

March 28, 2016

Re: Federal Update

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Dear Mayor:

Based on information provided by the National League of Cities (NLC) – our eyes, ears and voice in Washington – here is an update on several important developments.

I. Support Needed for Water Infrastructure Funding

Access to clean drinking water is fundamental for the health and well-being of America's communities and families. The recent drinking water crises in Flint, Michigan, Newark and other municipalities are stark reminders of the need to invest in our water infrastructure nationwide.

A bipartisan group of senators, led by Senators Debbie Stabenow, James Inhofe and Gary Peters, recently introduced S. 2579, the Drinking Water Safety and Infrastructure Act. This proposal would provide a \$220 million aid package for the City of Flint to resolve the drinking water crisis, as well as funding to support communities with aging water systems nationwide.

Specifically, the proposal includes:

- \$100 million for the Drinking Water State Revolving Loan Fund for any state, such as Michigan, that receives an emergency declaration under the Stafford Act due to a public health threat from lead or other contaminants in a public drinking water supply system;
- \$70 million for the Water Infrastructure Finance and Innovation Act (WIFIA) for lowinterest loans for large water and wastewater infrastructure projects nationwide; and
- \$50 million to support public health initiatives, such as lead poisoning prevention, research and health assistance.

With the U.S. Senate poised to take action when they return from recess, now is the time to ask our Senators to support this important legislation. Send a letter to Senators Menendez and Booker today and ask them to support S. 2579.

Want to review the text of the letter, or send it on your municipality's letterhead? [Click here](#) to download the letter.

Visit www.nlc.org/flint for more information.

II. NLC Joins House and Senate Champions to Support CDBG

Last week, NLC, as a member of a national CDBG Coalition, joined CDBG champions in the Senate and House to proclaim support for the CDBG program. A record 139 Representatives (including New Jersey Congresswoman Bonnie Watson Coleman and Congressmen Bill Pascrell, Albio Sires, Donald Norcross, Donald Payne and Frank LoBiondo) and 37 Senators (including both Senator Booker and Senator Menendez) joined the over 1,000 national, state, and local groups in the Coalition on three letters to the House and Senate Appropriations Committees urging greater funding for CDBG in FY 2017.

Thanks to the advocacy of local officials, funding for the CDBG program has recently stabilized at approximately \$3 billion annually. However, that amount remains more than 25 percent below the \$4.4 billion appropriated for the program before the Great Recession of 2008. The loss in funding has had consequences on communities nationwide, including a reduction of services for aging populations, for veterans' assistance (e.g., housing, services, employment/job training), for child care (e.g., after school programs for low-income children, day care assistance for working families), and extended delays for necessary public improvements. The CDBG Coalition is urging Congress to restore investments in municipalities by providing \$3.3 billion for CDBG in FY 2017.

With over 1,000 organizations signed-on from nearly every state, the National Letter of Support for CDBG is an essential component of our advocacy efforts. The CDBG Coalition will continue to solicit groups to sign on to the letter; to add your municipality's name, [click here](#).

III. Senate Seeks Drone Regulations that Preempt Municipal Governments

Last week, the National League of Cities and the U.S. Conference of Mayors led efforts to [oppose a provision](#) in Senate legislation that would allow the FAA to override local authority in determining how, when, and where commercial drones operate in their own cities. The provision sets a dangerous precedent by allowing the FAA to regulate the airspace for unmanned vehicles just feet above your city's homes, schools, businesses and public spaces, without regard for local needs and preferences of communities that may want to impose their own zoning regulations and restrictions.

Working closely with the U.S. Conference of Mayors, the National Conference of State Legislatures, the National Governors Association and members of the Senate, NLC will continue to galvanize support to ensure local control for local airspace. For additional information, read the NLC's [latest blog post](#) and register for bill updates [here](#).

IV. FEMA Proposal Is Problematic

Earlier this year, the Federal Emergency Management Association (FEMA) released an Advanced Notice of Proposed Rulemaking requesting comments on a proposal to establish a disaster deductible for state and local governments in order to receive FEMA disaster relief funds.

While the goals of incentivizing pre-disaster planning, mitigation and reducing disaster costs overall are laudable, in comments filed with the agency last week, NLC cited several concerns with the proposal and urged FEMA to exercise caution before altering the current statutory scheme.

Those concerns include FEMA's lack of authority to lower its share of disaster recovery costs without congressional action; the addition of administrative bureaucracy that would slow down the distribution of funds that contribute to recovery; and the imposition of arbitrary financial obligations on and costs shifts to state and local governments.

V. NLC Calls for Flexibility in Stormwater Rulemaking

In a letter to the U.S. Environmental Protection Agency (EPA) on proposed updates to its Phase II stormwater regulations, NLC urges the agency to adopt a flexible approach that would allow states, working closely with their Municipal Separate Storm Sewer System (MS4) communities, to choose the most appropriate method of incorporating permitting authority review and public participation in the permitting process.

The [NPDES Stormwater Proposed MS4 General Permit Remand Rule](#) is a response to a 2003 ruling from the Ninth Circuit Court of Appeals that found certain deficiencies in the permitting process for small MS4s covered under general permits, namely the lack of permitting authority review and the lack of public participation in the permitting process.

EPA has proposed one option for satisfying the court order, while also taking comments on two other options. The three options are:

- Option 1 (EPA's proposed approach) - A traditional general permit approach whereby the general permit includes clear, specific and measurable provisions and the permittee is required to submit a Notice of Intent that the requirements will be met.
- Option 2 - A procedural approach whereby the permit authority establishes a mechanism to approve individual MS4 programs.
- Option 3 - A state choice approach whereby the permit authority can choose to follow either option one or two or a hybrid of the two.

NLC urges EPA to adopt Option 3 to allow states the flexibility to craft practical MS4 permits and preserve the existing flexibility in the MS4 program for local permittees.

This rulemaking applies to operators of a "regulated small MS4," of which 94 percent are permitted under a state general permit. There are 6,380 small MS4s covered by general permits nationwide.

Seven states do not issue general permits, but rather individually permit their small MS4s and would therefore not be affected by this rulemaking: Alaska, Delaware, Idaho (EPA is the permitting authority), Iowa, Michigan, North Carolina, and Oregon.

VI. NLC Tells the House to Say No to PEPTA

On March 22, Representative Nunes introduced the Public Employee Pension Transparency Act (PEPTA), [HR 4822](#). This legislation is identical to previously proposed and ultimately unsuccessful versions of PEPTA introduced in the last two sessions of Congress. The act would require sponsors of state and local defined benefit plans to report plan liabilities to the Secretary of the Treasury annually in order to retain their federal tax-exempt bond status. It would also require supplementary reports restating these liabilities, using a so-called "risk-free" assumed rate of return. The data would then be entered into a federal database that would be accessible to the public. Finally, the bill makes it explicitly clear that public pension obligations are the responsibility of state and local governments and that the federal government will not provide a bailout. NLC opposes this measure and any imposition of federally mandated disclosure and reporting on state and local pension plans. To view NLC's letter opposing this measure to Speaker Paul Ryan and members of the House, [click here](#).

This proposed expansion of the existing reporting and disclosure requirements would add significant reporting burden to state and local plans, possibly doubling the effort and cost of the current reporting requirements. A small number of well-known jurisdictions have severe pension funding problems, but transparent data resources such as the [Public Plan Database](#) ensure that these jurisdictions' shortfalls are well-known and understood under the current reporting and disclosure requirements. In addition, PEPTA requires the creation of a new federal bureaucracy that would gather, process, and verify the information for the nation's 2,550 state and local pension plans.

Adding another calculation to public pension plans' disclosure efforts is not only burdensome but misleading. Significant additional and irrelevant reporting requirements will not correct funding issues. Adding a new number to the reporting and disclosure efforts of the Governmental Accounting Standards Board, Actuarial Standards Board, and credit ratings agencies could also impede appropriate funding decisions by causing policymakers to misunderstand the level of contributions required.

NLC, along with other Public Pension Network members representing both state and local governments and retirement systems, will continue to educate members of Congress about the true fiscal condition of public pension systems, and to oppose proposals to undermine state and local government authority to effectively govern and finance pension plans.

VII. \$2 Billion Available for Transportation Infrastructure Projects

The Federal Highway Administration announced this month that approximately \$2 billion in unallocated federal transportation earmarks can be repurposed by states if the original earmark was over 10 years old, if less than 10 percent of project funds had been obligated, or if the project is closed. For municipalities, this may be an excellent opportunity to secure funds for high priority, shovel ready projects.

For a list of cities with unobligated funds, you may visit the project list at the bottom of the [FHWA Earmark Repurposing webpage](#). If you find a project in your municipality that is eligible for repurposing, we urge you to work with our state Department of Transportation to identify alternative projects ahead of the [quickly approaching deadlines](#).

VIII. FAST Act Grant Funding Available for Freight Projects

The United States Department of Transportation (USDOT) has announced their first round of funding for the newly created FASTLANE grant program. The program, created in the FAST Act, will provide grants as small as \$5 million for freight infrastructure, including intermodal projects.

The National League of Cities worked closely with Congress to ensure that the FAST Act provided greater local control of federal funding to cities. We are pleased that this freight grant program answered NLC's call by allowing cities to directly apply for funding, as well as \$80 million in fiscal year 2016 for small projects.

For a list of eligible projects, and for more information on how to apply for freight funding through the FASTLANE grant program, we encourage you to visit the [Notice of Funding Opportunity](#) on the USDOT webpage.

IV. FCC Cable Box Proposal May Impact Local Governments

The Federal Communications Commission (FCC) has released a notice of proposed rulemaking that would shift how cable and satellite television subscribers consume video content. The proposal would require cable and satellite providers to provide video programming data available to other companies wishing to create device or software-based alternatives to rented cable boxes. The FCC has [advocated for this "unlock the box" proposal](#) as a route to increased flexibility and cost-savings for consumers, who would no longer need to rent cable boxes from their television providers, and could instead choose a device or program, that combines video content from several providers into a single navigation system.

NLC plans to raise concerns about the rule's potential to impact local governments. Public, educational, and government access (PEG) stations, which many local governments operate, were not specifically discussed in the proposal and could be harmed if cable providers' content agreements around those stations are not upheld by third-party device makers. The FCC stated

that at this time, it did not plan to include restrictions on how third party devices handled channel lineups or other agreements made by cable providers, as the agency did not anticipate abuse in this area. The proposal does outline requirements for third-party device manufacturers to protect other specific types of content, including Emergency Alert System messages.

Initial comments are due April 15, and reply comments are due May 16. NLC plans to submit comments on this proposal. The full text of the rule, and filing requirements, may be [found at the Federal Register site](#).

X. Supreme Court Updates for Local Government Officials

The State and Local Legal Center will hold the upcoming event focused on current trends in the Supreme Court that matter to local governments:

Rescheduled: 10 Years of the Roberts Court for State and Local Governments Webinar In cases big and small, involving issues ranging from race to religion, federalism to free speech, many, if not most, Roberts Court decisions have affected state and local governments. Join Tom Goldstein, SCOTUSblog and Goldstein & Russell, Adam Liptak, New York Times, and David Savage, Los Angeles Times, in a discussion about the significant impacts over the last ten years of the Roberts Court on state and local governments.

Date: May 11, 2016

Time: 1:00PM EDT

[Register for the webinar here](#).

*The webinar is FREE. Continuing legal education (CLE) credit is not offered.

XI. Sign up for Mayor and County Recognition Day for National Service

The nation's mayors and county officials are increasingly turning to national service as a cost-effective strategy to address local challenges. By unleashing the power of citizens, AmeriCorps and Senior Corps programs have a positive and lasting impact - making our cities and counties better places to live. To spotlight the impact of national service and thank those who serve, mayors and county officials will participate in the fourth-annual [Mayor and County Recognition Day for National Service](#) on April 5.

On this day, mayors and county officials will hold public events and use traditional and social media to highlight the value of national service to the nation's cities and counties. Last year, 2,786 elected officials representing more than 150 million citizens participated in the third annual Mayor and County Recognition Day for National Service. The initiative is being led by the National League of Cities, National Association of Counties, Cities of Service and the Corporation for National and Community Service.

Register to participate today. Go to www.nationalservice.gov/RecognitionDay or email Mayors4Service@cns.gov to learn more.

Very truly yours,

Michael Darcy, CAE Executive
Director