

Holland & Knight

800 17th Street, N.W., Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Broward MPO Federal Update September 2018

CONGRESS

President Signs Two Appropriations Minibus Packages, Avoiding Shutdown: Ahead of the 2018 mid-term elections on November 6, President Trump has signed into law two FY 2019 appropriations packages finalizing five of the 12 appropriations bills (75 percent of the federal government appropriations). The second spending package included a continuing resolution (CR) that extended FY 2018 funding for the unfinished appropriations bills—including the Transportation-Housing and Urban Development (THUD) bill—through December 7, averting a government shutdown before the end of FY 2018 on September 30.

Though the Senate is expected to remain in session for most of October, House Republicans announced on September 28 that they were recessing with two weeks left on their October schedule to provide candidates with more time to campaign before the midterm elections on November 6. Therefore, the THUD bill will not be considered until after the 2018 mid-term elections. Lawmakers will return to Washington on November 13. The House and Senate Appropriations Committees have been conferencing on the THUD bill and are considering about \$71.1 billion for the THUD conference report (the House bill included \$71.8 billion and the Senate bill included \$71.147 billion).

On September 21, the President signed the first minibus spending package for FY 2019 appropriations, including spending for Military Construction-Veterans Affairs (VA), Energy-Water, and Legislative Branch bills. The \$147 billion package had been approved in the House and Senate in August. On September 28, the President approved the second minibus package. [H.R. 6157](#), which includes the \$674.4 billion Department of Defense Appropriations bill and the \$178.1 billion Labor-Health and Human Services (HHS)-Education Appropriations bill. The Senate passed the measure in a [93-7 vote](#) earlier in September, and the House passed it in a [361-16 vote](#) on September 26.

FAA Reauthorization Signed Into Law: On October 5, the President signed into law a bill ([H.R. 302](#)) that included a five-year reauthorization through FY 2023 of the Federal Aviation Administration (FAA). The Senate passed the conference report on October 3 by a vote of 93 to 6, and the House passed the legislation on September 26 by a vote of 398 to 21.

The measure would expand the eligible uses of federal grants at airports, create new protections for passengers on commercial airlines, expand oversight of the NextGen technology upgrade program, streamline aircraft certification procedures, and further regulate drone use. The bill would not extend beyond FY 2018 a requirement that money in the Airport and Airway Trust Fund equal 90 percent of estimated receipts and interest for that fiscal year and unspent funds

from the preceding year. It would repeal a requirement that provides additional funding for airport planning and development in fiscal years when amounts authorized for facilities and equipment exceed the level provided. It would extend current tax rates on aviation fuel, tickets, and air freight that support the Airport and Airway Trust Fund through September 30, 2023. Additionally, the bill does not make any changes to the PFC. Other provisions in the measure:

- Provide additional funds for disaster relief and federal disaster programs;
- Reauthorize the National Transportation Safety Board (NTSB) and the Transportation Security Administration (TSA);
- Authorize \$1.02 billion for grants in FY 2019 for a new discretionary grant program for airports;
- Allow the Department of Transportation (DOT), until the end of FY 2023, to decide whether certain drones could fly over people, beyond their operator's line of sight, or at night without a waiver or certificate, as is currently required for those activities;
- DOT would have to enter into agreements with agencies to provide expedited reviews and a one-time approval of federal drone operations;
- Expand the definition of public aircraft to include drones operated by Native American tribes;
- Give the Departments of Homeland Security (DHS) and Justice (DOJ) limited authority to intercept dangerous drones. The FAA would have to review those agencies' use of counter drone systems; and
- Omit provisions relating to changing pilot training hours and preempting state meal and rest requirements for truckers.

2019 Transportation Agenda: The two members of Congress who are running for chairman of the House Transportation Committee, Reps. Jeff Denham (R-CA) and Sam Graves (R-MO), both predicted that infrastructure will be a majority priority in 2019, for both Congress and the Administration. Specifically, the members noted that a fix for the Highway Trust Fund (HTF) would be a committee priority. They noted that there are several ideas on the table, including a battery tax, a tire tax, and increasing the fuel tax to a vehicle-miles-traveled system. Department of Transportation Undersecretary for Policy Derek Kan has also indicated that there will be in-depth discussion on a major infrastructure bill in early 2019, and he expects to see legislation in the next two years.

ADMINISTRATION

NHTSA Reports Decrease in Traffic Deaths: The National Highway Traffic Safety Administration (NHTSA) reported a 1.8 percent decrease in traffic deaths over the prior year. Traffic crashes killed 37,133 people in the United States last year, according to new data from NHTSA's [Fatality Analysis Reporting System](#). The agency simultaneously released a statistical projection of traffic fatalities for the first half of 2018, which also indicated a significant decline. NHTSA estimates that 17,120 people died on the roadways in the first half of 2018, a decrease of about 3.1 percent from the first half of 2017. The National Safety Council, which uses slightly different metrics to count roadway deaths, has estimated that 40,100 people lost their lives on U.S. roads in 2017. NHTSA Administrator Heidi King warned that this reduction in fatalities

does not constitute a trend. However, the report does note that the number of large truck fatalities was the largest it has been since 1989.

DOT Releases AV 3.0 Guidance: Department of Transportation (DOT) Secretary Elaine Chao introduced the third iteration of the agency’s voluntary guidelines for autonomous vehicles (AV), called [AV 3.0](#), on October 4. The guidance builds upon the [previous versions](#) released by the agency and incorporates broad stakeholder input, such as that of regional transportation agencies, industry leaders, safety advocates, and public sector representatives. AV 3.0 provides updated voluntary guidance and policy considerations for a range of industry sectors, including: manufacturers and technology developers, infrastructure owners and operators, commercial motor carriers, bus transit, and State and local governments. It seeks to support safe development of AV technology by updating DOT AV initiatives by:

- Stating that the Department will interpret and, consistent with all applicable notice and comment requirements, adapt the definitions of “driver” or “operator” as appropriate to recognize that such terms do not refer exclusively to a human, but may include an automated system.
- Identifying and supporting the development of automation-related voluntary standards developed through organizations and associations, which can be an effective non-regulatory means to advance the integration of automation technologies.
- Affirming that the Department is continuing its work to preserve the ability for transportation safety applications to function in the 5.9 GHz spectrum.

The guidance also announces several actions that DOT plans to take to ensure that automation will be safely integrated in vehicles, such as:

- The National Highway Traffic Safety Administration (NHTSA) will request public comment on a proposal to streamline and modernize the procedures it will follow when processing and deciding exemption petitions.
- The Federal Motor Carrier Safety Administration (FMCSA) will initiate an Advance Notice of Proposed Rulemaking to address automated vehicles, particularly to identify regulatory gaps, including in the areas of inspection, repair, and maintenance for Automated Driving Systems (ADS).
- The Federal Highway Administration (FHWA) plans to update the 2009 Manual on Uniform Traffic Control Devices (MUTCD), taking into consideration new connected and automated vehicle technologies.
- The Federal Railroad Administration (FRA) is initiating research to develop and demonstrate a concept of operations, including system requirements, for the use of automated and connected vehicles to improve safety of highway-rail crossings.
- The Maritime Administration (MARAD) and FMCSA are evaluating the regulatory and economic feasibility of using automated truck queuing as a technology solution to truck staging, access, and parking issues at ports.
- The Pipelines and Hazardous Materials Administration (PHMSA) is researching the ability to enable the digital transmission of information to first responders before they arrive at an incident that involves hazardous materials.

- The Federal Transit Administration (FTA) has published a five-year research plan on automating bus transit.

AV 3.0 was [published](#) in the Federal Register on October 9, which will begin a 60-day public comment period.

Grants

Bus and Bus Facilities Infrastructure Awards Announced: Holland & Knight has met with DOT staff several times in the past few weeks and learned several updates on grants. On September 25, the Federal Transit Administration (FTA) awarded [\\$366.2 million](#) in bus and bus facilities grants. A total of 107 projects in 50 states and territories will receive funding from FTA's Buses and Bus Facilities Infrastructure Investment Program. The state of Florida only received one grant—a \$11 million grant for Miami Dade County to replace diesel buses with compressed natural gas (CNG) buses. 75 percent of the funding was given in grants of \$4 million or more, and the average grant size for 2018 was \$3.4 million. FTA stated that it received applications for 339 eligible projects totaling approximately \$2 billion in funding requests, from a total of 255 applicants in 51 states and territories.

BUILD Grants Will Be Announced Soon: Holland & Knight has learned that the Secretary will announce BUILD grant awards around Thanksgiving. DOT received 850 applications requesting triple the appropriated amount. Every state will receive a grant. The 100 to 120 announced awards will be made around Thanksgiving. The urban/rural split will be 50/50 or 40/60.

AV Grants Will Be Announced Soon: During DOT's AV 3.0 announcement, the agency said that NHTSA will soon issue a NOFO for \$60 million in AV testing grants that were created in the FY 2018 Omnibus Appropriations bill. DOT has said that private companies are investing billions of dollars in testing autonomous vehicles and DOT believes its role is to support public and private investment and avoid artificially limiting HAV testing. Please find below the relevant language from the FY 2018 Omnibus joint explanatory statement highlighted in yellow governing the NOFO that will be released:

Highly automated vehicle research and development program.-The agreement provides \$100,000,000, to remain available until expended, for a highly automated vehicle research and development program to fund planning, direct research, and demonstration grants for highly autonomous vehicle (HAV) technologies and advanced driver-assistance systems (ADAS). The agreement does not include directives included in House Report 115-237 under the paragraph entitled "Highly automated commercial vehicle research and development program" and instead replaces those directives with those contained herein.

Of the total amount provided, **not less than \$60,000,000 shall be used for grants and cooperative agreements to fund demonstration projects that test the feasibility and safety of HAV and ADAS deployments**, as well as necessary administrative expenses. The Secretary is directed to solicit applications within 180 days of enactment of this Act and to make funding awards within one year of enactment of this Act. The Secretary is

directed to include state, local, and tribal governments, transit agencies and authorities, metropolitan planning organizations, other subdivisions of state or local governments, or a multijurisdictional group thereof, including entities designated as automated vehicle proving grounds, as eligible applicants. The Secretary may also include academic institutions or research institutions as eligible, but shall not award funds to private companies. The Department is expected to include as eligible activities the following: technologies associated with autonomous vehicles and other collision avoidance technologies, including systems using cellular technology; advanced safety systems, including vehicle-to-vehicle and vehicle-to-infrastructure communications; advanced mobility and access technologies, such as dynamic ridesharing and information systems to support human services for elderly and disabled individuals; dynamic road network mapping; roadway marking and signage; community education and outreach; and transportation data collection and analysis. In reviewing applications and making funding awards, the Secretary is directed to award no more than \$10,000,000 to a single grantee, no more than \$15,000,000 to grantees within a single state, and not less than \$20,000,000 to entities designated as automated vehicle proving grounds. The Secretary is directed to select projects that serve a variety of communities, including urban, suburban, and rural environments, and that serve a variety of transportation markets including freight, personal mobility, and mass transit. The Secretary is directed to prioritize projects that test applications with the greatest potential to serve transportation-challenged populations, including the elderly and individuals with disabilities. For all funded projects, the Secretary is expected to require grantees to gather and share relevant data with the Department, subject to appropriate protections for confidential business information, to aid DOT research efforts, and to inform future policies and standards.

FTA Announces New Grant Opportunities: This month, the Federal Transit Administration (FTA) announced several new grant opportunities:

- [**Access and Mobility Partnership Grants; Human Services Coordination Research \(HSCR\)**](#): The FTA has made available \$2,434,767 in funding to support the implementation of innovative strategies in the coordination of human services transportation to provide more effective and efficient public transportation services to seniors, individuals with disabilities, and low-income individuals. Proposed research projects should address gaps identified in the locally developed Coordinated Public Transit-Human Services Transportation Plan. The funds will finance operating and capital project expenditures to develop and deploy projects that improve transportation services for targeted populations as noted above through methods that effectively and efficiently coordinate human services transportation. Eligible applicants for awards are state and local governmental entities, providers of public transportation, private or nonprofit organizations. Proposals may contain projects the recipient or its subrecipients will implement. Eligible subrecipients include public agencies, private nonprofit organizations and private providers engaged in public transportation. **All applications are due November 13, 2018.**
- [**Access and Mobility Partnership Grants; Innovative Coordinated Access and Mobility \(ICAM\) Pilot Program**](#): The FTA has made available \$3,903,715 for the

ICAM Pilot Program. Funds will be awarded competitively to finance innovative capital projects for the transportation disadvantaged that will improve the coordination of transportation services and nonemergency medical transportation services. **All applications are due by November 13, 2018.**

- **Expedited Project Delivery Pilot Program**: The Expedited Project Delivery Pilot Program is aimed at expediting delivery of new fixed guideway capital projects, small starts projects or core capacity improvement projects that utilize public-private partnerships, are planned to be operated and maintained by employees of an existing public transportation provider, and have a federal share not exceeding 25 percent of the project cost. **Expressions of interest to become one of the participants in this Pilot Program must be submitted to FTA by November 13, 2018.**