NOSSAMAN LLP | Memorandum

TO: Monterey County Board of Supervisors

FROM: Brent R. Heberlee

DATE: January 11, 2016

RE: 2015 Federal Legislative Report

This memo will review significant federal legislative and administrative matters with which I was involved in 2015 as part of the County team responsible for executing the 2015-16 Legislative Program.

With the Democrats losing control of the Senate after the November 2014 elections, the opening of the 114th Congress in January 2015 marked the first time that Republicans controlled both houses of Congress since 2006. For most of 2015, Republican leadership in the House and Senate found very little common ground with President Obama on the major policy issues facing the country. The resulting legislative gridlock gave rise to a flurry of executive actions by the Obama Administration on immigration, environmental protection, labor standards, and many other significant issues. As the first session of the 114th Congress came to a close on December 18, 2015, the House had a new Speaker and the Congress enacted major, bipartisan budget and tax legislation and a comprehensive transportation policy bill. If the Congress hopes to build on this legislative momentum in 2016, it will have little time to do so as the presidential nominating process increasingly dominates the political landscape.

House Leadership Shuffle

On September 25, 2015, Speaker John Boehner (R-OH) stunned his fellow lawmakers when he announced that he would resign from the Speakership by the end of October and retire from Congress after 24 years in office. This announcement occurred as the end of the 2015 fiscal year approached, requiring Congress to either pass legislation to fund the federal government for FY2016 or risk a government shutdown. The House Freedom Caucus, a group of about 40 ultraconservative Republicans, had threatened to block any funding bill from passing unless it defunded Planned Parenthood. The Freedom Caucus threatened to initiate a vote to force Speaker Boehner from his post unless he conceded to their demands. By announcing his retirement, Speaker Boehner was able to defuse the situation and temporarily resolve the government funding situation with a short-term funding measure.

Speaker Boehner's announcement set off a weeks-long House Republican leadership shuffle. Though House Majority Leader Kevin McCarthy (R-CA) was widely considered the favorite to replace Boehner as Speaker, he ultimately dropped out of the race, citing opposition from within the Republican Party, including the House Freedom Caucus. Following McCarthy's surprising announcement, Republican leadership renewed their efforts to recruit Rep. Paul Ryan (R-WI) for the position, despite previous statements that he was not interested in the job. After intense pressure, Ryan agreed to pursue the Speakership if he received assurances that the House Republican Conference's diverse factions would support him. On October 29, 2015, Rep. Paul Ryan was elected Speaker of the House, winning support from all but nine Republican House members.

Budget Agreement and Debt Ceiling

The Budget Control Act (BCA) of 2011 caps federal discretionary spending for both defense and non-defense programs through FY2021, and enforces those caps through across-the-board spending cuts, known as "sequestration." This past year, Democrats in Congress blocked FY2016 appropriations bills from advancing in an effort to force Republican lawmakers to negotiate higher spending levels for both defense and non-defense programs. Congressional Republican leaders and the White House negotiated a budget agreement that resolved this dispute, allowing the FY2016 appropriations process to proceed. The Bipartisan Budget Act passed on October 30, 2015, increasing the BCA's discretionary spending caps for FY2016 and FY2017 to $1.067 trillion and $1.07 trillion, respectively. The budget agreement also suspends the debt limit until March 15, 2017, taking a default off the table for the remainder of President Obama's term of office.

FY2016 Appropriations

One of the last items on the 2015 legislative agenda before lawmakers departed for the year was the passage of an Omnibus appropriations measure to fund the federal government for the remainder of FY2016, thereby avoiding a government shutdown. After high-stakes negotiations, the House passed a $1.1 trillion year-end spending bill on Dec. 18, 2015, by a vote of 316-113. The Senate passed the measure shortly thereafter by a vote of 65-33, sending the measure to the President. Senators had combined this spending measure with the Protecting Americans from Tax Hikes (PATH) Act, a bill to renew expired tax provisions.

Republican lawmakers had demanded that this must-pass spending legislation include over 100 policy riders, including language to require enhanced vetting of Syrian and Iraqi refugees and the repeal of major Obama Administration environmental and financial regulations. Democratic lawmakers and the White House strongly opposed these controversial policy riders, and in the end the bill's negotiators had largely stripped them from the package. Despite this, the spending measure contains some key wins for Republicans. The legislation lifts the four-decade-old ban on U.S. crude oil exports, another provision the White House opposed. In exchange, Republican lawmakers agreed to extend certain tax breaks for renewable energy producers.

The FY2016 Omnibus Appropriations Act also contains the following funding and policy measures that I have tracked for the County over the past year:

Transportation: maintains $500 million in funding for the TIGER program. The TIGER program distributes grants on a competitive basis to state and local governments for investments in roads, bridges, public transit systems, passenger and freight railroads and port infrastructure.

HOME Investment Partnerships Program (HOME): restores funding for the HOME program to $950 million. This level is $50 million more than FY2015 and results in the production of more than 35,000 affordable housing units for FY2016. The HOME program helps states and local governments increase housing affordability through the building, buying, or rehabilitation of affordable housing.

Department of Justice: includes a total of $2.5 billion for various state and local grant programs ($174 million more than last year), including $210 million for the State Criminal Alien Assistance Program (SCAAP); $476 million for Byrne Justice Assistance Grants; $187 million for COPS hiring and rehiring programs; and $70 million for programs to improve police-community relations, including the purchase of body-worn cameras for police.

Payments in Lieu of Taxes (PILT): provides $452 million for payments to counties through the PILT program. It is the amount estimated in the President's budget to fully fund payments in FY2016.

USDA Rural Water Grants: provides $522 million for water and waste disposal loans and grants ($57.5 million more than last year). Water and waste grants are increased by $26.2 million, which will help the most remote, lowest income rural communities to obtain clean drinking water and sanitary waste disposal.

Coastal Ecosystem Resiliency Grants: provides $10 million to continue the coastal ecosystems resiliency grants program established in FY2015.

Medical Marijuana: similar to last year, the Act contains language preventing the Justice Department from interfering with states that have medical marijuana laws, ensuring that the prescribing and dispensing of medical marijuana in that state is both legal and regulated.

Immigration: drops a House rider that would have prohibited the Department of Homeland Security or any other federal agency from expanding the existing Deferred Action for Childhood Arrivals or implementing the proposed Deferred Action for Parents of Americans and Lawful Permanent Residents while the court injunctive order remains in effect.

Immigration: contains a new provision that allows returning non-immigrant workers to be exempt from counting towards the cap on H-2B visas for FY2016, permitting employers who cannot find local temporary workers to more easily fill seasonal jobs in industries such as hospitality and seafood processing.

California Drought Relief Legislation

Negotiations between Senator Feinstein and California House Republicans over California drought relief legislation fell apart in mid-December after House Republicans attempted to include drought relief language in the Omnibus Appropriations Act. The language was similar to a Republican bill that passed the House on July 16, 2015, largely along party lines, that would loosen environmental restrictions on how much water can be pumped from the Sacramento-San Joaquin River Delta to parched agricultural communities in the Central Valley and municipalities farther south.

Senators Feinstein and Boxer introduced the California Emergency Drought Relief Act on July 29, 2015, a bill that would authorize over $1 billion for state and local water projects throughout California, including a handful of water recycling and desalination projects in Monterey County. The bill would also authorize additional funding both for federal and non-federal water storage projects, such as the Interlake Tunnel project.

Senator Feinstein has indicated she plans to introduce revised drought legislation very soon that will be considered by the Senate Energy and Natural Resources Committee early in 2016. Feinstein's bill will likely be folded into a broader West-wide drought relief bill that the Committee will develop early this year.

Surface Transportation Reauthorization

On December 3, 2015, Congress passed the first five-year reauthorization of federal highway and transit programs since 2005. The bill also included a reauthorization of Amtrak and provisions intended to improve the safety of transporting crude oil on railroads. Identifying a funding source presented a key hurdle in this effort, since the federal gas tax, which has historically replenished the Highway Trust Fund, has not been able to keep up with the nation's infrastructure needs.

The Fixing America's Surface Transportation (FAST) Act provides $305 billion for transportation over five years. But according to the Congressional Budget Office, revenue and interest coming into the Highway Trust Fund from the federal gas tax over the life of the bill would only amount to $208 billion. In order to cover the cost of surface transportation programs, Congress chose to draw $70 billion from the General Fund for the measure and deposit it in the Highway Trust Fund, the source of reimbursement for states for highway and transit projects. The largest offset for that transfer, at $53.3 billion, comes from drawing down the Federal Reserve surplus account, which is meant to absorb losses suffered by banks.

As for highway and transit policy, the FAST Act would boost funding for bus transit, convert the Surface Transportation Program into a block grant program to provide additional flexibility to state and local governments, and create new freight policy and grant programs. For counties, the bill increases the share of money from the Surface Transportation Program (the biggest pot of money in the transportation bill) that is dedicated to specific metropolitan regions from 50 percent to 55 percent.

Workforce Innovation and Opportunity Act (WIOA) implementation

WIOA, enacted in 2014, reauthorized and overhauled the Workforce Investment Act of 1998, and it represented the first major legislative reform in 15 years of the public workforce system.

The U.S. Department of Labor (DOL) and U.S. Department of Education issued a joint Notice of Proposed Rulemaking (NPRM) on April 16, 2015, to implement Title I of WIOA, which includes the governance structure for the one-stop centers that provide an array of employment services and connect customers to work-related training and education. Section 121(d)(2)(A) of WIOA and the proposed rule would require one-stop operators to be selected through a competitive process and in place no later than July 1, 2017, with very limited exceptions. The proposed rule suggests that this competitive process should be conducted not less than every 4 years. The federal agencies are currently reviewing the hundreds of comments they received, and a final rule is expected to be issued in early 2016.

Although the proposed rule has yet to be finalized, DOL has issued WIOA guidance documents as recently as August 15th that allude to the requirement for conducting competitions for selecting one-stop center operators. DOL has also indicated that it intends to issue a guidance document that focuses on “Competitive Procurement of One Stop operators under WIOA,” although it is unclear exactly when it will be released.

Base Realignment and Closure (BRAC)

The Pentagon’s FY2016 budget proposal included another request to Congress for authority to initiate a new BRAC round in 2017. The FY2016 Defense policy bills in both the House and Senate rejected new BRAC rounds, although the House bill leaves the door open to future base closure rounds by requiring the Pentagon to provide Congress with a 20-year structure plan for each military service and a worldwide inventory of infrastructure. The report would compare the plan with the infrastructure inventory to determine what would be needed to support the future force structure, and in theory give lawmakers an idea of what specifically the military's excess infrastructure is. The Defense policy bill remains stalled in Congress due to a veto threat issued by the President over unrelated provisions in the bill.

The FY2016 Defense spending bill, included as part of the Omnibus Appropriations Act, expressly forbids the Pentagon from using any funds to propose, plan for, or execute a new BRAC round.

Medicare Physician Payment System

After passing 17 temporary patches over the past 20 years, Congress enacted legislation in March 2015 to replace the flawed Sustainable Growth Rate formula used to calculate

Medicare payments to physicians. The bill establishes a new reimbursement system under which physicians could choose to participate under one of two methods: a Merit-Based Incentive Payment system under which doctors could get higher reimbursements based on better overall performance, or a group-oriented Alternative Payment Model system under which doctors would move away from traditional fee-for-service payments. It provides for a 10-year transition period under which current Medicare reimbursement rates would gradually rise each year until 2020 and then remain stable for five years while the two new programs are more fully implemented.

The measure also extends funding for the Children's Health Insurance Program for an additional two years, providing a total of $19.3 billion for the program for FY 2016 and $20.4 billion for the program for FY 2017. The program helps cover children whose families do not qualify for Medicaid. It extends funding for community health centers for an additional two years, through FY 2017, providing $3.6 billion each year, as well as numerous other health care programs that would otherwise soon expire, including the Maternal, Infant, and Early Childhood Home Visiting Program. The bill also delays by one year, until 2018, the scheduled reduction in Disproportionate Share Hospital payments received by many public hospitals across the country, including Natividad Medical Center.

Visa Waiver Program

The FY2016 Omnibus Appropriations Act includes significant changes to the Visa Waiver Program (VWP). These changes will require the adoption of new security protocols by all VWP partner countries and are in addition to the "enhancements" to the program announced by the Obama Administration at the end of November.

The VWP permits visa-free travel for 20 million visitors per year to the United States for citizens of 38 program partner countries around the world, including those from Western Europe, Australia, Chile, Japan, New Zealand, Singapore, South Korea and Taiwan. VWP visitors are admitted to the US as tourists or business visitors for 90 days, and every prospective VWP traveler undergoes counterterrorism screening and must receive approval through DHS' Electronic System for Travel Authorization.

The Omnibus Appropriations Act modified the VWP in three significant ways: 1) requiring every participating nation to issue passports embedded with electronic chips; 2) requiring every participating nation to report lost or stolen passports to the United States within 24 hours; and 3) banning any citizens from participating countries who have traveled to Iran, Iraq, Sudan or Syria from obtaining a visa waiver. The Act also excludes VWP individuals who are nationals of Iraq, Syria, Iran or Sudan.

Senator Feinstein introduced legislation this past November to strengthen the security standards of VWP, and several of the provisions of her bill were incorporated into the Omnibus Appropriations Act.

Bureau of Land Management Final Rule on Hydraulic Fracturing

The Bureau of Land Management (BLM) released its final rule on hydraulic fracturing on March 20, 2015. The rule updates regulations about drilling and fracking on land managed by the BLM and the Forest Service, as well as Native American tribal land. The rule, which would affect roughly 3,400 hydraulically fractured wells each year, requires operators to disclose fracturing chemicals to the industry-based FracFocus website and bans open pits at well sites, requiring wastewater to be stored in metal tanks. It would also require companies to demonstrate that wells are properly cemented to ensure fracking fluids do not leak into surrounding aquifers. The rule also includes a "variance" process when state and tribal regulations meet or exceed BLM's standards, and therefore qualify to supplant the federal regulations.

The BLM is currently enjoined from enforcing the new rule until a federal court reviews its legality.