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City Manager's Office

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Betsy Shotwell

**SUBJECT:** SEE BELOW

**DATE:** May 5, 2014

Approved

Date

5/5/14

## INFORMATION

**SUBJECT: PATTON BOGGS FEDERAL LEGISLATIVE AND REGULATORY ACTION RELEVANT TO GENERAL LOCAL GOVERNMENT INTERESTS: JANUARY – APRIL 2014**

The City's Federal lobbyist firm of Patton Boggs LLP has provided the attached comprehensive update for local government regarding actions of notable federal legislation and regulatory issues thus far in 2014.

Following are relevant updates on key items included in Patton Boggs' Federal Legislative and Regulatory Action memorandum dated April 23, 2014. Patton Boggs's efforts with regard to City-specific issues will be provided under separate cover.

### Minimum Wage Legislation / Save America Workers Act (H.R. 2575)

As anticipated, an April 30 procedural vote on the Senate proposal to raise the minimum wage from \$7.25 to \$10.10 within two years failed. Moderate Senator Susan Collins (R-ME) is working on a compromise that is reported to include an increase to \$9.00 as well as small business tax incentives and a repeal of the 30-hour/week full-time standard established by Obamacare to restore the 40-hour standard for implementation of the employer mandate (similar to H.R. 2575).

### FY 2015 Appropriations

The House passed the first two FY 2015 appropriations bills – Military Construction/Veterans Affairs (MilCon) (4/30) and Legislative Branch (5/1). On April 30, the House Commerce/Justice/Science (CJS) appropriations subcommittee approved its FY 2015 spending bill, which proposed reductions to local law enforcement programs, particularly COPS (analysis provided by Patton Boggs on April 29).

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The House Transportation/Housing and Urban Development appropriations subcommittee will markup its FY 2015 spending bill on May 7 and the full appropriations committee will consider the CJS bill on May 8.

Senate appropriations action remains slated for late May with the MilCon and Agriculture bills first up for consideration.

#### Water Resources Development Act (WRDA)/WIFIA

Conference negotiators will unveil their final WRDA agreement any day, with floor votes to follow shortly thereafter. According to committee staff, the WIFIA program will be included in the reauthorization.

#### Administration's MAP-21 Reauthorization Proposal

On April 29, Department of Transportation Secretary Foxx submitted the Administration's long-term transportation bill to Congress, the GROW AMERICA Act (analysis provided by Patton Boggs on May 5).

#### Tax Extenders

On April 29, the House Ways and Means Committee approved its first piecemeal bill, making six tax extenders permanent (H.R. 4438), most notably the research and development tax credit. The House is scheduled to vote on the bill this week, while the Senate may bring up its comprehensive package (extending all 55 of the tax provisions for two years) before the end of May. The divergent strategies most likely mean the extenders will not be renewed in any fashion until after the election.

#### "Waters of the US" Definition

On April 25, EPA hosted a conference call with local government stakeholders to discuss the proposed "Waters of the US" regulation.

On May 8, the House Transportation and Infrastructure Committee's Subcommittee on Water Resources and Environment will hold a hearing: "Potential Impacts of Proposed Changes to the Clean Water Act Jurisdictional Rule."

#### Promise Zones Initiative

On April 29, the Department of Housing hosted a webinar on the Promise Zones initiative.

#### Patent Reform

The Senate Judiciary Committee again postponed last week's scheduled markup of patent reform legislation over continuing conflicts on "fee-shifting". Last week, the Supreme Court issued its ruling on fee-shifting, changing the way attorneys' fees can be awarded in "exceptional" patent cases (analysis provided by Patton Boggs on May 5).

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### Housing Finance Reform

The Senate Banking Committee recessed its April 29 markup of the Housing Finance Reform and Taxpayer Protection Act (S. 1217) following opening statements. Committee leaders are negotiating tweaks to the bill which they hope will generate additional support within the committee, which will increase the bill's chances for passage on the Senate floor.

### Workforce Development

On April 24, the Departments of Labor, Education, and Health and Human Services released a Request for Information (RFI) soliciting stakeholder feedback on how to better align federal grants and services in order to develop high-quality career pathways programs for job training participants.

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.

Updates are also provided in Patton Boggs' 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' April 23, 2014 report: Federal Legislation and Regulatory Action Relevant To General Local Government Interests: January – April 2014.

# FEDERAL LEGISLATIVE & REGULATORY UPDATE

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**To:** City of San Jose  
**From:** Patton Boggs LLP  
**Date:** April 23, 2014  
**Subject:** Federal Legislation and Regulatory Action Relevant to General Local Government Interests: January – April 2014

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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 thus far in 2014. Patton Boggs' efforts with regard to City-specific issues will be provided under separate cover.

Congress is currently in recess until April 28. Shortly before the recess, the Senate approved a five-month extension of unemployment benefits (H. R. 3979). The bill would retroactively restore benefits to December 28 and continue them through May 31. Senate Republican co-sponsors and House Republicans from states with high jobless rates are urging House leaders to bring the bill up for floor debate in the House, but Speaker John Boehner (R-OH) believes the Senate bill is "unworkable". It is possible that the House will consider alternatives after the recess, such as extending benefits going forward, but not making them retroactive, and using the bill as a vehicle for other priorities.

The Senate plans to take up legislation to increase the minimum wage (S. 2223) when it returns, although there do not appear to be a sufficient number of Republican votes to support cloture. A recent Congressional Budget Office study reported that the proposal could lead to the loss of 500,000 jobs. Thus, the first bill likely to see a vote on the Senate floor after recess will be the tax extenders package recently approved by the Finance Committee (detailed below in the Tax section).

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## **BUDGET/APPROPRIATIONS**

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### **FY 2014 OMNIBUS**

Following the December 2013 enactment of the Bipartisan Budget Act (P.L. 113-67) through which topline discretionary spending levels for FY 2014 and FY 2015 were established, appropriators were able to negotiate a \$1.1 trillion FY 2014 Omnibus including full-year discretionary budgets for all federal departments (H.R. 3547/P.L. 113-76). The measure was signed by the President on January 17.

By foregoing the use of continuing resolutions for any agencies, appropriators effectively provided new funding and guidance for programs that have been frozen for years due to political gridlock while preventing another round of automatic spending cuts, or sequestration.

*Patton Boggs provided a detailed analysis of the FY 2014 omnibus on January 15.*

### **DEBT CEILING**

The extension of the nation's borrowing authority was expected to serve as a test for whether the congeniality of the Bipartisan Budget Act would continue or whether Congress was merely holding out for a bigger battle over the debt ceiling. It proved to be neither. In order to secure sufficient votes for passage, House Speaker John Boehner (R-OH) was forced to bring a clean debt ceiling increase to the floor with no deficit reduction provisions, while Senator Ted Cruz (R-TX), a tea party conservative, attempted a filibuster which was shut down by his own party in a 67-31 cloture vote. On February 12, a bill was approved that extends the government's borrowing authority through March 2015.

### **PRESIDENT OBAMA'S FY 2015 BUDGET PROPOSAL**

On March 4, President Obama submitted his FY 2015 Budget proposal to Congress requesting \$3.9 trillion to fund government agencies through FY 2015.

The budget includes many elements previously announced by the White House, including the four-year transportation bill unveiled by the President in late February (detailed below in the Transportation section). However, as is generally the case, the President's budget is unlikely to produce any legislative action, but will serve as the fiscal road map for Democrats heading into the mid-term elections.

In his request, the President utilized the topline base discretionary spending cap of \$1.014 trillion established in the Bipartisan Budget Act (P.L. 113-67). Thus, for the first time in years, the President and Congress are kicking off the budget season aligned in their topline discretionary spending level.

The President supplemented the \$1.014 trillion discretionary budget with an additional \$56 billion Opportunity, Growth, and Security Initiative (OGSI) which would be split equally between defense and non-defense funding. The funding was offset through increased fees and tax reform measures impacting the wealthy, thus, is not expected to receive consideration by Congress.

*Patton Boggs provided a detailed analysis of the President's FY 2015 Budget Proposal on March 10.*

### **FY 2015 HOUSE BUDGET RESOLUTION**

On April 10, the House approved the House Budget Committee Chairman Paul Ryan's (R-WI) non-binding FY 2015 Budget Resolution, the Path to Prosperity (H. Con. Res. 96) with twelve Republicans joining the entire Democratic Caucus in voting against the measure.

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The resolution maintains the \$1.014 trillion FY 2015 discretionary spending cap established in the Bipartisan Budget Act (P.L. 113-67). Chairman Ryan also keeps the separate caps set for defense (\$521 billion) and non-defense (\$492 billion) programs in FY 2015, but proposes a subsequent shift of approximately \$50 billion per year from domestic to defense spending, ultimately increasing defense spending by \$482 over ten years and reducing nondefense spending by \$791 billion below sequestration levels over the same time period. The resolution provides \$5.1 trillion in federal spending reductions over the next 10 years, achieved through a variety of strategies previously proposed by Republicans: the repeal of Obamacare; the elimination of the Social Services Block Grant; the conversion of Medicaid and the Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps) into block grants; and the future transition of Medicare into a voucher program.

Chairman Ryan's proposal will serve primarily as the fiscal blueprint for Republicans heading into the November mid-term elections. Senate Budget Committee Chairwoman Patty Murray (D-WA) will not produce an FY 2015 Budget Resolution, deeming it unnecessary as the discretionary cap for the fiscal year is already established in the Bipartisan Budget Act.

#### **FY 2015 APPROPRIATIONS PROCESS**

Eager to take advantage of the opportunity to return to regular order, appropriators kicked off the FY 2015 process the same week as the President submitted his budget request. Following several weeks of agency budget hearings, the House Appropriations Committee approved its first two FY 2015 spending bills on April 9 – Military Construction/Veterans Affairs (MilCon/VA) and Legislative Branch. Committee Chairman Hal Rogers (R-KY) intends for the committee to approve all twelve of its spending bills before the July 4 recess, allowing for possible floor votes before the August recess. The Commerce-Justice-Science measure is next up for committee action when Congress returns from its spring recess on April 28 and it is anticipated the MilCon/VA and Legislative Branch bills will be brought up for floor votes next week as well.

Before additional action can be taken, however, the individual allocations for the remaining spending bills (302(b)s) must be determined. Chairman Rogers said he was waiting to establish the remaining allocations until after the Congressional Budget Office (CBO) released its score of the President's Budget Proposal, which was done last week. Hence, we anticipate Chairman Rogers will announce the committee's 302(b) allocations next week.

Senate Appropriations Chairwoman Barbara Mikulski (D-MD) intends to start moving FY 2015 spending bills in May, aiming for a full committee markup of the Military Construction/Veterans Affairs bill on May 22. Senate Majority Leader Harry Reid (D-NV) recently announced he will dedicate two weeks of floor time each in June and July for appropriations measures.

The return to regular order also provides rank-and-file Members an opportunity to push for policy provisions through amendments. A process they were denied in FY 2014. This creates some concern, particularly in the House, where the open rule process can significantly lengthen floor debate and can lead to provisions that complicate passage of the bill. This is most likely with the Financial Services and General Government, Labor-HHS-Education, and Interior-Environment bills. In an effort to alleviate these challenges, House leaders are asking Members to bring these amendments to the committee instead of waiting until the bill reaches the floor.

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

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The House and Senate Water Resources Development Act conferees are expected to finalize a bill on Friday, with votes and passage expected by mid-May.

In May 2013, the Senate passed the Water Resources Development Act of 2013 (WRDA/S. 601) and 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). The House and Senate bills are generally aligned in their policy goals, but there are several differences for which the conferees must find agreement. 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 successful TIFIA program for transportation projects, while the House bill does not. WIFIA would provide loans, loan guarantees, and other credit support for large drinking water and wastewater projects. The Senate bill authorizes a five-year pilot program with an annual budget authority of \$50 million to the Environmental Protection Agency (EPA) for drinking water and wastewater projects and \$50 million for Army Corps of Engineers' projects. This is expected to leverage up to \$500 million or more in annual low interest loans for each agency. The Senate bill, however, limits WIFIA coverage to only 49 percent of a project's costs and restricts other methods used by locals to secure the remaining financing. Patton Boggs was instrumental in developing and drafting the WIFIA concept and we continue to work with conferees, CBO, and the Administration to ensure that the program is included in the final bill and would be available to cover 100 percent of project costs.

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.

## **TRANSPORTATION**

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### **MAP-21 REAUTHORIZATION**

In recent months, Congress began efforts to reauthorize the current surface transportation reauthorization (Moving Ahead for Progress in the 21<sup>st</sup> Century Act/MAP-21), which expires on September 31, 2014. The House Transportation and Infrastructure (T&I) Committee and the Senate Environment and Public Works (EPW) Committee have held hearings on a variety of issues, including general financing options and the nation's freight network. As a means to explore innovative infrastructure financing options, House T&I Committee Chairman Bill Shuster (R-PA) and Ranking Member Nick Rahall, II (D-WV) created a new special panel within the committee focused on public-private partnerships, led by John Duncan (R-TN) and Michael Capuano (D-MA).

On April 10, EPW Chairwoman Barbara Boxer (D-CA) and Ranking Member David Vitter (R-LA) announced they had an agreement on a set of principles for a six-year surface transportation bill and



intend to unveil legislative language shortly after the spring recess. According to the EPW leaders, their plan authorizes road, highway, and bridge programs at current levels, but does not include a funding mechanism, as that falls under the jurisdiction of the tax writers in the Senate Finance and House Ways and Means committees (House Ways and Means Chairman Dave Camp (R-MI) also addressed transportation funding in his recent tax reform proposal).

The key issue remains the insolvency of the Highway Trust Fund (HTF), which is estimated to deplete this summer. For a six year bill, \$96 billion in revenue would be needed to address the HTF shortfall. In addition to long-term funding stability, local government priorities in the surface transportation reauthorization include: increasing the local share of the Surface Transportation Program (STP); enhancing local participation in statewide planning; expediting project delivery; incentivizing alternative financing methods, such as the TIFIA program and public-private partnerships.

In the Senate Finance Committee, Chairman Ron Wyden (D-OR) and others are advocating for new bond financing options, including the renewal of the Build America program and a national infrastructure bank.

By early May, we anticipate draft MAP-21 reauthorization legislation from the White House, the Senate EPW Committee, and possibly the House T&I Committee.

#### **PRESIDENT OBAMA'S TRANSPORTATION INFRASTRUCTURE PROPOSAL**

On February 26, President Obama announced his proposal for a four-year \$302 billion transportation plan, which was subsequently detailed in his FY 2015 Budget Proposal. Revenue from corporate tax reform would accommodate the majority of the increased funding, thus making the proposal a non-starter with Congressional Republicans.

The President proposes making the TIGER program permanent and funding it at \$5 billion over four years (in conjunction with the President's announcement, the Department of Transportation (DOT) published the notice for the FY 2014 TIGER program, funded at \$600 million) and continues the TIFIA program at \$1 billion per year. The plan also increases funding for highways and transit and includes \$4 billion over four years for a competitive program to incentivize local policy reforms centered on collaboration, innovation, performance and efficiency. The President also proposes \$10 billion for a new multi-modal freight program.

## **TAX ISSUES**

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### **TAX REFORM**

On February 26, House Ways and Means Committee Chairman Dave Camp (R-MI) unveiled a discussion draft of his tax reform legislation – the Tax Reform Act of 2014.

For individuals, the draft reduces the number of tax brackets from seven to three: 10, 25, and 35 percent. It restricts most preferences for upper-income earners to a 25 percent benefit level; the means by which this is accomplished is a fairly complicated surtax levied on modified adjusted gross income which sweeps in items excluded from income under current law, such as municipal bond interest, 401(k) contributions, and the exclusion for employer-provided healthcare. In addition, the draft eliminates the deduction for State and local taxes, and significantly curtails the deduction for mortgage interest.

The top corporate tax rate of 35 percent is reduced to 25 percent over a five-year phase-in period, and is paid for by a host of changes to long-standing business tax rules.

With Chairman Camp retiring at the end of this term and House Republican leaders reticent to bring comprehensive tax reform up for an election-year vote, even Committee action on the full proposal is uncertain. However, Chairman Camp, as noted below, began hearings on certain provisions included in his draft bill and may take those up for individual committee votes.

Likewise, the partisan divide over whether comprehensive tax reform should include revenue measures will also prevent fundamental reform from being addressed in the Senate this year.

*Patton Boggs provided a detailed analysis of Chairman Camp's proposal on February 28 (committee documents were circulated on February 26)*

#### **TAX EXTENDERS**

On April 3, the Senate Finance Committee approved a tax extender package, which would renew nearly all of the 55 individual, business, and energy provisions that expired on December 31, including the New Markets Tax Credit; the research credit; mortgage debt relief; transit benefits; tax credits for the renewable energy industry (particularly relevant to wind energy organizations); empowerment zone tax incentives; and provisions for NASCAR track owners and filmmakers. During the markup, the Committee also expanded the transportation benefit to help defray the cost of bike-sharing expenses. Ultimately, the committee did not renew only two of the expired provisions: credits for energy-efficient appliances and those benefitting refineries. As approved by the Committee, the bill is estimated to cost \$85 billion over two years.

House Ways and Means Committee Chairman Dave Camp (R-MI) maintains that these tax provisions should be part of broader tax reform discussions and thus, individually considered and very selectively extended on a permanent basis. He intends to hold individual markups on various provisions and started with an April 8 hearing regarding the business provisions he extended or made permanent in his comprehensive reform package.

Tax bills must originate in the House; therefore, the Senate package is unlikely to advance in the House.

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

Although May 6 will mark the one year anniversary of the Senate passing the Marketplace Fairness Act (MFA), the bill's passage in the House has been stymied due to Judiciary Committee Chairman Bob Goodlatte (R-VA)'s reticence. The Chairman held a long-overdue hearing on the issue of remote sales tax collection in March, during which members of the committee on both sides of the aisle urged Chairman Goodlatte to move on legislation. Rep. Jason Chaffetz (R-UT) is expected to introduce a bill in the coming weeks that is similar to MFA but includes additional provisions related to audits and exceptions for small businesses. However, it is unlikely that the Chairman will act quickly. He has expressed interest in holding at least 2 more additional hearings, and in commissioning another bill that uses an origin-sourcing approach to resolving remote sales tax issues. MFA advocates are now looking to the Senate to attach it to a larger vehicle.

## **MANUFACTURING INITIATIVES**

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

In his State of the Union address this year, President Obama pledged to move forward with plans for a National Network for Manufacturing Innovation (NNMI) despite the fact that Congress has not appropriated funding for the initiative in the past. He noted in the speech that the Administration plans to launch four new institutes in the coming year, bringing the total number of institutes nationwide to eight. In addition, the President again requested funding in his FY 2015 Budget to create a total of 45 manufacturing innovation institutes over 10 years by building on the current institutes that are already planned for launch this year.

On February 25, the President announced two of these new manufacturing innovation institutes, led by the Department of Defense, which will be supported by a \$140 million federal commitment along with more than \$140 million in non-federal resources. One institute will be headquartered in Detroit and is focused on lightweight and modern metals manufacturing, while the other will be headquartered in Chicago to concentrate on digital manufacturing and design technologies. Both institutes will be made up of a consortium of businesses and universities and will seek to boost advanced manufacturing, strengthen defense capabilities, and attract high-quality jobs in the manufacturing industry.

In addition, the President also announced in February that the Department of Energy is soliciting applications for another manufacturing innovation institute focused on Advanced Composites Manufacturing Innovation. The Department will award \$70 million over five years to focus on manufacturing advanced fiber-reinforced polymer composites at the production speed, cost and performance needed for widespread use in clean energy products. Applications for this institute are due on April 22, 2014.

### **REVITALIZE AMERICAN MANUFACTURING AND INNOVATION ACT**

On April 9, the Senate Commerce, Science and Transportation Committee marked up and reported out of committee the Revitalize American Manufacturing and Innovation Act of 2013 (S. 1468). This bill was introduced by Senator Sherrod Brown (D-OH) and included 15 other bipartisan co-sponsors that support the creation of a manufacturing innovation network consistent with the President's vision for the NNMI. Senate Democrats have made this bill a centerpiece of their manufacturing agenda and the Obama Administration has pledged to work with Congress to pass the legislation. Congressmen Tom Reed (R-NY) and Joseph Kennedy (D-MA) have introduced a companion measure in the House but this legislation has not seen any action to date in that chamber.

## **ENVIRONMENT AND ENERGY ISSUES**

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### **"WATERS OF THE US" DEFINITION**

On March 25, the Environmental Protection Agency (EPA) and Army Corps of Engineers released the long-awaited prepublication draft regulation aimed to clarify the scope of the program-wide definition of "waters of the U.S." under the Clean Water Act (CWA). The proposed rule was published in the Federal Register on April 21, commencing a 90-day comment period (though some stakeholders are pushing for an additional 90 days, extending the comment period to six months). Requests have also been made to appropriators to include language in the FY 2015 Interior-Environment spending bill which would block the rule. While these efforts may be successful in the House, Senate action is less likely.

Under the proposed rule, most seasonal and rain-dependent streams would be regulated, but those with uncertain connections to downstream water would be evaluated on a case by case basis to determine whether the links are significant. However, the broadened jurisdiction regarding ephemeral streams, isolated ponds and lakes, wetlands and man-made waters could significantly expand EPA/Corps' exercise of authority to permit activities which might affect the newly defined jurisdictional waters. Such permit requirements could, of course, trigger National Environmental Policy Act (NEPA) review requirements for many projects where the risks and delays inherent in that process are not currently being anticipated. The proposal also requests comment on options for regulating similarly situated waters in certain geographic areas or for adding to the category of waters that are automatically covered.

Confusing and conflicting Supreme Court rulings raised questions over which waters fall under federal jurisdiction and numerous regulatory and legislative attempts have been made to clarify the scope of "waters of the U.S." According to the EPA, the current proposed rule is not intended to protect any types of water that historically have not been covered under the Clean Water Act. Last fall the EPA released a study that said that regardless of the size of streams or how frequently they flow they have important effects on downstream waters, but the study also said that there is insufficient evidence about the impact on downstream waters of wetlands and open waters located outside riparian areas.

#### **CLEAN WATER ACT SECTION 404 PERMIT LEGISLATION**

On April 9, the House Transportation and Infrastructure Committee approved a bill (H.R. 524) that would prohibit the Environmental Protection Agency (EPA) from retroactively denying a Section 404 permit. Section 404 permits are primarily utilized by local governments for roadside ditch and flood control channel maintenance. It is uncertain whether the bill will be brought up for a floor vote in the House, but it is unlikely to see action in the Senate.

#### **WHITE HOUSE CLIMATE CHANGE ANNOUNCEMENT**

Following the President's executive action on climate change last year, on March 19 the White House Council on Environmental Quality (CEQ) announced the creation and launch of a website database ([www.data.gov/climate](http://www.data.gov/climate)) intended to collect information related to climate change in order to help local governments and other stakeholders undertake climate resilience measures, while stimulating innovation and private-sector entrepreneurship in climate-change preparedness. Initially focused on sea level rise and coastal flooding, the site will ultimately collect other climate change indicators from across the country including those associated with "risks to human health, the food supply, and energy infrastructure." The data will be collected in partnership with federal agencies and private companies.

#### **EPA OZONE AIR QUALITY RULE**

On January 31, the Environmental Protection Agency released its Policy Assessment for the Review of Ozone National Ambient Air Quality Standards (NAAQS), again proposing to lower the NAAQS from 75 parts per billion (ppb) to 60 to 70 ppb. A similar proposal in 2010 was rejected due to implementation costs.

#### **EPA GREENHOUSE GAS (GHG) PROPOSAL FOR EXISTING POWER PLANTS**

On April 1, the Environmental Protection Agency (EPA) sent a draft notice-of-proposed-rulemaking (NPRM) aimed to limit greenhouse gas emissions from existing power plants to the White House Office of Management and Budget (OMB) for inter-agency review. Details of the draft NPRM were not released, but the submission indicates EPA is on track to meeting its June 1 target of publishing a NPRM in accordance with the President's Climate Action Plan and his subsequent directive to EPA.

## **HOUSE ENERGY LEGISLATION**

In early March, the House approved four energy-related bills: (1) the Energy Efficiency Improvement Act (H.R. 2126) which included a number of provisions that would promote federal and private sector energy efficiency; (2) the Electricity Security and Affordability Act (H.R. 3826) which would restrict the Environmental Protection Agency's (EPA) ability to promulgate a new standard to limit greenhouse gas (GHG) emissions from new fossil-fired power plants; (3) the Responsibly and Professionally Invigorating Development Act of 2013 (H.R. 2641) which would require federal agencies to expedite environmental analyses for projects that require review under the National Environmental Protection Act (NEPA); and (4) the Preventing Government Waste and Protecting Coal Mining Jobs in America Act (H.R. 2824) which would effectively prevent the Department of Interior from promulgating any regulation under the authority of Section 503 of the Surface Mining Control and Reclamation Act of 1977 "relating to stream buffer zones or stream protection" for at least five years.

## **HEALTH AND HUMAN SERVICES**

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### **SUSTAINABLE GROWTH RATE (SGR) / "DOC FIX"**

After prolonged debate, Congress failed to pass a bill that would repeal and replace the Sustainable Growth Rate (SGR). To avoid the threatened Medicare pay cut to physicians, the Senate passed a one-year patch to extend Medicare physician payments through March 31, 2015, The Protecting Access to Medicare Act of 2014 (H.R. 4302). The bill also delays the implementation of ICD-10 code sets and extends the Medicare Dependent Hospital (MDH) program and low-volume hospital (LVH) adjustment through March 31, 2015. The bill includes a variety of offsets to pay for the cost of the bill and makes changes to the Medicare sequestration cut for fiscal year (FY) 2024.

It is possible that this year's attempt at a bipartisan, bicameral SGR replacement deal will be renegotiated next year. With an election at the end of this year, a new cast of lawmakers could lead the charge to reform Medicare physician reimbursement.

### **MENTAL HEALTH LEGISLATION**

The Protecting Access to Medicare Act of 2014 (H.R. 4302), or the one-year SGR patch, also creates demonstration programs to improve community mental health services (Section 223). The bill would establish an eight-state demonstration program over a two-year period to incentivize community mental health providers to offer a broad range of mental health services. The bill also provides demonstration grants to improve care for individuals with mental illness (Section 224). This provision would authorize \$15 million each for fiscal years 2015-2018 for demonstration grants for local jurisdictions to implement assisted outpatient treatment (AOT) programs for individuals with serious mental illness.

The language included in the one-year SGR patch is similar to that written in the Excellence in Mental Health Act (S. 264), introduced by Senator Debbie Stabenow (D-MI) and Senator Roy Blunt (R-MO) on February 7, 2013. This bill sets national standards for federally-qualified community behavioral health centers and permits Medicaid reimbursement for community behavioral health services. In addition, the bill promotes care coordination services and creates a grant-matching fund to construct community-based mental health and treatment facilities. The bill has been referred to the Senate Health, Education, Labor, and Pensions (HELP) Committee. The Senate bill currently has 24 co-sponsors, and Rep. Doris Matsui (D-CA) has since introduced a House version of the bill (H.R. 1263).

### **SAVE AMERICA WORKERS ACT**

On April 3, 2014, the House approved the Save America Workers Act (H.R. 2575), which would repeal the 30-hour/week definition of full-time employment (for businesses with 50 or more full-time employees) mandated by the Affordable Care Act and restore the 40-hour/week definition. However, this bill is unlikely to be enacted as Senate Democrats believe this measure is another attempt to repeal the Affordable Care Act and would encourage employers to cap employee hours at less than 40 hours/week. Therefore, Senate leaders will not bring the bill up for a vote. Additionally, the President issued a veto threat on the House bill, citing Congressional Budget Office and Joint Committee on Taxation reports that the measure would increase the deficit by \$73.7 billion over ten years and increase the number of uninsured by 500,000.

Senator Susan Collins (R-ME) introduced similar legislation - Forty Hours is Full Time Act of 2013 (S. 1188) – and has indicated that she will include the bill as part of an alternative package to a Democratic minimum wage bill (which won't be brought up as a stand-alone, but portions may come up as amendments to other legislation). In addition to changing the hours/week requirement from 30 back to 40, Senator Collins' bill changes the formula for calculating the number of full-time employees. Collins' bill currently has 14 cosponsors.

### **PROMISE ZONES INITIATIVE**

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In President Obama's 2013 State of the Union address, he announced his plan to create the Promise Zones initiative to invest in communities across the country to create jobs, increase economic security, expand educational opportunities, increase access to quality, affordable housing and improve public safety. The Promise Zones initiative is specifically focused on revitalizing high-poverty communities across the country by leveraging private capital and assisting local leaders in navigating federal programs. The President intends to designate 20 Promise Zones by the end of 2016. Five areas were designated in the first round of the initiative in 2013 including San Antonio, Texas; Philadelphia, Pennsylvania; Los Angeles, California; Southeastern Kentucky; and the Choctaw Nation of Oklahoma.

On April 17, the Department of Housing and Urban Development posted a draft version of the application guide for the second round of Promise Zone designations. The U.S. Department of Housing and Urban Development (HUD) is requesting comments from stakeholders on the selection process and criteria that they have outlined in the application guide by Monday, June 16. Although HUD provided a specific list of cities that could receive funding through the program in 2013, it appears that the Promise Zones initiative is open to all cities that are interested in applying this year.

### **PENSION REFORM**

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In anticipation of new accounting standards that will be required after June 15, the Governmental Accounting Standards Board (GASB) released an educational online pension toolkit on March 11 aimed to assist in the application of the new standards in GASB Statement 68. GASB Statement 68, published in 2012, applies to governments that provide pension benefits to employees and changes how they must account and report defined benefit pension plan results.

## **PATENT REFORM**

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With the House passing its patent reform legislation (H.R. 3309) in December, stakeholders are now waiting on the Senate to act. Senate Judiciary Chairman Pat Leahy (D-VT) introduced the Patent Transparency and Improvements Act (S. 1720) which aims to increase transparency of patent ownership, regulate the demand letters that “patent trolls” send, and allow parties to stay proceedings. In contrast to H.R. 3309, it does not include a fee-shifting provision, limits on discovery, or heightened pleading requirements.

Chairman Leahy is working with the members of his committee to negotiate a compromise between his bill and the more aggressive bill passed by the House, which is favored by Senate Republicans.

The primary point of contention seems to focus on the “fee-shifting” language included in the House bill, which would require the loser in a patent infringement case to pay the legal costs of the winner. Senator Orrin Hatch (R-UT) (second ranking Republican on the committee) wants to go a step further and include a “bonding” provision which would enable courts to require certain litigants to put up funding at the beginning of a lawsuit in the event they will ultimately have to pay the legal fees of their opponent.

Therefore, Chairman Leahy is attempting to find a bipartisan agreement that would adopt some provisions of their bills into his. In particular, Chairman Leahy, Sen. Cornyn (R-TX), and Sen. Chuck Schumer (D-NY) are negotiating provisions related to fee-shifting, pleading standards, and discovery limitations. Sen. Schumer announced shortly before the April 14 recess that the group has made progress, and this week staff began circulating draft language of an amended bill that includes weaker versions of these provisions than the House bill. For example, language regarding fee-shifting in the amended Senate bill only allows for a “loser-pays” system in cases if conduct is not “objectively reasonable”, rather than automatically.

The Committee had planned to mark up S. 1720 in April, but the meeting was pushed back twice in order to allow the Chairman more time to find a compromise with his Republican colleagues. Staffers are still working to shore up support for the amended bill, and hope to hold a markup shortly after Congress returns from recess.

## **HOUSING**

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### **HOUSING FINANCE REFORM**

On April 29, the Senate Banking Committee will mark up the Housing Finance Reform and Taxpayer Protection Act (S. 1217), including a proposal to replace Fannie Mae and Freddie Mac (government sponsored enterprises (GSEs)) over a five-year period. Many of the functions of Fannie and Freddie would be transitioned to private entities regulated by the Federal Mortgage Insurance Corporation (FMIC), modeled after the Federal Deposit Insurance Corporation.

The House Financial Services Committee approved a measure to replace Fannie and Freddie last year, although that bill removed the federal government’s role in the housing finance system altogether.

## **IMMIGRATION REFORM**

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After months of discussions, on January 30, House Speaker John Boehner (R-OH) unveiled the House Republican immigration principles, which state:

- Before legislation can be undertaken, the nation's borders must be secure;
- Immigration reform must be enforced with a zero tolerance policy towards those who cross the border illegally or stay in the U.S. longer than the time provided through their visas;
- A fully functioning Entry-Exit Visa Tracking System must be implemented;
- Employment eligibility must be determined and verified through an electronic, not paper-based, system;
- To address the departure of highly-skilled and exceptional college graduates forced to return home due to the lack of visas, the visa, green card, and the temporary work program allocations should address the economic needs of the country and strengthen national security, while not displacing or disadvantaging American workers;
- Youth brought to the U.S. illegally by their parents should be given citizenship opportunities if they serve in the military or attain a college degree; and
- There should be no pathway to citizenship for adults here illegally unless they admit their culpability, pass rigorous background checks, pay significant fines and back taxes, develop proficiency in English and American civics, and have the ability to financially support their families without access to public benefits.

Lacking the full support of the Republican caucus, it is unlikely the House will adopt this, or any of the piecemeal immigration measures passed out of committee last year. While the push for immigration reform continues, how to address the legal status of immigrants remains too contentious and polarizing to be brought to a vote in an election year.

## **TELECOMMUNICATIONS**

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### **FCC WIRELESS SITING**

The Federal Communications Commission (FCC) is seeking input from local and state governments regarding its "Shot Clock Order," which mandated in November 2009 that local governments respond to applications for wireless infrastructure within certain time periods. The FCC issued a solicitation for comments in December concerning how it could improve wireless facilities siting policies. Although the deadline for official comments has passed, interested parties are invited to file ex parte comments. In particular, the FCC is seeking comment on four issues related to the Order: (1) expediting environmental review of small cells and distributed antenna systems; (2) issuing interim waivers that exempt temporary towers from the notification process; (3) tailoring the historic preservation review process; and (4) clarifying a provision of the Middle Class Tax Relief and Job Creation Act of 2012 that prohibits state and local governments from denying facilities' requests to modify existing wireless towers if the physical dimensions of the base stations are not "substantially" changed. With regard to this last issue, the Commission would like to define the terms "wireless tower," "base station," and "substantial change;" and to explore whether or not the language leaves state and local governments with sufficient discretion. Finally, the Commission also seeks input about the application of the deadlines to local moratoria, municipal siting preferences, and clarification of colocation.



## **FIRSTNET**

On March 11, the FirstNet Board of Directors approved a strategic roadmap to ensure that their task of creating a nationwide public safety communications network will be carried out in a deliberate and cost-effective fashion. The roadmap identifies several important “milestones:” to initiate public notice and solicit comments on certain program procedures or policies; to release its draft comprehensive network proposals for comment; to release draft requests for network equipment and service proposals for comment; and to begin formal state consultations. The roadmap also identifies several important tasks: to staff the agency; to complete an open, transparent, and competitive process for network proposals and services; to complete testing of functionality; to conduct state outreach; and to review information and determine pricing. The Board’s next meeting is April 25.

## **WORKFORCE DEVELOPMENT**

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### **TRADE ADJUSTMENT ASSISTANCE COMMUNITY COLLEGE AND CAREER TRAINING PROGRAM**

In conjunction with the President and Vice President’s visit to the Community College of Allegheny County on April 16, the Department of Labor announced its next competition for the Trade Adjustment Assistance Community College and Career Training (TAACCCT) program which was originally created as part of the stimulus. This will be the final round of TAACCCT grants which will be awarded to applicants that are seeking ways to engage more employers in workforce training efforts and create more effective pathways from college into the workforce. The Department of Labor has already distributed \$1.5 billion in funding to over 800 community colleges over the last three years and this final round of funding will provide \$450 million in grants. In its grant solicitation, the Department of Labor notes that it will prioritize applications that do the following: (1) Form partnerships between colleges and national employers or industry groups who can help scale up successful partnership strategies; (2) Expand state career pathways systems; and (3) Integrate state employment and education data.

### **AMERICAN APPRENTICESHIP GRANTS**

In addition to the announcement about the TAACCCT grant competition, the President also announced during his visit to Pennsylvania that the Department of Labor will making an additional \$100 million in existing H-1B funds available for the American Apprenticeship Grants to reward partnerships that help more workers participate in apprenticeships. This new grant competition will be launched in the fall. The intent of the program is to focus on partnerships between employers, labor organizations, training providers, community colleges, local and state governments, the workforce system, non-profits and faith-based organizations to launch apprenticeship models in new, high-growth fields; align apprenticeships to pathways for further learning and career advancement; and scale apprenticeship models that are successful.

## **CYBERSECURITY**

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### **NIST CYBERSECURITY FRAMEWORK**

As part of the President’s cybersecurity Executive Order (EO) issued in February 2013, the National Institute of Standards and Technology (NIST) was required to develop a Cybersecurity Framework made up of voluntary standards for critical infrastructure owners and operators. The final version of the Cybersecurity Framework was released on February 12, 2014, as required by the EO. To develop the Framework, NIST requested comments from stakeholders and held a number of workshops last year to receive feedback from interested entities on the necessary standards and guidelines that should be included in the Framework. Now that the final Framework has been released, NIST plans to continue to

hold several workshops throughout this year to discuss implementation by critical infrastructure and other entities. They held the first workshop on April 9-10 to discuss the privacy issues related to the Framework but plan to hold others in the coming months.

In addition to the work that NIST is doing to implement and promote the Cybersecurity Framework, the Department of Homeland Security (DHS) is also engaging with the public through its Critical Infrastructure Cyber Community program, also known as the C<sup>3</sup> Voluntary Program. This program is designed to coordinate the implementation of the Cybersecurity Framework across critical infrastructure sectors. The program will also offer cyber resilience reviews through free assessments of an organization's information technology resilience, as well as other information about cyber threats and how to respond to them. The President's FY 2015 Budget requested \$8.5 million for the implementation of the C<sup>3</sup> Voluntary Program and for technical assistance for entities that request an assessment of their cyber resilience through the program.

#### **CYBERSECURITY LEGISLATION**

In February, the House Homeland Security Committee marked up the National Cybersecurity and Critical Infrastructure Protection Act of 2013 (H.R. 3696). This bipartisan bill would address a number of comprehensive cybersecurity issues within DHS and codify existing DHS cyber efforts with critical infrastructure, such as the National Cybersecurity and Communications Integration Center (NCCIC). The bill is currently awaiting action on the House floor.

The Senate has not taken action in 2014 on cybersecurity legislation though there are several committees that are looking at potentially introducing bills in the coming months. At a recent Senate Homeland Security and Governmental Affairs Committee (HSGAC) hearing, Ranking Member Tom Coburn (R-OK) announced that the committee is working on legislation that will give the Department of Homeland Security (DHS) the authority to hire more cybersecurity professionals. Ranking Member Coburn stated that the committee will consider this bill during its next mark-up but did not offer a specific timeline for the bill's consideration. In addition, HSGAC is also looking at broader cybersecurity legislation that would clarify DHS's roles and responsibilities related to cybersecurity. The Senate Permanent Select Committee on Intelligence is also drafting a cybersecurity information sharing bill that it hopes to introduce soon.

#### **DATA SECURITY LEGISLATION**

Data security issues have been a focus of several Congressional hearings in light of the recent data breaches at a number of high-profile retailers including the Target Corporation and Neiman Marcus. In response, several Members of Congress have introduced legislation to establish a national data breach notification standard to ensure that companies are aware of their responsibilities when a data breach occurs. These bills include Senate Commerce, Science and Transportation Committee Chairman John Rockefeller's (D-WV) Data Security and Breach Notification Act of 2014 (S. 1976), Senator Pat Toomey's (R-PA) Data Security and Breach Notification Act of 2013 (S. 1193) and Senate HSGAC Chairman Tom Carper's (D-DE) legislation that would require notice of security breaches (S. 1927).

It is expected that these bills will start going through their respective committees of jurisdiction in the coming weeks. If these bills move forward, it is likely that broader cybersecurity amendments will be added as a way to incorporate cybersecurity into the current debate on data security. A possible piece of legislation that could be included in these efforts is the Cybersecurity Act of 2013 (S. 1353) that passed out of the Senate Commerce, Science, and Transportation Committee last summer and is currently awaiting Senate floor action.

## **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.

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) and the recently enacted Farm Bill extended the program through FY 2014.

Congressional efforts continue to obtain a permanent long-term funding source or a multi-year renewal for the PILT program. Most recently, a bipartisan letter signed by 40 Congressional members requested full funding for the program in the FY 2015 Interior-Environment appropriations bill.

## **FARM BILL**

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After nearly four years of negotiations, Congress finally passed a Farm Bill on February 4. It included an \$8 billion cut to the Supplemental Nutrition Assistance Program (SNAP), which was \$12 billion less than the House's proposed cuts but \$4 billion more than the Senate proposal. Most of the \$8 billion decrease in funding comes from the closure of a loophole that allows families receiving home heating assistance to automatically qualify for SNAP. The bill also allows for pilot projects related to identifying and reducing fraud in SNAP, and requires the U.S. Department of Agriculture (USDA) to authorize any interested states to conduct a pilot related to stricter work requirements.

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

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On March 21, the President signed the revised Homeowners Flood Insurance Affordability Act of 2014 (H.R. 3370/P.L. 113-89) into law.

The legislation repeals much of the incredible rate increases cause by the Biggert-Waters Act of 2012 and refunds those who have already paid the higher premiums. It limits flood insurance premium increases to no more than 18 percent per year, which will prevent many homeowners from experiencing skyrocketing annual premiums. It also repeals the so-called "triggers" so the transportability of flood policies from home sellers to buyers are handled fairly and do not disrupt the housing market. The bill also includes the reinstatement of "grandfathering," meaning that homeowners who played by the rules and built to code will no longer have to worry about catastrophic rate increases as a result of remapping. The bill requires the Federal Emergency Management Agency (FEMA) to conduct an affordability study and includes important considerations for mitigation, which will bring critical relief to homeowners nationwide.