

# Holland & Knight

800 17<sup>th</sup> Street, N.W., Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564  
Holland & Knight LLP | [www.hklaw.com](http://www.hklaw.com)

## **Broward Metropolitan Planning Organization Federal Update January 2018**

### **CONGRESS**

Appropriations and Budget Update: Negotiations on the fiscal year (FY) 2018 spending package continue, but it is likely that another short-term continuing resolution (CR) will be needed as current government funding expires on February 8. House and Senate staff are reportedly working on a CR that would fund the government through March 23, though no final decisions have been made.

Nevertheless, the White House plans to deliver its FY 2019 budget request to Congress on or about February 12, which is one week later than originally planned by the Office of Management and Budget (OMB). Officials have blamed the delay on the government shutdown in January. It is expected that the FY 2019 budget request will propose several new streamlining measures to reduce federal spending. Agencies were asked to submit reviews of their departments to eliminate duplicative offices or to move certain offices into different agencies.

In Congress, Republican leaders have not committed to completing a FY 2019 budget blueprint this year. Senate Budget Chairman Michael Enzi (R-WY) said he has begun drafting the annual budget resolution, and is hopeful to get it approved, but made no guarantees, saying everything is delayed because of the unresolved FY18 spending deal. House Budget Chairman Steve Womack (R-AR) has been hesitant to publicly commit to releasing a budget resolution this year, saying he would first consult with Republicans on the committee and discuss feedback received at the Congressional Republican retreat during the week of January 29.

Senators Introduce Private Activity Bonds Legislation: On January 18, Senators John Cornyn (R-TX) and Mark Warner (D-VA) [introduced legislation](#) to increase the current \$15 billion limit on private activity bonds (PABs) to \$20.8 billion. The “Building United States Infrastructure and Leveraging Development (BUILD) Act” seeks to increase investment in infrastructure projects by allowing state and local governments to establish public-private partnerships (P3s) to finance surface transportation projects. Sen. Cornyn said the bill will help the administration finance additional highway and freight improvement projects through P3s, minimizing the cost to taxpayers. Sen. Warner said the legislation, in conjunction with his [BRIDGE Act \(S. 1168\)](#) would attract additional investment to renew infrastructure, and emphasize the importance of PABs in leveraging private investment.

Senate Maps Path for AV Bill: Senate Commerce Committee Chairman John Thune (R-SD) said on January 24 that he and co-sponsor, Subcommittee Ranking Member Gary Peters (D-MI), were making progress on efforts to pass the driverless vehicle bill, [S. 1885](#). Chairman Thune said he is continuing to work through safety concerns raised by Senators Richard Blumenthal (D-

CT), Ed Markey (D-MA), and Dianne Feinstein (D-CA), who have placed holds on the bill. Senator Blumenthal has previously noted that he would likely vote for a bill on autonomous vehicles (AVs), but was holding out for more changes to the measure previously approved by the Commerce Committee in October 2017. If the sponsors are not able to receive unanimous consent, they hope to receive floor time for a roll call vote. Thune and Peters have predicted that the bill would get at least 80 votes by this process. The House previously passed an AV bill, [H.R. 3388](#), in September 2017.

House Republicans Consider Lifting Earmark Ban: In 2010 the House banned the practice of Members of Congress requesting earmarks in the annual appropriations bill. The Senate followed the House's lead on the issue and also voted to ban them. However since the 2016 elections, several Members of Congress have been seeking ways to bring earmarks back. Speaker Ryan (R-WI) finally has allowed the issue to be more thoroughly discussed. The House Rules Committee will hold hearings to debate the issue of 'returning the power of the purse' to Congress. The first hearings were on [January 17](#) and [January 18](#). President Trump has also stated that Congress should consider bringing back earmarks, to ease the passage of legislation. The president made this comment during a meeting with a bipartisan group of lawmakers to discuss immigration reform earlier this month.

Conservative groups, such as Club for Growth, have condemned the suggestion to revive earmarks. Club for Growth President David McIntosh said in a statement that earmarks benefit special interests at "the expense of working men and women." House Rules Committee Chairman Pete Sessions (R-TX) assured colleagues that the hearings are not meant to rush into a new earmark policy. Another GOP member of the Rules Committee, Rep. Tom Cole (R-OK) identified an interest among both Democrats and Republicans to reclaim earmark power, but acknowledged that a new system would be necessary. Several House members have argued that banning earmarks caused the unfavorable effect of Congress' power of the purse being relinquished to federal agencies.

House Transportation Committee Chairman Retiring: House Transportation and Infrastructure (T&I) Committee Chairman Bill Shuster (R-PA) announced on January 2 that he plans to retire at the end of his current term, joining a growing wave of GOP members announcing their exit. Rep. Shuster would otherwise be term-limited out of committee chairmanship, after serving three terms at the helm, and it was widely speculated that he would announce his departure. Aviation Subcommittee Chairman Frank LoBiondo (R-NJ) and T&I Vice Chairman John Duncan (R-TN) had also announced their retirement. Rep. Shuster has said that in his final year he intends to focus on pushing for an infrastructure bill in conjunction with President Trump and the administration. Two confirmed candidates to replace Rep. Shuster as head of the committee are Reps. Jeff Denham (R-CA) and Sam Graves (R-MO), both of whom lead subcommittees under Shuster.

House Appropriations Chairman Announces Retirement: On January 29, Rep. Rodney Frelinghuysen (R-NJ), Chair of the House Appropriations Committee, announced that he would not seek reelection at the end of 2018 (his current term). Frelinghuysen is the newest member of a growing list of Republicans choosing to forego reelection, opting to retire leading up to what is anticipated to be a challenging midterm election year for congressional Republicans. After the

retirement announcement, Congressman Robert Aderholt (R-AL) announced his intention to run as the next Chairman.

## **ADMINISTRATION**

Infrastructure Principles Draft Document Circulated: The White House is expected to officially release a 70-page memo of principles for an infrastructure package—which the President referenced during his January 30<sup>th</sup> State of the Union speech—in early February. However, a draft document of the principles has been circulating around Washington. According to the draft, the Administration may seek to target federal money to projects with significant funding contributions from states, local governments, private entities, and other non-federal sources. The Infrastructure Incentives Initiative would cap federal grant awards at 20 percent of total project costs, with an individual state limited to 10 percent of the amount available. This initiative would represent half of the total funding for the infrastructure package. A quarter of funding would be directed to rural infrastructure, including broadband, power transmission, drinking water and flood management. Another 10 percent of funding is reserved for projects deemed “transformative”. Other funding is available for capital financing and lending programs.

The draft also seeks to expand the use of private activity bonds to increase financing and attract more private investment in projects. States are also given increased flexibility to add tolls to interstates, to help raise money for public entities and airports. The White House also encourages a “self-help” approach in which states and local governments would own most public assets, to help in developing their own sustainable funding sources, weaning off reliance on federal money. The federal government would seek funding applications every six months from states or groups of states and territories, local governments, non-profits and private entities with public sponsorship for “core infrastructure projects.” Proposals would be scored based on how much non-federal funding is available for construction, operation, and maintenance.

The draft document has received a lukewarm reception from congressional lawmakers, who are wary of the lack of new funding sources for infrastructure. White House Infrastructure Adviser DJ Gribbin noted that the Administration purposefully left out new sources, allowing those details to be negotiated with Congress. It is likely that the final principles document will be given to Congress to use as a guidepost to shape legislation. Senior Democrats have questioned whether the proposal can win bipartisan support and believe the \$200 billion in federal money that the Administration has proposed is insufficient. Senate Minority Leader Chuck Schumer (D-NY) called for the Administration to offer \$1 trillion in federal investment. Republicans, including Senate Environment and Public Works Chairman John Barrasso (R-WY), have expressed skepticism over the reliance on private investment, which may not be as effective in less-populated areas. With Republicans leading the Senate by a thin margin, the President will need Democratic votes to pass an infrastructure bill based on the final White House principles.

New Interim FAA Administrator Takes Over: Former FAA Administrator Michael Huerta’s last day in the position was January 5. Interim Administrator Dan Elwell – who served as Huerta’s deputy – will take over as Administrator until a new one is approved. The new administrator may be Elwell himself, though this has not been confirmed. Elwell previously worked at Airlines for

America, the Aerospace Industries Association, and American Airlines. He also served as Assistant FAA Administrator during President George W. Bush's administration.

DOT Seeks AV Comments: Following an announcement from Transportation Secretary Elaine Chao, the Department of Transportation (DOT) published notices in the Federal Register on January 10, requesting information for the [Federal Highway Administration \(FHWA\)](#) on integrating automated driving systems (ADS) – autonomous vehicles (AVs) – into the national highway transportation system. The [Federal Transit Administration \(FTA\)](#) is also seeking comments on research programs for autonomous transit buses, and removing barriers to autonomous buses. The [National Highway Traffic Safety Administration \(NHTSA\)](#) will also seek comments on how to remove regulatory barriers for AVs, and how manufacturers can certify systems are meeting safety thresholds. Comments for NHTSA will inform guidance in the agency's third draft of AVs guidance, titled Federal Automated Vehicle Policy 3.0. In an address at the recent Consumer Electronics Show, Secretary Chao expressed her support for advancing innovation in AVs, and particularly, the societal impact AV technology will have in terms of safety, mobility, and security.

The Federal Transit Administration (FTA) [published their requests for comments](#) on automated transit buses and related technologies. The first notice seeks comment on the current and future status of automated transit buses. The second notice requests comment on current or potential regulatory and policy barriers for automated transit buses and related technologies.

Senate Committee Re-Approves Nominees: After the nominations of Diana Furchtgott-Roth and former Rep. Lynn Westmoreland were sent back to the Senate Commerce Committee following opposition to their selections, the Committee re-approved them along party lines on January 18. Furchtgott-Roth's nomination to serve as Assistant Secretary of Transportation was complicated following questioning over comments she had made about climate change and sexual harassment in the workplace. Westmoreland's nomination was sent back to the White House due to a polarizing debate over his qualifications. Separately, the nominations of Ron Batory to lead the Federal Railroad Administration and Adam Sullivan to serve as Assistant Transportation Secretary for Government Affairs are currently locked in a Democratic hold. Democrats have held up these nominations as they demand action on funding for the Gateway tunnel project in New York.