Holland & Knight
800 17th Street, NW, Suite 1100 Washington, DC 20006
T 202.955.3000 | F 202.955.5564

Broward Metropolitan Planning Organization
FEDERAL UPDATE
April 2015

Broward MPO Washington DC Visit: On April 17, Gregory Stuart visited Washington, DC for AMPO leadership meeting. Holland & Knight arranged meetings for him with staff with Senator Bill Nelson, Rep. Debbie Wasserman Shultz and Senate Environment and Public Works Committee. Greg discussed the MPO's TIGER project and new streamlining process with FDOT.

House Considers FY 2016 Transportation, Housing and Urban Development Appropriations: This month, the House Appropriations Subcommittee on Transportation, Housing and Urban Development marked up its FY 2016 appropriations bill. Overall, the bill provides $55.3 billion in discretionary spending, $1.5 billion above FY 2015 funding, and $9.7 billion below the President’s budget request – for both transportation and housing programs. However, much of this increase in appropriations is negated by HUD inflation costs and lowered Federal Housing Administration receipts.

For the Department of Transportation (DOT), the bill provides $17.2 billion in discretionary spending, $1 billion below FY 2015. The legislation includes the following funding for DOT:

- $12.53 billion for the Federal Aviation Administration (FAA), $159 million above FY 2015
  - $9.87 billion for operations
  - $2.5 billion for facilities and equipment
  - $156 million for research, engineering, and development
- $1.4 billion for the Federal Railroad Administration (FRA), $262 million below FY 2015
  - $850 million for Amtrak capital and debt
  - $289 million for Amtrak operating subsidies
  - $186 million for safety and operations
  - $39.1 million for research and development
- $100 million for TIGER discretionary grants – $400 million below FY 2015
- $40.25 billion for federal highways – equal to FY 2015 funding
- $10.7 billion for the Federal Transit Administration (FTA), $161 million below FY 2015
  - $8.595 million for transit formula grants, same as FY 2015
  - $1.9 billion for Capital Investment Grants (New Starts), $199 million below FY 2015
    - $40 million for Core Capacity
    - $250 million for projects entering FFGA by the end of FY 2016
    - Remainder would go towards Small Starts projects that can be funded in a single year

- $837 million for the National Highway Traffic Safety Administration (NHTSA) – $6.5 million above FY 15

Highway Trust Fund Timing: Discussions have been ongoing regarding extension of the Highway Trust Fund as the current authorization expires May 31. Given the lack of legislative days in May for Congress to enact a six-year bill, the key question is the length of the extension. Congress is considering a couple of different scenarios including a two-month extension (which does not cost), one until the end of the current fiscal year and another to the end of the calendar year (cost is $10 billion).

House Transportation & Infrastructure Committee Chairman Bill Shuster (R-Pa.) has indicated that he is looking to pass an extension through the end of December to allow funding to continue for construction of critical projects during the summer months. According to the Congressional Budget Office (CBO), $10 billion will be needed to ensure the HTF remains solvent through December. House Ways and Means Committee Chairman Paul Ryan indicated that he would like to see a temporary extension that keeps the Highway Trust Fund solvent through the end of the year.

Senate Environment and Public Works Committee Chairman Jim Inhofe (R-Okl.) prefers a clean extension into the summer which would not cost anything. This would put pressure on Congress to pass a surface transportation reauthorization bill this year and give Congress more time to figure out the funding issue.

The Senate Finance Committee met this past week to discuss extension but were unable to agree on the timing of the extension. Senate Finance Committee Chairman Orrin Hatch (R-UT) is proposing an $11 billion short-term funding measure to extend the Highway Trust Fund through the end of December. Senator Hatch said that if the proposal were to come to fruition, it would not be considered on the Senate floor "until about July." The Senator claims that current funding still moving through the pipeline for various projects would allow Congress to enact a short-term patch beyond the May 31 deadline.

Senate Minority Whip Richard Durbin (D-IL) said he is opposed to the short-term measure, adding that Congress "cannot patch [its] way to prosperity." Senate Finance Committee Ranking Member Ron Wyden (D-OR) did not take an explicit position and instead said that Congress is "talking about all the options."

Senator Hatch reportedly has a number of offsets already prepared for the proposal, including approximately $3 billion in offsets related to income tax provisions – in addition to others such as spending cuts and other savings mechanisms.

Funding for Highway Trust Fund Legislation Introduced in House and Senate: On April 16, Senate Environment and Public Works Committee Ranking Member Barbara Boxer (D-CA) and Senator Rand Paul (R-KY) introduced the Invest in Transportation Act of 2015 (S. 981). The bill seeks to create incentives for private companies to repatriate foreign earnings kept overseas by temporarily lowering the tax rate on such earnings to 6.5 percent. Furthermore, the bill would ensure that all revenues from repatriation would be transferred into the Highway Trust Fund, with at least 25 percent of such funds going toward hiring, wages, and pensions; research and development; public-private partnerships; and capital improvements and acquisitions. The Senators estimate that there is nearly $2 trillion in foreign earnings currently being held overseas. The legislation has been referred to the Senate Finance Committee for further consideration.

In the House, Representatives Jim Renacci (R-OH), Bill Pascrell (D-NJ), Reid Ribble (R-WI), and Dan Lipinski (D-IL) introduced H.R. 1846, the Bridge to Sustainable Infrastructure Act. The bill would index the gasoline and diesel fuel user fees to inflation, raising approximately $27.5 billion to sustain the Highway Trust Fund for approximately 1.7 years. The bill also establishes a bipartisan Transportation Commission by September 1, 2015 that would be charged with finding a long-term fix. The members said in a joint statement, "The longer we wait to fix our crumbling infrastructure, the more it will cost in the long-run. We need to act now to fix the broken system." No members of the Florida House Delegation have signed onto the bill.

Senate Banking Committee Holds Hearings on MAP-21: On April 21 and 23, the Senate Committee on Banking, Housing, and Urban Affairs held two hearings on MAP-21 surface transportation reauthorization. The first hearing featured FTA Acting Administrator Therese McMillan, during which she testified before the committee in support of the President's $302 billion, four-year GROW AMERICA Act proposal. Acting Administrator McMillan argued that, "We are not going to be able to advance and meet the needs of transit and the larger United States transportation system if we don't see increased funding levels." Senate Banking Committee Member Jerry Moran (R-Kan.) argued that funding for the reauthorization bill is "going to be much closer to flat line than it is a significant increase."

Committee Chairman Richard Shelby (R-Ala.) noted that Congress and the agencies would have to change the way it prioritizes and allocates federal dollars since "we're not going to have the money that we need" and instead must leverage private sector investments. Chairman Shelby added, "Regardless of the demand, the one thing we do not need is infrastructure that cannot be adequately maintained." Senate Banking Committee Ranking Member Sherrod Brown (D-Ohio) responded that he doesn't believe that adequate maintenance is being conducted already: "We're saying we shouldn't invest in new infrastructure until we fund existing infrastructure, but we're not funding existing infrastructure."

The second hearing featured representatives from the American Public Transportation Association (APTA), the U.S. Chamber of Commerce, the Transport Workers Union of America, and Prairie Hills Transit. The second panel focused on stakeholder perspectives on the need to pass a predictable, multi-year surface transportation reauthorization bill.

DOT Announces TIGER VII Notice of Funding Availability: On April 2, DOT announced the availability of $500 million for the seventh round of the Transportation Investment Generating Economic Recovery (TIGER) competitive grant program. Applicants this year will be required to fill out a pre-application online questionnaire, while the application itself will appear differently to reflect changes made in Office of Management and Budget (OMB) guidance that was issued in December. Otherwise, the eligibility requirements have largely remained the same and applicants are still encouraged to place a strong emphasis on Ladders of Opportunity. Pre-applications opened on April 3 and were due by May 4. Final applications opened on May 5 and must be submitted by June 5, 2015.

FTA Publishes Capital Investment Grants Program Guidance: On April 8, the FTA published its proposed guidance for the Capital Investment Grants program. The "Proposed Interim Policy Guidance" is meant to serve as a guide for project sponsors until FTA issues its final rule implementing MAP-21. FTA is currently accepting public comments on the proposed guidance, and the deadline to submit those comments is currently May 8, 2015, 30 days from its publish date in the *Federal Register*. At this time, FTA is only seeking comments on the components not listed in the Major Capital Investment Projects Final Rule issued in January 2013 or the New Starts and Small Starts Final Policy Guidance published in August 2013.

The proposed guidance will provide additional clarification on the current methods for applying project justification and criteria regarding the rating and evaluation of New Starts, Small Starts, and Core Capacity Improvement projects. The intent is that the document, when final, will be a comprehensive document that covers the entirety of the Capital Investment Grants program.

DOT Hosts TIGER Summit: On April 16, DOT hosted a TIGER summit at DOT headquarters for the first time in the history of the program. The purpose of the summit was to connect current and prospective applicants with key DOT officials and other technical experts. The summit featured top transportation officials, such as Transportation Secretary Anthony Foxx, Under Secretary for Policy Peter Rogoff, Assistant Secretary for Policy Carlos Monje, Director of Infrastructure Finance and Innovation John Augustine, and Deputy Director of Infrastructure Finance and Innovation Robert Mariner. Prior year successful applicants presented and described best practices.

Prevailing themes included the use of leveraging partnerships with other government entities and private partners, over-matching of funds, ladders of opportunity, and project readiness. In addition to the summit, additional TIGER webinars were held April 23 and April 28.

Transportation Secretary Foxx Announces LadderSTEP Technical Assistance Program: On April 23 DOT Secretary Anthony Foxx announced a new technical assistance pilot program to "foster sustainable economic development related to planned transportation projects." The pilot program, known as LadderSTEP, will launch in seven cities across the United States, including Atlanta, Ga.; Baltimore, Md.; Baton Rouge, La.; Charlotte, N.C.; Indianapolis, Ind.; Phoenix, Ariz.; and Richmond, Va. According to DOT, the LadderSTEP program is part of the department's Ladders of Opportunity strategy and is joined by similar components such as the Safer People, Safer Streets program and the Local Hire Initiative.

The Department of Transportation is launching a LadderSTEP Transportation Empowerment Pilot that provides technical assistance to local cities by convening public and private entities to advance game-changing community revitalization projects.

The goals of the program are to help cities advance sustainable economic development around one big transportation project by providing technical assistance to communities by sharing expertise in advancing federally funded projects and informing communities about resource networks that could support project implementation. DOT will also hold events to encourage public and private resources to facilitate project partnerships that are mutually beneficial and ensure that the long-term public interest is protected.

The Pilot seeks to demonstrate that transportation projects can revitalize distressed neighborhoods and support economic development; connect people to work and essential services; and provide people access to opportunity and support social mobility.

The schedule:

PHASE I - Community Selection & Outreach (Winter 2014): The Department will select pilot communities based on the criteria approved by counsel; and meet with city leadership to discuss the local vision and priorities to identify potential resources that can be provided for the pilot project;

PHASE II - Work Plan (Winter/Early Spring 2015): DOT will work with Mayor's to develop an implementation plan for the pilot;

PHASE III - Convening's (Spring 2015): DOT will work with Mayors to convene local officials, resource groups and other interested parties to foster dialogue;

PHASE IV - Sustained Technical Assistance (2015-2016): The Department will work with the Mayor's Office to support the implementation of each pilot work plan through the regional resource team to include national resource groups, federal agency partners, and local stakeholders.

Crude-By-Rail Update: In a joint announcement with Canadian Transportation Minister Lisa Raitt, DOT has announced the final rule to improve crude-by-rail safety. The crude-by-rail rule was first proposed in July and has since been the center of focus as DOT, Congress, and industry stakeholders attempt to reconcile varying priorities and safety standards. Since then, the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Railroad Administration (FRA) have been working in coordinate with Canada to develop the final rule.

In summary, the final rule includes: (1) requiring tank cars constructed after October 1, 2015 to meet new design specifications while requiring existing cars to be retrofitted with the same safety components; (2) requiring such trains to utilize a new two-way, end-of-train device or distributed power braking system; (3) restricting high-hazard flammable trains to 50 mph; conducting an analysis of rail routing to consider safety; and (4) enhancing the classification of unrefined petroleum-based products.

Senators Ron Wyden (D-OR), Chuck Schumer (D-NY), Dianne Feinstein (D-CA), Bob Casey (D-PA), Jeff Merkley (D-OR), Sherrod Brown (D-OH), and Mark Warner (D-VA) introduced legislation ahead of DOT's final rule, entitled the Hazardous Materials Rail Transportation Safety Improvement Act of 2015. The bill seeks to speed up the phasing-out of older tank car models that have been known to pose enhanced risks during the transportation of Class 3 flammable liquids, which include hazardous materials such as crude oil and ethanol. The legislation seeks to achieve this by placing a $175 per shipment fee on these older tank cars. The revenue earned through the fee would go to assist first responders and to a dedicated fund for clean-up costs associated with oil train accidents.

On April 15, Representatives Jim McDermott (D-WA) and Doris Matsui (D-CA) introduced legislation that is very similar to a another Senate bill that was introduced by Senators Maria Cantwell (D-WA), Patty Murray (D-WA), Tammy Baldwin (D-WI), and Dianne Feinstein on March 25 (S. 859). The bill, also known as the Crude-by-Rail Safety Act (H.R. 1804), establishes new maximum volatility standards for crude oil transported by rail and imposes a ban on "unsafe" DOT-111 tank cars. Furthermore, the legislation calls for comprehensive oil spill response planning and studies to be conducted. Like the Senate version, H.R. 1804 would also mandate the implementation of a confidential "close-call" reporting system. Representatives Mike Thompson (D-CA), Nita Lowey (D-NY), and Ron Kind (D-WI) are also original cosponsors of the bill.

This month, the National Transportation Safety Board (NTSB) also issued "urgent recommendations" to the Pipeline and Hazardous Materials Safety Administration (PHMSA), calling for action on the production and use of more resilient rail cars that carry flammable liquids. The recommendations were made following an examination of derailment events in West Virginia, Illinois and Ontario. NTSB has cited "unacceptable performance" associated with bare steel tank cars used to transport Class 3 flammable liquids.

In response, NTSB has issued four safety recommendations to PHMSA:

1. All new and existing tank cars that transport Class 3 flammable liquids should be equipped with thermal protection systems that meet or exceed federal performance standards.
2. All new and existing tank cars should be equipped with appropriately sized pressure relief devices.
3. PHMSA should adopt an "aggressive, intermediate" progress schedule to phase out or retrofit legal DOT-111 and CPC-1232 tank cars.
4. Establish a publicly available reporting system to track the replacement and retrofitting of tank cars.

In a letter to Acting PHMSA Administrator Timothy Butters, NTSB Chairman Christopher Hart cited exponential growth of oil rail traffic as a reason to expedite implementation of safer rail cars. "We can't wait a decade for safer rail cars," he said. "The industry needs to make this issue a priority and expedite the safety enhancements; otherwise, we continue to put our communities at risk."

Senators Boxer and Feinstein Introduce Positive Train Control Legislation: On April 16, Senators Barbara Boxer and Dianne Feinstein – along with Senators Richard Blumenthal (D-CT), Kirsten Gillibrand (D-NY), and Chuck Schumer – introduced S. 1006, the Positive Train Control Safety Act. The legislation allows the Federal Railroad Administration (FRA) to grant one-year extensions to certain railroads on a case-by-case basis until 2018 as they work to implement Positive Train Control (PTC) safety systems. Current law requires railroads to completely implement PTC by the end of 2015. The legislation would also require regular status reports from railroads during their implementation efforts, require trains carrying crude oil or ethanol to run on tracks already equipped with PTC, and seeks to implement a wide array of new safety and accountability measures along tracks. The legislation has been referred to the Senate Commerce, Science, and Transportation Committee for further consideration.