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# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Betsy Shotwell

**SUBJECT:** SEE BELOW

**DATE:** January 13, 2014

Approved

Date

1/14/14

## INFORMATION

**SUBJECT: FEDERAL LEGISLATION AND REGULATORY ACTION RELEVANT TO GENERAL LOCAL GOVERNMENT INTERESTS: 2013 YEAR-END ANALYSIS AND 2014 FORECAST**

The City's Federal lobbyist firm of Patton Boggs LLP has provided the attached comprehensive update for local governments regarding actions of notable federal legislation and regulatory issues in 2013 as well as a Congressional forecast for 2014.

On December 26, 2013, President Obama signed The Bipartisan Budget Act of 2013 (H.J. Res. 59) detailed in the attached memo which established topline discretionary funding levels for FY 2014 and FY 2015, enabling the appropriations process to return to order. Now, lawmakers must decide by January 15 – the expiration of the current FY 14 budget's Continuing Resolution-- how much money should go to individual Federal departments and programs for the rest of the fiscal year. In addition, lawmakers agreed last year to suspend the debt limit until February 7, 2014. While the U.S. Treasury can continue borrowing for an additional month by using emergency powers, this will surely test whether Congress can work together to increase the nation's borrowing authority and avoid default on payments.

In addition to the above, the President is preparing his 2014 priorities for his State of the Union address scheduled for January 28 with the President's FY 2015 Budget targeted for release in March.

This Federal legislative and regulatory update reflects many of the City's legislative policy principles and priorities and our efforts to work with our Federal partners to advocate on issues of concern and interest to the City during the second year of the 113<sup>th</sup> Congress.

HONORABLE MAYOR AND CITY COUNCIL

**Subject: Federal Legislation and Regulatory Action Relevant to General Local Government Interests: 2013  
Year-End Analysis and 2014 Forecast**

January 13, 2014

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Updates are also provided in Patton Bogg's weekly "Capital Thinking Blog" found on their website: [www.pattonboggs.com](http://www.pattonboggs.com).

/s/

BETSY SHOTWELL

Director, Intergovernmental Relations

For more information, please contact Betsy Shotwell, Director, IGR at (408) 535-8270

Attachment:

Patton Boggs' January 9, 2014 report: Federal Legislation and Regulatory Action Relevant to General Local Government Interests: 2014 Year-End Analysis and 2014 Forecast.

# FEDERAL LEGISLATIVE & REGULATORY UPDATE

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**To:** City of San Jose  
**From:** Patton Boggs LLP  
**Date:** January 9, 2013  
**Subject:** Federal Legislation and Regulatory Action Relevant to General Local Government Interests: 2013 Year-End Analysis and 2014 Forecast

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This memorandum provides a comprehensive update for local governments and their partners regarding actions on notable federal legislation and regulatory issues in 2013, as well as a forecast for 2014.

The first session of the 113th Congress concluded as the least productive in the post-World War II era in terms of passing legislation. Core philosophical divides between the parties on spending and revenue - despite their mutual opposition to sequestration - combined with House Republican opposition to funding the implementation of the Affordable Care Act (P.L. 111-148; P.L. 111-152), led to a 16-day government shutdown in October. Even traditionally bipartisan "must-pass" legislation, such as the annual reauthorization of Defense programs, proved difficult to pass (a scaled-back version of the Defense Authorization was ultimately approved by both chambers and sent to the President on December 30). Conference negotiations on the Farm Bill and the Water Resources Development Act (WRDA) also failed to produce legislation in 2013. In parallel, federal agencies struggled to advance new or existing initiatives without appropriations clarity or certainty of funding.

The legislative year wasn't entirely for naught. Congress was able to approve the reauthorization and expansion of the Violence Against Women Act (VAWA) as well as reform the student loan program. Moreover, the year ended on an optimistic note with passage of The Bipartisan Budget Act of 2013 (H.J. Res. 59) (detailed below), crafted by Budget Conference Committee leaders Rep. Paul Ryan (R-WI) and Sen. Patty Murray (D-WA). The agreement establishes topline discretionary funding levels for FY 2014 and FY 2015, enabling the appropriations process to return to order, at least through the mid-term election.

The relative ease in which the budget chairs reached the bipartisan deal leaves some to believe that tailored agreements can be reached on other legislative issues in 2014, such as the Farm Bill, the Water Resources and Development Act (WRDA), MAP-21 reauthorization, immigration reform and tax policy. The Workforce Investment Act (WIA) and the Elementary and Secondary Education Act (ESEA) are also overdue for renewal and may see action in 2014. However, election years are typically the least legislatively productive because Members are focused primarily on political messaging and there are fewer legislative days available. For example, in 2014, the House is scheduled to be in session for only 97 days before its scheduled election adjournment on October 2. Hence, many of these issues may prove to be too complex and partisan for floor action this year.

The first two weeks, and certainly the first two months, of the second session of the 113<sup>th</sup> Congress will test this theory. As detailed below, Congress must resolve the FY 2014 appropriations process by January 15 and Farm Bill conferees want to see a bill brought to the floor before the January recess begins on January 17. The Finance Committees will also work in the coming weeks to retroactively extend the 55 temporary tax provisions that expired on December 31. Additionally, Senate Democrats will try to move a three-month extension of unemployment benefits that also expired at the end of 2013 (which faces Republican opposition due to the \$6.5 billion cost and lack of offsets). WRDA conferees will also resume negotiations with the intent to finalize a bill within the first quarter of 2014. Iran sanctions and National Security Agency (NSA) surveillance changes will also be debated in the near-term.

On January 3, House Majority Leader Eric Cantor (R-VA) released the monthly legislative agenda for his caucus. Priorities include: Obamacare; Appropriations; Iran; Farm Bill; WRDA; and Comprehensive Environmental Response Compensation and Liability Act (CERCLA).

Perhaps the biggest test of whether this Congress can work together will surround the necessary increase in the nation's borrowing authority which will be required in February or March.

The Administration will also be busy in the coming weeks. The President is preparing to outline his priorities for 2014 in his State of the Union address scheduled for January 28, and the Administration is completing internal development of the President's FY 2015 Budget for targeted release in March.

## ISSUE AREA REVIEW AND FORECASTS

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Despite Congress' failure to enact many bills in 2013, legislative and regulatory efforts occurred which impact local governments, some of which will serve as the basis for action in the new Congress.

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## **BUDGET/APPROPRIATIONS**

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### **FY 2014 CONTINUING RESOLUTION**

After the collapse of the FY 2014 appropriations process resulted in a 16-day government shutdown, a short-term agreement was enacted on October 17 to temporarily resume government operations and avert an impending default by extending the nation's borrowing authority (P.L. 113-46). The continuing resolution maintains funding for federal agencies at FY 2013 sequester levels.

As a result of the continuing resolution three deadlines were established:

- December 13, 2013 – the non-binding target for a budget conference committee to finish a budget agreement for FY 2014, intended to establish discretionary funding levels and avert application of sequester cuts.
- January 15, 2014 – the expiration of the FY 2014 Continuing Resolution, and also the scheduled implementation date for the next round of sequestration.
- February 7, 2014 – the projected date by which the increased debt ceiling would be reached (although this may be extended for a short period of time through accounting techniques known as “extraordinary measures” implemented by the Treasury Department to extend previous debt ceiling deadlines).

With significant differences between the total spending numbers (the Senate proposed \$1.058 trillion; the House proposed \$967 billion; and both ignored sequestration, albeit in different ways), budget conference committee members immediately tamped down any expectations of a “grand bargain.” Instead, talks aimed to establish a topline discretionary spending level for FY 2014 and develop mechanisms to mitigate the upcoming sequestration cuts.

### **BIPARTISAN BUDGET ACT OF 2013**

On December 10, Budget Conference Committee leaders Rep. Paul Ryan (R-WI) and Sen. Patty Murray (D-WA) – announced a two-year budget agreement. The budget leaders found previously unreachable middle ground by first taking both tax increases and major entitlement program cuts out of the negotiations and by ultimately agreeing on a top-line discretionary cap of \$1.012 trillion for FY 2014 that essentially splits the difference between the \$1.058 trillion proposed in the Senate Budget Resolution (S. Con. Res. 8) and the \$967 billion proposed in the House Budget Resolution (H. Con. Res. 25).

The agreement also establishes a top-line \$1.014 trillion discretionary spending cap for FY 2015; mitigates sequestration by \$63 billion over two years – \$45 billion in FY 2014 and \$18 billion in FY 2015 – split evenly between defense and non-defense activities; and includes \$85 billion in deficit reduction through a package of savings and non-tax revenue.

The \$1.012 trillion discretionary cap for FY 2014 will provide \$520.5 billion for defense, compared to current funding of \$518 billion provided through the FY 2014 Continuing Resolution (CR/P.L. 113-46) and the \$498 billion sequester-level for FY 2014 mandated by the Budget Control Act of 2011 (P.L. 112-25). Likewise, the cap will increase discretionary non-defense funding to \$491.8 billion, compared to current funding of \$468 billion and 2014 sequester-level funding of \$469 billion.

The \$1.014 trillion discretionary cap for FY 2015 will provide \$521 billion for defense and \$492 billion for non-defense discretionary spending.

On December 12, the House passed the Bipartisan Budget Act of 2013 (H.J. Res. 59) by a vote of 332-94 and the Senate followed suit with a vote of 64-36 on December 18.

### ***The Offsets***

The law includes a mixture of spending cuts and non-tax revenue provisions to account for \$85 billion in savings. In part, the bill:

- Increases Transportation Security Administration security fees;
- Increases federal employee contributions to their pension accounts by 1.3 percent;
- Modifies cost-of-living increases for military and civilian retirement benefits;
- Raises the premiums for the Pension Benefit Guaranty Corporation;
- Eliminates mandatory spending for payments to non-profit student loan servicers, requiring them to be paid in the same manner as other student loan servicers;
- Limits how much a contractor can charge the federal government for an employee's compensation to \$487,000;
- Approves the U.S.-Mexico Transboundary Agreement;
- Repeals of the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research Program;
- Makes permanent the requirement that states receiving mineral revenue payments help pay the costs of managing the leases; and
- Rescinds the balance of the Strategic Petroleum Reserve (SPR) Petroleum Account and permanently repeals the SPR's authority to accept oil from Interior's royalty-in-kind program.

### **FY 2014 OMNIBUS**

House and Senate Appropriations staff worked over the holiday recess to reconcile their respective versions of FY 2014 spending bills in order to incorporate them into a comprehensive omnibus package. Reportedly, full-year budgets for the Agriculture, Defense, Military Construction-Veterans Affairs, Transportation-HUD, Commerce-Justice-Science, and Legislative Branch bills are complete. This week, Senate Appropriations Committee Chairwoman Barbara Mikulski (D-MD), Ranking Member Richard Shelby (R-AL), House Appropriations Chairman Harold Rogers (R-KY) and Ranking Member Nita Lowey (D-NY) will meet in an effort to work through funding and/or policy issues on the remaining bills.

Prior to the collapse of the FY 2014 appropriations process and the 16-day government shutdown, the House approved four of its spending bills – Defense, Energy & Water, Homeland Security and Military Construction. All remaining bills, with the exception of Interior & Environment and Labor-HHS-Education, were approved by the full Appropriations Committee. Not a single FY 2014 spending bill was brought to the Senate floor, although all but Interior & Environment were approved by the Appropriations Committee.

Appropriators are optimistic they can resolve the funding differences between the House and Senate versions of most of the spending bills. However, the three most contentious bills – and those with the largest funding gap between the House and Senate versions – may present obstacles too difficult to

overcome: funding for healthcare reform in the Labor-HHS-Education bill; funding for Dodd-Frank regulations in the Financial Services bill, and environmental policy riders in the Interior and Environment bill. Hence, these bills are the most likely candidates to be covered through a continuing resolution as opposed to a full budget.

In order to enact legislation prior to the January 15 expiration of the current FY 2014 Continuing Resolution (P.L. 113-46), Congressional leaders need to file the omnibus this week. Given the tight timeframe – and flight delays which postponed Chairman Rogers arrival in DC - it is possible that a short-term extension of the current CR will need to be enacted to allow a few more days for appropriators to work out the kinks. When the bill reaches the chamber floors, it is expected that it will be brought up under procedures which will limit, if not altogether prevent, the introduction of amendments.

#### **DEBT CEILING**

As noted above, the FY 2014 Continuing Resolution also suspended the debt ceiling through February 7, at which point the nation's \$17.3 trillion debt limit will be raised according to the amount of debt incurred during the extension. The Department of Treasury has historically utilized "extraordinary measures" to extend its borrowing authority beyond the statutorily-imposed deadline. While the Congressional Budget Office anticipated these measures could delay default until June, Treasury Secretary Jacob Lew notified Congress in December that the debt ceiling would need to be raised by late February or early March at the latest.

The President and Democrats will likely maintain a non-negotiable position and push for a clean increase in borrowing authority while Republicans will renew calls for deficit reduction equal to the amount of the increase. House Speaker John Boehner (R-OH) has long advocated for spending cuts to offset debt limit increases and in December, House Budget Chairman Paul Ryan (R-WA), fresh from completing the budget agreement, said Republicans would seek concessions to any debt limit increase.

#### **FY 2015 BUDGET AND APPROPRIATIONS**

Because the Bipartisan Budget Act also established a \$1.014 trillion discretionary spending cap for FY 2015 (\$521 billion for defense and \$492 billion for non-defense discretionary spending), it is expected that appropriators will be able to complete at least some of the FY 2015 spending bills in regular order. The anticipated 30+ day delay in the release of the President's FY 2015 Budget proposal will also delay appropriators from beginning their work. While the non-binding statutory date for the President to submit his proposal to Congress is the first Monday in February, there is no penalty for delay. President Obama did not submit his FY 2014 budget request until April. However, appropriators will not typically hold budget hearings until they have reviewed the President's proposal.

Additionally, because the top-line spending cap is already set, it is unclear whether the House and Senate will take up FY 2015 Budget Resolutions. The House will likely do so in order to reinforce their fiscal messaging during the election year, but the Senate may skip the process, deeming it technically unnecessary.

#### **WATER RESOURCES DEVELOPMENT ACT (WRDA) / WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA)**

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The House and Senate are currently in conference negotiations on the Water Resources Development Act. In May, the Senate passed the Water Resources Development Act of 2013 (WRDA) (S. 601) by a vote of 83 to 14. In late October, the House of Representatives passed their version of the legislation –



the Water Resources Reform and Development Act of 2013 (WRRDA) (H.R. 3080) by a vote of 417 to 3. The House and Senate bills are generally aligned in their policy goals, and passage is expected in the near future. One of the major differences is that the Senate bill includes a Water Infrastructure Finance and Innovation Act (WIFIA) innovative loan program modeled on the TIFIA program for transportation projects, while the House bill does not. Senate Environment and Public Works Chairman Barbara Boxer (D-CA) has stated that she expects a WIFIA program of some form to be included in the final legislation, but negotiations remain ongoing. The House and Senate bills also take different approaches to authorizing projects in the absence of Congressional earmarks, with the Senate giving the Army Corps discretion to initiate new Feasibility Studies on its own and authorizing the construction of all projects that complete the study phase (*i.e.*, that have a completed Chief's Report) before the date of enactment. The House bill, by contrast, does not allow the Army Corps to initiate new Feasibility Studies on its own and authorizes specific projects with completed Chief's Reports instead of providing a blanket authorization. Under both the House and Senate approaches, however, projects that do not have a completed Chief's Report – but that may complete the feasibility process soon after this legislation is enacted – must wait on the next WRDA bill to be authorized for construction. The Conferees are expected to complete work on WRDA soon, and the water infrastructure community continues to expect the legislation will be passed early in 2014.

## **TRANSPORTATION**

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### **MAP-21 REAUTHORIZATION**

The current surface transportation reauthorization (Moving Ahead for Progress in the 21<sup>st</sup> Century Act/MAP-21) expires on September 31, 2014. While DOT continues the implementation process for MAP-21, Congress must start to work on a new authorization bill. These efforts will begin with a January 14 hearing in the House Transportation and Infrastructure Committee titled "Building the Foundation for Surface Transportation Reauthorization", at which Atlanta Mayor Kasim Reed is scheduled to testify on behalf of the U.S. Conference of Mayors.

Lawmakers will face the same challenge that forced them to shorten the duration of the current reauthorization – the insolvency of the Highway Trust Fund (HTF). Congress must find a way to sustain or replace the HTF, which has been partially supported in recent years through general fund infusions. A long-term revenue stream is essential, but in an election year, it will be difficult to find support for new fuel taxes, which haven't been raised since 1993, or other revenue sources.

Replacement options, such as vehicle miles traveled (VMT) have not gained much traction in recent years (mainly due to privacy concerns), but may garner interest as the situation becomes more pressing. The current gas tax brings in approximately \$35 billion/year, while the most recent transportation bill included \$54 billion in funding for one year, which is inadequate to address the nation's infrastructure needs. Public-private-partnerships (P3s) will also be a primary topic during consideration of the reauthorization.

In December, Representative Earl Blumenauer (D-OR) introduced legislation (H.R. 3636) to raise the gas tax by 15 cents per gallon over two years, nearly doubling the current rate of 18.3 cents/gallon for gasoline and 24.3 cents/gallon for diesel. He also introduced a VMT bill (H.R. 3638) to establish a national pilot of the Oregon program in which 5,000 drivers are enrolling to pay 1.5 cents per mile in lieu of the State's gas tax.

Also of note, in November legislation was introduced which would lower the gas tax to 3.7 cents/gallon and transfer nearly all federal highway and transit program authority to states over five years (S. 1702 / H.R. 3486). While these bills will not move on their own, conservatives will likely raise the idea during the MAP-21 reauthorization debate.

We anticipate Senate Environment and Public Works Chair Barbara Boxer (D-CA) and House Transportation and Infrastructure Chair Bill Shuster (R-PA) will release draft bills before summer (or earlier depending on how quickly they can wrap up the WRDA bill).

#### **NATIONAL FREIGHT POLICY**

In November, the Federal Highway Administration released its draft designation of key highways to serve in the country's "Primary Freight Network" and guide future investments, soliciting comments on the proposal. Mandated by the last surface transportation bill (MAP-21), the plan is limited by law to cover 27,000 miles, but the analysis shows more than 41,000 miles needed for a comprehensive goods movement system. The plan adds to the foundation for a more significant freight component in the upcoming reauthorization of surface transportation programs.

#### **UNMANNED AERIAL SYSTEMS/DRONES**

In December, the Federal Aviation Administration (FAA) picked six test sites for Unmanned Aerial Systems (UAS), or commercial drone aircraft, to explore how to integrate the aircraft into the nation's airspace. Specifically the test sites will explore how to set safety standards, train and certify ground based pilots, ensure that the aircraft will operate safely even if radio links are lost and avoid collisions. Competition for the designation was fierce between the 25 applicants which many viewed as an economic development boon to nurture a new industry.

The six sites are: the State of Nevada, the University of Alaska (which plans to test in Oregon, Hawaii and Alaska), the North Dakota Department of Commerce, Texas A&M University in Corpus Christi, New York and Virginia.

#### **TAX ISSUES**

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##### **TAX EXTENDERS AND UNEMPLOYMENT BENEFITS**

In the coming weeks, Congress will grapple with whether to retroactively preserve 55 tax provisions which expired on December 31. These tax extenders range from the research and development tax credit to the mortgage debt relief deduction to accelerated depreciation to spur business capital investments. They also include the New Markets Tax Credit extension, renewal energy tax credits, and transit benefits. *See attachment for full list of expired tax provisions.*

More immediate, however, is whether to extend emergency unemployment insurance for the long-term unemployed, which expired at the end of December and eliminated support to 2.1 million people. Senate Democrats were successful in a cloture vote earlier this week and will likely hold a final vote on the measure soon. Republicans oppose another extension, citing lower unemployment rates justify a return to the regular six months of aid and pushing for an offset to the \$6.5 billion cost.

##### **TAX REFORM AND THE TAX-EXEMPT STATUS OF MUNICIPAL BONDS**

Tax reform remained a topic of legislative discussion throughout 2013 and this will continue in 2014. In late November, Senate Finance Committee Chairman Max Baucus (D-MT) released three discussion

papers focused on changes to international business taxes, administrative processes, and depreciation rules, with stakeholder feedback sought by mid-January.

Many thought that 2014 would bring about an overhaul of the tax code as a legacy initiative for Chairman Baucus and House Ways and Means Committee Chairman Dave Camp (R-MI), because of retirement and chairmanship term-limits, respectively. However, the nomination of Chairman Baucus as ambassador to China will likely derail any notion of comprehensive reform. A piecemeal approach is possible in 2014 with broader discussions expected in the 114<sup>th</sup> Congress when Senator Ron Wyden (D-OR) and possibly Paul Ryan (R-WI) will lead the committees.

While the dim prospect for comprehensive tax reform in 2014 may be good news for municipal bonds, the threat to eliminate or cap the tax-exempt status of the bonds will likely continue, despite significant advocacy and education efforts. First raised by the Simpson-Bowles Commission in 2010, several proposals, including the President's FY 2014 Budget proposal and the Senate's FY 2014 Budget Resolution have aimed to alter the tax-exempt status of municipal bonds.

#### **ONLINE SALES TAX (MARKETPLACE FAIRNESS ACT)**

The Marketplace Fairness Act, the bill that would allow states and local governments to collect online sales tax, stalled in Congress in 2013. In May, the legislation passed the Senate by a bipartisan vote of 69-27 (S. 743). However, House Judiciary Chairman Bob Goodlatte (R-VA) declined to hold any hearings on the Senate bill, or bring it up for a committee vote. Instead, he introduced a set of "principles" for his own online sales tax collection bill in September, but has not explored the issue further.

Advocates continue to press Chairman Goodlatte and House leadership to pass the Marketplace Fairness Act this year, as a standalone bill or as part of a larger legislative package. Moreover, the recent move by the Supreme Court to decline consideration of the opposition to the New York internet sales tax law puts additional pressure on Congress to act.

#### **DIGITAL GOODS AND SERVICES AND INTERNET TAX FREEDOM LEGISLATION**

Representative Lamar Smith reintroduced the Digital Goods and Services Tax Fairness Act (H.R. 3724), which he intends to try to move through the Judiciary Committee (he was the former Chair) early this year. It would prohibit taxes on music, pictures and other digital goods and services sold over the internet.

This legislation was marked up in 2012 but did not advance further due to opposition by the National Governors Association and other organizations. It was estimated that lost revenue to states and localities would amount to about \$3 billion in forgone sales tax in the first year. The NGA maintained that it would also have infringed on states' authority by effectively barring the sole use of regulatory or administrative means to shape sales taxes on digital goods. The new legislation dropped language that would have required states to use a legislative route rather than rely on administrative authority. This version says that a state may tax only sales and digital goods and services to customers with a tax address within that state and that states must not impose multiple taxes on digital goods. The bill defines digital goods as sounds, images, data and facts maintained in digital form. Internet access is not a digital good according to the legislation. The legislation explicitly says that hotel intermediary services aren't considered digital services. Thus, it does not address whether hotel rooms purchased through such services should be subject to sales tax on the price a consumer paid or on the wholesale price the service paid earlier.

A companion bill, S. 1364, has been introduced in the Senate by Senator Ron Wyden (D-OR). Senator Wyden is widely believed to be in line to become Chairman of the Senate Finance Committee should Senator Baucus be nominated and approved as Ambassador to China.

With both the Marketplace Fairness Act and the Digital Goods legislation pending before the House Judiciary Committee, there has been a longstanding concern that the two bills might be paired to move them forward, but there has been no notice of that to date.

Senator Wyden also introduced the Internet Tax Freedom Act (S. 1431) which would permanently extend the ban on assessing state and local taxes on internet access providers (the current ban expires on November 1, 2014).

## **FARM BILL**

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Although the last farm bill expired on October 1, Congress is still working to reauthorize the legislation. In June, the Senate passed its version of the farm bill (S. 954), which included \$4 billion in cuts to the Supplemental Nutrition Assistance Program (SNAP). The House, meanwhile, failed to pass a comprehensive farm bill due to a lack of support for its proposed SNAP cut of \$20 billion. House leadership then split the bill into an agriculture bill (H.R. 2642), which passed in July, and the nutrition title (H.R. 3102), which included \$39 billion in SNAP cuts and passed in September.

Since the House and Senate farm bill conferees held their first public meeting on October 30, the principal negotiators have been hard at work to find a compromise on contentious issues such as crop insurance, SNAP funding, food labeling provisions and farm subsidies. Although no agreement had been reached by the time Congress adjourned for its December recess, negotiators have since reportedly reached a deal on SNAP funding. Although they have not made the exact number public, many believe that the cut will be between \$8 billion and \$9 billion. This number is substantially below the \$39 billion cut that the House passed earlier this year, which poses a potential threat for the agreement's passage.

The conference committee is meeting this week to negotiate the remaining issues, and an agreement is expected to be announced soon. The Department of Agriculture assured Senate Majority Leader Harry Reid (D-NV) that it could stave off the effects of the expiration of the bill until early February. As such, floor consideration of the bill is a priority in both the House and the Senate. The House will likely schedule up-and-down votes for key provisions such as SNAP and farm subsidies. Other amendments may also receive separate votes.

## **MANUFACTURING INITIATIVES**

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### **NATIONAL NETWORK FOR MANUFACTURING INNOVATION**

As part of the President's proposed National Network for Manufacturing Innovation (NNMI), the White House launched a competition in May for three new Institutes for Manufacturing Innovation (IMI). By design, the NNMI initiative would create a network of IMIs to promote manufacturing innovation. Although it has been included in the President's FY 2013 and 2014 budgets, the NNMI initiative is subject to the Congressional appropriations process and has not been funded in recent years. Despite the lack of appropriations, the Obama Administration decided to move forward with competitions for the three new IMIs using \$200 million of existing funds from the Department of Defense (DOD) and the

Department of Energy (DOE). DOD has taken the lead to establish two new institutes in Digital Manufacturing and Design Innovation (DMDI) and Lightweight and Modern Metals Manufacturing Innovation (LM3I). DOE's institute will focus on Clean Energy Manufacturing to support semiconductor power electronic devices. Applications for the DOE competition were due on August 29 and the DOD applications due on October 31. Award announcements are expected to be made in the coming weeks.

#### **INVESTING IN MANUFACTURING COMMUNITIES PARTNERSHIP**

On December 10, the Economic Development Administration (EDA) announced a competition to designate up to 12 communities as "Manufacturing Communities" through the Investing in Manufacturing Communities Partnership (IMCP). ICMP is a new government-wide initiative that will help communities cultivate an environment for businesses to create well-paying manufacturing jobs and accelerate the resurgence of manufacturing. It is designed to reward communities that demonstrate best practices in attracting and expanding manufacturing by using long-term planning that integrates targeted investments in workforce training, infrastructure, research and other key areas. Applications for this competition are due March 14, 2014.

#### **FCC WIRELESS RULEMAKING**

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The Federal Communications Commission (FCC) has commenced a proceeding to consider adopting new rules that could dramatically undermine local authority to control the siting of wireless facilities. Comments to the proposed rulemaking, *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, must be filed by February 3, 2014, with reply comments due by March 5, 2014.

The rulemaking was prompted by provisions included in the Hurricane Sandy Relief package (PL 113-36) which stated that a state or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of the tower or base station. According to the FCC proposed rulemaking, an eligible facilities request is defined to mean any request for modification of an existing wireless tower or base state involving colocation of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment. There is concern that a potential impact of this proposed rule is that it might force local governments to approve installations that have substantial adverse effects on their communities and establish precedents and practices that are difficult to correct. The proposed rule might also force communities into litigation to defend local decisions.

#### **ENVIRONMENT AND ENERGY ISSUES**

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##### **CLIMATE CHANGE EXECUTIVE ORDER**

President Obama issued an Executive Order in November intending to help states mitigate the effects of climate change. The Executive Order directs federal agencies to promote: information sharing at all levels of government; "risk-informed decision-making"; adaptive learning; and preparedness planning. Additionally, the Executive Order also established a Council on Climate Preparedness and Resilience, and requires federal agencies to take a series of actions in coordination with the Council to, among other tasks: identify and remove barriers to increase American resilience to climate change, reform federal policies, fund programs that increase vulnerability of U.S. institutions to the impact of climate change,

and identify opportunities to encourage investments in “climate-resilient” infrastructure and technology.

In December, the President’s Task Force on Climate Preparedness and Resilience met to identify ways to prepare communities for the impact of climate change. The Task Force is currently composed of 26 state, local and tribal officials who are focusing on removing barriers to resilient investments, modernizing federal grant and loan programs to better support local efforts, and developing the information and tools needed to prepare with regard to climate change. Local government officials participating on the Task Force include Philadelphia Mayor Michael Nutter, Houston Mayor Anise Parker, LA Mayor Eric Garcetti, Salt Lake City Mayor Ralph Becker and Grand Rapids Mayor George Heartwell, among others.

#### **EPA CARBON EMISSIONS RULEMAKING**

Under the President’s Executive Order, the U.S. Environmental Protection Agency (EPA) is focused on reducing carbon emissions from power plants. In an effort to accomplish this, the EPA held listening sessions and has proposed several rulemakings. Currently, there are two negotiated rulemakings out for comment regarding carbon emissions in new power plants and revision of renewable fuel standards. A third rulemaking is scheduled for June 2014 regarding carbon emissions in existing power plants. The government closure delayed the process, but listening sessions, intended to inform the agency’s decision making process, are currently ongoing.

There has been considerable commentary regarding the carbon emissions rulemaking from both stakeholders and Members of Congress. Representative Whitfield (R-KY), Chair of the House Energy and Commerce Subcommittee on Environment and the Economy, is drafting legislation targeting the EPA’s proposed rulemaking. Rep. Whitfield and others on the Subcommittee, expressed concern regarding the EPA’s proposed greenhouse gas New Source Performance Standards for new power plants that would require the installation of carbon capture and storage technologies which they view as commercially unviable. They believe the proposed standards overstep the EPA’s legal authority and are requesting the proposed rule to be withdrawn. While Rep. Whitfield has held a hearing and circulated draft legislation, there has been no official bill entered into the record.

House Science Committee Chair Lamar Smith (R-TX) has also weighed in on several of these matters. Most recently, writing a letter to EPA Administrator Gina McCarthy criticizing the quality of the EPA’s scientific justifications used to support carbon capture sequestration as the best available control to reduce greenhouse gas emissions at new coal-fired power plants. While it is unlikely that carbon capture will be a component of the rulemaking process, Chairman Smith sought to raise these concerns with the agency.

#### **REDUCING EXCESSIVE DEADLINE OBLIGATIONS ACT**

Today the House is expected to consider the Reducing Excessive Deadline Obligations Act (H.R. 2279). This legislation consolidates three bills with strong support by the Energy and Commerce Committee last year dealing with the Solid Waste Disposal Act (SWDA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and compliance issues between the federal government and state governments. Among other provisions, the legislation seeks to: (1) amend 42 U.S.C. § 6912(b), which requires the Environmental Protection Agency (“EPA”) to review regulations promulgated under the SWDA every three years, to instead permit the EPA to review regulations as necessary; (2) require the President to consult with state governments before initiating a removal action under CERCLA; and (3) amend CERCLA to require all federally owned facilities to comply with state hazardous substance

regulations. Currently, H.R. 2279 has two amendments in order but should pass the House with a large margin, while it is expected to die in the Senate.

#### **“WATERS OF THE US” DEFINITION**

In September the Environmental Protection Agency (EPA) filed a draft rule aimed to clarify the scope of “waters of the U.S.” under the Clean Water Act (CWA). In recent years, following the last of three Supreme Court decisions on the issue, various legislative and agency efforts have been made to provide guidance to define bodies of water which fall under the jurisdiction of the CWA. In 2011, EPA and the Army Corps of Engineers submitted joint guidance on case-by-case determination of which waters met the test outlined by Justice Anthony Kennedy in *Rapanos v. United States*. Under his theory, a body of water that had a “significant nexus” to waters that were reasonably navigable, would fall under the definition. The guidance was held up in review at the Office of Management and Budget (OMB). Likewise, legislators were also restricted when the EPA was funded under a continuing resolution instead of a full-year budget, preventing any policy or guidance language.

As such, EPA decided to follow a rulemaking process and submitted the rule to OMB for interagency review in the fall. Simultaneously the agency released and requested comment on a draft report “Connectivity of Streams and Wetlands to Downstream Waters: a Review and Synthesis of Scientific Evidence”. EPA stated the proposed rule is focused on “clarifying protection of the network of smaller waters that feed into larger ones, to keep downstream water safe from upstream pollutants” as well as to protect wetlands that store and filter water. According to EPA the rule does not propose to amend existing regulatory exemptions and exclusions.

#### **EPA LEAD REQUIREMENTS IMPACT ON FIRE HYDRANTS**

In October, the Environmental Protection Agency (EPA) issued a guidance document to municipalities noting that fire hydrants would be included under the lead pipe requirements that went into effect on January 4. The new EPA standards set a maximum of 0.25 percent lead concentration in pipes and fittings used for drinking water, reduced from the current standard that allows 8 percent lead concentration. Given that most local governments were not prepared to be able to meet these standards by the January 4 deadline, the House passed the Community Fire Safety Act of 2013 ( H.R. 3588) by a 384-0 vote on December 2 to amend the Safe Drinking Water Act to exempt fire hydrants from the EPA’s lead pipe requirements.

With the overwhelming support of the House on this issue, the EPA announced on December 16 that if Congress didn’t act they would revise the guidance to exclude fire hydrants, noting that fire hydrants are not widely used as a potable source of water. One day later the Senate also passed H.R. 3588 by unanimous consent in order to ensure that the exemption was specifically for fire hydrants.

#### **FLOOD INSURANCE/BIGGERT WATERS 12**

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In July 2012, the Biggert-Waters Flood Insurance Act of 2012 (P.L. 112-141), known as BW-12, passed as part of the Moving Ahead for Progress in the 21st Century Act transportation reauthorization. BW-12 reauthorized the National Flood Insurance Program (NFIP) until September 30, 2017 with an eye to moving towards more “risk based” rates and restoring solvency to the program, which was approximately \$20 billion in debt. The bill passed before Hurricane Sandy devastated New Jersey and New York, creating massive flooding.

Flood insurance is guaranteed by the federal government, and most property owners in flood prone areas (both coastal and river related) are required to carry it. The rates are set according to a property's location on map drawn by the Federal Emergency Management Agency (FEMA). FEMA's maps are based on complex storm modeling and are the agency's estimates of each area's chance of flooding. BW-12 phases out grandfathered rates and moves to risk based rates for most properties when a new Flood Insurance Rate Map (FIRM) is adopted. This means that properties that were built in accordance with all FEMA requirements and applicable codes may now be considered out of compliance. It is estimated that under BW-12 some rates may go from hundreds of dollars annually to twenty to forty thousand dollars annually. The potential impact of these rates is that properties will become uninsurable, property values will decline, the real estate market will be impacted, and local governments could lose significant tax base.

The Senate will shortly take up the Homeowner Flood Insurance Affordability Act (S. 1846), introduced by Senator Robert Menendez (D-N.J.) which would delay certain premium increases required by BW-12 until FEMA can complete an affordability study and Congress can consider the recommendations of that study, which is expected to take about four years. This bill is supported by local government advocacy groups as well as the National Association of Homebuilders, National Association of Realtors and the American Bankers Association. The sponsors of the bill believe that they have the 60 votes required for a cloture vote and that the bill will pass the Senate.

Chances of passage in the House are less predictable. Numerous bills have been introduced in the House, but H.R. 3693, introduced by Representative Bill Cassidy (R-LA), is the leading contender for floor time. It takes a narrower approach and would delay rate hikes until March 1, 2015. Conservatives in the House are opposed to reversing the premium increases which help restore fiscal health the NFIP. It is expected that H.R. 3693 will be taken up in the next few weeks.

## **CYBERSECURITY**

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### **EXECUTIVE ACTION**

As part of the President's cybersecurity Executive Order (EO) issued in February 2013, the National Institute of Standards and Technology (NIST) is required to develop a Cybersecurity Framework made up of voluntary standards for critical infrastructure owners and operators. NIST has held five separate workshops throughout the year to receive feedback from stakeholders on the Framework's development and released a draft version in October for the public to review. Comments on the preliminary Framework were due on December 13. NIST is currently in the process of reviewing these comments and plans to release a final version of the Cybersecurity Framework by February 2014, as required by the Executive Order.

### **CONGRESSIONAL ACTION**

In April, the House passed four pieces of legislation that address cybersecurity issues, though none of these bills have seen any action since that time. In December, the House Homeland Security Committee introduced the *National Cybersecurity and Critical Infrastructure Protection Act* (H.R. 3696) which Committee leaders have been working on for a number of months. The bill seeks to codify and clarify the cybersecurity roles and responsibilities of the Department of Homeland Security (DHS) with the goal of improving information sharing between the federal government and the private sector. It is likely that the Committee will mark up this bill at the beginning of 2014.



The Senate is currently working at a much slower pace to develop and draft its cybersecurity legislation this Congress. In July, the Senate Commerce, Science, and Transportation Committee marked up its legislation, the Cybersecurity Act of 2013 (S. 1353). The bill would give authority to NIST to facilitate and support the development of voluntary, industry-led cyber standards and best practices for critical infrastructure. The legislation also addresses cybersecurity workforce training education, and research and development programs. The Senate Homeland Security and Governmental Affairs Committee is also working on legislation related to cybersecurity and will likely introduce a more comprehensive bill next year that covers cyber issues under the jurisdiction of DHS.

## **WORKFORCE INVESTMENT ACT REAUTHORIZATION**

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Reauthorization of the Workforce Investment Act (WIA) is long overdue, with the last major authorization bill passed in 1998. The House passed its version of the Workforce Investment Act, the Supporting Knowledge and Investing in Lifelong Skills (SKILLS) Act (H.R. 803) in March. The Skills Act aims to update the current workforce investment system by streamlining federal programs and creating a single source of employment support for employers and job seekers. The measure proposes to:

- Eliminate and streamline 35 current employment and training programs and create a Workforce Investment Fund to serve as a single source of support for employers, workers, and job seekers.
- Strengthen the role of employers in workforce training decisions by eliminating 19 federal mandates governing workforce investment board representation.
- Allow state boards, in consultation with the governor, to designate local workforce areas.
- Require state and local workforce investment leaders to outline the strategies they will implement to serve at-risk youth, individuals with disabilities, veterans, and other workers with unique challenges to employment.
- Establish common performance measures and require an independent evaluation of programs at least once every five years.

With the White House and most Congressional Democrats opposed to the House bill, the Senate Health, Education, Labor and Pensions (HELP) Committee advanced its own WIA bill (S. 1356) in July, but it has not yet been brought to the floor for consideration. The Senate bill would:

- Maintain the business majority, but slightly reduce the size of local boards.
- Require local boards to submit a comprehensive four-year plan to the governor.
- Empower state and local workforce agencies to tailor training programs based on specific needs.
- Emphasize use of real-world data, performance indicators, and evaluations.
- Create a 10-state pilot program to test new systems integration and alignment measures aimed at increasing performance outcomes.
- Establish six common state performance measures for core programs.

## **PATENT REFORM**

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In early December, the House of Representatives passed Judiciary Chairman Bob Goodlatte's Innovation Act (H.R. 3309) by an overwhelming margin of 325-91. The committee chairman had pledged to make patent reform a priority in 2013, and the bill's passage was the culmination of a year's worth of hearings and stakeholder negotiations. In summary, the Innovation Act aims to curtail abusive litigation from "patent trolls" by creating a loser-pays system for patent infringement lawsuits; limiting the discovery process; requiring greater specificity in patent suits; increasing transparency regarding patent ownership, and creating protections for end-users.

Senate Judiciary Chairman Pat Leahy (D-VT), who authored the last patent reform overhaul in 2011, has taken a slower approach to addressing patent assertion entities. He introduced the Patent Transparency and Improvements Act (S. 1720) in November 2013, which differs from the Innovation Act in that it focuses on demand letters sent by patent assertion entities, rather than the ensuing litigation. It requires plaintiffs to disclose patent owners; creates educational resources for businesses targeted in patent suits; requires the Patent and Trademark Office and Post-Grant review program to use the same standard of interpretation; and encourages the Federal Trade Commission to target the practice of sending fraudulent demand letters.

Chairman Leahy has pledged to take an open approach to marking up and shaping his bill, and is encouraging feedback from stakeholders and other Senators. Meanwhile, the members of his committee are not sitting idly. Several have introduced their own bills, including Orrin Hatch (R-UT), John Cornyn (R-TX), and Chuck Schumer (D-NY). The Senate is expected to hold its own series of hearings on the issue in 2014.

Anticipated decisions from the Supreme Court may establish criteria for when the losing party in a patent infringement case must pay costs incurred by the winning party as well as whether certain computer-assisted inventions may be exempt from patents. These decisions may impact the pace and substance of federal legislation.

## **PENSION REFORM**

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The Pension Protection Act (PPA) is set to expire at the end of 2014, which will bring a heightened focus to state and local pension reform in the coming months. With many State and local government-sponsored pension plans facing tremendous instability and funding shortfalls, it is likely that Congress will consider changes to accounting rules and overall pension funding policy when it considers the PPA.

## **IMMIGRATION REFORM**

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In June, the Senate approved a comprehensive immigration reform bill (S. 744) which would reform visa programs, tighten border security, require employers to verify workers' eligibility, and create a 13-year pathway for citizenship for undocumented immigrants. An amendment to the State Criminal Alien Assistance Program (SCAAP) was adopted during the committee markup of the bill that would allow reimbursements to local governments for incarceration of some undocumented and status-undetermined individuals.

The House took a piecemeal approach with several committees passing individual bills on issues such as border security and high-tech visas (H.R. 1417; H.R. 1772; H.R. 1773; H.R. 2131; H.R. 2278). Some of

these bills may be brought to the House floor in 2014, but Speaker John Boehner (R-OH) ruled out any conference with the Senate bill.

Immigration may continue to be on the Congressional agenda for 2014, but it may get too politically difficult for some Members to support any immigration legislation as the mid-term elections approach.

#### **PAYMENT IN LIEU OF TAXES (PILT) PROGRAM**

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The Payment in Lieu of Taxes (PILT) program within the U.S. Department of Interior (DOI) allows for federal payments to local governments to help offset losses in property taxes due to having non-taxable federal lands within their boundaries. PILT payments help local governments carry out vital services such as firefighting, police protection, construction of public schools and roads, search-and-rescue operations and related activities. The PILT program has been in existence since the mid-1970s.

In 2008, the PILT program was changed from a discretionary to mandatory expenditure funded by a five-year offset which ran out in 2012 (for FY 2013). In FY 2013, one year of funding for the PILT program was included as an add-on to the MAP 21 legislation (surface transportation reauthorization). Officially, the PILT program expired on January 1, 2014. However, with regard to the still unresolved FY 2014 appropriations, there is an effort underway to restore the PILT funding. In addition, there is a movement in Congress to try to obtain a permanent long-term funding source or a multi-year renewal for the PILT program in the FY 2015 Interior-Environment appropriations bill.

## Tax Extenders Expired as of December 31, 2013

### Individual:

- Credit for health insurance cost for eligible individuals
- Extension of deduction for certain expenses of elementary and secondary school teachers
- Extension of exclusion from gross income of discharge of qualified principal residence indebtedness
- Extension of parity for exclusion from income for employer-provided mass transit and parking benefits.
- Extension of mortgage insurance premiums treated as qualified residence interest.
- Extension of deduction of State and local general sales taxes
- Extension of special rule for contributions of capital gain real property made for conservation purposes.
- Extension of above-the-line deduction for qualified tuition and related expenses.
- Extension of tax-free distributions from individual retirement plans for charitable purposes.

### Business:

- Extension of research credit.
- Extension of temporary minimum low-income tax credit rate for non-federally subsidized new buildings.
- Extension of housing allowance exclusion for determining area median gross income for qualified residential rental project exempt facility bonds.
- Extension of Indian employment tax credit.
- Extension of new markets tax credit.
- Extension of railroad track maintenance credit.
- Extension of mine rescue team training credit.
- Extension of employer wage credit for employees who are active duty members of the uniformed services.
- Extension of work opportunity tax credit.
- Extension of qualified zone academy bonds.
- Extension of classification of certain race horses as 3-year property.
- Extension of 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements.
- Extension of 7-year recovery period for motorsports entertainment complexes.
- Extension of accelerated depreciation for business property on an Indian reservation.
- Extension of bonus depreciation.
- Extension of enhanced charitable deduction for contributions of food inventory.
- Extension of increased expensing limitations and treatment of certain real property as section 179 property.
- Extension of election to expense mine safety equipment.
- Extension of special expensing rules for certain film and television productions.
- Extension of deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.
- Extension of modification of tax treatment of certain payments to controlling exempt organizations.

- Extension of treatment of certain dividends of regulated investment companies.
- Extension of RIC qualified investment entity treatment under FIRPTA.
- Extension of subpart F exception for active financing income.
- Extension of look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company rules.
- Extension of temporary exclusion of 100 percent of gain on certain small business stock.
- Extension of basis adjustment to stock of S corporations making charitable contributions of property.
- Extension of reduction in S-corporation recognition period for built-in gains tax.
- Extension of empowerment zone tax incentives.
- Extension of temporary increase in limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands.
- Extension of American Samoa economic development credit.
- Election to accelerate AMT credit in lieu of bonus depreciation

**Energy:**

- Extension of credit for energy-efficient existing homes.
- Extension of credit for alternative fuel vehicle refueling property.
- Extension of credit for 2- or 3-wheeled plug-in electric vehicles.
- Extension of second generation biofuel producer credit.
- Extension of incentives for biodiesel and renewable diesel.
- Extension of production credit for Indian coal facilities placed in service before 2009.
- Extension of credits with respect to facilities producing energy from certain renewable resources.
- Extension of credit for energy-efficient new homes.
- Extension of credits for energy-efficient appliances.
- Extension of special allowance for second generation biofuel plant property.
- Extension of placed in service date for election to expense certain refineries.
- Extension of energy efficient commercial buildings deduction.
- Extension of special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities.
- Extension of alternative fuels excise tax credits.