

# Holland & Knight

800 17<sup>th</sup> 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 August 2017**

### **CONGRESSIONAL UPDATE**

Recess: Congress is in recess for the remainder of August, returning on September 5.

FY 2018 Appropriations Update: On July 27, the House passed a [\\$788 billion national security “minibus”](#) package that includes Department of Defense; Energy & Water; Legislative Branch; and Military Construction-Veterans Affairs Appropriations bills for fiscal year (FY) 2018 by a vote of 235 to 192 by a party line vote. Democrats opposed the inclusion of \$1.6 billion, requested by the President, to begin construction of the border wall.

On August 16, the House Rules Committee released the text of an [eight-bill \\$439 billion minibus spending package](#). The legislation would consolidate the FY 2018 Transportation-Housing and Urban Development, Agriculture, Commerce-Justice-Science, Financial Services, Homeland Security, Interior-Environment, Labor-HHS-Education, and State-Foreign Operations Appropriations bills. The Make America Secure and Prosperous Act (H.R. 3354) includes several contentious provisions, such as funding for the border wall and the potential elimination of an amendment allowing DACA recipients to be eligible for federal jobs. The amendment process for the spending package remains open until August 25. Amendments to the omnibus appropriations bill for FY 2018 relevant to transportation filed as of close of business on August 23 include:

- [King \(IA\) #6](#) – Prevents the enforcement of the Davis-Bacon Act for transportation agencies and programs.
- [Waters \(CA\) #7](#) – Adds \$7.5 billion for the TIGER grant program.
- [Waters \(CA\) #8](#) – Adds \$550 million for the TIGER grant program.
- [Lowey \(NY\) #9](#) – Redirects \$1 million around from the FRA Railroad Research and Development account to implementing medical fitness standards for critical safety personnel on interstate railways.
- [Fortenberry \(NE\) #12](#) – Prevents any funding from being used to prohibit an airport from using its AIP funding to store its snow removal equipment.
- [DeLauro \(CT\) #13](#) – Adds \$500 million for the TIGER grant program.

Since the House is recess for the month of August, this deadline is unusual and probably indicates that the House Rules Committee intends to move the omnibus appropriations bill to the floor soon after the House returns on Tuesday, September 5. During consideration on the floor, Republican leadership will add the text of the four-bill, \$788 billion national security minibus appropriations bill that passed the House on July 27 so that the Senate will receive a \$1.2 trillion omnibus appropriations bill that funds the entire federal government.

Congress will have to pass a continuing resolution (CR) in September before the fiscal year 2018 begins on October 1 as the Senate has not passed any of its appropriations bills. However, the timing of the CR is unclear as the President recently threatened to veto any appropriations bill, including a CR, if the bill does not include funding for the border wall.

FTA Opens Public Comment for Streamlining Proposals: The Federal Transit Administration (FTA) [issued a notice of request for comments](#) on proposing new procedures to “encourage increased project management flexibility, more innovation in project funding, improved efficiency, timely project implementation, and new project revenue streams.” The goal of the request for public comments is to incorporate public-private partnerships in a more efficient way, and develop approaches to increase private investment in public transportation projects. The deadline for comments is September 29, 2017. The notice follows a [February executive order \(EO\)](#) regarding the implementation of regulatory reform task forces in federal agencies to lower regulatory burdens and accelerate progress on federal projects.

DOT Announces FASTLANE Small Project Awards Grants: On August 2, Department of Transportation (DOT) Secretary Chao sent the agency’s [recommendations](#) for small FASTLANE grant awards to the transportation congressional authorization committees. The committees have 30 days to approve or disapprove the awards.

These will be the last grants under the program that used the name “FASTLANE.” In June, DOT announced it will award \$79 million of the FY 2017 money for “small projects” (total project cost under \$100 million) under the Obama Administration’s FASTLANE selection process. The majority of the FY 2017 money for large projects and all of the FY 2018 money (a total of \$1.5 billion) would be awarded under a new process, called INFRA.

Seven of the ten projects are related to freight rail in some way, including two multimodal port improvement projects.

The total FASTLANE share of the aggregate project cost for the ten projects is 34 percent, which is down from the total 45 percent for the seven small projects selected by the Obama Administration in FY 2016. The Trump Administration has indicated that a lower federal cost share, will be a key metric for selection of future INFRA grants and other discretionary transportation grants. 80% of these grants are for rural areas.

FY 2017 FASTLANE GRANTS FOR SMALL PROJECTS

State	Area	Project	Projected Federal Share	Percentage (%)	Rural/Urban
CO	La Plata County	U.S. 550 SOUTH CONNECTION TO U.S. 160	\$12,312,886.50	13	Rural
FL	Taylor County	GEORGIA & FLORIDA RAILWAY REHABILITATION	\$8,671,513.50	64	Rural
IN	Porter County	BURNS HARBOR INTERMODAL FACILITY	\$9,850,000.00	50	Urban
ME	Penobscott & Aroostook Counties	RAILROAD CAPACITY BRIDGE PROJECT	\$7,890,000.00	50	Rural
MI/WI	Ludington, MI and Manitowoc, WI	U.S. 10 LAKE MICHIGAN CROSSING DOCK IMPROVEMENTS	\$5,000,000.00	60	Rural
MS	Grenada, Canton and Coldwater	NORTH CENTRAL MISSISSIPPI RAILWAY PROJECT	\$7,540,000.00	50	Rural
NH/VT	Coos County, NH & Essex County, VT	ROGERS' RANGERS BRIDGE	\$5,000,000.00	43	Rural

OH	City of Akron	EVANS AVENUE RAILROAD GRADE SEPARATION IMPROVEMENTS	\$5,715,600.00	60	Urban
TX	West Texas	SORR REHAB. AND PRESIDIO INT'L RAIL BRIDGE RECONSTRUCTION	\$7,000,000.00	43	Rural
WA	Grant County	NORTHERN COLUMBIA BASIN RAIL ROAD PROJECT	\$9,900,000.00	33	Rural

CBO Issues Updated House FAA Bill Score: The Congressional Budget Office (CBO) issued an updated score for the House FAA reauthorization bill, the 21<sup>st</sup> Century AIRR Act, upon request from Democrats. The new score, while incomplete, projects the bill would increase the deficit to \$98.5 billion following changes to the text made in the House Rules Committee. However, this score reflects the bill's tax provision, and does not include the user fees the bill proposes to utilize to finance a privatized air traffic control system. Neither the House or Senate bills have not been scheduled for floor time. FAA authorization expires on September 30, leaving only 12 legislative days, with both House and Senate in session, for lawmakers to work on the bill when they return from the August recess so Congress will pass an extension. House Highways and Transit Subcommittee Sam Graves (R-MO) confirmed the extension during an interview, "We obviously have to have an extension or something in place by Sept. 30," Graves said. "We're going to have to get to work on that because regardless of if the House were to pass something and the Senate were to pass something, we're not going to make the deadline. The reality is we can't conference everything out in that amount of time."

## **ADMINISTRATION UPDATE**

President Signs Project Streamlining Executive Order: On August 15, President Trump signed an [executive order \(EO\)](#) to streamline and eliminate permitting regulations to accelerate infrastructure system construction. The EO specifically targets the environmental review process, and rolls back procedures set by the Obama Administration that direct the federal government to take into account climate change and sea-level rise as it approves and builds new infrastructure projects. Additionally, the EO establishes a policy of "One Federal Decision" in which one federal agency, deemed the lead, works in tandem with other agencies to execute environmental

reviews and permitting decisions on a project. Decisions on permits will be made within 90 days; agencies will be required to process environmental reviews within two years. The EO also rolls back the Federal Flood Risk Management Standard, established by President Obama. The standard required that new federally funded projects be constructed to endure the stronger storms and flooding that were projected as a result of climate change. The standard had not taken effect yet, as it directed each federal agency to develop its own regulations, none of which had been finalized.

Transportation Secretary Elaine Chao [said](#) the EO was beneficial, as it will decrease the time it takes to approve vital infrastructure projects. However, critics of the EO, such as environmental groups and political advocacy groups, have argued that it will allow developers to overlook environmental hazards and approve potentially harmful projects. Environmental groups have said they are prepared to legally challenge the EO if approvals are given without “meaningful scrutiny.” Democrats on the House Transportation and Infrastructure Committee also released a [“myth/fact” sheet](#) on the EO, addressing statements and expectations made in the order. The order marks an effort to move ahead with the President’s infrastructure agenda, following an outline of the administration’s goals in the budget, and the unveiling of the INFRA grant program.

FTA Announces Proposed Rule for Private Investment in Transit: On July 31, the FTA issued a notice of proposed rulemaking (NPRM) “to encourage increased project management flexibility, more innovation in project funding, improved efficiency, timely project implementation, and new project revenue streams.” [Comments must be received by September 29, 2017.](#) The goal of the proposed rule is to “address impediments to the greater use of public-private partnerships (P3s) and private investment in public transportation capital projects.”

This proposed rule is issued in accordance to MAP-21 which directed FTA to research potential impediments to public-private partnerships and private investment in public transportation projects, then issue a rule that would allow public entities to apply for waivers or modifications to those barriers.

During FTA’s research, the agency received comments from the private sector about the need to streamline its processes for reviewing and issuing grants. The timing of grant awards was identified as a factor that “can discourage lender interest because it is perceived to be incompatible with the timing of private financing schedules, public agency procurement schedules, and DOT financing programs, such as TIFIA, RRIF, and PABs.”

Under the proposed rule, FTA will create the Private Investment Project Procedures (PIPP) which would identify provisions of current FTA regulations that would reduce barriers to P3s and then issue modifications or waivers – as long as they do not include NEPA requirements. The FTA Administrator may issue modifications or waivers to recipients who demonstrate that:

- The FTA requirement that is proposed for modification discourages using a P3, joint development, or private sector investment;
- The modification or waiver of the requirement would encourage private engagement;

- The amount of private sector participation or proposed risk transfer would merit a modification or waiver; and
- Modifying or waiving the FTA requirement would not compromise public interest and public investment.
- Among other issues, FTA is seeking comment on whether applicants must provide evidence of committed financing for the project, or whether such a minimum requirement would be premature.