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 Metropolitan Planning Organization
Federal Update
November 2017

CONGRESS

FY 2018 Appropriations Update: On November 21, the Senate Appropriations Committee released its final four spending bills: Interior-Environment, Financial Services, Department of Defense, and Department of Homeland Security. The release of the bills was delayed due to a number of reasons, including Senate Appropriations Committee Chairman Thad Cochran's (R-MS) health issues, and ongoing debate regarding the inclusion of a provision to fund a border wall in the Homeland Security bill. Several policy provisions are included in the bills that are likely to become contentious, notably the exceeding of a statutory spending cap in the defense bill, which would trigger across the board cuts to military programs to adhere to a 2011 deficit law, unless Congress agrees to a deal raising spending caps.

The transportation funding in the Department of Homeland Security Appropriations bill includes:

- $7.141 billion for the Transportation Security Administration (TSA), a 2.4% decrease from current funding
- $50 million for Port Security Grants, a 50% decrease from current funding
- $60 million for Transit and Rail Security Grants, a 40% decrease from current funding

The Senate Appropriations Committee has indicated that these bills will not undergo committee markups but will be used as a starting point for year-end FY 2018 negotiations with the House.

Congressional leadership is trying to negotiate a two-year budget deal by the end of this month to adjust the caps on annual discretionary appropriations. This is necessary before a FY 2018 omnibus appropriations bill can be written and considered. For non-defense appropriations (which includes all transportation appropriations), Congress needs to increase the cap by almost $3 billion for the Senate Appropriations Committee's bills year. The House bills total $5 billion less than the cap amount, but the House defense appropriations bills are $72.4 billion above the FY 2018 cap on defense spending.

The House and Senate will unlikely finalize negotiations before government funding expires on December 8, as the Senate also has ongoing work on tax reform. Another continuing resolution (CR) will be needed to allow the Senate and House additional time to work on an omnibus spending package for all 12 appropriations bills.

House and Senate Move on Tax Reform Legislation: On November 16, the House passed H.R.1, the Tax Cuts and Jobs Act, by a 227-205 party line vote. The House Rules Committee did not allow any amendments to be considered to the bill. No Democrats voted for the bill, and the 13 Republicans who opposed the bill were from high-tax states (except for Rep. Walter Jones (R-NC): Reps. Donovan (NY), Faso (NY), Frelinghuysen (NJ), Issa (CA), Jones (NC), King (NY), Lance (NJ), LoBiondo (NJ), McClintock (CA), Rohrabacher (CA), Smith (NJ), Stefanik (NY), and Zeldin (NY). The legislation would enact $1.5 trillion in tax cuts for businesses and individuals, despite concerns from Democrats and several Republican members.

On November 16, the Senate Finance Committee advanced the its tax reform bill, by a 14-12 party line vote. The Senate Budget Committee will consider the legislation on November 28; if passed out of committee, the Senate will begin floor debate on November 29 and hope to pass the bill by the end of the week of November 27. Lawmakers will need to reconcile differences between the two bills prior to passing a final legislative package, which House Speaker Paul Ryan (R-WI) has said will occur before Christmas.

Though both bills would roughly double the standard deduction, House and Senate bills have numerous differences. The House bill would reduce the corporate tax rate, from 35 percent to 20 percent, and decrease the number of brackets from seven to four, while the Senate retains the original number; but the Senate reduces the top bracket from 39 percent to 38.5 percent, and the top bracket remains the same in the House plan. Moreover, the House bill increases the Child Tax Credit to $1,600 per child, from the previous $1,000, while the Senate bill increases the Child Tax Credit to $2,000 per child. The House plan also seeks to fully repeal the estate tax, while the Senate plan does not.

More controversial, the House and Senate bills eliminate or reduce several deductions. For example, the House bill limits the state and local tax (SALT) deduction to property taxes and caps it at $10,000, while the Senate bill eliminates the SALT deduction entirely. These proposals have received intense criticism from Democrats and Republican members from high-tax states, and SALT is likely to be an obstacle during conference committee, presuming the Senate can pass its tax reform bill. Republican members from states such as New York, New Jersey, and California have made their opposition to the bill known. However, House Ways and Means Chairman Kevin Brady (R-TX) has said that there are still areas of improvement within the bill. Notably, the Senate bill preserves private activity bonds (PABs), though the House bill does not. The repeal of PABs in the House bill has been criticized by local governments and transportation authorities, who have sent letters to committees of jurisdiction, urging that PABs be included in final legislation.

Another obstacle to final passage is the repeal of the Affordable Care Act's (ACA) individual mandate in the Senate bill. This provision has raised concern among Democrats and moderate Republicans that this proposal—which was not included in the House bill—would simply disrupt the already vulnerable insurance market. Senator Ron Johnson (R-WI) stated his opposition on November 15, and support from members such as Senator Bob Corker (R-TN) and John McCain (R-AZ) are unknown at this point, miring the bill's passage in uncertainty.

An analysis from the congressional Joint Committee on Taxation (JCT) found that the Senate bill would, by 2021, increase taxes for those earning $10,000 to $30,000, and in 2027, after individual tax cuts have expired, those earning $75,000 or less would see higher taxes. After this analysis was released on November 16, Democratic Senators reiterated their stance that the tax cut would only provide relief to high-earners.

The transportation provisions in the Senate tax bill include:

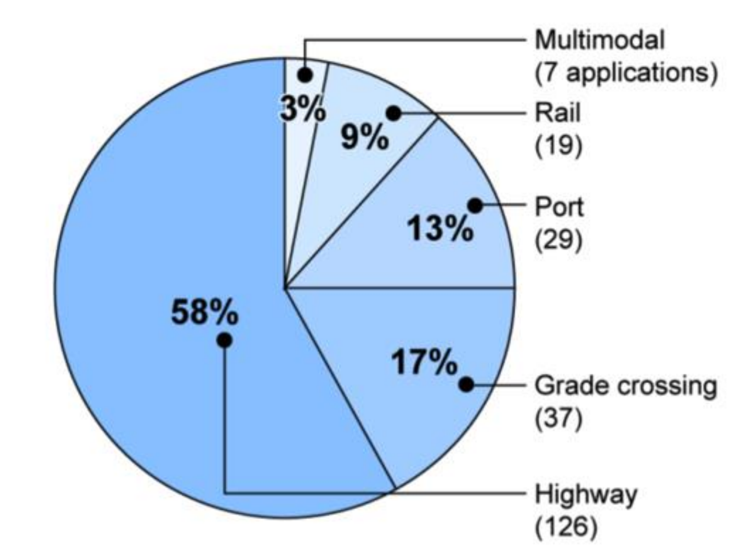
- Section 11048: Prevents bicyclists from excluding any bike commute money provided by employers from their income as a fringe benefit from 2018 through 2025 (the House bill does not include this provision)
- Section 13304(c): Repeals the deductibility for employers of all transportation fringe benefits (the House bill includes this provision)
- Section 13532: Prohibits new "advance refunding" tax exempt municipal bonds (the House bill includes this provision)
- Section 13822: Clarifies that provision of aircraft management services is not considered to be provision of air transportation for purposes of the 7.5 percent ticket tax and the passenger segment fee (the House bill does not include this provision)

Unlike the House bill, the Senate bill does not repeal tax-exempt private activity bonds after 2017 or ends the tax credit for purchase of plug-in electric vehicles.

GOP Members Discuss Infrastructure Plan: On November 16, several Republican members on the House Transportation and Infrastructure Committee gathered to discuss a plan for the Administration's infrastructure proposal. Members discussed concerns about leveraging the $200 billion in public funds outlined in the Administration's infrastructure principles. They also discussed other ideas for financing an infrastructure package, including truck-only toll roads and Transportation Infrastructure Finance and Innovation Act (TIFIA) loans. Rep. Daniel Webster (R-FL) said that proposals to raise the gas tax as a source of revenue were not addressed during the meeting. Rep. Todd Rokita (R-IN) said that while the members still do not have clear definition on specific elements, they are eager to work with the President on a package after Congress passes tax reform. Rep. Sam Graves (R-MO) said that while conversations between the Administration and himself and Chairman Bill Shuster (R-PA) are ongoing, it is not yet clear whether the package will be $1 trillion.

ADMINISTRATION

GAO Monitoring DOT Grant Recipients: In a letter sent on November 3, Republicans and Democrats from the House Transportation Committee have asked the Government Accountability Office (GAO) to monitor the Department of Transportation's (DOT) selection of highway and freight INFRA (formerly known as FASTLANE) grant recipients, following a GAO report that found DOT was not giving "clear rationale" for selecting certain projects, nor was it adequately documenting the selection process. GAO said it was not able to find how the department selected projects that were awarded grants in 2016, and said the Administration must provide insight into the process. Additionally, GAO recommends that DOT inform applicants how their projects ranked and rated once DOT awards the funding, and that DOT documents the processes selection processes. Modal requests for INFRA includes:



White House Seeks Third Disaster Relief Package: On November 17, the Office of Management and Budget (OMB) [requested] a $44 billion disaster aid package from Congress on November 17, to assist with recovery efforts in states affected by hurricanes. Senator John Cornyn (R-TX) has said the package will be considered in December after the Senate returns from recess and finishes work on the tax bill. The request may be added to either a CR or in a FY 2018 omnibus appropriations package.

For transportation, the request includes $71.887 million for the Federal Aviation Administration (FAA), $415.5 million for the Federal Highway Administration (FHWA) Emergency Relief program, $198,541,500 for the Federal Transit Administration (FTA) Emergency Relief program, and $10 million for the Maritime Administration (MARAD). Notably, the package is significantly less than California, Texas, Florida and Puerto Rico have requested in assistance.

The Administration's proposal asks Congress to consider offsets for the spending request. Included in the list of offsets is the elimination of $729.8 million from the Army Corps of Engineers' FY 2018 budget and a $1 billion rescission of highway contract authority balances held by for states DOTs. The rescission of highway contract authority is concerning to many because of a mandatory $7.6 billion rescission at the end of FY 2020 that was enacted in the FAST Act.

According to the FHWA, as of September 30, 2017 (the end of the fiscal year), states held $8.222 billion in unobligated balances of highway contract authority that will be subject to the FAST Act rescission scheduled for July 2020. Over 40 percent of the unobligated balance was focused in transportation enhancements and alternatives, metropolitan planning, and the CMAQ programs. This is despite the fact that those programs are less than nine percent of total new formula funding.

This offset could have the effect of cutting into real dollars at the end of FY 2020. The state of Florida has $263,938,398.95 in unobligated contract authority. The $1 billion rescission would be a rescission of $$35,440,401.07.