

To: Leon County Board of Commissioners
From: Squire Patton Boggs (US) LLP
Date: June 1, 2015
Subject: May/June Monthly Report

This memo provides an overview of Congressional and Executive Branch activities relevant to Leon County during the month of May and the beginning of June. We are also *attaching* under separate cover a more detailed legislative and regulatory update for the first five months of the 114th Congress.

FY 2016 Appropriations Update

For background, 12 appropriations bills fund all sectors of the federal government and contain funding for programs of interest to Leon County, such as: PILT, TIGER, Veterans programs, Community Development Block Grants (CDBG), homelessness programs, economic development projects, justice funding and national cemetery funding, to name a few.

Prior to adjourning for the Memorial Day recess, the House passed three FY 2016 appropriations bills – Energy and Water (H.R. 2028), Legislative Branch (H.R. 2550), and Military Construction-Veterans Affairs (H.R. 2029). Additionally, the Commerce-Justice-Science and Transportation-Housing bills were cleared by the full appropriations committee and the Defense subcommittee marked up its bill. Meanwhile, the Senate Appropriations Committee, which typically lags several weeks behind the House in commencing its appropriations work, approved its Energy and Water and Military Construction-Veterans Affairs spending bills just before the recess. By this time last year, the House had passed only one appropriations bill and the Senate was on a similar pace with only two out of full committee.

The House will debate the Commerce-Justice-Science (CJS) and the Transportation and Housing (T-HUD) FY 2016 Appropriations Bills on the floor this week. Both bills adhere to the sequester's spending limits, even though President Obama has threatened to veto any appropriations bills that do not adjust the caps.

The CJS bill would provide \$51.4 billion in discretionary budget authority, \$1.3 billion more than the FY 2015 level, but \$661 million less than the President's FY 2016 Budget Request.

The T-HUD bill would appropriate \$108.7 billion for the Transportation and the Housing and

Urban Development agencies. The total includes \$55.3 billion in discretionary spending subject to the spending caps and \$53.5 billion from the highway and aviation trust funds. The bill would provide \$1.5 billion more than the current level but \$25.9 billion less than the President requested. Notably, the bill would reduce funding for Amtrak and mass transit.

Surface Transportation Reauthorization (MAP-21)

The Surface Transportation Reauthorization (MAP-21) provides funding for the nation's roads, bridges, highways, rail and transit. Before returning home for Memorial Day recess, the House and Senate passed a two-month extension of MAP-21 (through July 31), which President Obama has indicated he will sign, averting a shutdown of federal surface transportation programs on June 1. The length of the extension was dictated by the level of revenues remaining in the Highway Trust Fund; the US Department of Transportation has estimated that Highway Trust Fund resources are sufficient to support the Federal transit and highway programs through late July or early August.

While some in Congress hope to use the next 60 days to adopt a long-term Highway Trust Fund revenue solution, the leaders of the House and Senate tax-writing committees continue to support another patch through the end of the calendar year. This longer timeline keeps the Highway Trust Fund revenue solution tethered to those committees' tax reform efforts. The expectation is that revenues derived from changes to corporate tax laws – along with current Federal gas tax revenues – could be sufficient to fund a single 5- or 6-year transportation bill at current program levels.

However, even if tax reform could generate sufficient additional revenues to fund the next transportation bill, that solution is several months – and several billion dollars – away. House and Senate transportation leaders must find almost \$11 billion in new revenues and/or spending cuts to offset the transfer of General Fund revenues to the Highway Trust Fund to pay for another extension through December 2015. An increase in the Federal gas tax, while an obvious and easily implemented revenue source, is politically unpalatable to Democrats and Republicans in Congress and to the White House.

Progress on legislation to reauthorize the policies and programs in MAP-21 has been limited to a series of oversight hearings this spring by the House and Senate transportation authorizing committees. To date, none of these committees has made public their legislative proposals. However, Senate Environment and Public Works Committee Chairman James Inhofe (R-OK) and Ranking Member Barbara Boxer (D-CA) recently announced plans to mark-up their multi-year highway reauthorization bill as early as June 24. Heeding the caution of the tax-writing committees that revenues are severely constrained, House and Senate authorizers are generally expected to maintain current top-line funding levels – little to no growth. After years of underinvestment in U.S. highways, bridges, and transit systems, this raises serious concerns that the next bill may be a zero-sum game, where a funding increase for one program can only come at the expense of another. Against this dynamic, stakeholders continue to push Congress to find significant additional revenue.

Move America Infrastructure Proposal

Due to some concern over the passage of the Surface Transportation Reauthorization, on May 4, Senate Finance Committee Ranking Member Ron Wyden introduced a bill to establish a new form of tax-exempt bond to finance a wide range of transportation projects that include significant private-sector participation (such that the bonds would not otherwise qualify for tax-exempt status

under current tax law). The program would be subject to an annual volume cap of about \$17.5 billion, but any bonds issued would not be subject to the Federal alternative minimum tax.

Wyden's bill would also create a new tax credit program under which States could raise funds for transportation projects by selling these credits to investors seeking to offset Federal tax liability. Tax credit proceeds must be matched by an equal amount of private equity investment. The purpose for this dollar-for-dollar match is to increase private investment in transportation projects, enabling States to reduce their reliance on debt, tolls, taxes, or other revenues to fund project costs. This model is loosely based on the Low Income Housing Tax Credit, which has been successful in attracting private investment to affordable housing construction.

U.S. Department of Transportation Funding: TIGER Grant

The Department of Transportation (DOT) TIGER grant applications are due this week on Friday, June 5. The County is leading the effort, in conjunction with the City of Tallahassee to submit the Southside Connectivity Completion Project for funding. We have been working with the County to highlight in the proposal the benefits of the project and how the project serves the DOT's goals of: creating a regional impact that is transformational; providing access to economic opportunities and breaking down barriers to access to transit and transportation.

Federal Aviation Administration

Congress is required to enact legislation in order to authorize funding and set national policy priorities for the Federal Aviation Administration (FAA), which impacts airports throughout the U.S. Current law, the Federal Aviation Administration Reauthorization and Reform Act of 2012 (P.L. 112-95), expires on September 30. The last FAA reauthorization required more than 23 extensions of the prior law spanning more than four years – and a temporary shutdown of the FAA in mid- 2011 – before lawmakers agreed to new legislation. Leaders in the aviation industry and aviation policy are not anxious to repeat that experience. Work is underway in both chambers of Congress to draft reauthorization bills. Multiple hearings and roundtables have been held on various aspects of the reauthorization on perennial issues such as safety, whether to increase the Passenger Facility Charge (PFC), how to finance airport expansion and pilot qualification requirements.

Currently, most attention is focused on the FAA's plan to overhaul and modernize the nation's air traffic control system. Just weeks after the National Research Council released a scathing report detailing the lack of progress on the FAA's \$20 billion Next Generation Air Transportation System (known as NextGen), many are calling for Congress to remove air traffic control responsibilities from the FAA and give them to an independent nonprofit corporation. Advocates, such leading airlines and the National Air Traffic Controllers Association, believe that it is time for a structural change to the way the FAA does business. They believe that moving air traffic control responsibilities from the regulatory agency to a nonprofit corporation would deploy modern technologies faster, improve service and reduce costs. Lawmakers are open to the idea, although some are concerned about safety and blame sequestration and budget woes for the problems of NextGen deployment.

As the hearings and roundtables wrap up this spring and early summer, it is anticipated that legislation will follow shortly.

EPA and Army Corps Announce Final Rule: “Waters of the U.S.”

As we reported to you on May 27, the Environmental Protection Agency (EPA) and the Army Corps of Engineers announced the issuance of the final rule concerning “Waters of the U.S.” According to the EPA, however, the final rule could take up to two weeks to be published in the Federal Register. Once published, the rule will become effective within 60 days. Of interest to Leon County are possibly the four most significant statements EPA provided concerning the final rule: 1) “there are no new permitting requirements;” 2) “the rule will maintain all previous exclusions;” 3) for the first time, the rule provides a definition for the word “tributary;” and 4) the rule actually adds new exclusions for “artificial lakes and stock ponds, water-filled depressions from construction and grass swales.” The agency also mentioned that, when writing the rule, it took into account “preparing for impacts from climate change such as drought, sea level rise, stronger storms, and warmer temperatures in order to protect streams and wetlands.”

First Time Definition of “Tributary”

The EPA noted that tributaries will be defined for the first time largely by evidence of “flowing water.” For example, the agency stated that “ordinary high water marks and indications of flow is what we are looking for.” If the area in question does not meet this standard, such as gullies, then it is not covered by the rule. The agency maintained that “ditches” are not covered unless they look and function like a tributary. The agency added that while it has long asserted jurisdiction over ephemeral streams, it is not interested asserting jurisdiction over “erosional features.” On a related note, the EPA noted that the final rule also provides for definitions of “how far” in terms of nearby activities that may impact covered waters.

New Exclusions

The EPA noted that the rule actually adds new exclusions for “artificial lakes and stock ponds, water-filled depressions from construction and grass swales.” In addition, the agency noted that for the first time it will be also be excluding “artificially irrigated areas that would otherwise be dry; fields flooded for rice production; and areas that are wet for aesthetic purposes.”

Storm Sewer Systems

Prior to May 27, EPA had released a statement about its proposed rule, noting that for municipal separate storm sewer systems, the agency did not intend to change how those waters are treated and had “considered ways to address this concern.” EPA also noted that in statement that it would “continue to encourage the use of creative solutions like green infrastructure and low-impact development.” On May 27, the EPA announced that the final rule “maintains the current status of municipal separate storm sewer systems (MS4s) and encourages the use of green infrastructure to protect water quality.”

“Unique Bodies”

The agency also disclosed that the final rule protects some “unique bodies” including prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California and Texas coastal prairie wetlands when they impact downstream waters.

What's In? What's Out?

In lieu of the final rule being available, the agencies provided the fact sheets below with more detail as to coverage by the new rule:

- [Clean Water Rule Summary Factsheet \(PDF\)](#)(3 pp, 251 K)
- [Clean Water Rule Agriculture Factsheet \(PDF\)](#)(2 pp, 269 K)
- [Clean Water Rule Business Factsheet \(PDF\)](#)(2 pp, 339 K)
- [Clean Water Rule Communities Factsheet \(PDF\)](#)(2 pp, 548 K)
- [Clean Water Rule Development Factsheet \(PDF\)](#)(2 pp, 258 K)
- [Clean Water Rule Local Government Factsheet \(PDF\)](#)(2 pp, 252 K)
- [Clean Water Rule Recreation Factsheet \(PDF\)](#)(2 pp, 502 K)
- [Clean Water Rule Utilities Factsheet \(PDF\)](#)(2 pp, 227 K)

Likely Congressional Action

While Congress has made efforts to derail the Waters of the U.S. final rule, we do not expect the President to sign into law any of the proposed legislation thus far. We also do not expect any of the current legislation to be able to garner votes in order to override a potential veto. We will provide you with a copy of the final rule once it has been made public.

Tech Hire Initiative Update

The Administration launched the TechHire initiative to provide Americans with skills, through universities and community colleges, but also nontraditional approaches including “coding boot camps” and high-quality online courses that can rapidly train workers for a well-paying job, often in just a few months. It is recognized that many employers need talented people who do not require a four year computer science degree in order to fulfill the roles employers need. TechHire partnerships include:

- Using data and innovative hiring practices to expand openness to non-traditional hiring;
- Expanding models for training that prepare students in months, not years; and
- Active local leadership to connect people to jobs with hiring on ramp programs.

Twenty communities were early acceptors and committed to take action, working with each other and with national employers, to expand access to tech jobs. These original communities have over 120,000 open technology jobs and more than 300 employer partners in need of the workforce and are working to find new ways to recruit and place applicants based on their actual skills and to create more fast track tech training opportunities. The Administration is seeking more communities to participate.

The Administration is expected to launch a \$100 million H-1B grant competition by the Department of Labor to support innovative approaches to training and successfully employing low skill individuals with barriers to training and employment including those with child care responsibilities, people with disabilities, disconnected youth and limited English proficient workers, among others. This grant competition will support the scaling up of evidence based strategies such as accelerated learning, work-based learning and Registered Apprenticeships.

My Brother's Keeper Initiative

The Administration launched the My Brother's Keeper Initiative in effort to achieve lasting change in improving life outcomes for boys and men of color. On May 4, President Obama announced that the My Brother's Keeper initiative gained new support in the form of an independent non-profit called My Brother's Keeper Alliance. The new entity, which raised over \$300 million in the past year, is composed of a group of private-sector leaders and other philanthropic and community partners, including the chief executives of Sam's Club, Deloitte Consulting, PepsiCo and Sprint, among others. Concurrently, the White House MBK Task Force will continue its similar work in addition to the non-profit. We anticipate this organization will continue to work with cities and counties, and anticipate possible funding opportunities as well. Though the new MBK Alliance is a separate entity from the White House MBK Task force, President Obama is expected to transition into a major role within the new organization after leaving the presidency.

Grady Dam

We continue to stay in contact with the Army Corps of Engineers (Corps) concerning any changes regarding the potential construction of the Grady Dam. We spoke with the Corps again on June 1, and the Corps continues to reaffirm for us that they will not permit further progress on the Grady Dam project, including lake filling, until the Corps is satisfied that Grady County has achieved the required mitigation. We understand that Grady County did not follow the plan it had provided to the Corps and still needs to present a plan concerning the mitigation that is still required. At this point, Grady County may need to purchase mitigation credits or provide alternative mitigation. According to the Corps, "it is not clear at this point if Grady County will be able to fix something that was put in incorrectly and has not performed." With regard to the path forward, we inquired as to whether the permit could be revoked. Indeed, there are ways a permit could be revoked if it is evident Grady may never comply with the conditions of the permit, or the permit could be suspended during a stage of non-compliance, or the permit could be modified to the 2008 Compensatory Rule. The Corps is currently checking on the technical status of the project and will provide us with an update.

Grants

Squire Patton Boggs has sent the recently identified federal grant opportunities and due dates that may be relevant to Leon County's needs and strategic priorities:

- Corporation for National and Community Service: 2015 Martin Luther King Jr. Day of Service Grants – June 2, 2015
- U.S. Department of Justice: FY 2015 Community Policing Development (CPD) – June 19, 2015
- U.S. Department of Justice: Cops-Hiring-Program-Application-2015 – June 19, 2015
- U.S. Environmental Protection Agency: Clean Diesel Funding Assistance Program FY 2015 – June 15, 2015
- U.S. Department of Justice: OVC FY 15 Supporting Male Survivors of Violence Solicitation – June 17, 2015
- U.S. Department of the Treasury: Volunteer Income Tax Assistance 2016 – June 1, 2015
- U.S. Department of Justice: BJA FY 15 Body-Worn Camera Pilot Implementation Program

- June 16, 2015
- U.S. Department of Justice: BJA FY 15 Edward Byrne Memorial Justice Assistance Grant (JAG) Program – June 16, 2015
 - U.S. Department of Agriculture: Farmers' Market SNAP Support Grants – June 18, 2015
 - U.S. Department of Agriculture: Regional Conservation Partnership Program – July 8, 2015
 - U.S. Department of Health and Human Services: Alzheimer's Disease Initiative - Specialized Supportive Services (ADI-SSS) Project Financed Solely by 2015 Prevention and Public Health Funds (PPHF 2015) – July 6, 2015
 - U.S. Department of Justice: OJJDP FY 2015 Second Chance Act Smart on Juvenile Justice: Community Supervision – June 15, 2015
 - U.S. Department of Housing and Urban Development: Lead Hazard Reduction Demonstration (LHRD) Grant Program – June 23, 2015
 - U.S. Department of Housing and Urban Development: Lead-Based Paint Hazard Control (LBPHC) Grant Program – June 26, 2015
 - Corporation for National and Community Service: Justice AmeriCorps – June 2, 2015
 - U.S. Department of Health and Human Services: Healthy Marriage and Relationship Education Grants – July 7, 2015
 - U.S. Department of Health and Human Services: New Pathways for Fathers and Families – July 7, 2015
 - U.S. Department of Health and Human Services: Responsible Fatherhood Opportunities for Reentry and Mobility – July 7, 2015
 - U.S. Department of Agriculture: Regional Conservation Partnership Program – July 8, 2015
 - U.S. Department of Education: Office of Postsecondary Education (OPE): First in The World (FITW) Program: VALIDATION Grants – June 30, 2015
 - U.S. Department of Education: Office of Postsecondary Education (OPE): First in The World (FITW) Program: DEVELOPMENT Grants – June 30, 2015
 - U.S. Economic Development Administration: The Partnerships for Opportunity and Workforce and Economic Revitalization (POWER) Implementation Grants – July 10, 2015
 - U.S. Department of Health and Human Services: National HIV Behavioral Surveillance (NHBS) – August 3, 2015

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