D-OR), McCain (R-AZ) and Sununu (R-NH) would make the 1998 moratorium permanent. S. 1453 introduced by Senators Carper (D-DE), Alexander (R-TN.), Feinstein (D-CA), Voinovich (R-OH) and Enzi (R-WY) would extend the revised moratorium for four years. NACo supports the latter approach.

The Internet of 1998 was a quite different place than the Internet of 2007. It was an all “dial-up” world dominated by America Online (or AOL as we know it today). The definition of Internet access was written in such a way as to protect the suite of content America Online was providing to their dial-up customers. This included news, shopping, and communities of interest.

Virtually all of the content users access today over the Internet was not available on freestanding websites in 1998. You had to use America Online. The term “Internet Access” of 1998 is not Internet access today. There are a whole range of services and content available over the Internet today that were not even contemplated in 1998. Communities of interest like *My Space* and *Facebook* and *YouTube* were not even a glimmer in anyone’s brains. By taking the simple and expedient road to extending the moratorium permanently, the sponsors of S. 156 lock in a bad definition of Internet access, and they preempt states that have had access taxes since before 1998.

Senators Carper, Alexander, et al. take a different approach. Rather than take a “shot gun” approach to defining Internet access, they use a “rifle shot” approach to defining today’s Internet access. They are clear that what is covered by the moratorium is a customer’s ability to access the Internet regardless of the technology – the very means by which an individual accesses content on the Web. The definition is clear and precise. It specifically exempts email, instant messaging and limited website space from taxes. As mentioned before S. 1453 would protect those states with access taxes before 1998.

Most importantly, S.1453 is temporary. Just as we could not contemplate the Internet of 2007 and the many ways we access content today – dial-up, DSL, cable modem, Blackberries, cell phones, Broadband over Power Line, WiFi and Wimax – we cannot be sure how we will be doing so in the future. By extending the moratorium temporarily, we can revisit the emerging technologies in a few years and make better decisions then.

### **Video Franchising**

The battle over what level of government will be responsible for video franchising has not ended, the venue has changed. The 109<sup>th</sup> Congress was unable to change existing law which allows for local video franchising. The House wanted a national program, the Senate would have retained local franchising, but would have severely limited local government authority. In December, the Federal Communications Commission released an order putting severe

limitations on local governments' authorities over video franchising. In April, NACo and other local government associations filed a Petition for Review with the 6<sup>th</sup> U.S. Circuit Court of Appeals to overturn the FCC decision. In June, the associations also filed a motion for a "stay" with that same court. Several states have chosen to use existing federal law to modify their state laws on video franchising, and supposedly easing entry for new video providers.

## **TRANSPORTATION**

**Aviation** – The federal airport and aviation programs expire on September 30, 2007 and this year Congress is reauthorizing these programs and hopefully enacting a bill that the president will sign. Much of NACo's focus has been on the Airport Improvement Program (AIP), Essential Air Service (EAS), the Small Community Air Service Development Program and the financing of the programs. NACo has had several opportunities to testify before the Congressional committees which are considering the airport legislation.

The Senate Commerce Committee approved its bill on May 16 and full Senate action will occur later this summer. Included in the bill is a \$25 per flight surcharge on any plane using controlled airspace, which will most impact business jets, with the proceeds being used for air traffic control modernization. There is no Passenger Facilities Charge (PFC) increase in S. 1300. The Senate bill increases AIP funding to an average of about \$4 billion annually over four years, about \$500 million more than the current program. EAS is authorized at \$133 million annually, a slight increase for the 143 communities that currently get EAS service and the Small Community Air Service Development Program increased to \$35 million annually.

The House Transportation and Infrastructure Committee approved its bill, H.R. 2881, on June 28 and the full House may consider the bill later in July. It would provide about \$4 billion per year for the Airport Improvement Program and Essential Air Service is increased from \$127 million to \$133 million, along with several reforms being made to the program. The Small Community Air Service Program was increased to \$35 million. The Passenger Facility Charge cap is increased from \$4.50 to \$7.00. The bill recommends that the general aviation jet fuel tax be raised from 21.8 cents per gallon to 30.7 cents per gallon to keep up with inflation and the aviation gas tax from 19.3 cents per gallon to 24.1 cents per gallon to help pay for modernization efforts and to stabilize the aviation trust fund. There are also several controversial labor provisions in the bill.

**SAFETEA-LU Technical Corrections** – A technical corrections bill is normally considered after the passage of a major transportation authorization to address errors and omissions that occurred in the original legislation. The House passed H.R. 1196 in March 2007. It includes a NACo recommended provision allowing for the expenditure of some Surface Transportation Program funds, a category in the federal highway program, on minor rural collectors in areas under 5000 population. This language had been in law since 1991 and was inadvertently left out of SAFETEA-LU.

The bill also provides additional research funding for the Federal Highway Administration and extends the life of the National Surface Transportation Policy and Revenue Study Commission

by six months to December 31, 2007 and provides it with an additional \$2 million. In May, the Senate Banking Committee, which has jurisdiction over the transit section of SAFETEA-LU, approved H.R. 1195 and subsequently in June the Commerce Committee, which reviews highway safety issues, passed a bill similar to the House version. No action on this bill has been scheduled before the full Senate.

**Transportation Funding** – The FY08 appropriations process has begun slowly. At this time, only the House Transportation Appropriations Subcommittee has approved its bill, though the prospects look good for a reasonable level of funding for most transportation programs supported by NACo. In the House the funding level for the federal-aid highway program is \$40.2 billion, which represents full funding at the SAFETEA-LU guaranteed level. Similarly, transit would receive \$9.73 billion, the guaranteed level. The Airport Improvement Program, which funds capital improvement projects at public airports, gets \$3.6 billion, a slight increase over the current year funding. Essential Air Service, which subsidizes air service to about 143 small and rural communities, is continued at the current level of \$109 million. The Amtrak funding, which has generated substantial controversy over the last several years is funded at \$1.45 billion, \$104 billion over the FY07 level.

**Amtrak** – Congress will continue to consider reauthorization proposals for Amtrak. With the Democrats in control of Congress it may be possible to get legislation completed this year though the Bush administration has a number of serious reform proposals on the table. The Senate Commerce Committee has already approved S. 294, a 6 year bill that would make available \$3.3 billion in operating subsidies and \$4.9 billion in capital grants for intercity service. As always one focus will again be on appropriating enough funds for Amtrak to continue all its current service and make some capital improvements. In the administration budget, funding for passenger rail is reduced from \$1.294 billion to \$800 million. The House appropriations bill provides \$1.45 billion.