

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 March 2017

APPROPRIATIONS/BUDGET UPDATE

FY 2018 Budget Blueprint: On Thursday, March 16, President Trump released a “skinny” FY 2018 proposed budget; a document that is meant to serve as a blueprint ahead of a full budget that is expected to be released in May. While the details of the full budget have not been released, the proposals outlined in the “skinny budget” could impact key transportation programs, and is therefore important to note that the President’s budget is seen only as an outline or a suggestion - it does not have the force of law. The budget proposal focuses on large increases to the Department of Defense, which are offset by dramatic cuts to domestic programs, including critical programs at the Department of Transportation (DOT). However, the budget does not propose any changes to the funding levels for the programs funded by the Highway Trust Fund under the FAST Act of 2015 (federal aid highway programs, FASTLANE, and transit formula grants), which provides an increase from \$53.7 billion in FY 2016 to \$56.1 billion in FY 2018, an increase of \$2.4 billion.

The reaction from Congress opposing the budget proposal has been swift and emphatic. Rep. Hal Rogers (R-KY), senior House Appropriations Committee member, stated “While we have a responsibility to reduce our federal deficit, I am disappointed that many of the reductions and eliminations proposed in the president’s skinny budget are draconian, careless and counterproductive.”

Below is a breakdown of the budget for DOT:

Department of Transportation (DOT)

- Requests \$16.2 billion for DOT, a \$2.4 billion (13 percent) decrease from FY 2017.
- Initiates a reauthorization proposal for shifting control of air traffic from the Federal Aviation Administration (FAA) to a private organization.
- Restructures and reduces subsidies for Amtrak to focus resources on other parts of passenger rail, and terminates federal funds for Amtrak’s long distance services to allow Amtrak to focus on state-supported and Northeast corridor train services.
- Limits funding for the Capitol Investment Grants program (New Starts, Small Starts, Core Capacity) to only projects with existing full funding grant agreements (FFGA)
- Eliminates \$175 million in funding for the Essential Air Service program, which provides subsidies for commercial flights to rural airports.
- Eliminates the TIGER grant program.

FY 2017 Appropriations: With the continuing resolution (CR) currently funding FY 2017 set to expire on April 28, Congress needs to pass legislation to fund the federal government for the remainder of fiscal year 2017, which ends on September 30, 2017. Congress is in only eight legislative days before April 28. In Holland & Knight's discussions with appropriations committee staff and members, it looks like that Congress can pass some FY 2017 appropriations bills, such as the Department of Transportation/HUD (THUD), Defense, and Energy and Water (funds the Department of Energy and the Army Corps of Engineers), in regular order, but may rely on another CR for those bills that are controversial such as the Labor/HHS/Education (due to Affordable Care Act), Interior (due to climate change), and CJS (due to immigration).

On March 24, the White House Office of Management and Budget (OMB) submitted proposed changes to the discretionary appropriations accounts for FY 2017. The Administration proposed the immediate abolition of the TIGER grant program, and indicated it will not give final approval for pending New Start projects in Maryland, California, and other states. The budget included \$17.935 billion in suggested cuts to non-defense discretionary budget accounts, and almost six percent of these cuts come from transportation and infrastructure programs. Along with ending the TIGER grant program, the White House suggests reducing Capital Investment Grant program down to \$1.7 billion from \$3.5 billion, and cutting Army Corps of Engineers water resources program by \$100 million. However, members of the House and Senate Appropriations Committees have said that these proposed changes are too late. Senate THUD Subcommittee Chairman Susan Collins (R-ME) said, "We're certainly looking at [the Administration's proposed cuts], but it certainly throws a monkey wrench into negotiations that were essentially completed. And the cuts are very deep in some programs that are extremely important, like the Community Development Block Grant Program and TIGER grants."

CONGRESSIONAL UPDATE

DeFazio Unveils Highway and Transit Funding Bill: On March 22, House Transportation and Infrastructure Committee Ranking Member Peter DeFazio (D-OR) introduced legislation ([H.R. 1664](#)) that would allow the Treasury Department to issue 30-year bonds through 2030 to fund state-of-good-repair and other future infrastructure needs. The legislation would raise revenue by having bond sales deposited to the Highway Trust Fund. Under the bill, gas taxes would be indexed to the cost of the transportation projects, and revenue from the taxes would be used to repay the bonds at the end of the 30-year term. Democratic committee staff have [estimated](#) the bill would increase fuel fees by approximately \$0.01 per year, while generating nearly \$500 billion. While the administration has not weighed in on the proposal, DeFazio is [confident](#) that it will receive support in Congress, saying that he has heard privately from members across the aisle that they would support the legislation should it reach the floor. The bill was referred to the Subcommittee on Highways and Transit on March 23.

Funding Transportation and Infrastructure: On March 8, the Senate Transportation, Housing and Urban Development (THUD) Appropriations Subcommittee held a hearing on transportation and infrastructure funding. Witnesses included:

- [Mr. David Bernhardt](#), Commissioner, Maine Department of Transportation; President, American Association of State Highway Transportation Officials (AASHTO)

- [Mr. Jim Tymon](#), COO and Director of Policy Management, AASHTO
- [Mr. Todd Hauptli](#), President and CEO, American Association of Airport Executives
- [Mr. Edward L. Mortimer](#), Executive Director For Transportation Infrastructure, U.S. Chamber of Commerce
- [Ms. Beth Osborne](#), Senior Policy Advisor, Transportation for America

Witnesses discussed the need for federal investment in surface transportation, prioritizing rail, the Passenger Facility Charge (PFC), and grant programs, such as TIGER, as important funding sources for improving infrastructure. Chairwoman Susan Collins (R-ME) asked the panel how best to fund the Highway Trust Fund, and witnesses affirmed that existing streams of revenue are the most useful.

Bernhardt stressed that FAST Act funding increases contained in a year-long appropriations bill need to pass as soon as possible, especially for cold-weather states with short construction seasons. Tymon emphasized (as did other witnesses) the importance of maintaining Highway Trust Fund solvency past 2020. Hauptli focused his remarks on the repeal of the statutory cap on passenger facility charges (PFC) that an airport can charge on passengers. He said that airports have \$13 billion in capital development needs each year that are not eligible for federal funding grants, and a PFC increase would be the “single biggest bang for the infrastructure buck” possible. Mortimer reiterated the Chamber of Commerce’s support for a gasoline tax increase to fund surface transportation.

Senator Chris Coons (D-DE) pointed to the popularity of TIGER grants, and Beth Osborne explained that they are beneficial because even if the grant is not awarded, the project becomes a subject of increased interest and is thus more likely to be completed. Committee members also addressed public-private partnerships (PPPs), and witnesses stated that PPPs create more business, rather than just provide a source of investment.

A group representing commercial airports said on March 7 that its U.S. members will need approximately \$50 billion in new infrastructure over the next five years, above what they can already afford. The group backed the “Investing in America: Rebuilding America’s Airport Infrastructure Act” (H.R. 1625) proposed by Reps. Peter DeFazio (D-OR) and Thomas Massie (R-KY), which would lift the \$4.50 cap on the PFC as a funding method for airport infrastructure. While the group considers the legislation to be the ideal vehicle for funding, airlines do not support uncapping PFC, as they believe it would discourage passengers from flying. A [report](#) released on March 7 by the Airports Council International-North America states that it will cost nearly \$100 billion to expand and repair airport infrastructure from 2017 to 2021, and President Trump has addressed the urgency of improving this mode of transportation.

Senate Passes Repeal of MPO Consolidation Rule: On March 9, the Senate passed legislation to repeal the December 2016 DOT rule that would force metropolitan planning organizations (MPOs) in the same region to merge. The bipartisan bill, [S. 496](#), was introduced by Senator Tammy Duckworth (D-IL), and was passed unanimously.

On March 29, the House Transportation and Infrastructure (T&I) Committee approved the House companion bill, [H.R. 1346](#)--Rep. Lois Frankel (D-FL) is a co-sponsor. During the markup,

House T&I Committee Chairman Bill Shuster (R-PA) and Highway and Transit Subcommittee Chairman Sam Graves (R-MO) stated that the MPO rule exceeded what was required by law and was contrary to congressional intent. Graves said, “Repealing this rule ensures local transportation investment decisions remain in hands of local authorities.”

Delaney Introduces Infrastructure Bill: Representative John Delaney (D-MD) introduced two bipartisan infrastructure bills titled: the “Partnership to Build America Act” ([H.R. 1669](#)), co-sponsored by Rep. Rodney Davis (R-IL), and the “Infrastructure 2.0 Act” ([H.R. 1670](#)), co-sponsored by Rep. Ted Yoho (R-FL). The Build America Act proposes creating a new American Infrastructure Fund (AIF) to finance state and local infrastructure projects through a one-time bond sale to U.S. corporations seeking to repatriate a portion of their international earnings.

The Infrastructure 2.0 Act, introduced at the APTA Conference on March 22, seeks to create the AIF and provide revenue to expand the Highway Trust Fund through international tax reform. Rep. Delaney introduced this concept in 2013, and reintroduced it in March to serve as a funding source for President Trump’s infrastructure package. Rep. Delaney [said](#) the bills would create good-paying jobs, boost long-term economic competitiveness and improve quality of life.

ADMINISTRATION UPDATE

Jeff Rosen Named DOT Deputy Secretary: The President has nominated Jeffrey Rosen to serve as Deputy Secretary of the Department of Transportation (DOT). Mr. Rosen served as DOT General Counsel from December 2003 to June 2006, as well as former DOT Secretary Mineta’s designee on the Amtrak Board. He also served as a Senior Policy Adviser at the Office of Management and Budget from June 2006 to January 2009.

Rosen’s nomination is expected to move through the Senate fairly quickly. President Obama nominated him to serve on the U.S. Postal Service Board of Governors in March 2016.

FTA Expects New Administrator: FTA Acting Administrator Matt Welbes said on March 13 at the American Public Transportation Association (APTA) Legislative Conference in Washington, D.C. that he expects the President to make a nomination between April and June, based on past precedent. For example, Peter M. Rogoff was nominated by former President Barack Obama in April 2009 and was confirmed by the Senate on May 21. He did not mention any further details regarding who might be nominated for the post. In addition to speaking about the timing of the FTA Administrator nomination, Welbes also spoke about the looming infrastructure package. He asked the APTA community for input on their experience with public-private partnerships (P3s), since many have not embarked on utilizing them given their dependence on public subsidy and fare box revenues.

AVIATION

House FAA Reauthorization Hearing: On March 8, the House Transportation & Infrastructure Committee’s Aviation Subcommittee held a [third](#) hearing to gather input on the Federal Aviation Administration (FAA) reform and reauthorization bill. Current FAA authorization expires on September 30, 2017. [Witnesses](#) included:

- [Mr. Brad Tilden](#), Chief Executive Officer, Alaska Air Group, Inc.
- [Mr. Russell Childs](#), Chief Executive Officer, SkyWest, Inc.
- [Mr. Joseph Hete](#), Chief Executive Officer, Air Transport Services Group, Inc.
- [Ms. Sara Nelson](#), International President, Association of Flight Attendants-CWA
- [Mr. Charles Leocha](#), Chairman and Co-Founder, Travelers United

The hearing focused on the current state of U.S. air transportation systems and ways to improve air transportation. Witnesses recommended that the bill benefit all stakeholders, stressing the importance of private air transportation entities' priorities, as well as passenger priorities.

Subcommittee Chairman Frank LoBiondo (R-NJ) began the hearing by noting the role of aviation in the U.S. economy and how diverse aviation is, with private aviation alongside mainline airlines, regional, cargo, and charter companies.

In his opening statement, Subcommittee Ranking Member Rick Larsen (D-WA) focused on the importance of NextGen--how the program is a historic shift for air traffic control (ATC), and has already brought \$2.7 billion in benefits, with \$160 billion expected by 2030.

Full Committee Ranking Member Peter DeFazio (D-OR) discussed three issues in his opening statement: aviation is experiencing the safest period in history; airlines are achieving high levels of profits; and a healthy aviation industry is good for everyone, from employees to consumers.

Mr. Tilden, with Alaska Air, mentioned that the aviation industry has changed a lot in the last 10 to 15 years, and that right now the airlines are investing in their infrastructure and people. He noted, that aviation policy must support strong competition as there are only four airlines carrying 80 percent of the passengers. He also showed his support for Open Skies policies and for ATC reform.

Mr. Leocha, with Travelers United, discussed airline passengers' interests: airlines' pricing structure should be public; PFC should not be increased; and airlines should educate passengers about their rights..

During questions and answers with the witnesses, DeFazio criticized Chairman Shuster's ATC privatization proposal. He alleged that the new ATC entity will have to go to the Secretary of Transportation if they want to increase taxes, close a tower, or change flight paths and NextGen procedures. If the Secretary disagrees, then courts will solve they issue, and this will not be more efficient than the current process.

Senate FAA Reauthorization Hearing: On March 23, the Senate Commerce Committee's Subcommittee on Aviation Operations, Safety, and Security held a hearing on airports and aviation certification.

The hearing had two different panels, the first discussing airports, and the second certification. The witnesses on the first panel were:

- [Rhonda Hamm-Niebruegge](#), Executive Director, St. Louis Lambert International Airport
- [Bob Montgomery](#), Vice President, Airport Affairs, Southwest Airlines

The second panel's witnesses were:

- [Peggy Gilligan](#), Associate Administrator for Aviation Safety, Federal Aviation Administration (FAA)
- [Gerald Dillingham](#), Director of Civil Aviation Issues, Government Accountability Office (GAO)
- [Greg Fedele](#), President, Sabreliner Aviation

In their opening statements, Subcommittee Chairman Roy Blunt (R-MO), full Committee Ranking Member Bill Nelson (D-FL), and Subcommittee Ranking Member Maria Cantwell (D-WA) discussed the importance of aviation to the U.S. economy and the need to ensure that airport capacity is sufficient and that aviation certification is efficient and safe.

The first panel mostly discussed PFCs. GAO compared ACI-NA's projections on airports' capital needs, with the FAA's, which put the five-year capital needs at a much smaller \$33 billion. The FAA only includes projects without funding already secured, while ACI-NA includes all projects, funded or not.

Senator Dan Sullivan (R-AK) raised issues with the federal permit system. He said that if there is going to be an infrastructure package, the federal permit system needs to be modernized to allow projects to be built in realistic time frames.

Transportation Legislation Tracker

Date Filed	Bill #	Title	Committee	Summary	Status
3-Jan-17	H.R. 100	Support Local Transportation Act	Transportation & Infrastructure (House)	To amend title 23, United States Code, to modify the percentages of funds to be allocated to certain urbanized areas under the surface transportation block grant program.	01/04/2017: Referred to the House Transportation and Infrastructure Committee Subcommittee on Highways and Trust
3-Jan-17	H.R. 127	Transportation for Heroes Act of 2017	Transportation & Infrastructure (House)	Revises urbanized area formula grant recipient requirements: requires to certify that it will ensure that a fare of no more than 50% of the peak hour fare will be charged to a U.S. veteran during non-peak hours for transportation using or involving a facility or equipment of a project financed by the grant	01/04/2017: Referred to the House Committee on Transportation and Infrastructure Subcommittee on Highways and Transit
4-Jan-17	H.R. 336	Transit Benefits Modernization Act of 2017	Ways and Means and Oversight and Government Reform (House)	To provide transit benefits to federal employees who use the services of any digital transportation company in the same manner as such agency provides transit benefits to employees who use public transportation services within the Washington Metropolitan Area	01/05/2017: Referred to the House Oversight and Government Reform Committee

4-Jan-17	H.R. 268	Neighborhood Noise Barriers Act of 2017	Transportation & Infrastructure (House)	Bill makes the planning, design, or construction of a Type II noise barrier eligible for surface transportation block grant program funding.	01/05/2017: Referred to the House Transportation and Infrastructure Committee Subcommittee on Highways and Transit
13-Jan-17	H.R. 549	Transit Security Grant Program Flexibility Act	Committee of Homeland Security (House) Senate Homeland Security and Governmental Affairs Committee (Senate)	This bill permits recipients the use of public transportation security assistance grant funds for backfill associated with security training; allowing more transit agency employees to participate in security drills/exercises. Funds provided pursuant to such a grant for a specified authorized use shall, with two exceptions, remain available for use by a grant recipient for at least 36 months. Any such funds used for security improvements for public transportation systems or security improvements for stations and other public transportation infrastructure, including those owned by state or local governments, shall remain available for at least 55 months.	01/31/2017: Passed the House by Voice* vote. *no record of individual votes was made 02/01/2017: Received in the Senate and read twice and referred to the Committee on Homeland Security and Governmental Affairs.
13-Jan-17	H.R. 547	National Infrastructure Development Bank	Energy & Commerce, Financial Services, Ways and Means, Transportation & Infrastructure (House)	Establishes the National Infrastructure Development Bank as a wholly owned government corporation.	01/17/2017: Referred to the House Transportation and Infrastructure Committee Subcommittee on Water Resources and

					Environment.
31-Jan-17	H.R. 765	Increase Transportation Alternatives Investment Act of 2017	Transportation & Infrastructure (House)	The Secretary of Transportation shall carry out a grant program to support community efforts to invest in transportation alternatives.	02/01/2017: Referred to the Subcommittee on Highways and Transit; Referred to the Subcommittee on Railroads, Pipelines, and Hazardous Materials.
31-Jan-17	H.R. 765	Increase Transportation Alternatives Investment Act of 2017	Transportation & Infrastructure (House)	The Secretary of Transportation shall carry out a grant program to support community efforts to invest in transportation alternatives.	02/01/2017: Referred to the Subcommittee on Highways and Transit; Referred to the Subcommittee on Railroads, Pipelines, and Hazardous Materials.
2-Feb-17	H.R. 824	No Transportation Funds for Sanctuary Cities	Transportation & Infrastructure (House)	Prohibition on use of Federal Highway Trust funds/grant funding in sanctuary jurisdictions.	02/02/2017: Referred to the House Committee on Transportation and Infrastructure
6-Feb-17	H.R. 891	Federal Transit Modernization Act of 2017	Transportation & Infrastructure (House)	This bill repeals requirements that condition certain financial assistance for public transportation projects upon employee protective arrangements approved by the Secretary of Labor.	02/07/2017: Referred to the Subcommittee on Highways and Transit
7-Feb-17	H.R. 904	Buy American Improvement Act of 2017	Oversight and Government Reform, Financial Services, Transportation & Infrastructure,	Bill sets domestic content standards for indirect purchases by U.S. Department of Transportation grantees, ensuring that tax dollars spent on aviation, highway, transit, and rail	02/07/2017: Referred to the House Homeland Security Committee

			Energy & Commerce, Agriculture, Natural Resources, Homeland Security (House)	infrastructure will support U.S. manufacturing and mining jobs	
7-Feb-17	H.R. 932	Mobility, Opportunity, and Vocation Enabling Act or the MOVE Act	Transportation & Infrastructure (House)	Directs DOT issue regulations necessary to establish performance measures relating to multimodal transportation connectivity and accessibility for states and metropolitan planning organizations to use to assess the connectivity and accessibility of roadways, public transit infrastructure, pedestrian and bikeway infrastructure, and other transportation infrastructure.	02/08/2017: Referred to the Subcommittee on Highways and Transit
13-Feb-17	H.R. 1028	Commute Less Act of 2017	Transportation & Infrastructure (House)	Aims to amend titles 23 and 49, United States Code, with respect to congestion mitigation and metropolitan transportation planning, and for other purposes. Changes include congestion mitigation plans, an employer-based commuter programs action plan, employer advisory councils, and an employer-based commuter program.	2/13/2017: Referred to the House Committee on Transportation and Infrastructure
15-Feb-17	H.R. 1093	Safety Notification	Transportation & Infrastructure (House)	Requires the Federal Railroad Administration (FRA) Administrator and the Federal Transit Administration (FTA) Administrator to notify Congress if they conduct safety audits on railroads or rail transit agencies. Additionally, requires the	02/15/2017: Referred to the House Committee on Transportation and Infrastructure

				Administrators to provide to Congress a report describing the results of the audit within 90 days of the audit's completion.	
1-Mar-17	H.R. 1266	Vision Zero Act of 2017	Transportation & Infrastructure (House)	"Vision Zero" is the goal of eliminating all transportation-related fatalities, including pedestrians, bicyclists, transit users, motorists and passengers. The Act creates two grant programs within the Department of Transportation to award money to communities to develop and implement Vision Zero.	3/3/2017: Referred to the House Committee on Transportation and Infrastructure
2-Mar-17	H.R. 1346	To repeal the rule issued by the Federal Highway Administration and the Federal Transit Administration entitled "Metropolitan Planning Organization Coordination and Planning Area Reform".	Transportation & Infrastructure and Homeland Security (House)	The bill would repeal the MPO Coordination Rule	3/2/2017: Referred to the House Committee on Transportation and Infrastructure
2-Mar-17	S. 496	A bill to repeal the rule issued by the Federal Highway Administration and the Federal Transit Administration entitled "Metropolitan Planning Organization Coordination and Planning Area Reform".	Banking, Housing and Urban Affairs (Senate)	The bill would repeal the MPO Coordination Rule	3/8/2017: Agreed to in the Senate
10-Mar-17	H.R. 1501	To amend title 49, United States Code, with respect to apportionments to small transit intensive cities, and for other purposes.	Transportation and Infrastructure (House)	To amend title 49, United States Code, with respect to apportionments to small transit intensive cities	3/10/2017: Referred to the House T&I Committee
9-Mar-17	H.R. 1458	RAISE IT Act	Ways and Means (House)	This bill would increase the excise tax on gasoline and diesel	3/9/2017: Referred to the House Ways and Means

					Committee
22-Mar-17	H.R. 1664	Penny for Progress Act	Transportation and Infrastructure (House) and Ways and Means (House)	Bonds backed by annual increases in federal gasoline and diesel taxes would provide \$500 billion of new federal transportation funding through 2030. DeFazio's plan would index increases in the federal gasoline tax of 18.4 cents per gallon and the diesel tax of 24.4 cents per gallon to construction inflation and improvements in vehicle fuel efficiency.	3/22/2017: Referred to the Committees on Transportation & Infrastructure and Ways & Means
22-Mar-17	H.R. 1669	Partnership to Build America Act	Transportation and Infrastructure (House) and Ways and Means (House)	This legislation would create a new American Infrastructure Fund (AIF) to finance state and local infrastructure projects. The AIF is capitalized through a one-time bond sale to U.S. corporations looking to repatriate a portion of their international earnings.	3/22/2017: Referred to the Committees on Transportation & Infrastructure and Ways & Means
22-Mar-17	H.R. 1670	Infrastructure 2.0 Act	Transportation and Infrastructure (House) and Ways and Means (House)	Would create both the American Infrastructure Fund and provides additional revenues to expand the Highway Trust Fund using more comprehensive international tax reform.	3/22/2017: Referred to the Committees on Transportation & Infrastructure and Ways & Means