

Holland & Knight

800 17th Street, N.W., Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Broward Metropolitan Planning Organization Federal Update March 2018

Appropriations Update: On February 9, the Senate (71-28) and the House (240-186) passed – in one package – a [budget deal](#) and a [short-term FY 2018 Continuing Resolution \(CR\)](#) to fund the government through March 23. Shortly thereafter, the President signed the bill into law. This deal funds the federal government through March 23 and provides an additional \$300 billion over two years. This additional money will allow the appropriators to provide the FAST Act authorized funding for the Capital Investment Grant program (New Starts/Small Starts/Core Capacity), rather than the House lower funding level and at least the \$500 million for TIGER.

Appropriations aides have indicated that the FY 2018 omnibus appropriations bill will be unveiled during the night of Sunday, March 18, or on Monday, March 19. The House is expected to vote on the bill on Tuesday, March 20 or Wednesday, March 21, and the Senate will consider the bill shortly after the House vote.

Several legislative “riders” are anticipated to be included within the bill; however, lawmakers must resolve disputes over funding, including on the Gateway project – a tunnel under the Hudson River that would connect Newark, New Jersey to New York City. These riders could include:

- Stabilization for Affordable Care Act: Funding for cost-sharing subsidies and reinsurance to avoid huge premium increase this fall.
- Three month extension for the FAA reauthorization, which expires on March 31.
- Export-Import Bank: Some Republican members want to lower the required threshold of board members for the Export-Import Bank to approve large loans.
- A national sales tax on online retailers.
- Offer financial incentives for federal and state authorities to comply with the U.S. criminal background check system.
- Short-term extension for the National Flood Insurance Program (NFIP), which expires on March 23.
- House Majority Leader Kevin McCarthy wants to include a provision to allow the Department of Interior to work on the Shasta Dam without state or local support.

Senate Democrats Release Jobs and Infrastructure Plan: The Senate Democrats released their [Jobs and Infrastructure Plan](#) on March 7. The [plan proposes \\$1 trillion](#) in real investments; funding for a new incentive grant program for states and local governments; funding to agencies for processing permits; and funding for Inspectors General and the Government Accountability

Office (GAO) to ensure oversight of infrastructure spending. More specifically, the plan proposes the following investments:

- \$140 billion for roads and bridges
- \$10 billion to expand TIGER grants
- \$115 billion for water and sewer systems
- \$115 billion for repairing and improving public transportation
- \$50 billion for modernizing and improving rail infrastructure safety
- \$40 billion for a new vital infrastructure program
- \$30 billion for revitalizing Main Street and promoting innovative transportation
- \$62 billion for neighborhood revitalization, lead remediation, and affordable housing
- \$50 billion for school infrastructure
- \$30 billion for ports and waterways
- \$40 billion for airports
- \$25 billion for resilient communities
- \$80 billion for the energy grid and promotion of clean energy
- \$40 billion for universal high-speed internet
- \$15 billion for addressing construction backlog on public lands
- \$10 billion for tribal infrastructure
- \$10 billion for addressing construction backlog at VA Healthcare facilities
- \$20 billion for innovative financing tools
- \$140 billion for ensuring solvency of the Highway Trust Fund for the next decade.

The plan relies on funding from rollbacks to provisions currently enacted in the Tax Cuts and Jobs Act:

- Restoring the top rate back to 39.6% (\$139 billion)
- Restoring the 2017 Individual AMT (\$429 billion)
- Restoring the 2017 Estate and Gift Taxes (\$83 billion)
- Closing the carried interest loophole (\$12 billion)
- Raising the corporate tax rate from 20% to 25% (\$359 billion)

Within the Senate Democrats' plan, over \$175 billion is identified in new investments for rural communities, and \$10 billion for tribal communities. Senate Minority Leader Chuck Schumer (D-NY) is promoting the plan as a way to undo some of the tax cuts signed into law in December. The plan is unlikely to move forward, as Democrats currently hold the minority in the Senate. Majority Leader Mitch McConnell (R-KY) has said that the plan would be a "nonstarter."

FRA Announces Funding for Rail Capital Projects and Operating Assistance: On February 18, the Federal Railroad Administration (FRA) [released a NOFO for the Consolidated Rail Infrastructure and Safety Improvements \(CRISI\)](#) grant program. Applications for funding under this solicitation are due no later than 5:00 p.m. EDT, June 21, 2018. The total funding available for awards under this NOFO is \$65,232,400, at least \$17 million must be made available for Rural Projects. The Federal share cannot exceed 80 percent, though FRA will provide selection preference to applications where the proposed Federal share of total project costs is 50 percent or less.

Project Eligibility:

Railroad safety technology, including PTC; broken rail detection and warning systems; track intrusion systems; and electronically controlled pneumatic (ECP) braking systems.

- Acquisition, improvement, or rehabilitation of railroad equipment (locomotives and rolling stock); railroad infrastructure (grade crossings, catenary, signals, and PTC equipment); and rail facilities (yards, passenger stations, or maintenance and repair shops).
- A capital project necessary to reduce congestion and facilitate ridership growth in Intercity Passenger Rail Transportation along heavily traveled rail corridors. Examples include: Projects addressing congestion that improve stations; increase rail capacity; reduce conflict between freight and intercity passenger rail; reduce delays and risks associated with highway-rail grade crossings; and provide more effective rail equipment.
- A highway-rail grade crossing improvement project.
- Rail line relocation and improvement project.
- A capital project to improve short-line or regional railroad infrastructure.
- Preparation of regional rail and corridor service development plans and corresponding environmental analyses.
- A project necessary to enhance multimodal connections or facilitate service integration between rail service and other modes, including between Intercity Rail Passenger Transportation and intercity bus service or commercial air service.

FRA encourages applicants to propose projects or components of projects that have operational independence that can be completed and implemented with the level of CRISI funding available together with other sources.

Evaluation Criteria:

FRA will first screen each application for applicant and project eligibility, completeness, and the 20 percent minimum match in determining whether the application is eligible.

FRA will then consider the applicant's past performance in developing and delivering similar projects and previous financial contributions, and previous competitive grant technical evaluation ratings that the proposed project received under previous competitive grant programs administered by the DOT if applicable.

Benefit-Cost Analysis:

FRA will evaluate the Benefit-Cost Analysis of the proposed project for the anticipated private and public benefits relative to the costs of the proposed project and the summary of benefits including—

- (A) Effects on system and service performance;
- (B) Effects on safety, competitiveness, reliability, trip or transit time, and resilience;
- (C) Efficiencies from improved integration with other modes; and
- (D) Ability to meet existing or anticipated demand.

Technical Merit:

- Applications indicate strong project readiness
- The proposed project's business plan considers potential private sector participation in the financing, construction, or operation of the proposed project.

- The applicant has, or will have the legal, financial, and technical capacity to carry out the proposed project.

FRA will give preference to projects for which the:

- Proposed Federal share of total project costs is 50 percent or less; and
- Net benefits of the grant funds will be maximized considering the Benefit- Cost Analysis, including anticipated private and public benefits relative to the costs of the proposed project.

President Nominates FTA Leader: President Trump announced his intent to nominate former Rep. Thelma Drake (R-VA) to serve as Administrator for the Federal Transit Administration (FTA). Drake currently serves as Assistant Director of Public Works for the city of Norfolk, VA. She served in Congress from 2005 to 2009, where she sat on the House Transportation and Infrastructure Committee. A nomination committee hearing date has not yet been announced.

2017 Round of TIGER Grants Announced: The Department of Transportation (DOT) released its [first round of FY 2017 TIGER grants](#) on March 9. Based on the awards, the DOT’s priority focus is on rural areas, with over 64 percent of the nearly \$500 million in awards going to rural projects. The 2017 appropriations law required a minimum of 20 percent of the grant money to go to projects in rural areas. Only two transit projects were selected for TIGER grants, and their \$17.6 million was just 3.6 percent of the total TIGER grant money. Road projects got 77 percent of the 2017 TIGER money. Bike/ped projects received zero this year (though the Trump Administration did fund some “complete streets” initiatives that do have bike/ped components). 9 percent of the 2017 TIGER money goes to port projects.

Senate Commerce Committee Hold Hearing on Infrastructure Proposal: On Tuesday, March 12, the Senate Commerce’s Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security held a [hearing](#) titled, “Rebuilding Infrastructure in America: State and Local Transportation Needs” to “examine opportunities to improve the national transportation network to better connect communities across the country.” The witnesses were:

- Kyle Schneweis, Director, Nebraska Department of Transportation
- Dan Gilmartin, Executive Director and Chief Executive Officer, Michigan Municipal League and Member of the National League of Cities
- Jordan Kass, President, Managed Services, TMC Division, C.H. Robinson
- Jo Strang, Senior Vice President, Safety and Regulatory Policy, American Short Line and Regional Railroad Association

Subcommittee Chairwoman Deb Fischer (R-NE) began the hearing stating that the country is in dire need of infrastructure investment, citing the American Society of Civil Engineers (ASCE) scorecard which graded the US with a [D+ for infrastructure condition in 2017](#).

In his testimony, Mr. Schneweis recommended that “the funds tied to any infrastructure package have as few federal strings attached as possible,” contending that localities and states move on a faster timeline without the federal government’s involvement.

Mr. Gilmartin said that local governments own, operate, and maintain 78 percent of the nation’s

road miles and invest billions in public infrastructure. He provided principles for national infrastructure investment: long-term funding; allow local officials more authority; expanded revenue tools to give local governments more options for infrastructure funding (many cities cannot legally utilize innovative finance); bolster the connection between urban areas and national economic growth.

Members' questions and testimony focused touched on lack of equity between urban and rural areas, economically disadvantaged and wealthy areas, and large and small businesses. Everyone agreed that sustainable reliable funding from the federal government is necessary.