

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 October 2014

House and Senate in Recess through the Election: Both the House and Senate adjourned on September 19 and will be in recess through mid-November, until after the mid-term election. The House and the Senate are expected to return on November 12 for official business, such as conducting leadership elections, and orientation for members-elect. In December, Congress will wrap up unfinished legislation including appropriations.

Lame-Duck Session Outlook: During the 2014 midterm election, Republicans retained their majority in the House, and won a majority (52-45) in the Senate as of today. Votes are still being tallied in Alaska in the race between incumbent Senator Mark Begich (D-AK) and Republican candidate Dan Sullivan. As of today, Dan Sullivan has the lead. The race between incumbent Louisiana Senator Mary Landrieu (D-LA) and Republican candidate, Rep. Bill Cassidy (R-LA), will go to a runoff in December. In Virginia, Senator Mark Warner is leading the race, but Republican candidate, Ed Gillespie, has still not conceded.

Senate Minority Leader Mitch McConnell (R-KY) stated that the Republican party will look to pass important legislative measures during the lame duck session to provide Senate Republicans a clean agenda for the 114th Congress.

Although members of the conservative wing of the Republican party have voiced their intentions to block any non-emergency measures during the lame duck session, it is expected that Republican leadership will look to pass an omnibus appropriations bill or a continuing resolution to ensure the government remains funded until September 30, 2015.

With the government funded for another year, it is believed Senate Republicans will entertain legislation that authorizes the Keystone XL, a repeal of the medical device tax, as well as provide the legislative groundwork for tax and entitlement reform.

Surface Transportation Reauthorization: The 2014 midterm election will bring changes to the leadership of the congressional committees who oversee and fund transportation policy. The House is expected to finalize chairmen and ranking member assignments before Thanksgiving. The Senate will assign chairman and ranking members in January.

Senator Jim Inhofe (R-OK) will once again become chairman of the Senate Environment and Public Works Committee, and Senator Barbara Boxer (D-CA) will be the ranking member. Senator Richard Shelby will retain the chairmanship of the Senate Banking Committee, which oversees the transit title. At this time, it is unclear which member will be the ranking member as current Chairman Tim Johnson (R-SD) is retiring. Senator John Thune (R-SD) will be the

chairman of the Senator Commerce, Science, and Transportation Committee, which oversees the highway safety and freight titles; and Senator Bill Nelson will be the ranking member as the current chairman, Senator Rockefeller (D-WV) is retiring. Senator Orin Hatch (R-UT) will be the chairman of the Senate Finance Committee, which oversees the Highway Trust Fund financing; and Senator Ron Wyden (D-OR) will be the ranking member. Senator Thad Cochran will be the chairman of the Senate Appropriations Committee, and Senator Barbara Mikulski will be the ranking member.

In the House, Rep. Bill Shuster (R-PA) will remain chairman of the House Transportation and Infrastructure Committee. Ranking Member Nick Rahall (D-WV) lost his reelection bid so Rep. Peter DeFazio (D-OR) will most likely be the ranking member. However, on November 6, Rep. John Garamendi (D-CA) announced his candidacy to become the ranking Democrat on the committee, seeking to pass 15 more senior members on the committee. Rep. Paul Ryan (R-WI) will most likely become the chairman of the House Ways and Means Committee as the current chairman, Dave Camp (R-MI) is retiring, and Rep. Sander Levin (D-MI) will remain the ranking member. Rep. Hal Rogers (R-KY) will remain chairman of the House Appropriations Committee, and Rep. Nita Lowey (D-CT) will most likely remain ranking member.

President Obama's FY 2016 Budget: It is expected that President Obama's fiscal year 2016 budget will seek to ease sequestration caps enacted by the Budget Control Act of 2011. According to Office of Management and Budget (OMB) Director Shaun Donovan, the president's FY 2016 budget will recommend increases for non-defense discretionary spending. OMB Director Donovan stated, "It's absolutely critical on the non-defense side that we continue to make progress against sequestration, to relieve sequestration, to invest, whether it's in infrastructure, in research and development, early childhood education, training..." The automatic across-the-board spending cuts will return in FY 2016 unless Congress and the president can reach an agreement to avert sequestration. Lawmakers will begin the debate once Congress returns from the lame-duck session.

House Majority Leader McCarthy Sends Memo on Outlook for 114th Congress: On October 22, House Majority Leader Kevin McCarthy (R-Calif.) sent a memo to House Republicans urging members to be active in putting together ideas to overhaul government reform during the 114th Congress. The memo, titled "Government Competency," highlights a number of government agencies – such as the Department of Veterans Affairs (VA) and the Internal Revenue Service (IRS) – that have allegedly failed to accomplish their core functions.

"Inefficient, ineffective, and incompetent federal agencies along with failed government policies have real world consequences," the memo states. "We must work to end this cycle of failings and make government functional again ... To be successful, we need every member and every committee to participate in this grand and ongoing project of government reform."

The memo, which was distributed just two weeks before the November midterm election, suggests that pushing aggressive government reforms that reduce the size and role of the federal government will be a key focus of the 114th Congress. Furthermore, House Majority Leader McCarthy also hopes to reduce the number of agency reports provided to Congress by sunseting certain requirements for various agencies and nonprofits that have submitted over 4,200 reports to Congress this year alone.

House Transportation & Infrastructure Committee Approves Passenger Rail Reform Bill/Senate's Schedule is Unclear: On September 17, the House Transportation Committee approved by voice vote the Passenger Rail Reform and Investment Act of 2014 (H.R. 5449). H.R. 5449 is a reauthorization of the 2008 Passenger Rail Investment and Improvement Act (PRIA). The bill was originally introduced on September 11 by House Transportation & Infrastructure Committee Chairman Bill Shuster (R-Pa.) and Ranking Member Nick Rahall (D-W.Va.). The bill authorizes \$770 million for new construction for Amtrak, which is 40 percent less than the \$1.3 billion that is currently authorized. The bill also implements new accountability and transparency measures, such as a mandate requiring Amtrak to conduct business case analyses before entering large capital acquisitions.

The legislation also addresses the Federal Railroad Administration (FRA)'s Railroad Rehabilitation and Improvement Financing (RRIF) program, which provides long-term, low-interest loans for railroad-related improvements. While this program is authorized to provide up to \$35 billion in lending, nearly all of it remains unused. Part of the lack of uptake stems from FRA's slow, cumbersome approval process. The legislation tries to address these long-standing concerns by adding process improvements like approval deadlines to add clarity and reliability for potential borrowers. This legislation will most likely be considered during the next Congress as there are many unresolved issues Congress must address during the lame duck session in November.

The Senate Commerce Committee is drafting the passenger rail authorization legislation now. Staff stated that they are pleased with the House legislation although the funding for Amtrak is low. The Commerce Committee would also like to include a strong RRIF program in its bill, but stated that the House bill goes a long way to improving the program.

Senators File Comments with DOT regarding Oil Tank Car Rule/Senate Commerce Committee Will Include in Legislation: In July, DOT announced a Notice of Proposed Rulemaking (NPRM) to improve the safe transportation of large quantities of flammable materials by rail - particularly crude oil and ethanol. The NPRM proposes enhanced tank car standards, a classification and testing program for mined gases and liquids and new operational requirements for high-hazard flammable trains that include braking controls and speed restrictions. Specifically, within two years, it proposes the phase out of the use of older DOT 111 tank cars for the shipment of packing group I flammable liquids, including most Bakken crude oil, unless the tank cars are retrofitted to comply with new tank car design standards. Public comment period ended on September 30, 2014. The DOT is supposed to issue final regulations before the end of the year.

In a letter dated September 29, Senators Ron Wyden (D-Ore.), Jeff Merkley (D-Ore.), Dianne Feinstein (D-Calif.), and Barbara Boxer (D-Calif.) submitted official comments to the DOT regarding the agency's proposed rule regulating the transportation of flammable materials by rail. The 15-page letter asks DOT to consider additional transparency and accountability measures when drafting the final rule:

- Expand the rule's advanced notification requirement to require railroads to notify State Emergency Response Commissions (SERC) of crude oil from areas outside the Bakken formation in northwest North Dakota

- Expand scope of advanced notification requirement to include ethanol and other Class 3 flammable liquids
- Lower the volumetric reporting threshold, which is currently 1 million gallons or more of oil, to 20 carloads of flammable materials and modify it to include any combination of Class 3 flammable liquid

The letter also asks DOT to consider improving the system by which information is shared with first responders: “railroads provide information about their crude-by-rail routes – though not volume information critical for emergency-response planning – on their websites. It seems counterintuitive to advertise route information to potential customers and investors, while objecting to the release of volume information to local first responders.”

The Senate Commerce Committee is also collecting comments on this issue now as they are drafting the passenger rail authorization legislation. Recently, Senator Richard Blumenthal (D-OR) introduced legislation which mirrors the NPRM. Committee staff stated that they have heard from many Senators about the need for increased funding for first responders, and will most likely include funding in the committee's rail legislation.

Federal Transit Administration Publishes Ladders of Opportunity Workforce Grant: On October 24, the Federal Transit Administration (FTA) published a Notice of Funding Availability (NOFA) in the Federal Register for the Innovative Public Transportation Workforce Development Program through the agency’s Ladders of Opportunity Initiative. According to the NOFA, the purpose of the program is to “promote innovative nationally and regionally significant public transportation and workforce development models and programs that invest in America’s economic growth and help build ladders of opportunity into the middle class for American workers.” FTA has budgeted approximately \$9 million for this program. All applications for this program are due by December 23, 2014. For more information, please visit: http://www.fta.dot.gov/grants/13077_16198.html.

Local Government Associations Urge Congress to Support Long-Term Transportation Funding: On October 21, five local government associations co-drafted a letter to House and Senate transportation committee leadership, urging Congress to support a long-term authorization and funding for federally assisted transportation projects. The letter was drafted in collaboration by the Association of Metropolitan Planning Organizations (AMPO), the National Association of Counties (NACo), the National Association of Regional Councils (NARC), the National League of Cities (NLC), and the United States Conference of Mayors (USCM).

The letter highlights the need for the federal government to support the role of local governments and local transportation entities in building and maintaining our nation's transportation infrastructure: "It is our belief that supporting locally owned infrastructure and emphasizing locally and regionally based decision-making will secure the most cost-effective, and economy- and mobility-enhancing investments to build our future." Furthermore, the letter is careful to place even greater emphasis on moving forward with a long-term authorization. In July, Congress passed a \$10.8 billion package to extend the authority of the Highway Trust Fund through May 2015, preserving its solvency for the short term. However, critics argue that without a long-term funding bill, planning and funding of key transportation projects are

becoming more difficult for local governments to manage, while increasing uncertainty for new and existing undertakings.

According to the letter, cities, counties, and townships are responsible for approximately 78 percent of the nation's roads, 43 percent of the nation's federal-aid highways, and 50 percent of the nation's bridges – in addition to operating a majority of ports, airports, and transit systems across the country.

FTA Publishes Final Rule on Transit Funding After Major Disasters: On October 7, the Federal Transit Administration (FTA) published a final rule establishing procedures that govern the implementation of the Transportation Emergency Relief Program, a program authorized by the Moving Ahead for Progress in the 21st Century Act (MAP-21). The Public Transportation Emergency Relief Program assists states and public transportation entities to cover the costs associated with damage caused by emergencies and natural disasters. According to FTA, “the rule includes a description of eligible projects, the criteria FTA will use to identify projects for funding, and additional details on how FTA will administer the program.”

Eligible projects include emergency operating expenses, as well as capital projects to protect, repair, reconstruct, or replace public transportation equipment and facilities. The final rule does not limit the program to damage caused by Hurricane Sandy, although the Disaster Relief Appropriations Act of 2013 does provide \$10.9 billion exclusively for recovery, relief, and resilience efforts in areas affected by Hurricane Sandy. The final rule can be viewed in the Federal Register: <https://www.federalregister.gov/articles/2014/10/07/2014-23806/emergency-relief-program#h-7>.