

May 27, 2015

Federal Update for period ending May 22, 2015

- I. House moves to halt EPA "Waters of the U.S. Rule
- II. House Approves Department of Justice Appropriations Bill
- III. NLC Files Comments on ACA "Cadillac Tax"
- IV. OMB Approves Wireless Siting Rules
- V. NLC Joins Amicus Brief Supporting Colorado Effort to Collect Tax on Remote Sales Dear

Mayor:

Here is an update on some recent significant developments at the Federal level. We want to thank the Federal Relations staff of the National League of Cities (NLC) for their advocacy and the information they provide to us.

I. NLC Applauds House Support for Local Concerns in EPA "Waters of the U.S." Rule

With NLC's support, the House has passed the Regulatory Integrity Protection Act (H.R. 1732) by a vote of 261-155 to halt the U.S. Environmental Protection Agency's (EPA) and the U.S. Army Corps of Engineers' (Corps) proposed rule on "waters of the U.S." EPA and the Corps are expected to release a final rule soon.

The bill requires the agencies to withdraw the current proposed rule, and begin again by conducting a federalism consultation with state and local governments as well as a comprehensive cost analysis examining the impact of the proposed rule and all Clean Water Act (CWA) programs.

In the Senate, the Environment and Public Works Committee held a hearing last week on similar bipartisan legislation. The Federal Water Quality Protection Act (S. 1140) directs the agencies to issue a revised proposal that adheres to a set of principles, including what types of waterbodies a "waters of the U.S." should and should not include, as well as a process by which the agencies should use to develop the proposal.

Background

EPA and the Corps are developing a rule to change the Clean Water Act definition of "waters of the U.S." The proposed rule, which is currently under review by the Office of Management and Budget, will have broad implications for local governments, including impacts to municipal stormwater and floodwater managements systems. The final rule is expected in the near future.

NLC submitted comments to EPA and the Corps on the proposed rule, raising concerns about further confusion over what waters will fall under federal jurisdiction, leading to unnecessary project delays, added costs to local governments and inconsistency across the country. NLC asked the agencies to clarify language and provide specific exemptions for essential local government systems, such as public safety ditches, water conveyances, stormwater systems,

green infrastructure, and more. NLC reiterated concerns about the rulemaking process, including the need for a federalism consultation with state and local governments and a meaningful costbenefit analysis.

II. House Committee Approves Justice Appropriations Measure

The annual appropriations process continues to inch forward with the House Appropriations Committee last week approving the [fiscal year 2016 Commerce, Justice, Science \(CJS\) Appropriations bill](#) on a voice vote. The bill includes \$2 billion in funding for several Department of Justice (DOJ) programs important to state and local governments; however, this funding level represents a \$334 million decrease over this year's funding levels for these programs. Among the programs funded in the bill are:

- \$409 million for Byrne Justice Assistance Grants (an increase of \$33 million)
- \$220 million for the State Criminal Alien Assistance Program
- \$183.5 million for Juvenile Justice Programs (a decrease of \$68 million and \$156 million below the President's request)
- \$474 million for Violence Against Women programs (an increase of \$44 million) of which \$25 million is for human trafficking task force activities and for services for victims
- \$235 million for COPS programs (an increase of \$27 million and \$68.5 million below the President's request) of which \$50 million is for a new Community Trust Initiative that will provide \$15 million for body camera pilots and research, \$30 million for justice reform and collaboration efforts, and \$5 million for improved statistics collection.

While the bill supports a broad range of federal programs that are important to the safety of municipalities and prioritizes law enforcement, counterterrorism and cyber security initiatives, NLC is concerned that bill severely cuts or eliminates funding to important grant programs such as Community Oriented Policing Services (COPS) Hiring Grants and dedicated funding for the Juvenile Justice Delinquency Act (JJDP). These cuts would result in an estimated 1,300 fewer sworn and non-sworn law enforcement positions safeguarding communities and significantly reduce support for juvenile justice programs. As the legislation advances, NLC will continue to advocate for funding to be restored to these programs.

III. NLC Files Comments with IRS on ACA "Cadillac Tax"

Last week, NLC, in collaboration with [NLC-RISC](#), submitted comments in response to [IRS Notice 2015-16](#), which outlined expectations for future guidance on the Affordable Care Act's high value plan excise tax (also known as the "Cadillac Tax"). In those comments, NLC outlined key areas of concerns for local governments related to the tax.

Under the ACA, starting in 2018, a 40 percent excise tax will be imposed on the value of health insurance benefits exceeding certain thresholds. For individuals, the threshold will be \$10, 200, and for families, the threshold will be \$27,500. Once the threshold is crossed, the cost in excess

of the threshold will be subject to the tax. All thresholds may be adjusted upwards if the IRS determines that medical inflation rates warrant such a change. The thresholds will be higher for persons in high-risk professions and for employers that have a disproportionate share of older workers or women. (These thresholds will be set by the IRS through regulation.) The tax will apply to fully insured and self-funded insurance plans. In the case of fully insured plans, the issuer (insurance company) will be responsible for paying the excise tax; in the case of self-funded plans, the administrator (usually the employer) will be responsible for paying the tax.

In the Notice, the IRS described potential approaches to a number of issues regarding the excise tax, including exclusion of certain benefits from applicable coverage, potential approaches for determining the cost of applicable coverage, application of annual dollar limits when an employee has both self-only coverage and other-than-self-only coverage, and adjustments for high-risk professions, as well as age and gender.

NLC anticipates that this is the first in a series of potential opportunities to comment on the excise tax and will continue to collaborate with NLC-RISC and keep us posted as more is learned, throughout the process.

IV. OMB Approves Wireless Siting Rules

On May 5, 2015, the Office of Management and Budget (OMB) gave its approval to three outstanding information collection requirements associated with the Federal Communications Commission's (FCC) [Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies](#) which were adopted by the Commission in October 2014. (See our May 21 letter on this matter at <http://nj-njslom.civicplus.com/ArchiveCenter/ViewFile/Item/330> .) With publication in the Federal Register on May 18, 2015, the new rules became effective. These newly established requirements are in addition to [other wireless siting rules](#) that became effective April 8, 2015. To help local governments comply with the new rules, NLC developed [these resources](#).

The newly approved requirements provide:

- In order to toll the order's 60-day review timeframe on grounds that an application is incomplete, the reviewing local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information.
- Following a supplemental submission from the applicant, the local government will have 10 days to notify the applicant in writing if the supplemental submission did not provide the information identified in the local government's original notice delineating missing information. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- If a request is "deemed granted" because of a failure to timely approve or deny the request, the "deemed granted" remedy does not become effective until the applicant

notifies the applicable reviewing authority in writing after the review period has expired that the application has been "deemed granted."

V. NLC Joins Amicus Brief Supporting Colorado's Effort to Collect Use Tax on Remote Sales

In *Direct Marketing Association v. Brohl* the Tenth Circuit will decide whether Colorado's law requiring remote sellers to inform Colorado purchasers annually of their purchases and send the same information to the Colorado Department of Revenue is unconstitutional. In [*Quill Corp. v. North Dakota*](#), decided in 1992, the Supreme Court held that states cannot require retailers with no in-state physical presence to collect use tax. The Direct Marketing Association argues Colorado's notice and reporting requirements are unconstitutional under *Quill*. The SLLC filed an [amicus brief](#) that discusses the devastating impact *Quill* has had on state and local governments in light of the rise of internet purchases and states' need to improve use tax collection through statutes like Colorado's. It argues *Quill* only applies to sales tax collection and should not be extended to apply to notice and reporting requirements when *Quill's* vitality is in serious question. At least three other states have similar notice and reporting requirements (Oklahoma, South Dakota, and Vermont).

We hope that you find this information useful. If you have any questions, contact Jon Moran at 609-695-3481, ext. 121 or jmoran@njslom.com.

Very truly yours,

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Executive Director