

Holland & Knight

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Broward Metropolitan Planning Organization Federal Update November 2015

Holland & Knight Update

- *Board Meeting:* On November 12, Holland & Knight attended the MPO monthly board meeting and provided an update on the fiscal year (FY) 2016 appropriations bills, surface transportation authorization legislation, 2016 congressional outlook, and Holland & Knight's advocacy work on behalf of the MPO.
- *TIGER Debrief Call:* Holland & Knight arranged a conference call with the MPO staff and the Department of Transportation (DOT) TIGER team to discuss the MPO's TIGER application. The DOT participants were: Robert Mariner, DOT lead for the TIGER program; John Augustine, Director of the Office of Infrastructure Finance and Innovation; and Thomas Berry, project lead for reviewing Broward's application.

DOT received 627 applications requesting more than \$10 billion for this round of TIGER. 39 applications were awarded \$500 million. DOT said that this project was a "great overall project" It "told a good story" and DOT "liked overall aim" of the project. The application included DOT's metrics--ladders of opportunity, state of good repair, safety, economic competitiveness, bike/pedestrian, Americans with Disabilities Act (ADA), last mile, and environmental benefits. DOT stated that the application needed more details on the project description and tangible benefits. DOT was concerned that the funding for the project could not be obligated on time. DOT also said that the \$39 million request was too high as the average TIGER award ranges from \$13 to 18 million.

- *Surface Transportation Reauthorization:* Holland & Knight drafted a letter for the MPO to send to the conferees outlining the board's priorities for the bill. We shared the final signed letter with the conferees' senior staff and the congressional delegation. H&K was also in communication with committee staff as well with the Broward Congressional delegation providing feedback on the conference report.

Consideration of FY 2016 THUD Appropriations Bill: On November 18, the Senate began consideration of the Fiscal Year (FY) 2016 Transportation-HUD Appropriations bill. The budget deal, which was passed by Congress in late October, included an increase in spending caps and raised the nation's debt limit until March 2017. As a result, the Senate THUD measure received a boost from the \$55.65 billion draft version to \$57.27 billion following the budget deal, an increase of \$1.62 billion. The bill provides an additional \$100 million for the TIGER grant program for a total of \$600 million. The bill also includes an additional \$50 million for Positive Train Control (PTC) technology. Additionally, Capitol Investment Grants receive an increase of \$311 million

for a total of \$1.896 billion. Overall, Department of Transportation (DOT) programs received a \$690 million increase. Below are charts that demonstrate the increase in THUD appropriations funding.

The "Big Six" USDOT Discretionary Appropriations Accounts

(Millions of dollars of discretionary budget authority. FY 2016 request rescored by Appropriations Committees to reject the Budget's proposed switch of certain existing FRA, FTA and NHTSA accounts from discretionary to mandatory. Senate numbers are SA #2812 on 11/18/2015.)

Mode	Account	FY 2014	FY 2015	FY 2016	FY 2016	FY 2016
		Enacted	Enacted	Request	House	Senate
OST	Nat'l Infra. Invest./TIGER Grants	600	500	1,250	100	600
FAA	Operations	9,651	9,741	9,915	9,870	9,898
FAA	Facilities & Equipment	2,600	2,600	2,855	2,500	2,855
FRA	Amtrak Operating Subsidies	340	250	n/a	289	289
FRA	Amtrak Capital & Debt Grants	1,050	1,140	n/a	850	1,102
	<i>Subtotal, FRA Amtrak Grants</i>	<i>1,390</i>	<i>1,390</i>	<i>2,450</i>	<i>1,139</i>	<i>1,390</i>
FTA	Capital Investment Grants	1,943	2,120	3,250	1,921	1,896
All Other USDOT Discretionary		1,633	1,450	4,288	1,651	1,835
Total USDOT Discretionary (Net)		17,817	17,801	24,008	17,181	18,474
				<i>FY 2016 vs FY 2015</i>	<i>+6,207</i>	<i>+673</i>
				<i>Senate vs Request/House</i>	<i>-5,534</i>	<i>+1,293</i>

Changes Made To the FY 2016 Transportation-Housing Appropriations Bill on the Senate Floor by Amendment #2812

Millions of dollars of discretionary budget authority.

		Committee	Floor	Floor
		<u>Version</u>	<u>Increase</u>	<u>Version</u>
OST	TIGER/NII Grants	500.0	+100.0	600.0
FAA	Facilities & Equipment	2,600.0	+255.0	2,855.0
FTA	Capital Investment Grants	1,585.0	+311.0	1,896.0
MARAD	Maritime Security Program	186.0	+24.0	210.0
Subtotal, USDOT Plus-Ups			+690.0	
HUD	Community Dev. Block Grant	2,900.0	+100.0	3,000.0
HUD	HOME Program	66.0	+834.0	900.0
Subtotal, HUD Plus-Ups			+934.0	
Net Total Discr. BA in Bill		55,646.0	1,624.0	57,270.0

In an effort led by Senator Wicker and Senator Feinstein, the Senate voted on November 18 by voice vote on an amendment to require DOT to complete a comprehensive safety study and conduct a formal rulemaking process with public notice and comment period before longer trucks ("twin 33s") are permitted on highways. Prior to this amendment being passed, language allowing

for longer tracker trailers was included in both the House and Senate versions of THUD appropriations. Supporters of eliminating the twin 33 provision said it overrides 38 states that have made longer trucks illegal on their roads.

Even though over 50 amendments had been filed on the Senate THUD bill, Senate debate ground to a halt on November 19, Thursday, when Senator Rand Paul (R-Ky.) blocked progress on the bill. He objected to consideration of all amendments until his amendment that would bar assistance to refugees from certain countries could get a vote. As a result, Senator Majority Leader Mitch McConnell (R-Ky.) withdrew the motion to end debate on the appropriations bill. THUD Appropriations Subcommittee Susan Collins (R-Maine) said that it is unlikely the Senate will consider the bill on the Senate floor. On Thursday afternoon, she said, "Given the very little time that remains, I cannot be very optimistic that we're going to be able to return to the bill.." "At this point," Collins said, it's "probably a good bet" the THUD spending bill will get rolled into the FY 2016 omnibus appropriations bill.

As the current continuing resolution (CR) expires December 11, the Senate and House Appropriations Committee staff have been working on drafting the omnibus bill . House and Senate leadership are bracing for a fight regarding "policy riders," such as defunding Planned Parenthood, eliminating the Waters of the U.S. Rule (WOTUS), or barring the Administration from punishing states that opt out of the Clean Power Plan. House Republican leadership has said that policy riders must be included in the spending bills while Democrats have united against them.

Senate and House Move to Conference on Surface Transportation Bill: On November 10, the Senate approved a motion to go to conference with the House on a multiyear highway and transit bill by a vote of 82-7. Both Senators Boxer and Feinstein voted for the motion. After voting to go to conference, the Senate also approved a motion sponsored by Sen. Roger Wicker (R-Miss.) by a vote of 56-31 to instruct conferees to require DOT to complete a safety study before longer trucks could be allowed on highways. As an outspoken advocate for truck size and weight limitations, Senator Feinstein voted in favor of the motion, while Senator Boxer did not vote. Currently, neither the House or Senate bill includes language expanding the length limits for double tractor trailers. The Senate also approved a motion by Sen. Richard Blumenthal (D-Conn.) by voice vote to instruct conferees to include rail safety provisions, including nearly \$200 million in grant funding for positive train control that were included in the Senate's DRIVE.

After the approving the motion to go to conference, Senate leadership announced seven Republicans and six Democrats to be conferees: Senator Jim Inhofe (R-Okla.), chairman of the Senate Environment and Public Works Committee; Senator Barbara Boxer (D-Calif.), ranking member of the Senate Environment and Public Works Committee; Senator John Thune (R-S.D.), chairman of the Senate Commerce Committee; Senator Bill Nelson (D-Fla.), ranking member of the Senate Commerce Committee; Senator Orrin Hatch (R-Utah), chairman of the Senate Finance Committee; Senator Ron Wyden (D-Ore.), ranking member of the Senate Finance Committee; Senator John Cornyn (R-Texas), Senate Majority Whip and member of the Senate Finance Committee; Senator John Barrasso (R-Wyo.), Chairman of the Senate Republican Policy Committee and member of the Senate Environment and Public Works Committee; Senator Lisa Murkowski (R-Alaska), chairwoman of the Senate Energy and Natural Resources Committee; and Senator Deb Fischer (R-Neb.), chairwoman of the Senate Commerce's Subcommittee on Surface

Transportation and Merchant Marine Infrastructure, Safety and Security; Senator Sherrod Brown (D-Ohio), ranking member of the Senate Banking Committee; Senator Dick Durbin (D-Ill.), Assistant Democratic Leader; and Senator Charles Schumer (D-N.Y.), member of the Senate Finance and Banking Committees, Vice Chair of the Democratic Conference, and Chair of the Senate Democratic Policy and Communications Center.

On November 5, the House announced its conferees from the House Transportation and Infrastructure Committee. In addition to Chairman Bill Shuster (R-PA) and Ranking Member Peter DeFazio (D-OR), the House conferees include members of the Highways and Transit Subcommittee: Reps. John J. Duncan, Jr. (R-Tenn.), Sam Graves (R-Mo.), Candice Miller (R-Mich.), Rick Crawford (R-Ark.), Lou Barletta (R-Pa.), Blake Farenthold (R-TX), Bob Gibbs (R-Ohio), Jeff Denham (R-Calif.), Reid Ribble (R-Wis.), Scott Perry (R-Pa.), Rob Woodall (R-Ga.), John Katko (R-N.Y.), Brian Babin (R-Texas), Crescent Hardy (R-Nev.), Garret Graves (R-La.), Jerrold Nadler (D-N.Y.), Corrine Brown (D-Fla.), Eddie Bernice Johnson (D-Texas), Elijah Cummings (D-Md.), Rick Larsen (D-Wash.), Michael Capuano (D-Mass.), Grace Napolitano (D-Calif.), Daniel Lipinski (D-Ill.), Steve Cohen (D-Tenn.), Albio Sires (D-N.J.), and Delegate Eleanor Holmes Norton (D-D.C.).

Additionally, on November 17, Speaker Ryan (R-Wis.) announced 16 more House Republicans that would serve on the conference committee. The conferees include Chairman Mac Thornberry (R-Texas) and Rep. Mike Rogers (R-Ala.) of the Armed Services Committee; Chairman Fred Upton (R-Mich.) and Rep. Markwayne Mullin (R-Okla.) of the Energy and Commerce Committee; Chairman Jeb Hensarling (R-Texas) and Rep. Randy Neugebauer (R-Texas) of the Financial Services Committee; Chairman Bob Goodlatte (R-Va.) and Rep. Tom Marino (R-Pa.) of the Judiciary Committee; Rep. Darin LaHood (R-Ill.) and Rep. Glenn Thomson (R-Pa.) of the Natural Resources Committee; Rep. Will Hurd (R-Texas) and Rep. John Mica (R-Fla.) of the Oversight and Government Reform Committee; Chairman Lamar Smith (R-Texas) and Rep. Barbara Comstock (R-Va.) of the Science, Space, and Technology Committee; and Chairman Kevin Brady (R-Texas) and Rep. Dave Reichert (R-Wash.) of the Ways and Means Committee.

The first official meeting of the conferees was held on Wednesday, November 18. House Transportation and Infrastructure Chairman Bill Shuster (R-Pa.) was named Chairman of the conference committee and Senate Environment and Public Works Committee Chairman Jim Inhofe (R-Okla.) was named c-chairman. Shuster said his goal for the conference was to produce an agreement by November 30 in order to get the President a bill before the current December 4 deadline.

Major issues that must be addressed by the conferees include overall funding levels, how long the authorization will last, and the controversial pay-for involving Federal Reserve funds. For example, the Senate DRIVE Act has higher funding levels than the House STRR Act and the Senate DRIVE Act is funded for four years while the House bill is funded for six years.

Another potential battle includes the House provision that dismantles a program that funnels more mass transit funding to seven “high-density” Northeastern states and redistributes it nationwide through a competitive bus grant program. Senator Chuck Schumer (R-N.Y.) has been outspoken saying that the amendment unfairly targets the Northeast, which has a disproportionately high number of mass transit users compared to the rest of the country. In the House, Reps. Richard

Hanna (R-N.Y.) and Louise Slaughter (D-N.Y.) sent letters to the conferees from the New York delegation and one from the members of the seven affected states, urging them to oppose the provision.

Recently, Holland & Knight spoke with Senate Environment and Public Works Committee staff who indicated that the bill will have higher funding levels than the House.

The Senate motion to conference was approved just 10 days before the original November 20 deadline, when authorization was set to expire. However, since the conferees were not able to reach an agreement prior to November 20 both the House and Senate approved measures to extend the Highway Trust Fund authorization until December 4. Lawmakers are optimistic they can finalize a conference report by then.

Letter from Secretary Foxx to Conferees: DOT Secretary Anthony Foxx sent letters to the senior House and Senate conferees on the surface transportation reauthorization bill on November 13. Within the letter, Foxx expresses appreciation for the inclusion of key provisions from the Administration's reauthorization proposal, Grow America Act, in both the House and Senate transportation bills.

However, the Secretary also writes that the Administration still has concerns regarding funding, specifically the cuts to the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program. He writes, "While both the Senate and House versions of the bill provide important flexibility to allow the Department to make use of carryover funds from previous years to supplement these amounts, the levels in these bills would be insufficient to sustain the TIFIA program at its current level of activity – much less manage the increased interest we are seeing in public-private partnerships."

Secondly, he writes that the Administration supports the inclusion of a rail title with increased funding in the Senate DRIVE Act. Additionally, he notes that the Senate's proposal includes \$199 million to help commuter railroads install positive train control, which has a new deadline of being installed by all commuter railroads by December 2018.

Additionally, the letter expresses concern regarding funding levels for DOT's administrative activities, noting that the House version of the bill does not contain enough funding to administer and staff the programs authorized by the bill and required by existing law. He says that the House version regarding funding levels for administrative activities will hamper efforts to respond quickly and efficiently to managing defect investigations and recalls, implement transit safety authorities, and support research in key safety areas.

Lastly, Foxx writes that proposals included in the current proposal encourage the delegation of federal authorities to states, which could lead to inconsistency and confusion across the country and predicts this approach would lead to litigation which is more likely to delay projects rather than expedite them. Specifically, Foxx mentions that the pilot provision delegating federal authorities in the House version should be removed.

FRA Administrator Clamps Down on PTC Implementation: On Thursday, November 19, Federal Railroad Administrator (FRA) Administrator Sarah Feinberg sent a letter to commuter and freight railroads outlining information they must provide to the FRA on revised positive train control implementation plans (PTCIP) by January 27. Specifically, a PTCIP must include a detailed schedule for implementing PTC by December 31, 2018; the calendar years in which spectrum will be acquired for PTC implementation; the total amount of PTC system hardware that will be installed for implementation and a timeline for implementation; the number of employees required to receive training under PTC regulations and the number of employees trained each calendar year; a summary of any remaining challenges to implementing PTC; a description of how the PTC system will provide for interoperability of the system with the movement of trains of other railroad carriers over its lines; and a description of how the PTC system will be implemented in a way that addresses areas of greater risk before areas of lesser risk. This directive comes as part of revised PTC implementation plans that was required by the budget deal, which allowed the installation deadline for PTC to be delayed until December of 2018.

Feinberg writes that the FRA will not consider any alternative schedules requesting PTC extensions until railroads have “met the statutory prerequisites for secretarial approval (under the law).” Additionally, she writes, “the FRA does not believe any railroad has met the statutory prerequisites at this time.” Under the PTC extension, the FRA now has the authority to provide guidance and oversight to railroads that have yet to implement PTC controls. Currently, any railroad that does not submit or refile a revised plan on time could face a minimum \$5,000 fine per day.

House Leadership to Overhaul Steering Committee: The House Republican Steering Committee is facing an overhaul following the election of Rep. Paul Ryan (R-Wis.) as Speaker of the House. Following his election, Ryan created a task force charged with recommending new Steering Committee rules in an effort to decentralize power. Currently, the Committee selects member committee assignments. Sources inside the talks have confirmed that the task force will recommend that Ryan, who currently has five votes on the committee, lowers his vote total to four. Furthermore, the panel will propose removing top committee chairs off the panel, and instead give them one rotating seat in which they can voice their opinions on issues involving their committees. As a result, the committee would be comprised of representatives elected by lawmakers, instead of committee chairs. Additionally, the Speaker would be able to appoint one lawmaker for an “at-large” slot. On November 19, Republican lawmakers approved the proposal by a voice vote.