

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 MPO Federal Update November 2016

ELECTION RESULTS

Holland & Knight: Holland & Knight has created a [Presidential Transition Analysis Center](#) on our website where we will be regularly posting information on major developments.

Presidential Race: Donald Trump and Gov. Mike Pence defeated Secretary Hillary Clinton and Sen. Tim Kaine (D-Va.) on November 8, 2016, in a markedly anti-establishment and populist election. A total of 7.05 million ballots were cast this year, which is similar to the 7.07 million tallied in 2012. Ultimately, voter turnout only accounted for 55 percent of eligible voters.

Congressional Races: In the U.S. Senate, Republicans maintained control, but Democrats narrowed their majority. Senate composition will be 52 Republicans and 48 Democrats. This includes the two Independents who caucus with the Democrats. The split, while giving Republicans the majority, puts the chamber in a precarious position in light of the 60-vote filibuster requirement and forecasts a challenging road ahead for Senate leaders, especially on confirmation battles. Republican incumbent Senator Marco Rubio defeated Democrat Patrick Murphy, and Senator Bill Nelson was not up for re-election.

In the U.S. House of Representatives, Republicans also maintained control, which was expected. Republicans lost a net of six seats by picking up three seats and losing nine incumbent seats. The current split is 241 Republican seats and 194 Democratic seats – 218 seats are needed for a chamber majority. Incumbent Democratic Representatives Alcee Hastings, Ted Deutch, Lois Frankel, Debbie Wasserman Schultz, and Frederica Wilson defeated their opponents, as did Republican incumbent, Representative Mario Diaz-Balart.

CONGRESSIONAL UPDATE

Lame-Duck Session: Lawmakers returned for legislative business on Monday, November 14. Though Congress was scheduled to be in session until December 16, the House and Senate plan to adjourn at the end of the week of December 5th.

Before leaving, Congress will extend to the spring the existing continuing resolution (CR), which is set to expire on Friday, December 9. The new CR is expected to be released on Tuesday, December 6, and will extend current government funding until March or April. This delay will give Congress time to confirm Trump's agency nominees and overturn Obama's regulations, before turning to appropriations bills.

House Republicans conferenced the bill on Friday, December 2, without discussing the CR's ultimate length or top-level spending numbers. Options include allowing for the annualized limit on discretionary spending of \$1.07 trillion, as called for in the budget deal reach last year, or to cap spending at last year's fiscal limit of \$1.067 trillion. With agencies having planned around the \$1.07 trillion number, the \$3 billion cut would force certain agencies to absorb modest cuts beyond what they had planned for. Additionally, agencies like the National Institutes of Health, set to receive a \$2 billion hike through the regular appropriations process, will have to adjust.

Democrats on the House Transportation and Infrastructure Committee wrote a letter to the Appropriations Committee last week asking them to provide money for Highway Trust Fund programs in the CR at the FAST Act funding levels rather than the extended FY 2016 rates. However, appropriators have been disinclined in the past to agree to these requests. Delaying the appropriations bill until March or April will also delay discretionary grant programs such as the TIGER program, New Starts/Core Capacity, FASTLANE grants, and the one-time \$199 million in positive train control (PTC) grants.

WRDA: The [final](#) Water Resources Development Act (WRDA) bill was released on December 5. House Majority Leader Kevin McCarthy (R-Calif.) is making a last-minute effort to attach his controversial drought language to the WRDA bill. Senate Environment and Public Works Ranking Member Barbara Boxer (D-Calif.) is calling the drought language a "poison pill" rider, and claims that she will vote no if the provision is included.

On Friday, December 2, House Majority Leader Kevin McCarthy announced on the floor that he expects the House and the Senate to vote on WRDA by Thursday, December 8.

Congressional Leadership Elections: Lawmakers in both the House and Senate met in their respective conferences to elect their leaders for the 115th Congress. The House GOP Conference has chosen to support their current leadership structure when the next Congress convenes in January: Rep. Paul Ryan (R-WI) will again be nominated for Speaker of the House, and Rep. Kevin McCarthy (R-CA) will continue to serve as Majority Leader, Rep. Steve Scalise (R-LA) as Majority Whip, and Rep. Cathy McMorris Rodgers (R-WA) as Conference Chairwoman. With a House Republican majority of 239-193, Ryan is expected to easily reach the 218 votes needed to be re-elected.

Current Minority Leader Nancy Pelosi (D-CA) was reelected as minority leader against challenger [Rep. Tim Ryan \(D-OH\)](#) in a caucus vote. Pelosi [released her nominees](#) for other leadership posts, which include Illinois Rep. Cheri Bustos, New York Rep. Hakeem Jeffries, and Pennsylvania Rep. Matt Cartwright to lead the House Democrats' communications team. She also selected Rep. Eric Swalwell (D-CA) to lead the Steering and Policy Committee with current co-chair, Rep. Rosa DeLauro (D-CT). Pelosi will need to overcome growing voices in her caucus unhappy with Pelosi's exclusive leadership style. Many young members hope to bolster their role in setting the party's priorities.

In the Senate, Senator Mitch McConnell (R-KY) was reelected as Majority Leader, and Senator Chuck Schumer (D-NY) was elected Minority Leader to replace retiring Senator Harry Reid (D-

NV). Senator Dick Durbin (D-IL) was re-elected as Democratic Whip, and Senator Patty Murray (D-WA) moved up to Assistant Democratic Leader. Senator Debbie Stabenow (D-MI) moved from the Assistant Democratic Leader slot to become Chair of the Democratic Policy & Communications Committee. Of note, the new position of Chairman of the Democratic Outreach Committee will be held by Senator Bernie Sanders (I-VT), and newly elected Senator Tammy Duckworth (D-IL) will serve as Conference Secretary. Senator-elect, Chris Van Hollen (D-MD), will serve as Chairman of the Democratic Congressional Campaign Committee.

Earmarks: While voting on leadership for the 115th Congress, the House GOP conference was also scheduled to take a vote on a couple of amendments that would have scaled back the 2011 earmark ban. The first amendment, offered by Rep. John Culberson (R-TX), would have allowed lawmakers to direct federal funding to federal, state, or local government projects. The second amendment, offered by Rep. Tom Rooney (R-FL), would have allowed Representatives to direct Army Corps of Engineers funding to projects in their districts. Speaker Ryan, however, convinced the GOP conference to postpone the vote until early next year, allowing more time to study the issue and citing the need to allow more time after the election before moving on such items. Ryan has promised a vote on earmark amendments to the House rules before the end of the first quarter of 2017. Sources indicate that these amendments would likely have passed.

Next Congress: New members of the Senate and those re-elected in 2016 will be sworn in on January 3. New Senate committee assignments will not be announced until the new Congress in January. Republican Senators submitted their committee requests on November 28. Senate leaders will also negotiate committee ratios. Last Congress, with 54 seats, Republicans had a two seat ratio; but now, with a closer margin, Republicans could lose a seat on each committee or Democrats could add one.

On December 2, the House Republican Conference approved committee chairmen for the 115th Congress, ratifying the recommendations made by the Steering Committee. Rep. Bill Shuster (R-PA) will remain chairman of the House Transportation and Infrastructure Committee. Here is a list of the new House Committee Chairs (*italics indicate potential chair*):

- Appropriations Committee – Rodney Frelinghuysen (NJ)
- House THUD Appropriations Subcommittee– Mario Diaz-Balart (FL)
- Budget Committee (open due to Chairman Price's nomination for HHS Secretary) – *Todd Rokita (IN)*
- Education and Workforce – Virginia Foxx (NC)
- Energy and Commerce Committee – Greg Walden (OR)
- Ethics – Susan Brooks (IN)
- Homeland Security Committee (could be open if McCaul goes to DHS)
- House Administration – Greg Harper (MS)
- Veterans Affairs – Phil Roe (TN)

ADMINISTRATION UPDATE

Elaine Chao to Run Department of Transportation: President-Elect Trump announced on November 29 that he will nominate Elaine Chao to be the Secretary of Transportation. She must be confirmed by the Senate. The wife of Senate Majority Leader Mitch McConnell (R-Ky.), Chao served for eight years as the 24th Secretary of Labor under President Bush. A long-time Washingtonian, she also served as Deputy Secretary of Transportation from 1989 to 1991 during President George H.W. Bush's administration. As Labor Secretary, Chao focused on preventing the loss of manufacturing jobs, which were dropping by three percent per month. Specifically, she aimed her efforts on high growth job training for those losing jobs due to automation or international trade—the same group of Americans who overwhelmingly supported Trump in this year's election.

Infrastructure Package: President-elect Trump's selection of Elaine Chao, along with his selections of Wilbur Ross for the Commerce Department and Steve Mnuchin for the Treasury Department, indicate his plan to focus on private infrastructure will likely continue to be the hallmark of his push to develop American infrastructure. Ross is the co-architect of the 10-page memo outlining Trump's \$1 trillion package, which would offer \$137 billion in federal tax credits to private investors.

Trump has made one additional announcement in a recent speech regarding his infrastructure package: the plan will require projects to “Buy American” and “hire American.” During the speech, he also indicated his intention to provide funding for projects to deepen harbors in addition to the road, bridge, and hospital infrastructure financing he has previously suggested the package would support.

However, in a conference call with reporters, the Senate's incoming Democratic Minority Leader, Sen. Chuck Schumer (D-N.Y.) pushed back on Trump's proposal, insisting that the package must include traditional government-funded highway and water projects, not just privately financed initiatives. Democrats continue to argue that allowing the private sector to make infrastructure decisions may result in more toll roads and bridges without addressing some of the nation's most critical infrastructure needs. Congressional Republicans, including Trump supporter Rep. Chris Collins (R-N.Y.) have likewise expressed support for a package with mixed incentives for both private- and public-sector projects.

National Infrastructure Bank Proposal: Steven Mnuchin, Trump's campaign finance chair and nominee for Treasury Secretary, announced on November 16 that Trump is considering creating a national infrastructure bank—an idea that Hillary Clinton often touted on the campaign trail. Trump's campaign is also considering offering more than \$1 billion in tax credits to support a \$1 trillion infrastructure investment, which would be offset by the tax revenue aggregated from projects' business profits and labor wages.

Clinton's [strategy](#) would have allocated \$250 billion to direct public investment in infrastructure and \$25 billion to an infrastructure bank. The bank would use its revenue to fund loans, credits

and loan guarantees. Ultimately, Trump's infrastructure plan will depend on the how much investment the private sector is willing to make in these projects. Democrats, including President Obama, have proposed creating an infrastructure bank for some time. Other countries—notably China and Canada—have already established an infrastructure bank.

Autonomous Vehicles Opportunity: The DOT is accepting proposals for their new [Automation Proving Ground Pilot Program](#). The agency will designate facilities as qualified proving grounds for the safe testing, demonstration and deployment of automated vehicle technology. Applications are due on December 19th.

GRANTS

New Round of FASTLANE Grants: DOT [announced](#) on October 28 that the Build America Bureau is now accepting applications for up to \$850 million for the second round of the Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) grants. Applications are due on December 15, 2016.