
CITY COUNCIL REPORT

CITY CLERK DEPT.

POLICY AGENDA

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TO: David Cavazos
City Manager

AGENDA DATE: May 28, 2013

FROM: Karen Peters
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ITEM:7

SUBJECT: FEDERAL LEGISLATIVE UPDATE

This report seeks approval, guidance, and direction from the Mayor and City Council on federal legislation of interest to the City. Staff also recommends support of *S.744: Border Security, Economic Opportunity, and Immigration Modernization Act* consistent with prior Mayor and Council policy direction on immigration legislation.

BACKGROUND

The Mayor and City Council adopted the City's 2013 federal legislative agenda in December 2012. This report provides an update on the status of many of those agenda issues, including the federal budget, comprehensive immigration reform, the Marketplace Fairness Act, the Water Resources Development Act, on-going sequestration impacts, and the farm bill.

FEDERAL BUDGET

On March 21, 2013, the House of Representatives passed H.Con.Res. 25, which seeks to establish a budget for federal fiscal year (FFY) 2014 and set budgetary levels for FFYs 2015 through 2023. Two days later, the Senate passed its own budget resolution (S.Con.Res. 8) for the first time in four years. The two proposals are vastly different, with the House version seeking to eliminate the deficit by implementing steep spending cuts and the Senate draft calling for nearly \$1 trillion in tax increases. The next step is for both chambers to appoint conferees who would, theoretically, work to reconcile the two proposals. However, the two sides are seemingly at an impasse, and little action is expected.

Regardless, the Appropriations Committees of both chambers are proceeding with the appropriations process. On the House side, subcommittee markups have begun, and two appropriations bills (Military Construction/Veterans Affairs as well as Homeland Security) have been reported out of the full committee. Additionally, the House Appropriations Committee adopted spending allocations reflecting the \$967 billion mandatory cap on discretionary spending set by the "sequester" contained in Budget Control Act of 2011. The House will begin an open appropriations process - whereby Members are allowed to amend any part of the bill from the floor - once lawmakers return from the Memorial Day break.

On the Senate side, Appropriations Committee Chairwoman Barbara Mikulski (D-MD) has signaled her intent to proceed as though the sequester will be repealed, operating instead under a higher \$1.058 trillion cap. The Senate Appropriations Subcommittees have held informational hearings but have not moved any legislation.

In the midst of this debate on Capitol Hill, President Obama released his budget proposal for FFY 2014 on April 10. According to the White House, the proposal would accomplish five main objectives: make America a magnet for 21st century jobs, meet the nation's infrastructure needs; invest in education for future economic growth; increase the standard of living for lower income and disadvantaged populations; simplify the tax code; and reduce the deficit in a fair and balanced way.

COMPREHENSIVE IMMIGRATION REFORM

On January 28, a group of eight Senators including Senators John McCain (R-AZ), Jeff Flake (R-AZ), Lindsey Graham (R-SC), Marco Rubio (R-FL), Dick Durbin (D-IL), Chuck Schumer (D-NY), Bob Menendez (D-NJ), and Michael Bennet (D-CO) announced a bipartisan blueprint for immigration reform.

On March 26, the Mayor and Council received a policy presentation outlining the immigration proposals from the Senate and Administration. At that time, the Mayor and Council adopted a policy statement to "support immigration reform legislation that offers border control and security for Arizona without imposing new mandates on local law enforcement, as well as an immigration system that fosters economic development, preservation of families, and allows all of the residents of Phoenix to fully participate in our economy and community." Since that time, there has been significant movement on immigration legislation. The Senate bill, *S.744: Border Security, Economic Opportunity, and Immigration Modernization Act*, was introduced on April 16, 2013.

The 844-page introduced version of the Border Security, Economic Opportunity, and Immigration Modernization Act is divided into four titles – Border Security, Immigrant Visas, Interior Enforcement, and Reforms to Nonimmigrant Visa Programs. Key elements of each title are listed below:

Title I – Border Security:

- The U.S. Department of Homeland Security (DHS) Secretary must develop a Comprehensive Border Security Strategy and Southern Border Fencing Strategy within six months before the registration period for Registered Provisional Immigrant status (RPI) begins.
- A strategy must be designed to achieve persistent surveillance of the border and a 90% effectiveness rate for apprehensions and returns in high risk border sectors.
- The DHS Secretary's plan must be operational before any RPIs may apply for adjustment of status.
- The DHS Secretary must develop and implement a fencing plan.
- E-verify must be mandatory and operational; and biographic entry-exit at air and seaports must be implemented before RPIs may adjust to permanent residence.
- After five years, if the specified goals of 90% effectiveness and persistent surveillance have not been met, a Southern Border Security Commission will be

established to make further recommendations for achieving these targets. The Commission will recommend up to \$2 billion in additional DHS spending that would be available to achieve the border security goals if they have not yet been met.

- To further ensure completion of these targets, Customs and Border Patrol personnel and resources will be increased, additional funding for border prosecutions are funded, and the authority of the National Guard to assist in border security operations is codified.
- To protect civil rights and the integrity of the system, additional resources and training will be devoted to implementing a DHS-wide use of force policy and associated training in appropriate use of force, individual rights, and sensitivity to cultural and environmental impact of federal operations on border communities.
- A Border Oversight Task Force is established to take testimony and conduct hearings in order to review and recommend changes to existing border policies. Racial profiling guidance will be implemented.

Title II – Immigrant Visas:

- Immigrants who entered the United States before December 31, 2011, and have been physically present in the U.S. since that time will be eligible to apply for RPI status provided they pass a background check, have not been convicted of serious criminal activity, pay any assessed tax liability, pay appropriate fees, and a \$500 fine.
- Initial registration will be valid for six years. It provides for work and travel authorization, and includes spouses and children in the United States.
- RPIs applying for renewal will be subject to a new background check, payment of processing fees, payment of taxes, and a \$500 fine payable in installments. RPIs must submit evidence of having been regularly employed while meeting public charge requirements or having income and resources at 100% of the poverty level.
- At the end of ten years, RPIs may apply for adjustment of status. They must pay a \$1,000 fine per adult; prove they are learning English; pay their taxes; show they have complied with the work requirement. Also, RPIs may not adjust status until the family and employment backlogs are cleared and the border security triggers are met. RPIs may apply for naturalization after a three-year wait, making the total path to citizenship a 13-year wait.
- Individuals who entered the United States before the age of 16 and who have completed high school in the U.S. may register for RPI status through the DREAM Act. Five years after registration, DREAM RPIs may apply for adjustment of status.
- Undocumented farm workers who can demonstrate a minimum of 100 work days or 863 hours in the two years prior to the date of enactment would be eligible for an Agricultural Card. Workers who work at least 100 days a year for five years or workers who perform at least 150 days a year for three years can adjust status to permanent residency. In addition, agricultural workers show that they have paid all taxes, have not been convicted of any serious crime, and pay a \$400 fine are eligible to adjust to legal permanent resident status.
- Backlog Reduction and Improvements include:

- New merit-based tracks that will allocate visas according to criteria of education, work history, and length of time in the United States.
- Elimination of employment-based country caps, increase in family based country limits, and recapture of unused visa numbers are authorized.
- Permanent authorization of programs for foreign doctor, religious worker recruitment; and EB-5 visa for Immigrant Investors.
- Technical fixes to improve and streamline current visa programs.
- Current family-based categories will be revised to permit the spouses and children of lawful permanent residents to immigrate immediately.

Title III – Interior Enforcement:

- Establishes a phased-in expansion of the current electronic employment verification system (E-verify) to cover all employers within a five-year period, beginning with federal contractors and critical infrastructure employers.
- Expands ability to protect against identity theft of Social Security numbers by allowing employees to block their social security number and gives employees access to personal E-verify history. It provides for an expansion of the photo identification mechanism as component of E-verify.
- Expands due process protections for employees to ensure that legal workers are not prevented from working due to errors in the system or because of employer negligence or misconduct.
- Authorizes increase in immigration court personnel, additional resources, and more training for judges and other staff, access to counsel for vulnerable populations to improve efficiency of courts, permanently and codifies Board of Immigration Appeals, and legal orientation programs.
- Tightens certain grounds of inadmissibility relating to document and passport fraud, driving while intoxicated following three convictions, conviction for gang related activities, convictions related to domestic violence, child abuse, stalking, violation of protection orders, and failing to register as a sex offender. Prohibits and/or increases penalties for abusive smuggling, hindering or obstructing immigration investigations, illegal entry, and re-entry.
- Increases oversight of detention facilities, expands discretion of immigration judges to conduct bond hearings, and requires establishment of alternative to detention programs in consultation with community groups.

Title IV – Reforms to Nonimmigrant Visa Programs (Future Flow):

- New Worker Program (W-Visa):
 - Establishes a new nonimmigrant W classification for lesser-skilled foreign workers performing services or labor for a registered employer in a registered position.
 - Spouses and minor children are included and will receive work authorization.
 - Three-year visa with renewal periods. Initially, 20,000 W-visas will be made available, rising to 75,000 visas in year four.
 - The visa program cap can rise to 200,000 depending on a formula based on economic conditions, demand for the program, and the recommendations of a newly established Bureau of Immigration and Labor Market Research.

- Shortage occupation employers can hire workers outside the cap. W-visa holders may switch from one registered employer or position to another without penalty and apply for the merits-based lawful permanent residence program or the Employment-Based system.
- A new agricultural guest worker visa program would be established to ensure an adequate agricultural workforce. A portable, at-will employment-based visa (W-3 visa) and a contract-based visa (W-2 visa) would replace the current H-2A program. The H-2A program would sunset after the new guest worker visa program is operational.
- H-1B: Reforms to the H-1B high-skilled visa program include:
 - Expand current cap from 65,000 to 110,000 with an option to ultimately increase the cap to 180,000 visas annually based on a High Skilled Jobs Demand Index.
 - Increase fines on companies that are heavy-users of H-1B visas. After three years, companies whose workforce is more than fifty percent H-1Bs are barred.
 - Establish significant new authorities and penalties to prevent, detect, and deter fraud and abuse of the H-1B and L-1 visa systems by fraudulent employers. Increases wages for foreign workers to help protect Americans.
 - Allow for work authorization for spouses and children.

On Tuesday, May 21, the Senate Judiciary Committee passed the reform package by a vote of 13-5. Three Republicans – Senators Jeff Flake (R-AZ), Lindsey Graham (R-SC), and Orrin Hatch (R-UT) – joined Democrats in approving the legislation. With several hundred amendments offered, the markup took several days. Of those amendments, four were authored by Senator Flake. All of Flake's amendments were agreed to by voice vote. They are outlined below:

- Flake Amendment #1: Adds three private land owner representatives (one from the Northern border region and two from the Southern border region) to the bill's Department of Homeland Security (DHS) Border Oversight Task Force.
- Flake Amendment #2: Revises the schedule for DHS's submittal of a semiannual status report regarding implementation of the Comprehensive Southern Border Security Strategy to 180 days after submission and every 180 days thereafter; additionally, adds the Comptroller of the United States as a recipient of the status report and requires an annual review of the reports as well as an assessment of the status and progress of the strategy by the Comptroller.
- Flake Amendment #3: Requires registered provisional immigrants to undergo national security and law enforcement background checks before such status is renewed.
- Flake Amendment #4: Requires the Secretary of Health and Human Services to conduct regular audits to ensure that registered provisional immigrants are not receiving Federal means-tested public benefits.

Also of note, the committee approved an amendment by Senator Orrin Hatch (R-UT) requiring implementation of biometric exit systems at the nation's ten airports with the highest volume of international travelers. Hatch's proposal is a watered-down version of an amendment proposed earlier in the markup process by Senator Jeff Sessions (R-AL), which would have required biometrics to be used at all entry and exit points in the U.S.

Entering the last couple days of debate, two disputes faced the committee. The first dealt with highly skilled worker visas and pitted high-tech industry leaders in Silicon Valley against labor unions. A deal acceptable to both sides has been brokered by Senators Orrin Hatch (R-UT) and Chuck Schumer (D-NY). The second area of contention pertained to the rights of same sex immigrant spouses. Senate Judiciary Chairman Patrick Leahy (D-VT) offered an amendment that would allow gay Americans to sponsor their spouses for green cards just as straight Americans can. Leahy's proposal, while supported by Democrats, promised to push Republicans away from the bill and threatened to eliminate any chance of bipartisan support. On Tuesday, May 21, the White House stated that it would rather have the gay rights debate once the bill reaches the full Senate. Echoing that sentiment, Senators Dick Durbin (D-IL) and Chuck Schumer (D-NY) indicated to Leahy that they could not support his amendment as it could possibly bring down the bill. Chairman Leahy withdrew his amendment.

Staff will continue to monitor changes to this bill and potential impacts to the City.

THE MARKETPLACE FAIRNESS ACT

The Marketplace Fairness Act of 2013 (S.743) would allow local governments to collect sales taxes on online and remote sales. It does not create any new tax or increase any existing tax; it simply provides for enforcement of state and local governments' existing authority. The legislation aims to level the playing field between traditional brick and mortar retailers who are required to collect sales taxes at the time of purchase and the online retailers who are not.

On Monday, May 6, the Senate passed the Marketplace Fairness Act by a vote of 69 to 27. Senator McCain voted for the bill and Senator Flake voted against. More than two-thirds of senators (all but five Democrats and about half of Republicans) agreed that states should be allowed to require online firms to collect the same sales taxes as their domiciled brick-and-mortar businesses. According to the National League of Cities and the U.S. Conference of Mayors, the legislation could provide for collection of an additional \$22 to \$24 billion of state and local taxes. Many businesses, including Walmart, Home Depot, Target, and Amazon, the largest online retailer, have expressed support for the Marketplace Fairness Act. Conversely, eBay opposes the bill, in part because it will hurt smaller sellers on eBay according to eBay CEO John Donahoe.

The bill would require that states provide free tax-calculation software to affected businesses. Firms with gross annual receipts of \$1 million or less would be exempted from the new requirements. Prior to final passage the Senate adopted an amendment from Senator Mike Enzi (R-WY), one of the measure's co-sponsors, which would extend the implementation timeline from three to six months and specify that requirements for filing returns and making tax payments must be the same for online and offline firms.

The measure's fate in the House of Representatives is unclear. House Republicans remain divided on the issue. House Speaker John Boehner (R-OH) and Majority Leader Eric Cantor (R-VA) have yet to explicitly state their opinion on the bill, though conservative groups such as the Heritage Foundation, Americans for Tax Reform, Americans for Prosperity, Tea Party Patriots, and FreedomWorks have already begun campaigns against the bill, labeling it a tax increase that threatens states' rights and burdens internet retailers with complex tax collection requirements and unwarranted audits.

Although the bill faces an uphill battle, the House companion legislation (H.R. 684) already has 65 co-sponsors, including Arizona Representatives Raul Grijalva and Kyrsten Sinema. The legislation will meet its first test in the House Judiciary Committee chaired by Representative Bob Goodlatte (R-VA). Though he has said he will consider the bill, Goodlatte has been skeptical of the legislation and will likely seek many alterations.

WATER RESOURCES DEVELOPMENT ACT (WRDA)

On Wednesday, May 15, the Senate passed *S. 601: The Water Resources Development Act of 2013 (WRDA)* by a vote of 83-14. The \$12 billion measure authorizes 18 new U.S. Army Corps of Engineers (Corps) flood protection, navigation, and ecosystem restoration projects while instituting a number of reforms to the process. It is the first water infrastructure bill to pass the Senate in six years and the first to move forward since earmarks were banned.

The legislation contains a provision that would increase flexibility for non-federal sponsors of Corps projects, including a pilot program aimed at improving the quality and speed of projects by allowing local and state governments to take over as project manager for Corps projects. It also includes a five-year pilot program to provide additional water infrastructure financing opportunities for local governments. Known as the Water Infrastructure Finance and Innovation Act (WIFIA), the bill authorizes \$50 million annually to both the U.S. Environmental Protection Agency (EPA) and Corps for flood control, water supply, and wastewater projects.

Based on the Transportation Infrastructure Finance and Innovation Act (TIFIA) model, this level of authorization is estimated to support at least \$500 million annually in low interest loans for each EPA and the Corps. The program would allow local governments to receive loans and loan guarantees at U.S. Treasury rates for projects such as pipe replacement or rehabilitation, new or upgraded treatment plants, wastewater projects, reuse, desalination, capital projects to improve energy efficiency, and new water supply projects over \$20 million.

This legislation also includes language important to Phoenix that addresses project cost limitations of Section 902 in the current WRDA bill. The new language will allow the Tres Rios Project to move to completion.

Attention now turns to the House as it drafts its own version of WRDA. House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) seems committed to moving the legislation as early as this summer.

SEQUESTRATION – AVIATION

The Federal Aviation Administration (FAA) received negative national attention after its furlough of approximately 15,000 air traffic controllers resulted in delays to thousands of flights across the country. The chaos sparked a fast-moving discussion in Washington. In late April, the Senate unanimously approved a measure that would allow the U.S. Department of Transportation (USDOT) to transfer \$253 million in funds to the FAA's operations account in order to reverse the effects of the furloughs and put an end to travel delays. The House passed the bill by a vote of 361 to 41. All members of the Phoenix delegation voted in favor of the legislation. President Obama signed the legislation on Wednesday, May 1.

The FAA has suspended all furloughs and returned to normal operations. The transferred funds should see the agency through to the end of the fiscal year, when another round of cuts is set to take place.

On May 10, the USDOT announced that a portion of the monies made available through the Reducing Flight Delays Act will be used to fund the 149 contract control towers which were scheduled for closure on June 15, including the tower at Phoenix Goodyear Airport. However, there is currently no funding available beyond FFY 2013, which ends on September 30, 2013. While this additional funding assists in the short-term, the Aviation Department is preparing contingency plans if Congress does not fund the contract towers in FFY 2014.

Additionally, Mayor Stanton and Aviation Director Danny Murphy have sent a letter to Congressman Ed Pastor (D-AZ), Ranking Chairman of the House Appropriations Subcommittee on Transportation, requesting his support of funding for the towers. Additionally, 82 House members and 70 Mayors, including the Mayor of Goodyear, sent letters to Transportation Secretary Ray LaHood and FAA Administrator Michael Huerta requesting that the towers be funded.

SEQUESTRATION – HUMAN SERVICES

The descriptions below provide information on the impact of the FFY Budget Continuing Resolution on Human Services Programs. Program impacts are based upon allocation notices or projections for programs with pending formal announcements.

Head Start – As a result of sequestration, in City Fiscal Year (FY) 2013-2014 the Head Start Education Division will receive 5.27% cut in funding (\$1,419,886). This results in approximately 186 less families receiving services.

Low Income Home Energy Assistance Program (LIHEAP) – Earlier this year the Department of Health and Human Services (HHS) released 90% of the FFY 2012 appropriation to help mitigate any impact from sequestration and/or any reductions in the final budget for FFY 2013. National LIHEAP groups do not anticipate additional allocations for FFY 2013 are anticipated. Effectively, this means Arizona’s LIHEAP allocation was cut by 10% for the current year and would be benchmarked for a 5% reduction for future years. LIHEAP funds are passed through the Arizona Department of Economic Security, which splits and blends each federal allocation into two annual contracts based on a July-June fiscal year. As a result, the City’s 2013-2014 budget will actually increase over the previous year. However, the impact of the FFY 13 appropriation will result in approximately 1,600 fewer households being served in the City’s 2014-2015 Fiscal Year.

Community Services Block Grant (CSBG) – The Human Services Department is designated as the Community Action Agency for the City and currently receives \$1.4 million in CSBG funding. Every dollar in CSBG funds received by the Human Services Department leverages \$42 in matching dollars from federal, state, and local sources. As a result, any reduction in CSBG would have a far more consequential impact than the actual reduction, as it would also decrease capacity to fully utilize leveraged funding dependent on CSBG’s flexibility. As a result of sequestration, the City’s CSBG allocation would be reduced by approximately \$144,316, impacting over 5,024 low-income vulnerable households.

Social Services Block Grant (SSBG) – As a result of sequestration, the City’s SSBG allocation would be reduced by approximately \$65,906 of the \$659,055 annual grant. This would impact the ability to provide services including emergency financial assistance, and information and referral to 832 low-income vulnerable households.

Older Americans Act (OAA) – The City currently receives approximately \$2.5 million in OAA funding for senior programs from the Area Agency on Aging (AAA), Region One, Inc. In FY 2012, the City used this funding to provide over 342,000 nutritious home-delivered meals to 2,403 seniors and disabled adults. As a result of sequestration, per the AAA, the City’s funding allocation would be reduced up to \$250,000, impacting the ability to continue providing nutritionally balanced home-delivered meals to seniors and disabled adults. These meals help to increase the health and functionality of older adults allowing them to remain living in their homes.

Homeless Programs – The “minimum” appropriation for the Emergency Solutions Grant (ESG) was reduced by \$50 million to \$190 million in the Continuing Resolution and the funds are subject to sequestration cuts of an additional 5.2%. HUD will allocate \$215 nationally to ESG, \$25 million over the Congressional minimum. While it is 24.8% less than the FFY 2012 allocation of \$286 million, it is nonetheless \$55 million over the \$160 million level provided for many years prior to FFY 2011. The disproportional cuts to ESG are the result of the budget indicating Continuum of Care projects, which share the federal budget line item, should be fully funded. The reduction directly impacts the City’s homeless services grants and programs starting July 1, 2013. More than \$330,000 will be cut from City programs.

FARM BILL

Last week, the House and Senate Agriculture Committees approved their respective versions of the farm bill, paving the way for the two chambers to begin working together on a new, five-year reauthorization of the sweeping legislation that sets national agriculture, nutrition, conservation, and forestry policy. Last Congress, lawmakers failed to reach an agreement on the measure and instead extended provisions from the 2008 farm bill; this extension is set to expire on September 30 of this year. Decreased funding to the Supplemental Nutrition Assistance Program (SNAP), also known as food stamps, will impact Phoenix residents who rely on this program.

The Senate Agriculture Committee approved its draft of the bill in bipartisan fashion by a vote of 15-5. According to the Congressional Budget Office, the measure would cost \$955 billion over 10 years, \$23 billion less than if the 2008 programs were kept in place. The Senate legislation gets rid of \$4.9 billion in direct payments to crop farmers, consolidates certain conservation programs, and cuts \$4 billion from food stamps, which are expected to cost \$700 billion over 10 years. The bill is expected to pass in the full Senate this week.

The House Agriculture Committee passed its own version of the legislation – also with bipartisan support – by a vote of 36-10. The House bill would cost \$940 billion and calls for deeper cuts to farm and nutrition programs. Specifically, the legislation trims \$40 billion over the next 10 years, with \$20.5 billion of this savings coming from the food stamp program. Like the Senate bill, the House version eliminates direct payments to farmers. The money from the payments would go toward other programs such as crop insurance and new subsidies. Speaker Boehner has stated that the legislation would be considered on the floor before the July 4 recess.

RECOMMENDATION

Staff will continue to monitor federal policy changes and their impacts to the City.

Staff recommends support of *S.744: Border Security, Economic Opportunity, and Immigration Modernization Act*, consistent with the Mayor and Council policy direction on immigration legislation.