

Monroe County, Florida 2017 Federal Legislative Agenda



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Monroe County Commission

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Monroe County 2017 Federal Legislative Agenda

Primary Issues

Proposed Spending Reductions and Program Eliminations

Oppose cuts to non-defense discretionary programs of importance to Monroe County. **Monitor** tax reform for potential significant impacts to revenue projections, precipitating additional spending cuts.

National Flood Insurance Program

Support efforts to improve the National Flood Insurance Program for the benefit of all participants. **Oppose** H.R. 1422 and S. 563 due to its allowance that surplus lines insurance companies can write private flood insurance given that they are not subject to the same oversight as admitted insurance carriers. **Support** prohibition of the issuance of flood insurance for new development on properties in the Florida Keys that contain known or suitable habitat for federally-listed endangered species. **Monitor** FEMA's implementation of the Homeowner Flood Insurance Affordability Act. **Support** the creation of a National Catastrophe Fund. **Support** increased funding for the Hazard Mitigation Assistance grant programs, including the Flood Mitigation Assistance Grant Program and the Pre-Disaster Mitigation Grant Program, as well as increased funding for the Disaster Relief Fund.

Water Quality

Support full funding of the Florida Keys Water Quality Improvements Program via the FY 2017 Army Corps of Engineers Work Plan. **Support** continued additional funding for Army Corps of Engineers environmental infrastructure projects in FY 2018 and future fiscal years. **Support** Monroe County's efforts and activities related to canal restoration.

Land Acquisition

Support efforts by federal agencies to acquire appropriate properties to mitigate environmental resource or military encroachment concerns in Monroe County. **Support** a \$900 million annual appropriation from the Land and Water Conservation Fund. **Support** future mandatory funding for the Land and Water Conservation Fund. **Support** increased funding of the Department of Defense's Readiness and Environmental Protection Integration program.

Payments In Lieu of Taxes

Support full, long-term mandatory funding of the Payments In Lieu of Taxes (PILT) program, which enables local governments to rely upon PILT funds when budgeting.

Everglades Restoration and the Health of Florida Bay

Support efforts to improve the health of Florida Bay by restoring adequate fresh water flows through the Everglades. **Support** full completion of the C-111 Canal suite of projects. **Support** completion of the Modified Waters Delivery suite of projects and improved operational plan, including further modification to Tamiami Trail. **Support** future construction of the Central Everglades Planning Project.

Naval Air Station, Key West Base Realignment and Closure

Monitor activities related to the Department of Defense Base Closure and Realignment Commission for potential impacts to Naval Air Station, Key West.



Transportation

Federal Aviation Administration - Authorization and Issues

Support \$3.35 billion in annual appropriations for the Airport Improvement Program. **Support** Monroe County's grant proposals for funding through the FAA Airport Improvement Program. **Support** an increase in the passenger facilities charge cap from \$4.50 to \$8.50. **Oppose** the elimination of the Law Enforcement Officer Reimbursement Program. **Support** the removal or relocation of the non-directional beacon at Higgs Beach. **Support** continued efforts to establish a joint-use airport at Naval Air Station Key West. **Support** federal funding for sound attenuation activities around military air facilities.

Transportation Authorization

Monitor proposed changes to federal highway programs. **Monitor** efforts to enhance federal transportation revenue streams. **Support** the continuation of dedicated bridge funding through the Surface Transportation Program or other avenues. **Support** opportunities to secure funding for Monroe County's priorities via federal highway legislation or other means.

Infrastructure Investment

Support new federal investment in infrastructure. **Support** any and all opportunities to secure funding for Monroe County's infrastructure priorities.

Energy & Environment

RESTORE Act

Monitor federal implementation of the RESTORE Act to ensure continued benefit to Monroe County. **Support** efforts to secure funding for Monroe County.

Climate Change and Sea Level Rise

Monitor federal climate change legislation and executive actions. **Support** federal efforts to address climate change and mitigate sea level rise. **Support** the federal legislative priorities of the Southeast Florida Regional Climate Change Compact.

Waters of the United States and Regulatory Reform

Monitor activity related to the implementation of the EPA's rule on Waters of the U.S. **Monitor** activity related to regulatory reform.

Energy Exploration

Oppose relaxation of the prohibition against leases on permits for drilling oil or gas wells within the boundaries of Florida's territorial seas. **Oppose** legislation that would prevent the Florida Department of Environmental Protection from blocking requests for offshore drilling in federal waters off Florida's coast. **Oppose** seismic surveying within the Everglades, surrounding critical areas, or any other federal lands. **Oppose** efforts to ease restrictions on hydraulic fracturing and other oil and gas extraction activities.

Oil Spill Protection

Support revisions to the Oil Pollution Act of 1990 and other associated laws to ensure that local governments may act as first responders in an effort to protect local communities, and be reimbursed for their actions undertaken to protect their resources and restore damaged areas during oil spill events, and the Oil Spill Liability Trust Fund is capable of addressing Spills of National Significance where there is no financially viable or legally responsible party.



Property Assessed Clean Energy Legislation

Support legislation and guidelines that would allow for the creation of residential and commercial PACE programs in Monroe County to finance a number of home and commercial property improvement projects including energy efficiency, flood mitigation, or hurricane protection.

Social Services

Continuum of Care Program – Federal Homeless Assistance

Support continued adequate annual funding for Department of Housing and Urban Development Homeless Assistance Grants, particularly for the Continuum of Care Program.

Aging Issues

Support continued adequate annual funding for Older Americans Act programs that support critical social service programs serving elder persons in Monroe County.

Social Services Block Grant

Support continued adequate funding for the Social Services Block Grant program.

Mental Health Care

Support legislation that responsibly expands treatment options and support for the mentally ill.

Public Safety

Public Safety Programs

Support continued funding for the wide variety of DOJ and DHS grants, i.e., Community Oriented Policing Services, Byrne Justice Assistance Grants, Emergency Management Preparedness Grants, Assistance to Firefighters Grants, Staffing for Adequate Fire and Emergency Response Grants, Urban Areas Security Initiative grants, and other security-specific grants. **Support** any Monroe County applications for these funds. **Support** federal funding for the construction of Emergency Operations Centers.

General Government Issues

Tourist Development Taxes

Oppose legislation that would exempt online travel brokers from paying taxes on the full room rate paid by the consumer, thereby costing Monroe County the opportunity to collect appropriate tourist development taxes from visitors to the region.

Remote Sales-Tax Legislation

Support legislation that requires companies making catalog and internet sales to collect and remit the associated taxes. **Support** federal tax policies that maintain revenue streams to local governments.

Tax-Exempt Bonds

Oppose legislation that would threaten the tax exemption on state and local bonds, including a 28 percent cap on tax-exempt municipal bonds.



FEDERAL ISSUE: Proposed Spending Reductions and Program Eliminations

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: In mid-March, the Trump Administration released its so-called Fiscal Year (FY) 2018 “skinny” budget, a 62-page document that very generally proposes overall spending levels for the federal government for the next fiscal year. Among those agencies that fare best include the departments of Defense (10% increase), Homeland Security (6.8% increase), Veterans Affairs (5.9% increase), and the National Nuclear Security Administration (an 11% increase - imbedded in the Energy Department budget, which gets an overall decrease of 5.6%). Meanwhile, those agencies that face the most significant budget reductions include the following: EPA (31.4%), HHS (16.2%), State/U.S. AID (28%), Labor (20+%), Agriculture (21%), Transportation (12%), Commerce (16%), Education (13%), HUD (13.2%), Interior (12%). The President is expected to release a full FY 2018 budget in late May that will provide more detail regarding individual programs.

Shortly after the release of the “skinny” budget, the Administration released a supplemental spending request for FY 2017 that also proposes to cut several programs of importance to Monroe County. Congress ultimately funds the government and can ignore much of what the President has recommended, but the FY 2017 supplemental and FY 2018 budget proposes so many reductions or whole elimination of programs while significantly boosting spending in other areas (defense, a southern wall, for instance) that many members of Congress support. Therefore, it will be difficult to restore all funding to domestic agencies or programs of importance. If a piece of the pie gets bigger, the entire pie is not likely to grow – instead other pieces will get smaller.

Among other things, following are several areas of concern to Monroe County in the FY 2017 supplemental and FY 2018 “skinny” budget. They include:

- The National Flood Insurance Program (NFIP) is impacted in two ways by the Administration’s FY 2018 proposal. The first is a suggestion to restructure the program “to ensure that the cost of Government services is not subsidized by taxpayers who do not directly benefit from those programs”. Although there is no additional detail provided, it is essential that flood insurance remain affordable for our citizens. The second change to the NFIP is a proposal to eliminate the appropriation for the NFIP’s Flood Hazard Mapping Program and potentially pay for these activities by adding another surcharge onto NFIP policies. With over 30,000 NFIP policies in force in Monroe County, on both commercial and residential properties, the affordability and stability of the NFIP is of vital importance to the County.
- The proposed reduction of funding for Payment In Lieu of Taxes (PILT) in FY 2017 by \$80 million from the amount currently proposed by both the House and the Senate, as well as continued reductions in FY 2018 would have a detrimental impact to the County. Approximately 19% of the County’s land is eligible for compensation through PILT. In FY 2016, the County received just over \$1.1 million dollars in PILT payments.
- Reduced funding to the Army Corps of Engineers by over \$100 million for FY 2017 and by \$1 billion in FY 2018 will directly impact projects important to the County, such as the Florida Keys Water Quality Improvements Program (FKWQIP) and the restoration of the Everglades.
- The elimination of nearly \$150 million in National Oceanic and Atmospheric Administration (NOAA) grants in FY 2017 and cuts to grants and programs for coastal and marine management, including the Sea Grant program, of over \$250 million in FY 2018 would detrimentally impact



the condition of our coastline and the health of the marine ecosystem, especially in the Florida Keys National Marine Sanctuary.

- A 31 percent cut to the EPA that reportedly will include laying off 25 percent of the agency's workforce and eliminating 56 programs. This includes the elimination of programs such as:
 - Climate Protection Program (224 FTE's)
 - Nonpoint Source grant program
 - National Estuary Program/Coastal Waterways (43 FTE's)
- The elimination of the Department of Energy's Weatherization Assistance Program which enables low-income families to reduce their energy bills by making their homes more energy efficient.

While it is hard to know exactly how seriously to take these proposed cuts, it is clear there is significant pressure to reduce domestic discretionary spending (as opposed to military or non-discretionary programs like Social Security).

Sequestration

Another threat to discretionary spending is sequestration. The Budget Control Act (passed in 2011) established budgetary caps in law for discretionary spending – one cap for defense accounts and another for non-defense accounts – through FY 2021. The penalty for spending over the caps is a sequestration of funds to ensure spending is in line with the budgetary caps established in law. Sequestration would result in a percentage-based cut to every account, program and project funded by discretionary spending.

For FY 2018, many members of Congress are concerned about the discretionary spending caps being too restrictive. Since the budget caps are established by law, Congress has the power to change the law to allow for higher spending levels. They did this in October 2015 when they reached a budget deal for FY 2016 and FY 2017 for new top-line spending levels.

Some lawmakers believe the best path forward for FY 2018 is to pass a budget resolution and write appropriations bills to the sequestration spending levels established in law and negotiate a "better" budget deal later in the year when it becomes obvious that the spending bills do not have the votes to pass Congress, similar to what happened in FY 2016.

Another concern regarding sequestration and spending caps is the potential for the Administration and Congress to attempt to violate the "firewall" between defense and non-defense spending. The rationale for creating separate top-line spending levels for defense and non-defense programs was to mitigate concerns that there would be attempts to skew the spending allocation in favor of defense. While the "firewall" is established in law, that does not mean that efforts will not be made to enact changes to allow for a boost to the military budget at the expense of non-defense discretionary spending.

Tax Reform

Finally, with tax reform discussed as a focal point likely in the fall and winter of 2017, Congress must be prepared to anticipate lower levels of revenue coming into the federal government, thereby precipitating potential spending reductions as well.

RECOMMENDED POSITION: *Oppose* cuts to non-defense discretionary programs of importance to Monroe County. *Monitor* tax reform for potential significant impacts to revenue projections, precipitating additional spending cuts.



FEDERAL ISSUE: National Flood Insurance Program

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: In 1968, Congress established the National Flood Insurance Program (NFIP) to address the nation's flood exposure. A three-prong floodplain management and insurance program was created to (1) identify areas across the nation most at risk of flooding; (2) minimize the economic impact of flooding events through floodplain management ordinances; and (3) provide flood insurance to individuals and businesses. Until 2005, the NFIP was self-supporting, as policy premiums and fees covered expenses and claim payments. Today, the program is roughly \$25 billion in debt due to several large storms.

In mid-2012, Congress passed, and the President signed, the Biggert-Waters Flood Insurance Act (BW12), a 5-year reauthorization of the NFIP that attempted to restore the program to firmer financial footing by making several changes to the program that impacts the County's residents.

Then, in early 2014, the Homeowner Flood Insurance Affordability Act (HFIAA), was enacted to address some of the so-called unintended consequences of BW12. While HFIAA delayed many of the premium increases implemented by BW12, in the long run, the only real difference between rate increases envisioned by the two bills is that HFIAA reinstated grandfathering. This provision originally ended by BW12 allows property owners to pay flood insurance rates based on original risk, not that which is determined by new community flood maps.

Authorization of the NFIP expires September 30, 2017, which means the 115th Congress will need to address the program this year. Reauthorization will likely include reforms to the NFIP.

Monroe County Position

Monroe County supports reauthorization of the National Flood Insurance Program (NFIP) with legislative, policy and programmatic modifications to improve the affordability and transparency of the program through reforms in the following areas:

- 1) Affordability/Rate Structure
 - a. Maintain a focus on affordability; however, if rates must rise, provide a more reasonable glide path for all properties
 - b. Ensure rates are consistent for all properties, including second homes and businesses
 - c. Ensure NFIP rates are not excessive or unfair by making the rate-setting process more transparent to the public
- 2) Programmatic Modifications to Enhance NFIP's Financial Sustainability
 - a. Consider Write-Your-Own reforms including reducing commissions while further incentivizing NFIP policy sales efforts
 - b. Encourage greater participation by those outside of the 100-year floodplain via expanded use of the Preferred Risk Policy
 - c. Further strengthen enforcement responsibilities to ensure those in the 100-year floodplain have and maintain flood insurance
 - d. Privatization that maintains affordability and requires whole profile of risk (no cherry picking)
- 3) Mitigation
 - a. Increase funding for existing flood mitigation programs
 - b. Establish tax credits for mitigation efforts



- c. Consider voucher/loan programs to further emphasize mitigation, particularly for lower-income participants
- 4) Endangered Species Protection
 - a. Support prohibition of the issuance of flood insurance for new development on properties in the Florida Keys that contain known or suitable habitat for federally-listed endangered species.

Monroe County Endangered Species Considerations

In addition, Monroe County is home to over a dozen species that are listed by the federal government as either being threatened or endangered under the Endangered Species Act. This led to decades long litigation by environmental groups who challenged the issuance of flood insurance in the Keys on the basis that this insurance encourages and subsidizes development which ultimately jeopardizes the listed species. That litigation led to an injunction against the issuance of flood insurance on up to 50,000 parcels of property in the county which lasted for seven years. Amending the NFIA to prohibit the issuance of flood insurance for new development on known or suitable habitat for listed species would protect those species, conserve the expenditure of federal resources, and help the County reduce its exposure to property rights claims brought due to federal, state, and local regulations that have been developed to preserve this same habitat.

Affordability Study

In 2015, the National Academy of Sciences released two reports on Affordability of National Flood Insurance Program Premiums. Overall the reports left many questions unanswered, indicating that many decisions must be made by policy makers (Congress, in this case) and that the report's specific and clear guidance is limited due to a lack of data.

The reports focus in a highly technical manner on examining options for providing premium assistance to certain NFIP policyholders and suggest tying such assistance to mitigation grants or loans. Specifically, the second report found that "linking mitigation with premium assistance can lead to property owners having a cost effective combination of mitigation and insurance coverage." The reports do not simply suggest ways to arbitrarily lower flood insurance policy costs across the board.

Now that the affordability study is complete, FEMA is expected to propose an affordability framework to Congress by the summer of 2017.

Flood Insurance Legislation

Rep. Curbelo has reintroduced his legislation from last Congress, H.R. 1401, the Flood Insurance Fairness Act that would extend the level of rate increases offered to primary homeowners under HFIAA to all property owners, particularly addressing concerns with second homeowners and business owners who may otherwise face exorbitant flood insurance rate increases.

Meanwhile, Reps. Dennis Ross (R-FL) and Kathy Castor (D-FL) reintroduced H.R. 1422, the Flood Insurance Market Parity and Modernization Act. This bill seeks to clarify provisions in BW12 that private flood insurance products would be regulated by individual states instead of the federal government, which is perceived to be better for insurers and is expected to create more opportunity for private insurance to proliferate. The bill was passed in the last Congress by the House, but never proceeded in the Senate. Senators Dean Heller (R-NV) and Jon Tester (D-MT) have introduced S. 563, which is cosponsored by Sen. Rubio as companion legislation in that body.

There are positive provisions in H.R. 1422 and S. 563, such as reinforcing the need for lenders to verify and ensure that homeowners maintain flood insurance for the duration of a mortgage loan, and allowing



for continuous coverage with no penalties if a person purchases private flood insurance and then chooses to again purchase from the NFIP. However, there are concerns that the legislation may allow the surplus lines market to write private flood insurance policies, which are not subject to the same oversight as admitted insurance carriers. A U.S.-based surplus lines insurance company is only an admitted insurer in at least one state. Monroe County only supports admitted insurance companies writing private flood insurance policies. It is expected that this legislation will be part of any House NFIP reauthorization effort.

National Catastrophe Fund

One option that could be used in place of traditional flood insurance would be the creation of some sort of a national catastrophe fund. While this idea has often been touted by groups outside of Congress, the past several Congresses have passed with no meaningful action on, or discussion of the issue. It is unlikely to be a focus of the 115th Congress.

Mitigation Grant Programs

Separate from the NFIP, there are several federal assistance programs from which the County may benefit that provide funding to states and local governments for mitigation activities. Specifically, the Hazard Mitigation Assistance (HMA) grant programs offer the following opportunities:

- The Hazard Mitigation Grant Program (HMGP) provides grants to implement long-term hazard mitigation measures after a major disaster declaration by the President. HMGP funding is based on each disaster and is provided through FEMA's Disaster Relief Fund (DRF). The DRF was funded at \$7 billion in FY 2015 and \$7.37 billion in FY 2016.
- The Flood Mitigation Assistance Grant Program (FMA) assists states and local governments in their efforts to reduce or eliminate the risk of repetitive flood damage to buildings and structures insurable under the NFIP. Both planning and implementation grants are available. The FMA program was provided \$150 million in FY 2015. For FY 2016, Congress provided the program with \$175 million.
- The Pre-Disaster Mitigation Grant Program (PDM) provides resources to assist state and local governments reduce overall risk to life and property from future disasters. Congress funded the program at \$100 million in FY 2016, which is still a significant increase from the FY 2015 funding level of \$25 million.

Local Activity

Mayor Carruthers has been nominated to serve as Florida's representative on the National Association of Counties' (NACO) NFIP Working Group tasked with developing policy recommendations for NACO to help address the NFIP. Meanwhile, the Florida Association of Counties has helped to lead a statewide response to NFIP reauthorization.

RECOMMENDED POSITION: *Support* efforts to improve the National Flood Insurance Program for the benefit of all participants. *Oppose* H.R. 1422 and S. 563 due to its allowance that surplus lines insurance companies can write private flood insurance given that they are not subject to the same oversight as admitted insurance carriers. *Support* prohibition of the issuance of flood insurance for new development on properties in the Florida Keys that contain known or suitable habitat for federally-listed endangered species. *Monitor* FEMA's implementation of the Homeowner Flood Insurance Affordability Act. *Support* the creation of a National Catastrophe Fund. *Support* increased funding for the Hazard Mitigation Assistance grant programs, including the Flood Mitigation Assistance Grant Program and the Pre-Disaster Mitigation Grant Program, as well as increased funding for the Disaster Relief Fund.



FEDERAL ISSUE: Water Quality

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: As population and tourism have increased in the Florida Keys, wastewater and stormwater practices have not kept pace until recently. Research suggests that this has led to the degradation of water quality in canals and nearshore waters surrounding the Keys. Nutrients commonly found in wastewater and stormwater are one of the major contributors to the decline in water quality in the Florida Keys National Marine Sanctuary (FKNMS).

Florida Keys Water Quality Improvements Program

For these reasons, Congress directed the U.S. Army Corps of Engineers to assist with implementation of infrastructure improvements in the Florida Keys to improve nearshore water quality within the Sanctuary. In 2001, Public Law 106-554 authorized the Florida Keys Water Quality Improvements Program (FKWQIP), whereby the Corps may provide up to \$100 million in technical and financial assistance to carry out projects for the planning, design, and construction of treatment works to improve water quality in the Sanctuary. The primary purpose of this effort is to improve water quality in the Florida Keys through implementation of several wastewater and stormwater master plans previously prepared for Monroe County and various municipalities within Monroe County. The South Florida Water Management District is the non-federal Sponsor for FKWQIP. In September 2006, the Corps completed a Project Management Plan to guide the activities of FKWQIP.

To fund environmental infrastructure projects that are not budgeted for by the Administration, such as FKWQIP, Congress has provided additional funding for what Congress terms “Additional Funding for Ongoing Work.” Among these accounts, Congress has for the past several years provided money for Environmental Infrastructure projects such as FKWQIP. Most recently, the Corps provided \$3 million in additional funding for FKWQIP through their FY 2016 Work Plan. The County will continue to work to ensure that FKWQIP receives funding in future Work Plans. To date, approximately \$50 million has been provided to the FKWQIP program via earmarks, the stimulus legislation, or Corps of Engineers work plans.

Canal Restoration

Canals within the Florida Keys have received considerable attention from regulatory agencies due to poor water quality. 300 of the 500 canals do not meet the State’s minimum water quality criteria and are a potential source of nutrients and other contaminants to nearshore waters designated as Outstanding Florida Waters. As a result, a comprehensive Canal Management Master Plan (CMMP) was commissioned by Monroe County with financial assistance from the Environmental Protection Agency and with approval from the FKNMS Water Quality Protection Program (WQPP).

One of the main objectives of the CMMP was to prioritize the residential canals within Monroe County related to the need for water quality improvements. A process was developed that classified canals by water quality characteristics into “Good”, “Fair”, and “Poor” categories. Canals receiving a “Poor” classification were considered as potential candidates for certain restoration technologies. Restoration technologies reviewed in the CMMP include removal of accumulated organics, incorporation of weed gates or similar weed barrier structures, addition of culverts, construction of pumping systems, and backfilling. The ultimate goal of this work is to restore the environmental health of Monroe County’s canals, and subsequently its nearshore waters.



The County Commission previously approved moving forward with a series of six canal restoration demonstration projects. Those projects will be complete by June 2016. The preliminary results have indicated immediate improvement to the water quality of the restored canals. The results will be used to further define restoration costs and for information in future grant applications to state and federal sources.

In order to be eligible for federal funding, canal restoration efforts would require a new authorization through Congress. Under the Water Resources Reform and Development Act (WRRDA) of 2014, the Army Corps of Engineers is required to seek proposals for water resources studies and project modifications on an annual basis. From the proposals submitted by local sponsors, the Corps identifies those that meet certain criteria and recommend them to Congress for authorization within an Annual Report. The Report will also include an Appendix listing those proposals that are not recommended for authorization and the reasons for the lack of recommendation. Congress will then have the opportunity to authorize the recommended studies and project modifications through a yes or no vote, rather than a traditional Water Resources Development Act (WRDA). This process provides an opportunity to seek future assistance from the Corps for canal restoration activities.

RECOMMENDED POSITION: *Support* full funding of the Florida Keys Water Quality Improvements Program via the FY 2017 Army Corps of Engineers Work Plan. *Support* continued additional funding for Army Corps of Engineers environmental infrastructure projects in FY 2018 and future fiscal years. *Support* Monroe County's efforts and activities related to canal restoration.



FEDERAL ISSUE: Land Acquisition

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: The federal nexus for Monroe County's land acquisition challenges are generally based upon two basic principles: a) rigorous preservation of the Florida Keys' unique environmental resources, which are protected under a variety of federal laws including the Endangered Species Act, and b) the need to protect from development encroachment the nation's investment in Naval Air Station Key West, one of the military's premier air combat training facilities.

The Florida Keys and Monroe County contain a number of unique environmental resources of national significance. In recognition of the value of these resources and features, the federal government has created four national wildlife refuges (Crocodile Lake, Great White Heron, Key Deer, and Key West), three national parks (Everglades, Biscayne, and Dry Tortugas), as well as a National Marine Sanctuary (Florida Keys) and a National Preserve (Big Cypress), all of which are located in whole or in part in Monroe County. World renowned for our coral reef, the Florida Keys is also home to over 30 listed species protected under the Endangered Species Act (ESA).

In order to protect these scarce yet vital natural resources, development on private property in Monroe County is heavily controlled by federal, state, and local regulations. To see the significant impact of federal regulations on the County's ability to regulate local development, one need to look no further than the Florida Key Deer v. the Federal Emergency Management Agency (FEMA) & US Fish & Wildlife Service (USFWS) suit settled in 2012 after more than 20 years of litigation. In that case, the USFWS and FEMA negotiated a settlement agreement with environmental advocates that forced the County to adopt regulations and procedures to assist the USFWS with performing its obligations under the ESA or face expulsion from the National Flood Insurance Program (NFIP). Given the draconian alternative of expulsion from the NFIP and the resulting collapse of the local real estate market due to the inability of potential home buyers to obtain federally-guaranteed mortgages, the County Commission had little choice but to implement procedures that essentially shifted the burden of implementation of the ESA from the USFWS to Monroe County.

That settlement agreement was predicated upon the USFWS's revised Biological Opinion (BO) on the NFIP in Monroe County. The BO contained reasonable and prudent alternatives (RPA) that required the Florida Keys communities to revise their Flood Damage Prevention programs to include the review of floodplain development applications for potential impacts to nine endangered species – a review the ESA requires FEMA and USFWS to undertake, not local governments.

According to the data contained in the BO, there are 63,411 acres of suitable habitat for listed species in unincorporated Monroe County. Approximately 7,193 privately owned vacant parcels, having an approximate combined value of \$240,088,014 within USFWS designated potentially suitable habitat. While the BO only addresses protections for nine species, twenty-two federally-listed species live in the Florida Keys and critical habitat has been designated for eleven of these species. In addition, the USFWS currently proposes to list (and subsequently designate critical habitat for) an additional five (5) species in the Florida Keys in the near future.

The limitations upon development imposed by the ESA and other federal, state, and local regulations impose severe restrictions on private property owners who desire to develop their properties. The U.S. and Florida Constitutions require government to compensate private property owners when those



regulations result in a taking. Currently, the County is defending takings suits involving potentially over 1,000 parcels of land. These claims are based in part upon regulations that were adopted to effectuate the ESA and other state and federal acts.

The County realizes the importance of preserving and sharing the benefits of our unique natural resources, and has conducted the reviews for FEMA and FWS, including restricting development based on this process, but federal support is required to maintain the protection of our significant environment. The Keys supports and encourages the federal government to target the acquisition of lands containing suitable habitat for and known populations of federally-designated wildlife species.

In addition to the land acquisition challenges resulting from environmental protection regulations, the County faces challenges in the area surrounding Naval Air Station (NAS) Key West, one of the military's premier air combat training facilities. The airfield is located just outside of Key West in the most densely populated area of the County. Noise from flight operations impacts the quality of life for residents living near the airfield. The impacts of encroachment from development, both past and future, in the vicinity of NAS Key West further exacerbates the land acquisition challenges for Monroe County. While the County wants to foster the continued use of the airfield, it must also be mindful of encroachment challenges due to property owners in the adjacent community. Acquisition of nearby properties can help solve that challenge.

In order to proactively address these land acquisition challenges, the County has engaged in land acquisition efforts primarily through the Monroe County Land Authority. The Land Authority has two dedicated revenue sources through which it funds land acquisition (half of the one cent tourist impact tax, and a State park surcharge). Unfortunately, these sources are insufficient, as they generate only about \$900,000 annually. However, in Fiscal Year 2015, the County Commission budgeted \$10 million in local funds to serve as a match for federal and state land acquisition projects. Even with that additional funding, the County lacks the financial resources to meet all of the land acquisition needs that result from federal and state environmental protection regulations as well as encroachment issues arising near NAS Key West. Solving the County's land acquisition challenge can only be done through a combination of federal, state, and local efforts.

The Land and Water Conservation Fund

The Land and Water Conservation Fund (LWCF) Act of 1965 was enacted to help preserve, develop, and insure access to outdoor recreation facilities for our nation. The law created the Land and Water Conservation Fund (LWCF) in the U.S. Treasury as a funding source to implement outdoor recreation goals. Revenues for the fund are derived from oil and gas leasing proceeds in the Outer Continental Shelf.

The LWCF has been the principal source of monies for land acquisition for outdoor recreation by four federal agencies—the National Park Service, Bureau of Land Management, Fish and Wildlife Service, and Forest Service. The LWCF also funds a matching grant program via the National Park Service to assist states (and local governments as sub-recipients) in acquiring recreational lands and developing outdoor recreational facilities. A portion of the appropriation is divided equally among the states, with the remainder apportioned based on need, as determined by the Secretary of the Interior. The states award their grant money through a competitive selection process based on statewide recreation plans, as well as establish their own priorities and criteria.

The LWCF is authorized at \$900 million annually. However, yearly appropriations have fluctuated widely since the origin of the program. Of the total revenues that have accrued throughout the history of the program (\$33.5 billion), less than half have been appropriated (\$15.8 billion). FY 2001 marked the



highest funding ever, with appropriations exceeding the authorized level and reaching nearly \$1 billion. In FY 2002, Congress provided the most LWCF funding of the past twenty years for the state grant program at \$144 million.

For FY 2016, the Administration requested \$53.2 million for the state formula and competitive programs. Congress, however, provided a huge boost to the state programs, funding them at \$110 million in FY 2016. The Administration then requested level funding in its FY 2017 budget, which the Senate also included in its version of the FY 2017 Interior and Environment Appropriations bill. The House, however, has included \$71.8 million in its version of the bill. The federal government is currently operating under a Continuing Resolution through April 28, 2017, and the FY 2017 appropriations process is not expected to be completed until that time.

In addition to yearly funding challenges, the current authorization for the LWCF is set to expire at the end of 2018. While this is still roughly three years away, the previous authorization was allowed to lapse for over two months when Congress failed to reauthorize the program after its expiration on October 1, 2015. A three-year reauthorization was finally included in the FY 2016 omnibus.

There have been legislative attempts over the past few years to reauthorize the LWCF, on both a permanent and temporary basis. These attempts have often included provisions to reform the program, such as requirements related to how the money is allocated. For example, the Senate version of an energy reform bill Congress worked on for much of 2016 would have permanently reauthorized the program. That bill was not passed prior to the end of session, however, due to timing conflicts, as well as disagreements over a number of provisions, including the language related to the LWCF.

Looking ahead, the Chairman of the House Natural Resources Committee, Rob Bishop (R-UT), unveiled draft legislation called the Protecting America's Recreation and Conservation (PARC) Act in November 2015, which would reauthorize the LWCF for seven years at \$900 million annually, but would also significantly reform the LWCF. The legislation would provide 45 percent of LWCF funds to the State Assistance Grant Program, 15 percent to fully fund the Payments in Lieu of Taxes program, 20 percent to fund offshore energy exploration, and 3.5 percent on federal land acquisition. The bill would also require a certain amount of that 3.5 percent to be focused east of the 100th meridian (a north-south line running through the Dakotas and into Texas) in order to prevent the purchase of much more land in the west.

As a starting point for the future of the LWCF, it could drastically reshape the program in the future and funnel significantly more money to the state and local programs. As stated above, this would boost the County's chances of securing funding for priorities in the community.

DoD Readiness and Environmental Protection Integration Program

The Department of Defense's (DoD) Readiness and Environmental Protection Integration Program (REPI), which was authorized by Congress in 2002, funds cost-sharing partnerships for the military with state and local governments in order to address incompatible development and loss of habitat around DoD installations. These partnerships obtain easements or other interests from willing sellers that preserve critical buffer areas around DoD facilities in order to protect the military's ability to accomplish its training, testing, and operational missions by helping to remove or avoid land-use conflicts, as well as addressing regulatory restrictions that inhibit military activities. Through FY 2015, REPI buffer partnerships have protected 437,985 acres of buffer land in 88 locations and 30 states. The REPI program may provide an opportunity for land acquisition for those parcels located near DoD facilities within Monroe County.



Since the program's inception, Congress has increased REPI's original funding from \$12.5 million to over \$70 million annually. In its FY 2016 budget request, the Administration recommended \$60.3 million for REPI. Congress, meanwhile, funded REPI at \$75 million in its FY 2016 omnibus appropriations bill. For FY 17, we expect similar funding levels as both the House and Senate have shown support for the program by proposing an increase of nearly \$15 million above the President's budget request.

Although congressional appropriations are consistently above the budget request, total service requests average \$140 million annually, which greatly exceeds available REPI funding. To make up some of the difference, federal REPI funding is augmented by cost-shares from partner contributions, including other federal grants, state and local grants or cost-share programs, private capital, donations, and in-kind services, among others.

RECOMMENDED POSITION: *Support* efforts by federal agencies to acquire appropriate properties to mitigate environmental resource or military encroachment concerns in Monroe County. *Support* a \$900 million annual appropriation from the Land and Water Conservation Fund. *Support* future mandatory funding for the Land and Water Conservation Fund. *Support* increased funding of the Department of Defense's Readiness and Environmental Protection Integration program.



FEDERAL ISSUE: Payments In Lieu of Taxes

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: Under law, federally-owned lands within a local government's boundary cannot be taxed, but these lands still create a demand for services, including firefighting and police protection, construction of roads, and search-and-rescue operations. Congress has created several programs in an attempt to compensate local governments, particularly counties, for these losses to their tax base. One of these programs from which Monroe County benefits is the Payments in Lieu of Taxes program (PILT).

Congress passed the Payments In Lieu of Taxes Act in 1976 (Public Law 94-565) to help offset the impact from these losses to local governments' tax bases through annual compensation. The PILT program is administered by the Department of Interior.

Payments are made annually for tax-exempt federal lands administered by the Bureau of Land Management, the National Park Service, the U.S. Fish and Wildlife Service, the U.S. Forest Service, and for federal water projects and some military installations. The authorized level of PILT payments is calculated under a complex formula that includes five factors affecting Monroe County's compensation: the number of acres eligible for PILT payments, the County's population, payments in prior years from other specified federal land payment programs, state laws directing payments to a particular government purpose, and the Consumer Price Index. The following are Monroe County's PILT payments for the last six fiscal years: \$1,099,616 in 2011; \$1,122,390 in 2012; \$1,095,408 in 2013, \$1,172,487 in 2014, \$1,158,900 in 2015, and \$1,180,195 in FY 16. A total of 454,861 acres, which is roughly 19 percent of the County's land, is eligible for compensation.

In 2008, Congress reauthorized PILT and changed it from a discretionary to a mandatory program through FY 2012. As a mandatory program, authorized eligible local governments are able to automatically receive their full PILT payments. As a discretionary program, however, PILT is subject to the annual, and often arbitrary, appropriations process.

PILT was reauthorized at mandatory levels for FY 2013 through the MAP-21 transportation reauthorization. Although funding for PILT was not included in the FY 2014 omnibus appropriations bill, the program was fully funded for FY 2014 through the five-year farm bill (PL 113-79) signed into law in February 2014. Then, in FY 2015, the omnibus spending bill included \$372 million in PILT funding. This, combined with the \$70 million included within the 2014 National Defense Authorization Act, brought the total amount of PILT funding for FY 2015 to \$442 million, fully funding the program. Most recently, PILT was fully funded at \$452 million for FY 2016.

More recently, the Administration's FY 2017 budget proposal requested \$480 for PILT in FY 2017. Both the House and Senate versions of the FY 2017 Interior and Environment Appropriations bills also include this level of funding for PILT. However, the Administration has recently proposed reducing funding for PILT by \$80 million from the amount currently proposed by both the House and the Senate in FY 2017, as well as continued reductions (which remain unannounced) in FY 2018, all of which would have a detrimental impact to the County. Approximately 19% of the County's land is eligible for compensation through PILT. In FY 2016, the County received just over \$1.1 million dollars in PILT payments.

As of now there is no concrete long-term nor short-term solution for providing additional PILT funding in future years. There has been some discussion of tying mandatory funding for the program to receipts



from the Land and Water Conservation Fund (LWCF). The LWCF is currently a discretionary program that is routinely funded well below its authorized amount. Because of this, many believe the LWCF should also be moved to the mandatory side of the budget in order to provide as much funding as possible for the program without crowding out discretionary funding for other high-priority needs. Tying PILT, the LWCF, and other programs together as mandatory funding provides an opportunity for many programs to receive full funding on a regular basis, providing stability for local governments, as well as conservation opportunities. Because both programs tend to have support from a bipartisan coalition of lawmakers, the largest challenge for this proposal is how to pay for it. As discussed earlier in this agenda, legislation has been introduced in the form of the PARC Act that would tie together the LWCF and PILT, among other programs. However, given the bill's other controversial provisions, it is unlikely this will be achieved through that piece of legislation.

RECOMMENDED POSITION: *Support* full, long-term mandatory funding of the Payments In Lieu of Taxes (PILT) program, which enables local governments to rely upon PILT funds when budgeting.



FEDERAL ISSUE: Everglades Restoration and the Health of the Florida Bay

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: Florida Bay is a large shallow lagoon bordered to the north by the Florida peninsula and to the south and east by the Florida Keys. A portion of the bay is located within Everglades National Park and is protected by the National Park Service (NPS), with the remainder lying within the Florida Keys National Marine Sanctuary, which falls under the jurisdiction of the National Oceanic and Atmospheric Association (NOAA). The Bay provides unique and critical habitat for many plants and animals, including several endangered species such as the Florida Manatee.

The NPS began long-term monitoring of Florida Bay in 1988 in order to collect and analyze hydrologic and salinity data from the Bay. At this same time, the Bay was suffering from tremendous (approximately 23,000 acres) of sea grass die off from hyper saline conditions with resulting algal blooms. Salinity levels are considered the primary driver of ecological conditions within the bay. Salinity levels are also the driver to maintain the state-established Minimum Flow and Level (MFL) for Florida Bay, an ecosystem-based protective standard established under Florida law.

The construction of water control structures and facilities within the Everglades throughout the 20th century has altered the natural hydrologic patterns of water in the region. Overtime, this has reduced the flow of freshwater into Florida Bay and changed the ecosystem of the Bay and other connected coastal regions. Managing these water flows to reduce the severity and frequency of hypersalinity events and algal blooms are among the goals of the Comprehensive Everglades Restoration Plan (CERP).

There are a number of projects and studies under various stages of development that are expected to, in the long run, improve the health of Florida Bay. These include the Central Everglades Planning Project, modifications to the C-111 Canal General Reevaluation Report, Modified Water Deliveries, including the bridging of portions of Tamiami Trail, and the C-111 Spreader Canal project.

- The Central Everglades Planning Project (CEPP) received its Corps of Engineers Chief’s Report in 2015 and was authorized in the 2016 version of the Water Resources Development Act, included in another, larger piece of legislation. CEPP intends to address criticism that a good portion of Everglades restoration to date has focused on the periphery of the remnant Everglades. CEPP seeks to respond to this concern by removing barriers to flow in the central Everglades to put the “river” back into the “River of Grass.” CEPP, once fully constructed, is estimated to bring an average of 200,000 acre-feet of additional water from Lake Okeechobee into the Central Everglades each year. This is expected to reduce damaging discharges to the east and west coast estuaries while returning more flow to the Everglades. Components of CEPP are expected to be under construction by 2021 with completion expected in 2030.
- The C-111 Canal is the southernmost canal of the Central and Southern Florida Project and is located in south Miami-Dade County. The C-111 Canal courses through extensive marsh wetland prairie and coastal mangrove marsh before it empties into Manatee Bay. The canal serves a basin of approximately 100 square miles and is the final segment of the South Dade Conveyance System. It functions primarily to provide flood protection and drainage for the agricultural areas to the west and south of Homestead, Florida. The canal has had unintended effects on groundwater levels in Taylor Slough, and has contributed to the reduced discharge to northeastern Florida Bay and increased unseasonable discharges to Manatee Bay and Barnes Sound. Taylor



Slough is a natural drainage feature of the Everglades that flows southwest into numerous tributaries that eventually empty into Florida Bay.

- The C-111 Project General Reevaluation Report (GRR) with integrated Environmental Impact Statement (EIS) was approved in 1994 and it authorized modifications to the original project as authorized by the Flood Control Acts of 1962 and 1968. The C-111 project is moving forward, and construction on several of the remaining project components began in Fiscal Year 2016 and are expected to end primarily in 2019. Construction efforts were divided into 9 contracts. Contracts 1-7 are complete and under Operation, Maintenance, Repair, Rehabilitation, and Replacement (OMRR&R) by the non-Federal Sponsor. The completed contracts built the following features of the 1994 GRR recommended plan: Pump Stations 332B, 332C, 332D, the retention/detention area, C-111 Spoil Mound Removal, Taylor Slough Bridge, and the S-331 Command and Control Facility. The remaining features to be constructed include the North Detention Area, which will connect this project with the Modified Water Delivery 8.5 Square Mile Area Detention Area and plugging of the L-31W Canal. Plans and specifications (P&S) are complete for the North Detention Area, and the contract was awarded in FY2015.
- The C-111 Spreader Canal Western Project focuses on the restoration of flows to Florida Bay via Taylor Slough as well as the restoration of the Southern Glades and Model Lands and coastal zone of Florida Bay. The bulk of the construction for the project was completed by the South Florida Water Management District in 2012. The effect of the C-111 Spreader Canal Western Project on adjacent park wetlands and on Florida Bay is being monitored and its effects will be evaluated after 3 years of monitoring and thus far, initial signals are positive. Rainfall-driven operational controls have not yet been implemented, but will be incorporated into future water control plans. The remaining phases of the C-111 Spreader Canal project are anticipated for completion in the 2019-2021 timeframe according to the latest CERP Integrated Delivery Schedule (IDS).
- The overall purpose of the Modified Waters Delivery (MWD) to Everglades National Park (ENP) project is to restore the natural hydrologic conditions in ENP, which was altered by the construction of roads, levees, and canals. There are four major components of MWD: 8.5 Square Mile Area Flood mitigation, Tamiami Trail Modifications, Conveyance and Seepage Control Features, and Combined Operation Plan. All four components are necessary to provide substantial flow increases to ENP.
 - The most well-known portion of this project is the bridging of the Tamiami Trail. A one mile bridge has been completed to date. In early 2015, the Department of Interior released a preferred alternative to bridge an additional 5.5 miles of the Trail called the Tamiami Trail: Next Steps project. The additional bridging will provide unconstrained flows of water to Northeast Shark River Slough (NESRS) in ENP. The resulting increased water volumes and improved flow distribution are expected to promote conditions conducive to the survival of myriad species of fish and wildlife. Groundbreaking for 2.6 of the 5.5 miles yet to be finished occurred in 2016.
 - Flood mitigation work to protect a residential area near the project (the 8.5 Square Mile Area) was completed in 2016.
 - Meanwhile, a set of significant changes to the operation of the local water management infrastructure that controls the flow of water to NESRS in ENP, known as Increment 1, began in 2015. The structural features of the MWD project finally allow this incremental increase in water flow. Planning and development of this field-test phase of the MWD project has been a complex, multi-year, interagency undertaking. Water flow into NESRS through the S-333 structure along the L-29 Canal will increase and water that seeps out of the park to the east will be returned to the park by use of the S-356 pump, also located along the L-29 Canal. Increment 1 is expected to continue for up to two years and is



expected to produce small but important hydrologic benefits based on the additional water flow and seepage return. Water quality will be maintained because seepage water has low levels of total phosphorus and is of very good quality overall. Increased water flow and water quality are expected to improve habitat function and species composition and abundance, while promoting the build-up of soil and inhibiting soil loss. Increment 2 is expected to provide additional hydrologic and ecological benefits to NESRS, and data collected during the first two increments will be used in Increment 3 to design a new operational plan for the system.

- The C-111 North Detention area (a component of MWD and referenced above in the C-111 GRR) is still not complete and scheduled for completion in 2017.

RECOMMENDED POSITION: *Support* efforts to improve the health of Florida Bay by restoring adequate fresh water flows through the Everglades. *Support* full completion of the C-111 Canal suite of projects. *Support* completion of the Modified Waters Delivery suite of projects and improved operational plan, including further modification to Tamiami Trail. *Support* future construction of the Central Everglades Planning Project.



FEDERAL ISSUE: Naval Air Station, Key West

BACKGROUND / HOW IT MAY AFFECT MONROE COUNTY: Naval Air Station (NAS) Key West is located on Boca Chica Key in Monroe County, Florida. It is the second to last major island in the Florida Keys. NAS Key West has several annexes throughout Monroe County including on Key West. The U.S. Navy's presence in Key West dates back to 1823, when a Naval Base was established to stop piracy in the area. The lower Keys were home to many wealthy shipping merchants whose fleets operated from these waters. This drew the interest of pirates such as Black Beard and Captain Jon Kidd, who used the Keys as a base from which to prey on shipping lanes.

Naval Air Station Key West's national security mission supports operational and readiness requirements for Department of Defense, Department of Homeland Security, National Guard units, federal agencies, and allied forces. What makes the southernmost air station attractive to the war fighter is access to unencumbered air space and sea space, the Tactical Combat Training System (TCTS), year-round great weather, the piers/harbor, the visitor quarters complex and the Gulf range complex. As such, NAS Key West is the Navy's premier East Coast transient pilot training facility for tactical aviation squadrons. The airfield hosts aviation squadrons from around the country on a regular basis to fulfill the mission.

NAS Key West encompasses more than 5,800 acres, and the Gulf water and air ranges span 134,000 square miles. Air station facilities can support up to 100 aircraft and more than 800 personnel at one time, as well as provide port operations for visiting ships. More than 30 tenant commands call Key West home.

These commands include:

- Joint Interagency Task Force South
- Coast Guard Sector Key West
- U.S. Army Special Forces Underwater Operations School
- Naval Branch Health Clinic
- VFC-111 "Sun Downers" Adversary Squadron
- VFA-106 "Gladiators" Detachment Key West
- U.S. Naval Research Lab

The air station's customers include active and Reserve fighter/strike fighter communities, Chief of Naval Air Training (CNATRA) units, Fleet Replacement Squadrons (FRSs), Fleet Forces Command units and other military service users.

Department of Defense Base Realignment and Closure Commission

The history of the Defense Base Closure and Realignment Commission dates back to the Kennedy Administration, which began to reconfigure and consolidate military bases to better meet the threats the United States faced during the Cold War. As the Cold War began to wind down and U.S. defense needs evolved, Congress passed legislation in 1988 to create the independent Defense Base Closure and Realignment Commission (BRAC).

BRAC is a bipartisan group of nine individuals who are appointed by the President to analyze recommendations of the Department of Defense and make decisions regarding base closures or reorganizations. BRAC attempts to remove political considerations from the decision making process. Congress ultimately must vote simply yes or no on BRAC's entire list of recommendations. There have been five BRAC rounds in 1988, 1991, 1993, 1995 and 2005.



Though the FY 2016 omnibus budget agreement provided some relief to the sequestration cuts by restoring around \$25 billion to the Department of Defense, the military is recognizing that it must drastically reshape itself due to the return of mandated sequestration defense cuts in FY 2018 and continuing limits on federal spending generally. If reductions in defense infrastructure are not available, then cuts will have to be distributed across manpower, training, and equipment.

In the Administration's FY 2017 budget proposal, the Department of Defense repeated its previous requests for a BRAC round in 2019. Congress did not provide authority for a new round of BRAC in the FY 2017 National Defense Authorization Act (NDAA). While in the FY 2016 NDAA, language was included to allow military officials to conduct studies on how much excess capacity exists in their stateside footprint (which may help clear the path for future BRAC rounds) the study and reports associated with this language have not yet been given to Congress.

Additionally, in the FY 2014 omnibus, Congress set up, and provided funding for a "Department of Defense Base Closure Account" in anticipation of a future BRAC. Congress continued to fund this account in both the FY 2015 and FY 2016 omnibus appropriations bills, providing just over \$265 million in FY 2016. In the FY 2017 Military Construction Appropriations bill, Congress provided just over \$240 million for the account.

In further recognition that savings (even within military accounts) must be found, some in Congress are softening on allowing a new round of BRAC. Congressman Adam Smith, the top-ranking Democrat on the House Armed Services Committee, introduced legislation in January 2017, to allow the DOD to conduct a new round of BRAC in 2019. The bill, H.R. 753, has 8 co-sponsors. Senate Armed Services Committee Chairman John McCain indicated in January 2017, that he and Ranking Member Jack Reed, plan to undertake a serious examination of base closures during the new Congress rather than simply passing legislation forbidding another BRAC as has been done in every year since 2012.

Across the country, communities are preparing for the worst, whether from a new BRAC or other cuts to their regional military facilities, and while NAS Key West's unique mission and location make it an unlikely target for future elimination, the County should remain engaged in order to be prepared for any contingency.

RECOMMENDED POSITION: *Monitor* activities related to the Department of Defense Base Closure and Realignment Commission for potential impacts to NAS Key West.



FEDERAL ISSUE: Federal Aviation Administration - Authorization and Issues

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: In July 2016, Congress passed a short-term Federal Aviation Administration (FAA) extension through September 2017. Before passing this bill, the Senate passed a bi-partisan, comprehensive FAA reauthorization bill. The House was unable to move their version of the bill, primarily due to controversy over the bill's inclusion of language to privatize the FAA's air traffic control functions.

Airport Improvement Program

Among other things, the FAA extension maintained the existing level of funding authorization (\$3.35 billion) for the Airport Improvement Program (AIP). AIP is a federal grant program that provides funds to public airports to improve safety and efficiency. The program is funded through taxes on airplane tickets and aviation fuel. This funding stream is critical to improvements at Key West International and Florida Keys Marathon Airports and is subject to annual appropriations by Congress. Between 2009 and 2013, Key West International experienced over 74 percent increase in passenger traffic. With this tremendous growth, it is critical to ensure that these airports can compete for sufficient federal funding as necessary to continue this trend.

For FY 2016, Congress provided \$3.35 billion for the AIP program which was an increase over the Administration's budget request of \$2.9 billion (which included the elimination of guaranteed funding for large and medium hub airports). The purpose of the proposal was to focus federal grant support on smaller commercial and general aviation airports that are less likely to have access to additional revenue or other outside sources of capital. In FY 2017, the Administration made the same budgetary request. Again, Congress is likely to overrule the proposal. The Senate and House each included \$3.35 billion in their respective versions of the FY2017 Transportation Appropriations bill for AIP.

Passenger Facility Charges

The FY 2017 Administration budget request proposed to allow larger airports to increase non-federal passenger facility charges (PFC), thereby giving larger airports greater flexibility to generate their own revenue. Authorized by Congress in 1992, the PFC allows commercial airports controlled by public agencies to charge \$3.00 per passenger through airline tickets. The PFC cap was raised in 2001 to \$4.50, but has not been increased since. Several airport groups, including the American Association of Airport Executives and the Airports Council International-North America, advocate for local authority to raise the cap per enplanement to meet current infrastructure needs and prepare for future demand.

Law Enforcement Officer Reimbursement Program

Meanwhile, the Trump Administration's FY 2018 "skinny budget" proposes to eliminate the Transportation Security Administration's (TSA) Law Enforcement Officer (LEO) reimbursement program. Currently, TSA provides more than 300 airports nationwide, including Monroe County airports, partial reimbursement for law enforcement officers who assist the agency in ensuring the safety and security of persons and property at TSA passenger security checkpoints at an approximate cost of \$45 million annually. This program was established after 9/11, when commercial airport operators were required by law to have a security program that includes a law enforcement presence at the airport. The program provides partial reimbursement to assist local entities in support of federally mandated airport security requirements. Without continuation of the LEO program, local airports must pick up the entire cost of these additional security measures.



Fish Hook Non-Directional Beacon at Higgs Beach

The County would like the FAA to remove or relocate the Fish Hook non-directional beacon (NDB) currently located at Higgs Beach in Key West. The circa World War II radio tower and surrounding fencing occupies nearly an acre of a 16.5 acre County beach park in Key West. The park is undergoing a major revitalization and Master Redevelopment Plan which calls for green space where the tower now stands. The park is at the southern terminus of the Florida Keys Overseas Heritage Trail bicycle pedestrian path and is a major tourist attraction and community amenity. In September 2009, FAA Technical Support Staff conducted a cursory review of the County's request and determined the NDB facility building and older antenna may be eliminated or the fenced area significantly reduced if replaced by a smaller and more modern antenna. However, in December 2012, FAA regional staff conducted a site survey to determine the scope of work and availability of suitable sites for potential relocation of the NDB. Less than a month later, the FAA released its report and concluded the following:

- The existing NDB shelter and tower are not suitable for relocation and would need to be replaced.
- No suitable location for the NDB was found (Two alternate locations were found to be unsuitable).
- Due to the heavy density and nature of the island, land acquisition of private property would be timely and costly.

The County met with the FAA in 2013, at which time they were told the NDB is needed for redundancy purposes and could not be removed or relocated. The FAA argued that should all other technologies fail, the NDB is needed because it would still function during an emergency. Then, in April 2015, Rep. Curbelo sent a letter to the FAA requesting the agency consider relocating the beacon, to which the FAA again indicated that no suitable location is available.

Most recently in November 2016, Monroe County approved an expenditure of more than \$40,000 to fund an FAA study to relocate the tower. In May 2017, the County met with the FAA to discuss how long a response from the FAA may take to complete the study.

Joint-Use of Naval Air Station Key West

Naval Air Station (NAS) Key West is located on Boca Chica Key near Key West. NAS Key West's national security mission provides operational and readiness support for the Department of Defense, Department of Homeland Security, Air National Guard, Army National Guard, and allied military forces.

The County has expressed an interest in utilizing NAS Key West as a joint-use facility due to limited runway length at Key West International Airport. At 4,801 feet, the runway is currently the shortest commercial runway in the country, which has deterred carriers from servicing the airport, thereby driving up ticket costs. Since the 1990's, the County has discussed joint-use of NAS Key West with the Navy. In 1995, however, the Navy issued a report disapproving joint-use at NAS Key West on the grounds that it would interfere with operational readiness. Since then, conversations between the County and the Navy regarding joint-use have occurred sporadically.

Sound Attenuation

Due to jet noise, activities at NAS Key West often negatively affect residents who live in the area. The FAA provides funding for sound attenuation activities at civilian airports. However, this funding is not available for military facilities. Monroe County would like to see changes to this policy in order to reduce the impacts of noise pollution from military aircraft on its residents.



VAN SCOYOC
ASSOCIATES

RECOMMENDED POSITION: *Support* \$3.35 billion in annual appropriations for the Airport Improvement Program. *Support* Monroe County's grant proposals for funding through the FAA Airport Improvement Program. *Support* an increase in the passenger facilities charge cap from \$4.50 to \$8.50. *Oppose* the elimination of the Law Enforcement Officer Reimbursement Program. *Support* the removal or relocation of the non-directional beacon at Higgs Beach. *Support* continued efforts to establish a joint-use airport at Naval Air Station Key West. *Support* federal funding for sound attenuation activities around military air facilities.



FEDERAL ISSUE: Transportation Authorization

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: After the passage of several short-term authorizations following the expiration of MAP-21 in 2014, Congress finally passed, and the President signed, a five-year surface transportation authorization called the Fixing America's Surface Transportation (FAST) Act. The FAST Act generally maintains many of MAP-21's reforms, but makes a few changes to existing surface transportation programs, as well as slightly increases funding for those programs.

In developing the FAST Act, however, Congress did not address the need for a long-term, sustainable plan to finance our nation's transportation infrastructure. Fuel taxes, which provide most of the money for surface transportation, do not provide a solid long-term foundation for transportation funding growth and investment, even if Congress were to authorize a modest increase. Instead, the FAST Act relies on various budget gimmicks to fund surface transportation programs over the next five years, such as surplus money from the Federal Reserve, reducing the amount of interest the Fed pays to banks, and selling off part of the Strategic Petroleum Reserve.

Without the creation of a long-term, sustainable funding source, the Highway Trust Fund's deficit will continue to grow over the next five years, making future authorizations increasingly difficult. The choice then becomes finding new sources of income for an expanded program, or alternately, to settle for a smaller program that might look very different than the one currently in place. Less federal funding via a future transportation reauthorization bill would mean significantly less funding available to FDOT, and ultimately Monroe County, to support both surface transportation and transit projects and programs.

Card Sound Bridge

Card Sound Bridge connects southern Miami-Dade County to Monroe County via toll. Monroe County is primarily responsible for operating and maintaining the bridge. It is one of only two roads that connect the Keys with mainland Florida. The bridge is roughly 50 years old and currently undergoing a ten-year update. However, it will likely need to be fully replaced after that time.

MAP-21 eliminated the Highway Bridge Program in 2012. Instead, bridges located on the Interstate or the National Highway System were eligible to receive funding through the National Highway Performance Program (NHPP). Bridges that were not located on this federal-aid system, such as Card Sound Bridge, as well as many others in Monroe County, were provided a separate set-aside in the Surface Transportation Program (STP). This resulted in a nearly 30 percent decrease in funding for on- and off-system bridges. The FAST Act, however, attempted to correct this by expanding the NHPP to allow funding for on-system bridges. This more than repaired the cut to on-system bridges under MAP-21. Meanwhile, the bill maintains the STP set-aside for off-system bridges.

RECOMMENDED POSITION: *Monitor* proposed changes to federal highway programs. *Monitor* efforts to enhance federal transportation revenue streams. *Support* the continuation of dedicated bridge funding through the Surface Transportation Program or other avenues. *Support* opportunities to secure funding for Monroe County's priorities via federal highway legislation or other means.



FEDERAL ISSUE: Infrastructure Investment

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: Traditionally, Congress has invested in infrastructure via a number of methods, primarily through legislation or programs like transportation authorizations, Federal Aviation Administration authorizations, revolving loan funds, through the tax code via bond programs, or earmarks prior to 2009. The last big influx of new and unexpected investment in infrastructure occurred via the 2009 Stimulus bill, which, among other things provided \$105.3 billion for infrastructure, including \$48.1 billion on transportation, \$18 billion on water, environment, and public lands, and the remainder on government buildings, telecommunications and broadband, and energy infrastructure.

Recently however, federal funding for infrastructure still fell to a 30-year low as a share of Gross Domestic Product. The American Society of Civil Engineers said in its latest report that \$3.6 trillion was needed to bring all segments of U.S. infrastructure up to a state of good repair.

In response, the Trump Administration has made bold promises to invest \$1 trillion in infrastructure over ten years. President Trump has given few details about his plans, but has said he would like the private sector to provide much of the funding. He has also indicated funding could be available not just for roads and bridges, but also for airports, schools and hospitals.

The most detailed plan, authored by Wilbur Ross, the nominee for Secretary of Commerce, and economist Peter Navarro, suggests there will be \$1 trillion in "cost-neutral" investment funded mostly with repatriated foreign corporate income. More specifically, Trump has proposed reducing the rate companies would pay to bring cash held overseas by U.S. corporations to 10 percent, down from 35 percent. Those companies then could invest in infrastructure projects, benefit from a new 82 percent tax credit and effectively erase their 10 percent repatriation tax.

However, lowering the cost of money with tax credits to investors may not entice the kind of investment suggested because local governments already have access to the municipal bond market, which benefits from the lowest financing costs in more than 50 years. The Congressional Budget Office reported in 2015 that just 26 private-investment projects were completed or underway nationwide.

Meanwhile, the Trump Administration and Congress will also have to decide whether to allow investment in new projects or upgrade existing infrastructure. Private investors are more likely to invest if they can make a profit. That often means tolls on roads and bridges, rate increases on water infrastructure, or property taxes on other projects. That becomes more difficult for environmental improvements or projects located in more rural areas. Also, voters have shown a reluctance to accept tolling on existing infrastructure.

With regard to specific infrastructure projects, in late January 2017, a list of 50 infrastructure projects was circulated. The origin of the list is somewhat unclear with conflicting reports that it was compiled by the Trump transition team or by the National Governor's Association for the Trump transition team. The list mentions that the projects would be funded with 50% private investment. However, there is no additional public discussion regarding projects or a more formal plan, including how to pay for it using either public or private funds. These projects may be reflective of the type of infrastructure investment that will be supported by the Trump Administration.



Lastly, during his first week in office, Senate Democrats called President Trump’s bluff (so to speak) and outlined an ambitious proposal to spend \$1 trillion on a broad range of infrastructure projects over the next ten years. Since the announcement, neither the President nor Republican members of Congress have responded in any significant way to the Democrats’ offer.

The proposal suggests the following investments:

Reconstruct Roads & Bridges \$100B	Improve Airports \$30B
Revitalize Main Street \$100B	Address Ports & Waterways \$10B
Expand TIGER \$10B	Build Resilient Communities \$25B
Rehabilitate Water and Sewer \$110B	21st Century Energy Infrastructure \$100B
Modernize Rail Infrastructure \$50B	Expand Broadband \$20B
Repair & Expand Transit \$130B	Invest in Public Lands & Tribal Infrastructure \$20B
Vital Infrastructure Program \$200B	Modernize VA Hospitals \$10B
Rebuild Public Schools \$75B	Provide Innovative Financing Tools \$10B

Congressional Republicans on the other hand, continue to discuss a desire to provide more funding for infrastructure, but have not offered a formal proposal or a specific time as to when they may be able to tackle the issue given other priorities. Some continue to look at repatriation of corporate foreign income as an at least partial funding source, while others suggest those funds should be used for tax reform. There is little to no talk of Congress simply using deficit spending to fund infrastructure.

While it is unclear how this discussion will progress during the 115th Congress, it is possible that new infrastructure investment opportunities could be created and used to fund projects in Monroe County.

RECOMMENDED POSITION: *Support* new federal investment in infrastructure. *Support* any and all opportunities to secure funding for Monroe County’s infrastructure priorities.



FEDERAL ISSUE: RESTORE ACT

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: In April 2010, an explosion at the BP-operated Deepwater Horizon oil rig caused the worst oil spill in U.S. history, with almost 5 million barrels of oil spilling into the Gulf of Mexico.

In the summer of 2012, Congress passed the RESTORE Act, which established the Gulf Coast Restoration Trust Fund and mandated that 80 percent of Clean Water Act (CWA) civil damages from the spill be allocated directly to the five impacted states, including Florida.

Since the spill, BP settled with the federal government for \$4.5 billion to resolve criminal charges against it. This funding is allocated by the National Fish and Wildlife Foundation (NFWF), as well as directed to other trust funds. To date, NFWF has awarded more than 100 million for 25 projects in Florida. BP also agreed to provide an interim payment of \$1 billion to repair natural resources via the Natural Resource Damage Assessment (NRDA) process. Based on the law, this last payment is tax-deductible for the company.

A civil trial between BP and the Department of Justice (DOJ) began in 2013, and, in 2014, a U.S. District Court judge ruled that BP was “grossly negligent” in the Deepwater Horizon spill, citing the company’s extreme measures to cut costs despite safety risks. In January 2015, the same judge ruled that BP dumped 3.2 million barrels of oil into the Gulf during the disaster.

Meanwhile, in 2013, DOJ settled with Transocean for their role in the Deepwater Horizon spill. As a result of the agreement, Transocean will pay \$1 billion in CWA fines, resulting in the first allocation of funding to be distributed via the RESTORE Act. From this initial settlement, Florida will receive about one-fifth of this funding with Monroe County receiving its own direct allocation.

In July 2015, BP and DOJ reached a settlement for all federal and state claims in which BP will pay \$5.5 billion over 15 years in CWA fines. BP will also pay \$4.9 billion in economic claims to the Gulf states, including \$2 billion to Florida; \$7.1 billion (not including the \$1 billion already committed by BP) in NRDA claims, including \$680 million for Florida and \$350 million for region-wide claims; and approximately \$600 million to resolve the economic loss claims of local governments.

These CWA fines will flow to the Gulf States via three channels created by the RESTORE Act: Direct Component, Council-selected projects, and the Spill Impact Component. The Department of the Treasury is tasked with implementing the RESTORE legislation. Treasury published a final rule for the RESTORE Act on December 14, 2015, with an effective date of February 12, 2016. From within the Treasury-administered Trust Fund, Monroe County is receiving another allocation in Direct Component funding as a first distribution, as well as \$12,434,783 from the Spill Impact Component, which was split evenly among the Gulf counties in Florida.

Direct Component (Bucket 1)

The Direct Component portion makes up roughly 35 percent of the total Trust Fund and is equally divided among the five Gulf States. The RESTORE Act grants states with significant discretion as to how they will use the funding for restoration activities.

Council-selected Projects (Bucket 2)



The RESTORE Act also established the Gulf Coast Ecosystem Restoration Council (the Council), which is responsible for administering 60 percent of the total funding allocated to the Trust Fund. Thirty percent of the Trust Fund is to be used by the Council to develop and fund a Comprehensive Plan for the restoration of the entire Gulf Coast ecosystem, and the remaining thirty percent is to be distributed under the Spill Impact Component. The Council includes the Secretaries of the Interior, Commerce, Agriculture, the Administrator of the Environmental Protection Agency, Secretary of the Army for Civil Works, the head of the Coast Guard, and the Governors of each state. Project and program requests for initial funding from the Transocean settlement under the Council's Comprehensive Plan were due in late 2014.

In August 2015, the Council released a draft Funded Priorities List (FPL) of their selected projects. This draft FPL proposed to fund approximately \$139.6 million in restoration activities with a focus on 10 watersheds in the Gulf. It also included Category I and Category II projects, with Category I projects to receive funding once the FPL is finalized and Category 2 projects to be considered for funding in the future.

Then, in August 2016, the Council released an update to its Comprehensive Plan, as well as a draft Ten-Year Funding Strategy for Gulf restoration. The Ten-Year Plan does not identify specific programs or projects, but does anticipate that the next FPL will have a three-year development period, with all future FPLs also operating on a three-year schedule. According to the update, spacing out FPLs will allow the Council to include much larger projects and programs in future FPLs, as well as explore alternative financing mechanisms, such as public-private partnerships, to support these large-scale projects.

Spill Impact Component (Bucket 3)

In September 2015, the Council released a proposed regulation to implement the Spill Impact Component of the RESTORE Act. It includes a formula based on three criteria to determine how much funding each state will receive. There are some concerns regarding one of the criteria, which is based on population, because it calculates the average population for each coastal county bordering the Gulf of Mexico within a state. Therefore, using this calculation, the Council finds that Alabama, which only has 2 coastal counties, has the largest average population, and Florida comes in last.

RECOMMENDED POSITION: *Monitor* federal implementation of the RESTORE Act to ensure continued benefit to Monroe County. *Support* efforts to secure funding for Monroe County.



FEDERAL ISSUE: Climate Change and Sea Level Rise

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: The Florida Keys is on the front lines of climate change, facing such potential impacts as sea level rise and increased hurricane intensity. Given the County's unique vulnerabilities to sea-level rise, as well as its international presence as a premier tourist destination, Monroe County has an opportunity to demonstrate leadership on this issue through the implementation of key policies, practices and investments that will prepare the County for the impacts of climate change. As a result, the County is acting now to enact local policies to combat the future effects of climate change.

In 2016, Monroe County completed a comprehensive study on the effects of local sea level rise and climate change mitigation strategies called GreenKeys. The study utilizes a planning scenario for sea level rise of 9 to 24 inches in the next fifty years. The data also shows that even using a conservative estimate of sea level rise, several streets and portions of the County can expect to see significant flooding on a regular basis.

In 2013, the County developed the Monroe County Community Climate Action Plan (MCAP), which outlines a course of action for the County to minimize climate change impacts and increase the sustainability of the Florida Keys. MCAP includes initiatives to reduce energy use and waste, create local jobs, improve air quality, and preserve Monroe's local landscape and history.

Other communities in Florida also recognize the risk climate change poses to their citizens, infrastructure, and economies. Monroe County partnered with Miami-Dade, Broward, and Palm Beach Counties in 2010 to form the Southeast Florida Regional Climate Change Compact as a way to coordinate climate mitigation and adaptation activities across county lines. The Compact represents a new form of regional climate collaboration designed to allow localities to plan for adaptation while providing an efficient means for state and federal agencies to engage with technical assistance and support. Monroe County hosted the 7th Annual Florida Regional Climate Leadership Summit in December 2015, which focused on facilitating climate-related collaboration and knowledge sharing.

Climate change is perceived to be a hallmark issue of the Obama Administration and his executive efforts, including his environmental regulations and climate change agreements with China and other nations. With a new Administration less inclined to support these efforts, it will be important to keep the focus on this issue through advocacy and discussions with members of Congress about the current and future effects of climate change on coastal communities such as Monroe County.

Given the makeup of the current Congress, passage of significant climate change legislation is unlikely in the near future. However, there are indications that some Republicans are willing to take incremental steps to address the issue. The Climate Solutions Caucus, founded in 2016 by Congressmen Curbelo and Deutch, serves as an organization to educate members on economically viable options to reduce climate risk and protect our nation's economy, security, infrastructure, agriculture, water supply and public safety. The caucus is bi-partisan with evenly maintained membership between Democrats and Republicans. There are currently 24 members of the caucus, including Florida Representatives Curbelo and Deutch, who serve as co-chairs, and Representatives Ros-Lehtinen, Mast, and Crist.

Also, in February 2017, a group of high-profile Republicans, tentatively called the Climate Leadership Council, began calling for a new carbon tax. The group, which includes three former cabinet secretaries,



is led by James Baker, a former White House Chief of Staff, Treasury Secretary and Secretary of State. Their plan includes a substantial carbon tax which would be returned to taxpayers. The plan is seen as a challenge to Republican politicians who have denied or down played the idea that human behavior is a factor in climate change. The idea behind their effort is to make polluting more expensive to create incentives for companies and people to move toward cleaner, renewable sources of energy. And the group believes that returning the carbon tax proceeds in the form of checks to families will have appeal with middle class families.

RECOMMENDED POSITION: *Monitor* federal climate change legislation and executive actions. *Support* federal efforts to address climate change and mitigate sea level rise. *Support* the federal legislative priorities of the Southeast Florida Regional Climate Change Compact.



FEDERAL ISSUE: Waters of the United States and Regulatory Reform

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY:

Waters of the United States

A series of decisions by the U.S. Supreme Court over the past decade imposed restrictions on the scope of wetland regulation governed by Section 404 of the Clean Water Act (CWA), which regulates “dredge and fill” activities in navigable waters and their adjacent wetlands. Opponents of these restrictions have urged Congress to redefine Waters of the U.S. (WOTUS), and apply that definition to all aspects of the CWA.

As legislation along those lines failed to pass previous Congresses, the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (ACOE) during the Obama Administration developed guidance and a final rule to redefine WOTUS. There is concern that this effort significantly expanded the definition of WOTUS to include tributaries, ditches, canals, and other water bodies that can potentially drain into navigable waters, interstate waters, or the territorial seas. These water bodies would be subject to new requirements, and some waters currently covered by a permit would be subject to additional monitoring and regulation when those permits are renewed.

Meanwhile, President Trump signed an executive order in February to begin the process of reversing the WOTUS rule.

While the executive order cannot itself repeal WOTUS, which was finalized in May 2015, the order directs EPA and the Army Corps to begin a formal review of the regulation, a likely first step to dismantling it.

The executive order also signals a significant change in the government's legal strategy for deciding which wetlands and streams are protected under the Clean Water Act. For more than a decade, federal agencies have relied on Justice Anthony Kennedy's opinion in the 2006 wetland-permitting case, *Rapanos v. United States*, in determining where the federal reach over waterways begins. The court ruled in favor of *Rapanos*, but in a 4-1-4 vote, the majority split on what approach to use to define government jurisdiction.

The order specifically asks the agencies to consider the late Supreme Court Justice Antonin Scalia wrote in the 2006 case *Rapanos v. United States*, saying the Clean Water Act ought only to cover navigable waters and waterways “with a continuous surface connection” to them — a far more restrictive definition than what the Obama EPA put into its rule. Relying on Scalia’s opinion would likely restrict federal jurisdiction.

Because the WOTUS rule already is final, the Administration would also have to follow the Administrative Procedures Act, meaning it will need scientific backing to dispute, among other things, the 408-page technical report that accompanied the Obama regulation.

The rule is currently on hold. The Court of Appeals for the Sixth Circuit, based in Cincinnati, ordered it halted in 2015 while numerous lawsuits challenging the rule wind their ways through the court system. The executive order instructed the EPA to ask the Sixth Circuit court to put the litigation against WOTUS on hold while the administration reviews it.



Regulatory Reform

The repeal or rolling back of federal agency regulations and executive orders and actions has long been a topic of legislative debate. Congressional Republicans are exploring ways to reverse numerous regulations and executive orders enacted by the Obama Administration. The Congressional Review Act (CRA), which allows Congress to cast simple majority votes of disapproval for regulations, is often cited as a way to block executive actions. In practice, it has only been used once since its passage 21 years ago.

While Congress has debated regulatory reform within many contexts and has made some strides towards enactment of these reforms, we can expect much more to come from the 115th Congress. The conservative House Freedom Caucus has compiled a list of over 200 regulations it wants to subject to a disapproval vote. These include rules and regulations governing things such as school lunch standards, tobacco regulations, climate change, financial/corporate oversight, and labor laws and practices.

Additionally, on January 5, 2017, the House passed the Regulations From the Executive in Need of Scrutiny (REINS) Act, which was introduced by Congressman Doug Collins (R-GA-9). A companion measure, introduced by Senator Rand Paul (R-KY) is pending consideration in the Senate, but it is hard to see how this bill passes as a stand-alone measure in that body.

The bill revises provisions relating to congressional review of agency rulemaking by requiring any executive branch rule or regulation designated as a “major rule” to come before Congress for an up-or-down vote before being enacted. A "major rule" is any rule that the Office of Information and Regulatory Affairs of the Office of Management and Budget finds results in: (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

A joint resolution of approval must be enacted within 70 legislative days after the agency proposing a major rule submits its report on the rule to Congress in order for the rule to take effect. A major rule may take effect for 90 days without such approval if the President determines it is necessary because of an imminent threat to health or safety or other emergency, for the enforcement of criminal laws, for national security, or to implement an international trade agreement.

RECOMMENDED POSITION: *Monitor* activity related to the implementation of the EPA’s rule on Waters of the U.S. *Monitor* activity related to regulatory reform.



FEDERAL ISSUE: Energy Exploration

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: *Offshore Energy Development*

Active energy drilling currently occurs in both the western and central Gulf of Mexico, while nearly the entire eastern Gulf is protected from drilling until 2022 by the Gulf of Mexico Energy Security Act of 2006 (GOMESA). Drilling does not currently occur off of the Atlantic coast of Florida. State waters in the Atlantic extend three miles from shore, with the federal government controlling waters beyond that point.

For many years, the federal government has developed five-year Outer Continental Shelf (OCS) Oil and Gas Leasing programs to guide energy exploration activities in federal waters. The most recent plan, developed for 2012-2017, did not propose to lease any areas in the Atlantic OCS for oil and gas drilling. However, the Administration's plan did indicate that it would allow seismic analyses to determine energy resource potential in areas of the Atlantic OCS from Delaware to parts of Florida (approximately north of Brevard County). The County submitted comments to BOEM on the PEIS regarding its concerns over the negative effects seismic air-gun testing could have on the ecosystem, and consequently on the region's economy that is so dependent on unique ecotourism activities, such as whale watching and commercial and recreational fishing. The County also stated its general opposition to oil and gas exploration off the Atlantic Coast of Florida, due to the devastating effects that accidents like the Deepwater Horizon oil spill have on the ecosystem and economies of coastal communities.

On January 17, 2017, the Secretary of the Interior approved BOEM's finalized OCS Oil and Gas Leasing Program for 2017-2022 and issued a Record of Decision (ROD) for the programmatic Environmental Impact Statement (EIS). In approving the Program, the Secretary chose Alternative C (the Preferred Alternative) from the Final Programmatic EIS. The ROD identifies Alternative D, No Action, as the environmentally preferable alternative. In addition, the ROD outlines programmatic mitigation measures that will apply to all sales that occur during this Program in areas where the mitigation measures are applicable.

There are two major differences between the 2012-2017 program and the 2017-2022 program. Of interest to Monroe County is that under the 2017-2022 program there will be ten region-wide sales comprised of the Western, Central, and Eastern Gulf of Mexico unleased acreage not subject to moratoria or otherwise unavailable, instead of separately offering the Central and Western areas in two annual sales and periodic sales in the Eastern area. The second difference is in regard to Alaska. Lastly, while this program is just beginning, we expect that development of the 2022-2027 program will begin in 2019 under the current Administration.

Congress also continues working toward opening up additional offshore energy exploration. In the 114th Congress, the Senate Energy and Natural Resources Committee approved a bill titled the Offshore Production and Energizing National Security (OPENS) Act that would allow new energy production on the Outer Continental Shelf (OCS) in the eastern Gulf of Mexico, the South Atlantic, and in the waters off of Alaska. The OPENS Act would also expand offshore revenue sharing to Florida in 2017 for leases in the eastern Gulf of Mexico. Currently, only Texas, Louisiana, Mississippi, and Alabama receive revenue from offshore drilling activities in the Gulf of Mexico. The bill would also direct the Interior Department to hold lease sales in the eastern Gulf in 2018, 2019, 2020, and after 2022.



In response to the Committee’s approval of the OPENS Act, Senator Bill Nelson sent a letter to Majority Leader Mitch McConnell (R-KY) and Minority Leader Harry Reid (D-NV) saying he would use “all available procedural options to block it.”

In early January 2017, Senator Bill Nelson re-introduced his Marine Oil Spill Prevention Act (S. 74). The purpose of the bill is to protect Florida from the threat of offshore drilling until at least 2027. The legislation amends the Gulf of Mexico Energy Security Act of 2006 to extend the moratorium on oil and gas leasing in certain areas in the Gulf of Mexico until June 30, 2027. It sets forth provisions concerning Coast Guard responsibilities, including designating areas that are at heightened risk of oil spills and implementing measures to ameliorate that risk. This bill also amends the Oil Pollution Act of 1990 to establish a Gulf Coast Regional Citizens' Advisory Council to advise on facilities and tank vessels, among other things.

President Trump, however, has stated that he intends to open additional onshore and offshore leasing on federal lands and in federal waters, particularly in the Atlantic and the Arctic. It is unclear if he intends to open leases in other areas - and doing so could take up to two years - but the 115th Congress will likely be supportive of attempts to open additional lands and waters to energy exploration and harvesting.

Onshore Energy Development (Hydraulic Fracturing)

The rapid expansion of oil and gas extraction using hydraulic fracturing — both in rural and more densely populated areas — has raised concerns about its potential environmental and health impacts. These concerns have focused primarily on impacts to groundwater and surface water quality, public and private water supplies, and air quality.

In Florida, the Burnett Oil Company submitted a proposal to the National Park Service (NPS) to conduct a seismic survey of 110 square miles within Big Cypress Preserve. Similar to offshore seismic testing, a seismic survey is a preliminary research technique used to determine the presence of oil and gas below the surface of the ground, which may lead to future harvesting in those areas found to be rich with resources. Senator Nelson sent a letter to the DOI on July 31, 2015, in strong opposition to seismic testing within the Preserve. The NPS completed an Environmental Assessment (EA) for the proposal and the City submitted comments in opposition to the seismic surveys. In May 2016, the NPS issued a finding of no significant impact following their environmental review. The finding of no significant impact is based on information and conclusions outlined in an environmental assessment completed for the proposed survey. Burnett Oil is required to implement a variety of measures to prevent lasting impacts and minimize short-term impacts to the preserve's resources during survey activities. The environmental assessment only covers the seismic survey. Should Burnett Oil wish to pursue production of resources, they must submit a new plan of operations which would undergo additional environmental review and public comment periods. However, in July 2016, six environmental groups filed suit to stop Burnett Oil’s seismic survey.

In terms of non-federal land, states broadly regulate oil and gas exploration. In Florida, oil and gas extraction activities are managed by the Department of Environmental Protection. State laws and regulations governing unconventional oil and natural gas development have evolved in response to changes in production practices, largely due to the use of high-volume hydraulic fracturing in combination with directional drilling. However, state regulations vary considerably, leading to calls for more federal regulation of unconventional oil and natural gas extraction activities.

In March 2015, DOI finalized regulations for hydraulic fracturing on public lands, which will allow government workers to inspect and validate the safety and integrity of barriers lining the fracking wells, require companies to publically disclose the chemicals used in fracturing, and set safety standards for how



companies can store and dispose of used fracking chemicals. The rule only applies to federal lands, and states still retain control of hydraulic fracturing on state and private lands.

In response to the rule, proponents of hydraulic fracturing introduced legislation to weaken the rule. Sen. James Inhofe (R-OK) introduced the Fracturing Regulations are Effective in State Hands Act (S. 828), which would give states sole authority over hydraulic fracturing on any land within their boundary and require that hydraulic fracturing on federal land comply with the laws and regulations of the state in which the land is located. The bill had 28 cosponsors in the 114th Congress. It has yet to be reintroduced in the 115th Congress.

Meanwhile, supporters of increasing federal regulations for hydraulic fracturing have also introduced legislation. Rep. Matt Cartwright (D-PA) introduced the Closing Loopholes and Ending Arbitrary and Needless Evasion of Regulations (CLEANER) Act of 2015, which would close a loophole that allows oil and gas producing companies to avoid hazardous waste disposal requirements. The bill had 101 cosponsors, including Rep. Deutch in the 114th Congress, but has not been introduced in the 115th Congress thus far.

In addition, Rep. Diana DeGette (D-NY) introduced the Fracturing Responsibility and Awareness of Chemicals (FRAC) Act in the House (H.R. 1482) and Sen. Bob Casey (D-PA) introduced a Senate version of the bill (S. 785) in March of 2015. Those bills would define hydraulic fracturing as a federally regulated activity under the Safe Drinking Water Act, which would subject fracking activity to underground drinking water protections and require industry to disclose the chemicals used in hydraulic fracturing. The bills had 63 and 12 cosponsors, respectively, in the 114th Congress. The bills have not been reintroduced in the 115th Congress.

RECOMMENDED POSITION: *Oppose* relaxation of the prohibition against leases on permits for drilling oil or gas wells within the boundaries of Florida's territorial seas. *Oppose* legislation that would prevent the Florida Department of Environmental Protection from blocking requests for offshore drilling in federal waters off Florida's coast. *Oppose* seismic surveying within the Everglades, surrounding critical areas, or any other federal lands. *Oppose* efforts to ease restrictions on hydraulic fracturing and other oil and gas extraction activities.



FEDERAL ISSUE: Oil Spill Protection

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: The Oil Pollution Act (OPA) was passed by Congress and signed into law in August 1990 in response to rising public concern following the 1989 Exxon Valdez oil spill. The OPA expanded the authority of the federal government to prevent and respond to oil spills.

The OPA created the Oil Spill Liability Trust Fund, from which one billion dollars per spill is available for such activities as expediting payments for those involved in cleanup efforts, payment of claims for uncompensated removal costs and damages (e.g., financial losses of fishermen, hotels, and beachfront businesses), and payments to a state or local governments for increased public services and the net loss of government revenue. The Trust Fund is primarily funded by an 8-cent-per-barrel tax on oil. This rate is scheduled to increase to 9 cents per barrel in 2017, which is also scheduled as the final year of the tax.

The OPA established several new regulations related to oil transportation, and broadened the scope of damages for which an oil spiller would be liable, including:

- injury to natural resources,
- loss of personal property (and resultant economic losses),
- loss of subsistence use of natural resources,
- lost revenues resulting from destruction of property or natural resource injury,
- lost profits resulting from property loss or natural resource injury, and
- costs of providing extra public services during or after spill response.

Under OPA, holders of leases or permits for offshore facilities are liable for all cleanup costs, plus non-cleanup and containment damages up to \$75 million per spill. Although this was a significant increase from before OPA was enacted, it is important to recognize that this also capped the liability for which BP could be held responsible for the Deepwater Horizon oil spill.

In response, Senator Robert Menendez (D-NJ) and several other senators, including Senator Bill Nelson, attempted to pass the Big Oil Bailout Prevention Unlimited Liability Act, a bill to raise the \$75 million cap limit to \$10 billion, retroactive to before the spill occurred. This effort was blocked by other Senators on the grounds that it would deter small companies from deepwater drilling. The bill was reintroduced in the 113th Congress but again failed to pass.

In February 2014, the Obama Administration announced a proposed rule to raise the liability cap under a provision in OPA that provides for the limit on damages liability to be periodically adjusted by regulation to reflect significant increases in the Consumer Price Index. On December 12, 2014, the Bureau of Ocean Energy Management finalized their rule, increasing the liability cap from \$75 million to \$133.65 million, the most allowable under OPA.

Monroe County would like to see additional changes to OPA and other associated laws to ensure that the Oil Spill Liability Trust Fund is capable of addressing Spills of National Significance where there is no financially viable or legally responsible party, and that local governments may act as first responders in an effort to protect communities and be reimbursed for actions undertaken to protect resources and restore damaged areas during oil spill events.



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ASSOCIATES

RECOMMENDED POSITION: *Support* revisions to the Oil Pollution Act of 1990 and other associated laws to ensure that local governments may act as first responders in an effort to protect local communities, and be reimbursed for their actions undertaken to protect their resources and restore damaged areas during oil spill events, and the Oil Spill Liability Trust Fund is capable of addressing Spills of National Significance where there is no financially viable or legally responsible party.



FEDERAL ISSUE: Property Assessed Clean Energy Legislation and Guidance

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: Property Assessed Clean Energy (PACE) programs aim to support energy efficiency and clean energy, and in Florida wind resistance, investments by homeowners and commercial property owners. This eliminates the upfront cost barriers of those investments and ensures that current and future property owners fairly share the costs and benefits of the improvements.

PACE is a financing tool that allows a home or property owner to receive low-interest financing for energy efficiency, renewable energy and wind resistance improvements, thereby saving that property owner money on their utility bills. PACE financing is repaid through a voluntary long-term assessment on a homeowner's property taxes over a longer time period that matches the useful life of those improvements. If a property owner sells their property, the repayment obligation, as well as the benefits of the energy improvements, can transfer to the next property owner.

In 2010, Fannie Mae and Freddie Mac raised concerns due to the senior lien status PACE financing takes over a mortgage as a local government assessment. Because Fannie and Freddie underwrite nearly ninety percent of new mortgages, this slowed the development of PACE programs. During that time, numerous PACE programs did develop and grow and currently over \$1 Billion of PACE projects have been completed across the country. In August of 2015, the Administration announced an effort to create guidelines for PACE programs. Under new guidance, which is anticipated to be released spring of 2016, PACE financing maybe subordinated in some limited cases; and those properties with subordinated PACE financing will be able to be purchased and refinanced with a federally-backed mortgage from Fannie Mae and Freddie Mac. Other guidelines are anticipated to address consumer protection issues.

Florida's PACE statute is unique in that it includes wind resistance improvements in terms of what can be financed in a PACE program. Recently, the State of Alabama passed similar state legislation that includes flood mitigation in the types of improvements that PACE programs can undertake. Monroe County supports such an expansion of PACE in Florida.

RECOMMENDED POSITION: *Support* legislation and guidelines that would allow for the creation of residential and commercial PACE programs in Monroe County to finance a number of home and commercial property improvement projects including energy efficiency, flood mitigation, or hurricane protection.



FEDERAL ISSUE: Continuum of Care Program – Federal Homeless Assistance

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: In 1987, Congress passed the McKinney-Vento Homeless Assistance Act as a response to the increase in homelessness in the United States. It originally created several programs within the Department of Housing and Urban Development (HUD) that focused on combating the root causes of homelessness. The McKinney-Vento Act has been amended many times, most recently in 2009, when President Obama signed the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act. The HEARTH Act updated and expanded the definition of homelessness and made changes to existing programs under McKinney-Vento. Also under the HEARTH Act, three previously separate HUD homeless assistance programs - the Supportive Housing Program (SHP), Shelter Plus Care program (S+C), and the Single Room Occupancy (SRO) program - were grouped under the umbrella of the Continuum of Care (CoC) program.

The CoC program provides competitive grant funding to local governments and non-profits. It requires communities seeking funds to develop a Continuum of Care system designed to address the critical problem of homelessness through a coordinated community-based process of identifying needs and building a system to address them. The approach is predicated on the understanding that homelessness is not caused merely by a lack of shelter, but involves a variety of underlying, unmet needs, including physical, economic, and social.

Under the CoC program, the SHP provides assistance to help the homeless transition from their current state to a more stable living situation. The goals of the program are to provide assistance to help the homeless achieve residential stability and foster independence through programs that increase skills and/or income levels.

The S+C program provides rental assistance that, when combined with social services, provides supportive housing for homeless people with disabilities and their families. The program allows for a variety of housing choices, such as group homes or individual units, coupled with a range of supportive services.

The SRO was created to expand suitable residential opportunities for homeless individuals. This has been accomplished through compensating owners of eligible SRO residences, for a period of 10 years, for improvements made to kitchen and bathroom facilities, as well as providing rental assistance for the residents that occupy those units.

Under the HEARTH Act, HUD added 12 new eligible activities for funding under the CoC program, which include the following: housing search mediation or outreach to property owners; credit repair; provision of security or utility deposits; rental assistance for a final month at a location; assistance with moving costs; and/or other activities that help homeless individuals move immediately into housing or would benefit individuals who have moved into permanent housing in the last six months. In addition, the HEARTH ACT requires established CoC's to rank their projects for funding into two categories: Tier I new or renewal projects, which are most likely to receive funding; and Tier II new or renewal projects, whose funding is dependent on the resources still available and the strength of the CoC's application.

The Monroe County Continuum of Care is the lead agency designated by HUD and the State of Florida for coordinating and planning homeless services in the Florida Keys. The CoC organizes the



collaboration of local agencies, including Monroe County Social Services and the Monroe County School District, to provide critical supportive services for the homeless.

The CoC competitive grants are funded through the Homeless Assistance Grants account for HUD. Congress provided \$2.135 billion in the omnibus appropriations bill for Homeless Assistance Grants in FY 15 and \$2.25 billion in the FY 2016 omnibus appropriations bill. For FY 17, the Administration proposed an increase in funding to \$2.664 billion. The Senate recommends \$2.33 billion and the House recommends \$2.487 billion in their respective versions of the FY 17 Transportation, Housing and Urban Development Appropriations bill.

RECOMMENDED POSITION: *Support* continued adequate annual funding for Department of Housing and Urban Development Homeless Assistance Grants, particularly for the Continuum of Care Program.



FEDERAL ISSUE: Aging Issues

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: Most federal programs that exist for the delivery of social and nutritional services for the elderly in Monroe County emanate from the Older Americans Act (OAA). These include supportive services, congregate nutrition services (meals served at group sites such as senior centers, schools, churches, or senior housing complexes), home-delivered nutrition services, family caregiver support, community service employment, and services to support the health, and prevent the abuse, neglect, and exploitation, of older persons.

The OAA was reauthorized in April 2016 through Fiscal Year 2019. This marks a major milestone as the programs under the OAA operated without authorization since Fiscal Year 2011. The bill was championed by Senators Alexander and Sanders and ultimately passed both the House and Senate by a voice vote.

The majority of the funding for OAA grant programs goes through the Department of Health and Human Services' Administration for Community Living (ACL), which provides formula funds to state and local agencies designated to provide direct services to the elderly. The ACL also offers some competitive opportunities.

The federal government provides some flexibility for spending allocated OAA funds in areas where there is a greater need. These services are available to all persons aged 60 and older, but are targeted to those with the greatest economic or social need, particularly low-income and minority persons and the elderly who live in rural areas.

During a time when funding for many federal domestic programs has been significantly reduced, appropriations provided for the ACL have remained relatively stable. Between Fiscal Years (FY) 2013-2015, funding for the ACL was \$1.47 billion, \$1.61 billion, and \$1.62 billion, respectively. For FY 2016, the Administration proposed a slight increase to \$2.1 billion for the ACL and its programs. Congress, however, provided \$1.96 billion for the ACL in the FY 2016 omnibus. While FY 2017 appropriations bills are not yet enacted, the House Appropriations Committee recommends \$2 billion in funding for the ACL while the Senate Appropriations Committee recommends \$1.935 billion.

RECOMMENDED POSITION: *Support* adequate federal funding for Alzheimer's and dementia research at the National Institute on Aging. *Support* continued adequate annual funding for Older Americans Act programs that support critical social service programs serving elderly persons in Monroe County.



FEDERAL ISSUE: Social Services Block Grant

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: The Social Services Block Grant (SSBG) is a federal program administered by the U.S. Department of Health and Human Service's Administration for Children and Families that provides funding to the states for social services for eligible populations. The program is permanently authorized under the Social Security Act.

States have broad discretion over how to utilize the funds, but SSBG is generally used to meet at least one of the following goals: 1) achieving or maintaining economic self-support; 2) achieving or maintaining personal self-sufficiency; 3) preventing or remedying neglect; 4) preventing or reducing inappropriate institutional care by providing for community-based care; and 5) securing referral or admission for institutional care when other forms of care are not appropriate. Services may include daycare, protective services, services to persons with disabilities, foster care, adoption, case management, health-related services, transportation, meal delivery, or any other services found necessary by the state that meets eligible criteria.

The SSBG program has seen stable funding over the past several years. It was funded at \$1.7 billion in FY 2015. The Administration proposed level funding for the program in its FY 2016 budget request, which was also ultimately granted by Congress in the FY 2016 omnibus. Both the House and Senate Appropriations Committee recommend level funding of \$1.7 billion for the SSBG program in FY 2017.

RECOMMENDED POSITION: *Support* continued adequate funding for the Social Services Block Grant program.



FEDERAL ISSUE: Mental Health Care

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: It is estimated that more than 50 million Americans experience some form of mental illness each year, with 11 million considered severely mentally ill. Millions of those who suffer (approximately 40 percent), however, are not able to access the treatment they need. Even when care is delivered, it is often delayed for more than two years after the illness first appears.

There has been a renewed interest in mental health care over the past several years. The Patient Protection and Affordable Care Act (ACA, also known as “Obamacare”) included significant reforms to mental health coverage. Specifically, the legislation named mental health treatment as an essential health benefit that insurance plans are required to cover. While most large-group plans previously offered some kind of mental health benefits, only 18 percent of small-group and individual plans covered mental health. Furthermore, it is estimated that the Medicaid expansion under the ACA has provided as many as 2.8 million people who suffer from a serious mental illness with coverage.

In addition to these provisions, the Administration has begun to implement the 2008 Mental Health Parity and Addiction Equity Act, which requires insurers to cover mental health at a level that is comparable to their physical health coverage.

In December 2016, President Obama signed into law the 21st Century Cures Act, which includes a number of provisions related to healthcare, mental health, and addiction. Among other things, the bill reauthorizes several key mental health and substance abuse programs, such as the Community and Mental Health Services block grant, the Substance Abuse Prevention and Treatment block grant, and the Mentally Ill Offender Treatment and Crime Reduction Act. It also includes a provision to strengthen the Mental Health Parity and Addiction Equity Act.

Lastly, the Helping Families in Mental Health Crisis Act, which was passed by the House in July and includes a number of positive mental health reforms, has been rolled into the 21st Century Cures Act. This legislation proposed reorienting the mental health system from its focus on serving the largest number of highest functioning patients towards providing treatment for the most seriously mentally ill instead. Specific initiatives within the legislation include: lifting a 16-bed cap on inpatient psychiatric hospital beds under Medicaid, advancing tele-psychiatry to link primary care doctors with mental health providers in areas where patients do not have access to such services, increasing funding for brain research to better understand the underlying causes of mental illness, extending health IT so mental health providers can better coordinate with primary care physicians, and implementing criminal justice reforms so patients are treated within the healthcare system and not through the justice system, among several other provisions.

The legislation has an estimated \$6.3 billion price tag. Roughly half of the bill would be offset by future cuts of \$3.5 billion to the Prevention and Public Health Fund, which was created by the Affordable Care Act (Obamacare) and helps fund public health departments around the country. It is important to note that this fund may disappear as Congress and the Trump Administration work to repeal Obamacare, thereby making these “savings” meaningless.

RECOMMENDED POSITION: *Support* legislation that responsibly expands treatment options and support for the mentally ill.



FEDERAL ISSUE: Public Safety Programs

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: Federal grant funding for many Department of Justice (DOJ) and Department of Homeland Security (DHS) programs are provided as block grants with each state receiving a certain amount of funding, generally linked to population. That funding is then passed through to local jurisdictions to help support police, fire, emergency management, and homeland security functions. Examples of these formula programs include the Emergency Management Performance Grant (EMPG) and the Byrne Justice Assistance Grant (JAG).

In other instances, funding from federal programs is made available to local governments via competitive grant solicitations. Competitive program funds can be used to hire police officers through Community Oriented Policing Services (COPS) or firefighters through Staffing for Adequate Fire & Emergency Response Grants (SAFER), and purchase equipment through the Assistance to Firefighters Grant (AFG). There is also another category of grants that are distributed to certain recipients based on specific criteria, such as the Urban Area Security Initiative (UASI), which provides funds to eligible regions to help communities prepare for, prevent, respond to, and recover from potential attacks and other hazards.

Monroe County has benefited from several of these federal programs in the past, while other programs offer competitive grant opportunities from which the County may seek funds.

In FY 2015, Congress provided funding for the COPS and JAG programs at \$180 million and \$376 million, respectively. Both the AFG and SAFER fire-related grants each received \$340 million, and UASI received \$600 million. EMPG, meanwhile, received \$350 million.

For FY 2016, COPS and JAG were provided with \$187 million and \$476 million, respectively. Congress provided \$345 million each for AFG and SAFER, \$600 million for UASI, and \$350 million for EMPG.

For FY 2017, the Senate included \$389 million for the JAG program and \$187 million for the COPS program while the House included \$425 million for the JAG program and \$0 for the COPS program in their versions of the FY 2017 Commerce, Justice and Science Appropriations bill. With regard to the homeland security programs, the House and Senate included \$340 million for each of the SAFER and AFG programs, \$350 million for EMPG, and \$600 million for UASI in their respective versions of the FY 2017 Homeland Security Appropriations bill. The federal government is currently operating under a Continuing Resolution through April 28, 2017. The FY 2017 appropriations process is not expected to be completed until that time.

Emergency Operations Center

Meanwhile, the Monroe County Emergency Operations Center (EOC) in Marathon is woefully inadequate for the threats that natural events pose to the Florida Keys. A new facility will cost roughly \$25 million. \$100 million in federal funding for the construction of EOC's was provided via the stimulus legislation of President Obama's first term. However, since then, Congress has not provided additional funding for the construction of EOC's and potentially applicable grant programs will not allow applications for EOC construction, making securing federal funding for the construction of an EOC difficult in the near-term.

RECOMMENDED POSITION: *Support* continued funding for the wide variety of DOJ and DHS grants, i.e., Community Oriented Policing Services, Byrne Justice Assistance Grants, Emergency Management



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Preparedness Grants, Assistance to Firefighters Grants, Staffing for Adequate Fire and Emergency Response Grants, Urban Areas Security Initiative grants, and other security-specific grants. **Support** any Monroe County applications for these funds. **Support** federal funding for the construction of Emergency Operations Centers.



FEDERAL ISSUE: Tourist Development Taxes

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: In the 111th and 113th Congresses, attempts were made to insert language into various pieces of legislation that would have exempted online travel brokers (Expedia, Travelocity, etc.) from remitting the full bed tax rate collected from consumers to the appropriate local government. For instance, if an online travel broker were to pay \$60 for a room in Monroe County and then sell that room to a consumer for \$100, they would be able to, under the proposal, only remit \$6 dollars to the local government instead of \$10 (using a 10 percent bed tax for illustrative purposes).

In 2009, Monroe County filed an action on behalf of itself and 32 other Florida local governments against a number of online travel companies alleging that the companies have failed to collect and/or pay taxes under the respective tourist development tax ordinances. Monroe County and its partners in the lawsuit agreed to settle with the online travel companies for \$6.1 million in 2010. During 2012, there were several Florida State Circuit Court cases that ruled in favor of the online travel brokers. Two cited that Florida law is not clear on the issue, while a Circuit Court Judge ruled more directly that the online travel broker only owes local tourist taxes on the discounted rates they paid for the rooms. Then, in June of 2015, the Florida Supreme Court affirmed the lower court rulings, stating that online travel companies are not hotels and, therefore, do not have to pay occupancy fees.

Meanwhile, in September of 2012, the District of Columbia government won a suit where a judge ruled that online companies (OTCs) should repay back taxes on the full retail price of hotel rooms they sold to consumers in the years after the D.C. City Council passed legislation mandating they do so. In February of 2014, a conditional settlement was reached in this case with six online travel firms. Although they have a right to appeal the D.C Superior Court decision, they agreed to pay \$60.9 million in back taxes to the D.C. government. Between 1998 and 2010, the amount owed in the lawsuit was estimated to be over \$200 million.

These examples demonstrate how courts across the country have ruled differently on this issue over the past few years, which has led online travel purveyors to continue seeking federal legislation that would codify their goal of not remitting taxes on the price of the hotel room paid by the consumer. In 2012, several of these online discount travel brokers (including Expedia, Orbitz, and Priceline) organized and registered to lobby under a new organization called the “Interactive Travel Services Association,” whose purpose is to advocate on several issues, including “taxes and fees related to travel.”

In May 2013, Expedia and other online hotel room purveyors attempted to amend the Marketplace Fairness Act to achieve their transient occupancy tax objectives. Ultimately, this effort was unsuccessful and the bill passed the Senate without this language.

In 2014, Monroe County collected \$31 million in tourist development taxes, which are used to support the tourism industry in the region. The County saw an increase of 12.2 percent in bed tax revenues and leads the state in occupancy and average daily rates for most of the year. This level of funding underscores the importance of tourist development tax revenue and the need to ensure it is not constrained by detrimental legislation.

RECOMMENDED POSITION: *Oppose* legislation that would exempt online travel brokers from paying taxes on the full room rate paid by the consumer, thereby costing Monroe County the opportunity to



FEDERAL ISSUE: Remote Sales-Tax Legislation

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: Currently, retailers are only required to collect sales tax in states where they have brick-and-mortar stores. The burden then falls to consumers to report to state tax departments any sales taxes they owe for online purchases. Often, due to complex reporting requirements, consumers do not report those purchases when completing their tax returns. As a result, local retailers are at a competitive disadvantage because they must collect sales taxes while out-of-state retailers, including many large online and catalog retailers, essentially give their customers a discount by collecting no state or local sales taxes.

Therefore, the current sales tax system is perceived as being unfair to brick-and-mortar retailers that employ local residents, including local stores as well as national chains like Best Buy or Home Depot. The lost revenue is also a drain on local governments. In 2014, uncollected sales tax was estimated to have cost local governments \$23 billion nationwide.

To correct this inequity across the country, Congress introduced the Marketplace Fairness Act in both the House and Senate during the 113th Congress. The bill would have created two systems from which states could choose to facilitate the process of collecting these taxes. The first would have been the already established Streamlined Sales and Use Tax Agreement (SSUTA), which would have simplified state and local sales and use tax laws. Twenty-four states have already signed this agreement, which is also supported by the National League of Cities and the U.S. Conference of Mayors. The second alternative would have allowed for states to meet minimum requirements for their state tax laws and administration thereof. To protect small, online retailers, this legislation would have also exempted sellers who make less than \$1,000,000 in total remote sales from the requirement to collect taxes.

In 2013, the Senate passed the Marketplace Fairness Act with bipartisan support by a vote of 70-24, with Senator Nelson voting for the measure and Senator Rubio against it. In the House, companion legislation was not considered, although it had 67 cosponsors, including Florida Representatives Deutch, Ross, Wilson, and Diaz-Balart, and former Rep. Crenshaw.

The issue reemerged in the 114th Congress. Most recently, in August 2016, House Judiciary Committee Chairman Bob Goodlatte (R-VA) released a discussion draft known as the Online Sales Simplification Act (OSSA), which would implement a hybrid-approach to taxing purchases made remotely. Under the draft, states would be able to impose sales tax on remote sales if the state first participates in a clearinghouse established under the OSSA. Then, remote sales would be taxable if the origin state collects sales taxes, yet at a rate adopted by the destination state. The sales tax rate would be a single state-wide rate determined by each participating state. This is significant as it would eliminate the option for many communities to add additional sales taxes for various local needs.

The increasing pressure to pass remote sales tax legislation may have something to do with court cases in South Dakota and Alabama that are challenging a 1992 Supreme Court decision holding that states cannot require retailers with no in-state presence to collect sales tax. Both states have recently enacted rules requiring all retailers who sell more than a certain dollar amount of goods annually in the state to collect sales tax, regardless of physical presence. Overturning the 1992 decision would require the Supreme Court to take up at least one of the cases (and rule in favor of the state) or an act of Congress.



Given this, and the reluctance of many Republicans to pass such a law, the issue may remain in the courts for the next several years. However, there is still a small possibility that remote sales tax language could be included in a broader tax reform package that could be considered in the 115th Congress.

RECOMMENDED POSITION: **Support** legislation that requires companies making catalog and internet sales to collect and remit the associated taxes. **Support** federal tax policies that maintain revenue streams to local governments.



FEDERAL ISSUE: Tax-Exempt Bonds

BACKGROUND; HOW IT MAY AFFECT MONROE COUNTY: Although municipal bonds have been tax-exempt for almost 100 years, a number of federal proposals target this exemption, particularly as part of the debate regarding tax reform or federal spending reduction. With local governments facing severe budget difficulties, any proposal to limit the tax exemption would put more pressure on local finances by reducing demand for tax-exempt bonds and increasing borrowing costs for local governments, ultimately leading to higher taxes or reduced services.

As in previous years, the Obama Administration proposed a 28 percent limit on all itemized deductions for high-income individuals in its Fiscal Year (FY) 2017 budget. If accepted by Congress, this would apply to all new and outstanding municipal bonds. According to a study conducted by the National Association of Counties, if this 28 percent cap had been in place over the past decade, borrowing costs to state and local governments would have increased by over \$173 billion, while a full repeal would have cost nearly \$500 billion over the same time period.

Meanwhile, the Trump Administration and the 115th Congress are expected to focus on comprehensive tax reform in 2017, making it a top priority. Among many other provisions, and to generate revenue to cover the cost of legislation, the Trump Administration has suggested its tax reform agenda will “reduce or eliminate most deductions and loopholes available to the very rich.”

This almost surely would include municipal bond deductions, meaning that bond issuers would have to offer higher rates to attract investors. It is estimated that the difference in the rate of earnings the County and other local governments would need to offer prospective buyers for their taxable bonds would depend on the market, but typically would range from 1.5 to 2 percent more for those offerings. On \$1 million borrowed, this would likely cost \$20,000 more in interest per year. Taking this further, if the County were to amortize a \$100 million loan over 30 years at taxable bond rates two percent higher than if the bonds were tax-exempt, the additional cost to taxpayers over those 30 years could be roughly \$30 million.

RECOMMENDED POSITION: *Oppose* legislation that would threaten the tax exemption on state and local bonds, including a 28 percent cap on tax-exempt municipal bonds.