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# Florida League of Cities 2014 Federal Action Agenda

## WATERS OF THE U.S. RULE

On April 21, 2014, the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers jointly proposed regulations to revise the definitions of "Waters of the United States" or "WOTUS," as the term is to be used in the application of the Clean Water Act (CWA) and the Corps of Engineers' jurisdictional regulations. The EPA has indicated that the purpose of the proposed rule is to clarify what waters are (and are not) covered by the CWA. In addition, the EPA has said that the new regulations will not have a substantial direct effect on the states since it will not significantly change what is currently considered WOTUS. However, there are some areas that, depending on the interpretation, could constitute a very significant expansion of the WOTUS definition and include waters previously not deemed jurisdictional under previous Corps of Engineers and EPA practice or guidance. The EPA is currently accepting public comment on the proposed rule through October 20, 2014.

The Florida League of Cities believes the proposed rule lacks clarity. The League has expressed concerns as to what the consequences of the proposed rule will be on municipal stormwater and wastewater utilities and the significant potential costs for Florida's municipalities.

The **Waters of the U.S. Regulatory Overreach Protection Act (H.R. 5078),** sponsored by Representative Steve Southerland (FL-2), would halt enforcement of the proposed rule among other things. The League supports language in the bill that would require the EPA to consult with state and local officials to formulate recommendations for a consensus regulatory proposal that would more clearly identify the scope of waters to be covered under the CWA.

## TRANSPORTATION REAUTHORIZATION

The **Moving Ahead for Progress in the 21st Century Act (MAP-21)** is the federal surface transportation program that is set to expire in May 2015. Funding for the program via gas tax receipts deposited in the Highway Trust Fund is not sustainable. A new transportation bill will require Congress to make some difficult decisions regarding funding. The Florida League of Cities supports long-term transportation planning and funding that includes local decision-making authority, invests in long-term equitable transportation solutions, supports sustainable multimodal choices and maintains a strong federal commitment. Specifically, the League requests Congress to consider the following local government priorities in the next surface transportation bill:

- Provide local governments with long-term funding: Provide local governments with the certainty of a multi-year program. Such certainty is vital for local governments to plan and fund transportation in their communities. The shortfall in the Highway Trust Fund also needs to be addressed immediately through enhanced gasoline taxes or alternative sources of revenue that do not interfere with local governments' ability to finance local transportation needs.
- Send funding directly to the projects where people live and work by giving local leaders a stronger role in selecting projects: Increase the roles for local officials to make decisions about project funding through metropolitan planning organizations and rural planning organizations.
- Support alternative financing: Fund the Transportation Infrastructure Finance and Innovation Act (TIFIA) program, incentivize local innovation and preserve the federal tax exemption for municipal bonds.
- Streamline the planning and approval process: Continue MAP-21 provisions that help cities deliver transportation projects quickly, eliminate red tape and maintain environmental standards.
- Support public transportation systems of all sizes: Continue to fund transit programs from federal gas tax revenues and provide discretionary funding for both rural and urban transit systems to address major investments.

## FEMA DEOBLIGATIONS/ CLAW-BACKS

Over the last few years, a number of local governments in Florida have expressed concerns with the **FEMA Public Assistance Program (FEMA PA).** FEMA PA, which provides recovery project funding to local governments for uninsured infrastructure repairs following a presidential disaster declaration, is a critical part of a community's recovery process. Since around 2011, the Department of Homeland Security's Office of Inspector General (OIG) has been auditing previously approved recovery projects in an attempt to recapture funds that it asserts should not have been awarded. Many of these audits are from the 2004 and 2005 storms and the moneys received have been long spent on recovery projects. These so-called "deobligations" can run in the millions of dollars and have impacted the budgets of local governments and other special districts across the state. While local governments have the right to an appeal process, the appeals process can result in lengthy delays, denials and, moreover, can involve issues so timeworn that neither the relevant documentation nor local government staff remain to accurately appeal these audit

## FEMA DEOBLIGATIONS/CLAW-BACKS (CONTINUED)

findings. This situation has left local governments with no choice but to pay back moneys for recovery projects that, in some instances, were previously identified, developed and determined eligible by FEMA staff.

In a state where natural disasters are never a question of if, but rather when, the Florida League of Cities strongly supports the mission and role of FEMA and the assistance it provides to local governments in times of need. However, the League believes improvements can be made to the process. FEMA has also acknowledged that there are problems and is currently considering reforms to the process. A more organized and cooperative approach needs to be further explored, specifically as it relates to the unlimited OIG timeframe for review of recovery projects, FEMA deobligations of previously approved recovery project funding years after the loss event and improvements to streamline the appeals process.

## MARKETPLACE FAIRNESS ACT/INTERNET ACCESS

A 1992 Supreme Court case left state and local governments unable to enforce sales tax collections by out-of-state catalog and online sellers. As a result, billions of local tax dollars are lost each year by allowing this tax-free platform to exist, while brick-and-mortar retailers collect sales taxes from customers. This creates an unfair disadvantage to the shopkeepers on main streets, especially at a time when local governments are trying to encourage job creation and economic development.

**HR 3086,** which passed the U.S. House of Representatives this summer, would make permanent the **Internet Tax Freedom Act's (ITFA)** moratorium on state and local government Internet taxes. The Florida League of Cities and several national and state local government associations oppose a permanent extension of the moratorium. As more services transition from telecommunications and cable to broadband, the scope of what the ITFA covers will greatly expand, even if the ITFA's current language remains unchanged. To protect the tax bases and fiscal strength of state and local governments, the Florida League of Cities does not support anything more than a short-term extension of the ITFA. A temporary extension would provide more time for the full scope of the transition from telecommunications/cable to broadband to occur, and provide a better sense of the costs that ITFA preemption would impose.

Recently, there have been efforts to combine the Marketplace Fairness Act with the ITFA. On July 15, 2014, Senators Enzi (WY), Durbin (IL) and several other senators introduced the **Marketplace and Internet Tax Fairness Act (MITFA), S. 2609.** The legislation combines the Marketplace Fairness Act, which passed the Senate last year with a strong bipartisan majority (69-27), with a 10-year extension of the ITFA. The Florida League of Cities supports S. 2609 as long as the moratorium is not permanent.

## SOBER HOMES

Recovery residences, also known as "sober living homes" or "sober houses," provide a great value to people overcoming drug and alcohol addictions. The recovery residence industry's prolific growth has raised questions nationwide as to whether a regulatory structure is necessary. These homes typically provide a drug- and alcohol-free living environment for individuals recovering from substance abuse; however, there is no universally accepted definition for these businesses, leaving to interpretation those characteristics that distinguish them from other regulated housing options.

Individuals in recovery are disabled within the meaning of the Americans with Disabilities Amendments Act (ADAA) and handicapped within the meaning of the Federal Fair Housing Amendments Act (FHAA). These acts prohibit discrimination on the basis of disability/handicap status. There is no clarifying definition of the protected class, except to describe individuals blanketed by the law as individuals who are "not currently using alcohol or substances."

State and local governments are limited by federal laws in their ability to address the impacts to local communities of "over-concentration" and "clustering" due to the proliferation of homes in many cities around the country. The Department of Housing and Urban Development is charged with the interpretation of the FHAA, while the Department of Justice is charged with the enforcement of the law. However, there has been no updated interpretation of the acts and how they apply to these homes or their protected residents since a Joint Agency Statement dated August 18, 1999, titled the **Group Homes, Local Land Use, and the Fair Housing Act.** The courts have applied the FHAA and ADAA inconsistently over the years, causing a great financial and social burden on state and local governments facing over-concentration of sober homes.

The Florida League of Cities urges Congress to enact legislation that provides state and local governments with the authority to oversee and regulate recovery residences within their jurisdictions.