

Holland & Knight

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Federal Update September 2017

HOLLAND & KNIGHT UPDATE

Broward MPO's Visit to D.C.: During the Greater Fort Lauderdale Chamber of Commerce Washington Summit, Holland & Knight arranged for several key meetings with the legislative staff for Reps. Mario Diaz-Balart, Deutch and Wilson to discuss congressional support for the INFRA grant application, upcoming 40th anniversary of the MPO, and the importance of MPOs in the transportation planning process. We also discussed FEMA funding and process for hurricane recovery efforts.

Infrastructure Update: Holland & Knight recently met with the White House staff who are drafting the Administration's infrastructure proposal. The Department of Transportation (DOT) is reviewing the principles now, and the White House is hoping to have them finalized by December to share with Congress. The principles are organized into five categories:

1. Lending: Increased funding for the DOT Transportation Infrastructure Finance and Innovation Act (TIFIA), Federal Railroad Administration (FRA) Railroad Rehabilitation & Improvement Financing (RRIF), and EPA Water Infrastructure Finance and Innovation Act (WIFIA) programs and expanded eligibility for these programs.
2. Incentives: Projects that need less federal funding will be prioritized for funding. Will need to meet performance measures.
3. Rural: Block grant funding. Will not need to provide increased local funding.
4. Streamlining: Financial penalties for not complying.
5. Transformative projects

CONGRESSIONAL UPDATE

Appropriations Update: Following the August recess, lawmakers returned to Washington with a daunting legislative agenda, which included passing a spending bill to avert a shutdown, raising the nation's debt limit to avoid a default, and providing a disaster relief package for victims of Hurricane Harvey.

While the House has made significant progress on its appropriations bills, the Senate has lagged behind. As a result, a continuing resolution (CR) was needed to give Congress more time to work on their FY 2018 spending package.

On Wednesday, September 6th, in a meeting with Senate and House leadership from both parties, President Trump surprised Republicans by siding with Senate Democratic Minority Leader

Chuck Schumer (D-NY) and House Minority Leader Nancy Pelosi (D-CA), calling on Congress to attach a three-month CR and debt ceiling increase to the hurricane relief package. While Majority Leader Mitch McConnell (R-KY) expressed support for the deal, House Speaker Paul Ryan (R-WI) was concerned that the deal gives Democrats too much leverage in December when the CR expires. At that time, Congress will also be under pressure to address immigration in the wake of the President's decision to rescind the Deferred Action for Childhood Arrivals (DACA) program, as well as the President's border wall proposal.

On September 6th, Majority Leader Mitch McConnell filed legislation that passed the Senate on September 7 by a vote of 80-17, and passed in the House on September 8 by a vote of 316-90. The President signed the legislation on September 8, which:

1. Extends current funding levels through December 8;
2. Suspends the debt limit through December 8— resetting it at a higher level on December 9 to include debt issued while the debt limit was not in effect—and allows Treasury to reset its “extraordinary measures” that give it some extra borrowing capacity, and thus extra time, once it nears the debt limit (which means the next debt ceiling vote could occur sometime in late spring to early fall); and
3. Provides \$7.4 billion for FEMA, \$450 million for the Small Business Administration (SBA), and \$7.4 billion for HUD's Community Development Fund “for areas more affected by 2017 disasters.”

While the package averts a government shutdown for now, it potentially sets the stage for a contentious December as Congress must pass an omnibus spending package, begin negotiations to address DACA, and address the President's request for funding a border wall. The President and Senate Minority Leader Schumer have also agreed to pursue a plan to repeal the debt ceiling altogether in December, which House Speaker Ryan has already said he opposes, jeopardizing the possibility of passing this reform.

On September 14, the House passed a \$1.23 trillion spending package, [H.R. 3354](#), that would fund the government for the new fiscal year, beginning October 1. The omnibus package incorporates all 12 appropriations bills (including Transportation-HUD), and was passed in a mostly party-line vote, [211-198](#).

During floor consideration, the House adopted an amendment by Rep. Rob Woodall (R-GA) that allows states much more flexibility in implementing the \$800 million rescission of unobligated highway contract authority funding included in the bill. After Transportation-HUD Appropriations Subcommittee Chairman Mario Diaz-Balart (R-FL) stated support for the amendment, the House adopted it by voice vote. The amendment removes exemption for suballocated Surface Transportation Block Grant Program (STBGP) dollars from being rescinded and eliminates a requirement that states meet their rescission target by implementing recession in a proportional manner. Transportation trade associations including NARC and AMPO are meeting with Senate Transportation-HUD Appropriations staff to urge the Senate to not allow the provision to be include in the final omnibus appropriations conference report.

Holland & Knight is also working with the MPO on a letter to the congressional delegation and Chairman Diaz-Balart urging Congress to not include this provision in the final omnibus appropriations conference report.

The House also passed an amendment by Rep. Dan Lipinski (D-IL) to increase funding for National Highway Traffic Safety Administration (NHTSA) for vehicle safety activities by \$9 million. Lipinski said his extra \$9 million was “carry out the directives” of the House’s autonomous vehicle legislation.

This bill does not have the necessary 60 votes required to pass in the Senate, where Republicans only hold 52 seats. The House omnibus appropriations bill exceeds the statutory cap on defense spending by \$72 billion. If enacted, the measure would require cuts to military programs to become law. Additionally, without a FY 2018 budget deal in place, which provides spending caps, the bill is essentially a guideline to Republican priorities. The bill also contains several policy provisions deemed “poison pills” by Senate Democrats, such as a measure to provide funding for President Trump’s proposed border wall.

Self-Driving Vehicle Legislation Update: On September 6, the House of Representatives unanimously passed a bill to accelerate the production and deployment of self-driving vehicles. [H.R. 3388, the “SELF DRIVE” Act](#), is a bipartisan bill that outlines regulatory authority at the state and federal levels; guidelines for the National Highway Transportation Safety Administration (NHTSA) on safety and development; and initial principles for cybersecurity, privacy, and consumer education. States will maintain control over vehicle registration, licensing, driver’s education and training, insurance, law enforcement, crash investigations, safety and emissions inspections, congestion management, and traffic laws and regulations. NHTSA will be responsible for regulation of safety of design, construction, and performance.

The bill focuses on four areas: Consumer Protection, Fostering Innovation, Increasing Mobility, and Promoting Research and Development. House Energy and Commerce Digital Commerce and Consumer Protection Subcommittee Chairman Bob Latta (R-OH) said the legislation would allow the industry to “flourish without the heavy hand of government.” The SELF DRIVE Act applies only to passenger cars and light trucks. Unions have voiced concern over the lack of inclusion of commercial motor vehicles in the House bill. However, the House Subcommittee does not have jurisdiction over Federal Motor Carrier Safety Administration (FMCSA).

Senate Commerce Committee Chairman John Thune (R-SD), Commerce Committee Ranking Member Bill Nelson (D-FL), and Senator Gary Peters (D-MI) have been working on a Senate version of the autonomous vehicles bill and introduced a [discussion draft](#) on September 8. The discussion draft requires manufacturers to conduct a safety evaluation report, and creates a technical safety committee that will provide performance standards recommendations. Additionally, the Senate bill allows more exemptions from federal safety standards than the House bill.

On September 13, the committee held a hearing titled “Transportation Innovation: Automated Trucks and our Nation’s Highways.” The hearing examined the benefits of autonomous truck safety technology, and impacts on job creation and the economy. The Senate is currently

engaged in ongoing discussion regarding whether or not to include trucks in self-driving vehicle legislation. Witnesses were:

- **Colonel Scott G. Hernandez**, Chief, Colorado State Patrol
- **Mr. Troy Clarke**, Chief Executive Officer, Navistar
- **Mr. Ken Hall**, General Secretary-Treasurer, International Brotherhood of Teamsters
- **Ms. Deborah Hersman**, President and Chief Executive Officer, National Safety Council
- **Mr. Chris Spear**, President and Chief Executive Officer, the American Truck Associations.

On September 27, Chairman Thune and Senator Peters announced they had reached an agreement on a bill, and would mark up the legislation in the Commerce Committee on October 4.

Self-Driving Vehicles Guidance: The Department of Transportation (DOT) released its revision to the National Highway Traffic Safety Administration (NHTSA) policy guidance regarding self-driving cars on September 12. The new guidelines, called [“Vision for Safety 2.0.”](#) scale back several recommendations outlined under President Obama’s Administration, including the 15-point safety assessment requirement. The requirement is now a 12-point plan, eliminating privacy, data sharing, and ethics stipulations. The streamlining guidance covers all motor vehicles, and NHTSA officials provided clarification that manufacturers are not required to submit voluntary safety assessments. Additionally, the guidelines no longer apply to vehicles with partial automation, which require that drivers still “remain engaged with the driving task.” Transportation Secretary Elaine Chao said the guidance will support further development of the new technology, and NHTSA identified the flexibility of the guidelines in keeping with constant technological advancement.

Senators Release Bill to Address Technology in Transportation: Sens. Richard Burr (R-NC) and Catherine Cortez Masto (D-NV) released legislation on September 14 aiming to boost innovative transportation systems nationwide. The bipartisan bill, called the [Moving FIRST Act](#), seeks to encourage communities to address transportation needs through new technology, data, and “smart solutions.” The bill builds on the Smart City Challenge program, which directed federal funding to transportation projects deemed “creative and innovative” in mid-sized cities. The bill formally authorizes Smart Cities as a competitive grant program, expands eligibility, and sets aside funding for communities. It also allows applicants to become eligible for other similar funding opportunities. Awards for large and mid-sized cities would be capped at \$80 million, and rural communities and regional partnerships would be capped at \$20 million.

FAA Extension Introduced: A new [bill](#) introduced by House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) would extend authorization for the Federal Aviation Administration (FAA) by six months, through March 31, 2018. The current FAA authorization extension expires on September 30.

The legislation also serves as a vehicle for hurricane tax relief, health care, and flood insurance provisions. The bill extends minor health care provisions not included in the FY 2018 continuing resolution bill, and extends authority for the Medicare Improvement Fund to FY 2021.

Additionally, the bill amends the Flood Disaster Protection Act to allow private flood insurance. It also provides disaster relief for individuals affected by Hurricanes Harvey, Irma, and Maria in the form of tax credits. The provision allows affected employers to claim tax credits of up to \$6,000 per employee for 40 percent of wages. Further, it allows federal officers or agencies to approve financial assistance and loans in areas identified as having special flood hazards.

The bill was considered in the House on September 25, under a procedure that requires a two-thirds vote for passage, and does not allow for amendments to be offered. The measure failed due to opposition to flood insurance provision, but GOP leaders will bring it back to the House floor under a rule that would facilitate its passage by a simple majority rule, and prohibit amendments. The administration has supported the bill.

The measure passed in the Senate on September 28 unanimously, and did not include flood insurance provision, and the House passed it on September 28 as well.

ADMINISTRATION UPDATE

DOT Releases TIGER Discretionary Grant Notice: On September 6, the Department of Transportation (DOT) [announced](#) the opening of applications for the [Transportation Investment Generating Economic Recovery \(TIGER\) Program](#). The FY 2017 Transportation-Housing and Urban Development Appropriations Act directed \$500 million available through September 30, 2020 for TIGER grants. Funds for the FY 2017 grant program will be awarded on a competitive basis for projects that intend to have significant impact on the country, a metropolitan area, or a region. The FY 2017 Appropriations Act outlines that TIGER grants may be no less than \$5 million and no greater than \$25 million, with an exception for rural areas, in which the minimum size is \$1 million. Selection criteria are the same as in previous rounds of the program: safety, state of good repair, economic competitiveness, quality of life, and environmental sustainability.

However, the descriptions of criterion have changed

- References to resiliency from climate change have been removed from the state of good repair criterion.
- Congestion pricing and public-private partnerships have been added to the economic competitiveness criterion.
- The reference to "green infrastructure" has been removed from the environmental sustainability criterion.
- The quality of life criterion has been rewritten—no reference to “livability”, and coordination with land use planning and economic development decisions.
- The previous Obama criterion emphasized improving access to essential services for "particularly for disadvantaged groups," and this criterion changes that to "particularly for rural communities."

FY 2017 TIGER grants will also give special consideration to projects emphasizing improved access to transportation for communities in rural areas. DOT will be holding a series of [webinars](#) during the grant application process. The deadline to submit an application for FY 2017 TIGER grants is Monday, October 16.

President Nominates More DOT Administrators: President Trump has nominated Paul Trombino to lead the Federal Highway Administration (FHWA), as well as Howard “Skip” Elliott to lead PHMSA.

Mr. Trombino was the Bureau Director of Transit, Local Roads, Rails, and Harbors with the Wisconsin Department of Transportation. In April of 2011, Iowa Governor Branstad (R) named him to be Director of the Iowa Department of Transportation. While serving as head of Iowa DOT for five years, he served a term as president of the American Association of State Highway Transportation Officials (AASHTO) and as the 2016 Vice-Chair of the Transportation Research Board (TRB) Executive Committee. Most recently, he was president of a civil engineering firm. Mr. Elliott has worked for railroad industry for 40 years. Before retiring in March of 2017, he was Vice President of Public Safety, Health, Environment and Security for CSX Transportation, for almost 13 years.

Even though the President has continued to nominate DOT appointees, the Senate has yet to confirm several of them. Below is a chart showing the status of nominees overseeing key transportation and infrastructure roles.

STATUS OF PENDING TRUMP ADMINISTRATION TRANSPORTATION NOMINATIONS			
Department of Transportation	Derek Kan	Under Secretary for Policy	Nomination reported 6/29/17 (Cal. #159)
Department of Transportation	Steven Bradbury	General Counsel	Nomination reported 8/2/17 (Cal. #254)
Department of Transportation	Adam Sullivan	Assistant Secretary for Governmental Affairs	Placed on Calendar 6/21/17 (Cal. #155)
Department of Transportation	Diana Furchgott-Roth	Assistant Secretary for Research and Technology	Nomination transmitted 10/2/17
DOT – Federal Highway Administration	Paul Trombino III	Administrator	Hearing scheduled for 10/4/17
DOT – Federal Motor Carrier Safety Admin.	Raymond Martinez	Administrator	Nomination transmitted 9/28/17
DOT – Federal Railroad Administration	Ronald Batory	Administrator	Nomination reported 8/2/17 (Cal. #261)
DOT – Pipeline & Hazmat Safety Admin.	Howard Elliott	Administrator	Approved in committee 10/5/17

Amtrak Board of Directors	Lynn Westmoreland	Member for a term of five years	Nomination announced 10/3/17
National Mediation Board	Kyle Fortson	Member for a term expiring 7/1/19	Nomination transmitted 6/26/17
National Mediation Board	Gerald Fauth	Member for a term expiring 7/1/20	Nomination transmitted 6/29/17
National Mediation Board	Linda Puchala (Reappointment)	Member for a term expiring 7/1/18	Nomination transmitted 9/28/17
Nat'l Transportation Safety Board	Bruce Landsberg	Member for a term beginning 1/1/18	Nomination transmitted 9/28/17
International Civil Aviation Organization	Thomas Carter	U.S. Representative and Ambassador	Nomination transmitted 9/5/17
U.S. Army Corps of Engineers	R.D. James	Assistant Secretary of the Army (Civil Works)	Nomination announced 10/3/17