

July 23, 2015

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Dear Mayor:

The following update on significant developments in our Nation's Capital relies on information provided by the National League of Cities (NLC). NLC is the highly respected voice of municipalities all around the Country and of all State Municipal League. We appreciate all they do on our behalf, and on yours, as well.

I. TRANSPORTATION FUNDING DEADLINE LOOMS

As the deadline approaches for Federal transportation funding to run out on July 31, U.S. Senate Environment and Public Works Committee (EPW) Chair Jim Inhofe and Ranking Member Barbara Boxer unveiled the bipartisan "[DRIVE Act](#)" (S 1647), the long-awaited Senate proposal for a new long term transportation bill.

The DRIVE Act would authorize funding levels for programs supported by the Highway Trust Fund over six years. "For cities and towns, the DRIVE Act is an improvement over the status quo. The bill would improve local control of funding under the Surface Transportation Program and the Transportation Alternatives Program. But there is much more that could - and should - be done. The National League of Cities looks forward to continuing our strong partnership with Chairman Inhofe and Ranking Member Boxer to achieve our goal of enacting a forward-looking, long-term, multi-modal transportation bill," said NLC Executive Director upon the bill's introduction.

The current short-term authorization for federal transportation programs under the Highway Trust Fund will expire at the end of July, and additional short term extensions will likely be necessary so that all the committees of jurisdiction in the House and Senate can complete work on their sections of the transportation bill.

While the DRIVE ACT supports many of NLC's transportation goals and has now passed the EPW Committee, NLC is working on a floor amendment with Senators Roger Wicker and our own Cory Booker to increase the percentage of funds allocated to local jurisdictions under the Surface Transportation Program (STP).

In the House, lawmakers conceded the impossibility of passing a long-term bill before the August recess by approving a five-month extension of surface transportation programs that would keep projects funded for the rest of the year. The extension, sponsored by House Ways and Means Committee Chair Paul Ryan and House Transportation and Infrastructure Committee Chairman Bill Shuster would provide \$8 billion through a combination of tax compliance measures and reduced spending of Transportation Security Administration fees in 2025 and 2026. Of that amount, \$6.07 billion is for the Highway Account and \$2 billion is for the Mass Transit Account.

Despite the short-term extension, leaders in the House and Senate have said approval of a longterm bill will remain a priority for this year.

II. Senate Finance Working Group Report Maintains Status Quo For Tax Exemption Last week, the U.S. Senate Finance Committee released the [reports from the five working groups](#) established by the leadership of the Senate Finance Committee, as it begins to examine the federal tax code. NLC was particularly interested in the working group's report of the Infrastructure, Community Development and Energy working group's report related to the tax exemption for municipal bonds.

In March, Senator Michael Bennett invited NLC to participate in a roundtable discussion of the Senate Finance Committee's Infrastructure, Community Development and Energy working group. Through its participation in the roundtable and in formal comments submitted to the committee, NLC underscored three priorities for local governments in the tax reform process: (1) maintaining the Federal tax exemption on municipal bonds to promote job creation and improve the nation's infrastructure; (2) ensuring that state and local governments retain the authority to set their own tax policy; and (3) opposing Federal pre-emptions that would grant preferential tax treatment to certain industries and threaten the fiscal health of state and local governments. NLC also reminded the Senate Finance Committee that, when considering any changes to the Federal tax code, it is important to respect local authority and promote intergovernmental partnership by authorizing e-fairness or the collection of local taxes already owed to state and local governments on Internet and mail-order sales.

While the Infrastructure, Community Development and Energy working group's report highlighted the significant usage of tax exempt bonds with over \$384 billion being issued between 2002 and 2011, there were no specific policy recommendations in the report regarding the tax exemption. While there were no recommendations in the report, NLC will continue to urge the preservation of the tax exemption in any federal legislation.

III. FY 2016 Spending Bills in Doubt

Despite the efforts of congressional leaders to "return to regular order", it appears that the annual federal appropriations process is headed for another break down. Under regular order, Congress would complete work on all appropriations bills before the new fiscal year begins on October 1.

To date, the House has passed six of 12 appropriations bills, the Senate has passed none, and it is unclear if any additional new spending bills will be voted on before the August recess. If Congress fails to approve the spending bills before the new fiscal year begins, as appears likely to happen, local officials should expect to operate under another series of funding extensions as has become common in recent years. Missing the deadline also raise the prospects of another government shutdown if consensus on an omnibus bill or continuing resolution cannot be reached.

IV. “E-fairness” Gains Momentum; More Local Voices Needed

In a meeting with Congressman Jason Chaffetz, lead sponsor of the Remote Transactions Parity Act (RTPA, [HR 2775](#)), last week, NLC President and Salt Lake City Mayor Ralph Becker thanked the Congressman for his leadership in putting forth a solution to this issue and pledged the support of cities and towns to seeing it get resolved this session. If enacted, the RTPA will give states and local governments the flexibility to require remote online retailers to collect the sales taxes that are already owed on remote purchases. Closing this online sales tax loophole would not only level the playing field between online sellers and Main Street brick and mortar ones who are required to collect the tax, it would also mean resources for local governments to fund much needed local services like infrastructure and public safety. It is estimated that this loophole costs states and local governments \$23 billion annually, which is why its passage is a top priority for NLC.

V. Labor Department Proposes Changes to Overtime Rules

The [U.S. Department of Labor has proposed changes](#) to the Fair Labor Standards Act (FLSA) that would extend overtime protection to millions of workers by increasing the salary threshold at which workers are eligible for overtime. NLC plans to file comments to the proposed changes.

The FLSA establishes minimum wage and overtime pay standards affecting workers in the private sector **and in federal, state and local governments**. As a general rule under the FLSA, unless they are exempt, workers must be paid at least one and one-half times their regular rate of pay for any hours they work beyond 40 in a work week.

Under the "white collar" exemption, certain executive, administrative, and professional employees are excluded from the FLSA's minimum wage and overtime protections. To qualify for the exemption, a white collar employee "generally" must:

be salaried; be paid at least a specific salary threshold (currently \$455/week or \$23,660/year) (salary threshold test); and primarily perform executive, administrative, or professional duties as provided in the Department's regulations (duties tests).

The proposed rule would nearly double the salary threshold at which workers would earn overtime pay whenever they worked more than 40 hours in a week. Last updated in 2004, the salary threshold would go from \$23,660 a year to \$47,892 a year. In the first year of its implementation, the Administration projects that 5 million more workers would become eligible for overtime pay. The number of workers in each state that would be affected by this proposal can be found [here](#). For additional information about the proposed rule, [click here](#).

Besides changes to the salary threshold test, the department is seeking comments on whether the current "duties tests" are working as intended to screen out workers who are not bona fide "white collar" exempt workers. It also seeks comments on the possibility of including nondiscretionary bonuses to satisfy a portion of the standard salary requirement. *Comments are due on or before September 4, 2015.*

To assist in developing and coordinating on our responses to this proposal, if your municipality is considering filing comments in this proceeding and/or has collected information regarding the specific impact the changes would have on your local government, please send an email to coleman@nlc.org and epurcell@njslom.org.

VI. Following Supreme Court Decision on Fair Housing, HUD Finalizes New Rules The U.S. Department of Housing and Urban Development (HUD) announced the release of a [final rule to Affirmatively Further Fair Housing](#) (AFFH). The new policy is intended to provide state and local governments with clearer guidelines, new tools, and data to meet fair housing obligations established in existing federal law. NLC previously commented on the rule in coalition with other local government group on the implications for local control. Community stakeholders, including local officials, have remained divided on the rule since it was first proposed two years ago. HUD has provided the following guidance on the new rule:

What the Rule Does: For HUD grantees, including municipalities receiving CDBG, the rule will mean replacing the existing Analysis of Impediments to Fair Housing Choice (AI) with a new Assessment of Fair Housing (AFH). The key differences are that HUD is providing data and a template for conducting a fair housing analysis, grantees will incorporate fair housing planning into the consolidated plan, and HUD will review assessments up front as part of the planning process. By making these changes, HUD can better partner with its grantees by providing a clearer path to meeting AFFH requirements, easing some of the burden of analysis by providing and packaging relevant data, and integrating fair housing into planning and investment strategies.

The rule will be implemented on a rolling basis. The due date for the first Assessment of Fair Housing (AFH) is 270 days prior to the program year that begins on or after January 1, 2017 (or January 1, 2018, depending on grantee type) for which a jurisdiction submits a new consolidated plan. HUD will also provide grantees at least 9 months from the publication of a final AFH Template applicable to the grantee type before the AFH is due.

Where to Find Additional Information: HUD will post the rule along with all official guidance and technical materials to the following HUD Exchange website: <https://www.hudexchange.info/programs/affh/>.

In the coming weeks and months, HUD will continue to provide guidance and additional resources as well as information about training opportunities for grantees via the HUD Resource Exchange AFFH website. In addition, grantees will be able to pose specific questions through the "Ask A Question" feature on that website.

VII. Free Webinar August 19: Revising Sign Ordinances After Reed v. Town of Gilbert

In [Reed v. Town of Gilbert](#) the Supreme Court ruled that Gilbert's sign code violates the First Amendment. Many, if not most, communities must now revise their sign codes. Most sign codes apply different rules to different categories of signs based on content, which the Supreme Court now generally prohibits.

Discuss the practical implications of this case for local governments with [John M. Baker](#), [Greene Espel](#).

After registering, you will receive a confirmation email containing information about joining the Webinar.

Revising Sign Ordinances After *Reed v. Town of Gilbert* Wednesday August 19, 1:00PM - 2:15 PM EDT

Register Online Now

VIII. Make a Difference This Summer

You don't have to go all the way to Washington to be an effective advocate. Before you head to the shore or mountains this summer, stand up for your municipality and lobby your members of Congress during their August recess.

Senators and representatives will be home for the month of August, and this is a great time to meet with your legislators and let them know how much your town needs their help on key issues.

It's easy to take action! Download NCL's one-stop guide to meeting with your legislators at home to get started. Have a great meeting! Don't forget to share what you do - email us at jmoran@njslom.org and advocacy@nlc.org with the details.

Contact Jon Moran at 609-695-3481, ext. 121 or jmoran@njslom.org, if you have any questions.

Very truly yours,

Brian C. Wahler, President
NJLM and Mayor
Piscataway Township