



January 4, 2019

2018 Year End Federal Affairs Report

Below is an update on developments related to the Pinellas County Board of County Commissioners' 2018 federal affairs agenda and other developments throughout the year that could impact the County. This includes legislative initiatives before Congress and policy and regulatory matters from Federal agencies.

National Flood Insurance Program

Congress approved eight short-term extensions of the National Flood Insurance Program in 2018, with the legislation approved in December to extend the program through May 31, 2019.

There was no break in service for policyholders until late December when FEMA took the position that no new policies or renewal policies could be issued during the Federal government shutdown, which began on December 22. Members of Congress, including the Florida Congressional delegation, quickly and strongly objected to the FEMA decision and FEMA changed course and advised underwriters to resume issuing policies on December 28.

Pinellas County Commissioners and staff played an important role throughout 2018 in interacting with Florida's Congressional delegation to discuss the impact various proposed legislative changes to NFIP would have on Pinellas County property owners. None of the eight legislative extensions changed the operations of the NFIP in 2018, but a long-term reauthorization of the program will be a priority issue for the new 116th Congress.

Beach Renourishment

Pinellas County, in partnership with the Army Corps of Engineers, finished its scheduled \$51 million beach renourishment project last fall.

In addition, the Corps provided \$2 million in Fiscal Year 2018 Federal disaster assistance to support the completion of a study to provide a 50-year Federal Reauthorization for the Treasure Island section of the Pinellas County beach construction project. Funding is made available as part of the Flood Control and Coastal Emergencies program.

The Corps also provided emergency disaster assistance funding this summer to begin work on the Anclote River dredging project to widen and deepen the waterway to improve safety for fishermen and boaters and to provide a safer harbor for watercraft in times of storms. The City of Tarpon Springs is the sponsor for this Federal project, but the County is a partner.

Federal Budget Updates

Van Scoyoc Associates provided detailed reports to the Commissioners and staff about funding for a variety of Federal programs of interest to Pinellas County throughout 2018. This included a report on final funding levels for the Fiscal Year 2018 budget, that was resolved by Congress six months late in March 2018.

Further information was provided to the County about the status of Fiscal Year 2019 funding bills as they worked their way through the House and Senate. Five of the twelve regular appropriations bills were approved by the Congress in September prior to the beginning of the new fiscal year on October 1. The other seven appropriations bills were extended once through December 21 but lapsed on December 22 when Congress failed to take final action before the end of the year. As a result, funding for 25 percent of the Federal budget was left in limbo, leading to a partial Federal government shutdown that extended into the beginning of 2019.

While still trying to resolve Fiscal Year 2019 funding bills, Congress will begin work in February on Fiscal Year 2020 spending bills.

Offshore Energy Exploration

The Bureau of Ocean Energy Management (BOEM) in March released a draft proposed program (DPP) for the National Outer Continental Shelf Oil and Gas Leasing Program for 2019-2024. The DPP includes 47 potential lease sales in 25 of the 26 planning areas (including the Eastern Gulf of Mexico), which is the largest number of lease sales ever proposed for a 5-year lease schedule. The release followed BOEM's 2017 Request for Information on the development of the plan, which the County commented on in the summer of 2017.

The DPP includes 12 sales in the Gulf of Mexico, including 2 sales in the Eastern Gulf of Mexico after the current legislative moratorium on oil exploration in the Eastern Gulf of Mexico (225 miles from the Pinellas County coastline) expires in 2022.

Pinellas County submitted a letter strongly objecting to the proposed lease sales in the Eastern Gulf of Mexico during the 60-day public comment period.

BOEM did not issue a final leasing plan before the end of 2018. Shortly after release of the DPP, Secretary of Interior Ryan Zinke told Florida Governor Rick Scott that BOEM would take no action that would impact Florida. Secretary Zinke resigned from office in December and the President has not nominated a new Secretary.

Monitoring the development of the final lease sale plan will be a major issue in 2019, as will efforts by the Florida Congressional delegation to enact legislation to extend the moratorium on lease sale activities before it expires in 2022.

Collection of Remote Sales Taxes

A 5-4 decision by the U.S. Supreme Court in June gave states broad authority to require online and other remote sellers to collect sales taxes, ending years of uncertainty over the ability to states to collect taxes on online sales.

The Court's ruling in *South Dakota v. Wayfair Inc.*, explicitly reverses prior Court precedents that barred states from requiring retailers to collect tax unless the firms had a physical presence, such as a store or warehouse, in their jurisdiction.

Prior to the decision, retailers were only required to collect sales tax in states where they have brick-and-mortar stores. This placed local retailers at a competitive disadvantage and resulted in a loss of revenue to state and local governments. The Supreme Court previously ruled on this issue twice, most recently in 1992, affirming the prohibition of collecting taxes from retailers that do not have an in-state presence. Legislative efforts to address this issue were unsuccessful, leading several states to seek resolution in the courts.

Congressional Delegation Meeting with the Commissioners

Congressmen Gus Bilirakis and Charlie Crist and staff from the offices of Senators Bill Nelson and Marco Rubio attended a work session with the Commissioners in February 2018. This was fourth annual meeting with the Pinellas County Congressional delegation and provided an opportunity for a wide-ranging discussion about legislative priorities for the County and the Members of Congress.

Invitations already have been extended to the Congressional delegation for the 5th annual meeting, scheduled for February 21, 2019.

Opioids

One of the major bipartisan legislative accomplishments of the 115th Congress was the enactment last fall of H.R. 6, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act. This legislation will advance treatment and recovery initiatives, improve prevention, protect communities, and bolster efforts to fight deadly illicit synthetic drugs like fentanyl.

H.R. 6 updated many provisions of the Comprehensive Addiction and Recovery and the 21st Century Cures Acts that were adopted by the 114th Congress. As a result of that legislation,

Congress appropriated more than \$4 billion in the 2018 Omnibus Appropriations Bill last March to help combat the opioid crisis, as well as \$6.7 billion in the final 2019 Health Appropriations Bill to boost programs that fight, treat, and stop substance abuse, and support access to mental health services.

The new SUPPORT for Patients and Communities Act will help combat the opioid crisis by:

- Improving and expanding access to treatment and recovery services
- Providing incentives for enhanced care, coordination, and innovation
- Establishing comprehensive opioid recovery centers
- Encouraging non-addictive opioid alternatives to treat pain
- Improving data to identify and help at-risk patients and families
- Addressing high prescribing rates while enhancing prescription drug monitoring programs
- Providing law enforcement with tools to rid communities of dangerous drugs
- Intercepting illicit opioids at international mail facilities
- Improving access to federal resources for local communities
- Tackling ever-changing synthetic drugs and Fentanyl
- Providing grants for local communities to safely combat fentanyl use and abuse

Van Scoyoc Associates hosted a lengthy conference call with County staff last October to discuss provisions of H.R. 6 and provisions of the legislation that could provide funding and support for the County's efforts to combat drug abuse and expand treatment options for County residents.

Sitting of Wireless Facilities

The Federal Communications Commission (FCC), by a 3-1 vote on September 27, 2018, approved a Declaratory Order regarding Wireless Infrastructure Deployment for 5G technology and services that establishes "shot clocks" for state and local governments to approve the deployment of small wireless facilities and provide guidance on streamlining state and local requirements on wireless infrastructure deployment.

Specifically, the Declaratory Ruling:

- Explains when a state or local regulation of wireless infrastructure deployment constitutes an effective prohibition of service prohibited by Sections 253 or 332(c)(7) of the Communications Act
- Limits state and local governments to charging fees that are no greater than a reasonable approximation of objectively reasonable costs for processing applications and for managing deployments in the rights-of-way

- Removes uncertainty by identifying specific fee levels for small wireless facility deployments that presumably comply with the relevant standard
- Provides guidance on when certain state and local non-fee requirements that are allowed under the Act—such as aesthetic and undergrounding requirements—may constitute an effective prohibition of service
- Establishes two new “shot clocks” for small wireless facilities (60 days for collocation on preexisting structures and 90 days for new builds)
- Codifies the existing 90 and 150-day “shot clocks” for wireless facility deployments that do not qualify as small cells that were established in 2009
- Concludes that all state and local government authorizations necessary for the deployment of personal wireless service infrastructure are subject to those “shot clocks”
- Adopts a new remedy for missed “shot clocks” by finding that a failure to act within the new small wireless facility shot clock constitutes a presumptive prohibition on the provision of services

There was a late push from some communities as well as a group of nine House Democrats to ask FCC Chairman Ajit Pai to postpone the vote, arguing that it risks "hamstringing cities and municipalities.”

The September action by the FCC follows similar action that was taken by the Florida State Legislature in 2017. The new 116th Congress is expected to review the impact of this FCC ruling on states and communities.

Water Infrastructure Finance and Innovation Act (WIFIA) WIFIA Funding

Van Scoyoc Associates notified County staff about a U.S. Environmental Protection Agency (EPA) notice last April to request applications from communities seeking credit assistance under the WIFIA program.

The notice outlined eligible projects which include: 1) activities eligible under the Federal Water Pollution Control Act; 2) activities described in the Safe Drinking Water Act; 3) enhanced energy efficiency in public water systems; 4) the repair of a treatment works or community water system; 5) a brackish or sea water desalination project; 6) projects to prevent/reduce the effects of drought; and 7) property acquisition. The selection criteria for applicants include: 1) project impact, 2) project readiness, and 3) and borrower creditworthiness. These criteria were crafted from the EPA’s two major priorities.

The Fiscal Year 2018 Omnibus Appropriations Bill provided \$63 million in WIFIA budget authority, double the amount provided in Fiscal Year 2017. This funding would cover the subsidies for as much as \$5.5 billion in loans, and as a result could leverage more than \$11 billion in water infrastructure projects. Congress created the Water Infrastructure Finance and Innovation Act (WIFIA) within the Water Resources Reform and Development Act (WRRDA) of 2014. Under WIFIA, low-cost long-term secured loans from the Army Corps of Engineers and

the EPA are eligible for certain entities, including local governments, to finance qualified water infrastructure projects. Important benefits of the program include the extended length of the loan and the ability of borrowers to develop customized terms and repayment plans that meet the unique features of specific projects. The maximum amount of WIFIA credit assistance to a project is 49 percent of eligible project costs. Additionally, borrowers can customize their repayment plans to match their anticipated revenues and expenses for the life of the loan.

Van Scoyoc Associates will continue to monitor future calls by EPA for WIFIA eligible projects.

FAA Authorization Legislation

Van Scoyoc Associates monitored the progress of legislation to reauthorize the activities of the Federal Aviation Administration (FAA), and any impact that legislation would have on the St. Petersburg/Clearwater International Airport. After a series of short term extensions of FAA programs, Congress in September enacted a five-year extension of these program.

County staff and Van Scoyoc Associates met with the Airport Director and his staff in December to discuss the status of the Airport Master Plan and airport improvement projects that the airport will be seeking FAA support for in 2019.

Opportunity Zones

The Tax Reform Act of 2017 created tax incentives for private investment in federally designated Opportunity Zones. Van Scoyoc Associates monitored the development of IRS guidelines for investors seeking to undertake projects in Opportunity Zones.

The IRS and U.S. Department of Treasury released important proposed regulations and guidelines last October for opportunity zones. Among the highlights of the proposed regulations and guidelines:

- The deferral of almost all capital gains from investments in qualified Opportunity Zones
- If at least 70 percent of the tangible business property owned or leased by a trade or business is qualified opportunity zone business property, the requirement that “substantially all” of such tangible business property is qualified opportunity zone business property can be satisfied if other requirements are met.
- If the tangible property is a building, the proposed regulations provide that “substantial improvement” is measured based only on the basis of the building (not of the underlying land).
- Guidelines are provided for taxpayers on the “original use” requirement for land purchased after 2017 in qualified opportunity zones, found [here](#).

Opportunity Zones allow investors to take proceeds that would be subject to capital gains taxes -- such as those from the sale of a business or stock -- and put them into opportunity zone funds to

defer and potentially reduce those taxes. They can also avoid taxes on the funds' gains completely.

Disaster Assistance and Planning

Congress and the Florida Congressional delegation focused on improving the process for Federal disaster assistance and recovery and provided significant disaster response funding.

In September, Van Scoyoc Associates shared with the County staff three documents the U.S. Environmental Protection Agency (EPA) released for public comment:

1. Planning for Natural Disaster Debris;
2. Pre-incident All Hazards Waste Management Plan Guidelines: Four-step Waste Management Planning Process;
3. All Hazards Waste Management Decision Diagram.

The Planning for Natural Disaster Debris guidance is intended to assist communities in planning for debris management before a natural disaster occurs (also referred to as “pre-incident debris management planning”). This guidance revises EPA’s existing guidance document on planning for natural disaster debris that was published in 2008 under the same name. The other two documents describe, respectively, the pre-incident waste management planning process for all hazards and the waste management decision-making process during an all hazards incident. EPA notes that pre-incident planning can significantly aid decision-making during a response and enhance a community’s resiliency and that p Pre-incident planning can also help communities recover faster, spend less money on cleanup and debris/waste management, and use fewer resources to rebuild and recover.

Later in September, Congress approved and sent to the President H.R. 302, the Disaster Reform Recovery Act (DRRA), to help communities better prepare for, respond to, recover from, and mitigate against disasters of all types. The DRRA increases the focus on pre-disaster mitigation – actions taken before disaster strikes that will lessen future impacts, reduce disaster costs, help speed recovery, and prevent loss of life. The goal of the legislation is to increase efforts to prepare for natural disasters, thereby, hopefully, reducing the amount of disaster recovery efforts needed in the future.

Specifically, the DRRA:

- Reforms FEMA and the Stafford Act by ensuring that a percentage of assistance provided in the wake of disasters is invested in pre-disaster hazard mitigation so that states, tribal, and local governments can pre-empt the damage and distress that results from disasters.
- Clarifies what may be eligible for mitigation funding, making sure investments are cost effective and reduce risk.
- Speeds recovery by creating efficiencies in FEMA’s programs such as getting structures inspected faster.

- Clarifies federal programs to help expedite assistance for recipients of FEMA aid, resolve issues quickly, and rebuild more efficiently.
- Provides more flexibility in meeting disaster survivors' housing needs.
- Simplifies federal requirements for individuals and state, locals, and Indian tribal governments.
- Helps communities meet the needs of pets in disasters.
- Increases transparency and oversight in the disaster assistance process.

New leadership in the 116th Congress already has indicated that the House and Senate will monitor the implementation of this Act as well as review FEMA practices and policies that may slow emergency response efforts, funding, and reimbursement to impacted communities.

EPA Emission Guidelines for Municipal Solid Waste Landfills

Van Scoyoc Associates shared with County staff a May 31 filing in Federal court by the states of California, Illinois, Maryland, New Mexico, Oregon, Pennsylvania, Rhode Island and Vermont for declaratory and injunctive relief in United States District Court to compel the Environmental Protection Agency (EPA) to implement and enforce the Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (Emissions Guidelines) that the states claim the Trump administration has not adhered to.

The Emission Guidelines were imposed by the Obama administration in 2016 to reduce the output of methane emissions from landfills. The Emission Guidelines imposed on the EPA a deadline by Nov. 30, 2017 to approve state plans to comply with the 2016 landfill methane rule or impose federal compliance plans on states that do not comply. However, according to the plaintiffs, neither EPA nor the Trump administration, completed that step of the process on time. In response, EPA informed the states in early May 2017, that it would issuing a 90-day stay on the Emission Guidelines, estimating it would cost more than \$100 million per year to implement the rules, to allow the agency to reconsider certain aspects of the Emission Guidelines.

In a statement issued announcing the 90-day stay, the EPA explained that the action was consistent with President Trump's Energy Independence Executive Order, and that the agency will "continue to review these actions to ensure that they protect the environment and enable a growing economy." However, the states enjoined in this suit are equating the stay to revoking or amending the rule, which they assert the EPA has no legal basis to do.

Currently, the 90-day stay has expired, and the agency states the Emission Guidelines are in effect, yet the States contend that EPA still has not enforced them and therein lies the claim against the EPA. The EPA has responded by stating that it plans to complete a reconsideration of the rule by spring 2020. The States feel that EPA's actions are a violation of the Clean Air Act, according to the lawsuit filed.

Waters of the United States

Clean Water Act regulations issued by the Obama Administration known as “Waters of the United States” (WOTUS) continue to remain in limbo as a result of Federal court orders and an announcement by the Trump Administration that it has stayed the Obama regulations and is rewriting the proposed regulations.

A federal judge in Georgia last June granted Georgia, Alabama, Florida, Indiana, Kansas, North Carolina, South Carolina, Utah, West Virginia, Wisconsin and Kentucky, a preliminary injunction to block implementation the WOTUS regulations, which the states said would result in a loss of state sovereignty over certain interstate waters.

This was a preventative measure by the Court as the Trump Administration in May already had rescinded the Obama administration definition for WOTUS and reverted to the previous definition for a stay of 2-years. The preliminary injunction served as a backup plan should other federal courts reverse the Trump Administration’s stay on the previous Obama Administration definition. Environmentalists and blue states are ready to challenge the Trump Administration action in Federal courts in New York and South Carolina; both courts are considering motions for summary judgment to repeal the actions that have been taken to change the Obama Administration definition.

The EPA and Army Corps of Engineers are in the middle of pursuing a two-step process to implement the changes to the definition of WOTUS. The first step is to rescind the 2015 Obama-administration definition for WOTUS and revert to the previous Obama definition. The second step, which will go into effect in 2020 per the 2-year stay, is to develop a new definition by pursuing a public notice and-comment rulemaking in which the agencies would conduct a substantive reevaluation of the definition of “waters of the United States.” According to the Trump Administration, they are looking to develop a definition that covers fewer water bodies, and leaves sovereignty to the states.

Van Scoyoc Associates notified County staff on December 11 that EPA and the Army Corps of Engineers (ACOE) published a proposed rule defining the scope of waters subject to federal regulation under the Clean Water Act (CWA). According to both the EPA and ACOE, the proposed changes to the definition of WOTUS are to “restore and maintain the integrity of the nation’s waters in a manner that preserves the traditional sovereignty of States over their own land and water resources.”

The changes proposed would separate navigable waterways under Federal authority into six categories: 1) traditional navigable waterways (such as large rivers, and lakes etc.); 2) tributaries, e.g. rivers and streams that flow to traditional navigable waters; 3) certain navigable ditches, such as the Erie Canal; 4) lakes and ponds that contribute to navigable waterways; 5) impoundments of jurisdictional waters; and 6) adjacent wetlands (wetlands that touch other jurisdictional waters, however there are exceptions).

In contrast, the proposed changes would exclude from WOTUS all waters or water features not mentioned above. Specifically, the proposed definition excludes features that only contain water during or in response to rainfall (e.g., ephemeral features); groundwater; many ditches, including most roadside or farm ditches; prior converted cropland; storm water control features; and waste treatment systems. By way of note, the Obama-era Clean Water Rule ephemeral streams were protected if they had an identifiable bed, bank and high-water mark. Bush-era guidance protected those streams if they had a significant hydrologic or ecological connection to navigable waters.

As stated by the EPA and the ACOE, the goal is to simplify the definition of WOTUS to empower the people of the United States to be able to better comply with the law, protect water resources, and essentially remove the red tape streamlining the ability of farmers and ranchers to work their land without getting the federal government involved. Detractors to the proposed rule change believe it will remove protections from Texas to South California.

The Committees of jurisdiction in the House and Senate already have indicated their plans to hold hearings on the WOTUS process and new proposed regulations. Van Scoyoc Associates will continue to monitor this process, work with County staff, and when necessary share the County's thoughts with the Florida Congressional delegation.

EDA funding

Van Scoyoc Associates worked with Pinellas County Economic Development to gather letters of support from the Pinellas County Congressional delegation for the Tampa Bay Business Incubator/Accelerator project in St. Petersburg. The County is seeking \$6 million in Federal funding from the Economic Development Administration (EDA). Funds were made available to EDA by Congress as part of a disaster assistance package related to natural disasters that hit the State in 2017.

Funding is for the construction and equipping of a new 40,000 to 50,000 square foot business incubator facility on land provided by the City of St. Petersburg. Pinellas County would provide \$2 to 4 million in matching capital funds through its Industrial Development Authority.

Red Tide

Van Scoyoc Associates alerted County staff to a September notice from the U.S. Small Business Administration (SBA) that would have appeared to exclude Pinellas County small businesses from eligibility to apply for SBA disaster assistance loans related to the loss of business from Red Tide.

Pinellas County was included in the Governor's Emergency notice, making Pinellas business owners eligible for State Disaster Business loans. Pinellas County Economic Development cleared up the confusion and Pinellas County small businesses were deemed eligible SBA assistance.

