

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 May 2015

FY 2016 Transportation, Housing and Urban Development Appropriations: This month, the House Appropriations Committee approved the fiscal year 2016 Transportation, Housing and Urban Development Appropriations (THUD) bill after a five hour mark-up on May 13. The Committee voted 30 to 21 along party lines, with Florida Republican Representatives Ander Crenshaw, Mario Diaz-Balart, Tom Rooney, and David Jolly voting in favor of the measure, while Democratic Representative Debbie Wasserman Schultz voted against the measure.

The bill provides \$55.3 billion in discretionary spending for both transportation and housing programs –\$1.5 billion above FY 2015 funding and \$9.7 billion below the President’s budget request. However, this increase in appropriations is almost completely negated by HUD inflation costs and lowered Federal Housing Authority (FHA) receipts.

The overall funding amounts within the DOT budget are broken down as follows:

- \$40.25 billion for federal highways – equal to FY 15 funding
- \$15.9 billion for the Federal Aviation Administration (FAA) – \$159 million above FY 15
 - \$9.87 billion for operations
 - \$2.5 billion for facilities and equipment
 - \$156 million for research, engineering, and development
- \$10.7 billion for the Federal Transit Administration (FTA) – \$161 million below FY 15
 - \$1.9 billion for Capital Investment Grants or “New Starts”, including \$40 million for Core Capacity
 - \$8.595 billion for transit formula grants
 - \$26 million for transit research
- \$1.4 billion for the Federal Railroad Administration (FRA) – \$262 million below FY 15
 - \$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
- \$837 million for the National Highway Traffic Safety Administration (NHTSA) – \$6.5 million above FY 15
- \$100 million for TIGER discretionary grants – \$400 million below FY 15

Several amendments were adopted including an amendment by House Appropriations Committee Ranking Member Nita Lowey (D-N.Y.) that increases funding for the Railway-Highways Crossing Program by \$130 million, for a total of \$350 million in FY 2016.

The Committee bill provides \$260 million less funding than FY 15 for Amtrak, which was the source of controversy after an Amtrak train derailed in Philadelphia, killing 8 passengers and injuring roughly 200 others. The Committee also rejected an amendment to provide \$825 million for positive train control, which the National Transportation Safety Board (NTSB) indicated could have prevented the derailment: “Based on what we know right now, we feel that had such a system been installed in this section of track, this accident would not have occurred.” However, Senate Appropriations Chairwoman Susan Collins (R-Maine) has given recent indication that she will include federal funds dedicated for rail safety in the Senate THUD appropriations bill.

The bill includes language increasing the minimum length limitation for certain truck trailers to 33 feet, up from the previous 28-foot minimum.

Currently, the House is expected to consider the FY 2016 THUD Appropriations bill on the floor during the week of June 1. In Holland & Knight’s discussions with the Senate THUD Appropriations Subcommittee clerk, the Senate THUD bill should be marked up within the next several weeks.

The White House issued a Statement of Administration Policy (SAP) indicating that the President would veto the House THUD bill, citing sequestration funding levels and the spending caps included in the budget resolution as reasons why the bill is not viable. The SAP also cites concerns with provisions in the bill, such as reductions to surface transportation programs, TIGER and Capital Investment Grants, rail safety programs, and others.

Update on FY 2016 Appropriations Process in the Senate: Democratic members in the Senate are raising obstacles in the FY 2016 appropriations process. Senate Appropriations Committee Ranking Member Barbara Mikulski (D-Md.) who said that Democrats would block any bill on the floor unless leadership agrees to new discretionary spending caps that eliminate sequestration: “although we are moving the process along today, I want to put the Chairman on notice. The President will veto bills at this allocation, and Democrats will vote against motions to proceed to these bills on the Senate floor.” Senate Democrats will oppose any motions to proceed on FY 2016 funding measures until new budget caps are agreed to, which eliminate sequestration for domestic discretionary spending.

Surface Transportation Reauthorization Update: This month, Congress voted to extend the authority for the Highway Trust Fund which was set to expire May 31, for an additional two months, through the end of July. The legislation does not carry an additional cost since the Trust Fund has sufficient funds to continue its obligations through that same period. The House passed H.R. 2353, the Highway & Transportation Funding Act of 2015, on May 19 by a vote of 387 to 35. Representative Curt Clawson (R-Fla.) was the only Florida House member to oppose the measure. The Senate then approved the measure by voice vote on May 23. Moving forward, Congress will now have to identify new funding to enact either a new bill or any extension past July 31 when trust funds run out.

Senate Environment and Public Works (EPW) Committee Chairman Jim Inhofe (R-Okla) and Ranking Member Barbara Boxer (D-Calif.) have indicated that the EPW Committee will mark up a six-year surface transportation reauthorization bill on June 24.

Meanwhile, Senate Finance Committee Chairman Orrin Hatch (R-Utah) floated the idea this month of an \$11 billion short-term funding measure to extend the Highway Trust Fund through the end of December. Chairman Hatch said that if the proposal were to come to fruition, it would not be considered on the Senate floor “until about July.” 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.

House Transportation and Infrastructure Committee and Senate Banking Committee staff have told Holland & Knight that they are waiting on the House Ways and Means and Senate Finance Committees to identify specific funding sources before the committee releases their reauthorization bills.

TIGER Update: The 2015 TIGER applications are due on June 5 by 11:59 EST. Holland & Knight met with DOT TIGER staff this past week who said that they had received 1000 pre-applications requesting \$14 billion. \$500 million is available for this round and DOT indicated that there probably 750 applications will be awarded. Holland & Knight has been working to secure letters from the delegation. At this time, we have secured letters from Reps. Frankel, Wasserman Shultz, Hastings, and Deutch.

Infrastructure Financing Legislation Introduced Senate: On May 12, Senator Deb Fischer (R-Neb.) introduced S. 1296, the Build USA Act. The legislation would create a new American Infrastructure Bank (AIB), which would provide new financing and funding tools to generate new transportation projects. States will be permitted to enter into voluntary three-year agreements with the AIB that would grant them the option to remit federal transportation funding (in which states receive 90 percent of remitted funds for core infrastructure projects and are granted authority and oversight for compliance with certain federal regulations in exchange), apply for a project loan through AIB, or both. The AIB would be funded through voluntary repatriation, in conjunction with interest revenues and receipts from remittance agreements. Senator Fischer said, “My bill adheres to three important points: reduce regulatory burdens, redirect funding, and provide states with more authority to manage their highways and bridges.” She added, “Nebraska has gained successful results with this model and it’s time to bring best practices from our states to the national discussion.” Currently, the legislation does not have any cosponsors.

Meanwhile, Senators Ron Wyden (D-Ore.) and John Hoeven (R-N.D.) introduced legislation to attract private investment in public infrastructure projects. The bill, known as the Move America Act of 2015 (S. 1186), would: (1) provide up to \$180 billion in tax-exempt bond authority known as “Move America Bonds” for States of the next 10 years; (2) provide up to \$45 billion in “Move America” infrastructure tax credits for States of the next 10 years; and (3) allows for public-private partnership ownership arrangements for roads, bridges, ports, rail, and airports. Senator

Hoeven's office estimates that the measure will cost between \$10 billion to \$15 billion over a decade.

President Obama Nominates Sarah Feinberg for FRA Administrator: On May 29, President Obama announced his intent to nominate Sarah Feinberg as Administrator of the Federal Railroad Administration (FRA). Ms. Feinberg had previously assumed the role of Acting Administrator for the FRA in January. DOT Secretary Anthony Foxx said, "Sarah Feinberg has already proven to be a steady and capable leader at FRA, and especially during the tragic Amtrak derailment in Philadelphia, where she remained on site throughout the initial rescue and recovery efforts." He added, "Her attention to detail and passion for the work continues to impress not just me, but safety experts, Members of Congress and the staff at FRA." Ms. Feinberg is currently scheduled to testify before the House Transportation and Infrastructure Committee on June 2 to discuss the latest Amtrak derailment in Pennsylvania.

As part of the announcement, the President also nominated Marie Therese Dominguez as Administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA). Since 2013, Ms. Dominguez has served as Principal Deputy Assistant Secretary of the Army for Civil Works at the Department of Defense (DOD). Secretary Foxx touted Ms. Dominguez' "extensive management, regulatory, and safety experience in the transportation public sector" and he expressed confidence that she will bring new perspectives to PHMSA.

Amtrak Train Derails, Sparking FRA Action Regarding Safety Along Passenger Corridors: On May 12, an Amtrak regional train derailed in Philadelphia killing eight passengers and injuring as many as 200 more. According to the National Transportation Safety Board (NTSB), the train was traveling at 106 MPH around a curve with a speed limit of 50 MPH.

In response to the accident, the FRA issued an emergency order – effective immediately – to improve safety along the Northeast Corridor. Further, FRA has indicated that it will take additional actions in the near future to address speed issues on all other passenger corridors as well. The emergency order requires the following:

- immediate code changes and modifications to the automatic train control (ATC) system to include enforcement of a 50 MPH speed limit for northbound trains approaching the curve
- adoption of additional safety measures along other curves with speed reductions or 20 MPH or more
- submission of action plan identifying modifications to existing ATC system or other signal systems, as well as target dates for such modifications

Amtrak is required to submit its action plan to the FRA within 20 days.

Secretary Foxx said that he does not find a direct correlation between Amtrak funding and this latest accident, adding: "Certainly having a greater level of investment would've given Amtrak a greater ability to manage its long-term capital needs differently ... But I don't think you can categorically say that would've changed things." Although, the Secretary finished by highlighting the need to implement positive train control technology as quickly as possible.

A member of the National Transportation Safety Board said that positive train control (PTC) implementation along this stretch of rail could have prevented the accident: “Based on what we know right now, we feel that had such a system been installed in this section of track, this accident would not have occurred.” Amtrak has since installed the ATC system following the FRA’s emergency order to control speeds around the curve.

Senate Banking Committee Holds Roundtable on No and Low Emission Vehicles: On May 19, the Senate Banking Committee hosted an industry-specific roundtable on no and low emission (NoLo) vehicles in the context of the long-term surface transportation reauthorization. The roundtable focused on various issues impacting manufacturers and operators of NoLo vehicles. The purpose of the hearing was to consider these issues and incorporate stakeholder recommendations into legislation reauthorizing FTA programs and others. The roundtable featured speakers from the private sector, transit agencies, and Committee staff.

Recurring themes from the roundtable included: (1) managing risk for local agencies through the FTA; (2) making investments in standardized infrastructure to support vehicles; (3) utilizing public-private partnerships; (4) macro trends driving innovation and adoption of NoLo vehicles, such as more stringent National Ambient Air Quality Standards; (5) closing the efficiency gap between current and NoLo vehicles; and (6) providing stability and certainty through a long-term reauthorization bill.

White House Convenes Build America Investment Initiative Roundtable: On May 5, the White House convened a Build America Investment Initiative roundtable involving approximately 80 public and private stakeholders. The purpose of the roundtable – which was held in partnership with the Ford Foundation and the Rockefeller Foundation – was to discuss practices to encourage new investments in infrastructure systems. Infrastructure systems in this context is not limited just to transit and can include highways, bridges, rail, broadband, water, sewer, and others.

According to the White House, the U.S. population will grow by 70 million people by 2045, increasing the demand placed on existing infrastructure systems. The White House also estimates that by 2045, freight movement will increase 45 percent above the current rate of 60 tons of freight per person per year.

In conjunction with the roundtable, the White House published a Federal Guide to Infrastructure Planning and Design. The guide provides a list of federal programs designed to assist local, state, and tribal governments in the early stages of a project’s life. The guide also includes case studies and predevelopment guidelines to assist municipalities and other stakeholders during the infrastructure investment process. According to the White House, the guide incorporates programs and opportunities from eight different federal agencies, including the Army Corps of Engineers; the U.S. Departments of Agriculture, Commerce, Homeland Security, Interior, Housing and Urban Development and Transportation; and the Environmental Protection Agency.

FHWA Publishes Separated Bike Lane Planning and Design Guide: This month, the Federal Highway Administration (FHWA) published its *Separated Bike Lane Planning and Design Guide* after nearly two years of research. The cities of Miami and St. Petersburg both

contributed data, designs, and expertise toward the study. The purpose of the guide is to assist municipalities as they plan and engineer road designs to address bicycle network, street and land use issues during the installation of protected bike lanes. The guide also addresses planning issues related to funding, maintenance, public outreach, and project evaluation.

The guide provides considerations for the following categories:

- Planning – separate bike lanes that are not isolated projects, while improving safety and design flexibility
- Additional Context – considerations for roadway capacity, pedestrian and other street user safety, transit corridors, accessibility, and parking
- Installation – pilot projects to test reactions to separated bike lane concepts, street retrofitting of existing right-of-way, and major capital construction projects
- Other Planning Issues – further considerations of cost, funding, maintenance, outreach, and agency coordination
- Project Evaluation – holistic evaluation of separated bike lanes and formalized data collection

The FHWA publication number for the report is FHWA-HEP-15-025.