

DATE: September 8, 2017
TO: City of Seattle
FROM: Holland & Knight LLP
RE: Federal Update

This memo provides an overview of federal issues that impact the City of Seattle, including appropriations, immigration, tax reform, autonomous vehicles, and environmental issues.

I. FY 2018 Appropriations

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. Further, several programs will expire on September 30th without reauthorization, including the National Flood Insurance Program (NFIP) and the Children's Health Insurance Program (CHIP).

While the House has made significant progress on its appropriations bills, the Senate has lagged behind. As a result, a continuing resolution (CR) is 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.

Nevertheless, 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 Friday, 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.

Against this backdrop, the House and Senate have continued their work on their respective appropriations bills. Before the August recess, the House passed a \$788 billion national security "minibus" package that includes Department of Defense; Energy & Water; Legislative Branch; and Military Construction-Veterans Affairs Appropriations bills for fiscal year (FY) 2018 by a party line vote of 235 to 192. Democrats opposed the inclusion of \$1.6 billion, requested by the President, to begin construction of the border wall.

Since coming back into session this week, the House has worked to pass the eight remaining spending bills as a \$439 billion minibus spending package. The package, known as the "Make America Secure and Prosperous Act" (H.R. 3354), includes the FY 2018 Transportation-Housing and Urban Development, Agriculture, Commerce-Justice-Science, Financial Services, Homeland Security, Interior-Environment, Labor-HHS-Education, and State-Foreign Operations Appropriations bills. It also includes several contentious provisions, such as expanding the global gag rule (which requires that any overseas organization receiving U.S. aid may not have anything to do with abortion) to all global health programs, and budget cuts to teacher training, law enforcement grants, scientific and research programs, and Planned Parenthood. During consideration on the floor, Republican leadership may add the four-bill, \$788 billion national security minibus so that the Senate will receive a \$1.2 trillion omnibus appropriations bill that funds the entire federal government.

Thus far, the Senate Appropriations Committee has passed eight bills and is continuing work on the remaining four, which could receive floor consideration this fall. Both the Senate and House are eager to pass a spending package to ensure that the President's discretionary spending authority is limited.

II. Immigration

A. DACA

On September 5, Attorney General Jeff Sessions announced that DACA is "being rescinded" and Acting Department of Homeland Security Secretary Elaine Duke [issued a memorandum](#) officially rescinding the June 15, 2012 memorandum entitled "[Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children](#)," (the DACA memo). Acting Secretary Duke's memo also stated that DHS "personnel shall take all appropriate actions to execute a wind-down of the [DACA] program[.]" Attached are the [DHS FAQs](#) that identify potential impacts to DACA recipients. The program will be phased out over the next six months (March 2018), giving Congress a limited window to act. Specifically, the memorandum, rescinding DACA, states effective immediately, DHS will take the following actions:

- For any initial DACA requests and applications for Employment Authorization Documents (EADs) that have been received as of September 5, U.S. Citizenship and Immigration Services (USCIS) will adjudicate them on an individual case-by-case basis.
- USCIS will reject all initial DACA requests and associated EADs received after September 5.
- For any requests for renewing DACA benefits and associated applications for EADs that have been received as of September 5, USCIS will adjudicate them on an individual, case-by-case basis.
- For individuals whose DACA status expires between September 5 and March 5, 2018, USCIS can still adjudicate their renewal requests, but only if they are received by October 5, 2017.
- If an individual's DACA protection expires March 6, 2018 (or a date thereafter), and he or she has not already submitted a renewal application, the individual would be subject to deportation on March 6, 2018 (or a date thereafter).
- For any EADs that are lost, stolen, or destroyed, USCIS will continue to process the replacement document for the remainder of duration that they are valid.
- Senior DHS officials said that as part of Duke's memorandum, USCIS will close all pending applications for Advance Parole associated with the DACA program.

Two bipartisan bills were introduced earlier this year to continue DACA. The first—the Bridge Act (S.128)—would provide a three-year provisional protected presence to qualified individuals who came to the U.S. as children. Subsequently, a similar bipartisan group introduced the Dream Act (S. 1615/H.R.3440), which would protect DACA recipients by allowing them to earn lawful permanent residence, and eventually citizenship if they:

- Are longtime residents who came to the U.S. as children;
- Graduate from high school or obtain a GED;
- Pursue higher education, work lawfully for at least three years, or serve in the military;
- Pass security and law enforcement background checks and pay a reasonable application fee;
- Demonstrate proficiency in the English language and a knowledge of United States history; and
- Have not committed a felony or other serious crimes and do not pose a threat to our country.

On September 7, House Democrats filed a discharge petition—a rarely used legislative maneuver requiring 218 members to sign before the House is compelled to act—to force a vote on the Dream Act. Democrats would need 24 Republicans to support the petition for passage. Though GOP members will be hesitant to buck their leadership, bipartisan support for DREAMers and the bill is building.

Separately, a coalition of 16 state Attorneys General, led by New York Attorney General Schneiderman, filed suit this week claiming that the Trump administration violated the Equal Protection clause of the U.S. Constitution by discriminating against DREAMers of Mexican

origin, who make up 78 percent of DACA recipients. California refrained from joining as a party because the state plans to file its own lawsuit.

III. Tax Reform

Since Senate Republicans failed to pass health care reform on July 27, President Trump and GOP leadership have made tax reform their next major priority. The “Big Six” have been negotiating the details of the package. The group includes House Speaker Paul Ryan, Ways and Means Committee Chair Kevin Brady (R-TX), Treasury Secretary Steven Mnuchin, Senate Majority Leader Mitch McConnell, Senate Finance Committee Chair Orrin Hatch (R-UT), and National Economic Council (NEC) Director Gary Cohn. Speaker Ryan has said that he expects Republicans to propose a tax reform plan by the end of 2017, though many doubt that this deadline will be met. The president has outlined his four “basic principles” for a tax overhaul bill:

1. Making the tax code simpler and easier for “everyday” Americans to understand;
2. Lowering the corporate tax rate from 35 percent to 15 percent, which would spawn new jobs and bigger salaries;
3. Tailoring changes for middle-class families to, as he put it, “put more money into [their] pockets; and
4. Creating incentives for companies to bring back corporate profits being held overseas back home to the United States.

Senate Minority Leader Schumer has outlined three principles that Democrats believe should guide a tax code rewrite:

1. Do not cut taxes for the top one percent, which would burden the middle class;
2. Move through the tax committees in Congress under regular order instead of budget reconciliation; and
3. Do not add to the deficit.

While the Senate is expected to hold three hearings on tax reform in September, many believe that the issue is too challenging for Congress to tackle in the current political environment. Congress has yet to agree on a FY 2018 budget, which was expected to be the vehicle for tax reform legislation. And, equally contentious is the process of identifying offsets to pay for the tax reform package. Offsets such as eliminating the federal deduction for state and local taxes (SALT), eliminating or capping the mortgage interest deduction, and eliminating the tax exempt status of municipal bonds remain on the table. However, many observers believe that given the full agenda facing Congress and difficulty reaching bipartisan compromise, it is unlikely that Congress will be able to pass comprehensive tax reform. Increasingly, a more likely scenario, appears to be that Congress will simply pass a personal tax cut—which may only be paid for partially or not be paid for at all. This could be combined with a set of tax-breaks (known as “tax extenders”) that have passed on an annual basis to benefit corporations.

IV. Environment

A. Executive Order: Streamlining Environmental Review Permitting

On August 15, President Trump signed an [executive order \(EO\)](#) to streamline and eliminate permitting regulations to accelerate infrastructure system construction. The EO specifically targets the environmental review process, and rolls back procedures set by the Obama Administration that direct the federal government to take into account climate change and sea-level rise as it approves and builds new infrastructure projects.

Additionally, the EO establishes a policy of “One Federal Decision” in which one federal agency, deemed the lead, works in tandem with other agencies to execute environmental reviews and permitting decisions on a project. Decisions on permits will be made within 90 days; agencies will be required to process environmental reviews within two years. The EO also rolls back the Federal Flood Risk Management Standard, established by President Obama. The standard required new federally funded projects be constructed to endure the stronger storms and flooding that were projected as a result of climate change. The standard had not taken effect yet, as it directed each federal agency to develop its own regulations, none of which had been finalized.

B. EPA Collecting Public Input on Waters of the U.S. Rule

The Environmental Protection Agency (EPA) has scheduled ten teleconferences and an in-person meeting to gather input on a rewrite of the Waters of the U.S. (WOTUS) rule. The agency, in coordination with the Army Corps of Engineers, has outlined a schedule that will run through the fall; nine calls will be sector-based, and one call will be for the general public. The in-person meeting will cover small entities, and will take place on October 23. EPA Administrator Scott Pruitt has been following a two-step process to repeal the rule and rewrite WOTUS, following a February EO.

V. Autonomous Vehicles

On September 6, the House passed the [SELF DRIVE Act](#) (H.R. 3388) by voice vote. The bill was approved by the [Energy and Commerce Committee](#) on July 27 by a unanimous vote of 54-0. This legislation applies to light-duty passenger vehicles and trucks—it does not include medium- or heavy-duty trucks—and would create a clearer pathway for autonomous vehicles to be evaluated by National Highway Traffic Safety Administration (NHTSA). One of the most contentious items in the bill was federal pre-emption language and ensuring that the legislation did not pre-empt traditional state and local authority on operations and traffic management. In the compromise bill that passed the House, the legislation says states or a political subdivision of the state can enforce or prescribe laws and regulations regarding “registration, licensing, driving education and training, insurance, law enforcement, crash investigations, safety and emissions inspections, congestion management of vehicles on the street” unless “the law or regulation is an unreasonable restriction on the design, construction, or performance of highly automated vehicles, automated driving systems, or components of automated driving systems.” Since “unreasonable restriction” is not defined in the bill, the authority to determine the standard would be delegated to NHTSA, and there is some concern that this gives DOT too much authority. Additional concerns about the House bill include:

- **Highly Autonomous Vehicle Advisory Council:** The legislation creates a new advisory council to run out of DOT. As it passed out of the full committee, the legislation was modified to include language allowing the Secretary to include state and local governments on the advisory council, however it doesn't require their inclusion. We would like to see this provision modified to require state and local participation on the advisory council and to ensure that they have an adequate number of seats to ensure that their views are well represented.
- **Data Sharing:** The legislation does not advance data sharing between the private and public sector. It does not require the reporting of any instances where an autonomous vehicle (AVs) did not crash but was involved in a near miss or dangerous situation. Transportation data allows cities to construct more hospitable conditions for all modes of travel, especially AVs. But in order to effectively build and manage safe, efficient streets for new modes, cities need data on vehicle collisions, near-misses, and disengagements. Real-time data on vehicle speeds, travel times, and volumes has the potential to inform speed limits, congestion management, evaluate street redesign projects, and ultimately improve throughput and quality of life.
- **NHTSA Funding:** Without even an understanding of the appropriate level of resources and expertise that NHTSA needs to safely regulate AV's, there is a risk in deploying AV's that could jeopardize safety and undermine consumer confidence in AV technology. While this is an issue that will largely be taken up through appropriations, the legislation does not address NHTSA resources.

In the Senate, the Commerce Committee is planning a hearing on autonomous trucking on September 13th. The Senate will likely release the text of its own autonomous vehicle legislation shortly.

In addition, USDOT is also expected to release its update to the federal government's policies around automated vehicles (AVs) next week. The original Federal Automated Vehicle Policy Statement (FAVP) was released by USDOT last September under Secretary Anthony Foxx, and was intended to be a living document that would be updated annually. Across four sections, the FAVP: provided manufacturers with guidance for safely testing and deploying AVs, delineated the roles federal/state/local entities in regulating AV development and operation, outlined NHTSA's existing authorities, and listed potential authorities it may request from Congress. It is expected that the new guidance will modify some of the more controversial portions of the original FAVP, such as the voluntary safety assessment letter (SAL) for manufacturers, the model state policy for AVs, and sections pertaining to pre-market approval.