

June 23, 2015

**Re: Federal Update:**

- I. Major Differences Emerge in House and Senate Spending Bills Transportation-Housing Bill Passes House**
- II. Senate Appropriations Committee Advances Public Safety Spending III. E-Fairness Legislation Introduced in the House**
- IV. House Committee Approves Bills that Limit Local Taxing Authority**
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Dear Mayor:

Here is an update on actions in Washington that can have an impact on local governments in New Jersey. We thank the folks at the National League of Cities (NLC) for their advocacy and this information.

**I. Major Differences Emerge Between House and Senate FY2016 Appropriations Bills Transportation-Housing Appropriations Bill Passes House**

The House has approved its version of a FY 2016 appropriations bill for the U.S. Departments of Transportation and HUD. As required by the Budget Control Act, overall funding for the bill adheres to the lower sequestration spending caps, thereby reducing overall federal investments in local governments. At the Department of Housing and Urban Development, the burden of sequestration has largely fallen on families in need of rental assistance through the Section 8 program. According to the Center on Budget and Policy Priorities, 85,000 fewer families were able to use federal housing vouchers in December 2014 than two years earlier, due largely to sequestration. The FY2016 bill attempts to alter course by providing a modest increase for housing vouchers, but many in the housing community believe even that modest increase will be insufficient to keep all existing vouchers fully funded for another year. The bill maintains level funding for CDBG at \$3 billion and HOME at \$900 million. This is good news on both fronts; however, maintaining level funding for home comes at a steep price for housing advocates as funding from the National Housing Trust Fund would be diverted to the HOME program, which would leave the Housing Trust Fund largely useless.

At the Department of Transportation, programs funded through the appropriations process would be subject to another small reduction, resulting in the lowest overall level of funding for these programs in 14 years, adjusted for inflation. Among local priorities, the popular TIGER grant program would be reduced from \$500 million to \$100 million. Other rail programs including Amtrak funding and Capital Investment Grants for Mass Transit would also receive reduced funding.

The Senate is expected to introduce its version of the FY2016 DOT-HUD Appropriations bill as early as this week, but the outcome of the overall spending debate is far from settled. President Obama is urging Congress to increase spending overall beyond the caps and has stated his intention to veto any bill that reaches him with the current sequestration caps in place.

## **II. Senate Appropriators Provide Funding for COPS Hiring Grants**

On Thursday, June 11, 2015, the Senate Committee on Appropriations approved the FY2016 Commerce, Justice and Science (CJS) Appropriations Bill, which provides funding for the U.S. Department of Commerce, U.S. Department of Justice, the National Aeronautics and Space Administration, the National Science Foundation, the National Oceanic and Atmospheric Administration and other related agencies. The bill funds the Department of Justice (DOJ) at \$27.8 billion, an increase of \$798 million above the FY2015 enacted level. The bill allocates \$2.3 billion in funding for state and local law enforcement and crime prevention grant programs, an increase of \$214 million above FY2015 enacted level.

Unlike the CJS Appropriations Bill that passed the House earlier this month, the Senate bill provides \$187 million for COPS Hiring grants to help State, local, or tribal law enforcement agencies to create and preserve police officer positions and to increase community policing capacity and crime prevention efforts. The Senate bill also provides \$65.5 million for Juvenile Justice State Formula grants and \$40 million for Juvenile Delinquency Prevention Programs, which were zeroed out in the House bill.

NLC will continue to urge Senate and House lawmakers to ensure that these and other essential state and local law enforcement grant programs continue to be adequately funded.

## **III. E-Fairness Legislation Introduced in the House**

Earlier this week, with the support of NLC, Representative Jason Chaffetz of Utah introduced the Remote Transactions Parity Act (H.R. 2775). 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 merchants, 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.

So far, a bipartisan group of 19 House members are co-sponsoring the bill. (To date, no New Jersey members are among them.) More are needed to build momentum for resolving this issue once and for all. If you haven't already, please contact your House members and urge them to cosponsor the bill.

#### **IV. House Committee Passes Bills That Interfere with Local Taxing Authority**

Early last week, the House Judiciary Committee passed two bills that NLC opposes because they would interfere with local taxing authority, H.R. 1643, The Digital Goods and Services Tax Fairness Act of 2015 (Digital Goods), and H.R. 2584, the Business Activity Tax Simplification Act of 2015 (BATSA).

The Digital Goods legislation calls for the preemption of local authority to tax digital goods such as downloaded music, movies and online services. Besides interfering with local taxing authority, the bill also redefines digital service in such a way as to exclude them from counting towards local cable franchise fee revenues generated from on-demand and pay-per-view services. With the increasing popularity of these services, local governments would lose millions of dollars in revenues that are currently being used to fund the delivery of essential local services such as public safety and infrastructure.

BATSA would mandate the use of a physical presence standard for determining whether a state or local government could assess a tax on a company.

In a letter for the hearing record, NLC told the Committee we opposed both bills and urged them to spend time instead resolving the remote sales tax collection issue. In his remarks during the Committee hearing, Ranking Member John Conyers raised concerns with the legislation specifically citing to our comments.

#### **V. Permanent Tax Ban Passes the House**

Despite NLC opposition, the House passed H.R. 235, the Permanent Internet Tax Freedom Act (PITFA) in a voice vote on June 9. This measure, which NLC has long opposed, will prohibit state and local governments from taxing Internet access, including those that were grandfathered in (Hawaii, New Hampshire, New Mexico, North Dakota, Ohio, South Dakota, Texas, Washington, and Wisconsin) when the Internet Tax Freedom Act was first passed.

With the House action behind us, NLC will now focus on mobilizing opposition to the companion bill pending in the Senate, S. 431. That bill is currently pending in the Senate Finance Committee.

#### **VI. Supreme Court Decides Significant Government Speech Case**

In [\*Walker v. Sons of Confederate Veterans\*](#) the Supreme Court held 5-4 that Texas may deny a proposed specialty license plate design featuring the Confederate flag because specialty license plate designs are government speech. The Court relied heavily on *Pleasant Grove City, Utah v. Summum*, where the Court held that monuments in a public park are government speech and that a city may accept some privately donated monuments and reject others. First, just as governments have a long history of using monuments to speak to the public, states have a long history of using license plates to communicate messages. Second, just as observers of

monuments associate the monument's message with the land owner, observers identify license plate designs with the state because the name of the state appears on the plate; the state requires license plates, etc. Third, per state law, Texas maintains control over messages conveyed on specialty plates and has rejected at least a dozen designs, just as the city in Summum maintained control monument selection.

## **VII. Supreme Court's Sign Case May Require Altering Sign Codes Nationwide**

In [\*Reed v. Town of Gilbert\*](#) the Supreme Court held unanimously that Gilbert's Sign Code, which treats various categories of signs differently based on the information they convey, violates the First Amendment. Gilbert's Sign Code treats temporary directional signs less favorably (in terms of size, location, duration, etc.) than political signs and ideological signs. Content-based laws are only constitutional if they pass strict scrutiny-that is, if they are narrowly tailored to serve a compelling government interest. The Court concluded that the sign categories in this case are based on content because they draw distinctions based on the message a speaker conveys. Gilbert's Sign Code failed strict scrutiny because its two asserted compelling interests-preserving aesthetic and traffic safety-were "hopelessly underinclusive." Temporary directional signs are "no greater an eyesore" and pose no greater threat to public safety than ideological or political signs, according to this decision.

Very truly yours,

Brian C. Wahler, President  
NJLM and Mayor Piscataway Township