

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 September 2016

CONGRESSIONAL UPDATE

Congress Leaves Washington After Passing Continuing Resolution: The House and Senate passed H.R. 5325, the 10-week [continuing resolution](#) (CR), on September 28, averting a government shutdown. The Senate first passed the CR by a [vote of 72-26](#); then the House passed the legislation by a [vote of 342-85](#), with President Obama signing the bill into law shortly thereafter. Senators Nelson and Rubio and Representatives Hastings, Wasserman Schultz, Wilson, Frankel, Diaz-Balart and Deutch voted for the CR. The CR funds the federal government through December 9, allowing lawmakers to focus on the elections and pass a spending bill in the lame-duck session.

The CR includes \$1.1 billion in funding to address Zika and the [FY 2017 Military Construction-VA appropriations bill](#). This is the first time since FY 2006 that Congress has been able to enact any of the annual appropriations bills before the start of the fiscal year. Furthermore, the bill provides \$500 million for disaster relief in Louisiana to address their recent devastating floods. A total of \$37 million in new opioid funding was also included in the CR to support Comprehensive Addiction and Recovery Act (CARA) grant programs.

Lawmakers return for legislative business after the November 8 election, with the House in session on Monday, November 14, and the Senate returning the following day.

Lame-Duck Session: When lawmakers return to Washington after the election, the House is scheduled to be in session for 16 legislative days, and the Senate will be in session for 20 days. Top Republican leaders are advocating for passing a series of small "minibus" packages to complete this year's appropriations work during the lame-duck session, instead of one large omnibus appropriations bill. Many of the items excluded from the CR will likely see action, including a fix to an FY 2016 omnibus appropriations drafting error, which affects an enforcement pause to an hours-of-service rule for truckers. The tweak would ensure that the 34-hour restart rule in effect before the Federal Motor Carrier Safety Administration (FMCSA) proposed new regulations in 2011 would apply to commercial truckers.

Senate Majority Leader Mitch McConnell (R-Ky.) recently agreed to "take a look at" extending tax incentives for energy technologies – such as fuel cells and combined heat and power systems – before the end of the year, which were omitted from last year's appropriations bill. Several of these energy investment tax credits enjoy bipartisan support, such as those focused on natural

gas. Without citing specifics, McConnell also entertained the idea that incentives for other technologies could be extended as well. The full list of possible lame-duck legislation includes:

- Merrick Garland's nomination to the U.S. Supreme Court
- Water Resources Development Act (WRDA) conference report
- Export-Import Bank financing authority
- Energy tax extenders
- Energy bill conference report
- Gun control
- Trans-Pacific Partnership (TTP)
- LGBT rights, including Rep. Sean Patrick Maloney's (D-N.Y.) anti-discrimination amendment
- Mental Health Reform Act of 2016
- Additional funding for opioid epidemic
- Criminal justice reform, including the Sentencing Reform and Corrections Act of 2015

New TSA Focus on Surface Transportation: Following an [inspector general report on the Transportation Security Administration \(TSA\)](#) released in September, Senators are pushing TSA to focus more attention on security measures for modes other than aviation. The report highlighted the lack of strategy for how resources are divvied up among transportation modes, as well as the failure to consistently consider the threat of terrorism in prioritizing programs. As a result, Senate Commerce Committee leaders, including Chairman John Thune (R-S.D.) and Ranking Member Bill Nelson (D-Fla.), introduced a [bill](#), the Surface Transportation and Maritime Security Act, on September 21 that would make sure that TSA resources allocated towards surface transportation security efforts match up with the relevant risks.

Earlier this year, [TSA Administrator Peter Neffenger](#) caught the Commerce Committee's attention when he said that only three percent of the agency's funding is spent on protecting trains, subways, buses and ports. According to [TSA Deputy Administrator Huban Gowadia](#), the agency does apply a "risk-based security" strategy to surface transportation modes and works closely with the Federal Emergency Management Agency (FEMA) to do risk analysis for the purposes of giving out money through transportation security grants. TSA is working now to finalize a strategy document that is expected to be released soon.

FAST Act Freight Roundtable: On September 22, the House Highways and Transit Subcommittee of the Transportation and Infrastructure Committee held a roundtable on the impact of the Fixing America's Surface Transportation (FAST) Act's freight provisions. Roundtable participants included: Kevin Burch, President of Jet Express Inc. and First Vice Chairman of American Trucking Associations; John Payne, Principal of Worldwide Transportation Linehaul for Amazon.com; Leslie Richards, Secretary of the Pennsylvania Department of Transportation; Kathleen Broadwater, Deputy Executive Director of the Maryland Port Administration; and Brad Bowman, International Vice President of Logistics for Smithfield Foods.

The panelists expressed concern about future transportation funding when the FAST Act, which was signed into law in December 2015, expires in 2020. Kevin Burch of Jet Express Inc. recommended to the subcommittee members to focus on the 18 percent of the interstates where

the worst highway congestion occurs. Kathy Broadwater, Deputy Executive Director of the Maryland Port Administration, raised concerns about the sustainability of funding for multimodal freight networks in the United States, citing a need for \$29 billion in surface transportation connectors – which she said was about triple what was allocated in the FAST Act. Industry also expressed long-standing concerns ranging from the hours-of-service restart provision to a shortage of truck parking and congestion.

Committee members and witnesses expressed frustration about the lack of transparency and feedback from the Department of Transportation (DOT) regarding the FASTLANE grant program. Responding to a question from Delegate Holmes Norton (D-D.C.) about the FASTLANE grant process, PennDOT Secretary Richards expressed many of the same frustrations that have characterized the competitive grant processes administered by USDOT. The first issue was the lack of assistance and feedback in the process, and “found it to be very cost-intensive to apply . . . while we appreciated the opportunity to apply, we feel that the competitive application process is difficult, but we rise to the challenge.”

GRANTS

FASTLANE Debrief: In September, the DOT [announced](#) the FASTLANE grants for 18 projects in 15 states and the District of Columbia, totaling nearly \$759.2 million. FASTLANE is a new program created in the surface transportation authorization bill, the FAST Act, for projects of regional or national significance, and 2016 was the first year for the five-year grant program. The only FASTLANE grant recipient in Florida was the Florida Department of Transportation, which won \$10,778,237 to support its Truck Parking Availability System (TPAS).

When DOT first issued the Notice of Funding Availability (NOFA) in March, Holland & Knight arranged a phone call with Broward MPO and the Port of Everglades to discuss its selected project for this program, the Intermodal Freight Connector Project. The group discussed the project description, how the project met FASTLANE’s metrics and the project request.

After DOT announced the project awards, Holland & Knight arranged a conference call for the Broward MPO and the Port of Everglades with DOT to provide a debrief for their application. DOT provided an overview of the FASTLANE program:

DOT received a total of 212 applications worth almost \$10 billion—only \$759.2 million was available for 2016.

There is a limitation of \$500 million for freight/port/intermodal projects for the life of the five-year/\$4.5 billion program.

DOT is required to distribute 25% of the funds to projects in rural areas.

DOT is also required to distribute 10% to small projects and 90% for large projects (project costs of \$100 million or greater).

Project eligibility is narrower than TIGER—focus on highways and freight only.

Then, DOT described how the FASTLANE projects are reviewed. First, DOT reviews projects to ensure they are eligible for the program. Next, projects are assigned to a technical review team led by MARAD, Federal Railroad Administration (FRA), and Federal Highway Administration

(FHWA), which determines how the project aligns with the FASTLANE selection criteria: economic mobility, environmental, safety and community outcomes. Also reviewed for secondary criteria is partnership/innovation and cost share.

This project was reviewed by MARAD as all port projects are. The technical review teams assigned each project a rating: recommended, acceptable, or not recommended. This project was rated as Acceptable. Projects that receive recommended ratings are reviewed by a Tier 2 review team to evaluate for benefit cost analysis (BCA) and project readiness. Projects are given ratings on BCA—benefits exceed costs, benefits likely to exceed costs, costs exceed benefits, or costs likely to exceed benefits. Projects are also given a project readiness rating of high, medium, low risk, and projects must obligate funding by September 30, 2019. A Senior Review Team, consisting of DOT leadership, evaluates projects and puts together a list for the Secretary. DOT must notify Congress six days before the final announcement. DOT notified Congress on July 5th, and congressional committees published the list shortly after.

DOT said that this project was well received—it addressed the criteria and was ready to go—and they suggested lowering the project down from \$111 million. The project was evaluated by MARAD, where it faced a lot of competition and MARAD was very conservative with its ratings in comparison to FRA and FHWA since there is a \$500 million limitation on port projects. MARAD received a total of 32 projects, of which 13 received recommended, 18 acceptable, and one not recommended.

For this year's grants, DOT selected 6 small projects and 12 large projects. DOT used \$73 million (out of \$500 million) for the port/intermodal/rail limitation. This round, DOT received 119 small projects requesting a total of \$2 billion, and DOT selected six small projects worth \$75.92 million. For large projects, DOT received 83 projects worth \$6.8 billion and awarded 12 large projects worth \$680 million.

ADMINISTRATION UPDATE

DOT Releases Driverless Car Guidance: On September 20, DOT released [guidance on self-driving cars](#), also known as highly automated vehicles (HAVs). With 94 percent of crashes tied to human choice or error, DOT is focused on ensuring that the technology used in HAVs provides a safe solution to reducing roadway fatalities. DOT issued this policy as agency guidance rather than a rulemaking to accelerate the delivery of a regulatory framework and best practices to guide manufacturers and other entities in the safe design, development, testing and deployment of HAVs. "We left some areas intentionally vague because we wanted to outline the areas that need to be addressed and leave the rest to innovators," said Bryan Thomas, a spokesman for the National Highway Traffic Safety Administration (NHTSA). DOT gathered stakeholder input from the public, traffic safety professionals, researchers, industry, government and the disabled community.

DOT will accept public comment on the entire policy for 60 days, which began immediately upon publication. The comments will be analyzed and "significant" comments will be addressed in the next revision of the policy. Congress expects that it will play an oversight role to ensure safety measures are being met.

Bridge Funding: As part of a Government Accountability Office (GAO) review of the funding and management of the nation's bridges, GAO conducted a survey of transportation officials from 24 states and the District of Columbia. The results overwhelmingly revealed that despite slightly decreasing the number of deficient bridges since 2006, state and local transportation departments lack adequate funds to maintain and upgrade aging highway bridges.

The GAO [report](#) focused on how well the Federal Highway Administration (FHWA) monitors the effectiveness of federal transportation spending. According to the GAO, the interstate highway construction boom that began in the 1950s and extended into the 1970s has resulted in an average bridge age of 45 years while the expected service life of a span is only 50 years. The report stated that the number of structurally deficient bridges decreased to 10 percent in 2015 from 13 percent in 2006 as federal funding obligated to bridge projects stayed relatively stable at \$6 billion to \$7 billion per year. And in Florida, the percentage of structurally deficient bridges by number was 2.8 percent in 2006 and decreased to 2.1 percent in 2015.

The report also reiterated the importance of linking performance outcomes with resources invested because it can help agencies to more clearly determine how changes in invested resources may result in changes to performance. While the FHWA estimates total funds dedicated to bridges and collects data on bridge conditions nationwide, it does not track the linkage between federal funds and changes in bridge conditions.

Smart Cities Announcement: On September 26, to kick off Smart Cities Week, the White House [announced](#) a new federal investment of \$80 million and a doubling of participating communities in the White House Smart Cities Initiative, which exceed 70 in total. The funds will be directed to four areas: climate, transportation, public safety and transforming city services. As part of this effort, the U.S. Department of Energy (DOE) created the Better Communities Alliance (BCA) to gather key stakeholders to promote knowledge exchange and collaboration, while streamlining access to community-focused DOE resources and funding. Broward County is a member community of the BCA as are Orlando, Miami-Dade County and West Palm Beach.

For transportation, the Administration announced more than \$15 million in new grants and planned funding to evolve the future of urban transportation, including National Science Foundation (NSF) funding for researchers in Chattanooga, Tennessee, to test, for the first time, how an entire urban network of connected and autonomous vehicles can automatically cooperate to improve travel efficiency and operate safely during severe weather events. And for public safety, more than \$10 million in new grants and planned funding for public safety, resilience, and disaster response. For example, the Department of Homeland Security (DHS) is funding the development of low-cost flood sensor-based tools in flood-prone areas of Texas, where predictive analytics will give first responders and local officials new capability to issue alerts and warnings, and the ability to respond more rapidly to save lives when a flood strikes.

Safer People, Safer Streets: In January 2015, U.S. Department of Transportation (DOT) Secretary Foxx challenged city leaders to raise the bar for bicyclist and pedestrian safety by joining a year-long "Mayors' Challenge for Safer People and Safer Streets" effort. On September 16, the Safer People, Safer Streets Summit was held in Washington, D.C, where

Secretary Foxx [recognized](#) the communities that demonstrated the most progress. The challenge had seven steps: (1) adopt a complete streets approach, (2) fix barriers to safe streets, (3) gather data, (4) design appropriate streets, (5) create networks through maintenance, (6) improve safety laws, and (7) educate and enforce proper road use behaviors. The Challenge is based on the 2010 DOT [Policy Statement on Bicycle and Pedestrian Accommodation](#), and has helped inform the [Strategic Agenda for Pedestrian and Bicycle Transportation](#).