

Holland & Knight

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Broward County Metropolitan Planning Organization Federal Update June 2017

Holland & Knight Update

Holland & Knight Board Presentation: On June 7, Lauri Hettinger and Lisa Barkovic with Holland & Knight provided a federal update to the board. They also discussed successes the MPO and the firm achieved over the past year which include:

- Assisted in securing an \$11.4 million dollar TIGER Grant, the only TIGER Grant awarded in Florida in 2016, through meetings and phone calls with the U.S. Department of Transportation (USDOT), outreach to members of the Florida Congressional Delegation, and a coordinated letter of support to former USDOT Secretary Foxx.
- During the drafting of the FAST Act, the most recent transportation reauthorization bill, Holland & Knight worked to get several MPO priorities in the bill, including:
 - Increased funding in the Surface Transportation Program (STP) resulting in an increase in MPO attributable funds coming to the Broward MPO. This will provide the Broward MPO with approximately \$1.33 million dollars in additional project funding over the next 5 years.
 - The creation of a discretionary freight grant program with MPO eligibility (FASTLANE – Nationally Significant Freight & Highways Projects). This is an \$800 million dollar program, and the MPO has a \$50 million dollar FASTLANE grant currently under review by USDOT.
- Secured \$11.01 million dollars in funding for the Wave Streetcar through the Transportation, Housing, and Urban Development (THUD) appropriations process and worked to protect future investments in the Capital Investment Grant program.
- Helped secure a repeal of the MPO Reform and Coordination Rule which was signed into law by the President. The rule would have required MPOs in a single urbanized area to either merge or create joint planning products, resulting in additional costs to MPOs.

Holland & Knight also discussed future opportunities for the MPO over the upcoming year including FASTLANE grant and Administration's infrastructure which could include funding for projects ready to go and streamlining provisions.

Congressional Update

Appropriations Committee Questions DOT Budget Cuts: Transportation Secretary Elaine Chao defended the Department of Transportation (DOT) budget to the House Transportation, Housing, and Urban Development (THUD) Appropriations Subcommittee in a hearing on June 15. Her [prepared testimony](#) provided additional details on the proposed program cuts and eliminations:

- Eliminating the TIGER Program: “With the passage of the FAST Act and the creation of a new competitive grant program, the Department has other opportunities for funding those projects that have nationally or regionally significant characteristics.”
- Ending approvals for new projects in the Capital Investment Grant program (New Starts/Small Starts/Core Capacity): “The Administration is reexamining programs where significant Federal resources are spent on activities that have primarily local benefits – including what fiscal and other tools might be the most appropriate to encourage investment in those jurisdictions.”
- Eliminating federal funding for long-distance Amtrak routes: “Amtrak’s long distance services are used by a relatively small number of passengers. These trains are very expensive to operate and maintain; and account for much of Amtrak’s operating losses. The President’s budget recognizes this is an area with a low return on investment and instead asks us to concentrate our resources on other portions of Amtrak’s system.”

Subcommittee Chairman Mario Diaz-Balart (R-FL) opened the hearing criticizing the proposal to make air traffic control a private system. Secretary Chao said citizens would have the same option under the Administration’s proposal as they currently do, and that regulation of noise would remain under the FAA. She did not, however, address whether public interest representatives would serve on the Air Traffic Control (ATC) corporation’s board of directors.

Rep. Mike Quigley (D-IL) asked Secretary Chao to justify cutting DOT’s budget by 13 percent while simultaneously promising a \$1 trillion infrastructure bill. Secretary Chao defended the reduction, explaining that they would allow investments to be more efficiently repurposed. She also stated that the President’s budget fully funds the Highway Trust Fund at funding levels authorized in the Fixing America’s Surface Transportation (FAST) Act. Subcommittee Ranking Member David Price (D-NC) asked several questions about the cuts to the Capital Investment Grant program. Secretary Chao was firm in her stance that DOT will not award funds to projects that do not already have a full funding grant agreement (FFGA). She said, “The Administration is reexamining programs where significant Federal resources are spent on activities that have primarily local benefits – including what fiscal and other tools might be the most appropriate to encourage investment in those jurisdictions.” House Appropriations Committee Chairman Rodney Frelinghuysen (R-NJ) also found issue with the reduction in funding for the CIG program, and the proposal to eliminate the popular TIGER grants program. In response to the administration’s request to end the TIGER program, the Secretary said that DOT would “respond to the will of the Congress,” and that if Congress provides future appropriations, DOT would make those funds available.

Highway Trust Fund Letter: More than 250 House members – 119 Republicans and 134 Democrats - signed a [letter](#) led by Rep. Sam Graves (R-MO) and Rep. Eleanor Holmes Norton (D-DC), requesting that an overhaul of the tax code be used as a vehicle to fix the Highway Trust Fund (HTF). The letter was sent to House Ways and Means Committee Chairman Kevin Brady and Ranking Member Richard Neal. The letter asks that any HTF solution include a long-term, dedicated, user-based revenue stream that can support transportation infrastructure investment. The letter was sent to demonstrate bipartisan support for a sustainable solution to paying for highway and transportation investment. Rep. Graves [said](#) the overwhelming support is a critical step in the process of reforming HTF. Several transportation industry groups, such as the Transportation Construction Coalition and the American Road & Transportation Builders Association, have supported the effort. However, while the letter addresses the importance of updating HTF, it does not identify a source of funding.

The following members of the MPO's delegation signed the letter: Reps. Mario Diaz-Balart, Lois Frankel, Frederica Wilson, and Alcee Hastings.

FAA Authorization Bills Introduced and Marked Up in Committees: House Transportation & Infrastructure Committee Chairman Bill Shuster (R-PA) introduced the [21st Century AIRR Act](#) on June 22, which included a proposal to shift air traffic control operations from the FAA to a private nonprofit corporation. Two Democrats, Reps. Colleen Hanabusa (D-HI) and Kyrsten Sinema (D-AZ), co-sponsored the bill, though neither serves on the authorizing House committee. Air traffic controllers have backed the privatization proposal; However, general aviation groups have opposed the legislation. A coalition of groups said in a [statement](#) that “any structural and governance reforms that require protections for an important sector of users is fundamentally flawed.” The bill funds the Federal Aviation Administration (FAA) at \$65.25 billion for a six years. The bill provides \$51.1 billion in funding for the first three years, but does not include authorization for several key items after the third year, accounting for the privatization of air traffic control. Committee Ranking Member Peter DeFazio (D-OR) said the bill does not address concerns about safety, national security, or new technology under the privatized system.

On June 27, the House Transportation & Infrastructure Committee approved the legislation in a 32-15 vote, with all of the panel's Democrats voting against the bill. The 10-hour markup included debate over several key amendments, and backlash from Democratic committee members who opposed the proposal to overhaul air traffic control to a private entity. Ranking Member Peter DeFazio (D-OR) said that the bill was generally approved on a bipartisan basis, but the proposal to privatize air traffic control was a major exception. He added that Democrats would have rather seen certain FAA funding exempted from budget cuts to enhance efficiency at the agency. Rep. Todd Rokita (R-IN) was the only Republican to vote against the bill, calling the privatization proposal the “corporatization of a monopoly.” The markup was expected to result in approval of the bill, but passage on the House floor is still contingent on Republican support. The committee considered nearly 80 amendments. Highlights include:

- An [amendment](#) from Rep. Lowenthal, Garamendi, and Huffman that would have re-established the congressional intent and 29 years of federal interpretation that the

limitation on the use of sales taxes collected on aviation fuel for airport purposes is applied to excise taxes on aviation fuel only, and not to general sales taxes that states and localities impose on all goods.

- ✓ Chairman Shuster spoke against the amendment citing FAA's clarification of policy in 2014. He said that hundreds of millions of dollars have been diverted to projects outside airports. He said he did understand that there is difficulty with self-help areas. He asked Rep. Lowenthal to withdraw the amendment and that he would like to work him and the co-sponsors. Rep. Lowenthal withdrew.
- An [amendment](#) from Ranking Member DeFazio that would have eliminated Chairman Shuster's proposal to privatize air traffic control – *failed*
- An [amendment](#) from Rep. Paul Mitchell (R-MI) to limit terms of Air Traffic Control (ATC) board members to four years – *passed*
- An [amendment](#) from Rep. Jerrold Nadler (D-NY) to require that the ATC non-profit corporation buy ATC government assets at fair government value – *failed*
- Rep. Mike Capuano's (D-MA) [amendment](#) proposed that the FAA continue to handle noise complaints if air traffic control was privatized – *withdrawn*
- An [amendment](#) from Rep. Rodney Davis (R-IL) would require the FAA to draft drone regulations for aircrafts weighing less than 4.4 pounds, and exempts pilots from acquiring an FAA certificate to fly these drones – *passed*
- An [amendment](#) from Rep. John Garamendi (D-CA) would prevent the Aviation Trust Fund from being privatized – *passed*

The full House may vote on the bill in July; however, due to the limited number of work days left in Congress before FAA authorization expires on Sept. 30, Congress will probably pass a short-term extension.

On June 23, the Senate Commerce Committee released their [bill](#), the Federal Aviation Administration Reauthorization Act of 2017, which does not shift air traffic control to a private entity. The bill had bipartisan support with Commerce Committee Chairman John Thune (R-SD); Committee Ranking Member Bill Nelson (D-FL), Subcommittee Chairman Roy Blunt (R-MO); and Subcommittee Ranking Member Maria Cantwell (D-WA) The bill funds the FAA at \$68 billion for four years. The Senate bill directs the FAA to issue a final rule authorizing drone package delivery by small unmanned aircraft systems (UAS) for hire; requires the FAA to assess NextGen; and increases funding for the Airport Improvement Program to \$3.75 billion annually. The Senate Commerce Committee approved the legislation on June 29 by voice vote. The contentious debate in the committee was on Chairman Thune's amendment that changed how pilots meet their 1,500 hour training requirement. The amendment was approved by voice vote after the members narrowly rejected Senator Tammy Duckworth (D-IL)'s amendment that would have replaced the Chairman's amendment with a "sense of Congress" affirming support for the 1,500 hour rule. Highlights of the Senate bill include:

- An amendment from Sen. Richard Blumenthal (D-CT) to reinstate the Aviation Security Fee – *failed*

- An [amendment](#) from Sen. Gary Peters (D-MI) that would allow universities to educate and conduct research for the purpose of advancing unmanned air systems (UAS) technology at designated outdoor flight fields approved by the FAA – *passed*
- An [amendment](#) from Sen. Maggie Hassan (D-NH) that requires the FAA to develop a strategy to provide outreach to state and local governments and guidance for local law enforcement agencies on UAS – *passed*

Chairman Thune said the bill may not be on the Senate floor in July, due to ongoing consideration of the GOP health care bill. He also noted that the difference between the House and the Senate bill – the issue of privatization – is one that may prove contentious, and has the potential to derail conference on the bill before FAA authority expires in September.

Administration Update

Infrastructure Week in June: The Administration deemed June 5 through June 9 “Infrastructure Week,” during which President Donald Trump participated in discussions and meetings regarding his infrastructure package. The White House released new information about his infrastructure plan on June 7 in two press releases. The first, titled “[President Donald J Trump Works to Rebuild American Infrastructure.](#)” outlined general principles for the plan, highlighting a focus on internal waterways. The plan included federal grants to rural areas to administer additional project funding, allocating \$200 billion in funding over a span of 10 years to promote \$800 billion in additional spending from states, local governments, and private sector investment. Federal funding is proposed to be divided into four categories: (1) grants and loans to transformative projects (2) grants to rural areas for repairing bridges, roads and waterways (3) enhancing loan programs using TIFIA as a template for how federal funds can be utilized in conjunction with state and private funding for projects and (4) creating incentive programs with grants for additional infrastructure funding. The second [release](#) introduced six infrastructure projects that would fall under the purview of the Interior Department: (1) the Hoover Dam (2) U.S. Geological Survey Streamgages (3) Blue Ridge Parkway (4) transmission lines on public lands (5) geothermal energy to power a tribal school and (6) fishing piers at Bill Williams National Wildlife Refuge.

President Trump used Infrastructure Week to weigh in with his support for privatizing air traffic control by turning it over to a nonprofit private company. Further, the President advocated for a proposal to eliminate the current system’s airline ticket and fuel taxes, replacing them with user fees determined by the privatized entity.

DOT Announces Next Round of FASTLANE Grants for FY 2017 and FY 2018 and Will Announce FY 2017 Small Projects Soon: On June 29, the DOT issued its [NOFA](#) for the retitled Infrastructure For Rebuilding America (INFRA) grant program.

The Department will make awards under the INFRA program to both large and small projects. For a large project, the INFRA grant must be at least \$25 million. For a small project, the grant must be at least \$5 million. The estimated funding available for FY 2017 and FY 2018 under this notice is approximately \$81 million to \$85.5 million for small projects and \$1.44 billion to \$1.48 billion for large projects Applicants may resubmit their previous FASTLANE application, but

must explain how the project competitively addresses the improved INFRA Grant criteria. This NOFO will remain open for 120 days and Grants.gov will open by August 1, 2017.

The INFRA merit criteria are:

- National and regional economic vitality
- Potential for innovation
- Safety
- Environmental review and permitting
- Project delivery approach
- Leveraging of federal funding
- Performance and accountability

Additional considerations

- Geographic diversity among recipients
- Project readiness

DOT has indicated that they are going to make small project announcements soon for the FY 2017 FASTLANE program. [From the DOT fact sheet](#): "Due to the comparatively small amount of funding statutorily reserved for Small Projects, \$78.88M of the total, the Department will move forward with making Small Project selections from previously submitted applications under the FASTLANE criteria, while reserving the bulk of the funding to be awarded under the improved INFRA Grant criteria. We're finalizing our Small Project selections in the hopes of getting those projects underway soon, while at the same time focusing efforts on the new Administration's priorities."

DOT Is Announcing TIGER NOFA within Next 30 Days: In a recent Holland & Knight meeting with DOT staff, they confirmed that the next round of TIGER will be announced in about 30 days. DOT is encouraging parties interested in TIGER to review the INFRA NOFA because many of the same themes and criteria will also appear in the next round of TIGER.