FEDERAL LEGISLATIVE REPORT

This Federal Legislative Report provides an update on NLC's six advocacy priorities:

- Passing a sensible economic stimulus package that makes a difference to working American's now.
- Making America safe by providing new, substantial and continuing funding for ongoing local homeland security efforts and sustained funding for successful public safety programs such as the Community Oriented Policing Program Services (COPS) and Local Law Enforcement Block Grant;
- Ensuring an adequate supply of affordable housing by fully funding the Community Development Block Grants (CDBG), HOME, HOPE VI, public housing, and Section 8 assistance;
- Strengthening vital transportation systems by increasing federal support for the Transportation Equity Act for the 21st Century (TEA-21) to preserve the partnership with cities, reduce congestion, and promote smart, sustainable development;
- Protecting the natural resources that have made America's success possible by increasing the federal investment in clean water and renewed water infrastructure and passing amendments to the Clean Air Act to reduce emissions; and
- Investing in children by fully funding implementation of the *No Child Left Behind Act*.

ECONOMIC STIMULUS

Federal Budget

The House and Senate Budget Conferees were unable to reach a compromise on the size of the proposed tax cut. The House Budget bill (H. Con. Res. 95) called for a $726 billion tax cut over 10 years, which is the same amount that was included in the President's plan. The Senate budget bill (S. Con. Res. 23) included a $350 billion tax cut over 10 years. The Conferees were able to reach an agreement on the spending limits in the budget, but could not find a compromise on the tax provision.

The Republican leadership devised an unprecedented budget "reconciliation" procedure in which the House and the Senate would consider different levels of tax cuts and resolve their differences later. The House Budget Reconciliation Instructions will provide for a $626 billion tax cut package while the Senate Reconciliation Instructions will provide for a $350 billion tax cut. This means that the debate over the size of the tax cut package will take place later this year through the Senate Finance and House Ways and Means Committees. The Budget Reconciliation instructions provide only the amount of the tax cuts. It is up to the tax-writing committees to determine the structure of the tax cuts as well as any amount of fiscal assistance to local governments and states. The House Ways and Means committee is expected to craft a tax package similar to the President's

proposal, which included the dividend tax cut proposal. The Senate Finance Committee is expected to develop an entirely different plan.

Recent reports indicate that the White House may be willing to reduce the size of its dividend tax cut proposal. This would help mitigate effects on public finance and housing where corporate demand for tax-exempt bonds and housing tax credits could decline, affecting the costs of borrowing for capital projects and the production of affordable housing.

Local and State Fiscal Assistance

Senators Olympia Snowe (R-Maine) and Charles Schumer (D-N.Y.) are working to gain passage of S. 201, the "State and Local Aid and Economic Stimulus Act of 2003." The bill was withdrawn as an amendment to the 2004 budget resolution; however, Senator Snowe needs your support to help her move S. 201 in the Senate Finance Committee and then to the Senate floor with a strong vote. This bill would provide immediate, temporary assistance to both state and local governments by providing $20 billion to the states and $20 billion to local governments, where distribution would be based one half on population and one half on tiers of unemployment.

NLC Position: NLC supports providing fiscal relief to state and local governments as part of a stimulus package and is supporting the Snowe-Schumer bill as the best vehicle for achieving that goal.

MAKING AMERICA SAFE

Homeland Security

President Bush recently signed into law an emergency wartime supplemental spending bill (H.R. 1559) that includes $2.23 billion in first responder assistance to local governments and states. Along with other state and local government groups, NLC was successful in securing an additional $230 million in funding over the President's request of $2 billion.

The $2.23 billion will be available through the Department of Homeland Security's Office of Domestic Preparedness within 60 days after the President signs the bill into law. Of the $2.23 billion appropriated, specific allocations are as follows:

- $1.3 billion is designated for equipment, planning, and first responder training and exercises. The money will be dispersed to states; and the states must direct at least 80 percent of the funds to local governments within 45 days of receipt.

- $200 million is allocated for critical infrastructure protection grants where at least 50 percent of the funds will be directed to local governments through the states, based upon the projected timeline above. The legislation permits use of the

critical infrastructure protection grants for operational costs, "to include personnel overtime as needed."

- $700 million is designated for discretionary grants to "high-density urban areas, high- threat areas, and for protection of critical infrastructure." The legislation also allows use of this funding for personnel overtime and requires that "no less than 80 percent of any grant to a state shall be transferred … to local governments within 45 days of receipt."

NLC Position: The Federal government should provide funding to local governments for emergency preparedness and response, Special resources should be provided to areas that are densely populated or have facilities deemed to be targets of terrorist.

AFFORDABLE HOUSING

American Dream Downpayment Act of 2002

The American Dream Downpayment Act of 2003 (H.R. 1226), sponsored by Rep. Katherine Harris (R-Fla.) and S. 811, sponsored by Sen. Wayne Allard (R-Colo.), would create a special fund, The American Dream Downpayment Fund, administered as part of HUD's existing HOME Investment Partnerships Program (HOME). The fund would distribute $200 million annually to more than 400 state and local governments to assist first time homebuyers with downpayment and closing costs. Participants' annual incomes could not exceed 80 percent of area median income. Neither bill has passed their respective committees, however, $200 million has been approved in the House FY2004 VA HUD Appropriations bill to fund the President's initiative.

NLC Position: NLC opposes using a set-aside in the HOME program for the Fund as homeownership down payment and other assistance are already eligible activities allowed by users of the HOME block grants.

Responsible Lending Act of 2003

Reps. Bob Ney (R-Ohio) and Ken Lucas (D-Ky.) introduced a bill that would amend the Home Ownership and Equity Protection Act (HOEPA) of 1994**,** creating a national consumer protection standard that preempts all state and local predatory lending laws. While the legislation does provide minor advances in nonessential provisions of HOEPA, NLC is concerned with several provisions that mask the significant setbacks for consumers hidden in the legislative language of the bill including:

- Total and complete preemption of all state and local consumer protection provisions;
- Complete elimination of all state limits on repayment penalties; and
- Limitation on damages for violations of HOEPA loans.

NLC Position: NLC opposes the Responsible Lending Act of 2003 because of the preemption clause and the legislation creates a weak national standard in the fight against predatory mortgage lending.

FY 2004 HUD Appropriations

The proposed HUD budget includes changes and cuts in some critical programs effecting cities including:

- **Community Development Block Grant (CDBG)** – The Administration has requested $4.7 billion for FY04. This is a $200 million decrease from the FY03 allocation.
- **HOME** – The Administration has requested $2.2 billion in HOME funding for FY04. This is a $200 million increase over the FY03 enacted level, however the budget includes $200 million specifically for down payment assistance.
- **Section 8 Homeownership** – The Administration is proposing abolishing the Section 8 program for FY05 and creating the Housing Assistance for Needy Families, a state voucher block grant program. The Administration has requested $13.6 billion for HANF, and $4.8 billion for project based rental assistance.
- **HOPE VI** - The Administration has requested no funding for the HOPE VI program. The program was funded at $574 million in FY03.
- **Public Housing Operating Fund** - The Administration has requested $3.574 billion in public housing operating funds for FY04. This request is down $26 million from FY03 and does not include the $200 million shortfall from the FY03 budget.
- **Public Housing Capital Fund** - FY04 includes requests $2.641 billion in the Public Housing Capital Fund, a $202 million reduction from FY02 funding levels.
- **Urban Development Action Grants** - $30 million has been requested for Urban Development Action Grants. No funding was requested for the Urban Empowerment Zones.

NLC Position: NLC opposes elimination of the HOPE VI program and Urban Development Action Grants, the cuts to Public Housing Operating Fund and Community Development Block Grants, and the Section 8 block grant proposal, HANF. NLC supports full funding for affordable housing programs.

TRANSPORTATION

TEA 21 Reauthorization

Congress began the reauthorization process of the Transportation Equity Act for the 21st Century (TEA 21), or TEA 3, which expires on September 30, 2003, before the Easter recess by adopting the fiscal year 2004 Budget Resolution. The final Resolution did not provide optimistic numbers for reauthorization. For transportation, the conference agreement provides $69.5 billion in FY 04; calls for $231 billion for highways and $49.1 billion for transit over the next multi-year reauthorization. The final amount is about halfway between the Senate and House passed numbers. Although the numbers are lower than transportation advocates had hoped, the conference agreement establishes a contingency procedure to allow increased spending above this level if new resources are

made available to the highway trust fund, which is a top goal of House and Senate reauthorization committee leaders.

Congress plans to introduce reauthorization bills in May with an aggressive schedule planned for passage by August recess. The Administration will likely be releasing its plan in May.

In an effort to generate more revenue for the reauthorization, the Senate Finance Committee approved the Energy Tax Incentives Act of 2003 (S. 597), which included a provision to recapture ethanol based fuel taxes for the Highway Trust Fund (HTF). NLC has long supported the idea of moving gasohol (ethanol + gasoline) taxes into the HTF as one way to increase funding for TEA 21 reauthorization. The provision included in S. 597 would boost revenue to the HTF by $2 billion per year. The bill will now go to the Senate floor for consideration with the overall Energy bill.

NLC Position: NLC supports increased funding for the reauthorization of TEA 21 programs to meet the growing infrastructure needs of the nation and the creation of an Urban Congestion program to target more resources – new and existing – to urban areas and empower local officials to make more planning and funding decisions, through suballocation of resources, to combat congestion.

Aviation Security

Last year, NLC opposed a mandate by the Transportation Security Administration (TSA) to order local law enforcement (LEOs) to replace the National Guard at airport screening checkpoints. The TSA agreed to reimburse local governments for the function and deputize LEOs as federal law enforcement because the use of LEOs was to be temporary until the TSA could deploy federal law enforcement, as required by the Aviation and Transportation Security Act of 2001 (ATSA).

Last year, the House Aviation Subcommittee approved the Aviation Industry Stabilization and Reform Act (HR 5506), which would have deleted the requirement that there be "federal" law enforcement at the nation's commercial airports as required in the ATSA. This could have created a permanent unfunded federal mandate requiring cities to provide permanently local law enforcement for airport security.

The Omnibus Appropriations Act (H. J. RES 2) included language NLC negotiated with the TSA and the Airport Executives that will allow the TSA to continue to use LEOs only after entering into a voluntary, written agreement with local law enforcement agencies. The language also provides a statutory basis for federally deputizing LEO's and gives protection under the Federal Tort Claims Act. It also authorizes funding for reimbursement of costs. Cities remain concerned about liability protection, staffing issues, and full reimbursement.

NLC Position: NLC supports full reimbursement of cities and full liability protection for use of LEO's and the training and deployment of federal employees to airports that request their presence.

PROTECTING NATURAL RESOURCES

Clean Air

Legislation submitted to Congress by President Bush last year to address emissions from power plants and related facilities was again introduced in both the House and Senate.

The Clean Skies Act of 2003 (H.R. 999 and S. 485) would amend the Clean Air Act by requiring reductions in sulfur dioxide, nitrogen oxide and mercury emissions from fossil-fuel fired electricity generating facilities and by establishing a market-based trading program – mirroring the successful cap-and-trade system for acid rain – for affected facilities. As with last year's proposal, the new measure does not include requirements to reduce carbon dioxide (CO_2) emissions from these sources. The legislation would impose controls on power plants and related facilities and require 70 percent reductions in emissions of the target pollutants. Required new emission reductions would begin in 2008 and 2010. The mercury requirements would affect only coal-fired facilities. Emission caps and trading would allow power plants to reduce emissions "in the most efficient and least costly way."

The administration also proposes to impose performance standards on all "new"(i.e., those units "that commence construction or reconstruction after the proposal is enacted") boilers, combustion turbines, and integrated gasification combined cycle plants and to exempt these "new" units from New Source Review (NSR) and other requirements. New performance standards would limit emissions of SO_2, NOx, Mercury and Particulate Matter (PM).

NLC Position: NLC supports legislation that will cap emissions from power plants and other insufficiently regulated facilities; establish market–based emission trading programs to facilitate compliance; and reduce emissions form all mobile sources including off-road vehicles.

Water Infrastructure Financing

Three legislative proposals – the Clean Water Infrastructure Financing Act of 2003 (H.R. 20 and S. 170) and the Water Quality Financing Act (H.R. 1560), - have been introduced to address wastewater infrastructure and the reauthorization and expansion of funding for the Clean Water State Revolving Fund (CWSRF).

While the measures are essentially similar, H.R. 20 would require states to use 25 percent of any State Revolving funding (SRF) in excess of $1.4 billion as grants to disadvantaged communities (defined by the state). In addition, the bill would require EPA to develop simplified application procedures for small systems (those serving 10,000 or fewer people) and to provide financial and technical assistance to wastewater systems to develop and maintain asset management plans.

For disadvantaged communities (as defined by the state), S. 170 authorizes the use of up to 30 percent of each state's SRF grant for loan forgiveness and extends the repayment period for loans from the CWSRF to 40 years or the expected life of the facility.

H.R. 1560 also provides $250 million annually for grants to remediate sanitary and/or combined sewer overflows in state-defined disadvantaged communities. The bill also includes provisions requiring loan recipients to analyze their rate structures to determine if they meet full cost of service. The House Transportation and Infrastructure held one hearing prior to introduction of H.R. 1560 and plans to mark-up the measure sometime in May. The critical issue which held up House approval of a measure in the last Congress – the application of prevailing wages (Davis-Bacon) to SRF-funded projects – will be an issue again in this Congress.

NLC Position: NLC supports additional financial assistance for wastewater and drinking water infrastructure needs and grant funding either from the SRFs or as an additional authorization/appropriation to assist in closing the $23 billion annual water infrastructure repair/replacement funding gap. NLC has reservations about proposals that would impose new mandates requiring water and sewer fees that reflect the full cost of service and implementation of an asset management plan.

FY 2004 Budget

The Bush Administration's proposed budget for fiscal 2004 would reduce funding for the Clean Water State Revolving Fund (CWSRF) by $500 million from the current $1.350 billion.

The CWSRF provides grants to states which in turn offer loans to cities to finance their municipal wastewater infrastructure needs, including mandates to remediate combined and separate sewer overflows. Most recently (i.e., in fiscal 2002, the last year for which an appropriation was approved) funded at $1.35 billion, the administration is requesting $850 million for wastewater in fiscal 2004, despite the agency's recent analysis documenting a funding needs gap of $535 billion (for wastewater and drinking water) over the next 20 years.

The Administration proposed to keep the Drinking Water State Revolving Fund (DWSRF) at its current $850 million level. Increases in funding for the drinking water programs would go to states through such programs as source water protection and increased funding for monitoring.

In approving the budget for the coming fiscal year, Congress rejected the president's request for the CWSRF and plans to fund the loan program at its current $1.350 billion level. Congress also approved the DWSRF funding level of $850 million. Appropriations for these municipal programs are expected to be approved over the next six months.

NLC Position: NLC supports – at a minimum – full funding for both the CWSRF ($1.35 billion) and the DWSRF ($1 billion).

INVEST IN CHILDREN

Individuals with Disabilities Education Act (IDEA)

The House Education and Workforce Committee recently approved legislation to rewrite and reauthorize the 1975 Individuals with Disabilities Education Act (IDEA), which guarantees disable students a free and equal public education in the least restrictive environment. The 1975 law authorized the federal government to pick up 40 percent of the costs school districts spend to educate a disabled student. Congress has never fully appropriated the 40 percent, leaving a burden on local taxpayers.

The federal government picks up 18 percent of the tab at total cost of $8.9 billion in FY 2003. Included in the committee's legislation is an amendment that would authorize an additional $2.2 billion for FY 2004 and $2.5 billion for FY 2005. Rep. Lynn Woolsey (D-Calif.) offered an amendment that would make special education an entitlement program and set authorization levels to reach the 40 percent mark in six years. The amendment failed 22-26 on a party line vote. This amendment is expected to be introduced again when the legislation reaches the House floor. Senator Mark Dayton (D-MN) offered an amendment to fully fund IDEA on the budget resolution debate. The amendment failed. Senator Dayton has introduced S-133 which would provide mandated full funding for IDEA.

No Child Left Behind

In January 2002, President Bush signed the "No Child Left Behind Act" (NCLB), the reauthorization of the Elementary and Secondary Education Act (ESEA). At the time of passage, the Act was hailed as a great bipartisan achievement. Fifty five programs were included in the act with a proposed annual investment of $19 billion, which has not been provided in President Bush's 2003-2004 budget requests nor in 2002 and 2003 appropriations. Implementing the reforms mandated in NCLB will be costly to local communities.

In an attempt to ease the burden placed on local governments by the "No Child Left Behind Act," Senator Patty Murray (D-WA) introduced an amendment to fully fund the law. Currently, the Republican budget cuts funding for the key education reform law by $700 million for fiscal year 2004, leaving 6.2 million children behind next year. The amendment died when the Senate voted to table it. Murray's amendment would have added $8.9 billion to fully fund the law. NLC is working with Senate and House leaders to have a similar amendment introduced during the appropriations process this summer.

NLC Position: Congress must act in a timely fashion on annual education appropriations and fully fund any federally mandated educational programs, especially the No Child Left Behind Act and the Individuals with Disabilities Education Act.

Head Start

Head Start is to be reauthorized by Congress in 2003. A heated debate and differences will be aired over whether to make the program more focused on literacy and reading readiness as the President wants or to allow it to retain its more comprehensive, holistic approach to addressing children's needs. Also, President Bush has unveiled a proposal that will fund Head Start through block grants to states. If this where to happen, local governments and community based organization would no longer directly receive Head Start funding, shifting local control of Head Start to the states. No legislation has been filed in Congress on behalf of the President's proposal

NLC Position: NLC opposes block granting Head Start to the states and supports. funding that would allow all eligible children in America's cities and towns to participate in Head Start.

OTHER ISSUES OF IMPORTANCE TO CITIES

E-Commerce

The House Judiciary Committee's Subcommittee on Commercial and Administrative Law is planning to move the "Internet Tax Nondiscrimination Act," (H.R. 49) legislation to make permanent the existing ban on Internet access taxes. A hearing was held on April 1.

The bill's sponsors - Rep. Christopher Cox (R-Calif.) and Sen. Ron Wyden (D-Ore.), who has an identical bill (S. 52) in the Senate - and Rep. Chris Cannon (R-Utah), chairman of the Subcommittee, are opposed to combining the moratorium legislation with language that would give states authority to require retailers to collect sales taxes on remote transactions in states where they have no physical presence.

The Internet Tax Moratorium is set to expire this November, and NLC is working with a coalition of governmental and business groups to include approval of the Streamlined Sales Tax Compact in any consideration of the moratorium. Several state legislatures are moving forward in authorizing participation in the Compact, which will become effective once 10 states with 20 percent of the U.S. population adopt the measure. Then, the multi-state Compact would be slated for approval by Congress.

NLC Position: NLC supports federal legislation to permit states and localities to require remote sellers to collect state and local sales and use taxes on orders made within their boundaries.

Faith-Based Initiative

After almost two years, NLC, with the help of Senators Richard Durbin (D-Ill.) and Jack Reed (D-R.I.) and the assistance of key faith-based organizations and civil rights groups, persuaded the Senate to pass a scaled back version of the President's faith-based initiative

by a vote of 95 to 5. The legislation lingered in the Senate because of concerns over the preemption of state and local regulations and civil rights laws.

The Charity, Aid, Relief, and Empowerment Act (S. 272), the CARE Act, is primarily tax legislation that would provide incentives for charitable giving by providing $12.7 billion in new tax breaks for charitable giving and additional spending for social services. The bill would (1) restore more than $1.2 billion to Title XX of the Social Services Block Grant and allow taxpayers to deduct up to $250 per person for their charitable donations above $250 and (2) expedite review for non-governmental organizations wishing to incorporate as 501(c)(3) entities and provide technical assistance to groups through a "Compassionate Capital Fund." If enacted, the CARE Act will expire in two years, allowing lawmakers to assess whether the deductions spurred charitable giving.

NLC won a major concession from the bill's co-authors, Senators Rick Santorum (R-Pa.) and Joseph Lieberman (D-Conn.), who promised that a companion House bill would not contain any of the controversial provisions. NLC opposed the previous House version (H.R. 7) because it would have preempted local contracting authority and civil rights laws, imposed unfunded mandates, increased municipal liability, "voucherized" key social service programs, and permitted the commingling of private and public funds.

On the administrative front, NLC has submitted comments objecting to proposed rules for the Temporary Assistance Needy Families (TANF), Community Service Block Grant (CSBG), and Substance Abuse and Mental Health Services Administration (SAMHSA), and HUD programs that would preempt state and local laws even though they use their own funds to satisfy the requirements of the programs. The proposed rules would also impose unfunded mandates on cities by placing "the responsibility for providing the alternative service provider with the State and Local agency."

NLC Position: NLC supports the federal government protecting local authority from any "charitable choice" or "faith-based initiative" legislation that (1) preempts local laws; (2) increases liabilities; (3) imposes unfunded mandates and vouchers; (4) permits the commingling of funds; and (5) fails to require parity between faith-based groups and non-governmental organizations applying for federal grants.